

**THE SCOTTISH LEGAL AID BOARD**

**MINUTE OF A MEETING OF THE LEGAL SERVICES POLICY COMMITTEE HELD  
AT 10.30 AM ON MONDAY 19 FEBRUARY 2007 AT 44 DRUMSHEUGH GARDENS,  
EDINBURGH**

Present: Margaret Scanlan (Convener)  
Graham Bell  
Iain Robertson  
Lindsay Montgomery  
Kenneth Ross  
Mahendra Raj  
Joseph Hughes  
Graham Watson  
Elaine Rosie

In attendance: Tom Murray, Director of Legal Services and Applications  
Douglas Haggarty, Head of Legal Services (Technical) (item 8 only)  
Catriona Whyte, Head of Legal Services – Civil (items 9-10 only)  
Elizabeth Cuschieri, Board Solicitor (item 11 only)  
Helen Bell, Board Solicitor (item 13 only)  
Eleanor Campbell, Legal Assistant to the Director of Legal Services and Applications  
Marie-Louise Fox, Legal and Policy Support to the Chief Executive  
Stuart Foster, Board Administrator

**1. APOLOGIES FOR ABSENCE**

None.

**2. DECLARATIONS OF INTEREST**

No interests not previously registered in the Register of Board Members' Interests were declared.

The Chairman declared an interest in relation to item 13 in that he had been party to the decision of the Legal Services Cases Committee to refuse the original application.

**3. DRAFT MINUTE OF MEETING HELD ON 18 DECEMBER 2006**

Subject to amending the second bullet point of item 6 to reflect the independence of the Quality Assurance Committee, the draft minute of the Legal Services Policy Committee held on 18 December 2006 was approved.

**4. DRAFT MINUTE OF THE LEGAL SERVICES CASES COMMITTEE HELD ON 18 DECEMBER 2006**

The draft minute of the Legal Services Cases Committee held on 18 December 2006 was noted.

**5. MONTHLY ACTION POINTS**

The Committee considered a paper by Tom Murray setting out progress with the implementation of actions arising at the previous meeting.

The Committee noted the position.

## **6. DIRECTOR'S REPORT**

The Committee considered a paper by Tom Murray reporting on matters of interest which had arisen since the previous meeting. The following were reported on: counsels' fees; JCPC – outcome of discussion; Spring package; Civil update; Criminal quality assurance.

It was further reported that:

- the Chairman and Chief Executive had held a most constructive meeting with the Sheriffs' Association, at which the Board's intentions in relation to curbing the excessive cost to the public purse of reports by curators and reporters had been clarified. The Association was now fully supportive of the Board's proposals, and would ask the Sheriffs Principal to issue a Practice Note to guide the drafting of interlocutors; it had also been agreed to meet again annually;
- at a recent taxation, Faculty had raised the issue of interest being payable on accounts submitted to the Board. The Board did not agree interest was payable and would dispute the matter at the JCPC in mid-May.

The Committee noted the position.

## **7. CONSULTATION ON THE CODE OF PRACTICE**

Deferred.

## **8. SOLEMN BLOCK FEES**

The Committee considered a paper by Douglas Haggarty updating on the current stage reached in the development of a block Table of Fees for solicitors in solemn criminal cases, and a report to be circulated to the profession as part of a consultation exercise on the rationale behind the proposed block fee scheme and its structure.

After discussion, it was AGREED:

- to note the terms of the report and approve the next stage of the process.

**ACTION: JDH**

## **9. ADVICE AND ASSISTANCE TEMPLATES**

The Committee considered a paper by Catriona Whyte reporting on the use made of the templates in relation to requests for increases in authorised expenditure in advice and assistance.

It was noted that there were currently 20 templates available for use by the profession, and firms using them were almost universally complimentary about them. There was no evidence to support initial concern that templates would drive up the costs charged by solicitors for work

done under advice and assistance. A report would be made to the March meeting with information on the volumes of cases and the costs incurred where the templates are used.

It was noted that the Board would be pro-actively engaging with firms that did not make use of the templates with the aim of increasing their use.

After discussion, it was AGREED:

- it was important to monitor the level of uptake by the profession;
- a sample of firms that did not use templates be contacted to find out if this was because they had encountered problems with using templates.

**ACTION: CAW**

## **10. LEGAL AID APPLICATION**

The Committee considered a paper by Catriona Whyte concerning a review application relating to House of Lords proceedings. The original application had been refused by the Legal Services Cases Committee.

It was noted that the application sought to appeal to the House of Lords against a decision of the Court of Session to reject the applicant's appeal against the Immigration Appeal Tribunal's decision to reject an appeal against refusal of the applicant's asylum claim. The applicant argued that insufficient justification had been given for the reasons reached in relation to the disposal of the appeal application.

An earlier decision of an Assessment Officer to grant civil legal aid had been taken erroneously and not in accordance with the Board's clearly stated procedure. A revised monitoring procedure had since been put in place.

The review application was supported by an opinion of counsel which argued in particular that the Board's conclusion that there was no probable cause was entirely unsubstantiated and the reasoning inadequate and incomprehensible.

However, it was noted that two of the original external reporters were of the view that there was no probable cause in this case, as did the Legal Services Cases Committee. The Board did not accept it could not consider the ultimate prospects of success of the asylum appeal, and had to consider whether an individual paying privately would meet the costs of House of Lords proceedings, particularly with no observation given about the ultimate prospects for the asylum claim.

It was recommended that the decision of the Legal Services Cases Committee be adhered to and the application refused on the basis that there was no probable cause and that it was unreasonable to make legal aid available.

In discussion, the view was expressed that counsel had made no proper argument that the appeal court judges had erred in law, and that the application should be refused. The Committee concurred, and turned attention to the reasons for refusal.

After discussion, it was AGREED to refuse the application on the basis that there was no probable cause and that it was unreasonable to make legal aid available, with the specific reasons for refusal being:

- *There is no probable cause in this case. It is not shown that the Inner House erred in law in its consideration of this appeal. The case does not appear to raise any significant points of “signal” importance for consideration by the House of Lords.*
- *It is also unreasonable to make legal aid available. The position as regards the ultimate success of the actual asylum application (assuming the House of Lords finds in favour of the applicant) is not set out. There is no information provided to assess the applicant’s ultimate prospects and it is not shown that a litigant using their own funds would instruct a solicitor to proceed to the House of Lords unless there was a fair possibility that the remedy ultimately aimed at (that of the asylum/refugee status or leave to remain) was actually achievable.*

**ACTION: CAW**

## **11. DRAFT CHILDREN’S SERVICES (SCOTLAND) BILL CONSULTATION: “GETTING IT RIGHT FOR EVERY CHILD”**

The Committee considered a paper by Elizabeth Cuschieri which summarised the proposals and set out a draft response to the consultation and draft Bill issued by the Scottish Executive.

It was noted that the consultation and draft Bill constituted the third phase of an extensive review of the children’s hearing system and services for children.

In discussion, the view was expressed that this was an area of law that had worked well, and there was no apparent need for changing the system.

After discussion, it was AGREED:

- to approve the response as proposed, subject to pointing out that the proposals would inevitably have financial implications.

**ACTION: EEC**

## **12. LAW SOCIETY CONSULTATION – EDUCATION AND TRAINING**

The Committee considered a paper by Eleanor Campbell which set out the policy implications and points that should be made in response to a Law Society of Scotland consultation on the education and training of lawyers.

It was noted that the consultation was based on a previous consultation: “Lawyers of the Future.” At the end of the consultation process the results would be shared with the key stakeholders (including the Board) who would be invited to comment on the themes emerging from the responses.

In discussion, concerns were expressed that the current system was not producing a flow of trained lawyers to areas of need, and there was nothing in the proposals that appeared to address this. Steps should be taken to instil a basic knowledge of legal aid issues at an earlier stage, including the pre-graduate stage. There was also a need for teaching in the basics of managing a business. Lawyers were coming into the system in sufficient numbers, but there were insufficient traineeships available. It was known that students felt the content of the diploma could be covered in 3 months instead of a year. The proposals did not address structural or funding issues. There was an unmet need for publicly funded lawyers, and legal education was not at one with the needs of society in this regard. The response should also refer to the importance of

continuing professional development in the legal aid area, and the Board's willingness to help provide this.

After discussion, it was AGREED:

- to approve the proposed response subject to reflecting the points raised in discussion.

**ACTION: EC**

### **13. LEGAL AID APPLICATION**

The Committee considered a paper by Helen Bell concerning a review application to appeal to the House of Lords against a decision of the Inner House of the Court of Session. The original application had been refused by the Legal Services Cases Committee.

It was noted that the action dismissed by the Inner House sought damages from the applicant's former solicitors for negligence following the applicant's, subsequently quashed, conviction. The former solicitors' agents succeeded in challenging the relevancy of the claim, and the court had considered it unnecessary to rule on the issue of immunity from suit for solicitors conducting a defence in criminal proceedings.

The review application was supported by an opinion of counsel, which argued there were good prospects of overturning the decision of the Inner House on the relevancy argument, as that decision had been reached by wrongly placing reliance on certain English authorities.

However, it was noted that the Inner House had been unanimous on the question of relevancy, giving persuasive and detailed reasons for their decision, and it was considered that counsel's opinion failed to persuade that the decision was wrong in law. It was recommended that the application for review be refused for the reasons previously given.

In discussion, the view was expressed that it was desirable that the immunity argument was ventilated, but that the case in question was not the appropriate vehicle. There could be no guarantee that the House of Lords would address the issue of immunity.

After discussion, it was AGREED that the application be refused for the reasons previously given.

**ACTION: HB**

### **DATE OF NEXT MEETING:**

Monday 19 March 2007 at 10.30 am.

The meeting ended at 12.00 pm.