

THE SCOTTISH LEGAL AID BOARD

**MINUTE OF A MEETING OF THE LEGAL SERVICES POLICY COMMITTEE HELD
AT 10.30 AM ON MONDAY 22 MAY 2007 AT 44 DRUMSHEUGH GARDENS,
EDINBURGH**

Present: Kenneth Ross (Convener)
Graham Bell (items 6-12 only)
Iain Robertson
Lindsay Montgomery
Graham Watson
Elaine Rosie
David Nicol
Mahendra Raj (items 7-12 only)

In attendance: Tom Murray, Director of Legal Services and Applications
Owen Mullan, Head of Legal Services – Criminal (item 7 only)
Douglas Haggarty, Head of Legal Services – Technical (item 10 only)
Kingsley Thomas, Head of Criminal Legal Assistance (items 9 -12 only)
Colin Lancaster, Head of Policy and Development (item 8 only)
Jo Garrett, Policy and Development Research Officer (item 8 only)
Steven Carrie, Senior Technical (Accounts) Specialist (items 10-12 only)
Marie-Louise Fox, Legal and Policy Support to the Chief Executive
Eleanor Campbell, Legal Assistant to the Director of Legal Services and Applications
Stuart Foster, Board Administrator

1. APOLOGIES FOR ABSENCE

Joseph Hughes.

2. DECLARATIONS OF INTEREST

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

3. DRAFT MINUTE OF MEETING HELD ON 23 APRIL 2007

The draft minute of the Legal Services Policy Committee held on 23 April was approved.

In relation to the Scottish Public Services Ombudsman case, the Chief Executive reported that a letter expressing a degree of apology, and separately, a letter requesting payment of the money owed to the Board, had been sent to the applicant, who had replied with an offer of payment. The matter was now closed.

4. DRAFT MINUTE OF THE LEGAL SERVICES CASES COMMITTEE HELD ON 23 APRIL

The draft minute of the Legal Services Cases Committee held on 23 April 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 matters were reported on: Quality Assurance Committee; Civil Register; Outcomes research project; meeting with Sheriff Principal Taylor; Judicial Studies Committee; remuneration of Civil Peer Reviewers.

It was noted that a paper would be submitted to the next meeting to discuss the concerns that had been emerging in relation to some immigration firms' practices;

It was reported that a solicitor who had not been co-operating with the Quality Assurance Committee was now threatening to take legal action against the Law Society.

It was AGREED Tom Murray contact the Law Society to request a copy of counsel's opinion obtained by the Society in connection with an action raised by another solicitor on similar grounds.

ACTION: TCM

7. PROCEEDS OF CRIME

The Committee considered a paper by Owen Mullan concerning the legal aid position of persons convicted of a criminal offence without the benefit of a grant of legal aid, who subsequently faced confiscation proceedings.

It was noted that in an increasing number of cases solicitors had contacted the Board for assistance in advising clients who had been served with a confiscation in terms of the Proceeds of Crime Act 2002 after being convicted of a criminal offence for which they had not been in receipt of legal aid. Solicitors were unsure of the legal aid position. It appeared there was a gap in the legal aid legislation which meant that an accused person not in receipt of legal aid in the original proceedings could not apply for legal aid to cover the confiscation proceedings.

It was estimated that if regulatory change were implemented to cover the gap, the cost to the Board could be in the order of £1m per annum.

After discussion, it was AGREED to:

- engage with the Crown Office with a view to agreeing a protocol which would permit confiscated funds to be released to the solicitor for the party to the proceedings;
- bring the apparent gap in the provision of legal aid to the attention of the Scottish Executive, advising that the Board was actively working with the Crown Office to arrive at the preferred position;
- refer a current case to the Crown Office, requesting the return of funds.

ACTION: OM

8. BOARD'S RESEARCH PROGRAMME

The Committee considered a paper by Clare Duffy and Colin Lancaster which sought views on the development of the Board's research programme for 2006 to 2009.

It was noted that most of the projects were either under way or committed to, and there was relatively little choice as to whether to take most of them forward. In addition to the commitments in the programme, the research team responded to a range of *ad hoc* short term requests. However, research capacity had recently been increased, with the consequence that the scope for delivering additional projects had improved, particularly for those projects that could begin in 2008/09.

After discussion, it was AGREED:

- the projects be drawn together to form a proposed programme for consideration by the Board.

ACTION: CL

9. CIVIL ADVICE AND ASSISTANCE REFORM

The Committee considered a paper by Joe Kelly and Kingsley Thomas reporting on the implementation of the Civil Advice and Assistance Reforms on 1 May 2007, and the issues dealt with in the initial stages of the new system.

The paper outlined the key elements of the reforms, the number and type of intimations of diagnostic grants and applications for uplifts to standard advice and assistance which had so far been received, together with the criteria being applied in the consideration of the uplift requests.

The Committee noted the position.

10. SUMMARY CRIMINAL LEGAL ASSISTANCE REFORM

The Committee considered a paper by Tom Murray outlining the summary criminal legal assistance model on which it was intended to consult over the summer, the progress to date, the steps needed for its implementation, and the timescales in which these were to be undertaken.

The paper summarised the broad structure of what would be a more integrated summary criminal legal assistance model, complementing and underpinning the changing summary justice process, reflecting at the same time experience derived from the implementation of the High Court reforms and the summary justice pilots, namely: the benefits to be derived from frontloading of payments for work undertaken, the provision of advice and representation by solicitor of choice and the early exchange of information between the Crown and the defence - essential components in reshaping culture and behaviour.

The current model was built on the initial proposals and the various developmental papers approved by the Committee in the previous year, but contained a number of elements which departed from what had previously been proposed and agreed. The Committee was invited to approve these departures, together with the form the consultation should take.

After discussion, it was AGREED:

- the consultation be conducted jointly with the Scottish Executive, Ministers having signed up to the principles, and should last for three months, the Committee being unhappy about the consultation period being reduced;
- to approve the departures from the original proposals, with the exception of the proposal to aggregate the resources of a spouse or partner in the means test, to which further consideration should be given and approving a solution to obtain full information about an applicant's financial circumstances.

ACTION: TCM

11. SOLEMN BLOCK FEES

The Committee considered a paper by Steven Carrie updating on the consultation process to introduce a block Table of Fees for solicitors in solemn criminal cases, and drawing attention to concerns being expressed by the profession on the current proposed structure.

It was reported that early feedback from the profession on the sheriff and jury proposed block fees had been negative, particularly in relation to the early settlement and progress fees proposed within the structure. The view had been expressed that in the busier courts disclosure was not working properly: solicitors were still having to do the bulk of the preparatory work, and block fees were therefore unsuitable.

In recognition of the views being expressed by the profession, the Board had been actively considering alternative options to the currently proposed block early settlement and progress fee. The paper set out a number of alternative options.

After discussion it was AGREED:

- after completing work on costings, the proposed option relating to charging precognitions as outlays at standard prescribed rates, in combination with those for the removal of case categories and the conclusion of proceedings be discussed with the Scottish Executive as a revised approach, with a view to entering into constructive negotiations with the Law Society in due course.

ACTION: SC

12. DATE OF NEXT MEETING: Monday 25 June 2007 at 10.30 am.

The meeting ended at 12.30pm.