

THE SCOTTISH LEGAL AID BOARD

**MINUTE OF A MEETING OF THE LEGAL SERVICES POLICY COMMITTEE HELD
AT 10.30 AM ON TUESDAY 25 SEPTEMBER 2007 AT 44 DRUMSHEUGH GARDENS,
EDINBURGH**

Present: Kenneth Ross (Convener)
Elaine Rosie
Iain Robertson
Lindsay Montgomery
Graham Watson
David Nicol
Joseph Hughes

In attendance: Catriona Whyte, Head of Legal Services – Civil (item 7 only)
Liz Cuschieri, Board Solicitor (item 8 only)
Kingsley Thomas, Head of Criminal Legal Assistance
Douglas Haggarty, Head of Legal Services (Technical)
Eleanor Campbell, Legal Assistant to the Director of Legal Services and
Applications
Sarah Rova, Legal and Policy Support to the Chief Executive
Stuart Foster, Board Administrator

1. APOLOGIES FOR ABSENCE

Graham Bell and Tom Murray.

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 27 AUGUST 2007

Subject to specifying that Douglas Haggarty had been co-opted onto the Committee to make it quorate in relation to item 7 only, the draft minute of the Legal Services Policy Committee held on 27 August was approved.

**4. DRAFT MINUTE OF THE LEGAL SERVICES CASES COMMITTEE HELD ON 27
AUGUST 2007**

The draft minute of the Legal Services Cases Committee held on 27 August 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.

It was reported that, following incorporation of some points made by the Crown Office, the joint consultation on summary criminal legal assistance reform had been essentially approved by the Cabinet Secretary and was expected to appear on the Scottish Government website next day.

Board officials would meet with the Law Society to advise them of the content of the approved document prior to sending a hard copy to all practicing criminal practitioners and the local faculties.

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: the Civil Register; Civil Quality Assurance; a Law Society presentation on the future of legal education and training; the Legal Aid Conference; current cases; Summary Criminal Legal Assistance Reform; reform of Civil Advice and Assistance; and verification of financial circumstances.

It was further reported that regulations had been laid introducing a new criterion for an uplift to the civil block fees in certain cases where a vulnerable witness was involved in a civil case, and that there had also been amendments made to the table of fees for undefended actions (non-divorce).

It was AGREED:

- Joseph Hughes be sent a copy of the re-modelling costing exercise;

ACTION: SF/SC

- a verbal update be provided on the position in relation to solemn fees;

ACTION: TCM

- otherwise, to note the position.

Update to Directors report

It was AGREED:

- a further report be made to the Executive Team and the Committee on the position regarding solicitors seeing evidence of their client's income in advice and assistance intimations.

ACTION: TCM

7. ADVICE AND ASSISTANCE TEMPLATES

The Committee considered a paper by Catriona Whyte updating the position regarding the use of templates in advice and assistance.

It was noted that 56% of civil advice and assistance requests for increases in authorised expenditure submitted since the introduction of the revised advice and assistance system had used templates, compared with 13% prior to 1 May 2007. Also, the Advice and Assistance Increase Unit were seeing far fewer requests for increases where available templates had not been used.

An extensive manual exercise would be commenced at the end of September to determine if costs had increased as a result of the improved availability of templates.

It was reported that an issue had arisen with the behaviour of a firm of solicitors that had used templates for applications to judicially review the Board's decision to refuse increases in authorised expenditure for a large number of A&A intimations lodged in respect of advising

prisoners on their right to vote. The Legal Compliance Manager had written to the firm to express the Board's concern, but had not received a reply.

In discussion, the view was expressed that such behaviour constituted an abuse of the Code of Practice and that the firm should no longer be permitted the use of templates. Nor was it incumbent on the Board to pay for any work done on the cases.

After discussion, it was AGREED:

- to write again to the firm to express the Board's concern that there was nothing to justify such expenditure, and depending on the response, to consider referring the matter to the Law Society;
- in the meantime, to stop the firm's use of online and paper templates;

ACTION: CAW

- otherwise, to note the terms of the report.

8. CIVIL LEGAL AID FOR DEFAMATION CASES

The Committee considered a paper by Philip Shearer which updated the position on developments relating to the provision of civil legal aid in defamation cases, and set out draft guidance for staff and the profession.

It was noted that an amendment brought about by the Legal Aid (Scotland) Act 2007 allowed civil legal aid to be made available for defamation actions in certain circumstances, provided criteria set out by Ministers in Directions were met. The Directions had come into effect, and it was now possible for an applicant to seek legal aid for more than simply defending a counterclaim made in other proceedings. In addition to the statutory tests, applications in this area had also to satisfy the exceptionality criteria set out in the Directions. As this was a very high test, it was expected that few applications would meet the criteria.

In discussion, the view was expressed that the terms of the Direction were unclear in respect of the test (by reference to the *Steel and Morris v UK* case) that the Board was expected to apply, and that this made it unsatisfactory to draft and issue guidance based upon it. Following consideration of a specific case at their previous meeting, the Legal Services Cases Committee had asked for a letter to be sent to the Scottish Government to point out the lack of clarity in the Directions. Nevertheless, it was recognised that there was a need to issue guidance on the matter in early course.

After discussion, it was AGREED:

- to delegate authority to the Chief Executive and Head of Legal Services (Technical) to revise and issue the guidance in neutral terms – in particular, to convey that solicitors making an application would need to refer to *Steel and Morris v UK* for their own interest, since the factors listed in the guidance were only those that the Board took from the case, and would include in applying the exceptionality test;
- the legal position regarding the extent to which Directions were to be applied be checked;
- to continue to press the Government for greater clarity on the Directions to the extent of the reference to *Steel and Morris v UK*.

ACTION: JDH/LM

9. DUTY SOLICITOR SCHEME – ELIGIBILITY CONSULTATION

The Committee considered a paper by Kingsley Thomas which set out the terms of a proposed consultation on new arrangements for agreeing the duty solicitor rotas with local faculties. The consultation proposed to amend the eligibility criteria for inclusion on the duty plans so as to allow solicitors to apply for inclusion on duty plans outwith their sheriff court district, with a view to applying the new criteria in the re-drafting of the 2008 duty plans from April 2008 onwards.

In discussion, the view was expressed that eligibility for inclusion on the duty plans should be as unrestricted as possible, and therefore should be extended beyond sheriff court districts and sheriffdoms. The proposed change was unrelated to the arrangements applying to the PDSO, but stemmed instead from the proposed extension of solicitor choice in custody undertaking cases in the summary reforms, and this should be reflected in the consultation paper. The consultation paper should also make it clear that any local faculty arrangements in respect of the duty plans had to be agreed in consultation with the Board and could not be prescribed by the faculty.

After discussion, it was AGREED:

- to amend the proposed consultation to reflect the points raised in discussion: specifically, to make the appropriate revisions to paragraphs 4.2, 4.3, 4.6 and 5; and to cross-reference the review of duty payment rates with the summary reform consultation paper.

ACTION: KT

10. DATE OF NEXT MEETING: Monday 22 October 2007 at 10.30 am.

The meeting ended at 11.45 am.