

**THE SCOTTISH LEGAL AID BOARD**

**MINUTE OF A MEETING OF THE LEGAL SERVICES POLICY COMMITTEE HELD  
AT 10.30 AM ON MONDAY 27 AUGUST 2007 AT 44 DRUMSHEUGH GARDENS,  
EDINBURGH**

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

In attendance: Tom Murray, Director of Legal Services and Applications  
Catriona Whyte, Head of Legal Services – Civil (item 7 only)  
Douglas Haggarty, Head of Legal Services (Technical) (items 8-10 only)  
Eleanor Campbell, Legal Assistant to the Director of Legal Services and Applications  
Stuart Foster, Board Administrator

**1. APOLOGIES FOR ABSENCE**

Joseph Hughes and Graham Bell.

In order to be quorate for item 7, the Committee co-opted Douglas Haggarty as a member of the Committee.

**2. DECLARATIONS OF INTEREST**

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

David Nicol and Tom Murray declared interests in relation to item 7 (legal aid application).

**3. DRAFT MINUTE OF MEETING HELD ON 30 JULY 2007**

The draft minute of the Legal Services Policy Committee held on 30 July was approved.

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

Subject to amending the list of attendees at the meeting to include the Chairman (for the final item only), the draft minute of the Legal Services Cases Committee held on 23 July 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: the civil register; civil quality assurance and advice and assistance templates.

The Committee noted the position.

## **7. LEGAL AID APPLICATION (Ref. 7802197107)**

The Committee considered a paper by Catriona Whyte concerning an application for review of a decision by the Legal Services Cases Committee.

It was noted that the applicant was one of a number of individuals who had raised damages actions against a tour company operator in relation to a coach crash. One case had already been heard and dismissed both in the Outer House and on appeal. Others had abandoned their claims or did not raise actions. The applicant was unsuccessful at proof in the Court of Session and wished to appeal against the Lord Ordinary's decision. There were three other related legal aid applications seeking cover for appeal applications.

The Legal Services Cases Committee had refused for reasons including that Counsel's supporting note did not adequately specify errors in the Lord Ordinary's decision nor the prospects of the inner House altering any of his findings-in-fact or conclusions and overturning the decision. The review application was supported by a note from junior counsel setting out what were considered to be the errors in the decision of the Lord Ordinary.

After discussion, it was AGREED:

- to adhere to the decision of the Legal Services Cases Committee to refuse the application on the basis that the tests of probable cause and reasonableness were not met - notwithstanding the terms of junior counsel's note it was still not considered that the information provided with the application was sufficient to show that the Inner House was likely to alter the Lord Ordinary's decision or that the costs to be incurred in relation to the appeal would be reasonable having regard to the prospects of success and the benefit to the applicant.

**ACTION: CAW**

## **8. CONSULTATION ON SUMMARY CRIMINAL LEGAL ASSISTANCE REFORM**

The Committee considered a paper by Tom Murray setting out a proposed draft consultation document for the summary criminal legal assistance reforms.

It was noted that the draft document had been radically altered to reflect revisions made to the document the Justice Department intended to publish describing the wider changes to the summary justice model, and changes to the Crown Office approach to disclosure discussed at a meeting held on 22 August.

In discussion, members suggested some amendments to the consultation.

Mention should be made of the risk of non-payment where there is a changed plea on the morning of the trial at the intermediate diet (this had been included in the earlier draft before the Committee

Section 1.10 should match the wording in the system model paper

Section 1.11 should be reworded to reverse the order

Section 5.5 – the middle bullet point did not actually contain a proposal;

Section 6.7 : state there was still a maximum figure to be applied

Section 6.21: a figure should be given for what would be paid

Explicit reference should be made to the continuation of the “exceptional cases” system

The statement about reducing bureaucracy should not be included

The proposed fees should be described as “demonstrative only”

After discussion, it was AGREED:

- subject to amendment in terms of the discussion, to refer the draft consultation to the Scottish Executive.

**ACTION: TCM**

## **9. SUMMARY CRIMINAL LEGAL ASSISTANCE REFORM – COSTING OF MAIN REFORM PROPOSALS**

The Committee considered a paper by Tom Murray which provided further details of the costings which could result from the reforms of summary criminal legal assistance, based on the assumptions given to the Board by the Crown Office.

It was noted that at the meeting with the Crown Office and the Scottish Executive held on 22 August the Crown Office had departed from its previously stated position on disclosure in two major respects: the Crown would not be able to provide the defence with a copy of the complaint and a disclosable summary of evidence in undertaking cases in advance of the actual hearing; and the Crown would not tie itself down to providing Crown statements as part of the disclosure package at a specific time (previously 28 days) in advance of the intermediate diet.

Although the Board was able to accommodate the Crown Office changes without radically altering the current and previously stated positions on what the new summary criminal legal assistance model would look like, members expressed serious concern that the Crown Office’s shifting of position made it difficult to place reliance on the figures they had provided, figures on which the Board’s indicative costs and savings were predicated. In particular, potential savings would be more than eradicated if the predicted direct measures failures of 10% increased to 20%. Members were also concerned that these changes would make it more difficult to achieve the cultural and behavioural changes necessary for the early resolution of cases in appropriate circumstances.

Whilst it was for Scottish Ministers to decide what rates should be applied to the work to be done within the new system model, they should be aware that that the higher the figures, the greater the likely resulting change in solicitor behaviour. There must be a robust early warning system in place to quickly identify if the reforms were not working.

After discussion, it was AGREED:

- to approve the proposed costings for referral to the Scottish Executive to inform their decision making process, with the very strong caveat, which should be highlighted in a covering letter accompanying the costings document, that the potential savings depended on the accuracy of information on predicted behaviour provided by the Crown Office.

**ACTION: TCM**

**10. DATE OF NEXT MEETING:** Tuesday 25 September 2007 at 10.30 am.

The meeting ended at 12 noon .