

THE SCOTTISH LEGAL AID BOARD

MINUTE OF A MEETING OF THE LEGAL SERVICES POLICY COMMITTEE HELD AT 10.30 AM ON MONDAY 20 OCTOBER 2008 AT 44 DRUMSHEUGH GARDENS, EDINBURGH

Present: Kenneth Ross (Convener)
Graham Bell (items 1-10 only)
Lindsay Montgomery
Graham Watson
David Nicol
Iain Robertson
Joseph Hughes

In attendance: Tom Murray, Director of Legal Services and Applications
Catriona Whyte, Head of Legal Services – Civil (items 7-8 only)
Elizabeth Cuschieri, Board Solicitor (item 9 only)
Owen Mullan, Head of Legal Services – Criminal (item 12 only)
Stuart Foster, Board Administrator

1. APOLOGIES FOR ABSENCE

Elaine Rosie.

2. DECLARATIONS OF INTEREST

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

David Nicol and Iain Robertson declared non-financial interests in relation to agenda item 7. The nature of their interests was such that they deemed it unnecessary to withdraw from the meeting.

3. DRAFT MINUTE OF MEETING HELD ON 29 SEPTEMBER 2008

The draft minute of the Legal Services Policy Committee held on 29 September 2008 was approved.

4. DRAFT MINUTE OF THE LEGAL SERVICES CASES COMMITTEE HELD ON 29 SEPTEMBER 2008

The draft minute of the Legal Services Cases Committee held on 28 July 2008 was noted. Reference was made to item 2, which recorded a declaration of interest, but did not specify if the interest was financial or non-financial in nature.

5. 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: civil register; quality assurance; and review and monitoring of the Reforms of Summary Criminal Legal Assistance.

In discussion, concerns were expressed about some aspects of the way the system was operating since the introduction of the summary reforms. The increase in ABWOR now being seen included cases in which the appointed solicitor was being used improperly as a route into ABWOR, and if the client did not qualify under ABWOR, applications were being made for legal aid. Perverse incentives remained in the system. Disclosure was not being operated in accordance with the Lord Advocate's guidance. There were concerns about the Crown Office's management of the system.

After discussion, it was AGREED:

- the Committee be kept informed of findings from the ongoing monitoring;

ACTION: TCM

- otherwise, to note the position.

7. LEGAL AID REVIEW APPLICATION (LSCC MINUTES 28/7/08 ITEM 8)

The Committee considered a paper by Wendy Dalgleish concerning an application for review of a decision of the Legal Services Cases Committee to refuse legal aid to raise proceedings for judicial review of the decision of a local authority not to allow the applicant's home-educated son to attend school for the purpose of sitting external SQA exams.

In discussion, the view was expressed that it was premature to consider the application, given that it was unclear as to whether the Ombudsman, to whom the applicant had made a formal complaint, was still considering the matter, as no decision by the Ombudsman had been provided.

After discussion, it was AGREED:

- to adhere to the decision of the Legal Services Cases Committee to refuse the application, but with an additional reason for refusal: that it was premature to decide on the application when it was unclear whether the Ombudsman was still considering the matter. In addition, the reference to whether a fee paying client would undertake the litigation should be removed from the refusal reasons.

ACTION: WD

8. CIVIL SIMPLIFICATION PROJECT: STAGE REPORTING

The Committee considered a paper by Catriona Whyte setting out proposals for change in relation to stage reporting in civil legal aid applications.

It was noted that at present stage reports were requested in all applications where civil legal aid had been granted after a certain period of time had elapsed. This was unnecessary because few reports raised issues, and the profession regarded the process as bureaucratic. The response rate where a report reminder was issued was 50%. The Committee had requested that work be done to ensure that only worthwhile reports were generated in high cost/ long running cases.

It was proposed that measures be introduced to control expenditure on potentially high cost cases at the outset, and that solicitors should submit ad hoc reports where there had been a material change in circumstances, with consequences if they did not. Solicitors should still be required to submit time-based stage reports at the Board's instigation in long running cases.

In discussion the view was expressed that a 50% response rate to requests for stage reports was unacceptable, and that sanctions were necessary in order to alter solicitor behaviour in that regard. The proposed timescales for requesting reports in long running cases should be shortened to 18 months and two years respectively. It should be recognised that it might not in every single instance be appropriate to penalise a solicitor for not disclosing a significant change in the circumstances of a client / case to the Board.

It was AGREED:

- to approve the changes proposed, subject to: shortening the timescales for long running case reports; noting that where both parties were legally aided there was the potential for a high cost case; and to initiating discussions on the changes with the Law Society;
- a draft of the revised guidance to be contained in the Civil Legal Assistance Handbook be submitted for the approval of the Committee.

ACTION: CAW

9. CONSULTATION: REFORM OF THE CHILDREN'S HEARING SYSTEM

The Committee considered a paper by Elizabeth Cuschieri that set out an amended draft response to this Scottish Government consultation, taking account of comments made by members at the previous meeting.

After discussion, it was AGREED:

- subject to some further minor re-wording, to issue the response as proposed.

ACTION: EEC

10. DUTY SOLICITORS PLAN 2009: PDSO INVOLVEMENT

The Committee considered a paper by Kingsley Thomas which set out the current arrangements for including the PDSO in the Duty Solicitor plans, and recommended increasing the allocations for 2009 as a way of optimising the use of the PDSO network.

In discussion, reference was made to the Board's ownership of the Duty Solicitor plans; protective practices by solicitors in some areas which prevented new firms gaining access to the plans; and instances of solicitors who had been allocated slots declining to utilise them. Support was expressed for the proposed allocations for 2009, subject to avoiding a diminution of private firms' current allocations.

After discussion, it was AGREED:

- to approve the recommendations contained in the paper to increase allocations to PDSO for 2009, subject to maintaining private firms' current allocations (excepting those who had failed to appear for slots allocated to them: their allocation should be reduced commensurately);

- that no changes be made until after the proposals had been discussed with the Scottish Government; and, when doing so, reference should be made to the scope for further increasing the allocations, if that was considered appropriate, with a report on the outcome to be submitted to the December meeting of the Committee.

ACTION: KT

11. CIVIL SIMPLIFICATION: FINANCIAL ASSESSMENT METHODOLOGY

The Committee considered a paper by Derek Arthur updating on the project review of the current civil legal aid financial eligibility tests. The paper outlined the issues being identified through research into the Board's current arrangements, and the key elements of methodologies, processes and structures used in other jurisdictions around the world.

The aim was to conclude the research in the current quarter and report back to the Committee early in quarter 4.

The Committee noted the position.

12. UNDUE HARDSHIP TEST FOR SOLEMN CRIMINAL LEGAL AID.

The Committee considered a paper by Tom Murray that presented an amended approach to the assessment of the undue hardship test in solemn criminal legal aid, taking account of issues raised at the previous meeting.

In discussion, support was expressed for the general methodology behind the proposed approach; however, issues were identified in relation to the treatment of spousal capital, the appropriateness of the figure of £7,147 as the capital threshold for hardship in solemn cases, and the need to require the profession to notify the Board if there was a change in the case from solemn to summary or it was moved from the High Court to the Sheriff Court.

After discussion, it was AGREED:

- further analysis of the issues raised in discussion be carried out and reported to the next meeting, along with an outline draft consultation.

ACTION: TCM

DATE OF NEXT MEETING: Monday 17 November 2008 at 10.30a.m.

The meeting ended at 12.30 pm.