

## THE SCOTTISH LEGAL AID BOARD

### MINUTE OF A MEETING OF THE LEGAL SERVICES POLICY COMMITTEE HELD AT 10.30 AM ON MONDAY 1 JUNE 2009 AT 44 DRUMSHEUGH GARDENS, EDINBURGH

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

In attendance: Tom Murray, Director of Legal Services and Applications  
Kieran Burke, Support to the Director of Legal Services and Applications  
Kingsley Thomas, Head of Criminal Legal Assistance (item 7 only)  
Matt Taylor, Senior Analyst, Policy and Development (item 7 only)  
Steven Carrie, Senior Technical Specialist, Accounts (item 8 only)  
Catriona Whyte, Head of Legal Services – Civil (item 9 only)  
Marie-Louise Fox, Legal and Policy Support to the Chief Executive  
Stuart Foster, Board Administrator

#### **Convenership:**

It was noted that, due to increasing commitments, Kenneth Ross had asked to step down as Convener of the Legal Services Policy Committee, and Joseph Hughes had agreed to take his place. The Committee wished to record their appreciation of the able way in which Kenneth Ross had conducted the proceedings of the Committee during his time as Convener.

#### **1. APOLOGIES FOR ABSENCE**

Kenneth Ross, Graham Bell.

#### **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 APRIL 2009**

Subject to deleting the third bullet point in item 12 (Approach to the review of civil quality assurance), the draft minute of the Legal Services Policy Committee held on 27 April 2009 was approved.

#### **4. DRAFT MINUTE OF THE LEGAL SERVICES CASES COMMITTEE HELD ON 30 MARCH 2009**

The draft minute had already been noted at the previous meeting of the Policy Committee.

#### **5. 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 AGREED:

- Julie Garvey be asked to arrange the meeting on sanction for counsel in criminal cases;

**ACTION: JG**

- a date be set for the Committee's consideration of a paper on the Review of Civil Quality Assurance;

**ACTION: TCM**

- otherwise, to note the position.

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

Tom Murray reported on matters of interest which had arisen since the previous meeting. The following matters were reported on: civil and criminal register; Glasgow Bar Association Judicial Review; Challenges Worldwide - Malawi.

It was AGREED:

- the Board propose to the Glasgow Bar Association that we issue a joint statement to make clear the Board's position regarding the outcome of the judicial review action, with the terms of the statement to be reported to the Committee;

**ACTION: TCM**

- otherwise, to note the position.

## **7. UNDUE HARDSHIP TEST FOR SOLEMN CRIMINAL LEGAL AID**

The Committee considered a paper by Tom Murray which presented the outcome of further analysis in relation to a new approach to the assessment of the undue hardship test in solemn criminal legal aid, together with an outline consultation paper.

In discussion, it was recognised that developing a system of assessing undue hardship in solemn cases was extremely challenging – first, because of the wide range of case costs which occur; second, because of the absence of contributions and third, to ensure that the system did not do anything which might create perverse incentives for solicitors or accused persons. It was also important to make the system as simple as possible.

It was agreed a further paper be developed in early course which:

- fleshed out the suggestion in the paper for a system which permitted a final determination of eligibility at the end of a case;
- to look further at whether proposals could be simplified;
- introduces the concept of capital allowances in solemn cases similar to those used in summary cases;

- that the revised consultation paper would exclude the wording of S.12 and revise the commentary about contributions but still recognise that the absence of contributions had an impact on the test being proposed.

**ACTION: TCM**

## **8. QUALITY ASSURANCE & JUDICIAL EXPENSES**

The Committee considered a paper by Tom Murray about the legislative and regulatory provisions regarding payment of judicial expenses to solicitors, and the current operational interpretation of these provisions when there was an interaction with private fee arrangements.

It was noted that the Law Society had asked the Board to confirm its policy regarding payment of judicial expenses to practitioners, particularly where practitioners had charged, or were seeking to charge, a legally aided client on a private client fee basis.

After discussion, it was AGREED:

- the opinion of senior counsel be obtained on the interpretation of Section 32, this to include a specific question on the effect of the Legal Aid (Scotland) Act 1986 on any private client contract in existence prior to legal aid being granted, and whether a breach of the section could be the subject of a criminal prosecution;
- in the meantime, guidance be issued to the profession to make clear that solicitors in speculative fee arrangements with their clients who subsequently made a legal aid application had a duty to inform the Board of this and to explain that they have informed their client of the implications;
- David Nicol would provide any assistance required in relation to obtaining the opinion of counsel and the work to be done with the QAC.

**ACTION: TCM**

## **9. A&A TEMPLATES**

The Committee considered a paper by Catriona Whyte recommending the approval of two new templates relating to children's advice and assistance.

It was AGREED:

- subject to making it clear that the payment to cover the giving of advice before and after hearings/court proceedings only applied if there was no legal aid in place, to approve the templates as proposed for issue to the profession with the next mailshot and for publication on the website.

**ACTION: CAW**

**DATE OF NEXT MEETING:** Monday 22 June 2009 at 10.30a.m.

The meeting ended at 12.15 pm.