

THE SCOTTISH LEGAL AID BOARD

MINUTE OF A MEETING OF THE LEGAL SERVICES POLICY COMMITTEE HELD AT 10.30 AM ON MONDAY 30 MARCH 2009 AT 44 DRUMSHEUGH GARDENS, EDINBURGH

Present: Joseph Hughes (in the Chair)
David Nicol
Lindsay Montgomery
Graham Watson
Iain Robertson
Elaine Rosie
Graham Bell

In attendance: Tom Murray, Director of Legal Services and Applications
Fiona Glen, Board Solicitor (item 7 only)
Catriona Whyte, Head of Legal Services – Civil (item 9 only)
Owen Mullan, Head of Legal Services - Criminal (item 8 only)
Kingsley Thomas, Head of Criminal Legal Assistance (items 8-11 only)
Hazel Thoms, Assistant Manager, Policy and Development (item 12 only)
Colin Lancaster, Director, Policy and Development (item 12 only)
Marie-Louise Fox, Legal and Policy Support to the Chief Executive
Stuart Foster, Board Administrator

1. APOLOGIES FOR ABSENCE

Kenneth Ross.

2. DECLARATIONS OF INTEREST

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

Elaine Rosie declared a non-financial interest in relation to item 12 (Update on Grant Funding).

3. DRAFT MINUTE OF MEETING HELD ON 2 FEBRUARY 2009

The draft minute of the Legal Services Policy Committee held on 2 February 2009 was approved.

4. DRAFT MINUTE OF THE LEGAL SERVICES CASES COMMITTEE HELD ON 2 FEBRUARY 2009

The draft minute of the Legal Services Cases Committee held on 2 February 2009 was noted.

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

Tom Murray reported on matters of interest which had arisen since the previous meeting. The following matters were reported on: Lady Stacey's refusal of an interim interdict motion as part of a judicial review action raised by some Glasgow solicitors to prevent the Board from implementing the Glasgow Sheriff and District Court duty plans for 2009; criminal quality assurance; the introduction of tapering; the roll-out of civil legal aid online from 31 March.

It was AGREED:

- Tom Murray circulate a summary of the interim interdict decision to members.

ACTION: TCM

7. SCOTTISH GOVERNMENT CONSULTATION ON THE INTERPRETATION AND LEGISLATIVE REFORM (SCOTLAND) BILL

The Committee considered a paper by Fiona Glen which set out a proposed response to a Scottish Government consultation on the proposed provisions of the Interpretation and Legislative Reform (Scotland) Bill.

After discussion, it was AGREED:

- to approve the response as proposed, subject to replacing words with numbers at paragraph 2 of Part 2, clarifying the wording of paragraph 20(a), and expressing support for the proposed online service at Question 13(a).

ACTION: FG

8. SANCTION FOR COUNSEL IN CRIMINAL CASES

The Committee considered a paper by Owen Mullan reporting on progress by the Project Board and seeking comment on draft guidelines on sanction for the employment of counsel in criminal applications.

After discussion, it was AGREED:

- a meeting with Paul McBride, Graham Bell and Joseph Hughes be arranged to give further consideration to the implications of the *HMA v Woodside* case, and discuss the wording of the draft guidance, which should be revised at paras 1.3 and 1.4 to make clearer the circumstances in which sanction was and was not required (and the representation that is available for murder cases); to separate out the more serious Sheriff Court cases; and address the issue of "sufficient resources" and sole practitioners.

ACTION: OM

9. SUBMISSION OF CIVIL LEGAL AID REVIEW APPLICATIONS

The Committee considered a paper by Catriona Whyte providing information on the reasons for accepting applications for review of a decision to refuse legal aid where the review was lodged late, together with information on the approach taken to the late submission of such applications.

After discussion, it was AGREED:

- that the existing guidance, which simply stated that the Board would consider a review application lodged outwith the 15 day period if there was a good reason to do so, be

extended to make reference to the ability of a solicitor to ask for extra time to lodge a review where there was a good reason for making such a request; and

- consider the information we give to an opponent about our approach to the 15 day period.

ACTION: CAW

10. REVIEW OF DUTY SCHEME

The Committee considered a paper by Kingsley Thomas which set out the proposed arrangements for conducting a review of the duty solicitor scheme.

After discussion, it was AGREED:

- the Sheriffs Association and JPs be added to the list of consultees;
- any consideration of duty allocations to the PDSO should await the outcome of the court action seeking to prevent the Board from implementing the 2009 duty plan in Glasgow;
- notification of the intention to consult be issued to say that the Board would be consulting on proposals in June;
- the perverse incentive relating to the transfer of cases between the original and the duty solicitor should be addressed;
- the appointed solicitor arrangements should be examined at the same time as the review.

ACTION: KT

11. REVIEW AND MONITORING OF THE REFORMS OF CRIMINAL LEGAL ASSISTANCE

The Committee considered a paper by Kingsley Thomas regarding initial arrangements for the review and monitoring of the High Court reforms introduced from 2005 onwards as well as the summary criminal legal assistance reforms introduced on 30 June 2008.

It was recommended that the results of the monitoring of the applications received so far, and the re-costing exercise completed at the end of 2008, be noted, and the proposals for further work approved.

After discussion, it was AGREED:

- consideration be given to the operation of financial verification and the quality of self grants by solicitors;
- the trends being seen in the growth of ABWOR and in custody cases, with the attendant increase in expenditure needed to be monitored;
- the impact of the High Court reforms should be looked at in association with the review of counsels' fees;
- a further report be made to the next meeting.

ACTION: KT

12. UPDATE ON GRANT FUNDING

The Committee considered a paper by Hazel Thoms on progress with the development of materials related to the Board's first grant funding programme. The materials were being shared with internal and external stakeholders for consideration of the clarity of the scope of the programme and also the process for applying for funding.

The Board was taking forward a broad programme of work on behalf of the Scottish Government to help meet additional legal needs resulting from the economic downturn. The programme of work encompassed:

- Recruitment of additional Part V Solicitors
- Transfer of the funding for current In Court Advice Projects to the Board from end of March 2009, and enhancement of these projects to meet emerging new areas of need
- Implementation of the Board's grant funding powers to support improved access to legal advice and assistance for people affected by the economic downturn

Work was progressing to implement the grant funding programme with urgency so as to ensure funded projects could be in place and having an impact as soon as possible. The funds for the programme were only available until March 2011, and this placed a tight restraint on moving ahead with the work.

After discussion, it was AGREED:

- feedback be obtained from the information events about making online applications;
- the guidance should make it clear that leverage could be taken into account by the Board in selecting applications for grants;
- consideration be given to the purchase of grant management software;
- applicants be required to provide details of their governance arrangements, including details about their finance manager, and a separate extract of their audited accounts;
- Audit Scotland could be approached about any lessons to be learned from their experience of grant funding;
- consideration needed to be given to potential double funding issues arising from any overlap between the legal aid and grant funding schemes.

ACTION: HT

DATE OF NEXT MEETING: Monday 27 April 2009 at 10.30a.m.

The meeting ended at 12.30 pm.