

SCOTTISH LEGAL AID BOARD

REPORT ON PUBLIC AND FACULTY MEETINGS FEBRUARY TO JUNE 2000

1. Introduction

The Board began a consultation process with the legal profession and the public in February 2000. We contacted local faculties of solicitors to invite them to meet with the Board to discuss all aspects of the provision of legal aid and the operations of the Board. We also placed adverts in the media to invite members of the public to a series of open meetings. Through this consultation we wanted to obtain the views of solicitors who provide a legal aid service and members of the public who have experience of the legal aid system, either as an applicant or an opponent in a legally aided case. We also met with representatives of other organisations which have an interest in the legal system and, in particular, legal aid. In addition to the information we received, these meetings also provided an opportunity for the Board to explain its role and the thinking behind some of its policies and procedures.

The information gained from the consultation informed our Corporate Plan for the period 2000-2003. Feedback from our latest service satisfaction survey of solicitors, which was issued in April, along with the results of an internal review of our systems and procedures and the information from the consultation will help us to identify ways of improving our service to all our customers.

This report summarises the comments and opinions expressed during the consultation. It mainly focuses on the issues raised by the legal profession and the public about the legal aid system as it is set down in legislation or the Board's service and where more information, guidance or explanation was required so that policy or practices were better understood. These are clearly the areas we particularly want to concentrate on to identify where improvements can be made. However, there were many areas where the profession and the public were happy with the service offered by the Board and the legal aid system in general, and there was unanimous support for the Board's action in carrying out this consultation and being open to comments and suggestions. The report also sets out what we have done or are doing to address these issues, where it is in our power and appropriate to do so.

This report has been issued to all those who took part in the public meetings, all local faculties of solicitors throughout Scotland, Jim Wallace MSP, Minister for Justice and Home Affairs, the Justice and Home Affairs Committee of the Scottish Parliament, the Law Society of Scotland, the Faculty of Advocates, and other organisations with an interest in legal aid. It is also on our web site at www.slab.org.uk.

2. Locations of meetings

Meetings with local faculties have been held in: Aberdeen, Inverness, Hamilton, Edinburgh, Glasgow, Dundee, Dumfries, Ayr, Cupar, Paisley, Airdrie, Campbeltown and Dunfermline.

Public meetings were held in: Aberdeen, Inverness, Dumfries and Glasgow. A further meeting is planned for Edinburgh in the autumn.

3. Key issues from public meetings

A summary of the views expressed and issues raised at the public meetings is given below.

General legal aid issues

- Legal aid should be available for representation at Children's Panel hearings. The Board should provide more information for parents and guardians of children involved with the Children's Panel about the availability of advice and assistance for work prior to the hearing.
- There was interest in access to legal aid through law centres in areas outside Glasgow and Edinburgh.
- Concerns were expressed about financial eligibility for civil legal aid and a perception that it was now more difficult to obtain civil legal aid.
- There was concern at the level of contributions payable in civil legal aid cases, and the difficulties that some applicants have in paying the contribution.
- Members of the public asked about a case involving legal aid which had been featured in the press a few days earlier (Catholic orphanage cases).
- There was a perception that some solicitors are not carrying out legal aid work because of the rates of payment, and this could deny people access to justice if they cannot find a solicitor willing to take on a legal aid case, particularly in rural areas where there are less solicitors.
- Legal aid should be available for representation at benefits tribunals.

- Concern was expressed about the apparent lack of progress in taking forward the Government's consultation paper *Access to Justice Beyond the Year 2000*, which dealt with the future of civil legal aid.

Issues relating to the Board

Applications

- Various questions were raised by members of the public who had been involved in legally aided cases about the turnaround times for certain aspects of applications, timescales for replying to correspondence and how the Board checked the financial details given by applicants on application forms.

Communication

- It was suggested that the information in the Board's public leaflet about preservation or recovery of property or money in civil cases could put people off applying for or accepting an offer of legal aid because they would be worried about the amount they may have to pay back.
- The Board should provide advice agencies with more information about the rights of opponents in legally aided cases.
- More information was needed for opponents in legally aided cases to explain their rights and how to make an effective objection to a grant of civil legal aid. It was also suggested that opponents should have more information on the progress of a case.

General

- Would the changes to legal aid planned for England and Wales affect Scotland?
- In Dumfries and Galloway there was considerable interest from the Citizens Advice Service in working with the Board to look at alternative ways of providing community legal services. This could be through the creation of a law centre, the employment of solicitors paid by public funds or by providing access to advice through a network of computers throughout the community linked by e-mail and internet to a central point.
- Victim Support Scotland suggested a further meeting with the Board to discuss issues relating to their work.

4. Key issues from meetings with local faculties of solicitors

A summary of the views expressed and questions asked at the faculty meetings are given below.

General legal aid issues

- The rates paid to solicitors have not changed for many years, with the difference between private and legal aid rates increasing significantly, and this is resulting in some firms deciding not to continue to carry out legal aid work as it is not viable. Also, legal aid work is often carried out by the less experienced solicitors in firms.
- Financial eligibility limits for advice and assistance and civil legal aid are causing concern, particularly in cases where applicants receive Family Credit but are then over the eligibility limit for civil legal aid or they have a large contribution to pay.
- Legal aid should be made available for representation at Children's Panel hearings and for employment tribunals.
- There was considerable interest in the Scottish Executive's plans for the future development of civil legal assistance.
- There was concern over the increasing number of professionals, such as GPs and firemen, charging for providing statements of fact for cases.
- The initial limit for work done in advice and assistance cases and the initial £2,500 of property or money recovered or preserved which is not subject to the clawback provisions in matrimonial cases should both be reviewed.

Issues relating to the Board

Applications

- Issues were raised over the consistency of decision making by the Board on different types of application. Concern that some staff did not appear to have sufficient knowledge of court procedures or the law to deal with applications, and the Board was asked whether more complex cases are dealt with by more experienced staff.
- Solicitors felt that the time taken for decisions on different types of applications varied significantly.
- More information was requested about the reasons for refusal of an application, particularly in criminal cases.

- In some cases solicitors are finding difficulty in obtaining sanction for counsel and more detailed reasons for refusal are needed in sanction cases generally. The time taken to deal with requests for sanction was sometimes too long and can cause problems with court appearances. Expanded guidelines for solicitors on seeking sanction would be helpful.
- The process for dealing with transfers of cases between solicitors should be reviewed, including the time taken to process transfers.
- Consideration should be given to changing the process of dealing with objections from opponents to allow the applicant's solicitor to see the objections and respond to points made.
- Solicitors questioned why there was often a difference between the amount requested for increases to advice and assistance and the amount granted. Guidelines on the Board's approach to granting increases would be useful.
- In advice and assistance cases, solicitors often found it difficult to verify an applicant's financial circumstances because they do not bring all the necessary details to the meeting.
- There was a feeling that it was more difficult to obtain a grant of civil legal aid than it had been and reparation cases were mentioned specifically. The Board's requirement to see corroboration when the courts did not was questioned.
- On occasions, if the Board was not able to make a decision on an SU4 (special urgency) application quickly enough, the solicitor said they had had to make a court appearance without knowing if legal aid is in place. It would be helpful if staff phoned the solicitor with a decision or sent it by fax. Guidance would be helpful on cases involving a Secretary of State's determination in special urgency cases.

Accounts

- The level of fees paid by the Board for defence post mortems meant that some forensic pathologists were reluctant to carry out the work for the fee paid. The amounts paid for other expert witnesses, such as doctors, should also be reviewed.
- Requests that taxation decisions should be published, either by the Board or in the Law Society Journal.
- Query over the Board's policy on paying accounts when warrants have been issued, and why the solicitor must wait until the case is concluded.

- Issues raised about abatement of solicitors' accounts –
 - the time claimed for perusing documents is often abated
 - time taken for looking at corroborative statements is often abated
 - the time taken to deal with correspondence
 - not being able to discuss abatements with staff by phone
 - clarification of what is allowable for lunch breaks at court
 - what is allowable for dealing with taped interviews and transcripts.
- Why can the Board not issue duplicates, particularly of account synopsis forms.
- Fixed payments
 - clarification on what is meant by Section 23(1)(b)
 - concern over arrangements for payment when a transfer takes place
 - waiting at court for cases to begin means that fixed payments have more effect on firms in Glasgow and Edinburgh where the courts are extremely busy and cases are often delayed or postponed.
 - are there any plans to increase the fixed payment or make it index linked?
 - as a result of the introduction of fixed payments, were there plans to make changes to the Board's Audit and Compliance activities?
 - clarification of when a trial starts.

Communication

- The profession would welcome more information from the Board for solicitors, applicants and assisted persons about the provisions for dealing with money or property recovered or preserved as a result of a civil case. It was felt that there was a general need to improve understanding of this complex area.
- Some issues were raised about the handling of correspondence.
- The Board should tell the legal profession earlier about planned changes to policy or procedures.
- There were various suggestions for improvements to applications and accounts forms, particularly the advice and assistance application form and a simplified form for civil cases involving children.

General

- Did the Board want to see the introduction of a code of practice for civil legal aid?
- General questions about legal aid for devolution cases and the implications of the cases claiming that fixed payments leads to a breach of the ECHR.
- Need for better and more consultation and communication between the Board and the profession and there was considerable support for the more constructive approach being adopted by the Board.
- At several meetings the Board was asked if it had plans to introduce e-commerce between it and solicitors.
- Solicitors expressed interest in the Board's views on the success of the Public Defence Solicitors' Office, and if public defence solicitors would be introduced in other areas of Scotland.
- Clarification was sought at several meetings of the Board's role in the determination of legal aid policy.

5. Addressing the issues raised

We are actively looking at these issues and preparing an action plan to take these forward, where it is within our remit and appropriate to do so. This will be included in our Operational Plan for the current year, to ensure the issues are prioritised and dealt with effectively.

We will report on progress with issues and answer questions raised by solicitors in our newsletter for the legal profession, *The Recorder*. We will also provide information on the issues raised by the public in our Annual Report and on our web site.

Some of the issues raised in the meetings are not within the Board's remit, such as changes to eligibility limits and rates paid to solicitors, but we will inform the Scottish Executive of the issues raised and discuss with them how these might be taken forward.

These are

- the availability of legal aid for representation at Children's Panel hearings, employment tribunals and benefits tribunals
- eligibility limits and the level of contributions in civil legal aid, and the £2,500 exempt from clawback in matrimonial cases
- the initial limit for work done under advice and assistance
- rates of pay for solicitors in legal aid cases
- access to legally aided advice through law centres or other advice agencies, and other issues relating to the Government consultation paper *Access to Justice Beyond the Year 2000*
- the increasing number of professionals, such as GPs and firemen, charging for providing a witness statement.

There was considerable interest in the operation of the Public Defence Solicitors' Office in Edinburgh and any plans for development of this idea to other areas of Scotland. The Scottish Executive is responsible for evaluating the pilot scheme and a report will be made to the Scottish Parliament in October 2001 after the first three years of the pilot.

We are already taking action on many matters raised at meetings. In a number of areas of work, the Board had already identified the need for change and improvements.

Work carried out to date

Applications

- We have undertaken a review of our systems and procedures for dealing with applications and are making improvements which will benefit both solicitors and applicants.
- A working group has been looking at the way we deal with sanctions for increased expenditure or employment of counsel, and guidance will be given to solicitors.
- We have restructured our Applications Department to establish closer working with solicitors in our Legal Services Department and we will make it easier for practitioners to speak directly to our solicitors about specific queries on cases. This will also make it easier to highlight areas where further staff training is required.
- We are in the process of introducing revised procedures to provide more detailed reasons for refusal of legal aid in criminal cases and for review applications in civil cases.
- We are reviewing the advice and assistance application form, and will be implementing a rolling programme of improvements to other forms.
- We are looking at the operation of the special urgency arrangements (Regulation 18) to see if these can be improved.

Accounts

- We published a report in the May issue of *The Recorder* clarifying various aspects of accounts assessment procedures and policies. Further articles will be included in future issues.
- We published a Criminal Accounts Assessment Manual for solicitors, and we plan to issue more guidelines on fixed payments and advice and assistance and civil accounts.
- We are discussing with the Law Society the best way to publicise taxations.
- We have employed consultants to review the way in which we deal with solicitors' and advocates' accounts and will have the results of that work soon.

Communication

- In October we will publish service standards for applicants, opponents, solicitors and advocates setting out the service they can expect from the Board at all stages of their case.
- We will shortly provide guidance for solicitors on the provisions for preservation or recovery of property or money in a civil case and we are developing improved information for applicants.

- We are reviewing our information leaflets for the public and will make them available in different languages. We are developing improved guidance for opponents in civil cases, giving information about their rights and guidance on making an objection to a grant of civil legal aid.

General

- In our Corporate Plan 2000-2003, we published new performance indicators and targets for applications and accounts, covering timeliness, accuracy and consistency. The new indicators include targets for all aspects of the application process, rather than just first instance decisions. These targets come into effect on 1 October 2000. We will also have standards for the time taken to deal with correspondence and complaints.
- An independent quality control unit is being established to monitor the consistency and quality of decision making in accounts and applications.
- From July 2000, the period for repaying contributions in civil cases was extended from 10 to 15 or 20 months depending on the size of the contribution. We will monitor this to determine the impact on the number of applicants who take up the offer of legal aid.
- We are developing plans, in conjunction with the Law Society, to introduce e-commerce between the Board and the legal profession to allow an exchange of information more quickly and efficiently. We are making a bid under the Government's Modernising Government Fund to assist us in delivering this.
- A meeting has taken place with representatives from Victim Support Scotland.
- We have consulted with the Law Society on more issues, and we will increasingly consult with the profession before changes to policy or procedure are introduced. We will continue to meet with local faculties of solicitors.
- We continue to develop our consultation and communication processes with the Faculty of Advocates.

In addition, we plan to

- review our guidance in relation to requests for a transfer of solicitor in civil legal aid cases
- issue guidelines on our policy and procedures for dealing with requests for increases in authorised expenditure in advice and assistance
- review the way we deal with objections from opponents in civil cases
- make greater use of fax to inform solicitors of decisions

- discuss the level of payments for expert witnesses with the Crown Office
- give more staff training on letter writing skills
- issue a special edition of *The Recorder* to inform the profession about matters relating to the European Convention on Human Rights.

6. Listening to your views

We plan to hold a public meeting in Edinburgh in the autumn, and we will continue the process of consultation with both the legal profession and the public. We are always pleased to receive feedback on the service we provide and on the provision of legal aid generally. If you would like to meet with representatives of the Board or to send us your views, please contact us at the address below.

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