

THE SCOTTISH LEGAL AID BOARD

**MINUTE OF MEETING OF THE SCOTTISH LEGAL AID BOARD HELD AT 1.30PM
ON MONDAY 12 DECEMBER 2005 AT 44 DRUMSHEUGH GARDENS, EDINBURGH**

Present: Jean Couper, Chairman
Kenneth Ross
Susan McPhee
Ellen Morton
Ian Percy
Elaine Rosie
Margaret Scanlan
David Nicol
Malcolm Thomson

In attendance: Lindsay Montgomery, Chief Executive
Andrew Menzies, Director of Corporate Services and Accounts
Ian Middleton, Director of Audit and Compliance
Tom Murray, Director of Legal Services and Applications
Colin Lancaster, Head of Policy and Planning (items 7- 9 only)
Colin Sim, Manager, Communications (item 9 only)
Matthew Auchinclos, Director, PDSO (items 11-12 only)
Marie-Louise Fox, Solicitor-Legal and Policy Support
Stuart Foster, Board Administrator

Margaret Frazer, Associate Director, MORI (item 9 only)

1. APOLOGIES FOR ABSENCE

Apologies were received from Willie Gallagher, Graeme McKinstry and Peter Gray.

2. DECLARATIONS OF INTEREST

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

Susan McPhee declared an interest in relation to item 8 (Part V update).

3. MINUTE OF MEETING HELD ON 7 NOVEMBER 2005

The minute of the meeting of 7 November 2005 was approved.

It was noted that the review of the Race Equality Scheme would be considered at the February 2006 Board meeting.

The quality of civil letters had been checked, and one problematic letter had been identified for revision.

4. MINUTE OF THE LEGAL SERVICES COMMITTEE HELD ON 24 OCTOBER 2005

The minute of meeting of the Legal Services Committee held on 24 October 2005 was noted.

5. MINUTE OF THE LEGAL SERVICES SUB-COMMITTEE HELD ON 24 OCTOBER 2005

The minute of the Legal Services Sub Committee held on 24 October was noted.

6. CHIEF EXECUTIVE'S UPDATE

Members considered a report by Lindsay Montgomery updating them on matters of interest since the previous Board meeting.

The Chief Executive reported further on Scottish Executive priorities for the reform programme. An outline of priorities and timescales had now been received. The Legal Aid Bill was the main priority and work on it would extend throughout the year. The Board's main concern remained that the model for the summary justice system may not be sufficiently clear in time to ensure that the necessary and appropriate changes to summary criminal legal assistance could be included in the Bill. The Board believed that fundamental reform of summary criminal legal assistance was essential to assist and support the successful implementation of summary justice reform, and that the projects had to be taken forward in tandem. It was very important that necessary changes were made to the primary legislation to facilitate these fundamental reforms. The Chief Executive had arranged to meet with the Scottish Executive in the following week to discuss how the Board could help them take forward the Bill.

The Board were also concerned that the Bill should include the measures necessary to enable the Board to ensure sufficient supply of legal aid provision to clients and to co-ordinate and facilitate effectively the provision of legal information and advice from appropriate legally and non-legally qualified advisors.

Without these the Board will be unable to maintain and develop effective access to justice to meet Ministers' objectives and the needs expressed clearly by respondents to the consultation.

Discussion took place on the Board's relations with the Faculty of Advocates. It appeared that the Faculty had adopted a strategy of distancing itself from the agreements previously reached in the negotiation on fees. A key concern about Faculty's manoeuvrings in this regard was that scarce resources were having to be diverted from the development programme to re-address issues which had previously been dealt with. The Dean was now claiming that no-one was entitled to negotiate on behalf of Faculty members, and that the previous agreements were therefore not binding. There was also a concern that if such behaviour was seen to produce favourable outcomes, others could be encouraged to adopt the tactic.

The Chairman would meet with the Dean to attempt to resolve the current issues, and to establish some kind of process that would enable meaningful negotiation with the Faculty. If this could not be achieved, Ministers would have to take the initiative. A meeting would be organised and members kept informed of the position.

Reference was made to court hearings that had taken place in which counsels feeing issues had involved the Board or the Scottish Executive.

The Chairman and members asked that their thanks and congratulations be conveyed to all staff involved in the Board's success in winning the Lloyds TSB Scotland Scottish Employer of the Year Award.

7. POLICY RESEARCH PROGRAMME

Members considered a paper by Colin Lancaster which updated on progress against the Board's research programme. The key areas of research related to: supply of solicitors; supply of advocates; indirect discrimination; applicant/solicitor surveys; impact assessments; actions involving children; outcomes of cases selected for review; case cost drivers; duty scheme; and Strategic Review issues.

It was noted that a report would be submitted to the March 2006 Board meeting on further potential areas of research.

After discussion, it was AGREED:

- in relation to outcomes of cases, with reference to civil legal aid, in considering whether the outcome of the case matched the solicitor's view of prospects of success, particular consideration should be given to cases where both parties were legally aided, and in relation to criminal legal aid, there would be merit in examining the stages at which criminal appeal cases collapsed;
- the Firm Analysis and Review Group should keep case cost drivers on their agenda.

ACTION: CL

8. PART V PILOT PROJECTS UPDATE

Members considered a paper by Colin Lancaster updating the position on the development and progress of the Part V projects in Phase 2 of the pilot programme. The paper outlined what had been achieved to date and any difficulties that had arisen during the set up process.

The key issue to note from the report was the difficulty that had been experienced with recruitment, and the poor response to the recruitment campaign for this phase of the projects. This had possible implications for the Board's plans for the direct employment of solicitors.

After discussion, it was AGREED:

- to proceed with setting up the Argyll and Bute Advice Network Project, even if the financial difficulties being experienced by the local CAB prevented their involvement;
- consideration be given to the scope for identifying alternative sources of funding of the Part V solicitors beyond the end of the current projects;
- a report be submitted to the March 2006 Board meeting on the broader plans for the direct employment of solicitors.

ACTION: CL

9. CIVIL LEGAL AID REFORM: REPORT TO MINISTERS

Solicitors' knowledge of and attitudes towards civil legal aid reform

Members considered a paper by Colin Sim which summarised the results and findings of research into solicitors' views of the civil legal aid reforms. The research had been conducted in two phases by MORI Scotland over the last few months.

Margaret Frazer from MORI gave a presentation on the results and answered questions.

It was noted that there had been a high response rate to the survey, with solicitors exhibiting a keen interest in making their views known. Almost half of all firms registered for civil legal assistance work had participated in the research, which allowed confidence that the survey respondents were representative of civil legal aid solicitors. MORI were currently analysing the results and producing statistics with a view to producing a report for publication in early 2006. The summary results would be shared with the Law Society and the Scottish Executive to assist with the report to Ministers.

After discussion, it was AGREED:

- that the gap between reality and solicitor perception exposed in some aspects of the results be factored into the analysis; to analyse where possible, the level to which legal aid represented fee income for firms; in relation to intentions to undertake civil legal aid work in geographical areas to analyse the volume of applications by geographic area;
- further analysis be undertaken to see if there was a relationship between volumes of work undertaken and views on bureaucracy.

ACTION: CS

Trends in supply of Civil Legal Assistance

Members considered a paper by Colin Lancaster which outlined recent trends in supply of civil legal assistance, including volumes of applications and numbers of solicitors submitting them.

It was noted that, overall, the analysis suggested that changes in the last year or so were broadly consistent with previous trends. However, the long term reduction in the volumes of applications had changed in recent months and there had been a very slight increase in volumes of applications. There had been a reduction in the number of outlets submitting applications. However, no areas had lost all of their outlets and most areas continued to have an apparently good range of outlets providing civil legal assistance. There had been a further reduction in family cases, and the main increase had been in reparations.

In discussion, concern was expressed that there could be cases where the real reason for raising proceedings was not divorce, but to obtain protection orders, an area in which it was difficult to get legal representation. It was also felt that there was likely to be an element of unmet need amongst those who had sought legal aid, but had given up pursuing it after encountering initial difficulties in getting the advice they were looking for.

It was AGREED:

- a sample of cases be checked to determine the proportion of divorce for unreasonable behaviour cases that also included protection orders.

ACTION: CL

Monitoring of civil legal aid reform – Report to Scottish Ministers

Members considered a paper by Marie-Louise Fox advising on the work being done to produce a report on the monitoring of civil legal aid reform to Scottish Ministers. The paper highlighted the main themes of the Report, namely: the short timescale since the reforms; solicitors' perceptions about fee increases and the changes required to the fee structure; solicitors' perceptions of bureaucracy and administration in civil legal aid; communication with the legal profession; quality assurance and civil audits; access to justice / adequacy in the supply of providers; and the effect of the reforms on applicants.

In discussion, members expressed the view that the strongest themes emerging were: the perception that fees were inadequate; concern over future supply of practitioners; and the perspective of practitioners in relation to bureaucracy. The Board's work had shown that civil legal aid reform, including the fee increases, had not halted the downward trend in civil legal aid provision. Ministers needed to be left in no doubt about the seriousness of this trend. The solicitor survey had shown there were issues with fees, supply and bureaucracy. Different measures, such as the direct employment of solicitors by the Board, had to be tried. A scheme for a PDSO –type arrangement should be put to Ministers. In light of the feedback from the survey of solicitors, the Scottish Executive should be urged to consider an increase to the underlying value of the unit of calculation in the block fee table. There was also an urgent need to streamline the system. Ministers needed to invest in online application work by, for example, providing grants to firms.

After discussion, it was AGREED:

- to approve the key themes of the report and the process for reporting to Ministers;
- members' comments be fed into the draft report;
- that monitoring of the civil legal aid reforms should continue to be carried out, and a further report made to Ministers in May/June 2006;
- that a project be set up with the Law Society of Scotland to look at the scope for simplifying the civil legal aid process.

ACTION: M-LF

10. CIVIL LEGAL AID PERFORMANCE UPDATE

Members considered a paper by Tom Murray and Andrew Menzies updating on operational performance for Civil Applications for the period ending 30 November 2005.

It was noted that the implementation of the new civil system had disrupted performance during the period 13 May to 1 September 2005. Post 1 September, there had been a residue of applications received prior to that date on which decisions were outstanding. These had adversely impacted on performance during September to November. The paper set out details of performance on applications received since 1 September, and this gave a better indication of how new applications were being handled within the new system, without those applications affected by the implementation of the system distorting the picture.

Members noted the position.

11. PDSO UPDATE

Members considered a paper by Matthew Auchincloss updating on the current development and operation of the PDSO. The paper outlined development plans for the four current PDSO offices for the next twelve months, and provided information on the value of the PDSO case load of the two Edinburgh offices.

It was noted that 2004 had been the best year so far for the Edinburgh PDSO in terms of caseload. The Director estimated that the Edinburgh office had produced a saving to the public of over £150,000 in the year. The Inverness office had performed better than had been anticipated, and had sufficient work to employ a third solicitor. Recruitment and logistical difficulties had hampered development of the Glasgow office in what was a tight market to break

Board minute – 12 December 2005

into. There was also more of a holistic approach to cases being practised in Glasgow, and whilst this approach had produced notable successes, and provided a wider advantage to society, it was time-consuming and the benefits were less visible in financial terms. However, a second solicitor had now been recruited, and the Director was very confident the case load would increase and that the savings made in Edinburgh would be made in Glasgow, given time. An external consultancy would be employed to look at the costings for the PDSO, and the findings published in the Annual Report.

In discussion, members expressed support for the Director's plans to further improve the effectiveness of the Glasgow office through attracting more clients and striking a balance between the more straightforward and the holistic approach cases.

After discussion, it was AGREED:

- members be kept advised of progress across the PDSO but particularly in Glasgow;
- a report be produced for the March 2006 Board meeting, which should attempt to quantify the savings that could be achieved across the public purse by the holistic approach to cases.

ACTION: MA

12. PDSO: JUSTICE ISSUES

Members considered a paper by Matthew Auchincloss which highlighted areas of concern for the Glasgow PDSO within the Criminal Justice system in Glasgow.

The Director reported that the Glasgow PDSO had concerns about difficulties faced by Duty Lawyers at the District Court through clients appearing on warrant without a copy of the complaint; the handling of cases involving accused with mental health issues; and the organisation of the Custody Court in Glasgow Sheriff Court.

The way the Crown was dealing with the new rules on disclosure was not working. Statements were being handed to solicitors in court, which meant that clients could not be properly advised, and early pleas were not being made in cases where they could have been. In the Custody Court, solicitors were having to see clients without paperwork, and documentation was only being provided when the accused was actually in the dock. This was leading to clients not being properly defended and unnecessarily remanded in custody, unnecessary not guilty pleas, and unnecessary applications for legal aid. The practice raised human rights issues.

The third key concern was that mentally ill clients were being remanded in custody when this was clearly unsuitable for them.

After discussion it was AGREED:

- the Director's report be sent to the Scottish Executive for attention;
- members would welcome periodic reports of this nature from the Director;

ACTION: MA

- the Chief Executive write to the Crown Agent to express members concerns about the issues raised;

- members be informed in due course of the Crown Agent's response to the information, and intended actions.

ACTION: LM

13. CHAIRMAN'S REPORT

The Chairman wished members and staff an enjoyable Christmas break. Arrangements for the next strategy session would be advised to members shortly.

14. DATE OF NEXT MEETING

Monday 6 February 2006.

The meeting ended at 4.45 pm.