

THE SCOTTISH LEGAL AID BOARD

**MINUTE OF MEETING OF THE SCOTTISH LEGAL AID BOARD HELD AT 1.30PM
ON MONDAY 20 JUNE 2005 AT 44 DRUMSHEUGH GARDENS, EDINBURGH**

Present: Jean Couper, Chairman
David Nicol
Ian Percy
Susan McPhee
Ellen Morton
Margaret Scanlan
Graeme McKinstry
Willie Gallagher
Kenneth Ross

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 8-10 only)
Hazel Thoms, Policy Project Manager (item 10 only)
Colin Sim, Acting Communications Manager (items 11-12 only)
Meg Houston, Project and Policy Officer (item 10 only)
Stuart Foster, Board Administrator

1. APOLOGIES FOR ABSENCE

Apologies were received from Peter Gray, Elaine Rosie and Malcolm Thomson.

2. DECLARATIONS OF INTEREST

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

Susan McPhee and Ellen Morton declared interests in relation to item 10 (Part V Update).

3. MINUTE OF MEETING HELD ON 9 MAY 2005

The minute of the meeting of 9 May 2005 was approved.

4. MINUTE OF THE LEGAL SERVICES COMMITTEE HELD ON 16 MAY 2005

The minute of meeting of the Legal Services Committee held on 16 May 2005 was noted.

5. MINUTE OF THE LEGAL SERVICES SUB-COMMITTEE HELD ON 25 APRIL 2005

The minute of meeting of the Legal Services Sub-Committee held on 25 April 2005 was noted.

6. MINUTE OF THE AUDIT COMMITTEE OF 9 MAY 2005

The minute of meeting of the Audit Committee held on 9 May 2005 was noted.

7. CHIEF EXECUTIVE'S UPDATE

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

In discussion, reference was made to the concerns expressed by some members of the Faculty of Advocates about the new tables for counsel's fees in criminal cases which had been laid before Parliament in March. Members expressed surprise that any such concerns were being raised so late in the day, given that the tables had been negotiated with representatives of the Faculty over a number of months, and there had been more than adequate opportunity to raise the concerns earlier. The view was expressed that if the particular areas of concern identified by Faculty were resolved by amendment of the tables, it should be on the understanding that Faculty did not make any further requests for changes prior to the review of the operation of the tables over the summer, as had previously been agreed. Ministers should also be aware of the relatively small sums involved in addressing Faculty's concerns when compared to the overall earning levels of advocates.

Members noted the position.

8. TRENDS ANALYSIS

Members considered a paper by setting out trends analyses of various aspects of the Board's business for 2004-05, comparing figures with previous financial years.

In discussion, it was confirmed that although there had been a decrease in grants of sanction for counsel, there had been an increase in requests, with the result that the overall cost to the Fund had increased. There was some concern that the drop in divorces on the grounds of unreasonable behaviour masked other, as yet unidentified, developments.

After discussion it was AGREED:

- future reports seek to add meaning to the statistics by putting them in context and assessing where key trends would lead;
- otherwise, to note the position.

ACTION: CL

9. RESEARCH PROGRAMME 2004-2007 - UPDATE

Members considered a paper updating the position on progress against the previously agreed research programme and the programme for the period to March 2006.

It was noted that all the projects in the original workplan scheduled to complete or commence in the period October 2004-March 2005 had done so, and that a further consultation exercise, which would include the external members of the Research Steering Group, would be undertaken in Autumn 2005.

10. PART V UPDATE

Members considered a paper recommending approval for implementation of a package of Part V Pilot Projects. The paper summarised the six proposals received, and set out the reasons for selection of the final proposals.

It was reported that no Ministerial comment had been received in relation to the Glasgow Asylum Project.

In discussion, the view was expressed that the four recommended projects were not only worthwhile individually but also made for a balanced package of initiatives.

After discussion, it was AGREED:

- to approve the four projects recommended;
- a brief paper be prepared setting out the specifics of the approved projects in terms of targets and outcomes and the relationship envisaged between the Steering Group and the Board, together with arrangements for providing support to the solicitors involved.

ACTION: CL

11. CUSTOMER AND STAKEHOLDER RESEARCH PROGRAMME

Members considered a paper which provided an outline of the programme of customer and stakeholder research to be undertaken in the main over the next six months.

In discussion, members made a number of suggestions for inclusion in the surveys.

After discussion, it was AGREED:

- to approve the proposed approach to conducting the programme subject to the inclusion of the additional issues to be raised;
- the success of the on-line survey be monitored to see if there was scope to extend it to other areas.

ACTION: CS

12. ANNUAL REPORT

Members considered a paper outlining a proposed approach to the production and content of the Annual Report and Annual Review, and related activities.

Members approved the approach proposed.

ACTION: CS

13. ANNUAL ACCOUNTS

Members considered a paper setting out the arrangements for concluding the production of the Board's Statement of Accounts for the year ending 31 March 2005, together with the paper submitted to the Audit Committee earlier in the day, and the Accounts themselves.

It was reported that although the Audit Committee earlier in the day had made a small number of amendments, the Accounts as presented were essentially as would be published. The Convenor of the Audit Committee recommended to the Board that, following inclusion of the points raised in discussion, the accounts be signed.

It was AGREED to recommend that the Accountable Officer sign the accounts, and make the appropriate arrangements for their publication in the Board's Annual Report and for their laying before Parliament.

14. POSSIBLE DE-REGISTRATION

Before considering the report tabled by the Director of Audit and Compliance, the meeting adjourned to allow members to consider representations submitted on behalf of solicitor and firm concerned. In addition, it was reported that Members had been asked by the solicitor's representatives to be informed that their client's original offer to repay whatever sum appeared to have been overpaid to them from the firm still stood. They also advised that they had not had a great deal of time to prepare the further representations which they had submitted. Once members had fully and carefully considered those representations, the meeting re-convened to consider the report by the Director of Audit and Compliance.

In considering that report, the Board noted that a previous investigation had been undertaken in terms of Section 25 D (1) of the Legal Aid (Scotland) Act 1986 as it had appeared that the solicitor concerned and his firm may not be complying with the Code of Practice in relation to criminal legal assistance. In a letter to the Board dated 26 April 2005 the solicitor's representatives stated that the firm and solicitor were now complying with the Code. It was noted that officers of the Board had attended at the solicitor's offices on 10 May 2005 in the exercise of their powers under Section 25 C (2) of the Act to monitor whether the firm and solicitor were now complying with the Code. The Board noted the conclusions of that audit which appeared to indicate that the firm and solicitor may not be complying with the Code, and representations were invited from them in terms of Section 25 D (1).

Having fully and carefully considered all relevant material placed before it by the Director of Audit and Compliance and all relevant representations made in terms of Section 25 D (1) on behalf of the solicitor and his firm, the Board satisfied itself in terms of Section 25 D (4) of the Act that he and his firm were not complying with the Code of Practice. In reaching that decision, the Board took no account of what appeared to be elements of double charging in Accounts of Expenses submitted by the solicitor in May 2005.

Having satisfied itself that neither the firm nor the solicitor were complying with the Code of Practice the Board is required to remove the relevant names from the register in these circumstances in terms of Section 25 D (4) (a) and (b) of the Act.

The Board then considered and agreed that deregistration was a proportionate decision against the background of the findings from the previous investigation, the assurances received of compliance following that and the conclusions from the audit following attendance at the solicitor's offices on 10 May 2005.

In accordance with its procedures for removing names from the register following failure to comply with the Code of Practice, the Board instructed the Director of Audit and Compliance to remove the names of that firm and that solicitor from the register and instructed him to intimate its decision to the firm and the solicitor in terms of Section 25 D (7) of the Act and, in so doing, to remind the solicitor of the requirements of Section 25 D (6) of the Act with regard to the transfer of current criminal legal assistance work.

In addition, the Board instructed the Director of Audit and Compliance to advise the firm and the solicitor of what appeared to be elements of double charging in Accounts of Expenses submitted by in May 2005 and that no account had been taken of that in taking the decision to deregister the solicitor and firm.

15. “SMARTER JUSTICE, SAFER COMMUNITIES” – SUMMARY JUSTICE REFORM AND THE REVIEW OF SUMMARY CRIMINAL LEGAL ASSISTANCE

Members considered a paper updating the position on the Scottish Executive’s plans for the reform of Summary Justice following the publication in March 2005 of “Smarter Justice, Safer Communities” as their response to the McInnes Report. The paper also set out how the Board’s plans for the reform of criminal legal assistance would fit in with the Scottish Executive’s timescales.

In noting the position, members expressed very strong concern that the timing of the Bills on the reform of criminal legal assistance and summary justice reform was such that there was a considerable risk that the changes to legal aid would not sit well with the changes to the criminal justice system.

16. CHAIRMAN’S REPORT

The Chairman reported that Robert Gordon and Micheline Brannan of the Scottish Executive would be visiting the Board on Tuesday 27 September. Invitations had been extended to Roy Martin, Dean of the Faculty of Advocates, and Caroline Flanagan, President of the Law Society, to meet members. Details of the Strategy Away Day would be issued shortly. A 2.5% increase in Board members’ remuneration had been approved.

17. DATE OF NEXT MEETING

Monday 25 July 2005.

The meeting ended at 4.30pm.