

THE SCOTTISH LEGAL AID BOARD

**MINUTE OF MEETING OF THE SCOTTISH LEGAL AID BOARD HELD AT 1.30PM
ON MONDAY 9 MAY 2005 AT 44 DRUMSHEUGH GARDENS, EDINBURGH**

Present: Jean Couper, Chairman
David Nicol
Ian Percy
Elaine Rosie
Susan McPhee
Ellen Morton
Satnam Singh
Graeme McKinstry (item 13 only)
Willie Gallagher
Kenneth Ross
Margaret Scanlan

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 and 15 only)
Jo Garrett, Policy Research Officer (items 10 and 15 only)
Colin Sim, Acting Communications Manager (item 15 only)
Janet Nixon, FOI Project Manager (item 12 only)
Marie-Louise Fox Solicitor-Policy and Legal Support
Stuart Foster, Board Administrator

1. APOLOGIES FOR ABSENCE

Apologies were received from Peter Gray and Malcolm Thomson.

2. DECLARATIONS OF INTEREST

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

3. MINUTE OF MEETING HELD ON 14 MARCH 2005

The minute of the meeting of 14 March 2005 was approved.

4. MINUTE OF THE LEGAL SERVICES COMMITTEE HELD ON 21 MARCH 2005

The minute of meeting of the Legal Services Committee held on 21 March 2005 was noted.

**5. MINUTE OF THE LEGAL SERVICES SUB-COMMITTEE HELD ON 21
FEBRUARY 2005**

The minute of meeting of the Legal Services Sub-Committee held on 21 February 2005 was noted.

6. MINUTE OF THE AUDIT COMMITTEE OF 7 FEBRUARY 2005

The minute of meeting of the Audit Committee held on 7 February 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. It was also reported that:

- Mark Thorley was to be replaced by Oliver Adair as Chairman of the Law Society's Legal Aid Committee;
- there had been some adverse reaction expressed at a recent meeting of the faculty of advocates criminal group to discuss the new tables of fees, particularly by some junior counsel who felt that they would be paid less in future.

Members noted the position.

8. OPERATIONAL PLAN 2004-2005

Members considered a paper setting out the progress made in respect of the operational plan during 2004-05.

Members noted that a great deal had been achieved in the course of the year against what had been recognised at the outset to be a very challenging programme of work. The Board congratulated the Executive Team on this achievement.

9. OPERATIONAL PLAN 2005-06

Members considered a revised operational plan for 2005-06 which took account of recent discussions on plans with the sponsor division and decisions on resources.

After discussion, it was AGREED:

- in relation to the legal aid online project, further detail be provided on the number of pilot firms involved in the roll-out of the existing A&A system, and its implementation; and a timescale for implementation of the review of sanctions be set;
- the plan be firmed up in terms outcomes and timescales generally.

ACTION: CL

10. SUPPLY AND DISTRIBUTION OF CIVIL LEGAL AID

Members considered a paper by Jo Garrett, Policy Research Officer, which provided an initial overview of the effects of the regulatory and practice changes introduced as part of the reform of civil legal aid.

The paper covered issues that had arisen through various informal channels and analyses of trends in civil legal assistance and the number of solicitors offering this service, and made suggestions as to the potential role of solicitors employed by the Board to provide a service in particular problem areas. The paper highlighted a number of concerns about the present situation, based on both anecdotal and statistical evidence.

It was noted that this preliminary overview formed part of the wider programme of monitoring of the civil reforms which would continue over the summer and be reported to the Board in the autumn.

It was also noted that, as most of the analysis contained in the paper was statistical, it could provide a broad indication of what was happening to supply, but could not address more specific concerns about particular types of work or cases with particular features if these could not be identified from the information recorded on the Board's computer system. Nor could the analysis identify particularly recent changes i.e. those that would only affect the data from the later part of the year, or provide any indication of what was likely to happen in future. Other aspects of the monitoring programme, such as the solicitor survey and further contact with voluntary sector agencies, were likely to be more revealing in that regard.

In discussion, there was agreement that these limitations meant that the analysis as presented in the paper may underestimate some of the more significant and concerning changes in service provision as perceived by members. Members highlighted that, while the paper concluded that the analysis of supply post-civil reform suggested a *continuation* of previous trends rather than an obvious and marked worsening of the situation, one of the aims of civil reform was to turn around, or at least halt, the trends of the previous ten years. In that respect, the analysis suggested that the reforms had not achieved this.

After discussion, it was AGREED:

- the Chief Executive write to the Scottish Executive to convey the Board's views regarding the issue;
- ACTION: LM**
- Ministers agreement to the principle be sought to allow preliminary development work to commence on the potential employment of solicitors in the Glasgow and Aberdeen areas as priorities;
 - to seek early regulatory change to address aspects of the fees table that did not appear to reward adequately certain types of work;
 - to continue to find ways to help solicitors understand which fees they were in fact entitled to, as there was some evidence of confusion leading to undercharging;
 - regulations should be sought to enable the Board to employ solicitors directly to provide a civil legal assistance service in areas of concern;
 - detailed proposals should be drawn up for the direct employment of solicitors, to be considered by the Board in September;
 - Members with relevant background experience of similar services be involved as appropriate in the preparation of the proposals.

ACTION: CL

11. BUDGET AND PERFORMANCE AND RESOURCES REPORT

Members considered a paper which provided the Board with an update on operational performances and resources for the period ending 31 March 2005.

It was reported that a significant proportion of civil applications over 90 days in the 7-12 month age group had been cleared since the issue of the paper. It was noted that a number of these outstanding cases had been continued for some time. It was explained that after the civil system had been introduced, there would be more scope to devote resources to monitoring continued cases.

In discussion, the view was expressed that the lower spend than anticipated on civil legal aid supported the position that there was a lack of service supply in that area.

Members noted the position.

12. FREEDOM OF INFORMATION UPDATE

Members considered a paper by Janet Nixon, Freedom of Information Project Manager, updating the position on progress and requests for information received in the past three months.

It was reported that the Board's processes for dealing with Freedom of Information requests appeared to be working well and were ensuring quality and consistency in decision making.

Members noted the position.

13. POSSIBLE DE-REGISTRATION

Members considered a paper by Ian Middleton, Director of Audit and Compliance.

It was reported that since the previous meeting, at which it had been agreed to invoke the de-registration procedure against the solicitor concerned, a number of representations had been received from the solicitor's agents to the effect that he had learned his lesson and would not transgress again, and that systems had been put in place in the firm to prevent any recurrence of the failures, and that he was now compliant with the Board's Code of Practice.

However, in the opinion of both the Director of Legal Services and Applications and Malcolm Thomson QC, the relevant legislation giving the Board power to de-register was worded such that the Board, when considering de-registration, was not entitled to take into consideration *past* failures to comply with the Code, only continuing practices or conduct. It was therefore inappropriate for the Board to consider de-registration without further enquiry, given the agents' claim that work now conformed to the Board's Code of Practice, and it was therefore recommended that no further action be taken until a further compliance audit had been carried out to determine whether in the seven months since he had been put on notice that his firm's practices were not acceptable, they were now compliant. It was noted that Peter Gray QC had indicated his support for the approach proposed.

After discussion, it was AGREED:

- to note the representations made by the solicitor's agents;
- a further compliance audit be carried out as soon as practicable, and the outcome reported to the next Board meeting, with recommendations on the options available for further action;
- the failures found and forming the basis of the Board's consideration of de-registration be referred to both the Crown Office and the Law Society of Scotland;

ACTION: IGM

- the Chief Executive advise the solicitor's agents of the Board's intended course of action;

ACTION: LM

- consideration be given to obtaining counsel's opinion on the Board's powers under section 25D of the 1986 Act.

ACTION: TCM

14. SOLICITOR INVESTIGATIONS

Members considered a paper by Ian Middleton setting out the range of investigations being undertaken into firms, including those that had not yet been reported to the Audit Committee.

It was noted that solicitor investigations were a very resource-intensive activity, but cost effective. Major investment in computer systems in recent years had provided a valuable basis for identifying trends and activities warranting investigation or other action. The Executive Team had agreed that additional resources were required, and that the allocation of additional funding was needed from the Scottish Executive to enable this to happen.

It was AGREED that further opportunities would be sought to advise the profession of our investigative capabilities.

ACTION: IGM/CS

15. PUBLIC KNOWLEDGE OF LEGAL AID

Members considered a paper by Jo Garrett and Colin Sim reporting the outcome of research commissioned to gauge the extent of knowledge of the Scottish Legal Aid Board amongst the general public. The report set out proposals for taking forward the results through the 2005 customer research programme.

The findings showed that there appeared to be a relatively high level of public awareness of legal aid and the legal aid logo, and that it represented legal aid. It was noted that the findings would be used to inform the proposed customer research programme, which would be presented to the June Board meeting.

It was AGREED to set up a telephone helpline service for the public within the operational year.

ACTION: CS

16. CHAIRMAN'S REPORT

The Chairman reported that the Legal Services Commission has a new chairman, Sir Michael Bichard. Satnam Singh would be leaving the Board at the end of May to take up a new position in Australia, and members wished him every success.

13. DATE OF NEXT MEETING

Monday 20 June 2005.

The meeting ended at 4.20pm.