

**IN CONFIDENCE**

**THE SCOTTISH LEGAL AID BOARD**

**MINUTE OF MEETING OF THE SCOTTISH LEGAL AID BOARD HELD AT 1.30PM  
ON MONDAY 8 MAY 2006 AT 44 DRUMSHEUGH GARDENS, EDINBURGH**

Present: Iain Robertson, Chairman  
Graham Watson  
Susan McPhee  
Ellen Morton  
Graham Bell  
Elaine Rosie  
Willie Gallagher  
Margaret Scanlan  
David Nicol  
Paul McBride  
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  
Marie-Louise Fox, Solicitor-Legal and Policy Support  
Stuart Foster, Board Administrator

**1. APOLOGIES FOR ABSENCE**

None.

**2. DECLARATIONS OF INTEREST**

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

Susan McPhee and David Nicol declared non-financial interests in relation to item 10 (Draft Evidence Submission for Justice 2 Committee) and Kenneth Ross declared a non-financial interest in relation to item 15 (Consultation Response: Judicial Appointments and Removals).

**3. MINUTE OF MEETING HELD ON 13 MARCH 2006**

The minute of the meeting of 13 March 2006 was approved.

It was noted that the corporate plan was still with Ministers for approval, and that they had been reminded of this.

**4. MINUTE OF THE LEGAL SERVICES COMMITTEE HELD ON 20 MARCH 2006**

Subject to an amendment to indicate that Kenneth Ross had declared a non-financial interest in relation to item 12 (Consultation: Judicial Appointments and Removals) the minute of the Legal Services Committee meeting held on 20 March 2006 was noted.

**5. DRAFT MINUTE OF THE LEGAL SERVICES COMMITTEE HELD ON 24 APRIL 2006**

The draft minute of the Legal Services Committee held on 24 April 2006 was noted.

It was noted that a paper updating the position on Michael Carlin would be submitted to the next meeting of the Legal Services Committee.

## **6. MINUTE OF THE LEGAL SERVICES SUB-COMMITTEE HELD ON 20 MARCH 2006**

The minute of the Legal Services Sub-Committee held on 20 March 2006 was noted.

## **7. DRAFT MINUTE OF THE LEGAL SERVICES SUB-COMMITTEE HELD ON 24 APRIL 2006**

The draft minute of the Legal Services Sub-Committee held on 24 April 2006 was noted.

## **8. CHAIRMAN'S INTRODUCTION**

The Chairman wished new members an enjoyable and stimulating experience during their tenure, always bearing in mind that quality of strategic thought and service to customers, together with good working relations with partner organisations, were central to the Board's valued contribution to access to justice. Taking forward the reforms envisioned in the Board's strategic plans, particularly by exploring new ways of working and extending on-line modes of operation were key aims. The Board's Vision statement would be a subject of discussion at the Board Away-Day in September.

## **9. CHIEF EXECUTIVE'S UPDATE**

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

Updates were provided on: additional public defence solicitors offices; civil advice and assistance reform; fees for solicitors in solemn cases; Part V Phase 2; structural and staffing changes in the Board; staff pay increase; and counsels fees.

It was reported that arrangements were being made for the Justice or Deputy Justice Minister, and the Head of the Justice Department, to attend future Board meetings.

The Law Society had advised the Scottish Executive that a special general meeting of its members would take place to discuss withdrawing all co-operation on criminal matters with the Scottish Executive and the Board, over delays in fee increases for solemn legal aid work. There was concern that if this difficulty between the Law Society and the Scottish Executive was not resolved in early course the lack of co-operation and involvement by the Law Society would cause difficulties for the implementation of criminal quality assurance and the reform of summary criminal legal assistance.

The Scottish Executive had issued a consultation about shared services across public bodies. The Chief Executive was Chairman of the NDPB Chief Executives Forum, which was reviewing this issue, and would report back on its conclusions.

Members noted the position.

## **10. DRAFT EVIDENCE SUBMISSION FOR JUSTICE 2 COMMITTEE**

Members considered a paper which outlined the key points from the Board's draft evidence to the Justice 2 Committee on the Legal Profession and Legal Aid (Scotland) Bill, and sought agreement for the approach proposed, together with any suggested changes for inclusion in the revised draft for submission to the Committee.

In discussion, a number of comments and suggestions were made. In particular, it was felt that the proposed complaints levy, which would be incurred even if a complaint was groundless, was open to abuse and unfair, and that this should be stated in the response.

It was AGREED to approve the response as proposed, subject to revision in terms of the discussion, and to highlighting that the Legal Aid Board in Scotland, once the leader, was now falling behind other developed systems in the world in terms of its operational powers.

**ACTION: CL**

## **11. OPERATIONAL PLAN 2005-2006**

Members considered a paper detailing progress made in respect of the operational plan during 2005-06.

Members noted the position.

## **12. OPERATIONAL PLAN 2006-2007**

Members considered a paper which provided an overview of the draft operational plan for 2006/07, following incorporation of comments made at the March Board meeting.

It was AGREED to approve the draft plan.

**ACTION: M-LF**

## **13. BUDGET AND PERFORMANCE AND RESOURCES REPORT**

Members considered a paper updating the position on operational performance and resources for the period ending 31 March 2006.

In discussion, reference was made to the reduction in civil A&A volumes, and it was AGREED the cause of this should be investigated.

**ACTION: CL**

Members noted the position.

## **14. TRENDS UPDATE**

Members considered a paper and heard a presentation by Colin Lancaster summarising legal aid trends in the main areas of the Board's business in 2005-06 and comparing figures with previous financial years.

In discussion, clarification was given that the drop in advocates fees referred to related solely to drugs cases in the High Court and had been cited as an example of how a small change in the number or type of cases could impact on overall expenditure.

It was noted that the Judiciary Office would be able to provide additional information on the length and type of such cases.

Reference was made to the large number of contact cases, a situation which may be influenced by the existence of legal aid.

It was AGREED to report separately on civil legal assistance to the June Board.

**ACTION: CL**

Members noted the position.

## **15. CONSULTATION: STRENGTHENING JUDICIAL INDEPENDENCE IN A MODERN SCOTLAND**

Members considered a paper setting out a proposed response to the consultation, which sought views on Ministers' proposals for the unification, appointment, removal and management of Scotland's judiciary.

After discussion, it was AGREED to approve the response as proposed.

**ACTION: LM**

## **16. POLICY RESEARCH PROGRAMME**

Members considered a paper seeking views on the Board's proposed research programme and work plan for 2006 to 2009.

After discussion, it was AGREED to approve the outline programme, including the broad scheduling of projects and the proposal that the research programme be reviewed by the Board on a six-monthly basis.

**ACTION: CL**

## **17. CHANGE TO STANDING ORDERS**

Members considered a paper proposing some changes to the Standing Orders for the Board and its Committees following consideration of a change to the arrangements for membership of the Audit Committee discussed at the previous meeting.

After discussion, it was AGREED:

- to approve the changes proposed;
- in addition, to specify that the convener of the Remuneration and Appointments Committee should not convene any other Board committee; and that
- a definition of what constituted "lay" and "legally qualified" members be inserted, based on the 1986 Act;
- the finalised version be circulated for information.

**ACTION: M-LF**

## **18. POSSIBLE DE-REGISTRATION**

Members considered a paper detailing the actions and response following the issue of the Board's notice of its intention to consider removing a solicitor and his firm from the Criminal Legal Assistance Register.

It was reported that the solicitor concerned had responded that all issues of non-compliance had now been addressed. In view of the relevant legislation, which required the Board's evidence of non-compliance to be up-to-the-minute, it was recommended that no further action be taken in respect of the proposal to de-register at the current time, but that a full compliance audit of the firm be carried out and the findings reported to the next meeting.

It was noted that the Scottish Executive's attention had been drawn to the nonsensical nature of the legislation requiring evidence of non-compliance to be contemporaneous.

It was AGREED to approve the recommendation.

**ACTION: IGM**

## **19. UPDATE ON PLAN FOR DIRECT EMPLOYMENT OF SOLICITORS IN CIVIL LEGAL ASSISTANCE**

Members considered a paper updating the position on proposals for the employment of solicitors by the Board to provide a civil legal assistance services in areas of identified need. The paper described the detailed proposal requested by and submitted to the Scottish Executive, together with additional information, and the proposed programme for implementation, assuming Ministers gave the go-ahead, and the necessary legislative changes could be made in early course. An update would be provided as soon as there was progress to report.

Members noted the position.

## **ANY OTHER BUSINESS**

### **Deputy Chairman**

The Chairman expressed his pleasure in announcing that Margaret Scanlan had agreed to accept appointment as Deputy Chairman of the Board.

### **Appeal in relation to the decision of Lady Dorian**

It was reported that counsel had advised the Board to withdraw its appeal against the decision of Lady Dorian in relation to responsibility for taxing accounts. This was directly contrary to counsel's earlier advice, and had only just been intimated, 48 hours from the appeal hearing. The reasons for the change of opinion were not known at this stage.

In discussion, the view was expressed that regulatory change was needed to rectify the position. The Scottish Executive had apparently been awaiting the outcome of the appeal before addressing the situation.

A report, to include an explanation for counsel's change of opinion at such a late stage in the proceedings, would be made to the next meeting.

**ACTION: TCM**

### **Board papers**

Members were invited to specify to the Chief Executive's Office the format in which they preferred to receive papers for meetings.

**DATE OF NEXT MEETING:** Monday 19 June 2006.

The meeting ended at 3.30pm.