

**THE SCOTTISH LEGAL AID BOARD
MINUTE OF MEETING OF THE SCOTTISH LEGAL AID BOARD HELD AT 1.30PM
ON MONDAY 10 SEPTEMBER 2007 AT 44 DRUMSHEUGH GARDENS, EDINBURGH**

Present: Iain Robertson, Chairman
Graham Watson
David Nicol
Graham Bell
Joseph Hughes
Denise Loney
Willie Gallagher
Les Campbell
Susan McPhee

In attendance: Lindsay Montgomery, Chief Executive
Andrew Menzies, Director of Corporate Services and Accounts
Tom Murray, Director of Legal Services and Applications
Ian Middleton, Director of Audit and Compliance
Colin Lancaster, Director of Policy and Development
Graeme Hill, Project Manager (item 9 only)
Audrey McColl, Financial Controller (item 10 only)
Derek Arthur, Project Manager – Simplification of Civil Legal Assistance
(item 18 only)
Stuart Foster, Board Administrator

1. APOLOGIES FOR ABSENCE

Kenneth Ross, Elaine Rosie, Ellen Morton, Paul McBride.

2. DECLARATIONS OF INTEREST

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

3. DRAFT MINUTE OF MEETING HELD ON 23 JULY 2007

The draft minute of the meeting of 23 July 2007 was approved.

4. MINUTE OF THE AUDIT COMMITTEE HELD ON 23 JULY 2007

The minute of the Audit Committee held on 23 July was noted.

**5. MINUTE OF THE LEGAL SERVICES CASES COMMITTEE HELD ON 23 JULY
2007**

The minute of the Legal Services Cases Committee held on 23 July was noted.

6. QUARTERLY ACTION POINTS

Noted.

7. CHAIRMAN'S INTRODUCTION

The Chairman reported that he had accepted an invitation to join the Law Society of Scotland Standards Project Reference Group, which had been formed to develop practice standards for solicitors and firms. Members were invited to inform him of any issues they would like raised with the Committee.

John Elvidge, Permanent Secretary, and John Swinney MSP, Cabinet Secretary for Finance and Sustainable Growth, had spoken at the NDPB Conference on 4 September. It was noted that the Scottish Government would pursue an agenda based on a small number of key objectives and seek to create a simpler public sector. The impending spending round could be expected to be the toughest to date.

In view of the period of change associated with the settling in of the new administration, the Board's meeting on 10 December would be devoted to strategic thinking about how the Board could best direct its activities to assist the Scottish Government in achieving its objectives.

8. 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: direct employment of solicitors for civil legal assistance; summary justice reform and summary legal assistance reform; solemn fees reform; civil legal aid fees review; pay remit; direct access of Department of Work and Pensions records for verification purposes; annual accounts and annual report; counsel's fees in appeals; counsel's fees in civil cases; interest on counsel's fees; solicitor advocates' badging of junior and senior solicitor advocates; the Muir fraud; sharing of accommodation and services.

The Chief Executive referred to the lack of money available to the Cabinet Secretary for spending on legal aid, and the challenge facing the Board in assisting the Government through the identification of efficiencies. The next draft of the joint consultation on the summary criminal legal assistance reforms would be submitted to the Legal Services Policy Committee, but could be sent to any interested member on request.

Members noted the position.

9. LEGAL AID ONLINE

Members considered a paper and heard a presentation updating on progress with the Legal Aid Online Project.

The presentation highlighted improvements made to the system, and progress with its deployment and marketing. It was noted that the system was proving increasingly popular with users, and it was intended to drive growth in uptake by targeting high volume users, whilst supporting the wider community of practitioners with enhanced "self-service" sign-up and training.

Following further enhancement over the coming months, Civil Legal Aid Online would be promoted by a wide roll-out from around May 2008, at which stage it was hoped to have

Criminal Legal Aid Online available, but this would be dependent on the implementation of summary criminal legal assistance reform.

It was AGREED:

- the next update demonstrate the benefits of the system from an efficiency savings perspective.

ACTION: AM/GH

10. EFFICIENT GOVERNMENT UPDATE

Members considered a paper which set out the anticipated level of efficiency savings relating to the Scottish Government's Efficient Government Initiative, together with broad proposals for further efficiency savings.

It was noted that the Board's revised Efficient Government target for legal aid for 2007/08 of £9m was expected to be met. The size and timing of continued savings would depend on the pace of regulatory change, and were therefore dependent on the actions the Scottish Government. The Board would seek to enhance its contribution to Efficient Government by seeking further savings, particularly from its administrative budget, through the simplification of processes, and the use of technology and shared services.

It was AGREED:

- to approve the proposed approach outlined in the paper, including investment in additional compliance/investigation staff;
- the next update include further consideration of the potential savings that could be derived from solicitors' travel expenses, and an explanation of IOLTA (Interest on Lawyers' Trust Accounts).

ACTION: AM

11. PERFORMANCE AND RESOURCES REPORT

Members considered a paper updating on operational performance and resources for the period from 1 June to 31 July 2007.

It was noted that:

- Criminal and Civil Applications and Accounts Assessment had met the headline performance indicators during the period and for the year to date. Although Advice & Assistance Applications were slightly below the target headline performance indicator for the year to date, performance continued to improve following the combined impact of the implementation of Civil A&A reform, introduction of new forms and the implementation of a new A&A computer system. As a result, the headline target was met in July.
- Total Grant-in-Aid expenditure for the first quarter was £4.1m compared to a budget of £4.0m.
- Legal Aid Fund cash spend was £50.2m compared to an expected £51.3 m.

- Although there was a drop in performance in invoice payment turnaround in June due to severe staffing difficulties in Finance, it was still expected that the overall target would be met.

Members noted the position.

12. FINANCIAL ELIGIBILITY

Members considered a paper outlining the findings of research commissioned by the Board to estimate the impact of possible changes to the rules governing eligibility for civil legal aid, and suggesting proposals for submission to Ministers.

It was noted that the Scottish Executive had asked the Board to commission the research to provide information on the impact of disregarding state benefits and tax credits for the purposes of assessment of financial eligibility and/or tapering eligibility for civil legal aid.

The paper set out the likely costs of disregarding all benefits as income, and a number of options and scenarios relating to tapered extension of eligibility. The researchers estimated that disregarding all benefits could lead to a 37% increase in gross costs to the Fund. It appeared that tapering would generally lead to a far greater increase in eligibility than would be seen from disregarding benefits, and at significantly less cost.

In discussion, the view was expressed that the question of disregards was not “all or nothing,” and that a compromise position could involve different treatment for different types of benefit.

There was an access to justice issue inherent in the current arrangements that had not been addressed by the previous administration – that a person with a disposable income of £1 more than the upper limit did not qualify at all for legal aid.

After discussion, it was AGREED:

- to convey the information requested by the Executive on disregarding benefits, with a recommendation that consideration should be given to introducing tapering at an appropriate level.

ACTION: CL

13. STRATEGIC FUTURE OF CIVIL LEGAL ASSISTANCE

Members considered a paper which outlined possible proposals for the future development of civil legal assistance, suggesting a range of potential areas for further exploration.

The paper considered a number of potential avenues for increasing access to justice while making better use of available funds based on: alternative and quicker ways of resolving legal problems; controlling the costs of legal assistance; ensuring adequate supply; extending the scope of civil legal assistance; and alternative sources of funding. It was noted that most of the ideas outlined in the paper would require considerable development before the Board could adopt them as policy.

After discussion, it was AGREED:

- the ideas set out in the paper should continue to be developed, but detailed work should only be carried out on topics in which Ministers expressed an interest.

14. SUPER-COMPLAINT AND OFFICE OF FAIR TRADING RESPONSE

Members considered a paper outlining the content of a super-complaint made by *Which?* regarding restrictions on business structures and direct access in the Scottish legal profession, and the response of the Office of Fair Trading (OFT).

The complaint was concerned with what were believed by *Which?* to be features of restrictive practice within the legal services market in Scotland. The OFT had concluded that in the interest of the consumer and the integrity of the profession, a number of restrictions on current practices should be lifted, and that the Scottish Government should consider with the profession how best to do so. The OFT recommended that policy statements should be made on the issues by the end of 2007. The Board had not been asked for its views, and until more specific proposals were made, it was unclear what impact there might be on the economics of legal aid work and its provision. A further report would be made on any new developments.

Members noted the position.

15. SIMPLIFICATION PROJECT

Members considered a paper and heard a presentation on progress with the Civil Simplification Project, which was designed to make Civil Legal Assistance much easier for applicants, solicitors and staff to operate by improving key areas of the business. The paper contained an implementation plan showing the workstreams identified to date, what had been achieved so far and the key milestones for the remainder of the year. Information on the project would be posted on the Board's website next month, and an update presented to the Legal Aid Conference in November. A further report would be made to the Board in the final quarter of the year.

After discussion it was AGREED:

- in addition to the proposed pilot, to ensure that sufficient time was allowed for external consultation with the Law Society and solicitor groups on the development of the forms;
- there was an need to address separately the extent of information required for probable cause and reasonableness, and how this should be obtained;
- otherwise, to note the position.

ACTION: TCM/DA

DATE OF NEXT MEETING: Monday 5 November 2007

The meeting ended at 4.00pm.