

**THE SCOTTISH LEGAL AID BOARD**  
**MINUTE OF MEETING OF THE SCOTTISH LEGAL AID BOARD HELD AT 1.30PM**  
**ON MONDAY 9 NOVEMBER 2009 AT 44 DRUMSHEUGH GARDENS, EDINBURGH**

Present: Iain Robertson, Chairman  
Graham Watson  
David Nicol  
Elaine Rosie  
Susan McPhee  
Les Campbell  
Joseph Hughes  
Graham Bell QC  
Denise Loney

In attendance: Lindsay Montgomery, Chief Executive  
Andrew Menzies, Director of Corporate Services and Accounts  
Colin Lancaster, Head of Policy and Development  
Ian Middleton, Director of Audit and Compliance  
Tom Murray, Director of Legal Services and Applications  
John Osborne, Assistant Manager, Policy and Development (item 9)  
Matt Taylor, Assistant Manager, Analysis and Management Info (item 10)  
Carol Goater, Research Officer (item 12)  
Andrew McIntosh, Corporate Support Manager

**1. APOLOGIES FOR ABSENCE**

Paul McBride QC, Ellen Morton, Kenneth Ross.

**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 31 AUGUST 2009**

The draft minute of the meeting of 31 August 2009 was approved.

**4. DRAFT MINUTE OF THE LEGAL SERVICES POLICY COMMITTEE HELD ON 5 OCTOBER 2009**

The draft minute of the Legal Services Policy Committee held on 5 October 2009 was noted.

**5. MINUTE OF THE AUDIT COMMITTEE HELD ON 31 AUGUST 2009**

The draft minute of the Audit Committee held on 31 August 2009 was noted.

**6. CHAIRMAN'S INTRODUCTION**

The Chairman informed members about the proposed timetable for filling the four Board Member vacancies coming up from March 2010. The advertisement for the posts would be published before 30 November and the interviews would take place in early February. It was hoped the advert would attract interest from both lay and legally qualified applicants.

Cabinet Secretary's approval was also being sought for the three re-appointments.

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

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

Members noted the position. Any learning from the report on the qualification of the Legal Services Commission's 2008/09 accounts would be considered by a future Audit Committee meeting.

**ACTION: AM**

## **8. PERFORMANCE AND RESOURCES REPORT**

Members considered and noted a paper by Andrew Menzies, which provided an update on operational performance and resources for the period from 1 July to 30 September 2009.

Members noted the increased workloads caused by the increasing demand for civil legal assistance and the effort that had been required to clear all backlogs.

## **9. PLANNING AND CO-ORDINATION OF ADVICE SERVICES**

Members considered a paper by Colin Lancaster, updating them on the work of the Government's Debt Action Forum and the Board's role in co-ordinating the response to certain of its recommendations. The paper also set out the work towards an implementation plan for better planning and co-ordination of publicly funded legal services and sought members' support for the Board's approach.

Members were pleased that the approach on planning and co-ordination was still in line with the outcomes of the Advice for All strategic review and they therefore noted the paper and were content with the Board's approach.

## **10. TRENDS ANALYSIS**

Members considered a paper by Matthew Taylor, providing a summary of legal aid trends for the 12 month period from October 2008 to September 2009 compared with previous years.

Members noted the increasing number of applications for civil legal aid and the importance of controlling the costs associated with the increasing volume of applications regarding Contact. Members also noted that the increase in housing/recovery of heritable property work had not been as great as expected. This was likely down to cases of repossession not increasing in line with recent Government forecasts and also the availability of the Board's grant funded in-court advice projects.

Members noted that the Executive would be carrying out some further analysis of the increase in ABWOR for road traffic offences, particularly the level of refusals compared to applications for summary criminal legal aid.

## **11. PATTERNS OF SUPPLY OF CIVIL LEGAL ASSISTANCE**

Members considered and noted a paper by John Osborne, giving an update on work to analyse patterns of supply of civil legal assistance.

Members noted that there were no significant concerns about the availability of civil legal assistance. They also noted that the reduction in intimations for advice and assistance on debt did not mean that less people were getting advice in this area. The paper was comparing cases of minimum fees under the old system with diagnostic interviews under the reformed system. The purpose of the diagnostic interview introduced through the civil reforms was to direct people seeking advice to the most appropriate advisor, which might be an advice agency. Previous data on claims for fixed fees did not give an accurate representation on who was getting advice on debt.

## **12. OPERATIONAL PLAN – 6 MONTHLY UPDATE**

Members considered and noted a paper by Andrew McIntosh, updating them on progress in the second quarter against the Operational Plan for 2009-10.

Members noted the continuing pressure on resources and the good progress made against the projects of high and medium importance.

## **13. STAFF SURVEY 2007 – UPDATE ON ACTIONS**

Members considered and noted a paper by Clare Duffy, updating them on progress made against actions arising out of the 2007 Staff Survey and highlighting plans for the forthcoming 2010 survey.

After discussion it was AGREED:

- that it was not necessary to carry out staff surveys on a yearly basis;

<b>ACTION: CL</b>
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## **14. CHANGES TO THE TRIBUNAL STRUCTURE**

Members considered a paper by Tom Murray, setting out how the legislative changes to the tribunal structure under the Tribunals Courts Enforcement Act 2007 would affect the way in which the Board provided legal aid in proceedings before the new tribunals. The paper asked Members to comment on the proposals for change where appropriate.

The functions of the VAT and Duties Tribunal for Scotland and the appeals to the Social Security and Child Support Commissioners had already transferred to the new tribunal system. The Board had not been made aware of this until very recently. The functions of the Asylum and Immigration Tribunal would be transferring to the new system in early 2010.

The Board needed to decide what legal aid type to assign to the first tier and upper tier tribunals. The risk of simply applying ABWOR to the former and civil legal aid to the latter was that a

different amount of activity was captured under each system than previously. The proposal was to remain with the status quo – ABWOR for proceedings before tribunals and civil legal aid for proceedings before the courts. To safeguard against unmeritorious cases coming before the upper tribunal, a merits test would also be applied by the solicitor where leave to appeal was refused by the first tier tribunal. As an additional control, the Board would also be given the power to look at how the solicitor had applied the tests at the conclusion of the case, as in criminal ABWOR.

Members noted that the executive had not been consulted sufficiently on the changes to the tribunal system. They also noted that no details had been received on how exactly the tribunals would operate.

After discussion it was AGREED:

- that the status quo for the aid types which have historically been used, namely ABWOR for proceedings before the tribunals and civil legal aid for proceedings before the courts should be maintained.
- that the policy should be reviewed and brought back to Members when the tribunal process had bedded in.

**ACTION: TCM**

**DATE OF NEXT MEETING:** Monday 7 December 2009