

**THE SCOTTISH LEGAL AID BOARD**  
**MINUTE OF MEETING OF THE SCOTTISH LEGAL AID BOARD HELD AT 1.30PM**  
**ON MONDAY 19 JULY 2010 AT 44 DRUMSHEUGH GARDENS, EDINBURGH**

Present: Iain Robertson, Chairman  
Graham Watson  
Ray MacFarlane  
William McQueen  
Denise Loney  
Sheriff Ray Small  
Les Campbell  
Paul McBride QC

In attendance: Lindsay Montgomery, Chief Executive  
Andrew Menzies, Director of Corporate Services and Accounts  
Colin Lancaster, Director of Policy and Development  
Tom Murray, Director of Legal Services and Applications (items 1-6 and 17 only)  
John Osborne Policy Development Officer (item 16 only)  
Hazel Thoms, Manager, Policy and Development (item 15 only)  
Stuart Drummond, Policy Officer (item 12 only)  
Clare Duffy, Assistant Manager, Policy and Development (item 13 only)  
Carol Goater, Research Officer, Stakeholder Engagement (item 13 only)  
Marie-Louise Fox, Head of Secretariat and Chief Executive's Office  
Andrew McIntosh, Corporate Support Manager  
Stuart Foster, Board Administrator

**1. APOLOGIES FOR ABSENCE**

Elaine Rosie, Susan McPhee, Alastair Kinroy QC, Joseph Hughes.

**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 14 JUNE 2010**

The draft minute of the meeting held on 14 June was approved.

**4. DRAFT MINUTE OF THE LEGAL SERVICES POLICY COMMITTEE HELD ON 31 MAY**

The draft minute of the Legal Services Policy Committee held on 31 May was noted.

**5. DRAFT MINUTE OF THE LEGAL SERVICES CASES COMMITTEE HELD ON 31 MAY**

The draft minute of the Legal Services Cases Committee held on 31 May was noted.

**6. DRAFT MINUTE OF THE LEGAL SERVICES CASES COMMITTEE HELD ON 21 JUNE**

The draft minute of the Legal Services Cases Committee held on 21 June was noted.

## **7. CHAIRMAN'S INTRODUCTION**

The Chairman updated Members on matters of interest.

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

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

The Chief Executive referred in particular to public finances and the likelihood that Ministerial decisions on savings would result in substantial development and implementation work for the Board.

In noting the position, members commended the Chief Executive's decision, made in recognition of the current financial position and the challenges ahead for the Board and the profession, to forego his performance bonus for 2009/10.

## **9. OPERATIONAL PLAN 2010-2011**

Members considered a paper which reported on overall progress made in respect of the Operational Plan for 2010-2011.

It was noted that good progress had been made in the early part of 2010-11 which had included a significant amount of scoping and planning for new projects and best value reviews. This had been achieved at the same time as a significant amount of senior resources being required to work on future savings plans and the implementation of the Lord Advocate's guidelines on police detention.

Progress had remained on track during the first quarter with the majority of projects of medium to high importance to the Board. However, the consequences of *Cadder v HMA* and the challenging implications of the forthcoming Spending Review dictated that it would be very difficult to maintain this over the remainder of the financial year. It was likely that the priorities in the Operational Plan would have to change when Minister's decisions on funding for 2011/12 became clearer and the range of savings to be made were apparent.

Members noted the position.

## **10. ANNUAL ACCOUNTS**

Members considered a paper which presented the draft Annual Accounts for 2009/10. Members noted that the accounts would still be published simultaneously with the annual report but that they would be separate documents.

It was noted that the Board's external auditors would issue an unqualified audit opinion and Members commended the favourable comments received on the Board's internal governance from the auditor during the consideration of the accounts at the earlier Audit Committee.

The Audit Committee were content with the accounts, subject to some minor amendment to reflect the fact that the recently agreed Financial Memorandum now said that the interest earned by the Board on cash balances may be used to provide additional funding.

It was AGREED:

- on the basis of the satisfactory recommendation from the Audit Committee (subject to the amendment to wording referred to above), to recommend to the Accountable Officer that he sign the accounts, make the arrangements for their publication and arrange for their submission, through KPMG, the Auditor General and the Scottish Government, for laying at the same time as the Board's Annual Report, before the Scottish Parliament.

**ACTION: LM**

The Board congratulated Andrew Menzies and his team on an exceptional job done in preparing the accounts, particularly in view of it being the first time this had been done on the basis of the International Financial Reporting Standards.

## **11. ANNUAL REPORT FROM THE AUDIT COMMITTEE**

Members considered a paper by the Convener of the Audit Committee reporting to the Board and the Accountable Officer, in accordance with best practice, on the activities of the Committee during 2009/10.

The Convener reported that the paper had been very favourably received by the Audit Committee earlier in the day, and that the Board's external auditors had also expressed satisfaction with its content.

## **12. PROPOSAL FOR SUPPORTING TRAINEESHIPS**

Members considered a paper setting out options available to the Board in supporting traineeships within the profession.

The report concluded that whilst anecdotal evidence existed of problems for trainees obtaining traineeships with legal aid firms and for firms offering traineeships, the problems were not so widespread or significant as to merit a substantial input of resources from the Board, particularly in the current financial climate. This, combined with the costs and risks of a grant funded scheme set out in the paper, led to the recommendation that the Board should not institute a scheme for the direct funding of traineeships in private practice firms.

Discussion centred on obtaining clarity on the actual benefits to the Board of such a proposal, and the appropriate number, location and supervision of trainees. It was also noted that contact with the Scottish Young Lawyers Association would be important.

After discussion, it was AGREED:

- to approve the recommendation that the Board offer a small number of multi-seat traineeships, with the majority of each trainee's time spent either in-house at the Board itself or with CLAO or PDSO.

**ACTION: SD**

## **13. SOLICITOR SURVEY 2010**

Members considered a paper which presented early findings of a recent survey of solicitors who provided work under legal aid.

It was noted that the survey had a very large sample size and there had been a good level of engagement from respondents. Responses were generally positive, particularly with regard to communications and legal aid online, while negative opinion had been encountered in relation to civil accounts.

Members questioned the motivation behind some of the answers given to the survey and subsequently noted that a number of focus groups would be carried out at a later stage to get answers to this.

A further report, with an action plan for addressing the findings, would be submitted to the Board as soon as work on the findings had been completed. Members agreed that nothing should be published until an action plan had been agreed.

After discussion, members noted the position.

#### **14. ECONOMIC DOWNTURN PROGRAMME**

Members considered a paper which provided an update on the programme of work being co-ordinated and funded by the Board in response to the economic downturn.

The arrangements for management of the Economic Downturn Programme, and the achievements so far in delivering the programme objectives anticipated by Scottish Government (particularly in relation to repossession) were noted.

A further report would be made to the Board in November regarding monitoring and evaluation of the projects in the programme and to propose options for a way forward in the key period up to and beyond April 2011. The main challenge in achieving this was the timing of Scottish Government decisions on future funding of targeted services. In the intervening period the activity set out in the paper would be pursued to minimise the risks to the programme and to the Board. Members would be updated as to any progress in the interim.

Members noted the position.

#### **15. PART V STRATEGIC REPORT**

Members considered a paper on options for refinement of the current remits and strategic objectives of the Civil Legal Assistance Offices, following on from the operational report to the previous meeting.

The casework services delivered by the Board's four Civil Legal Assistance Offices continued to evolve and grow. The paper suggested that some changes in focus might be required to ensure an appropriate focus on economic downturn cases in Inverness. It was also recommended that the Edinburgh and Aberdeen offices began accepting referrals on some family matters, subject to capacity, where these could be clearly related to the economic downturn.

The thematic work undertaken by the Edinburgh –based part V Legal Outreach Team has been focused on delivery of legal advice in prisons. It was recommended that the team continue its work for the time being but that only limited resource be devoted to further development of the service until future funding arrangements become clearer and the other demands on CLAO time can be prioritised.

After discussion it was AGREED:

- to approve the recommendations, with work to begin immediately with the CLAO and external partners to develop revised workplans to cover the period to April 2011, and the prison work Outcomes report, including the partner interviews, to be finalised over the next month and shared with the partner organisations at national and local level to inform future activity on this area of policy;
- a further report be submitted to the Board in November to agree the priorities for CLAO services, both casework and strategic, beyond March 2011.

**ACTION: CL**

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

Members considered a paper which provided an update on work to analyse patterns of supply of civil legal assistance.

It was reported that there had been a continuing general increase in civil legal assistance work, which had begun in 2008/09, that was widespread across the country. The rise in activity could be related to either increased need or spare capacity in supply that was meeting pre-existing need.

Areas such as Inverclyde, where potential access to justice concerns had previously been identified, would continue to be monitored. Members agreed that where access to justice concerns were identified it was important for the Board to first monitor whether the market would react to changes in supply patterns before assessing whether there was a case for intervention.

After discussion, it was AGREED:

- to approve the publication of updated results on the Board's website.

**ACTION: JO**

## **17. PROPOSED DE-REGISTRATION**

Members considered a paper recommending that a solicitor and the firm of which the solicitor was an employee be de-registered.

The Director of Audit corrected an error in section 7.1 where it was stated that the Board had accepted that standard of proof to be applied in such cases was "proof beyond reasonable doubt". This was incorrect; the evidential test to be applied was '*on the balance of probabilities*'.

After discussion, it was AGREED:

- to approve the recommendation of the Director of Audit and Compliance that the Board invoke its de-registration procedure to remove the names of the solicitor and the firm of which he was an employee from the Criminal Legal Assistance Register. The firm and the solicitor would be given an opportunity to make representations on the proposed de-registration and a fuller paper would be submitted to the Board.

**ACTION: IGM**

**DATE OF NEXT MEETING:** Monday 30 August 2010.

The meeting ended at 3.00 p.m.