

THE SCOTTISH LEGAL AID BOARD

MINUTE OF A MEETING OF THE LEGAL SERVICES POLICY COMMITTEE HELD AT 11.30 AM ON MONDAY 14 MARCH 2011 AT 44 DRUMSHEUGH GARDENS, EDINBURGH

Present: Joseph Hughes (Convener)
Elaine Rosie
Lindsay Montgomery
Graham Watson
Bill McQueen
Iain Robertson

In attendance: Tom Murray, Director of Legal Services and Applications
Catriona Whyte, Head of Legal Services – Civil
Marie-Louise Fox, Head of Chief Executive’s Office and
Communications Department
Stuart Foster, Board Administrator

1. APOLOGIES FOR ABSENCE

Alastair Kinroy QC, Sheriff Ray Small.

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 24 JANUARY

The draft minute of the Legal Services Policy Committee held on 24 January was approved.

4. MINUTE OF THE LEGAL SERVICES CASES COMMITTEE HELD ON 24 JANUARY

The minute of the Legal Services Cases Committee held on 24 January was noted.

5. ACTION POINTS

The Committee considered and noted the actions taken in relation to decisions taken at their previous meeting.

6. STAGE REPORTING

The Committee considered a paper by Catriona Whyte which set out the findings of a review of the revised stage reporting processes in place since March 2009, and recommended changes that should be made to the system to promote its more effective operation.

It was noted that the review had found there to be significant numbers of stage reports that did not provide adequate information, particularly in relation to revised assessments of the estimated costs of cases given at the outset, a finding that was especially concerning in high cost cases. In some high cost cases, criticisms had been made of the assisted person and / or counsel that had

not been drawn to the attention of the Board in stage reports. There was also concern about the potential level of non-compliance in the unprompted stage report process. Generally, stage reporting compliance was assessed as being as low as 60%, and this fell to around 50% in high cost cases.

As things stood, there were no consequences for a solicitor who failed to comply with the stage reporting requirements, yet these were of great importance in ensuring proper control of Fund expenditure. It was therefore recommended, following consultation with the Law Society and other relevant bodies, that a number of changes be made to the process to address the current shortcomings.

After discussion, it was AGREED:

- the guidance on unprompted reports be amended as set out in paragraph 11 of the paper, subject to:
 - stage reports being required whenever any court hearing - including proofs, debates and appeals - of three days or more was fixed
 - replacing the word “criticism” with *material differences* in situations where an expert’s report did not support the assisted person’s position or case
 - the proposed threshold of £25,000 for estimated or actual case costs being refined according to court and case type
 - adopting a proportionate approach to an omission to provide a stage report in children’s cases where the reporter was not supportive of the assisted person’s position or case when this did not materially affect the appropriateness of the grant of legal aid
 - helping the solicitor by issuing a reminder of the need to report unfavourable findings as a prompt when granting sanction;
- failure to provide a time based report should result in suspension and, potentially, termination, subject to making the solicitor and client fully aware of the consequences of suspension;
- failure to provide an unprompted report in accordance with the revised guidance should have the potential to lead to non-payment in respect of work done from the point the report ought to have been lodged; in which regard, senior counsel’s opinion be obtained to clarify the Board’s power to withhold payment, and separate consideration be given to whether there was any need to adjust the fee regulations;
- guidance to the profession on completion of the forms be significantly extended, with examples of good practice provided;
- the account synopsis form submitted by solicitors when lodging their accounts should be amended to include a question asking whether any criticisms were made of an assisted person or their legal representatives in any judgement issued, and it should be made clear that this could cover any party in the action; in addition, stage reports from other parties would be accepted in this regard;
- consideration be given to the question of what should be expected / required of solicitors in relation to keeping their clients advised on how much of their money was likely to be spent if their case were continued;

- to approve the proposals as amended in light of the discussion for consultation with the Law Society – who should be invited to assist in revising the guidance - and other relevant bodies, with feedback to be reported to the Committee.

ACTION: CAW

DATE OF NEXT MEETING: Monday 18 April 2011 at 10.30a.m.

The meeting ended at 12.40 p.m.