

THE SCOTTISH LEGAL AID BOARD

MINUTE OF A MEETING OF THE LEGAL SERVICES POLICY COMMITTEE HELD AT 11.00 AM ON MONDAY 18 APRIL 2011 AT 44 DRUMSHEUGH GARDENS, EDINBURGH

Present: Joseph Hughes (Convener) (items 1-8 only)
Lindsay Montgomery
Graham Watson
Bill McQueen
Iain Robertson
Alastair Kinroy QC (items 6-10 only)
Sheriff Ray Small (in the chair for item 9).

In attendance: Tom Murray, Director of Legal Services and Applications
Joe Kelly, Head of Civil Legal Assistance (item 7 only)
Elizabeth Cuschieri, Board Solicitor (item 8 only)
Nicola Cameron, Board Solicitor (item 9 only)
Catriona Whyte, Head of Legal Services – Civil (item 9 only)
Kieran Burke, Legal Support to the Director of Legal Services and Applications
Marie-Louise Fox, Head of Chief Executive's Office and Communications Department
Stuart Foster, Board Administrator

1. APOLOGIES FOR ABSENCE

Susan McPhee.

The Convener confirmed that Susan McPhee would be joining the Policy Committee and replacing Elaine Rosie, who was joining the Legal Services Cases Committee. The Convener asked that his gratitude for Elaine's valuable contribution to the work of the Committee be recorded.

2. DECLARATIONS OF INTEREST

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

Iain Robertson declared a non-financial interest in respect of item 9 (Legal Aid application) in that he had been present at the meeting of the Legal Services Cases Committee when the original decision on the application had been taken. He did not leave the meeting but took no part in discussion of that item.

As a Board member of the Scottish Children's Reporter Administration, Joseph Hughes declared a non-financial interest in relation to item 9, and left the room during discussion of that item, for which Sheriff Ray Small took the Chair.

3. DRAFT MINUTE OF MEETING HELD ON 14 MARCH

The draft minute of the Legal Services Policy Committee held on 14 March was approved.

4. DRAFT MINUTE OF THE LEGAL SERVICES CASES COMMITTEE HELD ON 7 MARCH

The draft minute of the Legal Services Cases Committee held on 7 March was noted.

5. ACTION POINTS

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

6. DIRECTORS REPORT

The Committee considered and noted a report on matters of interest which had arisen since the previous meeting.

7. A&A INCREASES AND VERIFICATION OF FINANCIAL ELIGIBILITY

The Committee considered a paper by Joe Kelly which proposed a change in approach to granting increases in authorised expenditure for outlays in light of the recent new provisions for verification of financial eligibility.

It was noted that the Board was currently prepared to grant appropriate requests for increases in authorised expenditure in cases in which the solicitor had granted an application for advice and assistance but had not yet complied with the verification provisions, but could withhold payment of the account if evidence of compliance was not subsequently provided.

A number of options were considered but after discussion, it was AGREED:

- to revisit the wording in the Handbook to ensure it was sufficiently explicit about the requirement for financial verification, and, if possible, to add a note to increase notifications reminding practitioners of the need to comply with the relevant regulations and the risk of non-payment for failing to do so.

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| ACTION: JK |
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8. DRAFT CHILDREN'S CODE OF PRACTICE

The Committee considered a paper by Elizabeth Cuschieri which set out a draft Children's Code of Practice, as would be required by the Children's Hearings (Scotland) Act 2011 when it came into force.

It was noted that the Act would introduce a scheme for registration of firms and solicitors doing children's legal assistance work. The draft Code reflected input from the Family Law Association, but not the Law Society, which had not responded to three written invitations to assist.

In discussion, views were expressed as to the extent to which the requirements of the proposed Code prescribed the way that solicitors carried out their work in this area.

After discussion, it was AGREED:

- the wording of the Code should be changed to reflect the existence of legal aid online and other numbering issues and also reflect the issue of disclosure by SCRA in children's cases and being able to ensure that cases are fully prepared;

- subject to editing, to approve the draft Code for preliminary consultation with the Law Society and other relevant persons or bodies as a precursor to the statutory consultation that would be undertaken when the Children's Hearings (Scotland) Act came into force.

ACTION: EC

9. LEGAL AID APPLICATION (CI/9865286309)

The Committee considered a paper by Nicola Cameron concerning an application for review of a decision by the Legal Services Cases Committee to refuse an application for legal aid to appeal to the UK Supreme Court against a decision of the Court of Session to decline to issue a declarator confirming that the applicant was a victim of a breach of the European Convention on Human Rights through not having been legally represented at a children's hearing which had taken a decision affecting the care of the applicant's child.

It was recommended that the Committee adhere to the decision of the Legal Services Cases Committee and refuse the review application for the reason given by the Legal Services Cases Committee.

In discussion, members referred to the very complex nature of the case and the fact that the issue of probable cause needed to be considered afresh. The issues involved needed careful scrutiny.

After discussion, it was AGREED:

- the application be continued to examine the issue of probable cause and to report back to the Committee at its May meeting.

ACTION: CAW / NC

DATE OF NEXT MEETING: Monday 23 May 2011 at 10.30a.m.

The meeting ended at 12.20 p.m.