

THE SCOTTISH LEGAL AID BOARD

MINUTE OF A MEETING OF THE LEGAL SERVICES POLICY COMMITTEE HELD AT 10.30 AM ON MONDAY 6 SEPTEMBER 2010 AT 44 DRUMSHEUGH GARDENS, EDINBURGH

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

In attendance: Catriona Whyte, Head of Legal Services - Civil
Colin Lancaster, Director of Policy and Development (items 9-10 only)
Kieran Burke, Support to the Director of Legal Services and
Applications
Andrew McIntosh, Corporate Support Manager
Stuart Foster, Board Administrator

1. APOLOGIES FOR ABSENCE

Alastair Kinroy QC.

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 relation to the legal aid review applications on the agenda in that he had been present at the meeting of the Legal Services Cases Committee when the applications had originally been considered. He did not leave the meeting.

Bill McQueen declared a non-financial interest in relation to the item on options for tribunal reform in that he had in the past been a lay member of the Employment Tribunal. He did not leave the room.

Joseph Hughes declared a non-financial interest in relation to the item on options for tribunal reform in that he is a member of the Additional Support Needs Tribunals for Scotland, Pension Appeals Tribunal, Scottish Solicitors Discipline Tribunal and Mental Health Tribunal for Scotland. He did not leave the room.

3. DRAFT MINUTE OF MEETING HELD ON 26 JULY 2010

The draft minute of the Legal Services Policy Committee held on 26 July 2010 was approved.

4. DRAFT MINUTE OF THE LEGAL SERVICES CASES COMMITTEE HELD ON 19 JULY 2010

The minute of the Legal Services Cases Committee held on 19 July 2010 was noted.

5. ACTION POINTS

The Committee considered and noted a paper by Tom Murray setting out progress with the implementation of actions arising at the previous meeting.

7. LEGAL AID APPLICATION

The Committee considered a paper by Alison Granger concerning an application to review a refusal to grant civil legal aid for judicial review of a decision of the Board to refuse an application for civil legal aid for proceedings before the Supreme Court. The case related to the applicant's application for asylum.

After discussion, it was AGREED:

- the application for civil legal aid be referred to the Sheriff of Lothian and Borders at Edinburgh in terms of section 14 (4) of the Legal Aid (Scotland) Act 1986 for a final determination.

ACTION: CAW

8. LEGAL AID APPLICATION

The Committee considered a paper by Catriona Whyte concerning an application for civil legal aid in respect of judicial review proceedings referred to the Legal Services Policy Committee on review following refusal at first instance by the Legal Services Cases Committee. The applicant was seeking legal aid to petition for judicial review to challenge a number of grants of planning permission by Aberdeenshire Council.

In discussion, reference was made to Regulation 15 of the Civil Legal Aid (Scotland) Regulations 2002 and the view was expressed that, on the basis of the evidence submitted by the applicant's solicitor, that Regulation 15(b) applied because it appeared there were other persons who had the same interest in the judicial review as the applicant.

After discussion, it was AGREED:

- the application for civil legal aid be refused on the basis that the terms of regulation 15 (b) of the Civil Legal Aid (Scotland) Regulations 2002 applied;
- To assist with future cases and policy discussion, that it would be helpful if the opinion of counsel be obtained on the meaning of regulation 15.

ACTION: CAW

9. DOMESTIC ABUSE (SCOTLAND) BILL: REQUEST FOR WRITTEN EVIDENCE BY THE JUSTICE COMMITTEE

The Committee considered a paper by Catriona Whyte and Colin Lancaster which set out draft written evidence to be provided to the Justice Committee on proposals in the Domestic Abuse (Scotland) Bill to remove the need for any financial eligibility tests where a pursuer lodges an application for civil legal aid seeking a protective order.

In discussion, although members agreed that the intentions were laudable, they expressed concern at the significant cost implications for the legal aid fund if the financial eligibility tests were removed (notwithstanding it was unclear whether what was proposed related to protective orders only or the whole proceedings). There was the likelihood of a large increase in applications and advice and assistance and that more actions would be defended.

After discussion, it was AGREED:

- the response should focus more strongly, and earlier, on the cost implications of the proposals;
- the reference in section 4 of the proposed response (Available supply of Solicitors) to solicitors reaching the same conclusion as Parliament on ability to pay should be deleted.

ACTION: CL

10. OPTIONS FOR TRIBUNAL REFORM IN SCOTLAND

The Committee considered a paper by Colin Lancaster which set out a proposed response to the current consultation on tribunal reform issued by the Scottish Committee of the Administrative Justice and Tribunals Council. (The paper was circulated to all Board members for comment).

It was noted that each of the options for reform sought some degree of integration or unification of tribunals. Scottish Ministers had announced a move towards unified administration of devolved tribunals. The Board had an interest in these issues as a substantial proportion of civil legal assistance expenditure related to tribunals, primarily mental health (a devolved tribunal) and immigration and asylum (reserved).

After discussion, it was AGREED:

- to approve the response subject to: explaining more fully how the issues set out in the paper impacted upon legal aid expenditure and noting that none of the options had been costed and a move towards any of the options should be based on a clear business case;
- to delete the reference in Appendix 1 in response to Paragraph 7.19.

ACTION: CL

DATE OF NEXT MEETING: Monday 4 October 2010 at 10.30a.m.

The meeting ended at 11.50 a.m.