

THE SCOTTISH LEGAL AID BOARD

**MINUTE OF A MEETING OF THE LEGAL SERVICES COMMITTEE HELD AT 10.30
AM ON MONDAY 17 JANUARY 2005 AT 44 DRUMSHEUGH GARDENS,
EDINBURGH**

Present: Margaret Scanlan (Convener)
Kenneth Ross
Jean Couper
Graeme McKinstry
Willie Gallagher
Malcolm Thomson.
Elaine Rosie

In attendance: Lindsay Montgomery, Chief Executive
Tom Murray, Director of Legal Services
Alex MacRitchie, Board Solicitor (item10 only)
Catriona Whyte, Head of Legal Services (Applications) (item 8 only)
Philip Shearer, Board Solicitor (item 7 only)
Colin Lancaster, Head of Policy and Planning (item 9 only)
Marie-Louise Fox, Solicitor -Legal and Policy Support
Stuart Foster, Board Administrator

The Convener welcomed Elaine Rosie to her first Committee meeting.

1. APOLOGIES FOR ABSENCE

Ian Percy, Peter Gray

2. DECLARATIONS OF INTEREST

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

Malcolm Thomson, Willie Gallagher and Jean Couper declared interests in relation to the application for legal aid to be discussed in that they had been involved in the decision of the Legal Services Sub-Committee to refuse the original application.

3. MINUTE OF MEETING HELD ON 13 DECEMBER 2004

The minute of the Legal Services Committee held on 13 December 2004 was approved.

4. DRAFT MINUTE OF LEGAL SERVICES SUB-COMMITTEE

The draft minute of meeting of the Legal Services Sub-Committee held on 13 December 2004 was noted.

5. COMMITTEE ACTION POINTS

The Committee considered and noted a paper by Tom Murray outlining action taken in relation to decisions at the previous meeting.

6. DIRECTOR'S REPORT

The Committee considered a paper by Tom Murray updating members on matters of interest since the previous meeting on 13 December.

It was reported that a letter had been received from a solicitor informing the Board that practitioners in his area who were registered to undertake legal aid work were passing it on to other firms – this was particularly true of work on interdicts. This raised the issue of registration not necessarily being an indicator of provision.

After discussion, it was AGREED:

- analysis be undertaken to understand why registered firms were passing on legal aid work, and a verbal report made to the next meeting;
- a check be made that there was no gap in the fees provision whereby solicitors were not paid for negotiations after the legal aid certificate had been granted but no action had been raised;
- to ascertain whether the Advice and Assistance Department checked that where the Board received intimation of A&A applications, that the solicitors were registered on the civil legal assistance register and not just the criminal legal assistance register;

ACTION: TCM

- otherwise, to note the position.

7. PROPERTY RECOVERED OR PRESERVED

The Committee considered a paper by Philip Shearer which set out options for improving the awareness of applicants and solicitors of the implications of recovering or preserving property in both advice and assistance and civil legal aid cases.

It was noted that, despite comprehensive guidance having been issued by the Board, there was still a need to improve understanding and awareness in both solicitors and applicants. It was proposed that this could be achieved by providing seminars for solicitors, and publishing guidance in relation to advice and assistance for solicitors and applicants.

After discussion, it was AGREED:

- to revise the format of the proposed article for *The Recorder* by using a question and answer format. There should be emphasis on preservation of property in advice and assistance cases. Information on exemptions from payment out of property recovered or preserved should contain a link to the online Handbook.
- the outline for a leaflet for applicants should contain:
 - information about the differences between “recovery” and “preservation”
 - a definition of “property”
 - information about how the Board authorised levels of authorised expenditure
 - the entitlement of applicants to ask their solicitor about levels of authorised expenditure
 - information about cost-benefit issues;

- the amendments to the leaflet, and ideas for an information pack for advisors in the not-for-profit sector, be brought back to the Committee;
- proactive monitoring of the position be carried out over the summer and reported back, and peer review used to find out where the gaps were in solicitors' understanding;
- to approve the offer to local Faculties to provide talks on quality assurance and property recovered or preserved.

ACTION: PS

8. SANCTIONS

The Committee considered a paper by Catriona Whyte updating the position in relation to sanction applications for both experts and counsel.

After discussion, it was AGREED:

- a detailed report be made to the March meeting to include a timetable and an update on progress with the work being undertaken with the BMA and the Institute of Chartered Accountants, and detailed information on the use of counsel in civil and criminal cases. An analysis of the firms seeking sanction to use counsel and their relative success rate was needed, together with information on any differences in approach between firms practising in rural and urban areas. A copy of the existing guidelines in relation to sanction for counsel in both civil and criminal cases should also be included. Comments received from practitioners used to instructing counsel should be part of the report if any comments were received.

ACTION: CAW

9. SMALL CLAIMS/SUMMARY CAUSE LIMITS

The Committee considered a paper by Colin Lancaster concerning the legal aid implications of a possible change in the small claims and summary cause jurisdiction limits. The paper set out the implications and possible options for addressing the issues raised.

After discussion it was AGREED:

- it be suggested to the Scottish Executive that the summary cause fees table should be updated;
- a number of options should be presented to the Committee at its March meeting, including issues such as whether any "new" cases should be dealt with under ABWOR or civil legal aid, what form of merits test might apply, and whether a new minimum level of claim should be established.

ACTION: CL

DATE OF NEXT MEETING:

Monday 21 February 2005 at 10.30 am.

The meeting ended at 12.10.

