

THE SCOTTISH LEGAL AID BOARD

**MINUTE OF A MEETING OF THE LEGAL SERVICES COMMITTEE HELD AT 10.30
AM ON MONDAY 21 FEBRUARY 2005 AT 44 DRUMSHEUGH GARDENS,
EDINBURGH**

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

In attendance: Lindsay Montgomery, Chief Executive
Tom Murray, Director of Legal Services
Steven Carrie, Senior Technical Specialist (extra item only)
Catriona Whyte, Head of Legal Services (Applications) (item 7 only)
Douglas Haggarty, Head of Legal Services (Technical) (extra item only)
Kingsley Thomas, Criminal and A&A Manager (item 8 only)
Marie-Louise Fox, Solicitor -Legal and Policy Support
Stuart Foster, Board Administrator

1. APOLOGIES FOR ABSENCE

Peter Gray.

2. DECLARATIONS OF INTEREST

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

3. MINUTE OF MEETING HELD ON 17 JANUARY 2005

Subject to: (a) recording that Elaine Rosie had been present at the meeting, (b) noting that the report to the Committee referred to at item 8 (Sanctions) should include a timetable, and (c) noting that the A&A check referred to in the third bullet point of item 6 should not be restricted to CICA cases, the minute of the Legal Services Committee held on 17 January 2005 was approved.

4. DRAFT MINUTE OF LEGAL SERVICES SUB-COMMITTEE

The draft minute of meeting of the Legal Services Sub-Committee held on 17 January 2005 was noted.

5. COMMITTEE ACTION POINTS

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

In discussion, consideration was given to the potential value of the Board employing solicitors to work in selected firms as a means of filling gaps in service provision. Further investigation would be carried out on the viability of this option.

After discussion, it was AGREED:

- there was an outstanding action to ascertain whether the Advice and Assistance Department checked that where the Board received intimation of A&A applications, the solicitors were registered on the civil legal assistance register and not just the criminal legal assistance register;
 - in addition to the proposed guidance leaflet for applicants on property recovered and preserved, an information pack should be produced for advisors, and drafts of these submitted to the March meeting;
 - in addition to the training course for external reporters (to be held on 21 March), a pro-forma aimed at achieving consistency and transparency in decision making be devised for reporters to complete, and the revised guidance to reporters be circulated to members;
 - a paper be submitted to the March meeting on the rationale and strategy for employing solicitors as a means of identifying gaps in service provision, taking into account the views of the Scottish Executive;
- ACTION: TCM**
- otherwise, to note the position.

6. DIRECTOR'S REPORT

The Committee considered a paper by Tom Murray updating members on matters of interest since the previous meeting on 17 January.

After discussion, it was AGREED:

- future reports on potential legislative amendments include monitoring and recording of implementation;
- ACTION: TCM**
- otherwise, to note the position.

7. ADVICE AND ASSISTANCE TEMPLATES

The Committee considered a paper by Catriona Whyte which sought approval for various revised A&A templates that took into account comments from the Family Law Association.

After discussion, it was AGREED:

- it be made clearer in the template for family (divorce) (financial assets over £50,000 and issues to be resolved involving children of the marriage) that it was the cost of the mediation that would be paid for, not the solicitor;
- otherwise, to approve the guidance as recommended;

- the profession be reminded of the existence of the existing templates in the next edition of *The Recorder*, and in decision letters for increase applications that could have used templates.

ACTION: CAW

8. A&A REFORM CONSULTATION RESPONSES

The Committee considered a paper by Kingsley Thomas updating progress with the reform of civil A&A.

An update on discussions held with representatives of the Scottish Executive and the Law Society since the issue of the paper was provided.

In discussion, the view was expressed that human rights should not be a discrete category of listed case. In addition, to avoid discrimination, costs specific to translators needed to be separated from the solicitor's fees so as to avoid increasing case costs and reaching the template threshold more quickly than other cases. Diagnostic interviews should be limited to one in three months.

After discussion, it was AGREED:

- the Committee's views be conveyed to the next tripartite meeting.

ACTION: KT

9. VULNERABLE WITNESSES: SANCTIONS FOR SPECIAL MEASURES

The Committee considered a paper by Tom Murray setting out draft guidelines for the sanction of special measures in cases involving child witnesses under the Vulnerable Witnesses (Scotland) Act 2004.

After discussion, it was AGREED:

- to approve the guidelines as proposed.

ACTION: TCM

10. REFERRAL PROCEDURE UNDER SECTION 31

The Committee considered a paper by Tom Murray about proposals which had been discussed with the Law Society concerning the procedure the Society should put in place to deal with referrals under section 31 of the Legal Aid (Scotland) Act 1986.

In discussion, it was noted that the proposed procedure would require to be monitored to ensure that it could, for example, deal with people who would not co-operate. Timescales need to be built in to the process to ensure that the Law Society of Scotland and the Scottish Legal Board worked together to make the process as efficient as possible.

After discussion, it was AGREED:

- the current proposal be approved, and revisions made to the Memorandum of Understanding to cater for the new procedure.

ACTION: TCM

11. REFORM OF CIVIL ADVICE AND ASSISTANCE: STAKEHOLDERS MEETINGS

The Committee considered a paper by Tom Murray summarising for information points raised at the Stakeholders meetings held under the convenership of the Scottish Executive in relation to the consultation on the reform civil advice and assistance. The Committee noted that these meetings were of limited value and that their use should be reconsidered

Otherwise, the Committee noted the issues raised.

12. ADDITIONAL ITEM: SCHEDULE 4 – COUNSEL’S FEES IN CIVIL LEGAL AID

The Committee considered a paper by Steven Carrie updating progress with the reform of Schedule 4 Counsels’ Fees in Civil Legal Aid.

It was reported that significant progress had been made in discussion with the Faculty of Advocates on the proposals for reform. However, the Board and the Faculty had differing views on the levels of remuneration payable in the sheriff court.

The Committee considered the Faculty’s submission that there should be no reduction of fees payable to counsel in the sheriff court in the light of the Board’s rationale for doing so.

In discussion, it was noted that the Committee had previously agreed that it was appropriate to have a higher rate of payment in the Court of Session, and that a differential of 10% was reasonable. Nothing in the letter from the Faculty persuaded them to depart from this view, and they did not foresee any problem in the availability of counsel as a result of the proposed changes, but this would be monitored.

After discussion, it was AGREED:

- there should be no change to the Board’s proposals for a reduction in fees payable to counsel in the sheriff court.

ACTION: SC

13. AOB

Inequality of Arms and legal aid

It was noted that the jurisdiction of the NHS Tribunal for Scotland had been extended. A devolution minute had been raised in an associated criminal case and the Scottish Executive had apparently advised in reply that the issue of availability of legal aid should be raised with the Board. As legal aid was not available for that type of tribunal, there could be expensive implications for the Board through the argument that there would be inequality of arms in such cases. The Board needed to be aware that this would become an issue.

ACTION: TCM

14. DATE OF NEXT MEETING:

Monday 21 March 2005 at 10.30 am.

The meeting ended at 12.20.