

THE SCOTTISH LEGAL AID BOARD

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

Present: Malcolm Thomson (in the Chair)
Kenneth Ross
Jean Couper (items 9-14)
Graeme McKinstry
Willie Gallagher
Elaine Rosie

In attendance: Lindsay Montgomery, Chief Executive
Tom Murray, Director of Legal Services and Applications
Philip Shearer, Board Solicitor (item 7 only)
Catriona Whyte, Head of Legal Services (Applications) (items 8-10 only)
Helen Bell, Board Solicitor (item 11 only)
Kingsley Thomas, Criminal and A&A Manager (item 12 only)
Liz Cuschieri, Board Solicitor (item 13 only)
Stuart Foster, Board Administrator

1. APOLOGIES FOR ABSENCE

Margaret Scanlan, Ian Percy, 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 21 FEBRUARY 2005

The minute of the Legal Services Committee held on 21 February 2005 was approved.

4. DRAFT MINUTE OF LEGAL SERVICES SUB-COMMITTEE

The draft minute of meeting of the Legal Services Sub-Committee held on 21 February 2005 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 21 February.

After discussion, it was AGREED:

- the profession be advised through *The Recorder* of the findings from peer reviews to date;

ACTION: TCM

- otherwise, to note the position.

7. RECOVERY OR PRESERVATION OF PROPERTY IN ADVICE AND ASSISTANCE

The Committee considered a paper by Philip Shearer updating the position on the development of information for applicants about the recovery or preservation of property in advice and assistance cases.

After discussion, it was AGREED: Citizens Advice Scotland and other agencies be contacted as proposed, and the draft outline of the guidance leaflet for applicants approved, subject to:

- including some examples as an appendix;
- inserting an introductory paragraph to say that the leaflet was specifically concerned with A&A, but referring to the link to the separate leaflet on civil legal aid;
- bringing questions 5 and 6 to the fore;
- adding some explanation of the relationship with hardship.

ACTION: PS

8. CONSIDERATION OF THE TEST OF REASONABLENESS

The Committee considered a paper by Catriona Whyte concerning guidance to be issued to external reporters in the consideration of the test of reasonableness in the assessment of civil legal aid applications.

It was noted that a training session on this topic would be held for external reporters later that day at which the guidance would be issued and discussed.

After discussion, it was AGREED to approve the guidance as proposed, subject to:

- making it clear that reporters' views on reasonableness were recommendatory only;
- reasons being given for granting, refusing or continuing an application;
- the appeal considerations so far as prospects were concerned would apply to all appeals and not just House of Lords cases;
- separate guidance being prepared to assist counsel when called upon to provide opinions in support of applications, by identifying factors to assist with the determination of the statutory tests or where objective comment on the tests was required.

ACTION: CAW

9. SANCTION OF COUNSEL

The Committee considered a paper by Catriona Whyte setting out changes envisaged to guidance for the use of counsel and a proposed timetable for monitoring the impact of the revised guidance on counsel and criminal applications (particularly in relation to High Court cases). After discussion, it was AGREED:

- to approve the proposed timetable;
- a group be set up to look at selected applications in criminal (noting that Elaine Rosie and Peter Gray had volunteered to be on the group);
- specific guidance be drawn up;
- the revised guidelines for civil legal aid be circulated to the bodies identified before being issued;
- the timetable for review of the guidelines;
- a similar exercise should be carried out for criminal legal aid;
- the profession be made aware that analysis of firms seeking sanction to use counsel and their relative success rate had been carried out and showed that success rates ranged from 45% to 90%;
- cross-checking be carried out of performance based on the success rate of first time applications to get an idea if some firms were having difficulties with legal aid applications generally, which might suggest a lack of training;
- to note that progress would be reported regularly.

ACTION: CAW

10. SANCTION OF EXPERTS AND UNUSUAL EXPENDITURE

The Committee considered a paper by Catriona Whyte updating the position on work completed and work in progress on sanction to employ experts and unusual expenditure. The paper set out a proposed timetable and arrangements for future reports on progress.

It was noted that the main focus of the work currently being undertaken was on the introduction of realistic controls over the costs of experts, and quality assurance in terms of their reports. Liaison was continuing with the Crown Office and the Working Group on Interpreting and Translation Provision in pursuit of those objectives.

After discussion, it was AGREED:

- to approve the timetable and arrangements for future reports;
- the next report include a comparison of the difference in the fees of translators and interpreters charged to the public and private sectors;

ACTION: CAW

- in general, future reports to the Committee advise on the resource implications of proposals where these might have inordinate resource implications;

ACTION: TCM

- otherwise, to note the position.

11. CONSULTATION: SUPPORTING POLICE AND PROTECTING COMMUNITIES

The Committee considered a paper by Helen Bell setting out the legal aid implications of proposed changes impacting on the Scottish Police Service and community safety, together with a proposed response to this Scottish Executive consultation paper.

It was noted that the principal legal aid implications affected exemptions and reviews in relation to football banning orders where no provision was available under current arrangements.

It was AGREED: to approve the response as proposed for submission to the Scottish Executive.

ACTION: HB

12. DRAFT GUIDELINES ON PRECOGNITIONS IN SHERIFF COURT CASES

The Committee considered a paper by Kingsley Thomas setting out the background to a proposed pilot of disclosure of Crown statements in Sheriff court cases in the Central area, together with draft guidelines for solicitors practising in that area.

It was noted that the guidelines were based on those for precognition- taking in High Court cases recently issued to all criminal solicitors.

After discussion, it was AGREED:

- to approve the guidelines as proposed.

ACTION: KT

13. FAMILY LAW (SCOTLAND) BILL

The Committee considered a paper by Elizabeth Cuschieri concerning a request from the Justice 1 Committee for written evidence on the Family Law (Scotland) Bill which had been introduced to Parliament on 7 February 2005.

The paper recommended that no written evidence be given because the questions related to policy issues only, and the Board should not express a view on such issues. The Board had already given written comments on the legal aid implications, and consulted with the Civil Justice Department. A letter to this effect should be sent to the Committee.

After discussion, it was AGREED:

- to approve the recommendation and the response as proposed.

ACTION: EEC

14. ADDITIONAL ITEM: MODERNISING THE CIVIL JUSTICE SYSTEM

The Committee considered a paper by Colin Lancaster concerning a letter from the Scottish Consumer Council (SCC) seeking the views of stakeholders to assist in a critical examination of the civil justice system. The paper set out a number of issues to be incorporated in a response to the SCC.

After discussion, it was AGREED:

- to approve the issues suggested for inclusion;
- the issues of inequality of arms (where one party had legal aid and the other did not) and the formality of the system being unintelligible to the non legally qualified, should also be included;
- the response be circulated to all Board members for comment.

ACTION: CL

15. DATE OF NEXT MEETING:

Monday 25 April 2005 at 10.30 am.

The meeting ended at 12.00 noon.