

THE SCOTTISH LEGAL AID BOARD

**MINUTE OF A MEETING OF THE LEGAL SERVICES COMMITTEE HELD AT 10.30
AM ON TUESDAY 27 SEPTEMBER 2005 AT 44 DRUMSHEUGH GARDENS,
EDINBURGH**

Present: Margaret Scanlan (Convenor)
Jean Couper
Peter Gray
Kenneth Ross
Elaine Rosie
Ian Percy (items 6-15 only)
Graeme McKinstry

In attendance: Tom Murray, Director of Legal Services and Applications
Lindsay Montgomery, Chief Executive
Kingsley Thomas, Manager, Criminal Applications (item 9 only)
Douglas Haggarty, Head of Legal Services (Technical) (item 6 only)
Elizabeth Cuschieri, Board Solicitor (item 11 only)
Philip Shearer, Board Solicitor (items 12 and 13 only)
Catriona Whyte, Head of Legal Services (Applications) (item 8 only)
Wendy Dalgleish, Board Solicitor (item 14 only)
Colin Lancaster, Head of Policy and Planning (item 15 only)
Stuart Foster, Board Administrator

1. AOLOGIES FOR ABSENCE

Malcolm Thomson and Willie Gallagher.

2. DECLARATIONS OF INTEREST

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

Jean Couper declared an interest in relation to item 14 (Review Application CI/01/4009784), having been involved in the original decision of the Sub-Committee.

3. MINUTE OF MEETING HELD ON 29 AUGUST 2005

The minute of the Legal Services Committee held on 29 August 2005 was approved.

4. DRAFT MINUTE OF LEGAL SERVICES SUB-COMMITTEE

The draft minute of meeting of the Legal Services Sub-Committee held on 29 August 2005 was noted.

In relation to the Sub-Committee's concern about lack of representation at Hearings before the Sheriff Principal, it was reported that the Sheriff Principal had written to advise that such Hearings would be discontinued.

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. CIVIL A&A REFORM – FINANCIAL ASSESSMENT

The Committee considered a paper by Douglas Haggarty concerning proposals for a new financial eligibility test in high cost cases under advice and assistance, including ABWOR, under the Civil Advice and Assistance Reform proposals.

It was noted that at the previous meeting the Committee felt there was not a strong argument for bringing in a more robust financial eligibility test triggered by the threshold proposed if there was no evidence that applicants would make higher contributions as a result.

In discussion, the view was expressed that it was still insufficiently clear what the cost benefit ratio of adopting this aspect of the proposals would be. The Committee needed to have an idea of the number of cases that would result in a higher contribution as a result of a more robust test. Unless there was a financially compelling case for doing so, the template should not be interfered with.

After discussion, it was AGREED:

- a further paper be submitted showing worked examples and costings.

ACTION: JDH

7. PROVIDERS OF INTERPRETERS AND TRANSLATORS

Deferred.

8. SANCTION FOR THE EMPLOYMENT OF COUNSEL IN CIVIL CASES

The Committee considered a paper by Catriona Whyte setting out revised guidelines for sanction for the employment of counsel in civil applications involving reparation claims.

It was noted that a number of solicitors had been contacted for their views on the existing guidance, and that these had been taken into account in drawing up the proposed revisions.

After discussion, it was AGREED:

- to approve the revised guidance and issue it for consultation as proposed, subject to making it clear in relation to requests for the employment of senior counsel that factors in addition to quantum had to be addressed;
- a revised form be considered for the future to cover requests for senior counsel.

ACTION: CAW

9. CRIMINAL LEGAL ASSISTANCE – QUALITY ASSURANCE CRITERIA

The Committee considered a paper by Kingsley Thomas setting out the latest position regarding the development of the quality assurance scheme for criminal legal assistance, together with the

criteria agreed by the joint working group with the Law Society for Scotland, for the peer review of summary, solemn and criminal appeal cases.

In discussion, the view was expressed that the scheme was more about compliance than quality assurance, and could not provide complete assurance that a well documented case file was evidence that a client had been well served, or *vice versa*. Nevertheless, it should be recognised that the scheme made a start in that direction. The soundness of the process for the selection of peer reviewers of sufficient calibre, and the sensitivity of messages about the scheme put out to the profession, were of crucial importance to the success of it.

After discussion it was AGREED:

- to approve the criminal peer review criteria as proposed, subject to taking account of the points made in discussion, and to:
 - adding a sentence to expand the guidance to reflect the change in Crown Office procedures resulting from the *Holland and Sinclair* cases
 - deleting “ where” and replacing it with *were* at section V(2) of the Appeal criteria
 - adding a reference to the appropriate involvement of counsel in the new High Court proceedings
 - the question of consideration of an early plea should be repeated in the summary and solemn criteria as appropriate;
- the Quality Assurance Committee that would be set up be involved in the selection of peer reviewers;
- the Quality Assurance Committee report to the Board;
- consideration be given to electing a member of the profession whose skills in advocacy outweighed those in administration to champion the promotion of the scheme to the profession;
- consideration be given to the co-ordination of quality assurance assessment of cases with the Faculty of Advocates
- the number of “cannot assess files” had to be monitored.

ACTION: KT

10. CHILDREN’S REFERRALS – UPLIFT IN FEES

The Committee considered a paper by Tom Murray concerning the suitability of proposals to introduce arrangements for an uplift in fees in children’s legal aid cases.

It was noted that the Committee had previously considered this matter and had not been persuaded that an uplift was appropriate given that extra work already attracted extra pay on the time and line arrangements. The Society had been asked to provide examples of the type of case it felt merited an uplift.

It was reported that the Society had now provided six such examples.

In discussion, the view was expressed that the examples provided fell into the category of case likely to incur additional work which would in any event be paid for under the time and line provisions.

After discussion, it was AGREED:

- an uplift would not be considered for cases of the type proposed;
- an uplift would, however, be considered for complex cases for which the Board would have sanctioned counsel where that work was done by a solicitor.

ACTION: TCM

11. CONSULTATION: “SECURE AND SAFE HOMES FOR OUR MOST VULNERABLE CHILDREN”

The Committee considered a paper by Elizabeth Cuschieri which set out the background to this Scottish Executive consultation on proposals for action in relation to the report of the Adoption Policy Review Group, together with a proposed response.

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

- pointing out that the problems previously identified in relation to the appointment of curators had yet to be solved;
- noting that the removal of freeing orders and the attachment of contact conditions to permanence orders was likely to involve more interested parties and therefore have implications for legal aid;
- establishing the Executive’s reasoning why it did not support the Review Group’s recommendation that there should be a centralised national system to appoint and train curators etc and if appropriate altering the response accordingly.

ACTION: EEC

12. CONSULTATION: PROPOSED CHANGES TO THE IMMIGRATION COMMISSIONER’S COMPLAINT SCHEME

The Committee considered a paper by Philip Shearer on this consultation by the Immigration Services Commissioner on proposed changes to her complaints procedures.

It was AGREED that a letter should be sent to the Commissioner explaining that the Board would like to discuss establishing a complaints procedure in respect of legally aided cases.

ACTION: PS

13. CONSULTATION: PROTECTING VULNERABLE ADULTS

The Committee considered a paper by Philip Shearer setting out the background to this Scottish Executive consultation on various issues relating to the protection of vulnerable adults, together with a proposed response.

It was AGREED to approve the response as proposed.

14. LEGAL AID APPLICATION

15. RESEARCH INTO ACTIONS INVOLVING CHILDREN

The Committee considered a paper by Jo Garrett updating the position on activity in relation to areas of research into court actions involving children.

It was noted that the Board's main concerns in this area related to the use and cost of reports in this type of work.

It was reported that the Justice Department was proposing to undertake a significant piece of research into the operation of the Children (Scotland) Act 1995, and had been in discussion with Board officials about questions the Board would like answered. This was an opportunity to tie in the Board's research questions to a larger project.

The Committee noted the position.

DATE OF NEXT MEETING:

Monday 24 October 2005 at 10.30 am.

The meeting ended at 12.20.