

THE SCOTTISH LEGAL AID BOARD

**MINUTE OF A MEETING OF THE LEGAL SERVICES COMMITTEE HELD AT 10.30
AM ON MONDAY 28 NOVEMBER 2005 AT 44 DRUMSHEUGH GARDENS,
EDINBURGH**

Present: Margaret Scanlan (Convener)
Peter Gray
Jean Couper
Elaine Rosie
Willie Gallagher

In attendance: Tom Murray, Director of Legal Services and Applications
Douglas Haggarty, Head of Legal Services (Technical) (items 9-10
only)
Kingsley Thomas, Criminal and A&A Applications Manager (items 1-7
only)
Catriona Whyte, Head of Legal Services (Applications) (items 7-8
only)
Marie-Louise Fox, Legal and Policy Support to the Chief Executive
Stuart Foster, Board Administrator

1. APOLOGIES FOR ABSENCE

Ian Percy, Graeme McKinstry, Kenneth Ross, and Malcolm Thomson.

2. DECLARATIONS OF INTEREST

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

3. MINUTE OF MEETING HELD ON 24 OCTOBER 2005

The minute of the Legal Services Committee held on 24 October 2005 was approved.

4. DRAFT MINUTE OF LEGAL SERVICES SUB-COMMITTEE

The draft minute of meeting of the Legal Services Sub-Committee held on 24 October 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.

It was AGREED:

- the actions points report be re-submitted to the next meeting with updates on outstanding matters as to be agreed with the Convener, and, thereafter, quarterly, with tracking of outstanding subjects.

6. DIRECTOR'S REPORT

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

It was reported further that the Board had not been timeously advised of the judgement in the Mungo Bovey –v- Auditor of Court of Session case. Now that it was known that the judgement had gone against the Board, the Board was appealing against the decision.

At the latest meeting with the Law Society on A&A reform, there had been criticism of the forms. This had been unexpected, and could be attributed to certain members of the Law Society's Civil Advice and Assistance Committee coming late to the issues. The reform process would continue, and detailed guidance would accompany the forms when issued to the profession.

The Committee noted the position.

7. SANCTION FOR THE EMPLOYMENT OF COUNSEL IN CIVIL CASES

The Committee considered a paper by Catriona Whyte concerning the responses which had been received in relation to the revised guidance for sanction for the employment of Counsel in reparation cases approved by the Committee for circulation to relevant stakeholders.

Of the comments received in relation to the circulated guidance, it was recommended that the only change to the guidance that should result was in relation to the comment from the Lord President's Office – namely, that a high value claim alone would not be sufficient reason to justify the use of senior counsel without other factors being present.

It was AGREED:

- to approve the recommendation that the revised guidelines previously approved by the Committee be circulated to the profession subject to an amendment to accommodate the point made by the Lord President's Office.

ACTION: CAW

8. ADVICE AND ASSISTANCE TEMPLATES

The Committee considered a paper by Catriona Whyte concerning the draft advice and assistance templates in relation to medical negligence claims which had been prepared by medical negligence practitioners at the invitation of the Committee.

It was AGREED:

- that the draft templates be approved for use;
- levels of expenditure be monitored.

ACTION: CAW

9. REPORTERS AND CURATORS: COSTS IN FAMILY CASES

The Committee considered a paper by Douglas Haggarty which set out the range of fees and costs associated with reports prepared by reporters and curators in family cases, and examined associated issues.

In discussion, it was noted that most grants for civil legal aid related to contact with children on divorce or separation. There was an increasing tendency for courts to ask for reports on such children's circumstances, and the bulk of these were being done by solicitors acting not as solicitors but as officers of court. Such reports had previously been carried out by Social Work departments. Solicitors doing this work were being paid double the legal aid rate to undertake work that did not require a solicitor to do it. Invariably, whether it was the legally aided client or the Sheriff that called for a report, the Legal Aid Fund ended up paying for it. The Board was concerned at the costs involved.

The view was expressed that the Board should take more control of the situation by identifying agency providers as preferred suppliers to undertake the reports on a contract basis, along the lines of the plans for translators and interpreters.

After discussion, it was AGREED:

- the Chairman arrange to meet the Head of the Sheriffs Principal to highlight the issues raised in discussion;
- Kenneth Ross be provided with a summary of the issues raised in discussion;
- a report be submitted to the next meeting to include consideration of the use of appropriate agency providers, and, for the short term, whether anything could be done to strengthen the Board's position in relation to sanction of reports instructed by Sheriffs, and whether there was a pattern of instruction in certain Sheriff Courts.

ACTION: JDH

10. COUNSEL'S FEES IN THE HOUSE OF LORDS / JUDICIAL COMMITTEE

The Committee considered a paper by Douglas Haggarty setting out the background and current position on the issue of Tables of Fees for counsel in the House of Lords and Judicial Committee.

It was noted that the Committee had approved a draft Table of Fees based on the Practice Directions for Judicial Taxations in the House of Lords, and recommended to the Scottish Executive that regulations be laid to allow for taxation in House of Lords and Judicial Committee cases before the Taxing Officer in London.

At a meeting held on 26 May, Faculty representatives accepted the principle of dispute resolution before the Taxing Officer, but were opposed to the idea of a Table of Fees, preferring to be in the same position as English counsel in that respect (but not others, in which they sought more favourable arrangements than were available in England.) The Board's representatives were of the view that either counsel accept a Table of Fees or they accept the decision of the Taxing Officer.

It was recommended, subject to the view of the Scottish Executive, that it be put to the Faculty of Advocates that a Table of Fees should not be introduced at this stage but that the Board and the Faculty enter into a protocol to the effect that fee notes be lodged in the customary format for House of Lords cases and that such fee notes be taxed in accordance with the Practice Directions of the House of Lords. The arrangements would be monitored and regulations introduced at a later stage if necessary.

The Committee so AGREED.

ACTION: JDH

11. THEMES EMERGING FROM THE PEER REVIEW PROCESS

The Committee considered a paper by Tom Murray setting out the themes affecting civil legal assistance which had so far been identified from the current cycle of peer reviews.

It was noted that there appeared to be four main themes emerging, and that these related to issues directly affecting: clients; file/case management; knowledge of civil legal assistance; and solicitors. Within the group of issues affecting clients, which was the category with the highest frequency and importance, instances of private charging had been uncovered. Many of these resulted from a lack of knowledge on the part of the solicitor, but there were instances of rules being broken. These were being recorded and would be the focus of subsequent reviews.

In discussion, members referred to the importance of relating the problem areas to the size of firms and the volumes of work being undertaken, and the role this could play in shaping the design of the quality assurance process going forward. As well as uncovering examples of poor practice, the review was producing evidence that there was much to commend in the behaviour of firms.

After discussion, it was AGREED:

- a further report examine the extent to which there was a relationship between the problem areas so far uncovered and the types of firms and the volumes of work involved.
- to note that the themes would be shared with the Quality Assurance Committee on 1 December.

ACTION: TCM

12. DATE OF NEXT MEETING:

Monday 19 December 2005 at 10.30 am.

The meeting ended at 12.00.