

THE SCOTTISH LEGAL AID BOARD

MINUTE OF A MEETING OF THE LEGAL SERVICES COMMITTEE HELD AT 10.30 AM ON MONDAY 8 AUGUST 2005 AT 44 DRUMSHEUGH GARDENS, EDINBURGH

Present: Margaret Scanlan (Convenor)
Willie Gallagher
Kenneth Ross
Elaine Rosie

In attendance: Tom Murray, Director of Legal Services and Applications
Joe Kelly, Treasury Manager (item 7 only)
Kingsley Thomas, Manager, Criminal Applications (item 8 only)
Philip Shearer, Board Solicitor (item 11 only)
Douglas Haggarty, Head of Legal Services (Technical) (item 12 only)
Catriona Whyte, Head of Legal Services (Applications) (items 9-10 only)
Marie-Louise Fox, Solicitor – Legal and Policy Support
Stuart Foster, Board Administrator

1. APOLOGIES FOR ABSENCE

Ian Percy, Peter Gray, Malcolm Thomson, Graeme McKinsty, Jean Couper.

2. DECLARATIONS OF INTEREST

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

3. MINUTE OF MEETING HELD ON 27 JUNE 2005

Subject to substituting *making a* for “relation to the” in the first bullet point of item 5, and amending the second bullet point of that item to read: “sanction for counsel following responses from APIL and others,” to noting that Elaine Rosie had tendered her apologies for not being able to attend, and to deleting reference to the paper on sanction for counsel in criminal cases, the minute of the Legal Services Committee held on 27 June 2005 was approved.

4. DRAFT MINUTE OF LEGAL SERVICES SUB-COMMITTEE

The draft minute of meeting of the Legal Services Sub-Committee held on 27 June 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 and noted a paper by Tom Murray updating members on matters of interest since the previous meeting on 27 June.

7. APPLICATIONS UNDER REGULATION 16(3)(b)

The Committee considered a paper by Joe Kelly which set out the background to and treatment of applications made under regulation 16(3)(b) of the Advice and Assistance (Scotland) Regulations 1996 ("hardship applications").

In discussion, it was noted that in cases where property recovered or preserved in the form of money had been won for a child, it appeared that CICA held the money in a trust account and would not make a release to pay solicitors' accounts. The position was being clarified with CICA, and the Board was proposing to assess the account and confirm how much would have been paid if payment were to have been made from the Fund.

After discussion, it was AGREED:

- if the issue of CICA not releasing payment for solicitors' fees was not resolved in the short term, the Board should change approach and grant those applications under regulation 16(3)(b);
- Joe Kelly liaise with the Convenor outwith the meeting about the undertaking of further statistical analysis;
- decisions set out in the appendix to the paper had been made correctly in accordance with the regulations and the guidance;
- to note the future treatment of exempt cases for annual report purposes;
- to consider whether the word "grave" should remain within the regulation.

ACTION: JK

8. GRAMPIAN AND WEST LOTHIAN "CLEANSTREAM" PROJECTS

The Committee considered a paper by Kingsley Thomas updating the position on the two projects being run by the Grampian and Lothian and Borders Criminal Justice Boards to evaluate and improve the running of the current summary justice system.

It was noted that the Board had been approached by both projects about a change in the regulations to allow solicitors of choice to represent clients appearing on undertakings, and the possibility of a change in the legal aid regulations had been raised with the Scottish Executive. The Committee would be kept up to date with developments.

After discussion, it was AGREED:

- analysis be undertaken to gauge the cost-effectiveness of the projects, and therefore their suitability to be replicated across the country.

ACTION: KT

9. PROVIDERS OF TRANSLATION SERVICES

The Committee considered a paper by Catriona Whyte setting out a plan of action for a pilot of providers of quality-assured translation services as requested at the May meeting of the Committee. The plan of action addressed the key issues that had to be considered before the pilot study could be put in place.

After discussion, it was AGREED:

- to approve the plan of action as proposed, with a further report firming up on the proposals to be made to the September meeting;
- any proposal should include agencies and freelancers, and those submitting proposals should indicate how they would provide quality assurance and what they would charge;
- fees should not be the sole selection criterion;
- the plan should be costed, with further consideration given to the Board's management costs and the possibility of outsourcing management of the project;
- in addition to this, for the future, consideration be given to the merit of a single translator only attending tribunals.

ACTION: CAW

10. CONSIDERATION OF SANCTION APPLICATION

The Committee considered a paper by Catriona Whyte concerning a sanction request in relation to these civil legal aid applications to incur expenditure of over £113,000.

It was noted that the Committee had refused the sanction application at their meeting in April 2005 because of insufficient supporting information, and that the applicants' agents had been so informed. The agents had also been advised that if a further sanction request were made, it had to be accompanied by full and detailed supporting information.

The agents had now asked for the Committee's decision to be reviewed and had submitted a letter in support of the application.

It was noted that the supporting letter provided little in the way of additional information and had not addressed the cost-benefit issue.

After discussion, it was AGREED to refuse the review application on the basis that the additional information provided was not sufficient to alter the view of the Committee.

ACTION: CAW

11. UPDATE ON REPORTERS, CURATORS AND SAFEGUARDERS

The Committee considered a paper by Philip Shearer updating the position with regard to developments in the interaction of curators, reporters and safeguarders and the legal aid system.

It was noted that the Board had for some time been concerned about the high cost of reporters and who paid for them. Differences in approach to the ordering of reports appeared to exist between courts and between legally-aided and privately-paying cases. There were technical difficulties with the appointment of curators arising from the Adults with Incapacity Act, and issues regarding the willingness of some solicitors to be appointed as safeguarders in children's legal aid cases.

In discussion, the view was expressed that the way to limit the cost of reporters to the public purse was to require the obtaining of such a report to be sanctioned by the Board.

After discussion, it was AGREED:

- to note that a communication channel to the Sheriffs Association, Sheriffs Principal and other interested parties already existed;
- prior to discussion with the Sheriffs Association, Sheriffs Principal and other interested parties, a report be made to the Committee focussing on reporters and the development of a model for sanctioning the payment of reports, and with information on the number of cases the Board currently paid for, an indication of options for fees, and whether or not the appointment of reporters was general practice in all courts;
- the paper also consider ways to stop the appointment of curators where there was a statutory structure for the appointment of safeguarders;
- the paper to be submitted to the Rules Council be circulated to the Committee;
- work continue on reviewing and developing guidance;
- the Law Society be kept involved with developments.

ACTION: PS

12. CIVIL FEES REFORM UPDATE

The Committee considered a paper by Douglas Haggarty updating the position on the making of necessary amendments, by way of regulations, to the block Table of Fees for solicitors providing civil legal aid under Schedule 6, chapter 1 (Undefended cases) and chapter 2 (Defended cases) of the Civil Fees Regulations.

It was noted that there were structural flaws in the block Tables of Fees introduced as part of the Civil Reform arrangements in October 2003, and that the defects were recognised as such by the Board, the Law Society and the Scottish Executive equally. The paper set out the issues and proposed solutions.

After discussion, it was AGREED:

- to approve the steps being taken by the Board in seeking to resolve the various fees issues;
- to approve the various specific recommendations contained in the appendix to the paper, subject to further discussion of recommendation number two;

- where amending the regulations, not to be too prescriptive in dealing with hearings, and regulations should make provision for any hearing at which evidence was led;
- further consideration be given to how best to build in additional work to the block fees;
- Douglas Haggarty update the Chairman on progress with the arrangement between CICA and the BMA.

ACTION: JDH

13. CIVIL A&A REFORM

This item was deferred to the next meeting.

14. DATE OF NEXT MEETING:

Monday 29 August 2005 at 10.30 am.

The meeting ended at 12.15.