

THE SCOTTISH LEGAL AID BOARD

**MINUTE OF A MEETING OF THE LEGAL SERVICES POLICY COMMITTEE HELD
AT 10.30 AM ON MONDAY 15 MAY 2006 AT 44 DRUMSHEUGH GARDENS,
EDINBURGH**

Present: Margaret Scanlan (Convener)
Graham Watson
Kenneth Ross
Iain Robertson
Elaine Rosie
Graham Bell
Lindsay Montgomery

In attendance: Tom Murray, Director of Legal Services and Applications
Douglas Haggarty, Head of Legal Services (Technical) (items 8-9
only)
Philip Shearer, Board Solicitor (item 10 only)
Catriona Whyte, Head of Legal Services (Applications) (item 7 only)
Marie-Louise Fox, Legal and Policy Support to the Chief Executive
Stuart Foster, Board Administrator

1. APOLOGIES FOR ABSENCE

None.

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 APRIL 2006

The minute of the Legal Services Policy Committee held on 24 April 2006 was approved.

**4. DRAFT MINUTE OF MEETING OF THE LEGAL SERVICES CASES COMMITTEE
HELD ON 24 APRIL**

The draft minute of the Legal Services Cases Committee held on 24 April 2006 was noted.

It was noted that following the recent amendment to Standing Orders approved by the Board, the Legal Services Cases Committee no longer reported to the Committee. However, minutes of the Cases Committee's meetings would continue to be circulated to the Committee for information. Lindsay Montgomery was now a member of the Legal Services Policy Committee.

5. COMMITTEE ACTION POINTS

The Committee considered a paper by Tom Murray setting out progress with actions arising from the previous meeting.

The Committee noted the position.

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 that the regulations drafted by the Scottish Executive's solicitors in relation to the reform of civil A&A were unworkable. Representatives from OSSE would meet with the Board in the course of the week to discuss the problems. It was to be hoped that the difficulties with the regulations as drafted had not arisen from a convention compliance issue, as this could have serious implications. In any case, it was doubtful that regulations would be in place during July as planned. The Committee would be kept informed of developments.

It was noted that the 24 firms that had indicated they wished to withdraw from the civil register had not been actively involved in legal aid work.

The Committee noted the position.

7. APPLICATIONS FOR CIVIL LEGAL AID BY CHILDREN

The Committee considered a paper by Catriona Whyte which provided information on civil legal aid applications by children. The information had been requested at the previous meeting as a result of the opinion of Lady Smith in a case in which she had expressed the view that the submission of a legal aid application in the child's name could amount to an abuse of legal aid funding if it should have been the parent's financial resources that had been assessed for civil legal aid eligibility. The paper gave a breakdown of applications motivated by financial rather than welfare considerations.

It was noted that further work was needed to analyse the statistical information provided, and that the Board was currently involved in a petition, due to be heard in July 2006, for review challenging the Board's assertion that in education matters it was the parents' resources that should be assessed for financial eligibility rather than the child's. The outcome of the petition could impact on the approach to be taken to these cases, and should therefore be awaited before any change to current procedures was considered.

After discussion, it was AGREED:

- further work be carried out in analysing the applications submitted that could be driven by financial motives to determine if further guidance was needed in relation to the assessment of financial eligibility and the merits of an application;
- the next report also include analysis of the reason for the relatively high grant rates for cases which had apparently been financially motivated.

ACTION: CAW

8. REPORTERS AND CURATORS IN FAMILY CASES: UPDATE

The Committee considered a paper by Douglas Haggarty reporting back on issues raised in an earlier paper: "Reporters and Curators in Family cases: Sanction and Accounts".

It was reported that a productive meeting had been held with Sheriff Principal Bowen, in the course of which he had clearly come round to recognising the seriousness of the issue of the unjustified cost of reporters and the part the courts could play in addressing it, and had volunteered to raise the matter with the Sheriff's Association by passing on a paper setting out the issues.

Further analysis had revealed that the numbers of intimations received from solicitors in the context of contact and residence actions ordered by the court under special urgency was higher than expected, which meant that the annual cost of reports had been underestimated. It was now estimated that the annual cost could be in the region of £3m to £3.5m., which represented a significant proportion of the Board's £17m net annual expenditure on civil legal aid as a whole.

In discussion, it was confirmed that if the Board proceeded to require sanction for reports costing over £2,000, this would have the effect of controlling work done under the special urgency provisions. The Board was in a position to require sanction for reports instructed *ex proprio motu*, as established in the *Venter* case. In raising the profile of the issues with sheriffs, the Board needed to be in a position to advise on the precise costs of reports and the proportion of them which were *ex proprio motu*. The view was expressed that contact and residence cases were inappropriately categorised as being of special urgency and should be removed from the SU2 provisions, bearing in mind that truly urgent cases could be dealt with under SU4.

After discussion, it was AGREED:

- to continue to consult with the Sheriff Principals and the Sheriff's Association, the latter through the referral of the paper on the issue by Sheriff Principal Bowen;
- on a parallel track, to consult with the Family Law Association prior to the Profession and other interested parties;
- Douglas Haggarty raise the issues at the Family Law Practitioners conference in November;
- as soon as possible, to place a prominent article in *The Recorder* to identify the issues and also the possible solutions being considered by the Board;
- to keep the Scottish Executive aware of the situation, from time to time, with regard to possible amendment regulations. It is unlikely that the principal civil regulations will be opened up for any other purpose before late autumn/early winter;
- it was important to bear in mind that the Board's current initiatives were interim measures – the longer term solution would require, for example, a table of fees;
- to report back to the Committee on the numbers of reports sanctioned, how many were ordered *ex proprio motu* and how many were sought under special urgency procedure or full civil legal aid
- to prepare draft guidelines including, subject to further development, a list of work considered to be "unusual work" in its own right which may form part of the work carried out in the context of the preparation of a report or in exercising the duties of a curator;

- to remove contact and residence cases from SU2;
- to report back on progress with the consultations.

ACTION: JDH

9. EXPERT WITNESS

The Committee considered a paper by Douglas Haggarty concerning the status of an expert witness, and whether it was appropriate for the Board to sanction his employment as such.

It was noted that the expert witness had been providing psychological assessments before the courts, and that the Board had sanctioned his employment on a number of occasions. However, his status, and the appropriateness of sanctioning his employment as an expert witness, had been called into question by his suspension for two years from the British Psychological Society (BPS). The expert witness had been advised that this matter was being placed before the Committee and had been invited to provide any further information to support his position.

At the previous meeting of the Committee it had been reported that a letter had been received from the expert witness asking for additional time to enable him to consult a solicitor with a view to making representations to the Committee. Representations had now been received and were attached to the paper.

It was recommended that the Board did not grant sanction for the employment of the expert witness until such time as there was an agreed, or at least clearer, position between the expert witness, or his representatives, and the BPS, as to what aspects of his work the expert witness remained competent to do, and what further qualifications or experience would be necessary for the British Psychological Society to recognise the expert witness as an expert in other areas.

In discussion, members expressed some difficulties with the recommendation from the point of view that the Board had previously employed the expert witness, as well as other experts who had no qualifications in their field. The status of the BPS was unclear. The Crown Office had been made aware of the expert witness's suspension from the BPS. Accordingly, the Board had no need to take a stance on the issue.

It was AGREED:

- the expert witness be advised that the Committee had had regard to the representations made on his behalf and had decided that the Board would not object to granting sanction for his employment in the future, while indicating that this did not imply that the Board supported the view that he was an expert in the fields concerned.

ACTION: JDH

10. WRITTEN EVIDENCE TO THE EDUCATION COMMITTEE ON THE ADOPTION AND CHILDREN (SCOTLAND) BILL

The Committee considered a paper by Liz Cuschieri. The paper discussed the Bill and set out a proposed response to the call for evidence from all interested parties on the general principles of the Bill, issued by the Scottish Parliament's Education Committee.

It was noted that the reforms proposed were radical and would have significant implications for legal aid. The Scottish Executive had seriously underestimated the cost implications for the Board, and their officials would meet with the Board to gain a better understanding.

It was considered that the evidence should emphasise that the Board wishes to see responsibility for payment of curators and reporters clearly set out in the primary legislation.

It was AGREED:

to approve the responses as proposed, subject to re-drafting in terms of the discussion.

ACTION: EEC

11. DATE OF NEXT MEETING:

Monday 26 June 2006 at 10.30 am.

The meeting ended at 11.55am.