

**THE SCOTTISH LEGAL AID BOARD**

**MINUTE OF A MEETING OF THE LEGAL SERVICES COMMITTEE HELD AT 11.00  
AM ON MONDAY 20 FEBRUARY 2006 AT 44 DRUMSHEUGH GARDENS,  
EDINBURGH**

Present: Margaret Scanlan (Convener)  
Peter Gray  
Malcolm Thomson  
Graeme McKinstry  
Ian Percy  
Kenneth Ross  
Jean Couper  
Elaine Rosie

In attendance: Lindsay Montgomery, Chief Executive  
Tom Murray, Director of Legal Services and Applications  
Douglas Haggarty, Head of Legal Services (Technical) (item 8 only)  
Joe Kelly, Manager, Treasury (item 7 only)  
Colin Lancaster, Head of Policy and Planning (item 8 only)  
Marie-Louise Fox, Legal and Policy Support to the Chief Executive  
Stuart Foster, Board Administrator

**1. APOLOGIES FOR ABSENCE**

Willie Gallagher.

**2. DECLARATIONS OF INTEREST**

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

**3. MINUTE OF MEETING HELD ON 19 DECEMBER 2005**

The minute of the Legal Services Committee held on 19 December 2005 was approved.

**4. DRAFT MINUTE OF LEGAL SERVICES SUB-COMMITTEE**

The draft minute of meeting of the Legal Services Sub-Committee held on 19 December 2005 was noted.

**5. COMMITTEE ACTION POINTS**

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

It was noted that the Convener would liaise with Catriona Whyte to expand the number of co-opted members on the Legal Services Sub-Committee experienced in Sheriff Court work.

**6. DIRECTOR'S REPORT**

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

It was noted that the Chairman would be writing to the Head of the Justice Department and the Justice Minister to set out the Board's concerns about the content of the Legal Aid Bill.

The Committee noted the position.

## **7. APPLICATIONS UNDER REGULATION 16(3) OF THE ADVICE AND ASSISTANCE SCOTLAND REGULATIONS 2002**

The Committee considered a paper by Joe Kelly concerning proposed amendments to the Board's guidance and practice regarding applications under Regulation 16(3) of the Advice and Assistance (Scotland) Regulations 2002 (Hardship Applications).

It was noted that the Board had received a number of representations from practitioners about "hardship" cases, with the most common areas of dissatisfaction being that the Board's policy on "hardship" applications was too harsh, and that it was unreasonable to expect practitioners to have to wait up to a year for payment for their work on such cases.

It was also noted that it was important that the "hardship" provisions should not become a disincentive to practitioners' provision of legal aid. Accordingly, it was recommended that, where appropriate, amendments be made to the Board's guidance and practice in order to accommodate the practitioners' concerns.

After discussion, it was AGREED:

- an article be produced for *The Recorder* to inform the profession that the Board continued to receive some "hardship" applications which did not meet the very exacting criteria imposed by current regulations, and highlighting that the Board could only grant applications demonstrating grave hardship or distress, and the different standards to be achieved for successful applications by assisted persons and solicitors, and the significantly higher grant rate for solicitor applications;
- a reduction from 12 to 6 months for accounts over £1,500 in the period a solicitor should be expected to wait for payment when no instalments were available;
- a reduction from 12 to 6 months in all cases in the period a solicitor should be expected to wait for payment when no instalments were available;
- that further miscellaneous changes to the guidance be agreed with the Convener;
- the new arrangements be monitored over the coming year to see if they reduced the complaints.

**ACTION: JK**

## **8. REPORTERS AND CURATORS IN FAMILY CASES**

The Committee considered a paper by Douglas Haggarty reporting back on issues raised in connection with a previous paper: "Reporters and Curators: Costs in family cases."

It was noted that the Board had been concerned for some time at the cost to the public purse resulting from the increasing tendency for the courts in family cases to appoint curators or reporters to prepare reports, the unfocussed terms of these appointments, and the fact that they were largely carried out by solicitors charging fees far in excess of the legal aid rates.

The paper addressed the issues relating to the use of appropriate agencies to do the work instead; whether there was a pattern of instruction in certain Sheriff Courts; and whether anything could be done to strengthen the Board's position in relation to the sanction of reports by Sheriffs.

In discussion, concern was expressed that reporters were being paid at judicial rates of £122 per hour – more than twice the rate a solicitor would be paid for carrying out legal work – for what effectively amounted to taking statements, work which did not require a legal qualification. The Board had alerted the Scottish Executive to the situation, and had advised that a table of fees was needed in this area, but the Scottish Executive had been unable to do any work on this. It was known that the Children's Commissioner had also raised concerns about Reporters with the Executive. It would be far cheaper for the Executive to allocate money to local authorities to enable them to return to their traditional role and have social work departments do the work.

Consideration was given to things the Board could do to limit expenditure in this area, particularly through limiting sanction for payment for reports instructed by the courts.

It was AGREED:

- in the medium term, to continue to press for the introduction of a table of fees, and promote the idea of government funding of local authorities to do the work;
- in the short term, in cases where reports had been instructed by the courts, to introduce a limit on what the Board would pay for reports without further justification;
- in order to fix an appropriate figure for the limit, further information be provided to the next meeting of the Committee on: the average cost and range of reports on a court by court basis if possible; the hourly payment rate and sheetage; and a comparison of legal aid rates for doing similar work;
- accounts involving reporters should be monitored not only on cost but also on content, and comparison made between the terms of the interlocutor and the report;
- a suitable item be prepared for publication in *The Recorder*.

**ACTION: JDH**

## **9. ANY OTHER BUSINESS**

Tom Murray reported on the outcome of a recent meeting with the Law Society at which the decisions of the Board at the meeting held on 6 February in relation to civil advice and assistance reform and the list of separate approved categories on which substantive legal advice could be needed.

The profession was keen that debt should be included on the list for debts above £250.

After discussion, it was AGREED:

- debt be included on the list for debts above £500, along with landlord and tenant and heritable rights, but not breach of contract

**ACTION: TCM**

**10. DATE OF NEXT MEETING:**

Monday 20 March 2006 at 10.30 am.

The meeting ended at 12.40pm.