

THE SCOTTISH LEGAL AID BOARD

MINUTE OF A MEETING OF THE LEGAL SERVICES COMMITTEE HELD AT 10.30 AM ON MONDAY 20 MARCH 2006 AT 44 DRUMSHEUGH GARDENS, EDINBURGH

Present: Margaret Scanlan (Convener)
Elaine Rosie
Malcolm Thomson (items 6-14 only)
Graeme McKinstry
Jean Couper
Kenneth Ross

In attendance: Lindsay Montgomery, Chief Executive
Tom Murray, Director of Legal Services and Applications
Ian Middleton, Director of Audit and Compliance (item 7 only)
Andrew Menzies, Director of Corporate Services and Accounts (item 9 only)
Kingsley Thomas, Manager, Criminal Applications (item 8 only)
Catriona Whyte, Head of Legal Services (Applications) (items 9-10 only)
Douglas Haggarty, Head of Legal Services (Technical) (item 6 only)
Steven Carrie, Senior Technical Specialist (item 6 only)
Judith Cemery, Accounts Manager (item 11 only)
Marie-Louise Fox, Legal and Policy Support to the Chief Executive
Stuart Foster, Board Administrator

1. APOLOGIES FOR ABSENCE

Ian Percy, Willie Gallagher, Peter Gray.

2. DECLARATIONS OF INTEREST

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

3. MINUTE OF MEETING HELD ON 20 FEBRUARY 2006

The minute of the Legal Services Committee held on 20 February 2006 was approved.

4. COMMITTEE ACTION POINTS QUARTERLY REPORT

The Committee considered a paper by Tom Murray setting out progress with implementation of Committee decisions.

It was noted that the mandatory training referred to at point 8 would be carried out once the list of reporters was available; and that the Convener had liaised with Catriona Whyte in relation to point 19 (sheriff court reporters).

Members noted the position.

5. DIRECTOR'S REPORT

The Committee considered a paper by Tom Murray updating members on matters of interest since the previous meeting. Tom Murray updated the position on children's uplifts.

After discussion, it was AGREED:

- Tom Murray report back to the tripartite meeting that the Board saw no reason to alter its position on children's uplifts;
- the existing uplift criteria be reviewed.

ACTION: TCM

The Committee noted the position.

6. CURATORS AND REPORTERS IN FAMILY CASES: SANCTION AND ACCOUNTS

The Committee considered a paper by Douglas Haggarty concerning issues raised in an earlier paper "Reporters and Curators in Family Cases".

The paper provided information requested by the Committee in the re-consideration of the current sanction guidelines with a view to identifying and setting a limit on what the Board would pay without further justification in cases where reports had been instructed, including *ex proprio motu* by the court.

The Committee discussed the case of *Venter v The Scottish Legal Aid Board* and its effect on the the Board's policy in this area. It was noted that the estimated annual cost to the public purse of reporters' accounts was not less than £2 million, and that figure did not include the cost of curators. The Chairman would shortly be meeting with the Sheriff Principal and would highlight the importance of sheriffs having due regard for value for money in instructing reports, and for interlocutors to be clear about what reports were to address.

After discussion, it was AGREED:

- to approve the approach outlined in the paper;
- a prominent article be placed in The Recorder to draw attention to the Board's consideration of this issue; and consideration given to contacting the GBA, EBA and deans of local faculties directly about this issue;
- to consider whether an amendment to SU2 procedure is required to avoid reports being obtained automatically under the special urgency provisions;
- to treat reports ordered *ex proprio motu* in the same way as reports requested by one of or jointly by the parties;
- to require sanction for reports costing over £2,000, in line with the Board's policy on sanction applications for unusual work and unusually large expenditure.
- to report back to the next meeting on the outcome of the Chairman's meeting with the Sheriff Principal, and with more information on the scope for imposing a limit on special urgency cases, and how many cases have special urgency cover for one or two parties;

- when Sheriff Principal Bowen's views are clear, to consider consultation with the Family Law Association;
- consideration be given to the Board being represented in court to address the question of who is to pay for a report;

ACTION: JDH

7. REVISED CODE OF PRACTICE FOR CRIMINAL LEGAL ASSISTANCE

The Committee considered a paper by Ian Middleton concerning proposed amendments to the Code of Practice for criminal legal assistance to take account of the introduction of quality assurance provisions for criminal legal assistance. A draft Code with proposed amendments was attached.

It was AGREED:

- to approve the revised Code as proposed, subject to changes to the following paragraphs:

3.2.5 - to expand non-discrimination to others involved in the justice system as well as clients, employers and other lawyers

3.5.1 - to delete the last sentence

4.4.5.2 - to make it explicit that solicitors should inform the Board if they have not followed Board guidelines.

4.5.1 – to check whether the statements listed are already included in the Accounts Synopsis form and if not, to include in the Code.

ACTION: IGM

8. ADVICE AND ASSISTANCE CATEGORIES

The Committee considered a paper by Kingsley Thomas specifying the categories of subject matters allocated to civil, criminal or children's advice and assistance matters, and updating the position on the approved categories for advice and assistance reform.

It was noted that the Law Society appeared to be prepared to accept the Board's proposal for a £500 threshold for the debt category, although formal confirmation is awaited.

After discussion, it was AGREED:

- to approve the Civil, Criminal and Children's case categories as set out in the appendix, subject to the amendment of two which should have been civil and not children's – CHCI and SWS;
- to note the position in relation to the development of the list of approved categories for civil and A&A reform, and the latest draft definition for the community care category.

ACTION: KT

9. PROCUREMENT OF TRANSLATION AND INTERPRETING SERVICES

The Committee considered a paper by Andrew Menzies setting out a proposal for conducting a tender exercise to establish a panel of providers of quality assured translation and interpreting services.

After discussion, it was AGREED:

- to proceed with the competitive tendering exercise as proposed, subject to referring to quality assurance rather than accreditation, and the tender process involving a means of assuring the proficiency of service providers, and how the Board would operate the panel.

ACTION: AM

10. OPINION OF LADY SMITH: ASSESSMENT OF FINANCIAL ELIGIBILITY

The Committee considered a paper by Catriona Whyte concerning observations expressed in a recent court case in which the Opinion had potential implications for the Board's approach to determining financial eligibility for civil legal aid.

It was noted that part of the opinion considered the issue of financial assessment for civil legal aid being based on the financial resources of the child where actions had been raised by the parent in the child's name, ostensibly to secure legal aid funding. Currently, with the exception of education placing request appeal applications (for which the legislation specified that parents lodge appeals) the Board's Financial Assessment Unit assessed financial eligibility based on the child's resources where it had been possible for proceedings to be raised in a child's name. The opinion contained the conclusion that in the case concerned, the action had been raised in the child's name so as to secure legal aid funding, and that this was an abuse of legal aid funding. Accordingly, it was pertinent to consider whether the Board's approach should be revised in light of the opinion.

After discussion, it was AGREED:

- the Financial Assessment Unit examine its procedures as recommended;
- a further paper be submitted in May on the Board's criteria for granting legal aid to children, distinguishing between cases driven by financial as opposed to welfare considerations, and, if possible, how many financially motivated cases the Board funded.

ACTION: CAW

11. APPORTIONMENT

The Committee considered a paper by Tom Murray proposing change to the Board's approach to the apportionment of solicitors' travel and attendance costs.

After discussion, it was AGREED:

- to approve the more straightforward way in which to calculate the sums due as recommended.

ACTION: TCM

12. CONSULTATION: JUDICIAL APPOINTMENTS AND REMOVALS

The Committee considered a paper by Lindsay Montgomery concerning the Board's response to a consultation on proposals to modernise and improve the court system through strengthening the role of Scotland's judiciary.

In discussion, consideration was given to whether or not it was appropriate for the Board to respond to the consultation.

After discussion, it was AGREED:

- to make a brief response to the consultation restricted to issues affecting legal aid, supported by factual information, as opposed to opinion, whilst endorsing the independence of the judiciary;
- the paper and draft response be circulated to all Board members for comment and, if an extension to the deadline for response could be obtained, brought back to the Committee, failing which a special meeting of the Board should be convened.

ACTION: LM

13. COMMITTEE MEMBERSHIP

The Board at its meeting held on 13 March had agreed to alter standing orders for the Audit Committee to enable a non Board member to be co-opted onto that Committee. It had also been agreed that the Legal Services Committee discuss and recommend on the desirability of changing standing orders to give it similar flexibility.

After discussion, it was AGREED:

- to recommend to the Board that the standing orders should be amended to allow the Legal Services Committee to co-opt non-Board members onto the Committee, and for the Board to decide whether this should be done by general or specific provision;
- to recommend that Lindsay Montgomery be made a member of the Legal Services Committee.

ACTION: LM

VALEDICTION

The Convener thanked the retiring members for their valuable contributions to the work of the Committee.

14. DATE OF NEXT MEETING:

Monday 24 April 2006 at 10.30 am.

The meeting ended at 12.45pm.