

**THE SCOTTISH LEGAL AID BOARD**

**MINUTE OF A MEETING OF THE LEGAL SERVICES COMMITTEE HELD AT 10.30 AM ON MONDAY 24 APRIL 2006 AT 44 DRUMSHEUGH GARDENS, EDINBURGH**

Present: Margaret Scanlan (Convener)  
Graham Watson  
Kenneth Ross  
Iain Robertson

In attendance: Lindsay Montgomery, Chief Executive  
Tom Murray, Director of Legal Services and Applications  
Douglas Haggarty, Head of Legal Services (Technical) (items 9-10) only  
Kingsley Thomas, Manager, Criminal Applications (items 7-10 only)  
Catriona Whyte, Head of Legal Services (Applications) (item 13 only)  
Philip Shearer (item 11 only)  
Marie-Louise Fox, Legal and Policy Support to the Chief Executive  
Stuart Foster, Board Administrator

**1. APOLOGIES FOR ABSENCE**

Elaine Rosie, Graham Bell.

**2. DECLARATIONS OF INTEREST**

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

Margaret Scanlan and Kenneth Ross declared non-financial interests in relation to item 13 (Legal Aid Application). The Committee co-opted Tom Murray and Marie-Louise Fox onto the Committee as legally qualified members for that item in their stead.

**3. MINUTE OF MEETING HELD ON 20 MARCH 2006**

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

It was AGREED:

- to change the process to require solicitors to seek the Board's permission under Regulation 18(1)(b) for reports on residence/contact; after further consultation with Sheriff Principal Bowen and the Family Law Association;
- a report be made to the next meeting on how many intimations under SU2 are received for interim orders for residence/contact so that further consideration can be given to the difficulties in this area.

**ACTION:TCM**

#### **4. DRAFT MINUTE OF MEETING OF THE LEGAL SERVICES SUB-COMMITTEE HELD ON 20 MARCH**

The draft minute of the Legal Services Sub-Committee held on 20 March 2006 was noted.

It was AGREED:

- in future, when referring applications for judicial review against SLAB to the Sheriff of Lothian and Borders, if there were issues on which a sheriff had already taken a decision, this should be included in the observations.

**ACTION:CAW**

#### **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 noted that the Law Society had again omitted to consult the Board on a matter affecting both bodies. In the latest instance, the Society had changed its criminal code in relation to the disclosure of information to third parties, but had not excepted the Board from the provisions, with the result that wherever a solicitor objected to the release of information, the Board would have to apply to the Society for disclosure on an ad hoc basis. The Society had been asked to change their code to rectify the omission, but had not done so. The Chief Executive would raise the matter with the Society.

The Committee noted the position.

#### **7. SUMMARY CRIMINAL LEGAL ASSISTANCE REFORM**

The Committee considered a paper by Kingsley Thomas which set out the current position with the reforms to summary criminal legal assistance.

It was noted that reform of summary criminal legal assistance was necessary to enable the provisions of the Criminal Proceedings etc (Reform) (Scotland) Bill to work as effectively as possible. The current reform proposals were based on a review of summary criminal legal assistance and a major consultation exercise undertaken by the Board. The paper summarised the latest thinking on the proposed changes to the different summary criminal aid types, and the piloting under the Grampian and West Lothian "Cleanstream" projects of legal aid changes to allow for the solicitor of choice, as opposed to the duty solicitor, to represent those appearing on undertakings to appear.

The Committee noted the position.

#### **8. CIVIL ADVICE AND ASSISTANCE REFORM**

The Committee considered a paper by Kingsley Thomas which summarised the latest position on the reforms to civil advice and assistance. The paper was considered along with item 10 (Civil Advice and Assistance – Law Officer’s Opinion) because of the possible implications of the Law Officer’s Opinion for the reforms. That paper highlighted the Opinion of the Lord Advocate on the *vires* of an aspect of the proposed regulations relating to civil advice and assistance reform.

It was noted that one of the key components of the reform involved the Board having the power to exercise a discretion as to what constituted “high level” advice. However, the Lord Advocate had issued an opinion that it would be *ultra vires* to confer this power on the Board. This meant that the proposed list of approved “high level” advice categories could not be issued by the Board as guidance but would instead need to be included in a schedule to the regulations, and any change to the list would require amendment of the regulations. The decision also called into question the *vires* of the 2004 regulations. The Executive’s solicitors were considering the issue and a fuller response was awaited.

It was noted that Phase 1 of the reforms - an increase in fee rates for all civil and children’s advice and assistance – had been implemented. Phase 2 would see the introduction of specific categories of case where advice from a solicitor was appropriate, and diagnostic advice and assistance, where the problem did not fall into one of the specific categories. Phase 3 would make changes to applicants’ financial eligibility and contributions for high value cases.

In discussion, the general view was expressed that the Opinion would not have a significantly adverse effect on the reforms, largely because of the advance work done on developing the list of approved case categories. However, the reforms had been promoted to the profession on the basis of flexibility in terms of the list, and this would now be lost. The Law Society would be told that this was not what the Board had intended, and had been imposed by the Executive late in the day.

The Committee expressed a wish for a timetable for the development of enhanced fees for complex work and the possibility of paying private rates on recovery to assist the retention of practitioners willing to do advice and assistance work. Steps should be taken to agree a timetable with the Executive.

The Committee noted both papers.

<b>ACTION: KT</b>
-------------------

## **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 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.

It was reported that a letter had been recently 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.

It was AGREED to accede to this request, and to defer consideration of the matter to the next meeting.

**ACTION: JDH**

## **10. CIVIL ADVICE AND ASSISTANCE – LAW OFFICERS OPINION**

See item 8 above.

## **11. CONSULTATION: PROTECTING VULNERABLE GROUPS**

The Committee considered a paper by Philip Shearer concerning a proposed response to a Scottish Executive consultation entitled: “Protecting Vulnerable Groups: Scottish Vetting and Barring Scheme”.

The consultation discussed options for improving systems for preventing unsuitable people from gaining access to vulnerable groups through their work, and ensuring that those who became unsuitable did not remain in the workforce. The proposals would involve the creation of a central unit to maintain lists of barred employees, and the sharing of information by public authorities. Such measures could have implications for the Board in terms of the availability of legal aid and for the disclosure of information under section 34 of the Legal Aid (Scotland) Act.

After discussion, it was AGREED:

- to approve the response as proposed;

**ACTION: PS**

- the layout of responses to consultations be reviewed to achieve more consistency in presentation.

**ACTION: TCM**

## **12. RESEARCH PROGRAMME**

The Committee considered a paper by Colin Lancaster which set out a proposed research programme for 2006 to 2009 and invited suggestions for additional projects and indication of priorities.

After discussion, it was AGREED:

- to approve the programme proposed;
- additional work be undertaken:
  - on research into outcomes , looking at the achievements of legal aid in terms of outcomes for clients and the impact of legal advice services on other parts of the system
  - to explore alternatives (something in the nature of arbitration/mediation) to directly funding litigation in areas where the existence of legal aid supported a large part of the market, and cases where the Board funded both parties and experts.

**ACTION: CL**

## **13. LEGAL AID APPLICATION**

The Committee considered a paper by Catriona Whyte concerning an application for extension of legal aid to cover a claim for solatium.

It was noted that the Legal Services Sub-Committee had agreed to grant the applicant in this case civil legal aid for an action of damages against the Council of the Law Society of Scotland subject to certain conditions, while restricting the claim to patrimonial loss only, and refusing it as far as solatium was concerned. The application had not been granted in terms of solatium because it had been considered that counsel had not adequately addressed time bar concerns. Subsequently, an opinion of senior counsel was received which argued that the time bar argument could be addressed, and asking that consideration be given to extending the existing grant of civil legal aid to cover the solatium claim in addition to the claim for patrimonial losses.

It was considered that the opinion of senior counsel addressed the Sub-Committee's concerns and recommended that the extension to the grant of civil legal aid be approved with the conditions already set in place by the Sub-Committee to continue throughout the lifetime of the case.

After discussion, it was AGREED to grant the application as recommended.

**ACTION: CAW**

**14. DATE OF NEXT MEETING:**

Monday 15 May 2006 at 10.30 am.

The meeting ended at 12.00 noon.