

THE SCOTTISH LEGAL AID BOARD

**MINUTE OF A MEETING OF THE LEGAL SERVICES POLICY COMMITTEE HELD
AT 10.30 AM ON MONDAY 19 MARCH 2007 AT 44 DRUMSHEUGH GARDENS,
EDINBURGH**

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

In attendance: Tom Murray, Director of Legal Services and Applications
Catriona Whyte, Head of Legal Services – Civil (items 7-9 only)
Elizabeth Cuschieri, Board Solicitor (item 10 only)
Joe Kelly, Head of Civil Legal Assistance (item 11 only)
Eleanor Campbell, Legal Assistant to the Director of Legal Services and Applications
Stuart Foster, Board Administrator

1. APOLOGIES FOR ABSENCE

Mahendra Raj.

2. DECLARATIONS OF INTEREST

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

Joseph Hughes declared an interest in relation to item 11 of the minute of the Legal Services Cases Committee of 19 February in that he had acted for one of the applicants in another capacity.

3. DRAFT MINUTE OF MEETING HELD ON 19 FEBRUARY 2007

Subject to amending item 10 to reflect the fact that it was an Assessment Officer, and not the Legal Services Cases Committee, that had taken the erroneous decision referred to, the draft minute of the Legal Services Policy Committee held on 19 February was approved.

4. DRAFT MINUTE OF THE LEGAL SERVICES CASES COMMITTEE HELD ON 19 FEBRUARY

Subject to correction of a typographical error in the third bullet point of item 8, the draft minute of the Legal Services Cases Committee held on 19 February was noted.

5. MONTHLY ACTION POINTS

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

The Committee noted the position.

6. DIRECTOR'S REPORT

The Committee considered a paper by Tom Murray reporting on matters of interest which had arisen since the previous meeting. The following matters were reported on: Quality Assurance – civil and criminal; Sheriffs' Refresher Course; Civil Register; Interest on Counsel's Fees; A&A Reform; Letter on A&A Eligibility.

It was noted that monitoring of improvement in the levels of solicitors' vouching for their clients' financial eligibility would be assisted by splitting cases sampled between those employed and those on benefits.

The Committee noted the position.

7. ADVICE AND ASSISTANCE TEMPLATES

The Committee considered a paper by Catriona Whyte setting out details of extended A&A templates for approval and circulation to the profession as part of the ongoing exercise to raise awareness of the templates.

Members were invited to pass any comments on the new templates to Catriona Whyte.

After discussion it was AGREED:

- under the streamlined procedure for applications under the Hague Convention, to amend the wording of the requirement to have met the client;
- a further paper be submitted to the next meeting with more detail on the current use of templates, with a view to monitoring usage and identifying any problems.

ACTION: CAW

8. LEGAL AID APPLICATION

The Committee considered a paper by Catriona Whyte concerning an application for review of a decision of the Legal Services Cases Committee to refuse civil legal aid to judicially review the Scottish Ministers in relation to a ban on prisoners that prevented the applicant from purchasing his own laptop computer.

The applicant argued that restricted access to computing facilities was a breach of his Convention right to a fair trial in relation to his criminal appeal proceedings.

In discussion, distinction was drawn between having access to a laptop computer and having access to the internet. The view was expressed that the denial of entitlement to purchase his own laptop computer was not a denial of his human rights, as he was legally represented in his criminal appeal.

After discussion, it was AGREED:

- to approve the recommendation to refuse the application for the reasons given by the Legal Services Cases Committee.

ACTION: CAW

9. AYR v HIGHLAND COUNCIL

The Committee considered a paper by Catriona Whyte concerning the opinion of Lord Uist in the above case.

It was noted that an application for legal aid to pursue damages against Highland Council had been granted on review subject to a limitation that the action be raised in the sheriff court (as opposed to the Court of Session) because the value of the claim was less than the Board's threshold of £75, 000 and no reason for raising the action in the Court of Session had been given.

The pursuer's solicitors had then enrolled a motion to remit the cause to Inverness Sheriff Court, and it was in consideration of the motion - which he refused - that the Lord Ordinary had given his opinion on the Board's decision to grant restricted legal aid. He was of the view that the case was appropriate for the Court of Session and did not agree with the Board's reason for the restricted grant.

In discussion, it was noted that the Lord Ordinary had reached his decision against a background in which he had wrongly understood that the Board had been given reasons why the case should be heard in the Court of Session, and had refused because of a lack of quantification of the sum sued for. In fact, the need to raise the action in the Court of Session had not been dealt with at all in the application form, the applicant's statement or in counsel's opinion. The view was expressed that in such circumstances, where legal aid was the central issue, the Board should have been given the opportunity to be represented in court.

Concern was expressed that the judge's decision could set a precedent that would result in far more cases going to the Court of Session than should otherwise be the case, including those who were not legally aided being obliged to incur Court of Session costs.

After discussion, it was AGREED:

- a letter be sent to the appropriate agencies (including Lord Gill, for his review of civil law) to advise that the judge did not have the fullest information at his disposal in arriving at his decision, and to convey the points raised in discussion in relation to Board representation and the implications of the decision;

ACTION: CAW

- otherwise, to note the position.

10. CONSULTATION: DRAFT SUPREME COURT RULES

The Committee considered a paper by Philip Shearer which summarised the issues arising from a consultation published by the Judicial Office of the House of Lords on draft Rules for the new Supreme Court, and set out a proposed response.

After discussion, it was AGREED:

- subject to including figures for the percentage of special urgency cases that failed and their cost, to approve the response as proposed.

11. SCOTTISH PUBLIC SERVICES OMBUDSMAN'S REPORT

The Committee considered a paper by Tom Murray which outlined the findings of the Ombudsman in relation to a complaint against the Board by an applicant.

It was noted that the applicant had complained to the Ombudsman alleging that the Board had unreasonably delayed in the presentation of her final liability to the Board relating to divorce proceedings for which she had the benefit of a legal aid certificate.

The Ombudsman had decided to investigate the complaint, and the Board had provided him with a detailed account of the steps which the Board had taken during the period the applicant had complained about, and in particular the fact that in the Board's view any delay was as a result of the applicant's solicitors' failure to provide information requested.

The recommendation in the Ombudsman's draft report acknowledged the applicant's liability but considered that the Board did unreasonably delay the presentation of the bill by not following up information requests to the applicant's solicitors in good time and should apologise to the applicant for this.

In discussion, members expressed difficulty in apologising to the applicant, who had been made well aware of her impending liability to the Board, had been less than straightforward in her actions, and appeared to have sold the recovered property without regard to her obligation to meet her solicitor's costs.

The particular nature of the solicitor and client relationship had been explained to the Ombudsman: when the Board wrote to solicitors, the Board was entitled to expect that it was also writing to the applicant, as it was the solicitor's duty to keep their client informed. If the Board were to accept the Ombudsman's report, it would set a precedent requiring direct communication with applicants, and involve inordinate cost.

Nevertheless, it was acknowledged that the Board could have chased up the applicant's solicitor more persistently at times.

After discussion, it was AGREED:

- to write to the applicant to the extent that in retrospect the Board had not chased up her representatives more persistently, while setting out the background context and the part the applicant had played in creating the problem;

ACTION: TCM

- to ask the solicitor if the client had responded to any requests for information he had made of her, if relevant;
- to explore the possibility in such circumstances of issuing letters to solicitors to the effect that if they did not respond to letters, the Board would have to write to their clients;
- to begin the information gathering exercise in relation to the recovery at the same time as the assessment of the account.

ACTION: JK

It was the Convener's last meeting as a Board member, and she expressed her gratitude to Tom Murray and his Team for many years of good service, to members of the Committee for their valued support and to Stuart Foster for bringing order to the chaos of their decisions.

DATE OF NEXT MEETING:

Monday 23 April 2007 at 10.30 am.

The meeting ended at 11.55 pm.