

**THE SCOTTISH LEGAL AID BOARD**

**MINUTE OF A MEETING OF THE LEGAL SERVICES POLICY COMMITTEE HELD  
AT 10.30 AM ON MONDAY 30 JULY 2007 AT 44 DRUMSHEUGH GARDENS,  
EDINBURGH**

Present: Kenneth Ross (Convener)  
Joseph Hughes  
Iain Robertson  
Lindsay Montgomery  
Graham Watson  
David Nicol  
Graham Bell (items 8-11 only)

In attendance: Tom Murray, Director of Legal Services and Applications  
Catriona Whyte, Head of Legal Services – Civil (item 7 only)  
Colin Lancaster, Director of Policy and Development (item 8 only)  
Clare Duffy, Assistant Manager, Research and Policy (item 8 only)  
Douglas Haggarty, Head of Legal Services (Technical) (items 9-10 only)  
Kingsley Thomas, Head of Criminal Legal Assistance (items 9-10 only)  
Eleanor Campbell, Legal Assistant to the Director of Legal Services and Applications  
Marie-Louise Fox, Legal and Policy Support to the Chief Executive  
Stuart Foster, Board Administrator

**1. APOLOGIES FOR ABSENCE**

Elaine Rosie, Mahendra Raj.

It was noted that Mahendra Raj had tendered his resignation from the Board with effect from 31 July in order to help set up a new business school at a university in the United Arab Emirates. The Chairman had thanked him for his contribution to the work of the Board.

**2. DECLARATIONS OF INTEREST**

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

Iain Robertson, David Nicol and Tom Murray declared interests in relation to item 7.

**3. DRAFT MINUTE OF MEETING HELD ON 25 JUNE 2007**

The draft minute of the Legal Services Policy Committee held on 25 June was approved.

**4. DRAFT MINUTE OF THE LEGAL SERVICES CASES COMMITTEE HELD ON 25 JUNE**

The draft minute of the Legal Services Cases Committee held on 25 June 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: civil quality assurance; Law Society Education Consultation; NS and FS v Scottish Legal Aid Board; advice and assistance reforms.

The Committee noted the position.

## **7. LEGAL AID APPLICATION (Ref. 7804669807)**

The Committee considered a paper by Catriona Whyte concerning an application for review of a decision by the Legal Services Cases Committee.

The applicant had petitioned the Outer House for judicial review of the decision of the Scottish Ministers to recall his licence, which had led to his being unable to vote in the Scottish Parliamentary Elections held on 3 May 2007. The Cases Committee had unanimously refused the application on the basis that there was no probable cause and that it would not be reasonable to make legal aid available.

The case had been unsuccessful in the Outer House of the Court of Session, and an appeal against that decision was refused by the Inner House. The application for review of the decision of the Legal Services Cases Committee had been submitted after the decision taken by the Inner House. The solicitors acting for the applicant had used the special urgency provisions to represent the applicant. As work had been done under the special urgency provisions, the solicitors were proceeding with the review application even although all parties were already aware that the case had been unsuccessful in court. It was open to the Board to grant legal aid restricted to the work done if the steps taken were reasonable having regard to all the circumstances.

After discussion, it was AGREED:

- to adhere to the decision of the Legal Services Cases Committee, and to refuse the application in full, including refusing cover for work done under the special urgency provisions - notwithstanding the information provided by the applicants' solicitors in their letter of 25 June 2007, there was still nothing to suggest that there was probable cause for the appeal or that it was reasonable to make public funding available;
- a report be made to the Committee on action taken with any accounts received from the firm concerned in relation to this and the other similar applications recently submitted.

**ACTION: CAW**

## **8. ASYLUM & IMMIGRATION ACTION PLAN**

The Committee considered a paper by Clare Duffy which updated the position on the Board's activity relating to immigration and asylum, and set out a proposed plan of action to address current issues.

It was noted that the Board had been examining closely the activities of a number of firms providing immigration and asylum work. This had resulted in a number of reports to the Crown

Office for alleged fraud. In the course of these investigations, through analysis of records and discussion with relevant agencies and individual asylum clients, the Board had uncovered evidence of private charging, inappropriate charging to the Fund and substandard quality of legal advice.

With the implementation of the Home Office's New Asylum Model, which aimed to speed up the asylum process, combined with evidence suggesting concerns regarding the quality of provision of legal advice, it was thought timely for the Board to review the current operation of the asylum system and the provision of legal advice with a view to ensuring the Board's policies and procedures in this area were both appropriate and proportionate.

The review had led to the conclusion that current evidence did not suggest there was an immediate need for direct action on supply in this area, although a watch would be maintained on this. However, other specific actions across a range of departments and operational and policy issues had been identified and were set out in the action plan. These would be taken forward and monitored, and the Committee updated on progress in due course.

In discussion, reference was made to the problem of peer review in what was a very specialised field. Also, such cases were frequently conducted wholly under the special urgency provisions, which could not have been the intention of Reg. 18, and this highlighted the need for further engagement with the Scottish Executive and the Home Office to remind them of the potentially variable impact of UK wide proposals on the, different, Scottish legal aid system.

After discussion, it was AGREED:

- to note the conclusions and approve the recommended courses of action contained in the paper.

<b>ACTION: CL</b>
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## **9. SUMMARY CRIMINAL LEGAL ASSISTANCE REFORM**

The Committee considered a paper by Tom Murray which detailed proposals to refine the Committee's previously stated position on diagnostic advice and assistance, the merits test for ABWOR, and the undue hardship test for summary criminal legal aid.

It was proposed to dispense with the concept of diagnostic advice and assistance in the criminal context while retaining the removal of minimum fees, and to reconsider the original proposal that the Board, and not the solicitor, should determine whether ABWOR was to be made available on the merits. The paper set out various options for doing these things. Also, it was now considered more appropriate to combine consultation on the solemn and summary undue hardship tests, and to do this after the close of the consultation on the summary criminal legal assistance reform. It was noted that the recommendation at point 34 should have stated "Options 1 and 4", instead of "1 and 2".

There was discussion about the appropriateness of subsuming initial advice into subsequent ABWOR or criminal legal aid in all circumstances (whilst acknowledging the perverse incentive inherent in fixed fees, and that under the current arrangements, in the average case, the solicitor was effectively being paid twice), and the perception the profession would have of such a proposal.

After discussion, it was AGREED:

- in relation to diagnostic advice and assistance, to approve Option 3, subject to the advice fee being greater than £25, and to extra payment where a solicitor was called to meet a client at a police station or prison;

- the consultation would also need to address the issue about subsuming initial advice, and to contain worked examples of what would be paid for in different scenarios under the current and proposed arrangements;
- in relation to the ABWOR merits test, to approve a combination of Options 1 and 4;
- to approve the proposed arrangements for consultation on undue hardship.

**ACTION: TCM**

## **10. SUMMARY CRIMINAL LEGAL ASSISTANCE REFORM - CONSULTATION**

The Committee considered a paper by Tom Murray which set out the first draft of the Board's proposed consultation document for the reform of summary criminal legal assistance.

It was reported that some initial, supportive, feedback on the draft had been received from the Scottish Executive.

In discussion, the view was expressed that the consultation should be jointly conducted with the Scottish Executive, and that the Cabinet Secretary should be signed up to the principles and financial commitment involved. Worked examples of what payments would be made under particular circumstances should be given, and there should be more focus on summary reform – why these proposals were being introduced. The “front loading” element should be made more prominent, the word “monolithic” removed, and the exceptions to subsuming initial advice and what was meant by “standard conditions” explained. The same wording as that used in the Act should be used at point 10.13, i.e. “no frivolous defence”.

After discussion, it was AGREED:

- to approve the first draft, subject to amendment to reflect the points made in discussion, with the revised version to be circulated and considered at a meeting of the Committee to be held on 27 August.

**ACTION: TCM**

## **11. DATE OF NEXT MEETING: Monday 27 August 2007 at 10.30 am.**

The meeting ended at 12.25pm.