

THE SCOTTISH LEGAL AID BOARD

**MINUTE OF A MEETING OF THE LEGAL SERVICES POLICY COMMITTEE HELD
AT 10.30 AM ON MONDAY 23 JUNE 2008 AT 44 DRUMSHEUGH GARDENS,
EDINBURGH**

Present: Kenneth Ross (Convener)
Joseph Hughes
Lindsay Montgomery
Graham Watson
David Nicol
Iain Robertson
Elaine Rosie

In attendance: Tom Murray, Director of Legal Services and Applications
Hazel Thoms, Policy Project Manager (item 10 only)
Catriona Whyte, Head of Legal Services - Civil (items 8-9 only)
Scott Cownie, Board Solicitor (item 11 only)
Andrew Menzies, Director of Corporate Services and Accounts, (item 12 only)
Stuart Foster, Board Administrator

1. APOLOGIES FOR ABSENCE

Graham Bell.

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 items 10 and 11 (Additional Support Needs Tribunals and Approach to "Slopping Out" cases).

3. DRAFT MINUTE OF MEETING HELD ON 31 MARCH 2008

The draft minute of the Legal Services Policy Committee held on 31 March 2008 was approved.

4. DRAFT MINUTE OF THE LEGAL SERVICES CASES COMMITTEE HELD ON 28 APRIL 2008

The draft minute of the Legal Services Cases Committee held on 28 April 2008 was noted.

5. DRAFT MINUTE OF THE LEGAL SERVICES CASES COMMITTEE HELD ON 2 JUNE 2008

The draft minute of the Legal Services Cases Committee held on 2 June 2008 was noted. In particular, it was noted that the Cases Committee had expressed concern at item 8 about a solicitor advocate who was also the nominated solicitor providing an apparently independent supportive opinion, and had agreed that this may be an issue for the Policy Committee to consider.

It was AGREED:

- a paper be submitted to the Policy Committee on this issue, which should consider and set out the various circumstances in which a supportive opinion from the nominated solicitor (whether or not a solicitor advocate) was or was not appropriate, with a view to producing guidance to staff and the profession.

ACTION: CAW

6. 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.

7. 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 Simplification Project – Special Urgency; Summary Criminal Legal Assistance Reforms; Monitoring of the Civil Advice and Assistance Reforms.

It was reported that the second week of roadshows relating to summary reform had been concluded. As with the first week, no hostility had been encountered, and questions had been balanced and informed. Issues had been raised in connection with the cost of travel from rural areas to court, the way pleas work in relation to the appointed solicitor, and the approach that should be taken to a nominated firm in this regard. A significant degree of concern had been expressed about serious cases being diverted to lower courts. These issues merited review and (in the case of rural travel) monitoring. The Scottish Government's "fix" for the errors in the regulations was still awaited. Members would be kept informed of developments.

After discussion, it was AGREED:

- to record and convey to the staff concerned that members were impressed by the high standard of information on the reforms being provided to the profession, and aware of its importance in promoting the constructive reaction from the profession being encountered at the roadshows.

ACTION: TCM

8. REJECTED CIVIL LEGAL AID APPLICATIONS

The Committee considered a paper by Catriona Whyte which set out proposals to amend the process for handling civil legal aid applications lodged with insufficient information to allow them to be registered.

It was noted that there were some cases of applications lodged with insufficient information in which the solicitor did not supply the missing information for a considerable length of time (it could take over a year in some instances to complete the registration process) and this created problems for Board departments because the information supplied was by then often out of date. Concern was expressed that applications should not be rejected for technical deficiencies which could easily be rectified.

After discussion, it was AGREED:

- to limit the period for returning applications that had been rejected to a maximum of two months;
- to report back on the numbers of applications finally rejected as a result of the amended process.

ACTION: CAW

9. CIVIL SIMPLIFICATION PROJECT: STAGE REPORTING

The Committee considered a paper by Catriona Whyte which updated the position on work being done as part of the civil simplification project in relation to stage reporting.

It was noted that stage reporting by solicitors acting at key stages in a case had been introduced in 2003 to enable the Board to consider whether there had been any changes in the underlying assumptions that allowed legal aid to be granted.

In light of experience, it was no longer considered that the current process, which required stage reports in every single case, was necessarily effective. To improve the process, it was proposed to remove the need for routine reports in all cases and concentrate on requiring reports on a regular basis in long running or high cost cases. Further work on this would take place in conjunction with that being undertaken on controlling high cost cases, at the conclusion of which detailed proposals for change would be submitted to the Committee.

Members noted the terms of the report and the proposals for further work.

10. ADDITIONAL SUPPORT NEEDS TRIBUNALS

The Committee considered a paper by Hazel Thoms reporting on proposed changes to the remit of Additional Support Needs Tribunals (ASNT) in Scotland. The paper considered options and advice for the Scottish Government (SG) on the possible legal aid impacts of the changes, together with options for supporting access to justice under the new remit.

It was noted that the current narrow remit of ASNT was likely to be expanded by the Single Equality Bill, due to be introduced in the Westminster Parliament in November 2008, which would transfer claims regarding disability discrimination in education from the Sheriff Court to the ASNT. While cases heard in the Sheriff Court attracted civil legal aid, cases heard at the ASNT were currently outwith the scope of ABWOR or legal aid.

The SG had agreed with the Minister for Children and Early Years that it would consider devising a scheme of support for representation of families which would be affordable, protect the rights of parents and maintain the ethos of the tribunals for all DDA cases. The SG came up with a number of initial options and agreed that the Board advise on their feasibility and identify further options.

In discussion, the view was expressed that the SG would have to provide the Board with better information on the likely volume of DDA applications in order to assess the resource requirement for using the Part V option, and that there should be discussion with SG on how they were sizing the scale of the problem and level of demand (bearing in mind that the policy was, properly, their responsibility) before the Board could recommend which of the options identified in the paper was the best way forward.

After discussion, it was AGREED:

- to revert to the SG to confirm that none of the options would require primary legislative change in the drafting process for the Single Equality Bill; to ask for more information about how they intended to progress matters and assess the scale of the problem; and to engage with them as the Single Equality Bill passed through Parliament, all with a view to reporting back later in the year and finalising the Board's position by September.

ACTION: HT

11. APPROACH TO "SLOPPING OUT" CASES

The Committee considered a paper by Scott Cownie on the approach to be taken to applications for civil legal aid which were still being received following the introduction by the Scottish Prison Service of settlement proposals intended to deal with the vast majority of "slopping out" claims against the Scottish Ministers. Such applications were being made where it was clear that the proposals in place either did not meet a particular applicant's circumstances or the £2,100 settlement payment was not seen as adequate compensation for the time spent in slopping out conditions.

It was noted that those considering civil legal aid applications did not wish to find themselves granting a large number of slopping out claims where it was considered that the level of the claim was modest and, in some cases, not above that being offered through the SPS administrative scheme to settle claims. It was likely that any cases brought before the court now would be defended as vigorously as was the *Napier* case. Such cases had the potential for incurring substantial expenditure with only limited information being available to show the true value of such claims. Allowing civil legal aid for "test cases" to attempt to resolve any outstanding issues was preferable to allowing a steady stream of applications. This way of proceeding would allow any other applications for civil legal aid on similar points to be held pending the outcome of test cases.

In discussion, consideration was given to the number and nature of test cases necessary to cover the circumstances and outstanding issues identified in the applications being received. The view was expressed that there should be four test cases covering these, namely, the use of porta-potties at HMP Peterhead, the time-bar imposed by the settlement, and quantification issues where the adequacy of the proposed £2100 was in doubt. It was recognised that other issues could emerge.

After discussion, it was AGREED to:

- identify test cases covering the porta-potty, time-bar and quantification issues and report back;
- contact Taylor and Kelly to advise them of the types of test case the Board was minded to use, and invite their views.

ACTION: SC

12. DEVELOPMENT OF AN APPROACH TO MANAGEMENT OF HIGH COST CASES

The Committee considered a paper by Andrew Menzies on the Board's intended approach to the development of an approach to the management and control of expenditure in high cost legal aid cases.

It was noted that the introduction of summary criminal fixed payments and the civil legal aid block feeing system had made a major contribution to the control of expenditure in many cases funded by legal aid. There were, however, cases that fell outside those arrangements - notably

those relating to solemn criminal proceedings, children's' cases and civil Court of Session cases - where the submission of "detailed" accounts could result in higher value cases.

It was believed that early identification of potentially high cost cases and proactive management of their conduct and progress should minimise the cost of such cases. To that end, a project had been established to develop an approach to the management of high costs cases to ensure that the associated legal aid expenditure represented best value.

Internal research would inform development of the approach, which would be piloted with a small number of firms prior to formal consultation with the profession in the Autumn, and implemented by the end of the calendar year.

Members noted the position.

DATE OF NEXT MEETING: Monday 28 July 2008 at 10.30 am.

The meeting ended at 12.05 pm.