

DRAFT

THE SCOTTISH LEGAL AID BOARD

**MINUTE OF A MEETING OF THE LEGAL SERVICES POLICY COMMITTEE HELD
AT 10.30 AM ON MONDAY 28 APRIL 2008 AT 44 DRUMSHEUGH GARDENS,
EDINBURGH**

Present: Iain Robertson (in the Chair)
Joseph Hughes
Lindsay Montgomery
Graham Watson
David Nicol
Elaine Rosie

In attendance: Tom Murray, Director of Legal Services and Applications
Colin Lancaster, Director of Policy and Development
Stuart Foster, Board Administrator

1. APOLOGIES FOR ABSENCE

Graham Bell and Kenneth Ross.

2. DECLARATIONS OF INTEREST

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

**3. RESPONSE BY THE SCOTTISH LEGAL AID BOARD TO SCOTTISH CIVIL
COURTS REVIEW CONSULTATION**

The Committee considered a paper by Tom Murray and Colin Lancaster which summarised the review, outlined aspects of the consultation worthy of particular consideration and discussion, and set out a draft response. The Committee also considered comments submitted by Kenneth Ross.

It was noted that the review was lengthy and wide-ranging, and envisaged a significant change to the civil justice system in Scotland which would have potentially significant consequences for civil legal assistance.

The consultation paper was divided into five main areas, each containing a discussion of potential issues and posing a set of related questions: access to justice; costs and funding of litigation; the structure and jurisdiction of the civil courts; principles for reform to civil procedure and key procedural issues; and working methods of the civil courts. The paper set out the key themes of the draft response to these five main areas.

Members congratulated Tom Murray and Colin Lancaster on the excellence of the response they had drafted, particularly in view of the fact that the consultation paper posed a number of possibilities, not all of which were mutually compatible.

In discussion, a considerable number of points were made, the detail of which is set out in the attachment to this minute.

After discussion, it was AGREED to approve the response as proposed, subject to incorporation of the points made in discussion.

ACTION: TCM/CL

It was noted that Board members who were not members of the Committee would have an opportunity to add their comments at a further meeting to discuss the response to be held on Thursday 1 May.

ATTACHMENT

CIVIL COURTS REVIEW CONSULTATION – DETAIL OF COMMENTS

Introduction

- Footnote to explain Part V and refer to our Act
- “we” – restate as “the Board”
- Third bullet, page 1 – insert “for example” after “widened”
- Third bullet page 2 - add: “further development and improvement”

Chapter 1

Q1 – Yes.

- Use active rather than passive voice
- Turn around the sentence that refers to “evidence base”
- Research should not hold up reform
- Use “brought into force” instead of “implemented” throughout
- We have ability to” – it is Ministers
- Replace “other jurisdictions” with “developed legal aid systems”
- Add at very end “ key to improving early resolution”

Q2 – Yes

Q3 – Yes

- P4 , third para – replace “we encounter” with “we see” and clarify wording to bring out more the issue concerning nationwide provision of legal aid

Chapter 2

Q1 – Considerable

- Para 2 – add “broader and” to “ more effective” (PLE)
- Say more about making the system easier to use e.g. common language

Q2 – Yes – we do have concerns

- P6 para 2 - replace “proportion” with number
- Next line – “problems” – nature of problems changes: legislation, complexity of life e.g no win , no fee, private funding, mediation, non-lawyer advice
- The downward trend in applications – the link to the supplier – the consultation’s approach is to look at activity based on Sheriff Court activity which implies it is not a geographical issue – we think it is
- P7 para beginning “more recently” needs re-written – needs separate examples – the reasoning behind them is very different
- P8, line 1 – quantify “significant”
- P8, Para 3 “anecdotal” evidence - say instead that we have some direct evidence (Part V, travelling issues) and we also hear...
- P8, para 5 add: “ private *sector* solicitors”

Q3

- Advocate greater use of the small claims court – tie in with change in court structure, and easier for a person to represent themselves. Small claims procedure does not work – need to avoid that experience – better designed paperwork would help
- P9, para 1 -Kenneth Ross’s point re time and cost implications of more party participation
- P10 – replace “remittance” with “remit”

Q5 – No.

Q6 – Probably

- Reword: monetary value is not synonymous with either importance to the parties or complexity

Chapter 3

Q1

- Put the last sentence first

Q2

- Without active work to reduce the case cost, many will not be able to take the case (Graham Watson – NHS – not worthwhile)

Q4

- Spelling of “decerniture”
- David Nicol – false logic: the fact that people take judicial expenses doesn’t mean the judicial fee table is correct – it shouldn’t read that way

Q5 – No

- Key thing is to be consistent across the country

Q6 – To a substantial extent

- P14 – we can’t decide; its for the government to decide

Q7 – Yes

- Qualification re defamation – point out there is a defamation direction

Q9 – Yes

- Household insurance – reparation – wider – need to say what it won’t cover

Chapter 4

Q2 – Yes

Q3 – Yes

- Reflect that may have different requirements in different places. Technology?

Q4 – Yes

- Kenneth Ross point re specialization – make the point that you don’t specialize everywhere.
- ignore the example given in the review (domestic abuse)

Q5

- Delete “blackmail litigation”
- “to ease the litigation process for their own firms” – sits more comfortably with the systems they have in place. Graham Watson -make the point about firms process
- Elaine Rosie -national sheriff court without geographical boundaries – no need to go to Court of Session
- Replace “beyond” with “except in”
- Feed in Graham Bell’s comments

Q6

- David Nicol – insert at the start of the answer the advantages of sifting
- “judicial reviews” – the wording doesn’t show we’ve grasped the point about private law issue

Q7 - Depends on final package

Q9

- Insert – changes need to be monitored

Q10 –No

- Rethink the way we have put the example – say system not used – illustration of difficulties that arise

Q11 - Yes

- First paragraph, and then a second one
- David Nicol re Kenneth Ross point re transfer – presumption – if got sift, can’t hit the firm

Q12 – No difference to us

Q13

- Example makes no sense – delete

Q14 – Yes

Q15 – No

Q16 – Yes

Q17 Possibly

Q19 – Yes

- Line 3, replace House of Lords with Court of Session

Q20 – No

- What period? Tom Murray to get figures and work it out

Q21 – Yes and depends

Q22

- Leave out last sentence?
- David Nicol – special urgency –we should not pay. Tom Murray will look at it again

Q24

- There should be more sheriffs
- Make clearer – adequately resourced
- “suited their availability”
- Graham Watson “imbalance”
- Elaine Rosie – set out our answer in terms of advantages and disadvantages

Chapter 5

Q4

- Find another phrase for “vexatious litigant”

Q6 – As far as possible

Q7 To a greater extent

- David Nicol – plain English point

Q8

- “in many occasions” – more “oomph”
- David Nicol – cash flow management – Ch 43 not OK unless you can get out of it – you have to put it into some other type of case management

Chapter 6

Q3

- Should be looked at further
- Replace “appeal” with “leave to bring”

Q5

- Add: however, unless there are clear reasons for a difference, a standard approach should make it easier for all parties

Q7

- Removing the need for counsel in the process

Q8 – Wherever possible – only more detailed where court sees need to set it out

Q9 – No

- Be clearer about getting rid

Q10 – Yes

Q11 – No

Q12 – Yes

Q13 – Yes

- David Nicol: “solicitor only” take out “plain English”

Q14 – More

Q15 – Significantly greater extent

- David Nicol – clawback rules – delete “or expenses”

Q16 – Yes

- Delete: “the Board has no direct experience of this”

Q17 – No

- The question is for others to answer – its not the case that people get more than they are entitled to – rephrase this for further consideration on Thursday

Q18

- Shouldn’t need to issue a written judgement in every case – check how often they turn up to hear a judgement- where there is a written judgement and still have a hearing – put on list for Thursday as well

Q19 – Yes

- Last sentence delete “ and parties”

Q21

- Say: “vexatious or difficult litigants”

Q22

- David Nicol - “assistance” – wording is wrong – for others to decide

Q23 – Yes

- “as the greater cohort” ?

Q24 – No

- Leave to bring a petition – not an action