

THE SCOTTISH LEGAL AID BOARD

MINUTE OF A MEETING OF THE LEGAL SERVICES POLICY COMMITTEE HELD AT 10.30 AM ON MONDAY 27 APRIL 2009 AT 44 DRUMSHEUGH GARDENS, EDINBURGH

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

In attendance: Tom Murray, Director of Legal Services and Applications
Catriona Whyte, Head of Legal Services – Civil (item 10 only)
Kingsley Thomas, Head of Criminal Legal Assistance (item 9 only)
Clare Duffy, Assistant Manager, Policy and Development (item 7 only)
Colin Lancaster, Director, Policy and Development (item 7 only)
Joe Kelly, Head of Civil Legal Assistance, (item 11 only)
Marie-Louise Fox, Legal and Policy Support to the Chief Executive
Stuart Foster, Board Administrator

1. APOLOGIES FOR ABSENCE

Kenneth Ross.

2. DECLARATIONS OF INTEREST

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

3. DRAFT MINUTE OF MEETING HELD ON 30 MARCH 2009

Subject to the correction of a typographical error, the draft minute of the Legal Services Policy Committee held on 30 March 2009 was approved.

4. DRAFT MINUTE OF THE LEGAL SERVICES CASES COMMITTEE HELD ON 30 MARCH 2009

In noting the draft minute of the Legal Services Cases Committee held on 30 March 2009, reference was made to two typographical errors, and to the accuracy of the wording relating to Andrew Pollock's invitation to attend the meeting.

5. ACTION POINTS

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

It was AGREED:

- a meeting be arranged to take place between Committee meetings on Monday 1 June to enable Joe Hughes, Paul McBride and Graham Bell to discuss sanction for counsel in criminal cases;

ACTION: OM

- otherwise, to note the position.

6. DIRECTOR'S REPORT

Tom Murray reported on matters of interest which had arisen since the previous meeting. The following matters were reported on: civil register; advice and assistance templates; statistical information relating to special urgency provisions; judicial review relating to the Glasgow duty plan.

The Committee noted the position.

7. PROVISION OF ADVICE SERVICES IN IMMIGRATION AND ASYLUM CASES

The Committee considered a paper by Clare Duffy and Colin Lancaster about proposed changes to the Immigration and Asylum Tribunal and the Board's likely response to those changes.

The proposed changes centred on a transfer of the functions of the Asylum and Immigration Tribunal to First-tier and Upper Tribunals. New procedural rules and changes to the legal aid process would be necessary as a result. The paper identified potential actions for the Board and the Scottish Government. For example, it had to be decided whether ABWOR or civil legal aid should be used to fund First and Upper Tribunal proceedings; if AWOR was decided on, regulatory changes and new merit testing would be needed. The timescale to prepare guidance, consult and make regulatory changes for the new structure was very tight.

It was noted that co-ordination of the work involved would be allocated to a project manager, and the Committee would be kept informed of developments.

The Committee noted the position.

8. REVIEW OF FINANCIAL ELIGIBILITY SYSTEMS FOR CRIMINAL LEGAL AID

The Committee considered a paper by Marie-Louise Fox which reviewed the financial eligibility systems for criminal legal aid in similarly developed legal aid jurisdictions around the world and discussed whether the Board should take a decision in principle to recommend to the Scottish Government that they introduce a system of contributions in summary and solemn criminal legal aid.

In discussion, the view was expressed that, whilst there was no conceptual reason for not introducing such a system, there would be a number of practical issues and possible consequences to be considered. As it was a political decision, it should be left to the Government to decide.

After discussion, it was AGREED:

- further work be undertaken on the experiences of other similar jurisdictions, looking at cost-effectiveness and how such a system might be made to work in Scotland, with a view to submitting a further paper to the Committee (and thereafter to the Board), on the advantages and disadvantages of the concept.

9. REVIEW AND MONITORING OF THE REFORMS OF CRIMINAL LEGAL ASSISTANCE

The Committee considered a paper by Kingsley Thomas updating the position on the review and monitoring of the summary criminal legal assistance reforms, and the issues that would be discussed at the meeting with the Cabinet Secretary for Justice and the Law Society on 27 April.

It was noted that the second costing model exercise showed that average grants of criminal advice and assistance had fallen by 65%, while grants of criminal ABWOR had increased by 152%. Average applications for summary criminal legal aid following the tendering of a not guilty plea fell by 24% in the same period. This represented an over-commitment in terms of the original costing model of some £445,000. The Committee also noted the issues raised by the Law Society at section 12 of the paper.

After discussion, it was AGREED:

- to continue to monitor and report on developments;
- to clarify with the Law Society the requirement for solicitors to obtain proof of identity of new clients.

ACTION: KT

10. CONVEYANCING COSTS

The Committee considered a paper by Catriona Whyte concerning the cost of home reports on sale of a property and whether those costs should be met under any applicable grant of advice and assistance or civil legal aid.

In discussion, the view was expressed that the cost of home reports was akin to surveyors' fees. Since surveyors' fees were specifically excluded from the conveyancing costs that could be met by the Fund, the cost of home reports should not be covered.

After discussion, it was AGREED:

- to approve the recommendation that cover for the cost of home reports not be provided using either advice and assistance or civil legal aid.

ACTION: CAW

11. MONITORING OF CIVIL SIMPLIFICATION REFORMS

The Committee considered a paper by Derek Arthur on expected outcomes from Phase 1 of Civil Simplification and how these would be monitored.

It was noted that it was intended to set up a sub-group comprising representatives from both the Project and Corporate Boards to manage the monitoring review, the overarching aim of which was to provide the Board with an understanding of solicitors' attitudes to the simplification changes and whether the intended outcomes of reducing bureaucracy and expense had been met.

After discussion, it was AGREED:

- monitoring reports be submitted to the Committee on a four monthly basis;

- reports include assessments of administrative costs and savings as well as the reductions in the percentage of rejected applications under the various headings;
- to follow-up with the profession on any further changes they would like to see made;
- an early report be made on how online was rolling out.

ACTION: JK/DA

12. APPROACH TO THE REVIEW OF CIVIL QUALITY ASSURANCE

The Committee considered a paper by Tom Murray which set out to facilitate discussion on how the Board might improve its approach to quality assurance.

It was proposed that a more holistic approach to quality assurance was required, one in which evidenced measures of quality improvement were externally visible, and there were incentives for firms to improve, as opposed to meeting minimum standards. The Board should have more control over the process, and the scheme needed to provide quality assurance without adding to the cost of doing so.

In discussion, reference was made to the timing of the introduction of any changes in terms of the cycles of peer reviews and the possible need for this to be done in phases. Discussions would need to take place with the Law Society in relation the Memorandum of Understanding.

After discussion, it was AGREED:

- a paper be submitted to the next meeting on what would need to be done to initiate changes in the third cycle, for discussion with the Quality Assurance Committee, with this to be followed by another paper on what the fourth cycle would look like;
- the issues be discussed with the President and Chief Executive of the Law Society.

ACTION: TCM

DATE OF NEXT MEETING: Monday 22 June 2009 at 10.30a.m.

The meeting ended at 12.20 pm.