

## **THE SCOTTISH LEGAL AID BOARD**

### **MINUTE OF A MEETING OF THE LEGAL SERVICES POLICY COMMITTEE HELD AT 10.30 AM ON MONDAY 14 DECEMBER 2009 AT 44 DRUMSHEUGH GARDENS, EDINBURGH**

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

In attendance: Tom Murray, Director of Legal Services and Applications  
Catriona Whyte, Head of Legal Services - Civil (items 6-7 only)  
Kieran Burke, Support to the Director of Legal Services and Applications  
Marie-Louise Fox, Head of Secretariat and Chief Executive's Office  
Andrew McIntosh, Corporate Support Manager  
Stuart Foster, Board Administrator

#### **1. APOLOGIES FOR ABSENCE**

Joseph Hughes, 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 16 NOVEMBER 2009**

The draft minute of the Legal Services Policy Committee held on 16 November was approved.

#### **4. ACTION POINTS**

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

It was reported that an analysis of cases conducted by staff reporting to the Sheriff Principal at Perth had found a marked difference in the number of early guilty pleas in cases conducted by the PDSO as compared with local firms.

#### **5. DIRECTOR'S REPORT**

The Committee considered and noted a report on matters of interest which had arisen since the previous meeting.

## **6. OUTCOMES IN CASES INVOLVING CIVIL LEGAL AID GRANTS**

The Committee considered a paper by Catriona Whyte reporting the findings from further research into outcomes in cases involving civil legal aid grants.

It was noted that information obtained from outcomes analysis helped to identify issues for guidance to the profession, particularly in relation to the reasonableness test.

After discussion it was AGREED:

- that where cases were high cost we should look at the quality of information provided by solicitors for initial grants, and throughout the case to ensure it allows us to manage the case cost effectively, as well as satisfying ourselves that the case will deliver real benefits.
- Family law cases should be included when assessing how successful we have been at recouping expenses.
- Cases that are abandoned as a result of reconciliation should be recorded as a successful outcome.

**ACTION: CAW**

## **7. GUIDANCE FOR THE PROFESSION ON THE REASONABLENESS TEST**

The Committee considered a paper by Catriona Whyte which provided further revised draft guidance for inclusion in the Civil Legal Assistance Handbook in relation to the approach taken to the test of reasonableness, having regard to comments made at the October meeting of the Committee.

After discussion, it was AGREED:

- subject to giving consideration to amending the wording relating to the choices set out in the CIV/SOL form on prospects of recovery from four categories to three, to approve the draft guidance for issue to relevant interested parties for comment.

**ACTION: CAW**

## **8. REPRESENTATION FOR BREACH OF COMMUNITY SERVICE ORDERS**

The Committee considered a paper by Tom Murray clarifying the position on cover available for Breach of Community Services Orders, an issue which had been raised in discussion at the Board meeting on 7 December.

The paper referred to the Board's guidance, which confirmed that criminal legal aid was not available in solemn cases involving breach of community service orders, and that ABWOR was the only cover available in such cases.

After discussion, it was AGREED:

- to amend the relevant wording of the guidance contained in chapter 6 of the Handbook to substitute *only ABWOR* for "ABWOR is only";
- to remind the profession of the correct position.

**ACTION: TCM**

## **9. GUIDANCE FOR PROFESSION ON JUDICIAL EXPENSES**

The Committee considered a paper by Tom Murray which set out proposed guidance to the profession on the issue of private feeing for work done prior to the grant of civil legal aid where either judicial expenses had been accepted or where a legal aid account had been submitted.

After discussion, it was AGREED:

- to approve the proposed guidance for issue to the profession subject to: (a) removing the implication under *Clarification and amending guidance* that the firm in the case referred to had charged the client while legal aid was in place (as this was not known); and (b) clarifying the anomaly contained in bullet points 2 and 3 of the section *General Advice*;

**ACTION: TCM**

## **10. REGULATIONS APPLYING TO APPOINTED SOLICITORS**

The Committee considered a paper by Tom Murray providing the information requested at the Board meeting on 7 December regarding the regulatory criteria in place to enable delegation under the appointed solicitor arrangements.

It was noted that the Glasgow Bar Association (GBA) was of the opinion that the Board's guidance on delegation was contrary to the regulations covering the operation of the appointed solicitor arrangements. The paper explained why this was not in fact the case. The amended regulations had been copied to all solicitors attending the associated training sessions held by the Board (and to the Law Society six weeks before).

Of the 49 cases being challenged by the Board, in only 4 cases was the issue solely one of delegation. The Law Society had confirmed that it was concerned only about cases where delegation presented solely as the issue for repayment. In such cases, it was considered possible that a wider interpretation of the regulations could allow payment, and this was being investigated.

After discussion, it was AGREED:

- to assess and report back on to what extent, where delegation is the sole issue and it relates only to appearance at a case known in advance of the solicitor taking instructions, it may be that the regulations permit an interpretation which will allow this.

**ACTION: TCM**

**DATE OF NEXT MEETING:** Monday 1 February 2010 at 10.30a.m.

The meeting ended at 11.30 a.m.