

THE SCOTTISH LEGAL AID BOARD

MINUTE OF A MEETING OF THE LEGAL SERVICES POLICY COMMITTEE HELD AT 10.00 AM ON MONDAY 31 MAY 2010 AT 44 DRUMSHEUGH GARDENS, EDINBURGH

Present: Joseph Hughes (Convener)
Iain Robertson
Elaine Rosie
Lindsay Montgomery
Graham Watson
Alastair Kinroy QC
Sheriff Ray Small
Bill McQueen

In attendance: Tom Murray, Director of Legal Services and Applications
Catriona Whyte, Head of Legal Services - Civil (item 8 only)
Kingsley Thomas, Manager, Criminal Legal Assistance (item 7 only)
Douglas Haggarty, Head of Legal Services (Technical) (item 10 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

None.

2. DECLARATIONS OF INTEREST

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

Bill McQueen declared a non-financial interest, and did not leave the meeting, in relation to item 10 (Proceeds of Crime: Financial Eligibility for Associated Proceedings) in that he had been involved in the appointment of forensic accountants employed in relation to the Petitioner.

3. DRAFT MINUTE OF MEETING HELD ON 26 APRIL 2010

The draft minute of the Legal Services Policy Committee held on 26 April 2010 was approved.

4. DRAFT MINUTE OF THE LEGAL SERVICES CASES COMMITTEE HELD ON 26 APRIL 2010

The draft minute of the Legal Services Cases Committee held on 26 April 2010 was noted.

5. 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.

6. DIRECTOR'S REPORT

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

Discussion took place on issues arising from the Criminal Quality Assurance peer reviewer training that had taken place to date, and the level of checking required of peer reviewer work. Members noted that peer reviewers would have their training refreshed in around six months time.

After discussion, it was AGREED:

- a further report be submitted on progress with the peer reviewer training when appropriate;
- otherwise, to note the position.

ACTION: TCM

7. RESULTS OF THE CONSULTATION ON THE UNDUE HARDSHIP TEST FOR SOLEMN LEGAL AID

The Committee considered a paper by Kingsley Thomas reporting on responses received to the consultation on applying the undue hardship test for solemn criminal legal aid.

It was noted that the analysis set out in the paper was based on comments from three individual solicitors, the Law Society and the GBA, and although it was concluded that none of the concerns raised should materially change the proposals contained in the consultation paper, the feeling that the conditional grant could act as a disincentive to resolve cases at an early stage should be considered and discussed further with the Law Society.

Members expressed the view that whilst respondents' issues about increased bureaucracy should be seen in the context of necessary change, it was recognised that these were nevertheless concerns and that they should be responded to.

It was AGREED:

- a meeting be held with the Law Society to discuss their concerns, including their reasons for disagreement with the Board, and a report on the outcome of the discussions be shared with the Committee;
- the Board would need to consider how it could best advise solicitors on the new process (most importantly over the telephone) in the first few months following implementation of the changes;
- responses be made to the three individual solicitors concerned to inform them of how matters were being taken forward;
- to approve the proposals for communicating the new procedures when finalised to the profession and key contacts, most notably by doing this through local faculty meetings rather than national roadshows.

ACTION: KT

8. OUTCOMES IN GRANTS OF CIVIL LEGAL ASSISTANCE

The Committee considered a paper by Catriona Whyte which provided updated findings from research into outcomes in cases involving civil legal aid grants.

It was noted that of the 126 cases considered, the success rate was high, and there was a tendency for solicitors to overestimate the costs of cases. It was expected that reports would shortly be available that would enable analysis of outcomes in all cases where an account synopsis form had been submitted, and this would provide a much broader picture of outcomes in cases than was currently possible.

After discussion, it was AGREED:

- there should be analysis of whether cases could be resolved earlier, at the A&A stage;
- there should be an annual review of the periodic reports on outcomes;
- the results of the work would be shared with the profession through the Supplier Support project.

ACTION: CAW

9. CIVIL QUALITY ASSURANCE

The Committee considered a paper by Tom Murray which set out proposed revisions to the Memorandum of Understanding between the Board and the Council of the Law Society of Scotland on the operation of the Quality Assurance Scheme.

It was noted that the revision had been necessitated by the need to take account of the new file sampling arrangements recently agreed by the Committee. The Council of the Law Society had approved the revisions without comment.

In discussion, the point was made that the Board reimbursed the Law Society's costs in administering the Quality Assurance Scheme from the Grant-in-Aid budget; however, given pressures on public expenditure, continuance of the present arrangement could not be guaranteed.

It was AGREED:

- to approve the revised Memorandum of Understanding for the interests of the Committee;
- the Director raise the question of funding the cost of the Quality Assurance Scheme at the next meeting of the Quality Assurance Committee;
- a minimum period for sharing results and best practice be agreed with the Law Society;

ACTION: TCM

- the recent amendments to the scheme did not equate to a full best value review and this should therefore be included in the Operational Plan.

ACTION: M-LF

10. PROCEEDS OF CRIME: FINANCIAL ELIGIBILITY FOR ASSOCIATED PROCEEDINGS

The Committee considered a paper by Douglas Haggarty concerning a judicial review of a decision by the Board to refuse the petitioner civil legal aid, on the basis of being financially ineligible, in connection with a civil recovery proof under the Proceeds of Crime Act.

It was noted that the crucial issue – not raised in the context of the judicial review – was the extent to which the Board should take account of money released under a restraint order in assessing an applicant’s financial eligibility. By refusing legal aid on the grounds of financial ineligibility in the case concerned, the Board was effectively pronouncing that the petitioner was able to afford to conduct proceedings himself, when it was illegal for him to use the money released for living expenses to fund legal proceedings associated with the civil recovery proof proceedings.

In discussion, the view was expressed that the Board’s approach should not be at odds with the legal position on funding associated legal proceedings, and it was appropriate in this and similar cases to apply the Board’s discretionary provisions to disregard the money released for living expenses when assessing financial eligibility.

After discussion, it was AGREED:

- the Board clarify the position regarding the possibility of a review in terms of the Act and regulations where civil legal aid was refused on means;
- as a matter of Board policy, monies released from restrained funds for reasonable living expenses would not be taken into account when assessing an application for civil legal aid in connection with legal proceedings, with the Crown to be advised of this;
- to approve the consequent actions as recommended in the paper, subject to adding guidance to the Handbook on applications in similar circumstances for legal expenses for *unrelated* legal matters, e.g. conveyancing, and the Board’s expectation that solicitors would approach the Crown for funding of unrelated legal expenses before submitting a legal aid application;
- that the Board should be able to clawback funds should these be released at a later date and to raise this formally with the Scottish Government.

ACTION: JDH

DATE OF NEXT MEETING: Monday 21 June 2010 at 10.30a.m.

The meeting ended at 11.50 a.m.