



## THE SCOTTISH LEGAL AID BOARD

### APPROVED MINUTE OF A MEETING OF THE LEGAL ASSISTANCE POLICY COMMITTEE HELD AT

10:30am ON MONDAY 29 March 2021 by Video Conference

Present: Raymond McMenamin (Chair)  
Ray Macfarlane  
Sarah O'Neill  
Marieke Dwarshuis  
Stephen Humphreys  
Colin Lancaster

In attendance: Anne Dickson, Director of Strategic Development  
Ian Dickson, Principal Legal Advisor  
Graeme Hill, Director of Corporate Services and Accounts  
Marie-Louise Fox, Director of Operations  
Andrew McIntosh, Corporate Support Manager  
Wendy Dalglish, Head of Legal Services - Civil and Children's (Item 4)  
Steven Carrie, Senior Technical Specialist (Item 5)  
Clare Barclay, Policy Development Officer (Item 5)  
John Osborne, Policy Projects Manager (item 4 and 5)  
Kieran Forbes, Policy and Research Analyst (Item 4)  
Stuart Drummond, Corporate Governance and Policy Officer

#### 1. Apologies for absence

None.

#### 2. Declaration of Interests

None.

#### 3. Draft minute of the Legal Assistance Policy Committee meeting held on 16 November 2020

The draft minute was **approved** by the Committee.

#### 4. Civil Legal Aid - Prior Approval for Unusual Expenditure - LAPC/2021/02

The Committee considered a paper which provided an update on proposed changes to policy in the area of prior approval for unusual work in civil legal aid. The Committee were asked to note progress and comment as required.

It was explained that the Civil Legal Aid (Scotland) Regulations 2002 contained a provision that prior approval was required if a solicitor wished to undertake 'unusual work'. However, it was left to SLAB's discretion as to how this was defined.

After discussion, the general view of the Committee was that option B (to clarify our definition of unusual simply by bringing it into line with the standard dictionary definition, as used in children's legal aid ) and C (as B but to incorporate a system of capped expenditure whereby any requests where the proposed expenditure/rates are above the caps, prior approval would be required: for those below the cap, no prior approval is required) were the options to explore further. It was felt that option D, which would ask solicitors to define "unusual" would be difficult to apply in practice, particularly if solicitors were not carrying out lots of legal aid work. The Committee noted the importance given by solicitors to having some amount of certainty of payment. Any policy development would therefore need to take this into consideration.

It was acknowledged that what might be initially defined as "unusual" could, over time, become "usual" and that a policy statement and guidance would be required for staff and solicitors to manage the switch from one category to another. Further work would need to be done with Accounts in due course.

The Committee were also of the view that an appropriate organisation linked with Adult with Incapacity law should be added to the consultee list.

With regard to the assessment of timing there was agreement within the Committee that production of accounts policy and guidance relevant to payment of this type of work should be produced first, as it would provide clarity to solicitors about what would be paid for.

The committee noted the remainder of the paper.

## **5. Accounts Assessment Policy Development Update - LAPC/2021/01**

The Committee considered an update on the development of policies in the accounts assessment area. The Committee were asked to note progress and comment as required.

The paper explained that with respect to the application of the taxation standard when assessing accounts, the accounts team had identified the core issue as being how to define or apply the common term "reasonable", due to the fact that each case required to be considered on its own facts and circumstances.

Therefore, the focus of the work was the prioritisation of the development of a working draft parent policy statement and a high level summary of SLAB's approach to assessing what was "reasonable".

As with the previous item on unusual work, the Committee noted that certainty of payment for solicitor was an important factor and that being transparent about how SLAB will assess accounts. The Committee agreed that it was important that there was clarity and certainty for the profession on what was reasonable and what information SLAB were seeking up front.

Some of the Committee were of the view that the terms “usual” and “unusual” could be viewed as adding an additional layer to the assessment process. Usual and unusual would be viewed as a means by which to frame what evidence would be required from SLAB in the assessment process. It was noted that although these terms were used in the assessment process they were not referred to in the legislation. However, the Committee agreed that there were many permutations of what might be termed “reasonable” and that the features set out in paragraph 15 of the paper formed the building blocks for a possible definition.

In terms of the consultation the Committee were of the view that there should be no written consultation until the options were more fully developed. In the meantime they could be tested with small groups on a confidential basis.

The Committee considered the section of the paper on the scope of the travel policy. Discussion took place on the differentiation between a place of business and a place of employment. The Committee queried why SLAB had retained the 40 pence rate for mileage when the Scottish Government rate was 45 pence. Further consideration would be given to the rate as the work progressed.

It was agreed that consultation with Sheriff Court Auditors would be useful given that there can be a differing approach across Sheriff Court areas.

The Committee noted the remainder of the paper.

## **6. AOB**

None.

The Chair confirmed 4 May 2021 as the next date of the next meeting and closed the meeting.