

JUDICIAL APPOINTMENTS BOARD FOR SCOTLAND

MINUTES OF THE BOARD MEETING HELD ON MONDAY 11th JANUARY 2010 IN THE BOARD ROOM, 44 DRUMSHEUGH GARDENS

Present: Sir Muir Russell, Chairing Member
Ms Elspeth MacArthur
Professor Andrew Coyle
Reverend John Miller
Lady Smith
Sheriff Principal Sir Stephen Young
Sheriff Kenneth Ross
Mr Roy Martin QC
Mr Martin McAllister
Mr Trevor Lodge, Chief Executive
Mr Chris Orman, Secretary to the Board
Miss Arlene Gibson, Secretariat

1. Welcome and Apologies

1.1 The Chairing Member welcomed the members to the Board meeting and wished them all a Happy New Year.

1.2 Apologies had been received from Mr Mowat who had sustained a broken wrist in a fall as a result of bad weather. Members wished him a speedy recovery.

2. Preliminary Meeting of Judicial and Legal Board Members to consider the Legal Competencies of Applicants for the Office of Judge of the Court of Session

2.1 Lady Smith chaired the discussion, which was observed by the lay members. Mr Martin noted a conflict of interest in respect of two of the applicants and for this reason he did not take part in the discussion about those two applicants.

2.2 The judicial and legal members carried out their duties in terms of Section 13 of the Judiciary and Courts (Scotland) Act 2008. They concluded, on the basis of the paperwork submitted and references received, that fifteen of the applicants had not demonstrated the knowledge of the law and skill and competence in its interpretation and application at the level required for the office of Judge of the Court of Session.

3. Office of Judge of the Court of Session: Sift of Applications

3.1 The Board assessed the 18 applications received. Taking account of the assessment by the judicial and legal members under section 13 of the Judiciary and Courts (Scotland) Act 2008 and against the high standard of judicial and other qualities expected of applicants for the office of Judge of the Court of Session, the Board decided to invite three candidates for interview.

3.2 The Board agreed that the interviews would essentially follow the format adopted for the recent Sheriff exercise. Judicial and legal members undertook to decide on a case study and a presentation topic. These would be discussed further at the Board Awayday on the 17th and 18th January

3.3 It was agreed that interviews would take place over two days during the first week of February.

3.4 The discussion identified a number of issues to be followed up in discussion at the forthcoming Awayday.

Action Point: The Secretary to the Board to take forward the arrangements for informing applicants of the result of their applications.

4. Minutes of Meeting held on 14th December 2009

4.1 The Board approved the minutes of the meeting held on the 14th December 2009.

5. Matters arising from the Minutes

5.1 Referring to paragraph 4.2 and the discussion with the Scottish Government about their having decided to make a shrieval appointment from the existing slate which was about to expire at the end of December, Mr Martin felt that the minutes did not sufficiently represent the strength of the Board's feelings on the matter, as expressed to Mr Stuart, and he asked that the wording be adjusted to reflect the Board's concerns.

5.2 On paragraph 5.2, Sheriff Ross requested that copies of the final decision letters issued to applicants in the recent Sheriff exercise be circulated to the Board.

5.3 On paragraph 5.3, Lady Smith asked whether a reply had been sent to Sheriff Cusine. The Secretary to the Board confirmed that a letter was about to be issued.

Action Point: The Secretary to the Board to agree form of words with Mr Martin and amend the minutes accordingly.

6. Scottish Government

6.1 Chairman welcomed Mr Colin McKay and Ms Jill Clark, Scottish Government, to the meeting.

6.2 Mr McKay introduced Jill Clark who had taken over sponsorship responsibility for the Board within his division from Mr Lachlan Stuart who would now be taking forward implementation of the Civil Courts Review

6.3 Mr McKay advised the Board of a number of impending changes to Director-General responsibilities within the Scottish Government. With effect from 18 January, Stella Manzie, formerly DG Finance and Corporate Services, will become DG Justice and Communities in succession to Robert Gordon who becomes DG Constitution and Corporate Change until his retirement in the Spring. There were some consequential changes with the Civil Law and Legal System Divisions and the existing divisions of the Criminal Justice Directorate forming a new Justice Directorate led by Bridget Campbell. Mr McKay also informed the Board that Mr Steven Humphreys had been appointed as Director of the Judicial Office in Scotland.

6.4 Mr McKay briefed the Board on progress with implementation of the Judiciary and Courts (Scotland) Act 2008, noting in particular the changes in role of the Lord President were on track to be introduced from the 1st April.

6.5 In relation to the Civil Courts Review, Mr McKay expected the Scottish Government to issue a consultation paper by the Summer recess. He understood that the Lord President had appointed a group of judges to draw up a response to the Review. The Chairing Member indicated that the Board would wish to be consulted on the terms of the consultation paper prior to it being published.

6.6 The Chairing Member informed the Board that a meeting with the Lord President and the Scottish Government had been arranged for the 20th January to discuss the Board's proposed process for submitting recommendations to the Scottish Government.

6.7 The Chairing Member noted that he would like to invite Stella Manzie and Bridget Campbell to meet the Board at an appropriate time.

7. Papers For Consideration

7.1 The Board noted the information paper *Office of Sheriff: Pool of Applicants for appointment in 2010* (JAB/2010/1). The paper provided the agreed pool of nine applicants suitable for appointments during 2010.

7.2 The Secretary to the Board introduced the paper *Office of Sheriff: recommendations to the Scottish Ministers; Office of Part-time Sheriff: Appointments from the current slate* (JAB/2010/2). It was agreed that paragraph 2 of the paper

should be amended to remove the word “commercial”. The Board approved the recommendations for appointment to the vacancies in offices of Sheriff based in Glasgow and Hamilton. It was agreed that the Secretary to the Board would contact the individuals concerned by telephone to ask whether they would be prepared to accept the appointments, if offered by the Scottish Ministers. This would be followed by a formal letter from the Board. In the event that either candidate declined, the matter should be referred back to the Board.

7.3 The Board confirmed its view, as discussed at the June 2009 meeting, that the majority of those on the current slate of candidates recommended for appointment to the office of Part-time Sheriff met the legal competence requirements of section 13 of the Judiciary and Courts (Scotland) Act 2008.

7.4 The Board noted that the Scottish Government had decided that, on current projections of likely vacancies, there was no need to run a part-time sheriff exercise in the near future. Given the Board’s commitment to a full time sheriff exercise in the second half of 2010, the implication of this was that the current part-time slate should be allowed to run until at least mid-2011. However, recognising that the slate would have been in existence for some time, the Board decided that candidates should be asked to confirm that their circumstances had not changed in such a way as to give the Board reason to review its decision about their suitability to hold office as a part-time sheriff.

Action Point: *The Secretary to the Board to contact the applicants regarding being recommended for the Glasgow and Hamilton vacancies.*

8. Away Day

8.1 The Chief Executive confirmed that the arrangements for the Away Day on the 17th to 18th January were in place. The papers would be circulated in advance. He also informed the Board that the Diversity Working Group would be meeting on the 13th January to sign off its final report to the Board. The report would be presented formally to the February meeting of Board but would be made available as background to the discussions at the Away Day.

9. Any Other Business

9.1 No other business was discussed.

The meeting closed at 1625 hours