

JUDICIAL APPOINTMENTS BOARD FOR SCOTLAND

BOARD

MINUTES OF THE MEETING HELD ON MONDAY 8th FEBRUARY 2010 IN THE TRAINING ROOM, 44 DRUMSHEUGH GARDENS

Present: Sir Muir Russell, Chairing Member
Ms Elspeth MacArthur
Mr Sandy Mowat
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
Ms Alessandra Asteriti, Secretariat

1. Welcome and Apologies

1.1 The Chairing Member welcomed the members of the Board to the meeting, especially Mr Mowat, absent from the previous meeting as a consequence of an accident.

1.2 There were no apologies.

2. Minutes of the Meeting held on Monday 11th January

2.1 The minutes of the previous meeting were approved subject to a number of amendments. It was agreed to circulate the amended minutes.

Action: Secretary to the Board to circulate the amended minutes to Board Members.

3. Matters arising from the Minutes

- 3.1 Paragraph 3.1 Lady Smith asked if it was necessary to disclose numbers of total applicants and interviewed applicants in the letter to unsuccessful applicants. The Board agreed that normally numbers would be disclosed, unless the small number of applicants made identification of applicants possible.
- 3.2 Paragraph 5.1 Sheriff Ross asked if the minutes of the December meeting had been amended as requested by Roy Martin. Mr Martin said that what was contained in the minutes of the January meeting adequately reflected his concerns.
- 3.3 Paragraph 5.3 In response to a question from Lady Smith, the Secretary to the Board undertook to confirm whether a reply to Sheriff Cusine had been issued.
- 3.4 Paragraph 7.3 The Board discussed the current slate for Part-time Sheriffs. If the Scottish Ministers were to decide to extend the slate until Summer 2011 it would be necessary to proceed as agreed previously to check at intervals that the circumstances of those on the slate had not changed in ways that could call in question their appointability; but it would not be readily possible to go beyond this without effectively opening a new assessment exercise. It would be important that the most careful consideration should be given, in consultation with the Board, to any appointments that might be made **during** an appointment exercise (which, on present expectations, could be running in the first half of 2011), given the possibility that names on the slate might not be judged suitable for inclusion in the new pool. As regards possible appointments in the near term, the Board noted that it had reviewed the names on the slate at the time of the transition to the statutory basis, and that, subject to establishing the position on certain complaint/review procedures for a very small number, was content that the names on the slate remained appointable. An important question to consider was whether the slate could effectively be made into a "pool" from which the Board would draw. All these matters would merit further consideration as a substantive item at the next meeting, which would provide an opportunity to raise relevant issues with the Scottish Government representatives.

Action: Secretary to the Board to ensure that a letter to Sheriff Cusine is issued.

4. Scottish Government

- 4.1 The Chairing Member informed the Board that the Scottish Government had no issues to raise with the Board at this meeting.

5. Papers for Consideration

- 5.1 The Board considered at length the report of the interview panel and agreed on recommendations of candidates considered to be suitable for appointment to the office of Senator of the College of Justice
- 5.2 Ms MacArthur introduced the *Final Report of the Diversity Working Group* (JAB/2010/03). Ms MacArthur noted the pragmatic approach of the report, in particular recommendations 5.9 and 5.10 which proposed a sensibly based and paced approach to identifying priorities for future work. The Board's statutory role was clear, but to make progress it would have to work in collaboration with other bodies that have an interest in legal/judicial careers. The way in which this was done would require careful consideration.
- 5.3 The Chief Executive said that he intended to discuss next steps with the Law Society of Scotland and the Faculty of Advocates. He also indicated that he was in discussion with the Scottish Government about the need for an additional member of staff part of whose duties would be to take forward this work. He hoped to be in a position to advertise the post shortly. He would first want to explore with the Law Society whether it had a suitable individual with HR and Communications expertise (the latter reflecting other needs seen by the Board) who might be assigned to the Board Secretariat for an agreed period.
- 5.4 Following discussion, the Board accepted in principle the report and its recommendations. The Board agreed in particular with recommendations 5.9 and 5.10 and agreed that priority should be given to refreshing the Board's website.
- 5.5 The Chairing Member thanked Ms MacArthur and members of the Diversity Working Group, past and present, for their efforts.
- 5.6 The Board considered the paper *Office of Sheriff: Recommendations to the Scottish Ministers* (JAB/2010/04) and agreed to the terms of the letter to be sent to the Scottish Government recommending applicants considered suitable for appointment to two vacancies in the office of Sheriff. On the matter of Part-time Sheriffs the Board noted that the majority of those on the current slate met the requirements of Section 13 of the Judiciary and Courts (Scotland) Act 2008. The Board had reservations about a small number of those individuals and therefore it was uncomfortable with wholesale endorsement of the entire slate at this time. The Board felt that it would like to discuss the matter further with the Scottish Government. **Reflecting earlier discussion, it was agreed that the letter should be issued to the Scottish Government.**
- 5.7 The Board considered the paper *Office of Sheriff: Letter from Applicant in the 2010 Pool* (JAB/2010/05) and agreed to the terms of the proposed reply to the applicant who had raised a number of questions about the Boards procedures following the recent shrieval exercise. The Board agreed that it would wish to

review some procedural issues in light of its consideration of the questions raised by the applicant.

Actions: Secretary to the Board to finalise letters for issue to the Scottish Government and the applicant.

6. Actions arising from Away-Day on 17th and 18th January 2010 (JAB/2010/06)

6.1 The Chief Executive circulated a list of action points arising from the Away-day. It was agreed that the Board should receive regular progress reports on implementation of these action points.

7. Meetings and Visits

7.1 The Chairing Member gave an oral report of his meeting with the Lord President, which was attended by Ms MacArthur, Sheriff Ross and the Chief Executive, on the 20th January. Mr Colin McKay, Scottish Government, and Mr Steve Humphreys, Director of the Judiciary Office for Scotland, were also present. The main purpose of the meeting, which it was hoped would be the first in a continuing tripartite dialogue, was to discuss the Board's proposed arrangements for making recommendations to the Scottish Ministers and the Lord President's involvement in that process. The meeting also touched on the need for better information about future judicial vacancies. An agreed note of the meeting would be circulated in due course.

8. Any Other Business

8.1 The Chairing Member noted that the Board had received a request from an applicant in the recent Judge of the Court of Session appointment exercise for sight of the Board's scoring scheme. This was being treated as if it was a request under the Freedom of Information (Scotland) Act 2002, and the information sought would be supplied. After discussion, it was agreed to seek advice from the Board's legal advisers on its responsibilities under Freedom of Information and Data Protection legislation.

Action: Chief Executive to pursue with the Board's legal advisers.

The meeting closed at 1510 hours.