

JUDICIAL APPOINTMENTS BOARD FOR SCOTLAND

BOARD

MINUTES OF THE MEETING HELD ON MONDAY 8th MARCH 2010 IN THE BOARDROOM, 44 DRUMSHEUGH GARDENS

Present: Sir Muir Russell, Chairing Member
Ms Elspeth MacArthur
Mr Sandy Mowat
Professor Andrew Coyle
Reverend John Miller
Lady Smith
Sheriff Kenneth Ross
Mr Roy Martin QC
Mr Martin McAllister

In attendance: Mr Trevor Lodge, Chief Executive
Mr Chris Orman, Secretary to the Board
Miss Arlene Gibson, Secretariat

1. Introduction

- 1.1 Apologies were received from Sheriff Principal Sir Stephen Young due to another judicial commitment.
- 1.2 The Chairing Member informed the Board that Sheriff Principal Young and Mr Roy Martin had indicated that they would not be seeking re-appointment when their terms of office come to an end in May. Reverend John Miller had also intimated his resignation with effect from the end of June when he would be taking up an appointment in Zimbabwe. The Chairing member thanked all three for their valuable contribution to the work of the Board and wished them well for the future.

2. Freedom of Information and Data Protection

- 2.1 The Chairing Member welcomed Ms Christine O'Neill and Mr Charles Livingstone, Brodies LLP Solicitors, to the meeting. Ms O'Neill gave a presentation to the Board on its responsibilities under the Freedom of Information and Data Protection Act legislation. The ensuing discussion focused on secure handling of data, retention of data by Board members, use of historical data for research purposes, and the requirement to destroy data that was no longer necessary for the purposes of exercising the Board's functions.
- 2.2 Mr Livingstone spoke to advice he had provided, at the Board's request, on the effect of the Judiciary and Courts (Scotland) Act 2008 (Transitional Provisions) Order 2009.

3. Minutes of the Meeting held on Monday 8th February and Monday 11th January

- 3.1 The Board approved the minutes of the meeting on 8th February, subject to the following amendments:

Paragraph 5.1: amend to read: "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."

Paragraph 5.6: amend to read: "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 the two vacancies in the office of sheriff. Reflecting earlier discussion, it was agreed that the letter should not refer to part-time sheriffs as the Board wished to discuss this further."

- 3.2 In addition, the Board formally approved the minutes of the meeting held on 11th January.

4. Matters arising from the minutes

- 4.1 There were no matters arising.

5. Office of Part-time Sheriff – Recommendations from the Slate (JAB/2010/7)

- 5.1 The Board resumed its consideration of the letter of 22 December 2009 from the Scottish Government which indicated that Ministers were minded to make three (subsequently revised to four) appointments to bring the complement of Part-time Sheriffs up to the full statutory limit (80) early in the new year, before expiry of the current slate of recommended candidates. The letter invited the

Board to confirm or otherwise comment on the current recommendations submitted by the non-statutory Board.

- 5.2 The Board noted that the Judiciary and Courts (Scotland) Act 2008 (Transitional Provision) Order 2009, which came into force on 1 October 2009, appeared to enable the recommendations of the previous Board for appointment to the offices of Sheriff and part-time Sheriff to be used until such time as the new Board made its own recommendations for appointment to those offices. The Board requested that independent legal advice be sought to clarify the terms and the meaning of the Order.
- 5.3 Taking into account the legal advice received, the Board agreed that, with one exception, the next ranked individuals on the slate should be recommended, in their rank order, for appointment to the four current vacancies.
- 5.4 The Board also decided that from now on it would regard the existing slate as a pool from which it would make recommendations to fill future vacancies in the office of part-time sheriff, if requested to do so by the Scottish Ministers, subject to checking at appropriate intervals with those individuals remaining in the pool that there was nothing about their circumstances that might cause the Board to reconsider their suitability for appointment. The Board also decided to recommend to the Scottish Ministers that the life of this pool should be extended to 30 June 2011, given the decision that had been taken about the timing of the next part time competition.

Action: The Secretary to the Board to inform the Scottish Ministers of the individuals to be appointed to the office of Part-time Sheriff.

5A Office of Sheriff: Pool of Applicants Suitable for Appointment in 2010

- 5A.1 The Board considered a letter dated 5 March 2010 from the Scottish Government requesting a recommendation for the vacancy for an All Scotland Floating Sheriff. By reference to the pool of applicants considered to be suitable for appointment, the Board agreed on the individual to be recommended for this vacancy.

Action: The Secretary to the Board to ascertain the candidate's willingness to accept the appointment, if offered, and to advise the Scottish Government accordingly.

6. Scottish Government

- 6.1 The Scottish Government officials briefed the Board on a number of issues, including the transfer of responsibility for administration of the Justice of the Peace recruitment campaign from the Board to the Scottish Government, the appointment process for new Board Members, the Civil Courts Review, and the Thomson Review of Rights of Audience in the Supreme Courts.

- 6.2 In relation to the Civil Courts Review, Mr McKay said that Ministers were unlikely to engage in a formal consultation on their response to the review. However, if the Board wished to make its views known to Ministers initial comments should be submitted within 6 weeks and any more substantive comments within 3 months.

Actions: The Scottish Government to provide the Board with a paper on timetable for appointment of Board Members.

Secretariat to provide a paper for the next meeting proposing initial comments that the Board might make on the Civil Courts Review with particular reference to the proposals in relation to the use of part-time sheriffs and on specialisation.

7. Papers for Consideration

Information Papers on the Offices of Judge of the Court of Session and Sheriff (JAB/2010/8)

- 7.1 The Board noted the papers and agreed that the Process Working Group should review the papers for accuracy and consider whether they can be used as information for candidates with amendment as appropriate.

Forward Look 2010 – 2011 and Appointments of Board Members (JAB/2010/9)

- 7.2 The Board noted the paper.

Process Working Group: Minutes of Meetings held on 8th and 26th February (JAB/2010/10)

- 7.3 The Board noted the minutes.

- 7.4 In response to a question from Professor Coyle, Sheriff Ross said that the group would welcome comments from members on the content and format of application forms and referee assessment forms.

Action: Board Members to provide the Secretary to the Board with comments on the application and referee assessment forms, for consideration by the Process Working Group.

8. Any Other Business

- 8.1 No other business was discussed.

The meeting closed at 1400 hours.