

# ***JUDICIAL APPOINTMENTS BOARD FOR SCOTLAND***

## **BOARD**

### **MINUTES OF THE MEETING HELD ON MONDAY 8<sup>th</sup> NOVEMBER 2010 IN THE TRAINING ROOM, 44 DRUMSHEUGH GARDENS**

Present: Sir Muir Russell, Chairing Member  
Ms Elspeth MacArthur  
Mr Sandy Mowat  
Professor Andrew Coyle  
Dr Michael Ewart  
Lady Smith  
Sheriff Principal James Taylor  
Sheriff Kenneth Ross  
Mr Iain Armstrong QC  
Mr Martin McAllister

In attendance: Mr Trevor Lodge, Chief Executive  
Mr Chris Orman, Secretary to the Board  
Mrs Dorothy Smith, Policy Officer  
Miss Arlene Gibson, Secretariat

#### **1. Welcome and Apologies**

1.1 The Chairing Member welcomed the Board Members to the meeting. There were no apologies.

#### **2. Sheriff 2011 Appointment Round: Judicial and Legal Members' Consideration of the Legal Competence of Applicants**

2.1 Lady Smith chaired the discussion, which was observed by the lay members. The judicial and legal members carried out their duties in terms of Section 13 of the Judiciary and Courts (Scotland) Act 2008. They assessed the applicants on the basis of their application forms, the written work provided and the referee assessments, in accordance with the Board's marking scheme, as input to the overall Board second sift assessment.

### **3. Minutes of the Meeting held on 11<sup>th</sup> October**

- 3.1 The minutes of the meeting held on Monday 11<sup>th</sup> October were approved subject to a few amendments.

### **4. Matters arising from the Minutes**

- 4.1 There were no matters arising from the minutes.

### **5. Scottish Government's paper on Tribunal Appointments (JAB/2010/65)**

- 5.1 The Chief Executive introduced the paper provided by the Scottish Government and suggested a number of matters that the Board might wish to clarify with the Scottish Government representative. The Chief Executive also reported briefly on his meeting on 4 November with representatives of the Judicial Appointments Commission, Ministry of Justice, Tribunal Service and the Scottish Government to discuss possible future arrangements for tribunal appointments in Scotland.
- 5.2 Professor Coyle informed the Board that the AJTC had estimated that there were about 700 reserved Tribunal members and 800 devolved Tribunal members. Professor Coyle suggested that the Board would need to decide on the nature of the process to be adopted for tribunal appointments. There were a number of possible models ranging from the Board itself taking responsibility for recommending candidates, to the Board determining and overseeing a process undertaken by other bodies.
- 5.3 The Chairing Member welcomed Mr Colin McKay, Deputy Director, Scottish Government Legal System Division, to the meeting. Mr McKay advised the Board that Mr Norman Egan, Regional Director, Tribunals Service, had been appointed Chief Executive of the Scottish Tribunals Service which was to be established on 1st December 2010. Mr Egan was unable to attend the meeting due to a conflicting engagement.
- 5.4 Mr McKay informed the Board that the timetable for introducing the necessary primary legislation to devolve responsibility for reserved tribunals was uncertain. In the Scottish Government's judgment it was unlikely that the Board would be expected to make appointments to reserved tribunals before May 2012 at the earliest. There were no current plans to involve the Board in appointments to devolved tribunals before reserved tribunals, and any such change would require primary or secondary legislation. Mr Egan's appointment would mean, among other things, that work could now begin on developing a project plan which would include arrangements for appointing members of tribunals.
- 5.5 The Chairing Member advised Mr McKay that the Board did not wish to be in the situation whereby decisions in the future could result in it being would take time to develop, test and implement. The Chairing Member felt that preliminary work should be commissioned now to review the different possible models and to establish what worked. Mr McKay agreed that this should be

done, and undertook to provide the secretariat with a contact in the Scottish Government Justice Analytical Services to advise on how to take this forward.

- 5.6 Referring to the impending Scottish Government response to the recommendations of the Scottish Civil Courts Review, the Chairing Member asked whether there were likely to be any implications for the Board's plans to run a Part-time Sheriff appointment round early in 2011. Mr McKay said that in the Scottish Government's view there would continue to be a need for Part-time Sheriffs for the foreseeable future, although the Scottish Courts Service was planning to reduce reliance on the use of Part-time Sheriffs through more efficient deployment and better management of court business.

*Action Point: Mr McKay to provide the Chief Executive with a contact in Scottish Government Analytical Services.*

## **6. Sheriff Principal Appointment Round: Interview Panels (JAB/2010/66)**

- 6.1 The Board agreed that Ms MacArthur should chair all the interview panels in the Chairing Member's absence.
- 6.2 The Board considered whether it was appropriate that Sheriff Principal Taylor should be involved in interviewing candidates one of whom would be his successor. Sheriff Principal Taylor indicated that he would be content not to participate and to abide by whatever decision the Board reached on the matter. The Board was of the opinion that there was a potential perceived conflict of interest and therefore Sheriff Principal Taylor should not participate in any aspect of the selection process. The Board also considered it was essential that a Sheriff Principal should be a member of the interview panel. It was agreed that the Chairing Member should write to the Lord President in terms of paragraph 12 of Schedule 1 to the Judiciary and Courts (Scotland) Act 2008 requesting that he nominate another Sheriff Principal to be a substitute member of the Board for the purposes of participating in the interview panel.

*Action Point: Chairing Member to write to the Lord President regarding the appointment of a substitute Sheriff Principal member for the appointment round.*

- 6.3 The Board agreed that the interview panel should consist of the same members for all interviews. Sheriff Principal Taylor offered to produce a briefing note for panel members on the specific characteristics of the his own sheriffdom.

*Action Point: Sheriff Principal Taylor to provide a briefing note for interview panel members.*

## **7 Sheriff Principal Appointment Round: Documentation (JAB/2010/67)**

- 7.1 The Board reviewed and agreed the Application Form, Guidance Notes for Applicants and Referees, Job Description and Referee Assessment Form, subject to some amendments.

*Action Point: Sheriff Ross and the Chief Executive to amend the forms.*

## **8. Judicial References (JAB/2010/74)**

- 8.1 After discussion, the Board agreed the terms of the section on judicial references to be included in the Guidance Notes for Applicants and Referees for the Sheriff Principal appointment round.

*Action Point: Chief Executive to seek the Lord President's approval of the draft section.*

## **9. Part-time Sheriff Appointment Round 2011 (JAB/2010/73)**

- 9.1 The paper, prepared by Sheriff Ross, set out the Process Working Group's recommendations for the format of the Part-time Sheriff competition. The Board agreed that written work would only be requested from those applicants who progressed to the second sift and that the first sift would be carried out on the basis of the self assessment provided by applicants of their judicial and personal qualities. The Board wished to give further consideration to the suggestion that applications should be anonymised for the first sift

*Action Point: Sheriff Ross and the Secretary to the Board to consider how anonymisation can be achieved and produce specimen application forms.*

## **10. Brodies' Advice on Application Form (JAB/2010/69)**

- 10.1 The Board noted paper JAB/2010/69, and agreed that this paper would be discussed at the next Board meeting on Monday 20<sup>th</sup> December.

*Action Point: Secretary to the Board to place the paper on the Agenda for December Board meeting.*

## **11. Away Day 2011 (JAB/2010/69)**

- 11.1 The Board discussed possible dates for the away day taking place early in the New Year and noted that it was proving difficult to find a date that suited all members. It was agreed to postpone the away day until March when diaries would have more availability.

*Action Point: Secretary to the Board to canvass Board Members on further dates.*

**12. Business Plan: Progress Report (JAB/2010/70)**

12.1 The Board noted the paper without comment.

**13. Business Continuity Plan (JAB/2010/71)**

13.1 The Board noted the paper without comment.

**14. Financial Report 2010-2011 (JAB/2010/72)**

14.1 The Board considered the paper and agreed to consider options for reducing the advertising budget.

*Action Point: Secretary to the Board to report back with options for reducing the advertising budget.*

**15. Any other Business**

15.1 No other business was discussed.

**16. Sheriff 2011 Appointment Round: Second Sift of Applications**

16.1 The full Board considered the 38 applications. Taking account of the assessment by the judicial and legal members under section 13 of the Judiciary and Courts (Scotland) Act 2008 and the personal and judicial qualities expected of applicants for the office of Sheriff, it was agreed that 17 applicants should be invited for interview.

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

Meeting closed at 1730 hours.

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