

Minutes of a meeting of the Legal Services Board (LSB) on 25 March 2015

Date: 25 March 2015
Time: 12.30-15.00
Venue: Office of Rail Regulation, One Kemble Street, London

Present: Sir Michael Pitt Chairman
(Members) Richard Moriarty Chief Executive
 Terry Babbs
 Anneliese Day QC
 Marina Gibbs
 Bill Moyes
 Ed Nally
 Helen Phillips

In attendance: Ian Brack Interim Chief Executive, Legal Ombudsman
 (item 4)
 Steve Brooker Consumer Panel Manager (item 6)
 Elisabeth Davies Chair, Legal Services Consumer Panel (item 6)
 Nick Glockling Legal Director
 Jenny Hart Business Planning Associate
 Kathryn King Interim Chief Ombudsman (item 4)
 Edwin Josephs Director of Finance and Services
 Graeme MacLachlan Regulatory Associate
 Julie Myers Corporate Director
 Dawn Reid Head of Regulatory Performance and
 Operations
 Caroline Wallace Strategy Director
 Adewale Kadiri Corporate Governance Manager (minutes)

Apologies: David Eveleigh

Item 1 – Welcome and apologies

1. The Chairman welcomed those present and in attendance to the meeting, in particular Dr Helen Phillips who was attending her first meeting since being appointed as a member of the LSB. He also welcomed Richard Moriarty to his first meeting as Chief Executive, as well as two new colleagues, Graeme MacLachlan, Regulatory Associate and Jenny Hart, Business Planning Associate, joining the meeting as observers. Apologies had been received from David Eveleigh.

Item 2 – Declarations of interests relevant to the business of the Board

2. There were no declarations of interest.

3. Board Members were reminded to notify the Corporate Governance Manager of any hospitality extended and/or received in the course of their LSB work.

Item 3 – Items considered out of committee since 27 January 2015

4. The Board noted that the Finance Report for January 2015 had been circulated electronically on 27 February. It was also noted, in relation to the OLC member recruitment exercise that offers of appointment had been made to five candidates (four lay and one non-lay). Written acceptances have been received from four candidates, and the appointments will take effect from 1 April [post Board note: all five appointees have accepted their offers]. Board members were thanked for their prompt attention to the proposals.

Item 4 – Paper (15) 09 OLC Budget 2015/16 for approval

5. Ian Brack, interim Chief Executive and Kathryn King, interim Chief Ombudsman attended to present this item. In setting out the context of the budget the following points were made:
 - The Legal Ombudsman (LeO) is operating in a changing environment, and it is seeking to adapt to this change.
 - The external governance framework is complicated, with the LSB having a number of statutory powers in relation to performance and certain statutory governance responsibilities and the MoJ currently holding accounting officer responsibility and with ongoing responsibility for financial oversight.
 - The organisation's ability to engage constructively with, and respond to the challenge from both the LSB and MoJ is being enhanced.
 - Three separate but connected reviews are being carried out. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [FOIA exempt: s36(2)(b)(ii)]
 - The new CMC jurisdiction has been used to trial new ways of working, with ombudsmen being involved earlier on in investigations. Early results have been encouraging, but it was acknowledged that a more fundamental overhaul of the system is required.
6. In the course of the subsequent discussion, the following points were raised:
 - [REDACTED]
[REDACTED] [FOIA exempt: s36(2)(b)(i)]
 - Questions were raised about the difference in unit costs between the legal and CMC work streams, although it was acknowledged that CMC cost

estimates could require adjustment going forward. It was also noted that the new ways of working being trialled with CMCs could ultimately lead to reductions in unit costs for the legal work.

- The OLC Board will be almost completely new as from 1 April, and a number of key senior management posts are currently occupied by interims. It was suggested that some refinement of the quantitative performance targets, alongside a greater emphasis on quality was required.
- With regard to the current relationship with the Principal Accounting Officer, it was noted that an externally led review of systems and processes is to be carried out.
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [FOIA exempt: s36(2)(b)(ii)]
- It was acknowledged that in the next three to six months the risk environment would become more challenging as a result of the changes that are to be made, but the expectation is that the position would start to stabilise once a permanent Chief Executive and Chief Ombudsman are appointed and other interim roles are filled.
- The Board made the point that it was keen to be of assistance to the OLC, but stressed the LSB would continue to fulfil its statutory responsibility of holding them to account for LeO performance.

7. The Board resolved to approve the OLC's budget proposal for 2015/16.

Item 5 – Paper (15) 10 Final LSB Strategy 2015-18; Business Plan and Budget 2015/16

8. Richard Moriarty opened the discussion of this item. 19 responses had been received to the consultation and these broadly supported the LSB's work. The strategy document has been significantly reduced in length.
9. The following points were made in the course of the discussion on the strategy document:
 - Questions were raised as to why the statutory decision making function had been included as a priority, rather than as part of business as usual.
 - It was noted that the work on ideal regulatory arrangements had been dropped on the basis that it could be open to misinterpretation. It was suggested that other opportunities might be found to provide leadership in this area.
 - More thought should be given to explaining what work will be done in year 2 and year 3 of the three-year strategy.

- It was suggested that paragraph 27 be amended to make reference to the challenges of legal aid funding reforms, and the LSB's impartial position on legal aid could also be set out.

10. The following points were made with regard to the budget proposal:

- The Audit and Risk Assurance Committee had considered the proposal in some detail, and had given their approval subject to an improved narrative, and a commitment going forward to provide more clarity on budget proposals for the following two years.
- In response to the proposal to set a budget with the same cash amount as last year, the MoJ had asked that the Board think carefully about how this could be perceived. Other commentary on the budget had been muted.
- A further discussion is to be held at the mid-year point about priorities.

11. **The Board resolved to**

- a) Approve the 2015/16 budget of £4,298,000, and**
- b) Delegate final drafting and publication of the Strategy for 2015-18 and the Business Plan for 2015/16 to the Chair and CEO.**

Item 6 – Paper (15) 11 Draft Consumer Panel Strategy 2015-18 and work programme 2015/16

12. Elisabeth Davies introduced this item. She articulated differences between this year's programme and that of previous years:

- The development of a three year strategy alongside the annual work programme, based on five years' worth of evidence, and in response to wider changes.
- The degree of consistency with the LSB strategy, with both bodies having responded to the Panel's 2020 report, as well as other regulators, including the BSB and CILEx. A number of LSB research projects are also relevant to the work of the Panel.
- Applications for research funding are to be made to external bodies, as part of efforts to build on progress already made, and to enhance the evidence base.

13. Other aspects of the programme remain the same, including:

- Its brevity and tight focus on outcomes.
- The clarity on the Panel's role.
- The adoption of a partnership approach, and commitment to evidence based work.

14. Improving access to justice is central to the Panel's strategy. Its further aims relate to supporting consumers to make more informed choices, improving regulatory and

complaints systems for regulated providers and recognising the need to raise standards within the unregulated sector. There is a separate strand relating to legislative reform.

15. The impact on the Panel of recent staff changes was noted, but the Panel Chair remained confident that the plan would be delivered.
16. The Board thanked the Panel for the plan, and for the other documents that it had produced, all of which had been valuable to the Board.
17. **The Board resolved to endorse the Consumer Panel's 2015/16 work programme.**

Item 7 – Paper (15) 12 Post-Ministerial summit work streams: update and first output

18. Caroline Wallace introduced this item to update the Board on the four work streams that had been set up following the Ministerial summit in July 2014. A meeting of chairs of all the regulatory bodies had been held in October, with four work streams identified to explore the scope for further deregulation. It is intended that, where possible, joint cross-regulator submissions would be made to Ministers after the election, but there would also be a full opportunity for the LSB to communicate its views separately. Apart from the proposals that had emerged from the work streams, the work had also provided good opportunities for collaborative working between the LSB and the approved regulators.
19. The following points were made by way of context:
 - Agreement had been reached on five proposals for clausal changes. These are currently going through the regulators' internal governance processes, and there is confidence that they would be endorsed by most of the bodies. [REDACTED]
[REDACTED] [FoIA
exempt: s36(2)(b)(i)]
 - Professor Stephen Mayson is chairing the group that is seeking to identify alternative legislative options beyond the Legal Services Act. A draft report on its work is to be presented to the next regulatory chairs' meeting [post-meeting note: this will now be a progress update rather than a draft report, as the latter is still substantially incomplete].
 - The LSB is leading on the production of the deregulatory status report, the aim of which is to explain to incoming ministers the deregulatory progress that has already been made in the legal sector.
 - The report on alternatives to holding clients' money is based on learning to be derived from existing alternative models in England and Wales, and in other jurisdictions. There is an effective cross-regulator working group examining this issue, and its aim is to produce a thought leadership paper to serve as a

shared resource and to be published (e.g. on the LSB website) when complete.

- A letter of gratitude for leading this work had been sent by the Minister to the LSB Chair.

20. The following points were made in the course of the discussion:

- It was suggested, in relation to the work stream on legislative options beyond the Legal Services Act, that the version of the project scope document should be simplified.
- It was acknowledged that the clausal changes requiring primary legislation may not be prioritised by Ministers for some time.
- It was noted that post-election, there may be little short- or even medium-term appetite for this work, and expectations should therefore be managed. There should, however, be clarity about the direction of travel.
- Ministerial involvement or consent is not required for implementation of any of the current proposals for alternatives to the holding of client money, so while the paper on this work stream might be referred to in any Ministerial submission, it would not contain any specific 'call to action' for Ministers.
- There had been a number of positive developments since the summit, and there is an appetite for further collaboration. The LSB holds an interesting strategic position and is seeking to strike a balance between facilitating this collaborative work and providing active leadership.

21. **The Board resolved to:**

- a) Note the progress being made and the next steps on the post-summit work streams, and**
- b) Endorse the paper setting out proposals for minor/clausal changes to the existing legislative framework.**

Item 8 – Minutes of the meeting of 27 January 2015

22. The minutes of the meeting had previously been approved as an accurate record by correspondence. The Chairman formally signed the minutes.

Item 9 – Report of action points

23. All actions were noted as on-track, and all items had either been included on the agenda or are on the Board forward plan for future agendas.

24. **The Board noted the updates to the report of action points.**

Item 10 – Paper (15) 13 Chief Executive's update – March 2015

25. Richard Moriarty presented his progress report. The Board noted the following:

26. People and governance issues

- A decision is still awaited regarding the appointment by the MoJ of a non-lay Board member following the exercise that concluded in February. With regard to the additional lay appointment, it is not expected that this will be made before September.
- Efforts are continuing to recruit and retain talent in the organisation. An announcement is shortly to be made with regard to the appointment of a new regulatory project manager.
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [FoIA exempt: s36(2)(b)(ii)]

27. Key project and work streams

- The QASA Supreme Court hearing took place on 16 March. [REDACTED]
[REDACTED] [FoIA exempt: s42] The claimants had indicated in their submissions that they wanted the scheme to be referred back to the LSB for consideration of the issue of proportionality, but proportionality had been considered by the LSB originally. Judgment is expected either at the end of May or beginning of June.

28. External policy developments

- Small business appeals champions – the proposal is that non-executive directors be appointed to regulatory bodies, with a specific responsibility around appeals. It is expected that this proposal will become law, and as such, the LSB's priority should be to work with BIS, MoJ and other regulators on finding a sensible way for legal services regulators to achieve the desired outcome, whilst avoiding costly or undesirable prescribed structures. MoJ are supportive of this approach.

29. Communications and stakeholder activities

- More emphasis is to be placed on building and maintaining informal relationships with board members from the other regulatory bodies.

30. **The Board resolved to note the contents of the Executive Report.**

Item 11 – Paper (15) 14 Report of the Audit and Risk Assurance Committee meeting on 10 March 2015

31. Terry Babbs introduced this report. [REDACTED]
[REDACTED]
[REDACTED] [FOIA exempt: s36(2)(b)(ii)]

32. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [FOIA exempt: s36(2)(b)(ii)]

33. The Board resolved to:
a) Note the content of the key points arising from the Audit and Risk Assurance Committee meeting held on 10 March 2015, and
b) Note the work proposed to improve OLC related governance and risk assurance arrangements with a view to returning to the Board in May.

Item 12 – Paper (15) 15 Finance Report to 28 February 2015

34. Edwin Josephs introduced this routine update on LSB finances. It was noted that the work to commission joint research with other bodies had been rather time consuming for the Research Manager, such that a number of other planned projects had been delayed, leading to a larger underspend than had been expected.

35. The Board resolved to note the contents of the paper.

Item 13 – Any other business

36. There was no other business.

Item 14 - Date of next meeting

37. The Board would next meet on 29 April 2015 at 13.00. The venue would be the Office of Rail Regulation, 2nd floor, One Kemble Street, London WC2B 4AN.

AK, 27/03/15

Signed as an accurate record of the meeting

..... Date

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