

Minutes of a meeting of the Legal Services Board (LSB) on 29 April 2015

Date: 29 April 2015
Time: 13.00-15.30
Venue: Office of Rail and Road, One Kemble Street, London

Present: Sir Michael Pitt Chairman
(Members) Richard Moriarty Chief Executive
 Terry Babbs
 David Eveleigh
 Marina Gibbs
 Ed Nally

In attendance: Antonet Abbink Corporate Affairs Associate (items 1-12)
 Nick Glockling Legal Director (items 1-12)
 Edwin Josephs Director of Finance and Services (items 1-12)
 Cat Kelly Regulatory Associate (item 5)
 Graeme MacLachlan Regulatory Associate (item 4)
 Karen Marchant Regulatory Project Manager (item 6)
 Julie Myers Corporate Director
 Dawn Reid Head of Regulatory Performance and Operations (item 6)
 Bryony Sheldon Regulatory Project Manager (item 7)
 Caroline Wallace Strategy Director
 Kate Webb Head of Regulatory Reviews and Investigations (item 5)
 Adewale Kadiri Corporate Governance Manager (minutes)

Apologies: Anneliese Day QC
 Bill Moyes
 Helen Phillips

Item 1 – Welcome and apologies

1. The Chairman welcomed those present and in attendance to the meeting, in particular, Antonet Abbink, Corporate Affairs Associate, who was joining the meeting as an observer. Apologies had been received from Anneliese Day QC, Bill Moyes and Helen Phillips. The Chairman noted comments that had been received from these members on the papers to be considered.

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 – Update on the impact of the Kingsway fire incident

4. Richard Moriarty reported that the fire had been very close to One Kemble Street, and that it had taken a number of days for the authorities to recognise exactly what had been damaged. There were only two days following the incident during which the LSB had no systems connectivity. Due largely to the adaptability of colleagues, and the standalone nature of LSB systems, the LSB had quickly recovered systems access and colleagues were able to work remotely from that point. LSB's stakeholders had also been helpful, for example, in offering the use of their offices for meetings. Some meetings, including that with chairs of the regulatory boards, had to be rescheduled.
5. The Board praised the efforts of the Director of Finance and Systems in finding innovative ways to enable the LSB to continue its work, and they expressed their gratitude to the whole executive team for their perseverance in difficult circumstances.
6. The most important lesson to emerge from the incident was the importance of the ability to communicate and access to systems. The Board noted that the LSB business continuity plan will be reviewed, and a paper presented at the May meeting of the Audit and Risk Assurance Committee setting out the process for this review.

Item 4 – Paper (15) 16 Post-Ministerial summit papers: second view

7. Caroline Wallace introduced this item, to update the Board on the cross-regulator work streams. The following points were made in relation to the respective work streams:
 - The deregulatory status report is intended to form part of a cross-regulator submission to the new Ministerial team, to highlight the progress to date on deregulation. This report has been developed at executive level across the regulators, and will be presented to regulator chairs at their rescheduled meeting on 6 May for each regulator to formally endorse
 - The paper on alternatives to handling client money is still a work in progress. The LSB will shortly hold a meeting with the Financial Conduct Authority to ensure that this work does not inadvertently cut across relevant aspects of financial regulation, and the paper will be finalised and brought back to the Board – and the chairs of the regulators - for formal endorsement following this. It is not intended that this paper will be part of the Ministerial submission (although it would be published on the LSB web site and there might for example be a link to it in the Ministerial submission). Rather it has been drafted as a thought leadership piece to challenge the regulators to give practitioners more attractive opportunities to opt out of handling client money

It was noted that the SRA has already published specific proposals which are in line with those set out in this paper.

8. In the course of the discussion, the following points were made:

- Overall, slow but steady progress is being made across the work streams
- The shortage of data in relation to the regulators' activities meant that it was difficult directly to measure the impact of deregulation and market liberalisation. However it was noted that the market evaluation work in the LSB's 2015/16 Business Plan should indicate whether the changes being made were having an impact in terms of market outcomes. It was also noted that the 2015/16 regulatory standards work would pick up with the regulators their collection and use of data about their performance and impact
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] **[FoIA exempt s36(2)(b)(ii)]**
- In terms of future cross-regulator collaboration, the LSB would be asking the regulators to commit more resource to the work. The CLC in particular recognises the benefits of this work and has indicated a willingness to propose topics for future consideration, and to contribute resources.
- It was acknowledged that Ministers new to the sector might query why there were still so many different regulators. This is a feature of the current LSA settlement. It is therefore important for regulators to demonstrate that they are collaborating where this could deliver benefits
- With regard to the alternatives to handling client money, it was acknowledged that the £29m in claims on the compensation fund probably amounted to only a fraction of the total value of transactions. Most of the money held relates to conveyancing, and as such most of it actually belongs to the banks. This could make the alternatives more complex to implement (e.g. by adding extra steps in the transaction chain) than the current arrangements of solicitors/conveyancers handling the money
- It was noted that the views of the Council of Mortgage Lenders (CML) had already been sought. CML is an important stakeholder as it sets the rules for joining the conveyancing panels. [REDACTED]
[REDACTED] **[FoIA exempt s36(2)(b)(ii)]**
although contact would be maintained as the paper continued to develop.

9. **The Board resolved to:**

- a) **Note the progress and next steps on the post-summit work streams**
- b) **Endorse, subject to their comments, the paper summarising progress on deregulation in the legal sector to date, and**
- c) **Endorse the proposal that upon publication of the client money paper, the opportunity would be taken to raise the profile of this issue, and to challenge the regulators to make more progress and to champion change in this area.**

Item 5 – Paper (15) 17 LSB’s leadership role on diversity

10. Kate Webb introduced this item. This followed on from the discussion at the Board meeting in January 2015 at which it was agreed that the LSB would take the opportunity to demonstrate leadership in this area by embedding diversity in its assessed criteria for judging the performance of regulators. The approach proposed builds on the previous model for embedding quality indicators, working with the regulators on good practice, and what their role should be. It was emphasised that the LSB is not looking to be prescriptive about what the regulators should be doing.
11. The following points were made in the course of the discussion:
 - It was noted that the LSB had a legitimate interest in the diversity of the legal sector workforce, not just the legal profession, as, although legal entities are private sector organisations, they have significant public sector relationships and deliver public interest outcomes, and as such they should also demonstrate a commitment to diversity.
 - The regulators had achieved progress, but more remains to be done. The key aim is to emphasise the importance of diversity, and to ensure that it becomes a central consideration within the regulators’ work programmes
 - There is a need to show leadership on what good looks like in this area, based on experiences in other sectors. For example, what happens when women return from maternity leave
 - The Board acknowledged the importance of this area of work, but were concerned about the impact that it could have on the LSB’s resources, considering its other competing priorities. It was noted that the intention was to have the regulators lead the work.
 - It was suggested that this work ought to be linked to a wider concept of diversity, and should include the identification of gaps in the meeting of legal need.
12. **The Board resolved to agree the proposed long term strategy for embedding diversity into the regulatory standards used to judge the performance of the approved regulators.**

Item 6 – Paper (15) 18 Assessing regulatory performance 2015/16

13. Karen Marchant introduced this item to update the Board on the regulatory standards project. At its meeting in November 2014, the Board had endorsed the overall approach to be taken, and to enable more discussion with the regulators than in the past, to help provide a more complete picture of their performance. The aim was also to highlight both good practice and weaknesses, with client satisfaction being one of the indicators. The intention is that the LSB will be targeted and proportionate. As

well as the self-assessment, more work would be done to inform the overall view of each regulator's performance.

14. In response, the Board made the following points:

- Concern was expressed about the time allotted: the regulators would be given from August to December to submit their evidence. It was felt that this was too long in light of the LSB's more targeted and proportionate approach. More time needed to be found within the timetable to review the regulators' evidence and to discuss with them the LSB's emerging findings
- It was suggested that the regulators should be challenged to incorporate this work into their normal ways of working
- It was agreed that the LSB should seek to tailor timetables for individual regulators
- It was agreed that a key area for the LSB's review to focus on should be the information and assurances that regulatory boards use to hold their organisations to account for their performance.

15. **The Board resolved to:**

- a) Endorse the proposed approach to assessing regulatory performance in 2015/16, subject to the timetable being reviewed, and**
- b) Ask that the assessment process includes exploring with the regulators the nature and scope of performance information and assurances that are presented to their boards.**

Item 7 – Paper (15) 19 Transitional protections

16. Bryony Sheldon introduced this item. This is one area of legacy arrangements, affecting a limited and declining number of firms under section 23 and Schedule 5 of the Act. The proposal was for the Board to agree that further work on transitional protection associated with commercial firms be deferred in light of other more pressing priorities and the fact that there is currently no suitable licensing body in place for the affected bodies.

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

- Questions were raised as to whether the existence of transitional protection raised competition issues, as arguably, such firms are more lightly regulated than others. However it was noted that these firms were still required to have COLPs and COLFs in place, and are also subject to supervision and enforcement (with the exception of notaries who are currently not subject to any regulation). It was agreed that the competition issue would be considered further
- It was agreed that this is a low priority issue, as there can be no new special bodies, and there is a relatively low risk to the regulatory objectives.

26. [REDACTED]
[REDACTED]
[REDACTED] [FoIA
exempt s36(2)(b)(ii)]

27. BIS and small business appeals champions

The LSB has made a case to BIS and MoJ that the objectives of the small business appeals champions' scheme might be achieved through the LSB's existing oversight role. Further discussions with BIS and MoJ continue, including around the concept of 'equivalence' between the LSB's oversight role and the requirements of the SBAC scheme.

28. BSB undertaking

- LSB Scenario planning is being undertaken with regard to possible outcomes of the work expected from the BSB. An option that is not supported by the outcome of the BSB's consultation/policy analysis would give cause for concern, as would the failure to submit a rule change application if needed by the end of July
- The Board asked that the importance of this issue is relayed to the BSB given its previous history.

29. Section 120 report from the OLC

The Board were concerned that some of the statements contained within this report could be interpreted as being at variance with information previously provided to the LSB. Clarification should be sought. Questions were raised as to how OLC will deliver on their objectives by developing the requisite systems. It is possible that some of the information that is useful for the LSB is not routinely collected by the OLC, and it was agreed that this would be followed up with them.

30. **The Board resolved to note the contents of the Executive Report, and that clarification would be sought from the OLC as to the contents of their section 120 report.**

Item 11 – Paper (15) 21 Q4 Performance Report: 1 January – 31 March 2015

31. Julie Myers introduced this report, setting out the narrative to be provided to the MoJ at the next quarterly sponsor meeting. The need for the rescheduling projects had been picked up, and the cost of regulation project had proved to be more complex than had at first been thought. Decisions on re-prioritising have been consciously made. With regard to the 2015/16 Business Plan commitments, many of the projects had been staggered so as to smooth out workloads. It was agreed that more focus will in future be placed on the impact of unplanned work.

32. **The Board resolved to:**

- a) Note the content of the draft Q4 performance report, and**
- b) Agreed to its use as a basis for discussion with MoJ.**

Item 12 – Paper (15) 22 Finance Report to 31 March 2015

33. Edwin Josephs introduced this routine update on LSB finances, the last one for the financial year. The Board noted that the budget heads are mostly underspent. The Board would receive the LSB's Annual Report and Accounts 2014/15 at its next meeting in May, and this will contain the final figures for the year. With regard to the outcome of the QASA Supreme Court hearing, it is expected that the ruling would be made in June.
34. **The Board resolved to note the contents of the paper.**

Item 13 – Paper (15) 23 Themes from the 2014/15 Board appraisal process

35. Mike Pitt introduced this item, summarising themes arising from the recently completed Board appraisal process. It was noted that the Board evaluation process is scheduled to commence shortly, and it was agreed that in light of the messages obtained from the appraisals, the form that has been devised for the evaluation should be shortened considerably.
36. The following points were raised in the course of the discussion of the appraisal themes:
- While it was acknowledged that there was a danger that guest speakers could dominate an agenda, it was noted that they do bring different perspectives to Board discussions. It was agreed that one or two such speakers should be invited each year, and that they would be drawn both from among the regulators as well as other industry figures. It was suggested that the lunch and learn process could be used as an initial sifting mechanism
 - With regard to the idea of establishing an informal sounding board or think tank, which would include external members, it was acknowledged that this could be resource intensive. It was suggested that it could be based on the work that is already being done with Professor Stephen Mayson
 - With the departure of key executives and long standing Board members, it was suggested that an annual event be organised between the Board and the Executive Group, but it is important that this is constructed around important developments
 - It was agreed that third party involvement in Board evaluation, in the form of members of the executive who attend Board meetings, should be introduced
 - With regard to the proposal to hold an LSB conference, it was noted that a public event, to be held outside London, is already being planned, aimed more directly at practitioners and stakeholders on the ground. Although it was acknowledged that there are already a number of conferences on legal regulation, the importance of the LSB's research programme warrants an

event that would have the effect of maximising its impact. It was agreed that consideration be given to holding a conference once every two years.

- 37. The Board resolved to note the content of the paper, and that the Executive would consider the comments made in the course of the discussion.**

Item 14 – Any other business

- 38. There was no other business.

Item 14 - Date of next meeting

- 39. The Board would next meet on 27 May 2015 at 13.00. The venue would be the Medical Research Council, One Kemble Street, London WC2B 4AN.

AK, 05/05/15

Signed as an accurate record of the meeting

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Date
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