

Minutes of a meeting of the Legal Services Board (LSB) on 27 January 2015

Date: 27 January 2015
Time: 13.00-15.30
Venue: Office of Rail Regulation, One Kemble Street, London

Present: Sir Michael Pitt Chairman
(Members) Terry Babbs
Anneliese Day QC
Marina Gibbs
Bill Moyes (items 1-4)
Ed Nally

In attendance: Karen Afriyie Administrative Assistant
Nicholas Baré Regulatory Associate (item 5)
Nick Glockling Legal Director
Edwin Josephs Director of Finance and Services
Richard Moriarty Chief Executive Designate
James Meyrick Regulatory Project Manager (item 5)
Julie Myers Corporate Director
Tom Peplow Regulatory Associate (item 7)
Dawn Reid Head of Regulatory Performance and Operations
Caroline Wallace Strategy Director
Kate Webb Head of Regulatory Reviews and Investigations (item 6)
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, including Richard Moriarty, Chief Executive designate, who was observing this meeting before taking up post on 2 February, and Karen Afriyie, a new LSB colleague also joining the meeting as an observer. Apologies had been received from David Eveleigh. Bill Moyes advised that he would need to leave the meeting at 14:00.

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 – Liaison with the Bar Standards Board

4. Bill Moyes reported that he had met Simon Lofthouse QC, his informal contact at the Bar Standards Board. [REDACTED]
[REDACTED]
[REDACTED] [FOIA exempt: s36(2)(b)] It was also suggested that similar questions may need to be raised with regard to the other regulators.
5. In the course of the discussion the following points were made:
- The benefits of Board members maintaining direct contact with counterparts on regulatory boards was emphasised, with the success of the meeting on the diversity work stream cited as a good example of this – although Board members reported mixed responses to their efforts to make contact with their counterparts
 - The Chairman confirmed that he meets the Chairs of the regulatory boards on a regular basis, but that the focus of these meetings tends to be on the progress that regulators are making in meeting regulatory objectives
 - It was agreed that it would be useful to hold discussions with other regulators' Boards/Board members to talk about the medium-term future rather than the detail of current issues, probably starting with the larger regulators
 - It was stressed that such conversations should take account of the LSB's Strategic Plan and the Consumer Panel's 2020 report, and that conversations are not started from scratch.
6. Board members were encouraged to continue to build on their links with their allocated regulatory bodies. It was also agreed that Richard Moriarty would consider how best to arrange the broader conversations with regulators.

Action: Richard Moriarty to take forward plans for Board to Board discussions

Item 4 – Paper (15) 01 CLC section 69 recommendation

7. Dawn Reid introduced this paper, the purpose of which was to update the Board on steps being taken to secure the extra powers that the CLC is seeking. The Board were reminded of the correspondence that had taken place between the LSB and the MoJ, and that although there are differences of opinion as to preferred method for securing the extra powers, there is agreement on the ultimate goal. In accordance with the suggestion made by the Board at its last meeting, external legal advice had been sought, and this confirms that the LSB has the power to make the section 69 recommendation.
8. In the course of the discussion, the following points were made:
- The CLC has identified the Deregulation Bill as a possible primary legislative vehicle by which the additional powers could be secured. The proposed

amendments to the Bill have been tabled, and they replicate the section 69 recommendation. They are to be discussed in the House of Lords in February.

- [REDACTED] [FOIA exempt: s36(2)(b)] This view is not shared by CLC. In view of the stage of the legislative cycle that the Bill has reached, it is not thought that there is sufficient time for a detailed analysis of the proposed amendments; it is likely that they would either all be accepted or all rejected.
- It was agreed that the LSB needs to provide an explanation as to why the consultation process had not yet been concluded. The legal advice received has confirmed that there are no unique legal risks to this consultation, as the process used is the same as in previous section 69 recommendations
- In the event that the Deregulation Bill option is unsuccessful, the section 69 order could be revisited. At that point, it would need to be understood why the primary legislation option failed, in case the reasons for this were relevant to further attempts to progress the section 69 order.
- It was acknowledged that the position would be clearer by March.

9. The Board resolved to consent to

- a) Note progress since the last meeting**
- b) Note the summary of the external legal advice, and**
- c) Agree to the publication of a holding statement and delegating the final sign off to the Chairman and Chief Executive**

[Bill Moyes left the meeting]

Item 5 – Paper (15) 02 Regulatory Standards report for 2014/15

10. Dawn Reid introduced this item, supported by James Meyrick and Nicholas Baré. The purpose of the paper was to address the main conclusions emerging from the regulatory self-assessment update report. Some late changes had been made to the format of the report. Also, as comparisons of the scores between the different regulators would be difficult and some had not scored themselves, it was decided not to include scoring in the final report. However, scores will be in the public domain by virtue of being attached to the Board paper.
11. In the course of the discussion, the following points were made:
- The main purpose of this report was to highlight good practice, as well as those areas that the LSB is likely to be focusing on in the 2015/16 exercise
 - Overall, progress has been made by the regulators. They have mostly delivered on their action plans. In particular, more modern approaches to supervision are being implemented

- However, it was noted that scope for improvement remains, particularly in gaining a better understanding of the needs and interests of the consumers using lawyers' services. This was seen as a significant gap in evidence
- Risks were also identified in delivery of the changes that had been promised, and it was noted that limited improvements had been made in corporate governance and scrutiny
- It was reported that the BSB had done good work in improving its executive capacity, but more needs to be done on the non-executive side. It was also noted that the SRA now has a board secretariat
- As set out above, some of the regulators had felt unable to score themselves as this was an update exercise. It was agreed that this would need to be explained more clearly, and that for future exercises, the LSB's expectations should be explicitly set out.

12. In relation to the report itself, the following comments were made:

- It was unclear what the actions plans of each regulator were, and therefore what the findings were being assessed against
- There was a need for greater clarity about each regulator's priorities, and for the LSB to send a stronger signal about what it is expecting to happen. The regulators should understand that they are expected to do things differently, and that they would be held to account. They should be reminded of the importance of this process.
- The high-level requirements on individual regulators are to be raised at Chair-to-Chair meetings. These expectations will also be publicised.

13. The Board resolved to agree that the changes to the draft report would be signed off by the Chairman and Chief Executive.

Item 6 – Paper (15) 06 Section 15: update and discussion paper and initial findings

14. Kate Webb introduced this item, consisting of an initial analysis relating to restrictions on practising rights for in-house lawyers. Concerns had been expressed that some regulators had introduced rules that exceeded the requirements of section 15, and that these rules were unnecessary and restrictive. This thematic review enables the LSB to take a sector-wide view of the different approaches, and requires regulators to provide the evidence and rationale to support their approach.

15. In drafting the paper, the practising rules of all regulators had been considered, and it was noted that three regulators: SRA, BSB and IPReg have specific rules for in-house practice. It is proposed that the discussion paper would be available for response and feedback from stakeholders for about two months, following which the merits of different options would be considered, and recommendations made to the Board in May 2015.

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

- The Board stressed that it was as important to understand why some regulators did not impose any rules in this area as it was to understand why others did have particular rules in place. The second half of the project would include looking at whether, where specific rules were in place that may go further than the requirements of section 15, there was evidence of risk to the regulatory objectives that justified their imposition, and whether they conformed to better regulation principles
- It was noted that this is a complicated part of the Act, and the Executive were asked to seek ways of simplifying the message. The use of tables in the paper was commended
- The Board expressed the view that the paper should be more assertive in setting out the LSB's view on the subject
- It was also suggested that the analysis of regulators' current arrangements should be brought forward to an earlier part of the report.

17. The Board resolved to

- a) Note this update, and**
- b) Delegate final sign off of the discussion paper to the Chairman and the Chief Executive.**

Item 7 – Paper (15) 04 Regulators' progress against delivery of diversity guidance

18. Tom Peplow introduced this item, the second review of regulators' progress against the LSB's guidance on diversity data and transparency. As with previous reports, this had been produced for general publication, although some comments within the report relate to specific actions that regulators are required to take.
19. In the course of preparing the report, the following points had been noted:
 - Most regulators are still in the early stages of implementing the guidance, although they are now establishing their evidence base. Improvements in the collection of data continue to be made
 - Regulators need to do more with the data that they have collected, in order to drive improvements in recruitment and particularly progression and retention within the profession.
20. The LSB continues to monitor progress in this area, and it may be that a thematic review could be considered, in the event that questions arise about the regulators' ability to achieve the required improvements.
21. The following points were made in the course of the discussion:
 - The question was raised about the value that data collection is adding to the aim of creating a truly diverse legal workforce. It was acknowledged that data collection was only the starting point, and the LSB needs to inject a sense of

urgency into the debate. It was suggested that the report should be explicit about the expectations on regulators, and include a description of what the LSB considers good practice to be

- It was suggested that in describing good practice, examples could be drawn from other sectors and organisations (including from within the legal sector itself) such as blind CVs and the use of apprenticeships
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] **[FOIA exempt: s36(2)(b)]**
- It was suggested that a few Board members should meet in a few weeks' time to address the issue of how the LSB could show effective leadership in this area.
- It was also noted that it has now been more than a year since the LSB hosted a meeting of all the regulators, and it was suggested that such meetings be held more regularly to help maintain momentum.

22. The Board resolved to

- a) **Agree that further work is to be done on the draft report before publication, with input from a subgroup of Board members on how best the LSB can show leadership in this area.**

Item 8 – Minutes of the meeting of 26 November 2014

23. The minutes of the meeting had previously been approved as an accurate record by correspondence on 10 December. The Chairman formally signed the minutes.

Item 9 – Report of action points

24. 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. It was confirmed that the updated Governance Manual documents would be circulated to Board members by the end of this week.

25. The Board noted the updates to the report of action points.

Item 10 – Paper (15) 05 Executive Report January 2015

26. Caroline Wallace and Julie Myers jointly presented his progress report. The Board noted the following:

Staffing

27. The high level of staff change of recent months has continued, with one further resignation in January. Most of the existing vacancies have now either been filled, or recruitment exercises are underway. It was confirmed that all of the departing colleagues are leaving to take up development opportunities which the LSB, due to its size, is unable to offer. It was also noted that two of the vacancies, that of Head of Regulatory Reviews and Investigations, and one of the Regulatory Associate roles have been filled by internal candidates.
28. Exit interviews are conducted with departing colleagues, and the only common theme is that in all cases the new roles amount to promotions. With regard to pay, it was noted that the LSB's rates are suitably attractive to new joiners, but as public sector pay rises have been restricted to 1% in recent years, this allows the organisation very little flexibility to give meaningful increases. In order to provide policy colleagues with more varied work experiences, the approach to matrix working is to be refreshed. The new Business Plan provides a platform for this.

Board appointments

29. Interviews for new LSB lay members have taken place, and Mike Pitt was on the panel. Decisions are now awaiting ministerial approval. Long listing for the non-lay vacancy has taken place, and final interviews are scheduled for the latter part of February. With regard to the OLC appointments, a large number of applications were received for both the lay and non-lay roles, and some strong candidates were identified at the long listing meeting which took place recently. It was noted that four appointments are to be made to a Board of seven, and of the existing members, two were appointed last autumn.

LSB strategic Plan 2015-18, Business Plan 2015/16 and budget

30. The Strategic Plan and Business Plan were published for consultation on 10 December. The first of two stakeholder workshops had had a good turnout and it generated useful discussions. Themes arising from the discussions included:
- Whether the strategic theme titled “enabling need for legal services to be met more effectively” was seen by the LSB as being less important than the other theme “breaking down regulatory barriers to competition, growth and innovation”. It was explained that the two are linked
 - On the issue of affordability, participants wanted to know what the LSB would be doing about legal aid
 - The LSB was urged to do more on public legal education, on the basis that this had the potential to make legal processes more transparent and to lower costs. Interestingly, few of those present were aware of the existence of the Legal Choices website
 - There was acknowledgement of the need for the LSB to consider the role and impact of the unregulated sector
 - There was considerable support for the proposal to streamline the LSB's statutory approval process.

The second workshop is to be held on 6 February. The Strategic and Business Plans will be brought back for finalisation by the Board in March.

Deregulatory work streams following Ministerial summit in July 2014

31. The next regulator Chairs' meeting is to be held on 19 February. Steady progress is being made on the various work streams. Professor Stephen Mayson has held the first of the planned workshops on identifying legislative options beyond the Legal Services Act. Meetings have also been set up to consider clausal changes and alternatives to handling client money, and work on the deregulatory status report is continuing. The representative bodies are keen to be kept informed on the progress of these work streams, and to this end, the Law Society has offered to host a forum in March.

Cost of regulation project

32. The survey of practitioners on the cost of regulation was successful, with about 1000 responses received. These are now being analysed. In depth interviews are now to be held with about 150 practitioners who volunteered to participate in this part of the project. The Board wondered whether the pre-election purdah period, commencing at the end of March, could affect this and other LSB work. It was agreed that work could carry on during the purdah period, but that care would need to be taken in making any public statements. It was confirmed that the Strategic and Business Plans would be published before purdah.

Office for Legal Complaints

33. Terry Babbs provided an update on meetings that he had had with OLC Board members. In relation to their performance management arrangements, he reported that they were now conducting a root and branch review of their metrics. He had also met with the Chair of their Audit and Risk Committee with a view to gaining an understanding of how both organisations address joint risk. As a result of this meeting:

- The OLC accept that their current risk register does not reflect OLC –related risks on the LSB Corporate Risk register
- It was time to consider afresh the Memorandum of Understanding between the LSB and OLC in light of the refresh of the MoJ/OLC Framework Document.

The executive will consider these issues with the LSB's Audit and Risk Assurance Committee.

34. The Board resolved to note the contents of the Executive Report.

Item 11 – Paper (15) 06 Q3 Performance Report: 1 October – 31 December 2014

35. Julie Myers presented this report, which is the routine quarterly summary of the LSB's performance in delivering its Business Plan commitments, and forms the basis of the submission to MoJ.
36. The following points were made in the course of this discussion:
- With regard to the event at Inner Temple attended by Terry Babbs and Caroline Wallace, it was noted that the LSB has previously liaised with members of the Inns of Court, but the regularity of this engagement had slipped recently
 - The Board noted the slippage on some of the projects, and this was largely due to staff changes. Work is being re-prioritised in this regard.
37. **The Board resolved to:**
- a) Note the content of the Q3 performance report, and**
 - b) Agree that it be used as a basis for discussion with MoJ.**

Item 12 – Paper (15) 07 Finance Report to 31 December 2014

38. Edwin Josephs introduced this routine update on LSB finances. . With regard to legal costs, it was confirmed that the QASA costs had already been incurred by the LSB hence the overspend on this budget heading, and that if the LSB does recover its costs, these would be credited to the month in which they are paid. The Board were reminded that the protected costs order meant that the LSB would not recover the amount that it had actually spent defending the action.
39. **The Board resolved to note the contents of the paper.**

Item 13 – Any other business

SRA Professional Indemnity Insurance rule change application

40. Dawn Reid raised this item, indicating that it had been brought back to the Board because the Board had made the original decision. She provided the following explanation:
- The Board had originally approved all aspects of the SRA's PII application, with the exception of the proposal to reduce the minimum level of PII to £500k
 - The approved rules contained a commencement provision of 1 October 2014 (seven weeks after the approval date), and applied to insurance policies effected after that date. The SRA is required to give insurers two months' notice of any changes before commencement. There were also one or two other technical issues with some of the wording, which had been drafted assuming full approval of the SRA's original proposals.
 - The suggested solution was to revoke the rules that had been approved, make technical changes to the 2013 rules (which would bring about the same

solution as the approved 2014 rules); SRA propose that these changes come into effect on 1 April 2015. As the SRA was proposing to revoke both the Indemnity Insurance Rules (2014) and the Amendment Rules, this would mean that the outcome approved by the Board in November 2014 (that firms must assess their insurance needs and obtain the appropriate level of insurance) would also be revoked.

- The Amendment Rules now proposed by the SRA would introduce the same outcome into the Code of Conduct from 1 April 2015 along with changes to the Indemnity Insurance Rules 2013, which would have the same effect as changes approved by the Board in November 2014.

41. The Board expressed their concern about revoking the Indemnity Insurance Rules and Amendment Rules, and they enquired whether an alternative way of dealing with the matter could be found. In the course of the discussion, the following points were raised:

- There might be a risk of practitioners having acted on the rules that were approved by the LSB in November and then finding themselves having taken action that they did not need to take, potentially at a cost to themselves
- The Board wanted to know whether the SRA would be prepared to share its legal advice on this issue with the LSB
- There was concern that this apparently complicated way of dealing with the issue would create confusion and lack of clarity for practitioners.
- It was noted that this situation could also have an impact on insurers.

42. **The Board resolved that**

- a) Caroline Wallace and Dawn Reid should consider how best to address the Board's concerns,**
- b) the response to the Board's concerns and the Executive's recommendation is to be communicated to the Board via email, and**
- c) Richard Moriarty is to sign off the decision**

Item 14 - Date of next meeting

43. The Board would next meet on 25 March 2015 at 13.00. The venue would be the Office of Rail Regulation, 2nd floor, One Kemble Street, London WC2B 4AN.

AK, 03/02/15

Signed as an accurate record of the meeting

.....
Date
.....