

Minutes of a meeting of the Legal Services Board (LSB) on 7 July 2015

Date: 7 July 2015
Time: 13.00-15.00
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
 William Moyes
 Ed Nally (via telephone link)
 Helen Phillips

In attendance: Caroline Wallace Strategy Director (items 1-11)
 Dawn Reid Head of Regulatory Performance and Operations (item 5)
 Edwin Josephs Director of Finance and Services
 Jenny Hart Business Planning Associate (items 3 and 10)
 Jessica Clay Legal Advisor (items 1-11)
 Kate Webb Head of Regulatory Reviews and Investigations (items 5-6)
 Marlene Winfield OBE Consumer Panel Member (items 1-11)
 Nick Glockling Legal Director (items 1-11)
 Stephanie Chapman Consumer Panel Associate (items 1-11)
 Adewale Kadiri Corporate Governance Manager (minutes)

Apologies: Anneliese Day QC and Julie Myers

Item 1 – Welcome and apologies

1. The Chairman welcomed those present and in attendance to the meeting, in particular, Stephanie Chapman, Jessica Clay and Marlene Winfield, who were joining the meeting as observers, and Ed Nally, joining via telephone link. Apologies had been received from Anneliese Day QC.

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 – Paper (15) 36 LSB and OLC relationship – future approach

4. In Julie Myers' absence Richard Moriarty introduced this item, reminding the Board that the letter informing the OLC of the LSB's intention to use its formal statutory powers had been issued two weeks ago. The purpose of the present paper was to set out the strategic relationship that exists between the LSB and OLC, and discuss the range of 'soft' and 'hard' levers available to the LSB in exercising its statutory responsibilities.
5. The following points were made in the course of the discussion:
 - It was acknowledged that the governance relationship between the LSB and OLC is unusual and that while the LSB does not have, in relation the OLC, 'enforcement powers' as it does in respect of the approved regulators, the public perception is that the LSB would be able to exercise levers to ensure the performance of OLC.
 - The terms of reference for a review of OLC governance have now been agreed with the MoJ. It was agreed that it would be important for the LSB to be involved in this work, as this may be of assistance in answering some of the questions raised in this paper, and inform the review of the LSB's Memorandum of Understanding with the OLC.
 - Building on the paper, further consideration should be given to the question of what a good relationship with the OLC should look like. For example, it was also suggested that work be done to understand, possibly by consulting with other ombudsman schemes, what constitutes good performance for an ombudsman.
 - As the LSB appoints the OLC Board and approves its budget, it was suggested that there might be a perception that the relationship was analogous to that with a wholly owned subsidiary. The Legal Director agreed to consider whether this view accords with the law in this area.
 - It was agreed that the issue of the LSB's relationship with OLC should be revisited at the September meeting.
6. **The Board resolved**
 - a) **To note the statutory nature of the Board's relationship with the OLC as set out in this paper, and**
 - b) **To receive a further paper at the September meeting on how we should describe the relationship with OLC and what practical options could be available to the Board in the event that OLC performance risk crystalizes.**

Item 4 – Paper (15) 37 Post-Ministerial summit work streams: Ministerial submissions and next steps

7. Caroline Wallace introduced this item. Both the joint submission as agreed by all the regulators, and a separate submission of the legislative options report by the LSB (with the agreement of the regulators) had been made to the Minister. The regulatory Chairs meeting held on 30 June had gone well, in spite of some last minute ambivalence on the part of some of the regulators. After some delicate negotiations, it had been possible to draft a paragraph for the legislative options paper with which all the regulators could agree.
8. The following points were made in the course of the discussion:
 - The LSB is pleased with the outcome of this work, even though the specific proposals on which agreement was eventually reached are not the most radical. The success was in actually working collaboratively and reaching a consensus.
 - The Board expressed their gratitude to the Strategy Director and all colleagues who had been involved in the work streams. They were particularly impressed by the quality of the papers within the ministerial submission.
 - Without a ministerial mandate, it may be difficult to achieve further collaborative working across all the regulatory bodies. It is more likely that, going forward, the LSB would work on specific proposals with subsets of regulators, or – particularly in relation to broader legislative reform - go it alone.
 - The Board noted that the likelihood of imminent legislative change is low, but that the ministerial mandate could be to continue to work with the regulators on achieving further deregulatory reforms within the current settlement.
 - In terms of next steps, it was noted that the LSB is already in dialogue with MoJ officials about implementing the regulators' proposals for relatively minor legislative changes.
 - Options for future work could include:
 - Compensation funds
 - Standard of proof for disciplinary hearings
 - Permitted purposes.
 - It would be important that, in developing its thinking, the LSB should be clear on its own views about the future.
9. **The Board resolved to:**
 - a) **Note progress and next steps on the post-summit work streams, and**
 - b) **Endorse the cross-regulator 'thought leadership' paper on alternatives to handling client money.**

Item 5 – Paper (15) 38 Consultation on section 69 order to modify functions of the CLC

10. Dawn Reid presented this paper, the purpose of which was to seek the Board's agreement to formally close the consultation undertaken in the summer of 2014 on the draft section 69 order to modify the CLC's functions. The Board were reminded that MoJ had been unwilling to agree to the modification by way of a section 69 order, but a legislative vehicle had been found, in the form of the Deregulation Act 2015, for making the changes. The relevant sections of the Act had come into effect on 30 June. The Board noted that this had at times been a difficult process, but were pleased that a favourable outcome had been achieved.
11. **The Board resolved to:**
- a) **Agree that the recommendation to the Lord Chancellor in respect of the section 69 order is no longer required, and**
 - b) **Agree to the publication of the statement on the LSB website confirming the Board's decision not to proceed with the recommendation on the order, delegating sign-off of the final document to the Chief Executive.**

Item 6 – Paper (15) 39 Thematic review on regulatory restrictions on in-house lawyers

12. Kate Webb introduced this paper to update the Board on the responses received to the LSB's discussion paper, published in February 2015, on the rationale for practising restrictions on in-house lawyers. The consultation had revealed that there is a range of views on this matter, and no clear consensus across the regulators. It was therefore suggested that the merits of these options be considered further in advance of recommendations being brought back to the Board later in the year.
13. The following further points were made in the course of the discussion:
- Both the BSB and SRA are actively considering their approaches in this area.
 - The options available to the LSB include issuing guidance or making a recommendation to the Lord Chancellor, but consideration will also be given to using more informal approaches to achieve the desired outcome.
 - The Board were content with the proposed next steps, but cautioned against doing away with all restrictions, as this could increase the risk to which in-house lawyers are exposed in relation, for example, to conflicts of interest.
 - The Board noted that the scope of the work to be done by SRA and BSB has widened, and as such, that the timetables previously set may shift.
14. **The Board resolved to**
- a) **Note the summary of responses to the discussion paper, and**

b) Delegate the approval of publication of the summary of responses to the Chief Executive.

Item 7 – Minutes of the meeting of 27 May 2015

15. The minutes of the meeting had already been agreed via electronic correspondence. It was agreed that they would be signed by the Chairman as an accurate record.

Item 8 – Report of action points

16. 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.
17. **The Board noted the updates to the report of action points.**

Item 9 – Paper (15) 40 Chief Executive's update – July 2015

Richard Moriarty presented his update report.

18. OLC and MoJ issues
- The OLC's application to become an ADR entity has now been received, and the Board agreed to extend the delegation to the sub-group that had been set up to consider this. The deadline for the introduction of trader information requirements has now been delayed until October.
 - The Board noted the OLC risk environment. This included continuing IT challenges at LeO and the imminent departures of key staff at senior levels.
 - Receipt of the latest monthly performance reports, as well as those on governance and the meeting of threshold targets expected in September, and the final November report, would enable a better understanding of the OLC's approach to performance monitoring.

The Board resolved to extend the delegation to its OLC ADR certification sub-group until such a time as the OLC's application could be certified.

19. QASA
The Board recorded its thanks to the executive team for helping ensure the successful defence of the judicial review claim at the Supreme Court. It was confirmed that the LSB will seek to reclaim its costs up to the cap limit, but that these will be returned to the profession by way of a cut to next year's levy.
20. Cost of regulation project
While the LSB remains interested in ascertaining whether legal sector regulators provide value for money, the focus of the project will shift away from quantitative benchmarking (which had proved to be impractical for the time being) to providing greater transparency of their costs. There will also be more of an emphasis on finding out how regulator boards hold their executives to account for providing value for

money. The commitment to benchmarking remains, but this has been postponed for now. It was acknowledged that it had taken time to build up systems in other sectors to enable regulators to benchmark their costs.

21. CILEx Regulation and Internal Governance Rules

The Board were content that the arrangements that had been put in place following the CILEx Regulation Chair elect's decision not to take up post are suitable and proportionate. Although the CILEx Regulation Board does not currently have a lay majority, the interim Chair, a lay person, will have a casting vote. This is a temporary arrangement until a replacement Chair is appointed, expected in October 2015.

22. Better regulation policy

BIS is stepping up its aim of reducing regulatory burdens, with the commitment to introduce an Enterprise Bill that will commit central government and independent regulators to savings from deregulation to the tune of £10 billion. A proportion of such reductions will fall to legal services regulators and therefore the LSB. It was acknowledged that in this environment, any proposals to increase the scope of regulation would be likely to have difficulty in gaining approval, regardless of the strength of supporting evidence.

23. Communications

The Board's attention was drawn to the letter, at Annex A, received from the Lord Chancellor regarding the quality of advocacy. The LSB would be keen to work with MoJ on this, considering the LSB's involvement in QASA and on education and training.

24. **The Board resolved to note the contents of the Chief Executive's update.**

Item 10 – Paper (15) 41 Q1 Performance Report: 1 April – 30 June 2015

25. Jenny Hart introduced this item in Julie Myers' absence. The report is in the same format as in past quarters, and incorporated the performance report that will be submitted to MoJ. Highlights included:

- The decision had been made to postpone some publications to achieve a more even spread.
- All previously vacant posts have now been recruited to, and the new Consumer Panel Manager will take up post in August. An additional Regulatory Associate has been recruited to provide six months' maternity cover.
- The Consumer Panel's Annual report has been published, and the joint research report on unbundling is being finalised.

26. **The Board resolved to note the contents of the Q1 report, and that it would be used as the basis for discussion with MoJ.**

Item 11 – Paper (15) 42 Finance Report to 31 May 2015

27. Edwin Josephs introduced this routine update on LSB finances. It had not been possible to present the June report to this meeting, and this will be circulated electronically in due course. The LSB's finances are in a good state, and the position is comparable to what it was this time last year.
28. **The Board resolved to note the content of the Finance Report.**

Item 12 – Paper (15) 43 Board evaluation 2015: analysis of responses

29. Mike Pitt introduced this item, summarising the responses from the Board evaluation exercise. It was agreed that the messages fairly represent the views of members about how it felt to sit on the Board.
30. The following points were raised in the course of the discussion:
- The Board commended the report, and felt that it provided a strong position from which to move forward.
 - It was agreed that the other matters referred to in paragraph 21 should be included on the action plan
 - The question was raised as to whether, in light of the size of the organisation and the Board, and the range of issues on its agenda, it was necessary to meet so regularly
 - It was agreed that Board members would have an opportunity to suggest additional agenda items in advance of Board meetings
 - With regard to the possibility of holding a stocktake, it was suggested that this could take the form of an informal workshop. One idea for such an event was to invite ombudsmen from other sectors to help in the consideration of what good looks like.
 - It was suggested that of the Board dates currently being agreed, one could be taken up for this stock take and another for a social gathering. It would also be useful to invite the new MoJ permanent secretary. Dates in October and in the spring were put forward as possibly the most suitable for such events.
 - It was agreed that board development and succession planning required urgent consideration, as long standing members would be departing at the end of September, and the first terms of two other members conclude at the end of the financial year. There were doubts as to whether appointments to replace those leaving at the end of September would be made on time.
31. **The Board resolved to note the themes identified from the evaluation exercise, and to adopt the draft action plan, subject to the additions discussed.**

Item 13 – Any other business

32. None raised.

Item 14 - Date of next meeting

33. The Board would next meet on 8 September 2015 at 13.00. The venue would be the Office of Rail and Road, One Kemble Street, London WC2B 4AN.

AK, 09/07/15

Signed as an accurate record of the meeting

.....
Date
.....