

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

Date: 27 May 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
 Anneliese Day QC
 David Eveleigh (via telephone link)
 Marina Gibbs
 William Moyes
 Ed Nally

In attendance: Edwin Josephs Director of Finance and Services
 Emma Kelly-Dempster Regulatory Project Manager (items 1-14)
 Jenny Hart Business Planning Associate (items 3, 4, 12)
 Julie Myers Corporate Director
 Kate Webb Head of Regulatory Reviews and Investigations (item 5)
 Marlene Winfield OBE Consumer Panel Member (item 8)
 Nick Glockling Legal Director (items 1-14)
 Steve Brooker Head of Research and Development (items 1-14)
 Adewale Kadiri Corporate Governance Manager (minutes)

Apologies: Helen Phillips

Item 1 – Welcome and apologies

1. The Chairman welcomed those present and in attendance to the meeting, in particular, Emma Kelly-Dempster, who was joining the meeting as an observer, and David Eveleigh joining via telephone link. Apologies had been received from Helen Phillips, but she had provided comments in advance on the papers and these were circulated to members.

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) 24 Proposals for managing OLC performance risk

4. [REDACTED]

5. [REDACTED]

6. [REDACTED]
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]

7. [REDACTED]

[REDACTED]

8. [REDACTED]

- [REDACTED]
- [REDACTED]

[FOIA exempt s36(2)(b)(c)]

Item 4 – Paper (15) 25 Certification process for OLC relating to the ADR Directive

9. Nick Glockling introduced this item. Under recently introduced Regulations implementing the EU ADR Directive, the LSB has been designated as “Competent Authority” for the purpose of certifying OLC as an ADR entity. [REDACTED]

[REDACTED]

[FOIA exempt s36(2)(b)(c)]

10. [REDACTED]

[FOIA exempt s42]

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

- It was acknowledged that almost all complaint handling schemes have time limits to avoid the operational inefficiency that comes with investigating stale complaints. In some cases, these limits are enshrined in statute. The focus of the ADR Directive on the other hand, is on making it easier for consumers to gain redress.
- It was noted that the Financial Conduct Authority had implemented changes to the rules for the Financial Ombudsman Service, that created a form of

'dual' jurisdiction for the FOS which saw it keep time limits for complaints made under the statutory scheme but lose time limits for complaints submitted voluntarily under the ADR regime. [Redacted]

[Redacted] **[FoIA exempt s36(2)(b)(c)]**

- An outcome which saw legal services firms being required to signpost to two ADR schemes, LeO for Legal Services Act purposes and a certified ADR scheme for ADR Regulations purposes was wholly undesirable. This would cause confusion for consumers and service providers and expose the LSB and OLC to reputational risk.
- [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
- [Redacted]
[Redacted]
[Redacted]
- [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted] **[FoIA exempt s36(2)(b)(c)]**

12. The Board resolved to:

- a) [Redacted]
[Redacted] **[FoIA exempt s36(2)(b)(c)]**
- b) **Delegate authority to a Board sub-group comprising Mike Pitt, Richard Moriarty, Helen Phillips and Terry Babbs to consider during June 2015 whether to consent to any submission for amendments to the OLC scheme rules, and if so, to decide upon any subsequent OLC application to become an ADR entity.**

Item 5 – Paper (15) 26 Investigation: Bar Council and internal governance rules – compliance with the fourth undertaking

- 13. Kate Webb presented this paper for the Board's information, and to explore members' appetite for risk in relation to the potential outcomes of the work that the BSB has carried out. It was stressed that the LSB is not seeking to pre-empt the outcomes; but wishes to identify risks and consider options.
- 14. In the course of the discussion, it was noted that:

- Conversations between the LSB and BSB at senior executive level have, over time, provided more reassurance. The BSB's consultation has sought views from beyond its traditional constituency, and it expects to meet the timetable that was set, although contingency arrangements are in place. [REDACTED]
[REDACTED] **[FoIA exempt s36(2)(b)(c)]**
- It was acknowledged that the issue could generate significant publicity, and it was therefore important that the rationale behind whatever decision is made is clearly set out.
- It was agreed that the lessons learnt from this work would be shared with the Board in the autumn.

15. The Board resolved to:

- a) Note the preparations that are being made ahead of the end of July deadline for the BSB to complete its review and take the necessary action**
- b) Agree that this issue will be revisited in the autumn for consideration of any lessons that can be learnt for the future.**

Item 6 – Paper (15) 27 Annual Report of the Audit and Risk Assurance Committee 2014/15

16. Terry Babbs presented this report to the Board about the activities of the ARAC. He confirmed that the Committee had discharged all of its functions in 2014/15, including full scrutiny of the LSB's Annual Report and Accounts 2014/15.
17. In the course of the year:
 - The Committee had been mindful of the activities of the external auditors, and although the LSB's total reward scheme had been subjected to greater scrutiny this year as a result of the concerns raised with regard to the OLC scheme, no issues had been identified.
 - The Committee had reviewed the internal auditors' work. This had been low key but useful.
 - On risk management and controls, the Committee's work had complemented that of the Gateway Group in looking afresh at the risk register. Following a recommendation from the internal auditors, the use of inherent risk scoring (i.e. the consideration of risks before mitigation) is being piloted with red rated risks and those with a score of 12.
 - The Governance Manual was reviewed.
 - The Committee had commissioned and approved a new approach to the assessment of its effectiveness.
18. **The Board resolved to endorse the report about the activities of the Audit and Risk Assurance Committee during 2014/15.**

Item 7 – Paper (15) 28 Draft LSB Annual Report and Accounts 2014/15

19. Richard Moriarty presented the draft Annual Report and Accounts. This had been scrutinised by the ARAC. The Report is to be signed on 28 May and is scheduled to be laid before Parliament on 9 June.
20. **The Board resolved to:**
 - a) **Agree the draft LSB Annual report and Accounts 2014/15, and**
 - b) **Delegate to the Chairman and the Chief Executive authority to approve the submission of the LSB Annual Report and Accounts 2014/15 to the Comptroller and Auditor General and Lord Chancellor.**

Item 8 – Paper (15) 29 Legal Services Consumer Panel Annual Report 2015

21. Marlene Winfield attended to introduce this report. She highlighted the Panel's Third Consumer Impact Report, which had been informed by five years of data from the annual Tracker survey, and has started to identify trends. One of these relates to concerns around the apparent lack of social mobility which has led to some interesting parallels between unbundling and the use of online tools, with both being perceived as either creating threats of exclusion or providing opportunities, according to need.
22. The Panel's 2020 report had been well received, and has continued to influence thinking, including among groups that had previously been sceptical of the Panel's worth. The Panel also introduced two practice guides to help shape day to day regulatory practice, and training sessions on their use had been held with two of the approved regulators.
23. The Panel has an ambitious work programme, including a focus on access to justice, building on the 2020 report, and the unbundling and online projects. There will also be focus on the experience of litigants in person, further work on open data and complaints handling.
24. With regard to the proposal for joint research with the Legal Ombudsman, it was noted that this had come about following benchmarking which showed that satisfaction scores among consumers whose complaints had not been upheld by LeO were much lower than in other schemes. The question had been raised whether this had to do with the way in which decisions are communicated, and it had been proposed that work would be carried out to explore this point during 2013/14. This had not happened, and it is now being carried over into 2015/16.
25. The Board expressed its gratitude for the work done by the Panel, noting that its reports are extremely influential. The Chairman and Chief Executive also noted that in their meetings with both regulatory and representative bodies, they often receive requests for engagement with the Panel.

26. The Board resolved to note the content of the Legal Services Consumer Panel's Annual Report 2015.

Item 9 – Minutes of the meeting of 29 April 2015

27. 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 10 – Report of action points

28. 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.
- 29. The Board noted the updates to the report of action points.**

Item 11 – Paper (15) 30 Chief Executive's update – May 2015

Richard Moriarty presented his update report.

30. OLC and MoJ issues

- [REDACTED] [FOIA exempt s36(2)(b)(c)]
- Following the appointment of Michael Gove MP as Lord Chancellor, Shailesh Vara MP continues as the Minister with responsibility for legal services. A meeting is being arranged with his office for presentation of the Annual Report and Accounts in advance of it being laid before Parliament.
- MoJ is not a protected department, and in light of the continued trend towards fiscal restraint, it is possible that significant cuts to their budget could be made. It was thought that Mr Gove's initial focus was more likely to be on the proposed Bill of Rights. The BIS agenda around deregulation and assessing the cost of regulation could be brought more into focus, and in this regard, the LSB's role in deregulation and as an agent for change could be seen as an advantage.

31. Post-Ministerial summit work streams

An event is to be held on 9 June to inform the representative bodies of progress that had been made in the post-Ministerial summit work streams. It was confirmed that three of the four are to be jointly badged with the approved regulators, but the fourth, on legislative options beyond the Legal Services Act, is less straightforward, as some regulators either have a different view of the future, or do not yet have a view. Over the summer period, there will be an opportunity to reflect on the lessons learnt from collaboration with the regulators, and how this can be best utilised in the future.

32. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] [FOIA
exempt s36(2)(b)(c)]

33. Communications and stakeholder engagement

The Board had committed to hold one public meeting a year. It is proposed that the first of these will take place on the same day as the November Board meeting, and that it should be held outside London. Leeds has emerged as the preferred venue, and the OLC and the Consumer Panel have both agreed in principle to participate. The format will be similar to the Cardiff event.

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

Item 12 – Paper (15) 31 LSB Corporate Risk Register

35. Julie Myers introduced this item, reminding the Board that the risk register is presented to them twice a year. The ARAC had reviewed it twice since it was last before the Board, and the Gateway Group reviews it each month. The Board were content to see that some risks were dropping off the register, enabling sharper focus on those remaining. [REDACTED]

[REDACTED] [FOIA exempt s36(2)(b)(c)]

36. **The Board resolved to note the LSB Corporate Risk Register.**

Item 13 – Paper (15) 32 Report of the 13 May meeting of the Audit and Risk Assurance Committee

37. Terry Babbs presented this report. Among other items, the Committee had received and considered first drafts of policies on the Bribery Act and price sensitive information. The piloting of inherent risk scoring had also been agreed at that meeting, with feedback on this to be received in October. The decision had been made to commence the process of seeking a new professional adviser for the Committee.

38. **The Board resolved to note the key points arising from the ARAC meeting held on 13 May 2015.**

Item 14 – Paper (15) 33 Finance Report to April 2015

39. Edwin Josephs introduced this routine update on LSB finances, the first one of the new financial year. He also expressed optimism that a more permanent solution to the treatment of levy income would shortly be found.

40. **The Board resolved to note the content of the Finance Report.**

Item 15 – Paper (15) 34 Report of the 24 March 2015 meeting of the Remuneration and Nomination Committee

41. Bill Moyes presented this item reporting on the issues covered at the Committee's meeting in March. The Committee had raised the question whether it continues to fulfil a worthwhile role for the organisation, and what issues should be entirely for management to decide on, and what is for the Board.
42. **The Board resolved to note the key points arising from the RNC meeting held on 24 March 2015.**

Item 16 – Paper (15) 35 Annual Report of the Remuneration and Nomination Committee 2014/15

43. Bill Moyes presented this item reporting on the Committee's activities during the year. It was noted that the Committee had just managed to fulfil its terms of reference as it had been one member down for the whole of the year.
44. **The Board resolved to endorse the report about the activities of the RNC during 2014/15.**

Item 17 – Board evaluation exercise: analysis of results (oral update)

45. Ade Kadiri reminded the Board that it had previously been agreed that an analysis of messages emerging from the completed evaluation forms would be brought to this meeting. However, not all the forms had yet been received. It was therefore proposed that this paper would be brought to the next meeting in July. The Board accepted this proposal.

Item 18 – Any other business

46. There was no other business.

Item 19 - Date of next meeting

47. The Board would next meet on 7 July 2015 at 13.00. The venue would be the Office of Rail and Road, One Kemble Street, London WC2B 4AN.

Signed as an accurate record of the meeting

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Date

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