

Minutes of a meeting of the Legal Services Board (LSB) on 26 November 2015

Date: 26 November 2015
Time: 13.00 -15.15
Venue: Ward Hadaway, 1A Tower Square, Wellington Street, Leeds

Present: Sir Michael Pitt Chairman
(Members) Richard Moriarty Chief Executive
 Terry Babbs
 Anneliese Day QC
 David Eveleigh
 Marina Gibbs
 Helen Phillips

In attendance: Vibeke Bjornfors Regulatory Project Manager (item 6)*
 Steve Brooker Head of Research and Development (items 1-6)*
 Neil Buckley Chief Executive designate
 Nick Glockling Legal Director
 Steve Green Chair, Office for Legal Complaints (item 10-11)
 Nick Hawkins Chief Executive, Legal Ombudsman (items 10-11)
 Edwin Josephs Director of Finance and Services
 Michael Kaltz Lay member, Office for Legal Complaints (items 10-11)
 Julie Myers Corporate Director
 Chris Nichols Regulatory Project Manager (item 5)*
 Dawn Reid Head of Regulatory Performance and Operations (items 1-3)*
 Kate Webb Head of Regulatory Reviews and Investigations (items 1-6)*
 Caroline Wallace Strategy Director
 Adewale Kadiri Corporate Governance Manager (minutes)

(* - joined the meeting via telephone link)

Item 1 – Welcome and apologies

1. There were no apologies. The Chairman welcomed those present and in attendance to the meeting. Neil Buckley, the LSB Chief Executive designate, who takes up post on 4 January 2016, was welcomed by the Board. He joined this meeting as observer.

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

2. There were no declarations of interest.

Item 3 – Paper (15) 56 Draft LSB Business Plan and budget

3. Richard Moriarty introduced this item, thanking the Audit and Risk Assurance Committee (ARAC) for their endorsement of the current budget proposal. The budget and draft Plan had been submitted to Ministers in advance of the meeting, in line with the need for Ministerial approval of the LSB's budget, and comments had been received the previous day. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. [FoIA exempt s36(2)(c)]

4. The Board agreed not to approve the draft budget at this meeting, but to convene by telephone conference before Christmas, to reach agreement on an amended draft, after which consultation on the plan would commence in the New Year. [REDACTED]

[REDACTED]
[REDACTED] [FoIA exempt s36(2)(c)]

5. The Board agreed that the following points should be taken into account in producing the next draft of the Business Plan:

- It was agreed that the drafting of the Plan would be made sharper and clearer, and that a bolder approach would be adopted in describing the LSB's deregulatory ambitions.
- The Business Plan needs to better demonstrate the purpose of the work and the impact we expect. This should include commentary on the state of market. The use of diagrams was also encouraged to enable the messages within the Plan to be presented more clearly.
- Each of the projects and research proposals within the Business Plan should include measurable outcomes.
- A revised budget would be proposed. In this context, the regulators should be challenged to identify efficiencies within their own organisations. It was noted that the LSB proposal for the regulators to achieve greater operational independence from the representative bodies appears to have MoJ support.

6. **The Board agreed to ask the Executive to re-draft the Business Plan with a view to considering a new version, via a telephone conference, before the Christmas break.**

Item 4 – Paper (15) 57 Suggested scope of work on the LSB’s vision for a future legislative framework

7. Caroline Wallace introduced this paper, informing the Board that the Lord Chancellor has written to the Chair of the Justice Committee confirming that a review of the Legal Services Act would be undertaken during the lifetime of this Parliament, and that in the meantime, he intends to consult on changes to the current framework, including the suggested clausal changes generated from the post-ministerial summit work, proposals for full independence for the regulatory bodies, and correcting the accounting treatment of the LSB and OLC levy. It is expected that some of these proposals would provoke reaction from the representative bodies in particular.
8. The following additional points were raised in the course of the discussion:
 - The LSB is now seeking to develop its vision for what a “fit for purpose” future legislative framework might look like.
 - It is proposed that Professor Stephen Mayson would lead Board sessions in March and April 2016 to build on proposals put forward in LSB’s September 2013 Blueprint document. Consideration would also be given to the possible role of “non-lawyer” routes to justice. Separate sessions are to be held with the Legal Services Consumer Panel, and a reference group consisting of key stakeholders.
 - It was agreed that the LSB would explore in what way the MoJ may wish to participate in this work.
 - The question was raised whether the timescale for the work could be compressed – for example by circulating an early version of the draft Board vision for the future, to allow all members of the current Board to comment on it. **It was agreed that the Executive would explore this.**
9. **The Board agreed to endorse the proposed scope of work with Professor Stephen Mayson on the LSB’s vision for the future legislative framework.**

Item 5 – Paper (15) 58 Unregulated project update

10. Caroline Wallace introduced this item, the purpose of which was to provide the Board with an update on progress made on the project so far. The Board noted that section 163 of the Legal Services Act enables the LSB to enter into voluntary arrangements in relation to unregulated services, and one of the aims of the project is to explore the scope of this remit. It was noted that unregulated services make up a significant – and possibly growing - proportion of the market, and that it is appropriate for the LSB to explore unregulated services in order to assess the risks posed to consumers and to consider the market holistically. It has been decided that the in-depth work would cover services that were provided for profit, with particular focus on the following areas: will-writing and estate administration, family law and intellectual property.
11. The following points were made in the course of the discussion:

- [REDACTED]
[REDACTED]
[REDACTED]. [FolA exempt s36(2)(b)(ii)]
- In response to the question as to why will-writing is being considered again, it was noted that this is very much building on work the LSB has already undertaken, and will update the LSB's evidence base following the Government decision not to make will-writing a reserved activity. While it is acknowledged that the possibility of including will writing as a reserved activity appears to be closed, the purpose of this work is to refresh the evidence base and to explore what alternatives to regulation might address the issues identified.

12. The Board agreed to note

- a) The progress made so far on the unregulated project, and**
- b) That a paper will be presented to the Board in April 2016 for a decision whether, in principle, the LSB should seek to have consumer protection extended to any unregulated providers.**

Item 6 – Paper (15) 59 Transparency reports – cost of regulation project

13. Caroline Wallace introduced this paper, introducing a draft report for the SRA as an example of the format that will be replicated for all the regulators, analysing its organisational costs. It is intended that the reports on each of the regulators will be published once they have been checked for accuracy with each regulator. Each report is based on readily available information only. The difficulty in producing the reports was noted, as this information was found to be incomplete and inconsistent in a number of respects. It was acknowledged, however, that this is a start in the LSB's drive to ascertain whether regulators are operating efficiently.
14. The following points were raised in the course of the discussion:
 - These reports have been developed in the absence of external benchmarking data against which the cost of the regulators could be compared.
 - The reports represent the final part of the evidence gathering phase of the project. After their publication, a discussion paper would be produced and published drawing together the conclusions from all the evidence gathered, and recommending next steps.
 - The Board noted that the draft report does not contain any conclusions, as it is designed to be factual, but it raises questions as to how the respective regulator Boards are able to hold their executive teams to account.
 - It is not intended that the regulators would be asked to fill the gaps in the information via additional internal analysis at this stage, but once the reports are published, the discussion paper will highlight those areas where there are gaps.
 - The Board suggested that the reports should be more challenging of the bodies to which they relate. It was suggested that at the same time as the

draft reports are sent to the regulators for accuracy checking, the LSB Chairman should write to regulators' chairs asking that their boards reflect on how the available information enables them to hold their executive teams to account.

- It was agreed that the draft discussion paper would be presented to the Board.

15. The Board agreed

- a) To endorse the approach set out in the paper,**
- b) That the revised introductory/context text for the transparency reports should be checked with the Board before they are sent to the regulators, and**
- c) That the Chairman will write to the each regulatory board chair asking how their board holds the executive to account on their level of spend, given the limitations of the publicly available information.**

Item 7 – Minutes of the meeting of 22 October 2015

16. 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

17. 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.

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

Item 9 – Paper (15) 60 Chief Executive's update – November 2015

Richard Moriarty presented his update report.

19. Organisational development
Following a competitive process, John Ward FCA has been identified as preferred candidate to act as professional adviser to the ARAC. The Board is required to endorse this appointment. **The Board agreed to endorse John Ward's appointment as professional adviser to the ARAC.**
20. MoJ sponsorship matters
All Arms' Length Bodies that are sponsored by the MoJ, including the LSB, are now subject to the emergency spend restrictions put in place by the Permanent Secretary. Discussions are ongoing with the MoJ as to how these will work in practice.
21. Office for Legal Complaints

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [FoIA exempt s36(2)(c)]

22. Statutory decisions

- The SRA's rule change application to remove two authorisation rules could be portrayed as a net growth in regulation and might raise difficult public policy issues. A warning notice has been issued.
- The Board was reminded of The Law Society's so-called "derivative income" proposal, which had been the catalyst for the LSB's PCF rules review. The outcome of this would be important for all approved regulators with regard to the uses to which derivative income could be put.

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

24. **The Board noted the contents of the Chief Executive's update.**

Item 10 – Paper (15) 61 Update on OLC performance

Item 11 – Paper (15) 62 Draft OLC budget 2016/17

Item 12 – Paper (15) 63 Actions arising from the OLC session

25. Steve Green, Michael Kaltz and Nick Hawkins joined the meeting for this item. Steve Green opened the discussion, acknowledging in relation to the revised key performance indicators, that the environment within which the Legal Ombudsman (LeO) is operating had changed, [REDACTED]

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

26. The following points were raised in the course of the discussion:

- The Board were reminded that when OLC representatives last attended, they had indicated that deliberate actions were being taken that were having the effect of slowing the pace of case handling in favour of a greater focus on quality. It was acknowledged that an almost exclusive focus on timeliness had in the past created the potential for inappropriate working practices. Attention was also being focused on achieving consistency of approach in the way cases are handled across LeO.
- In response to the question when LeO will meet the timeliness target, it was noted that on the basis of current levels of receipts, there is an expectation that

“steady state” in relation to the management of cases would be achieved by March 2016.

- The key action that is required to clear the current backlog is an increase in the ombudsman pool. Four internal candidates have now been identified to take up post as temporary ombudsmen, and a further six external personnel have been identified to be called upon at times of high demand. Both the internal and external personnel are ready to start work once MoJ approval to appoint is received. The appointment of the six external candidates is seen as an important first step in creating a flexible workforce.
- It was acknowledged that the performance of the case management system remains inconsistent, although there have been improvements since the summer. The new Head of IT has recently come into post, and is coming up to speed on the system and its difficulties. The OLC will shortly be going out to tender for the provision of support for the system.
- On the emergency spend controls that had been imposed by MoJ, it was noted that an OLC request for exemption in relation to the recruitment of frontline staff is under consideration.
- With regard to the draft budget for 2016/17, the imperative from MoJ for organisations such as the OLC to be looking closely at how they might work more efficiently and make economies was noted. However OLC took the view that their situation is distorted by the fact that the claims management work is funded by MoJ, while numbers of complaints received under the legal jurisdiction continue to fall. The OLC’s working hypotheses for this fall include that people are using regulated legal services less, and also that legal businesses are getting better at handling complaints in-house.

27. It was agreed that a Board sub-group be set up to oversee executive scrutiny of the OLC’s proposals for future performance reporting, and its 2016/17 budget. Terry Babbs and Marina Gibbs agreed to be on this sub-group.

28. **The Board agreed to note:**

- a) the OLC section 120 report on its proposals for a future performance framework,**
- b) the most recent performance report, and**
- c) the draft OLC budget for 2016/17.**

Item 13 – Matters emerging from ARAC

Paper (15) 64 Minutes of the ARAC meeting 13 October 2015

29. Terry Babbs introduced this item, highlighting the points raised in the course of the meeting:
- The Committee is pleased with the new format of the Corporate Risk Register following the introduction of inherent risk scoring. [REDACTED]

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

- The review of the Risk Management Strategy, which would normally take place at the October meeting, has been put back until March to allow for the completion of the inherent risk scoring pilot.
- The Committee contributed to the review of the LSB Governance Manual and had also recommended changes to the information governance policies.
- The Committee had welcomed the identification of a preferred candidate to act as its professional adviser. This is an important development in governance terms as none of the members have professional accountancy qualifications.

30. The Board noted the key points arising from the ARAC meeting held on 13 October 2015.

Paper (15) 65 Review of the LSB Corporate Risk Register

31. Julie Myers introduced this item, reminding the Board that the Corporate Risk Register had been reviewed by ARAC at their meeting in October, taking account of the changes that had been made following the zero based review and the inherent risk scoring pilot.

32. The Board noted the contents of the Corporate Risk Register.

Paper (15) 66 Review of the LSB Governance Manual

33. Ade Kadiri introduced this item, reminding the Board of the ARAC's contribution to the review. It was noted that one of the main changes was to the Policy on Colleagues' Expenses, to enable colleagues who wished to travel by first class rail at their own expense while on LSB business, to claim the equivalent standard class fare. The LSB's internal and external whistleblowing policies are also to be added to the Manual.

34. The Board agreed to approve the revised Governance Manual.

Item 14 – Paper (15) 67 – Minutes of the Remuneration and Nomination Committee meeting 23 September 2015

35. The Board noted the minutes of the RNC meeting.

Item 15 – Paper (15) 68 Finance Report for October 2015

36. Edwin Josephs introduced this routine update on LSB finances. It was confirmed that any remittance received in relation to the costs of the QASA litigation would be returned to the profession by way of a reduction in next year's levy.

37. The Board noted the content of the Finance Report.

Item 16 – Paper (15) 69 Annual review of the LSB Health and Safety policy

38. Edwin Josephs introduced this item, noting that in recognition of the Board's responsibility as an employer for ensuring the health, safety and welfare of all colleagues, they are required to review the LSB's Health and Safety Policy Statement on an annual basis.

39. The Board agreed to approve the Health and Safety Policy Statement and Policy.

Item 17 – Any other business

40. None raised.

Item 18 - Date of next meeting

41. The Board would next meet on 21 January 2016 at 13.00. The venue would be the Office of Rail and Road, One Kemble Street, London WC2B 4AN.

AK, 30/11/15

Signed as an accurate record of the meeting

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Date

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