

Minutes of a meeting of the Legal Services Board (LSB) on 8 September 2015

Date: 8 September 2015
Time: 15.15 -18.00
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
 Marina Gibbs
 Helen Phillips

In attendance: Bernard Herdan OLC Board member (item 5)
 Caroline Wallace Strategy Director
 Edwin Josephs Director of Finance and Services
 Ian Brack Interim Chief Executive, Legal Ombudsman (item 5)
 Jenny Hart Business Planning Associate (items 1-6)
 Jessica Clay Legal Advisor
 Julie Myers Corporate Director
 Karen Marchant Regulatory Project Manager (item 7)
 Kathryn King Interim Chief Legal Ombudsman (item 5)
 Kate Webb Head of Regulatory Reviews and Investigations (items 7 and 8)
 Michael Kaltz OLC Board member (item 5)
 Steve Green Chair, Office for Legal Complaints (item 5)
 Adewale Kadiri Corporate Governance Manager (minutes)

Apologies: William Moyes
 Ed Nally

Item 1 – Welcome and apologies

1. The Chairman welcomed those present and in attendance to the meeting. Apologies had been received from Bill Moyes and Ed Nally. Jessica Clay was attending for Nick Glockling.

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 – Items considered out of committee since 7 July 2015

4. The Board noted that Finance report for June 2015 had been circulated electronically to members on 21 July 2015.

Item 4 – Briefing and preparation for OLC session

5. The Board noted the background provided by Paper (15) 44 to the session with OLC Board members and members of its senior team. The Board agreed that it would be important to confirm the Board's commitment to the success of the Legal Ombudsman scheme, noting that this is as important to LSB as to OLC bearing in mind the outcomes the scheme is expected to deliver for consumers and the profession. The Board noted that it would be important for OLC to demonstrate to the LSB its plans to reverse the performance trends indicated in recent OLC reports.
6. **It was agreed that the advice regarding the legal status of the relationship between the LSB and OLC would be circulated to Board members, and that checks would be made as to whether there is any benchmarking information on the cost of Ombudsman schemes.**

Item 5 – Paper (15) 44 OLC performance

7. OLC representatives gave a detailed presentation on a wide range of matters relating to the OLC and the Legal Ombudsman's (LeO) current operating environment. It was agreed that discussions between the LSB and OLC Boards about LeO performance should take place more frequently than has typically been the case to date.
8. The OLC set out a number of key corporate challenges, including:
 - The impact of compliance with MoJ governance and financial controls and of the Accounting Officer function resting at this time in the MoJ, which slowed the ability of OLC management to respond swiftly and provide the most effective operational management to support delivery and performance.
 - The impact that continued uncertainty around approval of the flexible benefits scheme was having on staff morale. [REDACTED]

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

- [REDACTED]
 - [REDACTED]
- [FoIA exempt s36(2)(b)(c)]**
- Problems with the case management system introduced in January, which had impacted on performance. The system is now operationally stable but there remain issues which are still being addressed.
 - The proposal for the OLC to apply to be certified as an ADR provider is out to public consultation.
 - A review of governance controls is now in progress, and a draft report is expected in early October, with the final version to be completed by the end of that month. It is expected that this will have implications for key performance indicators and the wider control environment.

9. With regard to the LSB's section 120 and 121 requirements imposed in June 2015, and the OLC's existing key performance indicators, the OLC representatives raised the following points:

- On performance generally, the OLC Board reiterated the conclusion they had reached in January 2015 that the measures that had been historically in place were no longer suitable. Performance reporting to the OLC Board was now being simplified, to enable sharper focus on the measures that matter to consumers and the sectors. Going forward, it was likely that a "balanced scorecard" type approach would be adopted, and the OLC has engaged internally and externally to develop more appropriate key performance indicators (KPIs). A paper is to be discussed at the October OLC Board meeting and will inform the report on this matter to be sent to the LSB to discharge the OLC's obligation under the section 120 notice.
- The OLC Board is reviewing its measures and targets on timeliness to ensure that these work in the consumer interest. Account is to be taken of best practice on this subject from other schemes.
- On unit cost, it was noted that all costs, including central overheads, are included in the calculation, while a number of areas of work, some of which relate directly to case resolution, were ignored. This is not the approach adopted in many comparable organisations. It is believed that this method for calculating costs has the effect of discouraging activity that is not directly related to resolving cases, such as involvement in research, education and improving first stage complaint handling by lawyers. Consideration is being given as to how the KPIs could better monitor these areas, including the costs and benefits of research and education.
- The sole measure of quality within the OLC had previously been the quantitative analyses of consumer satisfaction levels but these do not consider the question of what people expect from an ombudsman scheme.

- The OLC is committed to developing a balanced suite of measures for output, time, and the quality of the Legal Ombudsman scheme and is undertaking research to understand consumer needs and expectations of the scheme.
10. The OLC had formally reported that the section 121 timeliness target had been triggered. A number of contributory factors had been identified, in particular that strategic decisions had been taken in the spring to improve casework quality and the customer experience, in the knowledge that they would inevitably have negative impacts in the short to medium term on performance against the time targets. These impacts had been exacerbated by difficulties with the case management system.
 11. The importance of the relationship between the OLC and LSB was emphasised, and OLC representatives indicated that they fully understood LSB's concerns about performance. The OLC had commenced an evidence-based strategic analysis of what LeO's key performance elements should be, and it was clear that to provide a meaningful assessment, measures and indicators had to be wider than the limited existing suite. This was why the OLC had begun to re-examine its approach to performance measurement. The OLC team also argued that the Legal Ombudsman's current performance against 90 day time targets remained significantly better than the most recent published performance data from many comparable schemes. LSB Members stressed that there is a real commitment to supporting the OLC to improve its performance but it was important that the commitment, insight and passion shown by the new OLC Board members was translated into an improvement in the OLC's performance results and value added as soon as was reasonably possible.
 12. In the course of discussion about time targets, the OLC team highlighted the fact that in the past LeO's operational resource had to deal with the peaks in caseload reactively, as they occurred, whereas the organisation was now seeking to create a long-term structural approach to deal with such peaks: steps are now being taken to create a cohort of fee paid ombudsmen who could be called upon to deal with surges in the caseload and avoid the creation of future long-term backlogs.
 13. With regard to the timetable for accelerating resolution times, OLC made the following points:
 - It was expected that performance against the 90 days target would improve by the end of this calendar year.
 - A coordinated programme of short, medium and long-term actions is underway to improve staff communication and engagement. The newly appointed Chief Executive will shortly be introduced to staff at an engagement event.
 - The OLC team noted that there was a strong possibility that the unit costs target would continue to be triggered, as this is based on the number of cases coming into the organisation which is reducing significantly, whilst costs for the year are mostly fixed.

14. On the strategic direction of the organisation, it was confirmed that the focus is now on:
- Developing a new KPI framework that is balanced and informed by the interests of consumers and the sectors.
 - Making improvements to LeO performance in line with the OLC's strategic priorities.
 - Building up the organisation's ability to influence good practice within the market.
15. The LSB Board thanked the OLC team for their attendance, and the comprehensive nature of their presentation. The LSB's concerns about performance were reiterated, as was the importance of performance against the LSB targets that had been set out to the OLC under sections 120 and 121 improving as quickly as possible. The OLC view that performance against the current time targets would begin to improve by the end of the calendar year was noted – as was the observation about the unit cost trend. The LSB also noted the OLC's commitment to developing a refreshed and refocused suite of performance measures. The LSB would invite OLC to update it on both items at its November meeting. [REDACTED]
[REDACTED]
[REDACTED] [FoIA exempt s36(2)(b)(c)]
16. The LSB Board noted the commitment shown by the OLC Board in attempting to grip the issues faced by the organisation. The LSB Board expressed its gratitude to Ian Brack for the positive impact that he has had on the organisation in the short time that he has been in post, and to Kathryn King for the important changes that she is leading in the way that LeO carries out its work. The Board reiterated its support for the important role that the OLC and LeO are fulfilling within the sector and confirmed its commitment to working in partnership with the OLC whilst respecting the different roles that the two organisations have.
17. **The Board agreed that the LSB Chief Executive and Corporate Director would present proposed next steps to the Board in October.**

Item 7 – Paper (15) 45 Thematic review: regulatory restrictions on in-house lawyers – proposed next steps

18. Karen Marchant introduced this paper. The Board were reminded that the LSB had issued a discussion paper in February 2015, responses to which had been summarised at the July Board meeting. Three themes had emerged from the responses to the discussion paper:

- The need for consistency within the rules imposed by regulators on in – house lawyers
- The need for any changes to consider the impact on consumers
- The need to consider the wider impact of changes to the rules for in-house lawyers on regulatory arrangements.

19.

[FOIA exempt s44] The next step is to publish the draft statement of policy and invite representations. IPReg had not responded to the discussion paper.

20. It was noted that the content of the statement of policy does not fetter the LSB's discretion to act in future.

21. **The Board agreed to**

- a) Use its powers under section 49 of the Act to issue a statement of policy setting out the high level principles that the Board will consider relevant in relation to regulatory rules for in-house lawyers, and**
- b) Delegate the approval of publication of the draft statement of policy and supporting consultation paper to the Chief Executive and Chairman.**

Item 8 – Paper (15) 46 BSB undertaking: conclusion

22. Kate Webb introduced this item. It has been two years since the investigation into the Bar Council and BSB got underway, and over 20 months since the BSB gave the fourth undertaking. The question before the Board was whether the fourth undertaking should now be discharged on the basis of the work that the BSB had done.

23. The submission from the BSB noted that its review had identified that a rule change should be made in respect of one issue (the place of the Bar Council's List of Defaulting Solicitors in its regulatory arrangements) and concluded that the status quo was the appropriate conclusion for the second issue (the place of the Bar Council's Standard Contractual Terms in the BSB's regulatory arrangements). On receipt of the initial submission, the LSB had raised a number of supplementary questions. In light of these questions, the BSB undertook some further work. The LSB's analysis is that, on balance, the BSB had done just enough to justify the discharge of the undertaking. This analysis had, however, raised a number of concerns.

24. It was agreed that the LSB's letter to the BSB communicating the decision would acknowledge the work that had been done to discharge the undertaking, but that it

should highlight the concerns around the organisation's capacity and capability to take policy decisions, and note that these would be addressed through the LSB's regulatory standards work. The Board noted the important role that the leadership of the BSB needs to take in completing the organisation's journey from a disciplinary body to a modern regulator.

25. The Board agreed that:

- a) **The fourth undertaking is discharged,**
- b) **The BSB's submission and the LSB analysis should inform the current LSB regulatory standards review, and**
- c) **Agreement of the letter to be sent to the BSB is to be delegated to the Chief Executive and Chairman, but that this would be shared with the Board when sent.**

Item 9 – Minutes of the meeting of 7 July 2015

26. 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

27. 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.
28. **The Board noted the updates to the report of action points.**

Item 11 – Paper (15) 47 Chief Executive's update – September 2015

Richard Moriarty presented his update report.

29. OLC and MoJ issues

- With regard to the OLC's application to become an ADR entity, information about the present position and its implications has been provided to the professional bodies.
- On Board appointments, at the time of writing, the process to recruit the non-lay member to replace Ed Nally had not commenced [Post Board note: the executive were notified by email on 9 September that the competition to appoint two non-lay members had gone live]. The lay competition, on the other hand, had progressed past shortlist stage, but information was subsequently received confirming that the process had been aborted by MoJ. The Chairman had subsequently received an apology from the senior official in charge of the process. The Board expressed its concern about the apparent lack of transparency of the process.

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

As it is now not possible that appointments to replace Ed Nally and Bill Moyes will be made before their terms of office end on 30 September, the Board will be below its statutory minimum from that date. The Legal Services Act indicates that this would not affect the validity of any decisions made, but it may affect the Board and its Committees' ability to be quorate.

30. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [FoIA exempt s44]

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

32. Communications and stakeholder engagement
The Board were reminded of the public event to be held in Leeds in November.

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

Item 12 – Paper (15) 48 Finance Report to 31 July 2015

34. Edwin Josephs introduced this routine update on LSB finances. The LSB's finances continue to be in a good state, and the position is comparable to what it was this time last year.

35. **The Board noted the content of the Finance Report.**

Item 13 – Any other business

36. None raised.

Item 14 - Date of next meeting

- 37. The Board would next meet on 23 October 2015 at 13.00. The venue would be the Office of Rail and Road, One Kemble Street, London WC2B 4AN.

AK, 10/09/15

Signed as an accurate record of the meeting

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Date

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