

Minutes of a meeting of the Legal Services Board (LSB) on 8 September 2016

Date: 8 September 2016
Time: 13.30 – 15.15
Venue: Sport England, 21 Bloomsbury Street, London WC1B 3HF

Present: Sir Michael Pitt Chairman
(Members) Neil Buckley Chief Executive
Terry Babbs
Jemima Coleman
David Eveleigh
Marina Gibbs
Dr Helen Phillips
Michael Smyth CBE QC (Hon)

In attendance: Steve Brooker Head of Research and Development (items 1-3)
Nick Glockling Legal Director
Edwin Josephs Director of Finance and Services
Daniel Knol Regulatory Associate
Graeme MacLachlan Regulatory Associate (item 4)
Julie Myers Corporate Director
Caroline Wallace Strategy Director
Kate Webb Head of Regulatory Reviews and Investigations (items 1-4)
Adewale Kadiri Corporate Governance Manager (minutes)

Item 1 – Welcome and apologies

1. The Chairman welcomed those present and in attendance, in particular Daniel Knol, a new colleague, who was attending the meeting as an observer. There were no apologies.

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

2. There were no declarations of interest.

Item 3 – CMA market study (oral update)

3. Caroline Wallace provided an update on the CMA market study. The LSB's response to the interim report was submitted on 19 August, with helpful input from Marina Gibbs and Jemima Coleman. The CMA have committed to publish all responses received on their website. It was noted that there had been mixed reactions to the LSB's response, with some commentators stating that the comments on titles could have the effect of undermining professional standards. Amongst respondents more broadly there were also diverging views on transparency, with the Law Society warning that the requirement to publish average prices could be misleading to consumers and burdensome on providers. Concern was also expressed by some respondents about the proposal to expand the scope of information provided on the Legal Choices website, as this would mean that regulated practitioners are, in effect, covering the costs of providing information about unregulated services.
4. Responses from frontline regulators appeared to show a split on the issue of legislative reform, with the SRA, for example, taking the view in its CMA response that now is not the time for such a review. Commentary from the regulators following publication of the LSB's paper on legislative reform, indicates strong support for full regulatory independence. The Lord Chancellor, in her evidence before the Justice Committee, had indicated that MoJ would consider the independence issue.
5. The LSB had been invited at short notice by the CMA to make a supplementary submission on reserved activities. The LSB response supported the position that had been taken on legislative reform, indicating that the current list of activities is not risk based but arises (at least in part) from traditional professional boundaries and historical political compromises, and that there can be an adverse effect on competition as a result.
6. CMA hosted stakeholder roundtables are to take place in September and October. LSB colleagues have also agreed to deliver a teach-in session on the regulatory framework to the CMA to help in targeting their recommendations. Meetings are also to be held with senior figures including Lord Currie.
7. **The Board agreed to note the update on the CMA market study.**

Item 4 – Paper (16) 55 – Diversity – the role of regulators in driving improvement

8. Graeme MacLachlan introduced this item, reminding the Board that in March 2016, they had considered the regulators' progress against guidance to them on gathering diversity data that had been issued by the LSB in 2011. Whilst all regulators are compliant with the data collection requirement, not all are using the collected data to inform policy decisions. The new guidance proposed focuses on outcomes, and is aimed at maintaining and building on the momentum that has been generated in this area. It was also noted that some of the deadlines in the existing guidance had expired some time ago.

9. Pending the outcome of consultation on the draft guidance, final proposals for revised guidance would return to the Board in January 2017. Regulators and other stakeholders will be given the opportunity to meet during the consultation period and ongoing monitoring will be undertaken through meetings with regulator CEOs and working level dialogues. Ultimately, the regulators would be held to account for their performance in this area through the updated performance assessment framework.
10. There was some discussion as to whether outcomes 3 and 4 in the proposed guidance should be retained. The point was made that much of the recent success in improving diversity within the sector had been as a result of initiatives developed from within businesses and across the sector, rather than externally imposed standards. It was suggested that the LSB should focus instead on helping to eliminate barriers to entry into the professions and ensuring that regulatory action does not have a disproportionate impact on groups with protected characteristics.
11. The argument was put forward, on the other hand, that the regulated sector as a whole is not currently doing enough to make the sector more reflective of the wider community, and that more action is required. It was agreed that the third outcome in the draft consultation document could be reframed to include regulators working with the profession to encourage a more diverse profession.
12. The importance of ensuring that the consultation paper refers to contemporary diversity challenges was emphasised. The LSB should set out explicitly what the expectations on the regulators are in what is a dynamic and fast changing area. It was suggested that the LSB engage with PRIME (a membership organisation of law firms committed to tackling social immobility within the profession by providing fair access to quality work experience), the Social Mobility Commission and others with an interest.
13. It was acknowledged that there is a range of performance in this area across the different regulatory bodies, with some having taken the lead by ensuring that the way that they manage their activity is informed by their obligations in this area. However, others have been more reactive, and followed the letter rather than the intent of the 2011 guidance. The aim of the revised guidance is to maintain continuity in data collection, but also encourage greater ambition and aspiration among all the regulators as to how they use the data in their work. There was some suggestion that those regulators who could do more to encourage a diverse profession ought to be highlighted. It was also suggested that a check should be made six months after the publication of the guidance on how well the regulators are following the new guidance
14. **The Board agreed**
 - 1) **To note and approve the approach set out in the draft consultation document and proposed guidance for regulators on encouraging a diverse profession, subject to the following:**

- a) **That the preface to the draft consultation document be amended to show more clearly the importance of this revised approach;**
 - b) **That clearer reference is made to definitions and issues around diversity;**
 - c) **That the discussion around outcome 3 in the proposed guidance be re-worked to emphasise that the regulators should work with the profession to help bring about a more diverse profession, including helping to establish the business case for diversity;**
 - d) **That checks would be made six months after publication of the revised guidance as to how the regulators are meeting the requirements of the revised guidance, and**
 - e) **That the LSB would engage with (amongst others) PRIME and the Social Mobility Commission during the consultation period.**
- 2) **That the amended documents would be circulated to Board members electronically before publication.**

Item 5 – Minutes of the meeting of 14 July 2016

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

Item 6 – Report of action points

16. The single action in the report was noted as being on-track.
17. **The Board noted the update to the report of action points.**

Item 8 – Paper (16) 56 Chief Executive's update – September 2016

18. Neil Buckley presented his update report and highlighted the following items:
- There has been no update from the Ministry of Justice (MoJ) regarding the recent lay appointment exercise.
 - A draft budget variation (BV) letter was expected from the MoJ shortly.
 - Short listing exercises for the roles of Chair and one member of the Legal Services Consumer Panel have been held and interviews will follow shortly.
 - An exercise to identify a new Chair and Member for the Office for Legal Complaints (OLC) will commence in due course in light of the decisions by Steve Green, the Chair of the OLC, and Professor Philip Plowden, not to seek re-appointment for second terms when their tenures end on 31 March 2017.
 - There has been no progress on the development of the tripartite operating protocol between LSB, OLC and MoJ. The clear need for this document has

been stressed to both OLC and MoJ. The Board noted the importance of this document and asked that it not be delayed pending the outcome of the tailored reviews of OLC and LSB

- The recent S120 reports received from OLC were noted and it was noted that performance on timeliness is improving. The point was made, however, that the OLC quarterly report is short on detail.
- In addition to the new joiners mentioned in the report, two other new regulatory associates have also been recruited and are now in post. In response to comments emerging from the colleagues' survey enquiries are being made as to the possibility of arranging opportunities for colleagues to become involved in corporate social responsibility initiatives. Michael Smyth offered to be the Board lead for any LSB corporate social responsibility initiative.
- On regulatory matters, recently received Practising Certificate Fee applications indicated a welcome downward trend and an acknowledgement of the need to reduce the cost of regulation to practitioners and ultimately consumers.
- On communications, the Chairman is speaking on 12 September at the Westminster Legal Policy Forum on regulatory reform, and the LSB's paper on the subject will be published simultaneously. Chairs of the all the regulatory bodies have been notified in advance of the content of the paper, and will receive embargoed copies of it prior to publication.

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

Item 9 - Paper (16) 57: Finance Report for August 2016

20. Edwin Josephs introduced this routine update on LSB finances. He indicated that the Audit and Risk Assurance Committee will scrutinise 2017/18 budget proposal at their meeting in October.

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

Item 10 – Any other business

22. No other business was raised.

Item 11 - Date of next meeting

23. The Board would next meet on 26 October 2016 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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