

Minutes of a meeting of the Legal Services Board (LSB) on 14 July 2016

Date: 14 July 2016
Time: 13.00 – 15.45
Venue: Office of Rail and Road, One Kemble Street, London WC2B 4AN

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 3 and 4)
Jenny Hart Business Planning Associate (item 10)
Nick Glockling Legal Director (items 1-13)
Edwin Josephs Director of Finance and Services (items 1-13)
Graeme MacLachlan Regulatory Associate (item 5)
Julie Myers Corporate Director
Tom Peplow Regulatory Project Manager (item 6)
Caroline Wallace Strategy Director (item 1-13)
Kate Webb Head of Regulatory Reviews and Investigations (item 5 and 6)
Adewale Kadiri Corporate Governance Manager (minutes)

Item 1 – Welcome and apologies

1. The Chairman welcomed those present and in attendance. 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 – Interim report of the CMA market study into the legal sector (oral update)

3. Steve Brooker provided this update on the CMA's interim report which had been published last week as part of their market study of the legal services sector. Two of the main headlines, from the LSB's perspective, were that the CMA had decided not to launch a market investigation, and the significant extent to which the LSB's research had been relied on in the report. The implication of the first point is that the CMA's formal order-making powers in relation to remedies are not engaged and so its remedies will be in the form of recommendations to stakeholders.
4. The Executive are broadly in agreement with the report's conclusions about competition in the sector not being as effective as it could be. There are some queries about how some of its possible recommendations would be implemented. The executive proposed that the LSB provides a high level response to the report, and also works with the CMA with regard to its recommendations.
5. The following comments were made in the course of the discussion:
 - The Board were positive about the CMA's interim conclusions, and what they mean for the LSB. It was noted that there was close alignment with the LSB's work on legislative reform, for example in relation to the need for proportionality, the possible advantages of regulation by activity rather than by title, the move towards consolidation of regulation, and the benefits of increased transparency.
 - In light of the CMA's interim report, it would be important that the LSB's future legislative framework paper was linked clearly to the need to improve outcomes for consumers, to avoid being seen as promoting regulation as an end in itself.
 - While acknowledging the LSB's role in helping to drive change in the sector, the need to get the frontline regulators to do more was noted.
 - There was some disappointment that the report had not raised more radical questions, but it was noted that the CMA had been restricted in the time and resource it could have devoted to the work
 - The question was raised whether the LSB would need to reconsider its areas of focus in light of possible CMA recommendations on transparency.
 - It was agreed that the LSB's response would focus on the areas of agreement with the report, but note would be taken of the LSB's mandate around consumer protection.
6. **The Board agreed:**
 - a) **To note the summary of the findings of the CMA's interim report;**
 - b) **To review the LSB's draft response electronically with final signoff provided by the Chairman and Chief Executive.**

Item 4 – Paper (16) 45 LSB position on a future legislative framework

7. Caroline Wallace introduced this item, reminding the Board of the informal session that had followed the May meeting. The latest version of the position paper had been drafted to allow for the inclusion of messages from the CMA interim report. It was intended that the focus of this discussion would be on agreeing a plan for introducing the findings from the work into the public domain. It was recognised that there was no certainty about what the new Lord Chancellor's views would be on legislative reform.
8. It was noted that, in the latest version of the paper, the detail around the issue of privilege has now been moved to the appendix, reflecting the fact that it is not a regulatory matter. The text regarding the role of the judiciary in relation to securing independence of regulation has also been strengthened.
9. The following comments were made in the course of the discussion:
 - The Board were pleased with the tone of the paper, and it was agreed that the comments on protecting the consumer interest made in relation to the response to the CMA interim report would be captured. Findings from the CMA report would be referred to in the foreword of the paper.
 - The question was raised as to whether the Consumer Panel's comments on the consumer voice should be further picked up in the paper, and it was suggested that the paper be amended to do so.
 - On the issue of changes to the regulatory architecture, the CMA's concerns were noted, as was the Law Society's view that regulatory reform should be postponed in light of the decision to leave the EU. However, the Board were cognisant of the medium to long term benefits to competition set out in the CMA report.
 - [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [FoIA exempt s36(2)(c)]
10. **The Board agreed**
 - a) **To endorse the final policy paper for publication, subject to the proposed amendments;**
 - b) **To endorse the communications approach; and**
 - c) **Pending any further developments, for the paper to be published on or just before the Chairman's speech to the Westminster Legal Policy Forum on 12 September.**

Item 5 – Paper (16) 46: LSB response to Legal Services Consumer Panel report on priority areas of law

11. Graeme MacLachlan introduced this item setting out the proposed response to the Panel's advice on the areas of law that the LSB should prioritise in its work.
12. The following comments were made in the course of the discussion:
 - The LSB could ask the regulators to tell the LSB of any steps that they are taking to protect the consumer interest in the areas of law identified in the LSCP's advice. It was suggested that the letter to the Panel should reference the fact that the regulators would be asked to comment on their work in this area.
 - [REDACTED]
[REDACTED]
[REDACTED] [FOIA exempt s36(2)(b)(i)]
 - It was noted that the three areas that the Panel had identified chimed with the issues that are referred to legal advice charities, along with debt advice, but there was surprise at the inclusion of criminal law.
13. The Board expressed its gratitude to the Panel for their work. It was confirmed that their findings would be taken into account in deciding on the areas that the LSB would focus on.
14. **The Board agreed to endorse the draft response to the Legal Services Consumer Panel commission, subject to inclusion in the letter reference to discussing with the regulators any steps that they are taking to protect the consumer interest in the areas of law identified in the LSCP's advice.**

Item 6 – Paper (16) 47: The emerging market in authorisation

15. Kate Webb introduced this item, which updated the Board on a paper considered at the January meeting. It was noted that the regulatory options that are available to lawyers are increasing, and that the SRA are proposing and the CLC has made changes to run-off cover requirements. It is likely that the BSB would become a licensing authority within a year, and ICAEW are expected to apply to expand the range of reserved activities it is designated to authorise. The issue of switching regulators has gained profile recently and was raised in the course of the recent Justice Committee hearing. The purpose of this update paper is to test the Board's thinking and to support the development of future work to reflect the risks and potential benefits to consumers associated with providers switching.
16. The following points were raised in the course of the discussion:

- The Legal Services Act had provided the conditions for lawyers to be in a position to choose the body that they would be regulated by. It was also noted that according to the Act, entity regulation takes priority over the regulation of individual practitioners. However, it was recognised that this issue of regulatory switching is primarily of interest only to providers and regulators. There remains a risk that the interests of consumers are overlooked.
- Questions were raised as to the possible long term impact of these developments, and how this relates to the possibility of moving to a single regulator. The point was made that until such time as there is a change in the legislation, there will continue to be a multiplicity of regulators, and the LSB must be alive to any risks that practitioners switching between regulators pose to consumers.
- The complexity that could arise as a result of competition among regulators fuels the case for legislative reform.
- The advent of solicitors' firms seeking authorisation from the BSB was noted, with the relatively lower cost of professional indemnity insurance seen as a driver for this. However, questions were raised as to whether, if numbers increased, this would introduce more risks into the Bar Mutual insurance model, although it is recognised that the fund is not currently obliged to insure entities.

17. The Board agreed to note the update on developments since January 2016, and the forthcoming LSB project work in this area.

Item 7 – Minutes of the meeting of 26 May 2016

18. 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 8 – Report of action points

19. All actions were noted as being on-track, and all items had either been included on the agenda or were on the Board forward plan for future agendas.
- 20. The Board noted the updates to the report of action points.**

Item 9 – Paper (16) 48 Chief Executive's update – July 2016

21. Neil Buckley presented his update report and highlighted the following items:
- Elizabeth Truss MP has been appointed as the new Lord Chancellor, and changes are also expected to be made to the ministerial team.

- The Chairman and Chief Executive had held their annual meeting with Lord Faulks on 30 June. This had been very successful, with the minister showing real interest in the LSB's work. Topics discussed included legislative reform, performance standards, the OLC and the LSB's research programme.
- The terms of reference for the upcoming tailored review have not yet been agreed, although the MoJ team have commenced their preparatory work. The OLC would also be subject to a tailored review at the same time. It is likely that the statutory governance relationship between LSB, OLC and MoJ would form part of the review. This would form part of a future Board discussion.
- The latest market evaluation report, highlighting changes that have taken place in the legal services market, was published on 1 July, and was referenced in the CMA report. The Board were reminded of the cuts that have been made to the LSB's research budget, but the LSB will continue to extract as much value from the existing budget as possible.
- Following the Justice Select Committee hearing on legal regulation at which representatives of the Bar Council, Law Society, BSB and SRA provided evidence, the Chairman has written to the Chair of the Committee to provide the LSB's perspective on some of the issues raised.
- The Chief Executive and the Communications Manager had visited Cardiff to meet Welsh Government officials. Discussion included the Wales Bill and whether a distinctly Welsh law jurisdiction already exists, a point on which there is a difference of opinion between Westminster and Cardiff. There has already been a call for Welsh courts to be established, and this is an area that the LSB would need to be mindful of. The Chairman and Chief Executive will be meeting the principality's new Counsel General.
- The MoJ consultation on removing barriers to competition was launched on 7 July and will run until 3 August. As yet, there is no certainty on when the expected consultation on regulatory independence will be launched.
- A recruitment exercise is underway to appoint new regulatory associates.
- The latest S120 reports received from OLC show some improvement over previous months.

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

Item 10 – Paper (16) 49: Q1 performance report: April to June 2016

23. Julie Myers presented this routine quarterly report, which forms the basis of the LSB's performance meeting with the MoJ sponsor team. Feedback from the sponsor indicates that they find the report valuable in that it prompts discussion on various topics. The Board noted that this quarter's report that all of the projects are currently on track.

24. The Board agreed:

- a) To note the contents of the report; and**
- b) That it forms the basis for the discussion with the MoJ.**

Item 11 - Paper (16) 50: Finance Report for May 2016

25. Edwin Josephs introduced this routine update on LSB finances. On the underspend on staff costs, it was noted that as a result of the MoJ spending restrictions, business cases must be made before recruitment to fill vacancies can be undertaken, as a result of which vacancies remain unfilled for longer.
26. **The Board noted the content of the Finance Report.**

Item 12 – Paper (16) 51: Amendment to Expenses Policy

27. Neil Buckley introduced this item, reminding the Board of the need to ensure that the LSB's policy in this area is in alignment with the MoJ "family" and HMRC guidance. The LSB policy had not previously capped the amount that could be claimed for breakfast, meaning that colleagues could have potentially been liable for tax and National Insurance contributions in respect of such claims, albeit that such claims were rare. The new subsistence rates proposed are based on the amount of time that colleagues are away from their normal places of work and are consistent with HMRC rates. It was noted that the proposals had been carefully considered at the last ARAC meeting.
28. The Board was concerned about the message that this change could send to staff colleagues, but it was noted that it is more likely to affect Board, Consumer Panel and OLC members, as staff colleagues are rarely away from the office for extended lengths of time.
29. **The Board agreed to approve:**
- a) **The replacement of the existing lunch and evening meal subsistence rates with a one meal and two meal rate based on 'time away', and**
 - b) **The changes to paragraph 23 of the policy on colleagues' expenses and its annex.**

Item 13: Paper (16) 52: Report of the 6 July 2016 meeting of the Remuneration and Nomination Committee meeting

30. Dr Helen Phillips introduced this paper reporting on the recent meeting of the RNC. Key issues discussed included the Committee's role in relation to OLC appointments and matters relating to pay and reward.
31. **The Board agreed to note the report of the RNC meeting.**

Item 16 – Any other business

32. No other business was raised.

Item 18 - Date of next meeting

- 33. The Board would next meet on 8 September 2016 at 13.00. The venue would be the offices of Sport England, 21 Bloomsbury Street, London WC1B 3HF.

AK, 18/07/16

Signed as an accurate record of the meeting

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Date

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