

Minutes of a meeting of the Legal Services Board (LSB) on 21 January 2016

Date: 21 January 2016
Time: 13.00 -15.25
Venue: Office of Rail and Road, One Kemble Street, London WC2B 4AN

Present: Sir Michael Pitt Chairman
(Members) Neil Buckley Chief Executive
 Terry Babbs
 Anneliese Day QC (from item 8)
 David Eveleigh
 Marina Gibbs
 Helen Phillips

In attendance: Nicholas Baré Regulatory Associate (item 9)
 Lola Bello Consumer Panel Manager (observing)
 Paul Greening Regulatory Associate (items 6-7)
 Nick Glockling Legal Director
 Steve Green Chair, Office for Legal Complaints (item 4)
 Edwin Josephs Director of Finance and Services
 Katheryn King Interim Chief Ombudsman (item 4)
 Julie Myers Corporate Director
 Dawn Reid Head of Regulatory Performance and Operations (items 5-7)
 Nicola Tysoe Legal Advisor (observing)
 Kate Webb Head of Regulatory Reviews and Investigations (items 5, 8 & 9)
 Caroline Wallace Strategy Director
 Adewale Kadiri Corporate Governance Manager (minutes)

Item 1 – Welcome and apologies

1. There were no apologies. Anneliese Day QC was at another engagement and expected to arrive later. The Chairman welcomed those present and in attendance to the meeting. New colleagues Lola Bello (Consumer Panel Manager) and Nicola Tysoe (Legal Advisor) joined the meeting as observers.

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

2. There were no declarations of interest.

Item 3 – Items considered out of committee since 26 November 2015

3. The Board noted that the Finance Report for November 2015 had been circulated electronically on 22 December 2015.

Item 4 – Paper (16) 01 Presentation of OLC Annual Report and Accounts 2014/15

4. Steve Green and Katheryn King attended to present this item. It was expected that the Annual Report and Accounts would be laid before Parliament on 29 January, pending the review of the Comptroller and Auditor General.
5. The following points were raised in the course of the discussion:
 - It was recognised that there remained media and stakeholder interest in matters relating to the former Chief Ombudsman.
 - The 2015/16 annual report and account was expected to be laid on a more usual timetable, but there was recognition that until the historic matters were resolved, future accounts may also be qualified.
 - The report of the interim Accounting Officer was noted. Actions arising from the Grant Thornton governance report were being actively pursued and it was hoped that this would help facilitate the return of the Accounting Officer function to the Legal Ombudsman (LeO) Chief Executive.
 - With regard to LeO performance, it was noted that improvements are being made and that evidence of this is slowly emerging. Approval to recruit both for temporary ombudsmen from within the organisation, and for an external pool to be called upon at times of high demand, has now been received.
 - The Board were informed that difficulties remain with the case management system, although there had been a reduction in the total amount of downtime during the course of January 2016. The LeO's new Head of IT has been working with the existing supplier to rectify as many of the problems as possible.
6. **The Board agreed to note the draft OLC Annual Report and Accounts 2014/15.**

Item 5 – Paper (16) 02: The emerging market in authorisation

7. Kate Webb and Dawn Reid introduced this item, which had arisen from discussions among members of the Senior Leadership Team in the last four to six months. It was noted that although the opportunity for providers, particularly firms, to switch regulators had been created by the Legal Services Act, the possibility of exercising this choice had only gained a higher profile more recently. This indicated, among

other things, a growing maturity in the reforms that had been introduced by the Act. It also indicated a realisation among the regulators that they could no longer assume that practitioners regulated by them would continue to be so. It was noted, however, that there are potential unintended consequences to this development. [REDACTED]

[REDACTED] More generally there is the concern that regulators' focus could become more fixed on the needs of providers rather than those of consumers. The question was also raised whether providers would end up gravitating towards regulators perceived to have higher barriers to exit. [FoIA exempt s36(2)(b)(ii)]

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

- It was acknowledged that there has not yet been much movement between regulators by providers, but that this could now be starting. Close monitoring is therefore required, not least as a result of the potential for detriment to consumers. It would be necessary to ascertain the minimum standards that ought to be in place to protect the consumer interest.
- It was suggested that the implications of this development could be assessed through the regulatory standards work. The issue also needs to be captured within the LSB's strategic programme in order that an informed judgement could be made as to the LSB's position on the matter. In principle, there should be no reason, under the current framework, to restrict competition.
- The Consumer Panel has not yet taken a view on this issue but they would be interested to understand the motives behind any switching between regulators.
- The potential reputational impact on the LSB was noted, and it was agreed that some further thinking on the LSB's position could be done within the context of the work that is being done with Professor Mayson.
- It was agreed that, as it is unlikely that the possibility of providers wishing to switch regulators is going to have an adverse impact on consumers in the short to medium term, for now, the LSB would keep a watching brief on the situation.

9. **The Board agreed to**

- a) **Note the issues raised in the paper, and**
- b) **Revisit this topic by way of a further Board paper in six months' time.**

Item 6 – Paper (16) 03 SRA Rule change application – regulatory reform programme

10. Dawn Reid and Paul Greening introduced this paper, the purpose of which was to seek the Board's approval to changes that the SRA is proposing to make to its regulatory arrangements. It was noted that the majority of the proposals within the application had already been approved, but there is a group of related issues in respect of which a warning notice has been issued.

11. The changes in question, which relate only to ABS, are (i) to remove the requirement that licensable bodies include a statement in their applications about the reserved legal activities for which the body seeks authorisation and (ii) to remove the SRA's power to revoke or suspend a body's authorisation where it is satisfied that the body had no intention of carrying on the legal activities for which it has been authorised. It was noted that one potential consequence of these proposals might be that firms whose activities do not need to be regulated could seek to be regulated in order simply to gain a competitive advantage. This could extend the scope of regulation, although such extension would be a firm's choice.

12. [REDACTED]
[REDACTED]
[REDACTED] [FoIA exempt: s42]

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

- In deciding on the application, account should be taken of the position where the needs of a firm's clients might change from what they had been previously.
- There is at present no evidence to quantify the level of risk that firms that do not need to be regulated will apply to come into regulation.
- The SRA is committed to a review of the impact of these changes.
- It was observed that this is a finely balanced decision, but that there is no reason under the Act to refuse the application.
- It was agreed that the final Decision Notice would note (amongst other things) that there could be benefits to consumers from the higher level of protection that regulation affords.

14. **The Board agreed**

- a) That the part of the application from the SRA relating to alterations to the regulatory arrangements in respect of reserved legal activities be granted, and**
- b) To delegate the finalising of the wording of the decision notice to the Chairman and Chief Executive.**

Item 7 – Paper (16) 04 Review of the Practising Fee Rules 2009

15. Dawn Reid and Paul Greening introduced this paper, seeking the Board's approval to proceed with the consultation on revisions to the 2009 Rules, including two new criteria. This review has been prompted in the main by the Law Society's application last year to enable it to use income arising from practising certificate fee (PCF) funded, non-regulatory permitted purposes for non-permitted purposes. It was noted, in addition, that the Rules had not been reviewed since they were introduced in 2009.

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

- Apart from the income issue, findings from the review indicated that stakeholders were broadly content with the LSB's proposals, and some further changes are to be made in response to comments received.
- It was noted that the LSB does not approve the regulators' budgets, but rather considers PCF applications in accordance with the criteria set out in the Rules, and it is on this basis that the two amendments to the criteria should be made to provide clarity.
- It was queried whether (for example) in the guidance to the Rules, regulators should be advised to have regard to the desirability of avoiding sudden significant increases in the level of the PCF.

17. The Board agreed to

- a) Note the outcome of the LSB review of the Practising Fee Rules 2009, and that revisions to the rules be consulted on, and**
- b) Delegate to the Chief Executive the drafting of the consultation paper.**

Item 8 – Paper (16) 05 Statement of policy on in-house lawyers

18. Kate Webb introduced this item, reminding the Board that they had agreed, at their meeting in September 2015, to publish a statement of policy on regulatory arrangements relating to in-house lawyers. This was considered to be the most appropriate way to support the BSB and SRA, both of whom had indicated their intention to review their approaches to regulating in-house lawyers. The purpose of this paper was for the Board to approve the content of the decision document. It was noted that representations from stakeholders in response to the draft statement had been broadly supportive. A paragraph had also been added in relation to pro bono activities, and this was supported by the Board.

19. The Board agreed to

- a) Note the content of the decision document, and approve its publication, and**
- b) Delegate the agreement of any final drafting changes to the Chairman and Chief Executive.**

Item 9 – Paper (16) 06 Section 112 (complaint handling) thematic review – initial findings

20. Kate Webb and Nicholas Baré introduced this item, seeking comments from the Board on the proposed approach to making the required changes as identified in the thematic review, and asking that sign off of the consultation paper be delegated to the Chief Executive. The Board were reminded that one of the LSB's first actions,

following its establishment in 2010, was to issue requirements on the arrangements that authorised persons should have in place in respect of complaint handling and sign posting under section 112 of the Legal Services Act. This includes mandatory requirements, outcomes and guidance. The question that the thematic review was required to address was whether these requirements remain fit for purpose.

21. The team had discussed the current LSB requirements document with stakeholders and a number of options for change had been identified. These were incorporated into the proposals before the Board.
22. The following points were raised in the course of the discussion:
 - The question was raised whether it would be proportionate to require regulators to ensure that providers publish data on their handling of complaints. It was agreed that at the very least, the regulators ought to be obliged to give consideration to such a proposal.
 - In relation to the findings from the 2011 research about the number of clients who were informed of their right to complain, concern was expressed about the small proportion of providers who appeared to have met this obligation. The possibility that signposting does in fact take place, but not necessarily at the point when consumers actually need the information was, however, acknowledged.
 - There was a wider discussion about the LSB's use of its enforcement powers. In writing to the approved regulators to launch the consultation, it was agreed that the LSB would indicate its concerns with the current figures, but invite them to provide information that they might have, indicating that consumers are in fact better informed of their rights in this area than the data suggests.
 - The Board was reminded of the distinction between section 112 requirements and the role of the OLC/LeO – more effective compliance with these rules could generate better handling by firms, but the relationship between this and the number of complaints eventually handled by LeO is not clear cut – for example, improved sign-posting could lead to more complaints being handled by LeO.
 - It was proposed that an eight week consultation be held, with a revised paper to be presented at the May Board meeting.
23. **The Board agreed to**
 - a) **Approve the proposed approach to dealing with the initial findings of the thematic review, and**
 - b) **Delegate sign off of the consultation paper to the Chief Executive.**

Item 10 – Minutes of the meeting of 26 November 2015

24. 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 11 – Report of action points

25. 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.
26. **The Board noted the updates to the report of action points.**

Item 12 – Paper (16) 07 Chief Executive's update – January 2016

27. Neil Buckley presented his update report. He reiterated his thanks for the warm welcome he had received. He indicated that, among other things, he will consider whether changes are required to the way that the CEO report is presented, and Board members were invited to provide any suggestions.
28. MoJ sponsorship matters
- There was nothing yet to report on Board appointments, but it is hoped that the calibre of the list of preferred candidates that had been submitted to the Lord Chancellor would lead to appointments being made.
 - MoJ had not acknowledged the LSB's signing of the amended Budget Version (BV) letter.
 - There has also been some engagement with MoJ on the issue of independence of the regulatory bodies. [REDACTED]
[REDACTED] [FOIA exempt: s36(2)(b)(ii)]
29. Office for Legal Complaints
OLC colleagues will be attending the March Board meeting to present their final budget and Business Plan. The Chief Executive confirmed that he will shortly be visiting LeO's base in Birmingham to gain a first-hand view of their operation.
30. Competition and Markets Authority
A teach-in was held by the LSB for CMA colleagues, and this had proved useful for both parties. The LSB's proposed response to the CMA's Statement of Scope for its study will be shared with Marina Gibbs prior to submission.
31. Bar Council PCF application
This application is seeking a 1.25% increase on last year's figure, and will, as usual, be carefully scrutinised.
32. CILEx Regulation report on barriers to switching regulators
There was a discussion about the implications of run-off insurance cover on providers' intentions to switch regulators. It was noted that the LSB remains open-minded about this, and that it would be for the frontline regulators to do the requisite exploratory work in the first instance, particularly in relation to possible consequences for consumers.

33. Communications and stakeholder engagement

- A productive meeting was held on 11 January with the CEOs of the regulatory bodies. They took away three work streams on which they will work collaboratively.
- A useful meeting had also been held with Lord Hunt of Wirral.
- It was noted that further meetings are to be arranged with senior judges in order for them to better understand the LSB's remit and role.
- A discussion of the LSB's vision is to be held at the next Senior Leadership Team meeting. This would also be discussed with the Board.

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

Item 13 – Paper (16) 08 Q3 performance report: 1 October – 31 December 2015

35. Julie Myers introduced this item, informing the Board that all of the material in this report would have been brought to their attention previously. The Board noted that MoJ colleagues found the report useful and that it forms the basis for discussion at the performance meetings.

36. **The Board agreed that the report be used as the basis for discussion with MoJ.**

Item 14 - Paper (16) 09 Finance Report to 31 December 2015

37. Edwin Josephs introduced this routine update on LSB finances. The Board noted that the LSB is close to receiving its costs in relation to the QASA litigation, in line with the orders made at each of the courts in which the case was heard. It is expected that remittances would be made before the end of March.

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

Item 15 – Any other business

39. None raised.

Item 16 - Date of next meeting

40. The Board would next meet on 23 March 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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