

Minutes of a meeting of the Legal Services Board (LSB) on 23 March 2016

Date: 23 March 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
 David Eveleigh
 Marina Gibbs
 Helen Phillips

In attendance: Nicholas Baré Regulatory Associate (item 10)
 Lola Bello Consumer Panel Manager (item 5)
 Steve Brooker Head of Research and Development (item 10)
 Emma Cartwright interim Head of Finance, Legal Ombudsman (item 6)
 Elisabeth Davies Chair, Legal Services Consumer Panel (item 5)
 Steve Green Chair, Office for Legal Complaints (item 6)
 Jenny Hart Business Planning Associate (items 6 & 7)
 Edwin Josephs Director of Finance and Services
 Graeme MacLachlan Regulatory Associate (item 11)
 Julie Myers Corporate Director
 Chris Nichols Regulatory Project Manager (item 9)
 Dawn Reid Head of Regulatory Performance and Operations (item 8)
 Kathryn Stone Chief Ombudsman (item 6)
 Nicola Tysoe Legal Advisor
 Caroline Wallace Strategy Director
 Kate Webb Head of Regulatory Reviews and Investigations (items 9 & 11)
 Adewale Kadiri Corporate Governance Manager (minutes)

Item 1 – Welcome and apologies

1. There were no apologies. The Chairman welcomed those present and in attendance to the meeting. Nicola Tysoe (Legal Advisor) attended the meeting in place of Nick Glockling, Legal Director, who was unavoidably absent.

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 21 January 2016

3. The Board noted that the Finance Report for January 2016 had been circulated electronically on 23 February 2016.

Item 4 – Paper (16) 10 Final LSB Business Plan and budget 2016/17

4. Neil Buckley introduced this item, indicating that the Minister has now approved that the LSB may collect the sum of £3,998k by way of the levy, which will therefore be the LSB's budget for 2016/17. This represents a nearly 7% reduction on last year's budget, and it is expected that the figure would fall to £3,503k by 2020. It was acknowledged that these reductions would require difficult prioritisation decisions to be made, including greater reliance on desk research and further analysis of evidence already collected. Business cases in support of requests to recruit to vacant posts and maternity cover can now be submitted to MoJ.
5. The following points were raised in the course of the discussion:

- 
[FOIA exempt s36(2)(b)(i)]
- The Board agreed to approve the proposal to pause the work on special bodies, to be reconsidered in 2017/18.
- The Chair of the Audit and Risk Assurance Committee (ARAC) confirmed that the Committee had received satisfactory answers to questions raised about the budget approval process. It is expected that communication from MoJ giving authority to commit expenditure would be received shortly.
- The importance of working collaboratively, where possible, with the frontline regulators on research was noted. The possibility of staff secondments in both directions is also to be considered.
- The Board expressed an expectation that the decision to discontinue work on the unregulated sector would not mean that the unregulated sector did not feature in the LSB's thinking on the sector as a whole as it remained important in the context of (amongst other things) the LSB's objective to ensure consumer interests were promoted.

- The Board expressed their thanks to the Director of Finance and Services and the Business Planning Associate for their efforts in getting the budget and Business Plan to this point.

6. The Board agreed to

- a) Approve the budget of £3,998k for 2016/17**
- b) The proposed changes to the Business Plan and delegated responsibility to the Chairman and CEO final drafting of the Plan and response to consultation, and**
- c) Defer work on transitional protections for special bodies.**

Item 6 – Paper (16) 12: OLC budget 2016/17 for approval

7. Steve Green, Chair of the OLC, Kathryn Stone, Chief Ombudsman, and Emma Cartwright, interim Head of Finance, attended to present this item.
8. In setting the context for the budget proposition, OLC reported that a number of new colleagues have recently joined LeO, and are beginning to have a positive impact on the organisation. It was acknowledged, however, that the number of cases received has continued to decline. The OLC Board has challenged the Executive to introduce some flexibility into LeO's resourcing arrangements to better adapt to the unpredictability of its workload.
9. The following further points were made in the course of the discussion with OLC:
 - On the issue of flexing the staff resource, the importance of taking account of issues that could affect the demand for legal services was noted. For example, as a result of the changes announced to the stamp duty for buy to let properties, it is anticipated that more transactions will be made in the short term, and this could in turn lead to a spike in complaints. As a result, proposals for later opening times and opening at weekends have been made to the OLC Board. A cohort of temporary ombudsmen has also been recruited, and internally, investigators are being trained as temporary ombudsmen.
 - Foundations are now being established to secure productivity gains in the future, including a new IT provider in April 2016. It was acknowledged that in addition to improving existing processes and systems, organisational attitudes, values and behaviours also need to shift. Work to agree and document, for the first time, a set of service principles is almost complete, and these will be published. It was reported that these have already been received positively by the Legal Services Consumer Panel.
 - The OLC expects that significant progress would be made in meeting the timeliness target by June 2016. However, they expressed the view that consumers are less concerned with timeliness, but more with the quality of the decision making.
 - With regard to investigatory efficiency, it was reported that a number of steps are being taken to help LeO improve its performance, including restructuring

teams, putting in place clearer performance measures more aligned with the service standards measures, and building in better models of staff engagement. There is an expectation that these measures will lead to improvements in both quality and timeliness, but the OLC team were not prepared to commit to specific levels of improvement at this stage.

10. The LSB welcomed the reduction in budget proposed and approved the budget of £13.63m for 2016/17

Item 7 – Paper (16) 13 Update on OLC performance

11. Julie Myers introduced this paper, reminding the Board of the statutory requirements that had been imposed on the OLC by the LSB in June 2015. The current reporting requirement and the existing targets are to expire at the end of March 2016, and the LSB Board sub-group on OLC performance has considered what the LSB's future approach should be. The proposal to the Board is to remove the current prescriptive section 121 targets, but to maintain a reporting requirement, in order to ensure continued transparency of performance in terms of quality, timeliness and cost.

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

- The Board recognised that it must act proportionately in imposing statutory requirements and that reporting did represent an additional burden on the OLC, but was cognisant of the importance of encouraging greater transparency and the need to ensure improvements in performance. It was expected that the nature of the reporting required by LSB would not be dissimilar to the information that the OLC would require to administer the Ombudsman scheme effectively
- It was noted that a three way protocol between the OLC, LSB and MoJ is being developed. The LSB and OLC ARAC Chairs would be meeting to ensure that there was a shared understanding of mutual and respective risks to each organisation

13. The Board agreed

- a) **That the LSB uses its powers under section 120 of the Act to require the OLC to continue to report on LeO performance, and**
- b) **To delegate authority to the Chairman to write formally to the OLC Chair on this basis.**

Item 5 – Paper (16) 11 Consumer Panel draft work programme 2016/17

14. Elisabeth Davies and Lola Bello attended to introduce this item. Areas of read across with the LSB's business plan and strategy were highlighted, as was the balance in the programme between the Panel's own initiatives, and its capacity to respond to LSB commissions. The programme had been kept deliberately brief, with a clear

focus on consumer outcomes. The annual Tracker Survey, a key component of the Panel's evidence base, is to be re-commissioned.

15. It was noted that the Panel will continue to work with others, for example, training the frontline regulators and LeO on the consumer principles toolkit. The reference to consumer segmentation in the programme is the continuation of a theme from this year, and builds on joint work done with the LSB on unbundling and online divorce tools, to put forward suggestions for the creation of nuanced solutions to legal problems.
16. The following further points were made in the course of the discussion:
 - It was recognised that the Panel does not itself have the skills or resources to do the segmentation work. The focus will therefore be on making the case for the regulators to develop work in this area.
 - With regard to the Panel's work on information remedies, it was reported that emerging thinking would be available from July 2016. The CMA market study team had attended the most recent Panel meeting, and have committed to attend another in the future.
 - There is alignment between the Panel and the LSB on the importance of protecting the interests of consumers, and discussions are ongoing as to how key objectives in this area can be met, taking account of the constraints on LSB resources. The additional costs of the Tracker Survey were justified on the basis of its importance to the Panel's work.
 - It was confirmed that organisations receiving the consumer principles training programme are not required to pay for it, as it is considered that one of the Panel's key roles is to help other organisations to find solutions for consumers. The Board suggested that in the current climate, this approach might need to be reconsidered.
 - The Board commended the draft work programme.
17. **The Board agreed to endorse the Legal Services Consumer Panel work programme for 2016/17.**

Item 8 – Paper (16) 14 BSB licensing authority application

18. Dawn Reid introduced this item. The application had been made in April 2015, but it had taken some time to progress to this stage. The LSB is currently working with the BSB and MoJ on the necessary statutory instruments. The BSB had made it clear that its intention was to become a “niche” regulator for these purposes, and would only authorise entities wishing to do advocacy related work. Although these restrictions are self-imposed, as the BSB team do not wish to take on work beyond their expertise, the LSB will nevertheless monitor their performance through the regulatory standards work, and a review is to be carried out in two years' time.

19. The BSB had properly considered whether it needed to set up a compensation fund, and its subsequent decision not to do so was considered to be appropriate in the circumstances. In any event, the section 69 order would provide it with the opportunity to set one up in the future.
20. An implementation plan is in place, and it is expected that all the required work would have been done by the end of October. The BSB want to be able to start designating entities by the end of this calendar year.
21. The BSB's regulatory assessment had indicated that overall, it has made significant progress. The organisation has developed a risk management framework, and new members of staff have brought with them useful wider regulatory experience. Progress has also been made on education and training, but more needs to be done to clear old enforcement cases.
22. The following further comments were made in the course of the discussion:
 - It is likely that the BSB will mainly authorise smaller entities, particularly in light of the restrictions on non-authorised ownership. It does not currently wish to pursue authorisation of the larger organisations, who may prefer to approach other licensing authorities.
 - The Board passed on its thanks to Tom Peplow and Bryony Sheldon for their work on the application, and noted the positive comments that had been received from the BSB Director General.
23. **The Board agreed to**
 - a) **Grant the application for a recommendation to the Lord Chancellor that the Bar Council is designated as a licensing authority**
 - b) **Delegate to the Chairman approval of the drafting of the recommendation, and**
 - c) **Delegate to the Chairman and Chief Executive approval of the drafting of the final decision notice.**

Item 9 – Paper (16) 15 Accessibility of legal services – final report

24. Chris Nichols introduced this report, which is the final output from the 2015/16 commitment to explore innovations in other sectors with a view to improving access for consumers of legal services. It was emphasised that the output from this work is to be positioned as a shared resource for the legal services regulators.
25. The following points were raised in the course of the discussion:
 - The Board commended the report, but noted that it was not clear what the LSB would do next in relation to Plain English guides and logos. In response, it was noted that the LSB could not mandate the production of such guides, but would

be interested in seeing if this is picked up by any of the regulators. No follow up is intended in relation to logos.

- There was some discussion as to whether the LSB needs to be more insistent about what the regulators should do in response to its findings.
- However, it was acknowledged that the regulators had not yet been surveyed as to what they are already doing in this area, and whether they had already done any thinking on the issues raised in this report. There was a discussion as to how the report might be used and any follow up prioritised. The CEO agreed to consider this and to report back at a future meeting.

26. The Board agreed to

- a) Note the findings from explorations of other sectors, and**
- b) Delegate final sign off of the report to the Chairman and the Chief Executive.**

Item 10 – Paper (16) 16 Open data review

27. Nicholas Baré introduced this item. The aim of the project was to consider steps to open up data in the legal sector. One element of the project involved the Consumer Panel's response to the LSB's open data commission, in which the Panel set out recommendations that would encourage the provision of information to help consumers make decisions about how their legal needs could be met. It was noted that the LSB accepts the three recommendations for it in the Consumer Panel's response. The project also aimed to consider the barriers that are currently in place for intermediaries (such as comparison websites), as well as ongoing regulatory interventions in other markets.

28. The following comments were made in the course of the discussion:

- The Board noted that the LSB does not itself have the regulatory levers to drive improvements in price transparency. However, the Board took the view that the LSB should take a line which encouraged the regulators to explore how improvements in price transparency could be secured. It was also suggested that the LSB should support the Panel's recommendation relating to the OLC, but leave implementation to the OLC Board.
- It was acknowledged that consumers have some difficulty in finding and choosing appropriate legal service providers, and that there are significant gaps in the amount and quality of information that is available. It was agreed that in its response to the Panel report, the LSB will indicate that it expects action to be taken to remedy this.

29. The Board agreed to

- a) The proposed response to the Consumer Panel's report, subject to the amendment suggested by the Board, and**

b) Delegate sign-off to the Chief Executive.

Item 11 – Paper (16) 17 Diversity – assessment of regulator progress

30. Graeme MacLachlan introduced this item. The recommendations set out in the paper were based on the work that had been done to date following the Board discussion in April 2015. It was noted that the larger regulators had responded well to this work which is, in due course, to be embedded within the LSB's regulatory standards work. The aim is that the progress made by the larger regulators serves to encourage the other regulators who are doing less well.
31. The following points were raised in the course of the discussion:
- It was acknowledged that all the regulators are now collecting diversity data. In terms of next steps, the way in which they use this information will be tested through the regulatory standards work, and best practice from other sectors would also be shared, with a view to encouraging the regulators to learn from what has worked elsewhere.
 - It was suggested that the report would be accompanied by a letter from the Chairman making it clear that there is an expectation that action would be taken in response.
32. **The Board agreed to**
- a) **Note the draft report on regulator progress, initiatives in other sectors and proposals for future assessment of regulator performance,**
 - b) **Agree to review the Board's 2011 guidance as a forerunner to developing a future performance assessment, and**
 - c) **Delegate sign-off of the final report for publication to the Chairman and Chief Executive, to be accompanied by a covering letter to the regulators from the Chief Executive.**

Item 12 – Minutes of the meeting of 21 January 2016

33. 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 13 – Report of action points

34. 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.
35. **The Board noted the updates to the report of action points.**

Item 14 – Paper (16) 18 Chief Executive’s update – March 2016

36. Neil Buckley presented his update report. He highlighted the following items:

- The government’s consultation on regulatory independence was not expected to be issued before Easter. It is possible that it will be published in the gap between the local election and EU referendum purdahs, but this has not been confirmed by the MoJ and is an internal working assumption only.
- Advertising for the LSB lay member competition has now gone live.
- There has been a change in ministerial responsibilities at the MoJ, and Lord Faulks QC has taken over responsibility for the LSB. It is hoped that the Chairman and Chief Executive will meet him soon.
- MoJ perception of risk – The Executive is awaiting an explanation as to why the LSB’s risk rating has been raised. At this point, it does not appear that this will have any implications for day to day sponsor relations.
- A draft response to the Judicial Executive Board’s consultation on McKenzie Friends is to be presented at the April Board meeting. This is a controversial area, and the reforms being suggested are significant. The need to exercise caution in approaching this issue was acknowledged.
- The Bar Council PCF application had indicated a 1.25% increase on last year’s figure. Although the application was eventually approved, letters were subsequently sent to all CEOs about the expected trajectory for next year’s applications.

37. The Board noted the contents of the Chief Executive’s update.

Item 15 – Paper (16) 19 Report of the ARAC meeting on 10 March 2016

38. Terry Babbs presented this report. He indicated that the minutes of the meeting would soon be available for the Board’s information.

39. The Board agreed to note the report of the ARAC meeting on 10 March 2016.

Item 16 - Paper (16) 20 Finance Report to 29 February 2016

40. Edwin Josephs introduced this routine update on LSB finances.

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

Item 17 – Any other business

42. None raised.

Item 18 - Date of next meeting

43. The Board would next meet on 27 April 2016 at 13.00. The venue would be the Office of Rail and Road, One Kemble Street, London WC2B 4AN.

AK, 29/03/16

Signed as an accurate record of the meeting

.....
Date
.....