

Minutes of a meeting of the Legal Services Board (LSB) on 26 May 2016

Date: 26 May 2016
Time: 11.30 – 14.30
Venue: Medical Research Council, One Kemble Street, London WC2B 4AN

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

In attendance: Nicholas Baré Regulatory Project Associate (item 5)
 Lola Bello Legal Services Consumer Panel
 Manager (item 9)
 Robert Cross Project Manager – Research (item 3)
 Elisabeth Davies Chair, Legal Services Consumer Panel
 (item 9)
 Paul Greening Regulatory Project Associate (item 4)
 Jenny Hart Business Planning Associate (item 15)
 Edwin Josephs Director of Finance and Services
 Julie Myers Corporate Director
 Dawn Reid Head of Regulatory Performance and
 Operations (item 4)
 Bryony Sheldon Regulatory Project Manager (item 6)
 Caroline Wallace Strategy Director (from item 3)
 Kate Webb Head of Regulatory Reviews and
 Investigations (item 5 and 6)
 Antonet Abbink Corporate Affairs Associate (minutes)
 Steve Hackett Director of Finance and Contracting
 Chesterfield Royal NHS Foundation
 Trust

Item 1 – Welcome and apologies

1. The Chairman welcomed those present and in attendance. Apologies had been received from Nicola Tysoe, Legal Advisor, who was due to attend in place of Nick Glockling, Legal Director. Antonet Abbink was acting as Board Secretary in place of Ade Kadiri. The Chair also welcomed Steve Hackett as an observer to the meeting.

- [Redacted]
 - [Redacted]
 - [Redacted]
 - [Redacted]
 - [Redacted]
 - [Redacted]
 - [Redacted]
 - [Redacted]
- [Redacted] [FolA exempt s22. Expires on publication of report]

6. The following points more generally were raised in discussion:

- Looking ahead, consideration should be given to the methodology, which was agreed in 2011, and whether it might be desirable to change certain aspects of it when taking this work forward in future.
 - Careful consideration should be given to the presentation of this research externally. It would be important to maximise its impact on the sector, and effort should be made to circulate it widely and make it as readable as possible. A press conference and briefing materials tailored for different groups of readers were being considered. In addition, these results would feed into our stakeholder work over the long term.
 - In terms of presentation, throughout the report we should make sufficient reference to the wider context in which the market finds itself, to avoid giving an impression that findings are being presented in isolation of external events.
 - [Redacted]
- [Redacted] [FolA exempt s36(2)(b)(ii)]

7. The Board agreed:

- a) To note the three key messages arising from the market evaluation research;
- b) That the report would be finalised in light of the Board discussions and would be signed off for publication by the Chief Executive. The report would be published after the EU Referendum.

Item 4 – Paper (16) 34 Outcomes of the consultation on changes to the Practising Fee Rules 2009

8. Dawn Reid introduced this item. The Decision Document is the result of a year's work that was initially prompted by an application the LSB received from the Law Society last year in relation to the use of derivative income, but is equally relevant to other regulators' Practising Certificate Fee (PCF) applications. The proposed changes to the LSB's PCF Rules presented in this paper were the subject of public consultation. The intention was to finish this work prior to the start of the 2016 round of PCF applications. We were currently expecting the Law Society / Solicitors Regulation Authority (SRA) application at the end of June.
9. The following introductory comments were made:
- Generally, the responses received to the consultation showed that the regulatory bodies were content with the changes proposed, whereas generally the representative arms showed more concerns.
 - [REDACTED]
[REDACTED]
[REDACTED] **[FoIA exempt s42]**
 - As a result of the consultation responses, a small amendment was being proposed to 10(f). This is further explained in the paper.
10. The following points were raised in the course of the discussion:
- As with any PCF application, irrespective of the direction of change proposed, contextual information was important for consumers. For smaller regulators, however, asking them to present more information might be too burdensome.
 - [REDACTED]
[REDACTED]
[REDACTED] **[FoIA exempt s44]**
 - The Chair noted that in the CEO and Chair level meetings with the regulators, the LSB would make very clear its expectation that costs of regulation should be decreasing.
11. **The Board agreed to**
- a) Note the outcome of the LSB consultation on the LSB's PCF Rules 2009;**
 - b) As a matter reserved to the Board, approve the changes to the PCF Rules, which will be renamed as the Practising Fee Rules 2016.**

Item 5 – Paper (16) 35: Summary of the representations to the first-tier complaints handling consultation, and updated publication

12. Nicholas Baré and Kate Webb introduced this item which reported on the outcome of a public consultation reviewing LSB's section 112 requirements and guidance for regulators. The executive proposed minor changes to the requirements, and some substantial changes to the guidance, resulting in a document that would be more focused and contextualised.
13. The following introductory comments were made:
- The team met the majority of the regulators and the Legal Ombudsman (LeO), in order to source more evidence of how they think the requirements and guidance are being used. Examples of what the regulators were currently doing in relation to first tier complaints handling were included in the paper.
 - Consideration has been given to so-called 'silent sufferers', ie consumers that are dissatisfied but don't engage in the complaints process. [REDACTED]
[REDACTED]
[REDACTED] [FoIA exempt s22]
14. The following further points were made in the course of the discussion:
- It was suggested that lessons could be learned from good practice in other sectors in particular by identifying levers and incentives available to drive positive change.
 - The revised guidance set a clear benchmark in terms of our expectations of the regulators.
 - [REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] **[FoIA exempt s22. Expires on publication of report]**
 - Given this added context, it was suggested that a more systematic way might be found to establish the most appropriate time of engagement, for instance with the help of scenarios.
 - The importance of the joint work being carried out by the regulators on client care letters was noted, particularly against concerns about public legal education. It was suggested the role of client care letters in improving consumer legal literacy could be reflected in the decision document.
 - On second tier complaints, a question was raised as to the extent to which we should require regulators to monitor relevant data arising from second tier complaints handling. It was noted that both LeO and the regulators were keen to work together on confronting this issue.

- [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted] [FoIA exempt s22. Expires on publication of report]

14. The Board agreed to

- a) Note the summary report of responses received and the LSB's response;
- b) Reconsider the wording of the requirements specified under section 112 and the guidance made under section 162 of the Act once it had been revised to take account of comments made in the course of the discussion. This would take place by correspondence, Publication will take place in due course.

Item 6 – Paper (16) 36 Thematic review of restrictions on choice of insurer

15. Bryony Sheldon introduced this paper, reminding the Board of the scope and rationale for this work. The review has looked at the professional indemnity insurance (PII) requirements of all of the regulators. The analysis that was presented to the Board was a work in progress. It was emphasised that we would like all regulators to think about the issue of choice of insurance provider, especially as the PII market was subject to change and the issues were not static. Whilst the issue had arisen originally in relation to the Bar Standards Board's (BSB's) PII arrangements, this review was of relevance to all regulators.
16. The following points were raised in the course of the discussion:
- It was acknowledged that this was a very complex area.
 - [Redacted]
[Redacted]
[Redacted]
 - [Redacted]
[Redacted]
[Redacted]
[Redacted] [FoIA exempt s36(2)(b)(ii)]

17. The Board agreed to:

- a) Note the findings of the thematic review of regulatory restrictions on choice of insurer;
- b) Finalise the analysis in light of the points raised in discussion, and delegate sign-off to the CEO for publication in due course.

Item 7 – Paper (16) 37 Annual Report of the Audit and Risk Assurance Committee (ARAC) 2015/16

- 18. Terry Babbs introduced this report, assuring the Board that effective audit and risk arrangements are in place. He noted that LSB had received the highest level of assurance from internal audit on research procurement and only minor performance improvement recommendations had been made in relation to business continuity. The Annual Report and Accounts had received a clean audit from NAO.
- 19. **The Board agreed to note the report about the activities of ARAC during 2015/16.**

Item 8 – Paper (16) 38 Annual Report of the work of the Remuneration and Nomination Committee (RNC) 2015/16

- 20. Helen Philips introduced this report, assuring the Board that the Terms of Reference of the RNC remain current.
- 21. The following points were raised in the course of the discussion:
 - It was noted the FRC had published guidance on succession planning, which the Committee might want to take note of. This would form part of the Committee’s activities during 2016/17.
- 22. **The Board agreed to note the report about the activities of RNC during 2015/16.**

Item 9 – Paper (16) 39 Consumer Panel Annual Report

- 23. Elisabeth Davies introduced the Legal Services Consumer Panel’s (the Panel) Annual Report, explaining the Panel’s intention in this process was to assess its own impact during the year. The Chair highlighted that the report also informed the Panel’s work programme for the next year, in line with its strategy of influencing over a number of years.
- 24. [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]

[FOIA exempt
s22. Expires on publication of report]

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

- It was agreed that the Executive would cross-check figures on public confidence in lawyers.
- Both LSB and the Panel share a view that there had been some improvements in the legal services market, but at a frustratingly slow pace. In particular, the Panel suggested that a distinct group of consumers were benefitting from the reforms, whilst there is a growing gap between these consumers and others who are not benefitting. The Panel expressed its intention to dig deeper into this issue to understand who was not benefitting and what could be done (by the Panel or by others) to address this imbalance.
- In response to the question which data the Panel would most prefer to see from the regulators, the Panel flagged that basic data was currently not available. Quality and price were key choice factors for consumers that could help them to make informed decisions.
- The Panel explained its choice of narrative when addressing the sector's data transparency compared to other sectors, such as financial services, referring to the journey that has been taken in other sectors and which the legal services sector should be taking as well. It was acknowledged that regulatory intervention could be another strategic element, which the Panel would like to work on with the LSB. In addition, it was noted that the Competition and Markets Authority (CMA) was looking into information availability as well,
- A point was raised in relation to access to redress and the inability of LeO to accept third party complaints. It was noted that the Panel was minded to re-visit this important area with LeO.

26. **The Board:**

- a) **Expressed its compliments on the report and its generous appreciation for the work of the Panel, commending the consistently high quality of the work delivered by it.**
- b) **Agreed to note the Panel's Annual Report.**

Item 10 – Minutes of the meeting of 27 April 2016

27. 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 11 – Report of action points

28. 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.

29. The Board noted the updates to the report of action points.

Item 12 – Paper (16) 40 Chief Executive’s update – May 2016

33. Neil Buckley presented his update report and highlighted the following items:

- The Lord Chancellor was not now expected to lay LSB’s Annual Report and Accounts before Parliament until after the EU Referendum. The Accounts have had NAO sign-off but have not yet been submitted to the Comptroller and Auditor General for certification. The Chairman and Chief Executive will be meeting Lord Faulks, the Minister with responsibility for legal services, before the laying of the Annual Report and Accounts.
- The LSB’s business case for recruitment to fill existing vacancies had now had approval from the MoJ and recruitment will commence shortly
- The LSB had met the Ministry of Justice’s *Tailored Review* team, the LSB would be subject to a *Tailored Review* over the summer, at the same time as the Office for Legal Complaints. The review was expected to conclude in September, subject to Cabinet Office approval of the terms of reference. The Review would include a stakeholder consultation. LSB remained in scope for the separate, but related, functional review of regulators. LSB was also likely to be required to make a contribution to the *Tailored Review* of OLC.
- A meeting was convened with the members of the Joint Advocacy Group in order to discuss progress on QASA implementation and the related issue of defence panels.
- OLC performance remained a matter that receives the LSB’s continued attention, whilst being mindful of the limitations of our powers in this regard.
- A meeting was held with the CMA in relation to their legal services market study.
- Meetings had been held with Lord Judge and Baroness Hayter, to help spread awareness of the LSB and our work among members of the House of Lords.

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

Item 13 – Paper (16) 41 LSB Risk Management Strategy – annual review

35. Julie Myers presented this report, which asked the Board to agree the revised *Risk Management Strategy* and also to discuss and confirm its tolerance for risk where currently, risk tolerance for operational risk stood as ‘low’ and risk tolerance for strategic risk stood as ‘relatively high’. The Strategy had been endorsed by ARAC pending Board discussion on its risk tolerance.

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

- The Board discussed whether its current behaviour had been in accordance with its risk tolerance as stated in the *Risk Management Strategy*.
- It was noted risk appetite evolves in line with key external events but also with prevailing strategy
- It was clear that the low risk appetite for operational risk (including financial) was appropriate.
- It was felt that the LSB should maintain its stated 'relatively high' tolerance for strategic risk whilst accepting that on a case by case basis, some decisions might appear more moderate.
- It was felt that the LSB had often addressed issues in a powerful and direct way.
- It was noted that as an oversight regulator our distance to the sector could give us more space to be bolder when taking strategic decisions.

37. The Board agreed to:

- a) Confirm that its risk tolerance remains as stated in the Risk Management Strategy; and**
- b) Agree the Risk management Strategy.**

Item 14 – Paper (16) 42 Report of the 12 May 2016 meeting of the Audit and Risk Assurance Committee

38. Terry Babbs introduced this item, referring to the paper for details.

39. The Board agreed to note the report of the Audit and Risk Assurance Committee meeting.

Item 15 – Paper (16) 43 LSB Corporate Risk Register

40. Julie Myers introduced this item, inviting the Board to undertake its six-monthly review of the LSB Corporate Risk Register.

41. The following points were raised in discussion:

- In relation to OLC/LeO (paragraph 13), it was noted that work is underway to develop a three-way operating protocol between MoJ-LSB-OLC. Work would then follow to establish a sub-register for OLC-related risk.
- It was noted that in accordance with the decision to have a focused register, misconduct in public office was not currently included as a reputational risk, this would however be kept under review.

42. The Board agreed that the LSB Corporate Risk Register remained current.

Item 16 - Paper (16) 44 Finance Report to 30 April 2016

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

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

Item 17 – Any other business

44. No other business was raised.

Item 18 - Date of next meeting

45. The Board would next meet on 14 July 2016 at 13.00. The venue would be the Office of Rail and Road, One Kemble Street, London WC2B 4AN.

AA, 27/05/16

Signed as an accurate record of the meeting

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Date
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