

Minutes of a meeting of the Legal Services Board (LSB) on 27 April 2016

Date: 27 April 2016
Time: 13.00 -15.00
Venue: Office of Rail and Road, One Kemble Street, London WC2B 4AN

Present: Sir Michael Pitt Chairman
(Members) Neil Buckley Chief Executive
Terry Babbs (from item 3)
Jemima Coleman
David Eveleigh
Marina Gibbs
Helen Phillips
Michael Smyth CBE QC (Hon)

In attendance: Antonet Abbink Corporate Affairs Associate
Steve Brooker Head of Research and Development (items 4, 5 and 9)
Vibeke Bjornfors Regulatory Project Manager (items 4 and 5)
Edwin Josephs Director of Finance and Services
Emma Kelly-Dempster Regulatory Project Manager (item 3)
Karen Marchant Regulatory Project Manager (item 3)
Julie Myers Corporate Director
Chris Nichols Regulatory Project Manager (items 6 and 7)
Dawn Reid Head of Regulatory Performance and Operations (items 3 and 8)
Nicola Tysoe Legal Advisor
Caroline Wallace Strategy Director
Kate Webb Head of Regulatory Reviews and Investigations (item 7)
Adewale Kadiri Corporate Governance Manager (minutes)

Item 1 – Welcome and apologies

1. There were no apologies. The Chairman welcomed those present and in attendance. In particular, he welcomed the two new non-lay Board members, Michael Smyth and Jemima Coleman, to their first meeting. Nicola Tysoe (Legal Advisor) attended the

meeting in place of Nick Glockling, Legal Director, and Antonet Abbink attended to shadow Ade Kadiri.

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

2. Michael Smyth declared his chairmanship of the trustees of the charity Law for Life, which is engaged in the provision of public legal education. He stated that he had given notice and he would be stepping down from this role at the end of July.

Item 3 – Paper (16) 21 Regulatory standards final report

3. Neil Buckley introduced this item, reminding the Board that assessment of the frontline regulators' performance against the regulatory standards is a key component of the LSB's oversight role. This is the second full report to be produced.
4. The following introductory comments were made:
 - This assessment builds on the work done in 2012/13. That exercise had relied exclusively on the regulators' self-assessment, but this time, other sources of evidence had been identified, including feedback from those who have used the regulators' services and the views of organisations that work closely with them. This had led to a more complete and rounded assessment. The regulators had been asked to check their individual reports for factual accuracy, and have made only a few comments.
 - The main headline was that all the regulators had made progress on at least one standard, and most had made progress on more than one.
 - All the regulators, with the exception of the Cost Lawyers Standards Board (CLSB), were able to demonstrate a good understanding of their performance, and their self-assessment grades were more aligned to the LSB's view than had been the case in the previous exercise. Most of the bodies were able to demonstrate a better understanding of legal services consumers' needs, although they are still finding it difficult to show that required outcomes are being achieved.
5. The following points were made in relation to the performance of individual regulators:
 - The BSB has engaged well with the framework, and has made progress against all five of the standards.
 - There has been overall improvement at the SRA, although it was noted that the organisation is still going through a period of significant organisational change.
 - Significant challenges remain at the CLSB, and there has not been much change since the last exercise, although their Chief Executive has taken some suggestions on board. This is a small organisation, with a small but growing regulated population, [REDACTED]

[REDACTED]. [FolA exempts 36(2)(b)(i)] It was noted that the Board Chairman is due to meet his CLSB counterpart shortly.

6. The following points were raised in discussion:

- It was suggested that more could be done in the overview report to highlight the importance of this exercise, and that this should be linked to the expected outcomes.
- In the context of the perceived shortage of data among regulators, the question was raised as to how the LSB could be satisfied that the comments and grades in the self-assessments could be supported. It was noted that reliance in this exercise had been placed on a broader range of information than previously, and that the regulators' assertions had been tested against this. It was also noted that the assessments were not meant to capture everything that the regulators did, and it was agreed that this point would be highlighted.
- While the Board acknowledged that it would not be appropriate to compare the scores of one regulator with another, the question was raised whether limited comparisons could be made in specific areas to help stimulate innovation by the regulators.
- With regard to the CLSB, it was noted that it charges the lowest fees of all the regulators, raising the question as to whether it has the resources to carry out its regulatory functions effectively.
- The SRA report highlighted a number of positive developments, including improvements in its operational performance, and its ambitious reform programme. It was noted, however, that on its own assessment, it had only improved in one area since 2012, and there is no area in which it considers its performance to be satisfactory. [REDACTED]
[REDACTED]
[REDACTED] [FolA exempt s36(2)(b)(ii)]
- The thoroughness of the work was commended, and questions were raised as to the time commitment required, in light of the squeeze on resources. It was recommended that consideration should also be given to outlining the relative strengths and weaknesses of each of the regulators, to assist practitioners who may be deciding which body they should be regulated by.

7. The Board agreed to:

- a) Note the assessment of regulators' performance for 2015/16 against the LSB's regulatory standards**
- b) Approve the individual reports for publication**
- c) Delegate authority to the Chairman and Chief Executive to sign-off the final version of the overview report, subject to amendments recommended by the Board, and**
- d) Consider for the future whether there is scope for benchmarking among the regulators.**

Item 4 – Paper (16) 22 Cost of regulation: transparency reports

8. Vibeke Bjornfors introduced this item, indicating that the publication of the transparency reports is one of the final outputs from the cost of regulation project. A draft overarching report, setting out the key findings from the project was also presented for consideration by the Board.
9. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[FoIA exempt s22] Following the November Board meeting, the Chairman wrote to chairs of the regulatory bodies to ask how they hold their executives to account for their organisations' spend. By the time of the Board meeting, responses had been received from all bar one of the chairs. The response from the SRA was received shortly before the Board meeting, and it provided helpful information on their governance arrangements. In terms of next steps, it was agreed that the focus would be on working with the regulators to increase levels of transparency on their costs.
10. The following points were raised in the course of the discussion:
 - It was suggested that the LSB should be more explicit in setting out its expectations on cost transparency. It was suggested that the outcome of this work could be used to inform future regulatory standards assessments, with cost transparency being one of the criteria. It was emphasised that the LSB needs to show leadership working in partnership with the regulators.
 - In spite of its scrutiny of PCF applications, the LSB does not have the power to compel the regulators to reduce their budgets. The LSB is currently consulting on the PCF rules.
 - Although it had been acknowledged previously that a cost benchmarking exercise would be too expensive, the question was raised whether this could be done specifically in relation to the regulators' corporate functions. It was agreed that this would be further explored.
 - The issue of insurance was raised, and the existing initiatives by approved regulators were noted.
 - It was agreed that the LSB should be pushing the regulators harder towards providing more metrics and benchmarking.
11. **The Board agreed to**
 - a) **Endorse the overarching report for publication, including the main proposal to focus future work on improving transparency of the regulators' costs.**
 - b) **Note the draft transparency report on the LSB's costs.**
 - c) **Delegate final sign-off of the report and all the individual transparency reports to the Chairman and Chief Executive.**

Item 5 – Paper (16) 23: Affordability of legal services: final report

12. Vibeke Bjornfors introduced this item setting out a proposed framework for the consideration of risks to the affordability of legal services. It was noted that there are no specific definitions of affordability that are relevant to this sector, and as such the LSB has taken a risk based approach, taking account of the type of service provided, the situation of the consumer, funding options and ease of shopping around. It would be for the regulators to consider how this framework might inform their future policy making.
13. The following further points were made in the course of the discussion:
 - The framework would become part of the LSB's internal policy 'tool kit' and would also be made available to regulators.
 - It was acknowledged that legal services may always be unaffordable for some consumers, and as such, that the LSB should also focus more broadly on overall accessibility.
 - The Board had a discussion about the timing of publications generally and the need to ensure that multiple reports are not published in too short a timeframe. This point was acknowledged.
 - It was agreed that this framework is a creative way of considering the issue of affordability, and that it be placed on the LSB website.
14. **The Board agreed to**
 - a) **Endorse the report, and**
 - b) **Delegate final sign off to the Chief Executive and Chairman.**

Item 6 – Paper (16) 24 Regulated/Unregulated services

15. Chris Nichols introduced this paper, reminding the Board that the purpose of the project was to improve the LSB's understanding of the scale and types of services provided in the unregulated sector, particularly in relation to for-profit work. The two reports that had been generated through the project should assist in developing future policy approaches in this area.
16. In 2013, a recommendation that will-writing be made a reserved activity had been made by the LSB to the Lord Chancellor. [REDACTED]
[REDACTED]
[REDACTED] **[FOIA exempt s36(2)(c)]** Consideration had been given to the possibility of the LSB extending the scope of its remit, on a voluntary basis, to unregulated providers, in accordance with its powers under section 163 of the Act, but this idea was not seen as workable, as there had been limited interest from providers and because there were limitations on how any such work could be funded.
17. The following points were raised in the course of the discussion:

- It was noted that the findings from this project would be useful to the CMA market study.
- [REDACTED]
- [REDACTED] [FoIA exempt s22]
- It was acknowledged that these findings weakened arguments that unregulated services should be brought into regulation, based on claims of unfair competition and consumer harm, and could distract attention from the bigger issue of how best to address unmet legal need.

18. The Board agreed to note:

- a) The key messages and learning emerging from the project,**
- b) The research report commissioned by Economic Insight, and the working draft of the in-house mapping report, and**
- c) The rationale for not pursuing further options for extending consumer protection to unregulated providers in 2016/17.**

Item 7 – Paper (16) 25 Response to Judicial Executive Board consultation on McKenzie Friends

19. Chris Nichols introduced this item. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [FoIA exempt s22]

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

- It is clear that the judiciary are concerned about the growth in the reliance on McKenzie Friends, and the impact that this is having and has the potential to have on the operation of the courts. It was suggested that the LSB response should acknowledge this.
- The Board noted that, under the Legal Services Act 2007, judges have discretion as to whether to grant rights of audience to McKenzie Friends. It was suggested that the LSB response make this point early on. It would be helpful to understand why the judiciary does not believe that this discretion is sufficient to address the perceived detriments.
- A response to question 10 could be used to address broader issues, such as the scope for simplification of court processes as part of the response to the increase in litigants in person.

- Concern was expressed about the references in the Society of McKenzie Friends' response to the consultation to solicitors acting as McKenzie Friends – it was unclear whether this was at the same time as being practising solicitors.

21. The Board agreed:

- a) To note the proposed response to the JEB consultation paper**
- b) To reconsider the draft response (out of meeting) once it had been revised to take account of comments made in the course of the discussion, and**
- c) That the amended response would be circulated to Board members before final sign off by the Chairman and Chief Executive.**

Item 8 – Paper (16) 26 Section 80 recommendation to the Lord Chancellor

22. Dawn Reid introduced this item, which is the second decision that needs to be taken with regard to the BSB licensing authority application. It was noted that this is a decision that is reserved to the Board. The contents of the draft order had been agreed by the MoJ before the eight week consultation period commenced. There had been one response to the consultation and this had been supportive.

23. The Board agreed to

- a) Note the content of the response document and approve its publication**
- b) Approve the making of the recommendation to the Lord Chancellor as set out in Annex A to the response document**
- c) Note the draft statutory instrument accompanying the recommendations as set out in Annex A to the response document, and**
- d) Note the regulatory triage assessment which will accompany the recommendation and draft order.**

Item 9 – Paper (16) 27 Draft LSB position on the future legislative framework

24. Caroline Wallace introduced this item. It was suggested that in order to give the Board sufficient opportunities to debate the proposals and how the key messages should be communicated, an extra standalone session would be held immediately following the May Board meeting.
25. The contributions of all colleagues who had been involved in this work, including, Professor Stephen Mayson, were acknowledged.
26. The following points were raised in the course of the discussion:

- [Redacted]
[Redacted]
[Redacted] [FOIA exempt s36(2)(b)(ii)]
- [Redacted]
[Redacted]
[Redacted]
[Redacted] [FOIA exempt s36(2)(b)(ii)] It is therefore critical that the LSB shares its experience, particularly given the LSB's ability to contribute objectively to the debate in view of its lack of vested interest in the outcome.
- The LSB's position should be clear about its preferences for the future. It would also be important to understand how the MoJ would receive the LSB's suggestions. The importance of engaging constructively with officials was noted.
- [Redacted]
[Redacted] [FOIA exempt s36(2)(b)(ii)]
- [Redacted]
[Redacted]
[Redacted]
[Redacted] [FOIA exempt s36(2)(b)(ii)]
- [Redacted]
[Redacted] [FOIA exempt s36(2)(b)(ii)]
- There was some discussion about the tone of the paper, and some suggestions were made with a view to addressing the key issues more directly. Board members were invited to hold one to one discussions with Caroline Wallace and Steve Brooker, ideally over the next fortnight, with a view to contributing to the drafting. In response to the question as to whether there were any relevant international examples to which reference could be made, it was noted that a survey of different models for legal services regulation around the world had been carried out, the resulting picture was mixed, and that the UK (in relation to the England and Wales jurisdiction) appeared to have a more developed approach.

27. The Board agreed:

- a) To note the LSB's emerging position on the issues of independence, award of title, consumer voice and regulatory architecture, and
- b) That a standalone session is to be held following the May Board meeting to discuss the outstanding issues and agree on a publication strategy.

28. Edwin Josephs introduced this item. It was noted that the Board was receiving the report at this stage as a response to the MoJ's stated intention to lay a consolidated departmental Annual Report and Accounts before the end of May 2016. The Board had had an opportunity to comment on an earlier draft in March, and the Audit and Risk Assurance Committee would provide further scrutiny, on the Board's behalf, at their meeting in May.
29. **The Board agreed to**
- a) **Approve the draft LSB Annual Report and Accounts 2015/16, subject to any additional points being raised through scrutiny by the ARAC, and**
 - b) **Delegate to the Chairman and Chief Executive authority to approve the submission of the Annual Report and Accounts 2015/16 to the Comptroller and Auditor General and Lord Chancellor.**

Item 11 – Minutes of the meeting of 23 March 2016

30. 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 12 – Report of action points

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

Item 13 – Paper (16) 29 Chief Executive's update – April 2016

33. Neil Buckley presented his update report and highlighted the following items:
- The Lord Chancellor had approved the Board's recommendation that the two Consumer Panel members whose first terms of office had ended should be re-appointed for a second term. The second terms have now been offered and accepted.
 - There is an indication that the LSB and OLC will be two of the first ALBs to be subject to the new 'tailored reviews'. It is likely that this will be a resource intensive process. The timescale for this review is as yet unknown, but the Executive will be meeting the review team shortly. The importance of making early contact with the MoJ's lead non-executive director was emphasised.
 - Business cases for authority to fill the existing LSB vacancies have now been submitted to the MoJ.

- The CEO continues to meet the Legal Ombudsman's Chief Executive regularly to discuss matters of mutual interest. The LSB Chief Executive had also recently attended the OLC ARAC meeting. He and the LSB Chairman will be attending the June OLC Board meetings. New statutory reporting requirements had been issued to the OLC in April.
- The market evaluation report, that is to be presented to the Board at the May meeting, will contain a summary of the key themes from the exercise.
- The Chairman and Chief Executive held meetings with Sir Brian Leveson as well as Justices Rose and Singh. One of the items discussed was judicial participation in QASA. A meeting is shortly to be held with the bodies that make up the Joint Advocacy Group.

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

Item 14 – Paper (16) 30 Q4 Performance Report: 1 January – 31 March 2016

35. Julie Myers presented this report, which forms the basis of the LSB's quarterly performance meeting with the MoJ. The report confirms that the LSB has performed well, in relation to what it had set out to do.
- 36. The Board agreed to note the Q4 performance report, and agreed that it be used as the basis for discussion with the MoJ.**

Item 15 - Paper (16) 31 Finance Report to 31 March 2016

37. Edwin Josephs introduced this routine update on LSB finances. The Board noted that although the report showed an underspend, this was not available for the LSB to spend, but the levy for next year would be reduced to reflect it.
- 38. The Board noted the content of the Finance Report.**

Item 16 – Paper (16) 32 Report of the 23 March 2016 meeting of the Remuneration and Nomination Committee

39. Helen Phillips introduced this item and noted that the Committee:
- Scrutinised and endorsed the proposal to re-appoint two Consumer Panel members
 - Had reviewed the findings of the colleague survey and were surprised at some aspects which did not accord with members' perception of the organisation. Details of follow-up work will be shared with the Board.
 - Noted that colleagues would be reminded of their own responsibilities in relation to pension planning.
 - Reviewed colleagues' terms and conditions.
- 40. The Board agreed to note the report of the Remuneration and Nomination Committee meeting.**

Item 17 – Any other business

- 41. The issue of the size of the agenda and the Board pack was raised. The Executive were asked to consider ideas for reducing the amount of paper that is produced, while ensuring that the strategic issues requiring Board attention continue to be highlighted. It was noted that a number of matters were reserved to the Board for decision whilst others were brought to the Board for information. The Chief Executive confirmed that he would consider these matters with the executive.

Item 18 - Date of next meeting

- 42. The Board would next meet on 26 May 2016 at 11.30. The venue would be the Office of Rail and Road, One Kemble Street, London WC2B 4AN.

AK, 03/05/16

Signed as an accurate record of the meeting

.....
Date
.....