

Notes of the Legal Services Board (LSB) meeting held on 26 October 2017

Date: 26 October 2017
Time: 13:00 – 13:45 (private session)
 13:45 – 16:50 (Board meeting)
Venue: Meeting Room 1, 2nd Floor, ORR, One Kemble Street, London
 WC2B 4AN

Present: Dr Helen Phillips Interim Chair
(Members) Neil Buckley Chief Executive
 Jemima Coleman
 Marina Gibbs
 Jeremy Mayhew
 Catharine Seddon
 Michael Smyth CBE QC (Hon)

In attendance: Nick Glockling Legal Director
 Edwin Josephs Director of Finance and Services
 Julie Myers Corporate Director
 Caroline Wallace Strategy Director
 Holly Perry Corporate Governance Manager (minutes)

In attendance for specific agenda items:

Tony Williams	Jomati Consultants LLP (item 3)
Bryony Sheldon	Regulatory Policy Manager (item 6)
Craig Wakeford	Project Associate (item 6)
Ed Nally	President, Solicitor Disciplinary Tribunal (SDT) (item 7)
Susan Humble	Chief Executive, SDT (item 7)
Dawn Reid	Head of Regulatory Performance and Operations (item 7)
Kate Webb	Head of Regulatory Reviews and Investigations (item 8)
Callum Armstrong	Project Associate (item 8)
Ian Wilson	Business Planning Associate (items 12 and 13)

Observer: Stephanie North Corporate Affairs Associate

Item 1 – Welcome and apologies

1. The Interim Chair welcomed those present and in attendance to the meeting, in particular Stephanie North, who was attending as an observer and Holly Perry, who

was attending her first Board meeting since taking up the post of Corporate Governance Manager.

2. Apologies were noted from Terry Babbs and David Eveleigh.

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

3. There following declarations were made:
 - Michael Smyth declared that he and Tony Williams were former colleagues;
 - Jemima Coleman declared her new role of Non-executive Director, Creative Access. It was confirmed that the register of interests had been updated accordingly.

Item 3 – Presentation by Tony Williams, Jomati Consultants LLP

4. The interim Chair welcomed Tony Williams to the meeting, explaining that Board Members were receiving insights from speakers to help bring wider considerations and perspectives to the Board's strategic deliberations.
5. Tony Williams delivered a presentation on latest changes in the commercial legal sector, setting out the current state of the market, the changing nature of the client, the impact of US firms, technological changes, and the impact of consolidation. The following points were raised and discussed at the end of the presentation:
 - the extent to which changes in commercial legal services were any different to changes impacting other types of professional service;
 - the speed of entry of US firms, and the likely impact of EU exit – there was evidence of some aborted transactions in the sector, and the rate of recruitment appeared to be slowing. However, it was not possible to say what the longer term impact of EU exit would be;
 - the impact of predictive software on the settlement of cases, and its capacity to bring about savings in judicial time;
 - cultural changes, and the increasing tendency of clients to use their professional advisers only for particular or types of work;
 - the wide-ranging deployment of paralegals in 'magic circle' firms, and their high quality – this development had the potential to broaden routes into the profession, and bring about a more diverse workforce;
 - the specific reasons that contributed to the pressure for firms to consolidate and grow, including professional indemnity costs, marketing, IT and risk management. The Board noted that there continued to be a long tail of firms that would struggle to be viable at the small-to-mid end of the market.
6. The Chair thanked Tony Williams for an insightful update. Jeremy Mayhew proposed a speaker for a future meeting. **ACTION: Jeremy Mayhew and the Corporate Governance Manager would liaise to make the necessary arrangements.**

Item 4 – Paper (17) 67 - Chief Executive’s progress report

7. The Chief Executive presented his progress report for the period from September to October 2017, drawing the Board’s attention in particular to the following points:
 - the Ministry of Justice (MoJ) had now launched the advert for a permanent Chair for the LSB, the closing date for which was 16 November 2017. Final panel interviews would be held on 16 January 2018;
 - the interim Chair, Marina Gibbs and Chief Executive had met OLC counterparts on 20 October, where OLC had confirmed that they hoped to present the shared vision of what good looked like to the November Board meeting, alongside the OLC’s draft budget for 2018/19. It had also been confirmed at the meeting that the current Director of Operations at LeO, Simon Tunnicliffe, would take up the role of interim Chief Legal Ombudsman on 8 December while the recruitment for a successor to Kathryn Stone as Chief Legal Ombudsman continued;
 - business cases had been submitted to MoJ in relation to assistance with the recruitment of successors for three colleagues who were leaving the LSB in December;
 - the Chief Executive had participated in the regular legal regulators CEOs meeting – discussions had been positive, and had included consideration of the impact of the UK’s exit from the EU. The Chief Executive had also hosted a visit by large delegation of Chinese officials.

8. Members thanked the CEO for his report and noted that:
 - the Corporate Director role would be recruited to at ‘Head of’ level rather than ‘Director’ level, and this would mean some changes in responsibilities and line management arrangements;
 - the reference to ‘immigration and nationality’ at Annex A of the CEO’s report (report on changes in the number of suppliers) was intended to be an example of an area of law where the average firm turnover had increased, based on SRA data;
 - a robust position needed to be maintained in relation to progressing with the external board evaluation work. The Chief Executive confirmed that discussions were ongoing with MoJ. [REDACTED]

[REDACTED]

[REDACTED] [FoIA
exempt: s36]

9. **Members noted the Chief Executive’s progress report.**

Item 5 – Paper (17) 68 – Approach to triaging independence disputes

10. The Board considered the paper, which outlined the approach being taken by the executive when issues about the interactions between approved regulators and frontline regulators were brought to the LSB’s attention on an informal basis. Many of these issues related to independence matters.

11. **The Board noted the paper.**

Item 6 – Paper (17) 69 – Internal Governance Rules (IGRs)

12. Members welcomed Bryony Sheldon and Craig Wakeford to the meeting. The interim Chair reminded Board Members that they had considered the issues in relation to the LSB's review of the internal governance rules (IGR) at the 21 September 2017 Board meeting.
13. In presenting the paper, Craig Wakeford thanked Board Members Jeremy Mayhew and Jemima Coleman for their comments and suggested changes, which it was hoped had been fairly reflected in the draft consultation document attached at Annex A. Subject to further comments, the intention was for the Chief Executive to sign off the final version of the document for publication in the week commencing 6 November, for a consultation period lasting until 9 February 2018. The executive would then present a paper summarising the consultation responses and recommending which of the proposals to take forward to the next, more detailed, consultation (if needed) to the appropriate Board meeting(s) next year.
14. The following points were raised in discussion:
 - Board Members considered that further refinements to the presentation should be made and requested that consideration be given to (i) reducing the document in length, and (ii) providing a summary, perhaps by tabulating the proposed changes for each option and sub-option, to help readers navigate the document more readily;
 - the definition of regulatory independence – currently referenced at paragraph 69 – would benefit from being moved to nearer the start of the document;
 - a number of detailed comments and suggestions were made to improve the readability of the document to aid the readers understanding;
 - [REDACTED]
[REDACTED]
[REDACTED] [FOIA exempt: s36]
15. **Subject to points raised in discussion being addressed, the Board agreed that the final draft should (i) be signed off by the Chief Executive and (ii) be used as a basis for consultation with stakeholders.**

Item 7 – Paper (17) 70 – Solicitors Disciplinary Tribunal budget 2017

16. The interim Chair welcomed Ed Nally, President of the Solicitor Disciplinary Tribunal (SDT), Susan Humble, Clerk and Chief Executive of the SDT, and Dawn Reid to the meeting.
17. In presenting the budget, Ed Nally and Susan Humble emphasised the following points to Board Members:
 - Ed Nally thanked the Board for inviting SDT to attend the meeting to present the draft budget, in person, for the first time;
 - the budget setting was a two-part process – SDT initially consulted with The Law Society (TLS) in accordance with statutory requirements, and then - once refined

to reflect TLS' comments - the draft budget was presented to the LSB for consideration and approval;

- SDT's finances were driven by assumptions for cases and sitting days, and clarity in relation to data from SRA was vital. A key issue for the SDT had been the absence of robust figures on throughput, which had made preparing the draft budget difficult. Ed Nally explained that SDT would have presented a draft budget of just under £2.8m for 2018/19 but two factors contributed to pushing the proposed budget to £2.84m – additional Tribunal sitting days and a possible rent increase. SDT were also dealing with a large number of existing pipeline cases. The draft operating budget being presented for the LSB's approval was 2.5% lower than the budget approved for 2017;
- on 10 October, SRA provided information to LSB and SDT on expected cases for 2018 with an estimate of 540 sitting days. This was significantly higher than the sitting days that SDT had estimated;
- Susan Humble explained that while it was preferable for cases to run to time and to plan, it was very difficult to predict the length of cases – some took as long as 2 years, particularly if the police became involved – and this meant there was an unavoidable level of subjectivity in estimating the number of sitting days and therefore the budget;
- it was explained that if the SDT generated a surplus in a particular year, TLS would debit this the following year meaning that the budget was adjusted year-on-year;
- a user group comprising TLS, SRA and SDT – hosted and chaired by SDT, and which LSB attended - met every six months to discuss areas of common interest and possible improvements that could be made;
- in terms of the SDT's cost to each of the 148,500 members of the regulated community, the cost pro rata was approximately £19 per annum;
- the SDT considered around 20 lay applications a year, many of which were unstructured and complex to determine;
- a number of cases each year were high profile, hard fought and were of interest to the higher judiciary;
- the SDT Board considered a regular report on performance against the KPIs agreed with the LSB;
- Susan Humble explained that changes to be made to the test of dishonesty were expected to impact on a number of cases currently going through the SDT, and that this might potentially cause delays, create additional hearing days and therefore drive up costs.

18. The following points arose in discussion:

- Dawn Reid explained that the approach to contingency funding being proposed for 2018/19 was consistent with previous years, and that in the event of a budget shortage, the Memorandum of Understanding agreed between the LSB, the SDT and TLS allowed for the SDT to approach TLS directly (ie not via the LSB);
- the Board noted the complexity and subjectivity involved in accurately estimating sitting days, and that the 2.5% budget reduction was based wholly on reduced sitting days. The Board also noted that the first contingency budget related to

additional sitting days. Board Members considered that an efficiency plan would be helpful addition to the paperwork in future;

- the table at paragraph 29 of the paper set out the reasons for the delays in cases heard in 2016 (44% of cases had been delayed, meaning that the SDT had not met its six month target in 19 cases). Board Members noted that 25% of these cases were delayed owing to issues serving the respondent, and in 13% of these cases, delays had been caused by the respondent's address being incorrect. The health of the respondent had been an issue in 8% of cases.

19. **On the basis of the discussions with SDT, the Board agreed the operating budget of £2,838,122 for 2018/19, but that if there was any call down on the contingency for additional cases, then the SDT should explain to the LSB what it is was doing to make efficiency savings, alongside approaching TLS for the additional funding.**
20. Ed Nally and Susan Humble left the meeting, and the Board thanked them for their attendance.
21. Reflecting on the discussion with the SDT, the Board agreed that follow up meetings would need to be held with the SDT, and also with the TLS.
22. The Board agreed that the LSB should take a consistent approach to both the LeO and SDT budgets.
23. The Board requested a discussion on the disciplinary landscape at a future Board meeting, noting in particular issues with regard to the relationship between the SDT and the SRA.

Item 8 – Changing shape of regulation – regulators' financial protection arrangements

24. The Board welcomed Kate Webb and Callum Armstrong. In introducing the item, Callum Armstrong explained that the Legal Services Consumer Panel (LSCP) had expressed some concern about the variation amongst regulators in financial protection arrangements for consumers, and the paper aimed to provide a summary of regulators' current financial protection arrangements as well as a summary of the LSB's oversight of these. While there were differences between regulators' arrangements, the executive considered that the necessary safeguards were in place and there did not appear to be evidence of detriment to consumers.
25. The following points were raised in discussion:
 - in places, care needed to be taken regarding language, eg reference to 'proportionate' at paragraph 17, on the basis that it was not clear why the LSB would make such an assessment;
 - it was important to acknowledge that the LSCP might have identified the start of a trend and that the LSB should therefore monitor the risk proactively – as per the proposal at paragraph 43 (ii) of the paper, which set out that the LSB could

require rule change applications to assess the impact on firms switching regulators as well as the risks for consumers.

26. **The Board agreed that the interim Chair should write to the LSCP Chair along the lines proposed, indicating that the LSB would continue to monitor risk in this area on a regular basis, and that it may issue guidance/a Statement of Policy if further evidence came to light. The LSCP would be asked to share any evidence it received with the LSB, to help build an evidence base.**

Item 9 – Minutes of the previous meeting – 21 September 2017

27. The Board noted that these minutes had been agreed in correspondence.

Item 10 – Action tracker

28. The action tracker was noted.

Item 11 – Items considered out of Board

29. The Board noted that one decision had been made by correspondence, out of Board meetings, owing to timing constraints and as permitted by Rule 3.7.2 of the Board's Rules of Procedure: the Board had agreed to amendments to the LSB's Rules of Procedure to deal with quorum requirements.

Item 12 – Audit and Risk Assurance Committee (ARAC) matters:

Report of 2 October 2017 meeting – Paper (17) 72

30. In absence of the ARAC Chair, Catharine Seddon reported on the key points that had arisen at the 2 October ARAC meeting, and drew Board Members to the following points in particular:
- sitting as a sub-group of the Board, the Committee had reviewed and endorsed the LSB's draft budget for 2018/19 for discussion at the Board in November;
 - the Committee had held a helpful private meeting with the auditors;
 - Alison Wedge, Head of ALB Governance and Claims Management Regulation Division at MoJ had attended the meeting as an observer and had contributed to discussions;
 - the Committee had considered the risk management strategy, for onward consideration by the Board, and had also approved the latest corporate risk register;
 - the Committee had agreed a proposal for assurance mapping to be introduced, including a pilot focusing initially on two areas of the LSB's work – the Board noted that the Committee's professional advisor would provide advice and support for the duration of the pilot;
 - the Committee had noted the LSB's plans to prepare for the implementation of the General Data Protection regulations. The Board noted the two reported data

handling incidents referenced in the paper and considered by ARAC were not of sufficient seriousness to require details to be considered by the Board;

- the Committee had noted the Q1 performance report;
- the Committee had agreed that a 'deep dive' into the LSB's approach to cyber security would be presented to the March 2017 ARAC meeting.

Risk Management Strategy review – Paper (17) 73

31. The Board welcomed Ian Wilson to his first Board meeting. Julie Myers presented the paper, which had been scrutinised by ARAC at its 2 October meeting and endorsed by ARAC - subject to some amendments - for onward approval by the Board. As part of its consideration of the Risk Management Strategy, the Board was specifically being invited to consider (i) whether the current risk tolerance statement continued to be appropriate, and (ii) the alternative phrasing for the definition of reputation impact.
32. The following points were raised in discussion:
- the positive internal audit assurance regarding risk management received during 2017 was noted and welcomed;
 - in relation to reputation risk, Board Members agreed that the perception needed to be avoided that the LSB regarded negative commentary as something to side-step;
 - it was agreed that the alternative phrasing for the definition of reputation impact required further work
 - in terms of the risk tolerance statement, the Board was keen to be bold, and regarded as an agent for change. It was noted that the Board's reputation was bound up with the entire sector's reputation now more than ever - on balance, it was agreed that the current risk tolerance remained appropriate.
33. **The Board:**
- **endorsed the changes to the Risk Management Strategy;**
 - **agreed the current risk tolerance rating ie that the tolerance for operational risk was low, and that the tolerance for strategic risk was relatively high; and**
 - **requested that further work was undertaken on the phrasing of reputation risk.**

Item 13 – Q2 Performance report covering the period 1 July to 30 September 2017

34. The paper provided the latest summary of performance against the business plan, the quarterly report of the LSCP's activities, and the regular report on regulatory decisions made during the quarter. The interim Chair noted that future reports would need to be clear on slippage in terms of resource issues. In addition, consideration needed to be given to how the executive would report against the revised strategy.
35. **The Board noted the performance report for Q2.**

Item 14 – Paper (17) 75 - Finance Report for September 2017

36. Edwin Josephs presented the latest finance report, reporting that ALB Finance Directors had had discussions with MoJ Finance regarding current financial transaction limits. A query was raised about the reported underspend and whether the report was sufficiently transparent on that point. It was agreed that Edwin Josephs would discuss the specific point with the Board Member in question.

37. **The Board noted the Finance Report.**

Item 15 – Reflections / forward look

38. The Board reflected on the business considered at the meeting, and noted the agenda for the November meeting, which was to be held in Bristol. Further information about the arrangements for the meeting, which would be followed by a stakeholder event in the early evening, would be sent to Board Members shortly.

Item 16 – Any other business

39. There was no other business

The meeting closed at 16:50pm

HP, 30/10/17

Signed as an accurate record of the meeting

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Date
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