

Minutes of the Legal Services Board (LSB) meeting held on 22 March 2018

Date: 22 March 2018
Time: 14:00 – 14:30 (pre Board private session)
 14:30 – 14:40 (Board private session)
 14:40 – 17:05 (Board meeting)
Venue: 2nd floor, One Kemble Street, London WC2B 4AN

Present: Dr Helen Phillips Interim Chair
(Members) Neil Buckley Chief Executive
 Terry Babbs
 Jemima Coleman (to item 6)
 David Eveleigh
 Marina Gibbs
 Jeremy Mayhew
 Catharine Seddon
 Michael Smyth CBE QC (Hon)

In attendance: Caroline Wallace Strategy Director
 Holly Perry Head of Corporate Services (minutes)
 Rusere Shoniwa Interim Director of Finance (observing)
 Steph North Corporate Governance Manager (observing)
 Ian Wilson Business Planning Associate (observing)
 Gary Ashton OE Cam Ltd (observing)

In attendance for specific agenda items:

Steve Brooker Head of Research and Development (items 4 and 6)
 Chris Nichols Head of Regulatory Performance (item 4)
 Dr Jane Martin Chair, LSCP (item 5)
 Lola Bello Consumer Panel Manager (item 5)
 Kate Webb Head of Regulatory Reviews & Investigations (private session, items 6 and 11)
 Bryony Sheldon Regulatory Policy Manager (item 7)
 Craig Wakeford Regulatory Policy Associate (item 7)
 Gabrielle Stewart Regulatory Policy Associate (items 6 and 11)

BOARD PRIVATE SESSION



1. [REDACTED]

2. [REDACTED]

3. [REDACTED] [FoIA exempt s36]

BOARD MEETING

Item 1 – Welcome and apologies

4. The Interim Chair welcomed those present and in attendance to the meeting.
5. No apologies had been received.

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

6. No new interests were declared.

Item 3 – Paper (18) 10 - Chief Executive's progress report

7. The Chief Executive presented his progress report for the period from January to March 2018, drawing the Board's attention in particular to the following points:
 - the LSB Chair interviews had been further delayed owing to the recent adverse weather. MoJ officials had written to the Chief Executive on 15 March 2018 to provide assurance regarding the interim Chair arrangements, and to confirm their expectation that a permanent Chair would be in post by June 2018. The Interim Chair's term of appointment as an ordinary member would end on 31 March 2018, and MoJ had advised that a re-appointment letter should be received by the Interim Chair imminently. The Board noted for the record its grave concerns and serious disappointment about the position it had been left in as a result of the delays to the Chair appointment process. The Board considered a contingency plan in the event that the Interim Chair's re-appointment was not forthcoming by 31 March 2018. **Action: it was agreed that a schedule of retirements and a succession plan for Board Members would be prepared for the Remuneration and Nomination Committee's scrutiny, on behalf of the Board, to attempt to mitigate similar issues arising in the future;**
 - a number of new colleagues had joined the team in recent weeks, and it was announced that Danielle Viall would be joining the LSB as senior legal adviser on 4 April. All vacant Senior Leadership Team (SLT) posts had now been filled;

- [REDACTED]
[REDACTED]
[REDACTED] [FoIA exempt s22]
- the LSB had issued an extension notice in relation to the SRA Solicitors Qualifying Exam rule change application;
- SRA would launch a consultation on 23 March on changes to indemnity insurance and compensation rules, which were designed to ensure users of legal service received the appropriate level of protection;
- Two volunteers were sought from the Board to take up the role of trustees of the LSB's life assurance scheme – Marina Gibbs and Jeremy Mayhew offered to assist.

8. The following points were raised in discussion:

- In relation to gender pay gap reporting, the Board noted that law firms were excluding partners' remuneration from their figures (as they were allowed to do under the relevant law), in contrast to the approach being adopted by accountants' firms where partners' remuneration was being voluntarily included in the calculations. The Chief Executive would discuss with the SRA, who would be encouraged to take a public view on the matter. The LSB would consider regulators' diversity plans in summer 2018, and this was considered to be the appropriate point for the LSB to consider taking a public position. The Chief Executive would also raise with SRA the discrepancy in sexual harassment reporting, specifically that in a recent survey of 1,000 employees in the UK's top 100 law firms, 42% of women has said that they had experienced sexual harassment at work, yet in the two years to October 2017, only 21 complaints of sexual harassment within law firms had been received by SRA;
- It was agreed that notes of the stakeholder meetings referenced in the Chief Executive's report would be made available to the Board on request;
- The Board expressed its thanks to Michael Smyth for attending the annual reception of the Society of Legal Scholars on the Board's behalf.

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

Item 4 – Paper (18) 11 – Final LSB Strategy 2018-21, Business Plan and budget 2018/19 including response to consultation

10. The Board welcomed Steve Brooker and Chris Nichols to the meeting. In presenting the item, Caroline Wallace explained that the purpose of the paper was to seek Board approval for the budget for 2018/19, the proposed Strategy for 2018-21 and the Business plan for 2018/19.
11. The Board noted the main changes to the documents arising from consideration of the consultation responses. Other points drawn to the Board's attention were as follows:
- a number of helpful offers of support and joint working had been made, and these would be followed up;

- the consultation responses had not changed the LSB's overall direction, however some tweaks had been made to reflect the comments raised in consultation;
 - there was further work to do in relation to measuring the LSB's impact.
12. Overall, the Board was content with the Strategy, which focused appropriately on the significant work areas. The next important step was to focus on development of the performance framework. The Chair of ARAC reported that at the meeting held on 13 March, the Committee had commissioned a piece of work on benefits analysis – specifically, a properly structured process that articulated what the impact of the LSB's work was intended to be, and the development of objective criteria for how this would be assessed.
13. Points raised in discussion were as follows:
- the LSB's role in relation to legal aid had been raised by a number of respondents, who had indicated that the LSB should develop a policy view on recent legal aid changes. The Board noted that a number of the regulatory objectives were germane and that it would be appropriate for the LSB to assess and comment on the impact of public policy on the regulatory objectives. While clearly there was a role for the representative bodies in the sector to take the lead, equity of access was key for the LSB, as was understanding the consumer impact of the changes. An opportunity was available to input via the MoJ's recently-announced post implementation review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). **Action: The Chief Executive to consider whether the LSB should submit a response to the LASPO post implementation review. An update to be provided at a future Board meeting;**
 - the offers of collaboration were warmly welcomed by the Board, and these demonstrated the impact of the recently-introduced Board to Board meetings;
 - in relation to research expenditure, it should be emphasised that the LSB seeks out all value for money research opportunities and has a policy that, where possible, underspend in other areas was made available in-year for additional spend on research, over and above the research budget;
 - the references in the Strategy to the LSB's role in respect of the OLC needed to take into account the current performance issues and the LSB desire to see improvements. The LSB was committed to progress, and a further focus for the LSB was OLC's role in providing feedback to the sector; and
 - a point was raised in relation to the confidential consultation response that had been submitted. The executive assured the Board that the points raised had been factored into the revised papers, and that the request for confidentiality in this case had been considered justified. The Board advised that confidential responses should not be accepted where these were submitted in bad faith.
14. In relation to the budget, MoJ had responded on 20 March 2018 as follows: *'Whilst formal confirmation cannot precede wider confirmation of the department's various individual budgets, we do not foresee any alterations to the figures presented in the LSB's Medium Term Financial Plan'*. The Chief Executive explained that there was no risk to the LSB in proceeding with expenditure post 1 April as there was a clear

audit trail of communication with MoJ. The risk remained with MoJ, and the Chief Executive reported that he had raised the issue with the new Director of Risk and Governance at MoJ at an introductory meeting earlier in the week.

15. The Chair of ARAC reported that at the meeting held on 13 March, the Committee had noted that while the downward trajectory would continue into 2018/19, it would plateau in 2019/20 on the basis that the LSB would need to seek new accommodation. This was likely to impact on non-budgeted research expenditure.
16. The Board thanked the team for all its hard work, subject to the points raised in discussion being reflected, the Board:
 - **agreed** the budget for 2018/19;
 - **agreed** the proposed Strategy for 2018-21 and Business plan for 2018/19; and
 - **noted** that the Chair and Chief Executive would approve the final paperwork for publication.

Item 5 – Paper (18) 12 Consumer Panel three-year strategy 2018/21 and work programme 2018/19

17. The Board welcomed Dr Jane Martin, Chair of the Consumer Panel, and Lola Bello, Consumer Panel Manager, to the meeting. In presenting the strategy and work programme, Dr Martin made the following introductory comments:
 - this would be Dr Martin's last appearance at the Board before standing down as Chair of the Panel in order to take up the role of OLC Board member, and Dr Martin looked forward to bringing her ombudsman experience to bear in her new role – the Board looked forward to the value Dr Martin would add;
 - the Panel had worked hard during 2017/18, which had been a year of change, with movements in both Panel membership and the Panel secretariat;
 - the Strategy and work programme were shorter than in previous years, with the aim of being as clear as possible about the Panel's role in supporting the consumer;
 - the Panel's main evidence base would continue to be the tracker survey;
 - the plans needed to be realistic, on the basis of the small secretariat and modest annual budget of £40,000. Collaboration was key, and the Panel membership themselves were a key resource;
 - the two strategic aims for 2018-21 were – (i) Equip – *advise on appropriate and proportionate regulation which equips consumers with the information and tools they need to choose and use legal services effectively*; and (ii) Protect – *support and challenge the regulators to adequately protect all consumers and keep pace with changing market risks*. Dr Martin explained what the Panel intended to achieve in 2018-21, as set out on page 6 of the draft strategy and workplan.
18. The Chair thanked Dr Martin for the introduction. The following points were raised in discussion:
 - the Board agreed that the strategy and workplan were clear, and that the revised format worked well;

- a question was raised about whether the balance had been appropriately struck between the focus on the consumer, and the focus on small business. Dr Martin explained that there had been a delay in appointing a new Panel member with a background in small business, but Adam Cooper would be joining on 1 April 2018 and would assist the Panel in this area;
- a question was raised about whether the Panel could consider the potential impact of the non-regulated sector. Dr Martin responded that given the level of resourcing, the Panel had to focus on regulated services. Lola Bello added that wherever possible, the Panel did seek opportunities to factor in the non-regulated sector – an example was the work on transparency, and Legal Choices;
- the Board expressed its concern about the continued lack of confidence on the part of consumers to complain about poor service, and the significant gaps in redress when they tried. Work needed to continue at pace in this area;
- the figure at 2.4 – the legal services market worth £3.2bn – would be checked.

19. Subject to the points raised in discussion, the Board **endorsed** the Consumer Panel's three-year strategy 2018/21 and work programme 2018/19. The Board looked forward to working with the Panel, and new Chair once appointed, during 2018/19.

Item 6 – Paper (18) 13 – OLC budget 2018/19

20. The Chair explained that the item would be considered in two parts. Firstly, the Chair and Chief Executive would provide an oral update on recent meetings focused on LeO performance and OLC oversight, and secondly, the Board would consider the OLC budget for 2018/19.

[REDACTED]

21. [REDACTED]

22. [REDACTED]

[REDACTED]

23. [REDACTED]

24. [REDACTED]

- [REDACTED]
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- [REDACTED]
- [REDACTED]

[REDACTED] [FoIA exempt s36]

Draft OLC budget 2018/19

25. The Chair invited Kate Webb to present the item. The submission in front of the Board had been approved by the OLC at its board meeting the previous week. The figures did not vary materially from the figures presented to LSB in November 2017. The Board were being asked to approve a gross revenue budget of £14.7m, comprising £12.7m for the legal jurisdiction – funded by levy through LSB; and £2m for the CMC jurisdiction – funded by grant-in-aid by the MoJ. The Board were also being asked to approve a capital budget of £0.25m.

26. The Board were reminded that the LSB’s acceptance criteria for the 2018/19 budget had been finalised following the November 2017 discussion with the OLC in Bristol. In particular, this year’s criteria asked the OLC to provide trajectories for improvement in its submission – these were covered in detail in section 3 of the paper. Board members’ attention was drawn to the fact that the budget was based on the trajectories in section 3.5, figures 4, 5 and 6 (the case load delivery plan) and the assumptions in section 4.1 The KPIs presented in section 3.1 were independent and presented as an indication of the stretching targets the OLC Board had set for LeO in 2018/19. The Board were additionally being asked to agree, with certain caveats, in-year inflationary uplifts, to avoid the need for the OLC to revert to LSB

with a request for budget variation.

27. The following points were raised in discussion:
- it was agreed that overall the OLC had responded to all the questions that had been asked;
 - a number of specific points were noted, which would either be carried forward to the Board's discussion of the 2019/20 budget acceptance criteria, or which would form part of the LSB's ongoing performance assurance discussions, including:
 - (i) the timescale for the trajectory for improvement was not within the financial year 2018/19; (ii) figure 2 did not allow for comparison with figure 4 – it would be important in future to present the data in a way that could be compared; (iii) customer satisfaction – did not differentiate between lawyers and complainants; (iv) the cost savings programme looked somewhat weak; and (v) case fee income and how case fees were set needed to be drawn out, and this would be included in the budget acceptance criteria for 2019/20.
28. Subject to the points raised in discussion, the Board **approved** the OLC's budget submission for 2018/19. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [FoIA exempt s36]

Item 7 – Paper (18) 14 – Overview of responses to IGR consultation and next steps

29. The Chair welcomed Bryony Sheldon and Craig Wakeford to the meeting. The paper provided an overview of responses to the IGR consultation which had closed on 9 February. The consultation presented four options for the IGR, with the purpose of exploring if changes to the IGR were needed to enhance regulatory independence. 15 responses were received, with a diverse range of views expressed. While there was no clear consensus on a preferred option, there had been a common view that the IGR were not working and a general preference for change. This allowed the Board some latitude in considering what direction to take.
30. The following points were raised in discussion:
- option 1 (no change) and option 2a (incremental change – minor tweaks to the IGR) should be ruled out, and it was agreed that the executive should work up option 2b (more extensive changes) and 2c (new approach, assurance 'gateways') for consideration at the April Board meeting;
 - it was noted that both options 2b and 2c were deliverable – though option 2c would take longer;
 - the striking differences in regulatory body and representative body responses was noted, and a query was raised about whether regulatory bodies' views should be given more weight.

31. The Board **noted** the summary of consultation responses, and **agreed** that options 2b and 2c should be further developed in terms of policy options and analysis, and presented to the 24 April Board meeting.

Item 8 – Minutes of the previous meeting – 24 January 2018

32. The Board noted that the minutes had been agreed by correspondence and published on the website.

Item 9 – Action tracker

33. The action tracker was **noted**.

Item 10 – Formal noting of items considered out of committee since the 24 January 2018 Board meeting

34. The Board formally approved the items that had been considered out of committee since the last meeting of the Board, and which had been agreed by correspondence:
- Paper (18) 08 – LSCP member appointment; and
 - Paper (18) 09 – LSB rules and enforcement policies – final sign off

Item 11 – Paper (18) 15 – Minor changes to the LeO scheme rules

35. The Board invited Gabrielle Stewart to present the item. The OLC proposals consisted of minor linguistic changes following LeO's research into the language of complaints and a focus on plain English. The changes – as set out in the paper – updated terminology around complaints, such as amending 'informal resolution' to 'agreed outcome', 'preliminary decision' to 'case decision', and 'ombudsman decision' to 'final decision'. There were other minor changes, including the addition of ICAEW to the list of approved regulators. The Board were advised that the Consumer Panel were supportive of the changes, and legal advice supported the view that the changes did not amount to a change of their policy – the information provided in the application met the needs of the approval criteria.
36. On this basis, the Board **consented** to the proposed changes to the OLC Scheme Rules.

Item 12 – Paper (18) 16 Audit and Risk Assurance Committee business

37. Terry Babbs presented a range of ARAC business, as follows:

Report of ARAC March meeting

38. A number of important items of business had been considered at the ARC meeting on 13 March 2018, as follows:
- a presentation and 'deep dive' paper on cyber security had raised issues about: the frequency of penetration testing of the LSB's website; the need to test the market ahead of re-contracting the LSB's contract for outsourced IT services;

and the risks related to transacting Board business on Board members' private email addresses – executive action was underway in relation to all three points;

- in the private session with the internal and external auditors, concerns had been raised about the level of staff turnover at the senior level – the Board noted that the issue had been registered externally. Re-assurances had been provided about the actions that had been taken and were ongoing in order to mitigate the risk, including a robust plan for interim and permanent succession. At the May ARAC, a 'deep dive' on appointments was planned. **Action: Jemima Coleman's input as Chair of RNC to be sought in scoping the work on the appointments 'deep dive'.**

39. The Board **noted** the report of the 13 March ARAC meeting.

Draft Annual Report of ARAC 2017/18

40. Terry Babbs presented the Annual Report of the Board's Audit and Risk Assurance Committee for the financial year 2017/18 for the Board's consideration. The Board **noted** the ARAC Annual Report.

Revised scheme of delegations

41. The Board was advised that the scheme had been considered in detail at ARAC at its meeting on 13 March, and a number of suggestions had been made. These had been incorporated in the revised version being presented to the Board, which was now being recommended to the Board for approval. The Board **approved** the revised Scheme of Delegations.

42. For the sake of clarity, it was **noted** that both annual reports of the subcommittees were signed by the respective chairs on behalf of their committee.

Item 13 – Paper (18) 17 – Annual Report of RNC 2017/18

43. On Jemima Coleman's behalf, Terry Babbs presented the Annual Report of the Board's Remuneration and Nomination Committee for the financial year 2017/18, for the Board's consideration. The Board **noted** the RNC Annual Report.

44. It was noted that the draft minutes of the RNC meeting held on 8 February had been circulated to the full Board for information earlier in the week.

Item 14 – Paper (18) 18 - Finance Report for February 2018

45. Rusere Shoniwa presented the latest finance report, noting that the forecast underspend was currently £216k of which £179k related to colleague costs (delays in new recruits serving their notice before taking up roles). It was confirmed that the LSB could not carry over underspends into the next financial year.

46. In respect of the MoJ's position on approving the LSB's budget for 2018/19 (discussed at paragraph 14), Rusere reported that he would be meeting the ALB finance team at MoJ before the end of March to secure a commitment regarding spend beyond 31 March 2018. Rusere also reported that he would shortly be

commencing a bottom-up review of the 2018/19 budget, to understand how the figures were formulated.

- 47. The Board **noted** the Finance Report.

Item 15 – Reflections / forward look

- 48. The Board reflected on the business considered at the meeting, and considered the business for the 24 April 2018 Board meetings.

Item 16 – Any other business

- 49. On behalf of the Board, the Chair expressed her deep gratitude to Kate Webb who would be leaving the LSB at the end of the month. Kate had been an outstanding colleague, whose formidable intellect had assisted the LSB significantly over the years. The Chair wished Kate well for the future, and emphasised that the LSB's door would remain open if she ever wished to return.

- 50. There was no other business

The meeting closed at 17:00.

HP 23/03/18

Signed as an accurate record of the meeting

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Date

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