

Paper (12) 21 - ANNEX B

Minutes of a joint meeting of the Legal Services Board (LSB) and Bar Standards Board (BSB) held on Thursday 9 February 2012

Date: 9 February 2012
Time: 4.30pm to 6.30pm
Venue: Victoria House, Southampton Row, London WC1B 4AD

Present:

From the LSB:

Steve Green, Board Member and Chair of the Audit and Risk Committee (Chairing the meeting)
David Edmonds, LSB Chairman
Chris Kenny, Board Member and Chief Executive
Barbara Saunders, Board Member and member of the Audit and Risk Committee
Andrew Whittaker, Board Member and member of the Audit and Risk Committee

From the BSB:

Baroness Ruth Deech, BSB Chair (present until 6pm)
Paula Diggle, Vice Chair - Planning, Resources and Performance Committee
Sir Geoffrey Nice QC, BSB Vice Chair
Matthew Nicklin, Chair, Planning, Resources and Performance Committee
Richard Thompson, Chair, Governance, Risk and Audit Committee

In attendance:

From the LSB:

Fran Gillon, Director of Regulatory Practice
Edwin Josephs, Director of Finance and Services
Julie Myers, Corporate Director
Holly Perry, Corporate Governance Manager (Minutes)

From the BSB:

Vanessa Davies, Director
Amanda Thompson, Head of Strategy and Communications

Welcome and introductions

1. The Chair welcomed guests from the Bar Standards Board to the meeting. The aim was an open, honest and constructive session involving a sub group of Board Members of the LSB and BSB. The focus of discussions was on business planning for 2012/13, with a view to an improved understanding of respective priorities.

Item 2 – Presentation by the LSB on 2012/13 priorities

2. The Chair, in his capacity as Chair of the LSB's Audit and Risk Committee, delivered a presentation covering:

- The LSB's vision and approach (greater competition, access to justice for all consumers, better empowered consumers, swift and effective redress, constantly improving and consistently ethical legal professionals who are as diverse as the communities they serve, clear and proportionate regulation)
- Priorities - achievements in the period 2009 to 2012 (certifying independence in regulation, liberalising the market to increase competition, ensuring redress when things go wrong through establishment of OLC)
- Emerging priorities for 2012 to 2015 (regulator performance and oversight, outcomes-focused regulation, strategic development and research, statutory decision-making, continuing work with the Legal Services Consumer Panel)
- Costs (a budget of £4.498m for 2012/13, reflecting a 9% reduction compared with 2011/12)
- The LSB's corporate risks (policy failure, over complexity, delays in parliamentary processes hampering regulatory reform etc)

3. In terms of the focus for discussions, the LSB was interested to hear:

- Whether the LSB had got its focus right, both in terms of the three year strategy and the more immediate priorities for 2012/13
- Whether there were any areas for joined up working between the LSB and BSB
- Whether there were any shared risks or overlapping risks between the two organisations

Item 3 – Presentation by the BSB on its 2012/13 business plan

4. The BSB's Director delivered a presentation on the BSB's business planning for 2012/13. The focus for the BSB in the coming period was on a consolidation and completion of work already underway, and strategic planning for the period 2013 to 2016. Key challenges included:

- Pressure on resources (direct cost requirement of £4.109m for 2012/13)
- Aligning the BSB's strategic objectives with the Regulatory Objectives
- Lack of synchronicity between the business cycles of the LSB and the BSB

5. BSB's core regulatory and corporate activity was expected to account for 75 to 85% of resources. Additional projects to develop regulatory arrangements would be considered in the light of core activity requirements, with key outputs for the period expected to include:

Outward facing

- Introduction of aptitude test for prospective BPTC students
- First round of centralised examinations in core BPTC subjects
- A new framework for CPD

- Aspects of the Legal Education and Training Review follow through
- A framework for the regulation of entities
- A new Code of Conduct
- Implementation of the QASA for criminal advocates
- Further work on first tier complaints handling and chambers monitoring
- Thematic review in relation to litigants in person
- Implementation of the LSB equality and diversity data collection project
- Development of BSB user group and public network to enhance consumer input to policy making

Inward facing

- Further work on regulatory independence and related governance issues

Item 4 – Discussion and questions about presentations

6. The Chair welcomed questions on the respective presentations; the following points were raised in the question and answer session:

(a) *How the LSB would measure success at the year end*

The LSB had different measures in place for the different workstreams, and it was important to bear in mind the medium-to long-range nature of the work underway. For example, in the area of will-writing, given the complexity surrounding regulation, it was unlikely that the work would show any demonstrable benefits in the space of 12 months. Outcomes would take time to measure, and might take further legislation. The LSB was building a framework of indicators based around the regulatory framework and the experience of users. In some key areas, where there were data gaps, the LSB would need to target additional research.

(b) *If data and/or research indicated there were no gaps, whether the LSB would need to continue to exist*

The LSB had been created by the Legal Services Act (LSA) in response to government concerns and pressure from consumer groups, and the LSA drove the organisation's workplan. Once there was confidence overall from stakeholders that detriment had been significantly reduced, and proof in the market that independent regulation was working, the role of the oversight regulator may cease to be necessary. The LSB was currently subject to a triennial review, which would cover the need for the LSB in the long term.

(c) *The LSB's focus on independence and diversity*

The BSB emphasised its separation from the Bar's representative body, and the importance it placed on this independence. The BSB also considered its position to be strong in relation to diversity, evidenced by the very high percentage of pupillages being awarded to BME students. The LSB applauded the progress made on independence. It also welcomed the commitment to diversity issues though, perhaps, drew different conclusions from the statistics. The BSB stated that it was unaware what the benchmarks or targets were for the LSB's drive to equality and diversity. The LSB responded that its focus was on building statistical analysis about routes of progression into and within the profession, and approaching the issues from a strong evidence base.

(d) *Cuts to legal aid impacting on the Regulatory Objective on access to justice*
The BSB raised concern that planned cuts to legal aid would present significant challenges, which threatened to undermine not only the Regulatory Objective relating to access to justice but also those objectives relating to the constitutional principle of the rule of law and protecting and promoting the public interest. For these reasons, BSB felt the cuts in legal aid needed to be resisted. While acknowledging the challenges, the LSB queried whether campaigning on legal aid might be seen to fall more appropriately to the representative body.

(e) *The LSB's focus on outcomes-focused regulation*
An example was given of an instance where prescriptive rules were sometimes needed over an outcomes-focused approach, and a query was raised about how to measure or evidence ethical standards and performance. The LSB and BSB had undertaken some constructive and collaborative work on recasting the Code of Conduct, and the BSB requested examples of where the rule book had – in the LSB's view - put up barriers. The LSB's view was that outcomes-focused regulation was based upon a credible evidence base and allowed authorised persons to use their professional judgements to deliver the right outcomes rather than prescribing a particular course of action. The intention was to place freedom to operate, responsibility for delivery of agreed outcomes and accountability for success with legal services providers.

(f) *Meaning of the Regulatory Objective relating to the 'interests of consumers' and outcomes focused regulation*
The BSB queried the definition of 'consumer' in the context of the Regulatory Objective as being open to interpretation. For example, it might mean the direct consumer (solicitor or barrister), the public generally, judges, tribunals or witnesses. In the LSB's view, it would depend on the market or the service being provided. There were a multiplicity of interests to be served, often at once, and there was a need to strike the right balance between flexibility and prescription. The BSB view remained that the rule book had more often than not been helpful in resolving competing interests, eg regulating access between a barrister and the court. However, there were also rules which were perhaps less helpful. For example, the OFT's work had assisted with creating a new model for CPD, which placed more trust in practitioners. In the BSB's view, it was in the best position to determine the appropriate balance, given its front line regulatory responsibilities. The LSB expressed no pre-conceived view on the exact form of the new BSB rule book but would expect to see all regulatory risks comprehensively assessed based on evidence and where detailed rules were set, they would need to be justified as the only effective means of mitigating a particular risk.

(g) *Meaning of 'consumer' interest over 'public interest'*
The BSB expressed concern that the LSB appeared to prioritise consumer interests over the public interest. The LSB was acutely aware of the need to serve the public interest and understood the difference between the two. The LSB took account of both the consumer interest and the wider public interest in its work, balancing as necessary.

(h) LSB business plan consultation

The BSB were particularly concerned to see the downward pressure on costs remain, and for the LSB to take account of the responses to its business plan consultation. The LSB agreed both points were important. In addition, the BSB noted that no account had been taken of the additional costs imposed by initiatives such as the Legal and Education Training Review, the Quality Assurance Scheme for Advocates or changes to the regulatory framework.

(i) Why the LSB thought that the way in which the BSB was regulated needed to change

The LSB did not see that the issues in relation to regulating the Bar were particular. The LSB's role was to carry out its duties as prescribed in the LSA and to deliver the regulatory objectives.

(j) Areas for joint working

The following areas were identified as possibilities for joint working:

- Follow through on the Legal Education and Training Review, particularly (a) workforce analysis and (b) barriers to the transfer within the profession (from solicitor to barrister and vice versa)
- Perspective of consumer – further discussion would be welcomed
- Joint work by board members from each organisation on joint risks being faced by the BSB and LSB (board member to board member discussion, to be facilitated by the BSB Director and LSB Chief Executive)
- Data collection work – the BSB would welcome a discussion with LSB before the publication of a discussion document, to discuss mutually shared aims
- Work on litigants in person – a large and growing category of consumer, with particular access to justice needs who might present difficult regulatory challenges (there was some evidence already available eg Civil Justice Council report and recommendations)

Any other business

7. The Chairman closed the meeting by thanking the BSB for joining for a helpful and constructive session. There was clearly a need for the organisations to work together to resolve the complexities and contradictions inherent in the system, and the agreed areas for joint working were a useful starting point for a programme or work that might stretch over three to four years.

8. The BSB Vice Chair thanked the LSB for hosting the meeting, on the BSB Chair's behalf.

HP 14.02.12