

Minutes of a meeting of Legal Services Board (LSB) on 28 October 2010

Date: 28 October 2010

Time: 9.30 am – 12.25 pm

Venue: Victoria House, Southampton Row, London WC1B 4AD

Present: David Edmonds Chairman
(Members) Chris Kenny Chief Executive
Terry Connor
Bill Moyes
Barbara Saunders
Nicole Smith
David Wolfe

Guests: Charles Plant Chairman, Solicitors Regulation Authority (SRA)
Antony Townsend Chief Executive, SRA

In attendance: Anna Cheung Regulatory Associate (Items 8-9)
Fran Gillon Director of Regulatory Practice
Michelle Jacobs Business Planning Associate (Items 12-13)
Edwin Josephs Director of Finance and Services
Bruce Macmillan General Counsel (Items 1-3 and 6 onwards)
Karen Marchant Corporate Affairs Associate (Items 12-14)
Julie Myers Corporate Director
Crispin Passmore Strategy Director
Bryan Hislop Board Secretary (Minutes)

Item 1 – Welcome and apologies

1. The Board and Executive met briefly in private session.
2. The Chairman welcomed Charles Plant (Chairman, SRA) and Antony Townsend (Chief Executive, SRA).
3. There were apologies for absence from Steve Green and Andrew Whittaker.

Item 2 – Declarations of interests etc.

4. There were no declarations of interests.
5. Board Members were reminded to notify the Board Secretary about hospitality extended / received in the course of their LSB work.

Item 3 – Charles Plant and Antony Townsend (Chairman and Chief Executive, SRA)

6. The Chairman and Chief Executive of SRA delivered a presentation about the priorities, opportunities and challenges facing SRA, covering a range of topics including alternative business structures (ABS) and outcomes-focused regulation (OFR), relationships with stakeholders, and internal operational and governance reforms.
7. In the course of the presentation and the discussion that followed, they commented that:
 - SRA was on course for the introduction of ABS and OFR on 6 October 2011, but that this required an ambitious programme of policy developments and internal operational and governance reforms;
 - the most significant challenge facing SRA was to implement successfully its comprehensive and well-supported change programme, which would ensure that its internal capability and capacity – including HR and IT resources and accommodation – were sufficient to deliver effectively and intelligently ABS and OFR;
 - the continuation of the productive relationship between LSB and SRA and a proportionate approach by LSB and Ministry of Justice (MoJ) respectively to oversight regulation and pre-legislative scrutiny were central to delivering against the very tight timeframe;
 - SRA would publish by 6 October 2011 its agreed risk appetite and an approach to monitoring and assessing compliance with OFR, but that the new comprehensive system for collecting data from the regulated community and assessing risk would not be in place until mid-2012;
 - SRA was working to promote its profile (and, therefore, its role) amongst the regulated community, not least in response to the ‘Smedley Review of the Regulation of Corporate Legal Work’;
 - there was evidence of continued resistance to ABS in some European jurisdictions, but also experience of the partial external ownership of law firms in others; and
 - SRA’s Board would meet for a strategic session to consider the post-ABS future of the legal profession, including the education and training of the legal workforce and the impact of recent regulatory reforms and developments in the legal services market on high street firms.
8. The Board expressed its gratitude to the Chairman and Chief Executive of SRA.

Item 4 – Minutes: 30 September 2010

9. **The Board resolved to agree the minutes of the meeting held on 30 September 2010 and to submit them for signing as an authorised record to the Chairman.**

Item 5 – Report of action points

10. **The Board resolved to note the Report of action points.**

Item 6 – Paper (10) 68: Chief Executive’s progress report: October 2010

11. Chris Kenny (Chief Executive) presented his progress report.
12. The Board noted in particular:
- the Programme highlight report;
 - the Joint Advocacy Group’s (JAG) most recent proposals in respect of Quality Assurance for Advocates (QAA) [REDACTED];
 - that SRA’s Publications and Reconsiderations Policies had been directed on 26 October as exempt from the requirement for LSB approval of amendments to regulatory changes;
 - that the Chairman had met the Prime Minister and Lord Young of Graffham to discuss his report, ‘Common sense, common safety’, about the operation of health and safety laws and the growth of the ‘compensation culture’;
 - Government proposals in respect of public bodies, including: the publication of a Public Bodies Bill, which would introduce statutory tri-ennial reviews of public bodies; the unexpected announcement by Department for Business, Innovation and Skills that it would consult on whether to transfer the functions of consumer bodies (including Legal Services Consumer Panel) to Citizens Advice; and the potential merger of Office of the Immigration Services Commissioner with an as yet unannounced body; and
 - the appointment of: Dr Vanessa Davies as Mandie Lavin’s successor as Director of Bar Standards Board (BSB); and Lynn Plumbley as the first Chief Executive of Costs Lawyer Standards Board.
13. The Board noted also updates about:
- LSB-MoJ governance-related matters, including progress in agreeing the LSB framework agreement;
 - the potential for an independent review of the framework for the education and training of the legal workforce, which was discussed in principle by the Board on 30 September, in particular the Chairman’s recent meeting with the Chairman of SRA and Baroness Deech (Chair, BSB); and
 - the negotiations between SRA and Law Society of Ireland in relation to its letter before action (dated 16 June 2010) challenging LSB’s approval of SRA’s regulations enabling the introduction of the new Qualified Lawyers Transfer Scheme.

The Board resolved to note the Chief Executive’s progress report.

Item 7 – Paper (10) 69: ABS implementation: next steps – key issues and risks

14. Fran Gillon (Director of Regulatory Practice) introduced the first of what would be a standing paper about progress in respect of the implementation of ABS, including a summary of next steps and potential risks. It was agreed to include a summary of risk mitigations in future iterations of the paper.

The Board resolved to note the paper about progress in respect of the implementation of ABS.

Item 8 – Paper (10) 70: Solicitors Disciplinary Tribunal – 2011 budget application

15. The Strategy Director introduced a paper recommending the approval of Solicitors Disciplinary Tribunal's (SDT) annual budget for 2011.
16. In the course of the discussion that followed, the Board noted that:
- SDT was required by Schedule 16 of Legal Services Act 2007 ('the Act') to submit each calendar year to The Law Society a budget approved by LSB;
 - the budget proposal for 2011 was £2,179,722, which represented a 2.77 percent decrease on the budget for 2010;
 - LSB, SDT and The Law Society agreed on 21 May a memorandum of understanding (MoU) about SDT budget applications, but that, despite the terms of the MoU, the application had not included key performance indicators (KPI);
 - the Executive had received assurances that KPIs would be agreed and in place by early 2011; and
 - the Executive recommended agreeing the budget proposal for 2011, subject to SDT developing and submitting with all future budget applications a report of performance against KPIs, which the Clerk to SDT had advised would be agreed by early 2011.

The Board resolved to agree SDT's budget proposal for 2011, subject to it developing and submitting with all future budget applications a report of performance against KPIs.

Item 9 – Paper (10) 71: The Legal Services Act 2007 (Levy) (No. 2) Rules 2010

17. Edwin Josephs (Director of Finance and Services) introduced a paper recommending amongst other things the submission of Rules for imposing a levy on the Approved Regulators (AR) for the consent of the Lord Chancellor.
18. In the course of the discussion that followed, the Board noted that:
- LSB was required by Section 173 of the Act to make Rules providing for the imposition of a levy on the ARs for the purpose of raising an amount corresponding to the aggregate of the leviable expenditure of LSB and Office

- for Legal Complaints / Legal Ombudsman (OLC / LeO);
- the eight responses received to the consultation about the proposed methodologies to apportion LSB's and LeO's operational costs were generally positive, and LSB's and LeO's response to the issues raised were set out in the draft decision paper, 'The Levy: funding legal services oversight regulation';
- the issues raised by respondents included: (1) the validity of the methodology to apportion LeO's operational costs, although it was noted that LSB would consider bringing forward its review planned for 2013/14 if data from LeO showed that the current methodology was not equitable to ARs ; (2) the approach to new and bankrupt ARs; and (3) the funding of LSB's / LeO's costs in actions for judicial review;
- the Executive would review the drafting of the proposed approach to absorbing and / or recovering from the remaining ARs any outstanding share of the levy due from a bankrupt AR, although it was noted that HM Treasury was content with the proposed drafting;
- subject to securing the consent of the Lord Chancellor, Board Members would have to sign the Rules before they could be laid in Parliament; and
- the arrangements in respect of the levy would be reviewed in 2013/14.

The Board resolved to agree:

- a) the publication of the decision paper, 'The Levy: funding legal services oversight regulation';**
- b) the submission of Legal Services Act 2007 (Levy) (No. 2) Rules 2010 for the consent of the Lord Chancellor; and**
- c) to delegate authority to approve any amendments to the decision paper to the Chairman and the Chief Executive.**

Item 10 – Paper (10) 72: LSB budget proposal and outline Business Plan – 2011/12

19. Julie Myers (Corporate Director) and the Director of Finance and Services introduced a paper recommending a budget proposal of £4,931k to deliver the outline LSB Business Plan 2011/12 ('the Plan').
20. In the course of the discussion that followed, the Board noted that:
 - it agreed on 27 July that the Plan should follow the format of the current year (2010/11) and the workstreams / milestones currently in place for 2011/12;
 - the Executive could not foresee a reduction in workload over 2011/12, and it was possible that spending on 'business as usual' activity might increase;
 - Audit and Risk Committee on 11 October endorsed and recommended as a basis for consultation a budget proposal for 2011/12 of £4,931k, which was level in cash terms to the budget for 2010/11 and included the £120k costs for absorbing the additional work associated with the commencement of Schedule 18 of the Act (relating to immigration advice and services);

- the budget proposal of £4,931k represented approximately 5 percent less than forecast in the Business Plan 2010/11;
- the budget proposal set out planning assumptions and intentionally did not attempt to cost activity by project, however, the cover paper to the iteration of the draft Plan that the Board would be invited on 30 November to approve for consultation would indicate (albeit at a high-level) anticipated spend per Regulatory Objective;
- the consultation on the draft Plan, the skeleton framework for which was appended to the paper, would invite respondents to propose and to prioritise the thematic reviews for the year; and
- the final Plan, including the budget and an evaluation strategy, would be presented for endorsement and approval respectively to Audit and Risk Committee on 28 February and to the Board on 28 March 2011.

The Board resolved to agree a budget proposal of £4,931k to deliver its outline Business Plan 2011/12.

Item 11 – Paper (10) 73: LSB Evaluation Strategy

21. The Strategy Director introduced a paper about the draft LSB Evaluation Strategy ('the Strategy').
22. In the course of the discussion that followed, the Board noted that:

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

[REDACTED]

Item 12 – Paper (10) 74: Q2 performance report: July – September 2010

23. The Corporate Director introduced a paper setting out the Q2 report of performance against the Business Plan 2010/11, which also included the draft submission to MoJ.
24. In the course of the discussion that followed, the Board noted:

- the quarterly highlight report;
- an overview of regulatory decisions in the quarter;
- the quarterly activity report from the Consumer Panel; and
- the assessment of LSB's status of its over-arching programme to deliver the Business Plan 2010/11.

The Board resolved:

- a) to note the draft Q2 performance report; and
- b) to agree to its use as a basis for discussion with MoJ.

Item 13 – Paper (10) 75: LSB Risk Strategy and Corporate Risk Register

25. The Corporate Director introduced a paper that invited the Board to agree and to note respectively the revised LSB Risk Strategy ('the Risk Strategy') and the updated Corporate Risk Register ('the Register').
26. In the course of the discussion that followed, the Board noted that:
 - the Risk Strategy had been revised in the light of practical experience of embedding risk management at LSB (particularly in respect of projects), comments from Audit and Risk Committee and the work to address the recommendations of the Internal Auditor's report about strategic planning and performance; and
 - Audit and Risk Committee on 11 October endorsed and recommended the revised Risk Strategy and noted and reviewed the updated Register.
27. The Board commended the Executive, in particular Michelle Jacobs (Business Planning Associate), for the recent progress in respect of risk management at LSB.

Item 14 – Paper (10) 76: The management of LSB exposure to OLC risks

28. The Corporate Director introduced a paper about LSB's exposure to OLC-related risks, an earlier version of which had been considered and noted by Audit and Risk Committee on 11 October.
29. In the course of the discussion that followed, the Board noted that:
 - it invited on 27 July Audit and Risk Committee to review and to report on its formal role in respect of OLC;
 - the Act did not provide LSB with a specific role in respect of the operational (or risk) management of OLC, which was a non-departmental public body in its own right, with its own Accounting Officer, Audit and Risk Committee and sponsorship relationship with MoJ;
 - LSB had statutory functions in respect of OLC, the execution of which exposed LSB directly or indirectly to a series of principally reputational risks, although a series of mitigations were provided by the LSB-OLC MoU;

- the MoU required the oversight of OLC's activities by LSB to be 'focused on identified and agreed areas of particular risks and performance', but that there were limited formal processes for LSB and OLC to identify and to develop a consistent response to shared and/or related risks;
- OLC was potentially exposed to LSB-related risks, and it was important for LSB to seek assurance that such risks were being considered by OLC; and
- a paper about the formalities of the LSB-OLC relationship would be presented to the Board on 30 November. This would include a draft agenda for the LSB-OLC joint Board meeting on 13 December, a focus of which would be the robustness of OLC's processes for managing the performance of LeO.

The Board resolved to note the paper about LSB's exposure to OLC-related risks.

Item 15 – Paper (10) 77: Audit and Risk Committee – 11 October 2010

30. Bill Moyes (Committee Chairman) presented the draft minutes of the meeting held on 11 October.

The Board resolved to note the draft minutes of the Audit and Risk Committee meeting held on 11 October 2010.

Item 16 – Paper (10) 78: Finance report: September 2010

31. The Director of Finance and Services introduced the Finance report.

The Board resolved to note the Finance report.

Item 17 – Any other business

Non-Lay Board Member vacancy

32. The interviews for a new Non-Lay Board Member were scheduled for 3 December.

Item 18 – Date of next meeting

33. The Board would next meet on 30 November 2010, 9.30am – 1.30pm (timing to be confirmed). The venue would be LSB's offices at Victoria House, Southampton Row, London WC1B 4AD.

BH 01.11.10

Signed as an accurate record of the meeting

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Date

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