

Minutes of a meeting of Legal Services Board (LSB) on 30 September 2010

Date: 30 September 2010
Time: 9.30 am – 12.00 pm

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

Present: David Edmonds Chairman
(Members) Chris Kenny Chief Executive
Terry Connor (Items 1-8)
Steve Green
Bill Moyes
Barbara Saunders
Nicole Smith
Andrew Whittaker
David Wolfe

Guests: Adam Sampson Chief Executive and Chief Ombudsman, Legal Ombudsman (LeO) (Item 9)

In attendance: Anna Castiello PA to the Chairman and the Chief Executive
Fran Gillon Director of Regulatory Practice
Michelle Jacobs Business Planning Associate (Item 10)
Bruce Macmillan General Counsel
Karen Marchant Corporate Affairs Associate (Items 8-9)
Julie Myers Corporate Director
Crispin Passmore Strategy Director
Michael Stacey Project Manager (Item 6)
Bryan Hislop Board Secretary (Minutes)

Item 1 – Welcome and apologies

1. The Chairman welcomed Anna Castiello (PA to the Chairman and the Chief Executive), who was attending as an observer.
2. There were apologies for absence from Edwin Josephs (Director of Finance and Services).

Item 2 – Declarations of interests etc.

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

Item 3 – Minutes: 7 September 2010

5. **The Board resolved to agree the minutes of the meeting held on 7 September 2010 and to submit them for signing as an authorised record to the Chairman.**

Item 4 – Report of action points

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

Item 5 – Paper (10) 60: Chief Executive’s progress report: September 2010

7. Chris Kenny (Chief Executive) presented his progress report.
8. The Board noted in particular:
- the Programme highlight report;
 - the speech by Jonathan Djanogly MP (Parliamentary Under Secretary of State for Legal Aid and legal services, Ministry of Justice (MoJ)) on 22 September, in which he endorsed the principle and timetable of alternative business structures (ABS);
 - that LSB and Solicitors Regulation Authority (SRA) would meet at Executive-level on 4 October to discuss ABS-related issues, including Section 69 of Legal Services Act 2007 (‘the Act’) (relating to the modification of the functions of Approved Regulators (AR), etc.);
 - that the Council for Licensed Conveyancers’ application in respect of changes to Licence and Practice Fees Arrangements was approved on 27 September; and
 - that LSB’s discussion document about the regulatory treatment of referral fees, referral arrangements and fee sharing was published on 29 September.
9. The Board noted also updates about:
- the campaign to recruit a new Non-Lay Board Member, the interviews for which would be held on 3 December;
 - LSB-MoJ governance-related matters, including in respect of the LSB framework agreement, which it was hoped to present for endorsement to the Board on 28 October;
 - 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 proposals for identifying through evidence (including ‘mystery / shadow shopping’) the real causes of detriment to consumers of the non-regulated will-writing market, and appropriate (regulatory and/or non-regulatory) approaches to mitigate such risks; and
 - the maintenance of performance against timeliness targets as Legal Complaints Service progressed towards an orderly closedown.

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

Item 6 – Paper (10) 61: The future of education and training for the legal workforce

10. [Redacted text]

11. [Redacted text]

[Redacted text]

[REDACTED]

Item 7 – Paper (10) 62: Internal Governance Rules – Dual self-certification: September 2010

12. The Strategy Director introduced a paper about Applicable ARs' dual self-certification assessments of compliance with the Internal Governance Rules (IGRs).
13. In the course of the discussion that followed, the Board noted that:
 - the Executive's initial review of the IGR dual self-certification assessments was presented to the Board on 29 June, at which time it was noted that no Applicable AR was fully compliant with the IGRs and 'next steps' were agreed;
 - there had been significant progress since June by the majority of Applicable ARs and that the Executive was satisfied that the ARs had both accepted the principle of independence and adopted appropriate action plans to address the key issues identified in June – including embedding lay majorities (albeit over a 15-month period) – and that further intervention was not required;
 - the progress by The Chartered Institute of Patent Attorneys, The Institute of Trade Mark Attorneys and Intellectual Property Regulation Board was less advanced, but that a dual self-certificate assessment of compliance was anticipated following frank discussions at Chairman and Chief Executive levels and intensive facilitation by the Strategy Director; and
 - the practical day-to-day effectiveness of the independence secured by embedding new governance arrangements would be monitored regularly by LSB through intelligence-gathering and the assessment of outcomes, in addition for example to analysing evidence and indicators expressly collected for this purpose both by LSB and the Applicable ARs. A critical measure, however, would be stakeholder perception.

The Board resolved:

- a) to agree the assessment and recommendations in respect of each Applicable AR's compliance with the IGRs and the related ratings of outstanding issues;
- b) to agree the recommendations in respect of lay majorities;
- c) to agree the proposed 'next steps'; and
- d) to mandate the Executive to address directly with the Applicable ARs any residual issues on an individual basis.

Item 8 – Paper (10) 63: Commencement of Schedule 18 of Legal Services Act 2007

14. The Strategy Director introduced a paper about the implications and process for commencing Schedule 18 of the Act, which would transfer the responsibility for the oversight regulation of ARs' functions in respect of regulating immigration advice and services from the Office of the Immigration Services Commissioner (OISC) to LSB and allow LSB to designate (applicant) ARs to become designated qualifying regulators of persons providing immigration advice and services.

The Board resolved:

- a) to note the planned commencement of Schedule 18 of the Act, with effect from 1 April 2011;
- b) to agree the draft recommendation to the Lord Chancellor to end the transitional period for Schedule 18 on 31 March 2011; and
- c) to agree to delegate authority to approve the consultation document about the draft rules to allow ARs to become designated qualifying regulators to the Chairman and the Chief Executive.

15. [CONFIDENTIAL ANNEX]

Item 9 – Paper (10) 64: Reporting Legal Ombudsman performance

16. The Chairman welcomed Adam Sampson (Chief Executive and Chief Ombudsman, LeO), who introduced on behalf of Elizabeth France (Chair, Office for Legal Complaints (OLC)) a paper about the reporting of LeO performance.
17. The Board noted that:
- it had received a 'work in progress' update about the proposed 'pyramid' approach to the reporting of LeO performance on 7 September, and that it was agreed that a formal OLC-endorsed paper about the reporting of LeO performance would be presented to the Board on 30 September;
 - the OLC proposed to report on a quarterly basis to LSB key performance indicators (KPI) on: (a) timeliness – the percentage of complaints within jurisdiction resolved within three months; (b) cost efficiency – the total cost of considering a complaint, calculated by dividing the total cost of the organisation by the number of cases resolved; (c) quality – a compounding of scores on timeliness, customer service and accuracy of decision-making; and (d) satisfaction – to be determined using both annual surveys and quarterly research on feedback;
 - 'timeliness' would be linked directly to the number of complaints resolved informally without an Ombudsman's decision, which would in general take three months; and
 - the reporting of 'satisfaction' would be delayed both by Government restrictions on spend and the throughput of cases, but that relevant data would be published as it became available.

18. In the course of the discussion that followed, it was agreed that:

- the proposed performance framework met the requirements of the Board, except in relation to 'quality', where the Board wished to see reports in respect of each of the discrete indicators comprising the KPI (i.e. timeliness, customer service and accuracy of decision-making); and
- one focus of the LSB/OLC joint Board meeting on 13 December would be the robustness of OLC's processes for managing the performance of LeO.

The Board resolved to endorse the LeO performance framework, subject to OLC reporting also each of the discrete indicators comprising the quality KPI.

Item 10 – Paper (10) 66: LSB Welsh Language Scheme

19. Julie Myers (Corporate Director) introduced a paper about the LSB Welsh Language Scheme ('the Scheme').
20. The Board noted that a draft of the Scheme was approved for consultation on 24 March and that a small number of minor amendments had since been agreed in principle by the Welsh Language Board.

The Board resolved to agree:

- a) the publication of the response to the consultation document; and
- b) the submission of the Welsh Language Scheme for approval to the Welsh Language Board.

Item 11 – Paper (10) 67: Finance report: April – August 2010

21. The Corporate Director introduced the Finance report.

The Board resolved to note the Finance report.

Item 12 – Any other business

Paper (10) 68: ABS Maximum Financial Penalty Order

22. A paper was tabled that proposed draft rules that prescribed that an unlimited maximum financial penalty may be imposed on an ABS by a Licensing Authority.
23. The Board noted that the draft rules, which were consistent with the policy it agreed on 24 March, would be presented for formal agreement and signature on 28 October, in accordance with Sections 95(3) and 204(2) of the Act.

The Board resolved to note:

- a) the draft The Legal Services Act 2007 (Maximum Penalty for Licensing Authorities) Rules 2010; and**
- b) the related Regulatory Impact Assessment.**

Item 13 – Date of next meeting

- 24. The Board would next meet on 28 October 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 01.10.10

Signed as an accurate record of the meeting

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Date

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CONFIDENTIAL ANNEX

Item 8 – Paper (10) 63: Commencement of Schedule 18 of Legal Services Act 2007

15. [REDACTED]