

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

Date: 30 November 2010

Time: 9.30 am – 1.25 pm

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

Present: David Edmonds Chairman
(Members) Chris Kenny Chief Executive
 Terry Connor
 Steve Green (Item 4 onwards)
 Bill Moyes (Item 5 onwards)
 Barbara Saunders
 Nicole Smith
 Andrew Whittaker
 David Wolfe

Guests: Linda Lee President, The Law Society (Item 5)

In attendance: Chris Baas Project Manager (Items 10 and 12)
 Steve Brooker Consumer Panel Manager (Items 1-10)
 Anna Cheung Regulatory Associate (Items 13-14)
 Lucas Ford Project Manager (Items 16-17)
 Fran Gillon Director of Regulatory Practice
 Chris Handford Project Manager (Items 10-11)
 Edwin Josephs Director of Finance and Services (Items 1-7 and 15 onwards)
 Alanna Linn Consumer Panel Associate (Items 8-9)
 Bruce Macmillan General Counsel (Item 5 onwards)
 Karen Marchant Corporate Affairs Associate (Item 15)
 James Meyrick Project Manager (Item 13)
 Julie Myers Corporate Director
 Crispin Passmore Strategy Director
 Alex Roy Research Manager (Item 15)
 Michael Stacey Project Manager (Items 8-10)
 Bryan Hislop Board Secretary (Minutes)

Item 1 – Welcome and apologies


1. The Chairman welcomed those present and in attendance to the meeting.
2. There were no apologies for absence from Board Members. Steve Brooker (Consumer Panel Manager) was attending on behalf of Baroness Hayter (Chair of the Legal Services Consumer Panel ('the Panel')), principally for the discussion of Item 9.

Item 2 – Declarations of interests etc.

3. David Wolfe declared, in advance of the discussion of Item 10, that he was a Legal Services Commissioner. There were no other 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 – Paper (10) 79: Chief Executive’s progress report: November 2010

5. Chris Kenny (Chief Executive) presented his progress report and Edwin Josephs (Director of Finance and Services) introduced the revised LSB Health and Safety Policy Statement.
6. The Board noted:
 - the Programme highlight report;
 - the progress in respect of processing the three applications from Institute of Legal Executives (ILEX) to be designated as an Approved Regulator (AR), the details of which were available on the LSB website;
 - the proposal to commission research to develop a framework for a market segmentation study of the supply of legal services, the scope of which would be circulated for information to the Board;
 - the positive public response to the Chairman’s 2010 Lord Upjohn Annual Lecture and the related announcement of the AR-led joint review of legal education and training. Proposals in respect of LSB’s strategic objectives in relation to the outcome of the review would be presented to the Board on 27 January 2011;
 - the consultation paper, ‘Rules for applications for Qualifying Regulator status’, required by Schedule 18 of Legal Services Act 2007 (‘the Act’) (relating to immigration advice and services), was published on 29 November;
 - an update about Government proposals in respect of public bodies, including: the Public Bodies Bill, which had entered its committee stage in the House of Lords; and the potential transfer of the functions of consumer bodies (including the Panel) to Citizens Advice; and
 - that only minor, technical revisions were proposed to the Health and Safety Statement.
7. The Board agreed:
 - 
 - the revised LSB Health and Safety Policy Statement.

Action

- (10) 20 – To circulate the scope of the market segmentation research to the Board.
(10) 21 – To present proposals in respect of LSB’s strategic objectives in relation to the outcome of the joint review of legal education and training to the Board on 27 January 2011.

The Board resolved:

- a) **to note the Chief Executive's progress report;**
- b) [REDACTED]
- c) **to agree the revised LSB Health and Safety Policy Statement.**

Item 4 – Paper (10) 80: ABS implementation: next steps – key issues and risks

8. Fran Gillon (Director of Regulatory Practice) introduced the standing progress report about the implementation of alternative business structures (ABS), which included a summary of next steps, potential risks, mitigations and changes in risk status.
9. The Board noted that:
 - LSB had offered formally to finance the drafting of the statutory instruments necessary to secure the timely implementation of ABS; and
 - pro-active project management had reduced considerably the pressure on LSB's limited resources.

The Board resolved to note the progress report about the implementation of ABS.

Item 5 – Linda Lee (President, The Law Society)

10. The President of The Law Society delivered a presentation about the priorities, opportunities and challenges facing The Law Society, covering a range of topics including ABS and outcomes-focused regulation (OFR), the respective roles of the regulatory and representative arms of ARs, and quality within the profession.
11. The President of The Law Society commented that:
 - The Law Society had no objection to the target date for the introduction of ABS, however, linking the introduction of OFR to the implementation of ABS on 6 October 2011 could stretch unnecessarily the short-term capability and capacity of the profession and, in particular, Solicitors Regulation Authority (SRA), potentially to the detriment of 'business as usual' regulatory activities;
 - 'effective' regulators: operated with the confidence of their stakeholders and the market; identified proactively when enforcement action was required; addressed disciplinary matters in a proportionate and timely manner; and used the intelligence and expertise of representative arms and their members;
 - she would welcome LSB guidance about how ARs should appropriately and transparently exercise their duty to the profession and consumers to hold to account their regulatory arms, but without actually or potentially influencing regulatory policy or interventions;

- the role of the regulatory arm in respect of quality was to set and to enforce base levels of quality for entry to the profession and for service levels; it was for the representative arm (if it chose to do so) to promote incremental and consumer-focused increases in quality above that base level (including, for example, by way of The Law Society's new Conveyancing Quality Scheme);
 - the expansion of the profession into a broad range of 'legal services providers' underlined the importance of embedding at entry level ethical behaviours and the professional principles, in particular acting in the best interests of clients; and
 - the legal profession of the future should empower consumers to make informed choices about their legal services provider / product, and provide to those in need safe and secure access to justice.
12. The Board expressed its gratitude to the President of The Law Society, who then left the meeting.

Item 6 – Minutes: 28 October 2010

13. **The Board resolved to agree the minutes of the meeting held on 28 October 2010 and to submit them for signing as an authorised record to the Chairman.**

Item 7 – Report of action points

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

Item 8 – Paper (10) 81: Promoting diversity and social mobility in the legal workforce – update and consultation paper

15. Crispin Passmore (Strategy Director) introduced a paper proposing priorities in relation to diversity and social mobility and recommending the approval of a consultation paper on increasing diversity in the legal workforce.
16. In addition to proposing minor amendments to the draft consultation paper, the Board noted that:
- it had agreed that a priority for 2010/11 would be the development (with ARs) of a consistent and comprehensive framework for gathering and publishing data about diversity and social mobility, particularly in respect of retention and progression in the professions;
 - the Executive had since engaged actively with ARs and representative bodies on the Diversity Forum to develop more detailed proposals, which had the general support of stakeholders, including the Panel, Black Solicitors' Network, Equality and Human Rights Commission, Stonewall and The Sutton Trust;
 - it was proposed not to set arbitrary targets, but instead: (a) to write to ARs setting out LSB's immediate priorities to encourage a more diverse legal workforce; (b) to request from ARs an assessment / evaluation of their current

evidence base and diversity initiatives and a detailed outline of their proposals to promote transparency at entity level; and (c) to consult formally on how to achieve transparency and common data categories, which could be formalised as guidance under s162 of the Act;

- increased transparency about diversity, complemented by the work of ARs and the professions in general, would help to develop a comprehensive evidence base to inform future policy responses and to influence behaviours at entity level; and
- the concerns and challenges identified by ARs had been set out for discussion in the consultation document (for example, in relation to the processing of sensitive personal data).

The Board resolved:

- a) to note the progress update;**
- b) to agree that the Chief Executive should write to ARs in the terms proposed at para 10-12 of the paper; and**
- c) to agree the publication of the consultation document, ‘Increasing diversity and social mobility in the legal workforce: transparency and evidence’, and to delegate authority to make any minor amendments to the consultation document to the Chief Executive.**

Item 9 – Paper (10) 82: Consumer perspectives on quality in legal services – advice from Legal Services Consumer Panel

17. The Strategy Director and the Consumer Panel Manager introduced the Panel’s advice to LSB about consumer perspectives on quality in legal services.

18. The Board noted:

- the original consumer research commissioned by the Panel, which found that: consumers assumed that all lawyers were technically competent and subject to more regulatory controls; quality considerations did not influence strongly consumers’ choice of lawyer; and consumers did not use or want quality marks in legal services;
- the Panel’s recommendations and wider advice to LSB, including proposals for an ‘agenda for quality’ consisting of: transparency to enable informed choices; credible quality assurance mechanisms; a simpler regulatory landscape; ensuring ongoing competence; and meaningful specialisation;
- that many of the issues raised in the consumer advice would be addressed through the AR-led joint review of legal education and training;
- the Panel’s advice (and any advice commissioned subsequently about implementing its recommendations) would be used to inform future policy decisions by LSB; and
- that LSB’s formal response to the Panel, and a progress report about the joint review of legal education and training, would be presented to the Board on 27 January.

Action

(10) 22 – To present LSB's formal response to the Panel, and a progress report about the joint review of legal education and training, to the Board on 27 January.

The Board resolved to note the Panel's advice about quality in legal services.

Item 10 – Paper (10) 83: Quality Assurance for Advocates – update on the development of a scheme for criminal advocates

19. The Strategy Director introduced a paper about Joint Advocacy Group's (JAG) proposal for a quality assurance scheme for criminal advocates (QAA).
20. The Board noted that:
 - LSB had an oversight role in respect of the delivery of a QAA scheme by JAG (namely Bar Standards Board (BSB), SRA and ILEX Professional Standards);
 - JAG's most recent proposal evidenced some progress, but significant amendment and further work would be required to produce a credible and robust scheme by July 2011;
 - an informal, proportionate resolution to LSB and other stakeholder concerns would be sought in an effort to promote delivery of a credible and robust QAA scheme, but that legal advice had been obtained setting out the tests for formal intervention; and
 - the Executive proposed: to continue to apply pressure on JAG to deliver a more robust proposal and an implementation plan; to commission research into best practice assessment methods and the design of a model / contingency QAA scheme; and to advise JAG that an inadequate QAA scheme that could not be approved was likely to have an adverse impact on one or more of the regulatory objectives.

The Board resolved:

- a) to note JAG's progress in respect of the delivery of a QAA scheme;
- b) to note that the absence of a QAA scheme for criminal advocacy would have an adverse impact on one or more of the regulatory objectives; and
- c) to endorse the proposed approach to ensuring the delivery of a QAA scheme.

[REDACTED]

21. [REDACTED]

22. [REDACTED]

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

23. [REDACTED]

- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Item 12(a) – Paper (10) 84: LSB as a Licensing Authority

24. The Director of Regulatory Practice introduced a paper setting out a proposed approach to direct licensing by LSB.

25. The Board noted that:

- in the absence of timely applications by ARs to be designated as LAs, direct licensing by LSB would be necessary to enable ABS 'go live' on 6 October 2011; and
- a paper about the necessary governance and other arrangements to permit direct licensing by LSB would be presented to the next meeting of the Board.

Action

(10) 24 – To present a paper about the necessary governance and other arrangements to permit direct licensing by LSB to the next meeting of the Board.

The Board resolved to note the paper about direct licensing by LSB.

Item 12(b) – Paper (10) 85: ABS consultation – Rules relating to licensed bodies

26. The Director of Regulatory Practice introduced a paper recommending the approval of a consultation paper on rules concerning the notification of changes to the holding of interests in, and registers of, licensed bodies.

The Board resolved to agree

- a) the publication of the consultation document, 'Further rules relating to the regulation of licensed bodies'; and
- b) to delegate authority to approve any amendments to the consultation document to the Chairman and the Chief Executive.

Item 12(c) – Paper (10) 86: Statement of Policy – modification of the functions of Approved Regulators

27. The Director of Regulatory Practice introduced a paper recommending the approval of a post-consultation Decision document and Statement of Policy on the use of section 69 Orders.

The Board resolved to agree 'Section 69 Orders: Decision document and Statement of Policy on the use of section 69 Orders'.

Item 12(d) – Paper (10) 87: Maximum Financial Penalty Rules

28. The Director of Regulatory Practice introduced a paper recommending the approval of a re-consultation on the maximum financial penalty that LAs could impose on ABS.

29. The Board noted that:

- it agreed previously that the penalty that LAs could impose on ABS should be unlimited;

- MoJ had subsequently raised concerns about LSB's vires under the Act to set an unlimited penalty; and
- the Executive accordingly proposed a re-consultation on the approach for setting limited maximum financial penalties.

The Board resolved to agree:

- a) to re-consult on the approach for setting limited maximum financial penalties that LAs could impose on ABS; and**
- b) to delegate authority to approve the re-consultation document to the Chairman and the Chief Executive.**

Item 13 – Paper (10) 88: Smaller Approved Regulators – activities and capacity

30. The Strategy Director introduced a paper about the smaller ARs project.

31. The Board noted that:

- 'smaller ARs' was defined to include all the ARs, excluding The Bar Council and The Law Society;
- there was evidence of limited active supervision (cf. regulation) by the smaller ARs, but that this was likely a reflection of the dynamics and markets of each regulated community and the capacity of their ARs;
- research had been commissioned to review the activities and capacity of the smaller ARs, including potential risks in the relevant markets to consumers, the outcomes of which would be presented to the Board on 28 March; and
- contingency plans were being developed to address the failure of any of the ARs, although no such failure was currently anticipated.

Action

(10) 25 – To present the smaller ARs research to the Board on 28 March.

(10) 26 – To circulate Annex A of Paper (10) 88, expanded to include The Bar Council and The Law Society, to the Board.

The Board resolved to note the paper about the smaller ARs project.

Item 14 – Paper (10) 89: SDT – Rules for Rule Change Applications and Compliance and Enforcement Policy

32. The Strategy Director introduced a paper recommending the approval of a post-consultation Decision document and amended Rules for Rules Change Applications ('the Rules') and Statement of Policy – Compliance and Enforcement ('the Statement').

The Board resolved to agree:

- a) the amendments to the Rules and the Statement; and**
- b) the publication of the decision document, 'Approving Rule Changes and Issuing Directions: Solicitors Disciplinary Tribunal'.**

Item 15 – Paper (10) 90: Draft LSB Business Plan 2011/12

33. Julie Myers (Corporate Director) and the Strategy Director introduced a paper recommending the approval of respectively the draft Business Plan 2011/12 ('the draft Plan') and draft proposals for evaluating the medium-term effectiveness of legal services reform and the impact of LSB ('the evaluation framework').
34. The Board noted that:
 - the draft Plan was consistent with previous Plans and that it (and the evaluation framework) had been developed in line with discussions at previous Board meetings and in consultation with Board Members;
 - the high-level, general allocation of proposed costs per workstream provided in the covering paper was consistent with expectations; and
 - the draft Plan had been submitted for informal review to MoJ, and that the Minister had raised no substantive concerns for the Board to consider.
35. The Executive's initial proposal was to annex the evaluation framework to the draft Plan. The Board agreed, following discussion, to separate the documents, which it was believed would allow for greater discussion about the evaluation framework with external stakeholders.

The Board resolved to agree to delegate authority to approve the separate publication for consultation of the draft Plan and the evaluation framework to the Chairman and the Chief Executive.

Item 16 – Paper (10) 91: LSB / OLC joint Board meeting – 13 December 2010

36. The Corporate Director introduced a paper about the LSB / OLC joint Board meeting on 13 December.
37. The Board noted:
 - the agenda for the meeting;
 - a briefing note to provide context for the agenda; and
 - a schedule of LSB and OLC governance interactions, as required by the Act and the LSB / OLC memorandum of understanding.

The Board resolved to note the paper about the LSB / OLC joint Board meeting on 13 December.

Item 17 – Paper (10) 92: First-tier complaints handling – procedural review update

38. The Director of Regulatory Practice introduced a paper about the initial assessment of ARs' submissions of compliance with the first-tier complaints handling (FTCH) requirements.
39. The Board noted that:
- The Bar Council and barristers directly had pushed-back significantly in relation to the requirement for consumers to be 'signposted' by their legal services provider to their rights of complaint, which was at this stage a matter for BSB to consider; and
 - a summary of the key themes and issues arising from the thematic review of ARs' compliance with the FTCH requirements would be published on the LSB website.

The Board resolved to note the initial assessment of ARs' submissions of compliance with the FTCH requirements.

Item 18 – Paper (10) 93: Finance report: October 2010

40. The Director of Finance and Services introduced the Finance report, noting that an under-spend against budget was forecast for 2010/11.

The Board resolved to note the Finance report.

Item 19 – Any other business

Non-Lay Board Member vacancy

41. The interviews for a new Non-Lay Board Member were scheduled for 3 December¹.

Item 20 – Date of next meeting

42. The Board would next meet on 13 December 2010, 11am – 12.30pm (timing to be confirmed), prior to the LSB / OLC joint Board meeting. The venue would be OLC's offices at Baskerville House, Centenary Square, Broad Street, Birmingham B1 2ND.

BH 02.12.10

Signed as an accurate record of the meeting

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Date
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¹ The interviews were subsequently postponed in response to adverse weather conditions.