

## **Minutes of a meeting of Legal Services Board (LSB) on 27 January 2011**

**Date:** 27 January 2011  
**Time:** 3.00 pm – 5.55 pm

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

**Present:** David Edmonds Chairman  
**(Members)** Chris Kenny Chief Executive  
Steve Green  
Bill Moyes  
Barbara Saunders  
Nicole Smith  
Andrew Whittaker  
David Wolfe

**In attendance:** Steve Brooker Consumer Panel Manager (Items 9-10)  
Sonya Gedson Regulatory Associate (Item 12)  
Fran Gillon Director of Regulatory Practice  
Chris Handford Project Manager (Items 6 and 10)  
Edwin Josephs Director of Finance and Services (Items 1-8 and 14 onwards)  
Bruce Macmillan General Counsel  
Julie Myers Corporate Director  
Crispin Passmore Strategy Director  
Dawn Reid Project Manager (Items 9 and 11)  
Bryan Hislop Board Secretary (Minutes)

### **Item 1 – Welcome and apologies**

1. The Chairman welcomed those present and in attendance to the meeting.
2. There was an apology for absence from Terry Connor (Board Member).

### **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: 13 December 2010**

5. **The Board resolved to agree the minutes of the LSB meeting and the LSB / Office for Legal Complaints (OLC) joint session held on 13 December 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 (11) 01: Chief Executive’s progress report: January 2011**

7. Chris Kenny (Chief Executive) presented his progress report.

8. The Board noted:

- that the Chairman, the Chief Executive and Jonathan Djanogly MP (Parliamentary Under-Secretary of State for Justice) met on 17 January to discuss, amongst other things, Alternative Business Structures (ABS)
- that the Chairmen of LSB’s and OLC’s respective Audit and Risk Committees and others had held a productive meeting on 24 January to consider mutual risks and mitigations
- the resignation of David Hobart as Chief Executive of The Bar Council, with effect from May 2011.

9. The Board noted also updates about:

- the all-colleague Learning and Development Framework
- the Government’s proposals in respect of public bodies, including the Public Bodies Bill, which was at its committee stage in the House of Lords, and the potential transfer of the functions of consumer bodies (including the Legal Services Consumer Panel (‘the Panel’)) to Citizens Advice
- the ongoing development of a comprehensive ‘Knowledge Bank’ / evidence base of data and other information about the legal services market, which would be published in due course to the LSB website
- the interviews on 21 January for a new Non-Lay Board Member, a submission in respect of which had been presented for approval to the Minister and Lord Chief Justice.

10. [REDACTED]

**The Board resolved:**

- a) **to note the Chief Executive’s progress report**

- b) [REDACTED]

**Item 6 – [REDACTED]**

11. [REDACTED]

12. [REDACTED]
- [REDACTED]
  - [REDACTED]
  - [REDACTED]

13. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- a) [REDACTED]
  - b) [REDACTED]

**Item 7 – Paper (11) 02: ABS implementation: next steps – key issues and risks**

14. Fran Gillon (Director of Regulatory Practice) introduced the standing progress report about the implementation of ABS, which included a summary of next steps, potential risks, mitigations and changes in risk status.
15. The Board noted an update about the generally positive response that had been received to the consultation on the approach to setting the maximum financial penalty (MFP) that Licensing Authorities (LA) would be able to impose on ABS. Having considered in particular the response from Solicitors Regulation Authority (SRA), it was agreed to increase the MFP from £150m to £250m, subject to a review in due course and to securing from General Counsel confirmation that a re-consultation on the MFP was not required. A Decision Document would be circulated for approval to the Board by not later than 4 February.
16. The Board noted also updates about risks in relation to:
- the appellate bodies workstream, particularly the discussions between LSB, Council for Licensed Conveyancers, SRA and Tribunals Services about the

latter's powers to award costs and related matters

- the capacity of Ministry of Justice (MoJ) to draft the necessary Orders within the available Parliamentary timetable.

17. The Board agreed that there was a good prospect that ABS would be implemented in accordance with the agreed timetable, which would be published on the LSB website. Overall progress against the timetable would be re-appraised by the Board at its meeting on 28 April.

**Action**

(11) 02 – To secure from General Counsel confirmation that a re-consultation on the MFP was not required.

(11) 03 – To publish the timetable for implementing ABS on the LSB website.

(11) 04 – To re-appraise progress against the timetable for implementing ABS at the Board meeting on 28 April.

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

**Item 8 – Paper (11) 09: Licensing Authority Committee – Terms of Reference**

18. The Director of Regulatory Practice tabled a paper about direct licensing of ABS by LSB, which built on the Board's discussion at the last meeting.

19. The Board noted that:

- in the absence of timely applications by Approved Regulators (AR) to be designated as LAs, direct licensing by LSB would be necessary to enable the implementation of ABS
- the paper set out proposed terms of reference for an LA Committee, which were consistent with Legal Services Act 2007 ('the Act')
- [REDACTED]

**The Board resolved to agree:**

- a) the terms of reference for the LA Committee
- b) the membership of the LA Committee.

**Item 9 – Paper (11) 03: Regulatory approaches**

20. Crispin Passmore (Strategy Director) introduced a paper intended to develop and to expand previous thinking about approaches to regulation by ARs.

21. The Board noted that:

- LSB and the ARs were obliged by the Act to promote the regulatory objectives and, in the case of the former, 'to assist in the maintenance and development of standards in relation to the regulation by approved regulators of persons authorised by them to carry on activities which are reserved legal activities'
- the draft Business Plan 2011/12 set out emerging thinking about effective approaches to regulation by ARs, which included four core elements: outcomes-focused regulation; a robust risk framework; appropriate supervision; and an appropriate enforcement strategy
- the increasingly diverse legal services market underlined the need to move to an outcomes-focused approach to regulation, but that there was a real risk that some of the ARs 'grand-fathered' into the regulatory regime would continue to use a more prescriptive rules-based approach, leading to a two-tier regulatory regime
- [REDACTED]

22.

[REDACTED]

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

[REDACTED]

- a) [REDACTED]
- b) [REDACTED]
- c) [REDACTED]
- d) [REDACTED]

### **Item 10 – Paper (11) 04: Rationalising the scope of regulation**

23. The Strategy Director introduced a paper about the scope of regulation of the legal services market.
24. The Board noted that:
- the paper was presented in response to commitments to review the scope of regulation, including in the Business Plans 2010/11 and 2011/12, which was discussed at the Board's strategy session on 7 September 2010
  - an aim of the review would be to ensure that regulation was more targeted at addressing consumer detriment, whilst remaining proportionate to identified market problems
  - the review of the scope (and nature) of regulation was a priority for LSB, not least because of the emerging policy debate about extending regulation to will-writing and the implementation of ABS
  - the Act explicitly limited to LSB alone the power to make recommendations about reserved legal activities to the Lord Chancellor, which indicated that Parliament intended LSB actively to consider the scope of regulation
  - the Executive would invite Board Members to participate in a workshop about the scope of regulation, which would inform a high-level discussion document to be presented to the Board on 28 April.
25. The Board complimented the LSB-commissioned report, 'Understanding the economic rationale for legal services regulation' (Decker and Yarrow, RPI, 31 October 2010), the publication of which would be supplemented by a series of related essays.

#### **Action**

(11) 05 – To invite Board Members to participate in a workshop about the scope of regulation.

(11) 06 – To present a high-level discussion document about the scope of regulation to the Board on 28 April.

**The Board resolved to note the paper about the scope of regulation of the legal services market.**

### **Item 11 – Paper (11) 05: ILEX application to extend the reserved legal activities for which it is an Approved Regulator**

26. Dawn Reid (Project Manager) introduced a paper setting out the Executive's recommendations in respect of an application by Institute of Legal Executives (ILEX) to extend its reserved legal activities and to make regulatory arrangements to enable it to designate Associate Prosecutors (AP) of the Crown Prosecution Service (CPS) with rights of audience and to conduct litigation, effective from 1 May.
27. The Board noted that:

- the Executive had completed a detailed review of the application, the advice of the mandatory consultees and ILEX's response to that advice, and was satisfied with the arrangements ILEX proposed to put in place for APs
- the application sought to permit ILEX to grant all the rights permitted in Prosecution of Offenders Act 1985 (as amended by Criminal Justice and Immigration Act 2008), but that the Executive proposed limiting the approval to the range of activities currently permitted by the Director of Public Prosecutions' (DPP) Instructions
- whilst it was appropriate for ILEX to place temporary reliance on the CPS internal quality assurance scheme, migration of APs to the Quality Assurance for Advocates (QAA) scheme being developed by the Joint Advocacy Group (of which ILEX was a member) should be mandatory
- the arrangements that ILEX proposed to put in place (including reliance on CPS arrangements) appeared to be appropriate to deliver effective regulation of this specific class of member (i.e. APs), but that an annual report from ILEX / ILEX Professional Standards (IPS), supplemented by an objective assessment by LSB, would be required to demonstrate the effective implementation of these arrangements.

**The Board resolved:**

- a) to approve the recommendation to the Lord Chancellor under Section 24 of the Act that ILEX be designated as an AR for the reserved legal activity of the right to conduct litigation**
- b) to approve the regulatory arrangements for APs, subject (as set out above) to: limiting the scope of the approval; mandating the migration to the QAA scheme; and receiving an annual report from ILEX / IPS to demonstrate the effective implementation of these arrangements**
- c) to agree to delegate authority to approve the Decision Notice and the wording of the recommendation to the Lord Chancellor to the Chairman and the Chief Executive.**

**Item 12 – Paper (11) 06: Evaluation of the PCF approval process for 2010**

28. The Strategy Director introduced a paper about the evaluation of the Practising Certificate Fee (PCF) approval process for 2010.
29. The Board noted that:
  - all of the PCF applications received in 2010 were approved (under Section 51 of the Act), which was an important (albeit first) step in increasing transparency about the use of funds by ARs
  - the evaluation of the approval process was informed both by external and internal feedback
  - the 2011 approval process would aim to focus on high-level spend, subject to the quality and volume of data provided by ARs

- the Executive recommended continuing to delegate authority to approve PCF applications to the Chief Executive, subject to appropriate consultation with the nominated Board Members.

**The Board resolved:**

- a) to note the findings of the evaluation of the PCF approval process for 2010**
- b) to note the approach to the PCF approval process for 2011**
- c) to agree to continue to delegate authority to approve PCF applications to the Chief Executive, subject to appropriate consultation with the nominated Board Members.**

**Item 13 – Paper (11) 07: Q3 performance report: October – December 2010**

30. The Corporate Director introduced a paper setting out the Q3 report of performance against the Business Plan 2010/11, which also included the draft submission to MoJ.
31. 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 Panel
  - 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 Q3 performance report; and**
- b) to agree to its use as a basis for discussion with MoJ.**

**Item 14 – Paper (11) 08: Finance report: December 2010**

32. The Director of Finance and Services introduced the Finance report.
33. The Board noted that:
  - MoJ had still not provided written confirmation of the budget allocation for 2010/11
  - an under-spend against budget was forecast for 2010/11.

**The Board resolved to note the Finance report.**

**Item 15 – Any other business**

34. There were no items of other business.



**Item 16 – Date of next meeting**

35. The Board would next meet on 28 March 2011, 2.30-5.30pm (timing to be confirmed). The venue would be LSB's offices at Victoria House, Southampton Row, London WC1B 4AD.

BH 31.01.11

Signed as an accurate record of the meeting

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Date  
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