

Minutes of a meeting of Legal Services Board (LSB) on 26 May 2011

Date: 26 May 2011

Time: 11.00 am – 12.45 pm

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

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

Guests: Neil Wightman Member, Legal Services Consumer Panel ('the Panel')
(Minutes 15-29)

In attendance: Chris Baas Project Manager (Items 1-7)
Steve Brooker Consumer Panel Manager (Items 1-14)
Fran Gillon Director of Regulatory Practice (Items 1-14)
Edwin Josephs Director of Finance and Services (Items 1-14)
Bruce Macmillan General Counsel (Items 1-14)
James Meyrick Project Manager (Item 8)
Julie Myers Corporate Director
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 apologies for absence from Andrew Whittaker (Board Member) and Crispin Passmore (Strategy Director). Neil Wightman (Panel Member) would attend for the discussion of Item 9 on behalf of Baroness Hayter (Panel Chair).

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: 28 April 2011

5. **The Board resolved to agree the minutes of the meeting held on 28 April 2011 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) 36: Chief Executive’s progress report: May 2011

7. Chris Kenny (Chief Executive) presented his progress report.
8. The Board noted that:
- the decision document, ‘Referral fees, referral arrangements and fee sharing’, would be published on 27 May
 - the Joint Advocacy Group had made increasingly positive progress in relation to the development of a Quality Assurance Scheme for Advocates (Crime)
 - Legal Ombudsman, Council for Licensed Conveyancers and Solicitors Regulation Authority (SRA) were liaising about the complaints handling implications of alternative business structures (ABS) and multi-disciplinary practices.

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

Item 6 – Paper (11) 37: ABS implementation: next steps – key issues and risks

9. 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.
10. The Board noted that:
- the risk matrix evidenced considerable progress by the Executive (in liaison with Ministry of Justice)
 - subject to the consent of the Lord Chancellor, the Board would be invited separately to make the Rules in relation to the maximum financial penalty that Licensing Authorities would be able to impose on ABS
 - a technical consultation would be required to correct an administrative error identified in ‘Rules for applications to be designated as a Licensing Authority’
 - the risks to the timely commencement of ABS included the Parliamentary timetable, and that these would need to continue to be communicated by LSB, Ministers and the Approved Regulators (AR) (in particular SRA) to the regulated community and the financial markets.

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

Item 7 – Paper (11) 38: Ending transitional protections

11. The Director of Regulatory Practice introduced a paper that invited the Board to agree a recommendation to the Lord Chancellor to end the transitional protections provided by Schedule 5 of Legal Services Act 2007 ('the Act') 18 months after the commencement of Part 5 of the Act.
12. The Board noted that:
 - LSB proposed in early 2010 a transitional period of 12 months
 - a re-consultation in April 2011 supported an extended transitional period, which would allow those ARs with limited information about their regulated communities to publicise their post-transition licensing requirements
 - the Executive would consider how best to assess the impact of ending the transitional protections
 - the Chief Executive would write to the ARs explaining, amongst other things, the implications of the proposed recommendation
 - the proposed recommendation would not extend to those special bodies defined at Section 23(2) of the Act (e.g. not-for-profit organisations), which would be the subject of a separate consultation later in 2011.

The Board resolved:

- a) **to make a recommendation to the Lord Chancellor to end the transitional protections provided by Schedule 5 of the Act 18 months after the commencement of Part 5 of the Act (except in relation to those special bodies defined at Section 23(2) of the Act)**
- b) **to delegate authority to approve the wording of the recommendation to the Lord Chancellor to the Chairman and the Chief Executive.**

Item 8 – Paper (11) 39: Internal Governance Rules – May 2011

13. The Chief Executive introduced a paper about the Internal Governance Rules (IGR) / independence exercise in 2011.
14. The Board noted that:
 - the Business Plan 2011/12 committed to conducting an IGR exercise in 2011, focused on reviewing the practical measures taken by the Applicable ARs (AAR) to embed independence in their systems and the conduct of their personnel
 - the regulatory and representative arms of each AAR were asked to complete and to submit a risk matrix designed to assess and to monitor compliance and a dual self-certificate of regulatory independence
 - the submissions revealed some uncertainty about the most appropriate level of oversight of regulatory arms by their ARs

- the Executive commended the submissions from, and the proposed 'next steps' in relation to, Institute of Legal Executives (ILEX) / ILEX Professional Standards and The Chartered Institute of Patent Attorneys (CIPA) / The Institute of Trade Mark Attorneys (ITMA) / IPReg (Intellectual Property Regulation Board)
 - the Executive commended also the submission from Association of Costs Lawyers (ACL) / Costs Lawyer Standards Board (CLSB), which was an action plan for securing compliance with the IGRs.
15. The Board noted also that LSB hosted on 25 May a meeting for the Chairs of the smaller ARs¹ to discuss the publication of research about the capability and capacity of those organisations², which had been considered at the last meeting of the Board. The discussion had been wide-ranging and would inform decisions about the timing of the publication of the research and the points that would be made at that times about its relationship to wider work on regulatory effectiveness.
16. The submission from The Bar Council / Bar Standard Board was scheduled to be presented to the Board on 13 July. There were ongoing discussions between The Law Society and SRA about their submission and the timing of resolution remained uncertain. It was agreed to propose a meeting in due course of Board-level representatives from LSB, The Law Society and SRA.

Action

(11) 09 – To propose a meeting in due course of Board-level representatives from LSB, The Law Society and SRA.

The Board resolved to agree:

- a) the 'next steps' in relation to ACL (CLSB), CIPA and ITMA (IPReg), and ILEX (ILEX PS)
- b) to delegate any further actions in relation to ACL (CLSB), CIPA and ITMA (IPReg), ILEX (ILEX PS) and the IGR 2011 exercise to the Executive.

Item 9 – Paper (11) 40: Legal Services Consumer Panel – Annual Report 2011

17. The Chairman welcomed Neil Wightman to the meeting, who attended to introduce a paper about the Panel's Annual Report 2011 ('the Report') and its first 'Consumer Impact Report' (CIR).
18. The Report included a historical review of the Panel's activities and impact in the period 1 November 2009 to 31 March 2011, a high-level commentary on developments affecting consumers, and a summary of its priorities for 2011/12.

¹ The 'smaller ARs' are all the ARs, excluding The Bar Council and The Law Society.

² 'The smaller approved regulators' (Smedley, April 2011).

19. The CIR, which would be published for the first time in June, was designed to be an annual tool for the profession, ARs and others to track improvements and areas for development from a consumer perspective. The Board noted that:
- it provided a mixed assessment of the market and reforms to date, and highlighted in particular the imbalance of power between consumers and lawyers
 - the first CIR was by definition a baseline assessment and that the methodology used and the indicators reported would be reviewed, revised and contextualised in future iterations
 - the Executive would ensure that the LSB Evaluation Framework and the CIR were appropriately integrated / synergised.
20. The Board acknowledged the work of the Panel during 2009-11, in particular the high quality of its independent advice, which it was agreed would underpin and promote LSB's and the Panel's future activities.

The Board resolved to note:

- a) the Panel's Annual Report 2011**
- b) the Consumer Impact Report.**

Item 10 – Paper (11) 41: LSB Annual Report and Accounts 2010/11

21. Julie Myers (Corporate Director) and Edwin Josephs (Director of Finance and Services) introduced a paper that invited the Board to agree the draft LSB Annual Report and Accounts 2010/11 ('the Annual Report').
22. The Board noted that:
- the content and format of the Annual Report was consistent with official guidance
 - the National Audit Office had asked for an increased level of disclosures in relation to previous years
 - the Comptroller and Auditor General anticipated certifying the financial statements with an unqualified audit opinion (without modification)
 - the Annual Report was now scheduled to be laid before Parliament on 13 June, in advance of the Chairman's meeting with the Minister on 15 June.
23. The Chairman of the Audit and Risk Committee confirmed that it had resolved at its meeting on 23 May to endorse and to recommend the Annual Report to the Board.
24. The Board commended the Executive, in particular the Director of Finance and Services, Bryan Hislop (Board Secretary) and Karen Marchant (Corporate Affairs Associate), for delivering successfully the Annual Report in the compressed timeframe necessitated by the Government's 'Clear Line of Sight (Alignment) Project'.

The Board resolved:

- a) to agree the draft LSB Annual Report and Accounts 2010/11**
- b) to delegate authority to approve the submission of the LSB Annual Report and Accounts 2010/11 to the Comptroller and Auditor General and Lord Chancellor to the Chairman, the Chairman of the Audit and Risk Committee and the Chief Executive.**

Item 11 – Audit and Risk Committee – 23 May 2011: verbal report

25. Bill Moyes (Committee Chairman) provided a verbal report about the meeting of the Audit and Risk Committee on 23 May, the minutes of which would be presented to the meeting of the Board on 13 July.
26. The Committee:
 - agreed a development programme in relation to its own effectiveness
 - agreed the internal audit Annual Plan 2011/12
 - recommended that the Executive considered appointing two specific non-executive Board Members to act as additional ‘Designated Officers’ under LSB’s Internal Whistle-blowing Policy
 - endorsed the Internal Auditor’s recommendation to purchase Board Members’ liability insurance, particularly in the light of the potential risks (if this was not done) to levy payers, which the Chief Executive agreed to pursue further (in his capacity as Accounting Officer)
 - endorsed and recommended a proposal to increase the mileage rate payable under LSB’s Policy on Colleagues’ Expenses to 45p per mile (for the first 10,000 miles), in line with the increase announced in Budget 2011.

The Board resolved:

- a) to note the verbal report about the Audit and Risk Committee meeting held on 23 May 2011**
- b) to agree an increase to the mileage rate payable under LSB’s Policy on Colleagues’ Expenses to 45p per mile (for the first 10,000 miles).**

Item 12 – Paper (11) 42: Learning and development at LSB

27. The Corporate Director introduced a paper about LSB’s Learning and Development Framework (‘the Framework’).
28. The Board noted both the formal and informal components of the Framework, which sought to encourage personal, professional and organisational development. The Executive agreed to consider the feasibility of additional development options, including time-off for volunteering, which would complement both the Framework and LSB’s commitment to be a socially responsible organisation.

The Board resolved to note the paper about the LSB’s Learning and Development Framework.

Item 13 – Any other business

29. There were no items of other business.

Item 14 – Date of next meeting

30. The Board would next meet on 13 June 2011, 2.30 pm – 4.00 pm (timing to be confirmed). The venue would be LSB’s offices at Victoria House, Southampton Row, London WC1B 4AD.

Item 15 – Private session

31. The Board, Corporate Director and Board Secretary met briefly in private session.

BH 27.05.11

Signed as an accurate record of the meeting

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Date

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