

Minutes of a meeting of Legal Services Board (LSB) on 13 June 2011

Date: 13 June 2011

Time: 2.30 pm – 4.15 pm

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

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

In attendance: Chris Baas Project Manager (Items 1-6)
Steve Brooker Consumer Panel Manager
Fran Gillon Director of Regulatory Practice
Edwin Josephs Director of Finance and Services
Emily Lyn Regulatory Associate (Items 1-5)
Bruce Macmillan General Counsel
James Meyrick Project Manager (Item 7)
Julie Myers Corporate Director (Minutes)
Crispin Passmore Strategy Director
Dawn Reid Project Manager (Items 1-5)
Michael Stacey Project Manager (Items 1-6)

Item 1 – Welcome and apologies

1. The Chairman welcomed those present and in attendance to the meeting.
2. There were apologies for absence from Steve Green (Board Member) and Bryan Hislop (Board Secretary).

Item 2 – Declarations of interests etc.

3. Edward Nally re-declared his membership of the Solicitors Disciplinary Tribunal (SDT).
4. Board Members were reminded to notify the Board Secretary about hospitality extended / received in the course of their LSB work.

Item 3 – Chief Executive's progress report: June 2011

5. Chris Kenny (Chief Executive) gave a verbal update about progress.

6. The Board noted the following:

- Quality Assurance Scheme for Advocates (QASA) – good progress was being made. Solicitors Regulation Authority (SRA) had recently approved the Scheme, but it was pursuing some concerns in relation to judicial evaluation
- Internal Governance Rules (IGRs) – the Bar needed to do further work in relation to its budget and financial controls, but progress was being made. Headway was also being made on The Law Society (TLS) / SRA application
- First-tier complaints handling – the research had been published on 9 June and the findings would be followed up with the Approved Regulators (AR). The Executive agreed to consider whether those respondents who had reported problems with the handling of their complaints could be advised or assisted
- The Chief Executive had met Catherine Lee, new Director, Access to Justice at Ministry of Justice (MoJ), and was aware that Elizabeth Gibby's successor would soon be announced [post-meeting note: subsequently identified as Abigail Plenty]
- A paper about the extent to which LSB had a legitimate role and policy agenda in relation to legal privilege in the light of current litigation would be presented to a future meeting of the Board.

Action

(11) 10 – To consider whether those respondents who had reported problems with the handling of their complaints could be advised or assisted

(11) 11 – To present a paper about LSB's role and policy agenda in relation to legal privilege in the light of current litigation to a future meeting of the Board.

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

Item 4 – Paper (11) 43: Alternative business structures (ABS): appeal arrangements for SRA as a Licensing Authority – recommendation to Lord Chancellor and consultation response

7. Fran Gillon (Director of Regulatory Practice) introduced a paper that invited the Board to agree in principle that a formal recommendation should be made to the Lord Chancellor to make an Order under Section 80 of Legal Services Act 2007 ('the Act') providing that the SDT may hear appeals against the decisions of The Law Society (in its capacity as a Licensing Authority (LA)).

8. The Board noted that:

- there was an error in Annex A, paragraph 1, where the reference should be to the SDT, not GRC
- the recommendation to use SDT was different to LSB's preferred long-term policy position of a single appeals body (the General Regulatory Chamber of the First-Tier Tribunal (GRC)) and that the Board had already made a recommendation that Council for Licensed Conveyancers' (CLC) ABS

- appeals should be heard by the GRC
- the proposed rules for SDT were, however, very similar to those of the GRC, and that the Board had no power to refuse the proposed route if it was satisfied that the proposal was reasonable
 - the necessary consents had been received from both SRA and SDT, and SDT had confirmed that it would conduct a full re-hearing when it considered an appeal
 - in making the recommendation, the Board would make very clear that it retained its preference for a single appeals route and that the 2011/12 Business Plan set out that work would be done during the year to understand the parameters for rationalising appeals routes. A paper about the transitional arrangements to a single appellate body would be presented to a future meeting of the Board
 - in considering any further applications from prospective LAs, the Board's preferred policy position would be made clear.

Action

(11) 12 – To present a paper about the transitional arrangements to a single appellate body to a future meeting of the Board.

The Board resolved:

- a) to agree in principle to make the recommendation at Annex A to the Lord Chancellor in relation to the proposed Order under Section 80 of the Act**
- b) to make rules under Schedule 13 to the Act about the relevant period for appeals against LA decisions about the ownership of ABS (Annex C)**
- c) to agree to delegate authority to the Chairman and Chief Executive to make the final recommendation to the Lord Chancellor and to publish the final version of the summary of responses and decision document (current draft attached at Annex D).**

Item 5 – Paper (11) 44: Applications by SRA for approval of changes to regulatory arrangements and to be designated as a Licensing Authority

9. Crispin Passmore (Strategy Director) advised that the Board had two decisions to make: whether to grant approval of the proposed changes to regulatory arrangements for solicitors and Recognised Bodies in the form of the new SRA Handbook; and whether to grant the application for TLS to become an LA and to make a recommendation to the Lord Chancellor for it to be so designated. The recommendation would also provide that, if an Order designating TLS as an LA was made by the Lord Chancellor, SRA's licensing rules would at the same time be treated as having been approved by the Board (as SRA would carry out the regulatory functions of an LA).

10. The Strategy Director invited the Board to consider a paper and presentation that set out the nature of the decisions required, the process that had been followed in considering the applications and in making the Executive's recommendations to the Board, and the information and views that had been received in relation to the applications.
11. The Chief Executive confirmed that, in making the recommendations, the Executive had considered the range of risks attached to each application and the likely impact of each of the options that were available to the Board.
12. In a lengthy discussion, the Board noted:
 - a) in relation to the Board's decision-making criteria, that:
 - the criteria for reaching decisions on the Handbook and the LA application were different
 - the Board needed to ensure that it applied a consistent threshold to its consideration of every LA application
 - LSB was not able to give partial or conditional approval of the LA application
 - b) in relation to the changes to regulatory arrangements (the Handbook), that:
 - SRA had committed to a full review of the operation of outcomes-focused regulation, including the proposed Handbook, at the end of 2013
 - greater clarity about SRA's approach to granting waivers needed to be communicated to the market, as did the approach to the potential exclusionary effects of the Separate Business Rule
 - there was a large amount of preparatory work going on around England and Wales to prepare solicitors for the introduction of the new Handbook
 - if approved, SRA would be able to adopt the Handbook for existing Authorised Persons and Recognised Bodies at any point, irrespective of the progress of Ministerial decision-making and Parliamentary process on the LA application
 - c) in relation to the LA application, that:
 - SRA's capability and capacity were crucial to the decision about whether to grant the changes to regulatory arrangements and LA recommendations
 - the progress being made around the IGRs between TLS and SRA would be an important determinant in SRA's ability to continue to develop and to embed capability and capacity as a regulator, whether of its existing community or ABS. As such, it was important that outstanding matters in relation to SRA independence were settled this year
 - SRA had (and continued to have) the support of an external consultancy in developing its risk assessment centre
 - SRA would, in the judgement of the Executive, have in place the necessary skills, resources and governance to commence effectively the new regulatory arrangements in the Autumn, although these would need to continue to evolve over the subsequent months in the light both of increasing volumes and broader organisational learning

- the commitment, resolve and leadership shown by the SRA Board provided an important level of assurance to the application
- additionally, the Board's approach to monitoring in the run-up to the Autumn and beyond to the review date in 2013 would ensure that a continuing focus was maintained in this area on SRA's governance, leadership and day-to-day operations. The work on regulatory effectiveness would provide the right strategic underpinning for this activity
- the approach that SRA intended to adopt initially to approve applications for potential entrants was appropriate in the context of the predicted limited number of early applications and that the proposal for an incremental development of criteria reflected the timing for a 'systematising' of decision-making expertise throughout the organisation in anticipation of subsequent greater volume
- there were a small number of areas where the Board would want to be kept closely and regularly updated about SRA's progress towards developing its capability and capacity and implementation of the new regulatory arrangements, were the application for change to be granted
- a joint Board forum could provide an opportunity for direct discussion on preparations.

Action

(11) 13 – To agree with SRA a process (including, for example, a joint Board forum) to monitor progress in relation to the implementation of ABS and the effectiveness of the outcomes-focused regulation regime.

The Board resolved:

- a) **to grant the SRA application for approval of changes to regulatory arrangements for solicitors and Recognised Bodies made under Part 3 of Schedule 4 to the Act. (In effect, this decision relates to the whole of the new Handbook, with the exception of the Qualified Lawyers Transfer Regulations 2009 and Higher Courts Qualification Regulations 2000, which remain unchanged and were not repealed by the SRA Board)**
- b) **to grant The Law Society application for LSB to recommend that an Order be made by the Lord Chancellor designating The Law Society as an LA under Paragraph 12(1) of Part 1 of Schedule 10 to the Act**
- c) **to make a recommendation to the Lord Chancellor that The Law Society be designated as an LA for the reserved legal activities of exercise of a right of audience, conduct of litigation, reserved instrument activities, probate activities and the administration of oaths, under Paragraph 14(2) of Part 1 of Schedule 10 to the Act**
- d) **to include in the recommendation to the Lord Chancellor, the recommendation that the licensing rules be treated as approved for use by the LA when the Lord Chancellor exercises his authority under Paragraph 16(1) of part 1 of Schedule 10 to the Act.**

Item 6 – Paper (11) 45: Rules for Licensing Authority designations: technical amendment

13. The Director of Regulatory Practice introduced a paper that invited the Board to agree amended LA designation rules, which were presented to correct a minor drafting error that had been identified.

The Board resolved to approve the amended rules at Annex A of the paper.

Item 7 – Paper (11) 46: CLC and the Smaller Approved Regulators research

14. The Strategy Director introduced a paper that invited the Board to review its decision to publish research conducted into the smaller ARs (by Nick Smedley), in the light of a request to do so by CLC.

15. The Board noted that:

- it had taken the decision to publish the research and to circulate advance copies to those bodies that were the subject of the research at its meeting on 28 April
- CLC had both expressed concern about the potential impact of the research on conveyancers and identified some alleged factual inaccuracies
- in publishing, the Board would make clear that the terms of reference for the review had not covered SRA or Bar Standards Board (BSB). However, scrutiny of the SRA Handbook and LA application had provided a higher level of scrutiny, and it was envisaged that there would be a similar process in considering BSB's revised code of conduct and application to begin entity regulation in due course
- the author was being advised about potential factual inaccuracies in the research identified by the smaller ARs, so that he could make any necessary corrections before publication
- the Board's press statement to accompany the research would make clear that the views of the author were not necessarily those of the Board and that the issue of performance by all ARs, larger and smaller, would be addressed through the regulatory standards project.

The Board resolved to maintain its decision to publish the research.

Item 8 – Any other business

16. There were no items of other business.

Item 9 – Date of next meeting

17. The Board would next meet on 13 July 2011, 12.30 pm – 4.00 pm (timing to be confirmed). The venue would be LSB's offices at Victoria House, Southampton Row, London WC1B 4AD.

Item 10 – Private session

18. The Board met briefly in private session.

JM 15.06.11

Signed as an accurate record of the meeting

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Date

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