

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

Date: 13 July 2011

Time: 12.30 – 3.50 pm

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

Present: David Edmonds Chairman
(Members) Chris Kenny Chief Executive
 Steve Green
 Edward Nally
 Barbara Saunders (Minute 11 onwards)
 Nicole Smith
 Andrew Whittaker
 David Wolfe

Guests: Elizabeth France Chair, Office for Legal Complaints (OLC) (Items 1-6)
 Dianne Hayter Chair, Legal Services Consumer Panel (“the Panel”) (Items 1-4)
 Adam Sampson Chief Executive / Chief Ombudsman, Legal Ombudsman (LeO) (Items 1-5)

In attendance: Steve Brooker Consumer Panel Manager (Items 1-17)
 Beata Dawidczyk Office Manager (Items 1-7)
 Sonya Gedson Regulatory Associate (Item 8)
 Fran Gillon Director of Regulatory Practice (Items 1-17)
 Nick Glockling Legal Advisor (Item 8)
 Chris Handford Project Manager (Items 1-4)
 Edwin Josephs Director of Finance and Services (Items 1-17)
 Bruce Macmillan General Counsel (Items 1-17)
 James Meyrick Project Manager (Item 9)
 Julie Myers Corporate Director
 Alex Roy Research Manager (Items 1-4)
 Michael Stacey Project Manager (Items 6-8)
 Bryan Hislop Board Secretary (Minutes)

Item 1 – Welcome and apologies

1. The Chairman welcomed those present and in attendance to the meeting. In particular, he welcomed: Elizabeth France (OLC Chair), Baroness Hayter (Panel Chair) and Adam Sampson (Chief Ombudsman, LeO).
2. There were apologies for absence from Terry Connor and Bill Moyes (Board Members).
3. The Board noted that Terry Connor would stand down as a Board Member on 31 August. The Chairman highlighted Mr Connor’s contributions to LSB, including as the inaugural Chairman of Remuneration and Nomination Committee. The Board extended its gratitude to Mr Connor.

4. The meeting would be followed by a joint meeting of LSB and Bar Standards Board (BSB).

Item 2 – Declarations of interests etc.

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

Item 3 – Paper (11) 48: Will-writing – advice from Legal Services Consumer Panel

7. The Panel Chair introduced the Panel's draft advice about the regulation of will-writing, which was commissioned by LSB in September 2010.
8. The Board noted that:
 - the will-writing market had unique features that increased the potential for consumer detriment, including that: consumers were usually uninformed; will-writing involved emotional / sensitive issues, which increased the vulnerability of consumers; and incorrect / inappropriate wills often were only identified following a consumer's death, leading to serious emotional and financial detriment
 - the Panel had assembled a robust evidence base demonstrating the potential for consumer detriment, including through a 'shadow shopping' exercise, a survey of recent will purchasers and an analysis of complaints data from LeO
 - the evidence revealed concerns about quality (amongst both solicitors and unregulated will-writers), high pressure sales practices and the storage of wills, as well as the presence of a 'rogue minority' operating in the market
 - in the light of the potential for consumer detriment, the Panel recommended, amongst other things, making will-writing a reserved legal activity under Legal Services Act 2007 ('the Act')
 - the Panel's advice, and the underpinning evidence, would be published on 14 July.

The Board resolved to note the Panel's draft advice, 'Regulating will-writing'.

Item 4 – Paper (11) 49: Rationalising the scope of regulation

9. Crispin Passmore (Strategy Director) introduced a paper about the proposed 'next steps' to rationalise the scope of regulation of the legal services market.
10. The Board noted that:
 - the Executive proposed the publication of a discussion document setting out LSB's approach to making decisions about whether to regulate, particularly in relation to the reservation of legal activities

- the discussion document set out, amongst other things: the underlying issues in relation to the reservation of legal activities (which had been explored in detail in papers presented to the Board on 7 September, 27 January and 28 April); LSB's powers under the Act to make recommendations in relation to the reservation of legal activities to the Lord Chancellor; and the proposed methodology and priorities for reviews during 2012-15
- the discussion document built on initial discussions with stakeholders and had been informed by academic peer review, which had concluded that the document was coherent and plausible, although changes were being made in the light of the review to more clearly articulate issues related to public interest
- the Executive proposed also requesting from OLC a report about complaints received by LeO where the complainant believed that s/he was purchasing a legal service from a lawyer covered by the Scheme, when in fact s/he was buying a service from an unregulated provider outwith the scope of the Scheme (to be requested under Section 120 of the Act)
- in the light of the Panel's advice about the regulation of will-writing, the Executive proposed also to conduct a formal investigation covering will-writing, estate administration and probate activities (to be conducted under Sections 24 and 26 of the Act (relating to the alteration of reserved legal activities)).

11. In discussion, the Board noted also that:

- there were significant benefits to proceeding with a formal investigation of will-writing etc, whilst still refining the methodology to reserving legal activities as set out in the discussion document. In particular, the Panel's advice (and other data) evidenced the potential for consumer detriment and, significantly, the approach set out in the discussion document had been developed alongside the work undertaken to date in relation to the regulation of will-writing
- the potential for consumer detriment could be addressed (in part) also by automation and codes of practice that required the use of voluntary schemes of redress, but it was acknowledged that these alone would be unlikely to address all the issues identified by the Panel
- the OLC Chair welcomed the formal request for a report under Section 120 of the Act, but it was noted that LeO would be able to provide data only about complaints signposted to, and within the jurisdiction of, LeO
- subject to approval, a project plan for the formal investigation would be developed over the coming weeks, with a view to consulting on the results of the investigation in Q4 2011/12.

12. The Board noted that the Panel Chair would stand down on 31 July to focus on her commitments in the House of Lords. The Chairman highlighted Baroness Hayter's contributions as the inaugural Chair of the Panel, which it was agreed would underpin and promote the Panel's profile and future activities. The Board extended its gratitude to Baroness Hayter.

The Board resolved to agree:

- a) to delegate authority to agree the publication of the discussion document, 'Enhancing consumer protection, reducing regulatory burdens', to the Chairman and the Chief Executive
- b) to conduct a formal investigation covering will-writing, estate administration and probate activities (to be conducted under Sections 24 and 26 of the Act)
- c) to request from OLC a report about details of complaints received by LeO where the complainant believed that s/he was purchasing a legal service from a lawyer covered by the Scheme, when in fact s/he was buying a service from an unregulated provider outwith the scope of the Scheme (to be requested under Section 120 of the Act).

Item 5 – Paper (11) 50: OLC Annual Report and Accounts 2010/11

13. The OLC Chair introduced the OLC Annual Report and Accounts 2010/11 (which included a report by the Chief Ombudsman), which had been agreed by the OLC Board on 20 June.
14. OLC was required by the Act to give a copy of the Annual Report and financial statements to LSB, which was in turn required to provide a copy to the Lord Chancellor (and, in respect of the latter, the Comptroller and Auditor General). The Lord Chancellor would lay a copy of the Annual Report before Parliament on 18 July.
15. The Board noted that:
 - LeO had launched on time, and within budget, on 6 October
 - 103 cases had been resolved by a formal Ombudsman's decision in the period to 31 March
 - anecdotal evidence revealed consumer uncertainty about the scope of regulation and the jurisdiction of LeO
 - LeO used columns in professional journals and public speaking opportunities to feedback lessons learned from complaints handling to the regulated community
 - LeO published statistics and anonymous summaries of all Ombudsmen's decisions, and that OLC had recently consulted on the criteria for publishing the details of firms / lawyers, which would be agreed in early 2012.

The Board resolved to note OLC's Annual Report and Accounts 2010/11.

Item 6 – Paper (11) 51: ABS implementation: next steps – key issues and risks

16. 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.

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

Item 7 – Paper (11) 52: Quality Assurance Scheme for Criminal Advocates – final proposal for approval in principle

17. The Strategy Director introduced a paper about Joint Advisory Group's (JAG) final proposal in relation to a Quality Assurance Scheme for Criminal Advocates ('QASA Scheme').
18. The Board noted that:
 - the Executive was satisfied that the overall approach to the design of the QASA Scheme (which provided a choice of judicial evaluation or assessment organisation as assessment routes) was reasonable and could be implemented in a way that was consistent with the Regulatory Objectives
 - risks to the successful implementation of the QASA Scheme included the possibility of limited and/or inconsistent judicial support, but that this would be monitored (including through the publication of assessment data) and contingency plans had been agreed to scale up the assessment organisation route
 - the judiciary recognised that it had a vested interest in the quality of advocacy
 - The Law Society and Solicitors Association of Higher Court Advocates (SAHCA) had reiterated their objections to the use of judicial evaluation, but their submissions to LSB raised no new points of argument
 - subject to the Board's approval (in principle) of the QASA Scheme, and receiving reassurances in relation to the 'key issues' set out in the paper, formal rule change applications would be submitted in September to LSB (for approval under delegated authority by the Chief Executive, Edward Nally and Barbara Saunders, in consultation as required with David Wolfe).

The Board resolved:

- a) **to agree (in principle) that the design of the QASA Scheme represented an acceptable approach to addressing quality risks in the criminal advocacy market that was consistent with the Regulatory Objectives, subject to receiving reassurances in relation to the 'key issues' set out in the paper**
- b) **to delegate authority to consider and to decide subsequent rule approval applications in relation to the QASA Scheme to the Chief Executive, Edward Nally and Barbara Saunders.**

Item 8 – Paper (11) 53: Increasing diversity and social mobility in the legal workforce: transparency and evidence

19. The Strategy Director introduced a paper that invited the Board to approve a post-consultation decision document and related Guidance about diversity and social mobility in the legal workforce.
20. The Board noted that:
 - the responses to the consultation indicated widespread support (including from BSB, Solicitors Regulation Authority and The Law Society) of the proposal to gather a better evidence base about the diversity and social mobility of the workforce
 - the concerns about the requirements to collect data about the full range of protected characteristics (in particular religion / belief and sexual orientation) and to publish data at entity level were addressed in the decision document, which proposed a more pragmatic and less prescriptive approach to the data collected
 - Information Commissioner’s Office (ICO) would receive reassurances that data would be collected and otherwise processed only with the expressed and informed consent of data subjects
 - the Guidance would be issued under Section 162 of the Act, which would allow LSB, when exercising its functions under the Act, to have regard to the extent to which an Approved Regulator (AR) had complied with the Guidance
 - there would be a thematic review of the outcomes of the first cycle of data collected and published by ARs in late 2012/13
 - the drafting of the decision document and the communications surrounding its launch in July would be reviewed to address, for example, concerns about data protection and the potential for ‘social engineering’.

The Board resolved:

- a) **to agree (in principle) the decision document, ‘Increasing diversity and social mobility in the legal workforce: transparency and evidence’, and the related Guidance**
- b) **to delegate authority to agree the publication of the decision document and the related Guidance to the Chairman and the Chief Executive.**

Item 9 – Paper (11) 54: Internal Governance Rules – July 2011

21. The Chief Executive introduced a paper about the Internal Governance Rules (IGR) / independence exercise in 2011.
22. 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 Bar Council / BSB submission demonstrated significant progress during the year, however, the Executive believed that the actual or perceived independence of BSB was potentially undermined by the role and membership of the joint Finance and Audit Committee and the rules that prescribed the profession of the Chair of the BSB by reference to the profession of its Vice-Chair
- these concerns had been expressed to Nicholas Green QC (who was conducting a review of The Bar Council's governance arrangements) and in writing to The Bar Council / BSB. The Executive proposed to ask The Bar Council / BSB to address these concerns in a revised dual self-certificate submission to LSB.

23. The Board noted also that there were ongoing discussions between The Law Society and SRA about their submission. The timing of resolution remained uncertain.

The Board resolved:

- a) **to agree to ask The Bar Council / BSB to submit a revised dual self-certificate to LSB**
- b) **to delegate authority to agree any further actions in relation to the revised The Bar Council / BSB dual self-certificate submission to the Chairman, the Chief Executive, Barbara Saunders and David Wolfe.**

Item 10 – Minutes: 26 May and 13 June 2011

24. **The Board resolved to agree the minutes of the meetings held on 26 May and 13 June 2011 and to submit them for signing as an authorised record to the Chairman.**

Item 11 – Report of action points

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

Item 12 – Paper (11) 55: Chief Executive's progress report: July 2011

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

27. The Board noted that:

- the Chairman and the Chief Executive expected to meet Jonathan Djanogly MP (Parliamentary Under-Secretary of State for Justice) to discuss the significant media and Parliamentary interest in referral fees and other

arrangements

- the Executive had met Ministry of Justice (MoJ) officials for initial discussions about the scope and timing of the triennial review of LSB, which was expected in early 2012.

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

Item 13 – Paper (11) 56: Q1 performance report: April – June 2011

28. Julie Myers (Corporate Director) introduced a paper that set out the Q1 report of performance against the Business Plan 2011/12, which also included the draft submission to MoJ.
29. 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 2011/12.

The Board resolved:

- a) to note the draft Q1 performance report
- b) to agree to its use as a basis for discussion with MoJ.

Item 14 – Paper (11) 57: Audit and Risk Committee – 23 May 2011

30. **The Board resolved to note the draft minutes of the Audit and Risk Committee meeting held on 23 May 2011.**

Item 15 – Paper (11) 58: Finance report: May 2011

31. Edwin Josephs (Director of Finance and Services) introduced the Finance report, which showed only a limited variance from budget.

The Board resolved to note the Finance report.

Item 16 – Any other business

32. There were no items of other business.

Item 17 – Date of next meeting

33. The Board would next meet on 14 September 2011, 9.30 am – 1.30 pm (timing to be confirmed). The venue would be LSB's offices at Victoria House, Southampton Row, London WC1B 4AD.

Item 18 – Private session

34. The Board, Corporate Director and Board Secretary met in private session.
35. The Board noted:
- the process agreed by Remuneration and Nomination Committee to appoint the Interim Chair of the Panel for the period to 31 March 2013
 - the Chairman’s proposal, in the light of previous Board discussions, to re-appoint Elizabeth France as Chair of OLC for the period 1 November 2011 to 31 March 2014, subject to the approval of the Lord Chancellor.

The Board resolved to agree to re-appoint Elizabeth France as Chair of OLC for the period 1 November 2011 to 31 March 2014, subject to the approval of the Lord Chancellor.

36. The Board and Corporate Director met briefly in private session.

BH 19.07.11

Signed as an accurate record of the meeting

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Date

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