

Minutes of a meeting of Legal Services Board (LSB) on 14 September 2011

Date: 14 September 2011

Time: 12.10 – 1.15 pm

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

Present: David Edmonds Chairman
(Members) Chris Kenny Chief Executive
Steve Green
Bill Moyes
Edward Nally
Barbara Saunders
Nicole Smith (Items 1-9)
Andrew Whittaker
David Wolfe

In attendance: Chris Baas Project Manager (Items 1-4)
Nick Glockling Legal Advisor (Items 1-12)
Edwin Josephs Director of Finance and Services (Items 1-12)
Bruce Macmillan General Counsel (Items 1-12)
Julie Myers Corporate Director
Dawn Reid Project Manager (Items 4-5)
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 Fran Gillon (Director of Regulatory Practice).

Item 2 – Declarations of interests etc.

3. Nicole Smith declared that she had been appointed as an Ombudsman at the Financial Ombudsman Service (July) and an Assistant Commissioner at the Boundary Commission for England (September). There were no other new 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 (11) 60: ABS implementation: next steps – key issues and risks

5. Chris Kenny (Chief Executive) 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.

6. The Board noted that:
- an Order under Section 80 of Legal Services Act 2007 ('the Act') (relating to the functions of appellate bodies) was due to be laid in the week commencing 12 September
 - Ministry of Justice (MoJ) had agreed to expedite the preparation of a Rehabilitation of Offenders (Exceptions) Order to cover owners (but not managers) of ABS.

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

Item 4 – Paper (11) 61: Schedule 12 Rules – decision document

7. Chris Baas (Project Manager) introduced a paper that invited the Board to agree a post-consultation decision document and related Rules about how LSB would review decisions about whether a body could make a direct licence application. The Board noted that the decision document was not about the actual process of direct licensing by LSB.

The Board resolved to agree:

- a) the 'Rules for LSB review of decisions about licence applications made to it' (at Annex A of the decision document)**
- b) the decision document, 'Decision Document: Schedule 12 rules'.**

Item 5 – Paper (11) 62: CLSB application for approval of regulatory arrangements

8. Dawn Reid (Project Manager) introduced a paper that invited the Board to note the draft decision notice approving the first regulatory arrangements application from Costs Lawyer Standards Board (CLSB) to LSB.
9. The Board noted that:
- CLSB would assume delegated regulatory responsibility for costs lawyers from Association of Costs Lawyers in October
 - the application sought approval of changes to CLSB's regulatory arrangements in respect of its Code of Conduct, Practising Rules, Disciplinary Rules and Procedures, and Training and Continuous Professional Development Rules
 - the Executive had conducted a detailed assessment of the application and was satisfied that, in general, the proposed Code and Rules were appropriate regulatory arrangements for CLSB (although it was agreed that some of the 'Principles' could have been expressed more effectively as 'Outcomes')
 - the draft decision notice would be presented for approval to the Chief Executive, in accordance with the authority delegated to him by the Board on 30 November 2009.

The Board resolved to note the draft decision notice approving the first regulatory arrangements application from CLSB.

Item 6 – Minutes: 13 July 2011

10. The minutes would be amended to record that Andrew Whittaker (Board Member) was present at the meeting.
11. **Subject to the above amendment, the Board resolved to agree the minutes of the meeting held on 13 July 2011 and to submit them for signing as an accurate record to the Chairman.**

Item 7 – Report of action points

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

Item 8 – Paper (11) 63: Legal professional privilege

13. Bruce Macmillan (General Counsel) introduced a paper that invited the Board to agree an intervention by LSB in a Supreme Court case in 2012 in relation to the potential extension of legal professional privilege to the clients of accountants and other non-legally regulated advisors on law.
14. The Board noted that:
 - the intervention was considered by the Executive to be necessary in the light of the risk that the Supreme Court might inadvertently decide in a way that:
(a) impacted unnecessarily on competition in the market; (b) underpinned the consumer protection provided by, for example, Section 190 of the Act (relating to legal professional privilege); and (c) created an apparent conflict for LSB between the law, as set out in the judgment of the Court, and the requirements imposed on LSB by the Act
 - a successful intervention by LSB would highlight to the Court the requirements imposed on LSB and the Approved Regulators (AR) (including the Association of Chartered Certified Accountants and The Institute of Chartered Accountants of Scotland) by the Act and, therefore, the importance of ensuring an equitable and transparent approach to the granting of privilege (achieved either through judicial guidance or remitting the matter to Parliament, or some appropriate combination of both)
 - the purpose of the intervention was not to secure legal professional privilege for the clients of accountants, but only to ensure that the Court was aware of the requirements of the Act
 - the intervention would be written and any oral submissions during the hearing would be kept to a minimum
 - the best estimate for external costs was not more than £4k (to consult counsel and to obtain permission to intervene) and £25k (to cover all subsequent work, including attendance at the hearing).

The Board resolved to agree:

- a) to intervene in the Supreme Court case in relation to the potential extension of legal professional privilege
- b) the related recommendations set out in the paper.

Item 9 – Paper (11) 64: Chief Executive’s progress report: September 2011

15. The Chief Executive presented his progress report.
16. The Board noted that:
 - the Government had announced on 9 September its intent to use criminal sanctions (not regulation) to ban the payment of referral fees in personal injury work
 - a direction was issued on 13 September to exempt the Council for Licensed Conveyancers (CLC) Appointment Regulations application
 - Institute of Legal Executives had formally withdrawn its application for designation as an AR of probate activities
 - the Executive would meet representatives of CLC on 14 September to discuss its application for designation as an AR of litigation and advocacy activities and issues in relation to its Practising Certificate Fee application
 - The Bar Council / Bar Standards Board had taken significant steps towards ensuring compliance with the specifics of the Internal Governance Rules (IGR), but that the Executive had written with a timetable for addressing the outstanding areas of concern
 - the Chairman would write to The Law Society recommending the submission of its draft proposals for reforming its oversight arrangements of Solicitors Regulation Authority (which would be presented in October to their respective Council and Board) and requiring decisive action to enable LSB to certify by October that The Law Society was fully compliant with the IGRs
 - the Lord Chancellor had taken the opportunity of his speech on 14 September to the CityUK Future Litigation event to endorse publicly the introduction of ABS on 6 October
 - Jonathan Djanogly MP (Parliamentary Under-Secretary of State for Justice) and Anna Bradley (Chair, CLC) would address an informal reception hosted by LSB on 6 October to mark the introduction of ABS
 - MoJ had approved the purchase of directors’ indemnity insurance for Board Members.
17. The Chairman tabled Paper (11) 66, which invited the Board to agree schedules of (re-)appointments to Office for Legal Complaints (OLC) and Legal Services Consumer Panel (‘the Panel’).
18. The Board noted that:

- the schedules of (re-)appointments were based on recommendations received from Elizabeth France (Chair, OLC) and Baroness Hayter (Chair of the Panel to 31 July)
- the terms of (re-)appointment were staggered and aligned to the year-end appointments schedule for LSB, which would allow for a gradual re-refresh in membership and more effective advertisement and selection processes
- Remuneration and Nomination Committee would be invited to monitor and to review the process to appoint a new Lay Member of OLC, effective from 1 February 2012
- the Parliamentary Under-Secretary of State for Justice had approved the Board's recommendation to offer Elizabeth France a further and final term of appointment as Chair of the OLC, for the period 1 November 2011 to 31 March 2014.

The Board resolved:

- a) to note the Chief Executive's progress report**
- b) to agree the schedules of (re-)appointments to Office for Legal Complaints and Legal Services Consumer Panel¹**
- c) to agree the commencement of a process to appoint a new Lay Member of OLC, effective from 1 February 2012.**

Item 10 – Paper (11) 65: Finance report: August 2011

19. Edwin Josephs (Director of Finance and Services) introduced the Finance report.
20. The Board noted that LSB had received its budget delegation letter from MoJ.

The Board resolved to note the Finance report.

Item 11 – Any other business

21. There were no items of other business.

Item 12 – Date of next meeting

22. The Board would next meet on 12 October 2011, 10.30 am – 2.00 pm (timing to be confirmed). The venue would be LSB's offices at Victoria House, Southampton Row, London WC1B 4AD.

¹ *Post-meeting note: The schedule of re-appointments to the Panel (at paragraph 12 of Paper (11) 66) stated in error that the proposed re-appointments would terminate on 31 October 2014. As noted at the meeting, and subject to the approval of the Lord Chancellor, the re-appointments will terminate on 31 March 2014 (which is aligned to the year-end appointments schedule for LSB).*

Item 13 – Private session

- 23. The Board, Corporate Director and Board Secretary met in private session.
- 24. The Board noted that the Chief Executive had exercised his discretion to depart in one aspect from the advice offered to him at the meeting of Remuneration and Nomination Committee on 2 September.

BH 15.09.11

Signed as an accurate record of the meeting

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Date
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