

Minutes of a meeting of Legal Services Board (LSB) on 12 October 2011

Date: 12 October 2011

Time: 11.35 am – 2.10 pm

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

Present: David Edmonds Chairman
(Members) Chris Kenny Chief Executive
 Steve Green
 Bill Moyes
 Nicole Smith
 Andrew Whittaker (Items 1-6)
 David Wolfe

Guests: Elizabeth France Chair, Office for Legal Complaints (OLC)
 Alison Robinson Head of Policy and Communications, Legal Ombudsman (LeO) (Item 7)

In attendance: Chris Baas Project Manager (Items 8-9)
 Nicholas Baré Business Planning Associate (Items 1-17)
 Steve Brooker Consumer Panel Manager (Items 1-17)
 Lesley Davies Project Manager (Item 5)
 Sonya Gedson Regulatory Associate (Item 6)
 Wendy Harris Project Manager (Items 1-17)
 Edwin Josephs Director of Finance and Services
 Bruce Macmillan General Counsel (Items 1-17)
 Luke Mcinerney Regulatory Associate (Items 3-4)
 James Meyrick Project Manager (Items 3-4)
 Julie Myers Corporate Director (Item 3 onwards)
 Crispin Passmore Strategy Director (Items 1-17)
 Dawn Reid Project Manager (Items 5-6)
 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), Nicholas Baré (Business Planning Associate) and Wendy Harris (Project Manager).
2. There were apologies for absence from Edward Nally and Barbara Saunders (Board Members).

Item 2 – Declarations of interests etc.

3. There were no 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 – Internal Governance Rules – The Law Society / Solicitors Regulation Authority

5. Chris Kenny (Chief Executive) provided a verbal progress report about The Law Society's revised proposals for reforming its oversight arrangements of Solicitors Regulation Authority (SRA), which would be presented for approval to the next meeting of their respective Council and Board.
6. The Board noted that:
 - the proposals represented a step forward, but fell short of the model recommended by 'The Hunt Review of the Regulation of Legal Services' (October 2009)
 - the Chairman had written requiring prompt and decisive action to enable LSB to certify that The Law Society was fully compliant with the Internal Governance Rules (IGR)
 - whilst a broad consensus appeared to have been achieved on many issues, some items remained outstanding and the Board would need to have proper assurance against the IGRs and detailed confirmation about how the proposals would deal definitively with all the issues raised by SRA in its earlier certificate
 - the Executive continued to map the enforcement options available to ensure compliance with the IGRs.

The Board noted the verbal progress report about The Law Society's proposals to ensure its compliance with the IGRs.

Item 4 – Paper (11) 67: Developing regulatory standards – progress report

7. Fran Gillon (Director of Regulatory Practice) introduced a progress report about the work to develop the regulatory standards of Approved Regulators (AR).
8. The Board noted that:
 - the consultation paper, 'Developing regulatory standards', proposed that ARs (and LSB) should self-assess their regulatory regimes, with a focus on four constituent parts of regulation: outcomes-focused regulation (OFR), risk identification frameworks, proportionate supervision, and appropriate enforcement strategies
 - the summary of responses to the consultation (which were available in full at the meeting) supported consistency in oversight regulation and AR self-assessments of their own regulatory arrangements, but concerns were expressed about the proposed timescales and what was considered to be an overly 'activist' role by LSB
 - Legal Services Consumer Panel ('the Panel') provided informal and generally positive 'advice' in relation to the consultation

- the Executive was confident that LSB's work in relation to first-tier complaints handling, the IGRs, rule approvals and, in particular, Licensing Authority (LA) applications demonstrated that it had sufficient in-house expertise to review effectively ARs' returns and to agree areas for further action, but it was acknowledged that the approach used would quite properly develop over time
- the accuracy and adequacy of the returns would be validated by: the publication of returns; requiring input from ARs' lay Board Members and their senior staff; and using expert 'challenge groups' and 'intelligent customers'
- the Executive would scope proposals to require Boards to demonstrate how they had assured themselves of the accuracy of their submission, possibly via external audit or other forms of assured professional advice. In any event, final submissions should always be signed off by the chair of the AR's regulatory board
- the Executive would scope also proposals to use Section 55 of Legal Services Act 2007 ('the Act') (relating to the provision of information to the Board) to require the submission of returns
- the frequency of reviews should be determined in the light of experience, but it was noted that there was a good case for annual reviews as the system was developed and bedded down
- ARs had been invited to a regulatory standards workshop on 13 October
- the consultation response document, which would set out clearly the role and value of OFR in securing a market that works for consumers, would be presented for approval to the Board on 30 November.

The Board resolved:

- a) to note the responses received to the consultation, 'Developing regulatory standards', and the informal 'advice' received from the Panel**
- b) to endorse the proposed 'next steps' and assessment process.**

Item 5 – Paper (11) 69: Application by Council for Licensed Conveyancers to regulate conduct of litigation and rights of advocacy

9. Crispin Passmore (Strategy Director) introduced a progress report about the application by Council for Licensed Conveyancers (CLC) to be designated to regulate the conduct of litigation and rights of advocacy ('the wider rights').
10. The Board noted that:
 - the paper explored potential hurdles to CLC's application, not least whether the statutory framework that created CLC would allow it to be designated to regulate the wider rights
 - CLC had sought counsel's opinion on the statutory hurdles, which would need to be resolved before LSB would consider whether CLC had appropriate regulatory arrangements, capability and capacity to regulate the wider rights

- the Lord Chief Justice was the only ‘mandatory consultee’ to object in principle to the application
- whilst it was for CLC to decide how best to proceed with its application, it was agreed that LSB would explore the use of a narrow Order under Section 69 of the Act (relating to the modification of the functions of ARs etc.) to permit CLC to regulate the wider rights (but only to the extent to which they related to conveyancing)
- a formal recommendation in relation to the application would be presented to the Board on 25 January.

The Board resolved:

- a) to note the progress report about the application by CLC to be designated to regulate the conduct of litigation and rights of advocacy**
- b) to endorse the Executive’s analysis of the potential hurdles to CLC’s application to regulate the wider rights**
- c) to endorse the proposal to explore the use of a narrow Order under Section 69 of the Act to permit CLC to regulate the wider rights (but only to the extent to which they related to conveyancing)**
- d) to note that a formal recommendation in relation to the application would be presented to the Board on 25 January.**

Item 6 – Paper (11) 70: Solicitors’ Disciplinary Tribunal – 2012 budget application

11. The Strategy Director introduced a paper that invited the Board to approve Solicitors’ Disciplinary Tribunal’s (SDT) annual budget application for 2012.
12. The Board noted that:
 - SDT was required by Schedule 16 of the Act to submit each calendar year a budget approved by LSB to The Law Society
 - the budget proposal for 2012 was £3,022,407, which represented a 38.9 percent increase on the approved budget for 2011, although it was noted that SDT had agreed to return any under-spend to The Law Society
 - the increase was attributable principally to SDT’s new powers to hear alternative business structure (ABS) appeals, the proposed acquisition of additional office space and the recruitment of two full-time clerks
 - The Law Society and SRA were content with the budget proposal
 - SDT failed to meet its agreed targets in the period January to June 2011, but its key performance indicators (KPI) demonstrated significant year-on-year improvements
 - the Executive recommended that approval of the budget proposal should be subject to SDT developing and submitting: (a) an action plan to improve its performance against its KPIs; and (b) a KPI report each quarter until the end of 2012.

The Board resolved:

- a) to agree SDT's budget proposal for 2012, subject to it developing and submitting:
 - i) an action plan to improve its performance against its KPIs
 - ii) a KPI report each quarter until the end of 2012
- b) to note SDT's performance against its KPIs in the period January to June 2011.

Item 7 – Paper (11) 71: Draft OLC Strategy 2012-15 and Business Plan 2012/13

13. The OLC Chair introduced and invited comments on the 'work in progress' draft OLC Strategy 2012-15 and Business Plan 2012/13 ('the Plan').
14. The Board noted that:
 - the Plan would be published for consultation on or about 20 October
 - the Plan set out priorities for the year ahead (e.g. completing the integration of IT systems, reviewing the approach to the case fee, etc.) and the longer-term (e.g. working with other Ombudsmen schemes to ensure joined-up redress, developing an approach to voluntary jurisdiction, etc.)
 - the Executive would provide additional comments to assist OLC to prepare its budget proposal submission
 - the Board would be invited post-consultation to approve OLC's budget proposal of £19.547m for 2012/13 (cf. £19.720m for 2011/12)
 - more detailed modelling had led to a significant reduction in budgeted income from case fees in 2012/13, which was reflected in a corresponding increase in budgeted levy income
 - cases that required an Ombudsman decision had increased significantly from an informed assumption of 10 percent to a peak of 40 percent, which, if maintained would have an impact on the time and resources required to conclude cases. The reasons for the current proportion was being analysed for consideration by the OLC
 - however, the quarterly performance data received from OLC demonstrated that a robust framework was being put in place to monitor the performance of LeO (it was noted that further work was being done in relation to quality).

The Board resolved to note the draft OLC Strategy 2012-15 and Business Plan 2012/13.

Item 8 – Paper (11) 72: ABS implementation: next steps – key issues and risks

15. The Director of Regulatory Practice introduced the final standing progress report about the implementation of ABS, which included a summary of next steps, potential risks, mitigations and changes in risk status.
16. The Board noted that:

- the first ABS had launched successfully on 6 October
- Jonathan Djanogly MP (Parliamentary Under-Secretary of State for Justice), Anna Bradley (Chair, CLC) and the Chairman had addressed a reception on 6 October to mark the implementation of the ABS regime and the designation of CLC as the first LA
- future progress reports about ABS would be included (as necessary) in the Chief Executive's progress report.

17. The Board extended its gratitude to the Director of Regulatory Practice personally and all of the team involved for their work to secure the successful implementation of the ABS regime.

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

Item 9 – Paper (11) 73: Next steps for ABS

18. The Director of Regulatory Practice introduced a paper that invited the Board to note the outstanding workstreams to deliver ABS.
19. The Executive was working to ensure continued levels of engagement and resources from Ministry of Justice (MoJ) to deliver the outstanding workstreams. In particular, it was noted that the Chairman would write to the Minister, recording the Board's gratitude for the rapid progress made in recent months, but also underlining the need for continued investment and close working.

The Board resolved to note the outstanding workstreams to deliver ABS.

Item 10 – Minutes: 14 September 2011

20. **The Board resolved to agree the minutes of the meeting held on 14 September 2011 and to submit them for signing as an accurate record to the Chairman.**

Item 11 – Report of action points

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

Item 12 – Paper (11) 74: Q2 performance report: July – September 2011

22. Julie Myers (Corporate Director) introduced a paper that set out the Q2 report of performance against the Business Plan 2011/12, which included also the draft submission to MoJ.
23. 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.
- OLC's Q1 report of performance by LeO.

The Board resolved:

- a) to note the draft Q2 performance report
- b) to agree to its use as a basis for discussion with MoJ.

Item 13 – Paper (11) 75: Chief Executive's progress report: October 2011

24. The Chief Executive presented his progress report.
25. The Board noted a verbal progress report about the Quality Assurance Scheme for Advocates (QASA), which covered in particular the application of QASA to solicitor advocates and the hostile response to Legal Services Commission's announcement to tie levels of funding to the quality of advocacy. In particular, it was noted that, after intervention by both the Chairman and the Chief Executive, Joint Advocacy Group had produced more realistic plans for resolving outstanding issues related to QASA.
26. The Board noted also:
- the slower than anticipated progress in relation to the Education and Training Review
 - that the Programme highlight report was agreed by the Executive on 11 October and would be circulated in due course to the Board.

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

Item 14 – Audit and Risk Committee – 10 October 2011: verbal report

27. Steve Green (Committee Chairman) provided a verbal report about the meeting of the Audit and Risk Committee on 10 October, the minutes of which would be presented to the Board on 30 November.
28. The Committee:
- noted that LSB's audit for 2011/12 and beyond would be delivered through a National Audit Office partnership arrangement with a third party firm
 - reviewed the updated Corporate Risk Register
 - endorsed and recommended minor revisions to the LSB Risk Management Strategy and the LSB Governance Manual, which would be presented for approval to the Board on 30 November
 - reviewed policies in relation to information assurance and anti-fraud and corruption
 - noted a letter from MoJ that complimented LSB and OLC for 'leading the way'

in their use of up-to-date and HMT-compliant Framework documents.

The Board resolved to note the verbal report about the Audit and Risk Committee meeting held on 10 October 2011.

Item 15 – Paper (11) 76: Finance report: September 2011

29. Edwin Josephs (Director of Finance and Services) introduced the Finance report.

The Board resolved to note the Finance report.

Item 16 – Any other business

30. The Committee extended its gratitude to Bryan Hislop (Board Secretary), who would leave the employ of LSB on 26 October.

Item 17 – Date of next meeting

31. The Board would next meet on 30 November 2011, 1.00 – 5.00 pm (timing to be confirmed). The venue would be LSB's offices at Victoria House, Southampton Row, London WC1B 4AD.

Item 18 – Private session

32. The Board, Corporate Director, Director of Finance and Services and Board Secretary met in private session.
33. The Board noted and endorsed a verbal report about Audit and Risk Committee's discussion on 10 October in relation to LSB's budget proposal for 2012/13. The proposal, as amended in the light of the Committee's discussion, would be included in the consultation on the draft LSB Business Plan 2012/13, which would be presented for approval to the Board on 30 November.

BH 13.10.11

Signed as an accurate record of the meeting

.....
Date

.....