

Minutes of a meeting of Legal Services Board (LSB) on 25 April 2012

Date: 25 April 2012
Time: 9.30am – 1.00pm
Venue: Victoria House, Southampton Row, London WC1B 4AD

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

In attendance: Nicolas Baré Business Planning Associate (item 12)
Fran Gillon Director of Regulatory Practice
Nick Glockling Legal Director
Paul Greening Regulatory Associate (item 6)
Karen Marchant Regulatory Associate (item 3)
Vincent McGovern Communications Manager
Julie Myers Corporate Director
Crispin Passmore Strategy Director
Holly Perry Corporate Governance Manager (minutes)
Dawn Reid Head of Statutory Decisions (item 6)
Alex Roy Head of Development and Research (items 4)

Item 1 – Welcome and apologies

1. The Chairman welcomed those present and in attendance to the meeting. In particular, he welcomed Vincent McGovern, who had joined the LSB as Communications Manager on 10 April 2012. In opening the meeting, the Chairman commended the Executive on the significant achievements of the past week, including publication of the will-writing and estate administration consultation, which had attracted positive and widespread press attention, and a strong speech by the Minister to the *Legal Futures* conference held on 23 April, supporting the LSB's position and work plan.

Item 2 – Declarations of interests etc

2. There were no new declarations of interests.
3. Board Members were reminded to notify the Corporate Governance Manager about hospitality extended and/or received in the course of their LSB work.

Item 3 – Paper (12) 27: Internal Governance Rules – process 2012

4. Crispin Passmore presented a paper which set out the proposed process for the Board's third exercise to assess applicable approved regulators' compliance with the Board's Internal Governance Rules (IGRs).

5. The Board noted:

- the focus for 2012 would be to gain assurance about the formal arrangements that had been put in place to ensure independent regulation in practice. The requests for an update on compliance would be more tailored to the individual regulator in 2012 than in previous years
- the Solicitors Regulation Authority and The Law Society were not compliant with the IGRs and remained under 'special measures' from the 2011 process (item 14, Paper LSB (12) 35 refers). The proposal was therefore not to include them in the formal compliance process at this stage
- the Chief Executive had written to the applicable approved regulators on 4 April 2012 to outline the proposed approach and timetable (subject to the Board's agreement) and to ask them to feed back on any concerns and comments, which the Board could be advised of at this meeting. No comments had been received
- the Board requested that consideration be given to the formulation of criteria to support the meaning of 'appropriate' in paragraph 3 (second bullet), information about how the LSB intended to measure performance, and the tests the LSB would apply
- consideration would also be given to capturing intelligence about particular instances and concerns throughout the year, to feed into the IGR and regulatory effectiveness work
- concerns were raised in relation to basic mechanics on the part of the applicable approved regulators, which would be tackled through, for example, tightening up timeframes for reporting.

6. The Board resolved to:

- **approve the approach proposed in the paper for the 2012 IGR process**
- **request that the Executive give consideration to the full range of points raised in discussion in formulating the approach for IGRs in 2013**
- **in communications with the applicable approved regulators, give an indication of the change in approach anticipated for 2013**
- **incorporate reference to the points raised in discussion in the Chairman's address to The Law Society Council scheduled for 15 May.**

Item 14 – Paper (12) 35: The Law Society and SRA monitoring

7. The Chief Executive presented a paper which had been circulated to Board Members by email on 23 April. The paper related to the LSB's concerns about the operation of the section 55 requirement for The Law Society (TLS) to provide monthly reports to the LSB on the implementation of its agreement with SRA.
8. The Board noted the Executive's concerns about the plans for modification of the arrangements, which were unsatisfactory in terms of the process. The amended arrangements were however acceptable in principle in the Executive's view.
9. The Board resolved to:
- **approve the amended arrangements**
 - **authorise the Executive to amend the section 55 requirement dated 16 February 2012 to reflect the new arrangements and to re-affirm the requirement for the monthly report to include details of (and comment from) the SRA and TLS on information requests that were considered disproportionate or inappropriate by the SRA**

Item 4 – Paper (12) 28: Diversity and social mobility report on approved regulators' plans

10. Crispin Passmore presented a paper which provided a summary of the action plans submitted in response to the LSB's statutory guidance on diversity data collection and transparency requirements (issued under Section 162 of the Legal Services Act 2007 in July 2011). Subject to the Board's views, the LSB would finalise the formal assessments and send them to the approved regulators ahead of publication on the LSB website alongside the plans themselves.

11. The Board noted:

- there had been ongoing dialogue with the regulators as to their proposals. The LSB had provided a clear indication of the likely areas of concerns in a letter to Chief Executives. The main area of focus had been the requirement that firms and chambers collect and publish data at an entity level, and the extent to which this was encouraged by the regulators
- the approved regulators were generally taking the work seriously, and there was positive evidence about willingness to bring greater transparency to performance at entity level
- the LSB's role was to apply pressure and influence the approved regulators, rather than consider enforcement options at this stage
- the SRA had not planned to require publication but had reconsidered its position and had submitted a revised plan with an intention to require publication from 2013. Although this meant a delay in relation to the timetable set out in the guidance, the LSB was minded to accept the SRA's position and continue dialogue to ensure it did not follow an overly restrictive approach in application of the guidance
- the BSB planned to implement entity level publication as a requirement but would accompany the new rules with guidance which was likely to preclude publication for small chambers (with less than 10 employees) or where there were less than 10 people identifying against any characteristic (likely to affect most chambers). The Executive were concerned about the apparently over-prescriptive approach of the guidance and the BSB would therefore be encouraged to pilot its approach with a limited number of chambers to test the outcome and how the guidance operated in practice.

The Board further noted:

- the Chairman had met the Chair of the Bar Council earlier in the week and had discussed plans for the LSB to host a seminar to be facilitated by the New York Bar Association's head of equality and diversity
- the Chief Executive and Strategy Director had met representatives of the Society of Black Lawyers (SBL) on 24 April, to discuss the SBL's concerns in relation to the SRA's disciplinary arrangements. The SBL had asked for a follow-up discussion and the LSB would consider engagement with other groups such as the Black Solicitors Network and Society of Asian Lawyers in the intervening period.

12. **The Board resolved to:**

- **endorse the Executive's analysis of the regulators' action plans**
- **agree to publish formal assessments of regulators' plans**
- **agree to a further report to be presented to the Board early in 2013**
- **agree that the Chairman write to the BSB Chair setting out the**

importance the LSB placed on the transparency objective and making clear the LSB's intention to consider BSB's accompanying guidance carefully during assessment of its imminent rule change application.

Item 5 – Paper (12) 29: First tier complaints handling – progress report

13. Fran Gillon presented a paper which updated the Board on the work carried out by the approved regulators on improving the way lawyers dealt with complaints. Barbara Saunders and Steve Green had helpfully contributed to the paper.
14. The Board noted:
- progress had been slower than the LSB had hoped and expected
 - [REDACTED]
 - there had also been concern about the lack of consumer research in the field, although the Consumer Panel and Legal Ombudsman would start a piece of joint research shortly on complaints and the effectiveness of sign-posting
 - there was a need for a wider public debate about why the legal profession appeared to continue to lag behind other professions in relation to complaints handling
 - concern was raised about the BSB's approach to sign-posting. The LSB would consider the issues further in the context of the regulatory effectiveness work.
15. **The Board resolved to note the progress report and proposed next steps:**
- **to develop a more targeted review framework using, amongst other things, information from the regulatory standards work, draft self assessments and the forthcoming consumer research**
 - **present the framework to the Board's 11 July meeting with a view to implementing it in September/October (and deciding then whether it should be applied to all the regulators or only to some of them)**
 - **in the meantime, Fran Gillon would write individually to each regulator to provide feedback on their responses**

Item 6 – Paper (12) 30 Solicitors Regulation Authority non-ABS financial penalties

16. **Ed Nally declared an interest in respect of the paper, on the basis it concerned the Solicitors Disciplinary Tribunal (SDT) of which he was a member.**
17. Fran Gillon presented the paper which set out the LSB's position in relation to the SRA's request to the Ministry of Justice (MoJ) that its power to impose penalties of £2,000 on non-ABS firms be increased to the equivalent for ABS (£50m for individuals and £250m for entities). The issue did not concern the power to strike off individuals – the focus was specifically on financial penalties. Nicole Smith and Andrew Whittaker had provided the Executive with helpful comments on the paper.
18. The Board noted:
- the SDT was strongly opposed to any increase in the SRA's powers. The Law Society did not oppose an increase and it was understood that it felt that a figure of around £5,000 would be appropriate rather than the ABS-equivalent
 - this was not an issue on which the LSB had a power within the Legal Services Act to make a formal recommendation to the Lord Chancellor, although the

LSB's views were likely to carry significant weight with the MoJ. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- there was broad support for the principle set out in the proposed response. However, the Board was reluctant to propose a specific figure for equalisation under the current hybrid regime: harmonising levels would potentially create a misleading impression that the regimes were harmonised when they were not
- there was agreement that the two figures need to be harmonised, if not equalised in the longer term, on the basis of further data from the SRA be secured and analysed.
- the drafting at paragraph 14 would be amended to reflect the Board's suggestions
- the broad range of comments from individual Board Members, including experience of penalties in the financial sector, the experience of the OFT appeals process, the affordability test of *D'Souza* as applied in the SDT, as well as points in relation to reputational damage and the deterrent effect of a higher penalty.

19. The Board resolved to:

- **agree that in the long term there should be harmonisation of penalties between ABS and non-ABS for the SRA**
- **agree the LSB's proposed response, subject to amendments to reflect the points raised in discussion and to simplify it the language**
- **subject to further analysis by the Executive, recommend to MoJ that there needed as a minimum to be an interim increase in the SRA's maximum penalty to a level that represented a credible deterrent for the largest law firms**
- **agree that the LSB should publish its final response on its website**

Item 7 – Paper (12) 31 Legal Services Consumer Panel report on comparison websites – response

20. Crispin Passmore presented the paper which made recommendations as to the Board's response to the Consumer Panel report on comparison websites published in February 2012. The report represented a departure from the Consumer Panel's usual approach, in that the intention was to forestall problems in this market before they began to emerge.

21. The Board noted:

- it remained early days for consumer choice tools in the legal market, with the major challenge being a lack of data for comparison. Issues in relation to the ownership of data had been raised and discussed with OFT
- the focus needed to be on standards, and not the means by which consumers accessed legal assistance
- liberalisation and ABS were likely to provide a spur to more consumer information and that this might support the expansion of comparison sites
- the Executive felt access to professional registers might to some extent facilitate the development of an innovative market in choice tools for consumers. However, it was noted that both the ownership of the data and its quality could not always be effectively ascertained in relation to accreditation, and there were risks in that if the LSB were to accredit a particular site or arrangement, a user who suffered loss or damage because of the inadequate

performance of the site might well seek redress from the LSB as the accrediting body. The wording of the response would be adjusted to reflect the Board's concerns in relation to accreditation

- the broad issues would be fed into the session on activity based regulation planned for the 30 May Board meeting.

22. The Board resolved to

- **write to the Consumer Panel setting out its response, based on the proposals in the paper, adjusted to reflect points raised in discussion. The focus would be on the LSB's role in facilitating the development of comparison sites, rather than being at the forefront of the work**
- **write to regulators and professional bodies, encouraging regulators to think about the role of comparison sites in their own consumer education strategies, and how they might work with comparison sites to maintain adherence to the standards set out in the Consumer Panel report**
- **reconsider the issue in 2013/14, when further information would be available about the changing nature of the legal services market.**

Item 8 – Office for Legal Complaints

23. Ahead of the joint meeting with the Office for Legal Complaints (OLC) taking place later that afternoon, the Board considered current OLC issues.

24. The Board noted:

- relations were positive although there remained challenges in relation to data provision
- the respective chairs of the LSB and OLC Audit and Risk Committees had spent time forging a positive relationship, and this had been helpful in a number of respects
- three-way meetings were to be re-introduced at Chief Executive level involving the LSB, Legal Ombudsman and the MoJ's senior official
- the LSB, Legal Ombudsman and MoJ had met on 30 March to discuss scope of regulation and voluntary jurisdiction work. Non executives of the LSB and OLC had also been present, and it had been a positive first meeting. A further meeting would be held in the early summer and the Board would be kept updated
- MoJ's position remained that if the OLC were able to present a business case which justified extension of its jurisdiction, both generally and specifically in relation to claims management, the case would be put to the Minister. Board Members were of the view that a well-structured, comprehensive case for extending jurisdiction would need to be made, with a narrative focused on consumers. The issue would be referred to in strategic terms at the joint meeting with the OLC
- consideration was also being given to the levy, and the Legal Ombudsman was also now turning its attention to the issue of payments of awards when firms went into administration on the basis that Compensation Funds did not extend to Ombudsman awards
- in terms of policy infrastructure, performance against KPIs, governance and risk, the picture was generally a positive and improving one, although the number of cases going to Ombudsman decision remained a concern.

Item 9 – Minutes – 28 March 2012

25. The Board resolved to agree the minutes of the meeting held on 28 March

2012 and to submit them for signing as an accurate record to the Chairman.

Item 10 – Report of action points

26. The Board resolved to note the Report of action points.

Item 11 – Paper (12) 32: Chief Executive’s Progress Report: April 2012

27. The Chief Executive presented his progress report for the month of April.

28. The Board noted:

- its preference to meet the independent Triennial Review Peer Reviewer as a full Board, subject to the Reviewer’s availability and the issues requiring discussion
- discussion was ongoing with the BSB in respect of QASA and regulatory effectiveness
- that reference to the Consumer Panel had not been included in the recent BIS announcement on the future of consumer protection
- the latest position in relation to the SRA – issues were progressing more positively than reported at the March Board, and in particular there had been some progress in relation to the Compensation Fund;
- discussions were ongoing with the Institute of Chartered Accountants of England and Wales (ICAEW) – professional privilege being a key area of concern for ICAEW
- the key points arising at the meeting with the BSB to discuss risk, which had taken place on 28 March involving the respective Chief Executives as well as the non executive Chairs of the Audit and Risk Committee and BSB’s equivalent. A follow up meeting would be held in July
- the very positive communications activity that had led to the successful announcements during April on the Business Plan, evaluation, will-writing, special bodies and scope

29. The Board commended the Executive on the strong communications successes in respect of the baseline evaluation report published at the start of April and the will-writing report, which had been published on 23 April. The Board resolved to note the Chief Executive’s progress report

Item 12 – Paper (12) 33: LSB Q4 performance report – January to March 2012

30. Julie Myers presented the paper which provided a summary of performance against the Business Plan in the fourth quarter of 2011/12. Nicholas Bare joined for the discussion. The paper comprised three appendices:

- the draft detailed Q4 submission to the MoJ
- the Consumer Panel’s Q4 performance report
- a summary of the LSB’s regulatory decisions made during the quarter.

There were no specific issues to note, as the paper summarised information reported over the quarter to the Board. This paper has been developed alongside the Annual Report and Accounts.

31. The Board resolved to agree the draft Q4 performance report subject to some minor drafting amendments, and its use as a basis for discussion with the MoJ.

Item 13 – Paper (12) 34: Finance Report for March 2012

32. The Board resolved to note the Finance Report, particularly the £300k underspend, which – as reported to the 28 March Board meeting – had resulted from a restructuring of activity ahead of the reductions planned in 2012/13. The Chair of the Audit and Risk Committee (ARC) assured the Board that the ARC had scrutinised the projected year end position extensively at its meeting on 28 March, in the context of agreeing the budget for 2012/13.

Item 15 – Any other business

33. There was no other business.

Item 16 – Date of next meeting

34. The Board would next meet on 30 May 2012, 09.30 – 13:30. The venue would be LSB's offices at Victoria House, Southampton Row, London WC1B 4AD.

HP, 30/04/12

Signed as an accurate record of the meeting

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Date

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