

## Minutes of a meeting of Legal Services Board (LSB) on 30 May 2012

**Date:** 30 May 2012  
**Time:** 9.30am – 1.45pm  
**Venue:** Victoria House, Southampton Row, London WC1B 4AD

**Present:** David Edmonds Chairman  
**(Members)** Chris Kenny Chief Executive (except item 17 part c)  
 Steve Green  
 Bill Moyes  
 Ed Nally  
 Barbara Saunders  
 Nicole Smith (except items 16 and 17)  
 Andrew Whittaker  
 David Wolfe

**In attendance:** Chris Baas Regulatory Project Manager (items 5 and 16)  
 Steve Brooker Consumer Panel Manager (items 8 and 9)  
 Elisabeth Davies Legal Services Consumer Panel Chair (item 8)  
 Harriet Gamper Consumer Panel Associate (except item 17)  
 Sonya Gedson Regulatory Associate (item 5)  
 Nick Glockling Legal Director (except item 17)  
 Sarah Horack *Opinion Leader* (item 3i)  
 Edwin Josephs Director of Finance and Services (except item 17)  
 Patrick Meakin *Opinion Leader* (item 3i)  
 Julie Myers Corporate Director  
 Crispin Passmore Strategy Director (except item 17)  
 Holly Perry Corporate Governance Manager (minutes)  
 Alex Roy Head of Development and Research (item 3)  
 Adam Sampson Chief Ombudsman (item 9)  
 David Thomas Office for Legal Complaints member (item 9)

### Item 1 – Welcome and apologies

1. The Chairman welcomed those present and in attendance to the meeting. In particular, Harriet Gamper was welcomed, who had joined the LSB as Consumer Panel Associate on 14 May 2012.

### Item 2 – Declarations of interests etc

2. David Wolfe declared an interest in respect of item 13, the Chief Executive's progress report and would provide details later in the meeting. There were no other 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) 35

4. The Strategy Director introduced the issues for discussion, which were intended to stimulate debate in advance of a broader Board strategy session to be held on 12

September 2012. This session comprised two parts:

5. *A presentation by Opinion Leader (Sarah Horack and Patrick Meakin)*

The Opinion Leader presentation focused on emerging consumer and research trends and how these might impact on legal services. The Legal Services Consumer Panel had received a similar presentation in late 2011. There were eight key consumer trends which were likely to continue to influence legal services (demand, supply and regulation) in the medium to long term, as follows:

- growing social and economic inequality
- an uncertain recovery proving more difficult for most to cope with than the 2008/09 recession
- greater use of social and other digital media
- the emergence of new forms and degrees of atomisation and of belonging
- horizontal rather than vertical structures becoming much more common
- intermeshing of working and non-working lives
- DIY, self-reliance and autonomy in health, education and retirement
- openness, transparency and symmetry work.

6. The Board noted:

- there were interesting dynamics in terms of the relationship between the broad population as a whole and consumers which might be thought of as vulnerable, and how the headline impacts might differ for each group
- the analysis implied that demand would inevitably rise – in this context, there were questions about (i) the role of the state (ii) the LSB's (and others') role on the state's behalf and (iii) concepts of accountability – there was a risk that as demand rose, so too might expectation of intensive regulatory intervention;
- the global market would need to be taken account of and the sector would need to be encouraged to be as flexible as possible – levels of transparency were likely to rise considerably
- the analysis assumed that the population would embrace change (eg through increased use of social and other digital media). However, a cadre of the population would not be empowered digitally and risked being excluded
- the importance of information provision and public legal education – and, by extension, the LSB's objective on public legal education - might become increasingly important with reductions in scope of legal aid impacting on access to legal services. The LSB's role might therefore be increasingly focused on enabling the sector to help people help themselves.

7. *A presentation by the Head of Development and Research*

The Head of Development and Research introduced discussion on some of the issues for regulation that might be raised by the variety of activities undertaken in the legal services sector. The need to consider such issues was emerging through a variety of projects, including will-writing, regulatory effectiveness, and scope of regulation.

8. The Board noted:

- there was a need to identify an approach to regulation that could accommodate the range of challenges on the horizon – the LSB wanted to encourage regulators to consider: (i) outcomes focused codes (ii) risk based segmentation

- of their regulated community (iii) targeted authorisation and supervision (iv) proportionate and effective enforcement
- complexity had always existed, and there had been a lack of segmentation in the market to date. Market analysis was therefore vital and the timing seemed right to look at issues such as information costs, and a sensible grouping of risk by activity rather than by title
- there was a need to avoid rigidity and instead encourage the maximum degree of flexibility – for example, looking across the profession on a risk basis and assessing the number of providers who were undertaking high risk activities. For the majority, the risks were likely to be low and regulation needed to be suitably proportionate
- regulation would need to consider authorisation by activity and the extent to which certain activities informed the need for a risk based approach
- further work would be undertaken to ensure that there was a coherent narrative overall, rather than the sense of successive “initiatives”
- the narrative to be developed would set out a summary of the first four years of the LSB’s work programme, where the approved regulators had got to, and how the LSB intended to move forwards in terms of better regulation
- although a strategic focus was important, the focus needed at the same time to remain firmly on helping consumers. It also needed to be granular enough to inform the LSB’s work programme – for the September discussion, one example would be chosen and worked through in detail to show how the approach might be applied in practice.

**9. The Board resolved to:**

- **note the presentation by *Opinion Leader* on emerging consumer trends and their impact on legal services – it was agreed that there was further work to do to understand more fully the impact of the analysis on the LSB’s future work programme**
- **note the paper and presentation on the importance of activity based regulation and requested that the Executive reflect the issues raised in discussion in planning the September strategy session.**

**Item 4 – Triennial Review update**

10. The Chief Executive provided the Board with a verbal update on the latest position.
11. The Board noted:
  - the Triennial Review papers were now with the Secretary of State prior to being sent to the Cabinet Office Minister
  - the outcome was expected to be broadly in line with update provided by the MoJ official at the Board’s 28 March meeting. Cabinet Office had been kept engaged throughout the process
  - following publication of the report, which was expected to be just before summer recess, a meeting would be held with the Chairman and Chief Executive in which MoJ officials and the MoJ independent peer reviewer would feedback on material gathered in the course of the review
  - a session would take place at the Board’s 11 July meeting to consider the wider issues raised by the Triennial Review, possibly to be externally facilitated
  - the Chief Executive had raised again with MoJ officials the issue of releasing responses beyond those that had been made publicly available by the bodies themselves who had responded.

- 12. The Board resolved to note the latest position with the Triennial Review prior to a fuller discussion at the Board's 11 July meeting. The focus for discussion in July would be on the quality of relationships generally. The option of external facilitation for the session would be considered further by the Chairman.**

**Item 5 – Paper (12) 37 BSB aptitude test rule change**

13. The Regulatory Project Manager presented a paper seeking the initial views of the Board on the BSB's aptitude test rule change. A number of the issues raised had been discussed with some Board Members in preparing the paper. The Board noted that the final decision on the rule change was delegated to the Chief Executive.
14. The Board noted:
- that it appeared, on the basis of the information provided so far by the BSB, that the proposal would have very little benefit to the market of qualified barristers, and would potentially introduce additional costs to students
  - its concern about the possible equality and diversity impacts of the rule change, which if approved would need to be monitored carefully
  - that consideration would need to be given to the legal risks in any decision taken
  - wider issues that the rule change raised in relation to BSB which would feed in to the LSB's regulatory effectiveness work
  - that the Executive would give further detailed consideration to the proposal against the statutory criteria for rule approval including the better regulation principles.
- 15. The Board resolved to note the Executive's approach to assessing the proposed rule change against the statutory criteria; a further update would be presented to the Board's 11 July meeting.**

**Item 6 – Paper (12) Paper (12) 38: Annual reports of (a) Audit and Risk Committee and (b) Remuneration and Nomination Committee 2011/12**

16. The Chair of the Audit and Risk Committee (ARC) presented the annual report of the work of the ARC in the period 1 April 2011 to 31 March 2012, and the Chair of the Remuneration and Nomination Committee (RNC) presented the annual report of the work of the RNC for the same period.
17. The Board noted:
- the two reports were required to be presented alongside the main LSB Annual Report and Accounts 2011/12 (agenda item 7, Paper (12) 39 refers)
  - a minor amendment to the Terms of Reference of the ARC was suggested, moving responsibility for the annual review of Board Members and senior colleagues' expenses from the RNC to the ARC
  - there were substantive changes proposed to the Terms of Reference of the RNC (covered under agenda item 17b, Paper (12) 45).
- 18. The Board resolved to:**

- **note the report about the activities of the Audit and Risk Committee during 2011/12 and agreed the amended Terms of Reference**
- **note the report about the activities of the Remuneration and Nomination Committee during 2011/12**

**Item 7 – Paper (12) 39: Draft LSB Annual Report and Accounts 2011/12 for approval**

19. The Corporate Director presented the draft LSB Annual Report and Accounts 2011/12 for approval, thanking the Board Members for their early and constructive comments on the report and particularly the Chairman's foreword. The Chairman of the ARC reported that the final draft Report had been endorsed for the Board's onward approval at the ARC's meeting held on 17 May.
20. The Board noted:
- subject to the revisions to the financial statements indicated on the erratum page, together with a small number of further points that had been raised by the auditors as part of their final check of the financial statements, there were no further amendments to draw to the Board's attention
  - the MoJ had confirmed on 28 May that the Minister has no comments or observations on the Report
  - as Accounting Officer, the Chief Executive would sign the accounts on 31 May, with the NAO expected to arrange sign off around the 6 or 7 June
  - the Report was then expected to be laid before Parliament on 19 June
  - a proactive communications strategy would accompany the publication of the Report.
21. **The Board resolved to approve the draft LSB Annual Report and Accounts 2011/12 for submission to the Comptroller and Auditor General and the Lord Chancellor. On the Board's behalf, the Chairman thanked the Chief Executive and all colleagues at the LSB for their creativity, determination and hard work during the year in driving forward all of the progress documented in the Report.**

**Item 8 – Paper (12) 40: Legal Services Consumer Panel Annual Report 2011/12**

22. The Chair of the Consumer Panel joined by telephone to present the Panel's Annual Report for 2011/12. The intention was to publish the Report around the same time as the LSB Annual Report and Accounts. The report gave an account of work in 2011/12 on the five key themes where the Panel felt it had made the most impact: better consumer choice, consumer vulnerability, getting redress, marking progress on reforms and re-drawing the regulatory boundaries.
23. The Board noted:
- the breadth and quality of the work reported was impressive and the range of issues unique, particularly in the context of the limited resources at the Panel's disposal - the Panel reflected impressive value for money
  - the Panel's intentions in terms of measuring the impact of its work, which linked to the Panel's expectations around seeing a stronger and more visible impact and focus in 2012/13 on three key themes: equality of access, unleashing consumer power, and enhancing the safety net.
24. **The Board resolved to note the Legal Services Consumer Panel Annual Report 2011/12. On the Chairman, on the Board's behalf, gave thanks to**

**Elisabeth Davies personally for taking over from Baroness Dianne Hayter, the previous Chair and continuing to ensure that the Panel delivered high quality advice. The Panel generally was also thanked for its work to champion consumer interests.**

**Item 9 – Paper (12) 41: Draft Legal Ombudsman Annual Report 2011/12**

25. David Thomas attended to present the Legal Ombudsman's draft Annual Report 2011/12, with the Chief Ombudsman also in attendance. The Report, which was still in relatively early draft, was expected to be approved by the Office for Legal Complaints at its meeting on 18 June. David Thomas undertook to report back any comments submitted by the Board.
26. The Board noted that:
- the document reported on activity in the first full year of operation of the Legal Ombudsman
  - overall, the volume of work had been less than forecast and the percentage of cases referred for Ombudsman decision had been higher than expected. The overall speed of resolution was, however, improving and work in progress levels were also declining. IT issues had been resolved and improvements had been made in terms of the learning and confidence of staff
  - in terms of the percentage of cases referred for Ombudsman decision, the Chief Ombudsman explained that the drivers had been scrutinised in detail and it remained unclear why so many were going to Ombudsman decision (over twice as many as the average for other Ombudsman schemes)
  - the organisation had ended the year £2m under budget. Although this presented a possible opportunity to make cost reductions, there were other developments (including potential changes to jurisdiction and time limits) that meant changes to infrastructure were less desirable at this time
  - the respective Chairs of the OLC and LSB Audit and Risk Committees met regularly to discuss performance management – the level of challenge and scrutiny was considerable and difficult issues were being discussed and addressed
  - it had no strategic issues to raise about the drafting of the report. However, the Board considered that the positive customer satisfaction quotes within the report needed to be balanced to give an honest view of performance overall.
27. **The Board resolved to note the final draft Legal Ombudsman Annual Report 2011/12. The Chairman thanked the OLC member and Chief Ombudsman in particular for attending to present the report.**

**Item 10 – Minutes of the 25 April meeting of the Board**

28. **The Board resolved to agree the minutes of the meeting held on 25 April 2012 and to submit them for signing as an accurate record to the Chairman.**

**Item 11 – Minutes of the 25 April joint LSB/OLC joint meeting**

29. **The Board resolved to agree the minutes of the joint LSB/OLC joint meeting held on 25 April 2012. The Board noted that the Chief Executive and Chief Ombudsman were liaising in relation to follow up work and would report back on progress at the end of 2012.**

## **Item 12 – Report of action points**

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

## **Item 13 – Paper (12) 42: Chief Executive’s Progress Report: May 2012**

**David Wolfe declared an interest in respect of paragraphs 26 and 27 of the paper, on the basis it concerned litigation with an organisation called Fish Legal. David Wolfe undertook work for Fish Legal, although at the current time this was unrelated to the point at issue.**

31. The Chief Executive presented his progress report for the month of May.

32. The Board noted:

- in relation to research activity, the recent presentation to senior MoJ officials on the evaluation work had been constructive and well received. In addition, the high street research was progressing well with over 1,615 interviews completed and 566 specific timed appointments set up. The research company was confident the target of 2,000 would be hit by 1 June
- in relation to the three BSB rule approval requests (Bar Course Aptitude Test, Equality and Diversity Code Provisions and Cab Rank Rule), the Board would be updated on progress at its 11 July meeting
- on the SRA issues of capacity and capability, meetings had taken place between the LSB and SRA at Chief Executive level and also Chairman to President and the Board noted the latest position. A further meeting was scheduled for the end of June
- the Chairman’s recent address to The Law Society Council would be circulated to Board Members
- in relation to the Fish Legal action, the LSB was an interested party only. SRA had changed the Rule which was the subject of the proceedings and, on 29 May, the LSB had approved that rule change. The SRA had therefore written to the court setting out why the claim should not be continued.
- the ICAEW had been responsive to the LSB’s feedback and a consultation document was now imminent on ICAEW applying to become an approved regulator
- the LSB continued to engage with the MoJ and Legal Ombudsman on jurisdiction issues
- Alan Milburn’s report into fair access to the professions, *Fair Access to Professional Careers*, was due to be published later on 30 May. The legal sector was doing better than the other sectors reviewed in detail although there remained considerable progress to be made, particularly on progression and entry
- the LSB would publish approved regulators’ diversity action plans and its assessments of each on 31 May
- it had been a positive month in relation to communications, with good coverage of the Chairman’s speech to the Russell Cooke seminar in particular.

**33. The Board resolved to note the Chief Executive’s progress report.**

## **Item 14 – Paper (12) 43: Minutes of the 17 May 2012 meeting of the Audit and Risk Committee**

34. The Chairman of the Audit and Risk Committee presented the key outputs from the Committee’s 17 May meeting.

35. The Board noted:
- a private session had been held with the internal and external auditors ahead of the main meeting, which had proved helpful in providing assurance that there were no issues of systemic concern.
  - the Executive would present final proposals to the Committee's next meeting on 15 October in relation to the future scope and content of internal financial information, following careful consideration of the independent adviser's report to the Committee on transparency
  - the Committee was giving further consideration to its own effectiveness and performance, and an action plan would be formulated for 2012/13.
36. **The Board resolved to note the draft minutes of the Audit and Risk Committee meeting held on 17 May 2012.**

**Item 15 – Paper (12) 44: Finance Report for April 2012**

37. **The Board resolved to note the Finance Report.**

**Item 16 – Any other business**

**Paper (12) 42 Chief Executive's Progress Report – May 2012 ADDENDUM TABLED**

38. The Chief Executive tabled a paper to follow up his report to the Board's 25 April meeting concerning the removal on the sunset clause within the s69 2011 Order that gave the SRA the ability to operate a single compensation fund for ABS and non-ABS. To effect the decision, the LSB needed to make a recommendation to the Lord Chancellor that the sunset clause be removed from the 2011 Order. Under s70 of the Act, the LSB needed to consult on the draft Order, and MoJ had confirmed its approval with this approach.
39. **The Board resolved to delegate authority to the Chief Executive to sign off publication of the consultation document.**

**PRIVATE SESSION**

**Item 17 – Paper (12) 45: Remuneration and Nomination Committee (RNC) matters**

**a) Minutes of the 27 April meeting of the RNC**

40. The Chairman of the RNC presented the key outputs from the Committee's 27 April meeting for the Board's information.
41. **The Board resolved to note the draft minutes of the Remuneration and Nomination Committee held on 27 April 2012.**

**b) Revised Terms of Reference for the Remuneration and Nomination Committee for Board approval**

42. The Chairman of the RNC presented the revised Terms of Reference for the Committee for the Board's consideration.
43. The Board noted that:



- the Terms of Reference had been revised considerably, to separate out more clearly the remuneration responsibilities and nomination responsibilities of the Committee. There was also reference to how the Committee would conduct its business, and its ways of working with the Executive
- the Board Chairman would participate when the Committee sat to consider nomination issues (for example on 25 June, when the Committee planned to look at Board and Consumer Panel nomination issues).

**44. The Board resolved to approve the revised Terms of Reference for the Remuneration and Nomination Committee**

**c) CEO remuneration**

45. The Chairman of the RNC sought Board approval for a decision relating to the Chief Executive's remuneration. The recommendation had been considered in detail at the RNC on 27 April and came with the Committee's endorsement.

**46. The Board resolved to:**

- **agree the recommendation of the RNC that the currently non-contractual 5% Additional Benefits Allowance paid to the Chief Executive in the form of pension contribution be moved to a contractual basis from 1 June 2012**
- **agree that the payment remain as pension contribution.**

**Item 18 – Date of next meeting**

47. The Board would next meet on 11 July. The venue would be LSB's offices at Victoria House, Southampton Row, London WC1B 4AD.

HP, 13/06/12

Signed as an accurate record of the meeting

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Date

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