

Minutes of a meeting of Legal Services Board (LSB) on 11 July 2012

Date: 11 July 2012
Time: 9.30am – 1.30pm
Venue: Victoria House, Southampton Row, London WC1B 4AD

Present: David Edmonds Chairman
(Members) Chris Kenny Chief Executive
 Steve Green
 Bill Moyes (except items 1 and 2)
 Ed Nally
 Nicole Smith
 Andrew Whittaker
 David Wolfe

Apologies: Barbara Saunders

In attendance: Chris Baas Regulatory Project Manager (items 6 and 7 only)
 Steve Brooker Consumer Panel Manager (item 8 only)
 Elisabeth Davies Legal Services Consumer Panel Chair
 (except items 12 to 18)
 Fran Gillon Director of Regulatory Practice
 Nick Glockling Legal Director (except items 15 to 18)
 Paul Greening Regulatory Associate (item 4 only)
 Edwin Josephs Director of Finance and Services
 (except items 15 to 18)
 Karen Marchant Regulatory Associate (items 3 and 5 only)
 Julie Myers Corporate Director
 Crispin Passmore Strategy Director (except item 15)
 Tom Peplow Regulatory Associate (observing the meeting)
 Holly Perry Corporate Governance Manager (minutes)
 Dawn Reid Head of Statutory Decisions (items 3 and 4 only)

Item 1 – Welcome and apologies

1. The Chairman welcomed those present and in attendance to the meeting, including Tom Peplow, who had joined the LSB as Regulatory Associate on 14 May 2012.

Item 2 – Declarations of interests relevant to the business of the Board

2. The Chairman declared that he had been appointed as non executive member of the board of Barchester Homes, a healthcare provider.
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) 46: Regulatory Independence – 2012 assessment and future plan

4. The Head of Statutory Decisions introduced the paper and issues for discussion. The paper covered (a) IGR dual self-certificates for 2012 and (b) initial thinking for

assessments for 2013. Self-certificates had been received from the Bar Council/BSB, CILEx/IPS, CIPA/ITMA/IPReg and ACL/CLSB. No submission had been requested from TLS/SRA.

5. The Board noted:

- no significant issues had been identified in the certificates - all bodies had been assessed as compliant except the Bar Council/BSB who had been assessed as potentially compliant (there was nothing in the certificate to suggest that the BSB were not operating independently but it was too early to form a view of the impact of recently introduced arrangements; since the 'potentially compliant' assessment in 2011, there had been significant structural change and progress)
- in relation to the Bar Council's comment that the BSB was targeting its activity where action was needed, and that this was somehow being fettered by LSB initiatives, no specific examples had been provided to substantiate the comment (the BSB had included some examples in its public response to the Triennial Review of the LSB). The point perhaps demonstrated a lack of budgetary flexibility on the BSB's part, although the revised arrangements had in fact resulted in an increase in resource in-year of 9% indicating increasing flexibility
- there was a distinction to be made between 'structural compliance' and 'behavioural compliance', the degree to which independence was a test in its own right, and whether quality of regulation was at least as important. In assessing behavioural compliance, objective tests would need to be developed. The issues for consideration set out at paragraph 40 of the paper would need to be tightened up, and focus specifically on independence
- in terms of the initial thinking for assessments for 2013, the issues were how the LSB might assess whether independence was being delivered in practice and how to tackle the issue of independence from the profession, rather than independence from the professional body *per se*
- in relation to paragraph 42, some concern was raised about gathering evidence from speeches on the basis that an approved regulator's actions were felt to be more important than words, though it was agreed that the credibility of action could be undermined by apparently contradictory public statements.

6. **The Board resolved to agree the assessment that CLSB/ACL, IPReg/CIPA/ITMA and IPS/CILEx were compliant with the IGRs and that the BSB/Bar Council was potentially compliant, noting the significant progress that had been made over a three year period. A paper would be submitted to a winter meeting of the Board setting out future plans for regulatory independence work, with the intention of agreeing an external document for publication in early 2013.**

Item 4 – Paper (12) 47: BSB application to alter regulatory arrangements – Cab Rank Rule

7. The Head of Statutory Decisions provided an update on the latest position. The BSB proposals were to introduce contract terms as part of regulatory arrangements and to replace the current Withdrawal of Credit scheme with a List of Defaulting Solicitors. The final decision was delegated to the Chief Executive. However, the views of the Board on progress so far were invited.

8. At its meeting on 18 January 2012, the Board endorsed the issuing of a warning notice to the BSB, advising that it was considering refusing its application to alter aspects of the Cab Rank Rule. Advice had been sought from 22 consultees and seven substantive responses had been received. The application had been assessed taking account of the advice and representation. Legal analysis highlighting the areas of concern linked to the refusal criteria in the Legal Services Act had also been undertaken. A verbal report was given of the main issues raised by each respondent.
9. The Board noted:
- the expectation that there would be detailed examination by the Executive, noting that unless the LSB was “satisfied” that one of the refusal criteria applied, the LSB should grant the application
 - following detailed scrutiny, the Executive was satisfied that the application amounted to regulatory activity rather than representative activity
 - in terms of the public interest, a refusal to approve the rule change would mean that a consumer might not secure the barrister of their choice
 - the BSB’s proposition that the need for the New Contractual Terms (NCT) necessarily flowed from the Cab Rank Rule was not accepted – it would be explicitly reflected in the final wording of the notice that the decision was strictly limited to NCT and would make no comment in relation to the Cab Rank Rule itself.
10. **The Board resolved to:**
- a) note the progress on the assessment of the application**
 - b) note the conclusions from the warning notices responses and the BSB’s representations on those responses**
 - c) delegate to the Chairman and Chief Executive the review of the final recommendation with a view to the Chief Executive making the final decision, to be communicated to the BSB by the end of July**
11. The Chief Executive additionally provided the Board with a verbal update on the Bar Course Aptitude Test (BCAT) application. A final response from the BSB on outstanding issues was expected shortly. This was expected to take the form of further statistical details from BSB and also a clear statement about evaluation and revisiting the decision, with LSB involved at each stage of the evaluation.
12. The Board noted:
- there was an important issue of clarification related to the choice of statistical methodology, on which it was important for the LSB to understand the BSB’s approach
 - proposals from the BSB about evaluation were expected to take the form of a four-to-five year time frame, which should form the basis of a discussion on whether to halt, continue or amend the scheme; the proper recording and monitoring of data would therefore be critical
 - in addition, the BSB had been asked to submit further information on equality impact, including the diversity impact assessment undertaken for the work
 - **[REDACTED]**
13. **The Board resolved to note the latest position in relation to the BSB’s BCAT application, and that a Board meeting by telephone would be convened if a further discussion was required following receipt of the additional**

information awaited from the BSB.

Item 5 – Paper (12) 48: Regulation of immigration advice and services – response to consultation

14. The Director of Regulatory Practice introduced the paper, which attached the response to the March 2012 consultation on the regulation of immigration advice that set out the issues and risks that had been identified in the way immigration advice is currently regulated.
15. The Board noted:
 - there had been a disappointing level of response from the qualifying regulators. The decision document therefore challenged qualifying regulators to draw up action plans by the end of 2012 to target and address the issues identified (which other respondents confirmed were the correct areas to pursue). The Board suggested a longer timeframe might be needed to allow qualifying regulators to evidence progress and that this might be done comprehensively, rather than via a specific action plan. Thought would need to be given to the next phase of activity, if there were no improvement in say 12 months
 - the BSB's lack of risk assessment on immigration would be fed into the LSB's work on regulatory effectiveness and consideration of its forthcoming rule change on increasing public access to barristers.
 - although the SRA's response did outline steps it planned to take on its approach to immigration regulation, concerns remained about overall capacity – these would be managed through ongoing discussions with SRA's senior management
 - the consultation had raised the issue of reservation - having considered the responses, the Executive's view was to consider immigration advice in the context of wider work on general legal advice
 - the Office of the Immigration Commissioner (OISC) proposed that it should take over responsibility for immigration regulation, including having an ombudsman type role in resolving complaints. The LSB had rejected this on the basis it would remove immigration from legal services regulation and also because there was already scope for the Legal Ombudsman and OISC to work together on a voluntary scheme which could include OISC regulated individuals
 - the references to the Criminal Cases Review Commission (CCRC) at paragraph 63 would be amended, as subsequent discussions with CCRC had highlighted that the issues were with criminal advice not immigration advice
 - the issues in relation to BME practitioners, who were disproportionately represented in this area of work, would be brought out in the redraft
 - as far as possible, the qualifying regulators would be encouraged to work together and share information. The LSB had had positive discussions with the UK Border Agency, and the qualifying regulators would be encouraged to do the same
 - the link was acknowledged between the work on immigration advice and services and the work on special bodies, including the developments in relation to transitional protection and next steps in terms of general legal advice and reservation
 - the changes in the market and the significant impact these were likely to have were also noted – particularly the legal aid scope changes, which would take effect in March 2013.

16. **The Board commended the document and thanked the colleagues involved in preparing it. The Board resolved to agree the proposed approach subject to the points raised in discussion, and delegated authority to the Chairman and Chief Executive to agree the final version of the document in advance of publication later in July.**

Item 6 – Paper (12) (49): First tier complaints handling – progress report

17. The Director of Regulatory Practice introduced the paper, which followed a discussion at the April Board meeting, at which the Board considered a paper summarising the response from the approved regulators about progress made towards improved understanding of first tier complaints handling (FTCH).
18. The Board noted:
- the results from the exercise had been disappointing, with the focus on consumers being limited. There would be follow up action in terms of those approved regulators who had failed to respond at all
 - the results provided a platform to take forward work on a proportionate and tailored basis with each approved regulator - there were different actions and timings and actions for each, as set out in the paper
 - David Wolfe and members of the Executive had met with representative of the Institute of Barristers' Clerks and the Legal Practice Management Association on 9 July to discuss how the BSB's guidance was working in practice. The intention was to issue a summary of the points covered in the meeting by way of an open letter to various bodies to generate further engagement
 - although the focus was on clarity for the consumer in terms of how to bring complaints about barristers (ensuring consumers were aware that they could do so direct), there was also an issue about solicitors being clear what to do when complaints about barristers were routed through them
 - there was a disappointing absence of data - it was important that approved regulators were clear what data they would require to discharge their role most effectively.
19. **The Board resolved to note the progress report, analysis and agenda for each approved regulator. The letters would be published on the website once sent.**

Item 7 – Paper (12) 50: Conveyancing review

20. The Regulatory Project Manager presented the paper, which set out the results of an internal review undertaken of conveyancing issues and considered whether the LSB should take more action in improving regulation specifically in this area.
21. The Board noted:
- it was strategically important to recognise publicly that the approved regulators were performing effectively in this area – paragraph 96 would be worked up to set out in more detail what the approved regulators were planning to do
 - care would be taken in relation to the presentation of the Conveyancing Quality Scheme
 - at paragraphs 34 and 36, references to the UK would be checked and replaced with 'England and Wales' as appropriate

- in terms of communicating the results, the document would be submitted to the approved regulators for factual accuracy checking prior to the LSB publishing it, emphasising the LSB's view that the paper reflected a reasonable response to the challenges in the market, and that the issues were unlikely to disappear.

22. The Board resolved to note:

- a) the draft report, which would be shared with the relevant approved regulators for their comments on factual accuracy prior to publication – a cover letter from the Chief Executive would accompany publication**
- b) that no further specific work would otherwise be undertaken at this time.**

Item 8 – Paper (12) 51: Legal Services Consumer Panel Consumer Impact Report 2012

23. The Chair of the Consumer Panel presented the second annual Consumer Impact Report, which aimed to paint a vivid picture of what it meant to be a consumer of legal services in 2012. The report was a central piece of work for the Panel, which built on reflections from the first report published in 2011. There were a mix of positives (improvements in outcomes and customer services) and lows (poor quality information and delays in securing information, as well as a lack of confidence on the part of consumers in complaining).

24. The Board noted:

- the report identified five elements: consumers becoming more active purchasers; a fall in consumer confidence; the persistence of inequalities for consumers; quality, and a failure to engage customers
- the report was deliberately cautious in relation to conclusions as data variations needed to be carefully considered
- the Consumer Panel would undertake a review of the CIR in the autumn, with a view to determining how regularly to publish the report in future
- in terms of impact, the 2011 report had certainly influenced the Panel's work programme for 2011/12, and was a useful resource in influencing change
- there were important linkages to be made between the CIR and the LSB's evaluation work which would prove useful to reflect in future annual report and accounts
- in turn, the LSB would take every opportunity to reference the CIR in its work
- a session with LSB colleagues was planned in September to go through the findings of the report in more detail
- the timing of the communication to approved regulators on first tier complaints handling, and the CIR would be thought through by the Executive.

25. The Board resolved to note the Consumer Impact Report.

26. The Chairman invited the Panel Chair to provide her reflections on the Triennial Review issues as they impacted the Consumer Panel, particularly as the report was somewhat more critical of the Panel's activities than it was of LSB or OLC. The Panel Chair was meeting the MoJ the following week, and had grouped the issues into themes. There were some areas where positive action was likely (the findings in relation to communications and visibility were, for example, accepted and were already being actioned) whilst other areas required more detailed consideration.

27. The Board resolved to note the Consumer Panel Chair's reflections on the

Triennial Review.

Item 9 – Minutes of the 30 May meeting of the Board

- 28. The Board resolved to agree the minutes of the meeting held on 30 May 2012 and to submit them for signing as an accurate record to the Chairman.**

Item 10 – Report of action points

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

Item 11 – Paper (12) 52: Chief Executive’s Progress Report: July 2012

30. The Chief Executive presented his progress report for the month of July.
31. The Board noted:
- there were two staffing developments to report: (a) a secondee from the College of Law was due to start at the LSB on 16 July for two months, to assist with the work on reservation (b) Matty Grant, Administrator, had left the LSB at the end of June to take up a new role as a contracts administrator
 - the Audit and Risk Committee (ARC) had met informally earlier on 11 July to discuss a range of issues including internal audit arrangements and the attendance of the MoJ’s Head of Internal Audit at ARC meetings (which had been agreed)
 - the Executive had rated the overall programme status as ‘one’, reflecting the status of the LSB’s developmental and rule approval agenda – the rating was being kept under monthly review
 - in relation to the SRA, dialogue at a senior level was progressing positively on capability and capacity issues, particularly risks in relation to major shared services projects and the control environment
 - the LSB has raised concerns about whether the SRA’s ABS guidance would be sufficient to address concerns about speed of processing applications, and the Board would be kept updated on the outcome
 - in terms of the regulatory effectiveness self-assessment process, the Chief Executive reported on the process so far. The CLC and BSB had made notably franker draft self-assessments than other regulators
 - in relation to the Prudential case and statutory privilege, the LSB had now received counsel’s draft written submission to the Supreme Court – this would be circulated to the Board for comment
 - in relation to the previously discussed issues around the Council of the Inns of Court, a test case on the appeal procedures had been heard on 30 June which would give clarity on how serious the issue was likely to be for the BSB
 - the Chief Executive had attended a positive half day conference in Dublin hosted by the Ministry of Justice Ireland on regulatory reform, at which he had delivered a keynote speech
 - the Chairman had had positive meetings in recent weeks with members of the senior judiciary - including Lady Justice Hallett, Baroness Hale of Richmond and the Master of the Rolls, Lord Neuberger
 - the Executive planned to run a session on the Legal Education and Training Review outside a formal Board meeting for those Board Members who were interested. The plan was to run a one hour session with some slides, where the Executive could feedback on the recent symposium, and provide an update on the direction the review was taking in advance of the strategy

session in September.

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

Item 12 – Paper (12) 53: Q1 performance report

33. The Corporate Director presented the Q1 Performance Report covering the period 1 April 2012 to 30 June 2012. The report reflected the status of the LSB's projects and demonstrated that all of the Q1 milestones in the business plan had been achieved. Further work was currently underway on refining the 'traffic light' system of highlighting risk.

34. The Board resolved to note the draft Q1 performance report and agreed its use as a basis for discussion with MoJ.

Item 13 – Paper (12) 54: Finance Report for June 2012

35. The Board resolved to note the Finance Report for June 2012.

Item 14 – Any other business - the Legal Services Act 2007 (Warrant) Regulations

36. The Director of Regulatory Practice presented a short verbal item relating to the Legal Services Act 2007 (Warrant) Regulations. The draft regulations allowed the LSB to apply for a warrant to enter and search the premises of an approved or a former regulator and take possession of any written or electronic documents.

37. The Board noted:

- MoJ initially consulted on the draft regulations between October 2009 and January 2010. Responses were largely supportive of the proposals and - where necessary - the original proposals were reviewed in light of responses
- the Joint Committee on Statutory Instruments (JCSI) considered an earlier draft of the warrant regulations at a meeting in March 2010 and raised some queries. At that time, it was agreed that the SI should be withdrawn and laid at a later date once the queries had been dealt with.
- the MoJ had been working to address the concerns raised and stakeholders were given a further opportunity to comment on the principles to be included in the draft warrant regulations which the MoJ circulated in October 2010. However, due to parliamentary time and other critical work pressures at that time, there was insufficient resource to progress the work required
- the work on the warrant regulations was now being taken forward and MoJ lawyers had prepared a revised version of the instrument on which the Lord Chancellor had consulted the LSB in accordance with sections 42(8) and 48(8) of the Legal Services Act 2007.

38. The Board resolved to delegate authority to the Executive to agree the final response to MoJ before proceeding with the formal parliamentary process.

PRIVATE SESSION

Item 15 – Paper (12) 55: Remuneration and Nomination Committee (RNC) matters

a) Minutes of the 25 June meeting of the RNC

39. The Chairman of the RNC presented the key outputs from the Committee's 25

June meeting for the Board's information.

40. The Board resolved to:

- a) **note the draft minutes of the Remuneration and Nomination Committee held on 25 June 2012, which were subject to a minor drafting amendment at paragraph 6**
- b) **confirm its agreement to the skills gaps and diversity considerations identified by the Committee as set out at paragraph 10, for onward submission to the Ministry of Justice**
- c) **submit any suggestions for potential applicants to the Chairman**

b) Recommendations to the Board in respect of the succession plan for the Legal Services Consumer Panel

41. The Chairman of the RNC presented a paper setting out three matters relating to succession planning for the Consumer Panel, following detailed discussion at the RNC's 25 June meeting.

42. The Board noted that the Lord Chancellor's agreement was required in respect of the appointment and re-appointment of Panel members, and, out of courtesy, the Chairman would also advise him of the decision in relation to the Chair.

43. The Board resolved to:

- a) **agree the appointment of Elisabeth Davies as full Chair of the Panel with immediate effect, to 31 March 2015**
- b) **[REDACTED]**
- c) **agree the appointment of a new member, to return the Panel to its original size**

Item 16 – Paper (12) 56: Triennial Review – final report

44. The Chief Executive and Corporate Director presented the final report, which had concluded that both the LSB and the OLC should continue to carry out their current functions and in their current forms.

45. The Board noted:

- the next reviews, in 2015, would look at two organisations which were well-established, rather than relatively new, which would make the fundamental review more useful
- on stage 2, the report had concluded that the LSB and the OLC had very good compliance levels in relation to governance and accountability. There were only five areas in which MoJ made recommendations to improve compliance even further, and the majority of these were minor
- **[REDACTED]**

46. The Board noted the final report of the Triennial Reviews of the Legal Services Board and Office for Legal Complaints.

Item 17 – Date of next meeting

47. The Board would next meet on 12 September, 09:30 to 16:00. The venue would be LSB's offices at Victoria House, Southampton Row, London WC1B 4AD.

HP, 20/07/12

Signed as an accurate record of the meeting

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Date
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