

Minutes of a meeting of Legal Services Board (LSB) on 12 September 2012

Date: 12 September 2012
Time: 12:00 – 15:00
Venue: Victoria House, Southampton Row, London WC1B 4AD

Present: David Edmonds Chairman (items 1 to 3 and 7 to 13)
(Members) Chris Kenny Chief Executive
 Steve Green (Chairing the meeting for items 4 to 6)
 Bill Moyes
 Ed Nally
 Nicole Smith
 Barbara Saunders
 David Wolfe (items 1 to 3 and 7 to 13)

Apologies: Andrew Whittaker

In attendance: Elisabeth Davies Chair of the Legal Services Consumer Panel (items 4 to 6)
 Elizabeth France Chair of the Office for Legal Complaints Chair (item 6)
 Adam Sampson Chief Ombudsman (item 6)
 Fran Gillon Director of Regulatory Practice
 Nick Glockling Legal Director
 Chris Handford Regulatory Project Manager (item 4)
 Edwin Josephs Director of Finance and Services
 Olivia Marley Regulatory Associate (observing the meeting)
 Vincent McGovern Communications Manager (items 4 to 6)
 Crispin Passmore Strategy Director
 Tom Peplow Regulatory Associate (item 5)
 Alex Roy Head of Development and Research (items 4 and 5)
 Holly Perry Corporate Governance Manager (minutes)

Item 1 – Welcome and apologies

1. The Chairman welcomed those present and in attendance to the meeting, including Olivia Marley, who was currently on secondment at the LSB, working on the regulation of will-writing, probate and estate administration project.

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

2. The Chief Executive declared that he had recently taken up a new role as non executive member of the independent Third Party Intermediary Code Panel being established by the energy company E.ON. The matter had been discussed with the Board Chairman and the chairs of the ARC and RNC respectively prior to approval. The role was time limited to the end of 2012 in the first instance.
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 – Formal noting of matters circulated since the Board’s 11 July 2012 meeting

4. The Board noted two items that had been circulated out of committee over the summer break:

a) Paper (12) 57 SRA Compensation Fund s69 Order

This paper had been circulated on 27 July 2012. Following a number of points raised by Board Members, the Strategy Director had responded in detail on 2 August. Board Members were content with the assurances provided. The Executive would continue to maintain pressure on the SRA in terms of both speed and content of the review, and would ensure that the Board was regularly updated.

b) Finance Report for July 2012

This was circulated out of committee for noting on 15 August 2012. No issues had been raised.

Item 4 – Paper (12) 58 – Investigation into the regulation of will-writing, probate and estate administration – provisional report (for consultation)

5. The Strategy Director and Regulatory Project Manager presented the paper. The LSB was drawing to the final stages of an investigation that had started in September 2010. The Board was reminded that at its March 2012 meeting, it has agreed, subject to consultation, that: (a) will-writing and estate administration be reserved; (b) connected regulation be proportionate, risk based and flexible so as to work for different types of providers in the market; (c) existing regulation be improved, with existing approved regulators being required to apply for designation to regulate the newly reserved activities. The consultation had taken place during April and there had been 43 responses, the vast majority of which had been supportive. The main challenges arising from responses were set out in paragraphs 6 to 8 of the paper. Work was ongoing with MoJ officials in relation to the implementation options, and handling via the Regulatory Policy Committee.

6. The Board noted:

- The Executive’s assessment that none of the responses to the April consultation gave cause for a fundamental change of the LSB’s position.
- The view of the accountancy bodies and the British Bankers Association, who did not consider that their members should be required to fall within legal services regulation. The intention was not to exclude these bodies, but the LSB would clarify that ancillary services such as inheritance tax advice would only be caught if they were provided in conjunction with either of the core services of writing a will or administering an estate. In addition, the approach to regulation would take into account protections that already existed within these sectors. The LSB had met, or would be meeting with, each of the bodies that had responded on this issue.
- Board Members questioned the Executive on the practicability of delineating ancillary services from will writing and estate administration – care would need to be taken during the drafting of the statutory instrument, which would need to be suitably flexible to allow for the inclusion of ancillary services if evidence was presented at a later date justifying their inclusion in the regulatory regime. It was acknowledged that retainer letters had an important role to play in requiring regulated entities to spell out the limitations of service.
- The guidance document, particularly the scenarios, was felt to be helpful. The

guidance would be free-standing and although it was subject to consultation, it was not expected to be controversial. Areas where developments would need to be kept under active review – for example in technological developments – would need to be drawn out. The drafting would also be reviewed to ensure the guidance worked as a stand-alone document.

- The Law Society, SRA and notarial bodies had argued that the SRA and the Faculty Office should be passported as regulators of any new reserved activities, and that their members be deemed authorised to carry out these activities. The Board agreed that it should not change its position on this point. It was noted, however, that a more streamlined process would be applied for these bodies, given a number of the tests had already been met.
- The challenges presented by the implementation and transitional options were considerable – none of the options were straightforward and most would require statutory orders. These issues were explored in detail at paragraphs 56 to 74 of the provisional report. Stakeholder views would be sought, and options were being worked through with MoJ officials – with whom the ultimate decision rested. The Board acknowledged the convoluted and time consuming nature of any of the options set out. To date, it had not been possible to identify a quicker route.
- Presentationally, there was a balance to be struck between regulatory intervention providing consumer protection and the re-focusing of existing regulation to ensure greater targeting and proportionality. Discussions with MoJ officials had reinforced that the Government was likely to look more favourably on a recommendation that was seen to also have a liberalising effect on business, although the views of new Ministers are not as yet known.
- Discussions were ongoing with MoJ officials in relation to both the impact assessment and equalities impact assessment. These would need to address all issues in a way that would be understood by approved regulators.
- The consultation period would be six weeks. In normal circumstances for a new proposal, this period was acknowledged to be less than good practice. However, a considerable amount of consultation had already taken place and a statutory timeline now applied. The cover letter accompanying the consultation would set out the context clearly, including the areas that were new. It was agreed that oral representations would be accepted in exceptional circumstances only, as per the LSB's existing policy on oral representations, and would need to be heard within the six week consultation period.
- The Chair of the Legal Services Consumer Panel reiterated the Panel's ongoing support for the recommendations.

7. The Board resolved to:

- a) Agree, subject to reflection of the points raised in discussion, the summary of feedback to the April consultation and the LSB's response**
- b) Determine that it was minded to recommend that the Lord Chancellor amend the list of reserved activities to add will-writing and estate administration activities**
- c) Agree, subject to finalisation by the Chairman and Chief Executive in the light of the Board's comments and MoJ feedback, the following papers for a six-week consultation period:**
 - **Provisional report – setting out the Board's recommendations and the reasons for them**
 - **Draft impact assessment**
 - **Draft equalities impact assessment**
 - **Draft section 162 guidance for prospective regulators of the new activities**

- d) Agree provisions, as discussed, in relation to receiving written and oral representations in relation to the provisional report.**

Item 5 – Paper (12) 59 - LSB response to the quality consultation and formal response to the Consumer Panel's advice on VQS

8. The Head of Development and Research presented the paper to the Board. This annexed the response to the March 2012 Approaches to Quality consultation which provided an overview of quality risks and examples of suggested regulatory interventions. A formal response to the Panel's report on voluntary quality schemes was also attached for the Board's consideration.
9. Respondents had generally agreed with the LSB's assessment of quality risks and the suggested actions. The intention was now to hand over to the regulators to take action. The LSB would set out clear success criteria by which regulators would be judged. The intention was not to ask for individual action plans; progress would instead be picked up through the LSB's regulatory effectiveness process.
10. The Board noted:
- In the response document, the LSB was encouraging implementation of the Legal Services Consumer Panel's recommendations in relation to quality schemes and endorsing the essential characteristics of the schemes they had identified. The Chair of the Panel confirmed that she was content with the consultation response, recommending that the Board assure itself that the necessary steps were in place to ensure that approved regulators were performing. The Executive explained that through the success criteria and self assessments, sufficient pressure would be maintained on approved regulators to ensure risks were identified and acted upon. It was agreed that setting success criteria arguably provided the LSB with a stronger hand than requesting the approved regulators develop action plans.
 - The Chair of the Consumer Panel also confirmed that she was content with the response as drafted to the Panel, which suggested that, at an appropriate point, the Panel review progress with scheme providers and approved regulators. She noted that discussion were ongoing on the work that the LSB would be asking the Panel to undertake on the extent that the regulatory system could, and should, help consumers to 'choose and use' legal services.
11. **The Board resolved to:**
- a) Agree the proposed approach, subject to the points raised in discussion**
 - b) Delegate authority to the Chairman and Chief Executive to agree the final version of the consultation response document in advance of publication (Annex A)**
 - c) Agree the response to the Legal Services Consumer Panel advice on Voluntary Quality Schemes (Annex B)**

Item 6 – Paper (12) 60 – Proposed amendments to OLC Scheme Rules

12. The Chair of the Office for Legal Complaints (OLC) and the Chief Ombudsman attended the meeting to present the draft amendments to the OLC Scheme Rules for the Board's approval. The OLC had completed a review of the Scheme Rules for the Legal Ombudsman. As required by the Legal Services Act 2007, the LSB's consent was required before the revised Rules could be adopted. The rules had been the subject of a statutory consultation by the OLC and were approved for submission to the LSB by the OLC at its Board meeting on 10 September.

13. The Board noted that:

- The OLC Chair had written to the LSB Chairman setting out assurances in relation to the Board's acceptance criteria following the OLC Board discussion, and attaching a draft foreword to the Scheme Rules – these were tabled for the Board's information. Points raised at the OLC Board which were drawn to the Board's attention included:
 - a) The OLC was confident it would have the capacity to take on the increased workload within existing resources (a 10% increase in the number of cases accepted for investigation was anticipated) with no negative impact on the service's ability to deliver its KPI targets
 - b) In relation to budget, the implication of the removal of the case fee was a £1.4m reduction of levy income, but this would be balanced by the withdrawal of 'free cases' - the profession had been singularly clear that it was supportive of this change, though there were concerns in relation to particular categories of law, including mental health.
 - c) The proposed time limits would be in line with courts and other aspects of the justice system, which would assist the Chief Ombudsman with maintaining a firm line – currently, dealing with limitation issues accounted for around 10% of the Chief Ombudsman's time
 - d) It was acknowledged that the transitional period would present challenges and there was no satisfactory solution – the proposal was not to consider cases earlier than October 2010. Cases post October 2010 would be allowed, as long as these had not previously been considered and turned down.

- The Chair of the Legal Services Consumer Panel indicated support for many of the proposed changes. She raised concerns with the decision of the OLC not to make recommendations at this time in relation to third party complaints and questioned what this might mean for existing practice. She indicated she would be meeting the Chair of the OLC and Chief Ombudsman to consider the issues in more detail. In the Chief Ombudsman's view, the following points were salient:
 - a) In consultation meetings, the majority view had come from the legal profession. Consumer views had been few and far between.
 - b) There was a lack of evidence in relation to third party cases being excluded – if evidence was forthcoming at a later stage, the position would be reviewed again
 - c) Defining third party complaints were challenging – the list of exclusions and inclusions would be difficult, if not impossible, to define
 - d) As well as definitions, there were also implications for workload, costings, and key performance indicators amongst other things
 - e) The Scottish experience of accepting third party complaints had not been positive
 - f) Boundary issues were already complex and challenging, without adding third party complaints to the mix
 - g) The OLC committed to clear definitions and a statement of clarity in relation to the c1,500 third party complaints a year in its final response.

- There were timing issues to work through in relation to the point at which the OLC published its decision document as it wished to provide stakeholders with three months' notice of implementation. There were a number of issues to be addressed before MoJ could reach a final decision on laying the relevant orders.

14. The Board resolved to consent to the proposed revisions to the OLC Scheme Rules.

Item 7 – Minutes of the 11 July meeting of the Board

- 15. The Board resolved to agree the minutes of the meeting held on 11 July 2012 and to submit them for signing as an accurate record to the Chairman.**

Item 8 – Report of action points

16. An updated version of the register of action points had been circulated on 6 September. All actions were on track, scheduled for discussion at future meetings or were covered by papers on the agenda.

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

Item 9 – Paper (12) 61: Chief Executive's Progress Report: September 2012

18. The Chief Executive presented his progress report for the month of September.

19. The Board noted:

- SRA performance was generally progressing positively. The SRA's move to new premises in Birmingham was on track; resilience testing was progressing with the SRA's practicing certificate IT system, and a contingency plan had been developed. However, the work had affected progress on the SRA's core regulatory IT system. The LSB would continue to apply pressure, via the Chair and Chief Executive, to ensure that the SRA delivered fully functioning IT systems, effective management structures and positive outcomes. Improved working between the SRA and TLS, the establishment of the Business and Oversight Board and creation of a control framework were all beginning to pay dividends. The Board noted that the outcome of a recent review of senior staffing would be announced shortly.
- Quality Assurance Scheme for Advocates (QASA) – the Board noted that implementation remained on track, although some powerful responses were expected to the latest consultation document.
- Legal Education and Training Review (LETR) – the latest paper from the Review team showed considerable progress.
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- [REDACTED]
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- [REDACTED]
- The Chair of the Audit and Risk Committee reported that his last meeting with the OLC to discuss key performance indicators had been positive. The Board could be assured that an appropriate suite of indicators was now being collected and presented to the OLC Board.

- Ministerial engagement – the Board endorsed the Chairman’s letter to the new Justice Secretary, which it was felt had been very helpful. Precise junior ministerial portfolios had not yet been confirmed, though it was fully expected that Helen Grant MP would take up responsibility for the LSB and legal services. *{Post meeting note – this has now been confirmed}*

20. The Board resolved to:

- **note the Chief Executive’s progress report**
- **agree in relation to Annex A levy rules that, subject to receiving appropriate HMT, NAO and MoJ assurances, the Executive could:**
 - a) **start to prepare a revision to the Board’s Levy rules to accommodate the MoJ becoming a leviable body for OLC expenditure**
 - b) **consult on these revisions with regulators and other interested stakeholders**

Item 10 – Paper (12) 62: Finance Report for August 2012

- 21. The Board resolved to note the Finance Report for August 2012.**

Item 11 – Paper (12) 63: Corporate Risk Register – six monthly review

22. In the Corporate Director’s absence, the Chief Executive presented the latest version of the Corporate Risk Register for the Board’s six monthly review. The register had last been reviewed by the Board in January, and had subsequently been reviewed each month by the Gateway Group. The last detailed review by the ARC had taken place at its May meeting.

23. The Board noted:

- The ARC would undertake its next detailed review at its meeting on 15 October – the ARC’s focus would be on red risks, mitigations and actions planned.
- All red rated risks related, in the main, to issues of regulatory performance or failure on the part of the approved regulators.
- The way some risks were described would be revisited – for example, the passive style in places tended to overemphasise the need for others to act
- It would be helpful to plot the risks overall – for example, the top three risks facing the LSB.

- 24. The Board resolved to note, subject to the points raised in discussion, the latest draft of the LSB Corporate Risk Register. The register would be considered in detail at the Audit and Risk Committee on 15 October.**

Item 12 – Paper (12) 64: Board evaluation action plan

25. The Governance Manager presented the draft plan for the Board’s approval. Following discussion of the outcomes of the 2012 Board evaluation exercise on 11 July, a suggested draft action plan had been sent to Board Members on 27 July, for comments out of committee during August. No substantive comments were received. It was noted that the recent Ministerial reshuffle had impacted on the timetable for the recruitment of new Board Members. MoJ officials were expected to provide an update on timings in the coming week.

- 26. The Board resolved to agree the adoption of the Board evaluation action plan attached at Annex B, noting that updates would be provided on**

progress at regular points during the remainder of 2012/13.

Item 13 – Paper (12) 65: Triennial review – next steps

27. The Chief Executive presented a paper on recommended next steps with the Triennial Review following a meeting with MoJ officials at the end of July, which the Board Chairman and Andrew Whittaker had attended. The paper set out:
- The five recommendations for the LSB (and OLC), with responses proposed by the Executive for the Board’s consideration.
 - A formal statement of response, to be sent to the Lord Chancellor, to be put into the public domain and formally copied to all approved regulators and other Triennial Review respondents – this aimed to address the wider points made in the review responses as well as the specific recommendations.
28. The Board noted:
- On recommendation 3, relating to open board meetings, there was value in ongoing consideration of the issue. However, the Board confirmed its formal view was as set out in the statement ie that it would not hold open formal Board meetings, but would re-energise its ongoing commitment to engaging at both member and staff level with as wide a range of people with an interest in legal services regulation as possible, including continuing to consult widely and openly, holding workshops and seminars on developing thinking, and meeting and speaking frankly to, all who had interest in the LSB’s work. The Board would keep its approach under review and act on practical opportunities.
 - Specific drafting changes were proposed to the statement of response, which would be reflected in the final version.
29. **The Board resolved to agree the actions set out in the paper including the proposed statement of response, subject to the points raised in discussion being reflected in a revised version.**

Item 14 – Any other business

30. There were no further items of business.

Item 15 – Date of next meeting

31. The Board would next meet on 10 October, 09:30 to 13:30. The venue would be LSB’s offices at Victoria House, Southampton Row, London WC1B 4AD.

Item 16 – PRIVATE SESSION

32. The Chief Executive briefed the Board on a confidential matter on which he expected to have a further update in time for the October Board.

HP, 17/09/12

Signed as an accurate record of the meeting

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Date
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