

Minutes of a meeting of Legal Services Board (LSB) on 28 November 2012

Date: 28 November 2012
Time: 13:00 – 17:00
Venue: Victoria House, Southampton Row, London WC1B 4AD

Present: David Edmonds Chairman
(Members) Chris Kenny Chief Executive
 Steve Green
 Bill Moyes
 Ed Nally (to item 5 only)
 Nicole Smith
 Barbara Saunders
 Andrew Whittaker
 David Wolfe (except item 10)

In attendance: Christina Blacklaws Director, Co-operative Legal Services (Board visitor – item 2 only)
 Tim Bayl Regulatory Associate (observing) (except item 73 - budget proposal discussion)
 Elisabeth Davies Legal Services Consumer Panel Chair (except item 73 - budget proposal discussion, and items 9 to 17)
 Elizabeth France Office for Legal Complaints Chair (except item 73 - budget proposal discussion, and items 9 to 17)
 Fran Gillon Director of Regulatory Practice
 Nick Glockling Legal Director
 Michelle Jacobs Business Planning Associate (items 5 and 6)
 Edwin Josephs Director of Finance and Services
 Emily Lyn Regulatory Project Manager (items 8 and 9)
 Julie Myers Corporate Director
 Crispin Passmore Strategy Director
 Alex Roy Head of Development and Research (items 7 to 9)
 Adam Sampson Chief Ombudsman (item 6 only)
 Holly Perry Corporate Governance Manager (minutes)

Item 1 – Welcome and apologies

1. The Chairman welcomed those present and in attendance to the meeting.

Item 2 – Board visitor

2. The Chairman welcomed Christina Blacklaws, Director, Co-operative Legal Services (CLS) to the meeting, for a joint session with LSB colleagues. Ms Blacklaws delivered a presentation covering the CLS's experience of going through the alternative business structure (ABS) licensing process; Co-operative Legal Service's aspirations and challenges in terms of introducing a new model of legal service provision; and thoughts on what this meant for suppliers, consumers and the legal services market generally.
3. Areas covered in the question and answer session included:

- Areas for possible improvement in relation to the SRA's ABS application process.
- Discussion of examples of innovative new ABSs and the impact on consumers.
- Views on how the market might develop in the course of the next seven years.
- Opportunities arising from the Cooperative's broad portfolio of services.
- Developments in family legal services, and the importance of mediation and conciliatory approaches.
- Approaches to the quality assurance of CLS's work.

Item 3 – Declarations of interests relevant to the business of the Board

4. The Chairman declared that he had recently been appointed as an independent Member of the Board of Kingston University. David Wolfe declared that he had a specific declaration to raise at item 10 (see note at item 10).
5. Board Members were reminded to notify the Corporate Governance Manager about hospitality extended and/or received in the course of their LSB work.

Item 4 – Formal noting of matters circulated since the Board's 10 October 2012 meeting

6. The Board noted one item that had been circulated out of committee: the September Finance Report, which had been circulated on 2 November 2012.

Item 5 – Paper (12) 73 – Draft LSB Business plan and budget proposal for 2013/14

7. The Corporate Director presented the draft LSB Business Plan and budget proposal. The Executive had prepared the Plan on the basis of the Board's discussions at the 12 September strategy session, particularly in relation to the focus on regulatory effectiveness, and abstention from significant project initiation other than in relation to an investigation of cost and complexity of regulation. The budget proposal built on detailed discussion at the Audit and Risk Committee's 15 October meeting. The version circulated to the Board had been sent in parallel to the Ministry of Justice, following receipt of helpful comments from MoJ officials to an earlier version of the draft.
8. The Board noted:

Budget issues

- Significant pressures on budget meant that the LSB would face a potentially difficult resource position in 2014/15, which would have implications for the work programme in 2013/14. If any further cuts were required, difficult prioritisation decisions would need to be made. There was limited contingency for unplanned work. The Board noted the risks in progressing with the work programme as prepared.

Draft Plan

- The draft Plan was clearly written, however issues raised during the 12 September strategy meeting (as well as in the context of the Triennial Review work) on communication could be reflected more fully. Further work would be undertaken on tone, language and positioning of the LSB's message

throughout the document, in particular in the foreword.

- Specific drafting points were raised on the „principles’ LSB follows in delivering its programme and in relation to the cost and complexity of regulation project where the Board agreed that an element of independent insight should be included as part of the project.
- The regulatory objectives were considered. Although a hierarchy had never been adopted, the Board had given significant early weight to the consumer, competition and access to justice objectives. The Board confirmed that there was a need to assess the risks in relation to all the regulatory objectives on an ongoing basis and to emphasise that none were being disregarded.
- A version of the Plan would be submitted to the Minister for informal review prior to publication. The Board would be advised of any Ministerial comments.
- The Chair of the Office for Legal Complaints commented that greater reference could be made to opportunities for joint work with the Legal Ombudsman eg research on unregulated legal services, first tier complaints handling etc.
- The Chair of the Legal Services Consumer Panel commended the Board for making no specific requests of the Panel, so giving it the maximum flexibility in devising its own work plan, which would be presented to the Board’s March 2013 meeting.

9. **The Board resolved to: (a) note the draft Plan, with any further drafting comments to be sent to the Corporate Director by close of play on 3 December; (b) delegate final approval of the document to be issued for consultation to the Chairman and Chief Executive, subject to reflection of the points raised in discussion (c) agree a draft budget for 2013/14 of £4,448k (2012/13 £4,498k).**

Item 6 – Paper (12) 74 – Draft OLC Strategy 2013-16 and Business Plan 2013-14

10. The Chair of the Office for Legal Complaints (OLC), accompanied by the Chief Ombudsman, presented their draft strategy and plan to the Board for comment. The paperwork was presented in order to give the Board some insight into the OLC’s plans for the year ahead, in advance of it being issued for consultation. The OLC planned to hold an open meeting as part of the consultation. In presenting the drafts, the OLC Chair emphasised that there was no dramatic change of position reflected in the documentation.
11. The Board noted:
- The drafts gave no targets or costs in relation to complaints about Claims Management Companies (CMCs), as the OLC was unsure of the date when the necessary powers would be switched on. The CMC jurisdiction would be ring-fenced in year one to preserve the integrity of the current KPIs, particularly on cost per case. It was accepted that a degree of uncertainty had to run through the plan as a consequence.
 - More generally in relation to KPIs, targets would be further considered (the Chairs of the OLC and LSB Audit and Risk Committees had recently met to consider the issues in more detail). These would be refined post consultation when the current year’s progress was clearer. KPIs on quality, satisfaction and timeliness would be progressed steadily, as knowledge and consistency within LeO improved. The Board was content with the OLC’s confidence and awareness measure as drafted.
 - The OLC Chair and Chief Ombudsman provided the Board with an update in relation to LeO’s future IT strategy. The Board indicated it would welcome

early sight of developments in this area.

- Comments were offered on the drafting of the consultation draft which the OLC welcomed and said would be taken into account, though there would only be limited changes before the final version of the plan was prepared. OLC would take full account of the comments in producing the final version of the business plan.
- The specific areas the Board felt should be addressed included:
 - reflecting best practice from other ombudsman schemes;
 - a maintained focus on monitoring cost per case generally, given the lower than expected case volumes;
 - a more robust proposition in relation to overall costs;
 - clarification in relation to the OLC's plans for considering voluntary jurisdictions.

12. The Board resolved to note the OLC's draft Strategy 2013-16 and Business Plan 2013-14 which would be issued for consultation shortly. The Board would consider the final version for approval in March 2013. The OLC budget for 2013/14 would also be considered for approval at the Board's March 2013, following consideration at the Audit and Risk Committee's March meeting¹.

Item 7 – Paper (12) 75 – Investigation into regulation of will-writing, probate and estate administration – interim post consultation update

13. The Strategy Director presented the paper. In September 2012, the Board determined to publish a consultation stating that it was minded to recommend reservation of will-writing and estate administration. The consultation had closed on 8 November. On the basis of the consultation responses received and analysed so far, the position in relation to reserving estate administration was likely to be even more balanced than originally anticipated. A number of final responses were awaited. The paper updated the Board on the Executive's latest thinking.

14. The Board noted:

- Evidence would continue to be reviewed and analysed, and levels of risk and likely detriment assessed.
- The interaction between the decision on estate administration and the decision on probate was considered. The position was far from straight-forward.
- [REDACTED]
[REDACTED]
[REDACTED] **[Review exemption end of February 2013]**
- There was a potentially greater role for voluntary schemes to support the objectives in estate administration than in will-writing. This would be looked into in more detail (past schemes of this kind in the latter area had not been successful, but they had not previously been tried in the area of estate administration).
- [REDACTED]
[REDACTED]
[REDACTED]

¹ POST MEETING NOTE: LSB Board not able to approve OLC budget at its March meeting as OLC Board not due to sign it off until late March. Sub-committee of Board to be agreed at March meeting to approve OLC budget under delegated authority.

- [REDACTED]
[REDACTED] **[Review exemption end of February 2013]**
- The Consumer Panel Chair reminded the Board that the Panel had identified six groupings of issues that needed to be addressed – all of these needed to be considered and reflected upon. Consumer confusion in this area of legal services was acute and the Consumer Panel looked forward to influencing the final outcome over the coming months.
 - In relation to consumer confusion, the Executive's assessment to date indicated that there was less cross-over in the suppliers of will-writing and estate administration services than previously thought. The Board noted this and cautioned that evidence of detriment to consumers might be difficult to find.
 - [REDACTED]
[REDACTED]
[REDACTED] **[Review exemption end of February 2013]**

- 15. The Board resolved to note the emerging thinking set out in the paper, ahead of further discussion and decision at the Board's 30 January 2013 meeting.**

Item 8 – Paper (12) 76 – Update on Legal Education and Training Review (LETR)

16. The Regulatory Project Manager presented the paper which provided an update for the Board ahead of the final report which was due to be submitted to the commissioning regulators (SRA, BSB and IPS) in December. The final report was expected to be published in January 2013. It would then be for the regulators to consider how to respond and to submit applications for approval of changes to regulatory arrangements to the LSB. The LSB would emphasise the importance of flexibility, looking for short term gains as well as identifying longer term objectives.
17. The Board noted:
- The Executive had had sight of some of the emerging recommendations on a confidential basis through the LSB's role on the LETR Consultative Steering Panel. These were summarised in the Board paper but remained subject to significant change and were therefore confidential.
 - The final report was expected to contain some positive elements from the LSB's perspective, and retain flexibility in relation to how outcomes needed to be achieved. The challenges would arise in relation to implementation of the proposals.
 - Overall, there was a fine balance of those stakeholders in support of the proposals expected to emerge and of those who were less positive. The evidence indicated clearly that there was a case for change and that present arrangements were not fit for purpose.
 - Members of the Executive were meeting the research team and, separately, the commissioning regulators at Chief Executive level before the report's finalisation. One of the items for discussion would be communications activity around the launch of the report.
 - The LSB's role was to exercise its powers in order to support the recommendations. Once the report was finally published, and the commissioning regulators had had time to digest it, the LSB would work with approved regulators to action the proposals and ensure broad knowledge and a wide variety of routes to qualification eg statutory guidance, statutory decision-making, designation etc.
 - Assurances were provided that employers' views had fed in to the report. As

21. The Board resolved to note the latest position in relation to QASA.

Item 10 – Paper (12) 77 – Regulation of special bodies/non-commercial bodies

Declaration of interest: David Wolfe recused himself from the meeting on the basis that his wife was on the Board of the Public Law Project (which is affected and responded to the consultation) and he was instructed by (or had been and/or might hope/expect to be again) by a number of the other respondents, including CPAG, Disability Law Service, Friends of the Earth, Liberty, Northumbria University, and the PLP).

22. The Director of Regulatory Practice introduced the tabled paper. Not for profit organisations (known as “special bodies”) had been given transitional protection by the LSA meaning that they did not currently have to apply for ABS licences. The LSB had consulted earlier in the year on when that transitional protection should end. The Annex to the paper set out the LSB’s position on the policy issues, which had developed considerably as a result of the input from the not for profit sector - no substantial policy changes were proposed.

23. The Board noted:

- The sector was clear in its responses that the current approach to regulation taken by the SRA was not suitable for not for profit organisations.
- There were two issues that were likely to attract attention on publication, neither being technically linked to removing the transitional protection. SRA needed, as a matter of urgency to remove: (a) its ban on not for profit organisations charging – the LSB could see no justification for it and there was evidence it was hampering innovation in the sector; and (b) its separate business rule.
- Specific drafting points were raised as follows: paragraph 26, reference to the case for regulation being finely balanced – there was a need to articulate the case for regulation (there would at a later stage be a detailed impact assessment); paragraph 31 – the initial proposal put forward by the LSB was a transitional period ending in 2014. Since then, the position had changed – this would be clarified and a date explicitly referred to.
- In its response, the LSB had not identified any body other than the GRC that would be appropriate to hear appeals from not for profit organisations.
- The Board raised some concern about timescales, with the view that sufficient progress was not being made to hit a deadline of 2015. An internal plan and timetable needed to be prepared to ensure the deadline was hit, particularly on the basis that it was not within the LSB’s gift to create the body required. A more detailed timetable would also be inserted in the document for publication (with two scenarios – one involving an existing approved regulator taking up the role; the second involving the creation of a new approved regulator for the sector).

24. **The Board resolved to:**

- a) agree the emerging policy position set out in Annex A, subject to the points raised in discussion**
- b) agree to delegate final sign off to the Chairman and Chief Executive prior to publication, which was expected later in December (subject to timing of publication of the draft LSB Business Plan).**

Item 11 – Minutes of the 10 October meeting of the Board

- 25. The Board resolved to agree the minutes of the meeting held on 10 October 2012, and to submit them for signing as an accurate record to the Chairman.**

Item 12 – Report of action points

26. All actions were on track, scheduled for discussion at future meetings or were covered by papers on the agenda.

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

Item 13 – Paper (12) 78 - Chief Executive's Progress Report: November 2012 including Health and Safety Policy

28. The Chief Executive presented his progress report for the month of November.

29. The Board noted:

- Board Member recruitment and Consumer Panel member recruitment – the final figures for the number of applications for the Board roles was as follows: 43 Non-Lay and 93 Lay applications. 15 applications had been received for Consumer Panel member role, with the closing date being 7 December
- Health and Safety Policy Statement – the statement at Annex A to the paper was formally approved by the Board.
- Research web pages launch, 22 November – this had been successful and the new pages had been well received.
- Draft s69 Order consultation – the Board delegated authority (until 31 March 2013) to the Chief Executive to sign off publication of the consultation, pending clarification from the SRA about the precise timescale for introducing the changes.
- SRA developments – the Board Chairman and Chief Executive had addressed the SRA Board earlier on 28 November; the discussion had been productive. In relation to developments more generally, the LSB had received assurances from SRA about the Practising Certificate renewal exercise. The Law Society has requested a meeting with the Board Chairman and Chief Executive to discuss the SRA's budget proposal for 2013/14; a response would follow the next meeting of the Business and Oversight Board scheduled for later on 28 November.
- MoJ issues – A positive session had taken place in November with the MoJ's Transforming Justice Director.
- Legal update – A decision was expected on the Prudential case before Christmas; Board Members would be kept updated. The Legal Director provided a verbal update on the process currently underway to secure new parties to the LSB's legal panel. The intention was to increase the size of the panel. A final decision would be known later in December.

- 30. The Board resolved to:**
- a) note the Chief Executive's progress report**
 - b) agree the LSB Health and Safety Policy Statement attached at Annex A**
 - c) delegate authority to the Chief Executive to sign off publication of the consultation document for the draft s69 Order attached at Annex B**

Item 14 – Paper (12) 79 – Finance report – October 2012

- 31. The Finance Director presented the Finance progress report for the month of November.
- 32. The Board resolved to note the Finance report for October.**

Item 15 – Paper (12) 80 – Minutes of the ARC’s 15 October 2012 meeting including revised Risk Management Strategy

- 33. The Chair of the Audit and Risk Committee (ARC) presented the item, which comprised the note of the Committee’s 15 October meeting and the revised Risk Management Strategy. The Audit and Risk Committee had reviewed the Risk Management Strategy in detail at its 15 October meeting, focusing in particular on the LSB’s approach to crystallised risk. The ARC endorsed the revised Strategy to the Board. The Board noted the management changes at KMPG, the LSB’s internal auditors, and also that the MoJ’s Head of Internal Audit was retiring.
- 34. The Board resolved to:**
 - a) note the draft minutes of the Audit and Risk Committee (ARC) meeting held on 15 October 2012 attached at Annex A**
 - b) based on the recommendation of the ARC, approve and adopt the revised LSB Risk Management Strategy set out in Annex B.**

Item 16 – Paper (12) 81 - Governance Manual review

- 35. The Corporate Governance Manager presented the paper, which set out minor revisions to the LSB Governance Manual following the scheduled annual review of LSB’s governance arrangements at the Audit and Risk Committee’s 15 October meeting. The Audit and Risk Committee had considered the revisions in detail, and endorsed them to the Board. The Board commended the Corporate Governance Manager for the considerable work which had gone into the exercise.
- 36. The Board resolved to agree the revised Manual prior to publication and circulation.**

Item 17 – Any other business

- 37. There were no further items of business.

Item 18 – Date of next meeting

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

HP, 3/12/12

Signed as an accurate record of the meeting

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Date

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