

Minutes of a meeting of Legal Services Board (LSB) on 30 January 2013

Date: 30 January 2013
Time: 09:30 – 13:00
Venue: Victoria House, Southampton Row, London WC1B 4AD

Present: David Edmonds Chairman
(Members) Chris Kenny Chief Executive
 Steve Green
 Bill Moyes
 Andrew Whittaker (except item 1)
 David Wolfe

Apologies: Ed Nally
 Nicole Smith
 Barbara Saunders (except item 1)

In attendance: Nicholas Baré Regulatory Associate (items 6 and 7)
 Jessica Clay Legal Advisor (except items 1, 15 and 16)
 Fran Gillon Director of Regulatory Practice (except items 1, 15 and 16)
 Chris Handford Regulatory Project Manager (item 5)
 Edwin Josephs Director of Finance and Services (except item 1)
 James Meyrick Regulatory Project Manager (items 6 and 7)
 Julie Myers Corporate Director
 Crispin Passmore Strategy Director (except items 1, 15 and 16)
 Dawn Reid Head of Statutory Decisions (item 4)
 Alex Roy Head of Development and Research (items 5 and 9)
 Holly Perry Corporate Governance Manager (minutes)

Nomination issues – private session

Item 1 - Paper (13) 01 Appointment to the Legal Services Consumer Panel – recommendation to the Board

1. Barbara Saunders presented the paper, which sought the Board's agreement to a recommendation to the Lord Chancellor regarding the appointment of a new member to the Legal Services Consumer Panel. The recruitment of a new member had been agreed at the Board's 11 July 2012 meeting. Final interviews had been held on Wednesday 23 January, chaired by Barbara Saunders. There was a clear recommendation as to the preferred candidate, whom the Board agreed would have credibility and would make a strong contribution immediately.
2. **The Board resolved to agree the recommendation to the Lord Chancellor as to the appointment of a new member to the Legal Services Consumer Panel.**

Item 2 – Welcome and apologies

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

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

4. Andrew Whittaker declared an interest in relation to item 5, Investigation into regulation of will-writing, probate and estate administration. From 1 May 2013, he would take up the role of general counsel to Lloyds banking group who were a provider of both will writing and estate administration services. On the basis that the Board were making a decision on a recommendation to Ministers, rather than one that would have direct effect, the Board agreed that there was no reason for him to recuse himself from discussions or the decision.
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 28 November 2012 meeting

6. The Board formally noted two items that had been circulated out of committee:
 - Board Finance Report November 2012
 - Drafting amendments to the OLC Scheme Rules

In relation to the OLC Scheme Rules, following a number of issues raised in correspondence, the Board had satisfied itself that the need for the drafting amendments had not cast doubt on the robustness of the consultation as a whole, such as to justify re-running it in whole or part. Satisfactory assurances had been provided by the Chair of the OLC to the Board Chairman in correspondence. A substantive discussion on wider OLC issues would be held at the 18 March Board, with a sub group of Board Members meeting in advance to discuss the issues.

Item 5 – Paper (13) 02 Investigation into regulation of will-writing activities, probate and estate administration

7. Chris Handford introduced the paper which followed the presentation at the Board’s 28 November 2012 meeting of an interim paper setting out emerging thinking after an initial review of the responses to the Provisional Report consultation. The Board was now required to make its final decisions in relation to the regulation of will-writing activities, probate and estate administration activities – the statutory timetable required final reports, and any recommendations to the Lord Chancellor, to be published no later than 26 February 2013.
8. The Board noted:
 - The case for reserving will-writing activities was considered to be compelling.
 - Doubts had been cast in relation to whether the tests for reserving estate administration activities had been met and whether regulation would, in any event, be an effective tool in deterring criminal behaviour in the market. Having discussed the issues with a number of stakeholders, and following completion of its analysis, the LSB executive considered that the tests for statutory regulation of estate administration had not been met, not least because it was unlikely that regulation would effectively mitigate the most serious risks in the market. Most key stakeholders had accepted that the case for reserving estate administration was weaker than that for will-writing activities.

- Although the case for probate being reserved was weak if a decision were being made for the first time, the evidence about the impact of it ceasing to be a reserved activity was not robust enough to recommend this action.
- In its final paper, the LSB would set out its overarching role in liberalising and de-regulating the market, but underline that, given the extent of the evidence of market failure, the compelling observations in relation to consumer detriment (and benefits to consumers of reservation), the regulatory objectives, the better regulation principles and other responsibilities, there was a powerful argument for reservation of will-writing activities. It would be made clear that Government would need to put the evidence into the wider context in making a final decision on reservation.
- In presenting recommendations to Ministers, reference would also be made to the LSB having thought about whether improving regulation of existing arrangements was an option. The Board agreed that strengthening SRA regulation and a voluntary code for the unreserved sector would be a marginal improvement on the present situation, but much weaker than reservation in terms of encouraging effective competition as well as consumer protection.
- In relation to estate administration, the list of compensating measures and references to the Legal Ombudsman's position would be reviewed. The drafting on probate would also be reworked to make clear that the LSB had not set out with an intention of considering this area of work in detail.
- A number of detailed drafting amendments were proposed by the Board, for reflection in the final version of the paperwork.

9. The Board commended Chris Handford and the team on an outstanding piece of work and resolved to:

- 1. Agree, subject to revision, the summary of feedback to the responses to the September consultation on the provisional reports and associated documents (Annex 1)**
- 2. Having considered the views and representations submitted in response to consultation:**
 - **Recommend that the Lord Chancellor amends the list of reserved legal activities at Section 12 of and Schedule 2 to the Legal Services Act 2007 to add will-writing activities**
 - **Not recommend that the Lord Chancellor amends the list of reserved activities to include estate administration activities**
 - **Not recommend that the Lord Chancellor amends the list of reserved activities to remove probate activities**
- 3. Agree, subject to revisions in the light of the discussion, the following papers to be provided to the Lord Chancellor and published on the LSB's website: (a) a final report document covering each of the three investigations into will-writing, probate and estate administration activities (Annex 2); (b) an impact assessment for will-writing and estate administration activities (Annex 3 and Annex 4).**

Item 6 – Paper (13) 03: Report on SRA regulatory standards self-assessment

10. Fran Gillon presented the paper, which described the LSB's views of the regulatory standards self assessment submitted by the SRA.

11. The Board noted:

- The SRA's final self-assessment was reflective but had failed to include reference to ABS authorisation, provided little information to support its assessment for enforcement and had not been sufficiently realistic in relation to capability and operational capacity. In addition, there were concerns about how effectively the SRA Board held the executive to account for its operational performance, rather than its policy development activities.
- Questions were also raised about whether the nature of the SRA assessment was consistent with the assessments the LSB had published so far, and why the SRA had not been more forthcoming in some areas. The executive confirmed that the process would be developed in future to ensure greater clarity around what should have been included or excluded in the context of the four cornerstones of regulation.
- The Board commented that caution was needed in relation to endorsing the SRA's assertions that improvement work was *well* underway and asked about the process for weighing up the evidence provided. Care was needed in deciding the final, overall assessment, to guard the LSB's reputation.
- The Board provided drafting comments on the report, including capturing accurately the position in relation to SRA improvements and the position of the SRA relative to the other approved regulators. The Board requested further thought be given to judging assessments in absolute terms or relative to context.
- The executive confirmed that evidence was wide-ranging, drawing on the LSB's full history of engagement with the organisation including a thorough review of correspondence to look for patterns or trends, as well as commentary from external commentators, in addition to the self-assessment itself.
- Board Members commented that the SRA's action plan – drawn from the SRA's business plan - appeared challenging and in many cases potentially unrealistic. The action plan would be actively monitored. The focus of monitoring would be on (a) authorisation and (b) traction between the Board and executive
- The Chairman and Chief Executive of the LSB had set out the high level points at a meeting with the SRA Board on 28 November 2012. Part of the ongoing monitoring would be via Chair to Chair discussions. The nature of engagement with the SRA Board would also be considered, with a Board to Board meeting being an option to consider.
- The Board discussed when and how the LSB should repeat the assessments, with the aim being for momentum to be maintained. The executive cautioned that an annual process was likely to be too frequent, given how long it had taken to complete, and that time was required between assessments for improvements to be made. Its current working assumption was that a biennial approach may be sensible. It was agreed that active monitoring of action plans was vital, with reports to the Board at each meeting via the Chief Executive's progress reports. A paper would be presented to the October 2013 meeting with further recommendations on how frequently the exercise should be repeated.
- The intention was for the final report to be published in mid February, once the SRA executive had had an opportunity to comment on factual accuracy.

12. **The Board commended the comprehensive nature of the work undertaken by Fran Gillon, James Meyrick and Nicholas Baré in drafting the report. Subject to reflection of the points raised in discussion, the Board resolved to**

delegate authority for final sign-off and arrangements for the report's publication to the Chairman and Chief Executive.

Item 7 – SRA ABS issues (Verbal report)

13. The Chief Executive presented a verbal report to the Board following the issuing of two section 55 Notices on 10 January requiring the SRA to provide the LSB with information about (a) the backlog of ABS applications and its plan to address the problem and (b) why the SRA had such a large number of enforcement cases and what action was being taking to reduce them – this followed information in its regulatory standards self-assessment that showed that it had 500 matters under investigation for potential referral to the Solicitors Disciplinary Tribunal.

14. The Board noted:

- The serving of Notices was a normal regulatory tool for the LSB to use when information was required from approved regulators.
- On 18 January 2013 the SRA had submitted a very high level spreadsheet setting out details of the ABS backlog. It appeared that there was limited reliable management information about either the current status of the programme as a whole or overall trends over time. The SRA had provided assurances that immediate investment was being made to reduce backlogs and an action plan to address systemic issues was being developed, with the target date for clearing the backlog and actioning longer-term improvements being 31 March 2013.
- It was understood that there had been issues with IT and that approvals had been slower than anticipated in the first six month, contributing to the backlog. There were also issues with the process, and the point at which certain decisions and judgements were being made. It would be vital that the action plan addressed these issues comprehensively.
- [REDACTED]
- It was possible for the LSB to use its formal powers to issue directions and/or key performance indicators if the SRA did not clear the backlog by the end of March and/or put in place its own, sufficiently rigorous, performance indicators.
- The Chief Executive briefed the Board on a further issue concerning the SRA's Separate Business Rule. In the context of ABS applications, the rule was becoming increasingly perverse in its effects. The Chief Executive would write shortly to the SRA Chief Executive to request that they expedite the previously agreed review of the rule.
- [REDACTED]

15. **The Board resolved to note the Chief Executive's verbal report. A further report would be provided to the Board in March or May, depending on progress made in the interim.**

Item 8 – Paper (13) 04: Internal Governance Rules: approach to self-certification in 2013

16. Dawn Reid presented the paper, which proposed how the LSB should deal with assurance on the Internal Governance Rules (IGR) for 2013. Work planned on a more fundamental review of the process in the longer term had not been progressed owing to resource constraints; this work now featured in the LSB's draft business plan for 2013/14.
17. The Board noted:
- All applicable approved regulators (with the exception of CILEx/IPS) had issues outstanding from previous returns. On this basis, a targeted approach for the applicable approved regulators was agreed - for most, this would mean a very short return to update the LSB in relation to changes and issues previously identified.
 - IGRs allowed the LSB to seek assurance on compliance with rules in such form and at such time as the LSB determined – there was no requirement for an annual certificate although to date these had been done annually. Further consideration would be given to the position beyond 2013/14.
 - A full certificate for the TLS/SRA was agreed, with a view to giving a new baseline and removing s55 reporting requirements; this would be clearly articulated to the SRA. Some drafting changes were proposed to Annex A (page 5) and Annex B (Annex 1) (the text would be cross checked against the Act). The sign off text would be amended to include reference to the need for chairs to have consulted their boards prior to signing the certificate.
 - In relation to the requirement for a lay majority on boards of approved regulators, which all had achieved as at January 2013, it was agreed that although the requirement had been achieved technically, it was important that all board members felt able to act independently of cultural pressures, as well as organisational ones.
18. The Chairman reported on his meeting with the Secretary of State, held on 20 December.
19. **The Board resolved to approve the approach and timetable proposed in the paper.**

Item 9 – Paper (13) 05: Adoption of British Standard 18477 for inclusive service provision

20. Alex Roy presented the paper. The Consumer Panel had written to the LSB in May 2012 to encourage adoption of BS 18477 on the treatment of vulnerable consumers. The paper presented proposals to integrate the use of the standard within LSB policy development.
21. The Board noted:
- There was no formal process to adopt a standard – the proposal was to establish a small executive group to take forward the work on the standards, and related work on the consumer toolkit, with non executive involvement.
 - The Board would be updated on progress via the Chief Executive progress report.
22. **The Board resolved to:**
- **Update the LSB consumer toolkit**

- **Develop and test a clear strategy for incorporating the thinking from BS18477 into policy and operational activities**
- **Invite regulators and the Legal Ombudsman to demonstrate how they have incorporated BS18477 into their work whether through regulatory effectiveness, rule approval processes or through the LSB's routine oversight functions.**

Item 10 – Minutes of the 28 November 2012 meeting of the Board

23. **The Board resolved to agree the minutes of the meeting held on 28 November 2012, and to submit them for signing as an accurate record to the Chairman. The amendments proposed by the Chair of the OLC were noted.**

Item 11 – Report of action points

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

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

Item 12 – Paper (13) 06: Chief Executive's Progress Report: January 2013

26. The Chief Executive presented his progress report for the month of January.

27. The Board noted:

- New appointments to the team.
- The Chairman and Chief Executive would be meeting Sir Alan Beith MP, Chair of the Justice Select Committee later on 31 January, prior to a hearing before the Committee scheduled for 19 March. Board Members would be notified of the exact time and venue of the Select Committee hearing.
- The recently published cab rank rule research had created some controversy with commentators. The LSB had been prompted to commission independent research in order to understand more fully how the rule worked in relation to the market. Usual practice had been followed in commissioning the research ie three tenders had been assessed. The LSB had not yet taken a position on the findings of the research. The Board discussed the issues raised, including how to generate opportunities for positive engagement with the Bar on the cab rank rule in the context of broader discussions on the BSB handbook.
- In relation to QASA, there were more issues arising in relation to slippage with the timetable. A meeting of Chief Executives had been called for 30 January to discuss the issues further.
- The Legal Advisor briefed the Board on the implications of the judgment issued the previous week in the Prudential case in relation to legal and professional privilege, following the Legal Director's email to Board Members of 23 January.
- The Chief Executive updated the Board on the LSB's submission to the Banking Standards Commission's call for evidence. A copy of the submission would be circulated to Board Members for information.

28. **The Board resolved to note the Chief Executive's progress report. In respect of Annex A, relating to the OLC budget approval process, the Board resolved to (a) agree the criteria that the OLC Board should be asked to address in seeking budget approval from the LSB and (b) delegate authority to a sub-committee to approve the OLC budget for 2013/14 (if timing of OLC**

submission prevented it being considered at the 18 March Board).

Item 13 – Paper (13) 07: Q3 Performance Report (October to December 2012)

29. Julie Myers presented the performance report for the period 1 October to 31 December 2013. As at 31 December, the executive's overall assessment of the programme was 'green'. A delay in the appointment of a new Project Manager had since begun to impact on timelines for certain projects, including first tier complaints handling and special bodies. There were no other specific matters to draw to the Board's attention.
30. **The Board resolved to note the Q3 performance report and endorsed its submission to the Ministry of Justice.**

Item 14 – Paper (13) 08: Finance report – December 2012

31. Edwin Josephs presented the finance report for the month of December, drawing attention to the impact of an agreed extension to the life of the LSB's PCs, which would mean changes to depreciation levels and a more significant underspend at year end. The likely impact of this on the reduction in budget for 2013/14 was noted. Finance Director also briefed the Board on external audit developments.
32. **The Board resolved to note the Finance report for October.**

Item 15 – Paper (13) 09: Minutes of the RNC's 30 November meeting

33. The Chair of the Committee presented the note of 30 November meeting.
34. **The Board resolved to note the draft minutes of the Remuneration and Nomination Committee held on 30 November 2012 attached at Annex A.**

Item 16 – Paper (13) 10: Colleague engagement survey

35. The Chief Executive and Corporate Director presented the paper, which set out the results of the LSB's first colleague engagement survey. The Board commended the 100% response rate. The results had been discussed with the RNC in detail at its meeting on 30 November (Annex A to Paper (13) 09 referred), and subsequently with the LSB management team and with all colleagues. The executive had met two individuals with particular expertise in this area, with the aim of securing external assistance to understand more fully the results of the survey and to facilitate engagement with colleagues in relation to the more sensitive issues that had arisen.
36. The Board noted:
- [REDACTED] In discussion with colleagues, the Chief Executive had made clear the LSB's 'zero tolerance' approach to bullying, harassment and discrimination.
 - On learning and development, all colleagues had been allocated a cash sum to spend on training by 31 March 2013.
 - One to one conversations had taken place between line managers and colleagues to discuss management engagement and feedback.
 - [REDACTED]

[REDACTED]

- In announcing to colleagues the details of the external consultant who would be assisting the executive with the next stages of the work, positive messages would be incorporated from the Board via the Chairman in relation to the Board's support.
- The Board agreed that the survey should be repeated regularly.

37. The Board resolved to note findings of the Colleague Survey and next steps.

Item 17 – Any other business

38. There were no further items of business.

Item 18 – Date of next meeting

39. The Board would next meet on 18 March, 13:00 to 17:00. The venue would be LSB's offices at Victoria House, Southampton Row, London WC1B 4AD.

HP, 4/2/13

Signed as an accurate record of the meeting

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Date

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