

Minutes of a meeting of Legal Services Board (LSB) on 10 July 2013

Date: 10 July 2013
Time: 13:30 – 17.00
Venue: Victoria House, Southampton Row, London WC1B 4AD

Present: David Edmonds Chairman
(Members) Chris Kenny Chief Executive
Anneliese Day QC
Terry Babbs
Steve Green
Bill Moyes
Ed Nally
Barbara Saunders (left the meeting after item 15)
Andrew Whittaker

In attendance: Timothy Bayl Regulatory Associate (item 6)
Fran Gillon Director of Regulatory Practice
Nick Glockling Legal Director
Michelle Jacobs Business Planning Associate (item 13)
Edwin Josephs Director of Finance and Services
Emily Lyn Regulatory Project Manager (item 7)
Olivia Marley Regulatory Associate (observing items 1-14)
James Meyrick Regulatory Project Manager (items 3 and 4)
Julie Myers Corporate Director
Crispin Passmore Strategy Director
Dawn Reid Head of Statutory Decisions
Alex Roy Head of Development and Research (items 7 and 9)
Bryony Sheldon Regulatory Project Manager (items 4 and 8)
Adewale Kadiri Corporate Governance Manager (minutes)

Item 1 – Welcome and apologies

1. The Chairman welcomed those present and in attendance to the meeting, particularly Olivia Marley, who was observing the meeting having recently taken up post as a Regulatory Associate.

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

2. There were no declarations of interest.

Item 3 – Paper (13) 42: SRA performance issues

3. Fran Gillon introduced the paper supported by James Meyrick, setting out the position as at June based on monitoring of the SRA's performance on authorisations since January.
4. The Board noted:
 - Although there had been improvements in some areas, overall performance

levels were similar to those of recent months. A letter from the SRA on 10 June had set out improvements that they planned to make to the authorisation process, including the uploading onto their website of a single authorisation form for all applicants, but the timelines set had already slipped. The single ABS application form was not yet on their website [Post Board note: the form was added on 12 July]

- The Executive's analysis of the authorisation of ABS firms appeared to indicate a concern that the SRA appears to be more comfortable authorising ABS firms that more closely resemble traditional law firms than those seeking to deliver more explicitly innovative models of service.
- Ministerial interest in ABS authorisations had increased as a result of correspondence from applicants disappointed with the process.
- There was a need for more precise information around performance against KPIs. LSB continues to receive monthly progress reports, and there should be sufficient information for a useful discussion at the Board to Board meeting on 24 July.
- The CEO post at the SRA has been advertised and a further Director post is being recruited to. No decision had yet been made as to whether the Chairman would be re-appointed, but the position should become clearer over the next few weeks. [Post Board note: The Law Society Council determined to reappoint Charles Plant for a further year at its meeting on 11 July].

5. The Board confirmed that it wished to use the LSB/SRA meeting on 24 July to ascertain that the SRA Board has sufficient grip on the organisation's performance and focus on the SRA Chairman's recent letter to the LSB Chairman. The Board agreed that the draft programme would be amended to focus on engagement with the Board, although it was agreed that a brief tour of the offices lasting no more than half an hour and a short staff presentation on authorisation would be useful.

6. **The Board resolved to**

- a) **agree that it should continue to monitor the SRA's performance in ABS authorisation**
- b) **agree that it is not currently appropriate to start a formal investigation into the SRA**
- c) **note that the Executive will continue to monitor the SRA's progress against its improvement plans**
- d) **note that the Executive will be conducting a survey of ABS applicants and licensees.**

Item 4 – Paper (13) 43: Bar Council and IGRs

7. Fran Gillon introduced the paper, supported by Bryony Sheldon and James Meyrick. Rapid progress is being made in this investigation, and further information has now been received from both the Bar Council and the Law Society. A challenge group has been established to review the investigation team's initial findings. This includes an external lawyer. Recommendations will be put to the Board as soon as possible
8. **The Board resolved to note the contents of the paper and the progress of the investigation.**

Item 5 – Paper (13) 44: Internal Governance Rules compliance: dual self-certificates

9. Dawn Reid presented the paper. This was an overview report of the exercise that had been undertaken during April and May to assess the dual self-certificates submitted by the applicable approved regulators on the standard of their compliance with LSB's Internal Governance Rules (IGRs). Three fully completed certificates had been received, but as at the time of writing the report, final certificates had not been received from Law Society/SRA and Chartered Institute of Patent Attorneys/Institute of Trade Mark Attorneys/Intellectual Property Regulation Board. Both had since been received in draft form.
10. The Board noted:
- The certificate from Association of Cost Lawyers/Cost Lawyer Standards Board highlighted historical tensions that have existed between both bodies, and their aim to work through these for the future
 - No view will be taken on the Bar Council/BSB certificate until the outcome of the investigation is known
 - It may be time to review the system of self assessments and to consider alternative ways of gaining assurance of approved regulators' compliance with the Internal Governance Rules, focusing on capturing the main risks to meeting regulatory objectives, rather than purely structural matters. It was also suggested that it may be time to revisit the question of external validation of regulators' submissions.
 - It may also be appropriate to revisit the issue of lay chairs, particularly in view of the forthcoming changes of leadership at the SRA and BSB.
11. **The Board resolved to**
- a) **note the summary of the returns submitted by BSB, CLSB, IPS, and IPReg, and**
 - b) **approve the proposed approach to each approved regulator**
 - c) **delegate decisions on the outstanding certificates to the Chairman and Chief Executive, with the advice of Andrew Whittaker and Barbara Saunders.**

Item 6 – Paper (13) 45: BSB application – Handbook for Individuals

12. Dawn Reid presented this paper, supported by Timothy Bayl, relating to an application under Schedule 4, Part 3 of the Act for revisions to be made to the Handbook setting out regulatory arrangements for individual barristers. A separate application is to be made later in the year which, if approved, would enable the BSB to authorise and regulate entities.
13. The Board noted:
- A review of the initial draft had found a number of specific issues and also concluded that the Handbook as a whole was not sufficiently outcomes focused. The BSB made some significant changes as a result of this feedback and, although still less thorough in its use of outcomes as a supervision and enforcement tool than might be considered ideal, the document now represented a significant step forward.

- That the size and complexity of the proposed handbook, although reduced from the present version, may still prove to be an obstacle to its use by practitioners and consumers alike. This will need to be evaluated in due course
- Pending LSB approval, the BSB proposes that the revised Handbook would come into force on 1 April 2014, and there is an implementation plan in place, progress against which will be monitored
- The collaborative working between the teams of the two organisations had been a very effective model, which had helped to improve relationships generally, as well as aiding the management of the specific issue.

14. The Board resolved to:

- **note the conclusions reached on the key issues identified in the analysis of the application**
- **approve the application under Schedule 4, Part 3 for the changes to regulatory requirements, and**
- **delegate approval of the drafting of the final decision notice to the Chair and Chief Executive**

Item 7 – Paper (13) 46: Equality and Diversity update

15. Emily Lyn introduced this paper providing the Board with an update on progress towards delivery of the objectives set out in LSB's guidance on diversity data collection and transparency. Previously, the focus within the professions had been on individual activities and initiatives to encourage equality and diversity, but these were not sufficiently joined up or outcomes focused. As part of the growing recognition of the importance of this area, there is a widespread acceptance of the data collection requirement in support of the objective.

16. The Board noted

- The overall increase in inclusivity in terms of entry into the professions, (although concerns remained around access for people from lower socio-economic groups) and the role that the market had played in this
- All the regulators have provided data, but the responses reveal a mixed picture. Almost 100% of SRA regulated firms had provided responses, and the average response rate per firm was 42%. The BSB and IPS, on the other hand had each recorded response rates of around 5%, and as a result of the small sample sizes, the usefulness of the data that they hold is limited. It would appear that in both cases, the low responses rates could be put down to a lack of clarity around the routes for providing responses. Furthermore, IPS do not consider this to be a regulatory issue.
- The SRA had demonstrated a strong commitment to embed diversity as a regulatory issue. A serious analysis of the data had been carried out, representing best practice. The next stage would be for discussions to be held with individual firms as to the steps they will take in relation to their data.
- Although regulators have not been asked to focus on any particular diversity strands, they were able to do so if they wished. Retention and progression rates for women are below what they should be, and the judiciary has been supportive of steps to attract and retain more women and people from minority ethnic backgrounds in the professions as a precursor to a diverse judiciary. It is the responsibility of individual firms to find appropriate solutions, but it is for the regulators to hold them to account.

- Not all regulators have an annual cycle of reviews, but they each have a clear timetable for the next round of data collection. The next step would be to hold a round table session focusing on improving response rates and compliance and identifying wider uses for the data.

17. The Board resolved to

- a) note the contents of the data received from the approved regulators, and**
- b) agree to the proposed next steps of holding a round table discussion with the approved regulators with a view to improving response rates and identifying wider uses for the data**

Item 8 – Paper (13) 47: Special bodies

18. Fran Gillon presented this paper, supported by Bryony Sheldon. The Legal Services Act had allowed for a transitional period during which some not for profit agencies, such as Law Centres and Citizens' Advice Bureaux did not require an ABS licence in order to operate. The Board considered draft guidance at its meeting in May, but had asked the Executive to reconsider options in the light of wider developments

19. The Board noted that

- Since their May meeting, the MoJ have issued a call for evidence for a review of the legal service regulatory framework which reinforced the desirability of pausing this work.
- The opportunity provided by the MoJ review to significantly reduce the cost and complexity of regulation in this area.
- The fact that a decision to pause would be welcomed by most of the organisations within this constituency, with whom the LSB has good relationships

20. **The Board resolved to**

- a) discontinue the pursuit of regulation of special bodies, pending the outcome of the MoJ review, and to revisit the matter once the outcome of the review is known, and**
- b) to agree the draft statement which explained the decision.**

Item 9 – Paper (13) 48: Regulatory scope: cost and complexity: will writing

21. Alex Roy presented this report, the main purpose of which was to set out a proposed response to the Lord Chancellor's decision not to accept the LSB recommendation that will-writing should be made a reserved legal activity.

22. The Board noted:

- The LSB stood by its analysis of the extent of consumer detriment that exists in this area, but it recognised the government's decision not to accept its recommendation.
- The next step would be to write to the approved regulators asking how they

would be handling the risks arising as a result of will writing activities, while ensuring that they do not inadvertently treat it as a regulated activity.

- The MoJ call for evidence had brought forward the cost and complexity analysis. The tightness of the timeframe was noted, and it was agreed that it is important to get the submission right.
- Draft submissions would be shared with Board members along the way, and a final draft would be considered by the Board at an extra meeting to be scheduled at the end of August or beginning of September.
- The importance of understanding the approved regulators' approach to the review, and of explaining the LSB's position clearly to a wide range of audiences, both in relation to the submission specifically and the wider work on cost and complexity planned thereafter;
- In view of the government's decision on will-writing, it was deemed highly unlikely that they would agree to the provision of general legal advice being brought within regulation. The consideration of the cost and complexity of regulation would better address this issue, allowing for the risks inherent in this area of work to be analysed. The specific project detailed in the Business Plan would not therefore be pursued as a separate activity.

23. The Board resolved to

- a) Agree to the proposed next steps in relation to will writing and general legal advice, and**
- b) Note the update on the cost and complexity work stream**

Item 10 – Minutes of the Board meeting 23 May 2013

24. The minutes were agreed as an accurate record of the meeting.

Item 11 – Report of action points

25. All actions were noted as on-track, and all items had either been included on the agenda of this meeting or are on the Board forward plan for future agendas.

Item 12 – Paper (13) 49: Chief Executive's report

26. The Chief Executive presented the progress report. The Board noted:

- The LSB was reviewing its Framework Agreement with the MoJ. To date the MoJ's appetite for pursuing its shared services agenda had not formed part of discussions regarding accommodation.
- Coverage of LSB research continued to be strong and the Chief Executive's interview on Radio 4 programme "You and Yours" which focused on consumers' trust in legal services, had been well received. A good piece of collaborative work had been done, in conjunction with Mencap, on consumers with learning disabilities.
- The work on the cab rank rule had been concluded and it was not proposed that any further work would be done on this subject.
- In relation to QASAⁱ, LSB had been named as potential co-defendant with the BSB in a letter before action challenging the lawfulness of the scheme. The Legal Director was working closely with external advisors to respond appropriately to the issues raised. With regard to the decision on the QASA rule change application, it was stressed that this must not be handled any differently because of the potential legal challenge. Consideration of the

application itself is ongoing, and an extension notice had been issued to the SRA, BSB and IPS in order that all the relevant information could be fully considered. The issue is to be discussed fully at the Board meeting on 24 July at which a firm recommendation would be put to the Board.

- The final report of the Legal Education and Training Review (LETR) was published on 25 June. It is a long and detailed document containing 26 recommendations which has already attracted much comment from stakeholders. A full paper on the report on its recommendations will be presented at the Board meeting on 24 July.
- The Government has published its response to the consultation „Non-economic Regulators: Duty to have Regard to Growth’, and had concluded that the LSB and SRA should be subject to the growth duty. The LSB had responded to the consultation agreeing with the principle of placing all regulators under the growth duty but requesting that it be done via a change to the Legal Services Act for legal regulators. The executive would write again to BIS and seek to influence the pre-legislative scrutiny process if possible, stressing the need for the duty to apply to all of the regulators via an amendment to the Legal Services Act.
- The LSB remained in discussion with the MoJ and OLC with regard to the proposal that complaints about the activities of Claims Management Companies (CMC) be considered by the LeO. Although the LSB is supportive of the proposal in principle, it remains of the view that it has no legal vires to assist in the collection of the levy, and that to do so carried an unacceptable degree of legal risk. The Chief Executive is to approach the Treasury Officer of Accounts to give context. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [FOIA exempt: s36(2)(b)(ii)] A Board

discussion on this would be held in the autumn.

- There had been a good response, including from the Secretary of State to the research done on small businesses’ access to legal services. Engagement across Government on this issue was being pursued.
- The Chairman and Chief Executive had had been a short but successful meeting with the minister Helen Grant MP on 24 June. She thanked them warmly for the work that the LSB had done. The Executive was working to attract as wide an audience as possible to contribute to the MoJ’s call for evidence, including academics, consumer interest organisations and individual firms.

27. **The Board noted the Chief Executive’s report.**

Item 13 – Paper (13) 50: Q1 Performance Report: April to June 2013

28. Julie Myers presented this paper, supported by Michelle Jacobs.

29. The Board noted that the level of pressure on resources within the LSB remained considerably high, and was likely to continue until the next quarter.

30. **The Board resolved to**

- a) **note the contents of the report, and**
- b) **agree that it be used as the basis for discussion with the MoJ**

Item 14 – Paper (13) 51 Finance Report to 30 June 2013

31. Edwin Josephs presented this paper confirming that for the first three months of the year, spending is largely in line with budgets. The likelihood of budgetary pressures post-October was noted.

32. The Board noted the Finance Report.

Item 15 – Any Other Business

33. There were no further items of business.

34. The Board noted the Finance report.

Private Session

35. The Board went into private session, and discussed: matters relating to the sourcing of new accommodation for the LSB. The Board also received the report and draft minutes of the Remuneration and Nominations Committee.

AK, 15/07/2013

Signed as an accurate record of the meeting

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Date

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ⁱ Barbara Saunders declared that Mr Iain Miller, of Bevan Brittan, who had been advising the BSB often acts as an advocate at the Professional Conduct Committee of the Architects Registration Board. Ms Saunders is a member of that Committee.