

Minutes of a meeting of the Legal Services Board (LSB) on 11 September 2013

Date: 11 September 2013
Time: 13:00 – 15:00
Venue: Victoria House, Southampton Row, London WC1B 4AD

Present: David Edmonds Chairman
(Members) Chris Kenny Chief Executive
Terry Babbs
Steve Green
Bill Moyes
Ed Nally
Barbara Saunders
Andrew Whittaker

In attendance: Julie Myers Corporate Director
Crispin Passmore Strategy Director (Items 1-11)
Fran Gillon Director of Regulatory Practice (Items 1-11)
Nick Glockling Legal Director (Items 1-11)
Edwin Josephs Director of Finance and Services
Alex Roy Head of Development and Research (Item 5)
Emily Lyn Regulatory Project Manager (item 5)
James Meyrick Regulatory Project Manager (items 3 and 4)
Matt Daykin Regulatory Associate (observing items 1-11)
Adewale Kadiri Corporate Governance Manager (minutes)

Item 1 – Welcome and apologies

1. The Chairman welcomed those present and in attendance to the meeting. Apologies had been received from Anneliese Day QC.

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

2. There were no declarations of interest.
3. Board Members were reminded to notify the Corporate Governance Manager of any hospitality extended and/or received in the course of their LSB work.

Item 3 – SRA performance on ABS authorisations

4. Fran Gillon introduced this paper, supported by James Meyrick. It was noted that improvements in the SRA's performance, observed over the last six months, had been maintained, but that senior management changes posed some risk to this continuing and the further actions identified by the SRA would need to be put in place to underpin sustained performance at a higher level. Therefore the Executive did not

recommend reducing the intensity of its focus on this area of the SRA's work. It was suggested that the current level of monitoring is sustained until the Christmas period, after which the Board would be asked to decide on next steps. This would also give the SRA's new Director of Authorisations time to build on the strong start that she had made.

5. In the course of its discussions, the Board noted:

- Particular concerns remain around the SRA's approach to the authorisation of MDP type firms and new entrants, and this had been highlighted in many submissions to the MoJ call for evidence by both firms and representative bodies
- The survey of applicants conducted by the LSB, although a small sample, supported the anecdotal evidence of difficulties faced by some applicants

6. **The Board resolved to note the contents of the paper, and to:**

- a) **Agree that the LSB should continue to monitor and report on the SRA's performance in ABS authorisation**
- b) **Agree that the Executive will report fully to the Board in January 2014 on:**
 - a. **SRA performance on ABS authorisation (and whether expected improvements have been delivered)**
 - b. **SRA's progress in introducing other changes in relation to regulatory scope and action on issues surrounding MDPs (and whether this is credible and acceptable)**
 - c. **Its assessment of the sustainability of performance in the first half of 2014**

Item 4 – Bar Council and IGRs: investigation

7. Fran Gillon introduced this item, supported by James Meyrick. The LSB's Internal Governance Rules (IGRs) have been in place since 1 January 2010. Their purpose is to give effect to the principle of regulatory independence, and they relate to the behaviour of and structure within approved regulators. This investigation related to the Bar Council's involvement in the BSB application to the LSB for approval of changes to the Code of Conduct in relation to the "Cab Rank Rule". It was an evidence based investigation which had sought to ascertain not just what the Bar Council and BSB had done, but also what they had failed to do. The draft investigation report put the behaviour alleged into historical context, as the requirement within the IGRs is for the Bar Council to delegate all regulatory activities to the BSB. This is the first time that the LSB may need to use its statutory enforcement powers.

8. In the course of the discussion, the Board noted

- They were being asked to make a judgement on the balance of the accumulated evidence, as there was no individual piece of evidence that conclusively proved the case
- The Executive's conclusion on the evidence presented was that it is "minded to" find that there had been a breach of the IGRs, and that this was contrary to the public interest
- The Board was not only being asked to find that there had been a breach of the IGRs, but in accordance with the LSB's Statement of Policy on compliance and enforcement, also whether the Bar Council had acted unreasonably. The allegation of unreasonableness in this case was supported by the Bar Council's evident failure to consider the IGRs, the fact that the breach had subsisted for a considerable period of time, and that the Bar Council had failed over that period to recognise in its behaviour that the IGR had come into, and remained, in force.
- Some further drafting changes were required to make the report sharper, nevertheless, the Board accepted its overall findings and were satisfied with the investigation's findings and concluded that the Bar Council's actions had been unreasonable.
- There was no conclusive evidence that the Bar Council had consciously sought to mislead the LSB, but they had been seriously remiss as to the likely impact of their statements and actions.
- The findings in the report were so serious that the Board discussed whether it should move immediately to consider if enforcement action might be justified. On balance, however, the Executive recommendation, having regard to the Board's Policy Statement on enforcement, that the Board should initially explore whether the matter could be dealt with by way of informal resolution was considered the appropriate way to proceed
- External legal advisers had been involved throughout the investigation and had advised upon the reasonableness of the "minded to" findings. There would be merit in reviewing how the investigation process had worked practically at a suitable stage in the future.

9. The Board resolved as follows

- a) That it was minded to make the findings as set out in the report;**
- b) A letter is to be sent by the Executive to the Bar Council, attaching a copy of the report, as amended in line with the minor comments from Board members, stating that the Board is minded to make the findings contained therein and to is seeking informal resolution of the issues by asking for details to be provided of clear and explicit restorative action that is to be taken by the Bar Council;**
- c) Upon hearing from the Bar Council, the Board will consider, at its meeting in October 2013, the most appropriate action to take in the circumstances; and**
- d) The letter to the Bar Council and the investigation report are to be published**

Item 5 – Legal Education and Training Review (LETR) draft guidance

10. Emily Lyn introduced this item. She reminded the Board that they had discussed the LETR report at their meeting in late July, and had asked that a draft consultation paper on proposed guidance for education and training be brought to this meeting. The draft guidance contains five outcomes that are considered important in introducing greater flexibility into the system. There is a risk that proposing this guidance would be seen as unjustifiably pre-empting what is being done by the commissioning approved regulators. The SRA were discussing their response to the review at their Board meeting today, but it was seen as important that the LSB urgently sets out clear parameters for what the future of education and training should look like.
11. The Board noted
 - The initial reaction to this guidance is likely to be fairly neutral, but concern was expressed about the shortness of the consultation period (8 weeks). This is particularly as the smaller approved regulators had not so far engaged at all with the LETR
 - The LSB has a clear responsibility to set for approved regulators the outcomes that are expected from them
12. **The Board resolved:**
 - a) **To approve the draft consultation paper and the proposed approach**
 - b) **That a Chairman’s forward to the draft guidance is to be drafted**
 - c) **That authority is to be delegated to the Chairman and Chief Executive to agree publication of the consultation paper following final amendments**
 - d) **The consultation period is to be increased from eight to twelve weeks**
13. As this was likely to be Emily’s last Board meeting, the Board thanked her for her enormous assistance on this and other workstreams, and wished her the best for the future.

Item 6 – Chairs of Regulatory Bodies

14. Crispin Passmore introduced this item. The issue had been discussed previously in agreeing the IGRs in 2009. The Board had subsequently considered concerns about the danger of “cultural capture” in the context of the dual self-certification process, but had not progressed this work due to resourcing priority decisions. However the issue remained a live one and the Executive considered that there was a strong case to publicly reconsider the issue now as a number of changes of personnel would occur in the coming 18-24 months.
15. The Board noted:
 - This issue transcends organisational architecture, and has a significant impact on the relationship between the regulator and the regulated community;

- This is the right time to reopen the debate in view of the fact that new BSB and SRA chair appointments are to be made in 2014. If the issue is not resolved now, a considerable amount of time would elapse before another opportunity to address it would arise;
- Simply appointing a lay person does not of itself guarantee that they would make a good chair, but overall, a lay chair was seen as the best option in terms of regulators both being seen to maintain independence and work more explicitly in the best interests of the public and consumers, and to do so in practice;
- The proposal should be that all approved regulators, with the exception of the Master of Faculties, move towards having lay chairs, but that existing non-lay Chairs be allowed to serve out their un-extended terms of office.

16. The Board resolved to

- a) Agree to consult for six weeks on a proposal that the IGRs made under section 30 of the Act are amended to require that chairs of regulatory Boards are lay**
- b) Agree that the proposal is to apply to all regulators, with the exception of the Master of Faculties, whose ecclesiastical law functions demand that he be legally qualified**
- c) Delegate sign off of the consultation paper to the Chairman and Chief Executive, in consultation with Barbara Saunders and Steve Green**

Item 7 – Minutes of meetings of 10 and 24 July and 29 August 2013

17. The minutes of the three meetings were agreed as accurate records.

Item 8 – Report of action points

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

Item 9 – Chief Executive's progress report September 2013

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

- The advertisement for the OLC Chair appointment had closed on Friday 6 September. Details of applications received will be made available to the selection panel shortly. The candidate pack for the OLC (lay and non-lay) member recruitment exercise was being prepared and a draft would shortly be shared with Steve Green and Ed Nally
- The advertisement for the LSB appointments should have been published on 2 September, but there had been delays in clearing the process for appointment with Number 10 and it was now awaiting the approval of the Lord Chief Justice. [Post-Board note: it will now be published by 20 September] Independent members of the selection panels have not yet been finalised but it is now expected that a senior judge will be a member of the panel for the LSB Chair
- The SRA had accepted the Board's points about the inadequacy of their consultation on the proposed practising certificate fee and would propose a different timetable for 2014/15;

- The government has launched a review of the future of advocacy, but its final terms of reference have not been published. It is to be led by Sir Bill Jeffery, a former permanent secretary of the MOD. The Board's current information was that it would not deal directly with advocacy, quality or education and training as these were matters for independent regulation, rather than government.
- The LSB has now received its first legal challenge by way of judicial review of the decision to approve the rule change application for QASA. The applicants have asked for the case to be expedited, meaning that it could be heard within the next three months. The LSB will shortly be making its own witness statements. The Executive is resisting calls for a Protected Costs Order, as it does not consider it appropriate for all sections of the profession to meet the costs of action brought for the benefit of a small number of practitioners.
- The Chief Executive formally thanked all colleagues and Board members involved for their assistance in finalising the response to the MoJ's call for evidence, which was already receiving positive comment

20 The Board resolved to note the Chief Executive's update.

Item 10 – Finance report for August 2013

21. Edwin Josephs presented this paper setting out the organisation's current financial position. September's report will include legal costs to date from the Bar Council investigation and the QASA judicial review. This currently amounted to an extra £17k, but was expected to rapidly rise to £60k and increase further as the hearing date neared. The Board noted that MoJ had been informed of the risk, but also that the Board had sufficient cash balances to meet costs and then recover any overspend in-year.
22. Overall, there is much less room for manoeuvre in this year's budget than in previous years. The budget had been profiled to take account of the office move, and most of the major costs would come out of capital funds which are not reflected in this budget. These costs can be managed between now and the end of the year.

23. The Board noted the Finance report.

Item 11 – Committee memberships

24. Julie Myers presented this paper, the purpose of which was to ratify changes to the memberships of the Audit and Risk Committee and the Remuneration and Nomination Committee.

25. The Board resolved to ratify:

- a) **The appointments of Terry Babbs and Anneliese Day QC as members of the Audit and Risk Committee, and**
- b) **The appointment of Barbara Saunders as a member of the Remuneration and Nomination Committee**

Items 12 and 13 were dealt with by the Board in private session.

Item 14 – Any other business

26. There was no other business.

Item 15 - Date of next meeting

27. The Board would next meet on 15 October 2013 at 9.30a.m. The venue would be LSB's offices at Victoria House, Southampton Row, London WC1B 4AD.

AK, 12/09/13

Signed as an accurate record of the meeting

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Date
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