

**Minutes of a meeting of the Legal Services Board (LSB) on 15 October 2013**

**Date:** 15 October 2013  
**Time:** 09:30 – 13:30  
**Venue:** Victoria House, Southampton Row, London WC1B 4AD

**Present:** David Edmonds Chairman  
**(Members)** Chris Kenny Chief Executive  
 Terry Babbs  
 Bill Moyes  
 Ed Nally  
 Barbara Saunders  
 Andrew Whittaker  
 Anneliese Day QC

**In attendance:** Julie Myers Corporate Director  
 Crispin Passmore Strategy Director  
 Fran Gillon Director of Regulatory Practice  
 Nick Glockling Legal Director  
 Edwin Josephs Director of Finance and Services  
 Dawn Reid Head of Statutory Decisions (items 5 and 8)  
 Alex Roy Head of Development and Research  
 James Meyrick Regulatory Project Manager (items 4 and 7)  
 Elisabeth Davies Chair, Legal Services Consumer Panel (item 7)  
 Harriet Gamper Consumer Panel Associate (item 7)  
 Nicholas Baré Regulatory Associate (item 4)  
 Sonya Gedson Regulatory Associate (item 8)  
 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 Steve Green.

**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 – Paper (13) 65 Bar Council investigation update**

4. Fran Gillon introduced this paper, supported by Bryony Sheldon and James Meyrick. The Board was informed that although there were small differences between them, both the Bar Council and the Bar Standards Board (BSB) had informally indicated their broad acceptance of the evidence base underpinning the investigation's findings of fact. However they remained unwilling at this stage to confirm acceptance of the report's "minded to" findings in writing and wanted to focus solely on acceptance of the proposed remedial actions. Without acknowledgment of the serious shortcomings in governance and behaviour, the Executive could not yet be fully confident of the Bar Council's commitment to implement the required improvements, and a final decision to accept informal resolution as the sole outcome, at the current time, could therefore not be considered desirable.
5. In the absence of informal resolution, having confirmed the Bar Council's behaviour to have been unreasonable, the Board discussed the various enforcement options open to it. In the course of this discussion, the following points were raised:
  - If the Bar Council is willing to take the identified remedial actions, there would be no need for a direction. If directions were issued, a breach could constitute grounds for imposing a financial penalty later on
  - The process of issuing a public censure does not require consultation, but the Bar Council would have an opportunity to make representations. In the course of those representations the Bar Council could confirm that it accepted the findings and undertake to do the things that it had already indicated it would do. In this case, the Board should consider whether informal resolution is appropriate.
  - Once formal action is commenced, the LSB must be prepared to pursue the statutory process, although informal resolution remains a possibility throughout.
  - The concerns raised by the investigation ought to be put into the public domain.
6. **The Board resolved to**
  - a) **agree the contents of the report and confirm that the Bar Council's actions were unreasonable**
  - b) **commence the formal public censure process as set out in the Legal Services Act 2007**
  - c) **issue a single communication to the Bar Council informing them that the tests for censuring them had been met, and**
    - a. **serve a formal Notice of proposed Statement of Censure**
    - b. **ask them to provide specific formal undertakings within 21 days as to the proposed remedial actions**
    - c. **emphasise the importance that the Board attaches to the findings in the report**
    - d. **the Council would be advised that the Board's final decision on censure would be taken at its next meeting,**
  - d) **Take no decision at this stage on whether to commence the process of giving statutory directions.**

**Item 7 – Paper (13) 69 Financial protection arrangements - response to Legal Services Consumer Panel advice**

7. Fran Gillon introduced this item which was a formal response from the LSB in response to the Panel's advice. Each of the recommendations had been considered. The SRA is to conduct a review of its financial protection arrangements, and a wide ranging discussion document is to be prepared which would cover a number of the issues raised. Professor Yarrow's draft report is presently being considered, and has already led to some interesting discussions around barriers to entry and exit.
8. In the course of the discussion, the Board noted
- The Consumer Panel was aware of the Board's earlier discussion and is supportive of the LSB's response. They are also in favour of scoping the advantages and disadvantages of formal schemes
  - The absence of data on financial protection was stark and unsatisfactory, but it was not clear how, without the use of its formal powers, the LSB would be able to obtain additional management information
  - The recommendation in para 15 that consumers should bear some risk was potentially difficult, as it is not clear what level of risk consumers should be expected to bear. It is not expected that consumers should provide all Professional Indemnity Insurance (PII) cover, but where there are gaps, "top up" products could be developed by insurers
  - There are differences in the arrangements for the protection of consumers from the impact of fraud and from those for negligence, and care must be taken not to forcefully conflate them
  - The possibility of a single compensation fund is an attractive one, but may not be practicable, particularly in relation to those consumers who are using unregulated providers. Concerns were raised about the funding for such a scheme, and the fact that levels of risk may be so high as to make it unaffordable

**9. The Board resolved as follows:**

- a) **That the report and the LSB response (subject to amendments) are to be published, confirming that some of the Panel's recommendations are accepted, and**
- b) **The LSB will seek to liaise with the SRA on its review of compensation arrangements.**

**Item 4 – Paper (13) 66 Regulatory standards – report on Approved Regulator progress**

10. Fran Gillon introduced this item, supported by James Meyrick and Nicholas Baré. The paper set out the progress being made by each of the approved regulators on implementing their action plans. It also provided options for the LSB's approach in 2014/15, the recommendation being for a formal update from each approved regulator, combined with the use of targeted thematic reviews. Themes for such reviews could include the regulation of in-house practitioners, transparency, and the

management of long running disciplinary issues. It was agreed that the Executive would return to the Board in due course with more detail on these reviews

11. The Board noted

- The process needed to provide approved regulators with opportunities to learn. A partial self assessment would be acceptable, so long as this is followed by a full one in due course
- Some of the criteria for choosing the thematic reviews would be based on the LSB's response to the MoJ call for evidence, particularly in relation to the research on regulatory barriers
- This proportionate approach is consistent with the Business Plan, but it needs to address issues around the paucity of data and consumer engagement
- The current process has had a significant impact on approved regulators and whatever process is to be used in the future must continue to hold them to account on how they are addressing areas of weakness
- The Board received an update on the SRA's R-View programme. This is described as more than an IT programme but a tool that would impact on every area of the SRA's work and underpins its commitment to outcome focused regulation. There were some significant risks around its implementation, but the Executive had received some reassurance that lessons from previous projects had been learnt. The Chief Executive had written to the SRA (at Annex D) to give early thoughts from a "critical friend" perspective.

12. The Board resolved:

- a) to note the progress report of the performance of approved regulators against their action plans
- b) approve the proposal that the 2014/15 regulatory standards assessment takes the form of a progress report from all regulators and a number of thematic reviews
- c) note that the Board would be provided with a list of potential thematic reviews in the New Year
- d) note the need for the final programme to dovetail effectively with the R-View programme in particular.

**Item 5 – Paper (13) 67 Designation applications: related statutory instruments**

- 13 Dawn Reid presented this paper summarising the range of statutory instruments that would be required in the event that the designation applications currently being considered are approved. There are four applications currently being considered, two (approved regulator and licensing authority) from the Institute of Chartered Accountants in England and Wales (ICAEW) for probate work. The others are for ILEX Professional Standards Ltd (IPS) for designation as an approved regulator for probate activities and Intellectual Property Regulation Board (IPREG) as a licensing authority. These applications are to be presented to the November Board meeting for approval

14. The Board noted:

- These are different applications, with different levels of risk attached to each
  - The processes from Board approval to review by the MoJ are rather convoluted. On the current timetable the orders will not be completed before the summer recess next year, and as such efforts are being made to take time out of the process
  - The Act requires the LSB to consult on the orders, and discussions are taking place with the MoJ on the best time for this to take place. Normally, the consultation papers would be seen first by the Board, but approval is being sought for these to be signed off by the Chief Executive. It was agreed that the wording of consultation papers should not be a matter for the Board
  - It was noted that the ICAEW consultation would provide another opportunity for other regulators to reissue their objections to its application
  - Some concern was expressed about the appearance that the LSB was prejudging the applications, but it was noted that the process had reached a sufficiently advanced stage for this not to be an issue. In any event, the consultation would not take place until after Board approval.
- A warning notice had been issued to the Cost Lawyers' Standards Board (CLSB) in respect of their application to regulate trainees. There were questions as to whether they had the power to undertake this activity and if there was a regulatory case for it. The Executive's recommendation would be discussed at the November meeting.

15. The Board resolved to

- a) note the contents of the paper, and
- b) delegate to the Chief Executive the final sign off of the consultation papers in relation to orders under section 69 or section 80 of the Act in respect of IPS, IPREG and ICAEW

**Item 6 – Paper (13) 68 Changes in competition in regulated legal markets**

16. The Board resolved to note the contents of the report which has now been published.

**Item 8 – Paper (13) (70) Solicitors Disciplinary Tribunal Budget 2014**

17. Dawn Reid presented this item, supported by Sonya Gedson. The recommendation was to approve the application from the Solicitors Disciplinary Tribunal (SDT) for its 2014 budget. The proposed budget is of £2.8m, representing a 2.4% increase on the 2013 figure. The Memorandum of Understanding between the SDT, The Law Society and LSB has recently been reviewed and agreed between all the parties.

18. The Board noted

- More information is now being received about the work of the SDT than before, and significant improvements in its performance had been noted. However, questions were raised about the need for an increase in its budget when there

had been an under spend in the previous two years. It was noted that any under spend would revert to The Law Society

- No Alternative Business Structure (ABS) appeals had yet been received by the SDT, and the Board were unclear of the assumptions upon which the 40 sitting days set aside had been based. It was acknowledged that as the ABS model matured, changes in ownership could generate some casework for the Tribunal
- A new User Group Committee (UGC) had been established with a view to improving case management and communication. The UGC will report annually on key performance indicators

**19. The Board resolved to approve the SDT's budget application of £2,847,020 for 2014, and delegated the Executive to raise the question about the justification for the ABS allocation**

**Item 9 – Minutes of the Board meeting of 11 September 2013**

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

**Item 10 – Report of action points**

21. 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 11 – Paper (13) 71 Chief Executive's progress report September 2013**

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

- The progress towards the office move is continuing. It was confirmed that the LSB will be take up residence at One Kemble Street with effect from 2 January 2014. The tender for IT support had been sent out and responses were expected by the end of this month. Extra help with the move had been secured from Consumer Focus. Pressure from the Competition Commission and BIS for the LSB to agree to a temporary move within Victoria House had intensified, but the proposal made was neither financially nor technically viable, and would be disruptive to the organisation's work at a particularly sensitive time. The Board endorsed this assessment and underlined the importance of the Executive giving priority to minimising risk to its own operations;
- The outgoing minister had approved the Consumer Panel appointments and as such the November appointments would be confirmed once terms and conditions had been agreed. The advertisements for the LSB Chair and Member recruitment exercises have now been published.
- The SRA have appointed Paul Philip as their new Chief Executive. He is presently Deputy Chief Executive at the General Medical Council, and has a good operational management reputation.
- The QASA judicial review application is likely to be heard in December. The LSB have changed solicitors from Herbert Smith to Field Fisher Waterhouse. The Criminal Bar Association had argued for a £15,000 costs cap, but Mr Justice Ousely eventually decided on £150,000. The LSB's witness statement would be finalised shortly. The issues covered in the grounds include: lack of evidence of a

problem necessitating such a scheme, threat to judicial independence, interpretation of the European directive and an overstretch of LSB's powers

- The Chairman and CEO would shortly meet the Permanent Secretary of the MoJ to discuss diversity in the light of our successful roundtable and her recent speech on judicial diversity. The LSB response to the MoJ review was generally well received. The Lord Chancellor had written personally to the Chairman commending the response, and in responding the Chairman had suggested a brief meeting to discuss the issues. Contact had also been made with the new junior minister with whom an introductory meeting has been arranged. The Chief Executive has met Sir Bill Jeffrey who is chairing the review of criminal advocacy. He is still in the fact finding phase of his work and received the Chief Executive's comments with interest
- The LSB's role as oversight regulator has been offered as a model for the regulation of higher education. A letter is to be sent to David Willetts explaining our position on more flexibility in the provision of legal education
- The dual self certificate for The Law Society and SRA has now been received. A request had been received from The Law Society's Business Oversight Board asking that the section 55 requests be stopped. Both were likely to be resolved by the next meeting

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

**Item 12 – Paper (13) 72 Q2 Performance Report**

24. Julie Myers presented this quarterly report in advance of the discussion with MoJ. Resource pressures have led to Business Plan commitments being re-scoped, with some being slightly delayed. It is a challenging programme and progress has been hindered by the addition of unexpected pieces of work. It was agreed that good progress was being made despite these pressures

**25. The Board resolved to agree to the use of the Q2 performance report as a basis for discussion with the MoJ**

**Item 13 Paper (13) 73 Finance Report for September 2013**

26. Edwin Josephs presented this report.
27. The Board noted
- It is anticipated that legal fees will rise as a result of the QASA JR – efforts would be made to meet these, but they had not been budgeted for, and costs could amount to at least £300,000 if the LSB loses the case.
  - There is to be a significant saving to be made from the lower costs of office accommodation following the move to One Kemble Street, which would both generate a lower budget and assist in managing other cost pressures on the organisation
  - Provision had been made for the office move as part of capital costs

**28. The Board noted the Finance report.**

**Item 14 – Any other business**

29. There was no other business.

**Item 15 - Date of next meeting**

30. The Board would next meet on 27 November 2013 at 1.00p.m. The venue would be LSB's offices at Victoria House, Southampton Row, London WC1B 4AD.

AK, 23/10/13

Signed as an accurate record of the meeting

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Date  
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