

Minutes of a meeting of the Legal Services Board (LSB) on 27 November 2013

Date: 27 November 2013
Time: 13:00 – 17:00
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: Karen Silcock Lay Member, Office for Legal Complaints (items 4-5)
 Adam Sampson Chief Ombudsman, Legal Ombudsman (items 4-5)

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
 Michelle Jacobs Business Planning Associate (items 4-6, 15-16)
 Dawn Reid Head of Statutory Decisions (items 7-10)
 Sonya Gedson Regulatory Associate (items 7-10)
 Paul Greening Regulatory Associate (items 7-10)
 Matt Daykin Regulatory Associate (items 7-10)
 Bryony Sheldon Regulatory Project Manager (item 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 – Matters dealt with out of committee since the 15 October 2013 meeting

4. The Board noted formally the paper on the Bar Council investigation which had been circulated on 13 November and agreed on 14 November, and the report on the appointment of the Chair of the Office for Legal Complaints, that had been circulated to all Board members bar the named candidate on 6 November and agreed on 8 November.

Item 4 – Paper (13) 77 Draft OLC Budget and Business Plan 2014/15

5. The Chairman introduced this item, reminding the Board that they would be asked to approve the Office for Legal Complaints' (OLC) budget formally in March 2014. The purpose of this session was to provide the Board with some insight into the OLC's plans for the year. The Business Plan in particular is "work in progress", and was a draft of the document that will be put out to consultation.
6. Karen Silcock, lay member of the OLC led the discussion, highlighting that:
 - 2014/15 is the first year of a three year strategic plan
 - The budget proposals are based on what is achievable within the Legal Ombudsman's (LeO) current jurisdiction. It did not include any assumptions about unit cost savings that could be made from extending the jurisdiction. The OLC Board's focus must be on improving performance within the existing jurisdiction
 - The cost review, undertaken in July 2013 had led to 44 roles being made redundant across the organisation. Planned expenditure for the year 2013/14 has now reduced from £17m to £15.6m, and it is expected that 8000 cases would be resolved, with unit costs of £1960 (falling to £1865 when the full year impact is taken into account)
 - Assumptions within the budget for 2014/15 included that:
 - any new activities, such as the management of complaints about Claims Management Companies (CMC), would be funded separately
 - activity levels are expected to remain stable, with the impact of any economic upturn offset by improvements in the handling of first tier complaints
 - around 7800 complaints per annum would be resolved
 - Key risks were highlighted and they included variation from expected case volumes, and delays in the implementation of improvements to the IT infrastructure
 - In 2015/16
 - it is expected that there would be more significant productivity gains
 - the aim is to reduce the organisation's footprint in Birmingham, with possible relocation elsewhere in the city also being an option

- there would be a drive towards achieving unit costs of below £1500 per case.

7. In the course of discussion, it was noted that:

- [REDACTED]
[REDACTED]
[REDACTED] [FoIA exempt: s43]
- In the light of the OLC presentation, its Board may want to consider further whether the consultation draft hit the right balance in its presentation between promoting a growth strategy, and improving performance within the current jurisdiction: the latter seemed wrongly downplayed
- There was some discussion about the unit costs of comparable schemes, and it was agreed that more work was needed to gain clarity in this area.
- Case fee rules had changed on 1 April, and as such the case fee income figures in the document are based only on the last 4-5 months. More information would be available by the time the budget comes back to the Board for approval. The amount received under this heading was also dependent on a number of variables, including bad debts
- There was discussion about the target for the majority of complaints to be resolved within 90 days. The introduction of a 56 day target for some cases is an attempt to differentiate between cases, but the way in which the UK implements the EU ADR directive may affect this
- Provision of a new IT system is seen as a potential “game changer” in terms of timeliness, as it could introduce interactivity between complainant and lawyer. This would need to be managed carefully
- In terms of the OLC’s plans and aspirations, bringing CMCs within their jurisdiction is the immediate priority. However, the Law Society had already registered their opposition to this development, and the extension was dependent on the ability of BIS and MoJ to identify a vehicle for amendments to the primary legislation. Wider expansion into other professional services would depend on Government decisions on implementation of the ADR directive. The LSB noted this position.

8. The Board resolved to note the OLC’s Draft Business Plan and Budget for 2014/15

Item 5 – Paper (13) 78 Levy Rules – Consultation Paper

9. Edwin Josephs introduced this item which was designed to deliver an LSB commitment to review the rules governing the levy to fund the LSB and OLC. The main changes proposed, which were the introduction of minimum contributions for all approved regulators and using actual OLC complaint data to determine the levy payable by each approved regulator, had been discussed with the majority of

approved regulators and OLC colleagues. Officials at Her Majesty’s Treasury had also been consulted. All were broadly comfortable with the proposals.

10. The Board resolved, subject to one small amendment and further discussion with OLC colleagues, to:

- a) approve the proposals for consultation, and**
- b) delegate the agreement of any final drafting changes to the Chairman and Chief Executive**

Item 6 – Paper (13) 79 Draft LSB Business Plan and budget proposal for 2014/15

11. Julie Myers introduced the draft Business Plan, noting that the document was still work in progress, and outlined refinements made since circulation to the Board. The plan represents the final year of a three year strategy, and had been structured in the same way as in the two previous years. Some changes had been made to the way in which workstreams are described, with, for example, “cost and complexity of regulation” now being referred to as “regulatory reform”, and “quality” now “improving the consumer experience”. However, there are no new major initiatives.

12. In the course of the discussion,

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[REDACTED] [FoIA exempt: s36(2)(b)(ii)]
- There was concern that the proposed work plan would lead to a focus on rule changes to the detriment of delivering real change for consumers
- It was noted that the 2014/15 budget proposal amounted to 14% less cash compared to that of 2010/11, and that this fact should feature prominently

13. The Board resolved to

- a) **Approve the draft plan as outlined and budget proposal for consultation**
- b) **Delegate final approval of the document to be issued for consultation to the Chairman and Chief Executive**
- c) **Agree to consult on the basis of a draft budget for 2014/15 of £4298k (2013/14) 4,448k) – a reduction of £150k**

Item 7 – Paper (13) 80 Institute of Chartered Accountants in England and Wales (ICAEW) applications for designation as an approved regulator and licensing authority for probate activities

14. Dawn Reid introduced this item. This was the culmination of a year's work involving a number of colleagues, and it is the first application for regulator and licensing authority status from a completely new body. The decision required is to make recommendations to the Lord Chancellor for his approval of ICAEW's applications for designation as an approved regulator and licensing authority in relation only to non-contentious probate matters. The application makes it clear that in the event that any of the matters become contentious, they will be passed on to appropriately qualified practitioners. The vast majority of applicants will be existing ICAEW registrants.
15. The following points were made in the course of the discussion:
 - As the ICAEW is not an Applicable Approved Regulator (AAR), they are not required to comply with the full Internal Governance Rules (IGRs). Probate is only a small part of their work, and as such a Probate Committee, made up of five lay and five non-lay members has been created. It was noted that the ICAEW definition of lay goes beyond what is required under the Legal Services Act, and these arrangements were considered to be appropriate
 - Because of the length of time that it will take for section 69 and 80 orders to be drawn up, interim arrangements have been put in place for dealing with appeals
 - This work is considered to carry a very low risk compared to other reserved activities, but nevertheless, the application represents an important strategic development for the LSB. Indications are that up to 250 ICAEW registered firms may ultimately become involved in this work, but the Institute has aspirations to grow its own capability into other reserved activities to enable it to regulate a wider range of entities.
 - In response to questions about membership of the Probate Committee, it was noted that the Chairman is appointed via an independent appointment panel which, on this occasion, had included the chair of IPReg. The Committee has a separate budget which it sets itself, but can also request resources from the central area
 - The Board noted the following potential future issues:
 - a consistent definition of non-contentious probate activity was required, but the Board were assured that there would be no inadvertent breach

- how any future conflict within ICAEW's Code of Ethics between the duty of disclosure and the duty to withhold on the grounds of client confidentiality would be managed
- there were significant differences between ICAEW members and solicitors in relation to the amounts that could be declared as *de minimis* payments to charity from clients' funds.

16. The Board resolved to

- a) Grant (under paragraph 14(1) of Schedule 2 to the Act) the ICAEW's application for a recommendation to the Lord Chancellor for designation as an approved regulator for probate activities**
- b) Grant (under paragraph 12(1) of Schedule 10 to the Act) the ICAEW's application for a recommendation to the Lord Chancellor for designation as a licensing authority for probate activities**
- c) Delegate to the Chairman and Chief Executive approval of the drafting of the recommendation**
- d) Delegate to the Chairman and Chief Executive approval of the drafting of the final decision notice**

Item 8 – Paper (13) 81 Application from the Chartered Institute of Legal Executives (CILEX)/ILEX Professional Services Limited application (IPS) for designation as an approved regulator

17. Dawn Reid introduced this paper, which is an application for designation as an approved regulator for reserved instrument activities and probate.

18. The Board noted that

- IPS had previously made an application in 2010 for the conduct of litigation and probate activities, but this had been withdrawn as they had agreed that they did not have the requisite knowledge and resource to be an effective regulator of entities at that time
- Since then, both CILEX and IPS had invested appropriately in gaining the knowledge and expertise required. They already had a strong track record in education and training and the Executive was satisfied that their arrangements are appropriate. IPS' organisational competence had developed significantly and its staff complement risen from four to sixteen
- Senior LSB colleagues had visited and spent time with one of their Board members, and considered their authorisation and supervision process. These processes are new to them and there are risks involved. Also, some roles, including within their Strategic Risk Committee, need to be filled. However, the overall assessment is that their processes are fit for purpose

- This designation could lead to the creation of new types of firms with lower profit and salary expectations, and focusing on different parts of the market. Many such firms are likely to have an interest in will writing.

19. The Board resolved to

- a) Grant the application under Schedule 4, Part 2, paragraph 14(1) and make a recommendation under Schedule 4, Part 2, paragraph 16(2) that CILEx be designated as an approved regulator for probate activities and reserved instrument activities**
- b) Delegate to the Chairman and Chief Executive approval of the drafting of the recommendation**
- c) Delegate to the Chairman and Chief Executive approval of the drafting of the final decision notice**

Item 9 – Paper (13) 82 Application from the Intellectual Property Regulation Board (IPReg) on behalf of the Chartered Institute of Patent Attorneys (CIPA) and the Institute of Trade Mark Attorneys (ITMA) for designation as a licensing authority

20. Dawn Reid introduced this item which is an application from IPReg to be designated as a licensing authority. The aim of this application is to regularise existing activities currently covered by transitional arrangements, rather than move into new areas.

21. It was noted that:

- IPReg has now acted to introduce formal requirements to cooperate with LeO, as required by S145 of the Act
- There had been some correspondence with the Lord Chief Justice (LCJ) following a misunderstanding between IPReg and the Consumer Panel about arrangements for Continuing Professional Development (CPD). The LCJ had also raised a concern that the description of the scope of activities that IPReg could not regulate was not sufficiently comprehensive. These issues have now been addressed

22. The Board resolved to

- a) Grant the application for a recommendation to the Lord Chancellor (under paragraph 12(1)) of schedule 10 to the Legal Services Act that CIPA and ITMA are designated as licensing authorities**
- b) Delegate to the Chairman and Chief Executive approval of the drafting of the recommendation**
- c) Delegate to the Chairman and Chief Executive approval of the drafting of the final decision notice**

23. The Board noted that these applications, taken together, represented major steps towards liberalising the market. It was suggested that this could be one of the themes in the Chairman's speech at the Hertford Seminar on Regulation on 9 December.
24. The Board commended this as an impressive piece of work and congratulated the Rules Team and other colleagues who had worked on the applications.

Item 10 – Paper (13) 83 – Application from the Costs Lawyer Standards Board (CLSB) to regulate trainee Costs Lawyers

25. Dawn Reid introduced this item, which is an application under rules change regulations to introduce regulatory arrangements for trainee cost lawyers.
26. The Board noted that:
 - The application had initially been made in October 2012. A warning notice was subsequently issued in December on the basis that CLSB did not have the delegated authority to regulate trainees, and that the application did not sufficiently explain the problem that the proposed regulatory intervention was seeking to address
 - CLSB have now obtained the requisite delegated authority to regulate trainees from the Association of Cost Lawyers. The LSB has been informed that there are 217 trainees, a quarter of whom work in solicitors' offices and would therefore be regulated by the SRA, but no further information has been provided, despite the fact that the warning notice had been issued more than a year ago
 - This proposal is not considered to be proportionate or targeted and does not therefore accord with the Better Regulation principles
 - The CLSB had registered their disappointment with the LSB's approach to their application and it is likely that they will raise the matter with the Lord Chancellor. However, it was agreed that the application does not add to the quality of training. It was acknowledged that attempts to engage with the CLSB leadership on this issue had been unsuccessful
 - The Board noted that no details had been included in the paper on the exchanges between LSB and CLSB between November 2012 and February 2013, and it was agreed that the draft decision notice would be amended to include this, such that an explanation of the chronology of the decision to refuse the application is on record
 - It was brought to the Board's attention that this was the first time that they had consciously turned down an application on the basis of considerations around proportionality and targeting. The decision was therefore potentially precedent setting and colleagues would need to ensure a consistent approach for the future.
27. **The Board resolved to**
 - a) **Refuse the application by CLSB to alter the regulatory requirements for trainee Costs Lawyers,**

b) Agree the decision notice, set out in Annex A, amendments to which are to be made by the Head of Statutory Decisions

Item 11 – Paper (13) 84 – First-tier complaint handling

28. Fran Gillon introduced this item to provide the Board with an update on the LSB's work in relation to first tier complaint handling. The Board expressed its disappointment with the lack of focus on this issue within approved regulators. On the other hand, the OLC's work in this area has been helpful to LSB colleagues in assessing the progress that had been made
29. The Board noted:
- Section 112 of the Legal Services Act places a clear obligation on approved regulators in this area. The question was raised as to whether this issue could be worked into the proposed regulatory reviews
 - Opportunities to work more collaboratively with LeO should be taken, and the areas requiring further work by approved regulators should be set out publicly
 - Despite the lack of progress from approved regulators, the number of complaints being referred to LeO is falling
 - The Chief Executives of the SRA and BSB would be meeting shortly to discuss signposting arrangements. LSB would be represented at a senior level to ensure that robust action emerged.
 - Although the current situation did not call for major new initiatives in 2014/15, it was important that the LSB avoided giving any inadvertent message that the subject demanded less priority from regulators. The Board should continue to troubleshoot where necessary and take opportunities to make further progress as they arose.
30. **The Board resolved**
- a) **That the LSB will continue to work closely with LeO to ensure that its initiatives are recognised by approved regulators**
 - b) **That no new substantial project work will be carried out on first-tier complaint handling during 2014/15 pending the outcome of the Legal Services Consumer Panel Tracker Survey and Impact Report, and the government's decision on the implementation of the EU ADR directive**
 - c) **That the issue will be reconsidered in full for the LSB's 2015/16 business plan**
 - d) **To note that approved regulators' responses to LSB's July 2012 letters will be published**

Item 12 – Minutes of the Board Meeting held on 15 October 2013

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

Item 13 – Report of action points

32. 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 14 - Chief Executive's progress report November 2013

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

Office move

- Progress towards the office move remains on track. IT support provision has been secured, and the new supplier will work alongside the Competition Commission team to ensure a smooth transition. Thanks were extended to Consumer Futures for providing the assistance of their staff as well as free access to their meeting rooms.
- The LSB's last day at Victoria House will be 20 December, and the move to One Kemble Street will take place on 2 January. Plans for cover over the holiday period are in place

SRA ABS authorisations

- The regular report on SRA ABS authorisations had been received on 15 November. A total of 217 applications had been approved to date; 82 had been submitted since 15 May and 11 had been withdrawn. There are increasing concerns about the number of withdrawn applications, with 34 having been worked on for between six and twelve months before withdrawal. It has not been easy to track the reasons behind these withdrawals, and a few had been withdrawn and then almost immediately re-submitted
- Monthly meetings are being held with the Director of Authorisations, who has promised improvements in the next two to three months. Resources are being targeted at clearing the backlog, but this may have a knock-on effect on more recent applications
- The Board will be provided with a full update and discussion of the potentially complex options at the January 2014 meeting

QASA

The judicial review application is to heard in Court 3 at the Royal Courts of Justice from 28 November . Scenario planning is to take place to consider all possible outcomes. Judgement is expected to be delivered before Christmasⁱ,

and a conference call may be needed to decide on an appeal in the event that the challenge is successful

Statutory decisions

The Chief Executive briefed the Board on informal discussions which had taken place with the Bar Standards Board prior to their recent issuance of guidance on treatment of VHCC fees in the weeks before the introduction of their new code.

Lay Chairs

The consultation period has now ended with a variety of views expressed. The matter would return to the Board in January and would require particularly careful judgements.

Communications activity

- Meetings with the MoJ, including the new junior Minister, Shailesh Vara, had established that Ministers were not yet clear what approach they will take on the review of regulation.
- The Chairman and Chief Executive will be meeting the Attorney General and Solicitor General on 28 November.

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

Item 15 – Paper (13) 85 Annual Review of LSB Risk Management Strategy

35. Julie Myers introduced this item which sought the Board's approval to the approach to managing risk across the organisation. As colleagues had become more comfortable with the concept of risk management, much of the descriptive material within the strategy is no longer required and had been stripped out. The revised strategy has been endorsed by the ARC.

36. The Board resolved to approve the revised LSB Risk Management Strategy.

Item 16 – Paper (13) 86 Annual Review of LSB Corporate Risk Register

37. Julie Myers introduced this item. A major review of the Register had been undertaken over the summer period. It is now shorter, and captures only the key risks facing the organisation rather than other background issues. This new version has already been reviewed three times by the Gateway Group and had also been considered at ARC where some of the risks and mitigations had been revised. The ARC's recommendation that more bulleted descriptions be used had been followed. Terry Babb's input into the work was noted with thanks

38. The Board noted the LSB Corporate Risk Register.

Item 17 – Paper (13) 87 Annual Review of LSB Governance Manual

39. Ade Kadiri introduced this item. There were no major amendments proposed but the ARC had asked that the potential refusal to accept claims for alcoholic beverages under the Colleagues Expenses Policy be referred for consideration by the Board. It was noted that the ARC had not been persuaded that this amendment was needed.

40. The Board resolved

- a) **Not to approve either of the suggested changes to the Colleagues Expenses Policy refusing claims for alcoholic beverages**
- b) **To accept all of the other suggested areas for revision of the LSB Governance Manual as endorsed by the ARC**
- c) **To agree the revised manual prior to publication and circulation**

Item 18 – Paper (13) 89 Finance Report to 31 October 2013

41. Edwin Josephs presented this report. It was noted that there would be an underspend over the last four to five months of the financial year on the LSB's accommodation costs as a result of giving up the two larger meeting rooms in its present accommodation earlier and the lower rental costs of One Kemble Street. It was also confirmed that the actual cost of moving to One Kemble Street had been covered and accounted for.

42. The Board noted the Finance Report.

Item 19 – Paper (13) 90 Report of the 23 October Audit and Risk Committee meeting

43. Steve Green introduced this item. It was noted that the ARC, sitting as a Finance Committee had spent much time on the LSB budget proposal. A minimal internal audit programme had been agreed for this year, but the auditors were comfortable that this is sufficient to enable them to provide proper assurance

44. The Board noted the key points arising from the Audit and Risk Committee meeting held on 23 October 2013.

Item 20 – Any other business

45. This was Crispin Passmore's last Board meeting. The Board thanked him for all his hard work, stating that they had enjoyed working with him, and had valued his deep understanding of the complexities of the sector. They looked forward to working with him again once he takes up his role at the SRA

Item 21 - Date of next meeting

46. The Board would next meet on 29 January 2014 at 9.30a.m. The venue would be LSB's offices at One Kemble Street, London WC2B 4AN.

AK, 29/11/13

Signed as an accurate record of the meeting

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Date

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ⁱ Post Board note: At the end of the hearing on 3 December, Lord Justice Leveson indicated that due to the amount of material produced and the complexity of the issues raised, it is unlikely that judgement will be delivered before the start of the new judicial term on 6 January 2014