

## Minutes of a meeting of Legal Services Board (LSB) on 23 May 2013

**Date:** 23 May 2013  
**Time:** 09:00 – 12:15  
**Venue:** Victoria House, Southampton Row, London WC1B 4AD

**Present:** David Edmonds Chairman (except items 8 and 11)  
**(Members)** Chris Kenny Chief Executive  
 Terry Babbs  
 Steve Green (chairing items 8 and 11)  
 Bill Moyes  
 Ed Nally  
 Barbara Saunders

**In attendance:** Elisabeth Davies Chair of the Consumer Panel (item 11)  
 Elizabeth France Chair, Office for Legal Complaints (item 4)  
 Harriet Gamper Consumer Panel Associate (item 11)  
 Fran Gillon Director of Regulatory Practice  
 Nick Glockling Legal Director  
 Edwin Josephs Director of Finance and Services  
 James Meyrick Regulatory Project Manager (items 5 & 6)  
 Julie Myers Corporate Director  
 Crispin Passmore Strategy Director  
 Tom Peplow Regulatory Associate (item 8)  
 Alex Roy Head of Development and Research (item 8)  
 Adam Sampson Chief Executive, Office for Legal Complaints (item 4)  
 Bryony Sheldon Regulatory Project Manager (item 7)  
 Cat Mariner Corporate Governance Associate (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 and Andrew Whittaker, Board members.

### 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 about hospitality extended and/or received in the course of their LSB work.

### Item 3 – Paper (13) 28: LSB's role as oversight regulator

4. Crispin Passmore introduced this paper, supported by Nick Glockling. The paper had been produced against a background of challenge from some in the legal profession to the Board taking an active view of its responsibilities. The Executive sought guidance from the Board on how best to approach communication of the LSB's role as oversight regulator.

5. During discussion, the following points were raised:
- The Board agreed with the content of the paper, but felt that the drafting did not fully reflect the impact of previous working papers on the matter;
  - The proposal that the Chair summarise the contents of the paper in a letter to approved regulators was thought unlikely to have an impact and risked causing unhelpful controversy;
  - Any communication strategy would need to recognise - and mitigate - the possibility that a positional statement might appear defensive, although the Board recognised that this was not the intention;
  - It might be appropriate to publish the themes from the paper alongside the LSB annual report, circulating as a companion document, and referring to specific sections as and when it became necessary to exercise the LSB's powers.
6. **The Board noted the analysis contained in the paper; rejected the proposal to send a letter to approved regulators; agreed instead that a form of words to be agreed by the Chairman and CEO would be published alongside the annual report and on the LSB website.**

#### **Item 4 – Paper (13) 29: Draft Legal Ombudsman Annual Report 2012/13**

7. Elizabeth France introduced the paper, supported by Adam Sampson. The OLC had met all but its cost per case targets for the year and had set out challenging objectives for the next. During a discussion of the report, the following points were raised:
- The Chief Executive of the Legal Ombudsman confirmed that, although 71,000 contacts had been made and 7,630 cases had been resolved, not all contacts became complaints, and thus page 7 might be amended to make this clearer to a wider audience;
  - The report indicated that a decline in informal resolution had taken place. OLC representatives confirmed that the OLC Board was looking into this, and that details of how this would be addressed were included in the business plan;
  - The case studies were particularly useful in providing context;
  - The OLC was moving towards greater engagement and alignment with regulators on the issue of emerging risks. The organisation was particularly concerned by development around Conditional Fee Agreements (CFAs), and would signal to regulators that they may need to address this if complaints increase. OLC assured the Board that they would work to monitor activity in this area and contribute to greater awareness and assessment of risk by regulators, including on damage-based agreements;
  - OLC had noted that the table on page 27 was incorrectly formatted and would amend this;
  - The Board expressed thanks that its request that the costs of claims management set up be clearly identified and separately accounted for had been met;
  - The Board noted the low percentage of immigration and asylum cases, and that this represented a particularly vulnerable demographic. It was thought likely that low signposting rates and unregulated advice firms were partly behind this figure;

- On IT issues, OLC were pursuing procurement, and waiting for the process to get underway before negotiating whether OLC or MoJ would sign the contract. An OLC Board member had been assigned to oversee this work.

**8. The Board noted the report of the Legal Ombudsman.**

**Item 5 – Paper (13) 30: SRA performance issues**

9. Fran Gillon introduced the paper. Performance in approving ABS applications had been patchy. The Executive proposed to obtain confirmation of the information and timescales provided by the SRA, and sought guidance from the Board on the possible scope of an investigation, should it be decided to launch one at a later meeting.

10. The following points were made during discussion:

- There was broad contentment with the paper, and agreement that long-term resolution depended on robust leadership and governance at the SRA;
- The Board expressed concern that the SRA would retain a two-stage application process, and confirmed the need to continue to challenge on this;
- The SRA would need to establish the nature of risk through the application process and consider how to engage in appropriate subsequent supervision. It would also need to ensure that any re-engineering of the application process resulted in better overall outcomes than were presently in place;
- The Board acknowledged that, although the SRA was in a state of uncertainty and change, it was necessary to maintain close scrutiny of the regulator, and to continue focusing on development of senior leadership stability and effective governance.

**11. The Board resolved to note the paper; the Board agreed that the proposed letter to the SRA should be redrafted to reflect the comments of the Board;**

[REDACTED]

[FOIA exempt: s36(2)(b)]

**Item 6 – Paper (13) 31: Bar Council and internal governance rules**

12. Fran Gillon introduced this paper, supported by Nick Glockling, James Meyrick and Bryony Sheldon. The paper laid out concerns that the Bar Council may have engaged in an inappropriate level of involvement in the making and alteration of the Bar Standards Board's regulatory arrangements. She confirmed that external legal support had been obtained, and that flexibility had been built into the scope of the proposed investigation.

13. The Board noted:

- Support for the proposal and agreement with the paper, and that it was necessary and appropriate to pursue the investigation, although there would need to be careful consideration on any points of subsequent challenge;
- Strong disappointment at the possibility that the LSB itself may have been deceived in the matter;
- Any investigation would need to remain flexible and ensure provision for

- external scrutiny of results;
  - The Chief Executive confirmed that, provided that significant unforeseen issues did not arise, the LSB had sufficient resource to pursue both SRA and BSB issues.
- 14. The Board agreed to launch a formal investigation according to the scope set out in the paper.**

**Item 7 – Paper (13) 32: Draft consultation on guidance for licensing authority treatment of special bodies**

15. Bryony Sheldon introduced this paper. Meetings with key stakeholders had informed its development. Issues remained around the scope of any possible regulation and the timetable for implementation. Transitional protection for special bodies was proposed to end in January 2016.
16. The Board noted:
- the strength and clarity of the paper and thanked the team;
  - That under the present system, consumers did not have access to the Legal Ombudsman. It was also thought likely that recent Legal Aid changes would drive up the number of users of services provided by special bodies, and that there would be an attendant increase in risk;
  - However, maintaining the transitional protection should be flagged as a legitimate and viable option in any consultation, particularly as the paper did not indicate substantial evidence of current consumer detriment arising for consumers of special bodies' services under with the current system and it was unlikely that putative licensing authorities would be in a position to devote the necessary effort to the issue in the near future, given more pressing priorities;
  - Special bodies required – and deserved – certainty and clarity. None of the approved regulators currently operating properly understood the requirements of special bodies, and the SRA was not thought to be likely to be in a position to take on the additional supervision for a significant period.
- 17. The Board agreed that the Executive should revisit the paper in the context of points raised during discussion, and consider additional communication to special bodies to clarify the position, reporting back at the July meeting.**

**Item 8 – Paper (13) 33: Damage-based agreements**

18. Alex Roy introduced this paper. The Executive had written to regulators in February to request further detail on how they planned to approach managing any risks they had identified in relation to the introduction of legislation permitting damages-based agreements.
19. The Board noted the following:
- The model could be positive in terms of access to justice, although the potential for detriment arising from unscrupulous marketing approaches was a matter of concern;
  - Regulators did not generally feel that there was a need for specific guidance on the matter, and that a risk-based regulatory approach was appropriate;
  - It would be necessary, however, to monitor regulation of this area, including

tracking complaints, liaising with the Consumer Panel, and noting any planned academic research in the area. OLC would require notice for any information requests the Board was likely to make;

- Consumer understanding of risk in this area was very low, which could lead to issues around mis-selling, particularly as the business model for these agreements was itself considered risky. The matter came under the umbrella of price transparency, and the Board may need to consider this context more widely in the context of the 14-15 Business Plan.

20. **The Board agreed the next steps in the paper, requiring additional clarity on expectations around monitoring.**

**Item 9 – Paper (13) 34: Annual reports of Audit and Risk Committee (ARC)**  
and  
**Paper (13) 35: Annual reports of Remuneration and Nomination Committee (RNC)**

21. Steve Green presented the ARC reports, thanking committee members and Phillip Lindsell for their contributions.

22. Bill Moyes presented the RNC reports, again thanking committee members and Sandra Jenner for contributions.

23. **The Board agreed the ARC and RNC reports.**

**Item 10 – Paper (13) 36: Draft LSB annual report and accounts 2012/13**

24. Edwin Josephs presented the paper and reports. Steve Green confirmed that the final draft version presented to the Board had been approved by the ARC. The report would be laid in Parliament on the 11 June, with a press release coinciding. This would be supplemented by wider communications engagement. The Chairman thanked Edwin for his work on the report and for facilitating a particularly smooth audit process.

25. **The Board resolved to agree the LSB annual report and accounts 2012/13 and to submit it to Parliament.**

**Item 11 – Paper (13) 37: Legal Services Consumer Panel Annual Report 2012/13**

26. Elisabeth Davies introduced the paper, supported by Harriet Gamper. Elisabeth offered thanks to Harriet for her support in producing the report. The report centred on desired objectives, actions and outcomes, and had shifted focus onto holding the organisation to account.

27. During a discussion of the report, the Board noted the following:
- The Panel would re-consider the drafting of the report in relation to the decision on will-writing;
  - The Panel had thought it appropriate to focus on outcomes in addition to its own activities and engagement;
  - The Board noted that the Panel may wish to reflect and refocus, to avert a potential risk of diversifying too far;
  - The table on page 5 was a reflection on the approach to the previous year, and would be amended as appropriate in future to ensure that it remained relevant;

- The Board wished to see consideration of the Panel's status relative to its previous operational context and future plans. Elisabeth confirmed that it was moving towards a new stage of development and would continue to reflect, particularly on new Panel members, its statutory independence, and the need to develop and maintain a strong evidence base, which remained critical to its legitimacy.

#### **Item 12 – Minutes of Board Meeting 30 April 2013**

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

#### **Item 13 – Report of Action Points**

29. All actions were noted as on-track. The action log had been updated to report finalisation of longest-standing points. A joint Board meeting with the SRA had been arranged for 24 July.

#### **Item 14. Paper (13) 38 – Chief Executive's Progress Report**

30. The Chief Executive presented the progress report. The Board noted:
- A business case on accommodation would be presented to the Board in July. Committee chairs, the Chairman and the Director of Finance and Services would be invited to meet in June to discuss this;
  - Research on small business legal needs had been strongly communicated and well-received;
  - There was strong resource pressure on the approvals team;
  - QASA – the rule application had been received, and a decision on approval would be circulated out of committee for comments. A teleconference would be convened if required. The BSB continued to stand against lobbying pressure. The Board noted that a number of Bar Circuits had voted against the implementation of QASA;
  - Equality and diversity – discussions were ongoing with the BSB; the SRA had produced a strong report;
  - Will-writing – there would be a full discussion at the next Board meeting in the context of MoJ's planned work on regulatory burdens as a whole. The Board noted that the Lord Chancellor's decision left open the question of remaking the recommendation at a later date;
  - The Board was scheduled to discuss the separate business rule at the joint Board meeting with the SRA on 24 July. The Board confirmed that there should be a risk-based, targeted, proportionate approach;
  - Communications and stakeholder engagement - The CEO and Strategy Director had attended a dinner on access to justice issues hosted by David Lammy MP, and the CEO had met Rob Buckland MP.

31. **The Board noted the Chief Executive's report.**

#### **Item 15 – Paper (13) 39: Report of the 13 May 2013 meeting of the Audit & Risk Committee**

32. Steve Green introduced this paper, which summarised the ARC meeting which took place on this date. He highlighted that the Committee had reviewed the

corporate risk register and noted the proposed refresh of the risk evaluation process and documents.

**33. The Board noted the report of the committee.**

**Item 16 – Paper (13) 40: Finance Report – April 2013**

34. Edwin Josephs presented the paper, confirming that the financial situation for the year remained tight.

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

**Item 17 – Any other business**

36. There was no further business.

**Item 18 – Date of next meeting**

37. The Board would next meet on 10 July 2013, at 13:00 – 17:00. The venue would be LSB's offices at Victoria House, Southampton Row, London WC1B 4AD.

CM, 28/05/2013

Signed as an accurate record of the meeting

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Date

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