

## **Minutes of a meeting of the Legal Services Board (LSB) on 29 January 2014**

**Date:** 29 January 2014  
**Time:** 09:30 – 12:30  
**Venue:** One Kemble Street, London WC2B 4AN

**Present:** David Edmonds Chairman  
**(Members)** Chris Kenny Chief Executive  
Terry Babbs  
Anneliese Day QC  
Steve Green  
Bill Moyes (from item 6 onwards)  
Ed Nally  
Barbara Saunders  
Andrew Whittaker

**In attendance:** Julie Myers Corporate Director  
Fran Gillon Director of Regulatory Practice  
Nick Glockling Legal Director  
Chris Handford Regulatory Project Manager (items 4-5)  
Edwin Josephs Director of Finance and Services  
James Meyrick Regulatory Project Manager (items 3-7)  
Dawn Reid Head of Statutory Decisions (item 4)  
Alex Roy Head of Development and Research (items 1-5)  
Adewale Kadiri Corporate Governance Manager (minutes)

### **Item 1 – Welcome and apologies**

1. The Chairman welcomed those present and in attendance to the meeting. The Chairman congratulated Steve Green on his appointment as Chair designate of the Office for Legal Complaints, and Anneliese Day QC on her inclusion on the Lawyer Magazine's "Hot 100" list.

### **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 (14) 01 SRA performance on ABS authorisation**

4. Fran Gillon introduced this item, supported by James Meyrick, and described this as a significant juncture in the LSB’s monitoring of the Solicitors Regulation Authority (SRA) on the authorisation of alternative business structures (ABS). In the course of the discussion, the following points were noted:

- Overall performance was described as improving, but still mixed. More licences are being issued, and there have been reductions in the number of open cases, with none being more than twelve months old. These improvements had been attributed to the introduction of a triaging process and more intensive preliminary contact with applicants before the application process commences. However, evidence of variable handling of different categories of applications remained
- It was noted that on average, it takes seven months to grant licences. The Legal Services Act provides for an initial decision period of six months, with the possibility of extension to nine months. However, extension notices are not being issued as required where applications are taking longer than six months to process. The need for more clarity as to when the statutory decision period commences was noted. Concern was also expressed about the number of applications that had been withdrawn, not least when a more rapid refusal may have been an appropriate response and the need for adequate explanations to be provided where applications have been refused was noted
- Progress in making improvements to the process has been slower than hoped. Recruitment is underway for new posts within the Authorisations Team, including that of a Head of Authorisations, and it is expected that a strengthened team would be in place by the summer. The arrival of the new Chief Executive and other senior staff was also noted
- In terms of the burden of the LSB’s monitoring on the SRA, it was noted that the SRA’s performance spreadsheet is compiled for its own purposes in any event and received on a monthly basis, but that the analysis of the data is carried out by the LSB. It was agreed that the scope of the monitoring would be kept under review and reports given to the Board bi-monthly, through the CEO report or a separate paper as appropriate. Much would also be done through the strengthened working between the teams, which was planned to include further discussions on site at the Cube;
- [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted] [FOIA exempt s36(2)(b)(i)]

5. The Board resolved that:

- a) **the LSB should continue to monitor and report on the SRA's performance on ABS authorisation, and the SRA would be pressed to work on the SBR and the scope of regulation**
- b) **it would not be necessary to undertake a formal review into the area of ABS authorisations at this point, but to maintain the issue as a standing agenda item on the CEO report.**

#### **Item 6 – Paper (14) 04 Sanctions and appeals evaluation**

6. Fran Gillon presented this item, which included a draft assessment report, the aim of which was to explore in more detail the issues concerning sanctions and appeals of legal regulators. The LSB's consideration of the current arrangements, which include nine underlying pieces of primary legislation and thirteen different appeals bodies, underlined the complexity of the system. In the course of carrying out this work, four features of best practice in regulatory sanctions and appeals regimes were identified:
  - transparency
  - the consistent use of the civil standard of proof
  - consistency of powers and sanctions
  - fair and effective appeal arrangements
7. The Board noted that transparency matters will be picked up through the work on regulatory standards but in most other respects, its ability to effect change in this area is limited, because of the need for primary legislation. In particular, it seemed unlikely that the Ministry of Justice (MoJ) would be pursuing wholesale changes to the regulatory framework which could address the inconsistencies between regulators' arrangements. However, were a regulatory case to go on appeal all the way to the Supreme Court, there was potential for the standard of proof issue to be resolved. Overall, this was seen as a government rather than regulatory issue. It was suggested that a workshop might be held, to be attended by all the key stakeholders, such that the matters raised in the assessment report could be fully aired.
8. **The Board resolved to note the draft assessment report and agreed to delegate authority to the Chairman and Chief Executive to agree its final publication.**

#### **Item 7 – Paper (14) 05 Regulatory standards – proposed approach for 2014/15 and 2015/16**

9. Fran Gillon introduced this item, supported by James Meyrick. The proposed approach for 2014/15 is for the approved regulators to provide the LSB with updates as to the progress made in implementing the action plans that had been agreed as part of the first regulatory standards self-assessment exercise. The approved regulators would be invited to take account of the following key regulatory developments, and asked what steps they are taking in readiness for:

- the new Regulators' Code
  - the proposed growth duty in the Deregulation Bill (to which, if enacted, all approved regulators would be subject)
  - the Consumer Panel's new Consumer Principles (shortly to be published), and
  - the LSB's work on quality
10. For 2015/16, the approved regulators would be expected to integrate these requirements into their fuller self-assessment process. This timetable would also enable account to be taken of any changes flowing from the Board's revaluation of strategy in summer and autumn 2014 to prepare for the 2015-18 strategic planning period.
11. In the course of the discussion, the Board noted the following:
- The LSB is actively monitoring the frontline regulators' performance against their action plans, and overall, they are meeting their obligations
  - The Bar Standards Board (BSB) in particular has made welcome and significant progress in effecting regulatory culture change
  - The performance of the regulators in driving deregulation and supporting growth is an issue in which there is a strong interest at both regulatory and governmental level
  - The Board noted the extensive work that the Executive had done to date and commended its unremitting focus on holding the frontline regulators to account for their action plans.
12. **The Board resolved to:**
- a) **agree the recommendations for conducting the 2014/15 update exercise and the proposed approach to the development of the in-depth 2015/16 self-assessment exercise, and**
  - b) **delegate sign-off for communications and the 2014/15 template to the Chief Executive.**

#### **Item 4 – Paper (14) 02 Outcome of consultation on Chairs of regulatory bodies**

13. The Chief Executive introduced this item. The Board were reminded of earlier deliberations on this issue in 2009, which led to the recommendation that the Boards of regulatory bodies should contain lay majorities.
14. The Executive proposed four options for Board consideration, which came without an Executive recommendation.
15. In the course of the discussion the following points were noted:

- The regulatory focus of the approved regulators continued to be more on “their part” of the profession, rather than the wider legal services market
- It was acknowledged that the move to lay chairs would not solve all the cultural issues facing regulators, but it would reduce the likelihood of regulatory capture. It was noted, however, that having a lay chair would not, of itself, entirely remove the risk of capture, and that care would still need to be taken to ensure that selection processes are sufficiently robust to bring forward the most suitable people
- The responses to the consultation had not produced any surprises. It had been useful to receive contributions from consumer bodies, notably Which?, which had not responded to LSB consultations for some time. The professional bodies had been almost universally opposed, arguing that the proposal could lead to the exclusion of good candidates, simply because of their professional background. The SRA did not strongly voice either opposition or approval of the proposed change, as its Board had been split along lay and professional lines. It had however recommended a range of additional measures to address matters relating to the appointments process itself which, it claimed, were essential to ensuring regulatory independence
- One of the main arguments against the proposal was that there was a lack of hard evidence to show that the performance of non-lay chairs was “worse” than their lay counterparts would have been in similar circumstances.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] [FOIA exempt s42]

16. The Board unanimously approved Option 1 as set out in the paper, but also to consult on proposals under Option 2, to:

***Proceed with proposed change to the Internal Governance Rules (IGR) to require lay chairs of the applicable approved regulators (AARs)***

In reaching this conclusion, the Board made the following comments:

- [REDACTED]  
[REDACTED] [FOIA exempt s42]
- Lay chairs could be influential in helping to reinforce separation between the regulatory and representative arms. One of the criteria for an effective chair is the extent to which they would be able to stand up to representative interests
- A move to lay chairs would help to secure the legacy of the existing incumbents at the SRA and BSB
- The SRA’s inability to reach a conclusion in their response to the consultation was noteworthy

- The Consumer Panel's response as summarised in paragraph 29 of the paper was persuasive
- Although a professional chair could effectively face down arguments from within the profession, and he or she also has an important ambassadorial role, it was also important to recognise that one role of a chair is to ensure that the organisation appropriately represents the interests of those to whom it is accountable. The regulators needed to be seen to be accountable to the general public and not the profession
- The perception of a conflict of interest in having a professional chair, and the impact that this could have on consumers, was seen as an important consideration.

**17. The Board resolved that:**

- a) Option 1 as set out in the paper be implemented**
- b) Option 2 would also be implemented via a short consultation on draft guidance on the appointments and reappointments process, ideally to be published as part of, or alongside the decision document on option 1;**
- c) Clearance of the final decision document(s) is to be delegated to a sub-committee comprising of the Chairman, Chief Executive, Barbara Saunders and Andrew Whittaker.**

**Item 5 – Paper (14) 03 Update on responses to education and training guidance**

18. Chris Handford introduced this item. The Board were reminded that they had discussed this subject on a number of occasions since the publication of the Legal Education and Training Review (LETR). The Board had agreed to consult on whether to issue statutory guidance in September 2013, and the consultation closed last December. Officially, many of the approved regulators had objected to the issuing of guidance, but at working level, a number of them had indicated that they would find such guidance helpful
19. The following points were made in the course of the discussion:
- The LSB remains of the view that the issuing of guidance is proportionate, and is important to ensure that the momentum generated by the publication of the LETR report is maintained. It would also be useful for all regulators to have some shared thinking as to its implementation
  - The LSB intends to take a “hands off” approach, and leave the approved regulators to get on with implementing action flowing from their consideration of LETR
  - The intended next steps are for the guidance to be published as soon as possible, with a staggered timetable, so that the smaller regulators who did not contribute to the commissioning of the LETR would have more time to get up to speed

- There was some discussion as to whether the approved regulators should be asked to submit implementation plans. The view was expressed that, as the outcomes had already been defined and the regulatory effectiveness framework was in place, asking for separate plans might be excessive. A thematic review after, say 12-18 months might be more appropriate
- There was a discussion as to whether reaccreditation was likely to lead to unexpected and unplanned extra work. It was noted that the LSB was not seeking to impose reaccreditation requirements, but was leaving it to frontline regulators to determine this on the basis of risk
- On the question whether entities were better placed than regulators to take responsibility for education and training, it was clarified that this related to the employer's responsibility to ensure that employees are well trained. It was acknowledged that certain issues, such as the recognition of formal qualifications, could not be delegated to entities and would remain the responsibility of regulators. It was agreed that this would be clarified in the drafting of the final guidance.

**20. The Board resolved to delegate finalisation of the statutory guidance on education and training to the Chairman and Chief Executive, in the light of the Board's comments, for publication in mid-February.**

#### **Item 8 – Paper (14) 06 Review of Schedule 13 of the Legal Services Act**

21. Fran Gillon introduced this paper. While it had been known at the launch of the ABS model that there were issues associated with schedule 13 of the Legal Services Act, evidence to support this had now been received via LSB research and monitoring of SRA licensing. This is a complicated piece of work.
22. The Board noted that
- The SRA has had greater experience than the CLC of applying schedule 13 to complex ABS applications or arrangements. In some cases, the checks required by Schedule 13 may extend a significant way up the corporate chain. Other checks are also carried out to ascertain whether people are fit and proper
  - It would be advisable to look at the lessons to be learned from experience in the financial services sector to help determine what safeguards needed to be kept in relation to rare, but potentially high impact, cases of ownership risk
  - The Board agreed with the principle that the response to the risks identified needed to be proportionate and targeted. It was suggested that anonymised illustrations be used to ascertain if cases fit within schedule 13
- 23. The Board resolved to note the planned review and that the outcome of this would be brought back to the Board in the autumn.**

#### **Item 9 – Minutes of the Board Meeting held on 27 November 2013**

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

### **Item 10 – Report of action points**

25. 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 - Chief Executive's progress report January 2014**

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

#### **Office move**

The Chief Executive thanked Edwin Josephs and other colleagues, as well as colleagues from the Office of Rail Regulation and Consumer Futures who had all contributed to the success of the move from Victoria House. Colleagues have settled in well to the new accommodation, even though, predictably, the office dynamics are somewhat different. The financial savings that the move is already generating are important. With regard to the meeting rooms, it was reported that the Civil Aviation Authority, as the overall landlord, was currently considering the proposed air flow solutions

#### **QASA**

- The Chief Executive thanked the legal team for all their hard work in helping to secure the successful defence of the judicial review claim. A number of further court appearances had been held to address the issues of costs and leave to appeal, and although decisions had apparently been made, they had not yet been communicated
- On costs, the CEO reported that as Accounting Officer he had a responsibility to seek to recover costs. It was also noted that the LSB's costs would be borne by the profession as a whole, and a majority of members would not have been consulted or had a stake in the action brought by the CBA. If the CBA are refused leave to appeal, they have seven days to apply to the Court of Appeal
- The Joint Advocacy Group (JAG) had indicated that registration for the scheme would be extended to the end of May, giving the opportunity for a refresh of judicial training. A suggestion had been made to the BSB by circuit leaders that a single cut off date of 31 December be adopted, but this will not be discussed by JAG until after the position regarding any possible appeal becomes clearer  
The Board formally expressed their thanks to the legal team and to the Chief Executive.

#### **Bar Council investigation update**

The Chief Executive thanked Andrew Whittaker and Steve Green for their help in agreeing the protocol with the Bar Council



## **Regulator issues**

**SRA:** The Chief Executive reported that he had had a good session with Paul Philip, the Chief Executive designate of the SRA, who would be taking up post formally on 3 February

**CLSB:** A useful meeting had been held with the CLSB Chair, who would be stepping down from the role in March. The Association of Cost Lawyers (ACL) have applied for a Royal Charter, and the Privy Council has sought comments from the LSB on the application. In line with the approach that had been taken in response to a previous similar request, the LSB is not minded to comment formally, but to indicate that it knew of no reason to withhold consent.

## **MOJ reviews**

- The Chairman had had a useful and amiable meeting with the Lord Chancellor, and had subsequently sent him a selection of media reports on the variety of new ABS firms that had been authorised and other recent innovations in legal services provision. The Lord Chancellor had emphasised that de-regulation is at the heart of government policy, and would not wish the outcome of the call for evidence to handicap the LSB, whom he regards as a change agent
- It was not clear what approach the Jeffrey Review is likely to take. The LSB would be willing to discuss how QASA would fit into this, but it would be important to emphasise that the review should not have the effect of delaying the commencement of the scheme. The CEO would be meeting Sir Bill Jeffrey in February
- There had been a good exchange with the Lord Chief Justice, who is keen for the judiciary to remain engaged on regulatory issues and will be seeking to involve some of his colleagues more directly.

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

## **Item 12 – Paper (14) 08 Q3 Performance Report (October to December 2013)**

28. Julie Myers introduced this item which summarised the LSB's performance in delivering its Business Plan commitments during Q3, including a narrative cover for the report to the MOJ. At the end of December, the LSB judged the overall status of its overarching programme to deliver its regulatory activities at Amber. It was noted that if the status was being assessed now, it was likely to be Amber/Green
29. There is a specific issue with the MOJ in relation to the process around statutory instruments. The decisions on designation applications made at the Board meeting in November 2013 may not take effect for two years as a result of a rather complex legal quality assurance process. It was noted that this was an issue for a number of arm's length bodies and that there were potential adverse impacts on the growth agenda. There is also a lack of resource at the MOJ, and there has been significant staff turnover in both legal and policy teams.

- 30. The Board resolved to note the contents of the Q3 performance report and agreed to its use as a basis for discussion with the MOJ.**

**Item 13 – Paper (14) 09 Finance Report to 31 December 2013**

- 31. Edwin Josephs introduced this item. It was confirmed that the LSB will seek to recover what it can from the claimants in the QASA judicial review. However, significant funds are held on account and as such there is no need to increase the levy as a result of the case. If costs are recovered, then the levy for the following year would be reduced accordingly
- 32. The LSB’s costs amount to about £200k (+VAT), and the cap is £150k. Discussions have been held with the BSB, and it has been agreed that any costs recovered would be divided between the LSB and BSB on a ratio of 75:25. It would be for the court to make the final decision on this.
- 33. The Board noted the Finance Report.**

**Item 14 – Any other business**

- 34. There was no other business

**Item 15 - Date of next meeting**

- 35. The Board would next meet on 26 March 2014 at 12.30p.m. NOTE CHANGE OF TIME. The venue would be LSB’s offices at One Kemble Street, London WC2B 4AN.

AK, 03/02/14

Signed as an accurate record of the meeting

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Date  
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