

Minutes of a meeting of the Legal Services Board (LSB) on 22 May 2014

Date: 22 May 2014
Time: 09:30 – 12:30
Venue: One Kemble Street, London WC2B 4AN

Present: Sir Michael Pitt Chairman
(Members) Chris Kenny Chief Executive
Terry Babbs
Anneliese Day QC
David Eveleigh
Marina Gibbs
Bill Moyes
Ed Nally

In attendance: Steve Brooker Consumer Panel Manager (item 8)
Elisabeth Davies Chair, Legal Services Consumer Panel (item 8)
Tony Foster Member, Office for Legal Complaints (item 9)
Fran Gillon Director of Regulatory Practice
Nick Glockling Legal Director
Chris Handford Head of Research and Development
Edwin Josephs Director of Finance and Services
Julie Myers Corporate Director
Adam Sampson Chief Legal Ombudsman (item 9)
Bryony Sheldon Regulatory Project Manager (item 4)
Caroline Wallace Strategy Director
Adewale Kadiri Corporate Governance Manager (minutes)

Item 1 – Welcome and apologies

1. The Chairman welcomed those present and in attendance to the meeting, which was his first as Chairman.

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) 28 LSB Strategy: Chair's perspective

4. Sir Michael introduced this paper, for discussion, setting out his thoughts on the LSB's direction of travel over the next twelve months and beyond. He expressed his gratitude to the Chief Executive and members of the Gateway Group for their input.

5. Sir Michael described the following key themes that ought to inform the LSB's work going forward:

- The written ministerial statement that had been issued in response to the Ministry of Justice's (MoJ) call for evidence on the future of regulation on the legal sector - although this had not signalled major legislative reform in the near future, it had placed the LSB in a position to exercise leadership, and this opportunity should be taken up carefully and thoughtfully
- The Blueprint document sets out a compelling vision of the future of the legal market, but future ministers would need to be persuaded to that it could form the basis for further legislation
- The views and interests of consumers must continue to be prioritised, and the LSB will continue to work closely with the Consumer Panel and the Legal Ombudsman to ensure that this is the case

6. [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

7. [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

8. [REDACTED]
[REDACTED]
[REDACTED] [FOIA exempt: s36]

Item 4 – Paper (14) 29 SRA update: strategy and performance

- 9. Fran Gillon introduced this paper which pulls together various strands of Solicitors Regulation Authority (SRA) performance. The SRA had published a number of documents during the course of May which, taken together, could indicate a change in their approach to regulation, and in particular a willingness to reduce the regulatory burden. This was noted to be a potentially significant step.
- 10. The paper also picks up some other consultations from the SRA – including on indemnity insurance and the compensation fund. Taken together, there are questions about what this means for consumer protection. The proposals suggest a move in the right direction, but questions remain around delivery. The LSB will need to continue to maintain constructive pressure on the SRA
- 11. In the course of the discussion, the following points were made:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED] [FOIA exempt: s36]
- The importance of both solicitors and barristers having appropriate indemnity protection in place on behalf of consumers was emphasised. The Law Society's

concerns about the shortness of the consultation period in relation to the SRA's proposals on indemnity insurance were noted

- On ABS authorisation, the Board noted that the SRA had commissioned a survey of applicants, but response rates had not been very good. Their focus at present is on clearing the backlog, and little work has yet been done on the reasons for withdrawn applications
- It was agreed that the proposals set out in the paper were encouraging, and that the LSB should engage actively in their further development, but without fettering its statutory discretion in rule approval.

12. The Board resolved:

- (a) To note the contents of the paper and its annexes,**
- (b) To continue to monitor and report on SRA performance on ABS authorisation,**
- (c) To continue discussions with the SRA on its approach to the regulation of MDPs, and**
- (d) That a further paper will be presented at the July Board meeting to provide an update on progress in these and other areas.**

Item 5 – Paper (14) 30 Jeffrey Review: LSB response

13. Chris Handford introduced this paper to provide the Board with an update following the publication of Sir Bill Jeffrey's report on his review of independent criminal advocacy in England and Wales. The key findings of the review include a call for the Bar to use the current challenging environment as an opportunity to reorganise, such that they are better able to compete for work against solicitor advocates. The review also found a clear case for the establishment of a quality scheme, although it stopped short of endorsing the Quality Assurance Scheme for Advocates (QASA), and that there was a need for more common advocacy training across the profession.
14. The report contained no specific recommendations for the LSB. In their response to the review, both the Criminal Law Solicitors Association and the London Criminal Courts Solicitors' Association have acknowledged the need to do more on training. The Bar Council's response on the other hand appeared to indicate a selective interpretation of the review's findings, and has drawn criticism from solicitor groups.
15. The Board noted that in order for barristers' chambers to be able to compete against solicitor firms for legal aid contracts, they would need to reorganise themselves into entities. An application from the Bar Standards Board (BSB) to enable them regulate entities is expected at the end of the month.
16. In the course of the discussion, the following further points were made:
 - The timing of any Government response was not known

- The BSB needs to do more to assist barristers in understanding the potential benefits and practicalities of entity regulation.

17. The Board resolved to note the contents of the summary of the Jeffrey Review

Item 6 – Paper (14) 31 Draft LSB Annual Report and Accounts 2013/14

18. The Chairman introduced this item. Confirmation was received to the effect that the Audit and Risk Committee (ARC) had endorsed the draft at their meeting on 13 May. There had been some debate, involving the external adviser and the auditors, on the notional entries that had been included in the accounts in relation to the treatment of levy income. It had been concluded that this treatment was correct, and that the Ministry of Justice (MoJ) was seeking a legislative vehicle for making the necessary amendment to the Legal Services Act to avoid the need for this approach to be adopted in future.
19. The Chief Executive, in his capacity as Accounting Officer, confirmed that he was content with the way the matter had been resolved.
20. The Board expressed their thanks to Edwin Josephs for ensuring that the audit process ran smoothly and to time.
- 21. The Board resolved to:**
- (a) Agree the LSB Annual Report and Accounts 2013/14, and**
 - (b) Delegate authority to approve the submission of the LSB Annual Report and Accounts 2013/14 to the Comptroller and Auditor General and Lord Chancellor, to the Chairman and Chief Executive.**

Item 7 – Paper (14) 32 Annual Report of the Audit and Risk Committee 2013/14 and review of the Terms of Reference

22. Terry Babbs presented this report, looking back at the ARC's activities and achievements over the last financial year. The following issues were highlighted:
- The Committee had been actively involved in a significant piece of work on risk management, such that the corporate risk register is now a much more focused document that assists the Executive in managing and reporting risk
 - Changes are to take place within the Committee – a new member would have been identified in advance of the October meeting. The way in which the Committee assesses its effectiveness is to be revisited and a paper on this is to be taken to the October meeting.

23. The Board resolved to agree the ARC's Annual Report for 2013/14

Item 8 – Paper (14) 33 Legal Services Consumer Panel Annual Report 2013/14

24. Elisabeth Davies introduced this report, reminding the Board that work is continuing on a number of the areas reported on. She highlighted three points:
- There is a continuing need for the Panel to ensure that it is proportionate in its work, and that it takes account of what has and has not changed. The work on open data is a breakthrough moment, and the frontline regulators deserve praise for their cooperation
 - Every decision made by regulators should be informed by consumer interests. This is the underlying principle behind the publication of the consumer principles toolkit, and the Panel worked closely with the Council for Licensed Conveyancers (CLC) in developing it
 - Acknowledgement of the significant and unique body of evidence that the Panel has built up – including four years' worth of data from the tracker survey, which shows how changes in consumer behaviour are beginning to mirror developments in the market. For example, data from the 2014 survey shows that consumers are beginning to shop around more, and that the proportion of transactions that are subject to a fixed fee is increasing albeit from a low level.
25. The Board unanimously commended the report's style, layout and content, and in the course of their discussions the following points were raised:
- Translating the British Standard on Inclusive Service Provision into practical guidance was regarded as an important step, as people are often subject to new vulnerabilities at times when they need to access legal services. The Standard enables organisations to focus more on the context within which they operate and is used across the voluntary and public sectors
 - The Board noted the Panel's recommendation for the creation of a self-regulatory regime for McKenzie Friends. It was acknowledged that there is much misunderstanding within sections of the legal profession about their role. There is also at present some inconsistency in the way that judges respond to McKenzie Friends, and this would need to be addressed. The indications were that those representing paid McKenzie Friends in particular are willing to engage with representatives of both the legal profession and the judiciary. The legal aid reforms have led to a growth in the numbers of litigants in person and as such, the assistance of McKenzie Friends, paid and unpaid, will increasingly be called upon
 - The Legal Education and Training Review (LETR) was seen by the Panel as a missed opportunity as elements that could have led to a truly diverse profession, creating more choice for consumers, had not been grasped
 - The Board welcomed the opportunity to work closely with the Panel, particularly on identifying the strategic risks likely to face consumers in 2020.
26. **The Board noted the Legal Services Consumer Panel Annual Report for 2013/14.**

27. Tony Foster attended to present the report, accompanied by the Chief Legal Ombudsman. He gave Steve Green's apologies. The report had received final approval from the OLC Board on 19 May, and as such the version before the Board was close to the final version, but some important changes had been made, including:

- Removal of comments relating to the increase in the number of complaints requiring an ombudsman decision
- Additional text to reflect changes to the way in which quality is measured.

28. In discussing the report, the following points were made:

- It was clarified that the table setting out satisfaction levels with the performance of the Ombudsman had been split between those who were satisfied with the outcome and those who were not. This system of measuring satisfaction was reported to be common to many ombudsman schemes
- The Legal Ombudsman had noted the number of cases that the Financial Ombudsman Service is able to resolve informally, and had aspired to achieve similar levels. This aim was also pursued on the basis that a formal resolution invariably left one party dissatisfied, while informal resolution increased the speed and efficiency of case handling. However, there is now a realisation that because of the difference in the types of cases that the Legal Ombudsman considers, the aspiration to achieve a similar level to FOS was not realistic.
- The Ombudsman would not normally intervene in the terms of an informal resolution except where it appears that the terms of the resolution put one party at a disadvantage against the other. It was felt that it is time to revisit the issue of case fees, the imposition of which sometimes prevents early resolution, as they can only be waived where the lawyer is not found to be at fault and all adequate efforts to resolve were made at first-tier. Legislative change would be required to amend this provision
- There was disappointment that, although this is the OLC's report, there is no overall comment from the OLC Board on the performance of the Ombudsman scheme. In response, there was an acknowledgement that some elements could be improved, and that there is now more of a focus at the OLC on understanding what good quality means. It was acknowledged that:
 - Current quality measures are not sufficiently robust or specific, and
 - The focus on cost and timeliness had sometimes been to the detriment of the quality of the work
- It was noted that the Ombudsman had met and exceeded performance targets, and that timeliness had improved significantly
- On unit costs, it was acknowledged that the OLC is at the start of a journey. Efforts to drive down costs are continuing – a new and cheaper IT system goes on line in September. The Claims Management Complaints (CMC) work will have to fund itself, but it will make use of a proportion of the OLC's overheads and it will therefore make a contribution. Moving office should also help in reducing costs. The OLC is keen to attract more business, but it acknowledges that the

current unit costs were too high, despite the fact that 25-30% had been taken out of the budget in the last two years

- In response to concerns about the amount and range of work to be covered over the next twelve months, the OLC reported that additional recruitment is planned shortly
- A Transformation Programme Board, to be chaired by an OLC Board member, is to be set up to oversee the CMC work. It was impossible to judge the number of cases that will come through once the Ombudsman formally takes on the work

29. The Board noted that there would be opportunities in June to take this conversation forward. They thanked Mr Foster and the Chief Legal Ombudsman for their attendance.

30. Board resolved to note the draft Legal Ombudsman Annual report 2013/14

Item 10 – Minutes of the meeting of 30 April 2014

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

Item 11 – Report of action points

32. Fran Gillon provided updates on the following actions:

- (12) 78 – The consultation on the section 69 order closes this month, and a paper is to be presented at the July Board meeting
- (13) 69 – The SRA has now published a consultation document on compensation arrangements

33. The Board noted the updates to the report of action points.

Item 12 – Paper (14) 35 Chief Executive's progress report May 2014

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

Operations and governance issues

35. Congratulations were extended to Chris Handford on his appointment, with effect from 12 May, as Head of Research and Development. He was commended for the work that he had done with the Jeffrey review team.

36. MoJ is starting the process to recruit two lay Board members – one to fill the existing vacancy, and the other as an early replacement for Bill Moyes. The existing membership makes it difficult to keep the Committees quorate, and members may be required to move between Committees until the new appointments are made.

Statutory decisions

37. No formal response has been received from the MoJ in relation to the CEO's letter to Shaun Gallagher , (Director, Access to Justice at MoJ) regarding LSB difficulties with the MoJ's new approach to the drafting of statutory instruments. The Legal Director is to speak to a senior lawyer at the MoJ to see where process improvements can be made.

Policy reviews

38. As part of its response to the call for evidence, the MoJ announced that a regulators' summit is to be held Further detail were awaited.

QASA judicial review

39. Following the granting of leave to appeal, the applicants now have until 23 May to apply to the Court of Appeal if they are unable to raise the £65k that had been set as the costs cap.

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

Item 13 – Paper (14) 36 LSB Risk Register: six monthly review

41. [REDACTED]

42. [REDACTED]
- [REDACTED]
 - [REDACTED] [FoIA exempt: s36]

43. **The Board resolved to note and endorse the LSB Risk Register.**

Item 14 – Paper (14) 37 Report of the 13 May 2014 Audit and Risk Committee meeting

44. Terry Babbs introduced this paper, reporting on the key issues considered at the most recent ARC meeting.

- 45. It was pointed out that the entry at paragraph 3(g) was wrong, as a formal proposal the decision had not yet been put forward. It would be subject to formal consultation with the ARC and Board.
- 46. **The Board resolved to note the points arising from the ARC meeting held on 13 May 2014.**

Item 15 – Paper (14) 38 Finance Report to 30 April 2014

- 47. Edwin Josephs introduced this item. The Board noted that as leave to appeal the QASA decision had now been granted to the applicants, LSB will continue to accrue costs as they arise, and could not take any account of any expected refund of costs until the matter was finally resolved.

- 48. **The Board noted the Finance Report.**

Item 16 – Any other business

- 49. Fran Gillon informed the Board of the need to consult on a technical amendment that needs to be made to LSB rules under Schedule 13 of the Act, to remove a conflict that exists with First Tier Tribunal rules as they relate to time limits for appeals. The Board agreed to delegate authority to the Chief Executive to agree publication of these consultations.[Post Board note: the document was published on 27 May]

Item 17 - Date of next meeting

- 50. The Board would next meet on 9 July 2014 at 09.30am. The venue would be Wallacespace, 2 Dryden Street, London WC2E 9NA.

AK, 27/05/14

Signed as an accurate record of the meeting

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Date
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