

Minutes of a meeting of the Legal Services Board (LSB) on 29 September 2014

Date: 29 September 2014
Time: 13.00-1500
Venue: Office of Rail Regulation, One Kemble Street, London

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

In attendance: Professor Stephen Mayson (items 3- 6)
Fran Gillon Director of Regulatory Practice
Nick Glockling Legal Director
Chris Handford Head of Research and Development
Edwin Josephs Director of Finance and Services
James Meyrick Regulatory Project Manager (item 7)
Julie Myers Corporate Director
Bryony Sheldon Regulatory Project Manager (item 8)
Caroline Wallace Strategy Director
Adewale Kadiri Corporate Governance Manager (minutes)

Apologies: Anneliese Day QC

Item 3 – Welcome and apologies

1. The Chairman welcomed those present and in attendance to the meeting, including Professor Stephen Mayson. Apologies had been received from Anneliese Day QC.

Item 4 – 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 5 – Items considered out of Committee since 9 July 2014

4. The Board noted that the Finance Report for July and Paper (14) 43 (Section 69 recommendation to the Lord Chancellor to modify the functions of the Chartered Institute of Legal Executives) had been circulated electronically on 14 August and 12 September respectively.

Item 6 – Paper (14) 44 Draft skeleton of the LSB Strategic Plan 2015-18

5. Caroline Wallace introduced the draft skeleton of the Strategic Plan which had been informed by input from the Board, LSB colleagues and external stakeholders. The Board noted that the current version did not yet reflect the emerging advice from the Legal Services Consumer Panel. The Board were asked for comment at this early stage, and to confirm that the drafting of the Plan had taken account of the views expressed at the Board session in July. The plan focuses on two strategic themes: appropriate regulation to ensure consumer protection, and improving access to justice
6. The following points were made in the course of the discussion:
 - The LSB might consider becoming more involved in thought leadership; with a view to influencing and persuading others. It was noted that the Consumer Panel has also proposed areas in which the LSB might wish to help form opinion
 - It was noted that choices made by the Board could have implications for the shape and size of the budget. Spending proposals would need to be submitted to the MoJ, and then presented to the ARC at their meeting in November. [REDACTED]

[FOIA exempt: s36]

7. The following comments were made in relation to the contents of the draft plan:
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]

10. Fran Gillon introduced this paper, supported by James Meyrick. It was noted that the issue of restrictions on business ownership has been under consideration since 2009. There is particular concern about the SRA's separate business rule, although it was acknowledged that a review of this has been announced by the SRA. This paper considered all of the restrictions that are in place, recognising that some of these are legitimate.
11. In the course of the discussion, the following points were made:
 - The Board welcomed the paper, and supported its analysis
 - In terms of handling with the SRA, it was noted that a four way meeting involving the LSB Chairman and Chief Executive is shortly to be held
 - It was suggested that paragraph 8.7 of the review should be amended.
12. **The Board resolved to:**
 - (a) **Note the contents of the review, and**
 - (b) **Delegate its sign off to the Chief Executive, subject to changes discussed at the meeting.**

Item 8 – Paper (14) 46 Investigation – Bar Council and internal governance rules – non-compliance with fourth undertaking

13. Fran Gillon introduced this item, supported by Bryony Sheldon. The paper set out the background to the investigation, and related to the failure of the Bar Council/BSB to meet the fourth undertaking that they had previously given. The Board noted that this is a very serious issue, and concern was expressed that the BSB did not appear to have grasped this. Whilst the BSB had apologised and set out its plans going forward, the proposed approach was felt to not be entirely satisfactory and this is to be taken up with them.
14. In the course of the discussion,
 - Although the executive had proposed that the BSB's response be accepted, the Board expressed its dissatisfaction with the state of affairs and a discussion was held about the formal enforcement options available to the LSB, in particular, public censure
 - It was agreed that, as a minimum, a Chairman to Chairman meeting, or one involving a number of their Board members, is to be held, such that the LSB Board's unhappiness at the non-compliance could be expressed to them directly, and that assurances can be given that such behaviour would not be repeated.
15. **The Board resolved that a Chairman to Chairman meeting, or one involving a number of BSB Board members is to be arranged in order that options for future action can be discussed with them in person.**

Item 9 – Paper (14) 47 Board meetings – openness and transparency

16. Ade Kadiri presented this paper, which addressed questions that had been raised with the Chairman during his meeting in July with journalists about timeliness of LSB Board paper publication, and openness of LSB Board meetings.
17. In the course of the discussion the following points were raised:
 - The Board accepted the proposal that Board minutes be approved via correspondence, and that these and the relevant papers could then be published in advance of the subsequent meeting
 - The Board agreed that it would not be appropriate for Board meetings to be held in public
 - The Board accepted the proposal to hold one public meeting a year, to be linked to a significant LSB event, such as the publication of the Annual Report and Accounts. Steps would need to be taken to ensure that the agenda was sufficiently engaging to generate interest from key stakeholders.
18. **The Board resolved to:**
 - (a) **Accept the proposal to approve Board minutes by correspondence such that the minutes and papers would be published on the LSB website within two weeks of the meeting**
 - (b) **Accept the proposal to hold at least one meeting a year in public in conjunction with a significant LSB event, such as the publication of the Annual Report and Accounts**

Item 10 – Board member contacts with regulators

19. Ade Kadiri introduced this paper reminding Board members of the informal contacts that had been set up with their counterparts on regulatory boards. Briefing material is being prepared and will shortly be circulated to members. It was agreed that the arrangement will be reviewed in six months' time
20. **The Board resolved to note the paper.**

Item 11 – Minutes of the meeting of 9 July 2014

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

Item 12 – Report of action points

22. 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.

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

Item 13 – Paper (14) 49 Chief Executive’s progress report September 2014

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

Staffing

25. In addition to the new joiners mentioned in the report, Meera Amin has accepted the offer of the new research associate post and will start on 6 October.

Relations with the MoJ

26. Two recent issues have emerged that risked undermining the LSB’s independence from government. The first was a proposal to create a “soft” reporting line for the LSB’s Finance Director to an official from Legal Aid Agency. This had been rejected by the LSB. The second, concerned the imposition of additional spending controls on the Accounting Officer, to the extent that any expenditure on stakeholder events, for example, would require MoJ approval. This issue relates to the interaction between the Framework Agreement with the LSB and Cabinet Office spend controls. The Board formally agreed to support the Chief Executive in maintaining his stance vis-à-vis the MoJ and upholding the spending delegations as set out in the Framework Agreement. A response to the latter is awaited from the MoJ.

Follow up to ministerial summit

27. The Chairman reminded the Board of the meeting to be held on 2 October with Chairs of the regulatory bodies, as a follow up to the ministerial summit held in July. This is to be a significant event, and a paper has been drafted for discussion at that meeting setting out:

- a) What more could be done within the existing framework
- b) Minor changes that could be made to the LSA, and
- c) Longer term thinking about what fundamental changes to the legislation could look like

It is not clear how well these proposals would be received as it is the first time that an event of this nature has been held, but there was cautious optimism that progress would be made on at least some of the areas highlighted in the paper. The meeting is to be facilitated by Professor Stephen Mayson.

SRA performance

28. The SRA’s performance on ABS authorisation is now significantly improved, and the Board agreed that the lifting of reporting requirements could be contemplated at around the turn of the year. The Board also agreed that a letter would be written to SRA congratulating it on the progress it had made on authorisations.

Research

29. The first meeting of the Stakeholder Reference Group for the cost of regulation project was held on 22 September. This had been very positive, and it is clear that the project is being taken seriously by all the regulators. The LSB team were congratulated for the work that they had done in preparation for the event.

Competition and Markets Authority

30. A positive discussion had been held with the CMA on the possibility of it undertaking a review of the legal sector. There will be further discussions in November

Regulatory policy

31. BIS has agreed that the requirement to have small business appeals champions will not be extended to the LSB or approved regulators for now. This was seen as a positive development.

Office for Legal Complaints

32. The MoJ have now accepted that the legislation as it currently stands does not permit the Legal Ombudsman to take on retrospective CMC complaints.

Communications and stakeholder engagement

33. There has been a gradual increase in the amount of press activity since the summer, and the LSB has received reasonable coverage.

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

Item 14 – Paper (14) 50 Finance report to 29 September 2014

35. Edwin Josephs introduced this item. The Board noted that overall, the LSB's finances are in good shape, although the legal costs budget is overspent. It was confirmed that if the appeal against QASA judgement is dismissed, the LSB would be making the strongest possible representation on costs in order to seek to recoup a substantial proportion of its expenditure on the case, as it considered it wrong in principle for the entire profession to have to bear costs caused by a small group within it.

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

Item 16 – Any other business

37. The Chief Executive introduced Paper (14) 51, enclosing a straightforward draft section 69 Order that would enable appeals against ICAEW decisions to be heard before the First Tier Tribunal. The draft Order had already been considered by the Joint Committee on Statutory Instruments who had recommended some minor technical changes.

- 38. The Board resolved to:**
- a) Note the content of the decision document and approve its publication**
 - b) Approve the making of the recommendation to the Lord Chancellor as set out in the annex to the decision document, and**
 - c) Note the draft statutory order accompanying the recommendation.**

39. The Board noted that this would be Fran Gillon’s last Board meeting before she leaves the LSB. She has been with the organisation for five years. The Board paid tribute in particular to her ability to grasp the finer detail of regulatory policy and practice, while not losing sight of the bigger picture, and for her help to them on a multitude of projects and issues. They wished her the best for the future.

Item 17 - Date of next meeting

40. The Board would next meet on 27 October 2014 at 1.30pm. The venue would be the Welsh Government offices, Cathays Park, Cardiff CF10 3NQ.

AK, 01/10/14

Signed as an accurate record of the meeting

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Date
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