

Minutes of a meeting of the Legal Services Board (LSB) on 26 November 2014

Date: 26 November 2014
Time: 09.30-12.30
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: Meera Amin Research Analyst (items 4-18)
 Nicholas Baré Regulatory Associate (item 9)
 Vibeke Bjornfors Regulatory Project Manager (items 4-18)
 Jessica Clay Legal Advisor (item 8)
 Elisabeth Davies Chair, Legal Services Consumer Panel (item 6)
 Sonya Gedson Regulatory Associate (item 8)
 Nick Glockling Legal Director (items 4-18)
 Steve Green Chair, Office for Legal Complaints (items 3-4)
 Paul Greening Regulatory Associate (item 7)
 Chris Handford Head of Research and Development (items 4-18)
 Edwin Josephs Director of Finance and Services (items 4-18)
 James Meyrick Regulatory Project Manager (item 9)
 Julie Myers Corporate Director
 Dawn Reid Head of Regulatory Performance and Operations (items 4-18)
 Bryony Sheldon Regulatory Project Manager (item 10)
 Caroline Wallace Strategy Director
 Adewale Kadiri Corporate Governance Manager (minutes)

Apologies: Anneliese Day QC

Item 1 – Welcome and apologies

1. The Chairman welcomed those present and in attendance to the meeting, including Meera Amin and Vibeke Bjornfors, new LSB colleagues joining the meeting as observers. 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 – Paper (14) 58 Draft Office for Legal Complaints budget 2015/16

4. Steve Green introduced this item which was presented to the Board for information only. The document had been reviewed by the OLC Board at its most recent meeting and would be published for consultation shortly. The OLC would return to the LSB in March with their proposal for final budget approval.
5. In the course of the discussion the following points were made:
 - The Board was concerned that the draft plan as written did not place sufficient emphasis on quality, cost effectiveness and performance, nor did it appear to focus adequately on the needs of consumers
 - The Legal Ombudsman will use the introduction of the claims management complaints (CMC) jurisdiction as an opportunity to trial new processes
 - However, it was noted that uncertainty remained about CMC complaint numbers.
 - The Legal Ombudsman remains in discussion with the Ministry of Justice (MoJ) about the date from which retrospective complaints could be accepted by the scheme.
6. Steve Green also updated the Board about matters relating to the Chief Ombudsman and the OLC's Annual Report and Accounts for 2013/14, confirming that the Permanent Secretary of the MoJ was currently the OLC's Accounting Officer in light of the departure of Adam Sampson. He confirmed that arrangements were being put in place for the appointment of suitable interim senior management.
7. **The Board agreed to note the OLC's draft strategy and budget 2015/16**

Item 4 – Paper (14) 59 Changes to the OLC Scheme Rules

8. Julie Myers introduced this item, seeking the Board's consent to the making of the necessary technical amendments to the OLC's scheme rules to take account of the extension of its jurisdiction to consider complaints against claims management companies
9. **The Board resolved to consent to the proposed revisions to the OLC scheme rules.**

Item 6 – Paper (14) 61 “2020 Legal Services: how regulators should prepare for the future”

10. Elisabeth Davies introduced this item which represented the Panel's formal response to the LSB's request for advice and had been the basis of a joint session between the Board and the Consumer Panel in September. The report had been launched at the Legal Futures conference. Whilst the report had been received well in many quarters, there had been some negative reaction to the concept of 'self-lawyering'.
11. In the course of the discussion, the following points were made:
 - It was emphasised that the report is not anti-lawyer, but reflected the fact that lawyers are only one route by which consumers' legal needs are met
 - As this work had been commissioned by the LSB, Caroline Wallace will attend the Consumer Panel's away day in December to discuss in more detail how its findings impact on the LSB's strategic plan and business plan, which is due to be issued for consultation in early December.
12. The Board congratulated the Panel on an excellent report.
13. **The Board resolved**
 - (a) to consider the Panel's report as it finalised its Strategic and Business Plans, and
 - (b) to thank the Panel for their work.

Item 5 – Paper (14) 60 Draft LSB Strategic Plan 2015-18; 2015/16 Business Plan and budget proposal

14. Caroline Wallace introduced this item. A number of changes had been made to the now single document in light of Board comments, including:
 - slightly rephrased strategic objectives
 - the addition of a footnote on the difference between legal need and demand
 - inclusion of a subsection on the wider implications of the plans for other stakeholders.
15. The draft Business Plan now includes an expanded range of possible areas for thematic reviews and included some suggestions for areas in which the Consumer Panel could be commissioned to provide advice. These would be narrowed down following consultation.
16. The draft plan was due to be published for consultation on 10 December and Board Members noted that they had been invited to attend a launch event on the day. It was noted that the Strategic Plan aligns reasonably well with the SRA's new Corporate Strategy.
17. With regard to the budget proposal, the ARC had recommended that this be maintained at the same level as 2014/15, amounting to a reduction in real terms.
18. The Board noted informal comments from MoJ officials who had been sighted on the draft in line with the Framework Agreement. These included a suggestion that greater

emphasis should be placed on the LSB’s role in overseeing the OLC. This would be incorporated.

19. The Board also agreed that the term “core programme” should be changed to avoid the perception that other areas of work are less important or non-core.
20. It was agreed that the implications of the autumn statement on public expenditure would be considered and, if necessary, they would be referenced in the plan (but without delaying the launch of the consultation).
21. With regard to prioritisation, it was noted that as part of the consultation process, stakeholders could suggest which of the proposals set out in the business plan they consider that the LSB ought to prioritise, and they would also have the opportunity to put forward their own proposals.
22. **The Board resolved to delegate final approval of the document to be issued for consultation to the Chairman, Strategy and Corporate Directors.**

Item 7 – Paper (14) 62 Council for Licensed Conveyancers (CLC) section 69

23. Chris Kenny introduced this item and provided the background to the issue:
 - CLC differs from other regulators in that it was set up by statute, the Administration of Justice Act 1985. Since that time, MoJ has decided that the CLC can regulate probate services. The 1985 Act referred only to the regulation of licensed conveyancers, but the CLC has sought to use the provisions of section 69 of the Legal Services Act 2007 to enable it to regulate practitioners providing only probate services without the need for them to also be licensed conveyancers
 - The draft order was consulted on by the LSB, and no responses were received
 - [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [FOIA exempt:
s36(2)(b)(ii)]

24. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[Redacted]
[Redacted]
[Redacted] [FoIA exempt: s36(2)(b)(ii)]

25. [Redacted]
[Redacted]
[Redacted]
[Redacted] [FoIA exempt: s36(2)(b)(ii)]

26. In the course of the discussion, the following points were made:

- It would be important to obtain external legal advice in order to test the LSB's position.
- It is important that the correct statutory process is followed, but the Board was concerned that relationships with key stakeholders should also be maintained.
- [Redacted]
[Redacted]
[Redacted]
[Redacted] [FoIA exempt: s36(2)(b)(ii)]
- [Redacted]
[Redacted]
[Redacted] [FoIA exempt: s36(2)(b)(ii)]

27. The Board resolved that

- a) [Redacted]
[Redacted] [FoIA exempt: s36(2)(b)(ii)]
- b) an update on progress be provided to the Board by correspondence,
[Redacted]
[Redacted] [FoIA exempt: s36(2)(b)(ii)]

Item 8 – Paper (14) 63 SRA Professional Indemnity Insurance (PII) rule change application

28. Dawn Reid introduced this item. The recommendation to the Board was to grant the application in part, with the proposal for a new outcome to assess and purchase an appropriate level of indemnity cover (and several other technical proposals) to be granted, and the proposal to reduce the minimum amount of PII cover from £2million to £500k to be refused. This latter aspect of the application had been controversial, had garnered little support outside the SRA and, as set out in the decision notice, had not been convincingly evidenced by the SRA. The LSB itself had also received numerous submissions urging rejection.

29. The LSB's assessment of the application had covered all aspects, and in light of the SRA's contention that the two principal proposals as set out in the previous paragraph are inextricably linked, external legal advice had been sought. This confirmed that the application could be granted in part.
30. There was insufficient evidence on the face of the application to support the £500k amount. However, it was emphasised that the LSB's rejection of that part of the application is not to be read as an endorsement of the existing higher amounts – it was simply that the case for change had not been made. Indeed there was no evidence to support the need for any minimum figure.
31. The following points were made in the course of the discussion:
- The material upon which upon which the SRA relied in the application is rather dated.
 - The new outcome reflects an assessment that most firms should already make so was unlikely to materially increase burdens on firms.
 - With regard to the SRA's contention that both parts of the application ought to be considered together, it was noted that the SRA Board had already approved the first limb subject to LSB endorsement.
 - It was agreed that the restricted information referred to should be disclosed in accordance with the suggestions in paragraph 28 of the cover paper.
32. **The Board resolved to**
- a) **grant the application in part, namely the proposal of a new outcome to the SRA Code of Conduct and further technical amendments to the SRA's regulatory arrangements, and to refuse the proposal to reduce the minimum level of PII cover from the current level of £2 million (£3 million for incorporated firms) to £500k, and**
 - b) **delegate the finalising of the wording of the decision notice to the Chairman and Chief Executive**

Item 11 – Minutes of the meeting of 27 October 2014

33. The minutes of the meeting had previously been approved as an accurate record by correspondence on 12 November. The Chairman formally signed the minutes.

Item 12 – Report of action points

34. 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.

35. **The Board noted the updates to the report of action points.**

Item 13 – Paper (14) 58 Chief Executive's progress report November 2014

36. The Chief Executive presented his progress report. The Board noted the following:

Staffing

37. The LSB is currently going through a period of high colleague turnover, and there have been two resignations since the last Board meeting. This reflects the fact that a number of colleagues who had been at the organisation at or soon after its inception, are now exploring other opportunities, but there was recognition that the pay situation also needed to be addressed.

Relationship with MoJ

38. On lay Board appointments, the Chairman reported that the recruiting panel had now agreed a strong short list, subject to confirmation by Ministers. Ministerial approval for commencement of the non-lay exercise was still awaited. [post Board note: Confirmation was received on 26 November that ministerial approval to commence the process had been received].

SRA ABS authorisation

39. The SRA has made good progress on improving its performance on authorisation. However although it is committed to carry out a review of its processes in this area, the timetable for this appears to have slipped.

Statutory decisions

40. It is expected that the BSB entity application will be approved this week. The parliamentary debate on the CILEx and ICAEW section 69 orders earlier in the month went well.

Education and training

41. The Board noted the success that had been achieved in overseeing progress in this area without the need for direct regulatory intervention.

QASA

42. The Court of Appeal has not yet reached a decision whether to grant leave to appeal to the Supreme Court [post Board note: notification was received on 28 November that the Court of Appeal had refused leave to appeal]

Cost of regulation project

43. The Board noted the comment in paragraph 17 of the Chief Executive's report about the need for more responses to the survey. By the time of the meeting, the number received had risen to 755, and it is expected that the final figure would be around 800 [post Board note: figure as at 28 November was 959]. The point was made that although this figure is lower than had been hoped for, this would not unduly affect the usefulness of the survey findings: the results will be analysed by regulator, and these would be subject to different confidence levels depending on the number of responses from members of the respective bodies. On this basis, it is likely that CLC, CILEx and CLSB could have lower confidence levels than others, but the LSB is targeting its efforts at getting more of their members to respond before the survey

closes. On the other hand, the number of volunteers for the in-depth interviews has exceeded expectations, and the qualitative information from the in-depth interviews will be useful in building up the evidence base.

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

Item 9 – Paper (14) 64 Development of regulatory standards approach for 2015/16

45. James Meyrick introduced this item. He informed the Board that a more targeted exercise is proposed in 2015/16 to reduce the burden both on the regulators and the LSB. The aim is to focus only on areas of risk. A two stage process is proposed, the first stage of which would involve the identification of those areas requiring a more detailed assessment, using data from the regulators themselves, the LSB's monitoring and intelligence gathering work and from questionnaire responses from key stakeholders for each regulator. This would not necessarily amount to a judgment on which areas the regulator is doing well in, but is more about prioritising those areas where there appear to be issues. The second stage would involve the setting up of a customised self-assessment template for each regulator. These proposals have in the main been endorsed by the regulators, with the exception of a few who would prefer that a more detailed process is conducted, as they view it as an opportunity to showcase their improvements – these preferences are likely to be able to be accommodated within the LSB's approach.

46. The Board resolved to:

- a) **agree to the implementation of a two stage approach for the 2015/16 regulatory standards exercise,**
- b) **retain the current “comply or explain” approach to independent scrutiny of the completed self-assessment and the current scoring approach, and**
- c) **approve the indicative timeline.**

Item 10 – Paper (14) 65 Special bodies – stakeholder update

47. Bryony Sheldon introduced this item. She reminded the Board that the transitional protection from which bodies are currently benefiting means that they may continue to provide reserved legal activities without the necessity of obtaining a licence. It is accepted that it would be appropriate to bring these bodies within regulation, but there are questions as to the timing of this. A strong steer had been given to the SRA that it would be asked by the LSB to carry out the necessary work, but the SRA is not yet in a position to do so. The support of MoJ in this regard would also be required. In the circumstances, it was recommended that further work be deferred until the autumn of 2016

48. The Board resolved to

- a) **agree that further work to end the transitional arrangements for special bodies be deferred until the autumn of 2016, and**

- b) delegate final sign off of the fuller update statement to the Chairman and Chief Executive.**

Item 14 – Matters emerging from the Audit and Risk Committee meeting of 5 November 2014

Paper (14) 67 – Report of the 5 November 2014 Audit and Risk Committee meeting

49. Terry Babbs introduced this item. In relation to the discussion on the internal audit plan, the Committee had considered whether an audit of IT procurement should be brought forward. It had, however, been noted that the system refresh had gone well, and as IT and business continuity go together, this would be carried out as part of the 2015/16 audit. The question was also raised whether the organisation's tolerance for strategic risk should be reduced in the period between Chris Kenny's departure and Richard Moriarty's arrival. It was agreed that this would be done, and that the issue would be revisited in May.

- 50. The Board resolved to note the key points arising from the ARC meeting held on 5 November 2014**

Paper (14) 68 – LSB Risk Management Strategy – annual review

51. Julie Myers introduced this item. The strategy had been the subject of a significant review in 2013 as a result of which no substantive changes were proposed on this occasion.

- 52. The Board resolved to agree the Risk Management Strategy.**

Paper (14) 69 – Corporate Risk Register

53. Julie Myers introduced this item. The Board is required to review the register every six months. The ARC had reviewed the register at its meeting on 5 November, and its comments were set out in paragraph 4 of the paper. [REDACTED]

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

- 54. The Board resolved to note the contents of the LSB Corporate Risk Register**

Paper (14) 70 – LSB Governance Manual Review

55. Ade Kadiri introduced this item reporting on the annual review of policies comprising the Governance Manual. No substantive changes had been made. Details of the relatively minor changes that had been made would be circulated to Board members as well as LSB colleagues and OLC and Consumer Panel members as appropriate. The Board also confirmed the necessary interim changes to the Schedules of Delegations to cover the Accounting Officer and Chief Executive's duties pending Richard Moriarty's arrival.

- 56. The Board resolved to agree the recommended changes in to the LSB Governance Manual.**

Item 15 - Paper (14) 71 Finance Report for October 2014

57. Edwin Josepchs presented this item. In light of the budget situation, it was reported that some research scheduled for 2015/16 was being brought forward.

58. The Board resolved to note the contents of the paper.

Item 16 – Any other business

Paper (14) 72 – Review of the LSB Health and Safety policy

59. Edwin Josepchs presented this policy which the Board is required to review annually. No substantive changes were proposed – the only change was to reflect the fact that the organisation had changed premises since the last review and so responsibilities of landlord needed to be updated. There were no incidents to report.

60. The Board resolved to approve the Health and Safety Policy Statement and Policy.

61. The Chairman on behalf of the Board recorded his appreciation to Chris Kenny for his unwavering commitment to the LSB, and for seeing it through from start up to what is today, a national body of considerable repute. They wished him well in his new role.

Item 17 - Date of next meeting

62. The Board would next meet on 27 January 2015 at 9.30am. The venue would be the Office of Rail Regulation, 2nd floor, One Kemble Street, London WC2B 4AN.

AK, 28/11/14

Signed as an accurate record of the meeting

.....
Date

.....