

Minutes of a meeting of Legal Services Board (LSB) on 17 December 2009

Date: 17 December 2009

Time: 9.30 am – 1.15 pm

Venue: Victoria House, Southampton Row, London WC1B 4AD

Present: David Edmonds Chairman
(Members) Chris Kenny Chief Executive
 Terry Connor
 Steve Green
 Rosemary Martin (Item 3 onwards)
 Bill Moyes (Items 3-9)
 Barbara Saunders
 Nicole Smith
 Andrew Whittaker
 David Wolfe

Guests: Stephen Bligh Partner, KPMG LLP (Items 1-3)
 Lauren Curry Assistant Manager, KPMG LLP (Items 1-3)
 Nyall Farrell Interim Chief Operations Officer, Office for Legal
 Complaints (OLC) (Items 4-6)
 Elizabeth France Chair, OLC (Item 4 onwards)
 Dianne Hayter Chair, Consumer Panel (Items 4-6)
 Prudence Roper Senior Manager, KPMG LLP (Items 1-3)
 John Ward Director, KPMG LLP (Items 1-3)

In attendance: Steve Brooker Consumer Panel Manager (Item 4 onwards)
 Fran Gillon Director of Regulatory Practice
 Michelle Jacobs Business Planning Associate
 Edwin Josephs Director of Finance and Services
 Bruce Macmillan General Counsel
 Julie Myers Director of Corporate Affairs
 Crispin Passmore Director of Strategy and Research
 Craig Robb Policy Advisor (Item 8)
 Alex Roy Research Manager (Items 4-10)
 Bryan Hislop Board Secretary (Minutes)

Item 1 – Welcome and apologies

1. The Board welcomed the representatives of KPMG, who were attending to facilitate Item 3; and Michelle Jacobs (Business Planning Associate), who was attending as an observer.
2. There were no apologies for absence from Board Members.

Item 2 – Declaration of interests etc.

3. There were no declarations of interests.

4. Board Members were reminded to notify the Board Secretary about hospitality extended / received in the course of their LSB work.

Item 3 – Paper (09) 75: LSB risk workshop

5. KPMG facilitated a risk workshop designed to ensure a clear and common understanding at Board and Executive level of the strategic risks facing LSB and the Board's risk appetite. The workshop was informed by the draft LSB Risk Management Strategy, the output from the Board review session facilitated by Peter Kilgour (Towers Perrin) on 30 November, and LSB's Corporate and Project Risk Registers.
6. The output from the risk workshop would be circulated separately.
7. The Board agreed that the Audit and Risk Committee would, at its next meeting, examine in more detail the strategic risks facing LSB, with the Board then to consider further the risks associated with alternative business structures (ABS) and those other strategic risks prioritised by the Committee.
8. The Board expressed its gratitude to the representatives of KPMG.

Action

(09) 86 – To circulate the output from the LSB risk workshop.

(09) 87 – The Audit and Risk Committee to examine in more detail the strategic risks facing LSB, and the Board then to consider further the risks associated with ABS and those other strategic risks prioritised by the Committee.

Item 4 – Minutes and action points

9. The Board welcomed Steve Brooker (Consumer Panel Manager), Nyall Farrell (OLC Interim Chief Operations Officer), Elizabeth France (OLC Chair) and Dianne Hayter (Consumer Panel Chair), who were attending principally for Items 5-6.

Minutes – 30 November 2009

10. **The Board resolved to agree the minutes of the meeting held on 30 November 2009 and to submit them for signing as an authorised record to the Chairman.**

Action points

11. A Paper in respect of Action (09) 58 would be presented to the Board on 28 January or 22 February 2010.

The Board resolved to note the report of action points.

Item 5 – Paper (09) 78: OLC – Scheme Rules, Memorandum of Understanding and budget 2010/11

12. Julie Myers (Director of Corporate Affairs) presented a Paper about the OLC Scheme Rules, an LSB-OLC Memorandum of Understanding (MoU) and the OLC budget 2010/11.
13. The Board was required by Legal Services Act 2007 ('the Act') to consent to the Scheme Rules (section 155) and to approve the budget (section 23 of Schedule 15).

Scheme Rules ('the Rules')

14. The OLC Board agreed on 14 December 2009 a number of revisions to the draft Rules annexed to Paper (09) 78. The revised draft Rules (including the rationale for the revisions) was therefore annexed to a supplementary Paper, which was circulated to the Board on 16 December.
15. The OLC Chair introduced the revised draft Rules. The Board noted that:
 - OLC had consulted widely (formally and informally) – including the Consumer Panel – on the draft Rules;
 - the OLC Board had agreed on the basis of evidence available from other ombudsman schemes to adopt a single case fee of £400, which it believed would mitigate negative complaints handling behaviours by authorised persons;
 - no case fee would be payable by authorised persons in respect of the first two potentially chargeable complaints closed during each year;
 - the above provisions in respect of case fees would be reviewed once sufficient data was available to OLC, probably after three years;
 - consumers / complainants could be represented by authorised third parties;
 - the Rules were drafted in accordance with the Act, but that a more accessible, 'Plain English' version would be developed for consumers / complainants; and
 - the estimated income from case fees was based on extrapolated data from Legal Complaints Service (LCS), and that the collection rate would have to increase significantly under OLC to avoid an increase in case fees.
16. The Board noted the Consumer Panel Chair's concern that allowing two 'free cases' per year could still lead to significant consumer detriment, particularly in respect of the consumers of services from small firms. On the other hand, the case fee of £400 could have little impact on the behaviour of larger firms. The Board therefore consented to the Rules, subject to directing OLC to review the Rules, in particular the provisions in respect of case fees, after two years.

MoU and budget 2010/11

17. The respective Executives had agreed a draft LSB-OLC MoU, which was designed to clarify (internally and externally) respective roles and responsibilities and set out

terms of engagement that facilitate effective working relationships.

18. The Board noted that the MoU was based on principles that would under-pin the LSB-OLC relationship, namely: mutual respect and trust; consultation and advice; timely and comprehensive operational arrangements; and information provisions and confidentiality.
19. The Board and the OLC Chair agreed to amend the first sentence of paragraph 16 of the MoU to provide for the mutual sharing of Board papers, unless the Chairs determined on a case-by-case basis not to share a particular paper (e.g. because it related to the relationship between the two organisations). Subject to this amendment, the Board agreed the LSB-OLC MoU.
20. The OLC Board agreed on 14 December amendments to its Business Plan 2010/11 (including the budget). The LSB Executive was collating the information necessary to approve the budget and the Board therefore agreed to delegate authority to approve the OLC budget 2010/11 to a sub-group of three Board Members chaired by the Chairman. [Post-meeting note: the sub-group met on 21 December and the notes of the meeting, and the Chief Executive's letter to the Chief Ombudsman, were circulated separately].

Action

(09) 88 – To amend paragraph 16 of the LSB-OLC MoU.

The Board resolved:

- a) to consent to the OLC Scheme Rules, subject to directing OLC to review the Rules, in particular the provisions in respect of case fees, after two years;
- b) to agree the LSB-OLC Memorandum of Understanding, subject to amending paragraph 16; and
- c) to delegate authority to approve the OLC budget 2010/11 to a sub-group of three Board Members chaired by the Chairman.

Item 6 – Paper (09) 80: Consumer Panel – Memorandum of Understanding, terms of reference and workplan 2009/10

21. The Director of Corporate Affairs presented a Paper about an LSB-Consumer Panel ('the Panel') MoU, the Panel's terms of reference (ToR) and the Panel's work programme 2009/10.
22. The Consumer Panel Chair provided an update about the Panel. The Board noted that:
 - the Panel convened for its first meeting on 27 November. Members had considered the Panel's ways of working and agreed that – in order to use the available resources most effectively – the number of physical meetings would

- be kept to a minimum;
 - Members had been appointed 'to lead' on specific issues / topics, including the provision of legal services in Wales, developing relationships with the Approved Regulators (ARs), etc;
 - in accordance with the Act, one Member had resigned from the Panel, following her appointment to a post at OLC; and
 - the Panel's secretariat was in place – and working effectively with LSB colleagues – to support and to promote the work of the Panel and the interests of consumers.
23. The draft LSB-Panel MoU was designed to clarify (internally and externally) respective roles and responsibilities and set out terms of engagement that facilitate effective working relationships.
24. The Board noted that the MoU was based on principles that would under-pin the LSB-Panel relationship, namely: consultation and advice; collaboration; information exchange; communication; and resources. The MoU provided for LSB to endorse the Panel's annual work programme, but it was noted that the Act required the Board to consider any representations made to it by the Panel. The Board noted that LSB and the Panel would share information proactively and on request, except where to do so would for example breach a contractual or other legal obligation. The Board agreed the LSB-Panel MoU, subject to reviewing / amending the phrasing of the principle about resources.
25. The Board agreed to endorse the Panel's ToR and work programme 2009/10.
26. The Board noted the recent discussions with a range of stakeholders (including The Bar Council) about the full range of referral arrangements and that the Panel had invited tenders in respect of its research into such arrangements.

Action

(09) 89 – To review / amend the phrasing of the principle about resources in the LSB-Panel MoU.

The Board resolved:

- a) to agree the LSB-Panel Memorandum of Understanding, subject to reviewing / amending the phrasing of the principle about resources;
- b) to endorse the Panel's Terms of Reference; and
- c) to endorse the Panel's work programme 2009/10.

Item 7 – Paper (09) 76: Chief Executive's progress report: December 2009

27. The Chief Executive presented his progress report.
28. The Board acknowledged the work of all colleagues to secure the publication on 10 December of the suite of 'go live' rules and two consultations on the designation and

cancellation of Licensing Authority status.

29. The Board noted that offers of employment had been issued in respect of three Project Manager posts, two Regulatory Associate posts and one Administrator post. Recruitment of a Legal Advisor, a Research Associate and an Executive Support Officer continued. [Post-meeting note: an offer of employment has since been issued in respect of the Legal Advisor post].
30. A draft framework document between LSB and Ministry of Justice (MoJ) would be developed and reviewed in consultation with all Board Members and then in more detail by a sub-group of the Board, with a view to a version being presented (following discussions with MoJ) to the Board on 28 January 2010.
31. The Board recalled that HM Treasury had approved in principle a 'netting off' arrangement in respect of the Levy, under which LSB would retain the funds collected from ARs necessary to finance its expenditure. Formal written approval was still outstanding.
32. A programme of communications had been developed around LSB's assumption of its full statutory powers in January 2010, supported by research commissioned from YouGov to understand consumers' views of the legal services market. The research etc would be circulated in advance of the 'launch' to the Board.
33. The Board noted that MoJ's Legal Services Consultative Panel (LSCP) had convened for its last meeting and would cease to operate on 31 December. The Board extended its gratitude to Barbara Saunders, who had attended LSCP meetings as an observer on behalf of LSB.
34. The Chairman and members of the Executive had met recently Henry Bellingham MP (Shadow Minister of Justice), Jonathan Djanogly MP (Shadow Solicitor-General) and Robert Kaye (Special Advisor to the Shadow Secretary of State for Justice).
35. The OLC Chair updated the Board about very recent developments in respect of the dispute between OLC (and MoJ) and The Law Society about the latter's revised position that TUPE Regulations applied to staff in LCS. The Board noted that any delay in recruiting to OLC could impact seriously on the transitional complaints handling arrangements agreed between OLC and LCS and LSB's objective to establish OLC during the second half of 2010. The OLC Board was taking specialist legal advice about how to proceed in respect of the dispute with The Law Society and its recruitment programme.

Actions

(09) 90 – To develop and to review in consultation with all Board Members and then in more detail a sub-group of the Board a draft framework document between LSB and MoJ, with a view to a version being presented (following discussions with MoJ) to the Board on 28 January 2010.

(09) 91 – To circulate the communications and research supporting the 'launch' of

LSB to the Board.

The Board resolved to note the Chief Executive's progress report.

Item 8 – Paper (09) 77: Solicitors' Disciplinary Tribunal – budget 2010

36. Crispin Passmore (Director of Strategy and Research) and Craig Robb (Policy Advisor) presented a Paper about the annual budget of the Solicitors' Disciplinary Tribunal (SDT). A supplementary Paper was tabled at the meeting.
37. SDT was required by Schedule 16 of the Act to submit each calendar year a budget approved by LSB to The Law Society. LSB was required before approving the budget to consult The Law Society.
38. The Board noted the conclusions and recommendations of the Executive, as set out in the supplementary Paper, approved a revised budget for 2010 of £2.25m (cf. SDT's submission of £2.4m), and agreed to consider additional increases to the budget justified following tri-partite discussions between LSB, SDT and The Law Society. The Board agreed further that approval of the revised budget was contingent upon SDT agreeing by April 2010 an MoU with LSB and The Law Society in respect of developing and approving future budget submissions.
39. The Chairman noted that Craig Robb would leave LSB on 18 December following his promotion to a post in Tribunals Service and, on behalf of the Board, acknowledged warmly his significant contribution over 15 months to the establishment of LSB. The Chairman acknowledged also the service of Martin Griffiths (Field Fisher Waterhouse LLP) and James Hutchinson (Slaughter and May), whose secondments to LSB were ending during December.

The Board resolved:

- a) **to approve the SDT's revised budget for 2010 of £2.25m;**
- b) **to agree to consider additional increases to the budget justified following tri-partite discussions between LSB, SDT and The Law Society; and**
- c) **to agree that approval of the revised budget was contingent upon SDT agreeing by April 2010 an MoU with LSB and The Law Society in respect of developing and approving future budget submissions.**

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Item 10 – Paper (09) 81: Research governance and early priorities

- 45. Alex Roy (Research Manager) presented a Paper setting out LSB’s research governance and stakeholder engagement arrangements, including the agreed research priorities for 2009/10 and the proposed priorities for 2010/11.
- 46. The Board noted the arrangements and priorities identified in the Paper and welcomed in particular the commitment to publishing all research commissioned by LSB.
- 47. The Board noted that LSB would adopt a partnership approach to the funding of research in 2010/11 in order to address the shortfall between the indicative cost of the proposed research priorities and the funding available in the draft LSB budget.
- 48. It was noted that the appointment of an AR representative to the Research Strategy Group and the Research Steering Group would be supplemented by wider AR engagement.
- 49. The Board would be invited to consider and to agree a final research plan and priorities for 2010/11 in early 2010.

Action

(09) 92 – To present a final research plan and priorities for 2010/11 to the Board in early 2010.

The Board resolved to note:

- a) the research governance and stakeholder engagement arrangements;
and**
- b) the proposed research priorities for 2010/11.**

Item 11 – Paper (09) 82: Finance report – November 2009

- 50. The Director of Finance and Services presented the Finance report – November 2009.

The Board resolved to note the Finance report.

Item 12 – Date of next meeting

- 51. The Board would next meet on 28 January 2010, 9.30am-1.30pm. The venue would be LSB's offices at Victoria House, Southampton Row, London WC1B 4AD.
- 52. The Chairman acknowledged the work of the Board, the Executive and other colleagues during 2009.

BH 21.12.09

Signed as an accurate record of the meeting

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Date

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