

## **Minutes of a meeting of Legal Services Board (LSB) on 22 February 2010**

**Date:** 22 February 2010  
**Time:** 9.30 am – 12.25 pm

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

**Present:** David Edmonds Chairman  
**(Members)** Chris Kenny Chief Executive  
Terry Connor  
Steve Green  
Bill Moyes  
Barbara Saunders  
Nicole Smith  
Andrew Whittaker  
David Wolfe

**In attendance:** Chris Baas Project Manager (Items 6-8)  
Anna Cheung Regulatory Associate (Item 10)  
Fran Gillon Director of Regulatory Practice (Items 1-8)  
Sandra Jenner HR Advisor (Items 14-15)  
Edwin Josephs Director of Finance and Services (Items 1-5 and 10-13)  
Bruce Macmillan General Counsel (Items 1-13)  
Julie Myers Corporate Director (Items 1-13)  
Crispin Passmore Strategy Director (Items 1-13)  
Alex Roy Research Manager (Item 11)  
Bryan Hislop Board Secretary (Minutes)

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

1. The Chairman welcomed those present and in attendance to the meeting.
2. There were apologies for absence from Rosemary Martin.

### **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 – Minutes: 28 January 2010**

5. **The Board resolved to agree the minutes of the meeting held on 28 January 2010 and to submit them for signing as an authorised record to the Chairman.**

#### **Item 4 – Report of action points**

6. **The Board resolved to note the Report of action points.**

#### **Item 5 – Paper (10) 08: Chief Executive’s progress report: February 2010**

7. Chris Kenny (Chief Executive) presented his progress report.
8. The Board noted in particular that:
- the output from the two well attended workshops about the draft Business Plan 2010/11 suggested that there was a broad consensus in respect of LSB’s proposed policy direction and resourcing levels;
  - colleagues were in advanced discussions with officials at Ministry of Justice (MoJ) about the commencement of Schedule 10 of Legal Services Act 2007 (relating to the designation of Approved Regulators (AR) as Licensing Authorities (LA));
  - a conference of local government lawyers had received a presentation about using not-for-profit alternative business structures (ABS) as a response to the current efficiencies and shared services agenda;
  - Senior Management Team would consider at its next meeting colleagues’ analysis of Bar Standards Board’s (BSB) application in respect of the proposed amendments to the Code of Conduct of the Bar (including, for example, to allow legal disciplinary partnerships);
  - the Chairman and the Chief Executive were scheduled to meet Shadow Ministers at Westminster and the recently appointed Counsel General for Wales, and that the Chairman would address the All-Party Parliamentary Group for Legal and Constitutional Affairs on 1 March; and
  - the two-week enrolment period for LSB Choices, the new all-colleague flexible benefits scheme, opened on 15 February.
9. The Board noted also updates about:
- the application by the Institute of Chartered Accountants in England and Wales to become an AR in respect of probate activity;
  - the first meetings of the Gateways to the Professions implementation group and its sub-group (chaired by the Chief Executive) looking at regulatory action and corporate governance reporting in relation to social mobility;
  - [REDACTED]
  - the series of LSB Open Forums, including in Newcastle (16 February), Bristol (9 March), and Wales, the Midlands and the South-West (dates to be confirmed).
10. The Executive agreed to circulate minutes of Legal Services Consumer Panel meetings to the Board.

**Action**

(10) 07 – To circulate minutes of Legal Services Consumer Panel meetings to the Board.

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

**Item 6 – Paper (10) 09: ARs' approaches to ABS**

11. Fran Gillon (Director of Regulatory Practice) introduced a paper about LSB's analysis of ARs' current strategies in respect of ABS. The paper would be updated regularly and reported to the Board as required.
12. In the course of the discussion that followed, the Board considered:
  - the cases for and against multiple LAs regulating ABS, in particular the potential impact on the promotion of competition, the other regulatory objectives and the principles of good regulation;
  - the analysis of BSB's approach to ABS, particularly in respect of LSB's promotion of the idea that BSB should move to become a regulator of 'advocacy' (*cf.* barristers) and the impact of the ProcureCo business model; and
  - the opportunities for ARs to develop a mutual solution to licensing ABS.
13. The Executive was scheduled to consider later in the year the practicalities and implications of LSB operating as a LA.

**The Board resolved to note the paper about ARs' approaches to ABS.**

**Item 7 – Paper (10) 10: Designating LAs and the cancellation of a designation as a LA**

14. The Director of Regulatory Practice introduced a paper about designating ARs as LAs and the cancellation of a designation as a LA.
15. The Board noted the Executive's consideration of the responses to the consultations on these issues, which were available in full at the meeting.
16. In the course of the discussion about the related Decision Document and the compliance and enforcement Statement of Policy, the Board proposed reviewing:
  - the suggested approach to oral representations, although it was noted that the Rules for applications to be designated as a LA were required to reflect the Rules for AR designation applications;
  - the suggested approach to an AR evidencing to LSB's satisfaction that 'it is a solid, stable, well structured, adequately financed and professionally operated body with the governance and institutional stability to discharge its functions on a proper basis'; and



- the statements in the Impact Assessments about race / disability / gender equalities.
17. Subject to the Executive's consideration of the above, the Board agreed the recommendations set out in the paper in respect of designating ARs as LAs and the cancellation of a designation as a LA.
  18. The Impact Assessments were subject to ongoing discussions with officials at MoJ. The Board agreed, therefore, to delegate authority to approve the publication of the Decision Document and the Statement of Policy to the Chairman and the Chief Executive.
  19. A paper about the consultation on ABS licensing rules would be presented to the next meeting of the Board.

#### **Action**

(10) 08 – To present a paper about the consultation on ABS licensing rules to the next meeting of the Board.

#### **The Board resolved:**

- a) to note the consultation responses and the Executive's consideration of them;
- b) *in respect of the designation of ARs as LAs* – to agree the:
  - a. Rules for applications to be designated as a LA, including the form of written and oral representations;
  - b. proposed prescribed fee of £22,000, if the applicant is a new applicant;
  - c. proposed prescribed fee of £16,000 for applications to add a reserved legal activity to an existing LA's regulatory powers, or if the applicant is applying at the same time to be an AR;
- c) *in respect of the cancellation of a designation as a LA* – to agree the:
  - a. Compliance and Enforcement – Statement of Policy in relation to cancellation of designation as a LA;
  - b. cancellation of designation: rules for application to cancel designation as a LA;
  - c. proposed prescribed fee of £4,500 for cancellation of some but not all reserved legal activities;
  - d. proposed prescribed fee of £6,000 for cancellation of all reserved legal activities;
  - e. cancellation of designation: rules on powers of entry;
  - f. cancellation of designation: rules on oral and written representations;
- d) to agree to delegate authority to approve the publication of the Decision Document and Statement of Policy to the Chairman and the Chief Executive; and
- e) to note that the process for assessing LA applications will be developed over the coming months.

**Item 8 – Paper (10) 11: ABS start date**

20. The Director of Regulatory Practice introduced a paper recommending the announcement of a start date for ABS of 6 October 2011.
21. The Chairman believed that this was a challenging but realistic date, which would give the Executive, LAs and other stakeholders a clear target, as well as sufficient opportunity to identify and to manage (and, where relevant, alert the Board to) risks to the ABS licensing process (including the start date).
22. It was noted that firms would be able to apply from the summer of 2011 for licences to provide services from 6 October 2011. The timetable for the licensing process would be circulated in due course to the Board.
23. The Board agreed the announcement of a start date for ABS of 6 October 2011.

**Action**

(10) 09 – To circulate the timetable for the ABS licensing process to the Board.

**The Board resolved to agree the announcement of a start date for ABS of 6 October 2011.**

**Item 9 – Paper (10) 12: Quality assurance for advocates**

24. Crispin Passmore (Strategy Director) introduced a paper about key developments in respect of a quality assurance scheme for advocates (QAA).
25. In the course of the discussion that followed, the Board noted:
  - LSB's role to date in intervening as the oversight regulator: to embed a governance structure and delivery timetable for the first stages of a criminal QAA scheme (by mid-2011); to maintain momentum; and to manage tensions between the regulatory and the representative arms of the ARs and between statutory agencies and the regulators;
  - the link between QAA and several other of LSB's workstreams, including: opening the market; increasing access to justice by tackling referral arrangements; and ensuring independence;
  - that LSB's regulatory powers could be used indirectly but legitimately to drive forward QAA;
  - that QAA was an important means of helping to ensure standards in publically funded criminal advocacy in general and in the light of current expenditure pressures in particular; and
  - LSB's potential role (post-mid-2011) in extending QAA beyond criminal and family advocacy.

**The Board resolved to note the paper about key developments in respect of QAA.**



### **Item 10 – Paper (10) 13: Consultation on Levy Rules – operational costs**

26. Edwin Josephs (Director of Finance and Services) introduced a paper about the consultation on the proposed methodology for calculating the Levy for recovering from the ARs the operational costs of LSB from 1 April 2010 and of Office for Legal Complaints (OLC) from 'go live'.
27. The preferred option for apportioning the Levy was consistent with the approach adopted in respect of LSB's and OLC's set up costs. In particular, it was proposed that:
  - LSB's costs should be apportioned based on the number of authorised persons regulated by each AR;
  - OLC's costs should be apportioned based on the number of complaints handled by each AR; and
  - AR-specific costs (relating, for example, to enforcement action or a court case), above a threshold of £100,000, should be levied only on the relevant AR.
28. The consultation would also invite comments about the approach to be adopted in respect of ARs that do not currently regulate authorised persons and the recovery of unpaid Levy contributions from ARs that have their designation cancelled.
29. The Board noted that the consultation document was presented in draft form and that it had not been considered in full by OLC. The consultation document would also be submitted prior to publication to HM Treasury and MoJ.
30. The Board agreed the recommendations set out in the paper.

#### **The Board resolved to agree:**

- a) **the policy directions proposed in the draft consultation document;**
- b) **the preferred option for the apportionment of the Levy (see para 27);**
- c) **to delegate authority to approve the publication of the consultation document to the Chairman and the Chief Executive;**
- d) **to draft a Statutory Instrument that would require amendment only following significant changes to the Levy arrangements; and**
- e) **the consultation timetable.**

### **Item 11 – Paper (10) 14: Research strategy and Research plan 2010/11**

31. The Strategy Director and Alex Roy (Research Manager) introduced a paper about the Research strategy ('the Strategy') and Research plan 2010/11 ('the Plan').
32. In the course of the discussion, the Board noted:
  - that the launch of the agreed Strategy and the Plan – which had been

informed by a series of stakeholder workshops – would be announced in March to the academic, legal and general press;

- the principles of research identified in the Strategy;
- the progress in respect of the research programme for 2009/10;
- the research priorities for 2010/11, which it was agreed would be expressed more objectively;
- the commitment to transparency and to publish all commissioned research, subject for example to preserving subjects' anonymity; and
- that LSB's website would be used as a 'hub' to link freely available peer-reviewed (but explicitly not LSB-endorsed) research from across the legal service market.

33. The Executive would consider in due course producing an annual market research publication.

**Action**

(10) 10 – To consider in due course producing an annual market research publication.

**The Board resolved to agree the Research strategy and Research plan 2010/11.**

**Item 12 – Paper (10) 15: Finance report: January 2010**

34. The Director of Finance and Services introduced the Finance report.
35. The Board noted that a small under-spend against budget was forecasted for 2009/10.

**The Board resolved to note the Finance report.**

**Item 13 – Any other business**

36. There were no items of other business.

**Item 14 – Paper (10) 16: Remuneration and Nomination Committee – 9 February 2010**

37. This Item was considered only in the presence of Board Members, Sandra Jenner (HR Advisor) and the Board Secretary.
38. Terry Connor (Committee Chairman) presented a paper summarising the draft minutes of the meeting. Amendments had been reported to the Board Secretary and the revised minutes would be circulated in due course to the Board.
39. The Board noted the decisions of the Committee in respect of the benefits element of the colleague reward strategy and agreed that the final decision in respect of the payment in 2009/10 should be made by the Chief Executive in his capacity as LSB Accounting Officer.

**Action**

(10) 11 – To circulate the revised minutes of the Remuneration and Nomination Committee meeting held on 9 February 2010.

**The Committee resolved to note the draft minutes of the Remuneration and Nomination Committee meeting held on 9 February 2010.**

**Item 15 – Date of next meeting**

40. The Board would next meet on 24 March 2010, 9.30am-1.30pm. The venue would be LSB's offices at Victoria House, Southampton Row, London WC1B 4AD.

BH 25.02.10

Signed as an accurate record of the meeting

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Date

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