

Minutes of a meeting of Legal Services Board (LSB) on 27 April 2010

Date: 27 April 2010

Time: 9.35 am – 12.30 pm

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

Present: David Edmonds Chairman
(Members) Chris Kenny Chief Executive
Terry Connor
Steve Green
Barbara Saunders (Items 1-9)
Nicole Smith
David Wolfe

Guest: Anthony Edwards Senior Partner – TV Edwards LLP (Items 1-2)

In attendance: Lesley Davies Project Manager (Items 1-2)
Lucas Ford Project Manager (Item 9)
Fran Gillon Director of Regulatory Practice
Chris Handford Project Manager (Items 7-8)
Edwin Josephs Director of Finance and Services (Items 1-6)
Alanna Linn Consumer Panel Associate (Items 1-2)
Bruce Macmillan General Counsel
Luke McInerney Regulatory Associate
James Meyrick Project Manager
Julie Myers Corporate Director
Crispin Passmore Strategy Director
Bryan Hislop Board Secretary (Minutes)

Item 1 – Welcome and apologies

1. The Chairman welcomed Anthony Edwards (Senior Partner – TV Edwards LLP), who was attending for Item 2; and Luke McInerney (Regulatory Associate) and James Meyrick (Project Manager), who were attending as observers.
2. There were apologies for absence from Bill Moyes and Andrew Whittaker, both of whom had submitted by email comments about the papers.

Item 2 – Anthony Edwards LLP (Senior Partner – TV Edwards LLP)

3. Mr Edwards, a solicitor operating from an established firm in east London, delivered a presentation about the priorities, opportunities and challenges facing criminal law specialists, covering a range of topics including referral fees, competition and alternative business structures (ABS).
4. In the course of the presentation and the discussion that followed, Mr Edwards commented that:

- the 'professional survival' of his and similar firms was dependent upon the delivery of a quality service to clients, but in an environment of low and reducing profit margins;
 - the removal of the 'false market' created by the duty solicitor system and the growing number of criminal law 'specialists' would increase the volume of business and promote competition; however, there was likely to be significant consolidation in regions where the market was currently fragmented;
 - transparency of fees and peer review were central to monitoring the quality of advocacy (which was a public activity) and to upholding the interests of clients;
 - referral fees were an established mechanism for negotiating and transacting business and posed no obvious risks to clients;
 - ABS could provide partnerships with a new source of working capital (for example to take advantage of developments in technology), but that the current low profit margins were unlikely to attract external investors to criminal law work;
 - established partnerships were well placed to expand and to provide holistic offender management services; and
 - the inefficiencies of the criminal justice 'system' continued to impact negatively on the costs and quality of advocacy.
5. The Board expressed its gratitude to Mr Edwards, who then left the meeting. A representative of the criminal Bar would be invited to attend a future meeting of the Board.

Item 3 – Declarations of interests etc.

6. There were no declarations of interests.
7. Board Members were reminded to notify the Board Secretary about hospitality extended / received in the course of their LSB work.

Item 4 – Minutes: 24 March 2010

8. **The Board resolved to agree the minutes of the meeting held on 24 March 2010 and to submit them for signing as an authorised record to the Chairman.**

Item 5 – Report of action points

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

Item 6 – Paper (10) 28: Chief Executive's progress report: April 2010

10. Chris Kenny (Chief Executive) presented his progress report.

11. The Board noted in particular:

- that the forecast under-spend against the budget for 2009/10 had increased from £70k to £190k;
- the project performance report, including the work to underpin the submission of finalised internal governance arrangements from Approved Regulators (AR) and the decision not to proceed with developing a distinct document about strategic workforce development issues;
- that the Executive and Solicitors Regulation Authority (SRA) were making good progress in their discussions about section 69 of Legal Services Act 2007 ('the Act') (relating to the modification of the functions of ARs);
- a summary of the rule change applications approved under delegated authority since the last meeting of the Board;
- that Legal Ombudsman (LeO) was on course to open in October 2010; and
- that the Chairman had met the Chair of Bar Standards Board (BSB) for the first of their monthly update meetings and that he and the Chief Executive were scheduled to meet Helen Edwards, the new Director General – Justice Policy Group, Ministry of Justice (MoJ).

12. The Board noted also updates about:

- the process for publishing LSB's commissioned research and the Consumer Panel's advice in respect of referral fees / arrangements, which would be presented for consideration to the Board on 29 June;
- the work to develop a memorandum of understanding in respect of Solicitors' Disciplinary Tribunal's annual budget approval process;
- the Joint Advocacy Group's progress in respect of Quality Assurance for Advocates; and
- the process to appoint Rosemary Martin's successor as a Board Member, which had been delayed by the pre-election 'purdah'.

13. The Board discussed briefly the potential implications of possible post-general election changes on legal services reform and noted proposals for introducing LSB (and LeO) to new political stakeholders.

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

Item 7 – Paper (10) 29: Rule change applications – SRA Disciplinary Procedure Rules and ILEX Professional Standards Code of Conduct

14. Crispin Passmore (Strategy Director) introduced a paper recommending the approval of rule change applications from SRA and ILEX Professional Standards (IPS).

15. The Board noted that:

- alterations to an ARs' regulatory arrangements must first be approved by LSB (Part 3 of Schedule 4 of the Act);

- Board Members had been consulted during the consideration of the applications; and
- due process had been followed by SRA and IPS and that there were no grounds to refuse the applications.

16. In the course of the discussion about the SRA application, the Board noted:

- that SRA had submitted a well researched and evidenced application, which demonstrated that it had taken reasonable steps to ensure that the proposal to apply the civil standard of proof in respect of new disciplinary powers was lawful and consistent with the majority of other professions;
- the draft Decision Notice, which had been circulated by email on 26 April; and
- that SRA would be the defendant in any legal challenge of the lawfulness of the proposed standard of proof, and it was agreed to reflect this in the Decision Notice.

17. In the course of the discussion about the IPS application, the Board noted:

- that the application was a positive step towards outcomes-based regulation and as such it was a beacon to current and prospective ARs; and
- the draft Decision Notice, which included conditions requiring IPS to develop its regulatory capability.

18. The Board approved the rule change applications from SRA and IPS and, subject to the Executive's consideration of a small number of proposed drafting amendments, the related Decision Notices. The Board also noted a summary of the process for considering rule change applications and an update about the applications approved under delegated authority.

19. The Board noted generally that an application could be refused if it was satisfied that granting the application would be contrary to the public interest, although it was agreed that developing fixed criteria to assess the 'public interest' would fetter the Board's discretion to consider each application on its own merits.

The Board resolved to approve:

- a) the SRA Disciplinary Procedure Rules application and Decision Notice;**
and
- b) the IPS Code of Conduct application and Decision Notice.**

Item 8 – Paper (10) 30: Practising fee approvals

20. The Strategy Director introduced a paper setting out the agreed framework for submitting, considering and approving ARs' practising fees for 2011. [Post-meeting note: The final sentence of paragraph 2 of the paper should read: 'These extend wider than activity that is straight regulation and also cover some activity more akin to professional body activity'.]

21. In the course of the discussion that followed, the Board noted that:
- the level of ARs' practising fees must first be approved by LSB (section 51 of the Act); and
 - the role of LSB as an oversight regulator would not be to scrutinise ARs' budgets or processes for setting practising fees, but instead to ensure, for example, that the fees were used only to fund the 'permitted purposes' (as defined) and that ARs had been transparent and were fully accountable to the members mandated to pay the fees.

The Board resolved to note the update about practising fee approvals.

Item 9 – Paper (10) 31: First-tier complaints handling

22. Fran Gillon (Director of Regulatory Practice) introduced a paper recommending the approval of Guidance on first-tier complaints handling ('the Guidance'), including a consumers' rights of complaint 'signposting requirement'.
23. In the course of the discussion that followed, the Board noted that:
- the ARs, LeO and the Consumer Panel had been consulted informally about the Guidance and the 'signposting requirement';
 - LSB would be authorised when exercising its functions (including considering enforcement action) to have regard to the extent to which an AR had complied with the Guidance;
 - the implementation of the Guidance by ARs would be assessed as part of a regulatory review in October / November and again approximately a year after the opening of LeO (i.e. late 2011/12);
 - the 'signposting requirement' would require only current (mid-contract) and future clients (including former clients submitting new instructions) to be notified of their rights of complaint; and
 - the Executive would discuss with BSB and SRA: (a) the implementation of the 'signposting requirement' by barristers, who were not obliged to issue terms of engagement to their clients; (b) the definition of 'client' when applied to self-employed barristers; and (c) the implementation date for the Guidance.
24. Subject to the Executive's discussions with BSB and SRA, the Board approved in principle the Guidance, including the consumers' rights of complaint 'signposting requirement' and the first-tier complaints outcomes. The Board agreed also to delegate authority to approve the publication post-'purdah' of the Guidance and a Decision Document to the Chairman and the Chief Executive.
25. The Board also noted a summary of the next steps in respect of the first-tier complaints handling workstream, in particular maintaining the momentum from ARs.

The Board resolved:

- a) to approve in principle the Guidance on first-tier complaints handling (made under section 162 of the Act), including:
 - a. the consumers' rights of complaint 'signposting requirement' (made under section 112(2) of the Act); and
 - b. the first-tier complaints outcomes;
- b) to agree to delegate authority to approve the publication post-'purdah' of the Guidance on first-tier complaints handling and a Decision Document to the Chairman and the Chief Executive; and
- c) to note the next steps in respect of the first-tier complaints handling workstream.

Item 10 – Paper (10) 32: Q4 performance report: January – March 2010

26. Julie Myers (Corporate Director) introduced a paper setting out the Q4 report of performance against the Business Plan 2009/10, which also included the draft submission to MoJ.
27. In the course of the discussion that followed, the Board noted:
 - the first quarterly activity report from the Consumer Panel;
 - that the format and content of the performance report would be reviewed again at the request of MoJ to ensure coverage of the full range of LSB's achievements and project risks; and
 - the status of the projects on the performance report.

The Board resolved:

- a) to note the draft Q4 performance report; and
- b) to agree to its use as a basis for discussion with MoJ.

Item 11 – Paper (10) 33: Terms of Reference and delegation of functions

28. The Corporate Director introduced a paper recommending the approval of new Terms of Reference (ToR) for the Audit and Risk and the Remuneration and Nomination Committees, which had been endorsed by their respective Committees.
29. The Board approved the ToR for the Audit and Risk and the Remuneration and Nomination Committees.
30. The paper also invited comments about the first draft of a Delegation of Functions document, which had been broadly endorsed by a selection of Board Members. The Board noted that a significant number of matters were reserved to the Board (which was in line with the Act), but that this would be addressed over time as the Board delegated more of its functions. It was agreed also to reserve the approval of the Equality Scheme to the Board.

31. A new Board code of practice / governance manual (including the approved ToR and a revised draft Delegation of Functions document) would be presented for approval to the Board on 27 May.

Action

(10) 13 – To present a new Board code of practice / governance manual to the Board on 27 May.

The Board resolved:

- a) to approve the Terms of Reference for the Audit and Risk Committee;
- b) to approve the Terms of Reference for the Remuneration and Nomination Committee; and
- c) to note the first draft of a Delegation of Functions document (including a schedule of matters reserved to the Board).

Item 12 – Paper (10) 34: Outline process for handling judicial review claims

32. Bruce Macmillan (General Counsel) introduced a paper outlining the process for handling judicial review claims, which was developed with the support of LSB's external legal advisors.
33. Although the decision to defend or to concede an action for judicial review would remain a matter reserved to the Board, it was agreed that for the duration of any litigation the Project Steering Group (including one or more Board Members) would have delegated authority to act on behalf of the Board. The Executive would consider developing high-level criteria to inform a decision to defend or to concede an action for judicial review, although it was noted that such information if published could assist potential applicants.

The Board resolved to note the outline process for handling judicial review claims.

Item 13 – Any other business

34. There were no items of other business.

Item 14 – Date of next meeting

35. The Board would next meet on 27 May 2010, 2-6pm (timing to be confirmed). The venue would be LSB's offices at Victoria House, Southampton Row, London WC1B 4AD.

BH 28.04.10

Signed as an accurate record of the meeting

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Date

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