

Minutes of a meeting of Legal Services Board (LSB) on 18 March 2013

Date: 18 March 2013
Time: 13:00 – 16:00
Venue: Victoria House, Southampton Row, London WC1B 4AD

Present: David Edmonds Chairman
(Members) Chris Kenny Chief Executive
 Steve Green
 Bill Moyes
 Ed Nally
 Barbara Saunders
 Andrew Whittaker
 David Wolfe

Apologies: Nicole Smith

In attendance: Terry Babbs LSB Board Member designate (observing)
 Steve Brooker Consumer Panel Manager (item 9)
 Jessica Clay Legal Advisor
 Elisabeth Davies Chair of the Legal Services Consumer Panel
 Fran Gillon Director of Regulatory Practice
 Nick Glockling Legal Director (to item 10)
 Edwin Josephs Director of Finance and Services
 Cat Mariner Corporate Affairs Associate (observing)
 James Meyrick Regulatory Project Manager (item 4)
 Julie Myers Corporate Director
 Crispin Passmore Strategy Director (by telephone, items 1 to 7)
 Dawn Reid Head of Statutory Decisions (items 5 and 6)
 Alex Roy Head of Development and Research (items 4 to 9)
 Adam Sampson Chief Ombudsman (item 7)
 Bryony Sheldon Regulatory Project Manager (observing)
 Karen Silcock Board Member, Office for Legal Complaints (item 7)
 Holly Perry Corporate Governance Manager (minutes)

Item 1 – Welcome and apologies

1. The Chairman welcomed those present and in attendance to the meeting.

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 about hospitality extended and/or received in the course of their LSB work.

Item 3 – Formal noting of matters circulated since the Board’s 30 January 2013 meeting

4. The Board formally noted the Finance Report for February 2013 which had been circulated on 22 February.

7. **The Board resolved to note the issues raised in the paper and agreed the timing of regular reports to the Board.**

Item 5 – Paper (13) 12: Research into efficacy of Bar Standards Board cab rank rule

8. Alex Roy presented the paper, supported by Crispin Passmore and Dawn Reid. Following the publication of the cab rank rule research, the Board had requested an opportunity to discuss the report and next steps. The concerns over the cab rank rule had manifested in applications for the introduction of standard contracts, direct public access and were likely to re-appear in the new Bar Code. The executive had agreed with the BSB to consider the cab rank rule within the Code discussions.
9. The Board noted:
- Public comment had been mixed, and a number of responses had been received on the issue including from the Lord Chief Justice. The LSB expected to receive official responses from Bar Council and BSB imminently.
 - Discussion with the BSB had focussed on the general issue of quality assurance of the LSB's research as well as the specifics of the cab rank rule.
 - The importance of the link between the cab rank rule and the BSB's public access application was emphasised.
 - The LSB had made clear in a comment piece published in *The Lawyer* alongside the research that it had no intention of abolishing the rule. The view was simply that, as drafted, the rule was unenforceable and evidence would be required that it was logical and justifiable when it came forward for approval with the Code.
 - Concerns remained around the communications aspects and reaction to the research, particularly why the regulator and other commentators had taken the view that the LSB was intending to abolish the rule. The purpose of the comment piece had been to set out the facts, and this had generated some positive reaction.
10. **The Board resolved to:**
- a) **note the research and commentary on the efficacy of the Bar Standards Board's cab rank rule**
 - b) **note that the BSB, Bar Council and judiciary were expected to provide written commentary in due course, and that this and other comments would be considered carefully before any further steps were taken.**

Item 6 – Paper (13) 13: Forthcoming Bar Standards Board applications

11. Chris Kenny presented the paper, supported by Dawn Reid. The LSB had received, and were due to receive, a series of BSB applications including: public access (already received); changes to the handbook as applied to individuals (imminent); changes to the handbook for introducing entity regulation (due to be received in the spring); licensing authority designation application (expected in the early autumn). The paper updated the Board on current discussions and issues and sought a steer from the Board on next steps.
12. The Board noted:

the budget. This was felt to be necessary in the context of the degree of unknowns facing the organisation in 2013/14.

- The OLC had suffered the failure of its IT provider and an element of capital cost was therefore required for 2013/14 in order to identify a new IT provider. No detailed scoping had taken place as yet, and no sensitivity analysis had been undertaken. However, a total refresh would be incorporated into the specification as a number of improvements to the current IT were required, including improved interface with users. The OLC was at a very early stage in considering the requirements; no spend was as yet committed and it was confirmed that the OLC Board would ensure the closest scrutiny of capital spend. The LSB would be kept updated on developments with IT. Adam Sampson confirmed that all current IT was fully depreciated.
- Staffing costs had increased by approximately £200k though the final position was dependent on a decision by the Ministry of Justice in relation to the jurisdiction on Claims Management Companies (CMC). The Board questioned whether there was any scope for non-staffing savings to ensure some earlier downwards pressure ahead of possible re-baselining of staffing in 2014/15, once CMC volumes were clearer.
- The split between communications and legal costs appeared large - £0.5m was significantly higher than the LSB allowed for both functions. There had been a number of responses to the OLC's business plan consultation on the need for improved communications about legal services redress as well as the need for transparency of information and advice on the website.
- The Board noted that the conversion rate had risen since December ie since the business plan consultation, and was now running at 16%. This was likely to be the result of the Scheme Rules changes which came into effect on 1 February, but it was not clear whether this would be a permanent feature. In turn, this meant that case numbers were very hard to predict though an estimated 800 additional investigations a year were anticipated.
- The OLC was challenged on its expected unit cost trajectory through the year and how it would be managed if the volumes remained steady or fell. The cost per case figure remained high, even though the draft budget anticipated a 15% increase in volumes, bringing unit costs to £1,999. Any shortfall in case volumes, particularly with staffing levels remaining static, threatened to drive up unit costs significantly. OLC noted the risk.
- Ahead of the Justice Select Committee on 19 March, the Board was reminded that: the costs of running the scheme under the Legal Complaints Service was approximately £26m; the costs predicted by consultants in 2005 during the drafting of the Legal Services Act had been £19.9m; and the current cost of running the scheme under the OLC was £15.5m.

16. The Board resolved to approve the OLC's budget submission for 2013/14. The Chairman would write to the Chair of the OLC to ensure that the points made in discussion were reflected appropriately.

Item 8 – Paper (13) 15: Final LSB Business Plan and budget 2013/14

17. Chris Kenny presented the paper supported by Julie Myers and Edwin Josephs. The LSB had consulted on the draft Business Plan for 2013/14 at the end of 2012, with the consultation having closed on 4 March 2013. Seventeen responses had been submitted. The executive had had only six working days from receipt of comments to circulation of Board papers – further work was therefore required to refine the Plan itself, although the draft response document was close to final.
18. The Board noted:
- A number of consultation responses had repeated points made previously, including to the Triennial Review and already reflected in the LSB's response to that. None had, however, justified a major change of direction with regard to the LSB's work plan.
 - The emphasis for the year ahead would be on maintaining regulatory performance and tackling regulatory cost and complexity. On the latter, the Executive were considering possible ways of broadening engagement in the governance of the work. Other changes to the version consulted upon included a slimmed down research plan and the postponement of the broader piece of work on regulatory independence, which would now be considered for 2014/15, along with postponement of the next Evaluation Review also until 2014/15.
 - The foreword had not yet been drafted and there were a number of other refinements needed. A final draft would be circulated to Board Members on 25 March for final comment by 28 March.
 - The lack of responses from consumer organisations was noted. The Board was advised that the absence of engagement was reflective of the general environment within which the sector was currently operating, and did not betray a lack of commitment or interest. The embedded Legal Services Consumer Panel meant that other avenues of engagement had been possible eg there had been positive contributions at the Consumer Panel workshops held earlier in the year. There had also been proactive engagement in other areas of the LSB's work such as in relation to special bodies and will writing.
 - The proposed operational budget and cash flow forecast for 2013/14 had been endorsed at the Audit and Risk Committee's 11 March meeting. The ARC had noted that pressures were mounting, but that a strong case could be made for the LSB's organisational prudence. The Committee had also recommended developing a strong narrative about the benefits of the LSB's research to date, to counter any reduction on research activity in 2013/14.
 - On the basis that an increase in budget was wholly unrealistic in the current climate, the Board agreed the executive's proposals for prioritising resources on core regulatory activity.
19. **The Board resolved to:**
- **note the responses to the draft Business Plan for 2013/14**
 - **agree in principle the proposed changes to the Plan**
 - **agree the proposed budget of £4,458k**
 - **delegate authority to approve the sign-off of the Plan to the Chairman and the Chief Executive in order to allow publication on 3 April 2013**
 - **agree the research plan for 2013/14.**

Item 8 – Paper (13) 16: Consumer Panel Draft Work Programme 2013/14

20. Elisabeth Davies presented the paper with Steve Brooker in support. The Board

was asked to endorse the work programme, as set out in the Memorandum of Understanding between the Board and the Consumer Panel.

21. The Board noted:

- This was the Panel's fourth Work Programme, and was framed around (a) the extent to which the Panel had achieved its 2012/13 commitments, (b) the areas of work which had not changed since 2012/13 and (c) key differences between 2012/13 and 2013/14.
- Evidence-based decision making would continue to be paramount, with a focus on vulnerable consumers. The Programme was also cognisant of wider changes taking place in the sector, for example the likelihood of an increase in litigants in person in the context of legal aid changes.
- The Panel would also continue to reflect the issues that the Board itself was raising, for example approved regulators' lack of consumer engagement. A facilitated workshop had been held to discuss the issues, which had included representatives of the smaller regulators.
- No new formal requests for advice had been proposed by the LSB for 2013/14, which would give the Panel maximum flexibility in prioritising its work.
- The Consumer Impact Report would, as previously advised, be undertaken every two years with the next report due in summer 2014. The work had shone a light on the work of the approved regulators, who now needed time to respond to the report. The annual tracker survey would continue annually.
- The Panel Chair responded to questions about the work planned in relation to asylum seekers accessing legal services. Amongst a wide range of other justifications, there was an absence of consumer research in this area, which the LSB had itself identified. The Board also asked about any plans to protect consumers who were at risk – legally and financially – where firms failed. In addition, there was a need to consider small business consumer issues. The LSB would be publishing a research study on small businesses imminently.
- The Panel would give consideration to repeating the work undertaken in 2012 on benchmarking ombudsman schemes.
- The report on consumer empowerment had been published the previous week, and this would be presented to the Board for full discussion on 30 April.

22. The Board commended the Panel's work in drawing up the Programme, resolved to note its overall direction and endorsed the Work Programme subject to the points raised in discussion.

Item 10 – Minutes of the 30 January 2012 meeting of the Board

23. The Board resolved to agree the minutes of the meeting held on 30 January 2013, and to submit them for signing as an accurate record to the Chairman.

Item 11 – Report of action points

24. All actions were on track, scheduled for discussion at future meetings or were covered by papers on the agenda.

25. The Board resolved to note the Report of action points.

Item 12 – Paper (13) 17: Chief Executive's Progress Report: March 2013

26. The Chief Executive presented his progress report for the month of March.

27. The Board noted:

- In respect of accommodation, it was now likely that the LSB would need to vacate Victoria House and acquire alternative accommodation from the Government estate. The challenge was to find premises which would allow the LSB to preserve its culture and working style while also provide value for money. Securing adequate back office services would also present a challenge.
- [REDACTED]
- There had been an indication from one of the regulators that it would push back the decision on QASA by a further month owing to the legal aid changes affecting crime competition – it was noted that there was no link between the two subjects and that assurance had been received that no change was planned to the ‘go live’ date.
- There had been disappointing responses from the approved regulators to the LSB’s communication on damage based agreements – and responses remained outstanding from the SRA and BSB. The changes would take effect on 1 April 2013. The LSB planned to hold a workshop for the approved regulators to run through the issues in more detail.
- The MoJ had begun its ‘light touch’ post legislative assessment of the Legal Services Act 2007 which it intended concluding quickly.
- In terms of OLC issues, a discussion had been held with a sub group of Board Members on 11 March. A number of issues had arisen in the discussion, and it was agreed that time for further discussion would be allowed for at the 30 April Board meeting.

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

Item 13 – Paper (13) 18: Report of the 11 March Audit and Risk Committee meeting

29. Steve Green presented a summary of the business considered by the Audit and Risk Committee at its 11 March meeting, including:

- the extension of the Committee’s external adviser’s contract for a further year, in light of an ongoing absence of a Board Member on the Committee with recent and relevant financial experience;
- agreement to propose to the Board the prohibition of first class travel, following a recent communication from the Secretary of State;
- endorsement of the risk register to the Board, following detailed consideration of all new and increased risks, as well as red risks. For a wide range of reasons, the environment was increasingly risky, and would remain so.

30. **The Board resolved to note and comment on the key points arising from the Audit and Risk Committee meeting held on 11 March 2013 and agreed to put in place a prohibition on first class travel through an amendment of the LSB’s expenses policy (similar to that in place for civil servants).**

Item 14 – Paper (13) 19: LSB Corporate Risk Register: Six Monthly Review

31. Julie Myers presented the corporate risk register. As noted at item 13, the register

had been subject to detailed scrutiny at the ARC's 11 March meeting. The impact on the business of continuing to carry the current high levels of risk required serious ongoing consideration.

32. The Board resolved to note the LSB Corporate Risk Register.

Item 15 – Paper (13) 20: Finance report – February 2013

33. Edwin Josephs presented the finance report for the month of February.

34. The Board resolved to note the Finance report for February.

Item 16 – Any other business

35. There were no further items of business.

36. The Chairman formally recorded the Board's thanks to Nicole Smith and David Wolfe whose terms of office were due to end on 31 March 2013. Nicole had added verve, challenge and a different perspective to the Board's deliberations, while David had contributed radical views on the issues affecting the Bar, as well as passion and commitment. The Board acknowledged their considerable contribution to the work of the LSB.

Item 17 – Date of next meeting

37. The Board would next meet on 30 April, 09:30 to 13:30. The venue would be LSB's offices at Victoria House, Southampton Row, London WC1B 4AD.

HP, 22/3/13

Signed as an accurate record of the meeting

.....

Date

.....