

Minutes of a meeting of Legal Services Board (LSB) on 25 January 2012

Date: 25 January 2012

Time: 9.30am – 1.30pm

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
Nicole Smith
Andrew Whittaker
David Wolfe (except items 14 and 15)

In attendance: Chris Baas Project Manager (item 6)
Steve Brooker Consumer Panel Manager
Fran Gillon Director of Regulatory Practice
Nick Glockling Legal Director
Chris Handford Project Manager (items 4 and 5)
Wendy Harris Project Manager (item 8)
Edwin Josephs Director of Finance and Services
Emily Lyn Project Manager (items 6, 7 and 8)
Bruce Macmillan General Counsel
Karen Marchant Corporate Affairs Associate (item 9)
Julie Myers Corporate Director
Crispin Passmore Strategy Director
Holly Perry Corporate Governance Manager
Dawn Reid Head of Strategy Decisions (item 10)
Alex Roy Head of Development and Research (items 4 and 5)

Item 1 – Welcome and apologies

1. The Chairman welcomed those present and in attendance to the meeting. In particular, he welcomed Holly Perry, who joined as Corporate Governance Manager on 19 December 2012.

Item 2 – Declarations of interests etc

2. There were no new declarations of interests.

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 – Paper (12) 01: BSB amendments to Cab Rank Rule

4. The paper – relating to the BSB’s submission of a rule change application that sought to make two substantive changes to the way the Cab Rank Rule operated – had been circulated to the Board out of committee on 13 January and considered at an extraordinary meeting of the Board held on 18 January. On 20 January, the BSB had been issued with a Warning Notice pursuant to paragraph 21 (1) (b) of Part 3 of Schedule 4 to the Legal Services Act 2007 by the Chief Executive under delegated authority from the Board.
5. The Board noted:
 - so far, BSB had not taken a decision to withdraw its application. The LSB would now proceed to consult with the OFT and other approved regulators
 - the key shortcomings in the application were set out in the paper circulated on 13 January
 - in addition, BSB’s failure to disclose that the matter had previously been the subject of failed discussions between the Bar Council and The Law Society before being considered by the BSB as a regulatory matter had been disappointing.
8. **The Board resolved to:**
 - a) **note the latest position with the BSB’s application**
 - b) **note that consideration was being given to a research proposal to investigate the Cab Rank Rule, including consultation with OFT.**

Item 4 – Paper (12) 02: Rationalising the scope of regulation

9. Alex Roy (Head of Development and Research) introduced a paper which updated the Board following the consultation on the LSB’s approach to considering the scope of reserved activities. Responses had been generally supportive of the need to extend protections to reduce uncertainty for consumers and the Board’s initial approach had in some cases being criticised as too fragmented. [REDACTED]
[REDACTED]
[REDACTED]
10. The Board noted:
 - the SRA’s response had suggested that a better approach to that proposed by the LSB would be to extend regulation to all legal services, which the Board considered was contrary to the better regulation principles
 - its in principle support for allowing much wider access to redress. There needed to be exploration of whether this might be best achieved through a change to the reserved activities rather than voluntary schemes – the LSB would continue to engage proactively with LeO on next steps

- the LSB's work on will-writing had demonstrated the length and complexity of the process to change reserved activities; timescales were acknowledged to be lengthy, but nevertheless challenging in terms of ensuring early implementation of decisions which were legally robust. [REDACTED]
[REDACTED]
[REDACTED]
- medium-term resourcing issues would be covered in the strategy paper to be presented to the Board in the Autumn, but the Executive were confident that work in 2012/13 could be resourced
- the decision document would set out the context for the work being LSB's focus on liberalisation of the legal services market; the link to business plan foreword would also be made explicit
- some definition was required of the types of business communities to be brought into the scope of the work, [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- the options for taking forward the work would be expanded in the decision document, to cover the full range of variants
- the Legal Services Consumer Panel had made substantial comments in its response; these would be more fully reflected in the summary responses document
- MoJ officials and Ministers would be briefed on the direction of travel.

11. The Board resolved to:

- a) **note that the proposed conclusions would be published as a short decision document in April 2012, reflecting the issues raised in discussion**
- b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Item 5 – Paper (12) 03: Investigation into the regulation of will writing, probate services and estate administration

12. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

13. [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

14. [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Item 6 – Paper (12) 04: Licensing Authority restrictions on ABS

15. Fran Gillon (Director of Regulatory Practice) introduced a paper updating the Board on recent discussions with regulators and others that had prompted the LSB to review and clarify its position on the restrictions that licensing authorities could place on the type of ABS that they might license. In the LSB’s Guidance to Licensing Authorities published in November 2009, the LSB recognised that not all approved regulators would be competent to regulate all types of ABS, but that the LSB would not approve regulatory arrangement or licensing rules that contained restrictions on regulated individuals working in ABS firms applying to another licensing authority.
16. The Board noted:

- there were clear links to both the regulatory standards work and the regulation of non-commercial bodies
- there were significant issues in terms of limiting regulatory diversity - if the LSB required all licensing authorities to be able to licence all types of ABS, the BSB and IPReg would not apply to become licensing authorities, meaning that only the SRA would be able to license advocacy or intellectual property ABS
- requirements set out in the Board's conclusions on self assessments for regulatory standards would need to be carried through to licensing authority designation applications
- there appeared to be merit in continuing to seek a single appellate body for appeals against decisions of Licensing Authorities. Pending further work on this issue, Licensing Authorities would be expected to use the General Regulatory Chamber, although a more robust analysis was required in relation to the arguments for the single appellate body for all appeals against decisions of approved regulators
- the LSB needed to ensure that licensing authorities collectively could cover the overwhelming majority of both business and ownership models in the light of its role to facilitate the regulation of evolving models that were developing in the market. It would be highly undesirable for the LSB to have to regulate directly if a business model developed that met the requirements of the Act, but was unable to find a licensing authority to approve it. Applications for individual LA approval therefore needed to be considered against this broader background. However, restrictions on ownership models would require very strong justification.

17. The Board resolved to:

- a) endorse the approach the executive was adopting, as set out in the paper, subject to further evidence and analysis of how the market was evolving and how gaps could be filled**
- b) agree the timetable and next steps.**

Item 7 – Paper (12) 05: Regulation of Non-commercial bodies

18. Fran Gillon (Director of Regulatory Practice) introduced a paper which provided the Board with an update on the key issues around ending transitional protection for non-commercial bodies, in advance of external consultation later in the Spring.
19. The Board noted:
- the principle that these bodies would need to be regulated in the future was likely to attract political attention given the importance of the sector to the Government's 'Big Society' agenda
 - scope changes in legal aid were expected to impact fundamentally the sector – some representative bodies had already raised concerns about the implication from the LSC that it would only contract in future with regulated bodies
 - the work on boundaries of regulation (paper (12) 02) – [REDACTED]
[REDACTED] – would have significant implications for non-commercial bodies, given many not for profit organisations delivered generalist legal

advice. That said, most not for profit bodies were not delivering reserved activities, so therefore would not be affected by the transitional arrangements coming to an end

20. The Board resolved to:

- a) endorse the analysis and proposed approach set out in the paper**
- b) agree to the development of an open-ended consultation document, reflecting the points raised in discussion, for consideration and approval at the March Board meeting prior to publication in April. The consultation document would need to integrate the thinking of key stakeholders**

Item 8 – Paper (12) 06: Approaches to quality

21. Wendy Harris (Project Manager) presented a paper which updated the board on developments since the 30 November Board meeting, including a separate discussion on voluntary quality schemes prompted by receipt of a report from the Legal Services Consumer Panel. The Board were reminded that the consultation on quality was included in the 2011/12 Business Plan, for launch by March 2012. The Board was reminded that the aim of the high level discussion paper was to encourage regulators to hold themselves to account in relation to quality – the paper had developed considerably since November.

22. The Board noted:

- the overriding objective was to encourage ARs to make use of the full range of regulatory tools to secure quality in a liberalised market
- the framework needed to be enabling, and described in such a way as to encourage outcomes focused regulation. The aim was for ARs to incentivise and inspire entities to focus on quality
- as the consultation paper was a high level think piece, a relatively low response rate was expected. The executive would consider further ways of making the paper accessible in terms of the language used, and would also look at other ways of disseminating messages contained in the report
- the paper would reflect that larger businesses were a form of consumer, with considerable purchasing power in the market – this sector would be given visibility in the document. The position of SMEs in general and micro businesses in particular required further consideration.
- the paper would be clearer about why particular activities did not require regulatory intervention.

23. The Board resolved to:

- a) endorse the discussion paper, subject to the issues raised in discussion which would be taken on board in the final discussion document**
- b) agree that the discussion paper form the initial formal response to the Legal Services Consumer Panel report on voluntary quality schemes**
- c) delegate authority to the Chairman, Nicole Smith and the Chief Executive to sign off the final discussion paper and publish by the end of March.**

Item 9 – Paper (12): 07 Regulation of immigration advice and services – a discussion document

24. Fran Gillon (Director of Regulatory Practice) introduced a paper that set out the findings of the review of the regulation of immigration advice and services, and invited the Board's views on a draft discussion document for publication. Steve Green and Karen Marchant were thanked for their considerable contribution to the work.
25. The Board noted:
- oversight responsibility for the regulation of immigration advice and services transferred to the LSB in April 2011. The LSB had sought assurances from the 'qualifying regulators' (ie the approved regulators for immigration) that they were effectively managing the risks to consumers and the public interest that the regulation of immigration advice and services presented
 - based on discussions with a wide range of organisations and a review of information that exists about the market, the Board endorsed the view set out in the paper that the current arrangements were unacceptable. There were significant concerns about the regulation of immigration advice and services. A key reason for this was the lack of data and risk assessment, meaning that regulators had an inadequate understanding of the market as a whole
 - the discussion paper was critical of the overarching framework for regulation of the sector. In the LSB's view, a risk based approach to regulation was not being adopted resulting in a considerable risk of consumer detriment
 - although the regulatory performance of the Office of the Immigration Services Commissioner (OISC) was not in the remit of the LSB or the exercise which had been undertaken, the fact that customers of the firms and individuals it regulated did not have access to LeO was a matter of legitimate concern for the Board particularly given the surprisingly high volume of immigration related complaints LeO was currently receiving
 - legal aid scope changes would mean that the majority of immigration work would no longer be publicly funded. This, together with The Law Society's plans to charge for an accreditation scheme, meant that the current risks to consumers were likely to increase in the absence of a positive regulatory response
 - diversity implications needed to be covered explicitly in the document, given the LSB's equality duties, in terms of the impact on both providers and consumers of the services. There was an acknowledgement that providers in the sector were vulnerable to organised crime. Work may be needed to ensure that regulators are able to access intelligence or information from law enforcement agencies more effectively; the proposal was to consult on whether qualifying regulators should be required, by the end of 2012, to implement a coherent, evidence based approach to managing risk in the provision of immigration advice and services – there was acknowledgement that this timetable would be challenging, but the risks led members to conclude that it was necessary.
 - there was broad agreement that if immigration and asylum advice was properly delivered, and if the regulatory architecture was fit for purpose, this would be in the best interests of all parts of government, the profession and consumers.

26. The Board resolved to:

- a) **note the findings of the review of the regulation of immigration advice and services**
- b) **endorse the discussion document, subject to redrafting to reflect the points raised in discussion**
- c) **delegate approval of the final document to the Chairman and Chief Executive prior to publication later in February.**

Item 10 – Paper (12): 08 CLC litigation and rights of audience designation application

27. Dawn Reid, Head of Statutory Decisions introduced a paper that updated the Board on progress with the assessment of the CLC designation application in preparation for a full discussion at the March Board.

The Board noted that:

- a site visit had taken place on 18 January. The LSB had gathered additional information to inform the capability and capacity assessment. The visit produced both positive evidence of good practice, but also highlighted some shortcomings
- the lack of an implementation plan presented difficulties for the LSB in terms of forming a final view as to whether CLC would have in place all the necessary arrangements at the point of designation – CLC had agreed to produce a plan
- advice from Counsel has been received, confirming internal LSB legal advice that there were statutory barriers that prevented the CLC from authorising and regulating entities for litigation and advocacy on the basis suggested in the application. These barriers could be removed through a s69 order, but the process for this could be lengthy. The LSB's assessment of the application was continuing and a final recommendation would be presented to the Board at its next meeting.

28. The Board resolved to note the current status on the assessment of the CLC application, prior to a final recommendation coming to the Board in March.

Item 11 – Minutes – 30 November 2011 and 18 January 2012

29. **The Board resolved to agree the minutes of the meetings held on 30 November 2011 and 18 January 2012 and to submit them for signing as an accurate record to the Chairman.**

Item 12 – Report of action points

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

Item 13 – Paper (11) 09: Chief Executive's progress report: January 2012

31. The Chief Executive presented his progress report.

32. The Board noted:

- in relation to the Triennial Review, the Chief Executive provided an oral update on his attendance at the MoJ's first workshop, reporting on the key themes of the discussion and the position that approved regulators were adopting. The LSB would submit a formal response to MoJ, towards the end of March, with accompanying evidence
- there had been a number of constructive meetings recently with MoJ officials in relation to a range of issues, including on international work
- that the President of the Law Society had expressed concern about the LSB's s55 order on IGRs. The Board considered the position adopted by TLS in relation to a statutory requirement to be disappointing. Unless compelling reasons were produced in the terms of S56 of the Act, there would be a strong case to enforce the order in the event of a refusal to supply the data requested
- in relation to ABS, a total of 76 applications had now been received by SRA
- in relation to QASA, the Chairman was currently preparing a short document, following a meeting of all key players on 23 January.
- in terms of agreeing the OLC's budget for 2012/13, discussions were taking place with the OLC the following week, involving the Chairs of both LSB and OLC's Audit and Risk Committees. The extension of jurisdictions was likely to impact on income flow, and OLC would be consulting on new case fee proposals
- a joint meeting of members of the LSB and BSB boards would take place on 9 February, with the Chairs of both bodies in attendance
- the LSB has inputted significantly to Alan Milburn's work on social mobility, and had led on the drafting of the chapter on the legal sector. The report was expected to be published in February
- Steve Green reported that, in relation to the OLC, final interviews had taken place on 24 January to recruit two new members of the board. The pool had been strong, and appointments were expected to be announced the following week. Subject to the receipt of references, the Board agreed the appointment panel's recommendations.

33. The Board resolved to:

- a) **note the Chief Executive's progress report;**
- b) **delegate authority to the Chairman and Steve Green to make the final offers in relation to the appointment of OLC members;**
- c) **delegate authority to Steve Green, Barbara Saunders, Andrew Whittaker and the Chief Executive to approve the final OLC budget 2012/13 on the Board's behalf.**

Item 14 – Paper (12) 10: LSB Q3 performance report – October to December 2011

34. Julie Myers presented a paper which provided the Board with a summary of performance against the Business Plan in Q3 of 2011/12. The Board noted the draft detailed quarterly Q3 submission to the MoJ, the Consumer Panel's Q3 performance report and the summary of LSB's regulatory decisions made during the quarter.

- 35. The Board resolved to agree the Q3 performance report and its use as a basis for discussion with the MoJ.**

Item 15 – Paper (12) 11: Finance Report for December 2011

- 36. The Board resolved to note the Finance Report, including the level of underspend expected at year end.**

Item 16 – Any other business

37. There was no other business.

Item 16 – Date of next meeting

The Board would next meet on 28 March 2012, 09.30 – 13:30. The venue would be LSB's offices at Victoria House, Southampton Row, London WC1B 4AD.

HP, 30/01/12

Signed as an accurate record of the meeting

.....
Date

.....