

## Minutes of a meeting of Legal Services Board (LSB) on 30 April 2013

**Date:** 30 April 2013  
**Time:** 10:30 – 13:00  
**Venue:** Victoria House, Southampton Row, London WC1B 4AD

**Present:** David Edmonds Chairman  
**(Members)** Chris Kenny Chief Executive  
Anneliese Day QC  
Terry Babbs  
Steve Green  
Bill Moyes (items 1 to 4 and item 6)  
Ed Nally  
Barbara Saunders  
Andrew Whittaker

**In attendance:** Nicholas Baré Regulatory Associate (item 3)  
Steve Brooker Consumer Panel Manager (item 6)  
Elisabeth Davies Chair of the Consumer Panel (item 6)  
Fran Gillon Director of Regulatory Practice  
Nick Glockling Legal Director  
Chris Handford Regulatory Project Manager (item 5)  
Frances Harrison Member of the Consumer Panel (observing)  
Edwin Josephs Director of Finance and Services  
Julie Myers Corporate Director  
Crispin Passmore Strategy Director  
Tom Peplow Regulatory Associate (item 6)  
Alex Roy Head of Development and Research (items 5 and 6)  
Holly Perry Corporate Governance Manager (minutes)

### Item 1 – Welcome and apologies

1. The Chairman welcomed those present and in attendance to the meeting, particularly Terry Babbs and Anneliese Day QC who were attending their first formal Board meeting since taking up post on 1 April 2013, and Frances Harrison, member of the Legal Services Consumer Panel, who was observing 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 – Paper (13) 21: Final regulatory standards response and LSB view – Bar Standards Board

4. Fran Gillon introduced the paper supported by Nicholas Baré, which described the LSB's views of the regulatory standards self assessment submitted by the BSB on 20 February. The intention was to publish the report during May.

5. The Board noted:

- The BSB had produced a frank self-assessment, had given itself realistic scores for each section and had already undertaken a number of activities to support the required standards.
- The BSB had set itself significant ambitions to improve by one rating in each area by April 2014 (and achieve 'satisfactory' by the end of its strategic plan – April 2016). This, alongside its other ambitions for expansion, were challenging. It was agreed that, overall, the forward plans were formidable in scope, timescale and the complexity of independences.
- The narrative would be adjusted to position the report along the lines that the BSB were on a journey, making positive progress but with significant further work to undertaken.
- [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] [FoIA exempt: s36(2)(c)]
- It was felt that the plan itself might be usefully grouped into areas for BSB action, areas where BSB was dependent on others for action, and timetabled so as to show actions due quarter by quarter. This would demonstrate the ambition of the plan, the scale of which had been discussed in the positive informal meeting with BSB on 18 April.
- The Board also reflected on the issues emerging from the recent s55 request to the Bar Council in relation to the BSB's independence, which would need referencing in the redrafted report even though the issues were being dealt with separately. A full update on the s55 request and the Bar Council's response would be considered at the Board's 23 May meeting.
- Care needed to be taken with consistency in the report eg references to the supervisory regime and how this related to the LSB's Statement of Policy – Compliance and Enforcement.
- In terms of enforcement, some explanation was felt to be needed in terms of explaining the relationship between the Councils of the Inns of Court and the statutory responsibilities of the BSB. This fed into the LSB's workstream on sanctions and appeals.
- There were a number of detailed drafting points for reflection in the report and to be addressed by way of a cover letter to accompany the report.
- The Board reiterated its earlier position that the self-assessment exercise needed to be undertaken on a regular basis.
- The final draft report would be submitted to BSB for factual accuracy checking prior to publication.

6. **The Board resolved to delegate final sign-off of the report and arrangements for its publication to the Chair and Chief Executive, subject to reflection of the range of points raised in discussion.**

**Item 4 – Paper (13) 22: SRA performance issues**

7. Fran Gillon introduced the paper. The LSB had been concerned about the SRA's performance on ABS authorisations for some months. As a result of serving an information request, the LSB had additionally become concerned about the SRA's considerable backlog in non-ABS authorisations. The Board was provided with a

verbal update on all areas of enquiry set out in the formal s55 request following a visit to the SRA's offices on 26 April.

8. The Board noted:

- The meeting with the SRA had been positive, revealing that there was a considerable degree of movement in hand or planned in the coming six to eight weeks in relation to: (a) process design, (b) improved information and guidance for applicants and (c) key performance indicators – although it was acknowledged that this was still not as clear on end to end process as it needed to be. A conference was planned for 4 June for the SRA to showcase all the recent changes.
- The SRA's risk assessment process was felt to be impressive – although there remained a tendency to be risk adverse.
- The executive's view remained that, although the SRA has made progress on all the issues of concern as set out, the LSB needed to continue to monitor them in detail in relation to all authorisations in order to help maintain momentum in translating assurances into solid changes.
- [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] [FOIA exempt: s36(2)(b)(ii)]
- [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] [FOIA exempt: s36(2)(b)(ii)]

9. The Board resolved to:

- **note the issues raised in the paper**
- **agree that, on the basis of the meeting held on 26 April and depending on the executive's analysis of any further information provided by the SRA, the LSB would:**
  - a. **continue to pursue getting information on all aspects of its authorisation process**
  - b. [REDACTED]  
[REDACTED] [FOIA exempt: s36(2)(b)(ii)]

**Item 5 – Paper (13) 23: Cost and complexity of regulation**

10. Chris Handford presented the paper, supported by Alex Roy, Fran Gillon and Crispin Passmore. The work flowed from the LSB's 2013/14 business plan and its response to the Triennial Review, in which the LSB had committed to undertake a new piece of work to review the costs and complexity of regulation.

11. The Board noted:

- The aim of the work was to test the hypothesis that the current system was too complicated, not risk based and that these two factors were unnecessarily driving up costs and slowing down innovation. The intention was to identify

- areas for improvement and to develop options for bringing about change.
- The workstream incorporated the project to assess the scope of legal services regulation work which was generated by the July 2011 review of general legal advice to individual consumers.
- The workstream was closely linked with earlier discussions on the scope for regulatory simplification. The Chief Executive reported that he was keen to share the Board paper with MoJ officials at an early opportunity as a possible way to address legislative simplification.
- There was a need to be mindful of the underpinning statutes, and what could and could not be changed in the short-term to address barriers to innovation: there would need to be both short- and medium-term agendas..
- A number of detailed points were raised including: a need to articulate more clearly the aims of the project; challenging the premise in the paper to view regulation by individuals in a negative light; the need for an analysis of the impact of ABS; the need for an analysis of the impact of the LSB and the Legal Ombudsman on costs and complexity; the extent to which outcomes focused regulation had added to or reduced the costs of regulation. Although it was acknowledged that the figures were not available, ideally the Board would wish to assess the cost of regulation on passage of the Act in 2007, the cost current cost of regulation and the cost to which the LSB/profession aspired.
- There was a need to consider the presentational aspects of the work, and developing a narrative to position the work. In addition, there was a need to ensure the work did not develop in an academic or theoretical way, but remained grounded in practical application.
- In terms of the diagrammatic presentation of the architecture, there needed to be acknowledgement of the cost and complexity of the legislation that rolled forward (as well as the new statutory basis set out in the 2007 Act).
- Board Members were invited to contribute actively to the project, not least by volunteering to sit on an external challenge group for the project, which would help maintain focus and prevent 'group think'.

**12. The Board resolved to note the plans and the next steps in relation to the work.**

**Item 6 – Paper (13) 24: Phase 1 of choosing and using legal services**

13. Elisabeth Davies, Chair of the Consumer Panel attended to present the Consumer Panel's final report on Phase 1 of choosing and using legal services, with Steve Brooker in attendance. The report had been published in March 2013. Alex Roy then introduced the executive's response and recommended next steps, supported by Tom Peplow.
14. The Board noted:

*In relation to the Panel Chair's introduction of the final report:*

- The Consumer Panel Chair's view that the report had been of fundamental importance to the work of the LSB, and had helpfully set out risks in terms of outcomes and actions as well as a diagnosis. Scoping the report had been difficult, and there was a significant degree of work that sat behind the final report.
- Some of the statistics from the analysis were worthy of reflection, including:

- 43% of those surveyed trusted lawyers to tell the truth
  - 30% of those surveyed thought that lawyers were well regulated
  - 36% of those surveyed who did nothing about their legal problem did not think that there was anything that could be done
  - 22% of those surveyed had shopped around for legal services
  - 1% of those surveyed had used a comparison website for legal services
  - 43% of those surveyed did nothing where they were unhappy about service
  - 76% of those who made a complaint about the service they received subsequently abandoned the complaint.
- The challenges the Board had to been presented with included a lack of co-ordinated information, the regulatory maze, the importance of joined up information and the option of pursuing an NHS Direct style model for legal services. There was also a need to consider the strategic perspective, and ensuring approved regulators' put in place a framework before moving on to empower consumers.
  - Whilst there was an acknowledgement that this was not an area where mapping out regulatory actions would be easy, the LSB executive's response did not pay sufficient attention to the wider strategic issues highlighted in the report. The LSB needed to require approved regulators to set out specific timetables and cross-reference how actions should be incorporated in existing work scheduled.

*In relation to the Executive's response and suggested next steps:*

- Effective engagement of consumers was acknowledged to be vital to a healthy legal market, which was the reason why the LSB had commissioned the Consumer Panel to look at how individual consumers chose and used legal services – and, specifically, what regulators were doing and could do more of to facilitate the process.
- Consolidation of the work in this area would best be achieved through the LSB's work on quality in legal services and the regulatory standards assessments. Market liberalisation was also expected play a significant role in making providers react to consumer demands and unmet need. The fact of new entrants to the market was fully expected to address the problem.
- In addition, the work to reduce the complexity of the regulatory framework and encourage greater co-ordination and information sharing between legal services organisations would be of vital importance.
- There was a need for the Board to consider how best to prioritise any new work as against other key areas for action as set out in the Business Plan.
- The Executive shared the Panel's views about the dangers of relying on information remedies alone. However it was sceptical about whether the recommendation that the Board should have a coordinating role in relation to information was likely to be practicable;
- The Board re-iterated its absolute commitment to putting consumers at the heart of the LSB's work. To address this, and to strengthen the link between the findings and recommendations of the report and the draft letter to approved regulators, it was agreed that the letter would be tightened to demand stronger leadership and reminding regulators of the demonstrable actions within a specified time period which the Board had previously specified, for example through its document on quality. The letter would specify outcomes rather than be prescriptive about the approach to adopt.
- Care needed to be taken to ensure that the consumer was not seen as

homogenous.

15. **The Board commended the report prepared by the Consumer Panel, and thanked the Panel Chair for the important piece of work it had published. The Board resolved to:**

- **note the Legal Services Consumer Panel's report**
- **note the executive's analysis and commentary on the recommendations/ next steps suggested by the Panel**
- **agree the LSB's response to the Legal Services Consumer Panel report on empowering consumers, subject to the points raised in discussion**
- **agree the LSB's letter to the approved regulators in response to the Legal Services Consumer Panel report on empowering consumers , subject to the points raised in discussion.**

**Item 7 – Minutes of the 18 March 2013 meeting of the Board**

16. **The Board resolved to agree the minutes of the meeting held on 18 March 2013, and to submit them for signing as an accurate record to the Chairman.**

**Item 8 – Report of action points**

17. All actions were on track, scheduled for discussion at future meetings or were covered by papers on the agenda. The proposed date for a joint meeting of the LSB and SRA Board was 24 July 2013. Board Members' availability would be canvassed.
18. **The Board resolved to note the Report of action points.**

**Item 9 – Paper (13) 25: Chief Executive's Progress Report: April 2013**

19. The Chief Executive presented his progress report for the month of April.
20. The Board noted:
- *Accommodation* – the Chief Executive provided the Board with a verbal update on the latest position. The Board noted that a response from BIS on the current occupancy of Victoria House was outstanding.
  - *Cab Rank Rule* – the public debate continued. The BSB was currently deciding how extensive the changes would be in terms of the rule change application. The Chairman had written to the Lord Chief Justice on the issue.
  - *QASA* – The Chief Executive reported that both the SRA and BSB Boards had recently approved the rules, and the formal rule change applications were now awaited. There was ongoing concern about the conflation of QASA and criminal legal aid changes, and a letter from The Law Society had been received earlier on 30 April on the issue. The Chairman would write to the Secretary of State to emphasise that QASA was a regulatory issue, that approved regulators would be held to account and that no link existed between QASA and competition in criminal legal aid.
  - *Legal Ombudsman/OLC issues* – The Chairman and Chief Executive provided a verbal report of the meeting of the OLC that they had attended on 22 April, and Board Members Terry Babbs and Ed Nally also reported back on their visit to the Legal Ombudsman that had taken place on 9 April. A number of

observations had been made, which would be subject to more detailed discussion at the Board’s 11 July meeting.

- The Board also noted the OLC’s response to the LSB’s s120 request of January 2012 which the LSB received on 25 March 2013, concluding that the report did not demonstrate a strong evidence base to suggest that consumer confusion about complaints was a major systemic issue. The lessons learned were noted – in future the LSB would deal more formally and more quickly with slow responses to such requests.
- *Will-Writing and Deregulation* – the Board noted that no Ministerial response had yet been received.

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

**Item 10 – Paper (13) 26: Q4 performance report: January to March 2013**

22. Julie Myers presented the final quarterly report for 2012/13 setting out the LSB’s success in achieving all the stated milestones for the year. The quarterly report on Consumer Panel activity was also attached, together with the overview of rule approvals and – for the first time - a report of all the Section 55 requests made in 2012/13. Based on an assessment of the status of individual projects, the executive had judged the status of its overarching programme to deliver its Business Plan for 2012/13 and its regulatory responsibilities is as green with all commitments on track at the date of report.

**23. The Board resolved to note the draft Q4 performance report; and agree to its use as a basis for discussion with MoJ.**

**Item 11 – Paper (13) 27: Finance report – March 2013**

24. Edwin Josephs presented the finance report for the month of March. The Board noted the budget for 2013/14, of £4,448k, which was challenging. MoJ had indicated that it would be amenable to a bid for an increase in capital allocation later in the year should this be required.

**25. The Board resolved to note the Finance report for February.**

**Item 12 – Any other business**

26. There were no further items of business.

**27. The Chairman formally recorded the Board’s thanks to Holly Perry, secretary to the Board, who was leaving the LSB on 3 May.**

**Item 13 – Date of next meeting**

28. The Board would next meet on 23 May, 09:00 to 13:00. The venue would be LSB’s offices at Victoria House, Southampton Row, London WC1B 4AD.

HP, 30/4/13  
Signed as an accurate record of the meeting

.....  
Date  
.....