

## Minutes of a meeting of Legal Services Board (LSB) on 28 March 2011

**Date:** 28 March 2011  
**Time:** 3.10 pm – 6.05 pm

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

**Present:** David Edmonds Chairman  
**(Members)** Chris Kenny Chief Executive  
Terry Connor (Items 1-7 and 9 onwards)  
Steve Green  
Bill Moyes  
Edward Nally (Items 1-6 and 9 onwards)  
Barbara Saunders  
Nicole Smith  
Andrew Whittaker  
David Wolfe

**Guests:** Elisabeth Davies Legal Services Consumer Panel ('the Panel') (Items 10-12)  
Adam Sampson Chief Executive / Chief Ombudsman, Legal Ombudsman (LeO) (Item 14)

**In attendance:** Chris Baas Project Manager (Items 6-8)  
Steve Brooker Consumer Panel Manager (Items 1-20)  
Lesley Davies Project Manager (Item 10)  
Fran Gillon Director of Regulatory Practice (Items 1-20)  
Nick Glockling Legal Advisor (Items 6-9)  
Edwin Josephs Director of Finance and Services (Items 1-20)  
Bruce Macmillan General Counsel (Items 1-20)  
Julie Myers Corporate Director  
Crispin Passmore Strategy Director (Items 2-20)  
Michael Stacey Project Manager (Items 6-9 and 11)  
Bryan Hislop Board Secretary (Minutes) (Items 1-20)

### Item 1 – Welcome and apologies

1. The Chairman welcomed those present and in attendance to the meeting. In particular, the Chairman welcomed Edward Nally, who was appointed as a Non-Lay Board Member with effect from 14 February.
2. There were no apologies for absence from Board Members. Elisabeth Davies (Panel Member) would attend for the discussion of Items 10-12 on behalf of Baroness Hayter (Panel Chair). Adam Sampson (LeO Chief Executive / Chief Ombudsman) would attend for the discussion of Item 14.

**Item 2 – Declarations of interests etc.**

3. Edward Nally declared, for the record, that he was a solicitor, a Governor of The College of Law, a Solicitor Member of Solicitors Disciplinary Tribunal (SDT) and, until 31 March, a Judicial Appointments Commissioner. There were no other 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: 27 January 2011**

5. **The Board resolved to agree the minutes of the LSB meeting held on 27 January 2011 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 (11) 12: Chief Executive's progress report: March 2011**

7. Chris Kenny (Chief Executive) presented his progress report.
8. The Board noted that:
  - the Executive was considering the implications of recent Government proposals, including in relation to reforms to the UK competition regime, extending civil rights of audience to Trading Standards Officers, promoting England and Wales as the international jurisdiction of choice, and the planned publication in May of the cross-Government social mobility strategy
  - the 2011/12 process for the dual self-certification assessments of compliance with the Internal Governance Rules had been set out in letters to the regulatory and representative arms of the Approved Regulators (AR)
  - [REDACTED]
  - Bar Standards Board had withdrawn its rule change application to introduce an English language test for applicants to the Bar Professional Training Course
  - LSB and Office for Legal Complaints (OLC) had made good progress on agreeing an approach to data sharing generally, in addition to agreeing specific proposals on key performance indicators
  - Audit and Risk Committee on 28 February endorsed a high-level draft outline and publication timetable for LSB's Annual Report and Accounts 2010/11.

9. The Board noted also updates about:

- Government proposals in relation to public bodies, including the removal of Schedule 7 from the Public Bodies Bill (which related to bodies and offices subject to the power to add to other Schedules), Cabinet Office's related announcement on 16 March to retain LSB and OLC on the grounds that they perform functions that require impartiality, and the implementation of a new programme of triennial reviews of non-departmental public bodies in 2011/12
- the Panel Chair's intervention in the House of Lords on 9 March in relation to Ministry of Justice's (MoJ) instruction to migrate the content of LSB's and the Panel's websites to central government websites.

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

**Item 6 – Paper (11) 13: ABS implementation: next steps – key issues and risks**

10. Fran Gillon (Director of Regulatory Practice) introduced the standing progress report about the implementation of alternative business structures (ABS), which included a summary of next steps, potential risks, mitigations and changes in risk status.

11. The Board noted an update about the appellate bodies workstream, in particular that:

- Solicitors Regulation Authority (SRA) had submitted a Licensing Authority (LA) application to LSB that identified SDT as the appellate body for ABS
- SRA would not consent to an LSB recommendation to the Lord Chancellor to make an Order under Section 80 of Legal Services Act 2007 ('the Act') for appeals against decisions of LAs to be heard and determined by the First-tier Tribunal of the General Regulatory Chamber (GRC), unless its rules were amended to provide a broader power to award costs against a party to proceedings
- in the absence of any change in SRA's position, LSB would need to re-consult on a new draft Order and recommendation to the Lord Chancellor, which would carry material risks to the planned commencement date of ABS
- Council for Licensed Conveyancers had consented to the use of GRC as an appellate body for ABS, and LSB would submit as planned a recommendation to the Lord Chancellor to make a relevant Order under Section 80 of the Act.

12. The Board noted also:

- that the draft impact assessment for the commencement of Part 5 of the Act (relating to ABS) had been submitted for comment to MoJ, which was reviewing whether such a statement was needed for the Commencement Order
- the proposed approach to the commencement of the provisions of the Act that would enable, if it proved necessary, direct licensing of ABS by LSB

- the proposed milestones of progress towards the commencement of ABS, which would be published to LSB's website following the appraisal of progress against the ABS implementation timetable at the next meeting of the Board.

**The Board resolved:**

- a) to note the progress report about the implementation of ABS**
- b) to endorse the proposed approach to the commencement of the direct licensing provisions of the Act.**

**Item 7 – Paper (11) 14: LSB Rules – reviews of decisions about licence applications**

13. The Director of Regulatory Practice introduced a paper recommending the approval of a consultation document on rules about how LSB (acting otherwise than as an LA) would review decisions about licence applications made to LSB (acting as an LA). The consultation document was subject to final legal clearance of drafting.

**The Board resolved to agree the publication of the consultation document, 'Consultation: Schedule 12 rules', subject to final legal clearance of drafting.**

**Item 8 – Paper (11) 15: Further rules relating to the regulation of licensed bodies**

14. The Director of Regulatory Practice introduced a paper recommending the approval of a post-consultation decision document, a summary of consultation responses and rules concerning the regulation of licensed bodies.
15. Information Commissioner's Office had advised that it would not challenge LSB's proposals in relation to the processing of personal data on lists of disqualified persons, provided that it was compliant with the data protection principles.

**The Board resolved to agree:**

- a) the proposed rules**
- b) to recommend to the Lord Chancellor making an Order specifying periods within which notification of changes to the ownership of a licensed body must be given to an LA**
- c) the proposed approach to disqualified persons**
- d) the publication of the decision document, 'Further rules relating to the regulation of licensed bodies'.**

**Item 9 – Paper (11) 16: Quality Assurance for Advocates and Review of education and training – update on developments**

16. Crispin Passmore (Strategy Director) introduced a paper about developments in relation to Quality Assurance for Advocates (QAA) and the AR-led joint review of legal education and training.

17. The Board noted that:

- Joint Advocacy Group (JAG) had demonstrated significant progress in the development of a QAA (Crime) Scheme, including by defining an assessment framework and establishing an advisory group of practising advocates and lay representatives (and chaired by Thomas LJ), but that there remained some significant challenges in relation to the design of the Scheme
- [REDACTED]
- the AR-led joint review of legal education and training was progressing, albeit not at the pace anticipated and with a particular focus on commissioning research and establishing a reference group to advise the ARs about the review
- the Executive's proposed focus in 2011/12 was to support and to influence the review by specifying desired outcomes and providing constructive challenge (as appropriate).

18. The Board re-affirmed the importance of its workforce development workstream (including QAA, education and training, and diversity and equality) to the delivery of the Regulatory Objectives, which the Executive would look to convey, for example, alongside the publication of the LSB Business Plan 2011/12 and / or in the context of developing the strategic framework for 2012-15.

**The Board resolved:**

- a) **to note the update about developments in respect of QAA and the AR-led joint review of legal education and training**
- b) [REDACTED]

**Item 10 – Paper (11) 18: Referral fees**

19. The Chairman welcomed Elisabeth Davies to the meeting.

20. The Strategy Director introduced a paper setting out a draft summary and the Executive's consideration of the responses to the discussion paper about referral fees.

21. The Board noted that:

- the proposal set out in the discussion paper, which was developed following an extensive evidence gathering exercise, was (as recommended by the Panel) to 'reveal, regulate and retain' referral fees

- [REDACTED]

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

**The Board resolved:**

- a) **to note the draft summary of consultation responses**
- b) [REDACTED]
- c) [REDACTED]

**Item 11 – Paper (11) 19: Proposed Quality Assurance strategy and response to the Panel’s advice on quality in legal services**

- 22. The Strategy Director introduced a paper recommending the approval of a quality assurance strategy and the response to the Panel’s advice on quality in legal services (which was presented to the Board on 30 November).
- 23. The Board noted that:
  - the concept of quality in legal services included both technical and service quality, but in essence meant the quality of the outcomes for the consumer
  - the Executive’s proposed focus in 2011/12 was the development of an analytical framework to decide appropriate regulatory interventions in relation to quality assurance, including by developing a ‘toolkit’ to identify the regulatory tools / interventions to be used to ensure minimum quality standards and their ‘pros and cons’
  - the Panel had offered to provide further advice about the robustness of existing quality schemes
  - the Executive’s proposed approach to quality standards was multi-faceted and would help to inform policy thinking both by LSB and the Panel.

24. [REDACTED]
- [REDACTED]
  - [REDACTED]
  - [REDACTED]

**The Board resolved to agree:**

- a) [REDACTED]
- b) [REDACTED]
- c) [REDACTED]

**Item 12 – Paper (11) 20: Consumer Panel work programme 2011/12**

25. Elisabeth Davies introduced a paper recommending the endorsement of the Panel's work programme 2011/12 ('the Programme'), as required by the LSB-Panel Memorandum of Understanding.

26. The Board noted that:

- the Programme was ambitious, but that it was achievable and allowed for time to respond, for example, to emerging consumer detriment
- the activities planned for 2011/12 included consumer engagement mechanisms, consumer diversity (particularly in relation to small charities as consumers) and the publication of the first Consumer Impact Scorecard<sup>1</sup>
- the LSB Evaluation Framework and the Consumer Impact Scorecard would be integrated / synergised (as appropriate).

27. The Board acknowledged the work of the Panel during 2010/11, both in relation to advising LSB and others and developing the policy agenda.

**The Board resolved to endorse the Consumer Panel work programme 2011/12.**

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<sup>1</sup> The Consumer Impact Scorecard will now be published as the Consumer Impact Report.

### **Item 13 – Paper (11) 21: LSB Business Plan and budget 2011/12**

28. Julie Myers (Corporate Director) introduced a paper about the consultation on the LSB Draft Business Plan and budget 2011/12 ('the Plan'), which was agreed by the Board on 30 November.
29. The Board noted the summary and the Executive's consideration of the responses to the consultation on the draft Plan. It was noted also that:
- the consultation received seven written responses and was informed by three stakeholder workshops
  - a number of respondents (in particular ARs) had taken the opportunity to comment generally on LSB's role as an oversight regulator, which it was agreed to address separately from, but alongside, the publication of the Plan
  - MoJ had indicated informal agreement at official level to a baseline budget for 2011/12 of £4,931k, although Ministerial confirmation was awaited
  - a number of respondents (in particular ARs) had suggested that, in the current climate, LSB should consider reducing its budget in future years
  - the budget was level in cash terms to the budget for 2010/11 and, allowing for the absorption of extra costs associated with the transfer of the regulation of immigration advice and services to LSB and other cost increases (e.g. National Insurance Contributions), equated to approximately five percent less than forecast in the Business Plan 2010/11
  - the paper would form the basis of a post-consultation decision document, which would be published in early April alongside the final Plan.

#### **Action**

(11) 07 – To address respondents' general comments about LSB's role as an oversight regulator separately from, but alongside, the publication of the final Plan.

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

- a) to note both the summary and the Executive's consideration of the responses to the consultation on the draft Plan**
- b) to agree in principle the proposed changes to the draft Plan**
- c) to agree in principle the proposed budget for 2011/12 of £4,931k, subject to receiving formal approval from Ministers**
- d) to agree to delegate authority to approve the Plan to the Chairman and the Chief Executive.**

### **Item 14 – Paper (11) 23: Office for Legal Complaints Budget 2011/12**

30. The Chairman welcomed Adam Sampson to the meeting.
31. The Corporate Director introduced a paper recommending the approval of the OLC budget for 2011/12, as required by Schedule 15 of the Act, subject to OLC securing a pay remit from MoJ approving the former's pay progression and revalorisation budget



proposal.

32. The Board noted that:

- the proposed budget for 2011/12 of £19,720k was broadly in line with the annual operating budget predicted in OLC's inaugural Business Plan
- OLC had confirmed that its submission met the criteria set to inform the budget approval process
- the Executive had sought and received high-level clarification from OLC in relation to a small number of areas related to the submission
- LSB and OLC / LeO were liaising with MoJ to agree a protocol for reviewing and agreeing any in-year budget variances necessitated by a significant change in demand.

**The Board resolved to agree the proposed OLC budget for 2011/12 of £19,720k, subject to OLC securing a pay remit from MoJ approving the former's pay progression and revalorisation budget proposal.**

**Item 15 – Paper (11) 24: Audit and Risk Committee – 28 February 2011**

33. **The Board resolved to note the draft minutes of the Audit and Risk Committee meeting held on 28 February 2011.**

**Item 16 – Paper (11) 25: LSB Corporate Risk Register**

34. The Corporate Director introduced a paper about the updated Corporate Risk Register, which had been reviewed by Audit and Risk Committee on 28 February.

**The Board resolved to note the updated LSB Corporate Risk Register.**

**Item 17 – Paper (11) 26: Finance report: February 2011**

35. The Director of Finance and Services introduced the Finance report, noting that an increased under-spend against budget was forecast for 2010/11.

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

**Item 18 – Paper (11) 22: LSB Evaluation Framework**

36. The Strategy Director introduced a paper recommending the approval and publication of an LSB Evaluation Framework ('the Framework').

37. The Board noted that:

- the Framework had been revised significantly with input from Board Members since it was presented in draft to the Board on 30 November

- three stakeholder workshops had demonstrated that the Framework was broadly aligned with external expectations
- the Framework had been simplified to highlight measurable outcomes based on LSB's vision for the legal services market
- a triennial consumer survey (coinciding with the triennial Government review of LSB) would be used to track consumer indicators
- the Framework would help to demonstrate LSB's role in delivering the Regulatory Objectives, although it was acknowledged that some stakeholders would be guided more by subjective pre-conceptions than by objective evidence.

38. The Board agreed the Framework, subject to a final review to ensure a consistent approach to defining the outcomes and including further information about the triennial consumer survey.

39. The Chairman acknowledged the work of Board Members and the Executive in relation to the development of the Framework.

**The Board resolved to agree the publication of the Framework, subject to ensuring a consistent definition of the outcomes and providing further information about the triennial consumer survey.**

**Item 19 – Any other business**

40. There were no items of other business.

**Item 20 – Date of next meeting**

41. The Board would next meet on 28 April 2011, 9.30am – 1.30pm (timing to be confirmed). The venue would be LSB's offices at Victoria House, Southampton Row, London WC1B 4AD.

**Item 21 – Private session**

42. The Board and Corporate Director met briefly in private session.

BH 29.03.11

Signed as an accurate record of the meeting

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Date

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