

**Notes of the Legal Services Board (LSB) meeting held on 23 November 2017**

**Date:** 23 November 2017  
**Time:** 13:15 – 13:45 (private session)  
 13:45 – 16:20 (Board meeting)  
**Venue:** Bristol Law Society, Bradford House, 12 Colston Avenue, Bristol  
 BS1 4ST

**Present:** Dr Helen Phillips Interim Chair  
**(Members)** Neil Buckley Chief Executive  
 Terry Babbs  
 Jemima Coleman  
 David Eveleigh  
 Marina Gibbs  
 Jeremy Mayhew  
 Catharine Seddon  
 Michael Smyth CBE QC (Hon)

**In attendance:** Edwin Josephs Director of Finance and Services  
 Caroline Wallace Strategy Director  
 Steve Brooker Head of Research and Development  
 Dawn Reid Head of Regulatory Performance and  
 Operations  
 Holly Perry Corporate Governance Manager (minutes)

**In attendance for specific agenda items:**

Wanda Goldwag Chair, Office for Legal Complaints (item 3)  
 Rob Powell OLC Chief Executive (item 3)  
 Kathryn Stone Chief Legal Ombudsman (item 3)  
 Kate Webb Head of Regulatory Reviews and  
 Investigations (items 3 and 8)  
 Chris Nichols Regulatory Project Manager (item 5)  
 Tom Peplow Regulatory Project Manager (item 7)

**Item 1 – Welcome and apologies**

1. The Interim Chair welcomed those present and in attendance to the meeting.
2. Apologies had been received from Julie Myers - Corporate Director, Nick Glockling - Legal Director and Ian Wilson - Business Planning Associate (who had been due to attend to observe the Board meeting).

## **Item 2 – Declarations of interests relevant to the business of the Board**

3. No new interests were declared.

## **Item 3 – OLC matters – Paper (17) 77**

4. The Interim Chair welcomed Wanda Goldwag, Rob Powell and Kathryn Stone from OLC to the meeting. Steve Brooker and Kate Webb were also welcomed to the meeting. On the Board's behalf, the Interim Chair wished Kathryn Stone well for the future following the announcement of her appointment as Parliamentary Commissioner for Standards. In her opening remarks, the Interim Chair also thanked OLC for the assurance letters now being received, which were proving helpful and were improving in terms of their content.

### *OLC Annual Report and Accounts 2016/17*

5. Wanda Goldwag explained that that Annual Report and Accounts 2016/17 had been approved, laid before Parliament and published on 19 October 2017 and there were no governance or financial issues to draw to the Board's attention. The Board had had sight of the draft Report before it had been laid and had had the opportunity to raise any questions at that time.
6. The Board **noted** the OLC Annual Report and Accounts 2016/17.

### *OLC Budget Principles 2018/19*

7. Wanda Goldwag opened by thanking the LSB for the draft budget acceptance criteria that had been sent by the LSB to OLC on 9 October 2017. These had been helpful in setting off the process.
8. Wanda Goldwag explained that the OLC were facing the following issues, which affected the budget setting process:
  - on the one hand, part of the work was becoming increasingly large and complex (the legal jurisdiction), and on the other, there was contraction in the volume and a reduction in complexity in the Claims Management Company (CMC) jurisdiction;
  - changes had been announced to the ability of CMCs to charge up-front fees – the Financial Guidance and Claims Bill had been amended to introduce an interim cap on success fees set at 20% of the claim and fees would not be able to be claimed for cases where there was no recompense for consumers – this would affect the business model of a number of CMCs overall;
  - the changes very recently announced in relation to CMCs meant that the OLC would need to re-assess its working assumptions as volumes might decrease further;
  - the OLC was currently developing an enhanced forecasting tool which would inform the final budget and KPIs for 2018/19. Sensitivity tests had been carried out on the forecast volumes – 15% under and 10% over the current figures;

- the 'low', 'medium' and 'high' case complexity ratings were helpful. The work graded 'high' was becoming more complex, while the work graded 'low' was not as straight-forward as might be assumed.
9. Rob Powell noted that, in the current year, the OLC was contending with many more cases than budgeted for (a current forecast of 7,900 versus a budgeted volume of 7,000, with the proportion of high complexity cases running at 14% against a budget assumption of 10%). The organisation continued to focus on reducing overheads wherever possible, including through reducing office space, and investing in more effective IT.
10. The following points were raised by Board members in relation to the issues presented by OLC:
- whether the flat case fee charged to firms of £400 might mean that (i) law firms were incentivised to deal with complaints at first tier if they possibly could and therefore that (ii) the OLC might miss important data about cases required to build up a picture of issues, trends and capacity challenges. It was noted that the case fee framework was governed by the Legal Services Act and Scheme Rules, which had been agreed by the LSB and Lord Chancellor. Wanda Goldwag responded that the problems in these cases were usually administrative and while material to the complainant, were not material more generally. OLC confirmed that the review of the scheme rules had been deferred pending the arrival of the new Chief Ombudsman. Michael Smyth agreed to liaise with OLC offline in relation to some further questions about fees charged to firms;
  - Kathryn Stone explained that a number of cases concerned the level of fees being charged by firms to clients at the end of a case. These complaints generally involved the firms concerned not communicating charges to clients clearly enough during the course of a case, which was not good practice;
  - a Board Member stated that the issue was not necessarily how firms dealt with complaints, but the nature of what clients were complaining about that was important;
  - a Board Member asked about local competition in Birmingham for skilled staff and ongoing work to review the implications of high turnover, and the resource that OLC had set aside to deal with backlogs (the transition team). In response, the OLC explained that the local market was extremely competitive with a number of competitors recruiting in significant volumes and with attractive reward packages. The OLC was currently reviewing its overall employee value proposition and benefits. It was agreed that the current rate of staff turnover was a key issue. Rob Powell noted that OLC staff had reported that workload was an issue in relation to decisions to leave OLC. In relation to the transition team, the OLC was looking to develop a more flexible resourcing model through expansion of the pool ombudsmen system (who would be on the payroll) which was ongoing, [REDACTED]
- [FOIA exempt s36(2)(b)(ii)]**
- a Board Member asked if the OLC could share their criteria for determining whether a case was complex – the OLC agreed to do this;

- in relation to a query about the extent to which the OLC had considered investing in artificial intelligence to help with straightforward adjudications, Rob Powell explained that the IT strategy would be presented to the OLC Board on 6 December and would include horizon scanning to apply new technological opportunities including around Artificial Intelligence (AI). In the shorter term, IT improvements would prioritise development of a digital complaint form;
- a Board Member asked about the drivers of case volumes, as it had been the case in the past that numbers had been overestimated and now they appeared to be underestimated. Wanda Goldwag responded that the OLC did look at drivers, and sought out trends relating to firms, and types of law etc but there was no clear underlying trend. More generally, all ombudsmen were seeing an increase in complaints – the public were now more inclined than in the past to complain. The data was monitored monthly, and if a significant reduction in cases was seen, the full budget may not be utilised;
- reflecting on the draft budget acceptance criteria, a Board Member asked about the 5% allocation of the budget to feedback to the profession, and whether this could suffice effectively to deliver feedback. OLC explained inputs were not the best measure in respect of this question. The budget was likely to be sufficient on the basis that the work was related to staff time and low cost solutions such as social media, which had delivered improvements in the current year within a reduced budget. OLC was continually looking at ways to feed back to the profession. OLC undertook to review the figure of 5% and the rationale for it, and would be reviewing and enhancing its suite of leaflets shortly. The OLC referenced its recent 'Language of Complaints' research<sup>1</sup>.

11. The Interim Chair thanked OLC for an insightful update and emphasised that the Board needed to see a trajectory for improvement in order to sign off the budget – a clear set of performance improvements over time. OLC responded that significant improvements in performance next year were unlikely due to the need to work through the backlog of cases that had arisen from increased demand.

#### *Discussion of 'what good looks like'*

12. In opening this item of the discussion, Wanda Goldwag explained that the LSB had already seen the vision, mission, objectives and values for the organisation, and that further work was underway on developing the performance management framework, drawing on the outputs from the Tailored Review. In addition, the new forecasting model would help explain the impact on KPIs of changes in case volumes. In terms of the elements of performance set out within the slides, it was vital for the OLC to address staff turnover.
13. Key points raised in discussion were as follows:
- KPIs needed to be specific and quantifiable and focused on raising standards – for example, the measures for feedback to the profession needed to track the impact and effectiveness of the feedback. Also measures for the

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<sup>1</sup> <http://www.legalombudsman.org.uk/wp-content/uploads/2014/09/Language-of-complaints-Report-.pdf>

inclusive/accessible objective and for the volume and outcome of cases referred to the Service Complaint Adjudicator should be considered.

- as well as timeliness and quality, a Board member asked if more clarity for complainants around how long cases would take to be resolved could be considered ie expectation management
- it would be important, if possible, to understand the proportion of cases that were out of scope, and if a case was out of scope, how quickly OLC advised individuals of this;
- measures for assessing awareness of the scheme and how easy individuals found it to use would also be useful and were already available through the Legal Services Consumer Panel annual survey and the Legal Ombudsman's own customer surveys.

14. Wanda Goldwag confirmed that all these points would be addressed.

15. The Interim Chair thanked the OLC for attending and for an insightful update and it was **noted** the OLC's final budget submission would be presented to the Board's 22 March 2018 meeting. OLC attendees then left the meeting.

### *Summary*

16. After the OLC attendees had left the meeting, the Interim Chair summarised the key points arising from the discussion and the Board **agreed** that it would be helpful for the Interim Chair of the LSB to write to the Chair of the OLC by way of follow up, drawing out the following points:

- that the time at the meeting to discuss what good looked like was limited, and therefore that the Board would like to expand on this, drawing on the points raised in the short discussion, including in relation to governance and transparency – and to ask OLC for further detail about the steps along the way;
- that it would be helpful to record the points made at the meeting about the budget including:
  - the need for the OLC clearly to link the budget to commitments around trajectories for improvement (noting that the OLC has included some discussion of this in their budget principles paper);
  - risks around the high staff turnover, and the outcome of work to review the employee value proposition;
  - detail on how case complexity categories were defined, and how and when case fees were applied;
  - a more detailed explanation of why OLC had chosen to allocate 5% of its budget to feeding back learning to the profession, and how best to measure the effectiveness of the OLC's work in this area, if not by the % of budget spend.

17. As set out in the tripartite protocol, there was now a period of time for the LSB to submit the final budget acceptance criteria to OLC, and for the LSB to have some iterative discussions with OLC during the period when OLC was consulting publicly on its draft business plan and budget, ahead of the Board meeting in March 2018.

#### **Item 4 – Paper (17) 78 - Chief Executive's progress report**

18. The Chief Executive presented his progress report for the period from October to November 2017, drawing the Board's attention in particular to the following points:
  - that recruitment for the LSB Chair was progressing, along with recruitment for OLC members, and an additional member for the LSCP;
  - that the recruitment consultants for the Head of Corporate Services role had now been engaged, and that the competition for the new Head of Regulatory Performance had now been launched;
  - that interviews for the PA to the Chair and CEO were starting w/c 27 November and that the recruitment for the part time administrative assistant was progressing.
19. The Chief Executive added that a positive four-way meeting had been held with SRA, where the changes in governance that had taken place within The Law Society had been noted by the LSB.
20. Members thanked the CEO for his report and noted that the reaction to the MoneySavingExpert report to the All Party Parliamentary Group on Consumer Protection would be kept under observation, and that the LSB would stand ready to respond to any points raised in relation to legal services. In addition, it was noted that the assurance letter from OLC attached as an annex to the CEO report did not include a trajectory for improvement – which OLC had agreed verbally to include at a meeting held 30 October 2017. This point would be followed up with OLC, noting that the OLC has included some discussion of this in their budget principles paper.
21. Members **noted** the Chief Executive's progress report. The Interim Chair, on behalf of the Board, thanked Julie Myers for all her hard work in helping the LSB to be the organisation it is, having joined the project team before the LSB became a legal entity in 2008 - she expressed how invaluable this had been to the effective operating of the LSB and wished her well for the future.

#### **Item 5 – Paper (17) 79 – Draft LSB strategy, business plan and budget**

22. Members welcomed Chris Nichols to the meeting. In presenting the item, it was explained that there were three elements to the paper: the draft strategy, the draft business plan and a consultation paper that introduced and sought views on both. The Board was being invited to note and comment on all of these, as well as a high-level proposal for how the LSB would monitor the impact of its work during this strategy period.

#### Draft LSB Strategy

23. The Board had approved a draft strategy in September for the purpose of informal consultation, and that consultation was now complete. There had been a good level of engagement, with 15 responses. The strategy was very well received overall, with particularly positive feedback in relation to its presentation. Annex A provided more detail on the main points raised. Following the feedback, a small number of drafting changes had been made to the strategy but no changes had been made to the objectives themselves. Two changes were drawn to the Board's attention in particular: (i) clarification that under the first objective the LSB's expectation was for all regulators to meet all performance standards and (ii) the addition of a slide on equality objectives - following internal review, these had been updated to be consistent with the LSB's expectations of regulators, as set out in our 2017 guidance, that the Board approved earlier in 2017.
24. The executive were now ready to proceed to public consultation. The draft consultation paper for the Board to note included the revised draft strategy.

### Business Plan

25. Alongside the strategy, the LSB would be consulting on a business plan with proposed work packages for 2018/19 (as set out in Appendix 2). The Board had not previously been presented with the proposed work packages, and views were invited. The business plan was based on an overall budget that was £50k less than last year's budget. This budget was endorsed by ARAC in October 2017.
26. Chris Nichols explained that there were a number of important existing commitments that would be pursued in 2018/19 as set out in the business plan eg implementation of regulatory performance and the LSB's agreed course of action on IGRs. Once existing commitments were factored in, there was likely to be scope for between one and three additional workstreams. The draft business plan and consultation set out four proposed workstreams: (a) technology and regulation; (b) small business legal needs follow up work; (c) consumer segmentation and (d) EU exit planning. Subject to public consultation, the Board would need to prioritise which ones to take forward next year.
27. The Board raised the following points in discussion:
- the reference to a 'muted response' in relation to whether stakeholders would be willing to provide a public expression of support for the strategy (or elements of the strategy) was noted as being somewhat inconsistent with the overall support for the business plan. It was felt this might have been linked to the phrasing of the request. The Board clarified that what was being sought were areas where there could be dialogue and, if possible, joint working between LSB and stakeholders;
  - in relation to the drafting of the section on technology and regulation, the Board agreed that regulators should be 'anticipating future challenges' in this area;
  - consistency in the use of language (eg in relation to 'required' performance standards, and effectiveness and efficiency) would be checked across the documents;

- in relation to the points made by regulators in response to the informal consultation, Chris Nichols confirmed that once the consultation had been launched, he would write tailored responses to each of the respondents to pick up on the specific points they had raised;
- in relation to the budget, Edwin Josephs confirmed that the proposed figure of £3,978k had been considered by ARAC and came with ARAC's endorsement, and was a reduction of £50k compared with 2017/18, which was also consistent with forecasts that the LSB had given to the MoJ as part of its *Medium Term Financial Plans (MTFP)*.

28. The Board thanked Chris Nichols and all those involved in the drafting for their hard work on the strategy, business plan and budget to date. Subject to the points raised in discussion, the Board **agreed** the documentation and proposed budget as the basis for public consultation, and **noted** that the Chief Executive would now approve the final version of the document ahead of the launch of the consultation. The next steps were confirmed as follows:

- the consultation would be launched on 4 December 2017 for a period of 11 weeks;
- responses to informal consultees would be issued alongside the launch of the formal public consultation;
- an event for stakeholders would be held during the consultation period;
- a discussion would take place with MoJ in parallel to the public consultation – it was noted that MoJ had been involved in the informal consultation and were content with the direction of travel, emphasising the need for EU exit planning to be referenced, and endorsing the plans in relation to technology and regulation.

29. Jeremy Mayhew referenced the £3bn of monies that had been set aside in the autumn budget for EU exit planning, and whether there was scope for the LSB to access it by identifying relevant workstreams.

#### **Item 6 – Paper (17) 80 – Communicating market intelligence**

30. The interim Chair reminded Board Members that the suggestion for the work had come from David Eveleigh, with whom the paper had been shared in advance. In presenting the paper, Steve Brooker explained that the intention for the work was to make the LSB the 'go to' organisation for data on the legal services market and the impact of reforms.

31. The proposal for the work was warmly welcomed, and the following points were raised in discussion:

- the timing of the next triennial market evaluation exercise was queried, on the basis that the research would be a useful piece of benchmarking ahead of EU exit, if the timing could be adjusted to coincide;
- data on the cost of regulators – including practicing certificate fee data – were felt to be useful data for inclusion if feasible, and also potentially sector profitability;



- as well as the headcount of regulators, the number of individuals in the regulated community and those in the pipeline were also felt to be useful data for inclusion if feasible;
  - linking the work to the regulatory objectives was felt to be worth considering;
  - expressly referencing ‘access to satisfactory redress before recourse to the Legal Ombudsman’ would be useful, if feasible;
  - further thought would be given to presentation of market intelligence, using visuals where possible.
32. Subject to points raised in discussion being addressed, including exploration of how the LSB might report on areas outside its remit, the Board **endorsed** the planned approach to communicating market intelligence and thanked Steve Booker for the helpful paper.

#### **Item 7 – Paper (17) 81 – Revised regulatory performance assessment process**

33. The Interim Chair welcomed Tom Peplow to the meeting. In presenting the item, Dawn Reid explained that following discussions at its May 2017 meeting, the Board had approved the proposed process and framework for consultation on the revised regulatory performance assessment process. This had now been subject to a 14 week consultation period. 19 responses had been received, the majority of which had been supportive.
34. The Board’s attention was drawn to a key change in the language regarding the standard to be met – earlier drafting had referenced ‘minimum standards of performance’ and this had now changed to ‘required standards of performance’. Greater emphasis was also now being made to ‘well- led’. In context of our regulatory framework this relates to capacity, capability and how governance operated in the organisation, as well as leadership, culture, the use of learning, transparency and a consumer focused environment. The project team had looked at standards used in this area in other sectors and what could be learned in the context of the performance of the legal services regulators.
35. The following points were raised in discussion:
- the well-led model was felt to be helpful, with the value of the model being the granularity that sat beneath it – giving specificity in relation to delivery of the standards;
  - it was agreed that consideration should be given to the model being adopted wherever the LSB had oversight responsibilities, so in addition to the approved regulators, this might extend to OLC and SDT. The LSB itself would also need to hold itself accountable to the well-led model;
  - the suggestion at paragraph 10 in the cover paper to adapt future information requests focusing on the well-led requirements was welcomed – the adoption of assurance statements was also suggested;
  - the Interim Chair explained that the essence of the well-led model was focused on evidencing governance and standards as adequate, which would then allow the oversight regulator to accept the organisation’s assurance on all other areas.

36. The Interim Chair thanked Dawn Reid, Tom Peplow and the team for a thorough piece of work, the consequences and implications of which would be long-standing. The Board **noted** the amendments made to the framework and the regulatory performance consultation document. In relation to timelines, the Board also noted that the revised framework would be implemented from 2018/19, once signed off by the Chief Executive. On behalf of the Board, the Interim Chair thanked Dawn Reid for all of her work since joining the LSB and expressed how invaluable her contribution had been to the effective operating of the LSB and wished her well for the future.

**Item 8 – Paper (17) 82 – Revisions of LSB rules and enforcement policy**

37. [REDACTED]
38. [REDACTED]
39. [REDACTED]
- [REDACTED]
  - [REDACTED]
  - [REDACTED]
- [FOIA exempt s22]

**Item 9 – Paper (17) 83 – LSB Corporate risk register**

40. The Interim Chair invited Terry Babbs as Chair of ARAC to present the item in Julie Myers' absence. Terry Babbs explained that the register had been completed re-cast following its regular biannual zero based review. The register evolved over time, and ARAC's role was to re-set the document at regular intervals. As part of this process, ARAC challenged the executive in relation to how the new register mapped to previous versions, and significant work had been put into risk mitigation in this latest version of the register. ARAC had also focused on the difference between inherent

and residual risks – and where there was little difference between the two in respect of particular risks, had challenged the executive about what further mitigations might be possible.

41. The following points were raised in discussion:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED] **[FOIA exempt s36(2)(b)(ii)]**

- in terms of the presentation of the risks, consideration might be given to ordering the risks so that the highest risks appeared first;
- it was clarified that the role of the Board in considering the register twice a year was to consider whether the key risks had been identified and their ratings were appropriate. ARAC's role was to give assurance on effective management of the risks – the Board did not need to go through the detail, as ARAC did this on the Board's behalf, however the Board needed to own the risks.

42. Subject to the points raised in discussion, the Board **noted** the latest version of the LSB Corporate Risk Register.

#### **Item 10 – Minutes of the previous meeting – 26 October 2017**

43. The Board noted that these minutes had been agreed in correspondence. One typographical error was identified, which would be corrected.

#### **Item 11 – Action tracker**

44. The action tracker was **noted**.

#### **Item 12 – Paper (17) 84 - Finance Report for October 2017**

45. Edwin Josephs presented the latest finance report. A query was raised about use of the staff underspend and whether this might be used to employ temporary staff. It was agreed that the Chief Executive would circulate a note to Board Members on how the Executive were using the staff underspend.

46. The Board **noted** the Finance Report.

#### **Item 13 – Paper (17) 85 – Annual Review of LSB Health and Safety Policy**

47. Edwin Josephs presented the paper, which attached the LSB Health and Safety Policy for the Board's approval. The draft had been circulated and approved by Remuneration and Nominations Committee (RNC) by correspondence, and therefore came to the Board with RNC's endorsement.

48. The Board **approved** the Health and Safety Policy and statement.

**Item 14 – Reflections / forward look**

49. The Board reflected on the business considered at the meeting, and noted the agenda for the January 2018 meeting, which was to be held in Bedford at CILEX's offices.

**Item 15 – Any other business**

50. The Board formally extended its thanks to Bristol Law Society for kindly hosting the LSB Board meeting, and for its generous hospitality.

51. There was no other business

**The meeting closed at 16:20.**

HP 27/11/17

Signed as an accurate record of the meeting

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Date  
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