

Minutes of the Legal Services Board (LSB) meeting held on 29 November 2018

Date: 29 November 2018
Time: 12:00 – 12:35 (Board private session)
 12:35 – 16:00 (Board meeting)
Venue: One Canal Parade, Dumballs Road, Cardiff, CF10 5BF

Present: Dr Helen Phillips Chairing the meeting
(Members) Neil Buckley Chief Executive
 Terry Babbs
 Jemima Coleman
 David Eveleigh (dialled into the meeting)
 Jeremy Mayhew
 Catharine Seddon
 Michael Smyth CBE QC (Hon)

In attendance: Chris Nichols Interim Policy Director
 Steph North Corporate Governance Manager (minutes)
 Holly Perry Head of Corporate Services
 Danielle Viall Senior Legal Adviser
 Caroline Wallace Strategy Director

In attendance for specific agenda items:

Steve Brooker Head of Research and Development (from item 8)
 Tom Peplow Regulatory Policy Manager (items 4 and 5)

External attendance:

Jeremy Miles AM Counsel General (item 17)
 David Slade Senior Justice Policy Adviser (item 17)

BOARD MEETING

Item 1 – Welcome and apologies

1. The Chair welcomed those present and in attendance to the meeting, including David Eveleigh who had joined the meeting remotely.
2. Apologies had been received from Marina Gibbs, who had provided written comments on the papers which would be fed into the meeting at the appropriate point.

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

3. There were no declarations of interest relevant to the business of the Board.

Item 3 – Paper (18) 59 - Chief Executive’s progress report

4. The Chief Executive presented his progress report for the period October to November 2018, drawing the Board’s attention in particular to the following points:
- On the scheduled office move, the Cabinet Office minister was expected to report back before Christmas on the new office location. There had been no indication that this would not be in London, [redacted]
[redacted]
[redacted] **[FoIA exempt s36(2)(b) and (c)]**
 - A new Financial Controller had verbally accepted an offer to join the LSB and would start in April 2019, subject to references;
• [redacted]
[redacted]
[redacted] **[FoIA exempt s36(2)(b)]**
 - [redacted]
[redacted]
[redacted]
[redacted];
[FoIA exempt s36(2)(b)]
 - The Board noted that as a result of the government’s budget statement in October, UKRN had been requested to increase collaboration between regulators; this was likely to involve some enhanced involvement on the LSB’s part, without being overly burdensome on resources. The LSB was an associate member; and the focus remained on the economic regulator members;
 - The Board noted that the SRA had urged the government not to agree to the blanket mutual recognition of other countries’ legal qualifications [redacted]
[redacted]; **[FoIA exempt s36(2)(b)]**
 - [redacted]
[redacted]
[redacted]
[redacted]
[redacted]; **[FoIA exempt s36(2)(b) and (c)]**
 - The LSB aspired to facilitate an open debate on the impact of technology on the market and the profession, and how regulators should respond. As such, academics and leading practitioners in the field would be invited to contribute essays on the topic to further the debate;
 - A question was raised whether the LSB should respond to the recent CMA market study into the audit sector. The LSB had statutory responsibilities for ACCA and ICAEW, an aim of increased consumer choice and the orderly provision of legal services. Work would be done to understand the LSB’s remit and authority to comment on issues to do with conflicts, especially in relation to the big four accountancy and professional services firms, given that they also provide legal

services and the LSB wants the public to have confidence in using legal services - **action**. [Post meeting note: The invitation to comment on the market study notice closed on 30 October and all responses have already been published. The CMA intends to consult on provisional conclusions by the end of the year which will provide another opportunity to review the LSB's position.]

5. Members **noted** the Chief Executive's progress report.

Item 4 – Paper (18) 60 – Regulatory Performance – current status and next steps

6. The Chair welcomed Tom Peplow to the meeting, noting thanks to the team for their hard work to date on this project.

7. Tom Peplow thanked Board members for their contributions to date, and introduced the paper, which set out the timetable for next steps for regulatory performance. The regulators had been sent transitional assessments which set out required actions and timeframes. The assessments and a table of findings were due to be published in December, [REDACTED]
[REDACTED]
[REDACTED]. [FoIA exempt s36(2)(b)]

8. The Board discussed the paper. The following points were raised in discussion:

- There was strong correlation between two actions not being met across the majority of regulators;
- The assessment should explicitly state that it had been outcomes-focussed and where the regulators had been found wanting, they were expected to take action within the requested time;
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED];
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED];
- [REDACTED]
[REDACTED]
[REDACTED] [FoIA exempt s36(2)(b)]

9. The Board **noted** the next steps, and **agreed** that the final decision on how considerations raised would best be addressed would be made by the Chief Executive and Chair.

Item 5 – Paper (18) 61 – Enforcement review – proposed next steps

10. Tom Peplow thanked Board members for their contributions to date, and introduced the paper, which set out the findings of the enforcement review, and an assessment of the LSB's 2014 policy positions. The team would undertake a best practice review of other sectors to inform how work could be planned for the future.
11. The Board considered the paper and the following points were raised in discussion:
- It would be important to consider the role of the oversight regulator and what the LSB is able to achieve in this area; it should be signposted that it was likely that the LSB would consider a new approach to enforcement in the coming months and years. This would be consistent with reducing the regulatory burden.
 - The inconsistency of approach between regulators on the use of interim sanctions should be considered and whether work on interim sanctions should increase in priority.
 - They were widely used in other sectors, and it was in the interest of practitioners too for such matters to be settled more quickly than currently. In terms of the consumer interest, the onus should be on the regulator to demonstrate ways in which they were compliant.
12. The Board **noted** and **agreed** that the enforcement review findings could be published in full, that the 2014 policy positions could be closed off with an explanation of their ongoing relevance, and with an outline of where the focus would be under the new regulatory performance framework – to include interim sanctions, timeliness and quality.

Item 6 – Paper (18) 62 – Finance Report for October 2018

13. Neil Buckley presented the Finance Report, highlighting the declining gap between the budget and the out-turn. Only a very small gap, if any, was anticipated by the end of the financial year. **Action** – the executive should include a full year forecast in the report.
14. The Board reviewed and **noted** the latest Finance Report.

Item 7– Paper (18) 63 – LSB Corporate Risk Register

15. Holly Perry presented the LSB's revised Corporate Risk Register, which was received by the Board twice annually, by the Audit and Risk Assurance Committee (ARAC) at each of its meetings, and by the Senior Leadership Team on a monthly basis, reflecting that it was intended to be a living document. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[Redacted]
[Redacted] [FoIA
exempt s36(2)(b)(ii)]

16. [Redacted]
[Redacted]
- [Redacted]
[Redacted]
 - [Redacted]
[Redacted]
[Redacted]
[Redacted] [FoIA
exempt s36(2)(b)(ii)]

17. The Board **noted** the updated Risk Management Strategy.

Item 8 – Paper (18) 64 – draft LSB business plan and budget 2019/20

18. [Redacted]
[Redacted] [FoIA exempt s36(2)(b)(ii)]

19. The Board reviewed the papers and the following points were raised in discussion:
- The papers had been very well drafted – the use of PowerPoint was welcomed, as was the simplicity and brevity of drafting which had led to a good debate.
On the draft Budget:
 - The Board was content with the proposed budget, while acknowledging potential risks around the required office move and IT costs. It would be important to ensure the LSB’s IT requirements were sufficiently defined ahead of the expected upgrade / transformation. A separate paper on this was scheduled to be presented to the ARAC in January 2019;
 - There was a risk that the LSB would look increasingly out of touch if its IT capabilities were not at least on a par with those it seeks to regulate; the Board encouraged the IT team to collaborate with the MoJ and other ALBs to share knowledge and best practice in this area;

- It was agreed that the IT budget in future years should be re-assessed based on the LSB's future ambitions. [REDACTED] [FoIA exempt s36(2)(b)(ii)]
- It was noted that in the future, the cost of IT may be balanced by a corresponding reduction in labour in certain areas of work;
On the draft Business Plan:
 - The Board expressed a strong preference for a twelve week consultation, rather than the proposed eight week consultation, especially factoring into account the festive period [post-meeting note: presenter error – the consultation had been proposed for twelve weeks];
 - It was acknowledged that the five-year policy objectives would be markers by which LSB delivery of its strategic objectives would be measured;
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED] [FoIA exempt s22]
 - [REDACTED] [FoIA exempt s36(2)(b)(ii)]

20. The Board **agreed** that the document[s] be issued for consultation, and **agreed** the draft budget of £3,798k (the same as the 2018/19 budget). The Board delegated authority to the CEO approval of the final consultation document for publication, subject to comments raised.

Item 9 – Paper (18) 65 – Mayson Review

21. The Chair invited Steve Brooker to present the Mayson Review paper, which set out proposed engagement between the LSB and Professor Mayson's independent review of legal services regulation. It would be important for the LSB to set out any changes to its policy position since 2016, and to consider where the market had moved on. The Chair and Chief Executive had met with Prof Mayson since the paper had been written, and provisionally agreed that Prof Mayson would address the Board at its June 2019 meeting.
22. The Board considered the proposed approach, highlighting the need to consider whether the current framework was adequate for the desired change. [REDACTED]

[REDACTED]
[REDACTED] [FOIA
exempt s36(2)(c)]

23. The Board **noted** the proposed engagement with the review.

Item 10 – Paper (18) 66 – OLC draft budget principles

24. The Chair invited Steve Brooker to present the OLC draft budget principles paper. Steve highlighted that the final budget would be presented for approval at the Board's March meeting, and that the purpose of this paper was to decide whether any further information was required before that decision could be made, and whether there should be any changes to the acceptance criteria.

25. The Board considered the paper and commented as follows:

- The paper reflected the principles as they had been discussed with the OLC;
- A more detailed explanation should be provided in relation to assumptions made about case volume, which should be justified accordingly;
- Concern was expressed at the low level (2%) of the budget allocated to 'feeding back to the profession'. Concern had also been expressed the previous year when that figure was 5%;
- On assumptions about staffing, it was queried whether the local recruitment market was in fact competitive below senior level;
- On the stated priorities for 'embedding a high performance culture', it was suggested that factors around organisational culture had been omitted. It was essential for there to be assurance that underlying issues were being addressed;
- One of the key criteria was around the increase in unit cost. The cost per case was already quite high for an ombudsman which was of concern. It would be helpful to know comparator case fees of other ombudsmen;

26. The Board **agreed** that the Chair, Board lead for OLC matters and CEO could agree the final budget acceptance criteria in light of the Board discussion, which would be shared with the OLC following the meeting.

Item 11 - Minutes of previous meeting 24 October 2018

27. The 24 October Board meeting minutes were **approved**. It was **noted** that the minutes would be published on the website following the meeting, and that this would be adopted as the standard procedure for in 2019.

Item 12 – Board action tracker

28. The Board reviewed and **noted** the action tracker.

Item 13 – Paper (18) 57 - Annual Review of LSB Governance Manual

29. Members **noted** the Annual Review of the LSB Governance Manual, which had previously been reviewed by correspondence.

Item 14 – Paper (18) 58 – Annual Review of LSB Health and Safety Policy

30. Members **noted** the Annual Review of LSB Health and Safety Policy, which had previously been reviewed by correspondence.

Item 15 – Forward look / reflections

31. The Board **reviewed** the agenda for the next Board meeting, to take place on 24 January 2019.

Item 16 – AOB

32. There was no other business.

Item 17 – External speaker presentation – Jeremy Miles AM

33. The Chair welcomed Jeremy Miles AM to the meeting. Jeremy was an elected Assembly Member for the Neath constituency, and also Counsel General for Wales, a position he had held since 2017.
34. The Counsel General spoke to the Board about his [Department's] engagement with law firms over the past year; what the Welsh Government was doing to support the legal sector, and the Government's role as both a provider of and user of legal services. Points raised included:
- The Counsel General's role encompassed being both a law officer and a point of liaison with the legal sector in Wales more generally.
 - Common themes across his engagement with legal practitioners and firms over the past year included: changing business models; the impact of the withdrawal of legal aid – particularly though not exclusively in rural areas; difficulty in recruitment and retention of qualified staff and support staff; awareness of and plans to promote technology and innovation; the divergence of Welsh law and jurisdiction; pressures faced by SME firms around the (increasing) cost of compliance, infrastructure and IT, and accessing online tools and published materials.
 - Noting what more could be done to support the legal sector, the Counsel General noted that the Welsh Government was about to introduce a bill to make laws more accessible, and to codify the Welsh statute book; the impact of reductions in the legal aid budget had produced a differential impact in different parts of Wales. The Government was aware of the need for a well distributed legal sector across the whole of Wales; cross-border transactions posed difficulties under the current single-jurisdiction but divergent laws system. Engagement between law firms should be encouraged. There was a relationship between a resilient and confident legal sector and a broader discussion about jurisdiction and the devolution of justice.

35. The Board thanked the Counsel General for his presentation, and his suggestion of ongoing engagement with the LSB. This was followed by a short question and answer session. Points raised included:
- Reductions in legal aid had had a disproportionate impact on certain communities in Wales;
 - The Welsh Government’s aspiration was to have full devolution of justice policy. The current system created anomalies e.g. penal services, social policy and criminal justice were controlled by different jurisdictions which made joined-up action more difficult. Wales was the only primary law-making body which did not also have power of jurisdiction ie enforcement powers;
 - There remained economic and constitutional challenges / infrastructure – there was an entire body of Welsh law which continued to require lawyers who were conversant in both Welsh and English law;
 - There was potential for the Welsh Government and the LSB to work together and to share insights into early intervention and public legal education – **action: follow up with Counsel General.** The Welsh Government was funding various mechanisms for citizens to understand their rights and how they could be enforced including: advice services, a new advisory hub, and developing a new curriculum for 2022 which would focus on rights and responsibilities, outcomes and capabilities.
36. The meeting closed.

SN 6/12/18

Signed as an accurate record of the meeting

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Date
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