

Minutes of the Legal Services Board (LSB) meeting held on 24 April 2018

Date: 24 April 2018
Time: 12:00 – 12:15 (pre Board private session)
 12:15 – 14:45 (Board meeting)
 14:45 – 15:45 (Board private session)
Venue: 2nd floor, One Kemble Street, London WC2B 4AN

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: Caroline Wallace Strategy Director
 Holly Perry Head of Corporate Services (minutes)
 Nicola Galiana HR Manager (observing)
 Steph North Corporate Governance Manager (observing)

In attendance for specific agenda items:

Bryony Sheldon Regulatory Policy Manager (item 4)
 Craig Wakeford Regulatory Policy Associate (item 4)
 Rusere Shoniwa Interim Director of Finance (items 5 and 8)
 Martin Coleman Non-Executive Director, CMA (item 9)
 Steve Brooker Head of Research and Development (item 10)
 Wanda Goldwag Chair, Office for Legal Complaints (item 10)
 Rob Powell Chief Executive, Legal Ombudsman (item 10)
 Rebecca Marsh Chief Legal Ombudsman, Legal Ombudsman (item 10)

BOARD MEETING

Item 1 – Welcome and apologies

1. The Interim Chair welcomed those present and in attendance to the meeting.
2. No apologies had been received.

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

3. No new interests were declared.

Item 3 – Paper (18) 19 - Chief Executive’s progress report

4. The Chief Executive presented his progress report for the period March to April 2018, drawing the Board’s attention in particular to the following points:

- the Chief Executive had attended an OLC business assurance meeting earlier that day at the Ministry of Justice (MoJ), which had been helpful. While LeO performance had declined further, there was an expectation that performance would shortly start to improve;
- in relation to gender pay gap reporting, the Chief Executive explained that while the LSB was not required to report owing to its size, it was in the process of conducting a pay audit and would report the results to the Remuneration and Nomination Committee in due course;
- Angela Latta had been appointed to the role of Regulatory Policy Principal and would take up post on 25 April. Angela had held a number of senior posts at the Department for Business, and more recently was the Chief Operations Officer at the Grocery Codes Adjudicator. A Regulatory Project Manager appointment had also just been made to replace Emma Kelly-Dempster, who would be leaving the LSB in May to take up a role in the Department for Health and Social Care.

5. The following points were raised in discussion:

- OLC assurance - Board Members asked whether the MoJ had raised similar points with regard to LeO performance as were being raised by the LSB. The Chief Executive stressed the importance of the three-way meetings with the MoJ and OLC, and that performance had been discussed at length including the trajectory and timeline for performance improvement. It was agreed that it would be important for the LSB and MoJ to remain very close in relation to the issue;
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] **[FoIA exempt s36]**
- Cost transparency – the Board noted the good progress being made, and emphasised the importance of accessibility. The executive confirmed that accessibility would form part of the discussions with approved regulators;
- Financial stability and the compensation fund – the Board welcomed the note at Annex D;
- Developments in Welsh law – the Board noted the proposals to be discussed by the Welsh Assembly Government in relation to Wales having a codified corpus of law, to tackle confusion caused by growing divergence from England. [REDACTED]

[REDACTED]
[REDACTED] **[FoIA exempt s36]**

- Horizon-scanning – the Board would welcome further work on learning from other legal models globally, in particular how other jurisdictions approached regulation, for example in the Americas and in Asia;
- SDT annual performance report 2017 – the Board noted the report at Annex A. The report made reference to some issues between SDT and SRA in relation to the quality of information. The Chief Executive reported that he had discussed with the Chief Executives of the SDT and SRA the need to facilitate better flows of information;
- BSB changes to how it deals with third party information – the Board noted the developments set out in Annex B, particular that BSB was considering establishing a new Independent Decision-Making Body to replace the Professional Conduct Committee.

6. Members **noted** the Chief Executive’s progress report.

Item 4 – Paper (18) 20 – IGR review: assessing the options

7. The Chair welcomed Bryony Sheldon and Craig Wakeford to the meeting. The paper provided a focus on the two options for drafting new IGR, as agreed at the 22 March meeting: [redacted]

[redacted] **[FoIA exempt s36]** The following points were drawn to the Board’s attention in presenting the paper:

- [redacted]
[redacted]
[redacted]
[redacted]
[redacted] **[FoIA exempt s36]**
- The paper set out early thoughts on what outcomes and guidance might look like. The current four principles in the IGR schedule (governance, appointments, strategy and resources and oversight) were a possible starting point;
- [redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted] **[FoIA exempt s36]**

8. The following points were raised in discussion:

- [redacted]
[redacted]
[redacted]
- [redacted]
[redacted]
[redacted]
- [redacted]

- [REDACTED]
[REDACTED]
[REDACTED] [FoIA exempt s36]
 - The overall success of the revised IGRs would be in the detail of how the rules were drafted, and how far the guidance went.
9. The Chair summarised the actions as follows¹:
- A draft summary response document and the draft decision document on which approach the LSB would take would be presented to the June extraordinary Board meeting – [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [FoIA exempt s36]
 - In parallel, in June, the executive would bring to the Board any significant additional considerations for the IGR that were raised by stakeholders following publication of the LSB report on the TLS/SRA investigation;
 - The final version of the response document would be presented to the July Board meeting;
 - [REDACTED]
[REDACTED]
[REDACTED] [FoIA exempt s36]
10. The Board **noted** the paper and provided its steer in relation to the next stages of the work, as summarised above.

Item 5 – Paper (18) 21 – Draft Annual Report and Accounts 2017/18

11. The Chair welcomed Rusere Shoniwa to the meeting, who provided the Board with an oral update on the latest position with the year-end audit. Fieldwork had completed on 20 April, and managers at NAO were now reviewing the accounts, which was generating a number of queries on field work issues. BDO were due to issue their audit completion report to NAO on 27 April. The Board noted that ARAC would consider the final draft of the report ahead of sign off and laying at its meeting on 21 May 2018.
12. The Board **approved** the draft LSB Annual Report and Accounts 2017/18 - subject to any additional points being raised through scrutiny by ARAC - and **delegated authority** to the interim Chair and Chief Executive to approve the submission of the Annual Report and Accounts 2017/18 to the Comptroller and Auditor General, and Lord Chancellor.

¹ The actions were reflected on later in the meeting, in the context of the presentation by Martin Coleman, which had incorporated consideration of the IGRs.

Item 6 – Minutes of the previous meeting – 22 March 2018

13. The Board noted that the minutes had been agreed by correspondence and published on the website.

Item 7 – Action tracker

14. The action tracker was noted. The Board also noted an action that had not been captured on the tracker – that Jemima Coleman’s input as Chair of RNC was being sought in scoping the work on the appointments ‘deep dive’. This had been actioned. It was noted that the draft response to the LASPO post implementation review would be circulated by correspondence to the Board shortly.

Item 8 – Paper (18) 24 - Finance Report for March 2018

15. Rusere Shoniwa presented the latest finance report, noting that spend to the end of March 2018 had been £3.47m against a budget of £3.85m, resulting in an underspend of £378k (£473k for the same period in 2016/17). The main contributors to the underspend related to colleague costs (£238k underspent) and accommodation costs (£90k underspent). As noted in the report, business rates rebates during the year totalling £66k had been a significant factor in the accommodation costs underspend. Liaison with ORR indicates that there is no potential impact on forecasting going forward and there is no expectation of ongoing rebates.
16. The interim Finance Director explained that there were some non-material errors in the percentage variance column at Appendix 1, which would be corrected before final publication of the minutes.
17. The Board **noted** the Finance Report.

Item 9 – Board Speaker – Martin Coleman

18. The Chair welcomed Martin Coleman, Non-Executive Director of the Competition and Markets Authority and former partner of Norton Rose Fulbright. Mr Coleman’s comments touched on matters relevant to the LSB’s strategy, including the extent to which regulatory reform in legal services had been successful, technology and the IGR review. Mr Coleman stated that he was speaking in a personal capacity and not on behalf of any organisation.
19. Key views expressed in Mr Coleman’s presentation included:
 - Three key environmental changes since the 2007 Legal Services Act:
 - Increased scepticism (governmental and public) about what competition will deliver for consumers;
 - Increased scepticism about the extent to which external investment delivers benefits for consumers rather than for investors;
 - New technology is transforming markets.

- ABS impact had been modest, in part due to unlucky timing in terms of the 2008 financial crisis, which had an adverse impact on investment in innovation.
- Large law firms doing more innovation than might be understood – they have the capital to make investments which are often beyond the means of smaller firms.
- LSB should not assume that external investment is vital for innovation or consumer benefit. Some external investors tend to take a short term approach, whereas self-funded investment (e.g. via partnership) can take a longer term, more holistic, view.
- Large law firms doing more innovation than might be externally understood – they had the resources to make investments which are often beyond the means of smaller firms, the ability to draw on partner and debt capital and are facing commercial pressures to improve efficiency.
- Technology might help break down consumer conservatism through streamlining and simplifying legal processes, so that consumers can break free of only using service providers that they have used before and/or who hold a professional title. It might facilitate trusted names in other sectors (eg accountancy) to enter/expand in legal services markets.
- In relation to innovation, regulators can stop things happening but it is harder for regulators to make things happen. Good regulation stops ‘bad’ things but does not hinder good initiatives that benefit consumers.
- Increased governmental focus on direct interventions to achieve good outcomes for consumers (particularly vulnerable consumers) rather than, as in the past, relying solely on competition to deliver benefits. Policymakers also thinking about the distributional effects of policy, rather than just efficiency.
- Traditional legal services regulation/business models (i.e. before the event requirements, underpinning codes of ethics, use of owners’ capital) may be more in tune with the times.
- Access to services by those who cannot pay under any market structure is not typically regarded as a competition concern (though should be a wider public interest concern). The CMA in its recent care homes market study concluded that additional public funding was needed to maintain the current market model. This was in contrast with the CMA legal services market study in which the CMA did not make comment on legal aid. However, care homes is a very different policy context to legal services – we should not assume that any future review of legal services would take same approach as care homes.

20.

- [REDACTED]
- [REDACTED]

- [Redacted]
[Redacted] [FOIA
exempt s36]

21. The Board thanked Mr Coleman for his insightful and reflective comments, both in terms of his general reflections on the regulatory objectives, but also for his comments on specific elements of the LSB's work plan. The presentation had provided the LSB with much food for thought. The Chair also thanked Jeremy Mayhew for making the introduction.

Item 10 – Paper (18) 25 – OLC discussion of *What good looks like*

22. The Chair welcomed Wanda Goldwag, Chair of the OLC, Rob Powell, Chief Executive, and Rebecca Marsh, Chief Ombudsman to the meeting. The Chair opened the session by explaining that the origin of the request was for the LSB and OLC to have a jointly-owned understanding of the governance and transparency requirements that would support an assurance framework, where OLC could be in a position to demonstrate accountability for the performance of LeO and where the LSB could have assurance about the discharge of the OLC's functions. The expectation was that a shared understanding of sound governance arrangements would generate trust between the OLC and LSB, so that in future the LSB could rely on OLC's assurance, rather than focus on LeO's performance.
23. Wanda Goldwag spoke briefly to the slides that had been included as part of the Board papers, and which covered: LeO's journey; the focus on purpose; the well-led framework; developing a capable organisation; driving performance, accountability and improvement; the long-term strategic focus, and transparent and open governance.
24. The following points were raised in discussion:
- The OLC Chair confirmed that the OLC Board understood and accepted its accountabilities to the LSB, and the need for the OLC Board to provide the LSB Board with assurance;
 - Whether the OLC Board was able to define its relationship with LeO - i.e. how in governance terms the OLC held the Legal Ombudsman to account. The OLC had shared a note with the LSB Chair in advance of the meeting explaining the relationship, in particular it noted that there was only one entity (the OLC) which set up, administered and oversaw the Legal Ombudsman scheme; the OLC Chair emphasised that while the OLC Board oversaw the executive management of the Office for Legal

Complaints in its running of the Legal Ombudsman scheme, it was important to work as one corporate whole;

- Whether the performance management framework was sufficiently articulated that the LSB Board could understand OLC's journey in terms of the right quality and quantity of information, and also an understanding of how the OLC Board would maintain a grip on the agreed areas for improvement to OLC performance – the OLC Chair responded that the OLC Board had considered a paper at its meeting earlier in the week on KPI tolerances, which addressed the point. Where performance fell outside agreed tolerances, then escalation would be to management and then the Board. It was acknowledged that it was inherently challenging to forecast the intake of cases with precision, and that substantial variations in caseloads could be difficult to contend with given the level of fixed overheads;
- Whether the OLC should establish a performance oversight committee – the OLC Chair responded that the Board was small. Oversight of performance was a core function of the OLC Board, and formed a significant part of discussion at every Board meeting. Delegation to a Board sub-committee had been considered as part of the independent Board effectiveness evaluation, and had been rejected for the reasons set out;
- Whether the focus on assurance was sufficient – the OLC Chief Executive responded that the business plan 2018/19 focused on continuous improvement, with a clear line of sight from strategic to individual objectives, but that there was more to do on measuring and reviewing the impact of significant changes that had been introduced. A new team working only on new cases in the new business model was now in place – it was hoped this would confirm that the changes that had been introduced (new systems and working practices) were effective and would enable LeO to respond and react swiftly, without being impacted by legacy work;
- How to maintain a constructive relationship during periods of performance challenge, appreciating the importance of achieving sustainable improvement – the OLC Chair responded that the OLC Board papers were shared with the LSB, and were intended to provide the required assurance alongside the voluntary assurance letters;
- Whether the skillset of the current OLC Board was right – the OLC Chair reflected that the latest appointees were very new in post, but all brought highly valuable skills that would be put to good use. The OLC Chair felt confident that the OLC Board was a strong team;
- In relation to transparency, LSB Board welcomed the work undertaken to put OLC Board minutes and papers into the public domain. A question was raised regarding whether the OLC had any further thoughts about

putting information into the public domain in relation to the technical quality of casework – the OLC Chief Executive explained that the independent adjudicator’s annual report was published, and delivery of performance formed part of the balanced scorecard, so there was a good deal of information published. The Chief Ombudsman added that quality of casework had been a point discussed with MoJ, and sampling processes (both in relation to compliance and outcomes) were in place. A new process recently introduced meant Ombudsmen would be involved in cases earlier on in the process, meaning that they were able to contribute to the scoping of investigations;

- What contingency measures were in place, should there be significant deviation from the delivery plan.

25. The Chair thanked Board Members for their questions, and OLC colleagues for their helpful responses. The question of next steps was turned to, and how the discussion would effect change. The OLC Chair explained that the coming months would see further changes - new staff, new IT, new telephony and a focus on eliminating legacy cases. The OLC’s ambitions for the Scheme had been clearly set out. Any digression from the delivery plan would involve the need for urgent action.

26. The Chair thanked the OLC Chair and colleagues for attending the meeting and for the good quality discussion. It was agreed that the next steps needed to focus on contingency planning, elimination of legacy cases, and a review of the LSB / OLC Memorandum of Understanding (MoU) to check that it reflected adequately the points of substance raised during the discussion including whether there should be a provision on mutual early warnings.

Wanda Goldwag, Rob Powell and Rebecca Marsh left the meeting

27. [REDACTED]

- [REDACTED]
- [REDACTED]

[Redacted] [FOIA exempt s36]

Item 11 – Reflections / forward look

- 26. The Board reflected on the business considered at the meeting, and considered the business for the 24 May 2018 Board meetings. Comments on the draft agenda for the meeting should be submitted to Holly Perry. The Chair reported that the draft external Board evaluation report would be available shortly, and would be sent to Board Members alongside individuals’ 360 degree feedback reports.

Item 12 – Any other business

LSCP Chair appointment

- 27. The Board formally **noted** the decision that had been considered out of committee the previous week regarding a recommendation to the Lord Chancellor as to the next Chair of the Legal Services Consumer Panel.

Chairing of the 17 July Board meeting

- 28. The interim Chair requested volunteers from among the lay members to chair the 17 July 2018 Board meeting, in her absence on annual leave.
- 29. There was no other business

HP 26/04/18

Signed as an accurate record of the meeting

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Date
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