

Minutes of the Legal Services Board (LSB) meeting held on 26 March 2019

Date: 26 March 2019
Time: 12:00 – 13:00 (Board private session)
 13:00 – 16:00 (Board meeting)
Venue: 2nd floor One Kemble Street, London WC2B 4AN

Present: Dr Helen Phillips Chairing the meeting
(Members) Neil Buckley Chief Executive
 Terry Babbs
 Jemima Coleman (dialled in up to item 4)
 David Eveleigh
 Marina Gibbs
 Jeremy Mayhew
 Catharine Seddon
 Michael Smyth CBE QC (Hon)

In attendance: Chris Nichols Director of Policy and Regulation
 Steph North Corporate Governance Manager (minutes)
 Holly Perry Head of Corporate Services
 Melanie Stewart Head of Finance (observing and item 7)
 Danielle Viall General Counsel
 Caroline Wallace Strategy Director

In attendance for specific agenda items:

Steve Brooker Head of Policy Development and Research
 (items 4-6, 13)
 David Fowles Regulatory Policy Manager (item 13)

External attendance:

Lola Bello Legal Services Consumer Panel Manager (item 6)
 Dr Anna Donovan UCL (item 13)
 Marlene Winfield Legal Services Consumer Panel Member (item 6)

BOARD MEETING

Item 1 – Welcome and apologies

- 1.1 The Chair welcomed those present and in attendance to the meeting. In particular, welcome to Jemima Coleman who was joining via phone, and to Melanie Stewart, who joined the LSB as Head of Finance on 11 March and was observing the meeting. The Chair, on behalf of all present, thanked Terry Babbs for his service to the LSB, especially his stewardship of ARAC which was a model of best practice. This was Terry's last meeting as his term would end on 31 March 2019.
- 1.2 A number of staffing changes had been announced since the last Board. Notably, Chris Nichols had been confirmed in post as Policy Director, [REDACTED] and [REDACTED] had been promoted from Regulatory Policy Associates to Policy Managers, and [REDACTED] had been regraded to become Corporate Services Manager. Congratulations were passed to them all. [FOIA exempt s40]
- 1.3 It had also been announced that [REDACTED] Research Manager, and [REDACTED] Regulatory Policy Manager, would be stepping down from the LSB. The LSB had been exceptionally well served by both [REDACTED] and [REDACTED], and it would be important for their corporate knowledge to be handed over effectively. [FOIA exempt s40]

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

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

Item 3 – Paper (19) 12 - Chief Executive's progress report

- 3.1 The Chief Executive presented his progress report for the period February to March 2019, drawing the Board's attention in particular to the following points:
 - The CEO had met with the Small Business Commissioner in Birmingham. Amongst other issues, they had discussed the amount of time taken for some law firms to pay their suppliers. **Action** – executive to consider the issue and the extent to which there was a need to take up the matter with TLS and the SRA [actioned – Small Business Commissioner put in touch directly with TLS and SRA]
 - The CEO had addressed the Devon and Exeter Law Society. There was considerable interest in the LSB's proposed work on ongoing competence. It was agreed that it would be helpful to have a dialogue with the wider profession in due course.
 - The CEO had met with the OLC. On behalf of the Board he thanked Rob Powell, outgoing LeO CEO, for all his work as CEO ahead of his last day on 29 March.
- 3.2 The Board considered the CEO report and comments raised included:
 - On the Mayson Review working papers, the Board noted that Prof Mayson was scheduled to address the Board in June 2019. It was important to remain mindful of the government's lack of appetite for regulatory reform at the current time and that

Prof Mayson's view on award of title was the biggest area of dissension from the LSB's position.

- On the ICAEW decision – it was questioned what, if any, impact there had been following the High Court's recent ICAEW decision given that the judgment was explicit in coming to a different conclusion to the LSB. **Action:** Executive to provide a one-pager setting out the court's decision, the impact on the LSB and any implications on the IGR.
- Mindful of the Board's desire to follow a robust communications strategy, it was queried whether it would be possible to mark the launch of the *She Breaks the Law* network for women working in the legal innovation field. Such an event would allow the LSB to champion innovation and diversity with an access to justice angle. **Action:** executive to consider and action as appropriate.
- The Board welcomed the recent meeting with the Solicitor General's office to discuss PLE. **Action:** executive to consider an event with Young Citizens and with other PLE providers.
- On the SDT, the performance annex was noted with interest. The Board acknowledged that the LSB had no power for setting targets but questioned whether there was scope elsewhere. [REDACTED]
[REDACTED]
[REDACTED] **[FoIA exempt s36(2)(b)(i)]**
- The Board asked whether a third party litigation provider could be invited to speak to the Board [*post meeting note – in progress*]

3.3 The Board **noted** the Chief Executive's progress report.

Item 4 – Paper (19) 13 – Final LSB Business Plan 2019/20

4.1 The Chair welcomed Steve Brooker to the meeting, thanking the executive for their work on this year's business plan, the coherent structure and the thorough consultation process.

4.2 Steve presented the paper to the Board, highlighting that the MoJ had assured the LSB that written authority to spend in 2019/20 would be received by the end of the week, and that formal approval of the budget would follow after that.

4.3 The Board considered the paper and **discussed** the questions posed in turn, as well as raising general comments on the paper:

- **Five-year policy objectives:** having considered the consultation responses, the Board remained confident in the chosen three five-year policy objectives- public legal education, ongoing competence and technology.
- **Non-disclosure agreements (NDAs)** – the Board questioned why the LSB was seeking to get involved in discussion of NDAs at this point. It was noted that NDA posed a major issue for law firms, and it was essential to be seen to address the issue not least in respect of public trust in the profession, and diversity more broadly.

It was agreed that work on NDA should be re-framed in the context of protecting the profession, professional standards, fitness to practice and education and training considerations. The LSB's ongoing work in these areas would shed light on areas we need to be mindful of for future work in these areas and levers which we can use.

- **Scope and timing of PCF applications** – Board members were content with the recommendation that the review commence in the second half of the business plan year.
 - **Suggested areas of further work** – Board members were content with the areas of work already proposed and no individual suggestion warranted a change in priorities. In relation to the suggestion that the LSB follow up on the impact on consumers and the profession of the recent SRA reforms, there are already plans in place to monitor the SRA's progress in this regard.
 - **LSB to require datasets on the profession from the regulators** – Board members considered whether such a request would be a burden on the regulators to provide, mindful that the LSB had potential to add value in his area by bringing datasets together to act as a comparison tool. It was agreed that there was a proportionality issue, and that it was too late for such data to be used as part of the ongoing work on the market evaluation survey.
 - PLE – in relation to consultation responses which questioned why the LSB was seeking to involve itself in the public legal education (PLE) sphere, it would be important for the LSB to provide rebuttal as it was the only body statutorily required to engage in PLE, indeed it was one of the regulatory objectives in the Legal Services act. The LSB had consistently stated it would work with partners to progress the agenda.
 - Junior Law Division response proposing a work stream which considered the role of regulators in protecting the profession – Board members agreed in due course it would be useful to have a discussion about the extent to which there was a regulatory objective to protect members of the profession. On the more specific points raised about protecting whistleblowers, it was agreed that the 2019/20 enforcement project should consider the approaches taken in other sectors to whistleblowers. **Action:** Consider the approach taken to whistleblowing in other industries as part of the 2019/20 enforcement project.
 - Single digital register – Board members acknowledged that each regulator had a different approach to gathering data. The intention was that work in this area would be taken forward by a working group of regulators. It was noted that regulators had been tasked with an action through regulatory performance to address deficiencies in publishing enforcement data linked to profiles on their registers.
- 4.4 Subject to comments raised, the Board **agreed** the LSB's budget for 2019/20 and **agreed** the proposed Business Plan for 2019/20, **noting** that the Chair and CEO would approve the final documents for publication.

Item 5 – Paper (19) 14 – OLC Budget 2019/20

- 5.1 Steve Brooker presented the OLC’s budget paper for 2019/20, noting that the LSB and OLC chairs had agreed it was not necessary for the OLC to attend for the item on this occasion. There had been no updates since the paper was issued, and the executive was confident that sufficient information had been presented to enable the Board to make their decision. A key point in the submission was that a £12.3m budget had been requested, but that the Ministry of Justice had provided budget cover for £12.6m and so an additional £300k might be requested as an in-year submission.
- 5.2 The Board **reviewed** the Budget submission, raising the following points in discussion:
- It was not clear why the additional £300k had not been included in the initial budget proposal;
 - The use of the term ‘indicative budget’ was unhelpful and the Board would want clarification of a final budget figure before approval could be given;
 - There remained concern about the relatively low amount of funds allocated to feedback to the profession;
 - It would be helpful to see evidence of benefits tracking and lessons learned from the *Modernising LeO* programme;
 - References to cost reduction did not seem to be supported by the figures which indicated a largely stable picture except for savings on estates;
 - There remained questions around the forecasting model in terms of robustness and accuracy;
 - The budget paper referenced an ombudsman-led approach, however it would remain important for the OLC to keep in mind a business-led approach;
 - Questions remained about the number of cases stuck in the backlog;
- 5.3 The Chair summarised the next steps, taking into account comments raised. A response to the OLC would be prepared which said the LSB did not agree indicative budgets and so would like to see a final proposed budget figure for approval, calculated on the basis of all the expected costs of the next year. Should the OLC wish to seek additional funds, either now or in-year, the Board would be open to considering this but would expect to see a clear plan now for how this budget would be spent and its expected benefits, for example improved performance.
- 5.4 The OLC would be asked to consider the following points: modernising LeO; cost savings over time; forecasting; business-led approach; feeding back to the profession; and the size of the backlog of cases that are currently in the assessment stage.
- 5.5 It was **agreed** that, given the new financial year would start on 1 April, it would be desirable to agree the budget by correspondence as soon as possible and certainly before the April Board meeting (action complete).

- 5.6 The Board asked the executive to explore with the OLC options for receiving the budget submission earlier in future years to ensure scope for proper scrutiny and any follow-up enquiries before the final budget could be approved.

Item 6 – Paper (19) 15 – LSCP Work Programme 2019/20

- 6.1 The Chair welcomed Marlene Winfield, Panel Member, and Lola Bello, Panel Manager, to the meeting. Marlene presented an overview of the Panel's Work Programme for 2019/20. Highlights included:

- The first strategic aim would be to equip consumers to use legal services effectively;
- The second strategic aim would be to protect consumers;
- There was an eagerness to support new technology to provide better legal services for consumers;
- There would be a continuing focus on transparency –including monitoring of the efficacy of price transparency measures and the continuation of efforts to encourage the LSB and other regulators to deliver transparency in terms of quality and price;
- In relation to quality, the Panel would prepare a paper and host a roundtable for regulators to share ideas and good practice across different jurisdictions;
- A research roundtable would be convened to discuss the safe use of technology in the sector;
- The Panel would continue to contribute to the Mayson Review of legal services;
- The tracker survey would be refocussed around the two strategic aims;
- The Panel has asked the LSB for an additional £10k to fund further research into how consumers deal with new challenges and emerging risks.
- Marlene finished by noting that the Panel appreciated the LSB's ongoing support for its work to get better outcomes for consumers.

- 6.2 Board members considered the LSCP's future work programme and the following points were raised in discussion:

- On quality indicators, it would be helpful to know which comparator organisations would be used given legal services were particularly bespoke;
- On the NAO's report on public perceptions of the four biggest economic regulators it had been found that the regulators tended to be good at setting objectives but not as good at monitoring outcomes. It was noted that the Panel were especially mindful of this, given the increasing pace of change in the legal services sector;

- 6.3 The Board **endorsed** the Panel's work programme, and the Chair on behalf of the whole Board expressed thanks to outgoing Panel members Frances Harrison, Cathy Gallagher and Andy Foster for their years of service and significant contribution to increased consumer protection in the legal services market.

Item 7– Paper 19 (16) - Finance Report for February 2019

- 7.1 Melanie Stewart presented the Finance Report for February 2019. The LSB remained on target for an underspend of £105k in 2018/19. The executive had done all within its

power to spend as close to budget as possible, mindful of the need not to go over-budget. It was noted that staff uptake of the available training budget had increased in 2018/19 but still persisted to be an area of repeated underspend. **Action:** Training options for Board members to be circulated

7.2 The Board reviewed and **noted** the latest Finance Report.

Item 8 – Paper 19 (17) - ARAC business

Report of last meeting – 12 March 2019

8.1 Terry Babbs presented an overview of the 12 March ARAC meeting, drawing the Board's attention in particular to the following points:

- [REDACTED]
- [REDACTED]

[FOIA exempt s36(2)(b)(ii)]

8.2 The Board **noted** the report of the 12 March ARAC meeting.

Annual report of ARAC 2018/19

8.3 Terry presented the annual report of ARAC, highlighting that the committee had been quorate at each of its meetings throughout the year, delivered on its terms of reference and had agreed that they remained relevant for the upcoming year.

8.4 Following the imminent departure of Terry at the end of his second and final term on the Board, Catharine Seddon would be taking over the chair of ARAC. Another change for 2019/20 was that the internal auditor, KPMG, had announced their intention not to re-tender their services. They would, however, be finalising this year's internal audits on: financial management; office move and IT transformation planning, and data management. On the 2018/19 Annual Report and Accounts, the LSB was on track to deliver it to NAO on time, and Neil Buckley would still be in post to sign off on the final documents – expected end of May 2019.

8.5 The Board **noted** the annual report of ARAC, and the Chair on behalf of the whole Board expressed thanks to Terry for his exemplary commitment to ARAC, and for bringing a fresh approach to risk management.

Item 9 – Paper 19 (18) – Annual Report of RNC 2018/19

9.1 Marina Gibbs presented an overview of RNC's work in 2018/19, highlighting that a lot of work had been done on succession planning as well as non-executive recruitment including two new members of the OLC and four new members of the LSCP, as well

as preparatory work for two new LSB Board members (as the appointments would be made by MoJ rather than the LSB).

- 9.2 The Board **noted** the Annual Report, with thanks to the committee for another good year's work, and particular thanks to Jemima Coleman for her chairship.

Item 10 – Board evaluation – plans for 2019

- 10.1 Board members **noted** an update from Holly Perry that, following an external Board evaluation exercise in 2018, the intention for 2019 was to revert to the previous questionnaire format to be circulated in the early part of summer, and the findings to be presented back to the Board in late summer. An external evaluation would be considered on a three-yearly cycle, subject to budgetary considerations.

Item 11 - Draft minutes of previous meeting – 28 February 2019

- 11.1 The 28 February Board meeting minutes were **approved**.

Item 12 – Board action tracker

- 12.1. The Board reviewed and **noted** the action tracker.
- 12.2 The Board requested that the action tracker come nearer the top of each Board agenda, and that the final plan for the LSB's ten-year anniversary should be reviewed by the Board before roll-out (**action – on 4 June Board agenda**).

Item 13 – External speaker Dr Anna Donovan

- 13.1 The Chair welcomed Dr Anna Donovan to the meeting. Anna was Vice Dean (Innovation) at UCL Faculty of Laws and would be presenting to the Board on blockchain - opportunities and risks in the legal sector.
- 13.2 Keys points raised and discussed included:
- There were four key areas to be discussed: an overview of the technology; applications of the technology that are pertinent to the legal services profession; opportunities and risks for the sector; and potential responses of the regulators.
 - The provision of education and training is crucial to reduce consumer harm. A number of misconceptions concerning distributed ledger technology exist, such as the common characterisation of DLT as 'tamper proof.' There is also a lack of clarity as to the different issues that may arise with, for example, permissioned and permissionless ledgers. Understanding the functionality of this technology is crucial to identify where a risk of harm arises and the interplay with existing legal frameworks
 - We are seeing a number of relevant use cases emerge that are relevant to the sector, in particular as a register of title, a reliable record of account and as a mechanism for transferring title. Activities recorded on the ledger (which are timestamped) could also have evidential benefit;

- The UK is very well placed to lead innovation in LawTech. As a jurisdiction we benefit from a strong talent pool in law, technology and finance, whilst the common law is well suited to respond to legal questions arising from this nascent technology. It was noted that Singapore is often recognised as a jurisdiction that is actively supporting innovation in this space.
- As and when blockchain became more popularly used, questions around rights of redress and provision of reserved activities would increasingly be raised; work is needed to determine those activities that fall within regulatory scope;
- Opportunities arising from blockchain included: better access to data for consumers; increased self-sovereignty; greater opportunity for simple transactions to be carried out with reduced transaction costs e.g. insurance claims; increased competition and a modernised sector;
- Key issues raised by the use of blockchain included: legal certainty (both as to interpretation and rights of enforcement); education across the sector including consumers, lawyers (in technical awareness) and developers (in legal principles); and addressing the narrative that has emerged around the nature of blockchain and the legal profession;
- Key barriers to the wider use of blockchain in legal services included: the cost of development and integration with legacy systems; interoperability; security concerns; consumer accessibility
- Furthermore, the ‘wait and see’ approach to regulation by the UK had been lauded by the industry to date. A piecemeal or reactionary approach to blockchain regulation would not be helpful. Regulating too soon presented the risk of regulating based on concerns that will likely dissipate as the technology and our understanding of it develops. Effective regulatory intervention will need to be agile enough to respond to emerging issues and will likely cover a broad spectrum of actions (including education and standards setting as well as direct regulation).

13.3 The Chair on behalf of the Board thanked Anna for a thoroughly engaging and informative presentation.

Item 14 – Forward look / reflections

14.1 The Board **reviewed** the agenda for the next Board meeting, to take place on 26 March, noting that the IGR item would be the main focus [REDACTED] [FoIA exempt s36(2)(b)(i)]

14.2. The Board next **reflected** on the meeting, making the following comments:

- It had been a good meeting, with an excellent speaker.
- It was important that sufficient time was allocated to the *Forward Look* item.

Item 15 – AOB

15.1. The Chair, on behalf of the Board, presented Terry Babbs with a small token of their appreciation, with very best wishes for the future.

15.2 There was no other business and the meeting closed.

SN 01/04/19

Signed as an accurate record of the meeting

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Date

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