



Minutes of the Legal Services Board (LSB) meeting held on 16 July 2019

Date: 16 July 2019
Time: 10:30 – 11:00 (Board private session)
11:00 – 14:30 (Board meeting)
Venue: 2nd floor One Kemble Street, London WC2B 4AN

Present:
(Members) Dr Helen Phillips Chairing the meeting
Neil Buckley Chief Executive
Catherine Brown (by phone until item 13)
Jemima Coleman (by phone until item 13)
Marina Gibbs
Jeremy Mayhew (from item 8)
Catharine Seddon
Michael Smyth CBE QC (Hon)

In attendance: Steph North Corporate Governance Manager (minutes)
Holly Perry Head of Corporate Services
Caroline Wallace Strategy Director

In attendance for specific agenda items:

Steve Brooker	Head of Research and Policy Development (item 13)
David Fowles	Regulatory Policy Manager (item 6)
Angela Latta	Regulatory Policy Principal (items 4-5)
Tom May	Research Manager (item 6)
Tom Peplow	Regulatory Policy Manager (item 5)
Jenny Prior	Corporate Services Manager (item 7)
Toakase Tonga	Legal Adviser (item 4)
Craig Wakeford	Regulatory Policy Manager (items 4 and 6)

External attendance:

Iain Miller and Sophie Bolzonello, Kingsley Napley (item 4)
Neil Purslow, Therium Capital (item 13)

Observing the meeting:

Matthew Hill Chief Executive designate

BOARD MEETING

Item 1 - Welcome and apologies

1. The Chair welcomed all those present to the meeting, including a warm welcome to Matthew Hill, Chief Executive designate of the LSB, who was observing the meeting, and to Catherine Brown and Jemima Coleman who had joined the meeting by telephone. Apologies had been received from David Eveleigh and Tim Sawyer.

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

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

Item 3 – Paper (19) 32 - Chief Executive's progress report

3.1 Neil Buckley presented his progress report, highlighting the following points:

- Office move – negotiations had now concluded for The Rookery contract. The Board **agreed** to delegate authority to the Chief Executive under the scheme of delegations in order to 'fix the seal' and in order to enter into a commercial contract valued over £250k. The Board noted its thanks to the whole office move team, in particular the HR Manager for her ongoing work on colleague engagement ahead of the move, and welcomed the formation of a working group to set behaviours for the new office and new ways of working.
- LSB colleagues – two policy associates had been appointed: [REDACTED] would join the organisation on 29 July, and [REDACTED] will join in September 2019. Margie McCrone would join on 17 July as a Policy Manager covering maternity leave. **[FOIA exempt Section 40]**
- IT transformation - it was noted that the LSB would not be able to upgrade the bandwidth in the current premises, owing to the absence of landlord permission.

3.2 Board members **reviewed** the CEO report, and the following points were raised in discussion:

- Legal Choices – it was disappointing that the BSB was withdrawing from Legal Choices, and there was a danger this would set a precedent for other contributors. It was acknowledged that the annual operating budget for Legal Choices was only £250,000, nevertheless it provided one of the only depositories of free legal information for the public. **Action:** LSB to consider its convening power and write to Legal Choices requesting a meeting in the autumn. A separate action to add an item on how Legal Choices could maximise its budget to be added to the September Regulators' Forum agenda. It was noted that there was a plan in place to improve content on the website and to market the website and raise its profile more proactively over a three year period, and that it would be crucial to increase the number of visitors to the site.
- OLC – the OLC had recently agreed for the ICO to undertake a voluntary audit of its data management practices. The audit report made several recommendations for improvement. The OLC had revamped its voluntary assurance letter, and the changes including greater detail and challenge were welcomed by the Board, as was the mooted mediated solutions pilot. It was noted that quarterly meetings would be scheduled between the LSB and OLC ARAC Chairs.

3.3 Board members **noted** the CEO Report.

Item 4 - Paper (19) 33 - IGR final decision document

4.1 [Redacted]
[Redacted]
[Redacted] **[FoIA exempt Section 42]**

4.2 Angela Latta presented the paper which sought Board approval for the final new IGR, the guidance on the IGR and the decision document. [Redacted]
[Redacted] **[FoIA exempt Section 40]** Jemima Coleman and Jeremy Mayhew had already been consulted as Board leads for the IGR, and the Board would be asked to accept the recommendations made by the executive:

4.3 The Board **considered** each recommendation in turn and the following comments were raised in discussion:

Obligation to separate (para 11-13)

- [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted] **[FoIA exempt Section 42]**
- The Board questioned whether delegation should only take place where it was feasible, however the prevailing view was that such wording was not required due to the existence of rule 16b – which effectively allowed an approved regulator with representative functions to say it was not able to fulfil its residual role if delegation had taken place. An aim of the new IGR was to make them more streamlined, but not to water down their intent, mindful that the purpose of the Legal Services Act was to encourage operational independence.
- [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted] **[FoIA exempt Section 42]**

- Having weighed up the arguments, in order to pursue the policy intent of the IGR the Board **agreed** the executive's recommendation.
- [REDACTED]
[REDACTED]
[REDACTED] [FoIA exempt Section 42]

Additional wording rules 4, 8 and 10 – seek to prejudice

- The Board agreed, [REDACTED], [FoIA exempt Section 42] the executive's recommendation to remove reference to *seek to prejudice* on the basis of the points raised in discussion.

Challenge to the interpretation of s28 – residual role

- The executive's recommendation was to leave the 'residual role' wording as drafted, on the basis that there was sufficient protection in the rules to address concerns. Alternatives considered included wording *remaining regulatory role* and *appropriate role*. The Board discussed these alternatives and argued that *appropriate* was too loosely defined, and would be hard to enforce against, and that if *remaining* were used it would be important to clearly define the boundaries of the role. There was also a sense that the latter term was no less inflammatory than the existing *residual role*.
- On balance, the Board **agreed** to keep the *residual role* terminology.

Terminology

- The Board **agreed** the executive recommendation to reflect more accurately in the IGR and guidance the terminology of Section 28 of the Act when discussing the regulatory objectives.

Definition of prejudice

- The Board **agreed** the executive's recommendation to not include a definition of *prejudice* in the new IGR, not least because the term was not defined in the Legal Services Act, and to do so here would require reconsultation.

- 4.4 The Chair on behalf of the Board thanked the team for the years of work that had been invested in rewriting the IGR, there was real confidence in the process and the outcome of the new rules. The Board **agreed** to delegate sign off of the final changes to the Chief executive, for publication by the end of July.
- 4.5 The policy team thanked the Board for their comments, and confirmed that the executive summary would be shortened and that the better regulation principles were enshrined in the Legal Services Act.

Item 5 – Paper (19) 34 - Update paper on regulatory performance

- 5.1.1 Tom Peplow introduced the paper, which provided an update six months on from publication of the regulators' actions plans for regulatory performance. There had not been an expectation of major change after only six months, and there were longer term challenges to regulator infrastructure. As shown in paragraph 13, timescales for improvements had been received from almost all regulators, and the policy team would continue to monitor progress closely and hold the regulators to account. Only

one outcome had so far moved to 'met'. Paragraph 15 outlined the plans in relation to outcomes W3 and ML5, noting that collaborative working had been limited to date. Paragraph 16 provided an update on the CLSB: performance remained a high risk however positive signs were emerging under the leadership of a new CEO and a new willingness to engage with the regulatory performance work.

5.2 The Board **considered** the paper and raised the following points in discussion:

- Relationship managers were congratulated for securing positive buy-in from the regulators for this work.
- No budgetary concerns had been raised as a result of the requested performance outcomes
- In relation to WL3, It would be helpful to consider what influence the LSB could exert over the regulator chairs or the UKRN to run an event themed around collaboration. It was noted that the next Regulators Forum would meet in September, and that the impetus to collaborate had not been strong to date – it would be helpful for the LSB to lead the way, and to provide more of a steer to regulators on an individual basis.
- It would be important for the LSB to consider how it could improve its role-modelling of transparency requirements e.g. open Board meetings, transparency of how decisions were made (**action**), and to show that it was working with the regulators in improving performance.
- Engagement with the CLSB was welcomed.
- Messaging of the work needed to be carefully worded to avoid the charge that 'nothing had changed'. A lot of progress was being made, and it would take time to see the results. In the meantime, the Board could be assured that matters were moving forward, and that the new approach had been well received by stakeholders.
- The team could consider to what extent the five-year policy objectives could be met through regulatory performance, and that diversity be moved to the performance assessment framework. It was confirmed that once an outcome had been established, it would be encompassed in regulatory performance.
- It was noted that work on data collection as part of the performance framework was not planned, as was a full assessment moving beyond 'met' or 'not met' outcomes in January 2020.

5.3 The Board thanked the team for the update, requesting that a new paper be provided to the September Board meeting reflecting on the LSB's arrangements and opportunities to enhance transparency (**action**).

Item 6 - Paper (19) 35 Scoping paper on public legal education (PLE)

6.1 The Chair welcomed the PLE team to the meeting. Craig Wakeford provided an overview of the scoping paper for the PLE project – one of the five-year policy objectives. The team were conscious to deploy LSB resources to best effect without narrowing the scope too early on. The Board leads for the project had been consulted and the initial proposal would focus on stakeholder engagement, initial research work and exploring use of the LSB's regulatory levers.

6.2 The Board considered the paper, and the following points were raised in discussion:

- This was a broadly sensible scoping paper, and timely given the Solicitor-General's PLE working group – to which the LSB was a contributor.
- There was a problem with PLE far beyond vulnerable consumers so the scope could sensibly be widened
- The comparison of best practice in health and financial services was welcomed. It would also be useful to consider methods of dissemination at this stage – an interesting example was Amazon's announcement earlier in July that its AI tool *A/lexa* would be able to transmit health messages to consumers, following a collaboration with the NHS.
- There was some rational inaction amongst consumers.
- An argument could be made to focus on vulnerable users at the outset of the project before broadening to a wider group of consumers in due course.
- In the project, it was questioned whether there was a risk of a gap between perception and reality. There was a question as to whether the LSB was resourced sufficiently to deliver the goal, not least when other objectives such as transparency and access to justice were being pursued simultaneously.
- It was concerning to note the LSCP's comments that it was not clear how the LSB could add value in this area.
- It was argued that the LSB's main lever was its regulatory lever – and third parties could carry out research. The team was encouraged to consider carefully where a material difference could best be made by the LSB, and to collaborate with and support others who were better placed to lead on delivery.
- It was agreed that there should be a focus on regulatory levers and what could actually be achieved for consumers - and measured.

6.3 The Chair thanked the team for the work on the scoping paper, and requested that a revised draft be circulated by correspondence over the summer, reflecting the intent of the project and with a focus on what could be achieved with the existing regulatory levers combined with the research already held in the area (**action**).

Item 7 - Paper (19) 36 - Q1 performance report

- 7.1 Holly Perry presented an overview of the revamped performance report for Q1 2019/20. The report was a work in progress, and some of the areas outlined were only for illustrative purposes at this stage.
- 7.2 The Board **considered** the report, and raised the following points in discussion:
- Members welcomed the bold approach taken, particularly the move to a visual, more accessible representation of progress
 - The programme dashboard was helpful, however the corporate dashboard had required some explanatory narrative for the amber areas
 - It would be important to add better metrics for communications activity e.g. reflecting themes, purpose and by making it clear what was being reported against
 - The dashboard would in due course include comparisons with previous quarters
 - Either on the performance report or the Finance report, there was an opportunity to include reference to value for money. In previous years, the full budget had not been expended however that was no longer the case (**action**: Melanie Stewart,

Catharine Brown and Catharine Seddon to meet to discuss value for money in more detail and report to ARAC in due course).

7.3 The Board thanked the executive for their work and the quality of revisions to date.

Item 8 - Paper (19) 37 - Finance Report to 31 May 2019

8.1 The Chief Executive provided an overview of the Finance Report, highlighting the following:

- As of 31 May 2019, there was an £18k overspend. Budgets would need to be carefully monitored over the course of 2019/20, not least in relation to upcoming changes to the accounting standards.
- The biggest financial risk was potential overspend of the office move project and accommodation budget

8.2 The Board **noted** the Finance Report, as well as the possibility that in 2020/21, it may be appropriate to request a larger budget from the MoJ / an increased levy, which was not felt to be unreasonable, having regard to the value of the sector to the UK economy (£32bn).

Item 9 - Report of 5 July 2019 Remuneration and Nominations Committee meeting - oral update

9.1 Jemima Coleman, Chair of RNC, presented an overview of the 5 July meeting. The Committee had discussed upcoming Board-level recruitment needs. Two LSB Board vacancies would arise at the end of David Eveleigh (non-lay member) and Marina Gibbs' (lay member) second terms. A recommendation was put to the Board that rather than replacing like for like, two non-lay members be sought. The rationale for this was that as the outgoing CEO was a non-lay member, and the incoming CEO would be a lay member, a 6-4 lay-non-lay majority would be maintained. The proposal had been raised at a recent MoJ recruitment planning meeting, and no view was expressed either way. Nothing in the Legal Services Act appeared to prevent the appointment of another non-lay member, so long as there remained an overall lay majority.

9.2 In support of the proposal, the following points were made:

- It was argued that the perception by stakeholders of the LSB would be strengthened by broader representation of a range of legal practitioners, perhaps including a barrister and a high street practitioner. Competition experience would also be desirable
- The optics around transparency would be important to consider - there were specific considerations for the oversight regulator and a legal background may provide added nuance to some of the more difficult conversations with stakeholders.

9.3 Against the proposal, the following points were made:

- The tension between both regulator and a member of the regulated community was acknowledged. The outgoing CEO was a qualified lawyer, although he had not practised in many years
- A goal of the revised IGR was to maximise independence. A move to a greater number of non-lay members could be perceived as against that direction of travel

- There was a serious governance risk around meetings not being quorate if more than one lay member was absent for any decision. The addition of an extra non-lay member would also rule out the option of appointing a future non-lay CEO if recruitment fell mid-term, even with non-lay terms of appointment being staggered.

9.4 The Committee had also received a recommendation to reappoint Rebecca Hilsenrath to a second term as an OLC Board member which was **agreed**. An extra RNC meeting would be scheduled in September to discuss the reappointment of the OLC Chair, whose first term was also coming to an end in March 2020. It was agreed that the LSB Chair would be invited to this meeting (**action**).

9.5 The Board **noted** the update from the RNC meeting, and having considered arguments for and against **agreed** the recommendation to recruit two non-lay members for the LSB Board.

Item 10 - Minutes of the previous meeting – 4 June 2019

10.1 The Board approved the minutes as drafted.

Item 11 - Board action tracker

11.1 The Board **noted** the action tracker.

Item 12 - Forward look

12.1 The Board considered the draft agenda for the September Board meeting and the following comments were raised:

- An item should be considered on the LSB's plans and means to increase its transparency (**action**)
- A paper on arrangements for disciplinary oversight should be added to the agenda (**action**)
- A one-off RNC meeting should be scheduled for the same day with the LSB Chair in attendance [post-meeting note: scheduled at 14:30 on 18 September]

12.2 The Board considered the draft agenda for the October Board meeting and were content. The Board **noted** the plan for the out-of-London Board meeting and external roundtable event in Newcastle in October.

Item 13 - External speaker – Neil Purslow

13.1 The Chair welcomed Neil Purslow, CEO of Therium Capital, to the meeting and there was a round of introductions around the table.

13.2 Neil provided a brief history of third party litigation funding, as well as the present state of the industry and the regulatory landscape. Key points included:

- Third party litigation started in Australia. The system emerged in the UK in 2007 following the Factortame judgment. Prior to this, it would have been illegal for third parties to provide such funding.
- In the interim ten years, the public policy argument had moved on from fears about the civil justice system being undermined and abused for commercial gain, to an acceptance that third party funding is a legitimate and binding activity.
- The courts were broadly supportive of third party funding, a body of case law was emerging, and there was a public policy argument to say it aided access to justice for some people.
- The types of cases funded broadly covered: commercial litigation, contractual, intellectual property disputes, insolvencies, competition and securities. There was little directly for consumers and there was a perception that such an addition was likely to trigger regulation.
- Consumers were, however, served by large group cases.
- There were currently 9 members of the Association of Litigations Funders which had been set up to oversee the market.
- The top three members alone raised about \$2bn in funds in 2018.
- New players were entering the market, but only infrequently, and viewed themselves as a financial arm of the legal world.
- The code of conduct was voluntary, but only two or three complaints had been received since its inception.
- The global third party funding market was worth c£15bn globally.
- Providers were motivated to be and to be perceived to be good citizens in this space.

13:3 Board members raised questions on the following topics:

- Transparency - there had been no obligation to disclose third party involvement in a case however following the RBS decision, funders had changed their approach and were happy for their involvement to be known.
- Withdrawal from a case - it was all but unheard of for a funder to withdraw its funding from a case. All were committed to the commercial imperative of funding the right case and succeeding.
- Judiciary - the judiciary were broadly supporting of third party funders if they were bringing cases that were meritorious, and had issued injunctions in some cases to protect funders.
- Structure - many third party litigation funders have institutional investors. The trend was towards fund structures.
- Consumer interest - big consumer cases could only be brought through third party funding as set up costs could reach £10m. Such cases would otherwise not get to court.

13.4 The Chair on behalf of the Board thanked Neil for taking the time to address the Board, as well as for providing an in-depth overview of a complex area using 'lay person' terminology.

Item 14 - Reflections

- 14.1 The Board reflected on the meeting, commenting that there had been a good, well-structured discussion on the IGR item, and an enjoyable discussion on the future of performance reporting. The Board also applauded the relative ease with which the meeting was conducted both in person and on the phone - it would be important to secure multiple microphones and speakers in the new office to ensure continuously seamless communication.

Item 15 - AOB

- 15.1 The Board noted the proposed meeting dates for 2020/21.
- 15.2 The Chair on behalf of the Board expressed deep and sincere gratitude to the Chief Executive at his last meeting in the role. It had been a pleasure to work alongside Neil, with his sound judgement and diligent approach. Neil would leave the organisation stronger than when he was joined, and he would depart the organisation with the Board's thanks and appreciation. There would be a formal thank you and goodbye with all colleagues after the meeting.
- 15.3 There was no other business and the meeting closed.

SN 23/07/19

Signed as an accurate record of the meeting

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Date

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