



## Minutes of the Legal Services Board (LSB) meeting held on 18 September 2019

<b>Date:</b>	18 September 2019	
<b>Time:</b>	10:30 – 11:45 (Board private session) 11:45 – 13:00 (Board meeting) 13:00 – 14:30 (Strategy session)	
<b>Venue:</b>	2 <sup>nd</sup> floor One Kemble Street, London WC2B 4AN	
<b>Present: (Members)</b>	Dr Helen Phillips Matthew Hill Jemima Coleman Marina Gibbs Jeremy Mayhew Catharine Seddon Michael Smyth CBE QC (Hon)	Chairing the meeting Chief Executive
<b>In attendance:</b>	Chris Nichols Steph North Holly Perry Danielle Viall Caroline Wallace	Policy Director Corporate Governance Manager (minutes) Head of Corporate Services General Counsel Strategy Director
<b>In attendance for specific agenda items:</b>	Steve Brooker Tom May Margie McCrone Melanie Stewart	Head of Policy Development and Research (items 11, 12, strategy session) Research Manager (strategy session) Regulatory Policy Manager (item 4) Head of Finance (item 6)
<b>External attendance:</b>	Philip Goodstone, EY Law	
<b>Observing the meeting:</b>	Ian Hamer Carla Duval Margie McCrone Paul Nezandonyi	Board Member designate Regulatory Policy Associate Regulatory Policy Manager Communications Adviser

## **BOARD MEETING**

### **Item 1 - Welcome and apologies**

1.1 The Chair welcomed all those present to the meeting, including Matthew Hill in his first meeting as Chief Executive and to Ian Hamer, Board Member designate, who was observing the meeting. Apologies had been received from Catherine Brown, David Eveleigh and Tim Sawyer. It was confirmed that the Board was quorate for the meeting.

1.2 Earlier in the day, the Board had heard from an external speaker, Philip Goodstone, on the topic of legal services provided by large accountancy firms.

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

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

### **Item 3 – Paper (19) 41 - Chief Executive’s progress report**

3.1 Matthew Hill presented his progress report, highlighting the following points:

- Statutory decisions – six exemption directive applications had been received since the time of writing; and
- Stakeholder survey – an item would be presented to the October Board meeting outlining the plan for the survey.

3.2 Board members **reviewed** the Chief Executive’s report, and the following points were raised in discussion:

- Colleague Survey – it was welcome that there would be an increased focus on the value that the LSB could add, and that it would be built into the colleague training event in October. It aligned to broader effort to enhance the impact of the LSB’s work.
- Legal Choices – discussions continued with the BSB, the governing body of Legal Choices as well as with the Regulator CEOs’ network. The LSB was clear that the BSB’s decision to withdraw funding for Legal Choices was unsatisfactory. It led to an overall diminution in the cross-sector commitment to providing good quality information for consumers. If the BSB’s main driver for its decision had been concerns about the effectiveness of Legal Choices, the best way to address those concerns would be to influence the project going forward, for example by encouraging better evaluation. The LSB would continue to engage with the parties. If a satisfactory resolution was not found the LSB would need to consider the implications for deployment of its regulatory tools. It was noted that the CMA was also engaging in depth with BSB.
- Comparison websites – it was noted that there had been a negligible increase in consumer interest in using such websites in the recent research findings

- Information Commissioner’s Office complaint – the Board noted the latest position that the ICO did not uphold the complaint against the LSB’s decision not to disclose information under s44(1) FOIA.
- Podcasts – the communications and tech teams were congratulated for their work to date on this work. It was positive that the podcasts had to date generated significant engagement, and would continue to be promoted on social media and to interested stakeholders.
- Solicitors Qualifying Exam (SQE): the Board had had an opportunity to engage with the SRA on the principles behind the next phase of development of its SQE proposals. The Board was seeking to encourage broad discussion on those principles with a range of stakeholders including the Law Society, the Junior Lawyers’ Division and representatives from the Justice Select Committee.

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

#### **Item 4 - Paper (19) 42 – Arrangements for disciplinary oversight**

- 4.1 Margie McCrone presented the paper which had been requested by the Board at its July meeting and which sought the Board’s view on the different approaches to disciplinary oversight. The team had met with the Professional Standards Authority (“PSA”) to help inform the paper and proposed to undertake a file review process within the 2019/20 business year, as well as to consider the PSA’s experience and explore any opportunities to adapt those mechanisms for the LSB’s purposes.
- 4.2 The Board **considered** the paper and the following points were raised in discussion:
- While there was much for us to learn, it was right not to consider replicating the PSA’s role in disciplinary oversight within the legal services sector and that was not the Board’s intention. Indeed, it was noted that adopting the PSA’s approach in its entirety would require the LSB to become a wholly different organisation
  - It was entirely sensible to seek legal advice as to what would be within the LSB’s remit in this area and to engage stakeholders on the issues
  - Public / consumer protection was a common theme between the legal services and healthcare regulation
  - It was noted that the PSA was a similar sized organisation to the LSB, with a similar budget.
  - The PSA’s oversight role was effective though arguably prescriptive, and fairly resource intensive.
  - There were lessons to be learned regarding what worked well and what could be improved or adapted for the LSB’s context, not least with regard to the potential scenario in which the LSB and the regulator took opposing views on whether or not a matter should go to appeal. Furthermore, if the LSB had the power of appeal, it could find itself under pressure to use it when it did not want to.
  - It would be essential to get advice on the whole of the LSB’s vires – both under current legislation and in terms of what could be achieved were new legislation to be introduced (**action**).

- The primary driver for this work at this stage was to take the LSB's understanding upstream – that is, to consider the oversight regulator's ability to influence outcomes before they happen, rather than taking retrospective steps. It would be essential to apply learning from the enforcement project and to continue to gather intelligence and identify themes.
- The proposed next steps were accounted for under the enforcement project in the current business plan. Resourcing would need to be considered carefully for future work in this area.

4.3 The Chair thanked the team for the paper, and requested that when the paper came back to the Board, it set out clearly the drivers for the work, an overview of the vires for the planned and proposed work, as well as the resource implications (**action:** paper to be presented to March 2020 Board meeting).

#### **Item 5 – Paper (19) 43 – LSB transparency**

- 5.1 Holly Perry introduced the paper, which set out suggestions for how the LSB could improve its transparency even further, including fewer redactions prior to paper publication, and open Board meetings. The paper also analysed the LSB's performance in relation to the transparency requirements requested of the regulators, as well as a comparison of the LSB and comparator oversight regulators.
- 5.2 The Board **considered** the paper and its recommendations. The board approved a range of recommendations for improved transparency. However, it asked for further work on the issue of holding board meetings in public, noting a range of potential risks and benefits, including those of moving to a more actively open form of policy making.
- 5.3 The Board **agreed** to the proposed actions to increase LSB transparency, and requested that further reflections take place on the matter of Board meetings in public take place – the Board would revisit the matter in due course. It would be helpful to discuss the issue more informally with colleagues who had experience of open meetings from other organisations.

#### **Item 6 - Paper (19) 44 - Finance Report to 31 August 2019**

- 6.1 Melanie Stewart provided an overview of the Finance Report, highlighting the following:
- There was a drafting error at paragraph 5a) the underspend was in fact £19k
  - There was a short delay in processing the pay award, and an underspend on the staffing budget due to new colleagues' start dates being later than expected
  - The delay on signing the lease for the new office had led to savings on the accommodation budget. There had also been savings due to a recalculation of the floor space of the new office, which had been offset by higher than expected IT costs due to the cost of running dual IT systems as part of the IT transformation.
- 6.2 The Head of Finance outlined that two dependencies had crystallised and as a result the Board were asked to approve unbudgeted capital expenditure. This expenditure has arisen for two main reasons. One, the scope of the IT project had changed with increased costs now expected to be offset by longer term efficiency savings and enhanced capability. In addition, the original costings for the office move project had

been inaccurate, having been based on the costs of moving to the current office which had not required a full fit-out.

- 6.2 The Board **noted** the Finance Report, and **ratified** the unbudgeted capital expenditure.

### **Item 7 - Minutes of the previous meeting – 16 July 2019**

- 7.1 The Board approved the minutes as drafted.

### **Item 8 - Board action tracker**

- 8.1 The Board **noted** the action tracker.

### **Item 9 – Items considered out of Committee**

- 9.1 The Board **noted** the following papers which had been considered out of committee:
- OLC Annual Report and Accounts 2018/19 - **Paper (19) 38**
  - LSB Board evaluation 2019 – **Paper (19) 39**
  - New internal auditor proposal - **Paper (19) 40**
  - Revised Public Legal Education scoping paper

### **Item 10 - Forward look**

- 10.1 The Board **noted** the draft agenda for the October Board meeting to be held in Newcastle, and delegated dinner arrangements to the executive.

### **Items 11-12 – Strategy session**

#### **11. Individual legal needs survey findings**

- 11.1 Tom May presented an overview of the findings of the recent individual legal needs survey – a survey of over 28,000 adults in England and Wales, and the third of its kind carried out by the LSB. Key findings included:
- There remained significant amount of unmet legal need and those most likely to benefit from legal intervention were least likely to benefit from it.
  - Professional intervention was more likely to secure a positive outcome
  - Women were less likely to feel confident in accessing legal services
  - Older people were more likely to feel confident, as were people with more money (although the overall percentages were still low)
- 11.2 The findings had implications for the LSB's transparency and public legal education (PLE) workstreams:
- Those with lower confidence were less likely to pursue a legal intervention, less likely to know their rights and what options were available to them. A PLE intervention might help to address this confidence gap at an earlier stage.
  - The dataset could be used to target interventions appropriately

- Greater price transparency and widespread price comparisons were likely to be in firms' self-interest: if consumers perceived that legal services were too expensive, they were less likely to seek a legal intervention and more likely to do nothing.
  - There was an overlap with health and justice to the extent that positive legal interventions were likely to reduce stress, injury and financial loss brought about by unresolved legal problems.
- 11.3 Tom outlined the next steps for the research: a communications plan would be produced ahead of publication in October; a report on PLE would be produced in time for Justice Week 2020; and the findings would be fed into the Health Justice strategy being developed by Dame Hazel Genn's team at UCL.
- 11.4 The Board considered the findings and thanked Tom for the presentation, commenting that in large part the findings were not surprising and that it would be very important to focus on what comes next to drive change.

## **Item 12 – LSB strategy and business plan 2020/21**

- 12.1 Caroline Wallace, Steve Brooker and Melanie Stewart led a presentation to the Board which asked whether the current strategy was still relevant and fit for purpose, and considered the business plan for 2020/21. The extent to which the three five-year policy objectives, added in the last business plan, adequately linked to the existing strategy was discussed. The key drivers for LSB work included: market changes, tech and innovation, policy and regulatory factors and access to justice.
- 12.2 The Board considered the presentation and the following points were raised in discussion:

### *Business plan and strategy*

- Not all work that was carried out throughout the year – with significant resource implications - was covered by the business plan e.g. IT transformation, office move, appointments. In addition, it was inevitable that other projects would arise throughout the year.
- There was perhaps a missing focus on consumers e.g. how people were affected by a lack of access to justice.
- The emphasis on access to justice, therefore, could be increased. It was not clear whether insufficient work was being done in this area, or whether what was being done was not communicated as well as it could be.
- The LSB had a place as both an influencer and an advocate, beyond its role as creator and enforcer of rules.
- The LSB should consider whether it should be more assertive as the oversight regulator, stating more frequently how consumers would be affected by different policy decisions. There was a useful interplay with health inequalities where medical and legal issues collided.
- There was perhaps a role, therefore, for the LSB to influence the policy environment more effectively by being clearer about the gaps and failures that could and should be addressed through regulation by the wide range of actors involved. A 'state of the nation' report could be produced to provide context for the development of the 2021-24 LSB strategy. Ideally this would show LSB leadership on a range of issues, where

the regulation had delivered positive outcomes and where positive things were happening in the sector, including case studies e.g. pro bono services provided by city law firms.

- It was acknowledged that there was often a lag between the LSB's work and the impact on consumers, and that there was a difference between things which were within the LSB's control and those that were subject to e.g. legislation.
- It was agreed that while legislative reform remained a welcome aspiration, it was important to drive change within the existing system with energy and rigour.
- Society was experiencing high levels of polarisation and shifting priorities, for example the younger generation had perhaps an increased focus on ethics and a lack of trust in companies and institutions.
- The younger generation were also less likely to be attracted to a traditional career with a big law firm, with long hours and high levels of stress.
- The LSB needed to build its relationships with entities as well as individuals.
- The Gambling Commission previously created a national strategy for the prevention of harms. The LSB could consider something similar which would evaluate the cost of failure related to the access to justice gap, for example, if law centres closed, how much more money would be spent related to ill health.
- **ACTION:** executive to bring to the Board at its October meeting a plan for the development of the LSB's three year strategy for 2021-24. This should include wide and deep stakeholder engagement and, in the early stages of the process, the production of a 'state of the nation' report.

### *Resourcing*

- Continuing with the current level of resourcing into the next year, there would be 5% capacity for other work, and around £100k. It was noted that there had never been pushback from the Board that there was insufficient resource to deliver the requested work.
- It was acknowledged that more could be done with existing resources and plans were in place to better improve resource deployment and performance monitoring.
- However, the executive drew attention to the significant and sustained increase in the volume and complexity of statutory decision applications and that this was likely to generate a business case for additional resource in this area.
- There was enthusiasm to increase the LSB's communications output, which would come with a commensurate resource implication.
- There should be no fear of dropping areas of work which were judged not to be adding value and not contributing to strategic objectives.
- It was noted that a draft budget proposal would be presented to ARAC on 1 October and a report of that meeting would be given at the next Board meeting.

12.3 The Chair thanked the team for the presentation, and the rich conversation it had provoked. The Board would like to gain a better understanding on the executive's thinking for the 2020/21 business plan when the draft business plan came back to the Board at its November meeting.

### **Item 13 - Reflections**

- 13.1 The Board reflected on the meeting, commenting that it would have been helpful to have longer for discussion in the strategy session.

**Item 14 - AOB**

- 14.1 On behalf of the Board, the Chair thanked Jeremy Mayhew for his contribution to the LSB over his three years' of service. Jeremy had brought diversity of thought, challenged prevailing wisdom and helped to reframe issues with colleagues in a constructive manner. The Chair presented Jeremy with a small token of the Board's appreciation, and looked forward to the planned farewell dinner.
- 14.2 There was no other business and the meeting closed.

SN 25/09/19

Signed as an accurate record of the meeting

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Date

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