



Minutes of the Legal Services Board (LSB) meeting held on 22 January 2020

Date:	22 January 2020	
Time:	10:30 – 11:10 (Board private session) 11:10 – 14:30 (Board meeting)	
Venue:	LSB offices, The Rookery, London WC1A 1DE	
Present: (Members)	Dr Helen Phillips Matthew Hill Jemima Coleman David Eveleigh Marina Gibbs Ian Hamer Catharine Seddon Michael Smyth CBE QC (Hon)	Chairing the meeting Chief Executive
In attendance:	Steve Brooker Angela Latta Paul Nezandonyi Chris Nichols Steph North Holly Perry Toakase Tonga Sally Al-Saleem David Fowlis Gabbie Stewart Melanie Stewart Craig Wakeford	Head, Policy Development and Research Head, Performance and Oversight Head, Communications and Engagement Director, Regulation and Policy Corporate Governance Manager (minutes) Director, Enabling Services interim General Counsel Policy Manager, (item 6) Policy Manager, (item 5) Policy Associate (item 4 and 9) Head, Finance and IT (item 10) Policy Manager (item 7)
External attendance:	Rob Houghton Graham Stanbridge	Reallymoving, item 16 Reallymoving, item 16
Observing the meeting:	Rachael Goldwater Agapi Kasamati	Corporate Affairs Assistant Policy Associate

BOARD MEETING

Item 1 - Welcome and apologies

- 1.1 The Chair welcomed all those present to the meeting, including Senior Team Leadership members who would now be in attendance for the full Board meeting. Apologies had been received from Catherine Brown, whose written comments on the Technology project paper would be fed into the discussions at the appropriate point.

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 (20) 01 - Chief Executive’s progress report

- 3.1 The Chief Executive presented his progress report, noting minor updates to the engagement schedule since the paper had been drafted.
- 3.2 Board members **reviewed** the Chief Executive’s report, and the following points were raised in discussion:
- Solicitors Disciplinary Tribunal – it was encouraging to note that the SDT had responded positively to proposed new mechanisms for considering draft budgets. While future submissions would continue to be ratified by the full Board, focused consideration would be delegated to a smaller group of Board members and executive colleagues.
 - Bar Standards Board – Board members noted the BSB’s latest draft PLE strategy.
 - Financial Ombudsman Service – Board members considered the implication for other sectors, including the legal sector, of recently reported whistleblowing claims.
 - Access to justice remained a key concern for the Board, as it did for many others in the sector. The Board was likely to give the issues some prominence in terms of strategy development.
 - The Board discussed latest market figures and asked for an explanatory note on the change in ONS methodology of assessing UK net exports (action - complete), and for further data on use of the commercial courts by overseas litigants.
 - It was suggested that the Chair of the Criminal Bar Association be invited to address the Board at a future date (action).
 - Legislative reform – while it recognised that wholesale legislative reform was unlikely in the near future (and would therefore be pursuing strategies that did not rely on such reform), the Board requested an update on priority areas for reform at an appropriate point (action).
- 3.3 Board members **noted** the CEO Report.

Item 4 – Paper (20) 02 - Development of the plan for the next three year- strategy

- 4.1 The Head, Policy Development and Research introduced the paper which set out the proposed approach to the development of the LSB’s strategy for 2021-24. The Board was asked for a steer as to whether this approach was the right one, and whether the two volumes should be published in phases. The Board observed that it had powers

under the Act to recommend the Lord Chancellor change the scope of reserved legal activities and noted such an undertaking would require not insignificant resource. A separate paper on this could be presented to the Board in due course (action).

- 4.2 The Board **considered** the paper and the following comments were raised in discussion:
- The Board expressed a strong preference to publish in a single volume later in the autumn.
 - The narrative would need to have a clear shape and purpose – setting out the sector’s direction of travel, challenges and opportunities, with a view as to what the LSB thinks might ensue.
 - This would also provide an opportunity to reflect on the past ten years of the Legal Services Act.
 - A preferred working title was ‘State of the Legal Services Sector’.
- 4.3 The Board **agreed** the proposed plan and timetable, subject to the points raised in discussion, in particular in relation to the publication of a single “state of the legal services” sector volume in autumn 2020, as a prelude to consultation on a draft strategy to be in place in spring 2021 with the exception that publication of the two volumes – evidence and narrative - should be simultaneous.

Item 5 – Paper (20) 03 – Technology project – next phase

- 5.1 David Fowlis, Policy Manager, introduced the paper, which set out the next steps for the technology paper.
- 5.2 The Board **considered** the paper and the following points were raised in discussion:
- The draft terms of reference were welcomed.
 - The Board welcomed the establishment of an expert reference group by the LSB, and also the proposal to position it as a shared resource for the Board and regulators, with the potential to provide advice to others with an interest, including Government and the sector itself.
 - It would be important to ensure that the group encompassed advice from the tech sector itself
 - As technology was such a fast-moving area, while seeking the input of other interested parties was important, it was also important that the group was agile.
 - The proposals as worded could be read as suggesting there should be a greater focus on removing barriers than addressing risks, including ethical issues, and unintended consequences. Both outcomes were viewed as important considerations for this work
- 5.2 Mindful of the comments raised, the Board **approved** the proposed technology project workstreams subject to the points raised in discussion.

Item 6 - Paper (20) 04 - PCF and permitted purposes

- 6.1 Sally Al-Saleem, Policy Manager, introduced the paper, which proposed a programme of engagement with stakeholders and then consultation on proposed future arrangements for the PCF. This programme follows an internal review of the existing PCF process which has largely remained unchanged since its inception. The review identified that the process could benefit from enhanced transparency, better

reflection of the costs /benefits of regulation, and better alignment to the LSB's current and future regulatory performance work. The Board noted the LSB's internal auditors, Crowe LLP, were carrying out an audit of the existing PCF process, with a view to reporting in February 2020. The Board noted that as the PCF process goes to the heart of what are permitted purposes under the Act, the work here may not be uncontroversial. As such open, ongoing and transparent engagement with stakeholders is crucial to ensure their concerns and issues they raise are fully considered before any decisions are made.

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

- The paper was very well argued with strong analysis.
- The equality impact assessment was welcomed, not least in relation to the LSB's desire to increase diversity in the legal profession.
- It was important that stakeholders were clear what work would be undertaken in this area and why. In particular, it was important to be clear that the motivation for the work was not to reduce funding available to either approved regulators or regulatory bodies. Rather, the review would seek views on mechanisms for achieving greater levels of transparency about the purposes to which regulatory fee income was applied, and to promote a debate among those regulated and the public about the costs and benefits of regulation.
- The review should also consider issues relating to the accumulation and deployment of reserves.
- Stakeholders would also be encouraged to feedback on how the LSB could improve its PCF review process.

6.3 The Board **noted** the proposal for the PCF review.

Item 7 - Paper (20) 05 – IGR incorporation into regulatory performance framework

7.1 The Head, Performance and Oversight, introduced the item. The paper proposed to monitor the achievement of the regulatory independence intended by the IGR by embedding it within the "well-led" standard of the LSB's existing regulatory performance assessment framework.

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

- The executive summary should make clear what previous decisions have been made and communicated in relation to IGRs and monitoring
- The question posed could be clearer. A suggested re-draft to encourage feedback could be along the lines of – *is it clear and fair* how the mechanism for meeting the IGR outcomes are set out.
- It would be important to avoid "perverse incentives" by ensuring that it was clear that approved regulators and regulatory bodies were encouraged to raise issues with the LSB early and without fear of sanction, even if they intended to reach solutions without the LSB's intervention.
- It was essential to engage stakeholders in early and ongoing conversations, which the Board acknowledged has been occurring. Board members noted that relationship managers would continue their engagement following the publication of the consultation. A roundtable event for the regulators should be arranged (action).

- 7.3 The Board **noted** the paper, with an update on the question to be approved in provided by correspondence with the Chair (action).

Item 8 - Paper (20) 06 - CMA recommendations – progress

- 8.1 The Head, Policy Development and Research, introduced the paper, asking the Board to comment on whether the proposed focus for work over the next year was the right one.
- 8.2 The Board considered the paper and the following comments were raised in discussion:
- The Board noted the link between this work and the LSB's ongoing competence work, particularly in relation to transparency and consumer feedback.
 - There was a sense that buy-in from the regulators was variable. There would need to be wide-ranging commitment for data to be shared more widely, and a much greater sense of urgency than was currently the case.
 - It was suggested that one approach might be to identify a small number of innovative legal services providers who would be prepared to test ("sandbox") and indeed showcase the more progressive ideas.
 - The Board asked about progress that regulators were making in including disciplinary data on their registers. It was noted that some progress had been made by a number of regulators, but that more was needed across the board; in the meantime, those who had still not achieved the necessary progress had been graded accordingly in the most recent performance assessment
- 8.3 The Board **noted** the paper with strong support for further action in this area, and requested that the executive work with the regulators and the CMA to make progress. The Executive would report back in due course, discuss the paper with the CMA, flag the extent of LSB's ambitions, and present an updated paper to the Board in due course (action).

Item 9 – Paper (20) 07 – Equality, diversity, inclusion (EDI) and the regulators

- 9.1 Gabrielle Stewart, Policy Associate, introduced the paper which proposed an enhanced approach to EDI in line with the LSB's regulatory performance work and regular series of monitoring.
- 9.2 The Board considered the paper and the following comments were raised in discussion:
- The Board supported proposals to explore differential outcomes for people in possession of protected characteristics in terms of disciplinary and enforcement processes. It noted that such an approach did not currently exist in the legal services sector.
 - The statistics indicated that there was scope for further and more rapid progress in terms of the overall diversity of the legal professions. The Executive's proposed approach – of embedding in the performance framework and expectation that regulators understood the composition of their regulated communities, had identified barriers to entry and progress and had programmes

in place to mitigate those barriers, was intended to drive progress. This was coupled to a much greater emphasis on the evaluation of the effectiveness of those programmes of activity. The upcoming *State of the Legal Sector* report would contain relevant metrics and data to guide this work in the future. The report could consider teasing out the benefits of diversity of thought.

9.3 The Board **noted** the paper and expressed support for the proposed approach.

Item 10 – Paper (20) 08 - Finance Report to 31 December 2019

10.1 The Head, Finance and IT presented the Finance Report. The paper reported spend against the latest forecast, and included an update on capital expenditure. A further round of forecasting would be undertaken at the end of January 2020.

10.2 Board members considered the Finance Report and raised the following points in discussion:

- There was a proposal to bring forward some capital expenditure on the IT transformation from FY 2020/21 to 2019/20.
- The Ministry of Justice had approved a small increase to the capital expenditure budget to accommodate the IT transformation and office move costs
- The executive was undertaking work to establish arrangements for deploying the reserves held by the LSB comprised of initial grant-in-aid start-up funding that had not been used since establishment. An update would be provided to the Board in due course (action).

10.3 The Board **noted** the Finance Report.

Item 11 - Minutes of the previous meeting – 26 November 2019

11.1 The Board **approved** the minutes as drafted.

Item 12 – Board action tracker

12.1 The Board **noted** the action tracker, including that a follow-up letter would be sent from the LSB Chair to the OLC Chair requesting an update on actions being taken to address points raised following the OLC's draft 2020/21 budget submission in November 2019 (action - complete).

Item 13 – Papers circulated out of committee since the last meeting

13.1 The Board **noted** Paper (19) 63 LSCP member appointment which had been circulated out of committee, and noted that a response from the Lord Chancellor was pending.

Item 14 - Forward Look

14.1 The Board **noted** the draft agenda for the March Board meeting. The ARAC Chair would not be in attendance at that meeting and the oral update following the 3 March ARAC meeting would be delegated to an ARAC member.

Item 15 – External speaker – Rob Houghton

- 15.1 The Chair welcomed Rob Houghton and Graham Stanbridge to the meeting and there was a round of introductions. Rob was the founder of reallymoving.com, a legal services comparison website set up in 1999 and the Head of thelawsuperstore.com which was acquired in 2017. Graham was the Head of Legal Sales for both organisations.
- 15.2 Rob provided an overview of reallymoving.com and the consumer experience and Board members asked a range of questions in discussion. Highlights included:
- Rob viewed comparison websites as a means through which access to legal services could be enhanced.
 - The website provided up to four quotes for consumers looking to compare legal services. Indicative quotes could be received without the consumer needing to input personal details.
 - The website also offered information on a range of common legal issues. Practitioners listed on the platform who are regulated by the SRA or CLC, or are members of other professional organisations, are clearly labelled as such.
 - The organisation was building its list of firms signed up to provide quotes – overall, there was inertia in the market with only limited desire to change. There was greater appetite to sign up from more innovative firms.
 - Practitioners who signed up could put a quote generator widget on their own website. It was argued that this helped firms who were less tech savvy to compete in the new marketplace.
 - There was no typical size of firm signed up.
 - Price was an important factor for consumers comparing providers, but not the only one. Reviews, reputation and physical proximity were also important factors.
 - Firms tended to self-regulate and if they received several poor reviews, they were likely to remove themselves from the platform.
 - There was no mechanism for tracking dispute resolution e.g. with the Legal Ombudsman however there was scope to engage with the Legal Ombudsman in relation to open data.
- 15.3 The Chair on behalf of the Board thanked Rob and Graham for their presentation and for what had been a thought-provoking discussion.

Item 16 – Reflections

- 16.1 The Board reflected on the session in particular how the meeting might have run had it been an open meeting and welcoming the short introductions to papers, as well as the quality of the papers presented.

Item 17 - AOB

- 17.1 The Board **noted** the proposed Board speaker programme for 2020.
- 17.2 There was no other business and the meeting closed.

SN 28/01/20

Signed as an accurate record of the meeting

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Date

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