



**Minutes of the Legal Services Board (LSB) meeting held on 26 March 2020**

**Date:** 26 March 2020  
**Time:** 10:30 – 11:00 (Board private session)  
11:00 – 14:00 (Board meeting)

**Venue:** By phone

**Present:** Dr Helen Phillips                      Chairing the meeting  
**(Members)** Matthew Hill                              Chief Executive  
Catherine Brown  
Jemima Coleman  
David Eveleigh  
Marina Gibbs  
Ian Hamer

Michael Smyth CBE QC (Hon)

**In attendance:** Steve Brooker                      Head, Policy Development and Research  
Angela Latta                              Head, Performance and Oversight  
Paul Nezandonyi                          Head, Communications and Engagement  
Steph North                                Corporate Governance Manager (minutes)  
Holly Perry                                 Director, Enabling Services  
Toakase Tonga                            interim General Counsel  
Melanie Stewart                         Head, Finance and IT (item 4, 10)

**External attendance:**

**For item 5 from the Office for Legal Complaints:**

Brendan Arnold                          Director of Corporate Services (observing)  
Rod Bulmer                                Board Member  
Elisabeth Davies                        Chair designate (observing)  
Rebecca Marsh                          Chief Ombudsman (observing)  
Jane Martin                                Board Member

**Observing the meeting:**

Rachael Goldwater      Corporate Affairs Associate

## BOARD MEETING

### Item 1 - Welcome and apologies

- 1.1 The Chair welcomed all those present to the meeting. Apologies had been received from Catharine Seddon, whose written comments 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) 11 - Chief Executive's progress report

- 3.1 The Chief Executive presented his progress report, including an oral update on the LSB's response to Covid-19, and issues arising since the paper was drafted as follows:
- Making Justice Work in Wales – there was no plan to respond to the consultation at this stage, but the LSB would engage with colleagues in Wales.
  - Criminal Legal Aid Review – the LSB would not respond to the current consultation specifically on legal aid fee schemes, but would look for opportunities to engage with the wider review.
  - The Chair and Chief Executive had had an introductory meeting with Lord Reed, President of the Supreme Court, who showed interest in the work of the LSB and in having an ongoing relationship.
  - Complaints about barristers had reached a record high, and disciplinary issues had been raised with the Solicitors Disciplinary Tribunal criticising the Solicitors Regulatory Authority on the Nabeel Sheikh case – item 6 on the agenda would include consideration of disciplinary arrangements.
- 3.2 Board members **reviewed** the Chief Executive's report, and the following points were raised in discussion:
- The LSB's immediate response to Covid-19 and the role of regulation in supporting the recovery of the legal services sector - the LSB would remain flexible in its approach to its work programme and reduce unnecessary demands placed on stakeholders in the coming weeks. The LSB will maintain effective regulation in the public interest and deliver its statutory obligations under the Legal Services Act. Work was underway to develop the LSB's response, and a paper would be presented to the Board shortly.
  - Constitutional Reform Group Steering Committee – further clarity on the terms of reference and timing of the proposed committee is awaited.
  - Slater and Gordon – the Board noted the emerging business model of the revised operations at the law firm.
  - Media coverage – LSB engagement with The Times was helpful, and further such opportunities should be sought to highlight the LSB's role and work.
  - Public panels - work to convene the panels was ongoing however no physical meetings would take place during the current period.
  - Technology papers – a collection of policy papers was due for publication shortly ahead of planned mini-conferences later in the year, subject to circumstances.

The papers would explore how different parts of the legal services sector perceive technological innovation and how, in their view, technology may improve access to justice. It was expected that this would be useful as the sector considers the use of technology in responding to covid-19.

- Solicitors Qualifying Exams – diversity and equality are important criteria and separate from reasonable adjustment requirements.

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

#### **Item 4 – Paper (20) 12 - Final LSB Business Plan 2020/21**

4.1 The Head, Policy Development and Research introduced the paper which set out the LSB Business Plan for 2020/21. It was flagged that activity would need to be flexible due to Covid-19 and its impact on the sector. Priorities would be adjusted as circumstances evolved and as the LSB developed new milestones in response to the crisis. The Board was asked to delegate final sign off to the Chief Executive and Chair.

4.2 The Board **considered** the paper and the following comments were raised in discussion:

- It was essential that the final plan referenced Covid-19 and the changing operating environment, as well as the potential for legal regulation as a mechanism for economic recovery – this would be covered in the narrative.
- Planned actions would be kept under review, and stakeholders would be kept in close communication.
- The LSB’s overriding aim would be to protect consumers and to help legal services providers provide the services consumers required through relevant, timely and proportionate regulation.
- It was proposed that a consultation response suggesting the LSB had a ‘tendency to gold-plate’ be the focus of discussion at an appropriate time in the future (**action**), and that in the meantime a meeting be arranged for the LSB Chair and the IPReg Chair (**action**).

4.3 The Board **agreed** the proposed plan, subject to the points raised in discussion, and Board **agreed** to delegate final sign off to the Chief Executive and Chair. It was expected that the final plan would be published by 1 April 2020.

#### **Item 5 – Paper (20) 13 – OLC Budget 2020/21**

5.1 The Head, Policy Development and Research introduced the paper which considered the OLC’s budget submission for 2020/21 – the OLC had requested a 21% budget increase for a total budget of £14.949m (up from £12.346m in 2019/20). The paper’s recommendation was that the Board did not approve the submission for the reasons set out.

5.2 The Chair invited OLC Board Members Rod Bulmer and Jane Martin to respond on behalf of the OLC. The following points were raised:

- The budget setting process had been less than ideal this year: there had been misunderstandings which would be important to learn from;
- The role of the OLC audit committee in this respect had not been clearly defined;

- The OLC Board shared the LSB’s view on the need for a clear direction of travel to be set out and for sufficient assurance to be provided before a budget could be approved;
- There was greater transparency about the issues the organisation was facing;
- Presently, neither organisation performance nor the customer experience were at acceptable levels: recruitment and retention was key to improving performance;
- Investigator productivity had increased, however the attrition rate also continued to increase;
- Cultural change was imperative: there was inexperience at senior levels across the organisation and a majority of staff were disengaged as reflected in the most recent staff survey;
- The OLC RemCo was developing its first People Strategy for the organisation;
- Further deterioration was possible and there was no quick fix; it would take time for improved outcomes to be seen – for example, new processes were being embedded for new starters to boost their productivity. The OLC backed its assertion that the operational budget would need a 21% uplift to cover productivity assumptions. It was suggested that a 5% uplift would be required to maintain current levels;
- The OLC Board understood that the OLC must learn from this experience and improve process for the future.
- The OLC recognised it had serious issues to address but did not go so far as to consider itself to be in crisis.

5.3 Having made the case in support of the budget proposal, the OLC representatives then withdrew the original application and presented a revised budget proposal in light of the impact of Covid-19 which had not been apparent when the original budget was being prepared. The OLC explained that the safety of colleagues and business continuity needed to be prioritised and that it would not be the best course of action to make a judgement currently about case volumes and the time it would take to clear the backlog in the new circumstances. The OLC therefore withdrew its original budget submission and requested in its place a flatline budget plus inflation, with the expectation that a further in-year budget submission could be made under the existing governance arrangements.

5.2 The Board **considered** the paper and the OLC’s revised proposal, and the following points were raised in discussion:

- The revised proposal was welcome and accepted by the Board but principally for different reasons to that set out by the OLC representatives. Although the Board acknowledged in the context of the coronavirus outbreak, its principal reasons were those set out in the paper in relation to the original budget proposal;
- The OLC Board’s candour about the challenges facing the organisation was welcomed, however the rationale for the budget increase proposed in the original application had not been convincing;
- The lack of progress over the past weeks and months had been frustrating;
- The budget-setting process had demonstrated a breakdown of governance processes at the Legal Ombudsman;
- It would be unacceptable to be having the same discussions about a lack of progress in a year’s time, regardless of new complications arising from coronavirus;
- The Board encouraged the OLC to explore radical solutions. In addition, it would want to see more information around the proposed fast stream resolution scheme;

- Looking to the future, the change in tone was encouraging and was the first step towards the Legal Ombudsman being a fit for purpose complaints handling organisation. The imminent arrival of a new Chair was a timely opportunity for further progress to be made.

5.2 The Chair on behalf of the Board thanked the OLC for their contributions to the discussion. The Board **approved** the OLC's revised budget proposal – flatlined at 2019/20 levels plus CPI inflation – and noted that an in-year budget submission was likely.

#### **Item 6 - Paper (20) 14 - Arrangements for disciplinary oversight**

6.1 The Head, Performance and Oversight introduced the paper, a follow-up to the paper presented in September 2019 and which set out a series of proposals for how the LSB could progress work in the area of disciplinary oversight.

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

- The paper proposed necessary and proportionate changes;
- There was an opportunity to share insights identified under the proposed changes across the regulated sectors and to feed into the LSB's strategic thinking;
- The LSB would consider how it could feedback improvements to regulatory bodies;
- It would be helpful to consider cultural and behavioural dimensions of work in this area;
- Resource implications had been considered, but it was also important to consider peaks and troughs and potential conflicts of interest if relationship managers were asked to conduct the desk audits into their allocated regulator: an independent eye might add more value;
- On prioritisation of the work, further to the planned trials, nothing would be rolled out unless the LSB was sure of capacity;
- The executive would consider the need for consultation. The Board would welcome further detail on the LSB's approach in due course.

6.3 The Chair on behalf of the Board thanked the team for an excellent paper. The Board **approved** the proposals for the disciplinary oversight project.

#### **Item 7 - Paper (20) 15 – LSB transparency**

7.1 The Director, Enabling Services introduced the item which provided an update on steps to increase the LSB's transparency. Several steps had been taken including: Board papers being published in advance of the meeting; no redactions in published papers except in very limited and exceptional cases; Chair blogs published after each Board meeting, and questions from members of the public invited ahead of each Board meeting. The paper had been drafted before Covid-19 had escalated, and so the timings of the recommendation for the Board to make a final decision on open meetings having attended open meetings of other Boards was likely to be impacted.

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

- The increase to transparency to date was welcomed;

- On balance, it was not considered that an informed decision on open meetings could be made during a time of near-universal remote meetings; in the meantime, Board members were asked to commit to viewing and providing feedback on pre-recorded open meetings which would be circulated (**action**: Food Standards Agency proposed); a follow-up discussion would be scheduled at a later date (**action**: later in 2020);
- When circumstances allowed, Board members would value the opportunity to view both open and closed sessions of another Board's meeting;
- The proposal for open meetings would not preclude the use of closed meetings for pre-agreed topics – there would be published criteria for what would be discussed in each meeting;
- The LSB was encouraging legal services regulators to increase their transparency and the LSB should be and be seen to be leading in this area.

7.3 The Board **noted** the update paper, with thanks for developments to date.

### **Item 8 - Paper (20) 19 - LSCP work programme 2020/21**

8.1 The Chair of the Legal Services Consumer Panel ("the LSCP") provided an overview of the paper, which set out the LSCP's proposed work plan for 2020/21. Key points included:

- This was year three of a three-year strategy;
- Areas of focus would be unbundling, public panels, and quality indicators;
- Other areas such as housing rights and family law were likely to become increasingly pressing due to the nature of coronavirus;
- In addition, mechanisms for getting access to justice were reducing rapidly – vulnerable consumers were particularly likely to be affected by these changes;
- There may be regulatory innovations to help bring about solutions.

8.2 The Board considered the paper and the following comments were raised in discussion:

- The consideration that had gone into measuring the impact of the LSCP's work was welcomed, as was the reference to advice deserts and cross-border commercial activity;
- On the success criteria, it would be helpful to see a greater focus on influencing policy decisions and how the LSCP would measure its achievement against that;
- In the current circumstances, the rapid shift to an increasing use of technology would inevitably leave vulnerable people behind – the very nature of vulnerability was likely to evolve and affect the whole consumer landscape;
- Technology had the potential to be transformative but also to entrench certain issues;
- Previous evidence had showed that in many instances doctors were acting as a first port of call for identifying some legal issues – in the new circumstances with doctors stretched, the LSCP could look again at how this might impact consumers;

- In terms of regulators' approach to the transparency agenda, it was hoped that progress to date would be reflected in the CMA's progress report expected in spring 2021;
- As the whole legal community was forced to consider how it operated, there was a real opportunity for the LSCP to engage and push its agenda forwards for the benefit of consumers.

8.3 The Board **endorsed** the LSCP's work plan for 2020/21, with thanks to the LSCP for the work that had gone into assembling this year's plan.

**Item 9 - ARAC business including:**

**i) Report of ARAC March meeting - Oral**

9.1 Marina Gibbs on behalf of the Chair of the ARAC provided an overview of the most recent meeting of the Committee on 3 March 2020. Items considered included: the LSB's budget for 2020/21 (sitting as a Finance Committee); the internal audit reports prepared by Crowe LLP – on oversight of the OLC and the PCF approval process; a deep dive into ways of working, particularly with a view to cultural change following the recent office move, and the potential impact on the LSB following the report of the Brydon Review into audit practices.

9.2 Board members **noted** the update.

**ii) Annual report of ARAC 2019/20 Paper (20) 16**

9.3 Marina Gibbs on behalf of the Chair of the ARAC presented the draft Annual Report of the Committee, which included an overview of the Committee's work over the past year including reviewing the risk register; oversight of the OLC; reviewing deep dives on a range of topics; consideration of the LSB's budget; counter-fraud assurance, as well as oversight of the office move and IT transformation projects.

9.4 Board members **endorsed** the Annual Report of the ARAC, with thanks to Committee members and executive colleagues for their hard work over the past year.

**Item 10 – RNC business including:**

**ii) Report of RNC February meeting - Oral**

10.1 Board members **noted** that the minutes of the meeting would be circulated for their information.

**ii) Annual report of RNC 2019/20 Paper (20) 17**

10.2 The Chair of the RNC presented the draft Annual Report of the Committee, which included an overview of the Committee's work over the past year including supporting the executive on areas such as employee wellbeing and senior colleague remuneration, as well as work to support public appointments to the Office for Legal Complaints and Legal Services Consumer Panel.

- 10.4 Board members **endorsed** the Annual Report of the RNC, with thanks to Committee members for their hard work across a range of important areas.

#### **Item 11 - Paper (20) 18 - Finance Report to 29 February 2020**

- 11.1 The Head, Finance and IT presented the Finance Report which reported the finance performance to the end of February 2020.
- 11.2 The Board **noted** the Finance Report, with thanks to the Head, Finance and IT for careful financial management particularly with the issues generated by the office move and IT transformation that required additional flexibility earlier in the financial year.

#### **Item 12 - Board evaluation – plans for 2020**

- 12.1 The Board noted that the intention was to repeat the exercise carried out in 2019 – being an online survey for Board members which would be circulated electronically over the summer, with a report for discussion to follow in Autumn 2020.

#### **Item 13 - Minutes of the previous meeting – 22 January 2020**

- 13.1 The Board **approved** the minutes as drafted.

#### **Item 14 – Board action tracker**

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

#### **Item 15 – Papers circulated out of committee since the last meeting**

- 15.1 The Board **noted** two papers circulated out of committee since the last meeting: Paper (20) 09 – recommendation to appoint OLC Chair and Paper (20) 10 – Q3 performance report.

#### **Item 16 - Forward Look**

- 16.1 The Board **noted** the draft agenda for the April Board meeting. All Board members were now able to attend that meeting.

#### **Item 17 – Reflections**

- 17.1 The Board reflected on the meeting which was the first LSB Board meeting to take place entirely by video-conference.
- 17.2 The Board agreed that for the next meeting onwards, routine items that were for noting (e.g. minutes, papers circulated out of committee) would be grouped together under a new heading 'items for consent'. Any comments should be submitted to the Chair in advance of the meeting to free up time on the main agenda.

#### **Item 18 – AOB**

18.1 The Board **noted** that the planned Board meeting and stakeholder engagement in Liverpool in June 2020 had been postponed due to Covid-19. Planning would continue for the visit to take place in October 2020 but this would remain flexible and no costs would be incurred.

18.2 There was no other business and the meeting closed.

SN 03/04/20

Signed as an accurate record of the meeting

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Date

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