



**Minutes of the Legal Services Board (LSB) meeting held on 20 October 2020**

**Date:** 20 October 2020  
**Time:** 10:30 – 11:00 (Board private session)  
11:00 – 12:00 (Board strategy session)

**Venue:** By videoconference

**Present:** Dr Helen Phillips Chairing the meeting  
**(Members)** Catherine Brown  
Jemima Coleman  
Flora Page  
Marina Gibbs  
Stephen Gowland  
Ian Hamer  
Catharine Seddon  
Michael Smyth CBE QC (Hon)  
Matthew Hill Chief Executive

**In attendance:** Steve Brooker Head, Policy Development and Research  
Stuart Hamill Head, Finance and IT  
Angela Latta Head, Performance and Oversight  
Paul Nezandonyi Head, Communications and Engagement  
Chris Nichols Director, Policy and Regulation  
Steph North Corporate Governance Manager (minutes)  
Toakase Tonga Interim General Counsel  
Danielle Viall General Counsel  
Carla Duval Regulatory Policy Associate (item 4)  
Margie McCrone Regulatory Policy Manager (item 5)  
Craig Wakeford Regulatory Policy Manager (item 6)  
Aisling O'Connell Policy Manager (LSB strategy item)

**Observing the meeting:**  
Rachael Goldwater Corporate Affairs Associate

## **BOARD MEETING**

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

- 1.1 The Board had met for a strategy development session to discuss the draft narrative volume, draft strategy 2021/24, and business plan 2021/22.
- 1.2 The Chair welcomed all those present to the meeting. Apologies had been received from the Director, Enabling Services.

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

- 2.1 The Board **noted** that Stephen Gowland's wife was now working as a freelancer writing content for what might become the solicitors qualifying exam (SQE).

### **Item 3 – Paper (20) 46 - Chief Executive's progress report**

- 3.1 The Chief Executive presented his progress report, highlighting that since the paper was drafted judicial proceedings had been initiated against the LSB by a member of the public in relation to a decision not to take regulatory action against a regulator in connection with a complaint made by the member of the public.
- 3.2 The Board **reviewed** the Chief Executive's report, and the following points were raised in discussion:
  - *OLC people strategy* – it was noted from the voluntary assurance letter that Legal Ombudsman (LeO) productivity had decreased in recent weeks. The OLC considered that the impact of Covid had been felt less than it might otherwise as a result of mitigations in place, however a focus on the people strategy would be key to addressing performance issues facing the OLC and LeO.
  - *Alternatives to the ombudsman model* – while the Board was confident in the strength of recent appointments to the OLC, particularly in relation to the Chair, it was important not to underestimate the scale of the challenges faced. It was also important to consider the possibility that even with the best leadership available, the statutory scheme, with its associated constraints and inflexibilities, may not be capable of delivering the levels of service that the public and levy payers rightly expected. It would be prudent, therefore, to consider alternatives to the existing scheme, and to do so in collaboration with the OLC and Ministry of Justice.
- 3.3 The Board **noted** the Chief Executive's Report.

### **Item 4 – Paper (20) 47 – Solicitors Qualifying Exam (SQE) application**

- 4.1 The Board was reminded of the relevant declaration of interest made at the start of the meeting.
- 4.2 The Director, Policy and Regulation introduced the paper, highlighting some of the challenges of the current framework for admission, including: high expense, disproportionate dropout rates amongst ethnic minority students for the Legal Practice Course and Graduate Diploma in Law, and difficulty in ensuring consistent standards across round 110 different education and assessment providers.

- 4.3 The LSB approved the first stage of the SQE application in 2018. The application for the second and final stage of the application was submitted by the SRA in November 2019. Views on the SRA's proposals had been received from the Legal Services Consumer Panel, the Law Society, the Junior Lawyers Division of the Law Society, the Chair of the Justice Select Committee, representative groups for academics and a number of other individuals and organisations. In total, seventeen formal representations had been submitted, with arguments both in support of and against the application. The issues raised by stakeholders had been considered in the LSB's assessment of the application.

Since the LSB wrote to the SRA in November 2019 outlining a non-exhaustive list of key issues, the SRA had made progress in addressing all of the issues identified. For example, it had increased its stakeholder engagement, developed expectations around qualifying work experience (QWE), commissioned and responded to the Bridge Group report on equality, diversity and inclusion (EDI); confirmed assessment would be available in Welsh across all tests; extended the transition period (in response to Covid and stakeholder concerns); and enhanced and refined plans for monitoring and evaluation.

- 4.4 In the lead up to the decision, appropriate assessment and oversight had been applied to the application, including the compilation of issues logs, assessment tables (made available to the Board) and senior leadership team oversight. Four Board members had already provided scrutiny of the assessment through the Board member working group that was set up for this purpose. The Board papers and recommendations which were informed by the working group, sets out the issues that we consider had the potential to engage the refusal criteria under the Act, taking account of the mitigations the SRA had set out in its application and response to the LSB's follow up questions.
- 4.5 The executive recommended approval of the application. If the Board decided to accept the recommendation, it was recommended that the decision notice should clearly set out the LSB's expectations of the SRA. This would include delivering on the commitments it had made through the application and assessment process, particularly around risk mitigation, monitoring and evaluation. The LSB would monitor progress through the regulatory performance framework to ensure that the SRA follows through on its commitments, but responsibility would ultimately lie with the SRA to make the SQE a success.
- 4.6 The Board was invited to:
- **Consider** the application and the assessment of it
  - **Note** the recommendation to grant the application in full
  - **Make a decision** to approve the application in full, refuse the application or issue a warning notice (to delay a decision for up to one year)
  - To **agree to delegate sign-off** for the decision notice (or warning notice) to the Chief Executive by the 28 October statutory deadline.
- 4.7 The Board **considered** the paper and the following points were raised in discussion:
- The paper was a testament to the rigorous and careful process followed in considering and assessing the application
  - The SRA had made significant progress since November 2019 when the Board wrote to outline key issues
  - It was acknowledged that the SQE would not be a panacea for all issues facing legal education and training, but that it was a positive step in the right direction

- *Qualifying work experience (QWE)* – In relation to the SRA’s plans to publish SQE pass rates by QWE provider, it was posited that only a limited number of candidates would be empowered to choose a provider based on outcomes in SQE assessment alone. It was therefore important that other measures were in place to encourage high quality QWE.
- *Professionalism and ethics* – In relation to ethics, the SRA’s proposal around sign off for QWE was based on concerns about ethical practice not having emerged. It was suggested that there could be a case for a stronger and more positive requirement to submit evidence that demonstrates ethical practice and professionalism. On this subject, the Board was mindful that the LSB is likely to be pursuing work under its new strategy on the importance of professionalism and ethics, including a review of its 2014 guidance on education and training. The outcomes of that work might require the SRA to review its approach in this regard, and the Board acknowledged that the SRA will have the ability to adapt to reflect any new requirements in this area.
- *Unpaid internships* – there was concern that unpaid internships could count towards QWE as there was the potential for these to be exploitative as well as not advancing diversity outcomes. However, the Board recognised that some unpaid work, for example working for Law Centres, may be covered by the umbrella category of ‘unpaid internships’ and may be rightly considered appropriate, indeed a valuable form of QWE, including in terms of diversity and inclusion. Limiting the amount of unpaid work that could count towards QWE was discussed. Overall, the Board noted the measures proposed by the SRA to monitor this area and mitigate risks, and accepted that this was an area that the SRA will need to keep under close scrutiny to establish how unpaid internships are being used and what their impact is on diversity and inclusion.
- *Guidance on QWE* – The Board noted that the SRA had included detail of its expectations for QWE in non-mandatory guidance and discussed whether some of the requirements should be more clearly mandated, and concluded there was good reason why the detail is not in the regulatory arrangements.
- *Hotline for concerns during QWE* – the likelihood of the most vulnerable students raising concerns in this way was considered, and there was some concern that this type of engagement may not be high, due in part to an imbalance of power, and the need for students to have their QWE signed off by those against whom they might have concerns. However, the Board recognised that the proposal was an improvement following concern expressed to the SRA in this area
- *EDI* – It was noted that the SRA’s commitments around EDI monitoring would need to mesh with its wider diversity strategy in order to make the most of the opportunities and encourage meaningful progress. The Board acknowledged that for the SRA to realise its objectives in full will likely depend on the SRA and other stakeholders including employers in making progress on wider issues in the sector, and in particular equality, diversity and inclusion
- *Monitoring delivery* - the LSB would monitor delivery of the SRA’s commitments through the regulatory performance framework
- Overall, the risks identified did not outweigh the benefits that were expected to come with the new framework – however, the risks need to be highlighted and

understood and, as and when issues emerged, or risks materialised, the SRA would need to demonstrate that it was taking action.

- 4.9 The Board **approved** the application for the Solicitors Qualifying Examination and **agreed to delegate to the Chief Executive** the sign off of the decision notice on the basis of its consideration.

#### **Item 5 – Paper (20) 48 – Ongoing competence**

5.1 The Regulatory Policy Manager introduced the ongoing competence paper which set out emerging themes and the policy team's early thinking about policy options and initial stakeholder feedback.

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

- There is a wide range of potential approaches to respond to the evidence – there was a question as to how any mandated approach could be introduced, and it would be imperative to identify the right range of measures
- There were parallels to the introduction of revalidation in the health sector, for which it was noted that the health professions' had limited enthusiasm for similar proposals when they were mooted and then introduced
- More on the proof of need for a great focus on ongoing competence would strengthen the arguments being made, including evidence of harms identified and measures proposed to combat them (not least as part of justifying potential costs to the profession with the introduction of ongoing competence measures). The example of Quality Assurance Scheme for Advocates (QASA) was provided as a proposal that had not been supported by a strong evidence base and ultimately failed
- On the other hand, it was posited that under the current regime, regulators had limited regard for ongoing competence and fitness to practice, which was of concern in its own right. For example, even if concerns about the competence of a regulated person were raised with a regulator, no regulator is currently equipped to deal with these issues short of considering enforcement action. As an extension of this, regulators are not currently looking for evidence of competence concerns in the first place.
- It was important that this work is aligned with the LSB's work on consumer engagement and quality indicators.

5.3 The Board **noted** the update on the ongoing competence project and agreed that the LSB's work in this area should continue. Following detailed analysis of the submissions, a further paper outlining the possible approaches which could be taken would be considered by the Board in the new year, prior to any consultation on proposed actions (**action**).

#### **Item 6 – Paper (20) 49 – Equality and Diversity update**

6.1 The Head, Performance and Oversight introduced the paper which provided an update on the LSB's work on equality, diversity and inclusion (EDI). The work largely aligned with the LSB's ongoing strategy development, which would be consulted upon in due course. There were also parallels with the SRA's proposed actions

around the SQE. The executive would continue to monitor regulators' actions in the EDI arena, and would commission research which would act as a springboard for further work in this area.

- 6.2 The Board **considered** the paper and the following points were raised in discussion:
- The Board welcomed the clear progress made since the last discussion
  - It was acknowledged that the LSB was on a journey to broaden its understanding of EDI in terms of both the profession and citizens and communities
  - The Board welcomed the integrated approach to EDI work - not least with parallels to promoting a consumer focus and the public legal education project
  - It would be helpful to make the most of the LSB's convening power to make further progress, and to widen consumer references to include users and citizens
  - References to transparency and granular reporting of EDI factors could be enhanced.
  - In addition to ensuring a fair path on the recruitment and progression of lawyers, the LSB should also consider retention of those with protected characteristics.

6.3 The Board **noted** the equality and diversity paper.

#### **Item 7- Update from 7 October 2020 Audit, Risk and Assurance (ARAC) meeting**

- 7.1 The ARAC Chair provided an oral update following the 7 October ARAC meeting. Areas covered at that meeting included:
- Agreement that ARAC would take a more active role in the drafting of the governance statement in 2021;
  - The internal audit report into statutory decisions received substantial assurance. The IT audit was ongoing, with no significant issues to report at this stage;
  - Routine scrutiny of the risk register; and the first of a new plan to introduce routine horizon scans at ARAC in addition to an annual horizon scan with the full Board;
  - An update on the development of assurance maps (mapped to the corporate and operational risks);
  - A deep dive on communications and engagement – with a commitment to review the sufficiency of current media monitoring content;
  - Consideration of the annual Governance Manual review - which would be recommended to the Board ahead of its 2 December meeting;
  - In addition, the ARAC Chair updated the Board that on 19 October she had attended the inaugural MoJ Audit and Risk Chairs' meeting with other MoJ arm's length body ARAC Chairs in attendance – useful lessons learned across government had been shared and the MoJ framework for risk was discussed.

7.2 The Board **noted** the update.

#### **Item 8 – Covid-19 sector response**

8.1 The Board **noted** the Covid-19 update paper.

#### **Item 9 - Finance Report to 30 September 2020 - Paper (20) 51**

- 9.1 The Board **noted** the Finance Report. A section on value for money would be included in future reports (**action**).

**Item 10 – Solicitors Disciplinary Tribunal (SDT) budget 2021/22 - Paper (20) 52**

- 10.1 The Board **approved** the SDT’s application for a budget of £3,150,607 for 2021/22. A working group comprised of Board members had met to scrutinise the budget submission in detail ahead of presentation to the Board for approval. The process had worked well, and would be repeated in future years.

**Item 11 - Minutes of the previous meeting – 15 September 2020**

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

**Item 12 – Board action tracker**

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

**Item 13 – Forward Look**

- 13.1 The Board **noted** the draft agenda for the December Board meeting.

**Item 14 – Reflections**

- 14.1 The Board reflected on the meeting, noting that the papers had been exemplary - generating both high-quality discussion and enabling effective decision-making.

**Item 15 – AOB**

- 15.1 There was no other business and the meeting closed.

SN 22/10/20

Signed as an accurate record of the meeting

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Date

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