DRAFT

Minutes of the Legal Services Board (LSB) meeting held on 30 November 2021

Date:	30 November 2021	
Time:	10:30 – 11:00 (Board private session) 11:00 – 14:00 (Board meeting)	
Venue:	Microsoft Teams	
Present: (Members)	Helen Phillips, Chairing the meeting Catherine Brown Jemima Coleman Stephen Gowland Ian Hamer Gary Kildare Flora Page Catharine Seddon Michael Smyth CBE QC (Hon) Matthew Hill, Chief Executive	
In attendance:	Steve Brooker	Head, Policy Development and Research
	Ethan Fleming	Corporate Governance Manager (minutes)
	Stuart Hamill	Head, Finance and IT
	Angela Latta	Head, Performance and Oversight
	Paul Nezandonyi	Head, Communications and Engagement
	Chris Nichols	Director, Policy and Regulation
	Holly Perry	Director, Enabling Services
	Danielle Viall	General Counsel
Attending for items:	David Fowlis	Regulatory Policy Manager (Item 5)
	Robin Geddes	Regulatory Policy Manager (Item 6)
	Aisling O'Connell	Regulatory Policy Manager (Item 4)
	Margie McCrone	Regulatory Policy Manager (Item 6)
	Toakase Tonga	Senior Legal Advisor (Items 6 and 7)
	Steve Violet	Regulatory Policy Manager (Item 7)
	Jenny Prior	Corporate Governance Manager (Items 8 and 9)
	Elisabeth Davies	Chair – OLC (Item 8)
	Paul McFadden	Chief Ombudsman – OLC (Item 8)
	Sandra Strinati	Chief Operating Office – LeO (Item 8)
	Michael Letters	Head of Finance – LeO (Item 8)
	Martin Spencer	Board Member – OLC (Item 8)
Observing:	Tania Hardcastle	Regulatory Policy Manager
Apologies:	N/a	

Board meeting

1. Item 1 – Welcome and apologies

1.1. The Chair welcomed everyone to the meeting with a particular welcome to the Regulatory Policy Manager who would be observing the meeting.

1.2. There were no apologies to record.

2. Item 2 – Declarations of interests relevant to the business of the Board

2.1. Catherine Brown had been appointed Chair of Hubbub having previously been a trustee.

2.2. Stephen Gowland declared that the Legal Ombudsman was considering if it had jurisdiction on a complaint against his previous firm and he would recuse himself from item 8.

2.3. Stephen Gowland declared that he had recently been made a CILEX Companion.

3. Item 3 – Paper (21) 57 Chief Executive's Progress Report

3.1. The Chief Executive presented the progress report.

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

- The Board noted that the UK had dropped down a place to sixteenth in the World Justice Project Rule of Law Index. In discussion, while it was recognised that by itself it would be unlikely to make a direct impact on the rankings, regulation could make a contribution to the regulatory objective on the rule of law, and this was included as a proposed workstream in the draft 2022/23 business plan. It could be made clear in other policies such as education and training and ongoing competence that lawyers played a fundamental role in society in relation to the rule of law.

In line with a Board action from September 2021, the LSB had written to SRA, BSB and CILEX Regulation in relation to professional ethics and integrity in the light of the recent Post Office and Royal Institute of Chartered Surveyors (RICS) cases. While enquiries were continuing, all had been able to identify at least some activity in this area. The SRA noted wider work it had planned on producing guidance on handling internal investigations into employer wrongdoing. The SRA is also planning to undertake a thematic review of in-house lawyers in 2022 and the BSB noted that it would be discussing its own work in this area with the SRA. The LSB would undertake further analysis of the regulators' responses as they had only just been received. A further update would be provided to the Board in due course (**action**).

- The draft business plan 2022/23 proposed monitoring developments on litigation funders as part of wider work on the scope of regulation.
- It was confirmed that open data and data standards to support this were within the scope of the current LSB work on technology. Further details would be provided in a planned update at the January Board, to include an update on standardisation of data by the regulators.
- In relation to the Better Regulation Framework, a stakeholder meeting had been attended by a member of the LSB executive. No new themes had been discussed that had not been included in the consultation document. A large number of responses had been received to the consultation. There was no indication of plans or next steps at this stage, and Board members would be kept updated.

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

4. Item 4 – Paper (21) 58 LSB Draft Business Plan and Budget 2022/23

4.1. The Regulatory Policy Manager introduced the paper for agreement ahead of consultation.

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

- The need for additional funds compared to the previous year should be made with more confidence to reflect the volume of work that was planned and to highlight that this was still lower than budgets in 2015/16 and 2016/17 (inflation-adjusted).
- The Executive were confident that everything proposed in the draft plan could be delivered but would remain flexible to take into account any required or unforeseen changes.
- It was noted that PII being harder to obtain could lead to fewer providers, with commensurate impact on access to justice.
- The rule of law work may be impacted by proposed changes to legislation such as changes to judicial review.
- The reference to both consumers and citizens was well received.
- A specific question on litigation funding would be included in the consultation.
- There would be a need to remain cognisant that changes might be needed arising from political developments. As well as maintaining flexibility, the LSB maintained positive relationships with officials, which helped with forward planning.

4.3. Subject to the points raised in discussion, the Board **agreed** the draft business plan and draft consultation document and **delegated** approval of the final version of the documents to the Chief Executive.

4.4. The Board **agreed** to consult on the basis of a provisional annual budget for 2022/23 of £4.287m (an increase of £189k, or 4.6% on the 2021/22 budget of £4.098m).

5. Item 5 – Paper (21) 59 Regulatory Framework Review – Emerging Thinking

5.1. The Regulatory Policy Manager introduced the paper. A proposal for consultation would be presented to the Board in February for approval. In the interim, the executive would continue to engage with the Board leads in this area.

5.2. The Board considered the paper, and the following comments were raised in discussion:

- The move from a ‘red, amber, green’ (RAG) rating to a more nuanced scale was welcomed as potentially mitigating oversimplification.
- There was a need to ensure regulators owned their regulatory approach and were providing strategic leadership – rather than requesting instructions from the LSB. There was also a need for the boards of regulators to be responsible for both their own organisations’ corporate culture and the expectations in relation to the culture and ethical standards of their regulated communities.
- Strategic leadership should include boards receiving adequate information from the executive to make sound decisions.
- In judging operational delivery, the key criterion would be evidence of the impact of outputs rather than just producing outputs themselves.
- It would be useful to include feedback from regulated communities, employees, legal observers and complainants in reviews to ensure that the assessments do not rely too heavily on what regulators tell the LSB. This could be commissioned by the LSB but may not take place each year due to the amount of resource it

would consume. Currently, the only mechanism at the LSB's disposal was analysis of the complaints the LSB received directly. Another approach would be to require regulators to undertake their own stakeholder feedback and share results with the LSB.

- New assessment tools should only be introduced if there was evidence that they were routinely used by other regulators to good effect.
- The greater emphasis on data was helpful and should help prevent poor practice.
- References to mechanisms and systems also needed to mention technology, which would be a force for good in the development of performance metrics.
- A predictable rhythm to (annual) reporting would be the aim, amplifying as far as possible the benefits to society. Opportunities would be sought for a mainstream news media article.

5.3. The Board **agreed** the proposals as the basis for revision of the regulatory framework and the next steps. A further update would be presented to the Board at its 1 March 2022 meeting.

6. Item 6 - Paper (21) 60 Ongoing Competence Policy Proposals – sign off for consultation

6.1. The Director, Policy and Regulation introduced the paper and reported that while they were derived from common-sense principles informed by wide consultation, none of the regulators was meeting all four of the outcomes proposed in the policy statement. A number of regulators do not set out standards of competence, no regulator currently presents systematic evidence as to levels of competence within their regulated community and none has a strategy for ensuring competence (or remediation of insufficient competence). By making these outcomes mandatory, regulators would need to become more active in securing competence on behalf of the public, although the LSB's approach would be to leave considerable latitude to the individual regulators to decide how best to achieve that within their communities.

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

- Competence in relation to soft skills such as customer service was important.
- The adoption of the proposals would bring the legal sector into line with other regulated professions.
- Measuring success was likely to take time and required two stages - the first to measure how competence was being assessed, and the second to review if it was leading to an improvement in standards of competence.
- The proportionate approach adopted was welcomed. The emphasis needed to be on encouraging regulators to get the work done, rather than seeking perfection in any arrangements.
- Along with references to vulnerability, mental health and wellbeing should also be referenced.
- The need for the changes had been accelerated by the pandemic and this should be reflected in the paper.
- A query was raised about interventions to ensure standards were maintained. The proposal appeared to leave it open to regulators to adopt an appropriate re-accreditation framework, which was felt to be right, but the LSB would want to make clear that there was an expectation that one was developed, or that regulators set out alternative approaches and why these would be more appropriate.
- The LSB has recently assessed some applications for changes to regulatory arrangements that touch on issues relevant to ongoing competence. In

assessing these, the LSB has been clear that granting approval of these changes will not negate the need for a more comprehensive assessment of compliance with the LSB's policy statement on ongoing competence, once this is finalised.
- OC was one of the LSB's three five-year policy objectives, and the publication would represent a major milestone.

6.3. The Board **agreed** the draft statement of policy and draft consultation paper as the basis for consultation and **delegated** approval of the final version of the documents to the Chief Executive.

7. Item 7 – Paper (21) 61 Review of Rules/Guidance for alterations to regulator arrangements

7.1. The Regulatory Policy Manager introduced the paper, which analysed the results of consultation and presented amended rules and guidance based on that consultation.

7.2. The Board considered the paper, and the following comments were raised in discussion:
- The proposed scheme was clear and easy to follow.
- The pre-application engagement would be helpful however it may be of benefit to include examples to set out in what circumstances the LSB would provide feedback pre-application.

7.3. The Board **agreed** the new Rules, new Guidance, and decision document and **delegated** approval of the final version of the documents to the Chief Executive.

8. Item 8 - Paper (21) 62 OLC Draft budget 2022/23 and mid-year stock take

8.1. Board member Stephen Gowland recused himself due to a potential conflict declared at the start of the meeting.

8.2. The Chair welcomed the representatives of the OLC and LeO to the meeting. The OLC Chair made some opening remarks, and the Chief Ombudsman presented a set of slides focused on radical actions planned, sustainable acceptable performance, and the impact of changes on the customer journey.

8.3. The Board considered the paper and presentation, and the following points were raised in discussion:
- The Board was grateful for all of the continued hard work and progress made by the front-line staff at the Legal Ombudsman.
- The LSB was heavily invested in the Legal Ombudsman achieving sustainable and acceptable performance as quickly as possible.
- In March 2021, the Board had demonstrated its commitment to helping OLC by agreeing a significant increase in budget. This was on the basis that the forecast performance trajectory represented the OLC's minimum delivery expectations at the time, not taking into account planned innovations, and that time was needed to change the performance culture in the organisation. Performance was now falling well below the minimum delivery expectations set out last year, which impacted on the LSB's confidence in what was being presented for approval for 2022/23.
- Concerns were also raised that a significant underspend was anticipated at year end. The LSB had gone to some lengths to explain and justify the considerable uplift in

funding for 2021/22. To be in the position now that the OLC had been unable to make full use of the funds was very disappointing.

- Although the LSB was supportive of radical solutions and new thinking, the term “radical” was perhaps not helpful and much of what was proposed by the OLC such as benchmarking pay was not considered radical. The Board would rather see specific actions that would have a specific demonstrable impact on the backlog.
- A priority for the OLC needed to be on outsourcing and the changes to the scheme rules to deliver increased performance. The OLC should not rely on securing a change to primary legislation which, if it was achieved, would take a number of years. The OLC instead needed to focus on things within their control.
- The assumption that LeO would operate next year at a full staff complement was implausible, which meant that underspends would almost certainly emerge. The LSB considered that a vacancy factor be built into the figures.
- The budget acceptance criteria needed to include devoting resources to insight and intelligence and taking a strategic approach to this.
- A further criterion would be for the OLC to demonstrate how it would respond to volume fluctuations in particular contingency plans in the event of increasing caseloads.
- The LSB Chair offered OLC the LSB’s support in whatever form necessary to help the OLC to prepare the final budget submission due to be presented in March 2022 in a form that would meet the LSB’s requirements.

8.4. The LSB Chair summarised by explaining that approving a further budget increase in the context of a significant underspend in 2021/22 and a failure to meet minimum delivery expectations would require the LSB not only to have confidence that the OLC had specific material proposals to remove the backlog at pace, but also that it was capable of deploying the resources effectively and in full. The LSB considered that the plans as currently presented did not meet this test.

8.5. After OLC and LeO colleagues had left the meeting, the Board noted that a board-to-board meeting with OLC was scheduled for 11 January. The meeting would be an opportunity for OLC to respond to the LSB’s feedback, with the aim of reaching a shared understanding of the LSB and OLC’s respective positions.

8.6. Subject to the points raised in discussion, the Board **agreed** the budget acceptance criteria.

9. Item 9 – Paper (21) 63 Corporate Risk Register

9.1. The Corporate Governance Manager introduced the item which was the twice-yearly consideration of the corporate risk register with the detailed scrutiny delegated to ARAC.

9.2. The Board raised the following points in discussion: In light of the new COVID variant Risk 15 – remote working should remain on the risk register and the Executive should consider further mitigations.

9.3. The Board **agreed** the Corporate Risk Register.

10. Item 10 – Paper (21) 64 Finance Report to 31 October 2021

10.1. The Board **noted** the finance report.

11. Item 11 – Paper (21) 55 Board Effectiveness Action Plan

11.1. The Board requested that target dates be added where they were not already included.

11.2. The Board **agreed** the Board Effectiveness Action plan subject to the amendment proposed.

12. Item 12 – Paper (21) 56 Corporate Governance Manual

12.1. The Board requested that the wording be adjusted to the CEO having a role for ‘optimising’ corporate culture than ‘ensuring’ corporate culture.

12.2. The Board **agreed** the Corporate Governance Manual subject to the amendment proposed.

13. Item 13 - ARAC Report

13.1. The Board **noted** the ARAC report.

14. Item 14 - Minutes of the previous meeting – 26 October 2021

14.1. The Board **agreed** the minutes as drafted.

15. Item 15 - Board Action Tracker

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

16. Item 16 - Papers circulated out of committee since last meeting:

16.1. The Board **noted** the papers circulated out of committee.

17. Item 17 - Forward Look

17.1. The Board **noted** the agenda for the next meeting.

18. Item 18 – AOB

18.1. The next meeting on the 25 January would be held virtually. The reserve meeting on the 1 March would be required on the advice of the Senior Leadership Team and would be held virtually.

18.2. The 22 March meeting was currently planned to be held in person.

18.3. The was no other business and the meeting was closed.