



Minutes of the Legal Services Board (LSB) meeting held on 19 January 2021

Date: 19 January 2021
Time: 10:30 – 11:00 (Board private session)
11:00 – 13:00 (Board meeting)

Venue: By videoconference

Present: Dr Helen Phillips Chairing the meeting
(Members) Catherine Brown
Jemima Coleman
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)
Danielle Viall General Counsel
Sally Al-Saleem Regulatory Policy Manager (item 4)
Robin Geddes Regulatory Policy Manager (items 5-6)
Aisling O'Connell Regulatory Policy Manager (item 7)
Toakase Tonga Senior Legal Adviser (item 4)
Steve Violet Regulatory Policy Manager (item 8)

BOARD MEETING

Item 1 - Welcome and apologies

- 1.1 The Chair welcomed all those present to the meeting. Apologies had been received from Flora Page, who, because of circumstances arising from her professional occupation, has voluntarily stepped aside from Board duties temporarily.

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

- 2.1 Board member Catharine Seddon declared two new appointments: Board member at the Human Fertilisation and Embryology Authority, with effect from 18 January 2021, and founder member of the Health Service Products (pricing, quality and information) Appeal Tribunal, with effect from 23 December 2020. There were no other declarations of interest relevant to the business of the Board.

Item 3 – Paper (21) 01 - Chief Executive's progress report

- 3.1 The Chief Executive presented his progress report.
- 3.2 The Board **reviewed** the Chief Executive's report, and the following points were raised in discussion:
- *Citizens' jury* – the Board noted the use of a citizens' jury as part of the ongoing competence evidence gathering stage;
 - *Listed law firms* – the Board requested more information on the history and performance of listed law firms (action: consider for the basis of a Board discussion in 2022);
 - *Use of reserves* – the Board commended the executive for progress made on the issue of LSB and OLC reserves. The Head, Finance and IT explained that in relation to the LSB's reserves, these remained at £6.3m, and his understanding was that it was made up of £5m provided to the LSB by the Ministry of Justice as historic grant-in-aid and a £1.3m surplus derived from the statutory levy. If this split can be agreed with the MoJ, it is likely that the LSB would be able to utilise the latter as it saw fit, and it was likely though not definite that the same principles would apply to the OLC if they could show any element of their reserves constituted a levy surplus;
 - *Solicitors Regulation Authority (SRA) published guidance on Solicitors Qualifying Exam (SQE)* – the Board noted that the executive was content that the guidance issued by the SRA reflected issues raised during the assessment of the application, and that the executive would continue to monitor implementation, including through quarterly meetings with the SRA;
 - *Judicial Diversity Forum (JDF)* – the Board noted that very few solicitor advocates went on to become QCs; it was noted that as yet unpublished drafts of the JDF's "Rapid Evidence Evaluation" pointed to a range of barriers to progress to senior positions, including perceptions of hierarchy. The LSB would continue to advocate for effective evaluation of diversity initiatives to better understand what works and to share best practice;
 - *Staff morale during lockdown* – the Board commended the executive for the positive measures in place to support colleagues' wellbeing and manage workload as the pandemic continued, noting that colleague feedback indicated

the main issues at this point in time were largely external factors which could not be alleviated by the LSB.

3.3 The Board **noted** the Chief Executive's Report.

Item 4 – Paper (21) 02 – Practising Certificate Fee (PCF) review – final rules and guidance

- 4.1 The Regulatory Policy Manager introduced the paper which provided an update following the consultation on the draft PCF rules and draft guidance that closed in October 2020. Four main changes to the rules and guidance were proposed in line with the LSB's policy objectives, and within the framework of the Legal Services Act: clarifying the distinction between representative and regulatory functions; setting out the factors the LSB may take into account in respect of regulatory performance when assessing PCF applications; introducing an upper time limit within which the LSB would make a decision on applications; and reinstating an existing rule which would allow for the interim collection of a limited practising fee. Changes were also proposed in response to proportionality issues raised by respondents to the consultation.
- 4.2 The Board considered the paper, and the following points were raised in discussion:
- The Board noted that this review should be seen in the context of aligning more closely the LSB regulatory functions of PCF approvals, statutory decisions and regulatory performance;
 - The Board commended the executive for a thorough consultation process, noting that the submissions have been carefully considered and the regulatory burden had been reduced where appropriate;
 - The Board acknowledged the tension between regulators seeking to keep practising fees low and having sufficient funds to achieve stated objectives;
 - The Board noted in particular that:
 - regulators must ensure that fees are set at a level and allocated sufficiently to discharge their functions (rule 29D), and where this is not the case, the LSB may refuse an application (rule 30); and
 - that each of the regulators are expected to publish a reserves policy.
- 4.3 The Board **agreed** to delegate to the Chief Executive approval of any final amendments to the rules, guidance and the associated consultation response document, and subsequently to publish these.

Item 5 – Paper (21) 03 – Competition and Markets Authority (CMA) progress review: initial analysis

- 5.1 The Head, Policy Development and Research introduced the paper which invited the Board to offer its first reflections on the CMA's progress review recommendations ahead of a full discussion at its 18 March 2021 meeting.
- 5.2 The Board **considered** the paper, and the following points were raised in discussion:
- The Board strongly endorsed the CMA's recommended leadership role for the LSB in this area, identifying stakeholder management and budgetary / resourcing implications;
 - The Board congratulated the team for their input to the recommendations, which reflected well on the ongoing and effective working relationship with the CMA;

- The Board noted the significance of the CMA's assessment that the case for wholesale reform of the legal services sector was stronger now than it ever had been
- The Board recognised that a review of reserved legal activities would require more resource, and that more widely the CMA's recommendations presented a wider scope of activity than the LSB had initially envisaged. In particular, the Board would need to give further consideration to the proposal that the LSB manage a register of unregulated providers since this would represent a major change of role for the organisation and require additional resource and capacity;
- It was acknowledged that the LSB should not underestimate that in lieu of an ownership role, there was more that could be done to make data more user friendly – for example, signposting was particularly important in the legal services sector as without prompts, consumers were unlikely to shop around;
- The Board noted that the SRA had published data on fines issued to firms not meeting their transparency requirements;
- It was acknowledged that in the present marketplace it was difficult for consumers to find the information they needed;
- On plans to expand redress for consumers, the Board recognised the importance of being open to considering and indeed developing alternative models for redress while supporting the Legal Ombudsman to the fullest extent to achieve its performance goals.; and
- Noting that at its March 2021 meeting, the Board would be presented with a revised budget and plan building on the initial analysis to provide a set of proposals about what the LSB's best response to the CMA's report would mean for any iteration of the *State of the Legal Sector* report, LSB Strategy and Business Plan (action).

5.3 The Board **noted** the executive's initial analysis of the CMA's recommendations, and that a further paper that dealt with stakeholder engagement would be considered at the March 2021 meeting.

Item 6 – Paper (21) 04 – Quality indicators

6.1 The Regulatory Policy Manager introduced the paper which set out the executive's recent work on quality indicators and sought agreement on plans to seek stakeholder feedback on policy options. The Regulatory Policy Manager highlighted that some of the legal services regulators were working together on a pilot encouraging consumers to provide feedback through digital comparison tools (DCTs). The pilot was expected to launch in February 2021.

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

- The Board welcomed the paper, which helpfully set out what was meant by 'quality', noting that it was important to consider outcomes as well as outputs;
- The Board discussed whether the overriding objective of the project was to raise general standards and innovation, for the consumer's benefit. It was important to improve the quality and consistency of services that all service users experience, not only empowered consumers. There was a role for the LSB to encourage a material number of consumers to use DCTs in order to improve outcomes for all- if service providers believed that a material number of consumers would use DCTs, this would incentivise them to improve their performance;

- The project should be clear in setting out: its objectives, what tools are available to increase transparency and, proposed solutions;
- The executive would review the consultation questions to ensure they were open rather than closed to encourage innovative thinking; and
- The impact on diversity and equality considerations would be addressed in the paper.

6.3 The Board **agreed** to delegate to the Chief Executive and Chair final sign-off of the discussion paper for publication, subject to points raised in discussion, including adding a foreword to set out the context that the paper is a response to the CMA's review and one part of an upcoming policy statement.

Item 7 – Paper (21) 05 – Technology project update

7.1 The Regulatory Policy Manager introduced the paper which updated the Board on the proposed next phase of the LSB's work on technology and innovation in 2021-24, focussing on cross sector collaboration, open data, ethics and consumer protection through regulation. The technology report distilled what had been learned from the first phase of work on technology and innovation.

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

- The paper should set out the nature of risks specific to legal services sector technology, including the risks associated with not pursuing technological innovations;
- The Board acknowledged that although technology was designed to open the market, there would always be some level of digital exclusion that the LSB could not address;
- It was important for the LSB to convene conversations and work in partnerships to achieve progress in this complex area – the Board agreed that by effectively setting out the issues the LSB would enable those in a position to take action to do so;
- The Board noted that although there were undoubtedly philosophical questions around artificial intelligence (AI) and machine learning, for example, the paper as drafted was too academic with insufficient focus on how change will happen;
- The Board agreed it was important to consider the context of unmet legal need, for which technology innovation was potentially one way to drive change, notwithstanding risks like AI potentially entrenching prejudice and making decisions less transparent and accountable;
- The Board acknowledged the difference between regulators remaining on top of technology issues versus becoming knowledgeable about technology issues;
- The Board questioned the proposal to convene a standing panel on technology, acknowledging this was one way to improve capability in this area;
- The Board reflected on the strategic opportunity provided by technology, which warranted consideration of capability at Board, executive and at partnership level. The paper should therefore describe the positive steps the LSB will take from a regulatory perspective to enable greater regulatory certainty for consumers; and
- It was proposed that this work might usefully start with a focus on the area(s) with the biggest opportunity to improve outcomes / objectives.

7.3 The Board **noted** the update. Nominated Board members would work with the executive to translate the high-level discussion into practical action, including concrete next steps and a resource plan [*post-meeting note: meeting scheduled 29 January 2021*]

Item 8 – Paper (21) 06 - Review of approval process for alterations to regulatory arrangements

8.1 The Regulatory Policy Manager introduced the paper which set out the findings of a review of the process for changes to regulatory arrangements, highlighting that a series of stakeholder meetings had provided helpful feedback on current processes and opportunities for change.

8.2 The Board **considered** the paper, and commended the executive on it. The work aligned with the LSB's objective to better align exercise of its regulatory functions through PCF, statutory applications for approval of alterations to regulatory arrangements and regulatory performance. The intention to promote greater consistency and clarity of proposed changes to regulatory arrangements was especially welcome.

8.3 The Board **noted** the update, and that a further paper on this topic would be presented in Q1 2021/22.

Items considered by consent

Item 9 - Finance Report to 31 December 2020 - Paper (21) 07

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

Item 10 - Minutes of the previous meeting – 2 December 2020

10.1 The Board **approved** the minutes as drafted, with one small addition at paragraph 3.2 *Consumer segmentation* ...The executive explained that their intention was to conduct further demographic analysis on the legal needs survey data, *including considering the balance of citizen and consumer in this context*;

Item 11 – Board action tracker

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

Item 12 – Paper circulated out of committee since last meeting

12.1 No papers had been circulated since the 2 December 2020 meeting.

Item 13 - Forward Look

13.1 The Board **noted** the draft agenda for the strategy session on Communications and Engagement planned for the 23 February 2021 Board meeting.

Item 14 – Reflections

14.1 The Board reflected on the meeting, welcoming the opportunity to contribute to developing policy at its different stages and noting that constructive discussion had been prompted by high quality papers. The executive also welcomed the meaningful discussions on policy issues, noting that when drafting papers there was an opportunity to explicitly state first principles - the LSB's objectives and the regulatory objectives - and how these align to the LSB's work.

Item 15– AOB

15.1 The Board **noted** the proposed Board speaker programme for 2021 / 22.

15.2 There was no other business and the meeting closed.

SN 25.01.2021

Signed as an accurate record of the meeting

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Date

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