FINAL
Minutes of the Legal Services Board (LSB) meeting held on 19 July 2022

Date:	19 July 2022	
Time:	10:30 – 11:00 (Board private session) 11:00 – 12:00 (Board speaker session) 12:00 – 14:30 (Board meeting)	
Venue:	Microsoft Teams	
Present: (Members)	Helen Phillips, chairing the meeting Catherine Brown Jemima Coleman Stephen Gowland Gary Kildare Habib Motani Flora Page Matthew Hill, Chief Executive	
In attendance:	Stuart Hamill	Head, Finance and IT
	Margie McCrone	Head, Strategy and Policy
	Paul Nezandonyi	Head, Communications and Engagement
	Chris Nichols	Director, Policy and Regulation
	Holly Perry	Director, Enabling Services (minutes)
	Toakase Tonga	Senior Legal Advisor
Attending for items:	Steve Violet	Regulatory Policy Manager
	Robin Geddes	Regulatory Policy Manager
	Clare Brown	Policy Associate
Observing:	Natalie Donaldson	Communications and Engagement Associate
	Nick Berggren	Research Associate
Apologies:	Catharine Seddon	

External Attendance: Abiodun Olatokun

Item 1 - Welcome and apologies

1. The Chair welcomed colleagues to the meeting. Catharine Seddon's apologies were noted, along with her written comments which had been submitted in advance – the comments would be referenced at the appropriate point in discussions. Angela Latta and Danielle Viall had also submitted apologies. Nick Berggren was welcomed to the meeting as an observer.

2. The Chair reflected on the very sad news of Board member Ian Hamer's death on 4 July 2022. Ian had been a dedicated and committed Board member to the very end, providing deep understanding of regulation in all its forms. Ian would be sadly missed by all Board members and colleagues, and the Board had passed on its thoughts and condolences to Ian's family.

3. The Board noted the changes to Board member lead roles arising from Ian's passing, and that the vacancy created would be filled via the Ministry of Justice's forthcoming recruitment of new Board members. The Board also noted the rules for quorum that applied in circumstances where the Board was carrying a vacancy.

4. Earlier in the day the Board had heard from Abiodun Olatokun, until recently Head of Public and Youth Engagement at the Bingham Centre for the Rule of Law, who addressed the Board on the Rule of Law and wider issues concerning legal services regulation.

Item 2 – Declarations of Interest

5. There were no new declarations of interest to report.

Item 3 – Chief Executive's Progress Report

6. The Chief Executive introduced the item, noting a typographical error in relation to the date of the annual conference referenced at paragraph 29: this had been amended in the public version of the papers to 13 October 2022.

7. The following points were raised in discussion:
   - The Legal Services Consumer Panel's eleventh annual tracker survey had been published and was welcomed, noting that regulatory initiatives to encourage consumers to shop around - such as making it easier for them to compare prices - were starting to take effect.
   - While the OLC's latest voluntary assurance letter indicated some improvement in case closure data, this remained behind target. The Board also noted some concern in relation to staff attrition rates, leading to concerns about the HR strategy and the corporate culture. Whether the EDI strategy was starting to pay dividends in recent recruitment was also queried. The executive reported that at a recent meeting, the Chief Ombudsman had acknowledged that LeO's people strategy, including recruitment and attrition, continued to be challenging and was a key focus of the senior team. A senior HR specialist was providing support on performance management and flexible working requests post-Covid. In terms of the EDI strategy, LeO had made good progress embedding this more widely, including through employee networks focusing on identifying actions LeO could take forward in priority areas.
   - The Board noted the delays in the laying of the OLC's annual report and accounts 2021/22. (*Post meeting note*: confirmation was received during the meeting the report had been laid earlier on 19 July).
   - The Board noted the strong correlation in themes of news round up and topics chosen for panel debate at the annual conference on 13 October.
   - On the draft programme for the annual conference, it was agreed that it would be helpful to explicitly build the theme of 'trust' into panels, and that it would be appropriate for one panel discussion to focus specifically on the strategic importance of EDI.
   - The Bar Council's response to the Bar Standards Board's decision to withdraw the Bar Course Aptitude Test (BCAT) was noted. The LSB approval had noted that the BSB's rule change in relation to BCAT was based on the BSB's assessment of its evidence in relation to the effectiveness and impact of the test.

- In relation to a question about the LSB's role in chairing an official-level working group of the Judicial Diversity Forum on defining success measures, it was clarified that the aim was to set an expectation that each stage of a lawyer's career could be tracked, with the chances of progression demonstrably not linked to protected characteristics.
- It was noted that the criminal legal aid uplift to fees of 15% recently announced by Government applied to new cases from the autumn, and therefore did not apply to the backlog of some 60,000 cases. With payment of barristers at the end of cases, and lead times of two years, this meant that the rise would be unlikely to come into effect in most cases until 2025.
- The Board noted that the All-Party Parliamentary Group on democracy and the constitution report published in June 2022 had found there to be concerns about the appearance of the politicisation of the judiciary, as well as indications of an increasing politicisation of the roles of Lord Chancellor and Attorney General.
- The news reports of some newly qualified solicitor starting salaries reaching £125k was noted. The Board reflected that over time, the gap between the starting salaries at city law firms and of those joining the duty solicitor scheme had widened significantly, impacting on supply into the criminal side of the profession. The commercial arm of the legal sector, like many professional services sectors, was thriving with high demand and high competition impacting starting salaries. The impact on diversity over time would be of interest.
- The qualitative research planned on lived experiences of legal professionals referenced at paragraph 23 of the Chief Executive's report was welcomed.
- The Board also welcomed the update that the statutory instrument raising the SRA's fining powers had been laid, following the LSB's advice to the Lord Chancellor. The Board would follow with interest how, if at all, the SRA's use of the new powers would influence the referral of cases to the SDT.

8. The Board **noted** the Chief Executive's report.

Item 4 – Sanctions Update

9. The Director, Policy and Regulation introduced the paper, which set out the regulators' progress since the discussion at the Board's 7 June meeting. A brief update was provided on further measures that were likely to be reflected in the Economic Crime Bill. The following points were raised in discussion:
    - Progress for many regulators in this area was welcomed.
    - Six regulators were largely meeting expectations, whilst BSB and IPReg had not yet been able to provide satisfactory assurance as to their responses. The BSB had set out its plans for further work, including a thematic review, which it was hoped would allow it to advance its understanding of risk and to respond accordingly. IPReg had not yet been able to provide assurance on its assessment of risk or the appropriateness of its wider action plan. The LSB executive were following up with both regulators.
    - The executive would now consider options in relation to further action, including if proportionate and appropriate enforcement powers, given the significance of the situation and the need for robust action.
    - Separately the issues affecting BSB in relation to information in the public domain regarding a growing backlog of investigations and enforcement, and poor performance on timeliness, were noted. These were indicators of issues more broadly with BSB's operations. The Board requested a discussion of the wider performance concerns in relation to the BSB at a separate meeting (**action**).
    - The difficulty in accessing data on the number of licences applied for was noted.

10. The Board **noted** the update and **agreed** the next steps for financial sanctions and legal services, and consideration of options for escalation if appropriate and proportionate in the circumstances, in relation each of the BSB and IPReg.

Item 5 – Ongoing Competence – Final Policy for Approval

11. The Regulatory Policy Manager presented the paper, which comprised the full analysis and proposed final statement on Ongoing Competence, following the last update to the Board in June. The statement represented the final output of the ongoing competence project, established in 2019 as one of the five-year policy objectives. The work was intended to promote the regulatory objectives, in particular protecting and promoting the public interest and the interests of consumers. The feedback received from Board at the 7 June meeting had been reflected, together with feedback received from the Board lead. Written comments from Catharine Seddon were also addressed. The following points were raised in discussion:

    - The policy statement had been amended to reflect feedback from consultation and move away from the 'comply or explain' approach. This change would not mean that regulators do not need to act and make changes to their approach. The onus would be on regulators to take responsibility for their approach and justify their course of action based expressly on the evidence that they had gathered. This approach would be consistent with the emphasis of the proposals for a new regulatory performance framework (subject to the outcome of the recent consultation), and would be mutually re-enforcing on the basis that monitoring, and enforcement of the statement would largely be through the regulatory performance framework;
    - The Board welcomed the outcomes-focused nature of the statement, reflecting that there was significant scope for regulators to develop approaches which were fit for purpose for their strands of the profession.
    - Reference to ethics within competence frameworks was welcomed, together with the format of the 'musts' boxes.
    - While the statement did not specifically reference technology, this did not negate the need for technology to feature in approaches, to the extent that this was important for particular areas of practice.
    - The extent of interaction with other regulators and academics globally was noted, and the LSB had now become a leading expert in the field.

12. The Board commended the executive on the work and **agreed** the statutory policy statement on Ongoing Competence. The Board **delegated** to the Chief Executive approval of any final, minor amendments.

Item 6 – OLC Scheme Rules

13. The Regulatory Policy Manager joined the meeting to present the paper, explaining that the Board's role in reviewing the revised rules was different to a typical statutory decision: section 155 of the Legal Services Act 2007 required the consent of the Board for the OLC to amend its rules.

14. Since 2009 agreed non-statutory acceptance criteria for changes to the Scheme Rules had been in place. The assessment undertaken by the executive had focused on whether or not the application satisfied those criteria and was therefore capable of receiving the

Board's consent. In undertaking this assessment, the executive had been mindful of the OLC's expertise and, ultimately, its responsibility for and independence in operating the scheme.

15. The following points were raised in discussion:

- The Board were generally satisfied that the submission addressed the criteria for decision and were content to accept the executive's recommendation to consent to the changes.
- Concern was however expressed in relation to the proposed change in time limit from six years to one year. While the change was consistent with other ombudsmen schemes, it was unclear from the evidence-base whether this reflected best practice.
- There was an extensive debate about the risk that reducing the time to bring complaints posed to some consumers who may not be able to access the scheme as a result, and the potential for disproportionate impacts on some individuals or groups. The decision to consent reflected that ombudsmen would use discretion to mitigate the impact on consumers, there would be transparency in the operation of that discretion and the extent of planned ongoing monitoring of the impact of the changes.
- The Board noted that while there were clear benefits in moving to a one-year timeframe for consumers generally, notably faster decision-making and better recollection of the circumstances of a case, it was inevitable that less confident, more vulnerable consumers may be less likely to challenge the one-year time limit, even in circumstances where there was a valid case for doing so. It was disappointing that the equality impact assessment had indicated that the changes would have a differential impact on some groups, but that the action required as a consequence had been recorded as 'not applicable'. (*Post-meeting note*: elsewhere in its application the OLC referred to mitigating actions including use of discretion and monitoring of impacts).
- Monitoring and evaluation by the OLC would be critical in relation to the change in time limits and the Board would welcome further assurances on this, particularly as these impacted vulnerable individuals. It was noted that monitoring by the OLC of other discretionary areas would also be important and should be kept under review. Assurances on monitoring impacts over the transition period would also be helpful.
- The Board noted the flat rate in relation to case fees had remained unchanged in the Scheme Rules – an alternative approach might have been to set case fees relative to a firm's size or turnover.

16. The Chair thanked the executive for its thorough assessment of the proposals. The Board **consented** to the OLC Scheme Rules changes. The Board would welcome further assurances in due course on the monitoring framework the OLC has in place for the change in time limit from six years to one year.

Item 7 – ACCA Cancellation of Designation

17. The Regulatory Policy Manager joined the meeting to present the paper, noting that the work reflected the culmination of this stage of the lengthy process in ACCA's application for cancellation of designation as an approved regulator.

18. The Board noted that significant work in the cancellation process had already been undertaken through assessment of and approval by the LSB of related applications,

notably, the CILEx Regulation application to provide an option ACCA's probate practitioners to transfer and ACCA's application to withdraw its regulatory arrangements (which had been initially refused).

19. The Board decided to recommend to the Lord Chancellor the ACCA's cancellation of designation as an approved regulator under section 45(3) of the Legal Services Act 2007, agreed to the draft letter of recommendation subject to a minor correction, and delegated authority to the CEO to make any minor drafting changes to that letter and its accompanying detailed analysis.

Item 8 - Corporate Risk Register and Risk Management Strategy

20. The Director, Enabling Services introduced the paper which invited the Board's comments on the latest version of the corporate risk register, the risk management strategy and the Board's risk appetite. The following points were raised:

Register

- R11 (*Regulators lack capacity and/or capability to deliver against expectations)*: an additional risk consequence would be added as follows: "reputational loss to the LSB and significant blow to traction in implementing the LSB's 10-year strategy." The Board also agreed that this risk had now gone beyond tolerance.
- R12 (*LSB approach fails to galvanise the regulators to act in ways that improve the diversity of the profession, leading to poorer consumer outcomes and low confidence in the sector)*: a significant upcoming mitigation to the risk was the annual conference and this would be added.

Strategy

- The reference to the Board's role at paragraph 1.3 to "set the tone" was queried – this would be amended to reflect that it was the Board's role to set the appetite.

Appetite

- The ratings were agreed – a small amendment would be made to the descriptor for 'open' under 'relationships': "disagreement is natural *and can stimulate a higher quality of decision-making"*

21. The Board **noted** the Corporate Risk Register subject to the points raised, and **agreed** the amendments to the risk management strategy and risk appetite.

Item 9 - Finance Report to 30 June 2022

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

Item 10 - Minutes of the previous meeting – 7 June 2022

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

Item 11 - Board action tracker

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

Item 12 - Papers circulated out of committee since last meeting

25. The Board **noted** the item circulated out of committee.

Item 13 - Forward look

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

Item 14 – AOB

27. The next meeting would be held in person at the LSB’s offices on 13 September 2022. If diaries permitted, an extraordinary meeting of the Board would be held ahead of the next scheduled meeting to discuss matters relating to the Bar Standards Board. There were no further items, and the Chair closed the meeting, thanking Board members for their contributions and the executive for the high-quality papers.