

## Minutes of the Legal Services Board (LSB) meeting held on 24 January 2023

**Date:** 24 January 2023  
**Time:** 10:30 – 11:00 (Board private session)  
11:00 – 14:30 (Board meeting)

**Venue:** LSB Offices

**Present:** Helen Phillips, chairing the meeting  
**(Members)** Catherine Brown  
Jemima Coleman  
Flora Page  
Stephen Gowland  
Gary Kildare  
Habib Motani  
Matthew Hill, Chief Executive

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|-----------------------|-------------------|-----------------------------------------|
| <b>In attendance:</b> | Sally Al-Saleem   | Regulatory Policy Manager (item 8)      |
|                       | Lola Bello        | Consumer Panel Manager (item 9)         |
|                       | Nick Berggren     | Research Associate (item 6)             |
|                       | Sophie Crookson   | Stakeholder Engagement Manager (item 9) |
|                       | David Fowles      | Regulatory Policy Manager (item 4)      |
|                       | Angela Latta      | Head, Performance and Oversight         |
|                       | Tom May           | Research Manager (item 6)               |
|                       | Margie McCrone    | Head, Strategy and Policy               |
|                       | Chris Nichols     | Director, Policy and Regulation         |
|                       | Aisling O'Connell | Regulatory Policy Manager (items 6,7)   |
|                       | Holly Perry       | Director, Enabling Services             |
|                       | Paul Nezandonyi   | Head, Communications and Engagement     |
|                       | Danielle Viall    | General Counsel                         |
|                       | Ethan Fleming     | Corporate Governance Manager (minutes)  |

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| <b>Observing:</b> | Natalie Donaldson     | Comms & Engagement Associate |
|                   | Marie Gibbs           | Corporate Support Officer    |
|                   | Suganya Suriyakumaran | Regulatory Policy Manager    |

**Apologies:** Catharine Seddon  
Stuart Hamill Head, Finance and IT

### Item 1 - Welcome and Apologies

1. Apologies had been received from Catharine Seddon.
2. The Regulatory Policy Manager and Corporate Support Office were welcomed to the meeting as observers.

### Item 2 - Declarations of Interest

3. Stephen Gowland had been appointed as a fee paid judge at the First-tier employment tribunal and at the First-tier social entitlement chamber.

### Item 3 - CEO's Report

4. The CEO introduced the item and reported that an updated tripartite agreement with the Ministry of Justice (MoJ) and the Office for Legal Complaints (OLC) had been agreed and the Board lead had reviewed it.
5. A joint letter had been received from the Solicitors Regulation Authority (SRA) and Solicitors Disciplinary Tribunal relating to their commitment to work more closely together on Equality, Diversity and Inclusion (EDI) data. This was a welcome product of previous engagement between the two bodies and the LSB.
6. The following points were raised in discussion:
  - The SRA's work on Strategic Lawsuits Against Public Participation (SLAPPs) was welcomed, and was expected to develop further over time. It was leading the way in the sector, in all likelihood because of the greater magnitude of risk based on volume..
  - The LSB had convened a meeting with regulators on sanctions which had included officials from the Office of Financial Sanctions Implementation (OFSI). The purpose was to identify and seek to address barriers to greater information sharing. It was expected that the SRA would shortly be sharing the findings from its thematic review of sanctions compliance. The BSB were in the process of conducting a similar review.
  - The tone of the OLC Voluntary Assurance letter was positive with strong progress on staff engagement although noting concerns at the level of sickness days. The OLC would need to consider the impacts of an 8% pay award not being realised. The LSB was currently exploring alternative measures to compensate staff in the event of a below inflation pay rise arising from ongoing public sector pay constraints in 2023.
  - In response to a query regarding their work it was clarified that the Office for Artificial Intelligence (AI) was responding to general concerns about the growing risks posed by AI and was not specifically targeting legal services. The LSB was committed to working with them although their proposals may require legislation in the medium-long term. Although AI was in its early stages it was recognised there was the potential for it to play a strong role in legal services and could increase access but it also raised a number of risks around accountability and ethics.
  - The proposed legislation to remove the cap on the SRA's fining powers in relation to economic crime would mean that, in practice, the SRA would need to amend its regulatory arrangements around setting its own levels of fine, which would require an application to the LSB.
7. The Board **noted** the CEO's report.

#### **Item 4 - Regulatory Performance Assessment Report**

8. The Director, Policy and Regulation introduced the item and explained that the 2022 annual assessment had used a hybrid approach under which regulators had been assessed against the previous framework's standards while the assessment had been presented using the new framework's rating system and in a narrative format. The next assessment would be wholly under the new framework. The following points were raised in discussion:

- The three key themes that emerged were lack of transparency, capacity and capability of regulators, and concerns about their approach to enforcement. Most regulators now had policies which should provide transparency about their decision making, but in some cases the implementation did not provide the level of transparency that might be expected. Some regulators' capacity and capability may be impacted by real terms cuts in their resources despite no sign of regulatory challenges diminishing, ongoing or increasing regulatory challenges and the legal sector performing well overall in the current economic climate. Some regulators need to that they have sufficient resources to carry out their enforcement work effectively.
- The standards and characteristics in the new framework were even more focused on areas like transparency and whether regulators were well led, so the next assessment would address these issues even more directly.
- It was positive to see some of the smaller regulators carrying out more research to provide an evidence base for decisions and future thinking.
- Engagement throughout the year with the regulators had proved useful in helping to inform the assessment and for the regulators to respond to the assessment.
- The publication of the report had generated interest from the media with wider reporting than previous years.
- A paper would be presented at a future Board meeting on the progress of implementing the new framework. **(action)** There would be benefit in the Chair writing to regulators recommending that they carry out their own assurance mapping against the new standards to assist them in getting ready for implementation of the new framework **(action)**.

9. The Board **noted** the Regulatory Performance Assessment report.

#### **Item 5 - Access to Justice and LSB's Strategic Positioning**

10. The Director, Policy and Regulation introduced the item, and the following points were raised in discussion:

- In essence, the LSB's remit was framed by the regulatory objectives (which included improving access to justice), its purview was the approved regulators and its powers were those set out in the Act.
- The approach taken to date by contributing the LSB's research and data where applicable to public debates and use of the LSB's ability to convene where appropriate in line with the Strategy for the Sector should be continued. This was within the LSB's remit and going further than this would risk straying beyond the LSB's remit.
- The LSB's strategic position on these issues should be reviewed on a periodic basis throughout the year to ensure it remained fit for purpose by reviewing what had been done since the last paper and what may be planned in the next six to nine months. **(action)**
- Regulatory bodies could take a more proactive role in addressing access to justice issues by influencing areas under their control rather than waiting for change from Government. Regulatory bodies could do this by working together and sharing resource and funding to demonstrate professional leadership.
- Consideration of barriers between different legal professions had previously been considered as a structural issue and could be looked at as an access to justice issue

in certain areas such as welfare, immigration and criminal work, which may assist in finding solutions.

- There may be benefit to partnerships with organisations who had similar interests in certain areas such as the Equality and Human Rights Commission who had issued reports on impacts on justice. Such engagement could assist with identifying speakers for future conferences.
- To give Public Legal Education more impact, it had been included in the policy statement on Consumer Empowerment.

11. The Board **agreed** LSB's Strategic Positioning on Access to Justice.

### **Item 6 - Technology and Innovation Survey Presentation**

12. The Research Manager and Research Associate gave a presentation on the Use of Technology and Innovation research. The following points were raised in discussion:

- There could be better examples given by regulators to demonstrate the benefits of using technology to providers. For those who had increased their use of technology, there had typically been less cost than expected with the top impacts being the ability to more readily customise their offering to consumers' individual needs and reducing the environmental impact.
- The upcoming individual legal needs research would assist in providing more information in relation to some of the areas.
- The findings would be useful in the proposed development of statutory guidance (see next item) on technology for access to justice. The guidance would be included in the source book (to be taken account of in the regulatory performance assessments).

13. The Board **noted** the Technology and Innovation Survey Presentation.

### **Item 7 - Technology and Innovation Principles for Regulators**

14. The Head, Strategy and Policy introduced the item, and the following points were raised in discussion:

- There was a need to proactively encourage innovation and experimentation and at a faster pace. This should be balanced against the risks of failures and who these would impact, such as consumers.
- Risks may be similar across regulators and collaboration should be encouraged.
- Innovation may not always be consumer-facing but should be purpose-led with an understanding of what it was trying to achieve. The different motivations for pursuing innovation and adopting technology need not be mutually exclusive.
- Regulators should promote, encourage and be open to innovation. There was a regulatory objective to improve access to justice, and technology and innovation may be one solution to this. Whilst there would not be a mandate to use of specific technology, regulators may choose to issue standards that technology should meet, and to provide guidance and assurance in relation to them.
- There was the potential for technology and innovation to disrupt existing long established business models and improve services for consumers and outcomes for businesses.
- Digital poverty was an issue amongst some consumers and care should be taken to manage the risks associated with this, to ensure they could access legal services offline.

- The ethics of using technology, including in relation to data, were important and should be taken into consideration.
- There were potential risks in the unregulated sector where decisions may be purely commercially driven.

15. The Board **agreed** that new draft guidance should be developed for consideration by the Board in mid-2023, with a view to public consultation commencing shortly thereafter.

#### **Item 8 – Misuse of Non-Disclosure Agreements (NDAs) and the role of legal professionals' conduct**

16. The Regulatory Policy Manager introduced the item and reported that this work was focused on lawyers' professional ethical conduct and their role in the misuse of NDAs to cover up wrongdoing. The SRA is currently investigating a number of open cases on the unethical use of NDAs and is conducting further policy work on NDAs. The following points were raised in discussion:

- The LSB's work would apply to all the legal regulators - currently only the SRA was carrying out work in this area. The SRA could already request information from firms on use of NDAs and conduct spot checks.
- The LSB should consider the Government's 2019 call for evidence and what significant developments had happened since then and new sources of evidence. It should be noted that where the LSB's work would be focussed specifically on lawyers' professional ethical conduct in relation to NDAs, the Government had been considering wider legislation on NDAs.
- There was evidence of issues with lawyers' conduct in relation to NDAs, so the call for evidence would be targeted at understanding the size and scale of the issue and what solutions should be considered to inform policy development and future consultation on potential changes to the regulatory framework.
- The call for evidence may also benefit from for inviting explicit evidence on a number of separate potential detriments.
- NDAs were sometimes used in cases where allegations had not been proven or were inconclusive and there may be instances where they may be welcomed by both the organisation and the individuals involved. This was why the focus needed to be on conduct that led to NDAs being misused for concealing wrong-doing. The call for evidence should include details on volume as well as themes concerning lived experience. It may also benefit from for inviting explicit evidence on a number of separate potential detriments.
- Similar considerations might apply to the issue of Strategic Lawsuit Against Public Participation (SLAPPs), which were gaining in public notoriety.
- It should be noted that changes to the NDA rules in the USA related to specific circumstances (such as part of employment contracts) and were of a narrower focus.

17. The Board **agreed** to publish a call for evidence to understand the scale of the issues identified and inform the development of policy proposals for consultation. The Board **delegated** to the Chief Executive the final drafting of the call for evidence.

#### **Item 9 - Conference Plans for 2023**

18. The Head of Communications and Engagement introduced the item, and the following points were raised in discussion:

- There were a number of factors to consider in relation to timing. Running the conference on an 18-month cycle would give more time for preparation in particular for topics to further develop. Holding the next conference in March 2024 would also allow for the new Chair to be fully involved in plans. A biennial conference however would not be helpful. Keeping it yearly at the same time of year would help to develop it as a calendar fixture. The Board was content to delegate authority to the Chief Executive to determine the best timing for next conference.
- Themes for the conference could include judicial diversity, environmental issues and sanctions. These topics could be explicitly linked to discussions at the last conference in particular around ethics whilst remaining forward looking.
- The increased use of bursaries was positive in helping a wider range of people access the conference.
- Greater use should be made of social media for future events, and further thought given to greater hybrid participation.
- The new regulatory performance assessment may be too narrow as a conference topic however alternative methods should be considered to gain traction/public interest in it.

19. The Board **noted** the Conference Plans for 2023.

#### **Item 10 - Cyber Security – Personal Devices**

20. The Director, Enabling Services introduced the item, and the following points were raised in discussion:

- Individual Board Members would be contacted to create personal timelines for implementation.
- Security measures should remain proportionate and not fetter the ability to work effectively.

21. The Board **noted** the Cyber Security proposals.

#### **Item 11 - Finance Report – 31 December 2022**

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

#### **Item 12 - Minutes of the Previous Meeting**

23. The Board **agreed** the minutes of the 29 November 2022.

#### **Item 13 - Board Action Tracker**

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

#### **Item 14 - Papers Circulated Out of Committee**

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

#### **Item 15 - Forward Look**

26. The Board **noted** the Forward Look.

**Item 16 – AOB and reflections**

27. The Chair thanked the Director, Enforcement and Policy for his hard work whilst at the LSB and his role in the progress the LSB had made and the leadership and intelligence he had shown and wished him well in his future endeavours.

28. The discussion at the meeting had been lively with frank discussion of key topics, but all Board Members had felt heard. Board and executive colleagues considered that the proposals under discussion had been improved by the discussion.