



**Minutes of Meeting of the Advisory Board held on
Tuesday 05 September 2023 at 11:00am at 1 The Sanctuary, Westminster**

Present (in person): Michael Heap, (MH) Acting Chair
Christopher Matthews-Maxwell (CMM)
Claire Curtis -Thomas (CC-T) (remotely)
Christopher Vaughan (CV) (remotely)
Elaine Standish (ES) (remotely)
Michael Lightowler (ML)
Jonathan Coutts (JC)

In attendance: Howard Dellar, Registrar (HJD)
Ian Blaney, Deputy Registrar (IB)
Neil Turpin, Chief Clerk (NT)
Mili Bhanji, Deputy Chief Clerk (MB)
Jaymisha Tailor, Legal Administrator (JT) (minutes)

PART 1 – OPEN ISSUES

1. Apologies:

Apologies have been received from Mark Craig (MC) and Lesley Hurst (LH).

2. Minutes of Last Meeting:

(a) **Approval of Minutes** – The minutes of the meeting held on 13 June 2023 had been circulated and approved by all present.

(b) **Confirmation of Documents uploaded to website** – Confirmed

3. Matters arising not otherwise on the agenda:

(a) LSB Statement of Policy – Ongoing Competence

NT reported that the Faculty Office submitted their response to the LSB which was subsequently followed up with a meeting. NT indicated that no major issues were raised by the LSB, nor any adverse feedback. We currently await the release of the Regulatory Performance Review in December.

(b) Disclosure & Barring Service Certificates – amending SI & Guidance

IB reported that the Debate regarding spent criminal convictions has currently passed through the House of Lords and the Statutory Instrument has been made.

As a result, The Faculty Office are now entitled to ask notaries and would-be notaries about spent criminal convictions and cautions.

The draft paper was shared with Unlock. Unlock is an independent charity which challenges the Government's approach to disclosing old and minor criminal records on standard and enhanced checks issued by the Disclosure and Barring Service (DBS). Unlock provided their comments on the paper, and these have additionally been incorporated within the guidance.

IB circulated a copy of the Guidance with the board, setting out the checks undertaken and what we would do if any spent criminal conviction came to light. A copy of the guidance will be made available on the Faculty Office website.

Action: *Corrections have been incorporated however IB asked that if any further corrections are spotted then to let IB know.*

MH reported that this is a positive outcome, and we can now properly investigate notaries.

CC-T congratulated the author of the guidance (IB)

(c) Insurance Minimum Term

At the last board meeting it was agreed that a broker would be contacted. NT reported that he had since been in contact with Trevor Solace and has a meeting arranged with him in Chesterfield on 15 September 2023.

CV added that the current minimum PI cover has been £1m. Regarding run off cover, CV recommended the FO liaise with Chris Allen. Chris was a draftsman with a vast amount of experience. He is a PI insurance broker and he looked into this a few years ago however at the time there was lack of appetite amongst underwriters and no further action was taken.

NT reported that this is an ongoing project and will revert to it in due course.

Action: *CV to provide NT contact details for Chris Allen.*

(d) Disciplinary System

IB reported that the scoping paper was circulated for review and comments were received. The paper is still under review. JC commented that he had not received a copy and requested a copy for review.

Action: *IB to circulate scoping paper on Disciplinary System to JC*

4. Faculty Office Updates

(a) PCF Consultation Response

NT explained that the Faculty Office launched its annual consultation on 18 July 2023 for the proposed level of practicing certificate fees, which ran until 14 August 2023. A good number of responses was received, 34 responses from notaries in total and for the first time ever, we received a response from the Legal Consumer Panel.

We received overwhelming support for the proposed level of PCF for the coming year and the application for approval is currently with the Legal Services Board.

On 4 September 2023, we had the first tranche of questions from the LSB upon review of our application. The Questions were primarily on the financials which we can deal with adequately but there were also additional fundamental points that require to be addressed.

LSB have highlighted their concerns regarding the resourcing available to it, i.e., the collaboration of full-time equivalent staff / numbers given to the EC arm and Faculty Office arm. Realistically, the working hours put into the regulatory arm does not differ much from the EC arm. If anything, it is increasing. Therefore, the calculations need to be re-iterated to LSB.

MH questioned the difference between the term “*Operating Reserves*” and “*Contingency Fund*”.

NT explained that *Operating Reserves* is essentially the cash in bank. The principal source of income is PCF. Historically, the accounts were showing a deficit and we were required to borrow funds from EC to fund the regulatory arm. The operating reserve is now at a level where we are up to six months costs held in the bank.

NT further explained that “*Contingency Fund*” are the costs arising from disciplinary matters.

NT reported that the Operating Reserves as of 31 March 2023 stood at £270k equating to approximately 6 months operating costs.

IB reported that insurance for liabilities for activity covered by the contingency fund has not been considered, as these arise adhoc and we would pay out in any given year. If an insurer was to be considered, we would be required to pay a premium therefore it is less cost effective than running as separate funds.

HD further added that the FO recover most of its costs from the notary under disciplinary action. A notary may bring a claim against us, and we have indemnity cover for those instances.

The contingency fund is currently at £160k.

CV highlighted that the consultation response suggested that there were a number of investigations / prosecutions in the pipeline. NT confirmed in the last 3 years, only 3 cases have resulted to strike action.

NT has submitted a response to the queries raised by the LSB. LSB have until 21 September 2023 to either approve the application or to grant an extension of time to consider the application further.

5. Single Digital Register - Options

The Competition and Markets Authority (CMA) first recommended a single register of all regulated lawyers in 2016, repeating its recommendations in 2020 and suggesting that the LSB lead its development.

The LSB commission research from PA Consulting, which involved a market analysis of other regulated sectors and an online workshop with regulators and the Legal Service Consumer Panel. Researchers identified three options – a decentralised register, a digital portal and a centralised register.

HD reported that A Single Digital Register already exists via Legal Choices on their website under the label “*Can you trust your legal adviser*” whereby consumers can check for any disciplinary history/data.

The proposal is for consumers to have the ability to easily access relevant regulatory information from one single source.

CC-T highlighted that she had undertaken her own desktop search on the internet, and it transpired that the Faculty Office did not appear on any search results when trying to source this information.

IB indicated that this could be due to Google structuring, but the complaints/disciplinary procedure is clearly signposted on our website.

Action: *IB suggested a review of the website to ensure it is user friendly and easily accessible. CC-T reported that she will prepare a report of her findings. CMM additionally volunteered to carry out this exercise to see what results he found.*

6. Law – Tech / AI

(a) LSB Consultation – draft statutory guidance on promoting technology & innovation

LSB have published a draft consultation paper on their proposed guidance under section 162 of the Legal Services Act 2007 regarding the promotion of the use of technology and innovation to improve access to legal services, and to focus on regulatory objectives.

The statutory guidance clarifies the LSB's view that regulators should be proactively engaged in fostering a regulatory environment that encourages technological and innovative solutions to meeting consumer needs.

It was agreed amongst the board that the paper was exhaustive and ambiguous as to what it is trying to achieve. Nevertheless, the Faculty Office are required to respond accordingly.

ML reported that on review of the paper he is of the opinion that the paper is more to alert the profession that technology should be taken into account. In response, ML suggested that a short summary of the steps to take AI into account when looking at it from a practitioners point of view and how it has affected services. Respond to issues raised and leave it at that. ML additionally suggested that it may be worth highlighting the legal barriers that currently exist, preventing full use of technology. For example, the way deeds, oaths and declarations are required to be signed.

Action: *NT has arranged a meeting with the Author of the guidance on Monday 11 September 2023 to discuss the paper and will have the opportunity to raise any questions with regards to what information they are requesting. Following this meeting, NT will then assess internally how we respond.*

ML agreed to put together draft report on what the profession is currently doing.

(b) General Update

ML informed the board of his article in the September issue of "Lawyer Magazine". ML reported the article is two-fold 1) to inform of the profession and 2) to attract wider audience to the profession.

Action: *ML to circulate an electronic version of the article to the Faculty Office*

7. AML/OPBAS Matters:

MB reported that a consultant has now been appointed to conduct a review of the current AML process and deliver specialist in house training and to improve AML framework.

MB indicated that the consultants' findings following the review were positive. Going forward there are two areas that require further consideration 1) consolidate training between inspectors and Faculty Office Staff and 2) how the "BOOMS" – (Beneficial Owners, Officers, and Managers) process was currently being handled by the FO.

8. First Tier Complaints – LSB Consultation on requirements, guidance, and policy statement

The LSB have released a consultation paper centered around the draft new section 112 Requirements for Approved Regulators Regulatory Arrangements for Authorised Persons's Complaints Procedure on First Tier Complaints and accompanying draft Guidance under section 162 of the Act to replace the First Tier Complaints handling. Additionally, the paper includes a draft statement of policy on First Tier complaints, setting outcomes for regulators to pursue in respect of the collection and analysis of intelligence on complaints. These proposed changes are designed to replace to the existing First-tier complaints handling requirements and guidance.

CV indicated this consultation is with regards to service level complaints and not conduct level.

NT reported that the number of FT complaints in the past 12 months has been 3. The number of complaints is therefore relatively small and monthly updates are received from LEO of the complaints that have reached them.

The Faculty Office website includes a detailed section on how to make a complaint and notaries should be making reference to it. Although complaints are in small numbers, we do highlight that this could happen to you and we are feeding off, but currently there is not much material.

NT reported that the Faculty Office does not currently have any formal information on Claims made against PPI policy on negligence claims. But these are questions that we will be asking in this years renewal round to gather that information/data. For example, whether they have any complaints lodged against them and whether they resulted in a claim been paid?

All notaries are required to provide their clients with the complaint's procedure (Section 8 Notice) As a belts and brace approach, the consultation paper is suggesting that at the conclusion of a matter, the client is also provided with the opportunity to raise any complaints. This could be achieved by including the complaints procedure on the reverse of the invoice, for example.

Action: review current complaints procedure.

9. Any Other Business:

None to report

10. Date of Next Meeting

Tuesday, 12 December 2023 (In person)

AGENDA PART II – CLOSED ISSUES

(None to report)