

<b>To:</b>	Legal Services Board	
<b>Date of Meeting:</b>	27 January 2015	<b>Item:</b> Paper (15) 05

<b>Title:</b>	Executive Report – January 2015	
<b>Workstream(s):</b>	All	
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<b>Status:</b>	Official	

<b>Summary:</b>
<p>The paper updates Board Members about:</p> <ul style="list-style-type: none"> <li>• operational and governance issues</li> <li>• progress on key projects</li> <li>• other internal and external policy developments</li> <li>• stakeholder and communications activities.</li> </ul>

<b>Recommendation(s):</b>
The Board is invited to note the Executive’s progress report.

<b>Risks and mitigations</b>
<b>Financial:</b> N/A.
<b>Legal:</b> N/A.
<b>Reputational:</b> N/A.
<b>Resource:</b> N/A.

Consultation	Yes	No	Who / why?
<b>Board Members:</b>		✓	Routine report
<b>Consumer Panel:</b>		✓	Routine report
<b>Others:</b>	N/A.		

<b>Freedom of Information Act 2000 (Fol)</b>		
Para ref	Fol exemption and summary	Expires
24	Section 44 - restricted information under s167 LSA which was obtained by the Board in the exercise of its functions and therefore must not be disclosed	

25

Section 36(2)(b)(i) – information likely to inhibit the free and frank provision of advice

## LEGAL SERVICES BOARD

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### Executive's Progress Report – January 2015

#### Operations and governance issues

1. This is the first Board meeting post-Chris Kenny's departure at the end of November and the delegations of his responsibilities to the Strategy and Corporate Directors put in place by the Board to cover the December/January period have enabled the team to continue working effectively over what has been a relatively quiet period in regulatory terms.
2. By contrast, organisational developments have continued a pace with significant recruitment activity to meet turnover. The Board will be aware that Kate Webb was the successful candidate for the Head of Regulatory Reviews and Investigations post, from what was a strong and broad external and internal field. The process was run by Penna and involved open external advertisement as well as search. The interview panel comprised the new CEO, Strategy and Corporate Directors. Kate joined us relatively recently, in June 2014, from the health sector oversight regulator and brings valuable regulatory experience.
3. We also made two further appointments at Regulatory Associate level – Cat Kelly (currently Corporate Affairs Associate) and Graeme MacLaclan (currently at Citizens Advice). Again, we had a strong field and we were pleased to be able to supplement our team with essential consumer policy experience whilst also being able to demonstrate our commitment to developing existing talent.
4. An internal move does of course create another vacancy but we have always recognised that the corporate affairs role is rarely a long-term commitment – and it provides an excellent springboard for colleagues relatively new to policy but keen to develop into the LSB. By the time of the meeting, recruitment for this post will be well underway, alongside recruitment for two upcoming Project Manager vacancies (an external process being run by Quadrant Search and Selection).
5. We are seeking, in the first instance, internal candidates for the role of Head of Research and Development, in light of Chris Handford's forthcoming departure at the end of February.
6. Finally, we received one further resignation in January: Harriet Gamper who has been with us for three years as Consumer Panel Associate will be leaving in April to join the Office for Rail Regulation.

7. The team were also very pleased to have the chance to meet Richard Moriarty before Christmas and we are now preparing for his arrival and planning induction activities.

### **Board appointments**

8. At the time of drafting, we understand that recommendations are with Ministers for two new lay Members for the LSB following interviews in December. Ministerial clearance was also, belatedly received, for commencement of the non-lay exercise and that exercise has now closed. We are advised that 34 applications were received and the Chairman will be part of the selection panel.
9. By the time of the Board meeting, long listing will also have taken place for new OLC Members where the selection panel is chaired by Terry Babbs. A total of 72 applications were received – 50 for the lay roles and 22 for the non-lay.
10. An update on latest developments regarding OLC governance matters will be provided in the meeting.

### **Sponsorship matters**

11. During December, we were advised that the MoJ Permanent Secretary had commissioned MoJ Internal Audit to conduct a review of all MoJ arms-length bodies non-executive and senior staff remuneration arrangements to cover all colleagues included in Remuneration Reports. We engaged with this exercise and the Director of Finance and Services provided all necessary evidence to the auditor. We expect sight of the report before the end of March.
12. There has not been any further correspondence to date on the financial control matters reported at the November Board meeting.
13. We have been working closely with our sponsor team on a number of matters emerging from BIS namely the proposed introduction of small business appeals champions and the applicability of proposals to the LSB and the regulators. In addition, the Chancellor's Autumn Statement announced that the "Accountability for Regulator Impact" initiative<sup>1</sup> would be extended with immediate effect to "government-sponsored voluntary regulation". The executive is beginning to consider the impact of this announcement on the LSB's work, given in particular

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<sup>1</sup> The ARI scheme was introduced by the 2012 Autumn Statement. It applies to non-economic regulators, including the LSB. An assessment under ARI (called a business engagement assessment) is triggered by any proposal to change regulation that does not demand a full regulatory IA but is predicted to significantly increase or decrease the regulatory burden on business. Before proposals are made, regulators (or departments) should assess the likely impact on business. This must make it clear to business what is proposed and it should also provide an assessment of the broad effects, based on the best evidence available. The assessment then forms the basis of discussion between the regulator (or department) and business representatives.

our stated intention to explore possibilities offered by voluntary regulation in the legal services market by section 163 of the Legal Services Act<sup>2</sup>. This will need to include discussion with LSCP, OLC and the approved regulators, to ensure they have this on their radar and are thinking about what impact it may have on them.

### **LSB Strategic Plan 2015-18, Business Plan 2015/16 and budget**

14. A small group of stakeholders including regulators, representative bodies and journalists attended the launch of our consultation on 10 December. A brief presentation and Q and A session with the Chairman and Strategy Director was well-received. To date we have received only a small number of responses – which is not unusual – and we are now preparing for two stakeholder workshops (on 26 January and 6 February). The closing date for responses is 20 February and the final documents will come to the Board for approval in March.

### **Deregulatory work streams following Ministerial summit in July 2014**

15. Progress continues on the work agreed by chairs of regulators in October and cross-regulator working groups are being set up for each of the four work streams with a view to being ready to present outputs to in-coming Ministers following the Election. Following comments made by several representative bodies (eg TLS, ITMA, the Bar Council), each working group will consider how best to involve the representative bodies in its activity. While we will be as transparent as possible about this cross-regulator work, the practicalities of involving a wider group of stakeholders with disparate agendas and interests need to be worked through. We agree that it is important that the representative bodies are able to engage with any outputs before they are shared with Ministers or published.

### **Cost of regulation project**

16. Our survey into the cost of regulation for providers of legal services was open between 13 October and 28 November. CLC, CLSB and IPS were given a one week extension in order to boost the survey response rate for their authorised professionals. We received a total of 964 fully completed responses to the survey, which we consider to be a reasonable response rate overall. Of this number, 375 responses came from entities and 586 from individuals. We are now analysing the responses with a view to publishing our findings in March 2015. The survey also generated 181 volunteers for the next stage in-depth research, which is in progress. This research will give us a deeper understanding of those things that service providers regard as the costs of regulation.

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<sup>2</sup> Section 163 allows the LSB to enter into voluntary arrangements with any person, under which the LSB can provide assistance for “purpose of improving standards of service and promoting best practice in connection with the carrying on of any legal activity”.

## **SRA performance**

17. The ABS authorisation data provided by the SRA on 15 January 2014 showed that:

- The SRA has granted 363 ABS licences
- It takes on average just over six months from the submission of an application for a firm to be granted an ABS licence;
- Of the applications submitted since January 2014 which have been granted a licence (73 licences) the average time taken is under three and a half months
- The SRA has reduced its work in progress caseload from 142 applications in January 2013 to 37 in January 2015 and during this time it has closed 105 applications through withdrawal and granted 288 ABS licences
- The average age of a work in progress application is over two and a half months and,
- None of the work in progress applications are older than nine months and four applications are over six months old.

18. Of the four work in progress applications that are over six months old the SRA has had to issue extension notices to the decision period for three of them. It has not had to do so for the other application as the SRA only considers that the six month decision period begins when an application is deemed complete.

19. We still have concerns as to whether the information required from applicants by the SRA is proportionate or targeted to what the Legal Services Act actually stipulates. In this regard, work done by the LSB on schedule 13 approvals exposed a number of areas where information requests have been considered disproportionate

20. The SRA has promised to review these issues. We consider that this represents a genuine commitment. We understand that it has identified and is already carrying out work on its authorisation process. However, it has not as yet produced project plans or shared these with us, as agreed. As such, the scope, timetable and expected deliverables for its review are unclear. We have made clear to the SRA that the S55 notice will have to remain in place until this is progressed.

## **Regulatory contact with the Bar Standards Board (BSB)**

### *Standard contractual terms review*

21. The BSB responded on 15 December to the letter we sent to them on their review of the standard contractual terms (the original letter from the LSB was included in

the November Board pack). In this letter the BSB assured the LSB that it will consider from first principles whether the standard contractual terms should remain part of its regulatory arrangements. The letter also set out an ambitious (necessarily so considering the requirements of the undertaking) timetable for the work.

22. We replied to this letter on 19 December welcoming their commitments and requiring, in advance of a meeting timetabled for 30 January, a project plan for the review and detail of the resources committed. We will update the Board at the meeting if we have received this information.

### *Kings Court Chambers*

23. On 9 December 2014 the Legal Ombudsman used its powers under the Legal Services Act 2007 to name a barrister as a result of their concern that his continued practice represented a risk to the public. The Legal Ombudsman had made 14 decisions against the barrister in the last year. On 19 December an interim suspension hearing for the barrister was held. The BTAS panel decided not to impose an interim suspension but has instead restricted the barrister's ability to provide public access work for four months.

24. The BSB is pursuing enforcement activity against the barrister in question. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

25. Once this issue is resolved, there may be merit in reviewing whether the BSB has the appropriate powers, arrangements and procedures in place to ensure that such a situation is unlikely to arise again. [REDACTED]  
[REDACTED].

### **Statutory decisions**

26. Since the last Chief Executive's report the following decisions have been issued:

- Bar Standards Board (BSB) Handbook; regulatory arrangements for entity regulation
- Solicitors Regulation Authority (SRA) Registered European Lawyers - introduction of concept of Exempt European Practices
- SRA Professional Indemnity Insurance Rules

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<sup>3</sup> See letter from LSB to BSB dated 8 October 2014 for further background on the section 55 notice - [http://www.legalservicesboard.org.uk/about\\_us/board\\_meetings/pdf/20141027\\_27\\_October\\_2014/Paper%20\(14\)%2058%20CEO%20Progress%20Report%20October%202014%20Anx%20B.pdf](http://www.legalservicesboard.org.uk/about_us/board_meetings/pdf/20141027_27_October_2014/Paper%20(14)%2058%20CEO%20Progress%20Report%20October%202014%20Anx%20B.pdf)

- Chartered Institute of Legal Executives (CILEx)/ILEX Professional Standards (IPS) Maximum level of fines in enforcement proceedings.

27. We issued four exemption directions:

- Council for Licensed Conveyancers: changes to three sets of rules (mostly in respect of its role as a licensing authority) – periods of time allowed for appeals and temporary licences, plus two further minor alterations unrelated to its licensing role
- IPS: changes arising from the coming into force of the section 69 order and other minor changes
- Intellectual Property Regulation Board (IPReg): technical and consequential changes arising from the coming into force of the section 69 order
- Institute of Chartered Accountants in England and Wales (ICAEW): addition to the minimum approved wording for personal indemnity insurance

28. We approved under section 51 of the Act (practising fees) annual fees for BSB entities.

29. In respect of orders (other than CLC s69 which is dealt with in the main agenda) the CILEx, ICAEW and IPReg section 69 orders came into force on 8 December 2014.

30. At the time of writing, we were considering three rules change applications

- SRA: changes to its Continuing Professional Development rules
- SRA: technical changes to its education and training requirements,
- CILEx/IPS: Compensation Fund Contributions.

31. We were also considering the BSB section 51 practising fees and annual fees form for individual barristers. We will update the Board on all these at the meeting.

## **Research**

32. Unbundled research – this is a joint piece of work with the Consumer Panel – looking at the consumer experience of unbundled services (where the provider does part of the work and the consumer does part of the work). The contract has been awarded to IPSOS Mori and field work will shortly begin. A full report is due to be published in May.



33. The contract to carry out the small business legal needs survey has been awarded to YouGov with the analysis to be conducted by a team from the Kingston University Small Business Centre, led by Professor Robert Blackburn. The survey will be completed by mid-March and a full report is due in May.

## **QASA**

34. On 28 November 2014, the Court of Appeal refused the Claimants' leave to appeal to the Supreme Court. As anticipated, the Claimants have made a further application for permission directly to the Supreme Court. It is not known when that will be determined.

## **Open data**

35. As part of the LSB's work on quality in legal services, the LSB and the Consumer Panel have consistently championed the need for greater transparency and access to data to support the empowerment of consumers. Part of this work has been to encourage regulators to publish the data they hold on their regulated communities in an easily reusable format, for example an Excel spreadsheet. It is our expectation that this will support the development of consumer choice tools (comparison websites) and potentially lead to an effective consumer quality assurance market.

36. This work has been ongoing for a considerable period of time but real progress has recently been made:

- CLC, CLSB, ICAEW, IPReg, SRA, SDT and the Legal Ombudsman have all made some core regulatory data available to comparison websites in a reusable format
- BSB and the Faculty Office are due to have also published data in reusable format by the end of January and
- IPS are updating their publication policies ahead of the publication of data on their members in reusable format in June

Future work will consider whether the data that has been published can and should be expanded on.

## **Office for Legal Complaints**

37. Terry Babbs and Julie Myers met OLC and Legal Ombudsman colleagues twice (in November and December). November saw the regular quarterly performance indicator discussion with Stella Manzie now leading for the OLC Board, taking over from Tony Foster. As reported to the Board previously, performance has taken a dip in some areas, notably levels of Ombudsman work in progress, and we had a robust discussion on the OLC Board's assessment of the executive's

plans for performance improvement. Alongside this, Stella reported that the OLC would be undertaking a root and branch review of performance reporting which would, hopefully, address our long expressed concerns at the failure to link quality into performance reporting adequately.

38. In December, we met Karen Silcock, OLC ARC Chair as part of a previously agreed commitment for LSB and OLC ARC Chairs to meet at least annually to discuss shared risks. This was a frank and robust discussion and Terry will no doubt say more in the meeting.
39. The OLC has appointed Ian Brack as interim CEO. Ian has a background in the public sector and the Corporate Director had productive discussions on MoJ proposals to introduce a new Framework Document for OLC where it was clear that our thinking on a range of governance and control matters were closely aligned. An update on the Framework Document will be provided in the meeting.
40. Plans are still on track for the claims management jurisdiction to become live at the end of January 2015 and OLC report that implementation work has proceeded well.
41. Finally, the OLC moved offices in Birmingham over Christmas to smaller and more cost effective premises. At the time of writing, whilst the move had gone relatively smoothly, there remained a significant problem with their telephony supplier which was requiring cumbersome and unwelcome workarounds.

## **Update on Scotland**

### *Entity regulation*

42. The Law Society of Scotland is to progress its work on the future regulation of solicitors and law firms. The Society's Council considered responses from two recent consultations on whether it should consider moving towards entity regulation of the profession and potentially introducing a principles-focused form of regulation. Following the responses gathered, Council members agreed to undertake further work on entity regulation.

## **Communications and stakeholder engagement**

43. During December:
  - Caroline Wallace spoke on 'regulatory perspectives' at the Ark Group risk management conference
  - Mike Pitt and Caroline Wallace met two members of the judiciary nominated by the Lord Chief Justice to liaise with the LSB: Mr Justice Singh and Mrs Justice Rose. This meeting was particularly helpful as the judges indicated that they would be prepared to establish points of contact for us to obtain a

'corporate' response from the judiciary to several of our key pieces of work (unbundled services research, regulatory standards)

- A team from the LSB and the Consumer Panel met Malcolm Davies from the Welsh Government for a discussion largely focussed on the development of the legal services (and professional services) markets in Wales
- Mike Pitt, Julie Myers and Caroline Wallace met the Attorney General and Solicitor General for an introductory meeting. The overall tone of the meeting was open and we had a good opportunity to discuss our approach to regulation and the legal services market
- Caroline Wallace attended the UK Regulators Network Senior Representatives meeting, which included discussion of the proposed UKRN work plan for next year (UKRN's on-going projects on consumer engagement, affordability and regulating for quality continue to be of interest to us). The meeting also signed off for publication UKRN's consumer engagement and switching report, which contains very useful material for the LSB, including a framework for understanding engagement and switching, and examples of interventions that have been tried in other sectors
- Jessica Clay and Nick Glockling addressed the NDPB Lawyers' Group on the handling of a judicial review claim
- We announced our decision on the SRA's application to reduce the minimum amount of Professional Indemnity Insurance to be held by practitioners, and we issued a statement on special bodies.