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| To: | Legal Services Board | |
| Date of Meeting: | 29 April 2015 | Item: Paper (15) 20 |

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| Title: | Chief Executive's update – April 2015 | |
| Work stream(s): | All | |
| Author / Introduced by: | Richard Moriarty, Chief Executive richard.moriarty@legalservicesboard.org.uk / 020 7271 0057 | |
| Status: | Official | |

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| Summary: |
| <p>The paper updates Board Members on:</p> <ol style="list-style-type: none"> 1. People and governance issues 2. Key projects and work streams 3. External policy developments 4. Communication and stakeholder activities |

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| Recommendation(s): |
| The Board is invited <u>to note</u> this report. |

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| Risks and mitigations |
| Financial: N/A. |
| Legal: N/A. |
| Reputational: N/A. |
| Resource: N/A. |

| Consultation | Yes | No | Who / why? |
|------------------------|------|----|----------------|
| Board Members: | | ✓ | Routine report |
| Consumer Panel: | | ✓ | Routine report |
| Others: | N/A. | | |

| Freedom of Information Act 2000 (Fol) | | |
|--|---|---------|
| Para ref | Fol exemption and summary | Expires |
| Para 5, 8, 35-37 | S36(2)(b)(ii) - information likely to inhibit the exchange of views for the purposes of deliberation by the Board | |

LEGAL SERVICES BOARD

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CHIEF EXECUTIVE'S UPDATE – APRIL 2015

A. PEOPLE AND GOVERNANCE ISSUES

Board appointments

1. We were delighted to hear that the Lord Chancellor and Lord Chief Justice agreed to extend the appointments of Bill Moyes and Ed Nally until 30 September 2015. This provides essential reinforcement for the Board in light of the failure to appoint a lay and non-lay member from recent recruitment rounds. The MoJ Public Appointments Team have started another competition for a lay member and planning is underway for a new competition for a non-lay member.

Recruitment

2. Recruitment for all vacancies has now concluded and a number of appointments have been made since the last Board meeting. In May, we will be joined by Chris Nichols and Emma Kelly-Dempster as Regulatory Project Managers. Chris is currently working at the Bar Standards Board (BSB) and Emma at the Professional Standards Authority (PSA). Karen Marchant has also been promoted to Regulatory Project Manager (from Regulatory Associate). We have also made an offer to a new Consumer Panel Manager which has been accepted in principle. This remains subject to references and I will be able to provide the name of the candidate at the Board meeting.
3. Once all of these colleagues are in post, we will be back at full complement.

Office for Legal Complaints (OLC)

4. All new OLC Board Members have taken up their posts. The first Board meeting with the new membership is scheduled to take place on 21 April 2015. The Board meeting will follow the OLC's scheduled Audit and Risk Assurance Committee meeting earlier that day, which the Permanent Secretary is scheduled to attend, as she remains the OLC's Accounting Officer. I will update Members on any matters arising from these meeting if necessary.
5. The Chairman and I met our OLC counterparts on 30 March. Key points to note from this meeting are that managing the consequences of the 2013/14 Annual Report and Accounts, [REDACTED]

[REDACTED] continues to occupy significant amounts of senior management time.
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

6. Notwithstanding this, we have had constructive meetings on a variety of policy and governance issues, including commencing a review of our governance protocols (in particular the Memorandum of Understanding) and the timetable for a review of the Scheme Rules. Updates on two other matters follow.

MoJ sponsorship matters

7. The main issue of discussion between LSB and MoJ since the March Board meeting has been the level and nature of Financial Transaction Limits. These are the controls that Cabinet Office and sponsor departments use to control individual categories of spending such as on recruitment, communications, etc.
8. This is a matter that has been reported to the Board on previous occasions and on which I indicated in March that I was keen to find a solution. We had a helpful discussion with representatives from MoJ Corporate Finance on 15 April, with our sponsor team also present. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

B. KEY PROJECTS AND WORKSTREAMS

SRA ABS authorisations

9. Data provided by SRA on ABS authorisation on 13 March 2015 showed:
 - The SRA has granted 391 ABS licences
 - There were 42 work in progress applications, and the average age of work in progress application is just over two months
 - Two applications were over six months old, and one was just short of this.
10. Data provided on 15 April 2015 showed:
 - The SRA has granted 402 licences
 - There were 37 work in progress applications, and the average age of a work in progress application is around two and a half months
 - One work in progress application is over six months old.

11. We consider that the data the SRA has been providing over the last few months demonstrates substantial improvement in the speed with which the SRA is dealing with ABS authorisation requests.
12. However, for some time we have been concerned about the disproportionality of the SRA's authorisation processes, and its plans to improve its processes were unclear. Recent meetings and discussions with the SRA around this point have however provided greater clarity about its proposals (demonstrated, for example, on 16 April with the launch of a consultation proposing changes to SRA Authorisation Rules for ABS). These developments have given us greater confidence about the scope and impact of the proposed process and policy reforms. For these reasons and in light of the data showing substantial improvements in the speed of the process, we have concluded that it is appropriate to end the section 55 monthly data reporting obligation on the SRA, and we have consequently revoked the s55 notice with immediate effect. Oversight of the SRA plans to improve ABS authorisation will continue through LSB's "business as usual" activities and appropriate work streams.

Bar Standards Board (BSB) undertakings

13. In 2013, the LSB investigated the Bar Council's failure to comply with the Internal Governance Rules in its dealings with the Bar Standards Board (BSB). To resolve the matter informally, the Bar Council provided certain undertakings to the LSB. Our current interest is compliance with the final undertaking, delegated to the BSB. In 2014, the Board discussed the BSB's failure to comply with the first aspect of the undertaking – to complete and publish a review, and the Chair met Patricia Robertson (member of the BSB Board) to discuss the issue.
14. Our focus is now on compliance with the final part of the undertaking. This has a deadline of 31 July 2015, by which time the BSB must submit an application to the LSB to alter regulatory arrangements around the standard contractual terms *if* a review identified that it was not appropriate for the terms to remain within the BSB's regulatory arrangements (at present, the standard contractual terms feature in a list of exemptions to the Cab Rank Rule). We have been in continuous contact with the BSB about its progress towards compliance, since its failure last year to comply with the first aspect of the undertaking.
15. On 27 March 2015 the BSB issued a consultation on whether it was necessary to retain references to the standard contractual terms in the list of exemptions to the Cab Rank Rule. The deadline for responses is 19 June 2015. We are concerned that time previously allocated for analysis of responses and development of the application (if any) to the LSB to change regulatory arrangements has been curtailed by delays in issuing the consultation paper. However, we have been assured by the BSB that they remain "on track". Nevertheless, we are in the process of exploring options for the Board in the event that the BSB fails to comply with the undertaking.

Statutory Decisions

15. Since the last report, we have considered and approved one rules change application:
 - At the time of writing we are considering a full rules change application from the SRA in respect of revocation of its Insolvency Practice Rules 2012 to give effect to the SRA's decision to cease regulating insolvency practitioners from 1 November 2015. The SRA is currently a Recognised Professional Body for the purposes of authorising solicitors to act as appointment holders in insolvency matters. An oral update will be provided to the Board.

16. We have in addition approved five exemption requests through the issue of an exemption direction, all in respect of the SRA:
 - Two separate exemptions issued to remove transitional arrangements in respect of sole practitioners
 - Higher Rights of Audience – removal of out of date transitional provisions from the Higher Rights of Audience Regulations 2011
 - Alteration to SRA Handbook glossary definition of “out of scope money” to correct a typographical error
 - Approval to remove specific dates from the SRA Quality Assurance Scheme for Advocates (Crime) Regulations and removing a minor administrative requirement for solicitors in the regulations

17. The Deregulation Act, within which the CLC's designation as a regulator for Rights of Audience and Reserved Instrument Activities will now sit, received Royal Assent on 26 March. The MoJ have advised that there is about a two month wait from that date before any commencement orders arising from the Act can be laid.

18. We continue to work with the BSB and the MoJ on an order under section 69 to modify the functions of the Bar Council.

Research

19. Progress continues on the first drafts of reports on innovation and unbundling. We are also preparing the interim report on the cost of regulation 'in depth' research. These reports will be finalised over the coming months and published in due course.

20. With regard to the cost of regulation, the challenge continues to be the shortage of participants, with just 62 out of the original 181 volunteers taking part, despite a range of activities to try to get more members of the profession involved. This will have the effect of limiting the level of analysis that can be undertaken.

21. The Small Business legal need survey has closed, with 10.6k respondents, 20% of whom had participated in the 2013 survey. This will allow in-depth analysis to ascertain whether, from this group of consumers' point of view, the reforms have had any impact over the last 3 years. The analysis should be ready for publication in June.
22. The research programme for the year ahead was published as part of the business plan in late March and a Research Strategy Group meeting will take place on 28 April.

OLC report on the transparency of the costs of legal services

23. On 24 March 2015, the LSB received the OLC's response to the section 120¹ requirement to provide the LSB with a report on complaints received by the Legal Ombudsman (LeO), concerning a perceived lack of price transparency. Notice of the requirement of this report was sent to the OLC on 18 June 2013 with a deadline for response of 1 April 2015. The section 120 report is attached at Annex A, and it will be published along with the rest of the papers relating to this Board meeting, fulfilling the requirement to publish as set out in the Act.
24. At the LSB's Board meeting in May 2013, the Board considered a paper on damages based agreements (DBAs)² and the draft OLC Annual Report for 2012/13. Both of these documents raised concerns about the transparency to consumers of the costs of legal services when funding arrangements such as conditional fee arrangements³ and DBAs were used.
25. Ahead of the May 2013 Board meeting, we received assurances from the approved regulators that the risks associated with DBAs for those they regulated would be tackled through their regulatory frameworks. The Board accepted these assurances and, following the May 2013 meeting, we wrote to the regulators and the OLC confirming this and expressing the Board's view that all parties should remain alive to the risks posed by DBAs and the potential for the use of such funding arrangements to increase. We made it clear that we expected developments in the area of price transparency in general and transparency of

¹ Under section 120 of the Legal Services Act 2007, the LSB has the power to require the Office for Legal Complaints to prepare and give to the LSB, within a specified period, a report in respect of any specified matter relating to the functions of the Office for Legal Complaints. The Act also requires the Board to publish any report given to it under S120.

² Damages-based agreements are agreements between a person providing advocacy, litigation or claims management services and the recipient of those services. Where if the recipient obtains a specified financial benefit in connection with the matter in relation to which the services are provided, they will pay the person providing the services a defined amount of the financial benefit obtained.

³ Conditional fee arrangements are agreements where a solicitor and a client agree to share the risk of litigation by defining certain success criteria. This means that the solicitor receives a success fee (up to 100% of their normal fee) if the case is won and nothing, or sometimes a discounted fee, if it is lost (or an agreed level of damages is not awarded).

DBAs in particular to be monitored to ensure good consumer outcomes are secured.

26. The 2015 OLC report has identified that complaints concerning transparency around the costs of legal services make up over a quarter of all cases in the period looked at⁴. Unfortunately, limitations on the information available to the OLC have prevented it from being able to provide more than this high level finding.
27. LeO introduced a new case management system in December 2014, and while it was too late for data from this new system to be included in this report, it is hoped that it will provide additional useful information in the future. In this regard, the LeO's draft Strategic Plan for 2015-17 includes a goal 'to disseminate what we have learned more widely' by 'feeding back insights and learning from our work to the profession, consumers and policy makers'.
28. We do, however, need to be mindful of the following comment in OLC's section 120 report: 'LeO systems are designed primarily to resolve complaints and as such the primary purpose of these systems is not as a research tool'. We will work with the LeO to establish how its systems could effectively fulfil both purposes and will also provide further comments on what it would be useful for future reports to include, for example, greater contextual information by including incidence in underlying population or similar, and any additional detail on the nature of service provider(s) where this is available.
29. We agree with the conclusion in the report that 'although the Legal Ombudsman has not seen any issues around DBAs or 'no win, no fee' funding methods specifically during this time period, there are still challenges around lack of price transparency for other funding models'. We will therefore be writing to the regulators to highlight the report's findings and remind them of our expectation that they monitor developments in the area of price transparency to ensure good consumer outcomes are secured, and that we will continue to review their progress with this through the LSB's regulatory performance and oversight work programme.

Certifying the OLC as a certified Alternative Dispute Resolution (ADR) provider

30. On 16 March 2015, the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 were laid. These are the first of two sets of regulations implementing the EU ADR Directive. The Regulations designate the LSB as a 'Competent Authority' for the purpose of certifying the OLC as a certified ADR provider.
31. The Directive's stated aim is to ensure that consumers across Europe can access redress when things go wrong with goods or services they have purchased, without having to resort to legal action. In the UK, with our patchwork of statutory

⁴ The report covers cases accepted by the Ombudsman scheme concerning transparency of the cost of legal services from 1 June 2014 to 31 January 2015.

and non-statutory ADR provision, sectoral regulators have been given the certifying function for ADR providers in their respective areas. For any market or aspect of a market not covered by a sectoral regulator, the Trading Standards Institute (TSI) has been designated as the Competent Authority. A Competent Authority Working Group has been established by BIS to ensure all activities are co-ordinated and that there is a consistency of approach.

32. All traders will be required to signpost consumers to a certified ADR provider from July 2015. For service providers obliged to use a statutory scheme e.g. those in the legal and financial sectors, unless the statutory scheme is certified, they would need to signpost consumers to an alternative certified provider – as well as to the statutory scheme.
33. The Directive lists the criteria that an ADR provider must meet to be certified and these have been replicated in the Regulations. The OLC will be preparing a submission for the LSB seeking certification based on the published criteria and, in addition, will need to make some technical amendments to their scheme rules to enable compliance. We anticipate the timetable for this process to be as follows:
- Discussion with OLC on format of submission (based on protocols developed by Trading Standards Institute) – April
 - Paper to May LSB meeting outlining process and seeking delegation of a Board sub-group to review the submission and certify – May
 - OLC submission received – end May
 - LSB sub-group review – June
 - Certification decision – end June.

Equality and diversity

34. Our report on the regulators' progress in implementing our guidance on diversity has been published following the roundtable with the regulators held on 23 March. Guest speakers at the event suggested uses to which the regulators could put the data that they are collecting to make a difference on diversity in the legal sector. A follow up meeting is being arranged, at which regulators will be asked to agree to further actions.

[REDACTED]

35. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

36. [REDACTED]

37. [REDACTED]

C. EXTERNAL POLICY DEVELOPMENTS

BIS and small business appeals champions

38. On 26 March 2015, LSB took part in a workshop organised by the Department for Business, Innovation and Skills (BIS) and MoJ, to discuss how the Small Business Appeal Champion initiative (provided for by the Small Business, Enterprise and Employment Act 2015) may be extended to the legal services regulators. In its most recent consultation paper (December 2014), BIS announced its intention to consider whether legal services regulators, including the LSB, should be brought within the scope of the Small Business Appeal Champion initiative. If extended to the legal sector, the obligation to appoint and to fund SBACs will sit with MoJ.

39. During the workshop discussion, it became clear that the LSB's existing oversight role was more extensive than BIS had previously understood, and that it may provide a proportionate means of meeting the SBAC policy intent of independent review of regulators internal appeal arrangements. Following the workshop, LSB colleagues met separately with officials from MOJ and BIS to explore this potential equivalence further and these discussions are continuing. Any decision on the most appropriate approach for the legal services sector will be taken by new ministers following the election.

D. COMMUNICATIONS

40. External communications activity has been limited as a result of the commencement of the pre-election purdah period on 30 March.

41. The report on the first phase of the cost of regulation project was published before the start of purdah, as were the reports on online / DIY divorce, the Diversity Review and the three year strategic plan and 2015/16 business plan. Our research on online divorce was picked up by Radio 4 You and Yours programme.
42. Caroline Wallace took part in a panel discussion at the 360 Group annual conference.
43. The LSB twitter account now has 909 followers. This account proved useful in informing the general public of the difficulties the office faced in the days immediately after the Kingsway fire.

22 April 2015