

To:	Legal Services Board	
Date of Meeting:	27 May 2015	Item: Paper (15) 30

Title:	Chief Executive's update – May 2015	
LSB Strategy fit	All work streams	
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Status:	Official (restricted)	

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. Communications

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

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
4, 5, last two sentences of 11, second sentence of 13b, last	Section 36(2)(b)(ii): information likely to inhibit the exchange of views for purposes of deliberation	TBC

sentence of 15, 24,		
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LEGAL SERVICES BOARD

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CHIEF EXECUTIVE'S UPDATE – MAY 2015

PEOPLE AND GOVERNANCE ISSUES

Board appointments

1. The MoJ Public Appointments Team has commenced the competition to appoint a new lay member. Long listing has taken place, the short listing meeting is scheduled for 16 June, and interviews 21 July. We remain unclear at the present time as to the final outcome of the non-lay competition.

Recruitment

2. Recruitment for all vacancies has concluded and most of the new colleagues have now taken up their posts, with Chris Nichols (from the BSB) and Emma Kelly-Dempster (from the Professional Standards Authority) joining in May. Once all of these colleagues are in post, we will be back at full complement.

Office for Legal Complaints (OLC)

3. We continue to engage closely with the OLC. A quarterly performance meeting with the new OLC Board member responsible for performance was held on 12 May 2015, led by Terry Babbs and Jenny Hart. There are two meaty items elsewhere on the agenda that deal with OLC issues in relation to LeO performance risk and implementing the Alternative Dispute Resolution Directive.

4. [REDACTED]

5. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

MoJ sponsorship matters

6. Board members will know that we have a new Lord Chancellor and Secretary of State in Michael Gove. In the communication around his important early messages, it was clear that his priority is to deliver the Conservative Manifesto pledge of repealing the Human Rights Act and replacing it with a Bill of Rights. Shailesh Vara has been re-appointed as the MoJ Minister with responsibility for legal services. This is helpful as we have an existing relationship with him. He was present at the start of our work on the post-ministerial work streams, in relation to which the Minister recently wrote to our Chair thanking us for our work in encouraging greater collaboration among the regulators.
7. Introductory letters are in the process of being prepared from our Chair to both the Lord Chancellor and Minister. Under our Framework Agreement with MoJ, our Chair meets the Minister once a year around June to discuss our Annual Report. This year's meeting will provide a good opportunity to explain the role of the LSB, the value we can deliver, and update the Minister on the work we are doing with the other regulators.
8. There was nothing about legal services regulation in the Conservative manifesto and some commentators speculate that fundamental legislative reform in this area may be lower down the list of Parliamentary priorities given the current lack of a compelling political imperative for urgent change, the lack of (shared) vision over what should come next, and the inevitable parliamentary 'hassle factor'.
9. That said, we are keen to ensure that we, along with the other regulators, continue to develop a case for change and to scope out the potential options. The aim is that this might form the basis of a submission to Ministers (see below). This work is currently being coordinated by Professor Stephen Mayson. We have been clear in our communications that what interests us is the discussion about what should be regulated, why and how (i.e. key public interest questions). We are less interested at this stage about 'who' should provide the regulation – a discussion that quickly ignites passion and anxiety in equal measure in some stakeholders about the potential for there to be a single legal services regulator. We have been clear that regulatory 'form should follow function'.
10. The new government has strongly signalled two related themes that will continue and they will influence the LSB's operating environment:
 - *Continued public spending restraint* - MoJ is not a 'protected' department and hence bodies such as the Institute of Fiscal Studies have predicted the possibility of significant further reductions in its expenditure in this parliament to contribute towards the government's fiscal objectives. This environment may, however, provide an opportunity for the LSB to reinforce the value of its

role in helping to address unmet legal need by deregulation and liberalisation ('agent of change'), whilst ensuring that key public interest expectations are safeguarded such as standards and the rule of law.

- *A renewed focus on deregulation and reducing the cost of regulation* – The climate is unlikely to be favourable to extensions of regulation. This raises an important political context for our work on the unregulated market. However, it also reinforces the value of the LSB's role in championing deregulation and reducing the cost of regulation. This includes the work we are doing in collaboration with the regulators (see below) and any work we do on our own such as our research on the cost of regulation. Our ability to do more in this area would be greatly enhanced if we had the power to 'call in' for review the regulators' rules as recommended by the original Clementi Report (2004).

11. We submitted to MoJ our initial thoughts on potential exemptions and variations to the Financial Transaction Limits that MoJ has sought to require of all its Arm's Length Bodies, and we plan to discuss this further with their financial governance team in early June. The limits include things like a freeze on recruitment, ban on providing any catering for meetings, no authority for any spend on communication activities, etc. [REDACTED]

KEY PROJECTS AND WORKSTREAMS

Post-Ministerial summit work streams

12. A meeting of regulator chairs was held on 6 May to review progress on the post-summit work streams. The meeting was successful, and focussed less on the detail of the papers and more on overall strategy, including engagement with the representative bodies and how best to make an impact with a joint Ministerial submission.

13. The key actions arising from the meeting were:

- a) All regulators to take the 'deregulatory status report' through their own internal governance processes, with a view to being able to endorse it as a jointly-badged document by the end of May (nb: the LSB endorsed this document at its April Board meeting).
- b) The LSB to set up an event to brief the representative bodies on the post-summit work streams. [REDACTED]

[REDACTED] We have now scheduled this event for the afternoon of Tuesday 9 June. We are planning brief introductions from our Chair and Andrew Caplen, and then presentations on each of the

work streams by speakers from both the LSB and the other regulators, with Q&A to follow. This is an important opportunity to raise the profile of this work amongst key stakeholders, to test reactions to some of the more controversial elements of the work (e.g. legislative reform), and to foster transparency and openness with the representative bodies more broadly.

- c) The LSB to make a proposal on the handling of the post-election joint submission to Ministers, and to revert to the regulator chairs' group. We are in the process of drafting a cover letter for the joint submission, which will include as annexes the deregulatory status report (item a above) and the list of agreed minor legislative changes (as endorsed by the Board at its March meeting). Once the regulators have signed off its format and content, the aim is to make the submission before the summer recess.

14. There is on-going joint working amongst the regulators at executive level on:

- *Alternatives to handling client money* - We have held very constructive discussions with the FCA on its regulatory regime for payment services institutions, and we are in the process of incorporating our learning into the paper. The aim is to circulate the final version of the paper to the regulatory chairs for endorsement as another jointly-badged document, for publication on the LSB's (and other regulators') websites. As agreed at the April Board meeting, following publication, we intend to raise the profile of this issue and to act as a champion of change in this area.
- *Legislative options beyond the LSA* - We will hold the sixth and final workshop with executives from across the regulators on 21 May. We expect to circulate a final version of the output paper shortly after that at executive level, and then to bring it to the next meeting of the regulator chairs (scheduled for 30 June) for discussion and agreement on its status. While we still aim if possible for this paper to be a 'jointly-badged' document – and some regulators are warm to this idea – it still seems unlikely that this will be possible for a majority of the frontline regulators in practice.

15. As mentioned above, the next meeting of regulator chairs is scheduled for 30 June. As well as discussing the paper on legislative options, we plan to hold a wide-ranging discussion with the regulators about the effectiveness of the collaborative process, how collaboration might work in future and what topics for collaboration might be of most interest. We want to communicate that we remain very open to collaboration, but will obviously want to retain our ability to provide leadership and our own views on some areas. [REDACTED]

Regulatory standards 2015/16

16. The Board, at its previous meeting in April, considered our approach to the 2015/16 review of approved regulators' performance against the regulatory

standards. We have revised the timetable to reflect the Board's view that the exercise should be completed by the end of March 2016, and in particular, we have highlighted to the approved regulators that they will have less time to complete their self-assessments. This is to reflect that this work will be more targeted for them than in previous reviews.

17. I have now written to all the approved regulators to inform them of the process and the approach we will take for the 2015/16 exercise, and I also gave a presentation at the Regulators' Forum on 13 May, at which I set out this approach to chief executives and senior colleagues of the approved regulators. I took the opportunity to highlight our intention to take a more targeted and proportionate approach, and to stress that we are keen to use the assessment to shine a light on positive developments and areas of good practice, whilst working with the regulators. We have also now launched a survey targeted at individual users of legal services, and we have sent a data request to the approved regulators for them to complete.

Statutory Decisions

18. Since my last report, we have approved one rule change application, to revoke the SRA Insolvency Practice Rules 2012, giving effect to its decision to cease regulation of insolvency practitioners from 1 November 2015 (this approval was reported orally at the Board meeting on 29 April).

19. While we currently have no applications or requests for exemptions, we are expecting a number of applications over the summer, particularly from the SRA. We will update the Board once the applications have been received.

20. We received the BSB's application to become a Licensing Authority on 29 April. The application has been checked for completeness and published on our website. The LSB has 12 months in which to make its decision on the application, with the possibility of extending this to a maximum of 16 months. We will therefore need to make a decision by 28 April 2016, or no later than 28 August 2016 if an extension notice is issued. We have now begun the detailed assessment.

21. We continue to work with the BSB and the MoJ on an order under section 69 to modify the functions of the Bar Council. The BSB has commenced consultation on the order, which closes on 31 July 2015.

Section 15 of the Legal Services Act 2007

22. The Board may recall that we issued the discussion paper, *Are regulatory restrictions in practising rules for in-house lawyers justified?* in February 2015. The paper presented an initial analysis to establish how current practising rules for in-house lawyers align with the minimum restrictions as set out in section 15 of the Act, and sought views on the approaches to in-house rules taken by the

approved regulators. The consultation exercise finished on 24 April. We received 18 responses to the discussion paper from a range of organisations with an interest in in-house rules, including five of the approved regulators. The next steps for this work will be to analyse the responses received, after which a summary will be published in June.

23. We intend to develop our thinking about our approach to this work over the summer, with a view to bringing recommendations to the Board in September. Our work appears to have sparked a reaction. In their consultation responses, both SRA and BSB stated that they intend to consult on changes to their rules for in-house lawyers. We will therefore seek to manage our approach to and timing for this work carefully to correspond with their plans as and where necessary.

[REDACTED]

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

Research

25. We have now received the reports for the innovation and unbundling projects, as well as a draft report on the in-depth aspect of the cost of regulation project. Our aim is to publish polished versions before the end of July.

26. The Innovation research –funded jointly with the SRA and undertaken by the Enterprise Research Centre at Warwick University – represents the first quantitative assessment of the levels of innovation across the entire legal sector (unregulated and regulated, ABS and non-ABS) and is expected to attract significant interest once published. Communications activity will be developed in due course as we are keen to gain some profile for this unique work.

27. The Small Business legal need survey has closed with 10,600 respondents, 20% of whom participated in the 2013 survey. The analysis continues, but in seeking to ensure robust comparability with the 2013 survey, the researchers have undertaken steps to re-weight the data across the 2013 and 2015 samples. This will delay the completion of the draft report by a few weeks. The analysis should be ready for publication in July. Again we are keen to get some profile for this work.

28. Work on scoping the 2015/16 update to the market evaluation work has started. The aim of this work is to consider how the market has changed since the introduction of the LSA reforms.

29. Rob Cross, our research manager, presented an assessment of the impacts of the Legal Services Act on access to justice at the Georgetown University Conference in Washington on 24 April. This was an opportunity to challenge some of the myths that have been put forward by those seeking to prevent similar LSA reforms in other jurisdictions. A copy of the presentation will be available online shortly.

LSB Immigration Advice and Services review (2012) – update

30. Three of the regulators overseen by the LSB have the role of qualifying regulators (QRs) for the purposes of regulated immigration advice and services. They are:

- Bar Standards Board
- ILEX Professional Standards (now CILEx Regulation)
- Solicitors Regulation Authority.

31. In July 2012 the LSB published a report of the consultation on Regulation of immigration advice and services. This report outlined expectations for the QRs and two outcomes against which they should measure their progress:

- That the immigration advice and services that consumers receive is provided by practitioners who are technically competent and provide good quality advice and client care¹
- That consumer detriment is minimised by quick and effective intervention against those advisers who do not meet minimum standards.

32. In 2012, the LSB committed to ‘review progress in this area over the next 12 months’, and that if concerns persisted, the LSB would then consider using formal powers under the Legal Services Act. Due to other work priorities, LSB did not have the resource capacity to conduct the review as planned in July 2013 and the review was subsequently delayed until 2014/15.

33. A response to the LSB’s report was submitted by the BSB in 2013. This was reviewed in Q3/Q4 2014/15 alongside material published by the SRA, and information provided by CILEx Regulation in November 2014. This review found no evidence to indicate a cause for concern or a need to consider using our formal powers under the Act.

34. The outcomes specified for immigration advice and services in the 2012 paper apply, in general terms, to all areas of legal services. Therefore, it is intended that

¹ A footnote to the first outcome noted that under section 83(5) of the Immigration and Asylum Act 1999, the Immigration Services Commissioner must, so far as is reasonably practicable, exercise her functions so as to ensure that those who provide immigration advice are “fit and competent to do so”. QRs are under no such obligation

future oversight of this topic will be carried out through the regulatory standards programme. This provides an opportunity to maintain oversight in a proportionate and flexible manner, with the additional benefit of being carried out within a framework already agreed with the regulators themselves. We will seek views from third parties with a focus on immigration advice and services as part of the Regulatory Standards programme. This includes speaking with the Office of the Immigration Services Commissioner (OISC).

EXTERNAL POLICY DEVELOPMENTS

Better regulation policy: Enterprise Bill

35. The Board are aware that LSB colleagues have been in discussions with MoJ and BIS officials regarding the application of the Small Business Appeals Champions policy to legal services regulators. On 19 May 2015, the Government announced plans for a new Enterprise Bill in the Queen's Speech. Among other proposals, the Bill will commit central government and independent regulators to reduce regulatory burdens on businesses by at least £10bn over the next five years.
36. The precise list of regulators to be included is still to be decided, but the Bill will include an enabling power for Ministers to bring specific bodies into the target via secondary legislation. Details are still to come on the scope of the target, including any categories of regulation that may be excluded, and how the impact of regulation should be measured, and how the target may be extended to independent regulators who are in a different legal and administrative position from Ministers and departments. We will continue to engage with officials as these proposals develop. This development makes very clear that the new Government's emphasis on deregulation is likely to be strong.

COMMUNICATIONS

37. Media activity has been limited since the last Board meeting, largely as a result of restrictions imposed during the pre-election period. Our Chair also spoke at the Georgetown University event on 24 April.
38. We are developing plans to fulfil the Board's commitment to hold a public event at some point this year. Our current thinking is the following:
- Hold the event on the day of the 26 November Board meeting from about 1630 to 1830, based on a similar format to the event held in Cardiff last year.
 - Hold the event out of London, possibly Leeds, in partnership with the local Law Society, Bar Circuit and other key local stakeholders.

- Undertake the event in conjunction with Legal Services Consumer Panel and OLC, so we that can each explain our respective roles and priorities, and thereby make the event useful for as many potential attendees as possible.

39. We are in the process of organising two Board to Board engagements for later this year with the SRA and BSB. These build on the approach I discussed last month of keeping it small in number, informal and focused.

20 May 2015