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| To: | Legal Services Board | |
| Date of Meeting: | 7 July 2015 | Item: Paper (15) 40 |

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| Title: | Chief Executive's update – July 2015 | |
| LSB Strategy fit | All work streams | |
| 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. Communications |

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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 7-second sentence, Para 14- | Section 36(2)(b)(i)and(ii): information likely to inhibit the free and frank provision of advice and the exchange of views for purposes of deliberation | TBC |

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| second half of sentence, and Annex A | | |
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LEGAL SERVICES BOARD

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CHIEF EXECUTIVE'S UPDATE – JULY 2015

PEOPLE AND GOVERNANCE ISSUES

Board appointments

1. Progress on appointment of a new lay member paused post-election. The panel was originally due to shortlist on 16 June and to interview on 21 July. As a consequence, shortlisting will now take place on the date originally set aside for interviews: 21 July. Two dates are being held for interviews: 3 and 13 August. The process for identifying a new non-lay member is due to start shortly although no dates are as yet being held for any stage.
2. The MoJ Public Appointments Team have expressed confidence that they can secure Ministerial approval to both appointments before the end of September. The Chair has written to Catherine Lee, Director General, Law and Access to Justice Group at MoJ to express his concern at the tightness of this timetable and the risks to LSB if it is not met. Julie Myers will report the latest position at the meeting.

Recruitment

3. All new colleagues identified from recent recruitment have now joined us bar one: Lola Bello, Consumer Panel Manager who will join in early August. At the time of drafting we are in the process of recruiting a Regulatory Associate to cover a six-month period of maternity leave and will shortly commence an exercise to identify a successor Executive Assistant for the Chair and Chief Executive in light of Anna Castiello's decision not to return to work after maternity.

Office for Legal Complaints (OLC)

4. Board members will be aware that we issued Section 120 and Section 121 notices to OLC during June and that OLC responded positively to those notices. I will update the Board on any matters relating to these notices which emerge post-drafting at our meeting.
5. At the time of drafting, we still await the OLC's application to become certified as an ADR entity, but our teams have been working closely to make sure that the application is as thorough as necessary. One hard deadline fell away during June

with the publication by BIS of a second set of Regulations relating to this Directive and which delayed until October the introduction of trader information requirements. We wrote to all regulators and representative bodies to alert them to this change and confirmed that it was still our intention to certify OLC, subject to due process, meaning authorised persons would not need to signpost to two different ADR bodies.

6. The Board delegated authority to a sub-group to consider the OLC's application during June. A meeting of the sub-group took place on 15 June to discuss progress and our approach. This Board delegation now needs to be extended beyond June. We hope certification can be achieved in July, but cannot rule out a later date.

Recommendation:

That the Board agrees to delegate authority to a Board sub-group comprised of Mike Pitt, Terry Babbs, Helen Phillips and Richard Moriarty to consider an application by OLC for certification as an ADR entity.

7. OLC have now agreed terms of reference with MoJ for a review of their governance controls. [REDACTED]
[REDACTED]. The Board should also be aware that OLC are in the process of recruiting a range of senior posts: Chief Executive; Chief Ombudsman; Head of Policy, Research and Communications; Head of IT; and Finance Manager.
8. A paper explaining the nature of our relationship with OLC is on the agenda for our meeting.

MoJ sponsorship matters

9. The Chair and I had a positive and constructive meeting with the Minister in advance of the laying of our Annual Report and Accounts (the first body in the MoJ 'family' to do so). We continue to have a positive working relationship with our sponsor team and will be working with them over the summer to refresh our Framework Agreement in light of the potential for a second Triennial Review of LSB and OLC later this year. I will brief you further on this at our meeting.

KEY PROJECTS AND WORKSTREAMS

Quality Assurance Scheme for Advocates (QASA)

10. As I had previously advised, on 24 June, the Supreme Court handed down its judgement on the appeal lodged by a number of criminal law barristers following their unsuccessful application for judicial review of the LSB's decision to authorise the QASA scheme. This brings to an end the long running legal challenge to the scheme.

11. By way of background, the LSB authorised the scheme, which applies only to criminal advocates, in July 2013, and the applicants lodged their claim for judicial review in the September of that year. The High Court ruled in the LSB's favour in January 2014, and although initially denied leave to appeal, the Court of Appeal eventually dealt with the matter, and again ruled in the LSB's favour in October 2014. Leave to appeal to the Supreme Court was subsequently granted on the narrow question of whether the LSB's decision was contrary to regulation 14 of the Provision of Services Regulations 2009 (which implements the 2006 Services Directive).
12. The Board will be aware that the application to authorise the scheme had been made by the BSB, SRA and CILEx Regulation. As at the time of writing, of the three, only the BSB had reacted publicly to the ruling, indicating that given the amount of time that has elapsed since authorisation, timescales for the scheme's implementation would need to be considered.
13. I will brief you on the issue of costs at the meeting.
14. Separately, last week I received a letter from the Lord Chancellor (copy attached at Annex A) [REDACTED]
[REDACTED]

Investigation – Bar Council and internal governance rules – compliance with the fourth undertaking

15. At its meeting in May, the Board discussed preparations that the executive were making ahead of the deadline for meeting the final undertaking given by the Bar Council (and Bar Standards Board) in the wake of the 2013 investigation. The executive continue to liaise with the BSB in the run-up to the end of July, with a series of meetings arranged to map progress. At the time of writing there has been no change in the anticipated outcome, and the BSB assure us that they will comply with the undertaking by the final deadline.

Cost of regulation project

16. We remain interested in ascertaining whether the legal sector regulators provide value for money to the community they regulate. The intention is to factor in both effectiveness and efficiency, as cheap regulation does not necessarily equal effective regulation. The regulatory standards work is the appropriate mechanism to address effectiveness.
17. The focus of our 'cost of regulators' work stream under the broader 'cost of regulation' project will, however, shift from seeking to benchmark the cost of regulators in a quantitative way, to providing greater transparency of the costs of regulators. This is in response to our finding that the necessary appropriate regulatory benchmarks do not currently exist, and that creating such benchmarks will first require much more transparency.

18. Our aim is that increased transparency will prompt the regulators to take steps to assure their regulated communities that they do provide good value for money. Any savings resulting from more efficient regulators should ultimately be passed on to the profession and consumers.
19. We will use existing information to map the cost of the legal sector regulators, including the LSB, and increase transparency around these costs. The broad areas where we will provide transparency include:
- Outlining a picture of total costs and money flows in the different regulators.
 - Suggesting questions that a NED or an authorised professional might want to ask their regulator around how it can assure itself that it delivers value for money.

Statutory Decisions

20. Since my last report, we have approved, by way of a direction to exempt, a slight alteration to its definition of “complaint” in the bar Standards Board Handbook glossary, which gives them the option of bundling several allegations from the same person about a single barrister into a single complaint. The underlying aim is to help safeguard against the perceived risk that a barrister might insist (based on the previous wording of the definition) on allegations being treated separately, thus potentially reducing the full accumulative weight of complaints.
21. We have received, and are currently assessing, a rule change application from the SRA to amend its Separate Business Rule, which removes the prohibition on SRA regulated solicitors and firms from owning or managing separate businesses. The initial decision period expires on 20 July, by which time we must either make a decision or extend the decision period.
22. We continue to assess the BSB’s application to become a Licensing Authority and to work with the BSB and the MoJ on orders under sections 69 and 80 to modify the functions of the Bar Council and establish appellate bodies. The LSB has 12 months within 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. The Mandatory consultees (Legal Services Consumer Panel and Competition and Markets Authority) are due to provide their advice by 21 July 2015. The Lord Chief Justice will then be asked for advice from the judiciary’s point of view, and the BSB will be given the opportunity to respond to any advice we have received.

CILEx Regulation and Internal Governance Rules

23. At the last meeting I briefed the Board on changes to the CILEx Regulation Board arising from the decision of the Chair elect not to take up his position on 1 June 2015 (when Alan Kershaw's term as Chair ended).
24. A recruitment and selection process has commenced and it is expected that a new Chair will be in place by 1 November 2015. The six person Board will consist of three lay and three non-lay members, i.e it will not have a lay majority. In the meantime, CILEx Regulation has appointed an interim Chair from current lay members. To address the issue of "lay majority", the Chairman will have a casting vote on any split decisions. We agree with CILEx Regulation's assessment that this is a proportionate response to the current temporary situation.
25. CILEx and CILEx Regulation need to amend their governance protocols to allow for this interim solution and this will be in place by 1 July (before the next meeting of the CILEx Regulation Board). This situation arises at a time when CILEX Regulation is also preparing for a change at Chief Executive level. We do not expect CILEx Regulation to make any significant changes or decisions about its regulatory remit in this period of significant change in senior personnel.
26. I am maintaining contact with CILEx Regulation during this interim period and will report any significant issues to the Board.

Research

27. We have now received the final report of the innovation research, which will be published in conjunction with the SRA on Monday 6 July. A summary of key findings will be published on our [research web pages](#), and we will use the Westminster Policy Forum as launch pad for wider opportunities to engage with BIS and others.
28. We have received early drafts of the small business legal needs research as well as a draft report on the in-depth aspect of the cost of regulation project. These are currently being reviewed and commented upon. Our aim is to publish polished versions of the cost of regulation report before the end of July and small legal needs in September, to avoid publication of four research reports in such a short space of time.
29. We have signed a funding agreement with the Legal Education Foundation and The Law Society in relation to the Individual legal needs survey, and appointed Ipsos Mori to undertake this large scale survey. We expect to have survey data and early findings in December 2015, with a view to publication in January 2016. This will primarily provide the data necessary to understand what the impacts of regulatory change have been on individual consumers' behaviour over the past three years, controlling for changes in legal aid and other government led reforms.

30. Work on scoping the 2015/16 update to the market evaluation work has been completed. The aim of this work is to consider how the market has changed since the introduction of the LSA reforms. A revised market evaluation framework has been agreed by the Director of Strategy following completion of a PID for this work. The Board will be provided with an update on progress in December, although the Research Strategy Group (RSG) will be engaged from July. [Terry Babbs is the Board representative on the RSG]

EXTERNAL POLICY DEVELOPMENTS

Better regulation policy

31. The Board will recall that LSB colleagues held discussions with officials from MoJ and BIS about the application of the Small Business Appeals Champions (SBAC) policy to legal services regulators earlier in the year. This is one element of wider government policy on business regulation and we do not anticipate a final decision on the application of the SBAC policy in legal services for some months.

32. The Queen's Speech included a commitment to introduce an Enterprise Bill. 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. This will be through amending the scope of the "Business Impact Target" introduced by the Small Business, Employment and Enterprise Act 2015. We are engaging with officials as proposals develop to understand the likely impact of deregulatory budgets on legal services regulation, and attended a technical design workshop at the Department of Business, Innovation and Skills on 24 June that looked at generic categories of regulator action that may fall in scope. A BIS consultation is expected in due course.

COMMUNICATIONS

33. Since our last meeting, we have published the LSB's Annual Report and Accounts for 2014/15, confirmed new performance and reporting arrangements with the OLC, and responded to the QASA ruling. All of these attracted some media attention – not least the exchange of letters on OLC performance. Richard Moriarty also gave his first public interview to Neil Rose which resulted in two articles on the Legal Futures website (attached at Annexes B and C).

34. On wider stakeholder engagement, LSB colleagues met and provided input to Kevin Doolan who is conducting a review of legal services in Wales on behalf of the Welsh Government. The Chair and I continued with our regular programme of meetings with regulators and representative bodies, the judiciary and other public bodies and I also met a number of representatives from the financial sector and professional services sector. These meetings are invaluable in ensuring we have the broadest perspective on the provision of legal services.

35. Vibeke Bjornfors represented LSB at a conference at Birmingham Law School and the Chairman participated in a panel discussion organised by the outgoing President of the Law Society.

36. Finally, work is well underway for our tripartite public meeting in Leeds in the autumn with OLC and the Consumer Panel.

30 June 2015