

<b>To:</b>	Legal Services Board	
<b>Date of Meeting:</b>	26 November 2015	<b>Item:</b> Paper (15) 60

<b>Title:</b>	Chief Executive's update – November 2015	
<b>LSB Strategy fit</b>	All work streams	
<b>Author / Introduced by:</b>	Richard Moriarty, Chief Executive richard.moriarty@legalservicesboard.org.uk / 020 7271 0057	
<b>Status:</b>	Official	

<b>Summary:</b>
<p>The paper updates Board Members on:</p> <ol style="list-style-type: none"> <li>1. People and governance issues</li> <li>2. Key projects and work streams</li> <li>3. Wider policy developments</li> <li>4. Communications</li> </ol>

<b>Recommendation(s):</b>
The Board is invited <u>to note</u> this report and <u>agree</u> to a recommendation at paragraph 5 in relation to the appointment of a professional adviser to ARAC.

<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>		
<b>Para ref</b>	<b>Fol exemption and summary</b>	<b>Expires</b>

Para 11, second bullet point	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	
Para's 23 and 24	Section 36(2)(b)(ii): information likely to inhibit the exchange of views for the purposes of deliberation	
Annex A	Section 22: information intended for future publication	

## LEGAL SERVICES BOARD

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### CHIEF EXECUTIVE'S UPDATE – NOVEMBER 2015

#### PEOPLE AND GOVERNANCE ISSUES

##### Board appointments

1. The Chairman, as part of a MoJ constituted appointment panel undertook short-listing for two new non-lay members in the period since our last meeting. Interviews are due to be held on 5 January. The Chairman has a meeting with the Lord Chancellor scheduled for 30 November to discuss the process for Board appointments. The process for appointing new lay members has not yet commenced.

##### Organisation development

2. Board members will be pleased to welcome Neil Buckley to this meeting as an observer. Neil has agreed that his start date will be 4 January and I will remain in post until 12 January and will be available during January to facilitate induction and handover. Neil has been having one-to-one meetings with all colleagues and will have some informal meetings with key stakeholders on an 'unbriefed' basis before starting. We have yet to receive confirmation of Accounting Officer delegation from the MoJ Permanent Secretary/Principal Accounting Officer but hope to do so before 4 January.
3. Nicola Tysoe joined the LSB in November as Legal Advisor. Nicola joins us from PhonepayPlus, the premium rate telephony regulator. We have received one notice of resignation in November, from Cat Kelly. This will be the first recruitment we will have to put through the MoJ's business case for recruitment process and I will update Board members as to our progress with that (see below).
4. I am shortly to receive the results of our Colleague Survey conducted during October. I was pleased to see that we got very close to 100% response rate and I will provide Board Members with an early read out of the results at the meeting if I can.
5. The Board will be aware that Phillip Lindsell's term as professional adviser to the Audit and Risk Assurance Committee ended in May 2015. Following a competitive process, led by Terry Babbs as Chair of the Committee, John Ward FCA has now been identified as the preferred candidate to take on this role. The Board were consulted on his appointment previously, but as the appointment of

professional advisers is currently reserved to the Board, **Members are asked to formally approve Mr Ward's appointment.**

6. In October, the LSB submitted its Annual Report to the Welsh Language Commissioner. The Commissioner raised one query about an aspect of our report, relating to the 'desk guide' we provide for colleagues to alert them to our Welsh Language Scheme, and we then received confirmation that our report was satisfactory. Thanks are due to Antonet Abbink for managing this process and our engagement with the Commissioner. It is possible that our statutory obligations in relation to the Welsh Language will change in the coming years as the Commissioner moves to 'Standards'. We understand that this has generated some significant work for some other regulatory bodies and we will keep you informed as we are brought within scope.

#### MoJ sponsorship matters

7. In response to the public sector spending environment, the Permanent Secretary has imposed a suite of emergency spending controls across the MoJ family including all its arms-length bodies (ALBs). These were communicated to us on 27 October and applicable immediately. It has been made clear that these controls are designed to stop spending. These controls supersede all other prior controls – including those which the LSB has been in negotiation over for some years – and there is no further room for manoeuvre. We are required to comply and must complete a weekly return to demonstrate this.
8. Whilst fully understanding the context and motivations for the MoJ controls, it is fair to say that the way they are to be implemented will have an impact on the LSB as a very small non-civil service NDPB. This is principally in terms of our ability to respond in an agile manner to emerging issues and in terms of the overhead that will be required to operate the new suite of controls. The controls include:
  - CEO approval for all staff travel deemed business critical (a case must be made for why e.g. teleconferencing is not appropriate)
  - MoJ DG level approval for all catering for external meetings
  - MoJ DG approval for all business critical recruitment (with the presumption being that internal only recruitment is permitted). There is however a general presumption that no further recruitment for 2015/16 will be permitted
  - MoJ DG, potentially Permanent Secretary, approval required for any events at an external venue for which there is a charge.
9. We will continue to engage with MoJ officials to understand how the implementation of the controls can operate efficiently for an organisation with the LSB's characteristics.

Office for Legal Complaints (OLC)

10. Matters related to OLC performance and budget are on the agenda for this meeting.

11. There are two key developments to bring to Board Members' attention:

- Chief Ombudsman: The OLC recently announced the appointment of its new Chief Ombudsman. Kathryn Stone OBE will join the OLC in January from the Independent Police Complaints Commission, where she has been a Commissioner since July 2014. She was previously the Commissioner for Victims and Survivors in Northern Ireland, appointed by the First Minister and deputy First Minister. Kathryn was also Chief Executive of Voice UK for 11 years, a national charity supporting people with learning disabilities and other vulnerable people in the criminal justice system.
- [REDACTED]

Legal Services Consumer Panel

12. On 17 November, the Consumer Panel published the 2015 edition of its annual tracker survey. The Panel's analysis shows that *"the situation is improving for empowered consumers...but the rest are getting left behind."* Full information on the report can be found on the Panel's website [www.legalservicesconsumerpanel.org.uk](http://www.legalservicesconsumerpanel.org.uk).

**KEY PROJECTS AND WORKSTREAMS**

Statutory decisions

13. Since my last report, two statutory decisions have been issued:

- Solicitors Regulation Authority (SRA) rule change application in respect of its Regulatory Reform Programme was part approved. The application contained a range of proposed changes, with the objective of removing some regulations and making others more targeted. The part of the rule change application not approved at this time is in relation to the SRA's "Reserved Activities" proposal to remove two authorisation rules. Its effect, if approved, would be that a licensed or authorised body will no longer face losing its authorisation if it does not carry out reserved legal

activities. We issued a warning notice in relation to that aspect, as it raises some questions for us around the implications of the SRA regulating firms that do not need to be regulated. The warning notice process under the Legal Services Act gives us an additional 12 months to further consider the issues and, if necessary, seek external advice. An update will be provided at the Board meeting.

- Following the Board's decision at its meeting on 22 October 2015, the LSB has approved the Solicitors Disciplinary Tribunal budget. As agreed at the Board, the letter approving the budget made clear that in the current environment a headline increase of 5.6% seemed high. We indicated that in approving the budget proposal, account had been taken of the significant increase in the number of cases being referred to the Tribunal, but that we expected that when making resourcing decisions during the course of the year, any differences between expected and actual workflows will be taken into account.

14. At the time of writing we were imminently expecting a rules change application from the SRA for a proposed regulatory framework for consumer credit. This follows the Financial Conduct Authority's approval of changes to the SRA consumer credit rules that will allow solicitors to carry out certain consumer credit activities under SRA authorisation, where those activities are central to the legal services provided.
15. In addition, a Practising Certificate Fee application from the Intellectual Property Regulation Board (IPReg) has been received and is being assessed. An update will be provided on both the SRA and IPReg applications at the Board meeting.
16. We continue to assess the BSB's application to become a licensing authority. Meetings have been held with the BSB's authorisation and enforcement teams to discuss their entity regulation work and the licensing authority proposals, and with two Board members (Dr Malcolm Cohen and Nicola Sawford) to gain an appreciation of the experience and views of Board members on the application. The advice of the mandatory consultees and BSB representations on this advice have been published. We also continue to make progress working 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.
17. We have commenced our review of the Practising Fee Rules (PCF Rules) and will have conducted interviews with all of the approved regulators by the time of the Board meeting. The plan is to put a paper, with a draft consultation document proposing potential changes to the rules, to the Board at the January 2016 meeting, following which, subject to Board comments, the consultation would be issued shortly thereafter. The Board is reminded that this issue is not simply a technical one. As the Board will know, one of the catalysts for the review was TLS' so-called "derivative income" proposals to use the monies raised by charging for permitted activities for other non-permitted activities, which could include paying for the TLS' overheads or its commercial activities. The outcome

of the review could therefore have important ramifications for TLS and the way in which derivative income is used and managed in general by approved regulators.

### Regulator performance

18. The deadline for regulators to submit their self-assessments of performance was Friday 30 October. We are pleased to say that we received all submissions on time, with the exception of the Faculty Office, who had made a formal request for an extension in advance of the deadline which we granted.
19. All of the regulators have provided comprehensive responses to the self-assessment. Four of the regulators had their self-assessments reviewed by an external third party to provide assurance about the robustness of the process they followed in reaching conclusions about their performance. The other four have provided explanations as to why they chose not to have their self-assessments externally reviewed.
20. We are assessing the information contained in the self-assessment, in conjunction with other evidence we have collected from a range of sources, such as:
  - meetings we have had with stakeholders – we have received feedback from around 30 organisations both at meetings we have held and from written submissions. We will complete the programme of engagement with stakeholders when we meet members of the Leeds Law Society at the LSB event being held in Leeds on 26 November.
  - information received in response to a data request to regulators
  - our survey of individual users of legal services regulators, which was undertaken earlier in the year
  - other intelligence obtained in the course of our wider oversight work, including for example, correspondence from members of the public.
21. All of this information will be used to inform our overall assessment of the regulators' performance.
22. We will shortly be contacting the regulators to arrange meetings with each of them to take place in early January. These meetings will provide an opportunity for us to discuss with them some of our initial findings about their performance and to ask for further evidence/clarifications before we finalise our report for publication in spring 2016. Our draft report will be considered by the Board at its 23 March meeting.

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Research

25. We held a research briefing event on 9 November at the BIS conference rooms. This showcased the findings of the Innovation and Small Business legal needs research reports. It was attended by over 40 people, with representatives from



across the different stakeholder groups including MoJ, CMA, The Law Society (TLS) and the professions.

26. We have appointed Pye Tait Consulting to undertake research jointly with the Bar Standards Board (BSB) into Public Access Barristers. This will support our market evaluation work, and shine a spotlight on the impact of this major regulatory change.
27. Economic Insight have been appointed to undertake research in support of the unregulated project (a paper in relation to which is on this agenda).
28. Research on the prices of common legal services is now in the field and will close in January. This will provide a spread of prices to support the market evaluation and affordability projects.
29. The individual legal needs survey – jointly funded by the Legal Education Foundation and The Law Society – is currently in the process of fieldwork.

#### Equality and Diversity

30. We are in the process of exploring further some of the challenges raised in our March 2015 report on diversity data collection. This work will take the form of a paper which will be presented at the March 2016 Board meeting, and represents the first stage in the Board's decision to introduce some form of assessment on diversity into the regulatory standards process.

## **WIDER POLICY DEVELOPMENTS**

#### QASA litigation

31. We have now received an order from the Supreme Court, awarding costs in favour of the LSB up to the pre-determined cap of £50,000. We have instructed our external lawyers to seek recovery of all sums now owing to the LSB.

#### Enterprise Bill update: Business Impact Target

32. On 27 October 2015 the Department for Business, Innovation and Skills (BIS) published a written ministerial statement indicating the regulators in scope of the Business Impact Target. This list is not definitive, but it was published to assist Parliament as it debates the Enterprise Bill. The Government still plans to consult on the definitive list in early 2016. The Ministerial Statement split statutory regulators into two categories: those under consideration to be brought into scope and those for further discussion who may be brought into scope. The LSB did not feature on either list, while some of the approved regulators are included in the "for further discussion" category by virtue of their listing under Money Laundering Regulations. Given this is an indicative list at this stage, and that legal services regulation has been deemed within scope of other better regulation initiatives (for example, the small business appeals champions), we remain

participants in ongoing BIS briefings and the workshops that are developing the detailed scope and methodology associated with the target.

#### Review of claims management regulation

33. The team met Carol Brady in November to discuss the progress being made on the joint MoJ/HMT commissioned review of claims management company regulation. The review team were keen to explore the LSB's perspective on claims management companies and options for regulation.

#### MoJ consultation on quality of publicly funded advocacy

34. We shall be submitting a response to MoJ's proposals to ensure the quality of criminal legal aid funded advocacy, and to impose a statutory ban on referral fees. Whilst we do not usually respond formally to government consultations, the policy areas discussed are within the LSB's remit. We are encouraging MoJ to take account of the quality assurance that should flow from QASA, once implemented, and to avoid any unnecessary delay to it by introduction of an overlapping scheme. For information, a copy of our response appears at **Annex A**.

### **COMMUNICATIONS AND STAKEHOLDER ENGAGEMENT**

35. Mike Pitt was a panel member at the National Pro Bono Week breakfast event which was held at the Law Society on 2 November. He shared the panel with high level representatives of the Bar Council, TLS and CILEx.

36. The LSB issued its small business legal needs update report on 19 October. It followed this up with an event on 9 November hosted by BIS which focused on this research and the innovation research issued earlier in the year. Representatives of the SRA, the Federation of Small Business and Rocket Lawyer participated in this event. Senior stakeholders from government, business and regulators among others were also in attendance.

37. I participated in a Joint V Presidents (presidents of Liverpool, Manchester, Birmingham, Bristol and Leeds Law Societies) event held in Leeds on 5 November.

38. Steve Brooker and Caroline Wallace represented the LSB at the Legal Futures Innovation conference on 17 November. Steve gave an introductory presentation on the Innovation research report while Caroline participated in a panel discussion about ABS and Innovation.

39. Short articles were provided to the Law Society Gazette (in support of the 'changes in prices of legal services' survey which started on 12 November) and to Modern Law magazine outlining the key findings of the small business legal needs updated report.

40. The LSB's currently has 1,107 followers on twitter (as of 12 November). A separate twitter account ([@LSB Leeds 2015](#)) was opened to promote the joint LSB / LSCP / LeO event that follows this meeting.

**18 November 2015**