

To:	Legal Services Board	
Date of Meeting:	22 October 2015	Item: Paper (15) 55

Title:	Chief Executive's update – October 2015	
LSB Strategy fit	All work streams	
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Status:	Official	

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. Wider 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

Para 2, second and third sentence Para 12, last sentence	Section 36(2)(b)(i): information likely to inhibit the free and frank provision of advice	TBC
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LEGAL SERVICES BOARD

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CHIEF EXECUTIVE'S UPDATE – OCTOBER 2015

PEOPLE AND GOVERNANCE ISSUES

Board appointments

1. Bill Moyes and Ed Nally's terms of appointment concluded on 30 September 2015. The Board will be aware that the process to appoint a new lay member was stopped by Ministers in September, after shortlisting. A new process has not yet commenced. The process to appoint two new non-lay members is now at long listing stage. The competition closed in early October and we understand that 26 applications were received by the Ministry of Justice (MoJ). Long listing will take place on 2 November with interviews to follow in December or early January. The MoJ are no longer using recruitment consultants and are now managing these appointments in-house.
2. The Chairman wrote to the Lord Chancellor to express his disappointment with the recent appointments process and to note that the Board currently has a membership below the requirements of statute (albeit can still operate with validity). [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].
3. We were pleased to learn that the Minister has offered Terry Babbs a second term of office (for 18 months) from 31 March 2016.

Organisation development

4. Board members will be aware that a panel comprising the Chairman, Helen Phillips and Anneliese Day QC, accompanied by Shaun Gallagher, Deputy Director, Access to Justice, MoJ, interviewed for my successor on 12 October. At the time of drafting, an offer had been made to a preferred candidate and an in principle acceptance received.
5. The team has also made an offer to a new Legal Advisor to replace Jessica Clay. The successful candidate has a strong regulatory background and we are just awaiting reference checks before confirming the appointment. With this appointment the team is at full complement.

6. On 13 October, we launched an all colleague survey and I will report the results to the Board in due course.

MoJ sponsorship matters

7. The Board will be aware of the long-running issue we have had with MoJ regarding the imposition of micro Finance Transaction Limits (FTLs) which go beyond the centrally imposed Cabinet Office spend controls. Our team has been in constructive discussions with MoJ Corporate Finance and, with their clear support, we were encouraged to submit 'business cases' for exemptions to three of the more onerous FTLs: recruitment; a marketing and communications control; and a control relating to IT.
8. I learned recently that our cases for being kept out of the civil service recruitment control and brought within the marketing and communications control had not been approved. I will update the Board further at our meeting.
9. Beyond this, our sponsor relationship continues to be constructive and our key officials have been working hard to make sure we are briefed on policy matters affecting the legal services market emerging from elsewhere in the Ministry.

Office for Legal Complaints (OLC)

10. Nick Hawkins took up post as the new Chief Executive of the Legal Ombudsman at the start of October. I will meet him formally on 3 November and he is visiting the office for a more general meet and greet on 22 October.
11. Matters relating to the terms on which the previous Chief Ombudsman departed the OLC were the subject of question to senior MoJ officials at the Justice Select Committee on 13 October, and received some trade press coverage.
12. Julie Myers, on behalf of the LSB, was interviewed by the Grant Thornton team conducting the independent review into governance controls at the OLC (reporting to OLC and to MoJ jointly). The report is due to be presented by the end of October. The Permanent Secretary, at his Justice Select Committee appearance, confirmed that this report would be key in his decision to delegate the Accounting Office function back to OLC. [REDACTED]
[REDACTED]
13. The 2014/15 OLC Annual Report and Accounts remains to be finalised and we have stressed to both OLC and MoJ colleagues that there is a statutory need to make sure this is given to LSB before it is laid. As with the 2013/14 Annual Report and Accounts, it is quite possible that this will have to be outside of a formal Board meeting.
14. The Director of Finance and Services attended the OLC Audit and Risk Assurance Committee as an observer on 20 October (on my behalf).
15. Matters relating to OLC performance are on the agenda.

KEY PROJECTS AND WORKSTREAMS

Regulatory standards

16. Since my last report to the Board on the progress of the Regulatory Standards exercise, we have met 27 different organisations that work closely with or are affected by the work of the legal services regulators, and we have received three written responses, with a further three expected shortly. We have also engaged with a range of stakeholders such as trade organisations, the representative arms of the legal service regulators, and organisations representing consumers' interest. The feedback received from the wide range of organisations has provided valuable evidence which will contribute to our assessment of the regulators' performance.
17. The regulators' completed self-assessment templates are due to be received on 30 October. To the best of our knowledge, all of the regulators are on track to meet this deadline. It is likely, however, that several of the regulators will choose not to subject their completed self-assessment to independent scrutiny. The purpose of this third party review is to assess whether regulatory boards and their executives have followed due process, including the use of evidence, in making the judgements set out in their self-assessments and supporting documents. Where a regulator has chosen not to subject its self-assessment to independent scrutiny, we will expect to receive an explanation for this decision.
18. The next stage of the regulatory standards exercise is to analyse the self-assessments against other evidence that we hold about each regulator. We will then make an assessment of the regulators' performance against the Regulatory Standards Framework. Before this assessment is finalised we will meet each of the regulators to gather further evidence and discuss our provisional view. These meetings are due to take place in December 2015/January 2016.

Statutory decisions

19. Since my last report, six statutory decisions have been issued, including the approval of three rule changes as below:
 - Solicitors Regulation Authority (SRA) Accounts and Overseas Rules – to simplify the process for firms reporting to the SRA on their accounts.
 - Master of the Faculties Conduct and Discipline Fees and Costs Order – this is a schedule of costs that may be awarded in respect of conduct and discipline cases.
 - the Chartered Institute of Legal Executives (CILEx) Regulation Compensation Fund contributions (approved by exemption direction)

20. Two Practising Certificate Fee applications were approved under section 51 for CILEx and for the Costs Lawyer Standards Board.
21. We are continuing to assess the rule change application from SRA in respect of a series of alterations it has badged 'Regulatory Reform Programme'. These are various changes with the aim of making regulation more targeted and removing some regulations. An update will be provided at the Board meeting.
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 BSB has made its representations on the mandatory consultees' (Legal Services Consumer Panel, the Competition and Markets Authority and the Lord Chief Justice) advice. Both the advice and the BSB's representations will be published on the LSB's website.

Research and evidence to inform policy making

23. Our major survey of over 10,000 SMEs is due to be published before the Board meets (scheduled for 20 October but this could change). In addition to the full report, short summaries of the research considering implications for regulators, the profession and policymakers have been prepared. A summary of the findings is appended at **Annex A**. A stakeholder event to provoke discussion and debate is being held at BIS on 9 November.
24. The joint LSB/LSCP research on consumer, provider and judicial perspectives on unbundled services has been published. This research paints a picture of law firms beginning to respond to consumer demand and changes in their commercial environment by developing affordable alternatives to full-service representation. It suggests that:
- reduced cost and the opportunity to exercise greater control over the case were the primary reasons why those consumers interviewed chose to unbundle
 - unbundling tended to be identified as an option during the initial interview between a consumer and their legal advisor rather than being actively marketed to potential clients. As a result, while some consumers are making savings on their legal bills, this development is not benefiting large numbers of people who are currently put off approaching lawyers in the first place due to cost concerns
 - no regulatory barriers to unbundling were identified, but some concerns were raised around assessing consumer capability, giving advice based on limited information and ensuring there is clarity on agreements about the scope of work, and

- members of the judiciary felt that if full representation could not be obtained then, as a starting point, some legal advice and assistance ought to be beneficial. They also echoed some potential difficulties with unbundling identified by providers and felt it important that advice and assistance is given by regulated advisers.
25. Targeted letters were sent to the Minister Shailesh Vara MP, the Lord Chief Justice, the approved regulators and representative bodies. The Head of Research and Development attended a stakeholder event held by the LSCP to discuss the research findings.
26. A contract has been awarded for a study to understand how prices of common legal services purchased by individual consumers change over time. The primary purpose of this research is to create a robust methodology that can be replicated in the years ahead, as well as providing a clear picture of the prices that are currently paid. The methodology will comprise interviews with regulated and unregulated providers, focused on scenarios in three areas: conveyancing; divorce; and will-writing (including probate/estate administration and power of attorney). The research will inform the Market Evaluation and Affordability projects.
27. We have initiated a new research study in partnership with the BSB on Direct Access Barristers. This research will inform the Market Evaluation exercise and a BSB review of its regulatory arrangements in this area. The main aim of this research is to develop a detailed picture of the current provision of legal services through public access and licensed access barristers and to understand the perceptions of barristers about the operation of the current regulatory arrangements. Further, we are interested in hearing perspectives about the impact of these schemes on clients, barristers and the regulatory objectives more broadly. This is currently out to tender.
28. To support the project to map the unregulated sector, a tender has been issued for research that will update and improve our understanding of unregulated legal services providers in four key areas: will-writing and estate administration; family; intellectual property; and employment. Key components of the study will be improving our understanding of the supply-side characteristics of unregulated legal services providers within these areas and the benefits and risks that they present to consumers. The Board will receive a paper on this project in November.
29. The [in-depth research into the cost of regulation](#) was published on 15 September. The findings are based on 17 entities and 47 individuals, and are therefore not representative of the legal profession. However, this is the first attempt at quantifying the actual cost of regulation experienced by practitioners in the sector. Our findings indicate that professionals regulated as entities see legal regulatory costs primarily as a burden, and would only undertake a small proportion of those activities for other regulatory or commercial reasons. Professionals regulated as individuals, on the other hand, are more likely to

undertake aspects of legal services regulation even if the regulatory requirement were removed. This is because complying with the regulation meets wider legislative requirements for doing business in England or Wales, or is commercially advantageous to the practitioner.

30. At the same time the LSB also [published free-form comments from](#) authorised legal services providers who took part in the cost of regulation attitudinal survey at the end of 2014. The paper provides an overview of typical comments. Respondents self-selected to give comments and these therefore reflect the underlying bias of each respondent. The top five areas for comments were:
- a. Proportionality - Several respondents thought sole practitioners had a disproportionately high cost of regulation while others suggested ways to make the cost of the practising certificate fairer to different legal providers.
 - b. Regulator value for money - Some respondents felt that a variety of regulators were over regulating without delivering any benefit to their professions and without being held to account for over regulation.
 - c. Continuing Professional Development - one respondent suggested that training courses had become unreasonably expensive for professionals to attend.
 - d. PII - On PII there was a real spread of comments with some pointing out that they were forced to be over-insured and that the process of applying for PII was very bureaucratic.
 - e. Duplication - Several respondents drew our attention to areas of duplication in the regulation they must comply with.
31. The transparency exercise, which seeks to understand the cost of the front line regulators and the LSB, based on already published data, is underway. The first draft of the data and overview reports have been completed and will now go through a number of internal and external quality control stages. This includes sharing individual reports with regulators to ensure that we have used their data appropriately. We expect to share these transparency reports with the Board in November.

Unregulated providers

16. Board members will recall the following package of work from our 2015/16 Business Plan:

We will develop our understanding of different types of providers (regulated and unregulated). For unregulated providers this will involve initial research into, eg the services on offer, the benefits and risks that go with them. Our objective is to understand the full range of choices available to consumers.

17. There are three main aspects to this project:

- i. **Mapping** the unregulated legal services sector to identify how prevalent unregulated providers are in different areas. This is being undertaken in-house.
- ii. **In-depth research and analysis** of profit making unregulated legal services providers in certain key areas. There will be a particular focus on analysing the potential benefits and risks to consumers, by reference to the LSCP Consumer Principles Framework.

Based on the findings from the mapping, SLT decided that this research will focus on the following areas:

- Will writing and estate administration
 - Family
 - Intellectual Property
 - Employment
- iii. **Legal analysis** of section 163 of the Legal Services Act (Voluntary arrangements). The analysis will seek to establish the level of consumer protection that would need to be provided to those using unregulated providers as a result of voluntary arrangements entered into with the LSB.

The project is progressing well and is on track. A substantive paper on this project, with full detail on scope and progress, will be on the agenda for the November Board meeting.

WIDER POLICY DEVELOPMENTS

Enterprise Bill and Business Impact Target

18. The Enterprise Bill was introduced in the House of Lords on 16 September. The Board will recall that this Bill seeks to extend the scope of the Business Impact Target (BIT), introduced by the Small Business, Enterprise and Employment Act 2015, to national regulators, and ensures regulators carry out assessments of the economic impacts on business of any change in their policies. Separately, the Bill introduces reporting requirements for regulators subject to the Regulators Code and, once introduced, the Growth Duty. The detailed scope of the BIT and the assessment methodology remain in development. We are engaging with BIS and MoJ officials to understand the details and applicability to the LSB and the legal

services regulators, and how these new policy developments will be implemented alongside existing initiatives under the Better Enforcement Programme (such as Small Business Appeals Champions).

Quality of criminal advocacy

19. On 1 October MoJ launched a consultation on a number of measures it believes will enhance the quality of publicly funded advocacy in the criminal courts. These include the creation of a panel of defence advocates; a ban on referral fees; and measures to prevent conflicts of interests between advocates and those who instruct them. It takes as a starting point the independent review of criminal advocacy led by Sir Bill Jeffrey, and published in 2014. The consultation explicitly describes the proposals as “complementary” to the work of the approved regulators currently implementing QASA. We shall be formulating a formal response, by the end of November and will want to discuss this with Board members at the November meeting.

COMMUNICATIONS AND STAKEHOLDER ENGAGEMENT

20. I spoke at the 360 Legal annual conference on 1 October and attended the 2015 Legal Wales conference on 9 October. Steve Brooker spoke at the CIPA 2015 Congress on 2 October. In the last week, I have also met with representatives from Which? and the General Counsel FTSE 100 group.

21. Several Board members joined me and our Chair for a meeting and then dinner with Board members of the SRA. I shall invite our Board members who were present to offer their reflections at the Board meeting. We have a similar event planned with the BSB in December.

22. The LSB has issued a number of publications during this period. Our response to the *BSB undertakings* was issued. The research on the impact of ‘unbundled’ services on consumers research, the *results of in-depth provider interviews* (cost of regulation), and the *S15* (in-house lawyers) *set of principles* consultation were all issued. All garnered trade press attention. I was interviewed by Modern Law magazine for their October/November edition.

23. The latest edition of the ‘LSB News’ newsletter was emailed and tweeted during the week of 14 September. Issues highlighted included options for reform of the Legal Services Act 2007, legal regulators rising to the challenge of cutting red tape, and the innovation and online divorce research.

24. The LSB’s currently has 1,056 followers on twitter (as of 07 October).

13 October 2015