

<b>To:</b>	Legal Services Board	
<b>Date of Meeting:</b>	8 September 2015	<b>Item:</b> Paper (15) 47

<b>Title:</b>	Chief Executive's update – September 2015	
<b>LSB Strategy fit</b>	All work streams	
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<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.

<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>		
Para ref	Fol exemption and summary	Expires
16 17 – third sentence and last two sentences	Section 36(2)(b) - information likely to inhibit the free and frank provision of advice and the exchange of views for purposes of deliberation	

22 41 – third and fourth sentence		
19 and 20	Section 44 - restricted information obtained by the Board in the exercise of its functions [and therefore] must not be disclosed (s167 LSA)	
Annex B	Section 42 - information is subject to legal professional privilege	

## LEGAL SERVICES BOARD

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### CHIEF EXECUTIVE'S UPDATE – SEPTEMBER 2015

#### PEOPLE AND GOVERNANCE ISSUES

##### Board appointments

1. Shortlisting for a new lay member took place on 21 July. Interviewing was due to take place in August, but is now expected to take place on 16 September. Whilst it remains possible that an appointment will be made before the expiry of Bill Moyes' term of office on 30 September 2015, this is not guaranteed.
2. On the non-lay member recruitment, whilst we were assured in June that the process was due to start "shortly", as at the date of writing this report, the competition is yet to commence. It is very difficult to see how a new non-lay member will be identified before the expiry of Ed Nally's term of office on 30 September 2015.
3. The consequences of this are that, from 30 September 2015, the Board's membership will fail to meet the criteria set out in Schedule 1 of the Legal Services Act (the Act) namely a Chair, a Chief Executive and "*at least 7, but no more than 10, other persons appointed by the Lord Chancellor*". As at 1 October 2015, the Board will comprise a Chair, a Chief Executive and five other members. The Chair has made clear his and the Board's unhappiness at this state of affairs to the Ministry of Justice (MoJ), which, via Catherine Lee, Director General, Law and Access to Justice Group, has apologised for the delays. We continue to press for progress and fully recognise and support the tone coming from government that recruitment processes should aim to appeal to the widest possible pool of talent and relevant expertise.
4. In terms of the impact on the Board, aside from inevitable operational impacts and risk to quorums, the Act (at Schedule 1 para 22) does make clear that "the validity of any act of the Board is not affected by a vacancy... amongst the members". We are therefore assured that the Board can continue to perform its statutory functions legitimately.
5. Julie Myers will update the Board of any progress at the meeting.

## Recruitment

6. Members will of course be aware that recruitment has commenced for my replacement. Saxton Bampfylde are assisting us and the recruiting panel will comprise the Chair, Helen Phillips and Anneliese Day QC. We have invited a senior MoJ official to join the final interview panel, recognising that the CEO will also act as the Accounting Officer for LSB (as a non-departmental public body). The Chair has also had correspondence with the Permanent Secretary on the process that will be followed and remuneration. The competition closes on 14 September with interviews scheduled for 12 October.
7. During August we were joined by Lola Bello as Consumer Panel Manager, Meghan Eyre as a Regulatory Associate to cover a six-month period of maternity leave and Annaliese Budimir as Executive Assistant for the Chair and Chief Executive. We have received one notice of resignation, from Jessica Clay, Legal Advisor, who will be joining the Solicitors Regulation Authority in October. Recruitment is underway for her successor.

## MoJ sponsorship matters

8. Along with all MoJ Arms-Length Bodies (ALBs), the LSB was asked at the end of July to submit a contribution to MoJ's 'zero based review' in early August. Primarily a fact-finding exercise, we were also asked for proposals on how we would meet a number of possible savings scenarios. I judged that it would be inappropriate, in governance terms, to offer proposals in the absence of any testing with the Board. To date, we have not been asked to expand on our submission. We will discuss budget matters in the strategy session on 8 September.
9. I hope to be able to report the conclusion of our long-running discussions with MoJ Finance on our Financial Transaction Limits (FTLs) at this meeting. Discussions have been very constructive. We understand that our business cases for variations, based on extensive analysis prepared by Edwin Josephs and Julie Myers, are now working their way through the MoJ system.
10. More broadly, our relationship with the sponsor team remains strong and day-to-day matters are running smoothly.

## Office for Legal Complaints (OLC)

11. Colleagues from OLC will be attending this meeting and a detailed paper is on the agenda to address scheme performance.
12. On 28 August we received formal notification from OLC that it was withdrawing its application to become an ADR entity. The primary reason for this is that the OLC Board have concluded, on legal advice, that they need to consult, not just on the technical details of Scheme Rule changes, but also on the principle of whether they should change the Scheme Rules at all. OLC recognises, however, that without an unequivocal commitment to making the Scheme Rule changes its

application for certification by OLC is not complete. Given its previous public statements on this issue, we stressed to the OLC the importance of it clarifying its position and ensuring its minimises any confusion among consumers and legal services providers in the lead up to the 1 October deadline for the trader signposting obligations under the BIS Regulations. We will update members at the meeting.

13. We were pleased to learn of the appointment of Nick Hawkins as Chief Executive of the Legal Ombudsman (LeO) during August. Nick will join LeO in October. Currently Chief Operating Officer of the Independent Police Complaints Commission, Nick is a barrister with a background in the Crown Prosecution Service and the Royal Navy. Recruitment continues for a Chief Ombudsman.

## **KEY PROJECTS AND WORKSTREAMS**

### *Collaborative working, Ministerial submissions and legislative reform*

14. Following the collaborative work amongst the regulators that we initiated after last summer's Ministerial summit, we made two submissions to the Justice Minister, Shailesh Vara MP in July. These were published on our website:

- a) On behalf of all the legal services regulators, we made a submission reporting on progress against deregulation since the Act was passed in 2007, and proposing a number of modest changes to the current legislative framework to reduce burdens on practitioners and improve the efficiency of regulatory processes. We have been in discussion with MoJ officials about the practical details of these changes and how they might be incorporated into any future legislative reform program (see further below). We have called a further meeting of all the regulator CEOs in October to explore what scope there might be for further collaborative working amongst us.
- b) We also submitted a paper that was the product of cross-regulator discussions facilitated by Professor Stephen Mayson, exploring the issues relevant to comprehensive reform of the Act.

15. The Minister responded positively to both submissions by way of his letter of 20 July to us (see Annex A).

16. [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

17. There have been various developments in relation to the Lord Chancellor. In June, he gave his 'One Nation' speech in which he referred to the need for the most successful in the legal profession to do more to protect access to justice for all. [REDACTED]

[REDACTED] On 15 July, in his first Select Committee appearance, the Lord Chancellor was asked if he anticipated undertaking a review of the Act during the course of this Parliament, to which he replied "yes". In answer to a supplementary question, he stated that, without wanting to pre-empt any conclusions (of a review), he did think there was a "*danger of regulators falling over one another's feet*". [REDACTED]

Section 51 and Practising Certificate Fees: use of income generated from permitted activities

18. Section 51 of the Act specifies that income raised from practising certificate fees (PCF) can only be applied to "permitted purposes" (section 51(3)), and that PCF is only payable if the level of fee has been approved by the LSB. In addition to regulatory activities, permitted purposes include the payment of LSB/Legal Ombudsman levies, participation in law reform and the legislative process, pro bono activities, promotion of the protection of human rights and promotion of relations with national and international governments, bodies or legal profession other jurisdictions. Some permitted activities (for example accreditation schemes or fees from examinations), can generate income for approved regulators.

[REDACTED]

- [REDACTED]
- [REDACTED]

■ [REDACTED]

[REDACTED]

20. [REDACTED]

21. As part of our initial analysis, we have sought legal advice on this matter; a summary of that advice is attached at Annex B. We are planning to meet with TLS in September to discuss the issue and how it might be resolved.

22. [REDACTED]

Regulatory standards

23. Since my last report to the Board, we have issued self-assessment templates to all of the legal services regulators, as part of our work to assess performance against our regulatory standards. The templates were issued using the Board's powers under section 55 of the Act (which relate to provision of information to the Board) and we have asked that completed self-assessments, which have either been reviewed by a third party, or include an explanation if they have not, be provided by 30 October.

24. As well as asking regulators to provide us with an evidence based assessment of their performance against each of our regulatory standards, we also asked a series of targeted questions about areas we had identified through our assessment of available evidence about each regulator, as well as a data request and survey of individual users of legal services regulators. The self-assessment templates also provide a clear opportunity for the regulators to tell us about areas where they think their performance is in line with best regulatory practice.

25. We have now closed the survey of individual users of legal services regulators, which ran from 14 May to 5 August. The survey results have provided us with some useful information for the assessment and we were pleased to have had 54 useable responses in our first year of running it.

26. We are now seeking the views of organisations that work closely with or are affected by the work of the legal services regulators. We have had a very positive response to our requests to meet with such organisations and are holding at least 27 meetings, with a further five submitting written responses. The meetings commenced in early August and will continue into late September. The meetings we have had so far are already providing valuable evidence to contribute towards our assessment of regulators' performance.

Statutory decisions

27. Since my last report, a total of 14 statutory decisions have been issued (including on practising certificate fees). 10 decisions (either approved as a rule change or through an exemption direction) related to changes to regulatory arrangements:

<b>Rule change</b>	<b>Summary of changes</b>	<b>Date approved</b>
SRA Separate Business Rule	Removes the prohibition on SRA regulated solicitors and firms from owning or managing separate businesses.	20 July 2015
*SRA Compensation Fund Contributions	Compensation Fund Contributions for the practicing year 2015/16	12 August 2015
*SRA Sole Practitioners	Enacts in regulatory arrangements the section 69 Modification of Functions Order in respect of sole practitioners.	14 August 2015
SRA Changes to Accounts and Overseas Rules	Changes to the SRA Accounts Rules 2011, redefining the circumstances in which accountants' reports are qualified, plus changes to the Overseas Rules to make them more principles based	2 September 2015
*CLC Changes to regulatory arrangements arising from the	Range of amendments to its Handbook and Frameworks so that they reflect the	24 July 2015



Deregulation Act 2015 (ED)	statutory powers arising from the Deregulation Act 2015	
CLC Adjudication Panel Rules	Mostly technical alterations to the Adjudication Panel, broadly to allow more flexibility in the panel for lay representation	24 July 2015
*CLC Compensation Fund Contributions	CLC Compensation Fund Contributions for 2015/16	21 August 2015
Master of the Faculties Conduct and Discipline Rules	Consolidates two sets of existing rules and limits the costs of disciplinary cases by introducing a table of costs to be applied.	21 August 2015
BSB Cab Rank Rule	Removes the Bar Council's List of Defaulting Solicitors from the BSB's regulatory arrangements and introduces a more general provision that allow a barrister to refuse instructions from a professional client if they pose an unacceptable credit risk.	24 August 2015
BSB Removal of "no further action" power	Remove the powers of the BSB's Professional Conduct Committee to take "no further action" in relation to breaches of the Handbook	26 August 2015

\*Approved by exemption direction

28. We have also approved the PCFs for TLS/SRA, Council for Licensed Conveyancers, Chartered Institute of Legal Executives and the Master of the Faculties.

29. 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 mandatory

consultees (Legal Services Consumer Panel, the Competition and Markets Authority and the Lord Chief Justice) have provided their advice in respect of the Licensing Authority application. The BSB now has until 15 October to make representations on the advice. Both the advice and the BSB's representations will be published on the LSB's website.

### Cost of regulation

30. The in-depth research into the cost of regulation will be published early this month. The findings are based on 17 entities and 47 individuals, and are therefore not sufficiently representative of the entire legal profession. However, this is the first time that the actual cost of regulation experienced by practitioners in the legal sector has been quantified and it has therefore thrown up some very useful information.
31. Based on the sample of practitioners who took part in this study, 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. However, professionals regulated as individuals 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.

### Research

32. In relation to the market evaluation project, our in house analysis of data continues. The approach taken has been discussed at the Research Strategy Group, and the Board will be engaged in the planned workshops in December/January. With regard to the small business research, following a number of iterations, we are in the process of reviewing the final draft of the report, and expect to publish it in October.
33. The report of the project considering the impact of unbundled services on consumers, run jointly with the Legal Services Consumer Panel, is to be published in the week of 14 September. The Panel will be hosting a seminar the following week to launch the report.

## **WIDER POLICY DEVELOPMENTS**

### Enterprise Bill and Business Impact Target

34. The Board will recall that in May 2015, the Secretary of State for Business, Innovation and Skills announced that independent regulators would be expected

to contribute to the government's £10bn target for reducing regulatory burdens on business: the "Business impact Target". This target is enshrined in law by the Small Business, Employment and Enterprise Act 2015 (SBEEA) which requires the government to set a target at the start of each Parliament.

35. On 5 August 2015, the chief executive of the Better Regulation Executive wrote to all National Regulators with an update. The Enterprise Bill, to be presented to Parliament in mid-September, will amend SBEEA to broaden the scope of the business impact target to include statutory regulators alongside central government and non-statutory regulators.<sup>1</sup>
36. It is anticipated that the scope of the Business Impact Target will, among other things, apply to new and amended policy, practice and guidance, but not individual case decisions. Exclusions are anticipated for items such as fees and levies, provision of public services, tax, and temporary measures (less than 12 months duration). At present there is no planned "de minimis" exclusion, but in due course there may be proportionate approaches for assessing smaller impacts such as a less burdensome reporting process.
37. Regulators will be required to assess the impact of changes to policies and processes on business and to have their assessment validated. It is anticipated that impact will use "Equivalent Annual Net Cost to Business" (EANCB), the current scoring mechanism for "One in, two out" measures. Regulators will have their assessments independently verified by the Regulatory Policy Committee. Exact details of the verification process are still to be confirmed.
38. We are in continuing discussions with MoJ officials on details of how the target would be applied to the LSB and the legal services regulators. The topic has also been the subject of much discussion within the UK Regulators' Network (UKRN). We expect that the LSB and the frontline legal services regulators will fall within the scope, contributing to a target set for the MoJ. If this proves to be the case, in the longer term it will be necessary to ensure that the LSB has sufficient capacity and capability to fulfil the specific assessment requirements demanded by EANCB methodology.
39. As with previous better regulation policy initiatives, there remains a number of issues to explore and work through with officials to establish the details of the application and impact on regulation of legal services (the Board may recall discussions earlier in 2015 on the application of the Small Business Appeals Champions policy to LSB and the frontline regulators). With respect to the Business Impact Target, LSB have been involved in technical design workshops run by BIS officials in June and August to develop finer detail. At some point over

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<sup>1</sup> In this context, "non-statutory regulators" are extensions of Secretary of State powers, for example, the Food Standards Agency, Claims Management Regulation Unit. By contrast "statutory regulators" in this context means separate legal entities established by statute, such as Ofcom and LSB.

the next six months, we expect a consultation on the proposed list of regulators that will fall under the target.

40. Alongside expansion of the Business Impact Target, it is expected that the draft Enterprise Bill will also introduce a requirement on regulators subject to the Regulators' Code and the Growth Duty, including the LSB, to report annually on implementation of these two measures (the expectation is that this will be through statutory annual reports). This requirement may also be supplemented by a power for Ministers to request information on compliance if initial information provided by regulators is deemed to be insufficient.

### Innovation plans

41. The Chancellor's Productivity Plan was launched on 10 July.<sup>2</sup> This included the government's commitment to work with regulators to publish innovation plans by spring 2016. [REDACTED]

## COMMUNICATIONS

42. On 7 July, the LSB launched, jointly with the SRA, the *Innovation in legal services* report. This launch was preceded by a press briefing for interested journalists and the report was picked up by the usual trade press stakeholders. It was followed by my delivering a key note speech to a Westminster Legal Policy Forum event: "*Innovation in the legal services market - growth, skills and new business models*". I highlighted in my speech the broad themes outlined in the research, and these were subsequently reported on again by those in the media who were present.
43. As indicated above, the various papers and suggestions that resulted from the follow up activities to the ministerial summit in 2014 were published in July. The collective response of the regulators was put out on 20 July and the legislative options beyond the LSA 2007 paper was published on 27 July. Both sets of publications were picked up in the trade press with the 'options' paper getting slightly more traction.
44. Planning for our public event with OLC and the Consumer Panel in Leeds in November is going well with excellent support from local groups in Leeds, in particular from Leeds Law Society.

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<sup>2</sup> Productivity Plan 2015. Available at: <https://www.gov.uk/government/news/productivity-plan-launched>

45. The LSB's following on twitter has passed the four figure mark. We now have 1,021 followers (as of 20 August).

**26 August 2015**