

<b>To:</b>	Legal Services Board	
<b>Date of Meeting:</b>	8 September 2016	<b>Item:</b> Paper (16) 56

<b>Title:</b>	Chief Executive's update – September 2016	
<b>Strategic theme</b>	All	
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<b>Status:</b>	Official	

**Summary:**

The paper updates Board Members on key developments across the organisation since the July 2016 meeting. The Board's attention is drawn, in particular to the following three developments:

**The recent all-colleague awayday**

In July we held a very successful all colleague awayday. The main focus of the morning was a session on the practical application of the theory of change to the LSB. It was a stimulating discussion which generated a great deal of enthusiastic input from colleagues.

**Assessment of performance against regulatory standards**

Action plans to address regulators' areas for development in meeting regulatory standards have now been agreed and published. The Board will be kept abreast of progress. A review of the LSB's approach to assessing standards is also underway. This will include consideration as to which aspects of the current framework remain fit for purpose and an assessment of how such work is carried out in other sectors and internationally.

**Practising Certificate Fee applications**

PCF applications have so far been received from two regulators, the SRA and the Mater of Faculties. Both were approved, but in the case of the Master of Faculties, further information had to be sought before a decision could be made.

**Recommendation(s):**

The Board is invited to note this report.

**Risks and mitigations**

**Financial:** N/A.

**Legal:** N/A.

<b>Reputational:</b> N/A.
<b>Resource:</b> N/A.

<b>Consultation</b>	<b>Yes</b>	<b>No</b>	<b>Who / why?</b>
<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 9, third sentence	Section 36(2)(b)(ii): information likely to inhibit the exchange of views for purposes of deliberation	

## LEGAL SERVICES BOARD

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### CHIEF EXECUTIVE'S UPDATE – SEPTEMBER 2016

#### Sponsor relations

##### New Ministers

1. As the Board will be aware, a new Lord Chancellor and Secretary of State for Justice, the Rt Hon Elizabeth Truss MP, was appointed in July. New junior Ministers were also appointed. The Chair has written to the Lord Chancellor to introduce the work of the LSB and offering congratulations on her appointment. We will also be seeking an early meeting with Ministers and understand that both Oliver Heald QC and Lord Keen will be taking an interest in legal services regulation matters.

##### Board appointments

2. The MoJ Public Appointments Team has advised that a submission regarding the outcome of the recent recruitment for new lay members is currently with the Lord Chief Justice. Their original timetable had anticipated appointments being made during July but at the time of drafting they were unable to advise when a final decision would be made.
3. In order to ensure timely decisions are made on upcoming re-appointment matters (for the Chair and two members), submissions have been made by the Chair and myself to the Lord Chancellor and to Catherine Lee, DG Justice and Courts Policy Group respectively.

##### Other sponsorship matters

4. On 27 July, I had an introductory session with Nick Goodwin, new Director, Access to Justice Policy. This was a constructive session and I discussed a range of issues including the pressing need for a decision on the criminal defence panel advocacy scheme in order that progress can be made on implementing QASA. In early August, we had our routine performance meeting with our sponsor team who continue to be appreciative of the quality and depth of our reports to them. We were pleased to learn in this meeting that some of the decision points for the MoJ's emergency spend controls may revert to ALB CEOs. Whilst the controls will remain in place, this would at least make decisions for example on whether or not to recruit to fill vacancies, speedier.
5. On 18 July, the Public Accounts Committee held an [evidence session](#) on the findings of the NAO's recent report into Departments oversight of ALBs. Richard Heaton, Permanent Secretary at MoJ, was one of the witnesses. One of the most

striking points to emerge from the session was the difference in approach to ALB oversight across Whitehall Departments.

6. We understand that the Tailored Reviews of LSB and OLC are now not likely to begin until mid-September.
7. There has been no further update on when the government's proposed consultation on the independence of legal regulators might be issued.

## **Governance**

### Office for Legal Complaints (OLC)

8. I will update the Board on OLC appointment issues in the meeting.
9. On 19 July, the Chair and I attended the OLC's July Board meeting. We were in attendance for the OLC Board's scrutiny of the performance of the Legal Ombudsman (LeO) scheme and observed their challenge to the Executive on both performance and plans for improvement. During our session, the Chair congratulated the OLC on the return of the Accounting Officer function and reiterated the LSB's commitment to a balanced scorecard approach for performance measurement at OLC. [REDACTED]  
[REDACTED]. With regard to timeliness, we noted that this remained a concern and that it had, for some time, been heading in the wrong direction. We were therefore pleased to see the recent upturn which we hoped would be sustainable. The Chair stated that once LSB was confident of that sustained performance improvement we could consider bringing to an end the performance reporting requirements.
10. Attendance at the OLC Board was informative for the subsequent Board's Quarter One performance oversight meeting subsequently held on 25 July 2016. The Chair and I conducted this meeting, on behalf of Terry Babbs, and met Steve Green, OLC Chair and Kathryn Stone, LeO Chief Ombudsman, with other LSB and LeO colleagues in attendance. Key points to emerge in this meeting were:
  - a. There has been a 'bulge' in cases at the assessment stage. This is being dealt with but is likely to have an impact on performance in the coming months as this 'bulge' works its way through the system. LeO has taken steps to prevent such a build-up happening again in the future.
  - b. The new arrangements for measuring customer attitudes which would see questions being asked at each stage of the process rather than at the end in order to avoid 'outcome bias'.
  - c. Improvements in internal quality assessment.
  - d. Plans to make investment in new IT.

11. At **Annex A**, Members will find attached statutory reports received from OLC in line with the LSB's S120 reporting requirements. These are:
- a. Monthly reports received 8 July 2016 and 9 August 2016
  - b. Quarterly report received 29 July 2016
12. OLC have asked for feedback on the quarterly report and we would welcome Board Members comments to inform that. On the monthly reports, whilst the report received in July showed an improvement in timeliness performance (50% resolved within 90 days against a target of 60%), as anticipated by the quarterly report, the impact of the 'bulge' resulted in a subsequent decline in performance on this measure to 47.1%.
13. With regard to the tripartite operating protocol, for which OLC colleagues took over drafting responsibility in June, we understand that a decision has been taken by them to halt progress on this as OLC no longer consider it is necessary in advance of the Tailored Review. The Chair and I will raise this at our forthcoming 4-way meeting with the OLC Chair and CEO.

#### Legal Services Consumer Panel

14. Longlisting for a new Chair and Member of the Consumer Panel took place on 15 August and shortlisting will take place on 6 September. The panels were confident that the fields for each role would deliver appointable candidates. The LSB is required to seek the approval of the Lord Chancellor to each of these appointments.
15. In August, members of the Panel and their team trained LSB colleagues on the use of consumer principles and consumer vulnerability guidance. This was well-received and forms an important part of our policy development approach.
16. Members will also be aware that on 16 August I wrote to the Panel Chair to request advice from the Panel to inform our work on information remedies. A final report is expected by the end of 2016 and will be used as part of our business planning process for 2017/18. It will also be of wider benefit in our assessment of rule change applications and to regulators who are considering information remedies

#### **Staffing and organisation matters**

17. The team has been busy with recruitment recently. Since the last Board meeting, we have been joined by Daniel Knol as a Regulatory Associate. Daniel's most recent role was with Infrastructure Victoria in Australia. In early September we will be joined by Danielle Viall as Legal Advisor (maternity cover). Danielle has worked recently at the General Medical Council and General Dental Council. Additionally in early September, Karen Naya will join us as a Regulatory Project Manager (maternity cover). Karen has most recently worked at the Nursing and Midwifery Council but has a background in system and professional regulation. We have also been recruiting for our remaining Associate vacancies and for a

replacement Corporate Governance Manager in light of Ade Kadiri's imminent departure.

18. On 28 July, we had a very successful and enjoyable all-colleague awayday where we were able to spend time discussing 'theory of change' and the outcomes we are here to achieve. This work formed the basis for the activity in the Board's own awayday.
19. The team has also started to work on developing an LSB Corporate Social Responsibility (CSR) initiative. Led by Chris Nichols, the team are developing ideas and would welcome involvement by any Board member with a particular interest in this area.

## **Regulation**

### *The Law Society/SRA*

20. Following our most recent 4-way with the Chair and CEO of the SRA I have written a joint letter to the CEOs of the SRA and the Law Society asking them to advise whether there are any matters of which they need to advise us under the Internal Governance Rules. Their reply is due by the end of September.

### *Regulatory Performance Action Plans*

21. We have now published all of the regulators' action plans and agreed tailored processes with each of them for reviewing their progress against the plans. We intend to publish an update on how the regulators have progressed against their action plans by mid-2017. We will inform the Board if any issues arise in relation to the regulators' progress against these plans.

### *Review of regulatory performance framework*

22. The review of the regulatory performance framework began in July 2016. The review has focused on whether:
  - the standards are still fit for purpose
  - the approach that we take to assessing performance is proportionate, targeted and appropriately focused
  - there is merit to retaining the stakeholder feedback and data request aspect of the current regulatory standards process
  - the approach we take to identifying, recording and assessing evidence of the regulators' performance could be improved.
23. In considering these issues, we have undertaken a number of tasks including:
  - an internal review of the approach to regulatory standards and the framework to identify where we consider it works well and where improvements can be made

- desk-based research on other regulatory schemes used nationally and internationally
- meeting with other regulators to discuss their schemes.

24. We have also met with the legal regulators to discuss their views on what works well and what could be improved with the current approach to regulatory standards and the related framework. At these meetings, we have also tested some potential ideas for change with the regulators. Our discussions have been constructive, and there is some consensus as to the changes that are needed. These discussions will inform any changes we propose to make to the standards framework.

25. The project is progressing well and we will update the Board on progress throughout 2016/17.

### Research

26. Colleagues continue to scope the research element of projects in the 2016/17 Business Plan. In particular good progress is being made on the investors and vulnerable consumers projects.

27. We plan to present a paper at the October Board meeting on how we can adapt the research function to ensure that we continue to provide colleagues and stakeholders with useful market intelligence, and support evidence-based policymaking, within our new resource constraints.

### Statutory decisions

28. The following applications were approved through our Exemption Direction process:

- Minor changes to the SRA's Indemnity Insurance Rules in respect of its Participating Insurer's Agreement
- SRA Compensation Fund Contributions (no changes to contributions but required to be approved by the LSB each year)
- Updating the minimum wording in the ICAEW Professional Indemnity Insurance Rules to take account of the requirements of the Insurance Act 2015 which came into force on 12 August 2016

29. We have approved PCF applications from the Master of the Faculties and the SRA. In the case of the Master of the Faculties, the overall cost of authorisation will be reduced resulting from a reduction in the contribution to the Contingency Fund. This reduction offset a small increase in the PCF. However, the application did not fully comply with all the requirements of our revised PCF rules. We sought further information and made clear in our decision letter (which is published) that all of the regulators are required to provide budgetary and PCF forecasts to support proposals to increase a PCF.

30. The SRA's application was more straightforward and involved a reduction in the PCF. No significant issues were raised with regards to the substance of the SRA application, although we did have to set out in the decision letter the LSB's statutory position with regards to section 51, as the application re-stated the legal advice the Law Society had received on use of commercial income, even though there was no proposal in the application to use commercial income differently.
31. We received the ICAEW's designation application and have commenced our assessment. We have also requested advice from the mandatory consultees: the Legal Services Consumer Panel and the Competition and Markets Authority. They have until mid-October to submit their advice.

#### MoJ consultation on reforms to ABS authorisation

32. In early August we responded to the MoJ's consultation on reforming the provisions around authorisation of Alternative Business Structures. This consultation arose directly from the joint work undertaken by the LSB and the regulators in 2015, and the proposals involve minor clausal changes to the Act. Experience since 2011 has indicated that there is nothing inherently riskier about ABS that requires a more stringent or inflexible approach to authorisation than that in place for a traditional law firm. That being so, it is appropriate that regulators are allowed to exercise a similar level of discretion in their approach to authorising ABS as they may do at present for traditional law firms. A level playing field for all legal services providers seeking authorisation also promises benefits for competition, innovation and growth.
33. If the MoJ proceeds with these proposals and gains Parliamentary approval for the reforms, we would expect to undertake a full revision of the LSB's guidance on licensing rules to reflect the additional areas of discretion that regulators and licensing authorities would be given. In our response to the MoJ we highlighted the need for this development work and asked that the MoJ adopt a phased approach that allows the LSB to publish revised guidance to licensing authorities before they seek to make changes to their regulatory arrangements. This would help avoid any risk that licensing authorities seek to implement new rules around ownership before we have completed the revision of our guidance.

#### MoJ informal consultation on proposals to amend file retention and destruction obligations for regulators and licensing authorities

34. Following a request from the SRA, the MoJ sought our views informally (and those of some other key stakeholders) on proposals to amend the requirement that approved regulators and licensing authorities must seek the permission of the High Court when seeking to destroy files retained following an intervention in a law firm (due to closure or other reason). The MoJ proposal is to remove this requirement and replace it with the obligation that the approved regulator or licensing authority publishes a policy on its handling of files in these circumstances, with the policy approved by the LSB as a regulatory arrangement (that is as a "rule change application").



35. It is evident from informal discussions with regulators, that this provision is potentially disproportionate when compared to the file retention obligations that law firms must observe. The Information Commissioner has previously indicated that the current requirements may act as a barrier to approved regulators and licensing authorities complying with data protection law. Further, under current arrangements the approved regulator or licensing authority must carry the cost of making the application to the Court, plus the charges associated with storing the retained material while this is being considered. The MoJ proposals at present are high level and it is unclear whether officials would seek to place additional provisions in legislation that would maintain protection of consumers interests while giving approved regulators and licensing authorities additional discretion to act in these circumstances. In our response we encouraged the MoJ to consider this matter. We also encouraged the MoJ to seek the views of the Legal Services Consumer Panel, as they were not consulted during this process.

**Communication and external engagement**

36. The table below lists mine and the Chairman’s external engagements from the last Board meeting up to the point of drafting.
37. An article was drafted (by Chris Nichols) for Modern Law Magazine on the LSB’s research into unregulated legal services published earlier in the year. It is due for publication in the next edition of the magazine.
38. An article and a ‘letter were provided to Costs Lawyer Magazine (the in-house magazine of the ACL). The article focused on the regulatory standards report issued. The letter was a response to articles (one by the CLSB Chief Executive and the other by the CLSB Chair) in the two most recent issues of the magazine which in our view did not reflect accurately the regulatory standards work of the LSB. It was considered that both articles required a response.
39. The affordability of legal services research and the response to the CMA’s interim report on the legal services market were both published in mid-August.
40. A consultation on the BSB’s section 69 order was launched.
41. In accordance with feedback received from Board members and colleagues, a list of people both from within the regulatory family and further afield, who may be invited to attend and present at future Board meetings, is being drawn up. Any ideas or suggestions that members may have as to possible invitees would be gratefully received.

OLC Board meeting	CEO and Chair	19 July
Quarterly LSB/Bar Council 4-way meeting	CEO and Chair	25 July

OLC/LeO Performance review	CEO and Chair, JH	25 July
Bar Standards Board CEOs meeting	CEO	26 July
SRA CEO monthly meeting	CEO	26 July
Introductory meeting with Nick Goodwin, Director, Access to Justice, MoJ	CEO	27 July
Introductory meeting with Ruth Bulteel, HMRC	CEO, EJ	01 August
4-way with SRA meeting	CEO and Chair	02 August
4-way with CIPA meeting	CEO and Chair	02 August
LSB/MOJ Q1 Performance meeting	CEO, JM, JH	05 August
Intro meeting with new President of CILEx	CEO	08 August
Meeting with TheCityUK	CEO, CW	15 August
Bi-annual CEOs meeting with ITMA	CEO	16 August
Meeting with CEO IPREG	CEO	17 August
1:1 with Elisabeth Davies	CEO	17 August
Introductory meeting with Legal Aid Agency	CEO	17 August
Monthly LSB/OLC CEOs meeting - by phone	CEO	23 August
Annual LSB/Judicial Appointments Commission (JAC) CEOs meeting	CEO	25 August

CW – Caroline Wallace

EJ – Edwin Josephs

JH – Jenny Hart, Business Planning Associate

JM – Julie Myers

**30 August 2016**