

<b>To:</b>	Legal Services Board	
<b>Date of Meeting:</b>	21 January 2016	<b>Item:</b> Paper (16) 07

<b>Title:</b>	Chief Executive's update – January 2016	
<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 key developments across the organisation since the November 2015 meeting.</p> <p>The Board's attention is drawn, in particular to the following three developments:</p> <ol style="list-style-type: none"> <li>1. Progress on Board appointments</li> <li>2. The announcement by CMA of their review into the legal services market</li> <li>3. Publication by CILEx Regulation of their report on barriers to switching regulators</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>
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Para ref	Fol exemption and summary	Expires

## LEGAL SERVICES BOARD

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### CHIEF EXECUTIVE'S UPDATE – JANUARY 2016

1. This is my first report since my arrival on 4 January 2016 and I would like to thank all colleagues, including Board members, who have contributed towards my induction to date. I will be reviewing the format of this report and the quarterly performance report for future meetings, and would welcome any feedback from Board Members on the information they find most useful.

### PEOPLE AND GOVERNANCE ISSUES

#### Board appointments

2. The Chairman, as part of a MoJ constituted appointment panel, took part in interviews for two new non-lay members on 5 January 2016. It was a strong field and it is hoped that this will lead to successful appointments. We are not yet clear on the likely start date for new Board members. At the time of drafting, the process for identifying new lay members has not yet commenced but officials from the Ministry of Justice's (MoJ's) Public Appointments Team have indicated that this should start during this month with final interviews in mid-March.
3. The Board's membership will remain below that required by the Legal Services Act 2007 (the Act) until such time as the Minister makes the necessary appointments.

#### MoJ sponsorship matters

4. I was pleased to receive formal delegation as Accounting Officer from the Permanent Secretary, Richard Heaton, on 4 January 2016. The email accompanying the letter made reference to the long running discussions between MoJ and LSB on our 'Budget Version' (BV) and Financial Transaction Limit (FTL) letters. The LSB's concern has been the need to ensure that the drafting of these letters is consistent with our statute and the obligations relating to Managing Public Money.
5. In order to bring this matter to a conclusion, I identified the amendments that I deemed essential and returned a signed, marked-up copy to the MoJ. I will update the Board on any MoJ reaction to this approach at the meeting.
6. Separately, the team has continued to engage with MoJ officials on the LSB's budget for 2016/17 and, by the time of this meeting, we expect to have issued the

draft Business Plan for consultation. I will update the Board on any further comments from Ministers at the meeting.

#### Office for Legal Complaints (OLC)

7. We have now received a copy of the Review of Governance and Financial Management report prepared for OLC by Grant Thornton. MoJ is cited as a major stakeholder for the report and we are aware that the OLC Accounting Officer, Catherine Lee, was due to consider its findings to inform the preparation of her Governance Statement for the OLC's Annual Report and Accounts for 2014/15. There are a number of important recommendations for OLC to reflect upon, a number of which have implications for MoJ and for LSB whilst some relate to the way all three organisations work together. As a priority, we have agreed to take forward work on a three-way 'operating protocol' to act as a companion 'how to' document to our respective Framework Documents, the Act and Managing Public Money.
8. The Board, at its November meeting, agreed to establish a sub-group (comprising Mike Pitt, Terry Babbs and Marina Gibbs) to consider the OLC's budget for 2016/17 and their new performance framework in advance of substantive discussion and LSB decisions required at the March meeting. The findings of the Grant Thornton report will form part of the sub-group's considerations.
9. We continue to receive reports from OLC against our S120 and S121 requirements. The reports for November and December are attached at **Annex A**. These confirm that timelines and unit cost performance improved slightly in December. On 11 January, OLC published their proposal for a new performance framework for consultation, along with their proposed budget for 2016/17.
10. The OLC's Annual Report and Accounts for 2014/15 is on today's agenda and Steve Green and Kathryn King will be attending to present it.

#### Legal Services Consumer Panel (LSCP)

11. Board Members will wish to be aware that Catherin Wolthuizen resigned from the LSCP in December in light of a move to Australia. We wish her well and thank her for all of her important work with the Panel.

### **KEY PROJECTS AND WORKSTREAMS**

#### Discussions with the Competition and Markets Authority (CMA)

12. The CMA have confirmed, in an announcement on 13 January 2016, that they will conduct a market study into the legal sector. We have issued a press release welcoming this development. Since the November Board meeting:

- Following a request from the CMA, a teach-in session on the structure of the legal sector and its regulatory framework was held on 19 January.
- There has also been a successful internal LSB brainstorm on ‘theories of harm’, in which Marina Gibbs participated, as the nominated Board member for this work stream. Theories of harm are high level hypotheses for investigation that are used by the CMA to provide structure and focus to its work. CMA guidance sets out five high level theories of harm, and of these, our internal brainstorm identified ‘weak consumer response’ and ‘barriers to entry and expansion’ as the most plausible ones to examine in more detail.
- We have started to consider our initial response to the CMA’s request for input on the scope of their study.

### Regulator performance

13. All of the regulators’ self-assessments were received at the end of October (with the exception of the Faculty Office who had formally requested and were granted an extension). We have since completed our initial analysis of the regulators’ performance against the Regulatory Standards Framework. We have reviewed the regulators’ self-assessments alongside other information, including stakeholder feedback and information received in response to a data request to the regulators.
14. We are meeting the regulators during the course of January to discuss their responses to our initial findings and to obtain any further information we require. Our draft report will be considered at the next Board meeting on 23 March and published thereafter.

### Statutory decisions

15. Since the last CEO report, three statutory decisions have been issued:
- Solicitors Regulation Authority (SRA) Consumer Credit Activities: Following the transfer of regulation of consumer credit activities from the OFT to FCA, the SRA, as a designated professional body, was required to have in place regulatory arrangements for SRA firms undertaking consumer credit activities. These arrangements must meet the approval of the FCA as well as the LSB. The arrangements list the prohibited activities and separately set out the restrictions on consumer credit activities.
  - CILEx Regulation Qualification Exemptions Policy: Approval of changes to CILEx Regulation regulatory arrangements removing from the requirement for alternative law qualifications to have been completed within seven years from the date of application for the exemption (the “Seven-Year Rule”).
  - Exemption Direction: Minor alterations to the Institute of Chartered Accountants in England and Wales (ICAEW) regulatory arrangements Disciplinary Bye-laws.

16. The Practising Certificate Fee (PCF) application from the Intellectual Property Regulation Board (IPReg) was approved. Following enquiries from LSB, IPReg made a revision (downwards) to the proposed PCF levels.
17. We have received, and are currently assessing, the PCF application from the Bar Council (Bar Standards Board).
18. We continue to assess the BSB's application to become a licensing authority. We are monitoring progress against their implementation plan and preparing the paper for the Board on the application. Provided the BSB's commitments as set out in its implementation plan are met, we expect the Board to be able to make a decision on the application at its meeting in March. The LSB has until 28 April 2016 to make its decision and can extend this to 28 August 2016.
19. The SRA's application for changes to its authorisation regulatory arrangements in respect of reserved legal activities and the PCF Rules 2009 review are both the subject of papers on today's agenda.

#### CILEx Regulation report on barriers to switching regulators

20. On 1 December 2015, CILEx Regulation published a report, with an accompanying press release, calling on the LSB to carry out a review of the regulatory requirement on legal services providers to take run-off insurance cover when they switch regulators. It is stated that this acts as a barrier to switching, and CILEx Regulation is concerned about the anti-competitive repercussions of this requirement. It asked that LSB (1) extends the scope of our current work on regulatory restrictions of choice of insurer and (2) directs regulators to review their regulatory arrangements and to work together in resolving this issue.
21. The Chairman responded in writing to the Chair of CILEx Regulation on 17 December 2015, stating that we did not consider that there was sufficient alignment between this issue and the LSB's current thematic review. We also did not consider that taking statutory enforcement action by issuing a direction under section 32 of the Legal Services Act 2007 is an appropriate course of action on the basis of the information in the report.
22. However, we have agreed to discuss the report's findings in more depth with the regulator. As set out in paragraph 32 below, the legal regulators agreed at their CEOs' meeting on 11 January to start a work stream to be led by CLC (who share CILEx Regulation's concerns) on run off cover.

#### Research

23. The following research projects are at fieldwork stage:

- Pye Tait Consulting's joint research (with the BSB) on Public Access Barristers. The outcomes from this will support our market evaluation work.
- Economic Insight is supporting the project to map the unregulated legal services sector, focusing in particular on intellectual property, divorce and wills, and estate administration.
- Research on the prices of common legal services in support of the market evaluation and affordability projects.
- The individual legal needs survey – jointly funded by the Legal Education Foundation and The Law Society. Fieldwork has been completed and data analysis has begun.
- Oxford Economic Consulting has been appointed to provide economic advice on likely market impacts of changes to regulation between 2010 and 2015. This analysis will be used to support the market evaluation project.

## **COMMUNICATIONS AND STAKEHOLDER ENGAGEMENT**

24. Richard Moriarty participated in a Welsh Government legal services roundtable in London on 25 November. The event was hosted by PwC and attended by the Lord Chief Justice. The LSCP were also present.
25. We responded positively to the government announcement (on 30 November) on cutting red tape and opening up markets to new and innovative business models. Our response was focused on the reform of the legislative framework for the regulation of legal services elements of the announcement.
26. As part of the LSB's programme of engagement with key Parliamentarians, the Chairman met Robert Neill MP (Chair of the Justice Select Committee) on 1 December and Dominic Grieve QC MP on 15 December.
27. Richard Moriarty and the Chairman met representatives of the Leeds Law Society prior to the Board meeting and stakeholder event on 26 November 2015. Members will recall that the meeting was followed that evening by a successful and well attended stakeholder event. It has been agreed that efforts should be made to hold a similar event at around the same time in 2016, with Manchester suggested as a possible venue in order to retain the 'Northern Powerhouse' theme.
28. There has been a working level discussion with MoJ concerning their plans to consult on the regulatory framework for legal services, and in particular, the full independence of regulators. The issues that are likely to be raised in the consultation will be discussed with the Board at the session with Professor Stephen Mayson later this afternoon.

29. I chaired the meeting of the CEOs of all the legal regulators on 11 January. These regular meetings aim to help the regulators collaborate on areas of interest, and it was agreed that three areas, namely disciplinary tribunals, run off insurance cover for firms switching regulators, and selected consumer-related topics, would be the subject of work in the first half of the year. This was followed by a discussion about the forthcoming MoJ consultation. There was an animated debate in particular concerning the issue of who should award title.
30. We published a short article in the January edition of Modern Law magazine outlining the key findings from the LSB's updated small business legal needs report.
31. As of 8 January, the LSB has 1,157 followers on twitter. The separate twitter account ([@LSB Leeds 2015](#)) which was opened to promote the joint LSB / LSCP / LeO event in Leeds on 26 November will be renamed and retained for use in promoting future events.

**21 January 2016**