

To:	Board	
Date of Meeting:	28 March 2011	Item: Paper (11) 12

Title:	Chief Executive's progress report: March 2011	
Workstream(s):	All	
Author / presented by:	Chris Kenny, Chief Executive chris.kenny@legalservicesboard.org.uk / 020 7271 0057	
Status:	Restricted	

Summary:
<p>The paper updates Board Members about:</p> <ul style="list-style-type: none"> • staffing and governance issues • progress on the key project areas, by way of a performance report • other internal and external policy developments • stakeholder and communications activities.

Risks and mitigations (Covered in assessments of project progress)	
Financial:	N/A
FoIA:	Initial assessment of exempted text highlighted.
Legal:	N/A
Reputational:	N/A
Resource:	N/A

Consultation	Yes	No	Who / why?
Board Members:		✓	N / A – routine update and personal commentary.
Consumer Panel:		✓	
Others:	N / A		

Recommendation:
The Board is invited to note the Chief Executive's progress report.

LEGAL SERVICES BOARD

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Chief Executive's progress report: March 2011

Recommendation

The Board is invited to note the Chief Executive's progress report.

Operations and governance issues

Organisation development and governance

1. The first training programme is drawing close to completion, with policy colleagues recently attending a two-day bespoke course at London School of Economics. Feedback on both this and the wider mandatory programme has been positive and we are looking to ensure that the learning from the programme is embedded and applied consistently across LSB. Over the coming months we will look ahead to the programme for 2011/12.
2. The Public Bodies Bill continues its passage through the House of Lords and a Government amendment has removed Schedule 7. Cabinet Office issued an update on public body reforms on 16 March, which confirmed that both LSB and Office for Legal Complaints (**OLC**) are to be retained because we perform functions that require impartiality. Department for Business, Innovation and Skills (**BIS**) issued on 17 March a consultation proposing changes to competition regulation architecture and we understand that additional consultations on changes to consumer arrangements are still scheduled for release before Easter.
3. Colleagues will be aware that we received confirmation from Ministry of Justice (**MoJ**) that our website must 'close', with content to be transferred primarily to justice.gov.uk by 31 March. That said, to date we have had no contact from the team leading the 'digital efficiencies programme' to discuss practicalities and until we do so we are maintaining our current site. Our legal analysis has been unable to uncover a statutory locus for such an instruction and we remain of the view that our sites should remain operational. [s36(2)(b)-(c)]. On 9 March, Baroness Hayter (Chair of Legal Services Consumer Panel (**LSCP**)) spoke out strongly in the House of Lords against MoJ's instruction, but we are not aware of a Government response to her intervention. This received a degree of media coverage, including an insightful piece in The Guardian which drew attention to the need to consider overseas observers' reactions to such moves as they develop their own approaches to legal services regulation.

[REDACTED] |
will update colleagues at the meeting.

Governance

4. I am pleased to welcome Edward Nally to the Board. A solicitor for 31 years, he is the Senior Partner of Fieldings Porter, a firm of solicitors in Bolton. Mr Nally is a Governor of the College of Law and a Member of Solicitors Disciplinary Tribunal. He was President of The Law Society in 2004/5 and, following his appointment to LSB, he is stepping down as a Judicial Appointments Commissioner. I am advised that the quorum for Board meetings will continue to be three, comprising of both 'non-lay' and a majority of lay Board Members.
5. Since the last meeting, the Board has agreed by correspondence:
 - the revised maximum financial penalty for ABS licensing (January 2011)
 - changes to the Rules for Approved Regulator Designation to enable applications for 'Qualifying Regulator' status (under Schedule 18 of Legal Services Act 2007 (**the Act**)) (**Paper (11) 11**, February 2011)
 - a recommendation from Remuneration and Nomination Committee (March 2011).

Project update

Programme highlight report (3 February – 8 March 2011)

6. The monthly Programme Highlight Report was circulated to colleagues on 18 March, following the meetings of the Programme Board and Senior Management Team (**SMT**) at which it was reviewed.
7. Although progress overall is steady, colleagues should note, in particular:
 - **Diversity:**
 - Attendance records show reduced Chief Executive-level engagement with the Diversity Forum, although there has been consistent attendance by Solicitors Regulation Authority (**SRA**), The Law Society, Bar Standards Board (**BSB**) and The Bar Council. In the light of this reduced engagement and the publication of the consultation paper, no further meetings of the Forum have been scheduled
 - The consultation paper, 'Increasing diversity and social mobility in the legal workforce: transparency and evidence', closes on 9 March. A response document will be presented to the Board in May
 - The exercise has already had clear benefits, if only by stimulating an increase in the visibility and quality of debate on the issue.
 - **First-tier complaints handling** – the regulatory review report has been completed and published. There will now be further engagement with Approved Regulators (**AR**) in relation to the outcome to the review, principally to develop plans for monitoring and enforcement
 - **Independence** – a timetable for the Internal Governance Rules process 2011/12 has been circulated for comment to appropriate colleagues. We will have written in advance of the meeting to all ARs explaining how the dual self-certification process will work in 2011/12, following up on specific issues for individuals organisations identified last year

- **Regulatory Information Review** – 457 articles have been incorporated into the 'Knowledge Bank'.

Alternative Business Structures (ABS)

8. The standing report about the key issues and risks facing the implementation of ABS is presented to this meeting (**Paper (11) 13**). Additional ABS-related papers are also presented (**Papers (11) 14 and 15**).

Research

9. In the past month:
 - we completed the pilot stage of the will-writing project (and we will now proceed to the main stage of the research)
 - we commissioned CRA to pilot the OXERA supply framework for city and high street firms
 - we commissioned Frontier Economics to pilot the supply framework for special bodies
 - we commissioned YouGov to survey consumer experiences of first-tier complaints handling
 - we commissioned Chris Dewberry (Birkbeck College) to review academic evidence about the use of aptitude testing
 - we published our research on the economics of legal services regulation, a compendium of essays to the economics paper and our research on consumer outcomes.
10. Our focus over the coming month includes:
 - managing the research programme
 - we expect to complete the 'Knowledge Bank' (including over 600 references) and to finalise plans for its publication
 - we will finalise and publish research plans for 2011/12
 - we will write and present a paper at the Society of Socio-Legal Scholars on our work about the economics of regulation of legal services and its implications for reserved / unreserved activities.

Regulatory decisions

Rule approval and exemptions

11. Three applications have been approved since my last report:
 - ILEX Professional Standards Limited (**IPS**) – approval of proposals to delegate certain decisions of the Admissions and Licensing Committee to officers of IPS
 - The Master of Faculties – approval of amendments to Notaries Practice Rules and Notaries (Conduct and Discipline) Rules arising from complaint handling requirements

- Council for Licensed Conveyancers (**CLC**) – part approval of amendments to regulatory arrangements for the Adjudication Panel and the Disciplinary Procedure Rules.

12. CLC also submitted an application for the approval of its new outcomes-focused Handbook (in connection with the Licensing Authority (**LA**) and additional reserved legal activities applications). This application is being considered.

New designation applications

13. Following approval at the last Board meeting, the application from Institute of Legal Executives (**ILEx**) to be designated as an AR for the conduct of litigation (restricted, at this point, to Associate Prosecutors of the Crown Prosecution Service) has been submitted for the approval of the Lord Chancellor. The application has been cleared by Ministers and the relevant Order has passed scrutiny by the Merits Committee and been laid.

14. In relation to the other two applications (litigation and rights of audience and probate), we are considering further information from ILEx about how it will approach the regulation of entities and its approach to supervision.

15. CLC has submitted its application to be an LA and an application to extend the reserved legal activities for which it is an AR (to include litigation and rights of audience). In relation to the former, advice has been received from Office of Fair Trading and LSCP; the application is now being considered by the Lord Chief Justice. The reserved legal activity application (which has a slightly longer timescale) is being considered by the mandatory consultees.

16. LSB has been asked to assist BIS to explore the role of Trading Standards Officers (**TSO**) in civil courts. At present, they have criminal rights of audience granted through Local Government Act 1972 and are thus exempt from our regulatory regime under Section 15 of the Act. The increasing shift towards the use of civil penalties leaves TSOs having to use lawyers (either in-house or outsourced) to conduct litigation and advocacy. We are therefore exploring options including, for example, authorising and regulating TSOs to conduct civil litigation / advocacy or expanding the current extension in criminal matters.

[REDACTED]

17. [REDACTED]

Other policy developments

18. Other policy developments – about which I will elaborate at the meeting – include:

- **The Bar Council** – on 14 March, I met David Hobart, whom the Board will recall is standing down as Chief Executive in May, to discuss governance issues and our draft Business Plan. The Chairman was due to meet Michael Todd QC, the Vice-Chairman of The Bar Council, but this has had to be re-scheduled
- **Legal Complaints Service (LCS)** – I met Prof. Shamit Saggar (Chairman) and Deborah Evans (Chief Executive), who reported positively about the impending closure of LCS on 31 March. On 10 March, LCS' caseload was 56, with only three cases expected to transfer to the acting Legal Services Ombudsman at the end of March. I received an early draft of LCS' final report, which provides a helpful summary of its five years of operation and evidences a real success story. I will circulate a copy of the final report to colleagues
- **Bar Standards Board** – I met Vanessa Davies (Director) on 14 March to discuss, amongst other things, education and Quality Assurance for Advocates. Colleagues have been contacted separately about proposals to convene a joint session of BSB / LSB, as part of BSB's new lay members' induction programme
- **Schedule 18 of the Act** (relating to immigration advice and services) – MoJ advises that the Minister has consented to the commencement of Schedule 18 of the Act and supporting Rules to take effect from 1 April 2011. As noted above, colleagues agreed by correspondence to make the Rules, subject to Ministerial consent.

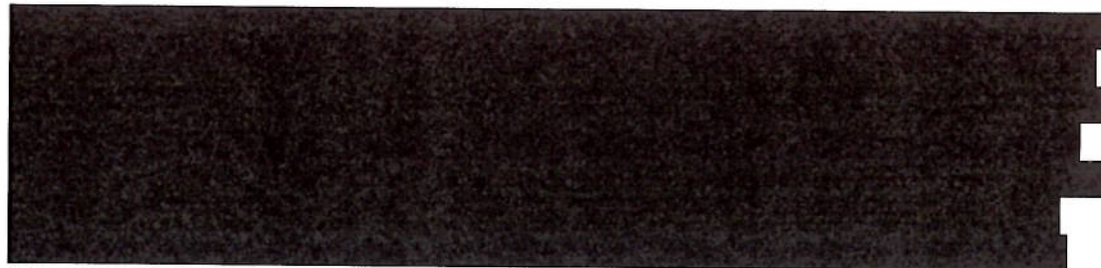
SDT performance measures

19. In October 2010, the Board agreed Solicitors Disciplinary Tribunal's (SDT) budget for 2011. As part of this approval, SDT was required to finalise a set of performance measures (PM) by early 2011, which we received in February.

20. Overall, we are content, as are The Law Society and SRA. There are five PMs:

- **Issue of proceedings** – 85% of case proceedings to be issued or notified of non-certification sent to the Applicant within 10 calendar days of date of receipt of Originating Application at SDT
- **Determination by hearing** – 70% of cases final determination of application, by substantive hearing or otherwise, to take place within six months from the date of issue of proceedings
- **Cost per court** – average cost per court, per day
- **Production of findings and decisions** – 80% of cases the 'findings and decisions' to be served on the parties within seven weeks of the final determination of the application
- **Appeals** – number of SDT decisions appealed by either the Applicant or the Respondent or both, and outcome.

21.



[s36(2)(b)]

22. The Board will receive its first performance report from SDT at the same time it receives SDT's annual budget application (September 2011). The performance report will cover the period 1 May 2010 to 30 April 2011, and will explain where SDT has exceeded or failed to reach PM expectations.

Judicial reviews

23.



[s36(2)(b)-(c)]

24. Since the last meeting, a second action for judicial review has been brought on behalf of a number of individuals by Messrs Bindmans. It concerns the impact of the new QLTS on those students who are currently studying for the Bar on a part-time basis and who may wish to seek to re-qualify as solicitors. LSB is not a Defendant to the claim, merely an 'Interested Party'. This action is currently stayed whilst the Claimants and SRA seeks settlement. If that proves unsuccessful, LSB will have an opportunity to consider whether it wishes to become actively involved in the case or take no part in it (and accept the consequences of whatever outcome is reached).

LSB Annual Report 2010/11

25. At its meeting on 28 February, Audit and Risk Committee (**ARC**) noted a high-level draft outline for LSB's Annual Report and Accounts 2010/11 and the supporting timetable for publication. ARC recommended that the Board should have an early opportunity to note these documents (in particular the former), both of which are at **Annex A**.
26. The Board Secretary will lead the process for producing the Annual Report, which will be overseen by ARC. The Board will be provided with an opportunity to provide comments, by email, on a fuller draft of the Annual Report in April, before being asked to approve the Annual Report and Accounts in May, which will be laid before Parliament before the summer recess.

Legal Ombudsman (LeO) / Office for Legal Complaints (OLC)

27. There have been several constructive meetings with LeO and OLC during March. On 1 March, I met David Thomas (OLC Member) and Adam Sampson (Chief Ombudsman) to discuss the data that is likely to be shared between our organisations and the mechanisms for this. On 2 March, Steve Green (LSB Member) and Julie Myers (Corporate Director) met Tony Foster (OLC Member), Liz Shepherd (Director of Operations, LeO) and Paul Partridge (Head of Finance) to discuss the reporting arrangements for OLC to provide assurance to LSB about its effective management of LeO performance. I believe that the group came up with a sensible approach, which Tony agreed to take back to his Board. I hope to confirm OLC's endorsement of the approach and to provide colleagues with an update about OLC's performance reporting to LSB at the meeting. [s36(2)(b)-(c)]
28. LeO announced at the end of February that, with immediate effect, it would provide statistics and anonymised case summaries on its website. This follows the recent joint LeO and LSCP research to establish the best way to publish the former's decisions. From June, LeO will also publish Ombudsman decision summaries, detailing the area of law, the type of lawyer and the outcome of the case (including the remedy). LeO expects to decide by the end of the year whether to name law firms.

Legal Services Consumer Panel

29. LSB's response to LSCP's advice on quality in legal services is presented to this meeting (**Paper (11) 19**). The Board is also invited to endorse LSCP's work programme 2011/12 (**Paper (11) 20**).

Communications

30. Political communications work over the last month has focused on briefing officials and Ministerial aides in the run-up to The Law Society Council decision on whether to allow SRA to apply for LA status. The Chairman and I met Sadiq Khan MP (Shadow Secretary of State for Justice) on 8 February. We provided a general overview of LSB and our programme, with an emphasis on ABS and equality and diversity matters. On 11 March, I met Kathryn Laing, the Lord Chancellor's Special Advisor, to provide a briefing on LSB matters (again with a focus on ABS) in advance of the Lord Chancellor's speech to The Law Society Council (in private session) on 22 March. We noted that Graham Stuart MP had raised concerns about will-writing and estate administration in the House and wrote to inform him of our work. This generated an appreciative response and we will continue to contact those we know are interested in this work.
31. We have worked with a number of media commentators to prepare the ground for the release of the final Business Plan 2011/12. Briefings have been arranged with Frances Gibb of The Times and Ros Taylor of The Guardian. We have also briefed Law Society Gazette on forthcoming announcements, as well as submitting a letter to the editor challenging commentary about ABS. An article reporting on the will-writing investigation will be published shortly in the Solicitors Journal.

32. Speaking engagements have focused on stakeholders within the sector. I was the lead speaker at an event celebrating the launch of the re-named Association of Costs Lawyers and Crispin Passmore (Strategy Director, LSB) addressing the organisation's annual conference. I also took part in a panel discussion at Inner Temple focusing on legal education, whilst the Chairman addressed students and Benchers at Lincoln's Inn about market reforms, the rule of law and professional ethics. On 17-19 March, I attended the Federation of Law Societies of Canada's Semi-Annual Conference, where I was invited to speak about the new regulatory framework in England and Wales. I will report back on this opportunity to share our experiences of implementing regulatory reform at the meeting.

21.03.11

High-level draft skeleton outline of the Annual Report and Accounts 2010/11

Section A

(Drafting co-ordinated by Bryan Hislop (Board Secretary) and Karen Marchant (Corporate Affairs Associate))

1. Introduction

- A summary of the highlights, achievements and challenges of 2010/11 from the perspective of the Chairman and Chief Executive
- While the section will touch upon our key challenges for 2011/1 (such as ABS), it is proposed that the main 'forward look' narrative is contained within the Management Commentary.

2. About LSB

- Our background, role, statutory responsibilities and how we are funded
- A summary of our key relationships (Government/OLC/ARs)
- Regulating in the interests of consumers (role of Consumer Panel and research).

3. An overview of 2010/11

- This section will (in tabular form) summarise our milestones, performance against them and the related workstream and regulatory objectives
- This approach will provide readers with an easy to digest summary of our year. An example of how this might look is provided below:

Workstream & Regulatory Objectives	Milestone	Outcome	Commentary
2A: Putting consumer and public interest at heart of regulation	Q1: publish our finalised research programme for 2010/11	Achieved	We completed this by XX.
	Q1/2: sponsorship of Legal Service Research Centre conference	Achieved	We sponsored the conference in XX. This provided an excellent example of XXX.
RO1, RO3, RO4, RO5, RO6, RO7	Q3: consult publicly on 2011/12 research programme	Achieved	The consultation ran from XX to XX, we had over XX responses.

- Separately, this section will cover performance against the service standards set for 2010/11.

Section B

(Drafting co-ordinated by Edwin Josephs (Director of Finance and Services))

This section is statutory and must include the following:

- LSB Members' Report (brief history, governance, people and culture, etc.)
- Management Commentary (future challenges, stakeholder relations, resources, etc.)
- Remuneration Report
- Statement of Accounting Officer's Responsibilities
- Statement on Internal Control
- Certificate and Report of The Comptroller and Auditor-General
- Financial Statements and Notes.

Timetable for the production of Annual Report and Accounts 2010/11

Date	Activity	Owner
28/02	Audit and Risk Committee NAO Planning Report 2010/11 to ARC (<i>to note</i>) ARA project plan to ARC (<i>to note</i>) (<i>deadline for papers: 18/02</i>)	NAO BH
14-25/03	Interim audit by NAO	NAO / EJ
By 01/04	Annual Internal Audit Report to CK (<i>to inform SIC</i>)	KPMG / EJ
01-07/04	Audit and Risk Committee Draft ARA (Part Two – words) to ARC (<i>to comment by email</i>)	ARC / EJ
01-07/04	Board Draft ARA (Part One) to Board (<i>to comment by email</i>)	Board / BH
08-11/04	Review / incorporate Board's comments	BH
12-18/04	Audit and Risk Committee Draft ARA (Part One) to ARC (<i>to comment by email</i>)	ARC / BH
19-21/04	Review / incorporate ARC's comments (<i>ARC telecon – to be scheduled</i>)	BH
By 21/04	'Near final draft' of ARA to be finalised for NAO	BH / EJ
26/04-06/05	Final audit by NAO	NAO / EJ
13/05	ARA to MoJ (<i>for information</i>)	BH
23/05	Audit and Risk Committee ARA to ARC (<i>to endorse and recommend</i>) NAO Audit Completion Report to ARC (<i>to note</i>) (<i>deadline for papers: 13/05</i>)	ARC / BH NAO / EJ
26/05	Board ARA to Board (<i>to approve</i>) (<i>deadline for papers: 18/05</i>)	Board / BH
26/05	ARA to Accounting Officer (<i>to sign</i>)	BH
26/05	ARA to Comptroller and Auditor-General (<i>to certify</i>)	BH
By 02/06	Lord Chancellor to lay ARA before Parliament	Ld Ch
TBC	Chairman to meet Lord Chancellor/Minister to discuss ARA	Chairman
From 20/07	Parliamentary recess	

Dates to confirm: Design work
Parliamentary process

Key:

ARA Annual Report and Accounts 2009/10
NAO National Audit Office
BH Bryan Hislop (Board Secretary)
EJ Edwin Josephs (Director of Finance and Services)
CK Chris Kenny (Chief Executive and Accounting Officer)