

To:	Board
Date of Meeting:	14 September 2011
Item:	Paper (11) 64

Title:	Chief Executive's progress report: September 2011
Workstream(s):	All
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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 is 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: September 2011

Recommendation

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

Operations and governance issues

Organisation development and governance

1. We said farewell to three colleagues over the summer: [REDACTED]. However, we welcomed Wendy Harris on a short-term contract to cover the workforce development portfolio. Wendy has a background in health and healthcare regulation. We are investing in thorough 'exit interviews' with departing colleagues to ensure we address any issues that may be under the day-to-day radar.
2. We are now preparing this year's training schedule, based on the outputs of the performance management process. This will also include training in equality and diversity issues.
3. On 1 September, we held a productive workshop with a range of our counterparts at Ministry of Justice (**MoJ**). Built as a chance to 're-set our relationship', we spent time looking at our mutual expectations of each other, where the past two years interactions have worked well and less well, with a view to building on the positive. It was a good-humoured occasion and, whilst there is a will to streamline and to drive delivery, it is clear that there are some constraints on MoJ that simply are not in their gift to adjust. We agreed to set-up a working group to review the statutory instrument drafting and laying process, to develop a 'work shadowing' scheme and to identify how LSB could best engage with MoJ's policy plan process.
4. It is a similar story with the operational sponsorship relationship. Julie Myers (Corporate Director) and Edwin Josephs (Director of Finance and Services) met a representative from MoJ's arm's-length body (**ALB**) team, who is attempting to prepare a submission for the Permanent Secretary about the excessive burden of data and information requests emerging from MoJ and Cabinet Office (there were c.25 over July and August).
5. We have no more details about the Triennial Review, but references in conversation with MoJ officials suggest that our review will now be conducted in parallel with the review of Office for Legal Complaints (**OLC**) (rather than sequentially). MoJ is considering how to approach these reviews and it has

indicated that an MoJ / ALB workshop will be held in October / November. We are 'guinea pigs' for the process and we will make sure that we stress the need for proportionality in the process.

6. The Chairman had his regular quarterly meeting with Helen Edwards (Director General, Justice Policy, MoJ) on 6 September. Helen was taken through our recent work and provided with an overview of the Board's strategy planning work.

Governance

7. Since the last meeting, the Board agreed by correspondence to appoint Elisabeth Davies as the interim Chair of the Legal Services Consumer Panel (LSCP). The appointment is for the period 1 August 2011 to 31 March 2013 and has been notified to Ministers.
8. The Board agreed also to rotate the membership of its Committees. With effect from 1 September, the composition of the Committees is as follows:

Audit and Risk Committee	Remuneration and Nomination Committee	Licensing Authority Committee
Steve Green (new Chair) Barbara Saunders Andrew Whittaker (new Member)	Bill Moyes (new Chair and Member) Ed Nally (new Member) Nicole Smith	Bill Moyes (Chair) Ed Nally Barbara Saunders Chris Kenny

9. Also since the last meeting, the Chairman has submitted to the Minister a letter recommending the re-appointment of Elizabeth France as OLC Chair for the period 1 November 2011 to 31 March 2014.
10. The Chairman will take the opportunity of this meeting to invite the Board to agree schedules of re-appointments to OLC and LSCP, which are based on recommendations received over the summer from the OLC Chair and Baroness Hayter (formerly LSCP Chair). The proposed appointments are staggered to allow for a gradual re-refresh in membership and are aligned to the year-end appointments schedule for LSB, which will allow for more effective advertisement and selection processes.
11. The Board Secretary is conducting the scheduled annual review of the LSB Governance Manual. The recommendations of the review will be presented for comment to the Audit and Risk Committee on 10 October, in advance of being submitted for approval to the Board on 12 October.

Project update

Programme highlight report

12. The Programme Highlight Report for the period 5 July to 2 August was circulated to colleagues on 16 August, following the meetings of the Programme Board and Senior Management Team at which it was reviewed. Overall, progress on projects is good. All planning is now complete, or plans for scoping work are in

place, and there have been no major changes to the timelines or objectives of the work outlined in the Business Plan 2011/12.

Alternative Business Structures (ABS)

13. The standing report about the key issues and risks facing the implementation of ABS is presented to this meeting (see **Paper (11) 60**).

Research

14. In the past month:

- we have been working with MoJ to develop a research specification looking at the provision of legal advice by high street firms. The Law Society has offered to lead this research and we are currently agreeing terms of our joint project involvement
- we completed a review of evidence and data to support our Evaluation Framework
- we completed a first draft of the supply side of the Regulatory Information Review, which was circulated for initial feedback to LSB colleagues, the Approved Regulators and the Research Strategy Group
- we completed our review of research needed to support LSB work during 2011/12.

15. Our focus over the coming months will include:

- publishing the will-writing, market segmentation, City firms, Special Bodies and international education research
- completing the demand side report of the Regulatory Information Review
- commissioning research on 'high street' provision of legal advice with The Law Society and/or MoJ
- commissioning research on consumer use of legal services to support the evaluation and review of probate and estate administration.

Regulatory decisions

Decisions

16. Five decision notices have been issued since my last report:

- Council for Licensed Conveyancers (**CLC**) Disciplinary Proceedings – standard of proof
- Solicitors Regulation Authority (**SRA**) Amendments to Compensation Fund Contribution
- Bar Standards Board (**BSB**) Authorisation to Practise Rules
- BSB Code of Conduct: barristers participation in ABS
- Intellectual Property Regulation Board (**IPReg**) Litigators Code of Conduct.

17. Five directions to exempt applications have been issued:

- SRA Qualified Lawyers Transfer Scheme Amendment Regulations 2011
 - SRA Practising Certificate Fee Determination 2011 and Recognised Body Fee Determination 2011
 - BSB Minor Alterations to Inns Conduct Committee Rules
 - BSB Alterations to Part X of the Code of Conduct (Definitions)
 - SRA Commencement, Repeals and Amendment Rules.
18. Two applications for approval of Practising Fee Certificate (**PCF**) fees (under Section 51 of Legal Services Act 2007 (**‘the Act’**)) have been granted:
- The Law Society / SRA
 - Institute of Legal Executives / ILEX Professional Standards (**IPS**).
19. The applications from CLC and the Master of Faculties have been received and are being assessed against LSB’s Practising Fee Rules 2009 and criteria for considering Section 51 PCF applications.

Designation applications

20. MoJ queried whether the approach adopted in SRA’s Licensing Authority designation application to the appointment of Heads of Legal Practice and Heads of Finance and Administration was consistent with the Act. LSB and SRA were satisfied that the approach was consistent and that alterations to the rules were not needed. MoJ is now content with the designation recommendation, although a sequencing issue (with the Section 80 Appellate Body Order) is to be resolved.
21. Institute of Legal Executives has formally withdrawn its application for designation as an Approved Regulator (**AR**) of probate activities, although it has indicated that it will make a further application (probably in 2012). We have given very full feedback on our attitude to the application and I attended a joint ILEX / IPS Board workshop to reinforce some of the messages in the context of their strategic development.
22. CLC’s application for designation as an AR of litigation and advocacy activities is still being considered. However, we are liaising with CLC about whether it is legally able to do what is proposed.
23. Institute of Chartered Accountants in England and Wales (**ICAEW**) continues to develop its application to be designated as an AR for probate activities. The timetable assumes that an application will be made in February, although this might change once ICAEW has considered further the range of issues on which it needs to consult.

Independence



The Bar Council / BSB

24. Following the last meeting of the Board, we received the revised dual self-certificate submission from The Bar Council / BSB. These were forwarded to the

Board colleagues who had the necessary delegated authority to agree further actions in relation to the submission.

25. The certificates and accompanying correspondence accept LSB's arguments in relation to compliance with the Internal Governance Rules (IGR) about governance, strategy and resources, and oversight. However, the changes that the parties intend to introduce generally were not codified or confirmed sufficiently for the Executive to make a judgement about their compliance with the IGRs and our guidance. Coupled with the absence of a lay majority until 1 January 2012, we are unwilling to confirm The Bar Council / BSB's compliance with the IGRs in 2011/12. However, given the productive nature of their work and their commitment to provide a detailed account of any new arrangements adopted during next year's process, we believe that we should accept this position.
26. We will write to The Bar Council / BSB to this effect, reiterating the specific areas of concern and reminding them of the requirements of the IGRs and our guidance.

The Law Society / SRA


27. 
28. 
[s36(2)]


Other policy developments

29. Other policy developments include:
 - **The Bar Council / BSB** – at the request of The Bar Council, I had a successful meeting with Michael Todd (Vice-Chairman) and Stephen Collier (Treasurer) on 2 September. Although we await BSB's formal announcement of its new lay appointments, Crispin Passmore (Strategy Director) and I met one confirmed appointee, Andrew Saunders (Head of Birmingham Law School), on 30 August. This also provided a useful opportunity to discuss our work on legal education and training.

- **Referral fees** – we understand that Ministers are looking to identify ways to frame a ban, but LSB and (separately) SRA have reminded MoJ that attempts to impose a regulatory-based (i.e. rather than criminal) ban would not be consistent with the independent legal regulatory framework established by the Act.
- **Immigration** – in order to develop our understanding of the regulatory issues for immigration, we will be contacting the ARs in the coming weeks to discuss our initial findings and any emerging issues. We have identified some regulatory risks, which are likely to be compounded by the legal aid reforms, and we want to understand better how the ARs plan to manage them. We have had a productive discussion with the Immigration Services Commissioner to keep her up to date with this work and the impact of the scope of regulation work on her office.
- **Quality Assurance Scheme for Advocates (QASA)** – the Joint Advocacy Group (**JAG**) is consulting jointly on proposed changes to SRA, BSB and IPS regulatory rules to allow for the new QASA arrangements. The consultation closes on 26 September and we expect to receive thereafter rule change applications (under Schedule 4 of the Act) from each of those ARs. JAG is piloting the judicial evaluation element of the scheme at Birmingham Crown Court and the training necessary to undertake judicial assessments will be rolled-out from November. Wendy Harris (our new Project Manager) will be meeting JAG on 19 September to discuss progress with the judicial assessment pilot and the rules consultation.
- **Will-writing** – our call for evidence in relation to will-writing, probate and estate administration was issued on 5 September.

Judicial reviews

30. SRA has now clarified how it will apply the Qualified Lawyer Transfer Scheme (**QLTS**) to solicitors qualified in Ireland. Accordingly, the claim brought by the Law Society of Ireland has been discontinued, with each party to bear its own costs.
31. Colleagues will recall also that LSB is an 'Interested Party' in an action relating to the impact of the QLTS on those students who are currently studying for the Bar on a part-time basis and who might wish to seek to re-qualify as solicitors. 



[s36(2)]

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

32. I met Adam Sampson (Chief Ombudsman) on 30 August. We focused on LeO data collection, performance and OLC / LeO / LSB relations. The Chairman and I will follow-up on this discussion when we meet Elizabeth France (Chair) and

Adam Sampson on 8 September. We will update colleagues at the meeting of the Board.

33. Colleagues will recall receiving in July the first LeO quarterly performance report and the OLC assessment of LeO's performance. We expect the Q2 performance report in early October. Steve Green and Julie Myers (Corporate Director) are scheduled to meet Tony Foster (OLC Member) and LeO colleagues towards the end of September with a view to reviewing targets for 2012/13. I expect to be in a position to report on these targets at the meeting of the Board on 12 October.

Legal Services Consumer Panel (LSCP)

34. I have had a constructive first meeting with Elisabeth Davies, the new Chair of LSCP. She has had induction meetings also with a number of other Executive colleagues and spoke on behalf of the Panel at a major Westminster Legal Forum Conference on 6 September.
35. The Government's consultation on proposals for the new consumer architecture closes on 27 September. We will be reviewing the proposals, alongside the earlier consultation on consumer empowerment and protection, published by the Department for Business, Innovation and Skills.

Communications

36. The launch of our discussion paper on the scope of regulation and the impending arrival of ABS provided the opportunity to write to Mark Prisk MP, the Minister of State for Business and Enterprise, who leads the coalition's regulatory reform agenda. We focused on our approach to better, targeted regulation, whilst linking our work to take down unnecessary barriers to competition with the government's 'Red Tape Challenge'.
37. On 6 September, I spoke to the Westminster Legal Policy Forum, leading on regulatory philosophy, outcome-focused regulation and likely developments in the market.
38. We have input significantly to a speech the Lord Chancellor will make to a City audience on the international competitiveness of the UK Legal sector on 14 September.
39. We will host an informal reception to mark the introduction of ABS on 6 October. Jonathan Djanogly MP (Parliamentary Under-Secretary of State for Justice) and Anna Bradley (Chair, CLC) will address the reception. All Board Members will receive an invitation to attend.
40. The team spent time over the summer reviewing our internal processes around communications, including publication process notes and media handling and crisis communications protocols.

07.09.11