



<b>To:</b>	Board		
<b>Date of Meeting:</b>	30 November 2011	<b>Item:</b>	Paper (11)82

<b>Title:</b>	Chief Executive's Progress Report: November 2011
<b>Workstream(s):</b>	All
<b>Author / Introduced by:</b>	Chris Kenny, Chief Executive chris.kenny@legalservicesboard.org.uk / 020 7271 0057
<b>Status:</b>	Protect

<b>Summary:</b>
<p>The paper updates Board Members about:</p> <ul style="list-style-type: none"><li>• operational and governance issues</li><li>• progress on key projects</li><li>• other internal and external policy developments</li><li>• stakeholder and communications activities.</li></ul> <p>Also attached to this paper as <b>Annex A</b> is a progress report on the development of the LSB's Evaluation Framework, which outlines how the LSB will review the effectiveness in delivering the reforms set-out in the Legal Services Act.</p>

<b>Recommendation(s):</b>
The Board is invited to note the Chief Executive's progress 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?
Board Members:		✓	N/A.
Consumer Panel:		✓	N/A.
Others:	N/A.		

<b>Freedom of Information Act 2000 (Fol)</b>		
<b>Para ref</b>	<b>Fol exemption and summary</b>	<b>Expires</b>
18-20	s36(2)(b) – free and frank provision of advice / exchange of views.	Tbc
7 last sentence	s36(2)(b) – free and frank provision of advice / exchange of views.	

## LEGAL SERVICES BOARD

<b>To:</b>	Board		
<b>Date of Meeting:</b>	30 November 2011	<b>Item:</b>	Paper (11)82

### Chief Executive's Progress Report: November 2011

#### Operations and Governance Issues

##### *Organisation development*

1. We have appointed Holly Perry, currently Head of Chief Executive's Office at the Legal Services Commission, as our Corporate Governance Manager (role previously titled Board Secretary). We had a very strong field for this post. Holly will start with the LSB on 19 December and will attend the 30 November Board meeting as an observer.
2. We have also appointed Robert Cross to take up a full time role as Project Manager (Research). Rob was previously with us on a part-time basis delivering a fixed-term contract. At the time of writing, we are recruiting for a Legal Advisor and Policy Project Manager (workforce and regulation).
3. The majority of colleagues will have been on Equality and Diversity Training by the time of the Board meeting. Only one session will be outstanding (1 December). Those who attended the first session on 9 November found it useful both as a formal session on our responsibilities but also a reminder of the importance of equality diversity issues more fundamentally as a regulatory objective.

##### *Governance*

4. Gatenby Sanderson have been appointed to recruit for the additional OLC lay Board Members after a competitive tender. The advertisement appeared in the Sunday Times on 20 November. Steve and Barbara will form the Recruitment Panel with Elizabeth France with interviews due to take place on 24 January 2012.
5. We have now received initial information from the Ministry of Justice (MoJ) about how they intend to conduct the Triennial Review of the LSB and the OLC, which they intend to launch on 10 January 2012 with the publication of Terms of Reference. The MoJ team's current plan comprises holding a series of workshops around the functions of the LSB and OLC (and including the Consumer Panel's functions). This will also include discussion on governance arrangements and funding mechanisms. We have been asked to review their plans and to provide a suggested list of stakeholders to include in the workshops, and I will update colleagues at the meeting. It is their intention to conclude the review before Summer Recess 2012.

6. We continue to work across the Ministry to ensure good relations are maintained whilst also encouraging a more proportionate approach to sponsorship and oversight. Much of the burden for the team comes from data requests from Cabinet Office and Julie Myers recently attended a meeting with other MoJ ALB's and the Transparency Team in the Efficiency and Reform Group. It was apparent from this meeting that the reporting implications for small organisations and the value of the data to Cabinet Office had not been addressed directly before and there appeared some willingness from the Cabinet Office team to consider a de minimus approach e.g. considering a budget or staffing threshold for some reporting requirements. We will see.
7. Steve Green, Edwin Josephs and I met Steven Bligh, Senior Partner at KPMG on 11 November to review KPMG's performance as our internal auditor. The discussion was constructive. [REDACTED]

## Project Update

### *Programme highlight report*

8. The November Programme Highlight Report will be circulated shortly, following the meetings of the Programme Board and Senior Management Team at which it will be reviewed. The cover note will highlight any specific issues for Board colleagues.
9. We remain concerned in particular about threats to the implementation of the Quality Assurance Scheme for Advocacy (QASA), where we will update the Board on various discussions with the relevant ARs and Lord Justice Thomas held or planned over the next few days over the practicability of implementation of the scheme in relation to plea only solicitor advocates and QCs. We also remain concerned about the slow progress of the education and training review, where the Chairman has written to the relevant chairs urging action and outlining a plan for a set of road-shows in the New Year to broaden debate from the purely academic.

## Research

10. At **Annex A**, Board members will find a report regarding progress in developing our Evaluation Framework. We expect to publish an initial evaluation alongside our Annual Report in 2012.
11. Since the last Board meeting on 12 October:
  - We commissioned BDRC to conduct our consumer benchmarking research
  - We commissioned YouGov to conduct our probate consumer research

- We commissioned IFF Research to conduct our probate business research
- We wrote to College of Law ask them whether they would consider letting us see more of their statistics on diversity
- We published the international education research report
- We finalised the demand and supply reports of the RIR
- We published our quality reviews supporting the quality round table
- We have discussed with the No10 Policy Unit the extent to which we can align our work with data on official transparency and “open data”

12. Our focus over the coming month will include:

- Finalising the specification for the delayed high-street research project
- Commissioning legal advice to support our work on cost protection
- Commissioning our work to develop a framework for benchmarking small firm use of legal services
- Commissioning academic research to develop a benchmark on implementation of professional principles
- Managing the ongoing research programme
- Developing an online communication strategy for the RIR and wider research
- Developing a skeleton draft of the evaluation

## **Regulatory Decisions**

### *Decisions*

13. No decision notices have been issued since my last report. An application from the Bar Standards Board relating to the standard terms to be used when the Cab Rank Rule is invoked has been received and is being considered. Because of the complexity of the issues raised, we have extended the time for consideration of this change for a further 90 days.
14. Three directions to exempt applications have been issued:
- Council for Licensed Conveyancers (CLC) - clarification included in the Handbook that CLC can take action for breaches of previous rules and guidance where needed
  - Bar Standards Board (BSB) Hearings before the Visitors Rules – clarification of the role of retired judges
  - CLSB Disciplinary Rules and Procedures – changes to the membership of the Conduct Committee and the Conduct Appeals Committee
  - ILEX (PS) – changes to membership of the Admissions and Licensing Committee.
15. Following the discussion at the last Board meeting, the approval of the Solicitors Disciplinary Tribunal’s budget for 2012 was issued on 14 October 2011.
16. Two applications for approval of Practising Certificate Fees (under Section 51 of the Act) have been granted:

- Chartered Institute of Patent Attorneys/Institute of Trade Mark Attorneys/Intellectual Property Regulation Board
- Association of Costs Lawyers/Cost Lawyers Standards Board.

17. We held an interesting discussion with the Bar Standards Board on their plans for moving their code towards outcome based regulation and to begin to regulate entities. There has clearly been some significant developments in their thinking and the underlying regulatory culture: the challenge when they submit their applications next year will be to show that they have developed capacity at the same pace.

*Designation Application Update*

18. [REDACTED]

19. [REDACTED]

20. [REDACTED]

## **Regulatory Independence: Bar Council and BSB**

21. We have asked for an update on implementation from the BC and BSB to brief the Board at this meeting. We understand that they have:
- appointed the required lay members and so will have a lay majority from January 2012.
  - agreed the constitutional amendments to prevent selection of chair or vice-chair by virtue of professional qualification.
  - made some progress on the required reforms to the Finance and Audit Committee; it is this aspect that we will pay close attention to during next year's exercise.

I will update colleagues further at the meeting when we have the full report.

## **Other Policy Developments**

### *Conveyancing review*

22. We had written to four approved regulators (SRA, BSB, CLC and Faculty Office) in June asking them a series of questions about how they approach the issue of mortgage fraud and regulate conveyancing. It took some time to get responses from the ARs (and we are still awaiting a response from the Master of Faculties) but we have commenced analysis of their approach against a series of risks we have identified in the conveyancing market to the regulatory objectives and whether the way in which ARs regulate these risks also impact on the regulatory objectives. Our initial analysis suggests that there is little by way of financial detriment to individual consumers from mortgage fraud or conveyancing issues and that it is lenders who are most likely to bear the cost where they are not able to make claims against a lawyer's professional indemnity insurance or compensation fund. We will be more closely scrutinising complaints about conveyancing (historically and in relation to the number of mortgaging transactions for example) and it is likely that we will visit ARs to explore the way in which their regulatory arrangements for conveyancing and risk management strategies work before making a final recommendation to the Board in January.

### *Immigration*

23. I advised the Board in September that, following investigations into the effectiveness of the regulation of immigration over the summer, we would discuss our initial findings with the three 'qualifying regulators' – BSB, SRA and ILEX PS who are authorised to regulate immigration advice under the Act. We have had some useful discussions with the regulators during November where we highlighted the regulatory risks that we had identified around the system of regulation, complaints and quality and accreditation, which are potentially increased by the legal aid reforms. We will be combining all the information we have about the immigration services market (informed by the data platform) and combining this with our assessment and understanding of the risks and the approach being taken by the regulators to manage them and producing a discussion document that we will publish in February. The discussion paper will be presented to the January meeting of the Board. We have also written to the

LSC to correct some misapprehensions in relation to regulatory cover in relation to the collapse of voluntary sector providers.

### **Judicial Reviews**

24. We have consulted a variety of stakeholders about the planned intervention in the Prudential case, which the Board discussed at its last meeting. This process has not so far uncovered any fundamental objections. I expect the formal intervention letter to have issued by the time of the Board meeting.

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

25. OLC/Legal Ombudsman – I met the Chief Ombudsman, Adam Sampson, on 3 November, for our regular catch-up. We covered quarter two performance (covered in paper 11/XX on the agenda), consumer research, and a matter raised by the CLC on intervened firms.
26. The Chairman and I had our quarterly four-way session with Elizabeth France, Chair OLC and Adam Sampson on 14 November. This was held in Birmingham and we used the visit as an opportunity to see the Legal Ombudsman operation in action, listen in on some calls and also observe the morning session of the OLC's November Board meeting. Discussions covered:
- the scope of the OLC's work, particularly in relation to claims management on which I am about to write to OLC, MoJ and the Claims Management Regulator
  - the need for a strong justification for a budgetary bid above the 11/12 outturn
  - performance, where we were favourably impressed with the level of OLC Board scrutiny
  - level and nature of legal challenges.
27. The Legal Ombudsman has now made its decision on publication of complained against firms, which the Consumer Panel welcomed. In serious cases, raising public interest issues, the Legal Ombudsman will both name the firm involved and describe the case in some detail. On a quarterly basis, they will provide simple aggregated statistical information about the entity complained against, the area of law covered and whether a financial or non-financial remedy had been imposed.
28. We have now made arrangements for a joint Board Meeting of the OLC and LSB to take place on the afternoon of 25 April. We also propose to convene a sub-group of the Board to agree the OLC's budget, informed by the final business plan and KPIs in due course. Steve Green and Tony Foster will be meeting early in the new year to discuss 2012/13 targets for the Legal Ombudsman, as well as having a separate meeting in their respective Audit Committee chair capacities to follow-up on the LSB and OLC shared and mutual risk meeting held earlier this year.
29. We are making good progress in the recruitment of an OLC Board Member, with an advertisement appearing in the "Sunday Times" on 20 November.



## Legal Services Consumer Panel

30. The Consumer Panel met for their regular meeting on 26 October where their advice to the Board on quality schemes was discussed. This will be published on 24 November. Over the past month, the Panel has also publicly supported the OLC's decision on naming certain complained against firms and submitted responses to LSB consultations on boundaries of regulation and regulation of will-writing, probate and estate administration.

## Communications

31. Crispin Passmore was interviewed by Gloria Hunniford as part of a programme for the new series of *Rip-off Britain*, which is due to re-start on BBC1 in late November. The episode will focus on problems experienced by consumers of will-writing services. We await details of the transmission date.
32. We have taken part in a number of conferences over the last month. Ed Nally took part in a panel *discussion organised* by SAHCA and which focused on QASA. The Chairman spoke at the European Policy Forum on the lessons that can be drawn for policy-makers from the model of oversight regulation in operation in the legal services sector. The Chief Executive took part in a panel discussion at The Law Society as part of Pro Bono Week, and subsequently a similar session based on challenges facing medium- and larger-sized firms at Smith and Williamson.
33. There have also been a range of regular stakeholder meetings, involving the IP regulatory bodies, the Master of Faculties and Cost Lawyers Standards Board. The Chairman has also met the Chairman of the Judicial Appointments Commission.

17.11.11

## LSB Board Evaluation Annex

### Background

1. The LSB has publicly committed to evaluating the impact of the Legal Services Act 2007 (the Act) on the legal market. We published an evaluation framework<sup>1</sup> setting out our approach on 15 April 2011. We plan to publish our first evaluation alongside the annual report in April 2012.
2. The Ministry of Justice have announced that they will be carrying out a triennial review of the LSB in Spring 2012 and our evaluation is likely to be a key piece of evidence in support of this review.

### Our approach

3. At present, it is too early to expect the early reforms (ABS, Legal Ombudsman, independent regulation) introduced by the Act to have had a significant impact on the market for the vast majority of consumers even if there are signs of structural change in the market. Reforms take time to bed-in and for research to produce data evaluating changes. Given this, our initial evaluation will focus on providing a benchmark against which we can measure the impact of the reforms.
4. In producing our benchmark of the market today, we will use both proxies for unavailable evidence and commissioning new research where proxies are unavailable or unnecessary. The priority for our evaluation will be to provide the LSB's narrative that draws out where we think the key evidence lies that will help us understand whether market reforms are having their desired impact. This will be supported by signposting to the key reports from elsewhere which we consider most convincing in supporting this narrative. Inevitably we will also reference where the evidence does not provide a clear picture and where we see the risks to our narrative lie.
5. Ideally, we would seek to separate out the impact of reforms led by the LSB on the market from wider market change. Given the initial report will focus on providing a benchmark against which future changes are measured, this is less important at this stage. Over the coming year we will explore how the role of the LSB can be distinguished from wider market changes in future evaluations.

### Structure of the evaluation

6. We are proposing to use the structure outlined in the Evaluation Framework<sup>1</sup> as the basis for the evaluation. The assessment will be structured around the headings in this paper: the profession; the consumer; the public; the market; investors.
7. Our current plan is for each section to have a brief summary of our assessment followed by five to ten key indicators that we intend to monitor. This will be followed by a more in-depth analysis highlighting the wider range of evidence that influenced our conclusions. This narrative will explain how we use these

---

<sup>1</sup>[http://www.legalservicesboard.org.uk/news\\_publications/publications/pdf/evaluation\\_framework\\_april\\_2011.pdf](http://www.legalservicesboard.org.uk/news_publications/publications/pdf/evaluation_framework_april_2011.pdf)

data points and what we draw from them about the current state of progress against the objectives set out in the evaluation framework.

8. We recognise that many other stakeholders will want to comment on our effectiveness and success. By publishing our narrative backed by evidence we will allow others to develop contrasting or supporting narratives. Similarly, our evidence based approach will directly challenge other commentators to reveal any additional evidence supporting their narrative.

### **Evidence identified**

9. Three key sources of evidence (two literature reviews and one original study) will form the basis of our evaluation, our own Regulatory Information Review (RIR), the Consumer Panel's Consumer Impact Report<sup>2</sup> and the Legal Services Research Centre's Civil and Social Justice Survey<sup>3</sup>.
10. The RIR covers perhaps the widest selection of material (both surveys and more anecdotal sources) which will support the evaluation. In particular, this review outlines in detail where gaps in evidence exist that cannot be filled from existing sources. Where necessary this has led to the additional research projects outlined later. We will be publishing the RIR in the coming month.
11. The Consumer Panel's Consumer Impact Report provides an analysis of their assessment across a range of indicators to determine whether they believe on consumer measures the reforms are delivering the desired outcomes. We are not aiming to replicate this analysis but will draw our own conclusions from this and other data where necessary and highlight the views of the Consumer Panel where appropriate.
12. The Civil and Social Justice Survey provides the most informative analysis of the experiences of users of civil justice. In particular, analysing their experiences of seeking solutions to the legal problems they experience whether through regulated or unregulated providers. We aim to expand the coverage of this type of analysis with the consumer research outlined below.
13. There are a variety of other useful and important research studies that we will be drawing on including the Ministry of Justice's own baseline survey of users of regulated legal advice and our research on consumer outcomes. These are largely summarised in the RIR.

---

<sup>2</sup>[http://www.legalservicesconsumerpanel.org.uk/publications/research\\_and\\_reports/documents/ConsumerPanel\\_ConsumerImpactReport\\_2011.pdf](http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/ConsumerPanel_ConsumerImpactReport_2011.pdf)

<sup>3</sup><http://www.justice.gov.uk/downloads/publications/research-and-analysis/lsrc/2010CSJSAAnnualReport.pdf>

## Research Plans

14. We are commissioning four projects to support this and future evaluations, these have been tested with the Research Strategy Group, from which we will be drawing external thought leaders to act as virtual steering groups for the research:
- a. High Street Solicitor Survey – working with the Law Society and Ministry of Justice we are currently designing a research specification and questionnaire to be piloted in early 2012. The aim of this project is to gather data on the structure and services provided by solicitor firms to help us identify where structural and service changes emerge over the coming years.
  - b. Consumer survey – working with the SRA we are commissioning a large survey of consumers to understand their choices of legal services, service types and costs. This survey aims to fill the gaps between the Civil and Social Justice Survey and the Ministry of Justice's baseline survey – understanding more about where people turn for advice and why. As well as getting a greater understand of the extent to which face-to-face dominates actual service provision and benchmarking costs from key services.
  - c. Small business survey – developing a framework for a future study to produce a quantitative benchmark of choices made by, and experiences of small businesses in dealing with legal problems. In the first instance this project would simply develop a sample framework, questionnaire and initial piloting. This project would aim to lay the groundwork for a similar survey to the Civil and Social Justice Survey, but for business rather than domestic consumers.
  - d. Profession – our aim is to develop a benchmark of the current compliance with the professional principles to help us understand whether new market structures alter behaviour in the market. Initially we are proposing a development study alongside the SRA to develop and pilot a testing framework based on available academic and other research.

## Timetable

<b>Deliverable</b>	<b>Date</b>
Commission consumer research	End October 2011
Commission small business pilot study	End November 2011
Commission high street research	End December 2011
Write up evaluation using existing sources	End December 2011
Update SMT/Board on evaluation progress	January 2012
Receive consumer research results	March 2012
Add consumer research results to paper	March 2012
Take final draft to SMT/Board	March 2012
Publish initial evaluation	April 2012
Complete small business pilot study	April 2012
Receive high street research results	August 2012
Incorporate high street, small business studies and Consumer Impact Report 2012 into evaluation	September 2012
Publish revised evaluation report	October 2012

## Next Steps

15. Initially we will focus on commissioning the research to fill the gaps identified in the RIR. Once this research is underway we will start to develop the narrative from the evidence base identified in the RIR.
16. We will return to the Board in January with a worked up sketch of the evaluation narrative highlighting where we expect to fill gaps using research commissioned.