

To:	Legal Services Board	
Date of Meeting:	30 January 2013	Item: Paper (13) 06

Title:	Chief Executive's Progress Report - January 2013	
Workstream(s):	All	
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Status:	Protect	

Summary:
<p>The paper updates Board Members about:</p> <ul style="list-style-type: none"> • operational and governance issues • progress on key projects • other internal and external policy developments • stakeholder and communications activities.

Recommendation(s):
<p>The Board is invited to note the Chief Executive's progress report. In respect of Annex A, relating to the OLC budget approval process, the Board is invited to:</p> <ul style="list-style-type: none"> • agree the criteria that the OLC Board should be asked to address in seeking budget approval from the LSB • delegate authority to a sub-committee to approve the OLC budget for 2013/14 (if timing of OLC submission prevents it being considered at the March Board).

Risks and mitigations	
Financial:	N/A.
Legal:	N/A.
Reputational:	N/A.
Resource:	N/A.

Consultation	Yes	No	Who / why?
Board Members:		✓	N/A.
Consumer Panel:		✓	N/A.
Others:	N/A.		

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
18 and 19	36(2)(b) - Inhibit (or likely to inhibit) the free and frank provision of advice, and the exchange of views for the purposes of deliberation of the Board	
23, second sentence	36(2)(c) - Otherwise (likely to) prejudice the effective conduct of public affairs	
24 and 25	42 (1) - Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings	

LEGAL SERVICES BOARD

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Chief Executive's Progress Report - January 2013

Operations and governance Issues

Organisation development

1. There is a separate item on today's agenda updating the Board on the LSB's first all-colleague survey, which was conducted in early November (Paper (13) 10 refers). The results were discussed with the Remuneration and Nomination Committee at its meeting on 30 November 2012.
2. Prior to Christmas, all colleagues were allocated a Personal Development Budget and a variety of training and development activities are being pursued including a bespoke course for policy colleagues from the London School of Economics on regulation. We have also taken up membership of the Whitehall and Industry Group (WIG) which offers an interesting range of workshops and seminars, many free, which generate debate and interaction between the public and private sector. Details of WIG events have been circulated to Board Members.
3. Bryony Sheldon will be joining us in February as a Regulatory Project Manager. Bryony is currently at Ofgem and has previously worked at the National Lottery Commission and, prior to that, in other roles at Ofgem. We hope to shortly announce details of our new Corporate Affairs Associate, for which interviews were held before Christmas.

Governance

4. Recruitment for new Board Member appointments is progressing well. Long-listing took place on 13 December, short-listing on 10 January and final interviews on 18 January. At the time of drafting, a submission to the Secretary of State and the Lord Chief Justice was being prepared by the Ministry of Justice. The Chairman will provide a verbal update at the meeting.
5. Gatenby Sanderson have also been managing the recruitment for the additional Legal Services Consumer Panel Member under the MoJ framework agreement. There is a separate item on today's agenda seeking the Board's approval as to a preferred candidate (Paper (13) 01 refers). The report explains that the Board's decision also requires the approval of the Lord Chancellor.
6. All colleagues have been taking part in a comprehensive review of our approach to information assurance. Led by the Corporate Governance Manager, colleagues have been looking at all of our policies in this area and considering how effective they are in practice. The intent is to recommend practical

improvements to ensure continued compliance is maintained. The outputs of this exercise will be considered by the Audit and Risk Committee in due course.

7. On 17 January 2013, MoJ announced a Services and Structures Review which will have three key elements:
 - A zero-based consideration of what MoJ does and the services it delivers
 - A review of how MoJ is organised to deliver those services.
 - A review into how MoJ can drive down spend.
8. The review is at a very early stage, but it has been made clear that both the work of the ALBs and how the Department works with them will be in scope. We are well placed to respond to the review in the context of the Triennial Review last year, and MoJ's ALB Governance Division will be working closely with the Review team to ensure that the work is properly aligned and not duplicated. It is not clear about the extent to which this will, or will not, dovetail with the separate exercise of post legislative scrutiny of the LSA. We will keep the Board informed of further developments as the project progresses.
9. On a related matter, whilst the MoJ have indicated that work has commenced, we are yet to see their proposals for revisions to our Framework Agreement.

Project update

10. The Q3 performance report is presented as a separate item on today's agenda (Paper (13) 07 refers). Significant policy updates are outlined later in this report. The main point to highlight is a general degree of resource pressure as we await the filling of vacancies.

Research

11. Since the last Board meeting we have:
 - Received a draft of the report looking at the value consumers place on legal regulation (contingent valuation)
 - Published the high-street and cab rank rule research
 - commissioned research on: consumers with learning disabilities and their use of legal services
 - Decided to carry out the data analysis of our consumer datasets in-house following an unsuccessful tender
 - Completed the data collection phase of our small business research with 10,000 business responses
12. Our focus over the coming month will include:
 - Commissioning research to develop a project plan for analysis of the cost of regulation
 - Commissioning research on the barriers to solicitors' firms exiting the legal services market

- Finalising the contingent valuation report and publishing
- Receiving the draft report on behavioural economics
- Receiving the draft report on understanding consumers who don't use legal services, don't use regulated legal services or don't trust legal services
- Framing our analysis of LSB consumer data-sets

Regulatory Decisions

13. Since the last meeting:

- A Warning Notice was issued to the Association of Costs Lawyers/Costs Lawyer Standards Board (CLSB) on 17 December. The notice advises them that we are considering whether to reject the application on the basis that the CLSB does not have a delegated power to allow them to make some of the proposed rules for trainees and nor does the application demonstrate that the proposals are a proportionate response to an evidenced risk/issue. The CLSB has until 31 January 2013 to submit a response.
- Three applications for approval for changes to regulatory arrangements have been granted since the last report:
 - SRA Training Regulations Part 2 (Training Provider Regulations) – removal of trainee minimum salary
 - Master of Faculties Notaries (Practising Certificate) Rules 2012
 - SRA Financial Services (Scope) and SRA Financial Services (Conduct of Business) Rules – referrals to financial advisers
- Three Exemption Directions have been issued:
 - SRA Compensation Fund Rules
 - ILEX Professional Standards Limited Continuing Professional Development Rules 2013
 - BSB Bar Training Regulations relating to admission and call declarations
- An application has been received from the Institute of Chartered Accountants in England and Wales for designation as an approved regulator and licensing authority for probate activities.

14. We have also been in correspondence with the BSB about the introduction of the aptitude test, the cost for which will now be significantly higher than initially notified to us. Although we have concluded that this variation does not constitute a change in regulatory arrangements requiring our approval, we have made clear to the BSB that we expect to see considerably greater care in cost benefit work in future.

Sanctions and appeals project

15. The Gateway Group has recently approved a project into the sanctions and appeals processes of approved regulators. The overall purpose of this project is

to better understand the risks and impacts of the current sanctions and appeals arrangements of the legal services regulators and to consider what options may be available to address any issues. This will be done by first developing a greater understanding of the current arrangements (including the legal authority and precedent), secondly by reviewing practice in other regulated sectors and finally we will assess the current arrangements of the legal regulators against the best practice identified and against the administrative justice and tribunals council criteria for administrative justice. At this point we will consider what, if any, changes are desirable and should be recommended. We intend to bring an initial paper to the board before summer and a fuller document in the autumn. We are currently conducting the legal analysis and will soon begin some work looking at other regulated sectors' approaches to sanctions and appeals. A major initiative in this area would be highly controversial with the BSB in particular.

Law Society/SRA issues

16. There is verbal item on today's agenda relating to ABS issues.
17. We have also made contact with David Fisher, the newly appointed non-executive lay chair of the Budget and Oversight Board and will be meeting him shortly. His appointment suggests an increasing amount of stability in oversight arrangements which need to become more robust and challenging, as the focus shifts from fire-fighting on SRA IT issues to broader scrutiny of performance.

Other policy developments

Simplification

18. [REDACTED]
19. [REDACTED]

Judicial relations

- 20. The Chairman had useful discussions with Lord Pitchford on 21 January. Lord Pitchford has recently been appointed to the role of Chairman of the Council for the Inns of Court.

LETR

- 21. Publication of the final report of the LETR has been delayed until February to allow longer for preparation of the document. We have started informal discussions with the regulators about the timetable for their own work to identify and implement specific changes thereafter.

QASA

- 22. After significant discussion involving LSB, the BSB agreed at its Board meeting on 13 December to make some medium-scale practical adjustments to the JAG proposals consulted upon earlier in the year, rather than the more radical scaling back which had previously been discussed. We now await a final timetable from the JAG and we will update the Board on our current intelligence on the topic. We also continue to monitor the political “noise” around the issue closely, most recently suggestions from some circuits that there may be some form of organised boycott of the scheme.

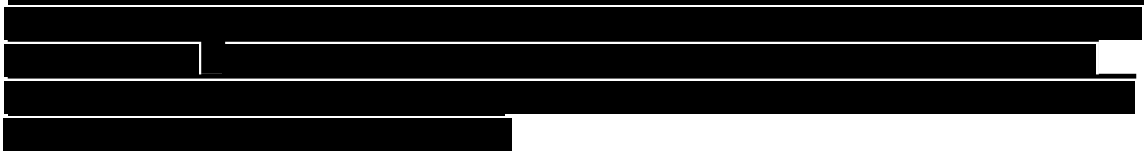
OFT Report

- 23. The Corporate Director has separately circulated the Europe Economics report for the OFT to Board members, along with our response to it. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] However, it is useful for the OFT to continue to push competition concerns in the professional services sector and their expectation is that the CMA is likely to retain this focus.

Legal update

- 24. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- 25. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]



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

26. Following on from the exchange around the drafting amendment to their agreed Scheme Rules, OLC have been sent a formal letter of consent from the Chairman.
27. There is still no clear idea of when OLC will gain authority to deal with claims management complaints. The issue of funding still rumbles on. MoJ are now looking at a way that it can be funded through grant in aid and are looking for a legislative vehicle to make the necessary amendments. Close working with HM Treasury is part of this but this will no longer require the LSB to amend its levy rules.
28. OLC are planning on having their budget ready to be approved at the LSB's March Board meeting. In order for this to happen they will be approving it before their Business Plan consultation closes ie at the February meeting. We have considered the issues inherent in the process and, after discussion with Steve Green, have concluded that they can submit the budget to us on this basis. Attached at Annex A is a paper asking for authority to be delegated to a sub-committee in case the OLC are unable to submit their budget to us in time for the Board's meeting on 18 March.

Legal Services Consumer Panel

29. The Consumer Panel held its annual strategy day in December at which they received an interesting double-header presentation by representatives from Rocket Lawyer and Russell Jones and Walker. The Panel's report on work completed during the last quarter forms part of the Q3 performance report.

Communications and stakeholder engagement

30. Communications activities over the Christmas and New Year period were significant. Highlights for the period include:
 - on 28 November, the Chairman addressed the Board of the SRA and on 13 December, the Board of the BSB. In both instances, the speeches made were forward looking and approached from the point of view of what needs to be done by all to achieve our common goals, but with a clear message in the form about the need to improve performance on ABS authorisation.
 - on 3 December, the House of Lords, at the behest of Baroness Deech, debated the efficacy of regulation in the legal services sector. This debate focused almost exclusively on the performance of the LSB. We provided Members of the House, including those with a legal and consumer background, with a briefing in advance.

- on 4 December, the Chairman met the Attorney General, Dominic Grieve QC for a useful discussion including progress by the regulators on QASA.
- on 5 December, we issued the summary of consultation responses on ending the transitional protection on special bodies. This was picked up by *Legal Futures*, the *Law Society Gazette* and the *Solicitors Journal*.
- on 6 December, I participated in a Baker Tilly Managing Partners roundtable event on ABS
- we published the Regulatory Standards Assessment report for all regulators (except the SRA and BSB) on 12 December. Some enquiries were fielded about the report and a number of articles appeared in the trade press (*Legal Futures*, the *Law Society Gazette*, the *Solicitors Journal* and the *Global Legal Post*) in follow up
- we placed a column in the January edition of Modern Law Magazine which highlighted the new research website
- on 12 December, I took part in a round table discussion organised by the *Law Society Gazette*. This round table resulted in a four page article summarising the discussion in the 14 January edition of the *Law Society Gazette*. (The photographs have been the subject of significant unnecessary comment).
- on 14 December we issued our analysis of the regulatory risks that arise in conveyancing. Again this was picked up by *Legal Futures*, the *Law Society Gazette* and the *Solicitors Journal*
- the Director of Regulatory Practice fielded a „question and answer’ style interview with for ICAEW’s *Economia* magazine. The focus of the interview was on what the Legal Services Act could mean for accountants and lawyers looking forward
- on 16 January the „high street’ research was finally published. A joint press release was put out by the Law Society and LSB. The MoJ chose not to participate in the release. The press release and research received good coverage from the trade press (ie *Legal Futures*, the *Law Society Gazette* and the *Solicitors Journal*).
- on 22 January, we published the research into the „cab rank rule’.
- On 23 January, I spoke at a breakfast briefing on the OFT’s recent report with Phillip Collins, the OFT Chairman.

31. We also issued a number of updates. Chief amongst them were:

- welcoming the JAG announcement on QASA (14 December)
- announcing our revised external legal adviser panel (20 December)
- responding to the OFT’s research (18 January).

32. In boosting our wider profile in the coming month, colleagues may wish to note that

- I will be speaking with the Chairs of the Law Society and Bar Council at the All Party Parliamentary Group on Legal Affairs on 6 February
- I have been asked to speak at a Regulatory Policy Institute event on media regulation on 12 February
- Following up an appearance by the SRA, we are submitting a memorandum to the Parliamentary Commission on Banking Standards.

Annex A - OLC budget sub-committee delegation

1. The Legal Services Act 2007 requires the Office for Legal Complaints (OLC) to gain the approval of the LSB to its annual budget before the start of each financial year.
2. The OLC are currently consulting on their annual budget for 2013/14 as part of their draft Business Plan consultation. The consultation will close on 3 March 2013. We are advised that the OLC plan to approve their final proposed budget on 25 February and to then submit to the LSB for approval. This would be in advance of the OLC Board approving their final business plan which is due to take place at their 25 March meeting.
3. In line with the agreed mode of working between LSB and OLC, rather than conduct a de novo analysis, the Board has always considered that it should approve the OLC's budget if it has adequate assurance that the OLC Board considered all appropriate aspects in recommending the proposed budget. To assist with this, the OLC is provided with a suite of criteria to address in its budget submission to support the LSB approval process. The criteria are agreed with the OLC prior to their submission.
4. Last year the OLC were required to provide:
 - A summary of the key risks to delivering the Plan for 2012/13 and mitigation proposed.
 - The volumes predicted for the year along with a sensitivity analysis illustrating the organisation's response should volumes fluctuate.
 - In accordance with the Act, an indication of the distribution of resources deployed in the operation of the ombudsman scheme and the amounts of income OLC expect to arise from the operation of the scheme. OLC were also requested to explicitly include within this breakdown staff costs and numbers broken down by function – for instance: enquiries; investigations; ombudsman team; corporate' others.
 - A summary of where the Plan and budget has changed in response to stakeholder responses which should explicitly include the outcome of discussions with MoJ and the extent to which the final Plan and budget takes account of their input.
 - The OLC Board's current thinking on funding for take-on of any new jurisdiction – in particular the funding of planning and establishment work (albeit small) in advance of the take-on of any new jurisdiction bearing in mind that current work is being funded from the current approved regulator levy.
5. Pending any additional views from the Board, the Executive recommend that these criteria remain appropriate for the 2013/14 OLC budget. As such, we propose that these be confirmed with the OLC immediately.

6. In previous years the LSB Board has delegated authority to a sub-committee to review the OLC's budget submission against the agreed criteria and, if they have been met, approve it.

7. The proposed timings for reviewing and approving the OLC Budget are set out below:

25 Feb	OLC consider budget paper for approval to send to LSB
w/c 4 -11 March	OLC send budget paper to LSB in advance of the LSB Board meeting on 18 March.
18 March	OLC budget presented to LSB Board for approval (OLC to have attendees at the meeting)
25 March	OLC approve business plan with approved budget for publication

8. If the above timetable is met, and providing the Board is content to approve a budget in advance of the OLC Board finalising its Business Plan, then the budget could be considered at the Board's March meeting.

9. If, however, there is any slippage to the timetable then it would be prudent to have a LSB sub-committee with delegated authority to consider the budget on the Board's behalf in place. As such, the Board is again invited to delegate authority to a sub-committee to approve the OLC budget for 2013/14. The Executive suggests that this sub-committee comprise the non-executive members of the Audit and Risk Committee and the LSB Chairman.