

<b>To:</b>	Legal Services Board	
<b>Date of Meeting:</b>	27 November 2013	<b>Item:</b> Paper (13) 88

<b>Title:</b>	Chief Executive's Progress Report - November 2013	
<b>Workstream(s):</b>	All	
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<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>

<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?
<b>Board Members:</b>		✓	N/A.
<b>Consumer Panel:</b>		✓	N/A.
<b>Others:</b>	N/A.		

<b>Freedom of Information Act 2000 (Fol)</b>		
Para ref	Fol exemption and summary	Expires
N/A		

## LEGAL SERVICES BOARD

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### Chief Executive's Progress Report - November 2013

#### Operations and governance Issues

1. Plans for the move to One Kemble Street are progressing well with a variety of contractors now in place to facilitate the move. This includes IT provision where I will report the outcome of the competitive tender at the meeting. We expect to secure a fair degree of saving on this contract. Additional elements such as physical changes to the space are also proceeding and key decisions – such as the carpet and worktop colour – have been made. We are also putting in place a comprehensive communications plan to alert people to our relocation.
2. For the record, I would like the Board to note the generous assistance we have received from Consumer Futures colleagues in relation to our move and also to Edwin and Michael Mackay who are running this project tightly.
3. On appointment matters:
  - OLC Chair and Members – the Board recommendation on OLC Chair has been put to the Minister and we await his advice. This is expected in week beginning 25 November. Pending the outcome and timing of this we anticipate the preferred candidate appearing before the Select Committee on 10 or 17 December. Advertising for OLC Members is due to close on 22 November 2013 and I will update Board Members on the field when we meet.
  - LSB Chair and Members – advertising for these posts has now closed and the process is being managed by the MoJ Public Appointments Team.
4. On staffing matters, recruitment is underway for a Strategy Director. After a competitive process, Saxton Bampfylde were appointed to lead this search and advertising is underway. We are also proposing to seek a secondee – via the Whitehall and Industry Group – for a Regulatory Project Manager to work on the simplification agenda for 18 months to two years.
5. In relation to the Strategy Director, appropriate controls have been put in place to avoid any conflicts of interest between now and Christmas, following consultation with the Chairman and Chair of Remco.

## SRA Authorisation Performance

6. The ABS authorisation data provided by the SRA on 15 October 2013 showed a similar level of performance in terms of licences granted to the September and August figures. However, it appears that a significant number of older work in progress applications have now been resolved. The data showed that:
- It takes an average of 7 months from the submission of a second stage application for a firm to be granted an ABS licence, 20% of applicants had to wait over 9 months for their licence.
  - The SRA has reduced its work in progress from 142 applications in January 2013 to 91 in October and during this time it has closed 62 applications through withdrawals and granted 128 ABS licences;
  - The average age of a work in progress application is 4 months. 16% of the work in progress applications are over 6 months old.
7. Based on this, performance is still below the level of the new SRA KPIs in terms of work in progress. This is because the average age of the work in progress is above 3 months. Figure 1 shows the age profile of the work in progress during each of the months we have been monitoring the SRA.

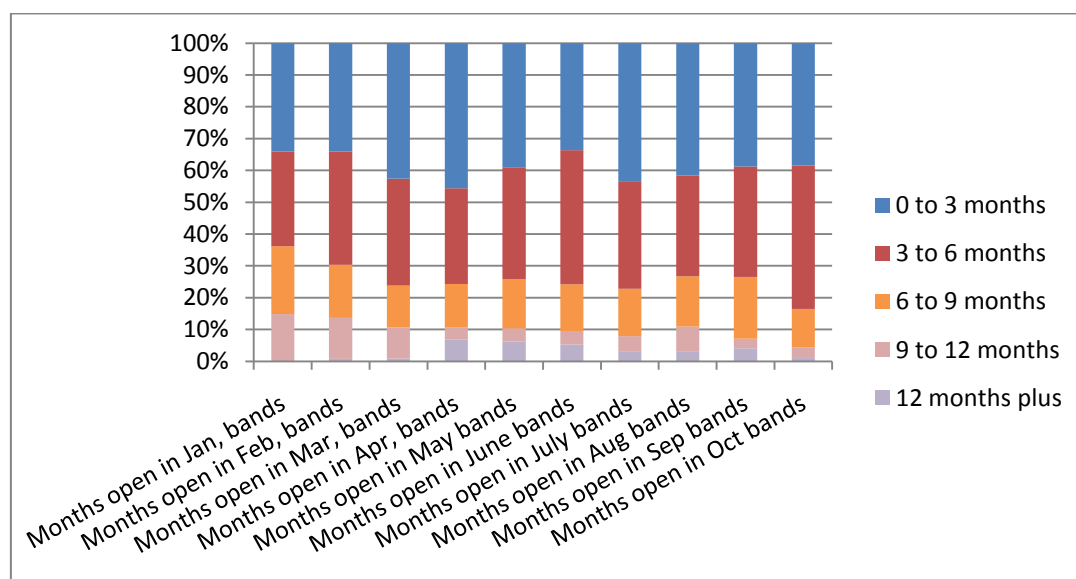


Figure 1: Age profile of work in progress ABS applications

8. The SRA does not issue an invoice until it deems “stage 1” is complete. The SRA does not consider that the statutory decision period of six months (extendible by three) begins until the invoice is paid. Table 1 looks at the quantity and age of the SRA’s work in progress according to the SRA’s own categories. The table shows that 71% of the SRA’s work in progress are either “new applications” or “stage 1” applications. Additionally it suggests that applicants are currently waiting an average of four months before being invoiced and so the statutory time decision period beginning.

	Number	Oldest (months)	Average (months)
<b>New application</b>	28	4	2
<b>Stage 1 - Complete Application</b>	36	9	4
<b>Stage 2 - Research</b>	14	8	5
<b>Stage 3 - Evaluation</b>	11	13	7
<b>Stage 4 - Decision</b>	2	10	8

Table 1: Breakdown of SRA work in progress

9. Figure 2 shows the time taken from submission of the second stage (or main) application to the granting of an ABS licence up to 15 October 2013. 44% of successful applicants were granted their licence within six months of submission.

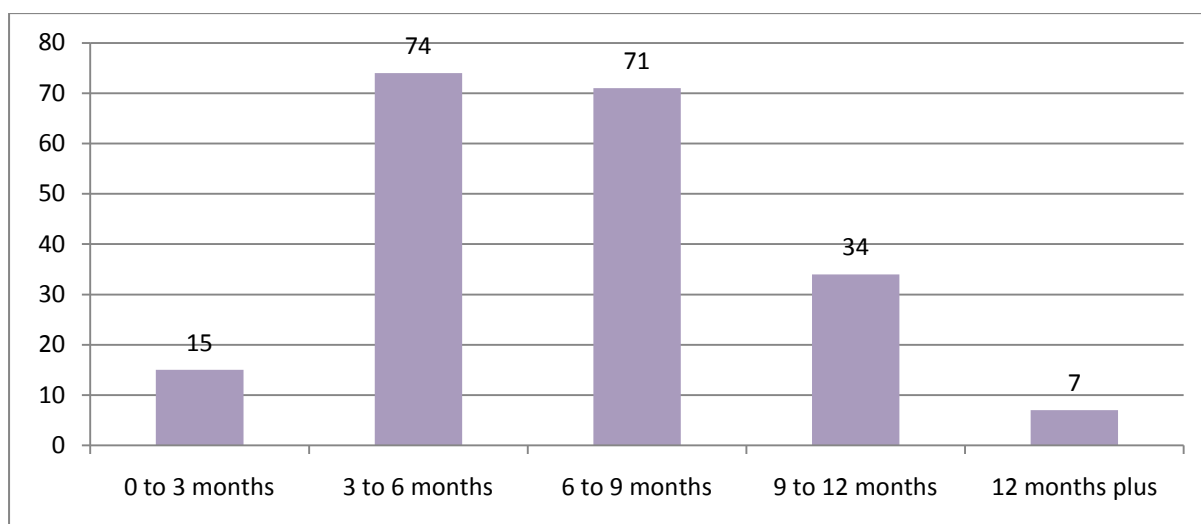


Figure 2 Time taken for ABS licences to be granted

10. This month we have not analysed the data to see whether specific business types or firms new to SRA regulation have / are taking longer to be granted a licence or are withdrawing their applications.
11. The Board will be provided with a readout of the 15 November figures at its meeting. The LSB is also meeting with the SRA Director of Authorisation on 18 November and the LSB will provide any useful information to the board orally.
12. The Board will be provided with a full update on SRA ABS authorisations at the January 2014 meeting as agreed at the September meeting.

### QASA judicial review

13. Further to the Claimants' application for a Protective Costs Order (PCO) seeking to cap their costs liability at £15,000, on 7 October 2013 Mr Justice Ouseley made an order (on the papers) for a reciprocal costs cap of £150,000. In light of this, the Claimants sought to have the PCO varied to reduce their costs liability to £75,000. They also sought an order requiring the LSB and the BSB (as first Interested Party) to submit a costs budget.
14. At the application hearing on 23 October, Mr Justice Bean refused the Claimants'

application to vary the PCO. In their submissions, the Claimants referred to an article in *Legalweek* in which it was claimed “*the LSB railed against high cost estimates for the hearing, provided by HSF*”. In fact, the LSB had provided no cost estimate to the Claimants or to the court and the court ruled that the original decision on the PCO placed no reliance on any estimate of the LSB’s costs.

15. Herbert Smith Freehills (HSF), as with all members of the LSB’s legal panel, was appointed after an open competition. The agreed charging rates were discounted from commercial rates and set at the level approved by the Government Procurement Service. Having undertaken the work up to permission stage, HSF then provided the LSB with an additional 66% discount. We have therefore incurred costs with HSF in the region of £30,000. Field Fisher Waterhouse has estimated its costs to conclusion of the matter in the sum of £90,000, with combined Counsels’ fees expected to increase the LSB’s total bill to around £200,000 (exclusive of VAT).
16. The Law Society has been granted permission to intervene, in support of arguments previously made by the Claimants. The LSB has made additional submissions in reply. I have made a statement setting out the LSB’s position in relation to the claim. The matter will be heard in the Administrative Court on 28 and 29 November, with judgment expected before Christmas. We will brief the Board as quickly as possible on the outcome as it is possible that some decisions may be needed before the next scheduled Board meeting on 29 January 2014

### **Bar Council investigation**

17. All Board members (with the exception of Ed Nally who was out of the country) confirmed that you were content to accept the recommendations set out in Paper (13) 74 (Investigation - Bar Council and internal governance rules) and a majority have done so in writing. Our rules of procedure (paragraph 3.7.2) allow the Board to “meet” by email, and as such the decision to accept the recommendations in the paper has the same status as if a meeting in person had been held. A note formally recording the decision has been entered into the record and will be placed on the website along with other documentation relating to this matter.
18. The recommendations adopted by the Board are:
  - On the basis of the letter from the Bar Council dated 30 October 2013, to resolve the investigation informally by agreeing the actions and publishing the report and exchange of correspondence on 25 November
  - To delegate to the Chief Executive Officer and the Chairman, with input from Steve Green and Andrew Whittaker, the power to decide whether to accept proposals from the Bar Council relating to the required undertaking to develop a protocol to respect regulatory independence when Bar Council representative provide advice or assistance to the BSB on regulatory functions and to develop proposals regarding Bar Council

attendance at non-public BSB meetings. These are due for submission by 16 December.

19. We have received a draft protocol from the Bar Council regarding the provision of advice or assistance from Bar Council staff and officers to the BSB on regulatory functions and have commented on that draft. We will provide an oral update to Board members on the release of the report and the progress made on the Bar Council proposals.

## **Research**

20. Since the last Board meeting we have:

- Published two reports: one on the value consumers place on regulatory protections and another on competition
- Held meetings with law firms to discuss participation in our research considering looking at the consumer experience of online divorce services
- Commissioned research looking at the best ways to help consumers' identify and address legal issues from a behavioural economics perspective
- Published a specification seeking tenders for research looking at lessons that might be learnt in terms of access to justice, from the personal injury market.
- Published a specification seeking tenders for statistical analysis of existing datasets to explore the types of problems for which individuals do not seek legal help.

21. Over the coming period we expect to

- Commission research from our two published specifications – PI market and data analysis
- Receive a final report on the barriers to entry, exit and merger project – a very substantial piece of work is emerging which may be worth full Board consideration.
- Publish a specification for research looking at the online divorce market.

## **Statutory Decisions**

22. We have completed the assessments of the current designation applications and reports on these are covered elsewhere on the agenda. I am very grateful to Dawn Read and her team and to legal colleagues for their sustained hard work

on these applications over a very long period.

23. Since my last report I have approved the following applications for changes to regulatory arrangements:

- The Bar Standards (BSB) practising certificate fee allocation methodology
- The Master of Faculties Notaries (Qualification) Rules 2013

24. I have also approved the practising certificate fee applications from the Intellectual Property Regulation Board and the Costs Lawyer Standards Board (CLSB).

25. Two applications for changes to regulatory arrangements have been received and are being considered

- CLSB Aims and Outcomes of the Costs Lawyer Qualification
- BSB Fitness to Practise Regulations

### **Better regulation**

26. Colleagues may be aware that the Better Regulation Executive/Better Regulation Delivery Office is introducing two new requirements. The first is a proposed duty in the Deregulation Bill 2013 on non-economic regulators to have regard (in the exercise of their functions) to the desirability of promoting economic growth. In carrying out this duty, the regulator must, in particular, consider the importance of ensuring that any regulatory action they take is necessary and proportionate. Fran Gillon has attended two workshops run by BIS to discuss the new duty.

27. In the BIS consultation, only the LSB and SRA were named as being subject to the duty but we have asked BIS to include all approved regulators and they are consulting the other bodies at the moment. Our latest information is that the timetable for the introduction of the duty is:

- Early Nov – BIS will share drafts of its guidance for comment
- End Nov - final list of regulators subject to the growth duty determined, draft guidance ready
- 16 December - the Joint Committee on the Deregulation Bill will present a report to Parliament following pre-legislative scrutiny of the Bill
- January/February 2014 - Government to respond to the Committee's report
- February 2014 (estimated) - Deregulation Bill introduced to Parliament

28. The second is the Regulators' Code that was published in July. Only the LSB and SRA were subject to the previous Code and, as with the growth duty, we hope

that BIS will extend compliance with the Code to all approved regulators. Our latest information is that the timetable for the introduction of the new Code is:

- End October - Listing Order finalised in preparation for Cabinet clearance
- Early Nov - Code and Listing Order laid and debated in both Houses
- April 2014 - implementation of Regulators' Code

## **Regulatory independence**

29. The completed dual self-certificate of compliance with the Internal Governance Rules was finally received from the SRA and the Law Society on 11 October 2013. I have written to the SRA and the Law Society noting that the certificate appears to accurately reflect the position at the end of June and agreeing with their assessment that there is still work in progress. We have accepted their offer to provide a progress report (as at the end of September) and asked that this be submitted to us by 30 November.

30. As part of this exercise we had undertaken to review whether the s55 reporting requirement in relation to the provision of the papers and minutes of meetings of the Business Oversight Board (BoB) should cease. Separately David Fisher, Chair of BoB, has also written to me proposing that this is no longer necessary. We have decided that we will review this early in 2014 once we have had the opportunity to consider the progress report and the conclusion of the current recruitment exercise for members of the BoB.

## **Policy developments**

### Education and training

31. The closing date for our consultation on LETR guidance is 11 December. Regulators are making progress in the intervening period, particularly in the area of Continuing Professional Development and alternatives routes into professions. Development of thinking on the wider workforce and relative roles of regulator, entities and individuals is moving less quickly.

### Criminal Advocacy Review

32. After a successful introductory meeting, we have been asked to provide a submission to Sir Bill Jeffrey's review of criminal advocacy by 6 December. We will seek non-executive input out of Board on this. We will be emphasising the main message of the Blueprint and Education and Training guidance in this area, majoring on the dangers of piecemeal intervention, whether by regulators or government, in an area where market forces are leading to significant changes in practice patterns.



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

33. We held a conference call with Tony Foster (OLC) and Paul Partridge (LeO) to discuss the LeO KPI report for Q2. The main points to come from the meeting were:

- Following on from the last meeting, the OLC reported that they are confident that the level of Case Fee Waivers was now settled and it was accurate, but they would keep this under review in terms of quality.
- In light of the fact that contact levels remain lower than original expectations there was discussion about whether there is scope for some research around the reasons for this (there was some speculation that it was because complaints were being dealt with better at the first tier). No clear approach to research has been identified.
- OLC provided an update on the cost review and confirmed that the LeO management team were tracking progress to ensure that they are achieving the planned savings. The 2014/15 budget that is before the Board today was presented to the OLC Board in October and they recognised that achieving the proposed figures will require further efficiency savings. Following the case review the figures for the KPI report had been rebased. OLC confirmed that they endorsed this approach but that there were no plans to publicise the fact that they are measuring their performance with new figures. LeO pointed out that the reason for the cost review was to bring down their unit cost, but the target had not changed. The year to date unit cost figure has been recast since the cost review and now stands at £2020; LeO project a unit cost of £1960 at the end of the year.
- The number of cases classed as 'work in progress' increased during the course of the cost review, and LeO are now dealing with a backlog. This has been put down to a fall in morale caused by the restructure as well as some staff being asked to take unpaid leave over the summer. The figures are now reducing.

34. The quality KPI is now reported on their website. They report that:

- satisfaction with service for parties that were satisfied with the outcome of their case was 100% for both complainants and lawyers (up from 97% and 95% in the last quarter).
- The satisfaction rates for parties that were not happy with their outcome was 44% for complainants and 50% for lawyers.

We pressed the OLC on whether these numbers were being reported to the Board, if they were satisfied with the way that they were presented and whether

they thought that the figures would be enhanced if they also provided an overall satisfaction figure. OLC confirmed that the Board were happy with the format as it was.

## **Communications and stakeholder engagement**

35. The Chairman and I continued our round of autumn meetings with smaller regulators and have met ITMA and CIPA, IPREG and the Faculty Office. The latter in particular showed very encouraging progress in their regulatory effectiveness work.
36. We both also met the new MoJ Justice minister Shailesh Vara MP and briefed him on the current state of play with regards to the legal services market. We also had a constructive meeting with Dame Ursula Brennan, MoJ Permanent Secretary, focusing on our work to improve diversity of the legal workforce. Not surprisingly, the MoJ call for evidence came up in both meetings and I have separately briefed the Board on the positive discussion with the Minister. We look forward to a promised meeting with the Lord Chancellor and continue to seek to engage Special Advisers ahead of that.
37. With a view to plugging a gap in the LSB's recent stakeholder engagement programme I attended the Legal Wales Conference in Cardiff on 11 October, where I met representatives of the Welsh Government, the President of the Cardiff and District Law Society and the Director of Legal Wales. I have subsequently met Theodore Huckle QC, the Counsel General for Wales (a role broadly equivalent to the Attorney General in the devolved administration). It is intended that a semi regular series of meetings (once a quarter on average) will be held with representatives of the Welsh Government with a view to engaging with them and ensuring that they are kept up-to-date with the LSB's regulatory activities. The first of these meetings took place on 12 November.
38. We have also had a burst of international work:
  - Crispin Passmore met the Irish Justice Minister, Alan Shatter TD, who was in London with senior officials on a fact finding visit about ABS, following an earlier visit to Dublin last year;
  - Julie Myers hosted a delegation from the Ministry of Justice for the People's Republic of China who were keenly interested in securing independence in regulation and the operation of the Legal Ombudsman service.
  - I attended a conference, and took part in a panel discussion, in Brussels titled "*New organisation of the profession and of law firms: cross-border issues*". This was a useful opportunity to scotch myths about the Board and ABS and to lobby the Commission on the need for the Establishment and Services Directives to be reformed;

- Crispin Passmore travelled to Köln where he spoke at the "Anwaltsblatt" symposium on the topic of ABS and found an academic and practitioner audience that was far more receptive to our messages than the German Bar is as an official lobbying body;
  - I have been invited to give a keynote address at a conference on legal innovation at Harvard Law School in March.
39. While we clearly have to be alert to the reputational, operational and financial risk of devoting too much effort to such work, this cluster of activity is a useful reminder of how much international interest there is in the work of the LSB and a useful corrective to the line lazily trotted out in many of the responses to the call for evidence that the existence of ABS and “government regulation” is harming British firms seeking to do business abroad.
  40. Useful stakeholder links have also been made with the Justice Expenditure team in HM Treasury and with the CBI.
  41. Articles have been drafted for both the *Professional Associations Research Network journal* (due for publication in January 2014) and *Modern Law magazine* (December issue). Both articles focus on the blueprint document or aspects of it (self-regulation in the case of the ML article).
  42. A number of conference appearances were made during this period. The LSB was represented at the CEPLER conference where Alex Roy spoke on a panel on the “*future of legal education*”. I also spoke at the Legal Futures conference on a panel with Lord Falconer, the vice-President of the Law Society and proponents and opponents of ABS.
  43. Some research was published during this period including research into the value of legal regulation and a report outlining changes in competition in the legal services market since the Legal Services Act 2007 came into force. Both of these reports were picked up by the trade press. A little bit after the fact, the Guardian wrote about the joint LSB/Mencap/Consumer Panel report on what happens when people with learning disabilities need advice about the law. The Chairman met the Guardian’s legal correspondent Owen Bowcott and discussed a number of the current issues that we have concerns about. This was the LSB’s first meeting with him.
  44. Finally, we held a small, but very constructive, workshop attended by a variety of stakeholders on our forthcoming Business Plan for 2014/15.
  45. And finally again, our twitter follower count is now up to 180!