

<b>To:</b>	Legal Services Board
<b>Date of Meeting:</b>	26 March 2014
<b>Item:</b>	Paper (14) 15

<b>Title:</b>	Chief Executive's Progress Report - March 2014
<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
29	Section 41 – Information provided in confidence	

## LEGAL SERVICES BOARD

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### Chief Executive's Progress Report - January 2014

#### Operations and governance Issues

1. We are now well-established at One Kemble Street with most teething problems now ironed out – not least the imminent hanging of doors for our meeting rooms. One more substantive issue has emerged as a consequence of our move, however, and that is the increasing fragility of our IT hardware. The need to upgrade some elements was well-known to us and was planned for, but it is clear that the physical movement from Victoria House and the untangling from Competition Commission systems means that this work needs to happen on a faster timetable than anticipated. This is having an impact on colleagues as we are experiencing a number of – short - periods of ad hoc downtime and our new IT providers are preparing a plan to get us to a stable solution as quickly as possible.
2. On appointment and staffing matters:
  - a. LSB Chair and Members – the outcome of these exercises is expected to be known by the time of the Board meeting and it is not impossible that some new appointees may be present at this meeting;
  - b. Caroline Wallace, Strategy Director, has a confirmed start date of 5 May and expects to be present at the next two Board meetings. Caroline has been able to spend some time meeting colleagues and familiarising herself with key issues and was also able to attend the March Consumer Panel meeting;
  - c. Caroline and I have had some discussions on how best to replace the Head of Development and Research and I will update colleagues in the meeting;
  - d. In February we said goodbye to one of our longest serving colleagues, Beata Dawidczyk, Office Services Co-ordinator. In light of the loss of outsourced finance support from CC we have opted not to replace this role but to create a new position for a part-qualified accountant to provide improved support for Edwin and add resilience to our finance and services function. An offer has been made;
  - e. Recruitment is ongoing for a Project Manager.
3. In February, Julie Myers and I had our regular sponsorship meeting with the

Ministry. This provided a timely opportunity to provide updates on policy developments and stakeholder relationships from both perspectives. It is clear that officials continue to find our quarterly reports valuable and useful in helping them to make connections with developments across the Ministry and beyond.

4. In February, Julie had a useful meeting with the Ministry's Arms Length Bodies Governance Team to discuss their shared services agenda and to make clear the LSB's position on such services. We have always been at pains to stress that we are firm believers in the principles of shared services and can point to numerous examples where we have been early adopters (finance, accommodation, facilities, HR advice outsourcing etc) but that we could not tolerate a solution that saw the LSB being 'forced' to take an MoJ service that did not meet our needs, did not provide value for money or risked undermining our independence. These points seemed to be accepted by officials and we do not anticipate early pressure for greater involvement in the Ministry's plans generally, although we are discussing their plans to rapidly accelerate the timetable for the pay remit process.
5. I will report on developments with NAO and the MoJ regarding accounting for our and the OLC levy elsewhere in the meeting.
6. During March 2014, all colleagues will have undertaken training on the new Government Security Classification system and refresher training on information assurance more generally. Whilst we operate primarily in an OFFICIAL environment (the lowest level) the consequences of getting it wrong can be severe for the organisation.

### **Equality and diversity**

7. Colleagues will find attached at **Annex A** our proposed annual report relating to our Equality Act 2010 obligations. This reports on progress on delivering our equality objectives and will be published shortly. During the coming months we will be arranging equality and diversity training for all new Board Members and colleagues and will also be ensuring that all colleagues have access to online refresher training including on unconscious bias.

### **QASA judicial review**

8. Following my update to the January Board meeting, we now know that the applicants, supported by the Criminal Bar Association, have sought leave to appeal the High Court's judgment to the Court of Appeal. They have also applied to extend the existing Protective Costs Order, which would mean that they would face no further liability for costs in relation to the appeal. The LSB is contesting both of these applications, as is the BSB. The Law Society for their part, have decided to make no further submissions. The SRA does not support the granting

of leave to appeal and has made a submission not to grant a stay to the implementation of QASA, pending resolution of any appeal. The parties were granted until 19 March to make submissions, so we expect the court's decision on leave to appeal some time thereafter.

## **Regulator Issues**

### *Correspondence with the Bar Council*

9. You will be aware of an exchange of correspondence that the Chairman and I have had with the Chief Executive of the Bar Council in relation to comments attributed to their Chairman, Nicholas Lavender QC, in an interview he gave. On 7 February 2014, David Edmonds wrote to Mr Lavender to express the Board's doubts about the Bar Council's commitment to the undertakings it made in accepting the findings of the investigation into whether it had breached the internal governance rules. This letter (attached at Annex B) is published on our website. The Bar Council replied on 18 February 2014 (Annex C), seeking to assure the LSB that it has acted in good faith regarding the undertakings and has drawn the requirements to the attention of all relevant staff.

### *Update on SRA ABS authorisations*

10. The headlines from the SRA ABS data provided to the LSB on 14 February show that:
  - a. The SRA has issued 260 licences, and 50 applications are work in progress; 108 applications have been withdrawn
  - b. The average time taken for a licence to be granted is still seven months, and the average age of a work in progress application is three and a half months; 24% of work in progress applications are over six months old and no live application is older than 12 months.
  - c. Over 60% of licences have been granted to firms that were already regulated by the SRA.
  - d. A total of 18 licences have been granted to MDP type firms out of 33 applications; however applicants from this category still take the longest time to be granted a licence (8.3 months on average) and nearly 40% of applicants of this type have withdrawn their application.
11. The LSB executive are visiting the SRA to discuss authorisation on 19 March, having received updated statistics from the SRA on 15 March. If necessary, a verbal update will be provided to the Board regarding this visit and the updated numbers.

### *New Chair of the Costs Lawyers Standards Board (CLSB)*

12. With effect from 17 March 2014, Steve Winfield has been appointed as the new Chair of the CLSB. He is a Fellow of the Chartered Institute of Bankers, having worked for nearly 30 years in the financial services industry. Mr Winfield has significant non-executive and in particular regulatory experience, gained from the financial as well as gambling and residential letting industries. The Chairman has written to Mr Winfield to congratulate him on his appointment.

### **SRA Independent Comparative Case Review**

13. Following reviews by Lord Ouseley (2008) and Pearn Kandola (2010), the SRA commissioned Professor Gus John to complete a case file review to identify whether there is any disparity in the way the SRA applies its policies and procedures in dealing with practitioners from a Black or Minority Ethnic (BME) background, as compared to others.
14. The SRA published Professor John's report on 13 March. It concluded that the disproportionately high representation of BME solicitors in the SRA's disciplinary work is caused by broader socio-economic factors to do with access to the profession, and not discrimination by the SRA. It is heartening that the SRA has not been found to be institutionally racist or to be acting discriminatorily in its disciplinary work. The SRA is currently considering the report's findings and 50 recommendations made, and it is due to issue its full response in May.
15. There is an interesting read across in the John report to the Professor George Yarrow report on the barriers to entry, exit and merger of regulated legal firms. The John report finding that the disproportionality in relation to BME solicitors facing disciplinary action is strongly influenced by the disproportionate representation of BME solicitors in more vulnerable small firms, or working as sole practitioners. The report references the LSB's role in initiating debate about the disproportionality in regulatory outcomes for BME solicitors and we will consider any specific recommendations for the LSB, in addition to discussing the report further with the SRA and SDT, and will come back to the Board as necessary.

### **Research**

16. Since the last Board meeting we have:
- a. Commissioned research on online divorce
  - b. Finalised broad plans for research in 2014/15
17. Over the coming period we expect to:
- a. Meet the Research Strategy Group to discuss plans for research in

2014/15.

- b. Receive draft and final reports on the following research projects: civil and social justice survey data analysis; public legal education; and professional indemnity market study.
- c. Start fieldwork on the online divorce research.
- d. Present three papers at Socio-Legal Studies Association annual conference in Aberdeen.

## **Statutory decisions**

### *Designation applications*

18. On 6 March 2014, the Lord Chancellor's office published the decisions to accept the recommendations that LSB had made in December on the designation applications from the Institute of Chartered Accountants in England and Wales; the Chartered Institute of Legal Executives/ILEX Professional Standards Limited; and the Chartered Institute of Patent Attorneys/Institute of Trade Mark Attorneys/Intellectual Property Regulation Board. While there is still a significant amount of work to do before the designation orders can be laid, this is nevertheless a significant milestone. We will continue to work with MOJ colleagues on the related statutory orders.

### *Changes to regulatory arrangements*

19. Since the last meeting we have received two applications from the Solicitors Regulation Authority (SRA) for changes to regulatory arrangements. One related to consequential changes to the Higher Rights of Audience Regulations arising from changes to the Intellectual Property Enterprise Court; having considered the nature and effect of the changes, we decided to approve the application through the issue of an Exemption Direction. The second application relates to changes to the Financial Services (Scope) Rules in relation to consumer credit regulations; this has been agreed, but the decision notice has flagged up the need for the SRA to make sure that its supervision strategy deals appropriately with firms offering this service.

20. Two further Exemption Directions were issued

- a. Bar Standards Board – minor alterations to the BSB Handbook
- b. SRA Quality Assurance Scheme for Advocates (Crime) Regulations 2013 (revised implementation dates)

21. One further application is being considered: the Master of Faculties made an

application on 7 March for changes to the Notaries Practice Rules (Inspection Regulations).

### *Practising Certificate Fees*

22. The application from the Bar Council was approved on 30 January 2014.
23. As noted in the paper on costs of regulation, we are considering other issues related to our process for PCF approval.

### **Complaint handling**

24. A paper to the November 2013 Board meeting reported on (among other things) problems in getting the BSB and SRA to work collaboratively to ensure that barristers get the help of solicitors with complaint signposting obligations. Having pressed both organisations, a meeting took place in December at which commitments were made to:
  - a. issue jointly agreed communications (by the end of February 2014) reminding barristers and solicitors of their respective responsibilities
  - b. agree a detailed timetable for further work, including emphasising the importance of complaint signposting at supervision briefing sessions and conferences, and carrying out thematic supervision.
25. The SRA has since issued guidance that sets out its expectation and the possibility of regulatory action if it is not met. This is that instructing practitioners either enable barristers to advise clients in writing of their right to complain about the service provided, or satisfy themselves that the client has been appropriately signposted (i.e. the barrister's information has been given to them). It also indicates how this can be consistent with client confidentiality obligations, which some solicitors have articulated as a barrier to cooperation in the past. The guidance is at <http://www.sra.org.uk/barristers/>
26. The BSB has also issued a press release referring to the SRA guidance and its implications for the obligation on barristers to inform lay clients of their right to complain (including the ability to refer uncooperative solicitors to the SRA). It indicates that the BSB will monitor chambers' compliance with the obligation through supervision.
27. This is clearly encouraging progress. It is also positive to note that a number of the approved regulators and representative bodies attended the Legal Ombudsman's recent event reporting on the business case for good complaint handling in legal services, where there was discussion of communicating key messages to the profession.

## **Office for Legal Copmplaints/Legal Ombudsman**

28. The OLC budget is before the Board today for approval. The cover paper also provides an update of recent Legal Ombudsman (LeO) performance against the KPI's and outlines some of the issues that were discussed at the latest KPI meeting in February. Terry Babbs has recently taken over from Steve Green as the Board representative at these meetings.
29. Michelle Jacobs attended the first Claims Management Companies (CMC) Complaints Programme Board meeting at the MoJ in an information gathering role. This group has been set up to manage the implementation of CMC complaints handling by the Legal Ombudsman between MoJ, LeO and the Claims Management Regulator, and the LSB will also attend. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

## **MoJ Reviews**

30. We understand that there may be an announcement very shortly on the outcome of the call for evidence exercise. I will update colleagues at the meeting.
31. Chris Handford and I met Sir Bill Jeffrey on 10 March. He now expects to submit his report to Ministers by Easter. Our discussion focussed on issues of quality, training and legal aid contracting, but he is as yet some way from final recommendations.

## **Communications and stakeholder engagement**

32. In the period since the last Board meeting, I have been interviewed by two journalists. I spoke to Agnese Smith about changes to legal services in England and Wales for a Canadian publication in advance of the Law Society of Upper Canada's intention to launch a consultation on the introduction of ABS. I also spoke to Kat Hall of the Law Society Gazette following up on the issuing of the LSB's guidance on education and training. Vincent McGovern and I met the CBI to discuss issues of mutual interest (both in England and Wales and internationally in an EU context). As part of the follow up to this meeting we will provide a short briefing with our key European concerns to help them with their briefing of the next UK Commissioner.
33. The second edition of the LSB email newsletter was sent out to elected politicians in England and Wales (MPs, MEPs, Lords and Welsh Assembly Members). This edition focused on QASA, the investigation into Bar Council's influencing of the



BSB in rule making, the recent designations decisions, the next steps for will-writing and it introduced the new Chair of the OLC. Reception appears to be neutral to positive (only three from a distribution list of 1500+ have asked to be unsubscribed).

34. The media (primarily trade) picked up on much of what we produced during this period. Coverage focused on the lay-chairs decision, the education and training guidance, the appointment of the new LSB strategy director and on the sanctions and appeals research paper (including a robust wide-ranging response from the Solicitors Disciplinary Tribunal, which I will be discussing with them on 21 March). Also notable in particular was a blog which I wrote for Legal Futures on a return to self-regulation.
35. Fran Gillon represented the LSB at a Baker Tilly Professional Practice Group event on 18 February. Chris Kenny made a well-received presentation (from London) to law students at Harvard University (which will be followed up by an article on the same topic). On 11 March, David Edmonds gave the opening speech at the Westminster Legal Policy Forum event on innovation in the legal services market. It was picked up by most of the trade journals who were in attendance.
36. The number of LSB twitter followers now stands at 317 (11 March). The account appears to pick up 15 to 20 new followers every week.