

To:	Legal Services Board	
Date of Meeting:	22 May 2014	Item: Paper (14) 35

Title:	Chief Executive's Progress Report - May 2014	
Workstream(s):	All	
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Status:	Official	

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

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
Annex A	Section 36(2)(c) – likely to prejudice the conduct of public affairs	

LEGAL SERVICES BOARD

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Chief Executive's Progress Report - May 2014

Operations and governance issues

1. I am pleased to announce that Chris Handford has been appointed to fill Alex Roy's former post of Head of Research and Development. Chris took up post with effect from Monday 12 May. This is an important role and we are pleased to have been able to make an internal appointment. We will begin the process of filling Chris' current shoes as soon as we can to help us get back up to full speed quickly.
2. I am also pleased to announce that Professor Stephen Mayson will be working with the Board closely for the remainder of the current business year. As you know, Stephen has a great track record in practice, consultancy, academia and as a legal commentator and has been a constructively critical friend of the LSB since our inception. He will be working for around a day a week averaged over the year, particularly contributing to work on the strategic plan for 2015-18 and the project on the cost of regulation.
3. A press notice announcing both appointments was issued last week.
4. We continue to impress on MoJ the importance of developing momentum on LSB appointment matters. MoJ are discussing the full range of NDPB appointment matters between now and the election and we are emphasising that the Board would find it almost impossible to function in the first half of 2015-6 if appointments were delayed until then.

Statutory Decisions

5. Further to the discussion at the April meeting about our difficulties with the MoJ's new approach to the drafting of statutory instruments, I enclose at Annex A my letter to Shaun Gallagher, Director, Access to Justice. I will keep the Board updated on further developments in this matter.

Policy Reviews

6. Board members have already been briefed separately on the outcome of the MoJ call for evidence exercise. As expected, the Government has ruled out

any change to the institutional framework for regulation this side of the General Election, although it has clearly recognised the force of the arguments put to it for a single tier of regulation and, quite separately, simplification on the issue of the scope of regulation, and made clear that the door remains open to return to both issues post-2015.

7. The statement's focus on the role of the legal sector in supporting economic growth and on reducing regulatory burdens is also in line with the LSB's thinking over the past 12 months and will be helpful in giving added weight to our dialogue with regulators on the issue. There is clearly a degree of frustration within Government about the failure of regulators or the profession to achieve consensus on practical issues, so, as noted in the Chairman's paper, the main lesson for the LSB may be to continue leading from the front in relation to the "Blueprint" agenda, but to also continue to seek to better explain its practical impact on consumers and wider public benefits in order to broaden the base of support for it.

QASA judicial review

8. As previously reported, on Friday 9 May, Lord Justices Briggs and Tomlinson granted the Claimants (Appellants) permission to appeal the QASA High Court decision handed down in January. Permission was granted in respect of all grounds, although notably it was granted in respect of five grounds before any oral submissions had even been heard by the Court. The rationale for granting permission early on in relation to those grounds was that the points on judicial independence and that of the advocate were *fundamental constitutional points* that required consideration by the Court of Appeal, regardless of the eminent standing of the High Court Judges who had sat at first instance. After submissions were made, permission was also granted in relation to the remaining grounds as the judges concluded that there were *reasonable prospects of success* in respect of these grounds and that they were *sufficiently entwined with the other grounds* that there was little sense in knocking these out when the others were proceeding.
9. In terms of the stay on the introduction of the Scheme until the Court of Appeal case is determined, the Court held that there should be no judicial evaluations (JEs) whilst this case was ongoing, given that if the JEs took place and then the Scheme was found to impact upon the independence of the advocate/judiciary, this could result in appeals against criminal convictions. There would also be a stay on the regulators imposing any compulsory measures on advocates.

10. The SRA suggested that Joint Advocacy Group (JAG) ARs might want to proceed with the preparations for introducing a scheme so that it was better placed should the appeal fail and the Court was content that this was acceptable. The SRA also suggested that it might wish to proceed with the introduction of level 1 and level 2a (plea only advocates) registration, since these did not involve any judicial evaluations and did not appear to touch upon any of the issues under appeal. The Claimants' advocate indicated that he did not think they would have any objections to this in principle and the Court agreed that the BSB/SRA would prepare a draft order for the terms of the stay. Draft wording has now been circulated between the parties in the hope that terms of the stay can be agreed. If not, the matter will go back before the Court for clarification.
11. The hearing has now been fixed for Wednesday 16 July, and is estimated to last three days. Finalised orders are still awaited.
12. As for the Protective Costs Order (PCO) to apply to the Court of Appeal proceedings, the Claimants sought a cap of £34,000 – representing the amount they expected they could raise through members of the CBA and the Circuits. The Court accepted Ouseley J's rationale from the initial PCO relating to the High Court proceedings but worked on the basis of the CBA being able to raise £50 per head from a proportion of its members, as opposed to the £100 Ouseley J had calculated. This led to a starting figure of a £75,000 cap. The Claimants put to the Court the limited funds that had so far been promised to the Claimants by the Circuits/CBA and made the same arguments that were raised in relation to the initial PCO application (i.e. case being brought in the public interest and it was an action on behalf of the whole legal profession). The Court subsequently ordered a slightly lower cap of £65,000. However, it was agreed that the Claimants could apply to the Court within two weeks if the funds could not be raised and if, as a result, it appeared that the appeal case would have to be dropped due to lack of funding. If the Claimants do revert to the Court citing a lack of scope for the additional funding, we will need to consider what response (if any) we want to make at that time. At first sight, it seems perverse for costs to be passed to the whole of the profession just because those pursuing their own agenda are unwilling to commit the resources necessary to pursue the challenge.
13. We will update orally at the meeting if there are further developments.

Research

14. Since the last Board meeting we have:

- Received final reports on the following research projects: civil and social justice survey data analysis; public legal education;
- Received the draft report on the personal injury market study.

15. Over the coming period we expect to:

- Publish final reports on the following research projects: civil and social justice survey data analysis; public legal education and hold a research briefing on 23 May at UCL (An email invitation has been sent to board members)
- Finalise the research specification for quality and price information research project,
- Conclude discussions with SRA on a potential joint research project into innovation capabilities and barriers in legal services, and draft a research specification
- Draft the research specification for the cost of regulation project
- Draft and deliver a presentation at the UCL Access to Justice conference

16. On 12 May, some staff colleagues and I met representatives of the Legal Education Foundation, including our own Ed Nally, to discuss their work and identify areas of mutual interest. The potential for joining together funders to develop a shared legal needs research programme was discussed. Potential joint areas and funders are being investigated by the LEF Chief Executive and the LSB research manager

Legal Services Consumer Panel

17. We should have reminded Board members at the last meeting that four new Panel members started their terms on 1 April – Cathy Gallagher, Dr Michelle Goddard, Dr Philip Marsden and Marlene Winfield OBE. These appointments together with those of Andrew Foster and Catherine Wolthuizen in November 2013 represent a complete and exciting refresh of Panel membership.

18. The Panel's draft annual report is elsewhere on the agenda.

Office for Legal Complaints

19. The Chairman has now had a conversation with Steve Green about the best way to approach the issues raised at the Board's April meeting. The outcomes of this discussion will be covered in more detail during the course of this meeting.

Communications and stakeholder engagement

20. Following the publication of Professor Gus John's SRA commissioned independent comparative case review into the way the SRA applies its policies and procedures in dealing with BME solicitors, on 1 May, I met Peter Herbert and representatives of the External Implementation Group (EIG) that had been set up in response to the previous report by Lord Ouseley. Colleagues may recall that the EIG had been vocal in its denunciation of the John report, which although found that there was disproportionality in the way cases against BME solicitors were handled at different stages of the disciplinary process, nevertheless, did not find evidence of institutional racism within the SRA. The need for all parties to work together to address the important issues raised in the report was stressed, and Paul Philip has signalled that this will be one of his early priorities.

21. The number of LSB twitter followers now stands at 432 (14 May).