

<b>To:</b>	Legal Services Board	
<b>Date of Meeting:</b>	29 September 2014	<b>Item:</b> Paper (14) 49

<b>Title:</b>	Chief Executive's Progress Report - September 2014	
<b>Workstream(s):</b>	All	
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<b>Status:</b>	Official	

<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
10	Section 41 – information provided in confidence	
36	Section 36(2)(b)(ii) – information likely to inhibit the exchange of views for the purposes of deliberation	

## LEGAL SERVICES BOARD

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

#### Operations and governance issues

##### *Staffing*

1. This will be Fran Gillon's final Board meeting before she leaves the LSB at the end of October for a position at Slaughter and May. Fran has been with the organisation for over five years and has made vital contributions to our work on a wide range of topics, ABS and regulator performance in particular. She will be a significant loss to the organisation. I will update members on plans for recruitment in the private session.
2. Other departures to note are those of Michelle Jacobs, Business Planning Associate who leaves in early October for a more senior role in the charity sector, and Michael Mackay, Administrator, who left in September for a commissioning role in a local authority. Both have been with the LSB for considerable periods of time and these represent natural and welcome career development opportunities for them both.
3. As advised in July, Vibeke Bjornfors will join us at the end of October as a Regulatory Project Manager, and Karen Afriyie as an Administrator. Vibeke joins from BIS and Karen from Minster Law.

##### *Non-executive recruitment*

4. The competition for two new lay members closed on 8 September 2014. 93 applications have been received. The long list sift will take place on 8 October.
5. Eight tenders were received to support forthcoming OLC appointments and a preferred bidder has been identified.

##### *Relations with the Ministry of Justice*

6. The Chairman and I had a useful meeting with the Permanent Secretary on 9 September. She provided positive feedback on the Chairman's recent speech to the Westminster Legal Forum, welcoming the „whole system' approach and focus on consumers.
7. I have written to senior officials to object to two proposals that risk undermining our independence from Government. The first is a proposal for all ALB Finance Directors to have "a soft line" to a senior MoJ finance official for advice,

mentoring and with some role in objective setting and performance management. This was exacerbated by an initial (now withdrawn) proposal that our link would be to the Legal Aid Agency. The second is in relation to detailed spend controls at a micro level, which would, for instance, require the LSB to seek permission for virtually all our research spend and stakeholder engagement activities. They go beyond agreed spending delegations in our Framework Agreement and implement a level of control that the Department has discretion to adjust in line with the wider Cabinet Office spend controls. I am promised a senior level response and will update at the meeting. This is already having an impact on the timing of much needed refresh work on the website.

### **Follow up to ministerial summit**

8. On 21 July, the MoJ called a legal services „regulators’ summit’ in response to the lack of consensus emerging from the MoJ’s call for evidence in 2013. Shaun Gallagher from the MoJ introduced the event, with sessions chaired by both Shailesh Vara and (briefly) the Lord Chancellor. The main focus was on how the regulatory burden on practitioners might be reduced, where there was agreement on the objective but little by way of specific suggestions. The Chairman, Caroline Wallace and Fran Gillon attended for LSB, with a good turnout at Chair (or Board) level from all the frontline regulators.
9. ARs, LSB and MoJ officials will meet again on 2 October at Chair-level (hosted by the LSB and with the benefit of independent facilitation by Stephen Mayson):
  - a. to identify common themes across regulators where progress may be made under the existing regulatory framework. The LSB (in conjunction initially with the SRA and the BSB) has been giving some thought to this in advance, gathering ideas from the LSB’s Blueprint, and from the LSB’s and the SRA’s responses to the MoJ’s request for sight of their plans for deregulation in advance of the summit;
  - b. to identify the scope for agreement on an “incremental” package of primary legislation changes to make the current framework easier to operate; and
  - c. if possible, to start to develop thinking on what a new regulatory framework might look like, in the event that primary legislation were to become an option – with the emphasis on exploring options and alternatives for how any new regulatory framework should operate, rather than focusing on the specific structure of the regulator.

## **SRA performance**

### *Schedule 13 review*

10. The timetable for the SRA's promised "fundamental and swift" review of its processes on Schedule 13 of the Act may be longer than originally predicted, not least because of wholesale change in staffing in both the authorisation team and the SRA's policy function. However, we met the new Head of Firm Based Authorisation in late August, a new interim Director of Firm Based Authorisation is also in place, and a project manager is being sought. [REDACTED]

[REDACTED]

[REDACTED]

### *MDP applications*

11. The SRA has decided, at its meeting on 17 September, to proceed with reform in this area, and we expect a formal application for rule changes in the near future. In the intervening period, MDP applications continue to be dealt with via the imperfect medium of waivers.

### *ABS authorisation*

12. Despite the personnel changes mentioned above, we are pleased to observe that progress on this area has been maintained. With the time taken to make a decision continuing to improve and, for the first time, none of the applications in progress are over than six months old. In more detail the ABS authorisation data provided by the SRA on 15 September 2014 showed that:

- a. it takes on average of under six and half months from the submission of an application for a firm to be granted an ABS licence;
- b. of the applications submitted since the turn of the year which have been granted a licence (42 licences) the average time taken is under three and a half months;
- c. the SRA has reduced its work in progress from 142 applications in January 2013 to 26 in September 2014 and during this time it has closed 98 applications through withdrawal and granted 258 ABS licences;
- d. the average age of a work in progress application is under two and a half months; and,
- e. none of the work in progress applications are older than six months (this is the first time this has been the case since our monitoring began)

13. Figure 1 shows the age profile of the work in progress during each of the months we have been monitoring the SRA. It shows the reduction of very old applications. For instance in January 2013, when we started monitoring, 51 applications (36% of WIP) were over six months old now there are no applications over six months old.

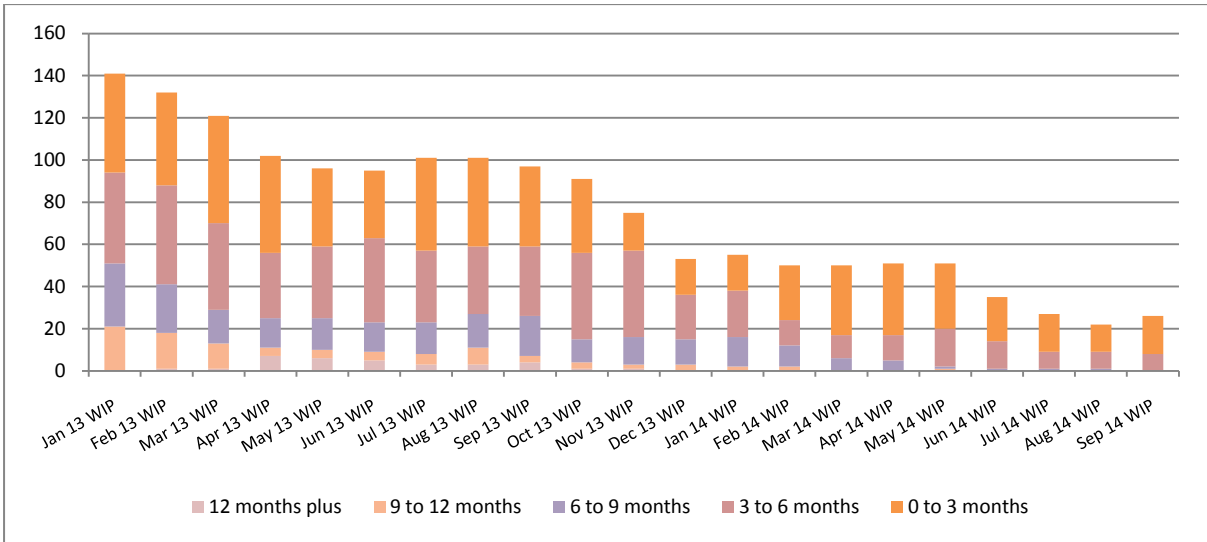


Figure 1: Age profile of work in progress ABS applications

14. The SRA does not issue an invoice until it deems “stage 1” is complete, and it does not consider that the statutory decision period of six months (extendable by three) begins until that 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 31% of the SRA’s work in progress is at “stage 1”. Previous reports have suggested that it was taking around three months for an application to complete stage one and so be issued an invoice. This latest data suggests that this may now be down to around two months.

	Number	Oldest	Average	%age
<b>New application</b>	0	n/a	n/a	0%
<b>Stage 1 - Complete Application</b>	8	5	2	31%
<b>Stage 2 - Research</b>	12	4	2	46%
<b>Stage 3 - Evaluation</b>	5	4	4	19%
<b>Stage 4 - Decision</b>	1	2	2	4%

Table 1: Breakdown of SRA work in progress

15. Figure 2 shows the time taken from submission of the application to the granting of an ABS licence up to 13 June 2014. Nearly 50% of successful applicants were granted their licence within six months of submission of the application.

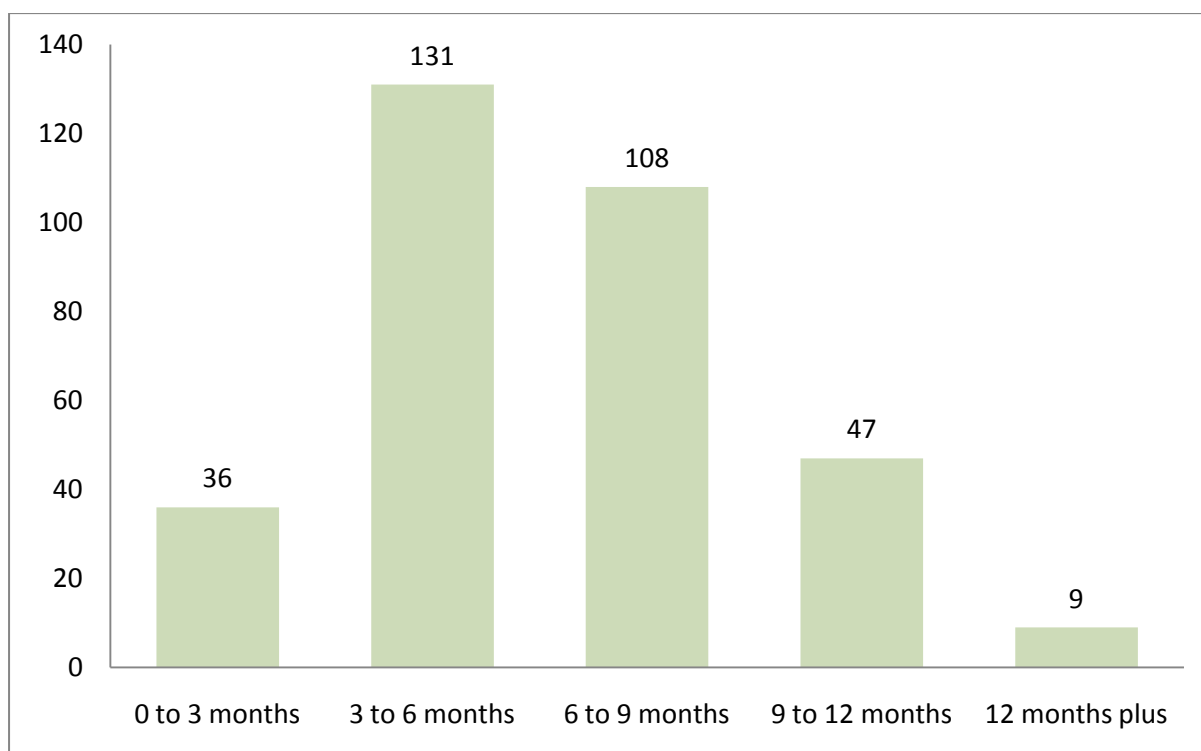


Figure 2 Time taken for ABS licences to be granted

16. Looking at the time taken for each licence to be granted by date of submission of the application, a moving average based on 25 observations shows that at its peak the moving average stood at just under nine months. This was based on applications submitted during spring 2012. For successful applications submitted more recently the average is under three months.

### BSB investigations and enforcement

17. We issued a section 55 request at the end of May about the BSB's investigation and enforcement processes, looking specifically at cases outside their service standards and /or considered inactive. We noted issues around the extent to which cases were adjourned (over 50% of records provided were adjourned); the age of some cases (20% of records provided were over two years old and the oldest case was nearly 10 years old); and, the reliance on pro-bono services to deliver their enforcement processes. We had a positive meeting with the BSB to discuss these issues on 17 September and will draft a letter that can be published noting the issues and the progress being made by the BSB. The issues will continue to be monitored as part of the regulatory standards work.

### Statutory Decisions

18. Since my last report, the Institute of Chartered Accountants in England and Wales (ICAEW) has been designated as an approved regulator and a licensing authority for probate activities. The ICAEW is the first new legal services regulator since the Act came into force and at the time of designation it reported

that there were 250 potential providers in the pipeline. We anticipate that the ICAEW will have authorised its first providers by the time of the Board meeting.

19. The House of Commons debate on the CILEx designation order took place on Monday 8 September 2014 and was approved; the House of Lords debate is scheduled for 23 October 2014.
20. The four consultation exercises for the section 69 orders related to designation applications were completed. No submissions were received for any of the consultations and we have informed the Ministry of Justice (MOJ) that our recommendations to the Lord Chancellor are (subject to final clearance from MOJ) to be accompanied by draft orders as consulted on.
21. The final clearance was received on the CILEx section 69 order at the start of September and following Board approval of the application the recommendation was made to the Lord Chancellor on 19 September 2014. Clearance has also been given for the Institute of Chartered Accountants in England and Wales. The Board has been asked to approve this recommendation through electronic circulation of the relevant papers.
22. We await final clearance from MOJ before bringing the final two recommendations to the Board. At the point of issue of this progress report we were awaiting clearance of the s69 orders for the Council for Licensed Conveyancers and the Intellectual Property Regulation Board.
23. In addition, a recommendation to the Lord Chancellor has been made on the Section 69 Order for the SRA on Recognised Sole Solicitors Practices; this order is expected to be made early in 2015.
24. We continue to assess the application from the BSB for the introduction of regulatory arrangements for the authorisation and regulation of entities. The BSB have identified the need for a change to the Civil Procedure Rules to enable the High Court to hear appeals in the period before a S69 order is put in place to enable appeals to the FTT. They are taking steps to resolve the issue through discussion with the Civil Procedure Rules Committee and are confident that this can be completed before the end of the year, allowing them (subject to us approving the application) to start authorising entities from January 2015 as planned. However the issue cannot be resolved within the normal decision-making period that ended on 22 September. As we cannot neither grant the application nor issue a further extension, we therefore issued a warning notice on 18 September.
25. The following applications have been completed since the beginning of July

*Rule Changes*

Solicitors Regulation Authority (SRA) Compensation Fund Determination (levy) 2014

### *Exemption Directions*

- a. Council for Licensed Conveyancers (CLC) Licensed bodies (ABS) licensing framework
- b. SRA Residual client balances
- c. Master of Faculties Notaries Practise Rules
- d. ICAEW Probate regulations
- e. CLC Regulation and enforcement policy: publication provisions
- f. ICAEW Probate Compensation Scheme Regulations

### *Practising Certificate Fees*

- a. Chartered Institute of Legal Executives/ILEX Professional Standards Limited
- b. The Law Society/SRA (notably, the PCF for individuals will decrease by 17% on last year's figure)
- c. Master of Faculties
- d. Council for Licensed Conveyancers

### **QASA judicial review**

26. There is nothing further to report at present, pending the Court of Appeal's judgement, which may be delivered in October.

### **First-tier complaint handling**

27. Previous updates have reported on our work to encourage the BSB and the SRA to work collaboratively to ensure that barristers get help from solicitors with regard to their complaint signposting obligations. After a slow start, good progress is now being made with

- guidance issued earlier this year highlighting respective obligations;
- BSB using reports from LeO, recent client care letters and arrangements for ensuring lay clients receive written information to inform supervision activity in relation to client notification which it sees as a high risk area. It anticipates getting further information in September from chambers that it has rated as high impact (approximately 185).
- Timetabled plans for SRA and BSB to discuss general protocols, procedures for collaborative working and information sharing across all supervision activity and evidence of levels of compliance and barriers to success in relation to client notification. Future actions to improve success rates will then be agreed.

28. This is clearly good progress. We will monitor the results of this joint work and update the Board in forthcoming meetings.



## Research

29. Since the last Board meeting we have:

- a. published the final report on the personal injury market study: Access to Justice: Learning from long term experiences in the personal injury legal services market;
- b. decided to delay the availability of the quality and price, and the open data impact research projects until 2015/16 – given regulators’ recent willingness to be more transparent with data to enable comparison websites to develop, a later start will allow evaluation of the extent to which this is starting to have an impact in reality;
- c. delayed the Evaluation: Measuring Access to Justice Report until April 2015, to free up resource for the cost of regulation research
- d. jointly with the SRA appointed a team led by Professor Steven Roper and Professor Jim Love to research Innovation: capabilities and barriers in legal services. This is due to report in May 2015
- e. (on cost of regulation research) agreed and started piloting our approach to the three projects:
  - i. a review of regulators’ expenditure and the PCF,
  - ii. a large scale survey of individuals and entities to gather views on the costs of regulation and identify further areas to pursue in more in depth work;
  - iii. an in depth costs of regulation data collection and analysis with a small group of participants
- f. Met the Legal Education Foundation and the Law Society to explore the potential for jointly funding a large scale legal needs project.

30. Over the coming period we expect to:

- a. amend the cost of regulation survey following the pilot, and then provide overview analysis for the first Reference Group meeting on 22 September. This will be amended following feedback, and we will look to launch the survey on 29 September
- b. draft the specification for the in-depth cost of regulation interviews, circulate for comment, and publish
- c. (on legal needs) finalise the joint funding for this work, and draft a legal agreement and research tender
- d. build data sets for Evaluation: Measuring Access to Justice Report, and review literature and wider developments.

## Regulatory policy

31. BRDO/BIS has confirmed that it is going to issue a consultation in the autumn on bringing all approved regulators within the scope of the growth duty. This duty in the Deregulation Bill would impose a new duty on regulators to "have regard to

the desirability of promoting economic growth" when exercising their regulatory function. It further directs that, in performing this duty the regulator must consider the importance of only taking regulatory action when it is needed and that any action taken is proportionate. We welcome BRDO's positive response to our request to do this, although it remains regrettable that they do not intend to achieve it via an amendment to the 2007 Act.

32. We have also had discussions with BIS about the proposal to have small business appeals champions in regulators. The method proposed (the Secretary of State appointing someone to a regulator to carry out this role) raises significant constitutional problems for legal regulators. We have made all the ARs aware of the issue but have not yet had a response from BIS.

### **UK Regulators' Network**

33. On 10 September, Caroline Wallace and I attended the CEO and Senior Representatives' meeting of this group, which we have recently joined as observers. Although many of their concerns on infrastructure and the relative interests of investors and consumers are not of concern to the LSB, we intend to participate in their interesting work on consumer behaviour and engagement and, where relevant, reflect their advocacy of the case for independent regulation.

### **Competition and Markets Authority**

34. Following useful discussions at the turn of the year with Alex Chisholm, CEO of the CMA, Chris Handford and I met Michael Grenfell, the CMA official responsible for sector reviews, in August. It is clear that they are considering whether the legal services market should be a priority for their work in 2015 and we did nothing to discourage them from pursuing the idea. We will meet again in November to compare progress on both our organisations' strategic plans.

### **Office for Legal Complaints**

35. Terry Babbs and Julie Myers met OLC and Legal Ombudsman colleagues on 12 August to review Q2 KPI performance. The OLC reported that there is now a detailed scrutiny of performance formally each quarter to provide the appropriate challenge to their executive. Terry may wish to update the Board on his reflections from this meeting, the notes of which have already been circulated.
36. It now looks likely that the Legal Ombudsman will take on CMC jurisdiction in „late Winter' due to delay with necessary clearances. We have been liaising with the Claims Management Regulator to ensure that appropriate regard is paid to our S112 sign-posting rules. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

37. We have also been in discussion with MoJ about BIS plans for implementation of the ADR directive. It is now clear that BIS expect current regulators to take on the role of Competent Authorities for sectors where there is already an ADR scheme in place. We are working with MoJ and BIS lawyers to identify where legislative change may need to be made to enable us to take on this role.

### **Communications and stakeholder engagement**

38. The period since the last Board meeting has been relatively quiet because of the customary summer hiatus, but we have started to gently increase the number and broaden the range of issues on which we comment publicly.

39. The Chairman delivered his first keynote speech on 4 September at the Westminster Legal Policy Forum speech. This was covered in the legal press and looks to have been well-received. Later that day the Chairman also gave his first one-on-one interviews, speaking to Neil Rose of Legal Futures and, separately, David Wurtzel, the consulting editor of Counsel Magazine.

40. We issued the fourth edition of our political newsletter at the end of July. As with previous editions there were two or three unsubscribe requests, balanced by one or two requests to subscribe. I was interviewed by the London correspondent of German daily newspaper Die Welt about the LSA 2007 and the impact of the ABS changes. The article was printed on 28 July.

41. The number of LSB twitter followers now stands at 603 (11 September). Twitter updates are proving useful in enabling the LSB to be more transparent and open and it offers an additional channel to publicise LSB activities which in the past would not have been proactively pushed (other than an update on the website). For example on 8 September we tweeted "*Background info on LSB 'Cost of Regulation' #legalresearch due to start end Sep/start Oct <http://bit.ly/1ClfhZz>*", on 26 August "*Thanks @Redbrick\_S for the infographic about unmet need for legal services. Very informative. <http://bit.ly/XOBIq4>*" and on "*LSB updates to some Part 5 (ABS) rules (specifically no's. 13, 15 and 16) <http://bit.ly/1kcTJJd>*". None of these would normally warrant a public statement however twitter allows us make an on the record acknowledgement about these particular issues. As a result, they are more likely to be picked up by the legal trade press and other interested bodies (eg many of the regional law society associations).

42. We have also had legal media coverage of a number of LSB activities during this period. Some of the more predictable issues were the response to the Consumer Panel on their McKenzie Friends report, the SRA's PII application and, as mentioned above, the 4 September speech by the Chairman. But other less high profile items, which might in the past have slipped under the radar, were also covered, such as the LSB welcoming the approval of the first local authority ABS, our approval of various practising fee applications and our statement issued in response to the publication of Social Mobility and Child Poverty Commission's report *Elitist Britain*.

43. Looking ahead, we are now planning for our stakeholder event in Cardiff in October, where we have secured an impressive venue and are working closely with regional contacts to generate a wide-ranging attendance list.
44. There is no sense that our issues will have any salience in the party conference season. We have, however, had some welcome interest from the shadow equalities Minister, Gloria di Pietro, on our work in the diversity area.