

To:	Legal Services Board	
Date of Meeting:	26 November 2014	Item: Paper (14) 66

Title:	Chief Executive's Progress Report – November 2014	
Workstream(s):	All	
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Status:	Official	

Summary:

The paper updates Board Members about:

- 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
5	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 - October 2014

Operations and governance issues

1. This will be my last (of around 60!) CEO report for the Board but I am pleased to confirm that all the necessary arrangements are in place to cover the gap between my departure and Richard's arrival. Elsewhere on the agenda is a request for formal delegations to go to Caroline and Julie and the case for this is supported by a formal letter from the Permanent Secretary confirming the designation of Julie as interim Accounting Officer.
2. Recruitment is now well underway for the Head of Regulatory Reviews and Investigations, supported by Penna, and for a new Regulatory Associate in light of the impending departure of Luke McInerney at Christmas. We are also about to make an offer to a new Business Planning Associate in succession to Michelle Jacobs.
3. The Chairman shortlisted for new LSB lay members on 14 November from a strong field. Interviews are due to take place in early December. As yet, officials have still not had Ministerial clearance to proceed with our essential non-lay recruitment. Timing is obviously now becoming very tight for this and we are pressing hard on progress to be made – although it is a matter outside of officials' control.
4. Board members will have seen recent press reports concerning Adam Sampson. Steve Green's attendance at the November Board will provide an early opportunity to discuss next steps on recruitment. Recruitment for OLC Board members in light of discussion at the last Board meeting will go live in the press on Sunday 30 November. Harvey Nash are supporting this exercise.
5. [REDACTED]
6. MoJ Internal Audit are carrying out a review of senior staff and Board member remuneration including ensuring appropriate contracts and pay controls are in place. We are co-operating with this exercise.

SRA performance

ABS authorisation performance

7. The ABS authorisation data provided by the SRA on 14 November 2014 showed that:
 - The SRA has granted 347 ABS licences;
 - It takes on average just over six months from the submission of an application for a firm to be granted an ABS licence;
 - of the applications submitted since the turn of the year which have been granted a licence (57 licences) the average time taken is under three and a half months;
 - the SRA has reduced its work in progress from 142 applications in January 2013 to 31 in November 2014 and during this time it has closed 102 applications through withdrawal and granted 272 ABS licences;
 - the average age of a work in progress application is nearly two and a half months; and,
 - None of the work in progress applications are older than nine months and only two applications are over six months old (one application relates to an MDP that was awaiting the outcome of the MDP decision, we expect this application to be granted a licence soon; the other applicant appears to have changed its structure during SRA consideration of its application).
8. The SRA has now addressed many of the LSB's original concerns regarding its approach to ABS authorisation. This includes
 - an approach to triaging applications so that they are deemed complete sooner (and the statutory time limit for a decision starts sooner);
 - public availability of an ABS application form and online support materials;
 - completion and publication of research into the experience of ABS applicants (and analysis of how they differ from traditional firms);
 - changes introduced in relation to the authorisation of multi-disciplinary practices (MDPs); and, the production of improved management information and KPIs.
9. In spite of these positive steps, some concerns remain. There has been significant staff turnover; there is currently no director for authorisation in place, a fairly new manager of firm based authorisation, and new officers responsible for authorisation. In addition, changes to the authorisation of MDPs are yet to be bed-in. In addition, little has been done to address the concern that information required from applicants by the SRA is not proportionate or targeted to what the Legal Services Act actually stipulates. In this regard, work done by the LSB on schedule 13 approvals exposed a number of areas where information requests have been considered disproportionate.
10. The SRA has promised to review these issues. We consider that this represents a genuine commitment. However, at a meeting between the LSB and the SRA on 6 November it was clear the scope or timetable for such a review, or its expected deliverables, had yet to be addressed. I have made clear to Paul Philip that the S55 notice will have to remain in place until this is progressed.
11. I am also sounding out Paul on the prospects for an SRA Board to LSB Board in March 2015. It is expected that the review will be discussed at this meeting, but the considerable progress that the SRA has made would also be recognised.

Statutory decisions

12. Since my last report the following decisions have been issued:

- Intellectual Property Regulation Board Practising Certificate Fee 2015
- SRA Multi-disciplinary Practices

13. One further SRA application is still being considered: relating to registered European lawyers and a new entity concept of Exempt European Practices (EEPs). We have raised some queries with the SRA about the regulatory status of EEPs and whether they would fall within the Legal Ombudsman's jurisdiction. The SRA concede that the application could have been better presented, and they are reviewing the information with a view to setting out the detail more clearly. The initial decision period has therefore been extended by 90 days from receipt of the application, to 23 December 2014.

14. We are continuing with the assessment of the Bar Standards Board's entity regulation application. We have also received and assessed an application from BSB under section 51 of the Act (practising fees) for approval of authorisation fees and annual fees for BSB entities. We expect to make a decision about these fees at the same time as the main entity application decision. I hope to be in a position to update the Board at the meeting.

15. In respect of orders (other than CLC s69):

- The CILEx and ICAEW section 69 orders were debated in the House of Commons on 18 November; the Commons debate on the IPREg order is scheduled for 25 November
- All three S69 orders are scheduled for debate in the House of Lords on 25 November
- The licencing authority designation order for IPReg has been signed by the Minister; as a negative order it only needs to be laid (not debated). It will come into force on 1 January 2015.

Deregulatory work streams following Ministerial summit in July

11. As reported at the October Board meeting, a meeting of the regulator chairs was held on 2 October as a follow-up to the Ministerial summit in July. Four key external actions for the LSB were agreed on 2 October (an update on these work streams is set out below). The LSB also undertook to include a review of its statutory decision making process in its 2015-16 Business Plan, and this has now been done. A further meeting of the regulator chairs to evaluate progress is in the process of being scheduled for February next year, when Richard Moriarty will be in post.

12. All the regulators have been asked to identify executive-level resources to engage in the work streams. They have all responded to this request, and cross-regulator working groups are in the process of being set up.

13. Following comments made by several representative bodies (including The Law Society and ITMA), we are considering how best to involve the representative bodies in these work streams. While we wish to be as transparent as possible about this cross-regulator work, the practicalities of involving a wider group of stakeholders with disparate agendas and interests need to be worked through for each work stream. It may be possible, for example, to keep the representative bodies informed, and make separate arrangements to let them engage with any outputs before they are published.
14. The timing for these work streams is based on the desirability of having the outputs from each work stream ready to present to in-coming Ministers following the May 2015 General Election.
15. Progress on actions:
 - a. Production by the LSB (in collaboration with the regulators) of a 'deregulatory status report'. Kate Webb will manage this work for the LSB. She has started to scope the work and will begin one-to-one discussions with the regulators shortly. The aim is to make use of material that the LSB already has (for example regulatory self-assessments) to propose text to the regulators which they can then modify, so as to minimise the additional work for them.
 - b. Collaboration between the regulators to identify effective business models to avoid the handling of client money. Chris Handford will lead this work for the LSB, which is likely to involve at least one cross-regulator meeting and a presentation about the BarCo model.
 - c. Prioritisation of 5-10 clausal changes to the LSA to streamline regulatory processes and lighten regulatory burdens. Chris Handford will lead this work for the LSB which is likely to rely heavily on work already undertaken in the context of the LSB's Blueprint, and in preparation for the 2 October meeting.
 - d. Development of legislative options beyond the LSA. We have asked Stephen Mayson to facilitate three to four cross-regulator workshops over the next three to four months. Stephen has already developed (in consultation with the LSB team) a project scoping document that comprises draft agendas for these workshops. The next step is to schedule the first of these workshops.
16. The SRA is working separately on its action from the meeting, which is to arrange knowledge sharing across the regulators on deregulatory initiatives such as MDPs and the separate business rule.

Research

17. The survey of legal services providers for the cost of regulation project was launched on 13 October and has continued during November. At the time of writing, although over 600 responses have been received, more are needed to improve the robustness of the results. However, the number of respondents who have volunteered to take part in the qualitative in-depth interviews that will follow

the survey (over 100 thus far) has been greater than anticipated. Both general and more targeted communications work continues to drive further responses to the survey.

18. Our joint research project with the SRA to look at innovation in the legal services market continues. The research is being carried out by a team led by Professor Stephan Roper and Professor Jim Love from the Enterprise Research Centre at Warwick Business School. The project is in two phases. The first phase is literature review and series of case studies, and the second phase will involve a survey of the whole sector to seek to quantify and measure the level of innovation. The outputs – a report, an analysis, and anonymous survey data will be published in May next year. We have received and are reviewing a draft interim report comprising the literature review and identification of innovative practices in legal services which will form the basis of the case studies.
19. Work on the specification of the large scale legal need survey of individuals continues. The LSB will undertake this work in partnership with – and with funding from - the Law Society and the Legal Education Foundation. Due to the size of the project (£250k) we are having to go through MoJ to seek permission to proceed. We are explaining the nature and purpose of the work to MoJ and how it links to our regulatory objectives, even though we do not consider that the Cabinet Office spend control on market research that MoJ says may be relevant is in fact relevant to this work of applied social science. We need to select which research organisation will undertake this research on our behalf in enough time for the fieldwork to commence at the beginning of January 2015. The project will be completed by October 2015.
20. Fieldwork also continues on our on-line divorce research project, and we have started to prepare for our update of the access to justice indicators in our evaluation framework.

Education and Training

Current position

20. Intelligence gathering in education and training continues and to date no imminent risks to the regulatory objectives or better regulation principles have been identified. LSB monitoring has not found any breach in or departure from its guidance since the Board issued statutory s162 guidance in March 2014.
21. A summary log of known recent developments in the approved regulators' education and training arrangements has been prepared so that an overview of the status of education and training developments can be taken (not included here for reasons of brevity).
22. On the basis of the summary log, key areas that we will focus our monitoring efforts on include:
 - The SRA's current consultation on the standards for practice as a solicitor. The consultation seeks views on a new 'Competence Statement' for solicitors and it also contains a 'Statement of Legal Knowledge' for

practising solicitors to demonstrate competence across a list of categories of law. The changes will not come into full effect until November 2016

- In April the SRA consulted on a new approach to continuing competence through CPD rules and is currently considering its policy response.
- In March the Government launched phase 2 of its 'Trailblazer Apprenticeship programme' in the legal sector. Under this scheme, an apprentice will be able to qualify as a solicitor, legal executive or paralegal via workplace-based training.

Westminster Policy Forum

23. Caroline Wallace delivered a speech to the Westminster Policy Forum on Education and Training on 4 November. Her main points were:

- In a changing market, flexibility in the way education and training is delivered and received is important because it gives firms and educators greater freedom within which to achieve the outcomes required by regulators. It will also contribute to greater diversity in the legal profession. But it does not mean that either the level of competence required, or the outcomes themselves, are flexible;
- Greater flexibility is necessary because regulators require an approach that can best respond to risks, whenever and wherever they arise. This is because the existing prescriptive approach is less likely to be able to respond to the types of changes we are likely to see;
- Education and training regulations should be clearly linked to the type of legal services that lawyers provide, allowing firms and educators more scope to tailor education and training to their needs.

24. Next steps

- The current intelligence gathering exercise will continue and we will maintain a log to record key changes made by regulators. Any major changes or areas of concern will be highlighted in future CEO updates
- We will maintain communication with the SRA about its current 'Training for Tomorrow' consultation. Areas to focus on include whether the proposed general legal knowledge requirements present unnecessary risks to entry, flexibility or specialism
- We will consider education and training for inclusion in the 2015/16 thematic review prioritisation exercise, but we recognise that it may be more appropriate to schedule any such review for a later business plan, possibly 2016/17, to allow the changes taking place to take root and have the chance to impact the market.

QASA

25. Further to the dismissal of the claimants' appeal by the Court of Appeal on 7 October, the costs appeal hearing was held on 30 October 2014. At that hearing, the Court of Appeal dismissed the claimants' appeal against the Divisional Court's costs order relating to the substantive hearing. It also held that the LSB was entitled to recover its costs for the appeal hearing, but that the BSB was not.

26. In terms of actual figures, this means that the LSB is entitled to:

- £112,500 of its costs relating to the substantive hearing with the BSB entitled to the remaining £37,500 of the £150,000 cap under the Protected Costs Order
- £65,000 of costs relating to the appeal hearing (i.e. the maximum allowed under the Protective Costs Order). However, this figure is subject to a detailed cost assessment.

27. It is worth noting that the LSB rejected an offer from the claimants to settle the appeal costs at £50,000. My Accounting Officer responsibilities would have prevented me from accepting such an offer, bearing in mind that LSB costs for the appeal are closer to £100,000. However, detailed cost assessment will delay actual receipt.

28. The CBA has since filed its written submissions seeking leave to appeal on four grounds –

- failure of the court to apply the correct proportionality test under the POS Regulations
- erring in law in finding that the LSB directed itself correctly in law on the nature and scope of the principle of independence of the advocate
- erring in law in finding that QASA did not present a risk to the perceived independence of the advocate; and
- erring in concluding that the lack of clarity relating to appeal rights under QASA does not justify the striking down of the LSB's decision.

29. The LSB and BSB have responded, comprehensively rebutting these arguments.

30. It is unlikely that the Court of Appeal will grant leave to appeal to the Supreme Court – we should be able to update the Board orally. However, the claimants have indicated that, should they make an application directly to the Supreme Court, they will seek to do so by Thursday 27 November. It is unlikely that any decision would be made by the Supreme Court before the New Year. It remains to be seen, given the comprehensive nature of the both the Divisional and Court of Appeal's judgements, they are prepared to undertake the further financial risk.

Diversity

31. As stated in the Business Plan, we have continued to monitor regulators' actions in response to our diversity data collection and publication guidance, and are currently compiling our second report on their progress. A full paper, along with the draft report and details of a sector wide diversity data set that is also being produced, is due to be brought to the Board early next year. We are still awaiting responses from a number of regulators, following a request for information on their progress, lessons learnt and use of the data. So far, the picture that has emerged as to the progress that has been made, has been mixed, particularly in relation to the analysis and presentation of the data that has been collected. On the other hand, however, a number of examples are emerging demonstrating real progress in approaching diversity as a regulatory issue.

Office for Legal Complaints

32. Steve Green will be attending today's Board meeting to present the OLC's draft business plan and budget for 2015/16 before it goes out to consultation. We expect that he will also update the Board on matters relating to the resignation of the Chief Ombudsman and the Annual Report and Accounts, as reported in the press on 19 November. Matters relating to the commencement of the claims management jurisdiction are also on the agenda.

33. We have also been working with MoJ officials in anticipating the implications for LSB and OLC of the implementation by BIS of the EU ADR Directive. Implementation is due to take place by July 2015. BIS issued their proposals for implementation on 18 November and, as anticipated, propose that where a statutory regulator has a pre-existing relationship with a statutory Ombudsman or ADR scheme ie the LSB with OLC and the Legal Ombudsman, then BIS will be designating those regulators as 'Competent Authorities' so that are able to 'certify' the statutory scheme in compliance with the Directive.

34. Based on our current understanding, we have provided advice to MoJ officials on a small number of changes that would be needed to the Legal Services Act 2007 and/or which would need to be included in BIS regulations to enable us to perform the Competent Authority function and to recoup the – minimal – costs associated with carrying it out.

Communications and stakeholder engagement

35. It has been a relatively quiet period since my last update in October from a trade media point of view. Our proactive activity has included an article authored by the Chair for the Law Society's Legal Compliance Bulletin that develops somewhat the ideas outlined in his speech from 4 September. Mike also gave a successful interview to "Counsel" magazine which concluded that "Sir Michael Pitt is a man that the Bar can do business with". I also gave an exit interview to the Modern Law Magazine, and this has been published in their mid-November edition.

36. There has been ongoing engagement with communications personnel in the approved regulators during this period in support of the *cost of regulation survey*. This has been with a view to getting as much promotion of the survey, and as much endorsement for engagement, as possible.

37. Edition #5 of the LSB Newsletter was sent out on 30 October. It featured my last statement as Chief Executive, and information about his successor; the Chair's 4 September speech; the cost of regulation survey; the follow up to the ministerial summit meeting; speeches from the LSB; and, of course, QASA (again).
38. I have undertaken four speaking engagements in my final month: at the Law Society national pro bono week launch on 3 November, a debate on the future of professional regulation at Bevan Brittain on 13 November, the Legal Futures conference on 18 November and a seminar on ABS for Barclays Bank clients on 19 November.
39. Terry Babbs and Caroline Wallace attended an event at Middle Temple to inform the work of the review group established under Lord Hunt of Wirral to review the strategy of the Inn. This has identified a need to strengthen our engagement with the Inns generally, which we will pursue in coming months.
40. The number of twitter followers stands at over 700 and we also created an official LSB Linked-In page during the month.