

To:	Legal Services Board	
Date of Meeting:	30 April 2014	Item: Paper (14) 25

Title:	Chief Executive's Progress Report - April 2014	
Workstream(s):	All	
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Status:	Protect	

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
9 and 20	Section 36(2)(b)(i) – information likely to inhibit the free and frank provision of advice	

LEGAL SERVICES BOARD

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Chief Executive's Progress Report - April 2014

Operations and governance issues

1. At long last we are able to welcome our two new Board Members, David Eveleigh and Marina Gibbs. It has been a lengthy process but we are delighted to have them on board and both have been able to spend some time with colleagues as part of their induction. Unfortunately, the Minister felt unable to identify a third and essential second lay member from the recent recruitment exercise. This inevitably means we may need to make greater call on some of you whilst membership is at less than full strength and we will need to pay particular attention to quorum and lay majorities. MoJ officials have indicated that they would be willing to proceed to a new appointment exercise swiftly to fill the vacant post and identify Bill Moyes' successor – they will need to if we are to confirm new Members in post before general election purdah. Julie Myers will be pursuing this the Public Appointments Team.
2. On staffing matters, we have just made an offer to a new regulatory Project Manager and I hope to be able to confirm details by the time of the meeting. I have also agreed with Caroline Wallace, that we will seek expressions of interest from current colleagues for the post vacated by Alex Roy – re-scoped to Head of Development. I would hope that this means we will not need to proceed to external recruitment. Chidinma (Chidi) Alufuo joined us on 22 April as Finance and Resources Associate and will be observing this meeting.
3. Additionally, in order to supplement our strategic thinking over the coming year, we have agreed to contract with Professor Stephen Mayson for strategic support and challenge. This will be broadly for a day a week.
4. At the time of drafting, we are in the midst of end of year audit. The matter reported at the March Board meeting regarding accounting treatment of the levy appears to have reached a satisfactory conclusion for this year at least, and we have alignment with Ministry of Justice Corporate Finance on how best to proceed. I am extremely grateful to Edwin Josephs for steering us through this issue and for working closely with Legal Ombudsman finance colleagues to ensure all parties reached a satisfactory outcome.

Policy Reviews

5. We still await publication of the MoJ's response to its call for evidence. We did however have an interesting and useful discussion with officials from the Department of Business, Industry and Skills (BIS) and Her Majesty's Treasury (HMT) who were keen to understand how best regulatory change could help to stimulate competition and growth in the legal services sector. We understand that this was in the context of understanding what the outcome of the review might say.
6. We understand that Sir Bill Jeffrey delivered his report on criminal advocacy to Ministers before Easter, but timing of publication and implications, if any, for us remain uncertain.

QASA judicial review

7. Following the March Board meeting, we learned that the Court of Appeal had refused the Claimants permission to appeal in a strongly worded decision by Lord Justice Laws. The Court of Appeal also refused to extend the Protected Costs Order in the Claimants' favour. However, as the application for permission was dealt with on the papers, the Claimants were entitled to renew their application for permission at a hearing. Accordingly, they have now applied for a hearing which has been listed for 9 May 2014. We continue to take advice from Counsel, Nigel Giffin QC, as to the most appropriate, and cost effective, way to defend this litigation.
8. As a result of the hearing, the Joint Advocacy Group has had to revisit the phasing of implementation. The three bodies are taking slightly different approaches, but the end date for compliance remains the same.

Regulator Issues

9. [REDACTED]

SRA ABS authorisation performance

10. The ABS authorisation data provided by the SRA on 15 April 2014 showed that:

- It still takes an average of 7 months from the submission of an 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 52 in April 2014 and during this time it has closed 85 applications through withdrawals and granted 205 ABS licences;
- The average age of a work in progress application is 3 months. For the second month running none of the work in progress applications are older than 9 months and only 10% are over 6 months old.

11. 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 old applications. For instance in January 2013 35% of applications were over 6 months old, now only 10% are that old.

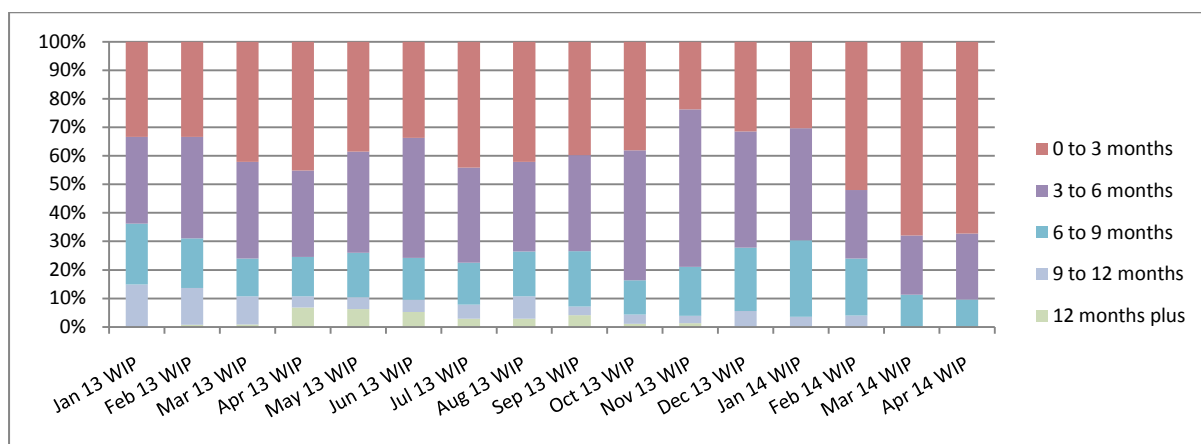


Figure 1: Age profile of work in progress ABS applications

12. 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 50% of the SRA’s work in progress is either “new applications” or “stage 1” applications. Additionally it suggests that applicants are currently waiting an average of between two and three months before being invoiced and so the statutory time decision period beginning. However, this is an improvement on previous months’ data.

	Number	Oldest (months)	Average (months)	%age
New application	0	n/a	n/a	0%
Stage 1 - Complete Application	26	5	2	50%
Stage 2 - Research	13	5	3	25%
Stage 3 - Evaluation	5	4	3	10%
Stage 4 - Decision	8	9	6	15%

Table 1: Breakdown of SRA work in progress

13. Figure 2 shows the time taken from submission of the application to the granting of an ABS licence up to 15 April 2014. 44% of successful applicants were granted their licence within six months of submission of the application.

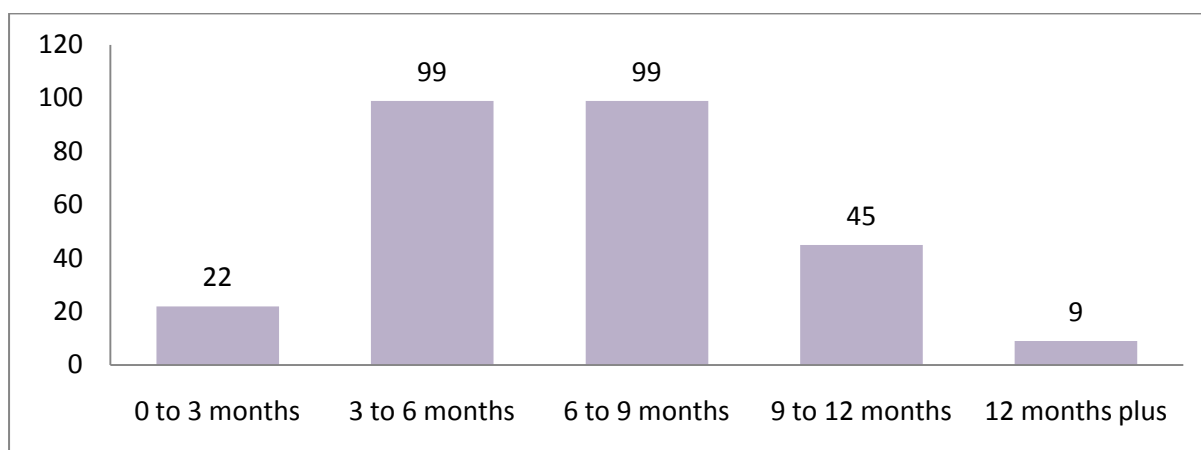


Figure 2 Time taken for ABS licences to be granted

14. On 2 April 2014 the SRA announced that it was going to conduct a review of its approach to authorising multi-disciplinary practices. The announcement suggested that a consultation would be issued in the summer. The SRA identified its current scope of regulation as the primary issue. The SRA's Board will consider proposals in May.
15. Looking at the most recent data in terms of performance in this area, the SRA has received approximately 38 applications from MDP type firms. It has granted 21 licences to those applicants, 13 withdrew their application and three remain work in progress. Of the 21 granted a licence, over half required a waiver. Apart from the category of „other', it still takes a longer average time for an MDP type application to be granted an ABS licence (8.2 months). This category of business has the second highest withdrawal rate after „business services' applicants.
16. The Board will be provided with a full update on SRA ABS authorisations at the May 2014 meeting.

BIS – better regulation initiatives update

17. There are currently three initiatives from the BIS better regulation team with which we are involved:

- a. The new Regulators' Code came into force on 6 April. The Code sets out a framework of best practice for regulatory delivery that "supports and enables regulators to design their service and enforcement policies in a manner that best suits the needs of businesses and other regulated entities". The LSB must have regard to the Code when developing policies and operational procedures and when setting standards or giving guidance. We have pressed BIS to extend the reach of the Code to include all approved regulators and have incorporated it into our work on regulatory standards. We are also considering how it will impact on our own work.
- b. The growth duty for non-economic regulators is set out in the Deregulation Bill that is currently going through Parliament. BIS has published draft guidance and has confirmed that it proposes to include all the approved regulators and the LSB in the Listing Order; it will consult on this in the autumn. It anticipates that the Order will come into force in April 2015. We continue to press for the duty to be incorporated in the regulatory objectives in the 2007 Act to ensure that it is seen as having equal weight;
- c. BIS is also consulting on its proposal to appoint small business appeals champions for each non-economic regulator. The champions will scrutinise the transparency, operation and effectiveness of appeals and complaints processes, make recommendations and publish a report for each regulator. We have responded to the consultation, supporting the outcomes that BIS is trying to achieve but highlighting that all the approved regulators need to be included in the initiative and noting the potential conflict of interest between the need for NEDs to take collective responsibility for decisions and the somewhat separate "champion" role.

Research

18. Since the last Board meeting we have:

- a. Met the Research Strategy Group, finalised plans for research in 2014/15 published in our Business plan
- b. Started fieldwork on the online divorce research.
- c. Presented three papers by Alex Roy and Rob Cross at the Socio-Legal Studies Association annual conference in Aberdeen.
- d. Received draft reports on the following research projects: civil and social justice survey data analysis; public legal education; and personal injury market study.

19. Over the coming period we expect to:
- a. Receive and publish final reports on the following research projects: civil and social justice survey data analysis; public legal education; and personal injury market study.
 - b. Draft research specifications for quality and price information research project,
 - c. Conclude discussions with SRA on potential joint research project into innovation capabilities and barriers in legal services.

Statutory decisions

Designations

20. [REDACTED]
21. The consultation exercise on the appellate body for the two licensing authority designations has been completed and is covered elsewhere on the agenda.

Changes to regulatory arrangements

22. Since my last report the following decisions have been issued
- a. Costs Lawyer Standards Board (CLSB) Code of Conduct – statement of rights
 - b. Master of Faculties Notaries (Practice) Rules – part approved; one rule (relating to investment business) is still being discussed since the drafting does not appear to deliver the intended result
 - c. CLSB Practising Rules (Rule 10 Insurance)
 - d. Bar Standards Board Rules for Inns Conduct Committee (exemption direction)
 - e. Ilex PS rights of audience certification rules (exemption direction).
23. We have also received in draft the BSB's application to begin to regulate entities. This has raised some complex legal issues on which we and the BSB have jointly sought Counsel's advice.

Practising Certificate Fees (PCF)

24. Following a review of the last round of PCF applications, we concluded that we needed to have a better understanding of how the approved regulators assure themselves that PCF income is only spent on allocated purposes. As a result, we have asked those approved regulators whose PCF income is not spent solely on regulatory matters to provide a report (by the end of May) on their methodology for allocating PCF income to permitted purposes. We have also used this as an opportunity to remind all approved regulators of the importance of consultation and transparency on PCF levels; all approved regulators have been asked to provide details of how they plan to approach consultation when developing the proposal for the next PCF.

Solicitors Disciplinary Tribunal (SDT) – annual report on key performance indicators

25. We received the annual report from the SDT on its achievements against the agreed KPIs at the end of February and discussed it with the President and Chief Clerk on 21 March 2014.

26. The key points to note are:

- a. The SDT continues to consistently achieve the targets for “proceedings issued within seven days of receipt” and “judgments to be issued within 7 weeks of determination”
- b. Although there was a marginal improvement for “determination of application within 6 months” (from 54% to 55%) this was still short of the 70% target. It was noted that many of the cases dealt with in 2013 were more complex and that the actions of some of the respondents were in some cases responsible for drawing out proceedings
- c. The average cost per court (for which there is no specific target) had increased by 40% (to £9532); this is a reflection of fewer but more complex cases requiring more sitting days
- d. Appeals were lodged on 17 decisions (12%). Of the ten that have been concluded, 2 were upheld.
- e. There has been a decrease of 55% in the number of cases being heard. This is attributed in part to the revised approach to supervision adopted by the SRA as part of outcomes focused regulation, which involves more engagement with firms as issues arise. The SDT predict that a number of cases will be referred to them soon. It was particularly noted that there has been an increase in the number of cases that involve alleged breaches of the SRA accounts rules.

27. In discussion, an issue was raised on how the SRA handles cases and the impact that this has on the SDT (for example, there is a perception that cases are not actively managed and that there is a paucity of reliable data, making it difficult for the SDT to effectively plan the use of its resources). The User Group Committee is one forum at which these issues are discussed, and we encouraged the Chief Clerk to meet directly with the new SRA Chief Executive to discuss the issues.

Other Policy Issues

Will Writing

28. Following the roundtable in January and subsequent discussion with the unregulated will-writing sector, the Chairman wrote to the Parliamentary Under-Secretary of State, Shailesh Vara, on 25 March with a report on the outcome. The reply interestingly seems to leave open the door for further consideration of the will-writing issue in due course. The correspondence is attached at **Annex A**.

Legal Services Consumer Panel

29. The Panel has had an active April with the publication of their review of progress on accreditation schemes (at the request of the LSB) and their major review of fee-charging McKenzie Friends. The former will form part of our work on the quality of legal services over the coming months. The latter we propose to bring to the July Board meeting for discussion as it does contain a recommendation for the Board to consider re: the meaning of conduct of litigation. We will need some time to consider this, as well as the report more generally, and the Board will receive a paper in due course. It is disappointing that so many professional commentators made hostile “shoot from the hip” reactions on the day of publication which cannot have been informed by proper consideration of the complex issues.

Office for Legal Complaints

30. OLC believe that they have now got a commitment from MoJ on a go live date of mid-November for commencement of the CMC work. This is an improvement on the early January date that had previously been mooted. OLC believe that, with commitment from Ministers to ensure Government time to debate the affirmative amendments planned in advance, some weeks could still be shaved off the timetable, and they will continue to press the MoJ to keep focus on the financial risks to them, as well as the overall reputational risks of any further lack of clarity or slippage. The risks and frustrations are very similar to those noted in para 13 above.

31. We plan to meet OLC on 29 April for their final KPI meeting of the financial year, and Terry Babbs may wish to further update the Board.
32. The OLC also published their Business Plan for 2014/15 in early April, with the budget approved by the Board.
33. Separately, we are considering how to respond to BIS' consultation on implementation of the ADR Directive, summarised at **Annex B**. Although the bulk of the document is of only peripheral interest to LSB, we do need to consider our prospective role as the verification body for the OLC and, potentially, other ADR schemes in legal services where there may be some tricky issues to resolve in relation to the interplay between implementing legislation and the 2007 Act.

Communications and stakeholder engagement

34. The period between the two Board meetings has been a relatively quiet one, including as it does the Easter holiday period. Nonetheless, a number of communication activities have been undertaken.
35. I was interviewed by Gavin O'Toole for the National Association of Licensed Paralegals (NALP) Paralegal News publication and by Richard Parnham for Partner Magazine. James Meyrick was also interviewed by HR magazine for a piece on the changing face of legal recruitment as a result of the introduction of ABS. The article was published in the April edition of the magazine.
36. The media (primarily trade) picked up on a variety of LSB activity during this period – specifically the announcement of the LSB's new Chairman and Board members, and the 2014/15 Business Plan and levy decisions. We also wrote another blog for Legal Futures, this time on our recently issued guidance to regulators on legal education and training and had a piece in Modern Law Magazine on our statutory guidance on education and training.
37. Finally, we had one of our regular meetings with representatives of the Welsh Assembly Government, and it is anticipated that this will lead to an exploratory meeting with the administration later in the quarter. We and the Legal Services Consumer Panel also agreed to participate in the 2014 Legal Wales conference in October in Bangor. In parallel, we are starting to plan for the October Board meeting to be held in Cardiff, where we will aim to broaden contacts with the Welsh Government beyond the Counsel General to include the First Minister and Minister for Industry.
38. The number of LSB twitter followers now stands at 387 (14 April).