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| <b>To:</b>              | Legal Services Board |                            |
| <b>Date of Meeting:</b> | 18 March 2013        | <b>Item:</b> Paper (13) 17 |

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| <b>Title:</b>                  | Chief Executive's Progress Report - March 2013  |  |
| <b>Workstream(s):</b>          | All   |  |
| <b>Author / Introduced by:</b> | Chris Kenny, Chief Executive<br>chris.kenny@legalservicesboard.org.uk / 020 7271 0057 |  |
| <b>Status:</b>                 | Protect   |  |

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| <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> |

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| <b>Recommendation(s):</b>   |
| The Board is invited to note the Chief Executive's progress report. |

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|------------------------------|
| <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 |
| Para 4                                       | Section 43 - Likely to prejudice the commercial |         |

|                        |   |  |
|------------------------|---|--|
|                        | interests of any person   |  |
| Para 9 (last sentence) | Section 36 - likely to inhibit the free and frank provision of advice |  |
| Para 14                | Section 44 – restricted information under s.167 of LSA 2007           |  |

## LEGAL SERVICES BOARD

|                         |                      |              |               |
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### Chief Executive's Progress Report - March 2013

#### Operations and governance Issues

##### *Organisation development*

1. In January I reported that we had engaged some external resource to help us unpick the results of the colleague survey and that work began in February. I am due to receive a draft report shortly before the Board meeting and will provide a verbal update at the meeting.
2. Catherine (Cat) Mariner joined the LSB on 5 March to take up the vacant role of Corporate Affairs Associate. Cat was most recently a programme administrator at the Institute of Education and immediately prior to that was a member of the Armed Forces Pay Review Body Secretariat at the Office of Manpower Economics. She also has experience of working in an arms' length regulatory organisation and central government.

##### *Governance*

3. Preparatory work is underway for the recruitment of a new LSB Board Chair (for 1 May 2014) and two Board Members (for 1 April 2014), as well as for the recruitment of a new OLC Board Chair and two OLC Board Members (for 1 April 2014). The Corporate Director and Corporate Governance Manager are liaising closely with the Ministry of Justice on the former, who lead on those appointments, and the Chairman is in discussion with the OLC Chair on the latter. Plans and timetables will be presented to the Remuneration and Nomination Committee by correspondence in due course. It is fair to say that the process is not at all simple, with the need to engage both No. 10 and the Select Committee at various stages. Consumer Panel appointments also need to be made this year.
4. As discussed with the Remuneration and Nomination Committee the Executive felt that, following the continued growth of the Board over the past few years, it was appropriate to ask Barnett Waddingham LLP (professional advisers on pensions and related matters) to review the services they currently provide. This was to ascertain whether the current level of service continued to meet the needs of the Board and its colleagues. Following ongoing discussions and agreeing to take some of the work 'in-house' we have secured a [REDACTED] reduction

in the level of fees that are charged and have agreed to continue to use their services for the next three year period.

5. We have previously reported to the Board that BIS have announced that the Competition and Markets Authority will be based in Victoria House. While we have not been served notice, our planning assumption is that we will have to find new accommodation in the course of 2013. As discussed in more detail in Papers (13) 19 (risk register) and (13) 15 (budget), this adds both operational and financial risk in the course of the year. However, we have already started identifying potential other locations and exploring implications for services. We intend to report more fully to the Board at its April or May meeting.

### **Project update**

6. The Board received the January highlight report by e-mail at the end of February. Currently, all projects are running to time and the Project Managers are now preparing to finalise plans for 2013/14 Business Plan, pending Board discussion on the response to consultation.

### *Regulatory standards*

7. The report on the SRA's submission to the regulatory standards exercise, which was reviewed at the 30 January Board meeting, was provided to the SRA for comments on the factual accuracy following the board meeting. The SRA provided detailed feedback, far beyond fact checking, to this draft. We carefully considered these comments and we have maintained detailed notes of this process to ensure that we can justify each decision on whether to accept or reject the point made.
8. We received the BSB's final report on 20 February and will report our assessment to the April Board meeting.

### *Cost and Complexity of Regulation*

9. We are in the early stages of scoping this project, identifying research inputs, resolving the project management structure and identifying the potentially rich areas where there may be scope for collaboration to prevent duplicative activity.

[REDACTED]

[REDACTED]

## Research

10. Since the last Board meeting we have:

- Commissioned research to develop an approach and initial prioritisation on cost of regulation project.
- Finalised research specification on Barriers to Entry, Exit, and Merger (a joint project with the Law Society) and issued a call for expressions of interest.
- Conducted 12 week review of LSB research web pages, and made recommendations for minor amendments.
- Evaluation - initial data analysis and collation for competition and regulation work started.
- Drafted project scoping paper on innovation and regulation in conjunction with Tilburg University

11. Our focus over the coming month will include:

- Working on draft reports for Behavioural Economics; Understanding Consumers; Cost of Regulation and Value of Regulation projects.
- Finalising details with Law Society, and drafting tender documents for joint research project into barriers to firm entry, exit, and merger.
- Evaluation - Completion of initial data analysis and draft initial report on competition and regulation.
- Build data sets of Access to Justice indicators, IPS, and Office for National Statistics census data sets development, to support future work.
- Finalising research plans for 2013/14.
- Implementing amendments to LSB research pages.
- Presenting LSB research on High-Street Solicitors and early thoughts on Behavioural Economics to Socio-Legal Studies Association conference.

12. We are also having a short independent review of our approach to research management to complement the earlier helpful internal audit report, but with a focus beyond the primarily financial.

## Statutory decisions

### *Applications to change regulatory arrangements*

13. An application from the Solicitors Regulation Authority (SRA) on referral fee arrangements has been approved.

14. There are currently five applications being considered:

- The Costs Lawyer Standards Board (CLSB) proposals to introduce regulatory arrangements for trainee Cost Lawyers – the issues with the application were discussed at a meeting with the Chief Executive of the CLSB on 13 February. [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- BSB Public Access and removal of restrictions on media comments
  - Ilex Professional Standards (IPS) Admission as a Fellow: work based learning
  - IPS Associates admission as a Fellow (for those with Associate status before January 1986)
  - SRA Red Tape Challenge initiative

### *Designation applications*

15. The assessment of the application from Institute of Chartered Accountants in England and Wales (ICAEW) for a recommendation for designation as an approved regulator and licensing authority for probate is progressing. A number of issues have been identified and discussions are ongoing. A visit to review some key processes and procedures (eg authorisation and supervision) is planned for late March, with final proposals to the July Board.
16. The Law Society has indicated that they intend to make a submission to the LSB on this application which we understand will focus on the independence arrangements. There is no formal process for us to consider such submissions once an application has been received (unless the information has been submitted in response to a formal request for advice under Schedule 4 or Schedule 10). The Law Society had the opportunity to comment on the application during the consultation issued by ICAEW but chose at that time not to make a formal response. We will invite ICAEW to comment on any submission made to us by the Law Society and consider the issues in the assessment of the application. I have explained to the CEO of the ICAEW that we expect them to comply fully with the IGRs, but that does not mean that the model adopted by the Law Society/SRA is the only acceptable way to do so. The Board's IGR define applicable approved regulators differently to those such as ICAEW that are not predominantly legal regulators. The principles apply in an identical manner but the rules reflect the particular circumstances.
17. In relation to other expected designation applications, meetings have been held with:
  - IPS (application for probate and reserved instrument activities due at the end of March)

- Intellectual Property Regulation Board (IPReg) (licensing authority application – current planning assumption that this will be submitted at the end of April)
- Council for Licensed Conveyancers (CLC) (application for litigation at the end of November)

18. We have identified that all of the designation applications will require statutory orders (section 69 and/or section 80); we will work with Ministry of Justice (MoJ) colleagues to try to identify the most efficient mechanism for dealing with these. The timetable for the orders could impact on the timetable for making decisions on applications.

#### *Other matters*

19. Following the Triennial Review, we said that we would look again at our detailed arrangements for rule approval and designation in the light of the points made in discussion. Some changes in working practices have been made, notably through closer engagement with regulators at the formative stage of their proposals. We have not, however, initially identified any changes which are needed to the formal rules for either process and, indeed, any change at this stage would have an adverse impact on handling the significant designation activity that will be in train in the first three quarters of 2013-14. I have therefore concluded that this work is best undertaken after the current crop of rule changes and designations finishes in early 2014 and, dependent on priorities at the time, we will either do some work in Q4 or reflect it in the business plan for 2014/15.

### **Other Policy Issues**

#### *Legal Education and Training Review (LETR)*

20. Since the last Board meeting, publication of the final report of the LETR has been further delayed. The report will be submitted to the regulators before May, following which it will be published. We do not yet have a firm date for publication but are working with the regulators to understand the impact on their plans. Some positive developments have emerged through these discussions.
21. IPS is proceeding with plans to introduce day one outcomes for CILEX Fellows (a rule change application has been submitted) and an application for approval of changes to the continuing professional development requirements is expected in May. The SRA has introduced some practical changes to its education and training regulations through the red tape challenge and the BSB is currently scoping out a timetable for review of its arrangements. Our focus in

the 2013/14 Business Plan will therefore be on supporting and challenging the regulators to regain momentum.

#### *Damage Based Agreements (DBAs)*

22. The Strategy Director wrote to regulators on 7 February, seeking their thoughts by 22 February on the extent to which DBAs constituted a potential mis-selling risk and whether action was called for to guard against this. Responses have been slow to arrive and those so far received have been perhaps unduly sanguine about the potential risks. We are considering options further.

#### *Standard Contractual Terms*

23. Colleagues may recall that, in our consideration of the BSB's rule change concerning standard contractual terms in 2012, one relevant issue was the extent to which these were a matter for the regulator or the representative body. We have therefore noted with some surprise press reports and announcements that the terms are now a matter for negotiation between the Law Society and Bar Council and will be seeking clarification from the BSB as a matter of urgency.

#### **Legal Ombudsman/Office for Legal Complaints (OLC)**

24. There is a separate item on today's agenda which seeks the Board's agreement to the OLC's 2013/14 budget (Paper (13) 14 refers). The Board received copies of the latest LeO KPI report and the OLC's commentary of it along with our own note outlining the LSB's views on 1 March. The LSB Chairman and Chief Executive met the Chair of the OLC and the Chief Ombudsman on 21 February where some of the concerns raised at the KPI meeting were discussed.
25. The Chairman and I met a sub group of Board Members on 11 March to discuss wider OLC issues, and I will provide a verbal update at the meeting.

#### **Legal Services Consumer Panel**

26. The Consumer Panel's draft Work Programme 2013/14 is a separate item on today's agenda (Paper (13) 16 refers).

#### **Communications and stakeholder engagement**

27. Communications actions during February 2013 had one or two notable standout events. Many will be reported elsewhere but communications highlights for the period include:
  - The Chairman and Chief Executive met the Chair of the Justice Committee Sir Alan Beith on 30 January.



- The Justice Committee has invited the LSB to a one-off oral hearing on its working which is scheduled for 19 March.
- I spoke at a Regulatory Policy Institute seminar on 12 February focusing on media regulation post Leveson, focussing on legal regulation and how it might be relevant to media regulation.
- On 13 February the LSB announced its will-writing, estate administration and probate recommendations to the Lord Chancellor. This was picked up by quite a few media outlets including the usual suspects (*Legal Futures*, the *Law Society Gazette*, the *Solicitors Journal*) and other, not so usual, commentators (*Times Legal*, *Money Marketing* [online], *IFA online* [online], *ICAEW*, *City Wire* [online], *Mortgage Strategy* [online], *The FT Observer* [online], etc.). It was also featured in a ten minute segment on the BBC's You and Yours consumer affairs programme on the day it was announced. An article was also drafted for LeO's monthly newsletter.
- A short opinion piece was drafted for an ABS focused supplement to *Modern Law* magazine's March edition.
- The Chief Executive attended the Liverpool Law Society's Management Conference on 28 February and made a presentation outlining the LSB's views of the key issues facing it and the legal sector for 2013
- The SRA's self-assessment report was published on 27 February. Trade press comment tended to be on the LSB's side of argument.
- On 28 February we published the equal pay literature review. It was picked up by some of the trade press