



To:	Board		
Date of Meeting:	13 December 2010	Item:	Paper (10) 95

Title:	Preparing LSB to become a Licensing Authority
Workstream(s):	Workstream(s) 5B: Widening access to the legal market
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Status:	Protect

Summary:

At its November meeting, the Board requested further development of, and options for, our plans to become a Licensing Authority (**LA**), so that we can be sure that all alternative business structures (**ABS**) can be licensed from 6 October 2011 (other than bodies for whom transitional arrangements remain in place).

This paper sets out a broad timeline of the stages that we would need to go through to license ABS from 6 October 2011 (**Annex A**). It recommends that the Board agrees in principle to take the first steps towards becoming an LA by agreeing in principle to establish an LA sub-committee and authorising the Executive to continue contingency planning by developing the separation plans in **Annex B** and the approaches to licensing in **Annex C**.

Annex C discusses one possible approach to the development of licensing rules and proposes an approach to developing our operational capacity; it also sets out some of the risks involved. **Annex D** sets out for information the requirements in Legal Services Act 2007 (**LSA**) for licensing rules and **Annex E** outlines our current view on the other regulatory arrangements that will be required.

We consider that the separation of our functions is relatively straightforward and can be done over the course of the next month. Licensing rules, particularly if we take an approach based on outcomes wherever possible, are likely to be relatively straightforward to develop. In developing our operational capability, we have considered what would be the most cost effective way in which to do this and the options are considered further in the paper.

We consider that the "tipping point" for making a decision whether and how far to proceed further is around mid-January. The Executive will review by then the areas of work that we will have to delay/postpone/stop in order to take forward the next stages of becoming an LA. Additionally, by February/March, we will know whether the informal applications we have been considering are likely to lead to a decision to recommend designation as an LA once a formal application is made. By late August/September, it may be clearer whether there are likely to be licensable bodies for which there will be no competent (or potentially competent) LA.

Risks and mitigations	
Financial:	Medium – high, depending on approach taken.
FoIA:	Pre-meeting assessment of exempted text is highlighted.
Legal:	The process of LSB becoming an LA will require a high level of legal input, but no specific legal risks have been identified to date.
Reputational:	Depending on the circumstances in which we become an LA, there could be damage to LSB's reputation.
Resource:	High – significant resource will be required to undertake the preparation needed, including budget expenditure in Q4 2010/11.

Consultation	Yes	No	Who / why?
Board Members:		✓	Insufficient time before deadline.
Consumer Panel:		✓	Insufficient time before deadline – we will update the Board at its meeting on any particular issues.
Others:	None.		

Recommendation(s):
<p>The Board is invited:</p> <ol style="list-style-type: none"> 1) to agree in principle to establish a sub-committee: <ul style="list-style-type: none"> • to keep the need for LSB to become and LA under active review and to advise the Board accordingly in light of developments; • subject to a future Board decision, to ensure that the necessary action is taken to ensure that the Board can undertake this role in a way that is compliant with LSA; 2) to comment on the attached plan (Annex B-C), which we intend to work up in more detail for review by the sub-committee at a meeting towards the end of January or very early February; and 3) to authorise the Executive to continue contingency planning on the broad basis outlined in the paper.

Timeline

Date	Action
December 2010	Develop project team/revise team job descriptions and performance objectives as required. Develop separation of functions at Board-level to enable an LA sub-committee.
January 2011	LA sub-committee ToR's agreed at January Board.
February 2011	View on whether there is likely to be a competent LA on 6 October. If necessary, LA sub-committee agrees consultation on LA rules and other arrangements (consultation would then start at the beginning of March).
June 2011	Consultation on LA rules ends.
July 2011	LSB Board considers LA rules and other arrangements.
August 2011	View on whether there is a competent LA for all types of ABS. Part 5 commenced.
6/10/11	ABS 'go live'.

Stage 1 – Operational changes

1. Proposed approach to separation of functions (LSA, s73(3)):
 - a) Establish a sub-committee of the Board (the LA sub-committee) – 2 lay and 1 non-lay member drawn from existing Board Members, with terms of reference, rules of procedure, SLA with LSB to service its meetings
 - b) Implement colleague guidelines on separation of activities and how to spot and deal with potential conflicts
 - c) Take the necessary steps towards appointing an external paid advisor – expertise would be required in regulation, licensing and outsourcing
 - d) Separate budget allocation to show £ allowed for LA functions including staff salaries and % of SMT and legal adviser salary
 - e) Set up project team and revise team job descriptions and performance objectives as required
 - f) Consider changing seating plans, but no need for physical separation from other colleagues
 - g) Set up separate filing system on Wisdom DMS with access only for LA Team, SMT leader, legal adviser and Chief Executive. Consider what other changes are needed (eg name, logo, website requirements, arrangements with the Legal Ombudsman for data sharing, etc.).

Issues to consider

2. Developing this approach is likely to take time from:
 - The Board Secretary – to ensure the governance arrangements are appropriate (approximately 3 days in total)
 - Legal Adviser – to review and provide advice on governance arrangements (approximately 1 day in total)
 - Finance Director – to ensure appropriate ring-fencing arrangements for the budget (approximately 1 day in total)
 - SMT member – to revise job descriptions and objectives, identify relevant staff, draft and implement guidance to staff, commence tender development process (approximately 5 days in total)
 - Business Planning Associate – to implement appropriate separation on Wisdom DMS (approximately 1 day in total).
3. We are confident that this can be done without the need to significantly re-allocate other work, although there is likely to be some impact on the timescales for colleagues' other work.

Possible approaches to direct licensing

A possible approach to the development of licensing rules

- 1. We consider that the development of licensing rules presents opportunities to learn from the approaches that Council for Licensed Conveyancers (**CLC**) and Solicitors Regulation Authority (**SRA**) have taken. We could take into account in particular the concerns raised by Legal Services Consumer Panel in response to SRA’s first consultation. We could also provide a much more proportionate and targeted approach on issues such as the separate business rule. There are, nevertheless, likely to be areas where strict rules are necessary, such as the protection of client money.

A possible approach to developing operational capacity

2. [Redacted]

- a) [Redacted]
- b) [Redacted]
- c) [Redacted]
- d) [Redacted]
- e) [Redacted]

3. [Redacted]

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

[Redacted]

4. [Redacted]

5. [Redacted]

[Redacted]

6. [Redacted]

7. [Redacted]

8. [Redacted]

9. [Redacted]

LSA's requirements for licensing rules

This Annex summarises the LSA's requirements for licensing rules:

1. Licensing rules – LSA, s83(2) – suitable licensing rules is defined by reference to suitable regulatory arrangements in Schedule 12(7) of LSA. These are defined at a high level and therefore allow a degree of flexibility and tailoring to ensure that they will be appropriate for all types of ABS. Licensing rules must include both the way in which we will license ABS and the rules with which ABS must comply. Licensing rules must contain (LSA, s83(5)):
 - a) qualification requirements for Licensable Bodies
 - b) how the LSB, in connection with an application for a licence, will take account of the objective of improving access to justice
 - c) appropriate arrangements for regulating the conduct of bodies, and their managers and employees:
 - i. conduct rules – including HoLP and HoFA requirements, fit and proper tests, determinations, review process, ensuring s176 duties
 - ii. disciplinary arrangements – disqualification rules: criteria and procedure (including reviews)
 - iii. practice rules – rule requiring a licensed body to comply with Schedule 11, paragraph 9 (licensed bodies must comply with licensing rules at all times, at least one manager must be an Authorised Person and no manager may be a disqualified person); rule ensuring that not all managers are Authorised Persons; rules on practising address; prohibition of disqualified employees; accounts rules
 - d) appropriate indemnification arrangements
 - e) appropriate compensation arrangements
 - f) the provision required by s52 and s54 (resolution of regulatory conflict) (including those provisions as applied by s103)
 - g) the provision required by s112 and s145 (requirements imposed in relation to the handling of complaints)
 - h) any other provision required to be contained in licensing rules by LSA.

Other regulatory arrangements

This Annex summarises the regulatory arrangements that the LSB is likely to have to make operational provision for:

1. Technical capability – IT (including website), submission of applications, payment of fees, record keeping, data protection
2. Risk assessment framework
3. Authorisation process – including fit and proper/ownership tests
 - Forms for licence applications (including information requirements)
 - Fees for licence applications (to be cost reflective and compliant with framework services directive)
 - Determination criteria
 - Refusal of licence applications and appeals
 - Period of licence (which may be limited) and renewal process
 - Statement on licence ceasing to have effect if the licensed body is issued with a licence by another body
 - Continuity of licences – transferring of licences between bodies (e.g. mergers and acquisitions)
 - Modification of licences (including fees and process)
 - Ownership tests (LSA, Schedule 13):
 - Regulatory Objectives
 - Regulated persons duties
 - Fitness to own
 - Definition of material interest
 - Associates
 - Power to impose share limit, voting limit (and obligation to notify where the limit is exceeded) (LSA, Schedule 13)
4. Form and content of Master Licence
5. Appeals process (for applications, licence modification, fit and proper, etc.)
6. Annual fees billing and collection process
7. Licence modification process
8. Monitoring processes
9. Enforcement and intervention policy
10. Fees (setting – application and annual)
11. Compensation arrangements
12. Reporting requirements (regular and event reporting)

13. Compliance and enforcement policy – financial penalties – criteria and process (including representations process); suspension and revocation of licences: criteria and procedure (including reviews); divestiture (LSA, Schedule 13).