

To:	Board	
Date of Meeting:	27 January 2011	Item: Paper (11) 01

Title:	Chief Executive's progress report: January 2011
Workstream(s):	All
Author / presented by:	Chris Kenny, Chief Executive chris.kenny@legalservicesboard.org.uk / 020 7271 0057
Status:	Restricted

Summary:
<p>The paper updates Board Members about:</p> <ul style="list-style-type: none"> • staffing and governance issues • progress on the key project areas, by way of a performance report • other internal and external policy developments • stakeholder and communications activities.

Risks and mitigations (Covered in assessments of project progress)	
Financial:	N/A
FoIA:	Initial assessment of exempted text highlighted .
Legal:	N/A
Reputational:	N/A
Resource:	N/A

Consultation	Yes	No	Who / why?
Board Members:		✓	N / A – routine update and personal commentary.
Consumer Panel:		✓	
Others:	N / A		

Recommendation:
The Board is invited to note the Chief Executive's progress report.

LEGAL SERVICES BOARD

To:	Board		
Date of Meeting:	27 January 2011	Item:	Paper (11) 01

Chief Executive's progress report: January 2011

Recommendation

The Board is invited to note the Chief Executive's progress report.

Operations and governance issues

Organisation development and governance

1. Board colleagues may find the office unusually quiet over the next three months with many colleagues away from their desks on training initiatives. Following a Training Needs Analysis, and the development of a Learning and Development Framework for LSB, most colleagues will be attending a mandatory training programme covering:
 - policy development
 - effective writing skills
 - effective submissions and briefings
 - influencing and negotiation skills
 - personal impact and presentation.
2. Some colleagues have also taken advantage of the availability of a 'Personal Development Budget' to undertake training and development specifically relevant to their own career development. Examples include speed-reading, project management, time management and strategic thinking. Over the next few months, we will also be working on development of an equality and diversity training package, which will also be offered to Board colleagues.
3. We now have LSB-wide consultation guidance in place, prepared by Michelle Jacobs (Business Planning Associate) and colleagues and based on 'best practice' guidance. This provides helpful guidance on how best to manage all stages of a consultation and includes standard templates for documents. As part of this exercise, we have been in contact with colleagues in the Department for Business, Innovation and Skills (**BIS**) to discuss LSB becoming a signatory to the BIS Code of Practice on Consultation.
4. In my December report, I noted our concerns about the impact of the Ministry of Justice (**MoJ**) reform programme on our programme. To date, we still do not have clarity about the precise nature of that impact, but we are aware that there will be a reduction in Assistant Directors (the first-tier of the Senior Civil Service) of some 50% in the policy directorate. Perhaps of greater concern is the impact of a heavy legislative programme on the ability of MoJ colleagues to secure necessary Parliamentary time for Orders essential for Alternative Business

Structures (ABS).

5. The Chairman and I met Jonathan Djanogly MP (Parliamentary Under-Secretary of State for Justice) on 17 January. We discussed principally the timeline to the 'launch' of ABS, as well as LSB's website, the AR-led joint review of legal education and training, QAA and the draft Business Plan 2011/12.
6. The Public Bodies Bill continues its passage through the Lords. Recent Government amendments proposed the removal of certain judicial bodies from Schedule 7, although not LSB or Office for Legal Complaints (OLC). On 11 January, Baroness Hayter led a debate about the implications for consumer interests of the proposal to transfer Consumer Focus' responsibilities to Citizen's Advice. I recently met Gillian Guy (Chief Executive of Citizens Advice) where this was one of the subjects discussed, along with our draft Business Plan 2011/12. We await a detailed Government consultation before Easter.
7. To date we have had no further correspondence from MoJ about the closure of our websites other than to confirm that it remains its view that our websites must close by 31 March 2011. Our legal analysis has been unable to uncover a statutory locus for such an instruction and we remain of the view that our sites should remain operational. We do need to bring this matter to resolution so we can improve the quality of our online offering [s.36(2)(b)-(c)].
8. On 7 January, MoJ launched a consultation on proposals, amongst other things, to extend the scope of the Freedom of Information Act 2000 to 'Approved Regulators under the Legal Services Act 2007' and sundry other bodies not currently subject to the Act. This builds on work done under the previous administration in 2009 to consider extending the scope of the Act.


Project update

Programme highlight report

9. The monthly Programme Highlight Report, which used to be an annex to this report, is now circulated to colleagues immediately following the meetings of the Programme Board and Senior Management Team at which it is reviewed. The report for the period 4 November 2010 – 18 January 2011 was circulated to the Board on 18 January.
10. Although progress overall is steady, the number of risk areas has increased and colleagues should note, in particular:

- **Section 80 appeals mechanisms (ABS implications) –** [REDACTED]

[S36].

- **Diversity** – The consultation paper “Increasing diversity and social mobility in the legal workforce: transparency and evidence” was published in December.
- **Reserved / non-reserved** (This work has been re-named “*Improving Access to Justice: rationalising the scope of regulation*”, in line with the draft Business Plan 2011/12):
 - The pilot of the ‘shadow shopping’ for the consumer experience of will-writing research has started. The Consumer Panel’s call for evidence closed with a good response, including case studies running into the hundreds
 - The final report of the Regulatory Policy Institute (RPI) research into the economic rationale for regulation for legal services has been submitted to LSB and will be published, along with some short essays in response, soon, following a successful academic seminar on 18 January.
- **ABS:**
 - The s69 consultation closed and the final draft Statutory Instrument was submitted on 6 January
 - The consultation on the Maximum Financial Penalty was issued and is due to close on 24 January. The final proposal is for a high fixed penalty of £150m for entities and £50m for individuals. This was reached after substantive discussion with MoJ.
 - 
Legal Services Act 2007 (the Act) [S36(2)(b)-(c)].

Alternative Business Structures (ABS)

11. The standing report about the key issues and risks facing the implementation of ABS is presented to this meeting (**Paper (11) 02**).
12. We continue to prepare for the consideration of applications for designation as Licensing Authorities. We have received a draft application from SRA and we are providing feedback. We have also been in discussion with CLC as it finalises its plans and rules [s44]. We have received comments on our draft impact assessment from MoJ and we will circulate a second draft in the next two or three working days. We propose to seek feedback on the impact assessment from ARs and others through a workshop that will be hosted in mid-February. The impact assessment provides the most comprehensive review to date about the market and possible impacts on ABS.

Research

13. In the past month:
 - we have commissioned OXERA to carry out the supply framework study and we have gone out to tender for the pilot project that will use this framework
 - the Research Strategy Group met to discuss the progress in meeting the research plan for 2010/11

- we hosted a series of well received seminars to discuss the research plan and draft Business Plan 2011/12
- we hosted a seminar to discuss with key academics the economics of legal market regulation paper
- we have set up the will-writing testing panel to support our 'shadow shopping' research
- we have gone out to tender for the first-tier complaints handling research, which we expect to commission in the coming month.

14. Our focus over the coming month includes:

- finalising the consumer outcomes research report in advance of a publication in Q1 of 2011/12
- holding a meeting with OXERA, MoJ and The Law Society to help support the development of the supply framework
- commissioning the first-tier complaints handling research.

15. We are also developing a **Knowledge Bank**, through the collection and analysis of data and information about the legal services market, to support LSB's development of a robust evidence base and to minimise the burden on the regulated community (see **Annex A**). We will be happy to organise a demonstration of the Knowledge Bank for any interested Board colleagues.

Regulatory decisions

Rule approval and exemptions

16. An application from ILEX Professional Standards Limited on changes to the Rights of Audience Certification Rules was approved on 22 December. The effect of the change is to allow ILEX Graduate members and Fellows to continue to exercise (or apply to be granted) rights of audience if they become managers in legal practices.
17. An application from the Master of Faculties in relation to the regulatory arrangements for complaints is currently being considered.
18. Two exemptions have been issued since my last report:
- alterations to ILEX Continuing Professional Development Regulations
 - alterations to ILEX Rights of Audience Certification Rules (membership of the Admissions and Licensing Committee).

New designation applications

19. The assessment of the application from ILEX to be designated as an AR for litigation rights and changes to the regulatory arrangements for rights of audience (specifically in relation to Associate Prosecutor members of ILEX) has been completed and is the subject of a separate paper to this meeting (see **Paper (11) 05**).

20. The two pending applications from ILEX (probate and litigation and rights of audience) are currently being considered by the Lord Chief Justice (response due 31 January). During the detailed analysis of these applications, an issue was identified relating to the regulation of entities. Section 15 of the Act requires that an individual authorised to undertake reserved legal activities can only do so as an employee or manager of a body if that body is also authorised. The proposals as presented would have allowed ILEX members to form businesses and practice independently (i.e. not under the supervision of a solicitor), but there are no provisions for the authorisation of such entities. ILEX is currently considering the impact of this on the application and whether it can amend the submission.

Section 51 Practising Certificate Fee (PCF) approval

21. The 2010 round of PCF approvals was completed with the issue of the approval letter to the Association of Law Costs Draftsmen (**ALCD**) on 1 December. A 'lessons learned' review has been completed and is the subject of a separate paper to this meeting (see **Paper (11) 06**).

Other policy developments

22. Other policy developments – about which I will elaborate at the meeting – include:

- **Bar Standards Board (BSB)** – I met Vanessa Davies (Director) on 14 January. As well as speaking about her new role, [REDACTED]
[s36].
- **First-tier complaints handling (barristers' 'sign-posting')** – we met BSB on 22 December to discuss its proposals for dealing with the complaints received regarding the first-tier complaints handling 'sign-posting' requirements. This was a productive discussion that led to a common agreement about the importance of the requirements, whilst recognising that in a limited number of cases it may be difficult for a barrister to contact a client directly. BSB agreed that there is no reason for not achieving compliance by adopting an outcomes-focus to supervision where difficulties arise, in particular because the new requirements are actually not that substantially different from what was required previously, and will re-think its approach on how to achieve this.
- **Schedule 18 of the Act** (relating to immigration advice and services) – MoJ has advised that, in the process of preparing for the commencement of Schedule 18, it has come to light that transitional arrangements were not enacted governing the interim period between the Act's commencement in January 2009 and commencement of Schedule 18 in April 2011. MoJ is confident that this oversight will not have any effect on the timetable for Schedule 18, nor any other adverse consequences, and is currently making arrangements to rectify the situation. [REDACTED]

[S36].

- **QAA and Education and Training** – We continue to work closely with the group of three regulators (SRA, BSB and ILEX Professional Services) that are working together to pursue each of these issues. There is a major Chief Executive level meeting to take stock of progress on 2 February and we will report back on the state of play at the meeting on 28 March.



- **Internal Governance Rules** – Dual self-certification is an annual process and certificates will be due for submission by ARs at the end of April. The Executive is considering the amendments that will need to be made to the certificate this year to capture information about whether independence is happening in practice as well as whether newly established governance arrangements are right on paper. Alongside this, we are developing a matrix for assessing compliance which will allow for each AR to be 'RAG-rated'. Drafts will be circulated for comment to the Board in February with the aim to circulate to ARs in March. We propose a detailed discussion about the certificates and assessments at the meeting on 26 May.

Legal Ombudsman (LeO) / Office for Legal Complaints

23. The joint Board meeting on 13 December has had an impact in terms of improving speed of communications in some areas. Two immediate developments are: a) a joint meeting of the Chairman of the respective Audit and Risk Committees, scheduled for 24 January, to take forward the discussion on shared and respective risks; and b) a constructive exchange with Adam Sampson (Chief Executive, LeO), in which we agreed to undertake two additional pieces of work, both involving non-executives: one to focus on OLC's performance oversight of the Ombudsman Scheme (involving Tony Foster); and one to look at information flows (involving David Thomas).

Legal Services Consumer Panel

24. The Panel has responded to a number of consultations in the past month, notably LeO's consultation on the publication of complaints, in which the Panel expresses firmly its view that lawyers who are the subject of 'upheld' complaints should be named. Full details of all Panel responses can be found on its website – www.legalservicesconsumerpanel.org.uk
25. The Panel's call for evidence on will-writing closed in December and generated an impressive response, including nearly 400 case studies from members of the public and from lawyers. 18 stakeholders also responded to the call.

Communications

26. Our work to develop contacts with third sector organisations continues and we were pleased to see 14 equality charities submit a joint letter backing our proposals to require law firms and chambers to publish diversity surveys of their workforce published in The Guardian and the Independent over the Christmas period.
27. We are preparing an analysis of media coverage over the last year so we can analyse the spread and tenor of reporting against key messages and audiences.
28. We are also reviewing all of our project specific communications plans to identify likely pressure points as well as to refine key messages in the light of the forward-look over activities included in the draft Business Plan 2011/12.
29. Recent speaking engagements include the Motor Accidents Solicitors Society, at which I spoke about ABS and referral fees, alongside wider issues. Although we are consciously backing-off from commercial conferences in the coming year, we continue to have a strong speaking programme for the coming quarter, including speeches to Heads of University Law Schools, the Inner Temple Conference on Legal Education and the ALCD National Conference. A comprehensive list can be found in Appendix 1 to **Paper (11) 07**. We have also contributed an article addressed to in-house lawyers through the Corporate Counsel Handbook for 2011.

20.01.11