

<b>To:</b>	Board
<b>Date of Meeting:</b>	25 January 2012
<b>Item:</b>	Paper (12) 09

<b>Title:</b>	Chief Executive's Progress Report: January 2012
<b>Workstream(s):</b>	All
<b>Author / Introduced by:</b>	Chris Kenny, Chief Executive chris.kenny@legalservicesboard.org.uk / 020 7271 0057
<b>Status:</b>	Protect

<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>

<b>Recommendation(s):</b>
<p>The Board is invited to:</p> <ol style="list-style-type: none"> <li>a) note the Chief Executive's progress report;</li> <li>b) delegate authority to the Chairman and Steve Green to make the final offer in relation to the appointment of OLC Board members (paragraph 17 refers);</li> <li>c) delegate authority to Steve Green, Barbara Saunders, Andrew Whittaker and me to approve the final OLC budget 2012/13 on the Board's behalf (paragraph 20 of the report refers).</li> </ol>

<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>		
<b>Para ref</b>	<b>Fol exemption and summary</b>	<b>Expires</b>
	s36(2)(b) – free and frank provision of advice / exchange of views.	

## LEGAL SERVICES BOARD

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### Chief Executive's Progress Report: January 2011

#### Operations and Governance Issues

##### *Organisation development*

1. Jessica Clay will be joining as Legal Adviser on 19 March 2012. Jessica is a solicitor and currently a member of the Public and Regulatory Law team at Field Fisher Waterhouse. Whilst working in private practice, Jessica also undertook secondments to the Nursing and Midwifery Council on two occasions.
2. We are also recruiting for a Consumer Panel Associate to replace Alanna Linn who leaves us at the end of February, and for up to three Regulatory Associates. This in part reflects the promotion of Emily Lyn to the post of Policy Project Manager (workforce and regulation).

##### *Governance*

3. The triennial review of both the LSB and OLC was launched officially with the publication of a written ministerial statement on 10 January. Stakeholders have until the end of March to submit evidence to the review and MoJ aim to reach final decisions by the summer. We will continue to track progress very closely and keep Board colleagues up to date on progress.

#### Project Update

4. The LSB Q3 performance report is a provided under separate cover (paper (12) 10). With the exception of QASA (see below) there are no major risks to bring to the Board's attention. The other areas to highlight are
  - Good progress on a range of issues to do with scope and style of regulation, most of which are reflected in papers for this meeting. We are working hard to ensure an overall consistent strategic approach;
  - A strong start to the flow of ABS applications to the SRA. As of 17 January 2012, press reports indicate that around 40 applications have been received;
  - A hostile reaction from The Law Society to the S55 order on transparency of the Budget and Oversight Board papers to the LSB issued at the same time as our conditional approval of internal governance rules. In the event that TLS fails to comply, and offers no reasonable explanation for its failure, It is possible that the Board will need to decide whether to seek a court order to enforce this;
  - The decision document on regulatory effectiveness was issued shortly before Christmas alongside the draft Strategy and Business Plan.

## **Research**

5. These are the key areas of work we have been progressing since the Board's last meeting:
  - Our consumer benchmarking research commissioned from BDRC Continental piloted its approach, and fieldwork has begun.
  - Vanilla Research has been commissioned to carry out a scoping study exploring consumer information needs for engaging with legal services.
  - We have finalised and published the specification for the delayed high-street research project, and reviewed expressions of interest from 16 research companies. Interviews are planned with four teams at the end of January.
  - We have commissioned legal advice to support our work on cost protection from Hogan Lovells, reporting in February 2012.
  - We have commissioned our work to develop a framework for benchmarking small firms' use of legal services – the research team comprises Professor Pascoe Pleasance (UCL) and Kingston Small Business Research Centre.
  - We have commissioned Professor Richard Moorhead to develop an approach to benchmarking professional principles of legal service providers.
  - We have commissioned IFF Research to carry out a qualitative study of businesses providing probate and estate administration services to support our policy programme.
  - We developed a tender specification for an online communication strategy for the Regulatory Information Review and wider research, which closed on 16 January. We expect to have a workable sub-site online by the end of March 2012.
  
6. Our focus over the coming months will include:
  - Reviewing the tenders for the High Street Research; agree and appoint the research organisation.
  - Finalising the draft Evaluation report for circulation to the Executive and Board.
  - Submission of annual data requests to the approved regulators, and review of information collection against identified gaps.
  - Managing the ongoing research programme and evaluating the effectiveness of dissemination of research findings.
  - Developing and submitting conference papers for the Socio-Legal Studies Association and Legal Services Research Centre research conferences.
  - Developing our research plan for 2012/13.
  - Finalising our business (IFF Research) and consumer studies (YouGov) which are looking at probate and estate administration.

## **Regulatory Decisions**

7. No decision notices have been issued since my last report.
  
8. Two applications have been received from the Master of Faculties both of which will enhance regulatory oversight of Notaries who are operating on their own

account. The first, a requirement for those commencing conveyancing and probate activities for the first time to undergo a period of supervision, has been introduced in response to the Smedley Report. The second, if approved, would require Notaries acting on their own account who hold client money to provide an annual Accountant's Report to the Faculty Office. Both applications are currently being considered.

9. Five directions to exempt applications from the full rules approval process have been issued:
  - Council for Licensed Conveyancers – alterations to the ABS licensing framework in accordance with the Rehabilitation of Offenders Exemption Order 2011
  - Solicitors Regulation Authority (SRA) – alterations to the Handbook as a consequence of The Law Society (TLS)/SRA being designated as a licensing authority
  - Bar Standards Board (BSB) – minor changes to the Practising Certificate Rules to clarify what constitutes a complete application for a practising certificate
  - Solicitors Disciplinary Tribunal (SDT) – alterations to SDT rules as a consequence of the TLS/SRA's designation as a licensing authority
  - BSB – alterations to the Disciplinary Tribunal Regulations to reflect the end of the BSB's jurisdiction over service complaints.
10. The application from the Bar Council/BSB for approval of practising certificate fees for 2012 has been received and is being considered.
11. A Notice has been issued under Section 55 of the Act (Provision of Information to the Board) setting out the information to be included in the report on the first year of regulation of Associate Prosecutors of the Crown Prosecution Service.

### **Other Policy Developments**

12. Board members may wish to note that no Approved Regulator has replied or even commented to us on the regulatory standards work.

### **Judicial Reviews**

13. We continue to progress the intervention in the Prudential Supreme Court case on Legal Professional Privilege. The ICAEW have made a number of detailed points on our proposed intervention and we are considering the extent to which we should reflect these.
14. The Afzal & Hai judicial review case [concerning part-time Bar students], in which we were named as an interested party, has now been resolved. The LSB did not have to intervene formally and no costs were incurred.

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

15. Recent and forthcoming issues of interaction with OLC include:

- Survey evidence from them, suggesting that only 23% of complainants heard about them from a lawyer – we have doubts about the methodology and have offered to work with them on further refinement, but the finding is worth attention in considering the effectiveness of first-tier arrangements;
  - We are writing to the Ombudsman to clarify exactly what the problems are in relation to his concern about enforcement of decisions about “phoenix” firms (especially those who transfer between regulators), the risks, and possible solutions.
16. Julie Myers will attend both of the OLC triennial review workshops, taking place on 9 and 21 February, on behalf of the Board.
  17. The shortlisting for the OLC Board Member position took place on 16 January, with the interviews due to take place on 24 January. Steve Green (Chair of the Panel) and Barbara Saunders will make a final recommendation to the Board at today’s meeting, which will be subject to the taking up of references. **The Board is invited to delegate authority to David Edmonds and Steve Green to make the final offer(s).**
  18. Steve Green will meet Tony Foster to consider LeO's KPIs and targets for 2012/13 on 30 January. Steve and Tony will then have a further session with the Chief Ombudsman, Adam Sampson, and me, in our Accounting Officer capacities, to consider shared and mutual risks. The outcome of that meeting will be reported to the 29 February Audit and Risk Committee.
  19. MoJ have asked Legal Ombudsman to develop a business case on extending its jurisdiction to Claims Management Companies (CMC). We have offered our assistance and set out the Board's requirements (what the impact on Legal Ombudsman performance will be, how we ensure that any rules and/or guidance that need to be in place are, and how the transfer of CMC complaints to LeO would be funded. We have also requested that the budget submission to the Board covers funding plans for any changes to jurisdiction. I will keep colleagues updated as the work progresses
  20. The OLC Board is expected to agree a formal recommendation to the LSB on its budget for 2012/13 at its 20 February meeting, following consultation. As a final board decision and confirmation of the budget will be required before the 28 March LSB Board meeting, **the Board is invited to delegate authority to Steve Green, Barbara Saunders, Andrew Whittaker and me to approve the final budget on the Board’s behalf.**

## QASA

21. We continue to seek to maintain the momentum on QASA and this month have been in regular contact with Antony Townsend and Vanessa Davies about the issues raised by the SRA’s research on Higher Court Advocates [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] On 17 January, the Chairman met the new Chair and the Vice-Chair of Solicitors Association of Higher Court Advocates

(SAHCA) and will be meeting Sir John Thomas and senior regulatory representatives on 23 January to review progress. This is – by some distance – the fastest moving and most uncertain issue in the office at present. I will update colleagues further at the meeting.

### **Bar Standards Board**

22. A sub-group of our Board and the BSB's will meet on 9 February to discuss our business plan. To that end, members of the Audit and Risk Committee, the Corporate Director and I will represent the LSB. We understand that the past and incoming chairs of the BSB's Performance Committee, as well as two other Board members and the Vice-Chair, Sir Geoffrey Nice QC, will attend on behalf of the BSB. We have arranged a briefing session to take place on 6 February for those Board members attending.

### **MoJ**

23. Three developments to report:

- The Chairman met Helen Edwards, Director General, Justice Policy on 12 January, for their regular quarterly meeting. They mainly covered the triennial review;
- A successful workshop was held on 4 January with the sponsor team, mainly focusing on ABS "loose end" issues, although they were also briefed on emerging thinking on scope. A high degree of agreement was reached, although the failure to consider more radical changes to internal process on secondary legislation or commit to delivery dates remains a frustration;
- I am seeing Catherine Lee, Director, Access to Justice, on 19 January to discuss the High Street research that is being jointly commissioned by the LSB, The Law Society and the MoJ. We also covered international issues, notably the conditions of the IMF recovery plans being imposed in the Republic of Ireland, Greece and Portugal which call for legal market liberalisation and independent regulation of lawyers, but have been the subject of adverse comment from the American Bar Association and Council of European Bar Associations. We have provided further briefing on this matter to MoJ's international team and will be briefing the UK Delegation to the IMF and UKREP Brussels direct on the factual background. At one level, we are seeing welcome adoption of pioneering UK work, but there are reputational risks which require a pro-active response by both Board and Government.

### **Communications**

24. Since the last report, the episode of *Rip Off Britain* that featured a study on the regulation of will-writers has now been transmitted. Crispin Passmore represented the LSB and a recording has been made available as part of the news round-up last month. Additional media work carried out over the last month has included a briefing for Eduardo Reyes from the Law Society Gazette. We also fielded additional media enquiries on will-writing from *The One Show*

and enquiries on our new diversity requirements from a number of trade press commentators.

25. The Transport Select Committee's report on motor insurance led to a resurgence of coverage on referral fees, including an attack on the LSB (and many other bodies) from Jack Straw on the Today programme. Our statement in response read as follows:

*As the Select Committee report makes clear, there is no single cause of the increase in motor insurance premia. We stand by our judgement that there is not sufficient evidence to justify a general ban on all forms of legal referral fee. But we are also clear that improvements in transparency and regulatory management are needed to make the market work better and that there may be scope for more targeted bans, such as Government is proposing in relation to personal injury claims.*

26. We have carried out a number of speaking engagements over the last month. I gave a well-received presentation to the Council of the ICAEW, which focused particularly on the process for application for designation as a licensing authority for ABS and spoke at the kick off meeting for the multinational "Law without Walls" course in St Gallen (Switzerland). Crispin Passmore featured in a Lexis Nexis webinar focusing on regulatory reform and what changes to the landscape will mean for practitioners.
27. The Chairman is meeting Baroness Hale to discuss diversity issues on 18 January. We also wrote to Lady Justice Hallett following her comments concerning LSB governance which were made to a Bar audience, and also in view of a shared interest in improving diversity in the legal profession.
28. Forthcoming speaking engagements include the following: an address to the Joint Four Law Societies which will be taking place at Liverpool Law Society; a speech to the Council for Mortgage Lenders; and an important address to the first of our education and training roadshow events, which will be produced in partnership with the College of Law.
29. Finally, Board members may wish to note the following report from *The Times of India* (16 January): Lawyers in Bihar, India – in view of the call given by the Bar Council of India to abstain from their professional work on 20 January – have decided to shun work in protest against the proposed move of the Union government to bring in the Legal Practitioners Regulation Bill and Higher Education and Research Bill. They see the move as an attack on the autonomy of the Bar Council. The premise of the draft Bill is to establish a Legal Services Board on the lines of Legal Services Board in the UK.

17.01.12