

To:	Legal Services Board	
Date of Meeting:	30 May 2012	Item: Paper (12) 42

Title:	Chief Executive's Progress Report - May 2012	
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
22	s36 – prejudice the effective conduct of public affairs	
Annex A	s35 - formulation/development of government policy	

LEGAL SERVICES BOARD

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Chief Executive's Progress Report – May 2012

Operations and Governance Issues

Organisation development

1. Further to my April report, Tom Peplow has now joined the LSB as Regulatory Associate and is working with Emily Lyn in the area of workforce development. Tom was previously at the General Dental Council. Harriet Gamper also joined us on 14 May as the new Consumer Panel Associate. Harriet had been a consultant at Civic Consulting, an economic and public policy consultancy based in Berlin. We are now operating with only one vacancy, that of Corporate Affairs Associate, which we will be looking to fill shortly.
2. We are now in performance appraisal season and all colleagues will have been appraised by mid-June. Following Remco discussion, the Director of Finance and Services is, in parallel, working on our Pay Remit submission to the Ministry of Justice (MoJ). This will be in line with HM Treasury guidance.

Governance

3. There is an update on the latest position with regard to the Triennial Review at item 4 on today's agenda (**Paper (12) 36** refers).
4. Board Members may also wish to be aware that Sir Suma Chakrabarti, Permanent Secretary, MoJ has recently been elected as the next President of the European Bank for Reconstruction and Development from 3 July 2012. Interim succession arrangements at the MoJ see Helen Edwards, who has thus far acted as our senior sponsor, acting as Permanent Secretary for the foreseeable future. We have made contact with Sir Suma in his new role, given the interest of other International Financial Institutions in legal services reform.

Project Update

Project Update

5. The Programme Highlight Report for the period to 10 May 2012 will be circulated to Board Members under separate cover. This will show that our programme remains on track with no major issues of concern to report that are not included elsewhere on this report. The Programme Board process continues to prove a useful discipline to identify, in particular, overlaps and dependencies in our programme.

Legal Services Consumer Panel

6. The Panel held its most recent meeting on 9 May 2012 where it discussed its Annual Report 2011/12 (**Paper (12) 40** refers), the Legal Ombudsman Scheme Rules consultation and its proposed submissions to the Legal Education and Training Review and the LSB's quality assurance consultation..
7. We are continuing to study how best to factor the Panel's report on deaf consumers, referred to by Elisabeth Davies at the last meeting into our ongoing work. We will be writing formally to the regulators (other than the SRA which co-sponsored the work) to draw their attention to the document formally.

Research

8. Since the Board's last meeting we have:
 - commenced the main stage of the high street survey
 - commenced research with Dr Chris Hanretty on statistical modelling of advocacy quality
 - commenced the quantitative stage of the contingent valuation work on the value of regulation
 - commissioned Professor John Flood (Westminster University) and Professor Morten Hviid (University of East Anglia) to carry out a study looking at the economic context for the cab rank rule
9. Our focus over the coming months will include:
 - commencing the work on reshaping the research pages for the LSB website
 - publishing the remaining reports from the 2011/12 research programme (small-business benchmarking study, consumer access to justice study, understanding consumer needs from legal information sources, benchmarking consumer ethics and cost protection report)
 - finishing the fieldwork for the high-street and contingent valuation research.
10. MoJ are becoming increasingly interested in our market analysis and evaluation work and we will be making a presentation to a senior policy making and analytic team on 24 May.

Regulatory Decisions

Decisions

SRA applications

11. On 18 April, we issued three decision notices and three exemption directions to amend the SRA's Handbook. The changes were introduced into Edition 3 of the Handbook, published on 23 April.
12. The full decision notices covered the following changes:
 - amendments to the Keeping of the Roll Regulations 2011 and the SRA Suitability Test 2011 to enable the SRA to raise character and suitability issues on applications from former solicitors to have their names restored to the roll and to apply the SRA suitability Test when considering such applications
 - amendments to the SRA Higher Rights of Audience Regulations 2011 to remove the right of foreign lawyers who cannot benefit from Directive 2005/36/EC (Recognition of Professional Qualifications) to have their work experience in their home jurisdiction assessed to determine whether they meet the standards of the higher rights of audience qualification
 - amendments to the SRA's Training Regulations 2011 to provide for Bar Vocational Course and Bar Professional Training Course graduates to apply for exemptions from parts of the Legal Practice Course.
13. The exemption directions covered:
 - the introduction of the SRA Insolvency Practice Rules 2012 to provide that solicitors and registered European lawyers authorised by the SRA to undertake insolvency work do so in compliance with the Insolvency Service's Insolvency Code of Ethics
 - changes to provide for licensed bodies to be authorised to undertake immigration work when also authorised to undertake reserved legal activities
 - a bundle of approximately 40 miscellaneous changes to the Handbook, as well as the introduction of a new Glossary.
14. Two of the exemption directions, covering to insolvency practice and immigration, had been submitted as full applications, but exempted following assessment against our significance, impact and risk framework.

Bar Standards Board

15. The Bar Standards Board (BSB) have submitted representations on the advice submitted to the LSB in relation to the Cab Rank Rule and this is now being considered. The BSB continue to assert the need for the regulator to define standard contractual terms in this area. We are arranging discussions to explore their analysis further.

16. Since my last report three applications have been received and are being considered:

- BSB Bar Course Aptitude Test (see **Paper (12) 37**)
- BSB Equality and Diversity Code Provisions
- SRA Practice Framework Rules and Authorisation Rules – changes to in-house provisions

17. The dual self certificate has been received from the Association of Cost Lawyers/Cost Lawyer Standards Board and is being considered

Regulatory standards

18. We received the following draft self-assessments in line with the required deadline of 31 May 2012:

- CLC
- CLSB
- Faculty Office
- IPS
- SRA

19. We are still awaiting submissions from IPReg and the BSB. The IPReg submission has been delayed owing to their desire to subject their draft to third party review. The individual completing the review, a member of the CLC council, wished to delay conducting this review until the CLC had finished their own process. We were content with this explanation. The BSB wrote to the LSB informing us that they would be submitting their draft self-assessment at the end of May. Although their overall timetable is somewhat slower than ideal, the BSB does seem to be aiming to use the exercise creatively as part of wider organisational development efforts.

20. By the time the Board meets we will have provided written feedback to the regulators on their draft submissions. With one exception, we have so far been disappointed by the lack of focus on the impact of regulation in the market and the absence of any discernable Board engagement with the process. We will also hold meetings with the regulators to discuss our initial views with them in advance of submission of the final self-assessment.

Section 55 Notice – Law Society / SRA independence monitoring

21. On 27 April the LSB issued to the Law Society the revised section 55 notice that was approved at the board meeting on 25 April. We have received one monthly report which complied fully with this new notice and one set of papers from the Business and Oversight Board. The monthly report reported that no major issues or disputes relating to independence arose during the period. The Business and Oversight Papers revealed no major concerns although a number of minor issues were logged.

Other Policy Developments

CLC application for extended rights

22. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

QASA

23. Informal contacts from both SRA and BSB indicate good progress on the final consultation document due towards the end of June, although references to the scheme in the Criminal Bar Association's recent public announcements about "strike action" suggests that implementation challenges will remain.

SRA issues generally

24. We are stepping up our active engagement with the SRA on questions of capacity and capability and also engaging appropriately with the Law Society as approved regulator. I will provide a verbal update on the latest position at the meeting. The Chairman will also be able to provide feedback following his meeting with Charles Plant taking place on 29 May.

Judicial Reviews

25. In March, we informed the Board of a claim in relation to the SRA's rule change for qualified lawyers transferring to the Roll of solicitors. The Claimant, a qualified barrister who had not secured pupillage, was aggrieved because she was unable to apply for admission as a solicitor following changes to the SRA's rules. The claim was out of time and the Claimant made no attempt to follow the pre-action protocol or enter into pre-action correspondence. Following the filing of our Acknowledgment of Service and Summary Grounds of Defence, the Claimant discontinued her claim.

Fish Legal

26. On 26 April 2012, the LSB received an application for Judicial Review in relation to the SRA's Practice Framework Rules 2011. The SRA is the proposed Defendant and the LSB has been included as an Interested Party only. The application seeks to challenge the SRA's inclusion of a rule which states that if you are employed by an association you may act for a member provided that you do not undertake any reserved legal activities.
27. Although the SRA Board meeting on 16 May agreed to delete the proposed rule, a proposal that we are now considering, it seems that Fish Legal is determined to continue with the claim. SRA has filed an Acknowledgment of Service confirming it contests the claim, in full. A schedule of costs was also filed by the SRA seeking costs in relation to its preparation of the Acknowledgment of

Service. We have confirmed in our Acknowledgement of Service that we are not contesting the claim at this stage, but have reserved the right to seek directions and/or make written submissions at a later stage (ie if permission is granted for the claim to proceed).

ICAEW and accountancy bodies

28. We expect the publication of a consultation document towards the end of June / early July on an application by ICAEW to become an approved regulator / licensing authority for the reserved legal activity of Probate services. The consultation is likely to advocate a regulatory scope that will include estate management, will favour using the General Regulatory Chamber for appeals and should arrive at a sensible position regarding independence. Our informal engagement with the ICAEW has, we hope, helped to clarify their proposals so that they properly address our approval criteria.

Government's Social Mobility Strategy

29. Nicole Smith attended a reception hosted by the Deputy Prime Minister on 22 May, to celebrate the first anniversary of the Social Mobility Strategy. However, the policy focus on the day was more on university entry rather than retention and progression within professions, although this received a helpfully high profile in a related speech on the same day by Lord McNally, the relevant MoJ minister. We understand that there will be more coverage of legal issues in Alan Milburn's update to his social mobility report, due for publication before the end of the month, which will highlight the need for continued focus on data collection and transparency to underpin specific initiatives.

Red Tape Challenge

30. We expect an announcement shortly from Government on what form this will take in the legal services sector.

Office for Legal Complaints (OLC)/Legal Ombudsman

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

- Steve Green met OLC Board Member, Tony Foster, on 24 May to discuss Legal Ombudsman performance. This included a review of the quarter four report (to be circulated to the Board shortly) and the latest results of the Legal Ombudsman's customer satisfaction survey.
- I met Adam Sampson on 14 May for our monthly catch-up where we considered amongst other things follow-up action from the joint Board meeting in April. I also attended the OLC's Audit and Risk Committee, which considered the OLC's governance statement and accounts for 2011/12.

Jurisdiction matters

32. There are a number of jurisdiction matters to draw to the Board's attention:

- OLC is seeking to have S 161 of the Act switched on to allow them to take on complaint handling about claims management companies (CMCs). This has implications for the LSB in so far as switching on S 161 appears to result in the Claims Management Regulator becoming a „leviable body' and bringing it within jurisdiction of our regulatory arrangements process (in relation to rules relating to complaints only). We are working with MoJ to ensure that the ramifications of this are understood by all sides.
- There are broader jurisdictional issues around eg will-writing and other non-regulated „legal' services where OLC may seek to develop a voluntary jurisdiction in the absence of regulatory „hooks'.

33. The OLC's consultation on proposals to change its Scheme Rules closes on 18 June 2012. Any changes agreed by the OLC will need to come to the LSB for consent in due course.

Signposting

34. At the Legal Ombudsman's request, we hosted a round-table of Ombudsmen and regulators on 16 May to discuss any implications for complaints handling arising from MDPs. Ombudsmen were concerned to ensure that complainants were appropriately signposted to the correct Ombudsman Scheme so that delays and confusion were not experienced by the complainant. Discussion centred on whether there was, as yet, evidence of a problem that could only be solved by regulatory intervention– or whether the current situation was such that it could be managed effectively by good process between different Ombudsman schemes to seamlessly re-direct complaints.

35. The Chairman and I will be discussing these and other issues with Elizabeth France and Adam Sampson on 24 May and we will update the Board as necessary.

Communications

36. Since the April Board meeting, we have taken part in a number of useful speaking events, a number of which secured good media coverage of our robust positioning. In particular, the Chairman's speech to a seminar held by Russell-Cooke, chaired by the Master of the Rolls and which also included submissions by the incoming Bar Council Chair and current Law Society President proved especially interesting to trade commentators. Similarly robust messages were also given when the Chairman addressed Law Society Council, prompting much less strong reaction than on previous similar occasions.

37. Less newsworthy but equally positive from a stakeholder engagement perspective, I spoke on a panel with Lord Falconer to an SRA seminar on the future regulation, to a mixed financial services and legal conference on ABS hosted by SIFA and at a separate event hosted by the ACL and on 23 May will be speaking at an event on the Future of the Bar with the Chairman of the Bar Council.
38. We concluded our series of events supporting the legal education and training review with a very well received event in Cardiff on 10 May. Our understanding is that the review team will be unveiling their proposals at or immediately after the SRA's symposium on 10/11 July, so we will be working towards an assessment of them by the September Board. Our discussion paper for the seminars has been helpful in moving the team to explore more radical options, but colleagues will have noticed concern from commentators such as Stephen Mayson about the review dealing too narrowly with questions of existing qualifications to the exclusion of broader workforce issues.
39. We have accepted an invitation from the Irish Justice Minister to speak at a conference on legal services reform in Dublin in July.

And finally

40. Thanks to those who supported the LSB team in the London Legal Support Trust sponsored walk which took place on 21 May. Helped by a very generous donation of £1,000 from the Jomati Foundation, we raised in total £2,150.