

To:	Legal Services Board	
Date of Meeting:	12 September 2012	Item: Paper (12) 61

Title:	Chief Executive's Progress Report – September 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):
<p>The Board is invited to note the Chief Executive's progress report. Specifically in relation to Annex A, LSB Review of Levy Rules, the Board is asked to agree that, subject to receiving appropriate HMT and MoJ assurances, the Executive can:</p> <ol style="list-style-type: none"> a) start to prepare a revision to the Board's Levy rules to accommodate the MoJ becoming a leviable body for OLC expenditure b) consult on these revisions with regulators and other interested stakeholders

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
21-23	Intended to facilitate free and frank advice or intended to promote a free and frank exchange of views for the purposes of deliberation by the Board (s36, FoIA)	N/A
Annex A 2-9, 12-14	Intended to facilitate free and frank advice or intended to promote a free and frank exchange of views for the purposes of deliberation by the Board (s36, FoIA)	N/A

LEGAL SERVICES BOARD

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Chief Executive's Progress Report – September 2012

Operations and Governance Issues

Organisation development

1. After receiving approval of our pay remit from the Ministry of Justice (MoJ) we were able to award a pay rise to all colleagues this year, after two years in pay freeze. In line with public sector controls, our pay bill was able to increase by 1% and, after discussion at Remuneration and Nomination Committee (RNC) we agreed to distribute this on a 'flat cash' basis ie all colleagues received an identical pay rise of £770. The Strategy and Corporate Directors, and myself, agreed not to take the pay award.
2. It has been a quiet month in terms of notifications from the centre. As required, we submitted an exemption request for the cross-government branding exercise but have had no feedback to date.
3. We have received one resignation, Chris Baas, who will be leaving us in November to move abroad. We will be recruiting for his replacement shortly.

Governance

4. There is a separate paper on today's agenda (Paper (12) 65 refers) on the Triennial Review, covering suggested actions to address the Review's specific recommendations on corporate governance (where judged appropriate) and a draft formal statement responding to the broader concerns raised by stakeholders during the Review process.
5. The process for recruiting two new Board Members continues and we expect to see an advertisement appearing in the Sunday Times on 16 September. MoJ are leading this recruitment and have secured the services of Professor Hazel Genn as independent appointing panel member to sit alongside Catherine Lee, Director, Access to Justice, MoJ and the Chairman.

Project update

6. The July Programme Highlight report was sent to Board Members on 28 August. August has been relatively quiet owing to annual leave and the Olympics. Latest developments are covered elsewhere in this report or on the main agenda.

Research

7. Since the Board's last meeting we have:

- completed a pilot of the research pages for the LSB website for testing
- published the small-business benchmarking study and consumer access to justice studies
- we commissioned *Opinion Leader* to carry out research on the value consumers place on key regulatory protections using a contingent valuation methodology. Fieldwork testing the methodology has now commenced
- receiving and analysing the latest regulatory data for use in the updating of the evaluation report.

8. Our focus over the coming months will include:

- completing the work on reshaping the research pages for the LSB website
- publishing the remaining reports from the 2011/12 research programme (benchmarking consumer ethics and cost protection report)
- finishing the fieldwork for the contingent valuation research and finalising the high-street solicitors report
- publishing the statistical modelling of advocacy quality report
- receiving the first draft of the cab rank rule research
- updating the evaluation report
- commissioning the final projects for the 2012/13 research programme.

Regulatory Decisions

Rules change applications

9. Since the last report we have completed the applications from the BSB on the Aptitude Test and the Cab Rank Rule Standard Contractual Terms and issued the Decision Notices and written to the BSB about broader issues raised by these applications. We have also issued a Decision Notice approving the SRA's Compensation Fund Determination (the amount to be paid by regulated firms and individuals).

10. One application is pending; IPReg have submitted for approval proposals relating to their certification rules on the right to conduct litigation, the rights of audience and other reserved legal activities.

11. An Exemption Direction has been issued to the Master of Faculties for a minor change (for clarification) to the Notaries (Qualification) Rules 1998

12. The lessons learned review of the rules change process (with particular reference to the recent BSB applications) is progressing and we expect to bring an update to the Board at its meeting in October.

Section 51 Practising Certificate Fee applications

13. Applications have been approved for the Law Society/SRA and the Master of Faculties. An application from CILEx/IPS has been received and is being considered.

Section 55 Notice – Law Society/SRA independence monitoring

14. Since the last Board meeting, The Law Society has provided two monthly reports and two copies of the meeting papers from the Business and Oversight Board in line with the Section 55 notice.
15. The monthly reports have not reported any concerns regarding the operation of the new arrangements and have simply reported on the actions to be taken in the new shared service arrangements. The LSB has no specific concerns arising from these reports. The two Business and Oversight Board meetings have concentrated on the management of the IT Enabling Programme, in particular the functionality to deliver the 2013 practicing certificate renewal exercise. These papers have not raised any specific concerns regarding regulatory independence. The Executive's current thinking is to review the continuing need for the existing section 55 notice at the end of September.
16. More broadly, the new arrangements do appear to be managing the renewal project effectively and taking appropriate decisions on risk management. However, given the critical nature of the renewal exercise, the tight timetable and past record there remains a risk that the exercise may not deliver the level of success required. We have therefore requested a meeting with all parties once a decision on this year's approach and timetable has been made. The meeting is likely to cover the rationale for the decision, the timetable, risk assessment and management, details of contingency planning and the communication strategy. We will also discuss the current thinking on timetable and resourcing the next steps for the Enabling Programme as a whole. I will provide a verbal update on this topic and broader SRA management issues.

Other Policy Developments

QASA

17. The fourth and final consultation on the Quality Assurance for Advocates (QASA) scheme is now open and runs until 9 October. While we do not consider there to be any substantive policy issues at this time, we have moved into the pre-submission process for rule approval and will be providing formal feedback to JAG on the points that need to be addressed ahead of the application for approval of changes to regulatory arrangements. David Wolfe has already been involved in this process as the nominated Board member for QASA and we will be starting to involve Barbara Saunders (as the rule approval lead). We expect the application in early December but will keep the Board updated before that point. We are engaging with key stakeholders including Lord Justice Thomas, the Legal Services Commission and the Crown Prosecution Service to ensure all issues are captured and the scheme meets the needs of its key consumers, but

there remains scope for contentious dispute on both detail and principle through the autumn.

BSB and COIC issue

18. There have been a number of developments on this issue since the July Board. On 12 July, the Visitors published their decision on a test case; they dismissed a challenge to the composition of the panel, found that it was properly constituted and that its decision remained valid. The BSB has, however, accepted that there are a small number of cases where the anomalies could have produced a perception of (but not actual) bias. For those cases, it will accept that the original decisions are susceptible to being overturned, will not resist challenges to them, but may seek to rehear the cases depending on the circumstances.
19. On 27 July, the COIC Disciplinary Tribunals and Hearings Review Group chaired by Desmond Browne published a highly critical report into the infrastructure and appointment process of COIC. The report made a number of recommendations that are “intended to put [COIC] on an up-to-date professional footing for the future”. We have written to the BSB to ask how it will assure itself that the performance management framework for COIC will deliver the BSB’s statutory responsibilities, including when it will be in place, how the BSB will monitor and enforce it and what sanctions will be applied in the event of under-performance. We have also raised the more general question about whether, given that the Legal Services Act gives licensing authorities powers to impose penalties, disqualify people from working in ABS, and impose licence conditions, directly (with a right of appeal to an appellate body), it would be more appropriate for the BSB to take enforcement decisions “in-house”. Meetings on this issue, and other more general concerns about the operation of the BSB’s disciplinary processes which have been raised with us, are being fixed for later in September.

Next steps on special bodies

20. The special bodies consultation closed on 16 July and we received 24 responses. We were very pleased with the number and depth of consultation responses and this process has helped change our thinking. The consultation responses underlined that there is a variety of business structures already among special bodies that will require proportionate adjustments to the ABS regime. These adjustments are likely to include significant modifications to the way that schedule 13 (ownership) works for special bodies. Many of the responses covered governance issues and we will look much more closely at the role that the Charities Commission plays in governance requirements. Many respondents talked about the changes to legal aid funding, and many are likely to be under acute financial stress in the coming years.

21. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ICAEW and accountancy bodies

24. On 29 June ICAEW published its consultation document on its application to become an Approved Regulator and Licensing Authority for the reserved legal service of Probate activities. The consultation closes on 7 September and we expect to receive a formal application at the end of September or the beginning of October.

Legal Education and Training Review

25. Further to discussions with Board members in the LETR workshops held over the summer, the LETR has now published its second and final key issues paper called „Developing the Detail’.

26. The paper considers that changes to the current system of legal education and training are likely to be required to ensure that legal professionals possess the necessary skills to practise in the future legal services market. The paper explores a number of issues including the future of the Qualifying Law Degree; development of more bespoke LPCs and greater integration with the training contract; centrality of ethics and values; and gaps in the current education and training system. It also looks at the lack of flexibility in existing pathways and explores potential separation of qualifications from standards set by regulators. This gives a strong indication that the review is likely to make fairly detailed – and perhaps more wide ranging and radical - recommendations in December than appeared probable a few months ago. We will keep the Board updated as the LETR progresses through the final stages and will return with a paper in November as agreed with members at the workshops.

Legal update

27. On 3 September, we received a claim from a Mr Alan Cowdrey who is seeking permission to proceed with a claim for judicial review in relation to the decisions

taken by the SRA and relayed to Mr Cowdrey in writing on 23 May 2012 to close the complaint he made/take no further disciplinary action regarding an individual solicitor at a firm. The SRA is the proposed defendant to the claim, and the LSB and The Law Society have been included as interested parties.

28. We acknowledged receipt of the documentation on 5 September and should the LSB choose to file an Acknowledgement of Service, the deadline to do so will be 26 September.

Office for Legal Complaints (OLC)/Legal Ombudsman

29. A briefing on the OLC's proposed new jurisdiction over Claims Management complaints is attached at **Annex A**.

30. The LeO scheme rules will be presented to the Board for consent (Paper (12) 60 refers).

31. At the end of July we met the Legal Ombudsman and OLC for the regular review of their Q1 key performance indicators. Board Members were provided with copies of the data slides and OLC commentary on 28 August. Performance areas are running within target, however unit cost is still high and some areas of Ombudsman Quality are below target levels. Action is being taken to address this but we will be maintaining a watching brief over them, especially in light of developments with claims management companies and the impact that the Scheme Rules amendments may have on both volumes and performance. Steve Green may wish to provide a verbal update.

Communications

32. Summer has meant that it has been rather quiet on the communications front, as is usual. A number of things have happened however including:

- The production of a number of articles including one by the Chairman for the August edition of the Bar Council's *Counsel Magazine*. Subsequently, a decision was taken by the publishers to hold the article over to its September edition. Further articles have also been provided to the Law Society's *Legal Compliance Bulletin*, the first edition of *Modern Law Magazine* and to the online magazine *thejusticegap.com*
- a number of updates on the website were picked up by external media including our letter to regulators on our referral fee guidance (22 August) the reappointment of Elisabeth Davies as Chair of the Consumer Panel (21 August), our communication with regulators on first-tier complaints handling (30 July) and our report on individual consumers' use of legal services (17 July).

Welsh translation of LSB website

33. When the Welsh Language Scheme was launched in October 2010, we made a commitment to increase the Welsh content on our website over the subsequent

three years. We have now added an option for viewing the „home’ and „contact us’ pages in Welsh. Users can select the „Cymraeg’ option at the top of each of the pages to open them. Only the static text on the pages has been translated, „Latest News’ has not been included.

34. It was agreed when the Welsh Language Scheme was developed that this level of translation was proportionate to our size and remit and we have no plans to increase the Welsh content further unless feedback indicates that this will be appropriate.

35. We are also in the process of updating the Consumer Panel Website to include Welsh content and intend to have this in place by October 2012.

Stakeholder engagement

36. Summer absences have also limited stakeholder interactions, but the following discussions which the Chairman and I have had are worth noting:

- Dame Janet Gaymer and Sir Mark Potter on the LETR
- IPS Chairman and CEO for general round-up in the context of their aspirations for new reserved activities in particular
- Gray’s Inn lunch visit with the Treasurer
- Introductory meeting with Andrew Spooner, new President of the Solicitors Disciplinary Tribunal
- Visit to Epoq Legal Services, a major on-line supplier
- Update meeting with Gillian Guy, Chief Executive of Citizens Advice

37. The outcome of the Ministerial reshuffle was confirmed just as this report was being finalised, with Kenneth Clarke, Crispin Blunt and Jonathan Djanogly being replaced by Chris Grayling, Helen Grant (a family solicitor) and Jeremy Wright (a criminal barrister) respectively. At the time of writing, precise junior ministerial portfolios had not been confirmed, but we will be briefing the new team as soon as they are. I will update the Board orally at the meeting.

ANNEX A

Claims Management Complaints briefing

Background

1. MoJ announced on 28 August 2012 that they would begin the process to switch on S161 of Legal Services Act 2007 which will allow the Legal Ombudsman to accept complaints from consumers of Claims Management Companies (CMCs).

2. [REDACTED]

Issue

3. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- a. [REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

10. A Project Board has been set up by MoJ to manage the process, Edwin Josephs and Michelle Jacobs will attend on behalf of the LSB.

LSB Review of Levy Rules

11. LSB committed in its original decision on the levy to reviewing the levy rules in 2013/14. The Board will recall that some approved regulators stated a preference for a more „risk-based’ approach to the LSB levy calculation but were unsure how this could be determined but were content with the LSB’s preferred ‚per capita’ basis until first review. In relation to OLC expenditure, approved regulators have an expectation that the levy calculation would be capable of being revised in light of experience and be based on actual complaint numbers handled by LeO rather than remaining based on historic complaint numbers from before LeO was set up.

12. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]