

To:	Legal Services Board	
Date of Meeting:	28 November 2012	Item: Paper (12) 78

Title:	Chief Executive's Progress Report - November 2012 including Health and Safety Policy	
Workstream(s):	All	
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Status:	Protect	

Summary:

The paper updates Board Members about:

- operational and governance issues
- progress on key projects
- other internal and external policy developments
- stakeholder and communications activities.

The Board is also presented with:

- the LSB Health and Safety Policy Statement for annual review, following review and endorsement of the Policy at the Remuneration and Nomination Committee's 25 June 2012 meeting. The Policy Statement is attached at **Annex A**.
- attached at **Annex B**, a paper inviting the Board to delegate authority to sign off publication of the consultation on the draft s69 Order to modify the SRA's regulatory functions to include the regulation of sole practitioners.

Recommendation(s):

The Board is invited to:

- note the Chief Executive's progress report
- review and agree the LSB Health and Safety Policy Statement attached at **Annex A**
- delegate authority to the Chief Executive to sign off publication of the consultation document for the draft s69 Order attached at **Annex B**

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
19, first sentence	Restricted information under s167 of the Legal Services Act	N/A
26	S36 - intended to promote a free and frank exchange of views for the purposes of deliberation by the Board	

LEGAL SERVICES BOARD

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Chief Executive's Progress Report - November 2012

Operations and governance Issues

Organisation development

1. The LSB's first all colleague survey was launched in early November. The results will be discussed with the Remuneration and Nomination Committee and then with colleagues and appropriate action identified and agreed as necessary.
2. Chris Baas, Regulatory Project Manager, left the LSB on 9 November and an offer has been made to a potential successor. Tim Bayl joined the LSB on 12 November as Karen Marchant's maternity cover. Tim recently arrived in the UK from Australia where he had been working in a policy role in the New South Wales Department of Education and Communities. We are also recruiting for the vacant Corporate Affairs Associate post in the corporate team.

Governance

3. The advert for Board Member appointments was placed in the Sunday Times on 4 November, with a closing date of 23 November. I will provide Board Members with a verbal update on the number of applications for each post received. The long listing meeting will take place on 13 December, with shortlisting on 10 January and final interviews on 18 January.
4. Gatenby Sanderson have also been appointed to recruit for the additional Legal Services Consumer Panel Member under the MoJ framework agreement. The advertisement appeared in the Sunday Times on 11 November. Barbara Saunders is chairing the recruiting panel and Ed Nally is also a member, together with Elisabeth Davies and an independent. Interviews are scheduled to take place in January 2012.
5. Steve Green, Edwin Josephs and I are meeting Andrew Sayers, Senior Partner at KPMG on 26 November to discuss KPMG's performance as our internal auditor following a sudden unexpected senior staffing change. I will provide a verbal report of our discussion at the meeting.

Annual review of LSB Health and Safety policy

6. All organisations employing more than five members of staff are required to have a written and signed statement of general policy on Health and Safety. The Board has recognised and accepted its responsibility as an employer for ensuring, as far as is reasonably practical, that the health, safety and welfare at work of all its colleagues is safeguarded and that the health and safety of visitors and of the general public are not adversely affected as a result of LSB's activities. The Board is required to review the LSB Health and Safety Policy Statement on an annual basis.

7. The policy was originally approved by the Board in 2009 and was updated in November 2010 to reflect, for example, current processes (eg regular meetings of the health and safety group) and to take account of Board Members' comments. The Remuneration and Nomination Committee reviewed the Policy Statement at its 25 June 2012 meeting, and the following points were raised in discussion and noted by the Committee:
 - there had been no incidents or accidents in the year under report, and there had been no other developments since the Board's last review to require any changes to the policy
 - in relation to the statement of general policy, there was no hierarchy as to the bullet points listed. The bullets would be re-ordered, so that the bullet on maintaining safe and health working conditions was listed first
 - no reference was made in the policy to fire drills. The responsibility rested with the landlord, and these took place at least twice a year and a specific reference to Landlord's responsibilities should be included in Part 2, *The Organisational Responsibilities and Arrangements*
8. The Policy Statement attached at **Annex A** takes account of the points raised by the RNC and is presented to the Board for review and final approval.

Project Update

Programme highlight report

9. The October Programme Highlight Report will be circulated shortly, following the meetings of the Programme Board and Gateway Group at which the report will be reviewed. Significant policy related issues are outlined below.

Research

10. Since the last Board meeting on 10 October 2012 we have:
 - finished the fieldwork and started the analysis looking at the value consumers place on legal regulation (contingent valuation) and received the final draft of the high-street solicitors report
 - received the first draft of the cab rank rule research
 - commissioned research on: small businesses as consumers of legal services, behavioural economics; and understanding consumers who don't use legal services, or don't choose regulated providers or don't trust legal services
11. Our focus over the coming month will include:
 - publishing the high street solicitors report
 - receiving the first draft of the contingent valuation report
 - commissioning research looking at the legal problems faced by consumers with learning disabilities
 - commissioning a researcher to carry out analysis of our consumer datasets.

Regulatory Decisions

12. Since the last meeting:

Rules Changes

- The decision to approve IPReg's revised arrangements for certification rules was issued on 6 November 2012.
- Minor changes to the CLC complaints code were agreed on 21 November.
- An application has been received from the Cost Lawyer Standards Board seeking approval for a set of regulatory arrangements for the regulation of Trainee Cost Lawyers. This application is being considered. It raises significant issues of proportionality and we will consult the Board as the analysis progresses

S51 Practising Certificate Fee Approvals

- The application from IPReg was approved on 5 November 2012.

Law Society/SRA issues

13. Since the last Board meeting we have received the weekly reports on the enabling programme and a set of papers for the Business and Oversight Board meeting on October. No matters of significant concern were identified in these papers. The Law Society has not challenged our requests for the information, but has questioned the extent to which some of the risks we identified in the request have arisen in practice.
14. Attached at **Annex B** is a paper inviting the Board to delegate authority to sign off the publication of the consultation on the draft s69 Order to modify the SRA's regulatory functions to include the regulation of sole practitioners. The Board is invited to delegate authority to the Chief Executive to sign off publication of the consultation document for the draft s69 Order.
15. The SRA have reported good progress with this year's Practising Certificate Fee renewal, after minor teething difficulties on the first day of operation. The move to "The Cube" in Birmingham has been handled smoothly and the formal opening of the building was marked by the launch of the SRA's own version of the "Red Tape Challenge", a subject on which we have pressed them informally on a number of occasions.
16. The Chairman and I are speaking to the SRA Board immediately before this meeting and will report on the discussion.

Other Policy Developments

17. There are separate updates on today's agenda covering the Legal Education Training Review (Paper (12) 76 refers), QASA (verbal update) and Special Bodies (Paper (12) 77 refers).

BSB and COIC issue

18. We met the BSB on 30 October to get a better understanding of their procedures for investigating complaints of misconduct. The BSB also provided an update on COIC - the BSB Board received the report in July and considered a draft response at its meeting in October; that response will be sent to COIC later this month and will be published.

19. [REDACTED]
[REDACTED]
[REDACTED] A Project Board has been established which includes Vanessa Davies and lay representation, and a Project Manager (Wendy Harris) has been appointed by COIC. The Board concluded that it should review developments formally in July 2014 (two years from the publication of the report).

ICAEW and accountancy bodies

20. We understand that ICAEW are finalising the designation applications and now expect them to make a submission at the end of November.

MoJ Issues

21. Crispin Passmore and I had a very useful discussion with Antonia Romeo, (Director-General, Transforming Justice, MoJ) about the alignment between regulatory and broader policy objectives and the scope for simplification of the legislative base for regulation in the medium-term. We will be continuing these discussions in the coming months.

Judicial Relations

22. The Chairman had useful discussions with Lord Dyson, the new Master of the Rolls, and Lord Neuberger, now head of the Supreme Court, in the course of November. The latter referred extensively to LSB analysis in a recent lecture on legal education and training.

Legal update

23. On 3 September 2012, we received a claim from a Mr Alan Cowdrey who sought permission to proceed with a claim for judicial review in relation to the decisions taken by the SRA to close the complaint he made/take no further

disciplinary action regarding an individual solicitor at a firm. The SRA was the proposed defendant to the claim, and the LSB and The Law Society were included as interested parties. The SRA contested Mr Cowdrey's claim. We filed an Acknowledgement of Service at the Administrative Court on 24 September 2012, simply to preserve our position in the event that Mr Cowdrey was granted permission to proceed with his claim.

24. On 13 November 2012, we received notification from the Administrative Court of Mr Justice Wilkie's decision of 6 November 2012 to refuse permission for Mr Cowdrey to apply for judicial review. Mr Cowdrey had seven days to request this decision be reconsidered at a hearing in open court and has not done so. This matter was dealt with in-house by the LSB legal team and accordingly, no external legal costs have been incurred.
25. The hearing of Prudential plc and another -v- Special Commissioner of Income Tax and another took place at the Supreme Court from 5 to 7 November 2012 . The LSB was granted permission to intervene in this case by providing written submissions. There were four other interveners – the Bar Council, the Law Society, the ICAEW and the International Association for the Protection of Intellectual Property (UK Group) – all of whom provided oral submissions at the hearing. The main issue to be addressed by the Justices was whether the scope of Legal Advice Privilege ought to be extended beyond solicitors and barristers to include accountants. We attended the hearing each day and it was clear from the questions being asked that the Justices had considered our submissions and were aware of the impact this issue could have on s190 of the LSA 2007, which allows in relation to the provision of certain services for Legal Professional Privilege to extend to certain individuals (who are not barristers or solicitors) and licensed bodies. It is not yet known when a judgment will be handed down but it could take up to 12 weeks.

Legal Ombudsman (LeO)/Office for Legal Complaints (OLC)

26. Claims management company (CMC) complaints:

- [REDACTED]
- [REDACTED]

27. OLC review of LeO KPIs:

- A meeting was held with OLC and LeO to discuss their Q2 KPIs on 5 November. The data showed no significant change from previous quarters:

however case numbers dropped due to an unprecedented fall in numbers in September and clearing the backlog. It is now clear that LeO will not hit its £2,000 unit cost target in 2012/13.

- We also discussed LeO's proposed KPIs for 2013/14 including how their annual customer satisfaction survey data will input into a „Reputation and Impact' KPI and using the KPI Internal Audit to inform Quality Improvement.
- Steve Green may wish to provide a verbal update on other issues covered at the meeting.

Legal Services Consumer Panel

28. Karin Woodley and Graham Corbett have both been re-appointed as members of the Consumer Panel in line with previous Board decisions.

Communications

29. Communications activities continued at a steady pace during the month of October. Highlights for the period include the following:

- a „question and answer' style interview with David Edmonds for *Modern Law Magazine*. This interview was given two pages in its third edition. Also included in this issue was a short column piece focusing on the report on benchmarking and tracking changes in the ethics and behaviour of providers of legal services which Professor Richard Moorhead wrote for the LSB
- I delivered a key note speech at the Westminster Legal Policy Forum event in which he spoke about the challenges still facing regulation in the legal services sector and what the LSB will be doing to meet them. The speech received wide coverage in the trade press
- I also spoke on 21 November at an Institute for Government/Public Chairs Forum conference on Triennial Reviews.
- Nicole Smith represented the LSB at the Black Solicitors Network's annual Diversity League Table publication launch and award ceremony. She delivered a short address and presented the awards. Reaction to her participation has been extremely positive. Having participated in the judging panel, I was also filmed for a promotional video for the Black Solicitors Network's Diversity League Table.
- Chris Baas, in one of his final acts for the LSB, represented the organisation at a breakfast briefing on ABS
- the new research pages on the website were uploaded on a trial basis in late October. The full public launch takes place on 22 November at a

reception to mark the event and the significant contribution that research is making to legal services regulation.

- we issued a number of latest news updates which were picked up by the trade media including the:
 - market impacts and evaluation report
 - invitation to legal services providers to join a Panel of Legal Advisers, providing advice and assistance
- the Chairman spoke at the SAHCA conference on 17 October, using his comments to call for continued cooperation to secure implementation of a common QASA scheme.
- The Bar Conference 2012, attended by Chris Kenny and David Wolfe, provided a platform for the Bar's leadership to call for our abolition. This did not come as a surprise, following as it did Michael Todd QC's 'right of reply' column in Counsel magazine in which he reacted strongly to David's prior article 'Walking forwards briskly'. MoJ issued a helpful statement on the following Monday, pointing out that the Bar Council had not made this point in its evidence to the Triennial Review.

30. Our introductory meeting with Parliamentary Under Secretary Helen Grant has been postponed on a number of occasions and is now arranged for 5 December.