

To:	Legal Services Board	
Date of Meeting:	30 April 2013	Item: Paper (13) 25

Title:	Chief Executive's Progress Report - April 2013	
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
None	None	

LEGAL SERVICES BOARD

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Chief Executive's Progress Report - April 2013

Operations and governance Issues

Organisation development

1. Work to reflect on the outcome of the Colleague Survey and follow-up work commissioned to interrogate the findings continues in the Executive Group. I will be informing all colleagues of next steps shortly and will update the Board as this work develops. It is likely that we will need to take some time as a team to refresh and reinvigorate our corporate values – which some members will recall was an early piece of work undertaken by the Board before most colleagues were recruited.
2. Adewale (Ade) Kadiri will be joining the LSB on 3 June as Corporate Governance Manager. Ade is currently Deputy Head of Corporate Governance at Oxford University Hospitals NHS Trust, following time in a similar role at Sussex Partnerships NHS Foundation Trust. Prior to this, Ade had had a varied career in inspection, audit and regulation in health and local government. Ade is ICSA qualified as well as legally trained, having qualified and been called to the Nigerian Bar.
3. We have extended Tim Bayle's contract as a Regulatory Associate (maternity cover) until November. We are also recruiting for an additional associate to work primarily on the cost and complexity project.

Governance

4. NAO commenced their external audit of the LSB on 15 April. The process appears to be going very smoothly and more details will be provided following the Audit and Risk Committee's meeting on 13 May.
5. With the advice and agreement of the Remuneration and Nomination Committee, plans are well-advanced for the extensive programme of Board, OLC and Panel recruitment required this year including agreeing process and timing with the Ministry for those appointments which they lead. This will take up a significant amount of the governance team's time over the coming months and indeed that of those Board members asked to take part in selection panels. We are arranging for NED colleagues' thoughts about qualities needed by the Chairman's successor to be fed to MoJ at an appropriate point.

Accommodation

6. I will provide a verbal update at the meeting on the latest position with regard to accommodation issues.

Project update

7. The Q4 report covering the period 1 January to 31 March 2013 is a separate item on today's agenda. The Board received the February highlight report by e-mail at the end of March. Currently, all projects are running to time.
8. We continue to await the Lord Chancellor's decision about whether to accept our recommendation on will-writing. However, we are advised by MoJ officials that the Impact Assessment has received a "green" rating from the Regulatory Policy Committee, a key step on the critical path.

Research

9. Since the last Board meeting we have:
 - received draft reports on:
 - an approach and initial prioritisation on cost of regulation project
 - understanding consumers
 - behavioural economics
 - consumers with learning disabilities (commissioned jointly with the Consumer Panel)
 - commissioned the Regulatory Policy Institute to carry out the work on Barriers to Entry, Exit, and Merger (a joint project with The Law Society)
 - presented LSB research on high-street solicitors and early thoughts on behavioural economics to Socio-Legal Studies Association conference
 - finalised the small business as consumers research for publication mid May
 - had an independent review of our approach to research management.
10. Our focus over the coming month will include:
 - finalising draft reports for publication and arranging communication of findings
 - finalising the Value of Regulation report for publication
 - completion of initial data analysis and draft initial report on competition and regulation for the cost and complexity project.
 - building data sets of access to justice indicators and Office for National Statistics census data sets development, to support future work
 - implementing amendments to LSB research web pages.

11. Controversy has continued over the Cab Rank rule research, with lengthy legal analysis being prepared by both the Bar Council and Bar Standards Board. We understand that the research authors will be equally robust in their response to these critiques.

Statutory Decisions And Investigations

Applications to change regulatory arrangements

12. Four applications have been approved since my last report, as follows:

- BSB Public Access and removal of restrictions on media comments. (This decision was strongly welcomed publicly by the Bar Council).
- Ilex Professional Standards (IPS) Admission as a Fellow: work based learning
- IPS Associates admission as a Fellow (for those with Associate status before January 1986)
- SRA Red Tape Challenge initiative

13. There are currently five applications being considered:

Alterations to regulatory arrangements applications

- Costs Lawyer Standards Board (CLSB) proposals to introduce regulatory arrangements for trainee Cost Lawyers – following the issue of a warning notice, we understand that the CLSB are considering whether their delegation arrangements with the Association of Cost Lawyers (ACL) allows for the proposal to proceed
- IPS arrangements for the awarding of litigation rights
- IPS arrangements for the regulation of immigration advisers

14. The two IPS applications have some common regulatory arrangements which also need to be considered in the designation application (see below). If granted, these would significantly extend the scope of IPS regulatory arrangements and we think it appropriate to seek some external input into these applications. We have therefore issued a warning notice which allows us to seek advice and also extends the time in which we can make a decision (so that they can be considered at the same time as the designation application).

15. An exemption direction was issued to the Council for Licensed Conveyancers for minor amendments to its Handbook.

Designation applications

16. The assessment of the application from Institute of Chartered Accountants in England and Wales (ICAEW) for a recommendation for designation as an

approved regulator and licensing authority for probate is progressing. We have completed a site visit to develop our understanding of the processes for authorisation and supervision and a further site visit is planned for the end of May.

17. IPS (on behalf of the Chartered Institute of Legal Executives) has submitted an application seeking a recommendation for designation as an approved regulator for probate and reserved instrument activities. The regulatory arrangements for this application are also relevant to the rules change applications listed above. Although our assessment is at an early stage, it is already clear that IPS have taken careful account of the feedback given when they last submitted proposals in this area

Internal Governance Rules compliance

18. Letters to applicable approved regulators requesting their dual self-certificate on compliance with the internal governance rules have been issued. The process has been simplified for all regulators, other than Law Society and SRA. We have made clear in the latter case that we will cease the regular S55 monitoring of the Budget and Oversight Board (BOB) if we are reassured on compliance by their response.

Bar Council

19. We issued a S55 request for document disclosure to the Bar Council on 27 March, following a press release which could have been read as implying that they had exerted undue influence in the drafting of the standard contractual terms for the operation of the cab rank rule. A full response has been received and we will update colleagues on the progress of our analysis at the meeting.

Other policy Issues

Special bodies - draft guidance for licensing authorities

20. The LSB published a consultation document on the regulation of special bodies, and a response to that consultation, in April and December 2012 respectively. These discussed issues involved in ending the transitional protection provided by section 23 of the LSA for non-commercial bodies with non-lawyer owners and/or managers to provide reserved legal activities without the need to be licensed as ABS. Once commenced (to coincide with the end of the transitional protection), section 106 allows special bodies to apply to the relevant licensing authority for an order modifying how licensing rules apply to them. Our current thinking is that the necessary changes should be introduced to enable special bodies to be licensed by April 2015, but we have made clear that we will not make the necessary recommendations to the Lord Chancellor until satisfied that there is at least one licensing authority with suitable licensing rules.

21. Our intention is to bring a paper to the May Board, to accompany draft guidance for licensing authorities on licensing rules. We are developing thinking on this through stakeholder workshops on 18 and 25 April.

BIS consultation

22. On 18 April, I responded to a Department for Business Innovation and Skills (BIS) consultation about whether there should be a duty for non-economic regulators to have regard to growth in the discharge of their functions. The response is attached at **Annex A**.

QASA

23. Both the SRA and BSB Boards will consider the final QASA scheme and are expected to approve rules at their respective meetings on 24 April. Subject to those decisions, we expect to receive an application for approval of the scheme as a change to regulatory arrangements in May. Due to the timing of the application, I plan to update the Board at its 23 May meeting through the Chief Executive's update. A full paper will follow thereafter for discussion outside of scheduled board meetings: although the decision formally lies within my delegated authority, I expect colleagues to want to be fully engaged in the decision .
24. The Board will be aware of the continued opposition of the Criminal Bar Association to the scheme and in particular the strong Twitter and blog campaigns and suggestions of mass meetings with potential adverse effects on the running of the court system which continue to attract interest from the legal press. This lobbying is intimately bound up with the CBA's opposition to the Government's proposed changes to criminal legal aid, although there is no causal connection between those potential changes and QASA. I will update orally on these issues at the meeting.

Damage Based Agreements (DBAs)

25. We have now received assurances from regulators that they consider their current controls adequate to forestall potential risks of misspelling of DBAs. We are analysing their responses and will report to the Board at the next meeting.

Legal Ombudsman/Office for Legal Complaints (OLC)

26. The Chairman and I will attend the OLC's April Board meeting on 22 April and I will provide a report at the meeting.

Section 120 request

27. On 25 March 2013, the LSB received the Office of Legal Complaints' response to the Board's Section 120 request about complaints received by the Ombudsman Scheme that are not within its jurisdiction. The request was made on 24 January 2012 with an original deadline for response of the first working day of August 2012. The Chair of the OLC's cover letter and the Section 120 report are attached at **Annex B**.
28. The request was made in light of a number of public comments made by the Chief Ombudsman indicating that the Ombudsman scheme was receiving an increasing number of complaints where the "complainant has thought that they are purchasing a legal service from a lawyer covered by the Ombudsman scheme when in fact they were buying a service from an unregulated provider and therefore no such redress is available". The Board thought that both quantitative and qualitative data supporting these views may prove important evidence in the context of our work to review the scope of legal services regulation.
29. The Board has already made its decision following its investigation into will-writing, probate and estate administration activities. The information could, in theory, provide some insight to assist our review of general legal advice for individual consumers and also the risk framework for our costs and complexity work (Paper (13) 24 refers) and may also have been relevant to OLC thinking on the possible development of a voluntary jurisdiction. However, in reality, the information provided is of limited value. We agree with the view of the OLC Chair in her covering letter that the report, while offering some insight, "is not as comprehensive or insightful as any of us would wish" and "does not give sufficient evidence, on its own, for any policy decision".
30. One of the main issues was the low response rate to the survey by complainants whose complaint was out of jurisdiction. Only thirty three people responded. The OLC relied on survey information as they could not meet the original data request from data held. A key learning point expressed by the OLC is to review its data collection, so that "it does not provide just management information in relation to their operation and management performance, but also allows them to draw broader insights". These topics may form an agenda item for a future joint Board meeting.
31. The Section 120 report will be published as part of the publication of the April Board papers, fulfilling the requirement to publish set out in the Act.

Legal Services Consumer Panel

32. A separate item on today's agenda presents the Consumer Panel's Phase 1 report on choosing and using legal services and the executive's recommendations as to next steps and actions.

Communications and stakeholder engagement

33. Proactive communications activity during this period has been relatively low key although a number of issues have been the subject of some media scrutiny most notably the off oral hearing at the Justice Select Committee which took place on 19 March with the Chairman's personal view about the possible future for legal regulation receiving most attention. We are very grateful to those colleagues – both Executive and Board – who helped with our preparation.
34. Receiving less attention, but of equal interest, Crispin Passmore gave a speech on the same day to the Westminster Legal Forum on regulation for a diverse and innovative legal sector. Crispin is also speaking to a Regulatory Policy Institute conference on regulatory independence on 26 April.
35. Most colleagues were able to attend an informal meeting with the Bar Standards Board at the Treasury on 18 April. This has provided helpful context for the decisions facing the Board in coming months about a number of BSB applications, as well as this meeting's discussion on effectiveness.
36. Looking ahead, we are starting to plan for the launch of our small business research. As part of that, the Chairman wrote to the IP Minister, Viscount Younger of Leckie alerting him to the research in the context of his recent announcement regarding mediation for small businesses for intellectual property disputes.
37. Other communications highlights for the period include:
 - The LSB's business plan was published on 3 April. This was picked up by the trade press including *Legal Futures*, the *Gazette*, the *Solicitors Journal*, *Legal Week*, etc. The media focus, predictably enough, was less on the work programme for the coming 12 months and more on supposed disagreements with the SRA;
 - A second article was drafted for *Legal Action* (the journal of the Legal Action Group). Its focus was on consumer needs from legal services
 - The Chairman and I had our regular meeting with the Chair and CEO of the Institute of Trade Mark Attorneys on 10 April;

- I gave evidence to the Policy Connect Higher Education Commission on 17 April about the extent to which the legal services regulatory model might be transferrable to higher education.
- The Chairman and I met Joshua Rosenberg on 18 April for an informal briefing on the various issues the LSB will be dealing with in the coming six to nine month period.
- We continue to deal with a variety of media queries and requests for speeches and contributions to publications.

38. We are developing plans for a briefing session for the Board with a number of financial sector players with an interest in the legal services market, possibly over a working dinner. We will keep colleagues in touch as thinking develops.