



Meeting: Legal Services Board, 8 June 2021

Item: Paper (21) 25 - CEO Progress Report – May 2021

Introduced by: Matthew Hill, Chief Executive

Status: Official

Introduction

This paper updates Board Members on key developments across the organisation since the 20 April 2021 Board meeting.

Recommendation

The Board is invited to **note** this report.

Annexes

Annex A – OLC voluntary assurance letter

Annex B - News round-up

Annex C - Response to the Home Office consultation on its Immigration Plan

Annex D - Correspondence between CEO and Director General, BSB regarding replying by silence to pupillage applications

Risks and mitigations	
Financial:	N/A
Legal:	N/A
Comms and engagement:	N/A
Resource:	N/A
Equality and diversity:	N/A

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
None		

CEO Progress Report – May 2021

Ministry of Justice (MoJ) matters

Appointment matters

LSB Board members

1. The LSB executive is now meeting with the MoJ public appointments team on a fortnightly basis ahead of the launch of the campaign to recruit a non-lay member to join the Board in April 2022. This is helping to maintain momentum. As previously reported, diversity will be a key focus for the campaign. The LSB Chair and Chair of RNC have been consulted on the draft candidate pack, and officials at MoJ are preparing a submission to the Lord Chancellor. The outline timetable is as follows:
 - Launch before summer recess: June
 - Open over summer: a minimum of 4 weeks
 - Proposed virtual outreach event: July
 - Sift: August / September
 - Ministerial clearance: September
 - Interviews: November
 - Appointee takes up post: 18 April 2022

Legal Services Consumer Panel

2. Panel Member Owen Derbyshire stepped down from the Panel in March 2021. Recruitment for his successor is underway, and the Chair of RNC is chairing the recruiting panel. A total of 14 applications have been received. The recruitment timetable is as follows:
 - Shortlisting meeting – 4 June
 - Final panel interviews – 14 June and 16 June
 - Report and recommendation to LSB Board – by correspondence by 18 June
 - Submission to Lord Chancellor requesting approval of recommended candidate – c 25 June
 - Appointee takes up post – July (subject to Lord Chancellor approval)

Office for Legal Complaints

3. Recruitment of three new OLC members launched in w/c 19 April – two lay and one non-lay member – and the Board lead for the OLC is chairing the recruiting panel. RNC member Ian Hamer is also a member of the recruiting panel. A total of 163 applications have been received. The recruitment timetable is as follows:
 - Preliminary interviews underway – ending 4 June
 - Shortlisting meeting – 10 June
 - Final panel interviews – 21 June and 22 June
 - Report and recommendation to LSB Board – by correspondence – by 25 June
 - Submission to Lord Chancellor requesting noting of recommended candidates – by 30 June
 - Appointees take up post - July

Colleague and organisation matters

Staffing

4. A new Corporate Manager will be joining the LSB on 14 June, splitting their time between corporate governance and corporate services.
5. The Administrative Assistant will be leaving the LSB on 15 June following over three years in post. Having studied law part-time during their employment at the LSB, they will be taking up a post as a paralegal. Recruitment for their successor is underway. Our other Administrative Assistant will be returning from maternity leave in mid-July.
6. The recruitment of a new Consumer Panel Associate is underway. We will also shortly be advertising for a new Regulatory Policy Manager, to lead on curation of the LSB Strategy.
7. We have signed up to the *Race at Work Charter*. This is a public commitment to improving the experiences of black, Asian and minority ethnic employees in the workplace. It sets out five actions for signatories to take:
 - appointing an executive sponsor for race – for the LSB, this will be the Director, Enabling Services;
 - capturing data and publicising progress;
 - ensuring zero tolerance of harassment and bullying, and ensuring promotion of compassion and respect of all colleagues;
 - making equality in the workplace the responsibility of all leaders and managers; and
 - taking action that supports ethnic minority career progression.
8. We will be adding a section to our diversity and inclusion plan to cover these five actions and how we plan to progress them.
9. Colleagues completed the LSB's eighth pulse survey in May, and the results have been shared with RNC. We have also been giving thought to some principles for hybrid working and had a very helpful session on this at the all-colleague away day held on 20 May. These principles are being captured in a revised flexible working policy (on the basis that we will not be changing employment contracts; the LSB will continue to be a London-based organisation for the foreseeable future). We will be consulting colleagues on revisions to the policy in June, before presenting the updated policy to RNC for sign off at its July meeting. Following the further lifting of restrictions on 17 May, we are seeing an increasing number of colleagues attend the office on a voluntary basis.

Governance

Office for Legal Complaints

10. The voluntary assurance letter following the OLC's May meeting is at Annex A.
11. We met the OLC Chair and LeO Chief Ombudsman to take forward the 'enhanced public reporting' element of the decision on the OLC's budget application for 2021/22. The core ingredients of the proposed approach are reflected in the voluntary assurance letter (attached at Annex [A]).

12. An executive level meeting took place with Legal Ombudsman counterparts to discuss policy matters, including looking ahead to a review of the Scheme Rules and assistance with LSB projects on the unregulated sector and consumer vulnerability.
13. The first meeting of LeO's Stakeholder Challenge and Advisory group took place in April with an initial focus on developing an understanding of the Legal Ombudsman's process and planning for tackling the backlog.

Solicitors Disciplinary Tribunal (SDT)

14. The Master of the Rolls finalised the appointments protocol for SDT Panel Members. As noted in the SDT item on the agenda, this includes measures relating to equality, diversity and inclusion. Specific measures include a focus on advertisement of vacancies to encourage diverse applications and permission to use positive action initiatives, including 'equal merit provisions' at all stages of the appointments process. Appointment panels must also be ethnically and gender diverse.
15. The SDT has provided a preliminary estimate for its 2022 budget to the Law Society. This is the first step in annual budget application process and no action by us is required at this stage. A date for the budget challenge panel meeting has been scheduled in October 2021.

Regulatory developments

News round-up

16. The news round-up is attached at Annex B.
17. We submitted a response to the Call for Evidence for the Independent Review of Criminal Legal Aid. We have also been invited to sit on the board of the Cross Whitehall Group of departments and public bodies that have an interest in the review's work.
18. We submitted a response to the Home Office consultation on its Immigration Plan, see Annex C. This includes a proposal to introduce a good faith requirement for asylum seekers and their legal representatives. We consider that the new requirement is unnecessary since it duplicates the professional principles and duties in existing codes of conduct.

Strategy and business plan

19. The team has been developing plans for 'curating the strategy' – making sure that we maintain momentum on the sector-wide strategy, pursue the ideas for collaboration initiatives identified by the regulatory bodies and others, and keep track of the various internal and external activities that address the nine challenges in the strategy. We plan to bring a paper to the July Board meeting outlining our plans.
20. All the regulatory bodies have replied to the Chair's letter of 29 March exploring areas for collaboration on the back of the sector-wide strategy. We will provide an analysis of the responses in the July Board paper referenced above.

Research

21. We are currently procuring for small business legal needs survey.
22. Work has begun to plan our approach to research activities in the new business plan, including mapping the unregulated sector, consumer vulnerability and the social acceptability of technology.

Statutory decisions

23. Since my last update, the LSB has issued two exemption directions. One relates to the assurance protocol between TLS and the SRA and the other to the SRA in relation to amendments to the Glossary to its standards and regulations.
24. At the time of writing, the LSB is considering two applications. One is the SRA's application for approval of proposed alterations to its regulatory arrangements in respect of new Compensation Fund Rules. As you are aware we have issued a "warning notice" under paragraph 21(1)(b) of Schedule 4 to the Act mainly on the basis that we did not consider that sufficient arguments had been made as to why the proposed reduction of the proposed reduction to £500k of the existing £2m cap on potential pay-outs to individuals making claims to the fund was not a net detriment to the interests of consumers. The SRA has since withdrawn that element of their proposals. We are now proceeding with our assessment of the revised arrangements.
25. The other is an application from CILEx Regulation to alter its regulatory arrangements in respect of its education standards. The proposals comprise the creation of an integrated set of education standards, rules, and a single application process to enable competent individuals to become authorised in their specialist area of practice without duplicating application and assessment requirements. The determination period for this application has been extended to 23 June 2021.
26. The LSB is also considering a request for exemption from the SRA in relation to alterations to its Regulatory and Disciplinary Procedure Rules to refer to requirements in primary legislation that are of relevance to the conduct of personal injury litigation.

Legal

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through our performance assessments. An updated performance assessment will be published on our website.

29. Well-led Reviews of the BSB and Faculty Office continue. The BSB is considering its response to the interim findings report. The draft Faculty Office report is scheduled for review by the Board Challenge Panel on 27 May.

Technology

30. We are finalising our joint research project with Lawtech UK on SMEs experience of using lawtech solutions. We hope to publish this by late June. We also continue to engage with the Lawtech UK team on the future of the Regulatory Response Unit.

Diversity

31. We published the report from the Bridge Group on the extent and impact of diversity and inclusion regulatory initiatives in May. The findings will inform our future work on our policy and guidance review.
32. At the same time, we launched the diversity dashboard which brings together the latest diversity data collected by the regulators. Data includes all protected characteristics except the categories of marriage and pregnancy. We have also included social mobility statistics. The dashboard will be expanded in the coming months when data becomes available to include information on how the diversity of professions differ at entry and at senior levels over time.
33. At the Judicial Diversity officials meeting, I noted the LSB priority on diversity and inclusion, as one of the nine challenges the sector needs to address as part of our strategy for the legal sector. Ensuring that the judiciary has an increasingly more diverse pool of candidates sitting alongside an appointments process that empowers applications from a diverse range of candidates, is essential. We also continue to encourage a common evaluation framework or set of principles to ensure that resources can be focused on initiatives that have the greatest impact.

Fitness to practise

34. At the April Board meeting, we took an action to update the Board by correspondence on the emerging debate on whether the legal services sector needs a fitness to practise regime.
35. Fitness to practise involves ensuring that regulated professionals continue to demonstrate the skills, knowledge and ethical competence expected of them throughout their careers. This is a key consideration and component of our work on ongoing competence, which has involved looking at fitness to practise approaches in other sectors and particularly the use of remedial sanctions, as opposed to more punitive sanctions. In July, the Board will be receiving a paper outlining our proposed approach to setting out requirements for regulators on ongoing competence.
36. Another related angle on fitness to practise, which has been the subject of debate in the legal sector over the last year, relates to how the health and mental health of those subject to disciplinary proceedings is taken into account. The Board paper on the SDT for this meeting covers this in a little more detail. It is also something that we plan to discuss at future meetings with key stakeholders in relation to disciplinary proceedings.

Solicitors Indemnity Fund (SIF)

37. The Board will be aware that the closure of SIF has received some increased coverage as the closure date currently set for September 2021 approaches. The LSB has received significant correspondence from retired solicitors (and in some cases their MPs) in relation to this issue.
38. TLS established SIF in 1987. In 1999 the decision was taken to move towards an insurance based open market scheme with the consequence that SIF entered into run-off with effect from 1 September 2000. Responsibility for indemnity provision was delegated by TLS to the SRA in 2006.
39. It is accepted that SIF is a generous indemnity scheme, not obviously mirrored in any other sector or indeed elsewhere within the legal profession and one that it appears that the open market is not able to replicate at an affordable rate.
40. In 2012, the LSB considered and approved an application from the SRA to extend the SIF from September 2017 to September 2020. In 2020 we approved a further application to extend the fund to September 2021, which was based on actuarial advice commissioned by the SIF Board that a one year extension would be affordable.
41. The SRA has comprehensive MTCs for professional indemnity insurance for the solicitors and firms that it regulates. Amongst other requirements, these stipulate that when a firm closes without a successor practice, they must purchase six years run off cover, to cover claims made up to six years after closure. SIF provided cover beyond the six years but only as a residual fund which was set for closure when the decision was taken to move to open market indemnity provision (in 1999).
42. The SRA and TLS are working together to consider what solutions are available following the closure of SIF. However, the SRA's stated position is that six years' run off cover strikes the appropriate balance of protection for consumers with the cost of providing that protection. It also notes that the six-year minimum period of run-off cover is consistent with that required by other regulators of legal services.
43. The LSB has met with the SRA and TLS and will continue to support them in working in the consumer interests on this issue to mitigate the impact of the closure of SIF. To be clear, the decision to close SIF is a historic one, the fund has not received any further contributions and any extension of the scheme would come at a cost to the profession and therefore the consumer.
44. We will keep the Board updated as the SRA Board are due to reconsider the issue at its next meeting 8 June 2021.

Regulator Pioneer Fund (RPF)

45. On 20 May, a new £3 million round of the Regulator Pioneer Fund (RPF) was launched. It is a one-year fund for projects of at least 6 months, which must complete by 31 March 2022. The competition closes on 15 July, with UK regulators and local authorities eligible to apply.
46. SLT discussed the RPF and agreed not to submit a bid. We considered that our business plan priorities were not a sufficiently strong fit with the application criteria

(the competition this year focuses on deregulation rather than technology and innovation). Further, a bid would also impact on existing business plan commitments given the requirement for all expenditure to be completed by the end of the current financial year.

Replying by silence to pupillage applications

47. On 1 April, we received an email from a prospective pupil in respect of the practice by some barristers' chambers of 'replying by silence' to pupillage applications, and which attached correspondence between the prospective pupil and the Director General of the BSB and the Chair of the Bar Council.
48. I wrote to the Director General of the BSB on 13 April, to raise our concerns about this practice and the importance of providing feedback to pupils. In the letter, we made clear our view that we consider this to be a regulatory issue, not least because it may raise questions about how diversity and inclusion in the pupillage process can be properly demonstrated and asked the BSB to explain its future plans for addressing this and holding chambers to account.
49. We received a reply from the Director General on 27 April, explaining that the BSB intends to evaluate its existing measures and to review the need for others, to encourage changes in practice and culture. I wrote to the Director General on 4 May, welcoming the actions they proposed and noting that this would become a specific area of focus for future regulatory performance assessments of the BSB. My correspondence with the Director General is attached to this report (see Annex D).

Communications and stakeholder engagement

External events

50. We have planned the first of three proposed out of London Board engagement events on 7 June 2021. The virtual event, focusing on the legal services strategy in the Welsh context, was rescheduled from April due to the official mourning period following the death of HRH The Duke of Edinburgh. Further events are scheduled for 21 September (West Midlands and tech focus), and 29 November (East of England and an ongoing competence focus).
51. Chris Nichols spoke at the LegalEdCon on 19 and 20 May on the SQE and legal education.

Meeting schedule (21 April – 7 June)

52. Since the last Board meeting there have been 28 senior meetings including nine with approved regulators or regulatory bodies.

21-Apr	Solicitors Regulation Authority	Chief Executive
21-Apr	360 Law Group	Chief Executive
23-Apr	LawCare	Chief Executive
23-Apr	Bar Standards Board	Chief Executive
23-Apr	Office of Legal Complaints	Chief Executive
26-Apr	Costs Lawyer Standards Board	Chief Executive

27-Apr	Law Society of Scotland	Chair and Chief Executive
27-Apr	Lord Wolfson	Chair and Chief Executive
04-May	Solicitors Regulation Authority	Chair and Chief Executive
05-May	Intellectual Property Regulation Board	Chief Executive
05-May	Legal Services Consumer Panel	Chief Executive
06-May	Office of Legal Complaints	Chief Executive
11-May	Bar Standards Board	Chief Executive
11-May	Legal Aid Practitioners Group (LAPG)	Chair
11-May	Age UK	Chair
11-May	ACE: Strategic Impact of Covid on ALBs	Chair
12-May	Office of Legal Complaints	Chief Executive
12-May	Solicitors Disiplinary Tribunal	Chief Executive
17-May	CILEX	Chief Executive
18-May	National Autistic Society (NAS)	Chair and Chief Executive
18-May	Bar Council	Chair and Chief Executive
20-May	Kingsley Napley	Helen
20-May	Judicial Diversity Forum	Chief Executive
27-May	Legal Aid Agency	Chief Executive
26-May	The Law Society	Chair and Chief Executive
26-May	Ministry of Justice	Chief Executive
26-May	The Law Society and Solicitors Regulation Authority	Chief Executive
04-Jun	Market Transparency Co-Ordination Group	Chief Executive