

|                         |                      |                     |               |
|-------------------------|----------------------|---------------------|---------------|
| <b>To:</b>              | Legal Services Board | <b>Agenda item:</b> | 15            |
| <b>Date of Meeting:</b> | 23 March 2017        | <b>Item:</b>        | Paper (17) 19 |

|                                |   |
|--------------------------------|---|
| <b>Title:</b>                  | Chief Executive's update – 23 March 2017  |
| <b>Strategic theme</b>         | All   |
| <b>Author / Introduced by:</b> | Neil Buckley, Chief Executive<br>neil.buckley@legalservicesboard.org.uk / 020 7271 0057 |
| <b>Status:</b>                 | Official  |

**Summary:**

This paper updates Board Members on key developments across the organisation since the 18 January 2017 meeting. The Board's attention is drawn, in particular, to the following matters:

- a. There is an update on the timetable for the recruitment of the Chair of the LSB.
- b. Implementation of QASA remains on hold. A further meeting is planned with the Joint Advocacy Group.
- c. The LSB opened an investigation into whether the current arrangements between TLS and SRA are in line with Part 4 of LSB Internal Governance Rules.

**Recommendation(s):**

The Board is invited to note this report.

**Risks and mitigations**

**Financial:** N/A.

**Legal:** N/A.

**Reputational:** N/A.

**Resource:** N/A.

| Consultation           | Yes  | No | Who / why?     |
|------------------------|------|----|----------------|
| <b>Board Members:</b>  |      | ✓  | Routine report |
| <b>Consumer Panel:</b> |      | ✓  | Routine report |
| <b>Others:</b>         | N/A. |    |                |

| <b>Freedom of Information Act 2000 (Fol)</b>  |  |                |
|---|--|----------------|
| <b>Para ref</b>   | <b>Fol exemption and summary</b>   | <b>Expires</b> |
| Para 1, second and third sentences<br>Para 5<br>Para 25, last sentence, section in brackets only<br>Para 28, final sentence<br>Para 29 and 30 | Section 36(2)(b)(ii): information likely to inhibit the exchange of views for purposes of deliberation |                |

## LEGAL SERVICES BOARD

|                         |                      |                     |               |
|-------------------------|----------------------|---------------------|---------------|
| <b>To:</b>              | Legal Services Board | <b>Agenda item:</b> | 15            |
| <b>Date of Meeting:</b> | 23 March 2017        | <b>Item:</b>        | Paper (17) 19 |

### CHIEF EXECUTIVE'S UPDATE

#### Sponsor relations

##### Appointments matters

1. The timetable for the process for the recruitment of the Chair has been revised.  
[REDACTED]  
[REDACTED]  
[REDACTED] Further clarification has been sought.  
We have had no further news on the arrangements for the interregnum.
2. Ministerial approval was granted to the Board's decision to reappoint three members of the Legal Services Consumer Panel: Cathy Gallagher (two years); Marlene Winfield (three years); Michelle Goddard (three years).
3. At the time of drafting, we are awaiting in principle approval from the Lord Chancellor to the Board's preferred candidate for OLC Chair so that the candidate can appear before the Justice Select Committee for pre-appointment scrutiny. Rebecca Hilsenrath accepted the Board's offer of appointment as non-lay member of the OLC and will take up her post on 1 April 2017.
4. The Board will wish to acknowledge that 31 March 2017 is the last day in office for Steve Green, OLC Chair, and Professor Philip Plowden.

##### Sponsorship matters

5. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

6. In February, Cabinet Office published “[Partnerships with arm’s length bodies: code of good practice](#)”<sup>1</sup>. This document has emerged after scrutiny of the relationships between Departments and ALBs by the National Audit Office and the Public Accounts Committee. These observed the varying nature of those relationships and whether relationships were optimal. The new Code sets out four principles which should underpin Department and ALB relationships: purpose; assurance; value; and engagement (PACE). The overall aim is to encourage a partnership approach and a move away from the term ‘sponsorship’. This represents a welcome development and we look forward to see how it affects our own relationship with the MoJ.
7. On 15 March, I am due to meet MoJ colleagues to discuss the LSB’s annual impact and support analysis. Historically, this exercise has sought to identify the degree of risk an ALB presents to the MoJ and it will be interesting to see how the process has evolved in light of the new approach to these relationships expected by the document referred to above. LSB has always been considered a low risk to the MoJ.
8. We have had to seek one spend approval since the last Board meeting and this was agreed quickly.
9. I now have regular meetings scheduled with Amelia Wright, our new lead MoJ official and have met Scott McPherson, Director of Judicial, Rights, and International Policy. These are useful supplements to our routine working level relationships with MoJ officials

## **Governance**

### Office for Legal Complaints (OLC)

10. On 2 February, the Chair and I had two meetings with OLC and Legal Ombudsman colleagues. First was our regular quarterly four-way with the Chair, CEO and Chief Legal Ombudsman. This was followed by the Quarter three performance review meeting, attended by the OLC Chair, Chief Legal Ombudsman and LeO’s Head of Operations. Key points to note from this meeting were: that the service principles which were launched in April 2016 are now successfully embedded into LeO working practices; the strong relationship between the new senior team at LeO and the Board; acknowledgement of the need to ‘ramp up’ work on LeO’s market influence; progress on IT; and developments around quality audits, including the involvement of an OLC Member in this process.

---

1

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/594345/Partnerships\\_between\\_departments\\_and\\_arm\\_s\\_length\\_bodies-code\\_of\\_good\\_practice.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/594345/Partnerships_between_departments_and_arm_s_length_bodies-code_of_good_practice.pdf)

11. Papers relating to performance, budget and the tripartite operating protocol are elsewhere on the agenda.

#### Legal Services Consumer Panel (LSCP)

12. Dr Jane Martin will be attending this meeting to present the LSCP's work programme for 2017/18.

13. We have now received the Panel's response to our 2016 advice commission into information remedies and will bring this to the Board so that its implications for our work can be considered.

#### **Staffing and organisation matters**

14. Thank you to Board Members who have volunteered to attend upcoming Colleague Forums.

15. We have had one resignation since the last Board meeting, Graeme MacLachlan will be leaving us in May 2017. We also said goodbye to Danielle Viall, Legal Advisor, who was with us on a fixed term contract to cover maternity leave. Successful recruitment took place for a new Consumer Panel Associate and the new appointee will join us at the end of March 2017.

16. We will shortly be launching an equality and diversity survey of our own staff and non-executives and I would encourage you all, please, to respond.

#### **Regulation**

##### Regulatory performance assessments

17. We have reviewed our approach to regulatory performance assessments by consulting with LSB colleagues, the front line regulators and by undertaking research on other regulatory oversight schemes. We have identified a number of areas for improvement with our current standards and process. We are in the process of developing a revised model and we are currently testing this with the front line regulators, the LSCP and KPMG (who are looking at this as part of our internal audit contract). In February we updated our Board sponsors on the progress we have made with this project. We expect to bring papers on the revised regulatory performance assessment model to the Board in May 2017.

##### Research

18. The main developments since the last meeting are:

- We have received the first drafts of reports for the vulnerable consumers research, which focus on the experiences of people with mental health problems, and dementia (and their carers). Our intention is to publish the research to coincide with Mental Health Week over 8-14 May and we are developing plans to maximise the communications impact of this work. The Board will have an opportunity to discuss the reports at its April meeting.

- OMB Research has been appointed to re-run the prices research, including new questions on price transparency, and this is currently in the field.
- YouGov has been appointed to re-run our periodic survey on the legal needs of small businesses and fieldwork is underway. The fieldwork will be spread over financial years and first results should be available in early summer.
- Our ABS survey has closed and received a very healthy response rate (about one-quarter of all ABSs responded and all licensing authorities were covered). Responses are currently being analysed and will be presented as part of a wider paper on investment in the sector which the Board is due to discuss at its April meeting. Unfortunately we were unable to commission the small scale planned survey of the investment community as no bids were received.

### Statutory decisions

19. Since my last report, we have issued a decision notice to the Master of the Faculties approving its application for changes to its regulatory arrangements in respect of its Notaries Practice Rules 2014 and its Notaries Qualification Rules 2013.

20. We have also issued the following three exemption directions:

- The Institute of Chartered Accountants in England and Wales (ICAEW) Probate Regulations and Probate Compensation Scheme Regulations
- The Bar Standards Board (BSB) regulatory arrangements, Part 2, Section C, Conduct Rules of the Handbook
- ICAEW Minimum Approved Wording within The ICAEW Professional Indemnity regulations.

21. The BSB withdrew its rule change application in relation to its Disciplinary Tribunal Regulations on 19 January. It said it had inadvertently presented the application as a request for an entirely new section of the Handbook when in fact its intention was to seek approval only of the substantive changes to the Disciplinary Tribunal Regulations (along with a number of less significant changes designed to modernise the drafting of the rules and make them easier to understand). It said it intended to submit a new application in March 2017.

22. The Bar Council Practising Certificate Fee (PCF) application was approved on 27 January. In approving the 12% increase we recorded in our decision letter that we gave close consideration to the financial demands on the Bar Council in respect of its pension deficit. The Bar Council is responsible for making the payments to address the deficit in the defined benefit pension scheme and has in recent years done so without having to rely on PCF income. We approved the application on the understanding that once the pension deficit has been discharged, then the increase will be removed from the PCF calculation.

23. We have continued to assess the ICAEW designation application to become an approved regulator and licensing authority for additional reserved legal activities. The Board will recall from the January report that ICAEW submitted some changes to its application, the main feature of which was that it decided that it would not at this time seek to develop training and qualification arrangements for conduct of litigation and rights of audience. Instead, entities wishing to become authorised for these activities by the ICAEW will need to employ an individual who has been suitably qualified and authorised by another legal services approved regulator (for example, the BSB, SRA or CILEX Regulation).
24. The changes need to be considered carefully and this has had an impact on the timetable. We are now expecting to bring a recommendation to the Board in April.

#### LSB's vision for legislative reform – ICAEW submission

25. In January, we received a letter from the ICAEW commenting on our vision for legislative reform (see **Annex A**). In consultation with the Chairman, we sent a fairly neutral response back to the ICAEW (see **Annex B**), welcoming its contribution to the debate, addressing the point that we've been too 'modest' in our aspirations and suggesting that the points ICAEW raises could be discussed at the scheduled senior-level LSB/ICAEW meetings. We have created an internal briefing document that addresses the substantive points the ICAEW raises, and that can be used when the Chairman and I meet ICAEW's senior team. Although ICAEW sent a copy of its submission to Lord Keen, we considered there was no need for us to write to the Minister ( [REDACTED] ).

#### Responding to emerging market risks

26. We committed in our 2016/17 Business Plan to review how regulators are responding to emerging market risks. We have scaled back this activity in light of developments since the Business Plan was finalised. From our regulatory standards work it has been clear that the largest regulators in particular are becoming increasingly sophisticated in their approach to identifying risk. Both the SRA and the BSB publish evidence based, forward-looking Risk Outlooks. Our discussions with the regulators have also established that they have set up, through the Regulators' Forum, a group to work together specifically on risk. We understand that they have discussed at a high level each of their approaches to risk and the areas of joint work that might be of interest. In these discussions, all of the regulators expressed an interest in completing joint horizon scanning or scenario planning type exercises.
27. We have also completed in-depth analysis of relevant LSB research to identify changes in the market that might highlight emerging market risks. This review includes our survey of individuals' handling of legal issues in England and Wales completed last year and our research report on innovation in legal services. The findings from this analysis are being shared with the regulators and we will continue to monitor their work on emerging market risks and encourage the

regulators who are better resourced in this area, to share their knowledge with the other less well-resourced regulators. Any evidence that is identified will potentially inform our next three year strategy.

Quality Assurance Scheme for Advocates

28. The implementation of QASA remains on hold while there is uncertainty about the introduction of a potential Ministry of Justice (MoJ) Defence Panel scheme and the impact that it might have on QASA. In October 2015 the MoJ published a consultation on advocacy quality which invited views on the introduction of a Defence Panel scheme for publicly funded criminal defence advocacy in the Crown Court and above.<sup>2</sup> It is unclear how QASA and the Defence Panel scheme, if it is introduced, would co-exist. [REDACTED]

29. [REDACTED]

30. [REDACTED]

---

<sup>2</sup> See the Ministry of Justice consultation on Preserving and Enhancing the Quality of Criminal Advocacy 1 October to 27 November 2015

[https://consult.justice.gov.uk/digital-communications/enhancing-the-quality-of-criminal-advocacy/supporting\\_documents/consultationpaper.pdf](https://consult.justice.gov.uk/digital-communications/enhancing-the-quality-of-criminal-advocacy/supporting_documents/consultationpaper.pdf)

### UK Regulators Network (UKRN)

31. As Board members will know, the LSB is an observer member of UKRN. When UKRN was set up in 2014, the government committed to reviewing its impact by the end of 2016. Given other developments last year, there was some uncertainty about whether such a review would proceed. However, BEIS launched the promised review in December 2016.
32. We received a questionnaire about our views as a member of UKRN, its value to us and the extent of our engagement with it. We responded to the questionnaire in January. BEIS also held round tables for consumer groups and regulated businesses in February. BEIS has described the output of its review as likely to be a 'short health check' of the network and is hoping to complete its review in March. UKRN will undertake its own review following the BEIS review, to provide clarity on UKRN's role and remit after two years' operational experience.
33. The UKRN forward work programme for 2017/18 contains several projects of interest to the LSB. These include projects on:
- the role of independent regulation;
  - behavioural insights; and
  - switching demographics. While consumers do not often switch between legal services providers once they've engaged them, this project should build our understanding of some of the dynamics behind unmet demand/inertia in legal services.

### Formal Investigation into governance arrangements between the Law Society and the Solicitors Regulation Authority

34. In 2016 the Solicitors Regulation Authority raised concerns, through our regular meetings, about the operation of the internal governance arrangements between it (SRA) and the Law Society. In response in August 2016 we invited both SRA and TLS to make a joint submission setting out any areas where they felt that there was non-compliance with the LSB's Internal Governance Rules (IGRs). Rule 9(b) places an obligation on the applicable approved regulator, acting jointly with its regulatory board, to notify the LSB if it considers itself to be not in compliance with those rules.
35. There was no joint response, with separate submissions from both parties. These submissions highlighted that each organisation had a difference of opinion as to the state of the relationship between them. We made a further information request and reviewed the additional information with that already submitted. In the light of the information received I took the decision to launch a formal investigation into whether the current arrangements between TLS and SRA are in line with Part 4 of LSB IGRs. This requires that the internal governance arrangements must not impair the independence or effectiveness of the performance of regulatory functions. We notified the TLS and SRA of this decision by letter on 15 February 2017, and published the letter on the LSB website on 17 February 2017. Since this time, colleagues have been scoping the investigation and beginning initial inquiries and analysis.

## Communications and external engagement

36. Two articles were prepared for Modern Law Magazine. The first in late January (for the February/March edition) focused on the CMA report and focused more on the report (as this was the only item in that edition which had its attention on the CMA report) itself than the LSB's position on it. The second article has been submitted for the next edition and focuses on the LSB's revised guidelines to regulators on diversity.
37. On 25 January, the LSB's Strategy Director spoke at a Westminster Legal Policy Forum event: legal innovation and the business of law: technology, skills and new business model. A few days later on 31 January the Chief Executive attended a Brexit round table discussion hosted by the European Policy Forum's Regulatory Practice Group.
38. The latest edition of the LSB Newsletter was sent to MPs, Peers, MEPs and members of the Wales Assembly in late February.
39. I have met with stakeholders from a number of new organisations including representatives of the Prisoners Advice Service, the Legal Practice Management Association and the Equality and Human Rights Commission. I also met with Christina Blacklaws (Deputy Vice President of the Law Society). A list of all engagements since the last Board meeting to date of drafting is below:

|   |        |                  |
|---|--------|------------------|
| Intro meeting with Amelia Wright, MoJ   | NB     | 25 January 2017  |
| LSB/MOJ Q2 Performance meeting  | NB     | 25 January 2017  |
| Regulator CEOs meeting  | NB     | 27 January 2017  |
| Triannual 4-way LSB/CILEX Regulation meeting  | NB, MP | 30 January 2017  |
| Intro meeting with Andrew Langdon, new Chair of the Law Society (Stephen Crowne, CEO, also attending) | NB, MP | 30 January 2017  |
| Biannual LSB/CLC CEOs meeting   | NB     | 30 January 2017  |
| Brexit Round Table Discussion for Regulators  | NB     | 31 January 2017  |
| 4-way OLC meeting   | NB, MP | 02 February 2017 |
| OLC Q3 Performance meeting  | NB, MP | 02 February 2017 |
| Intro meeting with Michael Blacker, outgoing Chair of BOB of Law Society and SRA                      | NB     | 03 February 2017 |
| Meeting with George Bull, RSM   | NB     | 07 February 2017 |
| Intro meeting with Equality and Human Rights Commission   | NB     | 08 February 2017 |
| Meeting with NAO re: VFM study on the management of clinical negligence costs                         | NB     | 13 February 2017 |
| BSB CEOs meeting  | NB     | 14 February 2017 |
| ICAEW 4-way meeting   | NB, MP | 28 February 2017 |
| SRA 4-way meeting   | NB, MP | 28 February 2017 |
| City of London Law Society 4-way meeting  | NB, MP | 28 February 2017 |
| OLC CEOs meeting  | NB     | 01 March 2017    |

|  |        |               |
|--|--------|---------------|
| BSB meeting re Future Bar Training (FBT)                 | NB     | 03 March 2017 |
| Meeting with ICAEW Probate Committee                     | NB     | 06 March 2017 |
| Biannual LSB/CLC 4-way meeting                           | NB, MP | 06 March 2017 |
| 4-way CITMA meeting                                      | NB     | 06 March 2017 |
| 4-way Law Society meeting                                | NB     | 07 March 2017 |
| Intro meeting with Legal Practice Management Association | NB     | 07 March 2017 |
| Intro meeting with the Legal Aid agency                  | NB     | 07 March 2017 |
| BSB CEOs meeting   | NB     | 08 March 2017 |
| Intro meeting with the Prisoners Advice Service          | NB     | 14 March 2017 |

**END**