

<b>To:</b>	Board	
<b>Date of Meeting:</b>	27 January 2015	<b>Item:</b> Paper (15) 01

<b>Title:</b>	Council for Licensed Conveyancers (CLC) – order under Section 69 of the Legal Services Act to modify the CLC’s functions
<b>Workstream(s):</b>	Workstream: Statutory decision making (see Business Plan 2014/15)
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<b>Status:</b>	Official

<b>Summary:</b>
<ol style="list-style-type: none"> <li>1. This paper provides an update on the actions that have been taken since the November 2014 Board meeting on the proposal to recommend a section 69 order to modify the functions of the Council for Licensed Conveyancers.</li> <li>2. External legal opinion has been sought on whether the Board can proceed with a recommendation on a section 69 order, notwithstanding the known difference of opinion on the vires of such an order to deliver the change.</li> <li>3. The Deregulation Bill has been identified as a possible vehicle for giving effect to the changes to the CLC’s powers, though it is not yet certain whether this will be successful.</li> <li>4. Paragraphs 17 to 21 set out our conclusions and the proposed next steps.</li> </ol>

<b>Recommendation(s):</b>
<p>The Board is invited:</p> <ol style="list-style-type: none"> <li>(1) to note the progress since the last meeting</li> <li>(2) to note the summary of the external legal advice (Annex B)</li> <li>(3) to agree to the publication of a holding statement (Annex C), delegating the final sign off of the statement to the Chair and the Strategy Director</li> </ol>

<b>Risks and mitigations</b>	
<b>Financial:</b> None	
<b>Legal:</b>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>



## LEGAL SERVICES BOARD

<b>To:</b>	Board	
<b>Date of Meeting:</b>	27 January 2015	<b>Item:</b> Paper (15) 01

### **The Council for Licensed Conveyancers (CLC) – order under section 69 of the Legal Services Act 2007 to modify the CLC’S functions**

#### **Introduction**

1. Over the past two years we have been working with the Council for Licensed Conveyancers (CLC) and Ministry of Justice (MOJ) on an order under section 69 of the Legal Services Act 2007 (the Act) to modify the functions of the CLC. At the time of the last Board meeting, the consultation on the proposed order had been completed but we were not able to bring forward a recommendation on whether to proceed with the recommendation to the Lord Chancellor to make the order; questions had been raised by MOJ as to whether the proposed modifications could in fact be secured through secondary legislation.
2. This paper provides an update to the Board on the actions taken since the November 2014 meeting and includes recommendations on next steps.

#### **Actions since the last meeting**

##### *Letter to Minister*

3. Following the last meeting, the Chairman wrote to the Justice Minister summarising the Board’s discussion. The main issues covered in the letter were
  - That the Board welcomed the very clear support (as expressed at the meeting with the Minister on 4 November 2014 and in the subsequent letter from the Minister to the Chairman on 17 November 2014) for the policy objectives behind the proposals which are fully in line with Government’s policy on deregulation
  - A restatement of our view that a section 69 order is an appropriate mechanism for giving effect to the required changes while recognising that the legal advice that MOJ has received takes a contrary view
  - Noting that at the 4 November meeting the MOJ’s recommended course of action was to make the amendments through primary rather than secondary legislation and that MOJ would be prepared to look for an appropriate legislative vehicle to achieve this
  - Confirming our agreement that a change through primary legislation would provide certainty for all; this would remove the risk of a successful challenge

- Encouraging the MOJ to consult with colleagues on whether the Deregulation Bill would be an appropriate vehicle (noting that the lack of response to the consultation suggests that the changes are not controversial)
  - Emphasising the Board’s view that prospect of success (or otherwise) of the change being effected through the Deregulation Bill, would be a material factor that would be taken into account when the Board makes its decision on whether or not to proceed with the recommendation on the draft order.
4. A copy of the Chairman’s letter is in **Annex A** to this paper.
  5. On 19 December, the Minister acknowledged the Chairman’s letter noting that he was aware that there was a proposal to table amendments to the Deregulation Bill and that MOJ officials were continuing to explore the best way to achieve the proposed changes.

*External legal advice on the proposed handling of the recommendation*

6. The Board asked that an external legal opinion be sought on our assessment of the options available to us in terms of bringing to a conclusion the consultation process started in July 2014.
7. An opinion has been obtained from Martin Chamberlain QC and a summary is contained in **Annex B**.
8. Having considered the advice from Counsel, our view remains that an order under Section 69 of the Act is an appropriate mechanism for making the proposed modifications to the CLC’s functions and that we can, if necessary, proceed with a recommendation.
9. [REDACTED]

*Deregulation Bill*

10. As noted above, the Deregulation Bill (which is currently at Lords Committee stage) has been identified as a piece of primary legislation through which the changes to the CLC’s statutory powers could be delivered.
11. Baroness Hayter (former Chairman of the Legal Services Consumer Panel) is supportive of the changes that the Act was designed to introduce and has agreed

to table amendments to that Bill. The CLC have made a submission to her setting out the required suggested amendments (which largely mirror those in the draft section 69 order, save for some additional, minor, technical changes).

12. CLC wrote to MOJ to keep them updated of the change in approach, reminding them that MOJ have previously said that there is no principle objection to the change. The Minister acknowledged this letter on 19 December, [REDACTED]

[REDACTED]

13. [REDACTED]  
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[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

14. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

15. The amendments have now been tabled and are expected to be considered by the Lords Committee on this Bill on 3 February 2015.

16. We note the continuing assurances from MOJ officials that there is support in principle for the changes but we recognise that it is not a matter over which they have any control. CLC's direct approach has been welcomed; this will have a very positive impact on the success or otherwise of the amendments being accepted.

*Conclusion and proposed next steps*

17. Our view remains that we do need to formally conclude the consultation process on the section 69 order and issue a decision document. There are risks associated with whatever decision is made, even a decision to do nothing at this point (see paragraph 9).
18. Based on the legal advice, our view remains that, recognising the known difference of opinion on vires between us and MOJ, the Board can proceed with the recommendation that an order is made under section 69 of the Act to modify the functions of the CLC.
19. However, all parties involved agree that amending the powers through primary legislation is the preferred route. The Deregulation Bill has the potential to deliver this and our view is that we should wait to see if the current activity to include the

amendments in that Bill is successful. It is of course possible that only the amendments relating to the alleged vires defect are supported and this could have the consequence of CLC still needing a section 69 order in due course to give effect to other changes.

20. Therefore, our conclusion at this stage is that the final decision on the making of the order should be deferred to allow time for the Deregulation Bill option to be pursued. We should reconsider the matter once there is more certainty and clarity as to the likely success of that Bill delivering the changes.
21. To reduce the reputational risk associated with not concluding the consultation process or remaining silent, we propose that a holding statement is published on our website explaining that another legislative route is being explored. A draft of that proposed statement is in **Annex C**.

### **Recommendation**

The Board is invited:

- (1) to note the progress since the last meeting
- (2) to note the summary of the external legal advice (Annex B)
- (3) to agree to the publication of a “holding statement” (Annex C), delegating the final sign off to the Chair and the Strategy Director

16.01.2015