

<b>To:</b>	Legal Services Board	
<b>Date of Meeting:</b>	27 May 2015	<b>Item:</b> Paper (15) 25

<b>Title:</b>	Certifying OLC as an ADR entity	
<b>Work stream(s)</b>	Performance, evaluation and oversight	
<b>Author / Introduced by:</b>	Nick Glockling, Legal Director Julie Myers, Corporate Director Jenny Hart, Business Planning Associate	
<b>Status:</b>	Official	

**Summary:**

BIS has recently introduced Regulations implementing most of the provisions of an EU Directive on alternative dispute resolution (ADR) for consumer disputes. These Regulations designate the “Competent Authorities” that will be responsible for certifying certain entities which will provide ADR in compliance with standards set out in the Regulations. The Regulations also place obligations on traders to provide certain information to consumers about accessing ADR.

The LSB has been designated as Competent Authority in relation to the Office for Legal Complaints (OLC) for the purposes of these Regulations. This means that the LSB must approve an application from the OLC to become an ADR entity, providing the requirements of the Regulations are met.

[REDACTED]

[REDACTED]

[REDACTED] This relates to whether the Regulations allow ADR providers to impose time limits for the consideration of complaints. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

We are in close contact with OLC on this matter but have not yet received its application. We do not have a scheduled Board meeting in June. Given the ADR Regulations come into force from 9 July, we **recommend** the Board delegates authority to a sub-group to act on this issue in June, comprising the Chair, CEO and at least two other Board members.

**Recommendation(s):**

The Board is invited:

- (1) [REDACTED]
- (2) delegate authority to a Board sub-group comprising the Chair, CEO and at least two other members to decide whether to consent to the proposed amendments to the OLC scheme rules to take account of the requirements of the ADR Regulations and, if so to receive, consider and decide upon the OLC's application to become an ADR entity during June 2015.

**Risks and mitigations**

**Financial:** There are no direct financial implications.

**Legal:** Discussed in this paper

**Reputational:** Failure to designate the OLC as an ADR entity under the Regulations could have serious negative reputational impact for both LSB and OLC as it would mean duplication of sign-posting for legal businesses and confusion for consumers.

**Resource:** The work is included in the Business Plan 2015/16

Consultation	Yes	No	Who / why?
Board Members:			TBC
Consumer Panel:		X	
Others:	OLC, BIS		

**Freedom of Information Act 2000 (Fol)**

Para ref	Fol exemption and summary	Expires
1 <sup>st</sup> sentence in para 3 of summary, recommendation 1, 4 <sup>th</sup> para in summary, 1 <sup>st</sup> bullet point of para 2, 10-12	Section 36(2)(b)(ii): information likely to inhibit the exchange of views for purposes of deliberation	
Last sentence in para 3 of summary, 13-17, Annex A	Section 42: information subject to legal professional privilege	

## LEGAL SERVICES BOARD

<b>To:</b>	Legal Services Board	
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### Certifying OLC as an ADR entity

#### Purpose

1. Board members should be aware of the current risks posed by our role in certifying OLC as an ADR entity.

#### Recommendation

2. The Board is invited:
  - [REDACTED]
  - delegate authority to a Board sub-group comprising the Chair, CEO and at least two other members to decide whether to consent to the proposed amendments to the OLC scheme rules and, if so, to decide upon the OLC's application to become an ADR entity during June 2015.

#### Background

3. BIS is responsible for implementing the alternative dispute resolution for consumer disputes ("the ADR Directive")<sup>1</sup>. It has used its powers under s2(2) of the European Communities Act 1972 to make the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 ("the Regulations"), due to come fully into force on 9 July 2015.
4. The Regulations appoint the LSB as a competent authority for the OLC acting as an ADR entity. The OLC will not be able to act as an ADR entity unless the LSB, acting as a competent authority, certifies that the OLC meets a number of statutory requirements. This will involve judgment as to whether the OLC's scheme rules comply with the Regulations.
5. In August 2014, the LSB cautioned MoJ – who acted as the contact with BIS – against assuming that OLC scheme rules made under the Legal Services Act 2007 would necessarily comply with the ADR

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<sup>1</sup> 2013/11/EU

Directive and any domestic regulations made under it. As a result, MoJ, OLC and BIS have been parties to a discussion as to the changes that will be necessary to OLC scheme rules in order to comply with the Regulations.

**Key issue – interpretation around time limits**

6. Article 5.4 of the ADR Directive states that Member States “may, at their discretion” enact domestic legislation that permits an ADR entity to make procedural rules allowing it to refuse to deal with disputes on certain specified grounds, listed in sub-articles (a) to (f). One of these, 5.4(e), provides for a time limit by reference to the period between submission of the complaint to the service provider and subsequent submission to the ADR entity.
7. There has been discussion between BIS and a number of would-be ADR entities as to whether the reference to a time limit in Article 5.4(e) should be read as illustrative or as comprehensive. In other words, can an ADR entity’s scheme rules include other time limits, or only that set out in Article 5.4(e) the ADR Directive?
8. Many existing ombudsmen schemes, including LeO’s, have additional ‘long-stop’ time limits, such as an exclusion of complaints where the behaviour giving rise to the complaint occurred more than 6 years before submission. Rule 4.5 of the OLC’s scheme rules provide that  
  - the complainant must refer the complaint to the Legal Ombudsman no later than:
    - six years from the act/omission; or
    - three years from when the complainant should reasonably have known there was cause for complaint.
9. Without these long-stop provisions, LeO could find itself being asked to consider a dispute arising from services delivered 20 years ago, provided the consumer first raised a complaint with the legal services provider less than a year ago.

10. [REDACTED]

[REDACTED]

[Redacted text]

11. [Redacted text]

12. [Redacted text]

**Legal opinion**

13. [Redacted text]

14. [Redacted text]

**Next steps**

15. [Redacted]

16. [Redacted]

17. [Redacted]

18. We are in close contact with OLC on this matter but have not yet received its application. We do not have a scheduled Board meeting in June. Given the ADR Regulations come into force from 9 July, we would welcome the Board delegating authority to a sub-group to act on this issue in June, comprising the Chair, CEO and at least two other Board members.

21 May 2015

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[Redacted]