

To:	Legal Services Board	
Date of Meeting:	8 September 2015	Item: Paper (15) 44

Title:	Office for Legal Complaints (OLC) performance	
Workstream(s):	Performance, evaluation and oversight	
Author / Introduced by:	Julie Myers, Corporate Director Julie.myers@legalservicesboard.org.uk / 020 7271 0059	
Status:	Official	

Summary:

Members of the OLC Board and senior Legal Ombudsman colleagues will be attending the Board meeting on 8 September to discuss OLC performance and other matters. OLC colleagues are expected to brief the Board on:

- the most appropriate performance framework for the Legal Ombudsman (LeO) scheme and the steps being taken to deliver it;
- their analysis of performance against current targets and remedial action proposed where performance falls short;
- current change management objectives, challenges faced and steps in place to overcome them.

This paper:

- rehearses the S120 and S121 Legal Services Act 2007 requirements placed on the OLC by the Board in June 2015;
- provides the OLC's response to date to aspects of those requirements;
- outlines areas the Board may wish to explore with OLC colleagues on 8 September.

With the agreement of the Chairman, this session is in lieu of discussion of a further paper describing the relationship with the OLC and the nature of any practical options that could be available to the Board in the event that OLC performance risk crystallizes.

The Board's views on next steps will be sought after the conclusion of the joint session with OLC and time is allowed for this on the agenda.

Recommendation(s):

The Board is invited:

- (1) to note the paper
- (2) to consider the areas for discussion and challenge.

Risks and mitigations	
Financial:	N/A
Legal:	N/A
Reputational:	N/A / Brief summary , to be developed in the main report.
Resource:	Managing the LSB's governance relationship with OLC is absorbing above average levels of resource at present and is likely to continue to do so for the foreseeable future.

Consultation	Yes	No	Who / why?
Board Members:	X		Mike Pitt
Consumer Panel:		X	
Others:	Legal Ombudsman colleagues were consulted on the format of the Board to Board session.		

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
19 – last sentence	S36(2)(c) – information likely to prejudice the effective conduct of public affairs	Review in 12 months

LEGAL SERVICES BOARD

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Office for Legal Complaints (OLC) performance Executive Summary

Background

1. The Board used its statutory powers to issue requirements for the OLC under Sections 120 and 121 of the Legal Services Act 2007 (the Act) on 3 June 2015. This followed discussion of matters relating to OLC performance at Board meetings in March and May. The requirements are described at paragraph 4 below.
2. In July 2015, the Board debated the nature of its relationship with OLC, and started to explore its aspirations and expectations of both the relationship and the OLC's performance in administering the Legal Ombudsman scheme. This session concluded with a request for a further discussion in September on the nature of the relationship and what additional options might be open to the Board should OLC performance risk crystallize.
3. In light of the debate at the July meeting, the LSB and OLC Chairs agreed that it would be beneficial for there to be direct discussion at Board level between the two organisations. Given the shared commitment to a well-functioning Legal Ombudsman scheme and a common belief that its success is central to delivering one of the main aims of the Act, mutual understanding of respective strategies and challenges is important.

Requirements imposed under Section 120 and targets under Section 121 of the Legal Services Act 2007

4. The full requirements issued by the Board can be found at **Annex A**. In summary they are:
 - a. **Section 121 performance targets** requiring that from 1 June 2015 to 31 March 2016, OLC must ensure that it meets the following targets in administering the Legal Ombudsman scheme
 - i. Timeliness – the number of cases resolved within 90 days must not fall below 60% in any month
 - ii. Unit costs – unit cost per case must not exceed £1,750 in any rolling quarter
 - iii. Quality – average satisfaction of complainants and lawyers (irrespective of outcome) must not fall below 40% in any quarter)
 - b. **Section 120 reporting requirement** requiring OLC to provide LSB with a monthly report on timeliness, unit cost and quality and, where any target in 4a above is not met, a written explanation of the reasons and details of timetabled remedial action to bring performance back into compliance. Additionally, by 1 September 2015, to report on the

governance arrangements put in place by the OLC to ensure its administration of LeO allows for effective monitoring of performance against current OLC KPIs and LSB targets.

- c. **Section 120 reporting requirement** requiring OLC to provide interim (by September) and final (by 1 November) reports on:
 - i. proposals for a comprehensive framework of KPIs and performance measures to apply to LeO from April 2016
 - ii. rationale for the proposals illustrating why OLC believes these are most appropriate having due regard to the regulatory objectives and best practice in Ombudsman schemes
 - iii. proposal for the performance monitoring governance arrangements that will apply from 1 April 2016.

OLC compliance with Section 120 and 121 requirements

5. OLC confirmed its intent to comply with the requirements in a letter on 12 June 2015, noting:
 - a. that the Legal Ombudsman is engaged in a programme of transformational change
 - b. that the organisation has achieved significant savings in 2015 by moving to a new office, commencing the implementation of a new and more capable case management system and taking on the claims management jurisdiction
 - c. the arrival of a largely new Board, exploration of new ways of working and the impending arrival of permanent senior staff in some roles.
 - d. the OLC's commitment to improving current performance levels and to revisiting the measurement framework to provide more transparent and useful indicators.

OLC failed to meet timeliness target in June and July

6. In line with the LSB's requirements, OLC has so far provided two monthly performance reports – on 7 July (reporting for June) and 7 August (reporting for July). These can be found at **Annex B**. These confirmed that the OLC missed the LSB's target for timeliness in each month: in June, 57.1% of cases were resolved within 90 days; and in July, 52% of cases were resolved within 90 days. The target was 60% of cases to be resolved within 90 days. OLC subsequently reported that, for June, the 60% target was met between days 91 and 95 ie 60% of cases were resolved within 91 – 94 days (rather than within 90 days). The targets set by LSB for unit cost and quality were met in each month.
7. The report for August is due the day before the September Board meeting and so Board Members will be able to hear the latest position directly from OLC attendees.

Why was the target missed?

8. In line with LSB requirements, OLC provided a written explanation of why the timeliness targets were missed each month and details of remedial action proposed. These form part of the reports found at **Annex B**. In each month, OLC

reported that the failure to meet the timeliness target is a combination of three main factors:

- a. *Technical difficulties with the new case management systems (CMS)* – the 7 July report provides the background to the problems experienced with the new CMS noting that they were first reported to the OLC in March with more detailed reports following in subsequent months. OLC's ARAC are also reported to have scrutinised the problems and, by the August report, the most significant problems are reported to have been resolved. Minor intermittent issues remain and the interim CEO is overseeing an action plan to address these.
 - b. *Short-term impacts of changes to Ombudsman working practices* - in May, OLC changed the way the 'main grade' Ombudsman team worked with the rest of the organisation, embedding them now within investigation teams. In both the July and August reports, OLC report 'immediate quality benefits from this change', although there have been some consequences for timeliness as immediate Ombudsman capacity has reduced. This is expected to be a short term impact, with the longer term benefit on timeliness of the change in working practice expected to become evident from November 2015.
 - c. *Short-term impacts of changes to Ombudsman workload management* - OLC report that because some 40% of cases require an Ombudsman decision, changes to the way Ombudsman workload is managed can have a significant impact on timeliness. OLC report that prior to November 2014, 'achievement of the 90 day target was factored into workload management. Since that time, Ombudsman now work on a predominantly 'first in first out' basis which they judge to be fairer and more customer focused albeit with a consequent impact on achievement of the 90 day target.
9. OLC explain that, taken together, these changes have contributed to a failure to meet the 90 day target and are likely to do so for several months before the predicted beneficial impacts of changes made become evident.

What are the plans for remedial action?

10. The reports at Annex B contain the OLC's description of the 'timetabled remedial action' proposed. In summary, and focusing on the most recent report (received 8 August), they state:
- a. *Technical difficulties with the new case management systems (CMS)* – a range of activities are reported to have already been completed to address the technical difficulties with the CMS. Looking ahead, OLC report that outstanding 'lower priority' elements of the CMS will be implemented. Only one is identified, however, the go-live of an Online Portal to provide a degree of 'self-service' for customers. This is predicted to be publicly available in September or October.
 - b. *Short-term impacts of changes to Ombudsman working practices* – OLC report that a firm commitment to the new working practices and their belief that a short-term negative impact needs to be accepted in order to achieve the wider benefits. As such, no remedial action is proposed although the arrangements remain under scrutiny. OLC

report that they are alert to whether there are broader resourcing implications from the arrangements but state that there needs to be a better understanding of the longer term trends on caseload and contacts before any permanent changes to resourcing should be considered. Interviews for a pool of Ombudsman to be made available to call upon to meet peaks in demand are however taking place over August.

- c. *Short-term impacts of changes to Ombudsman workload management* – OLC report that they will continue to monitor the new arrangements but do not propose to revert to the previous workload management method (because it would not address longer term efficiency and customer service challenges).

Performance management governance and development of an appropriate framework

11. At **Annex C**, Board members will find a letter comprising OLC's report on current governance arrangements for effective monitoring of performance against current OLC KPIs and LSB targets and OLC's interim report on progress towards a future framework for performance to be in place from 1 April 2016. We expect this to be a core component of the presentation provided by the OLC at the 8 September Board meeting and Board Members will want to read this carefully to be prepared for the discussion.
12. What is not clear from the interim report, is the extent to which the regulatory objectives have been reflected in the developing framework (although they are referenced in the report), nor the extent to which learnings from other Ombudsman schemes are being considered. Board members may recall a report prepared by the Legal Services Consumer Panel, which 'benchmarked' so far as possible bearing in mind data limitations, the Legal Ombudsman scheme against other complaints resolution schemes¹. This is not referenced in the interim report by OLC and it would be interesting to hear from the OLC whether they see it as relevant.

Briefing for 8 September meeting

Attendees

13. The OLC colleagues in attendance will be:
 - a. Steve Green, OLC Chair (appointed 1 April 2014)
 - b. Michael Kaltz, OLC Member and Chair of OLC Audit and Risk Assurance Committee (appointed 1 April 2015)
 - c. Bernard Herdan, OLC Member and Chair of OLC Remuneration and Nomination Committee (appointed 1 April 2015)
 - d. Ian Brack, Interim Chief Executive
 - e. Kathryn King, Interim Chief OmbudsmanBrief biographies for the above are at **Annex D**.

1

http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/2013%2012%2005%20LeOBenchmarkingReportFinal.pdf

Items expected to be covered by OLC

14. OLC colleagues are expected to brief the Board on the following matters:
 - a. the most appropriate performance framework for the Legal Ombudsman and the steps being taken to deliver it
 - b. their analysis of performance against current targets and remedial action proposed where performance falls short
 - c. current change management objectives, challenges faced and steps in place to overcome them.
15. Paragraphs 1 – 13 above provide background material for items a and b of the discussion. In addition, Board Members will wish to note the following in relation to item c.:

Staffing changes – on 13 August, OLC announced that Nick Hawkins has been appointed as Chief Executive, taking over from Ian Brack in October. Nick Hawkins is a barrister and joins OLC from the Independent Police Complaints Commission (IPCC) where he has been Chief Operating Officer since September 2014, following a 15 year career in the Crown Prosecution Service (CPS) including as a Chief Crown Prosecutor. He had previously served in the Royal Navy for 22 years. An appointment has not yet been made to the post of Chief Ombudsman, and the recruitment process continues. Other roles in the process of being filled permanently are Head of Policy and Communications and Head of IT.
16. **ADR application** – OLC withdrew its application for certification as an ADR entity on 28 August 2015. An application was made on 3 July, which the LSB executive spent much of the summer reviewing, but was withdrawn when it transpired that the OLC decided it needed to consult on a broader basis than that contained within the original application. Simply, rather than consulting on ‘how’ scheme rules should change to enable compliance with the ADR Regulations the OLC believed it needed to remain ‘open’ on ‘whether’ scheme rules should change. Without a firm commitment to change, the OLC could not make a valid application for certification and so the original application was withdrawn.
17. This decision has potentially serious implications for regulated legal services providers who will still need to comply with the consumer information requirements of the ADR Regulations on 1 October. At the time of drafting there seem to be two possible outcomes: the first, that there is no ADR entity competent to deal with legal services complaints and so there is genuinely no body for providers to signpost to; the second, that a body certified by the Chartered Trading Standards Institute (CTSI) is deemed to be competent for legal services complaints, and thus should be signposted to by legal services providers. Choosing between these competing interpretations of the 2015 Regulations is not a function of the LSB. We wrote immediately we learned of the OLC’s decision to regulatory and representative arms of approved regulators to alert them to these possibilities and encouraged them strongly to liaise with the Department for Business, Innovation and Skills (BIS) and CTSI to gain clarity.
18. If an alternative body is deemed by BIS and CTSI to be competent for complaints about regulated legal services it is also likely that such a body (or

another) would be deemed competent for complaints about unregulated legal services. This may then go some way to addressing concerns about the availability of redress in the unregulated legal services sector: whilst submission to any such scheme would remain voluntary for providers, there would at least be a scheme willing and capable of providing ADR in those sectors.

19. **Relationship with Ministry of Justice and governance matters** – the Accounting Officer delegation for OLC remains reserved to the MoJ. At the time of drafting, we are unsure who that responsibility rests with now that there has been a change of Permanent Secretary. We understand that Grant Thornton has been appointed to undertake the review of controls and systems deemed essential by both MoJ and OLC and that this will commence shortly. [REDACTED]

20. We also understand that OLC are yet to resolve the matter of expenditure on staff benefits deemed irregular in the 2013/14 Annual Report and Accounts. This expenditure continued during 2014/15 and in the current year 2015/16 thus there is a strong possibility that the OLC's accounts will again be qualified in 2014/15 and potentially also in 2015/16. The Board will need to be presented with the Annual Report and Accounts in due course in line with the requirements of the Act.

Areas for discussion

21. The Board may wish to explore the following areas with OLC attendees:
- a. How is the OLC assuring itself that it has a clear plan and the requisite delivery capability to remedy its performance issues over the quickest timeframe possible?
 - b. Whether current performance issues are hindering the OLC's ability to meet its other strategic objectives and, specifically, disseminating what the OLC learn more widely?
 - c. What is the OLC's 'red line' for performance – are there levels of timeliness, cost and quality that would be deemed as 'failure' and how confident is the OLC that they will not be reached in the next few months?
 - d. How to assess quality, and in particular, the extent to which decisions reached are reasonable and fair will need to feature in the new performance framework – what are OLC's current thoughts on this hard to measure area?
 - e. Does OLC still have ambition to extend its jurisdiction and, if so, what impact does OLC think the likely entry of other ADR entities into the legal sector in its widest sense will have on those plans?
 - f. What steps does the OLC believe it needs to take to recover its Accounting Officer delegation from MoJ and what practical impact is the current situation having on OLC's performance?
 - g. How close is the OLC to resolving matters outstanding from the qualification of the 2013/14 Annual Report and Accounts and what are the Board's expectations on outcome and timing of the 2014/15 Annual Report and Accounts?

- h. Does the OLC believe that, with the benefit of hindsight, it was right to take on the claims management company jurisdiction at the time it did and what, if any, has been the impact on the legal jurisdiction?

Conclusion / 'next steps'

- 22. The Board's views on next steps will be sought after the conclusion of the joint session with OLC and time is allowed for this on the agenda.

2 September 2015

Annex A - Requirements imposed under Section 120 and targets under Section 121 of the Legal Services Act 2007

Annex B – Performance reports from OLC for June and July 2015 (received 7 July and 7 August respectively). These also contain explanations of why targets were missed and details of proposed remedial action.

Annex C - OLC's report on current governance arrangements for effective monitoring of performance against current OLC KPIs and LSB targets and OLC's interim report on progress towards a future framework for performance to be in place from 1 April 2016

Annex D – Biographies of OLC attendees