

<b>To:</b>	Legal Services Board	
<b>Date of Meeting:</b>	23 March 2016	<b>Item:</b> Paper (16) 13

<b>Title:</b>	Office for Legal Complaints (OLC) performance risk	
<b>Workstream(s):</b>	Performance, evaluation and oversight	
<b>Author / Introduced by:</b>	Julie Myers, Corporate Director	
<b>Status:</b>	Official	

### Summary:

In June 2015, the LSB exercised its statutory powers in relation to the performance by OLC of its functions and imposed reporting requirements under S120 of the Legal Services Act 2007 (the Act) and performance targets under S121.

Both of these requirements are due to cease on 31 March 2016.

The Board, at its November meeting, agreed to establish a sub-group (comprising Mike Pitt, Terry Babbs and Marina Gibbs) to consider the OLC's new performance framework in advance of this meeting. The sub-group has met twice and this paper contains their steer on a way forward.

The proposal is to remove the current S121 targets but to maintain a S120 reporting requirement. This would require OLC to report performance statistics to LSB on a monthly basis as at present, but to reduce the frequency of narrative reporting to quarterly where LSB would expect to see the OLC's response to the trends it has observed over the preceding quarter. The detail of the framework against which OLC would be required to report would not be particularised by LSB, beyond an expectation that reports would include, at a minimum, performance on timeliness, quality and cost. This would provide OLC with greater flexibility as they develop and embed their new Key Performance Indicator (KPI) framework. It will be made clear, however, that the LSB's expectation is that, where new KPIs are yet to be established and tested by OLC, existing measures should be retained for reporting.

It is suggested that this requirement commence on 1 April 2016 and it be reviewed in quarter 3, after two quarterly reports have been received.

[REDACTED]

### Recommendation(s):

The Board is invited to consider the steer from the LSB's OLC sub-group, to agree to use the LSB's powers in relation to OLC as set out in this paper and to delegate authority to the Chairman to write formally to OLC on this basis.

### Risks and mitigations

<b>Financial:</b>	None
<b>Legal:</b>	The use of formal LSB powers has to be proportionate.
<b>Reputational:</b>	LSB is exposed to degree of reputational risk should OLC/LeO performance falter. These proposals are part of a broader strategy of OLC engagement to help mitigate this risk.
<b>Resource:</b>	Maintaining statutory requirements carries a small increase in resource requirement but is manageable at present.

<b>Consultation</b>	<b>Yes</b>	<b>No</b>	<b>Who / why?</b>
<b>Board Members:</b>	x		Mike Pitt, Terry Babbs, Marina Gibbs as OLC sub-group
<b>Consumer Panel:</b>		x	
<b>Others:</b>	LeO CEO has been briefed		

<b>Freedom of Information Act 2000 (Fol)</b>		
<b>Para ref</b>	<b>Fol exemption and summary</b>	<b>Expires</b>
Summary box: final para; First bullet point of para 10; Sixth bullet point of para 10– second half of first sentence and whole of second sentence; Para 20; First sentence of para 16	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>Date of Meeting:</b>	23 March 2016	<b>Item:</b> Paper (16) 13

### Office for Legal Complaints (OLC) performance risk Executive Summary

#### Purpose

1. The Board exercised its statutory powers in relation to the performance by OLC of its functions in June 2015 and imposed reporting requirements under S120 and performance targets under S121. Both of these requirements are due to cease on 31 March 2016. This paper seeks a decision from the Board on next steps.

#### Recommendation

2. The Board is invited to consider the steer from the LSB's OLC sub-group, to agree to use the LSB's powers in relation to OLC as set out in this paper and to delegate authority to the Chairman to write formally to OLC on this basis.

#### Background / context

3. In March 2015, in response to a discussion on the risk faced by LSB as a consequence of OLC performance, the Board asked the Executive to consider how it might use its statutory powers under the Act in relation to the OLC and its role to administer the Legal Ombudsman (LeO) scheme. This was discussed subsequently at the Board's meeting in May 2015, and the Board decided to exercise its powers under S120 and S121 of the Act in relation to OLC, setting trigger thresholds for OLC reporting to LSB and a request for a report on improved performance measurement. These requirements were issued in June 2015. In summary they were:
  - **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)
  - **Section 120 reporting requirement** requiring OLC to provide LSB with a monthly report on timeliness, unit cost and quality and, where any target in a 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.

- **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. proposals for the performance monitoring governance arrangements that will apply from 1 April 2016

### OLC compliance with Section 120 and 121 requirements to 31 March 2016

#### ***Performance against targets and reporting of reasons for failure to meet***

4. Monthly performance reports under S120 were provided on time in every month but performance did not always meet the S121 targets set by LSB. In particular, the timeliness target was not met in any month (see below).

	Target	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb
<b>Time</b>	<b>60%</b>	57.1%	52%	49%	49%	48%	48%	56%	48%	44%
<b>Unit cost</b>	<b>£1,750</b>	£1,709	£1,724	£1,770	£1,865	£1,903	£1,761	£1,660	£1,587	£1,598
<b>Quality</b>	<b>40%</b>	61%	61%	58%	58%	58%	55%	55%	55%	55%

5. Whilst the associated S121 reports contained some commentary on the reasons for failure to meet the targets, the narrative on how performance would be brought back into compliance was not always time-bound and, in each month, focused on three specific reasons rather than indicating that a more strategic approach to performance improvement across the piece was being developed. The same reasons persisted over the reporting period (see paragraph 7 below).
6. The most recent S121 report received (9 March) is attached at **Annex A**. As the accompanying letter from the OLC Chair acknowledges, timeliness performance is the worst experienced since LSB exercised its statutory powers (at 44% of cases resolved within 90 days against a target of 60%). The OLC Chair reports that, after extensive discussion within the OLC Board, *“there is complete clarity about what needs to be done to address this and that everything possible is being done to rectify the situation, commensurate with our need to operate as a responsible ALB and to maintain our momentum on the resolution of the full range of issues which led to the qualification of our accounts”*.
7. Looking back over the S121 reports, the commonly cited reasons for failure to meet the timeliness target were:
  - technical difficulties with the case management system

- short-term impacts of changes to Ombudsman working practices
- lower than planned investigator resource resulting in delays to allocation of resources

Whilst these remain the reasons cited in the March report, there is a more positive position seeming to emerge:

- the case management system performance seems more stable and much less service disruption is reported. Additionally, OLC will be moving to a new supplier in April and “will be taking steps to make the infrastructure more robust”
- the revised Ombudsman working practices appear to be having the desired effect as the average waiting time for an Ombudsman decision is now three weeks (four at last report) and confidence that by April/May the waiting time will be at two weeks
- recruitment appears to be back on track.

***Reporting on new performance framework and governance arrangements***

8. The OLC also provided the LSB with proposals for its future approach to performance measurement and governance arrangements under the separate S120 requirement. These were discussed by the Board in November 2015 when OLC representatives also attended the Board meeting. Some elements of the proposals were still to be finalised. These included the outcome of research to underpin the embedding of the interim Chief Ombudsman’s work to develop a new quality framework and the outcome of work then being conducted by Grant Thornton.
9. Further to that meeting, OLC consulted publicly on elements of the proposed key performance measures which it planned to adopt for 2016/17. At the time of drafting, we have not seen the outcome of this consultation nor any additional proposals around changes to governance of OLC performance oversight of LeO as a consequence of Grant Thornton’s work.

**Additional context for discussion**

10. There have been a number of developments affecting OLC’s operating environment since June 2015 including:

- [REDACTED]
- OLC appointed a new Head of IT and a tender for the provision of future support for the case management system was issued.
- OLC remains particularly affected by the emergency spend controls imposed by MoJ, and the retention of Accounting Officer status by MoJ, particularly in relation to their ability to recruit new staff either as vacancies arose or to implement aspects of operational change.

- There has been considerable change in senior management with Nick Hawkins taking up post in late 2015 as Chief Executive and Kathryn Stone arriving as Chief Ombudsman in January 2016. A new Head of Operational Insight and Engagement took up post in February and a new Head of Finance appointed.
- OLC's Annual Report and Accounts for 2014/15 were finally published in January 2016 and saw the accounts qualified for a second year.
- Grant Thornton concluded their investigation into governance and financial management [REDACTED].

11. In November 2015, OLC reported that on the basis of (then) current levels of receipts, they expected that "steady state" (ie performance decline would have bottomed out) in relation to timeliness of the management of cases would be achieved by March 2016.

**Assurance on OLC performance "grip" from 31 March 2016**

12. The Board's approach to its relationship with OLC in respect of OLC's performance in administering an Ombudsman scheme needs to be reviewed at this Board meeting because the statutory performance targets set by LSB for OLC expire at the end of March 2016.
13. The Board has historically held the view that it is not for the Board to do the job of the OLC with regard to scheme oversight. The objective is for the LSB to be assured that the OLC is performing its statutory role in administering the scheme adequately. (Implicit in this approach is a recognition that preferring that it were done differently is not the same as saying it is not being done adequately).
14. There remain mixed views within both LSB and OLC as to whether the imposition of statutory targets has helped or hindered performance improvement by OLC. There are equally mixed views as to the way ahead. There is little dispute, however, that the public reporting of performance against targets has increased external scrutiny and provided the full Board with greater visibility of the OLC's performance that it might have historically have had.
15. The Board's sub-group met to consider options for the way in which the Board might seek to assure itself that the OLC has appropriate arrangements in place to administer the LeO scheme specifically in relation to the performance of the scheme. The sub-group reviewed the OLC's proposals for a new performance framework and associated governance arrangements. Their aim was to see if it provided sufficient assurance to the LSB that OLC has a grip on Ombudsman scheme performance such that LSB does not need to set new targets or maintain current ones and / or does not need to formally agree a new OLC performance framework.

16. [REDACTED]

Nor did they believe that the time was yet right to replace formality with informality of reporting. They concluded that a recommendation should be put to the Board that a position that allowed LSB to remain strategic, rather than be immersed in detail, should be pursued. This should focus less on the precise nature of any target but instead be aimed firmly at the OLC Board's response to scheme performance trends.

### **Sub-group's preferred option**

17. The preferred option is to exercise the Board's power under S120 to require the OLC to report routinely and self-critically on its performance in administering the Legal Ombudsman scheme. The new S120 reporting requirement would be drafted to deliver the following outcomes:

- Monthly reports of performance statistics against, at a minimum, timeliness, quality and cost. The requirement would not be prescriptive as to the measures to be used or any targets to be met but would expect the OLC to report against its own performance framework save for cost and quality where, until new measures have been trialled and benchmarked, existing measures should be included alongside any new measures.
- Quarterly reports describing the OLC's response to any trends in performance it identifies, any root cause analysis for such trends and, where Scheme performance remains below the OLC Board's aspirations and/or declines, clear, time-bound information on action proposed, the impact of previously identified action and the impact expected.

18. This approach would allow the OLC the flexibility and autonomy to embed its new performance framework whilst retaining continuity with prior regimes and enabling public scrutiny during the transition. As narrative reporting would only be required on a quarterly basis, and would be in line with the OLC's own scrutiny of LeO performance, this should be less burdensome than the current monthly reporting regime.

19. It is suggested that this requirement be in place for all of 2016/17 with a review point after two quarterly reports have been received, most likely in November 2016.

### **OLC views on this approach**

20. [REDACTED]

### **Additional risk mitigation measures**

21. Real or perceived performance decline at the Legal Ombudsman, particularly if this results in real or perceived consumer or service provider detriment or lack of

confidence in the scheme, could represent a reputational risk for the LSB. This is because there may be an expectation that it is the LSB's 'fault' (where LSB's role is misunderstood) or that LSB could have done more to 'fix' or 'prevent' any such issues (again, where LSB's role and the scope of its powers are not understood). As a consequence, this risk features on the LSB's corporate risk register and is scored highly at present.

22. A number of risk mitigation activities are already in place to address the impact and likelihood of the risk occurring. These include (and are not limited to):

- The Board being briefed fully on the extent and limitations of the LSB's statutory role
- Letters on file to MoJ explaining LSB's role in relation to OLC finance and clarity built into OLC Framework Agreement
- A schedule of regular CEO, Chair meetings
- A strong and continuing focus on OLC related risks at LSB Board and ARAC meetings (ARAC has previously considered a detailed paper on strengthening governance protocols to mitigate risks including development of separate OLC risk register)
- Attendance of LSB CEO at OLC ARC meetings which allows for early warning on any significant governance failure.
- Quarterly meetings between respective Board members focusing exclusively on OLC administration of LeO scheme
- Messages regarding LSB role in relation to OLC being adjusted from 'responsible for overseeing to 'having range of statutory responsibilities in relation to'

23. Looking ahead, we will also continue to work with both MoJ and OLC to consider whether there are any actions for LSB arising from the OLC-commissioned review of finance and governance controls from Grant Thornton. Most immediately, LSB is taking forward an action to draft a three-way operating protocol for agreement between the three bodies, after which we expect to develop a shared risk register with OLC and for this to form the basis of a meeting between LSB and OLC ARAC Chairs .

### **Recommendation**

24. The Board is invited to consider the steer from the LSB's OLC sub-group, to agree to use the LSB's powers in relation to OLC as set out in this paper and to delegate authority to the Chairman to write formally to OLC on this basis

07.03.16