

<b>To:</b>	Legal Services Board	
<b>Date of Meeting:</b>	28 October 2010	<b>Item:</b> Paper (10) 76

<b>Title:</b>	The management of LSB exposure to OLC risks	
<b>Workstream(s):</b>	2c – Improving service by resolving complaints effectively	
<b>Introduced by:</b>	Julie Myers, Corporate Director, julie.myers@legalservicesboard.org.uk / 020 7271 0059	
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<b>Status:</b>	Protect	

### Summary:

At its 27 July 2010 meeting, the Board invited the Audit and Risk Committee (**ARC**) to review and to report on its formal role in respect of the Office for Legal Complaints (**OLC**). At its 11 October meeting, following a discussion about the role of the ARC in the management of OLC risks, the ARC agreed to provide the Board with a paper setting out the statutory relationship between the LSB and OLC.

This paper provides the Board with:

- a summary of the statutory relationship between LSB and **OLC** (see **Annex A** for an overview of related parts of Legal Services Act 2007 ('the Act'))
- the potential risks to LSB arising from OLC
- the mitigations to manage those risks, which are mainly covered in the Memorandum of Understanding (**MoU**) between the two organisations agreed on 17 December 2009 (**Annex B**).

While the ARC concluded that the LSB does not have a formal role in the management of OLC risks, it agreed that the execution of the LSB's statutory functions with regard to the OLC exposes the LSB directly or indirectly to a series of principally reputational risks.

This paper is intended to inform a discussion by the Board about whether it believes the LSB's exposure to the risks posed by its statutory relationship with the OLC is being effectively mitigated and/or whether a different approach should be adopted. The Board will receive a further paper at its 30 November meeting that will include an assessment of the formalities of the relationship. This will inform a discussion at the joint meeting with the OLC Board on 13 December about the relationship between the two Boards.

### Risks and mitigations

<b>Financial:</b>	N/A.
<b>FoIA:</b>	Cover paper – s36. Annex A and B – s21.
<b>Legal:</b>	N/A.

<b>Reputational:</b>	The paper discusses the potential reputational risks to LSB connected to its relationship with OLC.
<b>Resource:</b>	N/A.

<b>Consultation</b>	<b>Yes</b>	<b>No</b>	<b>Who / why?</b>
<b>Board Members:</b>	✓		ARC considered an earlier version of the paper.
<b>Consumer Panel:</b>		✓	N/A.
<b>Others:</b>	N/A.		

<b>Recommendation(s):</b>
The Board is invited to note and to comment on the paper.

## LEGAL SERVICES BOARD


<b>To:</b>	Board		
<b>Date of Meeting:</b>	28 October 2010	<b>Item:</b>	Paper (10) 76

### The management of LSB exposure to OLC risks

#### Recommendation(s)

The Board is invited to note and to comment on the paper.

#### Background

1. The LSB's formal, statutory relationship with the OLC is set out in the Act (see **Annex A**) and the practical arrangements for managing it are described in the MoU between the two organisations (see **Annex B**).
2. At its meeting on 27 July, the Board invited the ARC to review and to report on its formal role in respect of OLC and its management of risk. The ARC considered this issue at its 11 October meeting.
3. The Act does not provide the LSB with a specific role in managing the risks of the OLC. The OLC has its own Audit and Risk Committee and the Chief Executive of the OLC has been appointed by the Ministry of Justice (**MoJ**) to be the OLC's Accounting Officer. He is therefore responsible for the financial management of the OLC and for ensuring that it has a sound system of risk management and internal control in place. Although the LSB Chief Executive attends the OLC Audit and Risk Committee, it is explicit that his invitation is as an observer.
4. However, under the Act, the OLC must adopt an annual budget which has been approved by the LSB, the LSB must appoint the OLC Board and may set targets for it. The LSB is also required to consent to the OLC's Scheme Rules and make rules for setting and collecting the OLC's levy.
5. In addition, the LSB has publicly defined one of its key success indicators as being the creation of a new independent ombudsman for complaints to ensure fair, rapid and effective dispute resolution. This means that our success as an organisation will be very much aligned to the success of the OLC and will be publicly seen in this way.
6. 
7. It should also be noted that the MoJ has a direct sponsorship responsibility for the OLC as one of its non-departmental public bodies (**NDPB**). The management statement between the MoJ and OLC recognises that the OLC has a shared

accountability to the LSB and the MoJ and that the Lord Chancellor has a statutory responsibility to report to Parliament on the activities of the OLC.

8. This paper reviews the statutory relationship between the LSB and OLC and the risks that this raises in order to inform a discussion about where, if at all, the Board requires additional assurance that there is a sound framework in place for the management of LSB risks relating to the OLC.

**What are the potential risks to the LSB arising from its relationship with the OLC?**

9. The risks to the LSB in its relationship with the OLC relate to those areas where the LSB specifically has some remit or role in the OLC’s work. The general principles committed to in the MoU are designed to ensure that between the two organisations there is:

- mutual respect and trust
- consultation and advice
- timely and comprehensive operational arrangements
- information provision and confidentiality.

10. More specifically, the LSB’s responsibilities under the Act relating to the OLC, the risks involved and the mitigations for those risks can be summarised as:

<b>Responsibility under the Act</b>	<b>Risk</b>	<b>Mitigation (as agreed in the MoU)</b>
The LSB appoints and remunerates members of the OLC Board.	[REDACTED]	[REDACTED]
The LSB makes rules regarding the imposition of a levy on leviable bodies to recover leviable LSB and OLC expenditure.	[REDACTED]	[REDACTED]
The OLC is responsible for setting itself an annual budget for approval by the LSB.	[REDACTED]	[REDACTED]
The LSB may set performance targets for the OLC, or direct such targets to be set, and require it to report on any aspect of its discharge of its functions.	[REDACTED]	[REDACTED]
The LSB may direct the	[REDACTED]	[REDACTED]

<p>OLC to take steps to modify its Scheme Rules in general or specific terms (and may specify that the Scheme Rules make provision to ensure the OLC and ARs share information about their respective complaints handling and regulatory activities).</p>		
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11. Based on this assessment, the key risk to the LSB in relation to the OLC’s management of risk is reputational, rather than financial. The key mitigations are based upon the LSB’s relationship with the OLC being proactive, in terms of understanding the activities and day-to-day status of the OLC, rather than reactive.

**Role of LSB in OLC risk management**

12. While the LSB does not have a specific role in managing OLC risks under the Act or the MoU, nor does the LSB’s Audit and Risk Committee’s Terms of Reference (ToR) provide it with a specific remit in relation to the OLC, the MoU does require that the oversight of the OLC’s activities by the LSB to be “focused on identified and agreed areas of particular risk and underperformance.” Additionally, the ARC has responsibilities around risk management and financial and other controls in relation to the LSB.

13. [Redacted]

14. [Redacted]

15. [Redacted]

16. [Redacted]

[Redacted]

**Sources of assurance**

17. In light of the statutory responsibilities of the Board to the OLC, the ARC considered how the Board might assure itself on the following key issues:

a) [Redacted]

b) [Redacted]

c) [Redacted]

d) [Redacted]

18. [Redacted]

20.10.10

## Key aspects of the statutory framework

The following is a summary of the OLC and LSB's relationship as set out in the Act and specifies where we have acted upon what the Act says.

### Legal Services Act 2007 - Part 6

**S118** requires the OLC to prepare an Annual Report for each financial year, which must include an annual report prepared by the Chief Ombudsman, and to give that report to the LSB. The LSB must then give that report to the Lord Chancellor who in turn must lay before Parliament. The report must deal with any matters as the LSB may from time to time direct. **[Not acted upon – this process was not formalised for the 2009/10 annual report]**

**S120** allows the LSB to require the OLC to prepare and give the LSB a report on any specified matter relating to the functions of the OLC. The LSB must publish any report received. **[No reports required to date]**

**S121** allows the LSB to set one or more performance targets for the OLC or to direct the OLC to set one or more performance targets relating to the performance by the OLC of any of its functions. The LSB and OLC must publish any targets it imposes or is required to set and the Board is permitted to take any appropriate steps to monitor the extent to which any such targets are being met. **[As members of the Committee will be aware, the Board endorsed the performance framework for the OLC at its 30 September meeting and will review a suite of indicators on at least a quarterly basis. But it did not use its S 121 powers to set or direct]**

**S122** requires the OLC to appoint a person to act as Chief Ombudsman. The Act contains various provisions requiring the ombudsman to report information to either approved regulators eg possible misconduct or to the LSB eg where the ombudsman considers that there has been a serious failure by the relevant authorising body (approved regulator) to discharge its regulatory functions. **[Not yet applicable for the Ombudsman to report to LSB]**

**S 144** allows the LSB to specify that the OLC, the ombudsman or a member of OLC staff discloses certain information to approved regulators so as to avoid duplication of investigations and to ensure that the OLC assists approved regulators to carry out their regulatory functions (and vice versa). **[Not yet been required]**

**S155** requires the OLC to obtain the consent of the LSB to its scheme rules. The consent of the Lord Chancellor is also required to any rules relating to charges payable by respondents. **[Board consented to the Scheme Rules at its 17 December 2009 meeting]**

**S156** allows the LSB to direct the OLC to modify its scheme rules, providing certain notification requirements are complied with. **[Not yet been required]**

**S172** allows the Lord Chancellor to pay to the LSB and to the OLC such sums as the Lord Chancellor may determine as appropriate for the purposes of meeting the expenditure of the LSB and OLC incurred under or for the purposes of the Act. **[So far only been necessary for set-up costs pre-levy being in place]**

**S173** requires the LSB to make rules regarding the imposition of a levy on leviable bodies for the purposes of meeting leviable LSB, OLC and Lord Chancellor expenditure (as defined). The levy is paid to the LSB who must have the consent of the Lord Chancellor before making the rules.

**[LSB has recently consulted on the levy charging arrangements, with input from the OLC]**

#### **Legal Services Act 2007 – Schedule 15**

**Para. 1** specifies that the LSB must appoint a chairman of the OLC with the approval of the Lord Chancellor; and six to eight members after consultation with the OLC chairman.

**[OLC Chair and Board appointed by the LSB – Chair of LSB responsible for performance management of OLC Chair]**

**Para. 8** provides for the LSB to remove a member from office under certain specified conditions. The chairman of the OLC may only be removed from office with the consent of the Lord Chancellor – and the LSB must consult the chairman before removing any other member.

**[Not been required to date]**

**Para. 10** requires the LSB to pay the OLC chairman and members. This includes travel and subsistence allowances.

**[LSB currently responsible for this]**

**Para. 23** requires the OLC to adopt an annual budget which has been approved by the LSB. Providing the LSB agrees, the OLC may vary the budget for a financial year at any time after its adoption. The budget must include an indication of the distribution of resources and the amounts of income the OLC expects from the operation of the scheme.

**[LSB approved 2010/11 budget at its 17 December meeting]**

**Para. 25** prevents the OLC from borrowing money except with the consent, or general authorisation, given by the LSB. The LSB can only give consent or a general authorisation with the consent of the Lord Chancellor.

**[Not yet been required]**

**Para 26** requires the OLC to keep proper accounts in accordance with directions given by the Lord Chancellor with the agreement of the Treasury. The OLC must present its statement of accounts to the LSB each year who must in turn provide them to the Lord Chancellor, the Comptroller and Auditor General. These are in turn laid before Parliament.

**[Not acted upon – this process was not formalised for the 2009/10 accounts]**



## **Memorandum of Understanding between Legal Services Board (LSB) and Office for Legal Complaints (OLC)**

1. This Memorandum of Understanding (MoU):
  - provides a framework for the relationship between the LSB and OLC. It reflects their independent and separate functions and aims to facilitate constructive communication, co-operation and co-ordination in the performance of their roles in the legal services market;
  - is a public document and benefits both consumers of legal services and the legal profession by setting out clearly the way in which the two bodies will interact and contribute to the efficient functioning of the statutory systems for regulation and dispute-resolution; and
  - was agreed on 17 December 2009. The LSB and OLC will monitor its operation and review and revise it at regular intervals of no more than two years.

### **Statutory framework**

#### **The role of LSB and OLC**

2. Under the Legal Services Act 2007 (“the Act”):
  - The LSB is responsible for overseeing legal regulators in England and Wales. It is independent of Government and of the legal profession. It oversees ten separate bodies, the Approved Regulators, which themselves regulate the circa 135,000 lawyers practising throughout the jurisdiction, and is charged with acting in a way that is compatible with the eight regulatory objectives set out in the Act and which it considers most appropriate in meeting those objectives.
  - The OLC is responsible for setting up and running an independent ombudsman scheme which aims to resolve complaints between consumers of legal services and the providers of such services. It aims to do this in as quick and informal a manner as possible. In discharging its functions, the OLC must act in a way that is compatible with the objectives set out in the Act and which it considers most appropriate in meeting those objectives. It must also have regard to the principles which it considers represent best practice in ombudsman schemes.

### **Statutory responsibilities**

3. Under the terms of the Act, the LSB has a number of responsibilities as regards the OLC. These include:
  - with the consent of the Lord Chancellor, appointing, and, if necessary, removing the OLC Chair

- after consultation with the Chair, appointing and if necessary removing the other members of the Board;
  - remunerating the OLC Chair and members of the Board;
  - giving consent to scheme rules made by the OLC
  - making rules in consultation with the OLC providing for the imposition of a levy on leviable bodies to recover leviable LSB and OLC expenditure.
4. In addition, the LSB may but is not required to :
- require the OLC to report on any aspect of its discharge of its functions;
  - set performance targets, if required, for the OLC or direct such targets to be set;
  - direct the OLC to take steps to modify its scheme rules in general or specific terms
  - from time to time and if required, specify that the scheme rules must make provision to ensure that the OLC and Approved Regulators share information to avoid duplication of investigations and to make sure that they assist each other in their respective complaints handling and regulatory activities.
5. Under the terms of the Act, the OLC (with the consent or approval of the LSB) is responsible in particular for:
- setting an annual budget and any subsequent variations of it for approval by the Board;
  - recommending to the Board a set of rules to govern the operation of the Ombudsman scheme, who can complain, about whom, and about what acts, and any subsequent changes to those rules
  - Recommending to the Board and to the Lord Chancellor, the rules made under S136 of the Act in relation to the charges payable by respondents
  - giving to the LSB a copy of the OLC annual report (which must include an annual report from the Ombudsman) to be passed on to the Lord Chancellor.
6. Under the terms of the Act, the OLC is responsible in particular for
- setting up and administering an ombudsman scheme to deal with consumer complaints about legal services which has regard to the best practices of ombudsman schemes;
  - appointing a Chief Ombudsman and other assistant ombudsmen;
  - giving to the LSB a copy of its annual accounts to be passed on to the Lord Chancellor, and Comptroller and Auditor General;

### **Core principles underpinning the relationship**

7. The Act commits both the LSB and OLC to, so far as is reasonably practicable, act in ways which are compatible with the regulatory objectives. Whilst each organisation has an independent function, fulfilling their different roles will require a degree of working together. In practice, we expect this to mean that:

- the OLC will seek to actively gather intelligence from its work to inform the policy development activities of the LSB;
- the LSB will actively take account from the earliest stages of how its policy development activities will impact on the work of the OLC, both directly on the organisation and on the volume and nature of its workload via the effect those policies have on the market place;
- on appropriate occasions, the organisations will undertake joint project based work in pursuit of the regulatory objectives;
- the organisations will, where sensible, ensure effective joint or coordinated communication with the Approved Regulators, authorised persons and other stakeholders

8. To make sure that this is achieved in practice, the organisations commit to the following principles:

- **Mutual respect and trust**

The LSB and OLC start from a position of mutual respect for each other's statutory role and independence and acknowledge their shared responsibility for delivering the objectives set out in the Legal Services Act.

- **Consultation and advice**

The LSB and OLC expect to engage early and often on any issues that may arise and which are a cause for concern in the regulation of legal services and the provision of effective dispute resolution and agree to equip each other with sufficient knowledge of respective policies, statements, positions and advice in advance of their reaching the public domain

- **Timely and comprehensive operational arrangements**

The LSB and the OLC will cooperate in the smooth running, and periodic review, of arrangements for:

- setting the OLC's budget, the levy and the associated case fees;
- consulting on and making rules affecting the OLC's Ombudsman Service;
- setting and reporting on targets for the OLC;
- managing their relationships with the Ministry of Justice, Approved Regulators, and other key stakeholders.

- **Information provision and confidentiality**  
LSB and OLC agree to share and/or make available proportionate and up to date information of relevance to delivering the statutory objectives and to respect the confidentiality of all information.

### **Detailed arrangements**

#### **Budget management**

9. In determining the annual budget, the LSB and OLC will agree in good time the timetable and format to be adopted in order to deliver to their mutual needs. This will involve in relation to budget setting for 2011-12 onwards
  - A discussion at Board level between the OLC and LSB before the OLC budget is published for consultation;
  - Informal notification of any further concerns of the LSB to the OLC during the consultation period;
  - A formal decision of the OLC Board on its recommendation to the LSB in the light of that consultation;
  - Final LSB Board discussion and confirmation of that budget.

#### **Scheme rules**

10. Where either body is considering seeking any change to the scheme rules, they will actively seek to consult and involve the other in that decision at the earliest possible point.

#### **Performance monitoring and reporting**

11. In approaching the monitoring of the OLC's performance by the LSB, the arrangements will be based on the following principles:
  - The primary responsibility for the performance management of the OLC will be discharged by the OLC Board.
  - The oversight of the OLC's activities by the LSB will be proportionate and focussed on identified and agreed areas of particular risk and underperformance;
  - The primary channel for formal communication to the LSB about the performance of the OLC will be the OLC Board;
  - The OLC Board will share details about the categories of performance information which it will monitor regularly with the LSB. It is anticipated that the LSB's information needs at both Board and Executive levels will be met by a sub-set of that information;
  - The LSB may request further formal information from the OLC Board in order to address particular areas of concern. Any such requests should focus on identified areas of particular policy sensitivity and operational risk. .
12. Performance targets will be set by the OLC following consultation with the LSB both about their form and content. These targets will include details of the reporting framework to be adopted. If the LSB is considering instructing the OLC to set

further targets, setting any targets directly or asking for additional performance information, they will consult the OLC at the earliest possible date.

### **Information exchange**

13. The OLC will inform the LSB of trends in relation to the content of cases and the effectiveness or otherwise of the complaints handling arrangements put in place by individual Approved Regulators or, in exceptional circumstances, of individual cases (suitably anonymised as required) that appear likely to have significant regulatory implications, which the LSB will then evaluate and consider whether any LSB action is required.
14. The LSB will alert the OLC about any changes it perceives in the legal services market and any specific regulatory issues or changes which may impact on the complaints-handling environment. The LSB will consult the OLC about any actions it may take which may have such impacts.
15. Any information-sharing between the two organisations is subject to relevant restrictions on disclosure of confidential information:
  - So long as it has regard to any rights of privacy, the OLC may disclose information to the LSB for the purpose of assisting either party to discharge its functions;
  - Similarly, the LSB may disclose confidential information to the OLC for the purpose of assisting either party to discharge its functions.
16. The Boards of the LSB and the OLC will normally make available to each other respective Board papers, with the exception of those that concern the relationship between the two bodies directly and which respective chairs determine should not be shared. The papers will be made available at the time the minutes of the relevant meetings are agreed ie following Board discussion and decision on those papers. With the agreement of the respective chairs, individual papers may be shared earlier where this is appropriate. More generally, CEOs of each organisation will ensure that their respective Board is apprised of key issues relating to the other.

### **Keeping in touch**

17. The CEOs of the LSB and OLC will meet on a regular basis, no less than monthly, to discuss issues of common interest.
18. In addition to meeting together formally on a quarterly basis, the Chair of the OLC will attend Board meetings of the LSB at appropriate stages in the business cycle and also at least once a year for a more general discussion of emerging trends and issues, and the Chair of the LSB will attend Board meetings of the OLC at least twice-yearly on a similar basis
19. In addition, the Chair of the LSB will conduct a formal annual appraisal of the Chair of the OLC.

Signed:

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David Edmonds, LSB Chairman

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Chris Kenny, LSB CEO

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Elizabeth France, OLC Chair

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Adam Sampson, OLC CEO