

<b>To:</b>	Legal Services Board	<b>Agenda Item:</b>	9
<b>Date of Meeting:</b>	21 September 2017	<b>Item:</b>	Paper (17) 62

<b>Title:</b>	<b>Recommendations of the Tailored Review</b>
<b>Workstream(s):</b>	All
<b>Author / Introduced by:</b>	Julie Myers, Corporate Director Julie.myers@legalservicesboard.org.uk / 020 7271 0059
<b>Status:</b>	Official

### Summary:

In July 2017, the Ministry of Justice (MoJ) published the outcome of its Tailored Reviews of the LSB and OLC. The Review concluded that the functions of both the LSB and OLC are still required and that their current statutory delivery models remain the most appropriate. The Reviews also found that both bodies are generally operating efficiently and effectively, however, a number of recommendations were made *“to further improve performance and efficiency, as well as recommendations to improve the tripartite governance relationship.”*

A hard copy of the full Tailored Review has **not** been provided although the Executive Summary is attached at **Annex A**.

This full Tailored Review report can be found at [this link](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/630084/lsb-olc-tailored-review-2017.pdf) ([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/630084/lsb-olc-tailored-review-2017.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/630084/lsb-olc-tailored-review-2017.pdf)).

This paper notes the recommendations made to the LSB and seeks confirmation of the Board’s response to them to inform a formal response to the MoJ.

### Recommendation(s):

The Board is invited **discuss** and **agree** the nature of its response to the recommendations of the Tailored Review.

### Risks and mitigations

**Financial:** N/A

**Legal:** N/A

**Reputational:** There will be a risk to our reputation with MoJ if these recommendations are not seen to be considered carefully. However, it is equally important to the Board’s reputation for independence that the recommendations, as far as they relate to the LSB’s regulatory activities, are not treated as directions.

<b>Resource:</b> N/A
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<b>Consultation</b>	<b>Yes</b>	<b>No</b>	<b>Who / why?</b>
<b>Board Members:</b>		<b>X</b>	
<b>Consumer Panel:</b>		<b>X</b>	
<b>Others:</b>			

<b>Freedom of Information Act 2000 (Fol)</b>		
<b>Para ref</b>	<b>Fol exemption and summary</b>	<b>Expires</b>
Para's 7 – 18	Section 22: information intended for future publication	On publication of response

## LEGAL SERVICES BOARD

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### Recommendations of the Tailored Review

#### Background

1. Departments are required to carry out a Tailored Review of each of its executive agencies, non-ministerial departments and non-departmental public bodies once in the lifetime of each parliament. Cabinet Office issues guidance to inform the review process. Each review is designed to provide assurance that the body under review remains fit for purpose, well governed and properly accountable for what it does.
2. The Ministry of Justice (MoJ) commenced Tailored Reviews of LSB and OLC in October 2016. The Reviews were the first conducted by MoJ under the new Cabinet Office guidance. To inform the Review of the LSB, alongside a public call for evidence, the MoJ team visited the LSB and met a number of colleagues to learn more about our work, interviewed a small number of Board members, and gathered significant amounts of material regarding the way we work.
3. The MoJ reported that their rationale for a joint report into Reviews of both LSB and OLC, was that *“given the unusual but dependent relationship, it made logistical sense for the two organisations to be reviewed at the same time, allowing for a more detailed exploration of how this relationship works and whether it is the most effective and efficient way for the organisations to interrelate.”*

#### Conclusions of the Tailored Review

4. The Review concluded that the functions of both the LSB and OLC are still required and that their current statutory delivery models remain the most appropriate. The Reviews also found that both bodies are generally operating efficiently and effectively, however, a number of recommendations were made *“to further improve performance and efficiency, as well as recommendations to improve the tripartite governance relationship.”*
5. The Executive Summary of the Reviews can be found at **Annex A**. The full report can be found at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/630084/lrb-olc-tailored-review-2017.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/630084/lrb-olc-tailored-review-2017.pdf)
6. Overall, we are pleased with the tenor and the tone of the Review as regards the performance of the LSB and the value that our work has, and has the potential to have, on outcomes for the legal services sector and its users. The Review is an endorsement of our role and remit. It does, however, reiterate the clear message that we have been given previously, that there is little likelihood of legislative change in the near to medium future and a firm message that we must utilise our statutory powers under the Legal Services Act 2007 to the full to bring about improvements to the regulation of legal services.

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- 7. [Redacted]

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- 15. [Redacted list item]

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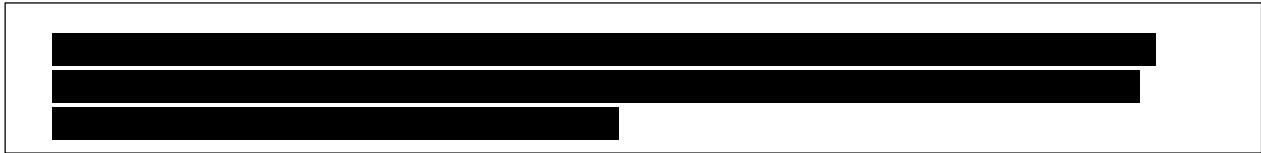
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**Tailored Review of OLC**

19. This paper does not address the recommendations made to the OLC but they are available for the Board’s interest at Annex A. The Tailored Review report also includes commentary on OLC performance from an MoJ perspective.

**Next steps**

20. Pending the Board’s discussion, a formal response to MoJ will be prepared, warmly welcoming the outcome of the Tailored Reviews and explaining the Board’s response to the recommendations.

**Recommendation**

21. The Board is invited **discuss** and **agree** the nature of its response to the recommendations of the Tailored Review.

## Annex A

**Tailored Reviews of the LSB and OLC (all references are to material that can be found in the full report at**

**[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/630084/lb-olc-tailored-review-2017.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/630084/lb-olc-tailored-review-2017.pdf)**

### Executive Summary

1.1 Tailored Reviews provide assurance to Government and the public on the continued need for the form and function of public bodies, as well as assessing the potential for improved efficiency, effectiveness, and governance. These reviews were conducted by the ALB Governance Division in the Ministry of Justice (MoJ), independently of the relationships between the policy team which sponsors the bodies, the Legal Services Board and the Office for Legal Complaints. These were the first Tailored Reviews carried out by the Ministry of Justice but the Legal Services Board (LSB) and the Office for Legal Complaints (OLC) were previously assessed under the Triennial Review programme in 2012.

1.2 To assess the bodies, the review team issued a public Call for Evidence (questions are shown at Annex A and respondents at Annex B). The review team also considered a wide range of information, including reports, stakeholder views, and governance assessments. A Challenge Group provided additional rigor to the reviews and recommendations (its makeup is shown at Annex C). Greater detail about the review process can be found in Annexes D and E.

### Main findings

1.3 The review found concerns about the effectiveness of the current governance arrangements between the Legal Services Board, the Office for Legal Complaints, and the Ministry of Justice. This was supported by respondents to the Call for Evidence, the review team's analysis, and the bodies themselves. Unclear lines of accountability and lack of clarity of roles and responsibilities promote inefficient ways of working.

1.4 The review's assessment shows that the LSB is generally effective both in promoting the regulatory objectives and in delivering its functions. The activities carried out by the LSB were judged to be within the statutory remit of the organisation, however the review team found evidence that some activities were perceived to be outside of the LSB's remit and have made recommendations to combat this perception. The review made additional recommendations relating to cost transparency, the gathering of diversity data, the LSB's research, assurance on the adequate separation of the frontline regulators from the professional representative bodies, and the LSB's assessment of the frontline regulators. The review found that further efficiencies may be found in the organisation through a review of the senior staffing structure.

1.5 Following the OLC's 2015 external, independent review of governance and financial management, the organisation has made significant progress. Although the review found room for improvement in some areas of the organisation's performance, the review team recognises the work that has already been done to address performance issues and to embed a culture of continuous improvement. The review judged that, in the longer term, efficiencies may be found by merging the roles of the Chief Executive Officer and the Chief Ombudsman.

1.6 The review made further recommendations about the OLC assessing the viability of becoming an approved Alternative Dispute Resolution body and the role the OLC can play in providing feedback.

### Conclusions



1.7 The review concluded that the functions of both the LSB and the OLC are still required by Government and that the current delivery models, as an Executive NDPB (LSB) and a statutory body (OLC) are the most appropriate for the organisations.

1.8 Although both organisations are generally operating efficiently and effectively, the review has made a number of recommendations to further improve performance and efficiency, as well as recommendations to improve the tripartite governance arrangements. These are listed in Table 1.

**Table 1**

**Recommendations for the Legal Services Board (LSB)**

1. The functions of the LSB are still required by Government. The LSB should therefore retain its current functions.
2. It is efficient and effective for the Consumer Panel to operate as an independent arm of the LSB and it should continue to do so.
3. The functions of the LSB need to be delivered independently of Government and the professions. The LSB operates effectively as an Executive NDPB. The LSB should therefore retain its current form as an Executive NDPB.
4. The Competition and Markets Authority's Legal Services market study made recommendations to the LSB to oversee and report on frontline regulators implementation of remedies to improve consumer information and transparency. The LSB should enact these.
5. To promote diversity in its organisation, the LSB should carry out a diversity survey of its staff and board, and publish the results at least every two years. The form of the survey and the level of information published must be determined with regard to appropriately preserving the anonymity of individuals.
6. To ensure there is no perception that the LSB is carrying out actions beyond those necessary to fulfil its statutory functions, the LSB should:
  - a) clearly highlight on published research how that research links to its objectives and statutory functions; and
  - b) reflect further on its impact in its annual report, and visibly tie all work to either its statutory functions or the regulatory objectives.
7. To ensure continued public and international confidence in the regulation of the legal sector, the LSB should use all of its powers to provide robust assurance on the separation of the frontline regulators from the representative functions of the Approved Regulators, including the use of its investigative powers where appropriate. Any changes, including those as a result of the review of internal governance rules, should be made within the existing legislative framework.
8. Whilst undertaking its ongoing review of its process for assessing frontline regulators, the LSB should take into account the recommendations of the Cabinet Office's Regulatory Futures review.

9. To provide assurance on the efficiency of its organisational structure, the LSB should conduct a review of its senior staffing structure, with a view to establishing future efficiencies.

### **Recommendations for the Legal Services Board and the Ministry of Justice**

10. Principles of good governance require that framework agreements be kept up-to-date. The LSB and MoJ framework agreement should be updated and then reviewed at least every three years.

### **Recommendations for the Office for Legal Complaints**

11. The functions of the OLC are still required by Government. The OLC should therefore retain its functions with regards to legal complaints. The Government has made a commitment to transfer complaints about Claims Management Companies to the Financial Ombudsman Service.

12. The functions of the OLC need to be delivered independently of Government and the professions. The OLC operates effectively as a statutory body. The OLC should therefore retain its current form as a statutory body.

13. The OLC is well placed to provide valuable feedback to a range of stakeholders. The review supports the OLC's work to improve the feedback it provides, and recommends it looks for opportunities to increase feedback to the frontline regulators, representative bodies, and the LSB.

14. The OLC should continue to consider whether to submit an application to the LSB to become an approved ADR provider under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015.

15. Following the LSB's decision not to renew the statutory reporting requirements for the OLC under Section 120 of the LSA 2007, the OLC should continue to work with the LSB to identify areas for performance improvement.

16. The review recognises the improvements that have been made following the identification of issues relating to governance and financial management. The OLC should continue to comply with the principles of Managing Public Money and should implement the recommendations of the internal audit of corporate governance conducted by the Government Internal Audit Agency.

17. To promote efficiency in the longer term, the OLC should work towards merging the roles of the Chief Executive Officer and the Chief Legal Ombudsman following implementation of the Modernising LeO programme.

## **Recommendations for the MoJ, LSB and OLC**

18. To ensure clarity of roles and lines of accountability the LSB, MoJ, and OLC should publish the tripartite operating protocol setting out the three parties' roles and responsibilities. This should be reviewed after six months and every three years thereafter.

19. The LSB and OLC holding to account meetings with MoJ should be reviewed to support and reflect the lines of accountability set out in the updated tripartite operating protocol.