



Ministry
of Justice

Tailored Reviews of the Legal Services Board and Office for Legal Complaints



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Executive Summary

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 LSB, OLC and MoJ

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: <ul style="list-style-type: none"> 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 Ministry of Justice, the Legal Services Board, and the Office for Legal Complaints

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.

Purpose and Scope of Reviews

Purpose and Scope of Reviews

2.1 Tailored Reviews provide assurance to Government and the public on the continued need for a public body, both its functions and its form. Where appropriate, reviews make recommendations to improve the efficiency, effectiveness, and governance arrangements of the bodies under review. The Cabinet Office mandates that Tailored Reviews must be carried out for each public body at least once in the lifetime of Parliament. Further detail on what Tailored Reviews are and how these reviews are carried out can be found in Annexes D and E.

The Act received Royal Assent in October 2007. The LSB came into being on 1 January 2009 and took on the majority of its statutory powers on 1 January 2010.

2.3 In 2012, the Ministry of Justice (MoJ) carried out Triennial Reviews of the two organisations.² The reviews concluded that the functions of both the OLC and the LSB were still required by Government, and that no changes to the delivery models were required.³

Current context and developments

2.4 The 2016/17 Tailored Reviews of the LSB and OLC took place in the context of a range of events, reviews, and reports, as well as a dynamic legal services environment. These included:

- a. The Cabinet Office's Regulatory Futures Review, published in January 2017. This was the first "Functional Review"⁴ carried out under the Public Bodies Reform Strategy. Over 70 regulators were in scope of the review, including the LSB. Its stated objectives were to:
 - "identify opportunities to achieve significant improvements in operating efficiency by reviewing functions across the sector looking particularly at the experience of businesses and consumers affected by regulation;

- "identify the sources of burdens on regulators themselves, the opportunities to reduce those burdens and hence to reduce cost, complexity and delays in regulation; and
- "develop a taxonomy of effective regulatory delivery models that makes it possible to extend the work of this review across all regulators."⁵

b. The Competition & Markets Authority's (CMA) Legal Services market study, published in December 2016. This study covered legal services in England and Wales, focusing on experiences of consumers and small businesses. It focused on three themes:

- "Whether consumers can access, assess and act on information about legal services so that they can make informed purchasing decisions and thereby drive competition for the supply of legal services;
- "Whether information failures result in consumer protection issues that are not being adequately addressed through existing regulations and/or redress mechanisms;
- "Whether regulations and the regulatory framework go beyond what is necessary to protect consumers and weaken or distort competition for the supply of legal services."⁶

Context

Historical context

2.2 The Legal Services Board (LSB) and the Office for Legal Complaints (OLC) were established under the 2007 Legal Services Act (LSA 2007). The Act made significant changes to the framework of legal services regulation, in line with the recommendations set out by Sir David Clementi in his 2004 independent review¹ of the regulatory structure of legal services in England and Wales. Clementi identified the need to move responsibility for handling complaints away from frontline regulators (The Law Society and the Bar Council) to a single, independent consumer complaints body.

1 Clementi Review: http://www.avocatsparis.org/Presence_Internationale/Droit_homme/PDF/Rapport_Clementi.pdf

2 Triennial reviews provided challenge to and assurance on the continuing need for the functions and forms of NDPBs. They also reviewed the NDPB's control and governance arrangements. Triennial Reviews were replaced by Tailored Reviews in 2016.

3 www.gov.uk/government/publications/legal-services-board-triennial-review-2012

4 www.gov.uk/guidance/public-bodies-reform

5 www.gov.uk/government/publications/regulatory-futures-review para 1.13.

6 www.gov.uk/cma-cases/legal-services-market-study#final-report Para 15

- c. The LSB's paper, "A vision for legislative reform of the regulatory framework for legal services in England & Wales", published in September 2016. It sets out the LSB's vision for a future legislative framework for legal services regulation and addressed the following questions:
- "What should be the number, nature and presentation of any regulatory objectives?"
 - "What should fall within the scope of regulation? How should that be addressed?"
 - "Should regulation be focused on activities or the providers who carry them out?"
 - "How can the independence of legal services regulation from both government and representative bodies best be assured?"
 - "Does the regulatory framework need to give consumers a voice? If so, what is the best way to achieve that?"
 - "How should the legal services regulator(s) be structured?"⁷
- d. The Legislative Options Beyond the Legal Services Act 2007 paper, published in 2015. This paper was the outcome of a series of cross-regulator discussions, facilitated by the LSB and chaired by Professor Stephen Mayson. The paper explores options for reform of the LSA 2007.⁸
- e. The LSB's report, "Evaluation: Changes in the legal services market 2006/07 - 2014/15", published in 2016. Based on analysis undertaken between August 2015 and May 2016, this report evaluates changes in the legal services market against the desirable outcomes of the regulatory objectives set out in LSA 2007.⁹
- f. On 29 March 2017 the Government triggered Article 50, formally starting the process of the UK leaving the European Union. At the time of drafting, it was too soon to suggest what impact this might have on the LSB, the OLC and the wider legal services market.

The rationale for a joint report

2.5 The Act gives the LSB a variety of functions, powers and duties with regard to the OLC. In turn, the OLC has a number of accountabilities to the LSB in addition to its own powers, functions and duties. As such, it was agreed that the two reviews would be conducted concurrently, but separately. Given their unusual and 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.

7 http://www.legalservicesboard.org.uk/news_publications/LSB_news/PDF/2016/20160909LSB_Vision_For_Legislative_Reform.pdf para 17

8 http://www.legalservicesboard.org.uk/what_we_do/pdf/20150727_Annex_To_Submission_Legislative_Options_Beyond_LSA.pdf

9 <https://research.legalservicesboard.org.uk/wp-content/media/2015-2016-FINAL-Market-Evaluation-Main-report11.pdf>

The Legal Services Board

The Legal Services Board

Purpose and structure

- 3.1** Fully operational since January 2010, the LSB is an Executive Non-Departmental Public Body (NDPB) of the MoJ. It is the oversight regulator for legal services, overseeing the nine approved regulators (ARs), who are in turn responsible for the direct regulation of legal service providers, as shown in Figure 1.
- 3.2** Where an AR has representative and regulatory functions (representing and regulating the profession, respectively), it must ensure that regulation is carried out independently of representation. The LSA 2007 did not require these functions to be performed by separate legal entities, so an AR may delegate regulation to a body or committee. The LSB makes internal governance rules with which the ARs must comply to ensure an appropriate split between regulatory and representative functions.
- 3.3** The LSB board has ten members (four female, six male). In line with the Act, the Board has a lay Chair and lay majority and the Chief Executive is a member of the Board. As at 31 March 2017, the Board comprised six lay members and four non-lay members, as shown in Figure 2. The staff of the LSB are public servants; at 31 March 2016 it had 24 full time and seven part time employees. The LSB is funded by a levy on the profession, provided annually by ARs in arrears. The budget for 2016/17 was £3,998,000. The finances of the LSB are discussed on page 27.
- 3.4** The LSA 2007 requires the LSB to establish and maintain a Legal Services Consumer Panel (LSCP) to represent the interests of consumers. The LSCP provides independent research and advice, but does not have a distinct legal identity from the LSB. The LSB uses its own budget to fund the LSCP and its small secretariat. In 2016/17 the LSCP's budget was £210k. The LSB has a number of functions, powers and duties with regards to the OLC, including appointing board members. The OLC also has accountabilities to the LSB including a requirement to seek the LSB's approval to its annual budget and consent to its Scheme Rules.

Figure 1. The structure of legal services regulation

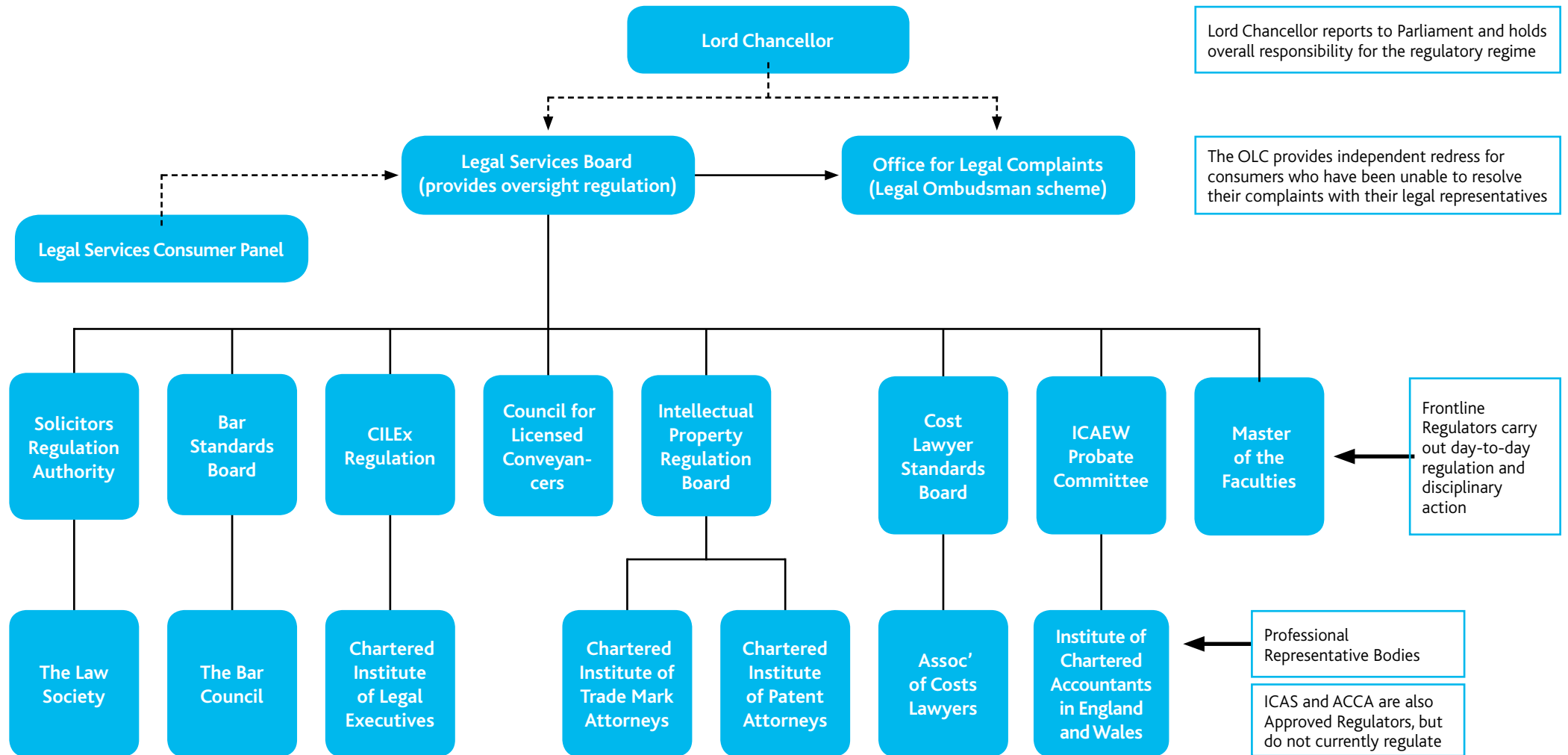
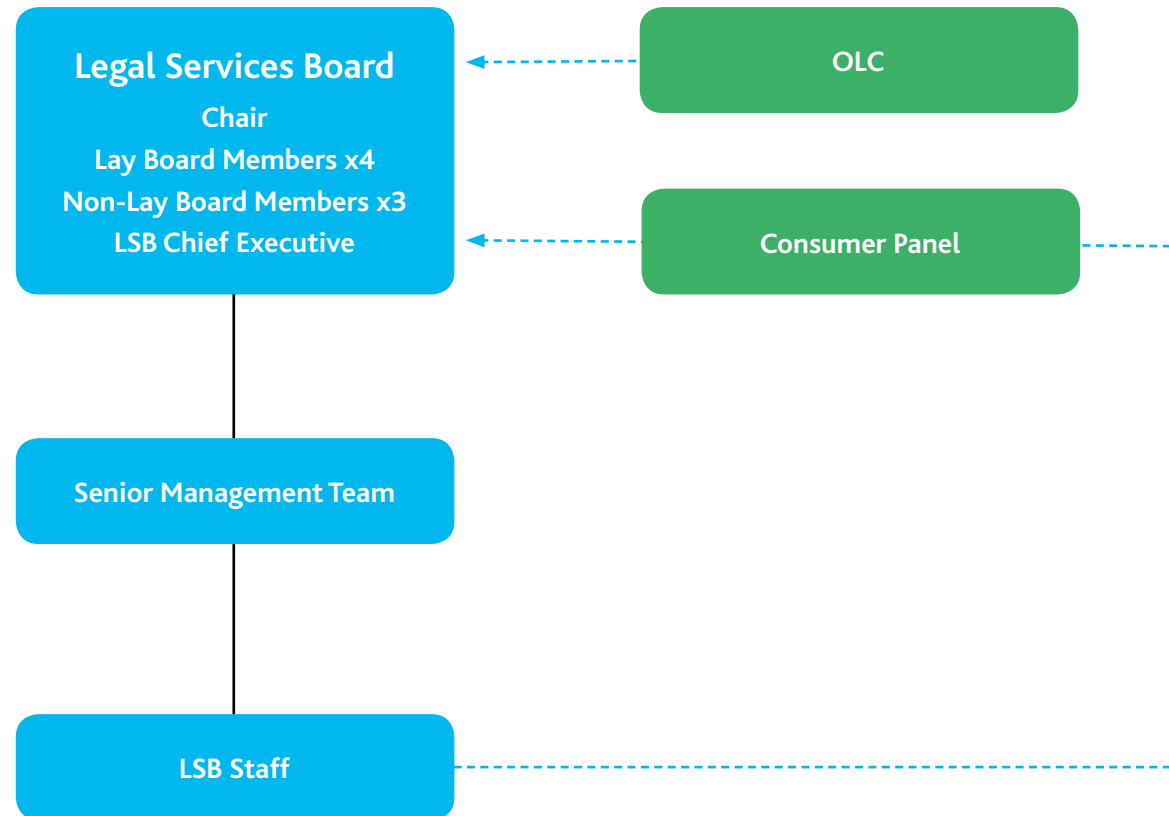


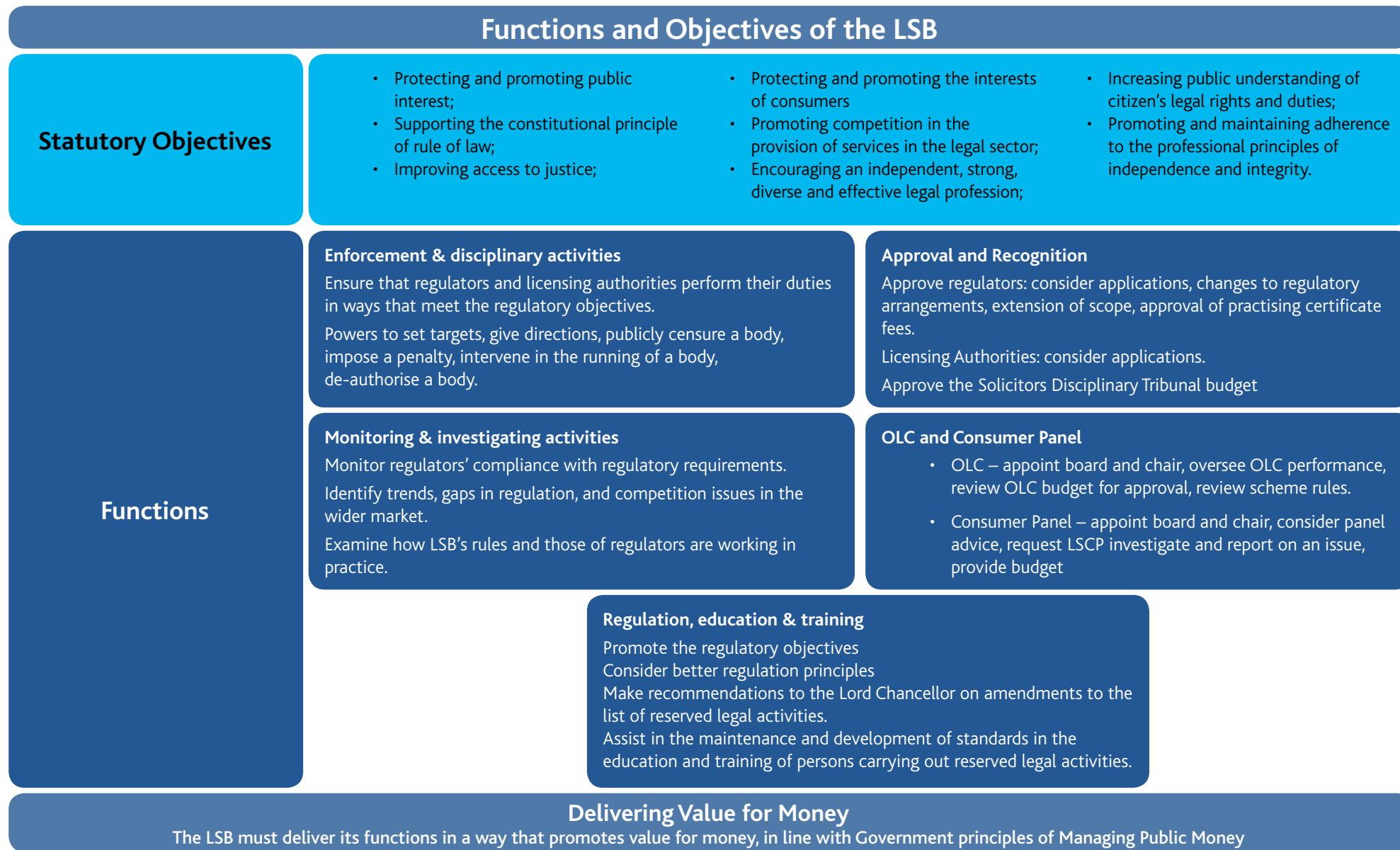
Figure 2. High level organogram showing the structure of the LSB



Functions and Objectives

3.5 The LSA 2007 sets out eight statutory objectives to be promoted by the LSB, OLC, and the approved regulators. These are not hierarchical – each has equal weighting. The act additionally grants the LSB a number of specific functions and responsibilities. These objectives and functions can be seen below.

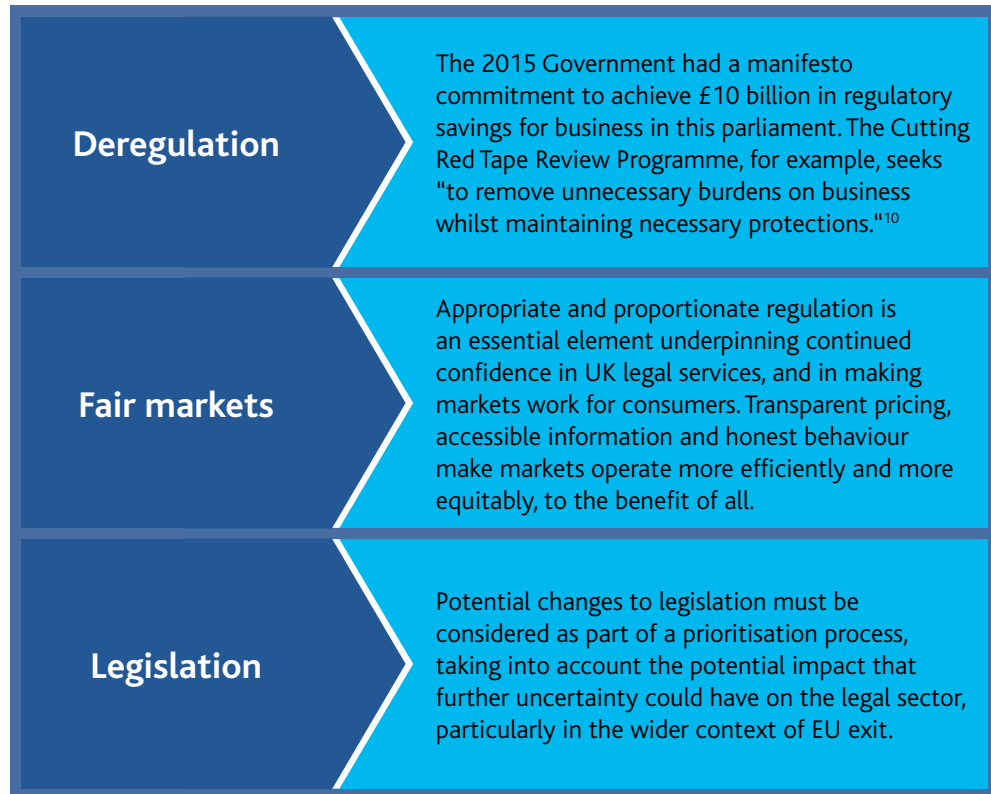
Figure 3. Functions and Objectives of the LSB



Does Government still require the functions of the LSB?

What is the Government's view on regulation?

3.6 The Government's view on regulation can be summarised as follows:



Is sector specific regulation of legal services required?

3.7 The case for sector specific regulation for legal services has most recently been considered by the CMA in its 2016 market study of legal services.¹¹ The report explains that whilst a level of consumer and business protection exists outside

of sector specific regulation¹², this is insufficient in the case of legal services. This is also a view outlined in the 2015 report "Legislative Options Beyond the Legal Services Act 2007." Reasons discussed include:¹³

- **High Stakes:** Legal services may be accessed at times of particular stress or in relation to highly charged issues, such as family matters, criminal charges, or cases with a significant financial cost. The impact of poor service at these times may be severe and difficult to provide effective redress for. As such, post-hoc redress is not sufficient – regulation being in place guards against poor service occurring in the first place.
- **Asymmetry of information:** In this complex field consumers may not have the skills and knowledge to assess the quality of the legal services they are receiving. Sector specific regulation provides a level of quality assurance.
- **Public good:** Regulation of legal services supports the rule of law and contributes to public and international confidence.¹⁴

Is an oversight regulator required?

3.8 Given the multiplicity of frontline regulators, an oversight regulator is beneficial for a range of reasons, including maintaining a level of consistency of standards across frontline regulators, promoting the needs of the consumer, encouraging knowledge sharing, and ensuring compliance with the statutory objectives. There is, however, a further question about whether the broader regulatory framework is the most appropriate for the sector. The 2015 report "Legislative Options Beyond the Legal Services Act 2007" highlighted issues with the narrow scope of regulated activities, unmet legal need, and insufficient independence between some lawyers and their regulators.¹⁵ In a recent report setting out its vision for legislative reform, the LSB proposed moving to a single regulator.¹⁶ This would involve abolishing the frontline regulators and the LSB, and replacing them with a single body. The CMA's market study concluded that while the framework is not currently a major barrier to competition, there are concerns about its long-term adaptability.¹⁷ Government is currently considering the CMA's recommendations and will respond in due course. Changes to the regulatory framework would require legislative change.

¹⁰ <https://cutting-red-tape.cabinetoffice.gov.uk/faqs/>

¹¹ www.gov.uk/cma-cases/legal-services-market-study#final-report

¹² The non-sector specific protections afforded in legislation relevant to legal services are outlined in the CMA market study report (pp28-30 and annex E) www.gov.uk/cma-cases/legal-services-market-study#final-report

¹³ LSB 2015 Report: www.legalservicesboard.org.uk/what_we_do/pdf/20150727_Annex_To_Submission_Legislative_Options_Beyond_LSA.pdf

¹⁴ These points are discussed in more detail in the LSB's 2015 report "Legislative Options beyond the Legal Services Act 2007. (Stephen Mayson) and the CMA's Market Study Report.

¹⁵ Mayson reference: www.legalservicesboard.org.uk/what_we_do/pdf/20150727_Annex_To_Submission_Legislative_Options_Beyond_LSA.pdf

¹⁶ Vision for future reference: www.legalservicesboard.org.uk/news_publications/LSB_News/PDF/2016/20160909LSB_Vision_For_Legislative_Reform.pdf

¹⁷ www.gov.uk/cma-cases/legal-services-market-study#final-report (Para five)

Are the functions of the LSB the right functions for an oversight regulator?

3.9 To determine the need for the LSB's functions, the review team considered responses to the Call for Evidence (see Annex A), recent reports, assessment of the current legal services sector, and analysis of stakeholder views. The LSB is not calling for statutory changes to its functions to move towards a single regulator. Based on the evidence received, the review sought to investigate further the LSB's roles in relation to the LSCP and the OLC.

The Legal Services Consumer Panel

3.10 Some respondents to the Call for Evidence raised concerns that the LSCP may not be sufficiently independent of the LSB, or recommended complete independence of the panel. For example:

"We believe the Panel would function well as a separate independent body. This would further strengthen the consumer voice within legal services regulation."

Frontline Regulator

"[We believe] that the Legal Services Consumer Panel (LSCP) is not sufficiently independent of the LSB nor is it perceived to be so. Its activities and plans appear largely integrated with those of the LSB and staff broadly interchangeable. Whilst this may not necessarily be entirely negative, it can appear that it is 'captured' by the LSB."

Professional Representative Body

Other respondents did not perceive there to be a problem of independence:

"The LSA provisions under Article 8 on the constitution of the panel are designed such that it should operate independently of the LSB. This set up is enhanced through a Memorandum of Understanding between the LSB and Consumer Panel which further details the resourcing, communication and information arrangements. We have not seen any evidence to suggest that the independence of the Panel is compromised."

Professional Representative Body

"Our perception is that the LSCP operates autonomously and pursues its own agenda under the Act"

Frontline Regulator

3.11 Research did not reveal evidence of a lack of independence. Operating as an independent arm of the LSB allows the LSCP to operate on a smaller budget than might otherwise be possible and allows it to contribute to the development of LSB policy at early stages when it is likely to have the most impact. The review is satisfied that this early engagement does not impact on the LSCP's independence, though it should be noted that it may give a perception of insufficient independence. The review concludes that it is most efficient and effective for the LSCP to retain its current position. However, the LSB and LSCP should both be mindful of perceptions regarding independence when carrying out their work.

The OLC

3.12 The LSB has a number of functions, powers and duties relating to the OLC, including appointing the OLC Board and overseeing the OLC's performance in administering the Legal Ombudsman scheme. Based on the evidence received, the review sought to investigate further the relationship between the LSB and the OLC, looking at responsibilities and lines of accountability between the two. This was done as part of the governance review, which can be found on page 47.

Recommendation:

The functions of the LSB are still required by Government. The LSB should therefore retain its current functions.

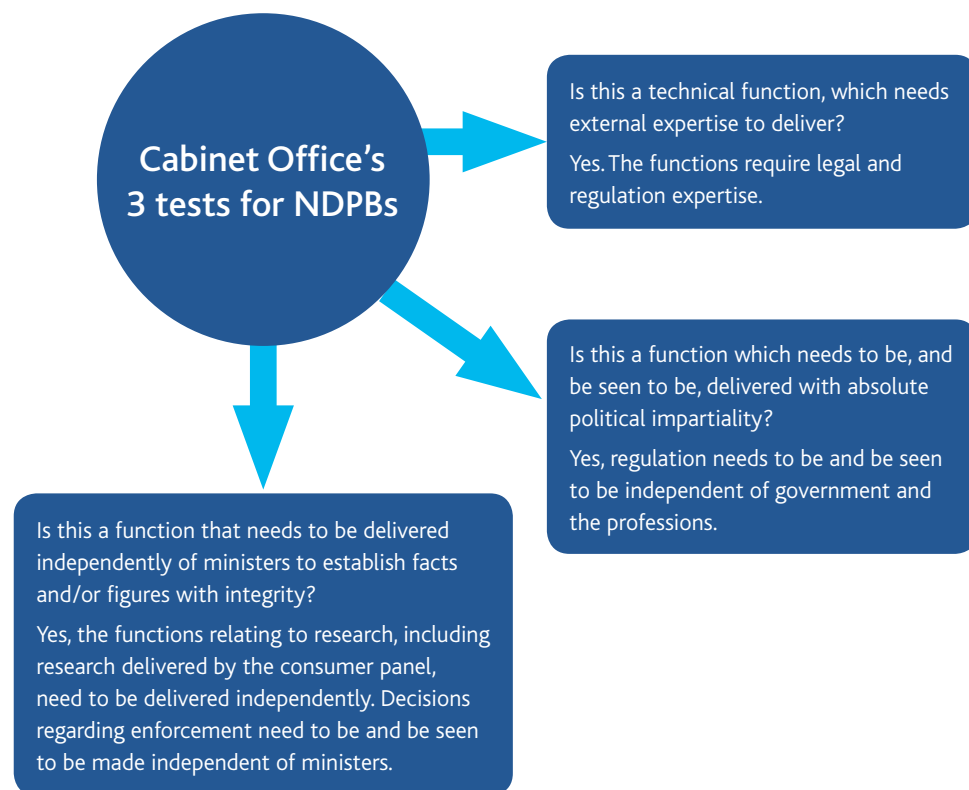
Recommendation:

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.

Is an Executive NDPB the best delivery model for the LSB?

3.13 To ensure public confidence, regulation needs to be, and be seen to be, independent of Government and the profession. There is, however, a further question of whether this independence is best achieved through a public body. The Cabinet Office sets out three tests to help ascertain whether functions should be delivered by a Non Departmental Public Body.¹⁸ Figure 4 shows how the three tests apply to the functions of the LSB.








Figure 4. Cabinet Office's three tests applied to the functions of the LSB.



3.14 69% of respondents to the Call for Evidence supported continued delivery by a public body. This is also the option supported by the LSB: *"The LSB believes that regulation should be structurally, legally and culturally independent of the professions and Government. In our view this is the most effective way to deliver confidence to consumers, providers and investors, and society more broadly."*

3.15 The review considered a number of specific alternative delivery models as set out in the Cabinet Office guidance and shown in Table 2.

Table 2. Analysis of alternative delivery models

 <p>Move local government or voluntary sector A national, rather than a local model is required for consistency.</p> <p>One way of achieving a national model through local Government would be to carry out a tender exercise to find a local authority to deliver the functions nationally. An example of this model is the National Trading Standards Estate Agency team, who act as the lead enforcement for the Estate Agents Act 1979. The review did not receive any evidence to suggest this is a viable option.</p> <p>A considerable level of expertise would be needed to deliver the functions, which may be difficult for a charity to achieve and then maintain.</p>	 <p>Abolish There is a continuing need for regulation in the legal services market and this is best done independently of Government and the legal profession. As such, the LSB should continue to exist in some form.</p>
 <p>Move to private sector To ensure public and international confidence, the functions must be, and be seen to be, delivered independently of the profession.</p> <p>Even if the private organisation was not connected to the legal sector, it is in the public interest that the body is accountable to Parliament.</p>	 <p>Continued delivery by a NDPB For the reasons outlined above, the LSB should continue to operate as a NDPB. This form ensures that the market is impartially regulated and creates the independence needed so that the organisation is not perceived to be under undue pressure from Government or the profession.</p>
 <p>Merge with another body There are few bodies with which it would be appropriate for the LSB to merge. The 2012 Triennial Review considered the possibility of merging the LSB and the OLC. However, the two bodies deliver different functions and the review did not receive any evidence to suggest that efficiency savings or other improvements could be made by merging them. Evidence submitted to the 2012 Triennial Review¹⁹ cautioned against merging the bodies, suggesting this would bring the OLC too close to the frontline regulators.</p>	<p>Recommendation: 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.</p>
 <p>Bring in house To maintain public and international confidence, the functions of the LSB must be, and be seen to be, delivered independently of Government.</p>	
 <p>Delivery by a new executive agency Moving to an executive agency would undermine independence by bringing it too close to Ministers.</p>	

¹⁹ <https://consult.justice.gov.uk/digital-communications/review-lsb-olc/>

Is the LSB effective and efficient?

- 3.16** The LSB has statutory functions and objectives. To achieve the right outcomes, it therefore needs to:
- Effectively and efficiently deliver its functions; and
 - Do so in such a way as to uphold and promote the regulatory objectives.
- 3.17** When it comes to the second point, there are intrinsic difficulties in judging the performance of the LSB. Assessing changes in the market is an effective way of determining whether the objectives are being met – but determining the LSB’s role in this is more complicated.
- 3.18** Firstly, it is challenging to separate the effects of regulation from broader market influences and changes. Secondly, even where areas can be identified as having been impacted by regulation, the distinct impact of the LSB as an oversight regulator is difficult to isolate from the broader influence of the frontline regulators.
- 3.19** The LSB can however, be held accountable for the way in which it engages with the objectives and the extent to which it effectively targets its work towards areas where improvements need to be made. In this way its effectiveness at promoting the objectives can be determined.

Does the LSB effectively engage with the objectives?

- 3.20** The LSB does not have a duty to deliver the objectives. Its duty, set out in statute, is to promote the objectives.²⁰ The relevant extract from the Act

can be seen in Figure 5. The extent to which the LSB is promoting the objectives can be assessed through the visibility it gives the objectives in publications, its promotion of the objectives in delivering its functions, its promotion through research, and through its business plan.

Figure 5 Duties of the LSB relating to the regulatory objectives, taken from LSA 2007 part 2, section 3.

The Board’s duty to promote the regulatory objectives etc

- (1) In discharging its functions the Board must comply with the requirements of this section.
- (2) The Board must, so far as is reasonably practicable, act in a way —
 - (a) which is compatible with the regulatory objectives, and
 - (b) which the Board considers most appropriate for the purpose of meeting those objectives.
- (3) The Board must have regard to —
 - (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and
 - (b) any other principle appearing to it to represent the best regulatory practice.

1. **Visible in publications.** The LSB clearly identifies the objectives in relevant documents. For example, in the “About Us” section of its website²¹ and in its business plan.²² Its 2016 Vision Paper discussed its view on the future of the objectives.²³ It has also produced a more detailed pamphlet explaining what the objectives mean in practice.²⁴ This pamphlet is currently under review, with an aim to make it more user friendly. This is work the review supports.
2. **Promoted through functions.** Assessment of the LSB’s effectiveness in delivering its functions can be found on page 22. Examples of the ways it promotes the objectives in delivering its functions include actively considering the objectives when assessing applications for regulatory rule changes, and building consideration of the objectives into the assessment criteria for its reviews of the frontline regulators.
3. **Promoted through research.** A key way in which the LSB promotes the objectives is through its market evaluation research. In 2011 the LSB set out an evaluation framework of desirable market outcomes associated with the regulatory objectives.²⁵ It produced a baseline report against this framework in 2012,²⁶ and a competition focused report in 2013.²⁷ In 2016 it published a detailed analysis of market changes

²⁰ LSA 2007, part 2, section 3. www.legislation.gov.uk/ukpga/2007/29/pdfs/ukpga_20070029_en.pdf

²¹ www.legalservicesboard.org.uk/about_us/index.htm

²² www.legalservicesboard.org.uk/Projects/pdf/20160412_LSB_Business_Plan.pdf

²³ www.legalservicesboard.org.uk/news_publications/LSB_News/PDF/2016/20160909LSB_Vision_For_Legislative_Reform.pdf

²⁴ www.legalservicesboard.org.uk/news_publications/publications/pdf/regulatory_objectives.pdf

²⁵ http://www.legalservicesboard.org.uk/news_publications/publications/pdf/evaluation_framework_april_2011.pdf

²⁶ <https://research.legalservicesboard.org.uk/wp-content/media/impacts-of-the-LSA-2012-Final-baseline-report.pdf>

²⁷ <https://research.legalservicesboard.org.uk/wp-content/media/Changes-in-competition-in-market-segments-REPORT.pdf>

between 2006/07 - 2014/15.²⁸ This report provides valuable insight into the current legal services market and highlights areas where more work is needed to achieve desirable outcomes. Making these improvements will not be a task for the LSB alone; a range of organisations need to be involved, including the OLC and the Approved Regulators. The review acknowledges the value of the work the LSB has carried out on this topic, deepening the understanding of the legal services market and providing a framework through which to monitor changes and target action. The review encourages the LSB to use this research, and future research on this topic, to promote change in the market.

4. **Promoted through the business plan.** The review notes that the LSB's 2017/18 business plan focuses on areas identified in the CMA's market study as requiring further work to achieve the desirable outcomes associated with the regulatory objectives. The review encourages the LSB to consider the impact it can have on these outcomes when delivering its business plan.

Is the LSB delivering its business plan?

- 3.21 The LSB provides quarterly reports to MoJ on performance. These provide key activities, achievements, and risks; specify which objectives the activities are in support of and provide a RAG status. At the time of assessment the programme was rated green by the LSB, signalling that delivery of the business plan is on track.

Focus on: Improving Access to Justice

How does the LSB define "Improving Access to Justice"?

- 3.22 In a pamphlet published in 2011, the LSB set out its understanding of the regulatory objectives.²⁹ This contains a detailed description of how the LSB interprets the scope of Improving Access to Justice. Key points of this include:

"Access to Justice is the acting out of the rule of law in particular or individual circumstances. The tools to achieve that outcome range from informing the public about their rights, through routine transactional legal services and personalized advice, through to action before tribunals and courts."

"Justice is more than the resolution of disputes: it includes "just" relationships underpinned by law."

"Access too must be conceived widely in our view. It encompasses services delivered through any channel such as face-to-face, telephone or internet."

"Access to Justice is relevant to all consumers - individuals, groups, companies and organisations - from the smallest to the largest."³⁰

- 3.23 As previously stated, the LSB is currently reviewing the pamphlet in which this description is contained.

What has the LSB done towards this objective?

- 3.24 The LSB has carried out research on both financial and non-financial barriers to accessing justice. For example, in 2016 it published a report on what lessons could be learnt from other sectors to lower non-financial barriers to accessing services.³⁰ In August 2016 the LSB published a framework to understanding risks to the affordability of legal services.³¹ This framework was shared with frontline regulators and included in internal LSB documents.
- 3.25 The LSB has been active in driving change to increase the transparency of price and the quality of information in the market. The LSB, LSCP, and frontline regulators have all worked to increase the level of information available, and all frontline regulators now make information about the providers they regulate available to comparison websites. Greater market transparency empowers the consumer and promotes competition.

28 <https://research.legalservicesboard.org.uk/wp-content/media/2015-2016-FINAL-Market-Evaluation-Main-report11.pdf>

29 www.legalservicesboard.org.uk/news_publications/publications/pdf/regulatory_objectives.pdf The LSB is currently reviewing this document.

30 www.legalservicesboard.org.uk/news_publications/publications/pdf/2016/20160331_Lowering_Barriers_Final_Report.pdf

31 [www.legalservicesboard.org.uk/news_publications/publications/pdf/2016/20160817_Framework_for_understanding_risks_to_affordability_of_legal_services_\(Au___pdf](http://www.legalservicesboard.org.uk/news_publications/publications/pdf/2016/20160817_Framework_for_understanding_risks_to_affordability_of_legal_services_(Au___pdf)

What is the LSB planning to do to improve Access to Justice?

- 3.26** Tackling unmet legal need is a key objective of the LSB's 2015-18 strategy, and the LSB's business plan includes actions to improve market transparency and to explore the needs of small businesses and vulnerable consumers. This includes carrying out and publishing research, identifying ways to improve delivery of legal services, and engaging with frontline regulators and professional representative bodies, consumer groups, and the LSCP.³²
- 3.27** The CMA's 2016 legal services market study included a number of recommendations to frontline regulators to improve transparency and cost data. The report recommended the LSB monitor the implementation of these recommendations, and take appropriate action if a frontline regulator fails to take sufficient action. This function is in line with the LSB's statutory objectives, and so the review supports the LSB taking on this role.

Recommendation:

The CMA's Legal Service Market Study made a number of recommendations to the LSB to improve consumer information and transparency and these should be implemented.

Focus on: Encouraging a diverse legal profession

- 3.28** Supporting diversity within the legal profession is part of the broader regulatory objective to encourage an inclusive, independent, strong, and effective legal profession. A diverse legal profession includes a range of individuals in relation to their sex, ethnicity, race, colour, gender, socio-economic background, sexuality, and disability.
- 3.29** Inclusion and diversity are important for the legal profession as a whole to ensure it has as wide a talent pool as possible and that an individual's background is not a barrier to their success. It is imperative for the legal profession to be reflective of, and sensitive to, the diverse consumers it serves.

What has the LSB done to promote diversity in the legal profession?

- 3.30** In 2010, the LSB undertook research³³ to identify diversity issues in the profession and established a Diversity Forum. In 2011 it published statutory guidance about diversity expectations of approved regulators, including duties for firms and chambers to publish diversity statistics. The LSB carried out reviews of frontline regulators' progress in 2013 and 2015. The 2015 review found that analysis and use of data required improvement, but a more robust evidence base had successfully been developed. Additionally, the LSB hosted two roundtables to discuss ways to increase diversity with frontline regulators.³⁴
- 3.31** The LSB carried out diversity surveys of its own staff in 2010 and 2012, the results of which were published on its website.³⁵ Its annual report includes data on gender balance. As of 31 March 2016, 61% of LSB staff were female.³⁶
- 3.32** In February 2017, the LSB issued new guidance giving regulators greater flexibility to help the sector find new ways of developing the diversity of the workforce and to assist with the collection and use of the data already gathered in the last five years.
- 3.33** The LSB launched a diversity survey of its staff in April 2017, work which the review supports. Transparency of diversity data needs to be balanced with anonymity for individuals. The review encourages the LSB to track the diversity of its staff, with an aim to promote diversity and inclusion in the organisation. This data should be published in as much detail as is possible without compromising the anonymity of individuals.

What is it planning to do promote diversity in the legal profession?

- 3.34** In August 2017, the LSB plans to carry out progress checks to see how the regulators are delivering the outcomes of the revised guidance. A formal assessment of regulators' progress in this area will be carried out in August 2018.

³² www.legalservicesboard.org.uk/Projects/pdf/20160412_LSB_Business_Plan.pdf

³³ www.legalservicesboard.org.uk/Projects/workforce_development/index.htm#diversity

³⁴ http://www.legalservicesboard.org.uk/about_us/board_meetings/2017/PDF/17_03_Diversity_The_Role_Of_Regulators.pdf

³⁵ http://www.legalservicesboard.org.uk/about_us/our_staff/equality_and_diversity/diversity_survey.htm

³⁶ http://www.legalservicesboard.org.uk/news_publications/publications/pdf/2016/20160707_LSB_Annual_Report_2015_16.pdf

Recommendation:

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.

Does the LSB carry out its functions effectively?

3.35 The Tailored Review process, which included a Call for Evidence, engagement with LSB Board members and the MoJ policy sponsor, and assessment of relevant reports and reviews, highlighted the following areas that warranted further investigation:

- the role of research;
- ensuring sufficient separation of the frontline regulators from the professional representative bodies;
- assessment of the frontline regulators; and
- approval of the frontline regulators' rule changes.

Role of research

3.36 The LSB has a targeted research programme, overseen by a Research Strategy Group, which includes independent representation (for example, academics and representatives from ARs). The research is used by the LSB as well as other organisations with an interest in the legal sector. In addition to the resulting reports, the LSB also publishes all data sets. The research is promoted in various ways, including social media and speaking engagements.³⁷ Recent research includes:

Prices of Individual Consumer Legal Services	Changes in the legal services market 2006/07 – 2014/15
Innovation in Legal Services	Online survey of individuals' handling of legal issues in England and Wales 2015
Comparing methods of service delivery: A divorce case study	Unregulated legal service providers

What evidence did the review receive?

3.37 The quality of the research was highlighted as a particular strength by respondents to the Call for Evidence. For example, one Professor of Law wrote, "Single-handedly it has transformed our knowledge of the legal profession and legal services market." The CMA's report also praised the LSB's research programme, and the research programme of the LSCP, describing them as "crucial".³⁸

3.38 However, responses to the Call for Evidence raised concerns that some of the research topics may go beyond the remit of the LSB. For example, the LSB carried out research on unregulated providers and one respondent queried whether this should have been funded by the regulated professions.

What is the Review's assessment?

3.39 The review did not find evidence of the LSB carrying out research not designed to facilitate the delivery of its statutory functions and regulatory objectives. For example, research on unregulated providers was in relation to its statutory function to consider the scope of reserved legal activities. However, the evidence did highlight a *perception* that some of the research goes beyond the LSB's remit.

³⁷ <http://research.legalservicesboard.org.uk/>

³⁸ www.gov.uk/cma-cases/legal-services-market-study#final-report

Greater clarity in the research about which objectives and functions it supports would help to mitigate this perception. This could be further reinforced if the LSB were to consider the impact it has in its annual report and link all of its work to either a statutory function or regulatory objective.

Recommendation:

To ensure there is no perception of the LSB 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 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.

Appropriate separation of frontline regulators from professional representative bodies

- 3.40** To ensure public confidence in legal services regulation, the frontline regulators must be, and be seen to be, free from interference by the professional representative bodies. The LSB makes internal governance rules, with which the ARs must comply to ensure an appropriate split between regulatory and representative functions. The relevant section of LSA 2007 can be seen in Figure 6.
- 3.41** The LSB has statutory powers to enforce these rules. For example, under part 4, section 37, the LSB is able to impose a financial penalty if a body is found to have failed to comply with the internal governance rules.³⁹

Figure 6: Extract from LSA 2007 outlining the Board's duties relating to internal governance rules (Part 4, section 40)

The Board must make rules ("internal governance rules") setting out requirements to be met by Approved Regulators for the purpose of ensuring —

- (a) that the exercise of an approved regulator's regulatory functions is not prejudiced by its representative functions, and
 - (b) that decisions relating to the exercise of an approved regulator's regulatory functions are so far as reasonably practicable taken independently from decisions relating to the exercise of its representative functions.
- (2) The internal governance rules must require each approved regulator to have in place arrangements which ensure —
- (a) that the persons involved in the exercise of its regulatory functions are, in that capacity, able to make representations to, be consulted by and enter into communications with the Board, the Consumer Panel, the OLC and other Approved Regulators, and
 - (b) that the exercise by those persons of those powers is not prejudiced by the approved regulator's representative functions and is, so far as reasonably practicable, independent from the exercise of those functions.

- (3) The internal governance rules must also require each approved regulator —
- (a) to take such steps as are reasonably practicable to ensure that it provides such resources as are reasonably required for or in connection with the exercise of its regulatory functions;
 - (b) to make such provision as is necessary to enable persons involved in the exercise of its regulatory functions to be able to notify the Board where they consider that their independence or effectiveness is being prejudiced

What evidence did the review receive on the separation of professional representative bodies and frontline regulators?

3.42 The review considered responses from the Call for Evidence and recent reports. A sample of these are shown in Figure 7.

Figure 7: Sample of evidence received on the separation of professional representative bodies and frontline regulators

A 2015 Treasury report “A better deal: boosting competition to bring down bills for families and firms” recommended MoJ carry out a consultation on regulators’ independence.

“Until we have full regulatory independence, the LSB has a critical role to play in protecting the independence of the regulators and upholding public confidence in the sector...we would suggest that the LSB should focus on using its existing powers to deliver greater independence within the current legislation” (Frontline Regulator, Call for Evidence).

The CMA review received mixed evidence, including a response from the Solicitors Regulation Authority (SRA) highlighting issues with its relationship with the Law Society.⁴¹ The CMA’s recommended a consultation on the independence of the regulators.⁴²

What is the review team’s assessment?

3.43 At the very least, there is an issue about the perception of interference of particular professional representative bodies in the work of the associated frontline regulators. This may, in part, be because of the co-location of the two functions within the same legal entity. However, were this to be simply an issue of location the review team would expect to see similar evidence across the ARs, instead of evidence about particular situations and bodies. The review found that more can be done to secure appropriate separation between the professional representative bodies and the frontline regulators.

3.44 The review suggests that the LSB could do more within the current framework, particularly around providing visible assurance to the professions and the public that regulation is carried out independently of the professional representative bodies. In providing this assurance the LSB should consider both cases of actual interference, and how it can mitigate issues with the perception of interference. The review notes that the LSB has committed, via its 2017/18 Business Plan, to a review of its internal governance rules. The review team welcomes this and is of the opinion that any changes should be made within the existing legislative framework.

3.45 On 17 February 2017 the LSB announced a formal investigation into the relationship between the Law Society and the SRA. This is an opportunity for the LSB to provide assurance on the independence of the SRA, or to take further steps as appropriate. The review team encourage the LSB to continue to provide visible assurance on the adequate separation between professional representative bodies and the frontline regulators.

Recommendation:

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.

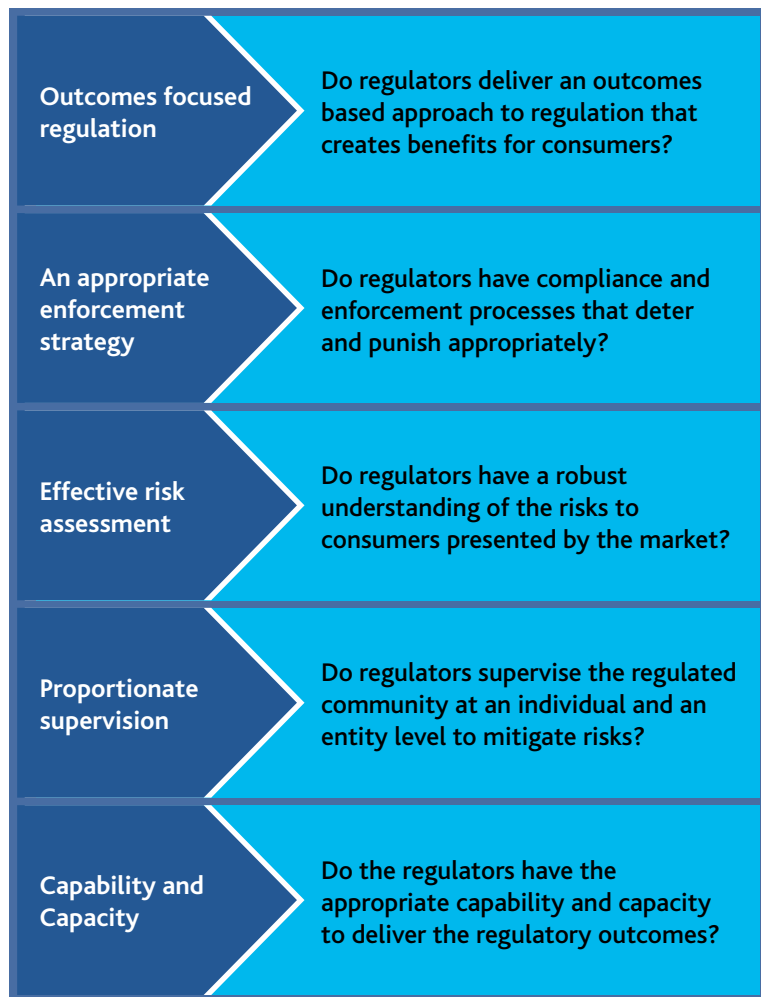
40 www.sra.org.uk/sra/consultations/consultation-responses/cma-interim-report.page

41 www.gov.uk/cma-cases/legal-services-market-study#final-report

LSB assessment of frontline regulators

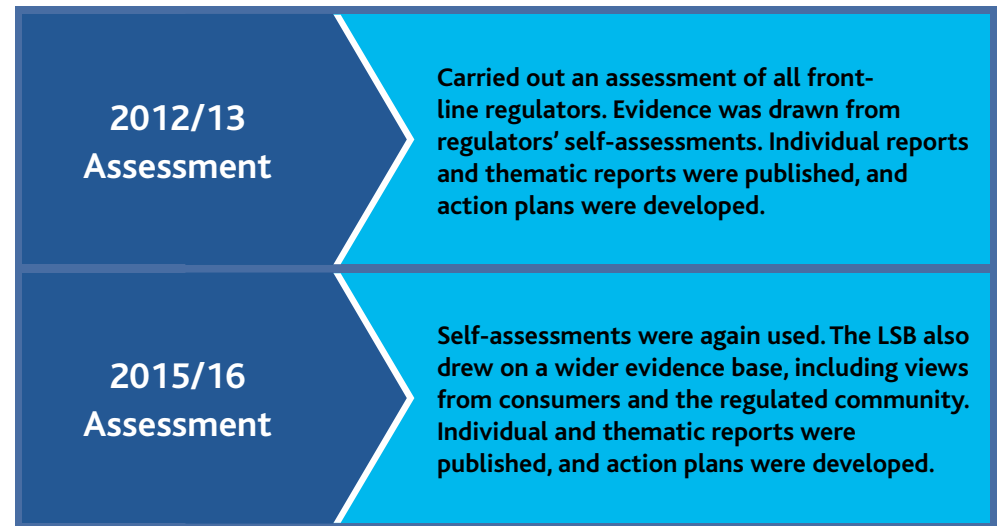
3.46 The LSB has carried out two full assessments of the frontline regulators. The first took place in 2012/13, the second in 2015/16. It assessed the frontline regulators against the principles in Figure 8.⁴²

Figure 8. The LSB's assessment principles



Since its inception, the LSB has carried out two full assessments. The LSB's approach to these assessments is shown in Figure 9.

Figure 9. LSB's approach to assessments of their frontline regulators



3.47 In 2017 the Cabinet Office published "Regulatory Futures", a thematic review of regulators.⁴³ The review was not specifically focused on legal services regulation, but the LSB was in scope. The recommendations were predominantly aimed at regulators, rather than oversight regulators. However, the principles underlying the recommendations are still of relevance to oversight regulators, including the LSB. The review recommends a shift towards regulated self-assurance and earned recognition. Where relevant, inspections should be targeted and proportionate.

3.48 The LSB is currently reviewing the assessment process of the frontline regulators. It will consult on any changes during 2017/18. The review encourages the LSB to consider the principles of being proportionate and targeted as it develops the process.

42 www.legalservicesboard.org.uk/Projects/developing_regulatory_standards/index.htm#Regulatory_Standards

43 www.gov.uk/government/publications/regulatory-futures-review

Recommendation:

Whilst undertaking its ongoing review of its processes for assessing frontline regulators, the LSB should take into account the recommendations of the Cabinet Office's Regulatory Futures review.

Approval of frontline regulators rule changes

- 3.49** Under the LSA 2007 changes to the regulatory arrangements of approved regulators must be approved by the LSB. The LSB assesses the change against the regulatory objectives or, where the change requested is small with "limited impact on the regulatory community"⁴⁴ it may grant an exemption. These exemptions are intended to keep assessment proportionate and efficient.
- 3.50** The review received a small amount of mixed evidence on the LSB's effectiveness in delivering this function. Given the range of organisations the LSB oversees, it is perhaps unsurprising that there is diversity of opinion on this. For example:

"LSB could revise its policy and internal rules on approval of changes to regulatory arrangements to make them much lighter touch: they could intercede only when a frontline regulator has been irrational."

Frontline Regulator

"It would be helpful if the LSB could do more thorough impact assessments of proposed regulatory changes and encourage the frontline regulators to do likewise"

Professional Representative Body

- 3.51** The contradictory nature of the suggestions received highlights the extent to which the LSB must carry out this function in a way that balances the needs of both professional representative bodies and frontline regulators. Responses to the Call for Evidence did not indicate that the LSB is shifting that balance too far in one direction or the other. This is demonstrated by the small number of respondents who raised this issue and the balance in views given.

- 3.52** The LSB carried out an assessment of its processes in 2015/16. This included consultation with frontline regulators and professional representative bodies, as well as analysis of completed rules changes and guidance documents. As an outcome of the assessment, the LSB is carrying out a range of improvements, including improving the clarity of queries and decisions, operational efficiencies, and publication of greater information on the process.

In 2015/16, the average time for completing an application was 29 days, compared to 33 days three years before.

In 2015/16, 77% of applications received were completed within 28 days, compared to 55% three years before.

- 3.53** The LSB has made improvements to the efficiency of the process, and has recently consulted on its approach. The review is therefore not recommending any changes to the approvals process.

Conclusion: Is the LSB effective?

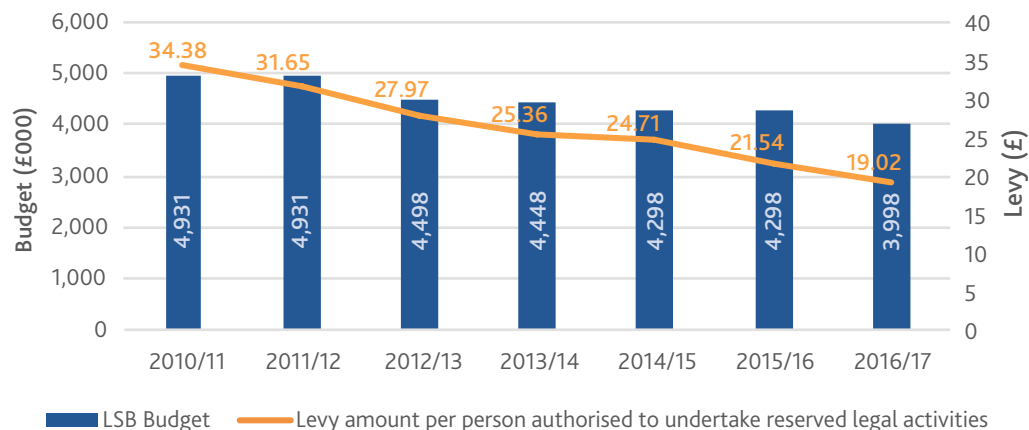
- 3.54** The review's assessment shows that the LSB is generally effective both in promoting the regulatory objectives and in delivering its functions. The review has, however, made recommendations relating to cost transparency, the gathering of diversity data, the LSB's research, the separation of the frontline regulators from the professional representative bodies, and the LSB's assessment of the frontline regulators.
- 3.55** Although the review did not find evidence of the LSB going beyond its statutory remit, some respondents to the Call for Evidence suggested it was carrying out tasks beyond those required to fulfil its statutory functions. As an oversight regulator funded by the profession, it is important not just that the LSB acts within its remit, but also that it is seen to act within its remit. Greater clarity about how activities tie to broader functions and objectives may help to provide assurance that the LSB is not overstepping its remit. Increased transparency about the impact of activities may also help to promote understanding of, and confidence in why they are within the scope of the LSB's statutory functions and objectives and why they were priorities for the LSB.
- 3.56** The LSB should therefore reflect further on its impact in appropriate documents,

such as its annual report, and visibly tie all work to either its statutory functions or the regulatory objectives.

Does the LSB represent good value for money?

3.57 As an Executive NDPB, the LSB has a responsibility to uphold the principles of Managing Public Money; this includes achieving value for money. It is funded by a levy on the profession, the cost of which may impact the price of legal services. The LSB's efficiency, therefore, may impact on the consumer. Its budget for 2016/17 was £3,998,000, this represents a reduction of 19% from its 2010/11 budget. This can be seen in Figure 10. We recognise the work the LSB has done to achieve cost savings and encourage it to continue to focus on achieving budget and levy reductions where possible.

Figure 10. Graph showing the reduction in the LSB budget and levy from 2010/11 to 2016/17



The levy cost is assessed each year. The LSB carried out a full assessment of the levy rules in 2013/14.

LSB research on Value for Money

3.58 The LSB has commissioned and carried out a range of research to assess the value of regulation and to assist in the development of priorities,⁴⁵ examples of which can be seen at Figure 11.

Figure 11. Examples of LSB research

A 2015 LSB study on the value of regulation found only between 41% and 67% of legal service providers knew the Practising Certificate Fee funded the LSB. As a result, the LSB is working with frontline regulators to improve transparency about the cost of regulation.

LSCP produces a biannual report measuring progress on delivering better consumer outcomes.

LSB commissioned research on consumers' views on the value of regulation.

3.59 By clarifying which areas offer value and where improvements could be made, the research done in this area has the potential to improve both the LSB and the frontline regulators' value for money. Respondents to the Call for Evidence highlighted the quality of the research carried out by the LSB and the LSCP. To ensure that maximum value is achieved from the research and that its potential impact is realised, the review encourages the LSB to continue to use the research results to promote value in itself and the frontline regulators.

Organisational Efficiency



3.60

LSB employees are public servants, rather than civil servants. On 31 March 2016 it had 24 full time employees and seven part time employees. The total wage bill of staff, the Board and the Consumer Panel was £2,426,000 in 2015/16. Using pay band comparisons, the LSB had seven senior civil servant (SCS) equivalent roles during the same period.⁴⁶ At 23% of total staff, the SCS equivalent roles represent a significant proportion of its employees.

- 3.61** There are a range of reasons why the LSB may require a number of SCS equivalent roles. These include the wide range of stakeholders the LSB engages with (including ARs), rates of pay for some roles needing to compete with other organisations (including regulators), and that a small organisation may be more reliant on senior staff to provide skills and experience.
- 3.62** However, even taking this into account, the number and remuneration of senior staff must be considered in the context of the need to deliver organisational efficiency. This is particularly the case now that the organisation has established its role and processes. This review is neutral as to whether each of the individual SCS roles are still required and whether the salary is appropriate. However, 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 efficiency savings.

Recommendation:

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.

Internal Governance Assessment

3.63 In 2016 the Tailored Review team carried out a robust assessment of the LSB's governance arrangements against the principles of good governance set out in Cabinet Office guidance.⁴⁷ The assessment additionally included updates on the recommendations from the 2012 Triennial Review, which can be seen in Annex F. The LSB either complied, or provided adequate explanation for non-compliance, with the principles and policies in the areas listed in Figure 12.

Results of the Internal Governance Assessment

- 3.64** The assessment showed that the framework agreement between the LSB and the MoJ is out of date. To ensure transparency and clarity of responsibilities this document should be updated and periodically reviewed.
- 3.65** Evidence provided to the team showed a particularly high standard of induction materials for new board members. This reflects feedback received from board members, who explained that the induction material allowed new members to immediately contribute and add value to the organisation.
- 3.66** The review revealed significant issues with the tripartite governance arrangements between the LSB, OLC, and MoJ. This is discussed in detail on page 50.

Recommendation:

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.

Figure 12. Governance Assessment of the LSB



Office for Legal Complaints

The OLC

Purpose and structure

4.1 The Office for Legal Complaints (OLC) was established as a statutory body in July 2009 under Part 6 of the LSA 2007 and is the Board responsible for setting up, and administering an independent complaints handling scheme known as the Legal Ombudsman,⁴⁸ *creating its scheme rules and overseeing its performance*. The Legal Ombudsman became fully operational in October 2010. It was subject to a Triennial Review in 2012, alongside the LSB.


4.2  The OLC Board has seven members, including the Chair (newly appointed on 1st April 2017), four of whom are female and three are male. This includes two non-lay board members, and five lay board members as shown in Figure 13. The staff of the Legal Ombudsman are public servants. The demographics of the Legal Ombudsman, at October 2016, are shown in Figure 14.

Figure 13. High level organogram showing the structure of the OLC and the Legal Ombudsman

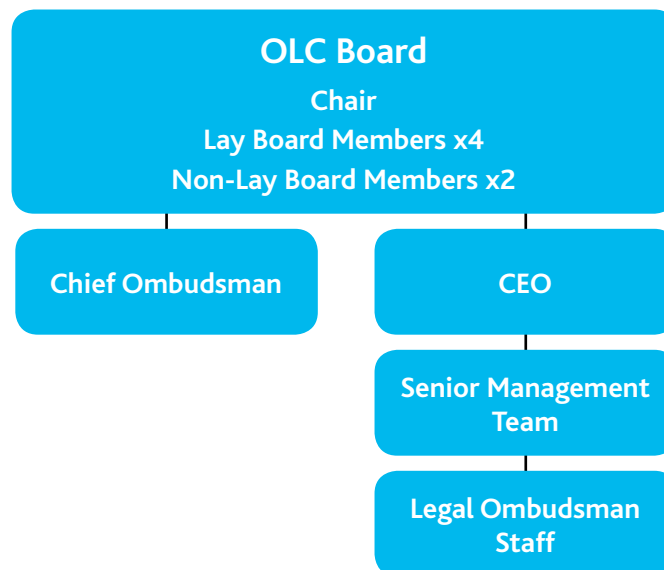
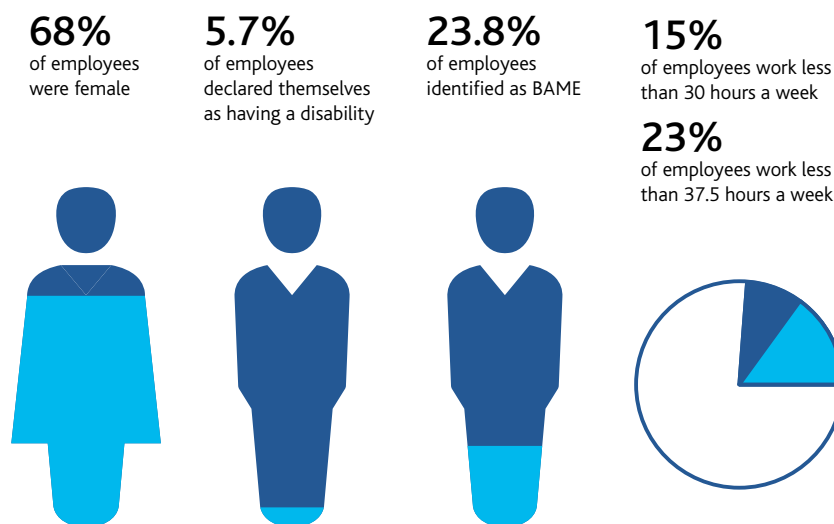



Figure 14. Demographics of the Legal Ombudsman at October 2016



Funding of the OLC

4.3  OLC expenditure on legal service complaints in 2015/16 was £11.6m. The OLC is funded partly through a levy on the legal profession, provided by approved regulators annually in arrears, and partly through case fees. The LSA 2007 allows the flexibility to determine the best way to operate the fee mechanism. The OLC must consult in making those arrangements. The LSB has oversight for the Legal Ombudsman's funding and performance.

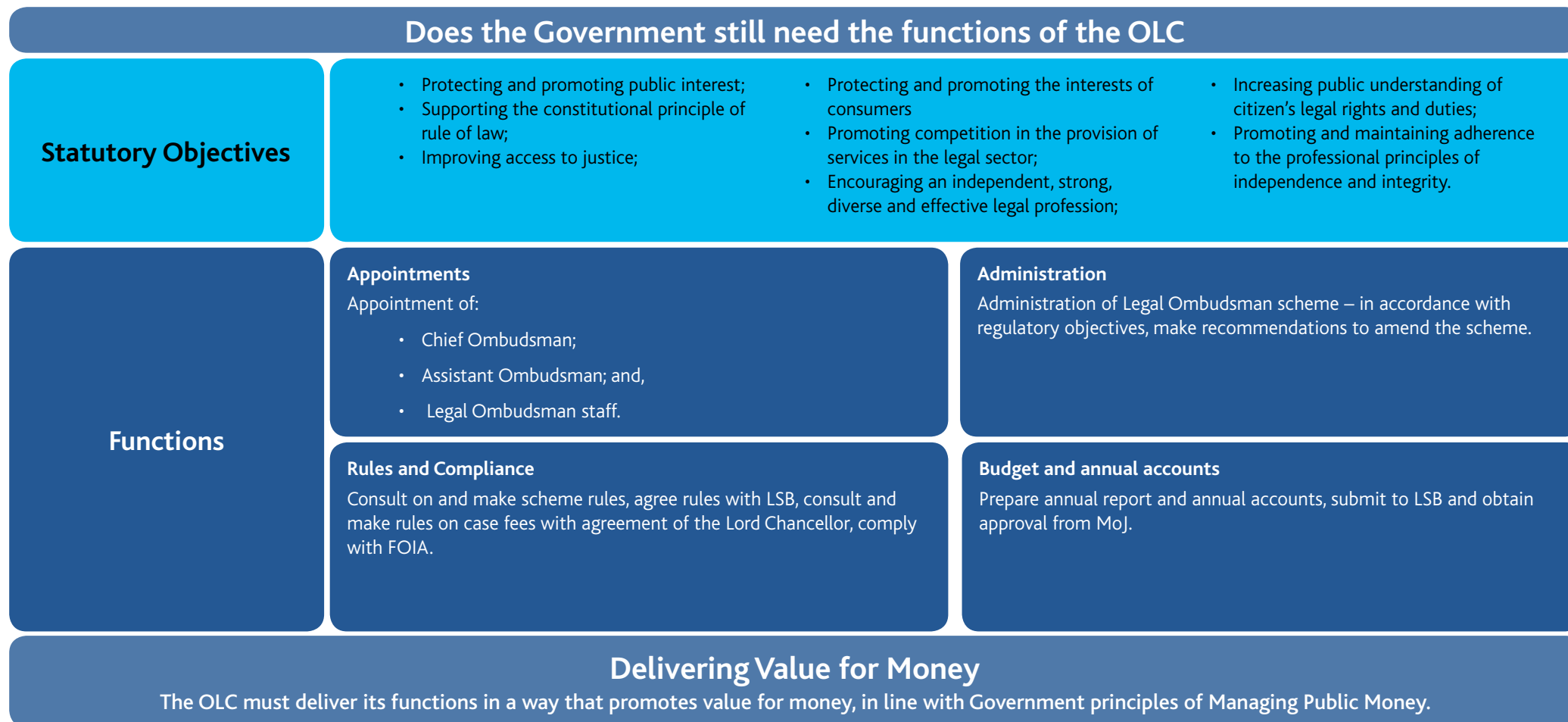
4.4 On 28 January 2015 the Legal Ombudsman began dealing with complaints about claims management companies. The cost of running this service was £2.1m in 2015/16 and is funded partly through a levy on claims management companies (collected by the claims management regulator and paid to the OLC via the MoJ), partly through case fees and partly through a grant-in-aid from the MoJ. The review team has not assessed the CMC jurisdiction as part of this review for two reasons; firstly, since it is a new jurisdiction with no previous data to compare to, and secondly, it has been agreed that the regulation of claims management companies will transfer to the Financial Conduct Authority and complaints handling to the Financial Ombudsman Service.

48 Further information on the OLC and Legal Ombudsman is available at www.legalombudsman.org.uk

Functions and objectives

4.5 The OLC has been established to ensure that the Legal Ombudsman promotes the regulatory objectives set out in Section 1 of the LSA 2007, as shown in Figure 15. These are not hierarchical – each has equal weighting.

Figure 15. Functions and Objectives of the Legal Ombudsman



Does Government still require the functions of the OLC?

4.6 The review did not receive any evidence to suggest that the functions of the OLC were not required or needed amending. The importance of having an independent complaints system is widely supported, and confirmed by a number of reports.

Review of the Regulatory Framework for Legal Services in England and Wales

4.7 Sir David Clementi's independent review of the regulatory structure of legal services in England and Wales⁴⁹ identified concerns surrounding the independence of a complaints handling system delivered by frontline regulators which did not meet the requirements of consumers. The review recommended the establishment of a single independent body to handle consumer complaints in respect of all legal service regulators (known as approved regulators in the LSA 2007). Clementi suggested that a single independent complaints system allows for:

- increased consumer confidence;
- simplicity for consumers;
- consistency and clarity of process;
- greater flexibility and in particular, ability to accommodate alternative business structures; and
- collection of data to feed back to frontline regulators to aid improvements in service delivery.

This recommendation went on to form part of what was to become the LSA 2007.

Legislative Options Beyond the Legal Services Act 2007

4.8 In 2015, a report from a cross-regulator discussion chaired by Professor Stephen Mayson, set out issues with the LSA 2007 and how they might be addressed through amendments to, or replacement of the Act. The report recognised that an independent complaints system is a matter of consumer protection:

"If there is a dispute about the quality of service received, expert assessment will often be required to resolve it."

Competition and Markets Authority Legal Services Market Study

4.9 The recent CMA market study into the supply of legal services in England and Wales⁵⁰ supports the need for a redress mechanism:

"redress mechanisms can be an effective way to compensate consumers when their legal services provider has acted wrongfully (e.g. by engaging in an unfair commercial practice), made mistakes (e.g. has provided poor-quality legal advice) or provided poor service (e.g. by not providing key information clearly). For consumers, the ability to obtain adequate redress (whether an apology, having the problem put right or compensation) increases trust and confidence and decreases perceived barriers to engagement with the sector."

"Effective redress mechanisms can also improve the incentives for legal services providers to offer good quality advice and service. In addition, feedback from complaints enables providers to improve their services and helps regulators to identify systemic problems that might require intervention."

Fair markets

4.10 A fair market, working for the benefit of both consumers and service providers, requires a strong redress system and confidence that legal service users have somewhere to go when things go wrong. Adequate recourse is also important in promoting competition within the legal services market and encouraging the delivery of a good quality service.

Conclusion: There is widespread support for an independent complaints system in the legal services sector.

Recommendation:

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

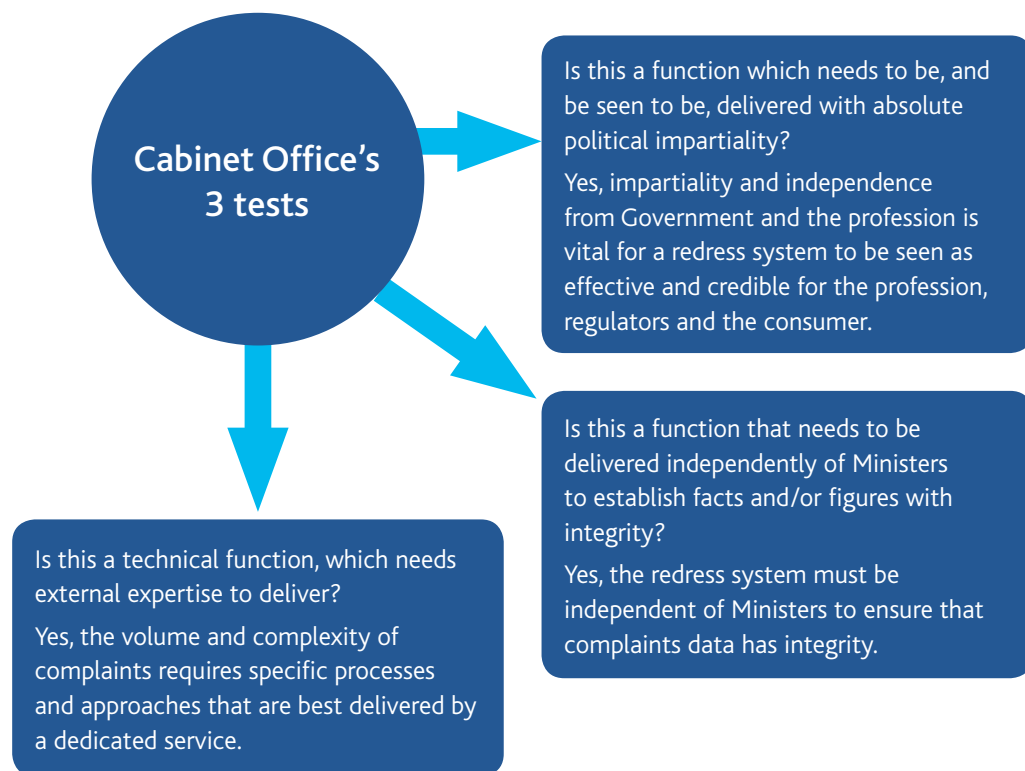
49 www.avocatsparis.org/Presence_Internationale/Droit_homme/PDF/Rapport_Clementi.pdf

50 www.gov.uk/cma-cases/legal-services-market-study#final-report

Is a statutory body operating at arm's length from Government the best delivery model for the functions of the OLC?

- 4.11 83% of respondents to the Call for Evidence supported continued delivery of OLC's functions by a body independent of Government. To ensure impartiality and public confidence, complaints handling needs to be, and be seen to be, independent of Government and the profession.
- 4.12 The Cabinet Office sets out three tests⁵¹ to help ascertain whether functions should be delivered at arm's length from Government. Figure 16 shows how the three tests apply to the functions of the OLC.

Figure 16. Cabinet Office's three tests applied to the functions of the OLC



- 4.13 The OLC shares the views of Government and more than three quarters of respondents to the Call for Evidence that "a *second-tier complaints body should be independent of the profession(s) whose complaints it handles to demonstrate impartiality to both the complainant and service provider*".
- 4.14 The review considered a number of specific alternative delivery models as set out in Cabinet Office guidance and shown in Table 3.

Table 3. Analysis of alternative delivery models

	<p>Move to local Government or voluntary sector A national, rather than a local model is required for consistency.</p> <p>One way of achieving a national model through local Government would be to carry out a tender exercise to find a local authority to deliver the functions nationally. An example of this model is the National Trading Standards Estate Agency team, who act as the lead enforcement for the Estate Agents Act 1979.</p> <p>The voluntary sector would need a considerable level of expertise to deliver the functions, which may be difficult for a charity to achieve and then maintain</p> <p>No evidence has been received to suggest that either of these would be a viable option at present.</p>
	<p>Move to private sector The importance of consumer interest in this complex area, and the need for independence from the profession, suggest that the functions need to be delivered by a public body.</p> <p>Private sector schemes are more at risk of bias and were part of the impetus for reform which led to the LSA 2007.</p>
	<p>Merge with another body There is no one body with which it would be appropriate for the OLC to merge. The Government has plans to create a single public sector Ombudsman but it will not include private sector organisations, such as lawyers.</p> <p>There is value to a feedback loop most easily established via sector specific redress. An Ombudsman covering multiple sectors may also mean a larger body would, in practice, work in silos.</p>
	<p>Bring in house The functions of the OLC need to be delivered independently of Government to avoid perception of political influence. The responses to the call for evidence were opposed to this delivery model.</p>
	<p>Delivery by a new executive agency Moving to an executive agency would be seen to undermine independence/perception of independence.</p>

Abolish

To ensure confidence and stability in the legal services market, there is a clear need for a redress mechanism for when things go wrong. As such, the OLC should continue to exist in some form.

Continued delivery by a statutory body

In order for complaints to be handled in a truly impartial way, they need to be investigated independently of both Government and the profession. The best way to ensure this is for the OLC to continue to operate as a statutory body.

Conclusion:

The OLC should continue to operate as a statutory body at arm's length from Government.

Recommendation:

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

Is the OLC efficient and effective?

Introduction

- 4.15** The OLC is currently looking at alternative ways to measure its performance going forward and has developed proposals for a new balanced scorecard for implementation from April 2018. The OLC is of the view that the proposed new measures will reflect what matters to customers, in particular, an appropriate balance between quality and timeliness.
- 4.16** In order to assess the efficiency and effectiveness of the Legal Ombudsman at the time of the review, the review team analysed data on the Legal Ombudsman's performance against its KPIs over the last three full financial years (2013/14, 2014/15 and 2015/16). Comparing the Legal Ombudsman scheme to other Ombudsman schemes was considered, however the review team agreed with the Legal Services Consumer Panel report 'Benchmarking the Legal Ombudsman', published in November 2013⁵² which states:

"Each scheme operates in different contexts, which affects the size and type of complaints it receives and the customers (complainants and respondents) it deals with. The processes schemes use differ somewhat and the resources at their disposal vary greatly. The Panel is also alert to the risks of creating perverse incentives or encouraging misreporting due to a "targets culture". The schemes use a variety of reporting conventions which makes comparisons difficult".

- 4.17** The view that making comparisons was not helpful and in fact would not be easy to do was supported by the Chief Legal Ombudsman and Chief Executive of an Ombudsman scheme in another sector.
- 4.18** The LSB holds the OLC to account for its performance in administering the Legal Ombudsman scheme. In June 2015, the LSB used its powers under Section 121 of the LSA 2007 to set targets and reporting requirements (from 1 June 2015 to 31 March 2016). This addressed performance in relation to quality, timeliness and cost targets in administering the legal jurisdiction side of the scheme. If performance fell below the trigger target levels, the OLC were required to provide an explanation of why performance had not reached the target and the steps they (OLC) would take to remedy the situation. In April 2016, on the expiry of the

June 2015 Section 120 and Section 121 requirements the LSB issued a revised Section 120 requirement to the OLC which ran until March 2017. At the expiry of this requirement, the LSB asked the OLC to consider a voluntary reporting approach. At the time of drafting, this approach remained under discussion. For 2015/16 the following KPIs were agreed for the legal jurisdiction:



Timeliness

The percentage of cases resolved within 90 days, 180 and 365 days from the date the case is accepted for investigation.



Quality

Customer satisfaction measured at the end of the complaints process.



Unit cost

Track the unit cost by reporting the annual cost of the organisation averaged according to the number of cases.



Reputation

Commission external, independent measurement of satisfaction levels among customers (consumers and lawyers) and stakeholders on an annual basis.



Impact

Undertake annual surveys of stakeholder groups to assess their confidence in delivery against objectives and annual surveys of consumers of legal services to determine how many are aware of the Legal Ombudsman.

Timeliness KPI

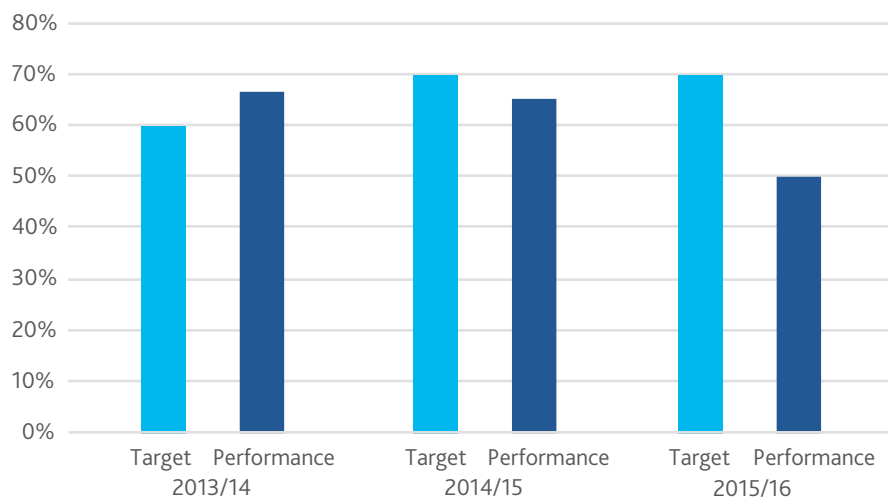
4.19 There are currently three measures under the timeliness KPI, each with its own target, as shown in Table 4. Performance on timeliness is measured as percentage of cases resolved within 90, 180 and 365 days.

Table 4. Performance against the timeliness target in 2015/16

Measure – proportion of cases resolved within:	2015/16 Target	2015/16 Performance
90 days	70%	50%
180 days	95%	91%
365 days	100%	100%

4.20 Figure 17 shows that the percentage of cases resolved within 90 days has fallen over the last three years. Whilst the Legal Ombudsman exceeded the 60% target in 2013/14, it did not meet the increased 70% target in the following two years. In 2015/16, 50% of cases were resolved within 90 days, against a target of 70%.

Figure 17. Percentage of cases resolved within 90 days

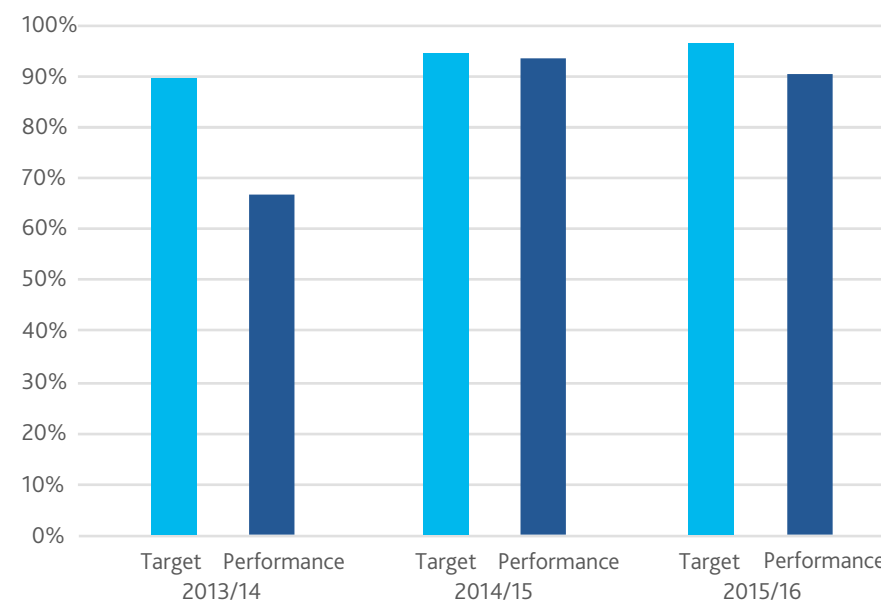


4.21 Figure 18 shows that the Legal Ombudsman's performance against the 180 day measure. Performance has improved since 2013/14 when 67% of cases were resolved within 180 days (against a target of 90%). In 2014/15, 94% of cases were resolved within 180 days. This then fell slightly in 2015/16 to 91% (against a target of 95% for both years).

4.22 Whilst research found that comparing Ombudsman schemes is not helpful, the review notes that the Legal Services Consumer Panel's benchmarking of the Legal Ombudsman study found that performance, particularly on 180 days, was similar to other schemes.⁵³

4.23 All other accepted cases go on to be resolved within 365 days and have done for the three financial years the review considered (2013/14, 2014/15 and 2015/16).

Figure 18. Percentage of cases resolved within 180 days



4.24 It is the opinion of the review team, that while measuring timeliness is important, it can be a distorting target resulting in a focus on quickly closing cases rather than on providing a thorough investigation and a good quality of service.

What factors impact on timeliness?

4.25 When looking at the timeliness of legal services complaints, it is important to consider a number of factors that impact on timeliness:

- due to the complexity of legal cases, it takes longer to investigate and make a decision regarding a complaint. The review team notes that it is difficult to compare Ombudsman schemes due to the different ways in which they operate. However, a very high level comparison shows that, in 2015/16, 40% of cases accepted required an Ombudsman decision, in comparison to 10% of cases accepted by the Financial Ombudsman Service during the same period; and
- the need to obtain documentation and the number of exchanges between the parties is time consuming.

Why has performance on timeliness declined?

4.26 There are a number of reasons for the decline in performance on the timeliness KPI (particularly on the 90 day target):

- ongoing technical issues with the new Case Management System implemented in 2014/15. There are plans in place to implement a new system during 2017/18;
- an office move in January 2015;
- a recruitment shortfall led to significant backlogs in work at various key stages of the casework process; and
- In 2014/15, changes in senior management

and continued uncertainty with regards to the remuneration for all staff increased the risk of loss of continuity and knowledge, both within the senior management team and across the organisation. This was a challenging period for the OLC and the Legal Ombudsman, and the difficulties they faced are known to the policy sponsor team.

What is the OLC doing to improve the timeliness of resolving complaints?

4.27 Members of the OLC Board and the Legal Ombudsman's senior management team recognise that they must do more to reach an optimal balance between timely decisions and the quality of investigations. Previously, the scheme over-emphasised rapid resolutions and the independent governance review conducted in late 2015, likened the scheme to a 'call-centre', which focussed on speed rather than the quality of decision making to meet good ombudsman standards (a legacy of the scheme's original performance philosophy).

4.28 The Legal Ombudsman's customer feedback suggests that service providers value thorough investigations, with plenty of updates throughout, over getting a quick resolution.⁵⁴ Service providers have also commented that, at times, unrealistic demands are placed on them to provide evidence within tight timescales in order to help meet timeliness targets. In 2015/16, the focus shifted to ensure quality was not sacrificed for speed and the Legal Ombudsman made proposals for a new 'balanced scorecard' approach to performance. Work on the balanced scorecard has continued

and the OLC recently consulted on its Strategy and Business Plan for 2017-20,55 inviting views on how best to measure performance. These plans include measures that incentivise staff to demonstrate the scheme's Customer Service Principles (see Annex G).

4.29 The OLC recognises the necessity to continue to measure timeliness, and have proposed a new approach based on median time to resolve a complaint. This approach has been broadly approved by the Board and the OLC will consult with stakeholders before the transition in April 2018. Until then, the OLC will continue to report on the current timeliness measures.

4.30 The basic operation of the Legal Ombudsman has not changed significantly since it was first launched in 2010. To evolve with the changing legal landscape and changing consumer behaviours and expectations, the OLC and the Legal Ombudsman leadership team felt that significant change was required in their operations.

4.31 A number of initiatives have been introduced to improve the efficient and effective investigation of all cases (see Figure 19 on performance improvement initiatives). These new initiatives may have contributed to recent improvements in the timeliness of resolving complaints. For example:

- since the triage and telephone process was introduced in October 2016, up until February 2017, 77 cases have been resolved February saw the OLC achieve their highest number of resolutions during the triage stage of the process - 19 in total. There have also been examples of cases being informally resolved within a matter of days.

⁵⁴ www.legalombudsman.org.uk/annual-report-and-accounts-2015-16-published

⁵⁵ www.legalombudsman.org.uk/?portfolio=strategy-and-business-plan-consultation-2017-2020

- A new recruitment process has seen a shift in 'large scale' bulk recruitment to a continually open campaign that allows the recruitment of smaller numbers on a regular basis.
- the Legal Ombudsman has resolved more cases each month during the months of September through to December 2016 than the number of cases accepted showing that the backlog is being dealt with effectively.

Figure 19. Performance improvement initiatives



Triage pilot

Initially implemented as a trial, and now an integral and permanent part of the business process, the Ombudsman led triage process has moved the focus of the Ombudsman to the front of the business process, working with some of the most experienced Investigators to review the case as soon as it is accepted for investigation. The role of the team is to initially review the complexity of the case and identify whether it can be resolved quickly and informally. If it can, the case will be resolved, which means that a straight forward case is not sitting in a queue behind a more complex case. This provides a better customer experience and impacts positively on timeliness performance. If the case cannot be resolved by the Triage Team, they undertake a comprehensive review of the case and provide a summary for the Case Investigator. Another significant benefit of the triage process is that it ensures that evidence needed to commence the investigation is requested early, which means that the investigation can be progressed immediately when allocated to an Investigator, again impacting positively on timeliness and the customer experience for those cases that are not resolved at the triage stage.



Telephone initiative

Introduced to encourage Investigators to resolve complaints by phone rather than defaulting to email or letters which are more time consuming channels of communication. The initiative was implemented in response to feedback from customers and to ensure service delivery is in line with the Customer Service Principles (see Annex G). It was felt that increased use of the telephone would make case progression more effective, and could result in an increase in the number of cases resolved by informal resolution, impacting positively on quality and overall customer experience. As part of the initiative an Investigator toolkit was developed alongside short, targeted master classes led by experienced Investigators.

Since the introduction of the telephone initiative, there has been a significant increase in initial contacts and sharing of views over the telephone. It is difficult to attribute any increase in performance specifically to this initiative, as it was implemented as part of a wider package of initiatives. However, Quarter 3 of 2016/17 saw the highest number of cases resolved by informal resolution, which can in part be attributed to this initiative.

Launched in December 2016, the knowledge strategy aims to align Ombudsman to specific areas of law. This provides scope for specialist Ombudsman to be closely involved in complex investigations improving efficiency and reducing send backs.



"Modernising LeO" programme (includes IT and case management)

Launched in late December 2016, the "Modernising LeO" programme (initiated to support the fourth strategic objective for 2017-20) consists of two inter-related change workstreams described below:

- unITe: developing a unified IT environment that is effective, efficient and reliable; and
- Enhance: launched in December 2016, the objective of the Enhance programme is to improve performance through its people and ways of working.

Internal quarterly performance reports show that the Legal Ombudsman have made progress in improving timeliness and that the delivery of the initiatives should both improve efficiency and improve customers' experience of the service.

Unit Cost

4.32 Unit cost is calculated by dividing the total cost of operating the Ombudsman scheme by the number of cases resolved in each financial year. Table 5 shows these figures for the three financial years 2013/14, 2014/15 and 2015/16.

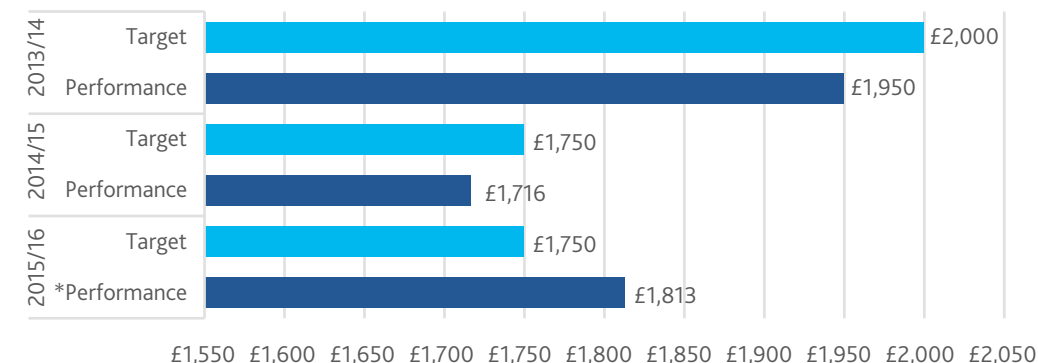
Table 5: Cost of operating the Ombudsman scheme, the number of cases resolved, and the unit cost for the three financial years 2013/14, 2014/15 and 2015/16

	Cost of operating scheme (m)	Number of cases resolved	Unit cost (cost of operating scheme/volume of cases)
2013/14	£15.7	8055	£1950
2014/15	£12.8	7440	£1716
2015/16	£11.6	6416	£1813

4.33 Figure 20 compares the target unit cost to actual unit cost during the three financial years 2013/14, 2014/15 and 2015/16. The unit cost was £1950 in 2013/14. This was expected to fall year on year as the scheme established itself, and the targets reflected this, other than for 2015/16 when the Chair froze all KPIs following an independent review of their governance. Whilst the unit cost fell to £1716 in 2014/15, it then increased to £1813 in 2015/16 against the flat target of £1750.

Figure 20. Unit cost of operating the Ombudsman scheme for the three financial years 2013/14, 2014/15 and 2015/16

Unit Cost per annum (target and actual)



* 2015/16 Performance figure includes a one off payment to change the remuneration scheme. Without this, annual performance figure would be £1,754

Why has unit cost increased?

4.34 Prior to 2015/16, the unit cost has consistently fallen year on year. A number of reasons have been identified that are likely to have contributed to the increase in unit cost:

- a reduction in the volume of cases. In 2015/16, the Legal Ombudsman accepted and resolved fewer complaints than the previous year;
- the cost of operating the scheme in 2015/16 included a one-off payment of £671,638 to close down the Flexible Benefit scheme and Total Remuneration Supplement allowance (see page 47 on the OLC's internal governance assessment). Without this payment the unit cost would have been £1754, only £4 above the £1750 target.

What improvements are the OLC making to reduce the unit cost?

4.35 It is evident from discussions with OLC Board members and the Legal Ombudsman leadership team, that they believe unit cost to have flaws as a principal performance target.

- 4.36** Historically, reducing the unit cost was seen by the OLC as a good thing *per se*, with no clear view of what the resultant service should look like. In 2014/15, whilst performance on 180 day timeliness KPI and unit cost was reduced, quality deteriorated.
- 4.37** The OLC and Legal Ombudsman leadership team recognise the value in measuring unit cost, but also see that it can be a distorting target and can provide a disincentive to properly deal with complex legal cases. This could lead to what is known as failure demand.⁵⁶ The OLC are currently engaging with the MoJ Continuous Improvement Team to share learning about business transformation and performance measurement, including the issue of failure demand.
- 4.38** In addition to this, consideration should be given to the opinion that the complexity, emotional element and higher stakes of legal complaints result in them being more costly to deal with leading to the need for a higher proportion of Ombudsman decisions.⁵⁷
- 4.39** Following the independent governance review in late 2015, there has been a significant strategic shift from a focus on driving down costs through quick resolutions to balancing this with improving the quality of decision making and the customer experience. The Customer Service Principles introduced in 2015/16 (see Annex G) have helped provide the organisation with a clear understanding of what the service should look like.
- 4.40** As a result, the Legal Ombudsman is developing a new balanced scorecard in which unit cost is likely to be less prominent, with a focus on timeliness and quality in line with its Customer Service Principles (see Annex G). The new balanced scorecard will be implemented from April 2018.

How can the Modernising LeO programme deliver the Customer Service Principles in the most efficient and effective manner possible?

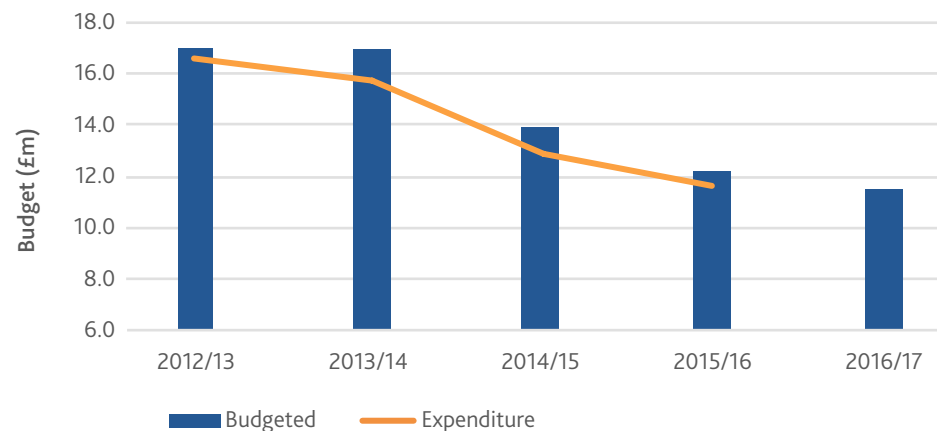
- 4.41** Increased efficiency through successful implementation of the performance initiatives shown in Figure 19 should have an impact on cost. For example, timelier resolution of cases should lead to an increase in the number of cases being resolved per Investigator (a factor that has an impact on unit cost).

- 4.42** The OLC made recent internal quarterly performance reports available to the review team. The way in which unit cost is measured changed in 2016/17 with the cost of complaint being measured separately to the cost of investigation. The quarterly performance update for January 2017 reports that from April to December 2016 the cost per complaint was £53 and the cost per investigation £770.
- 4.43** The Legal Ombudsman are continuing to measure the old unit cost KPI for comparative reasons. Under the old KPI, the cost per case during the period April to December 2016 fell to £1575. Reasons for the decrease in unit cost include an increase in the volume of cases resolved in Quarter 3, a delay in the recruitment of frontline staff and other corporate performance efficiencies detailed in Figure 19.

Overall expenditure

- 4.44** The OLC have made consistent, year on year reductions in the overall cost of the scheme from £16.6m in 2012/13 to £11.6m in 2015/16 (as shown in Figure 21). The review team acknowledges the effort made by the OLC in continuing to reduce its overall expenditure and encourages it to continue to focus on achieving budget reductions where possible.

Figure 21. The Graph showing OLC's budget and expenditure from 2012/13 to 2016/17



⁵⁶ "Failure Demand" is a concept discovered by Professor John Seddon, whereby failure to do right by the customer by resolving the problem in the first place, (which often happens in a call-centre environment where timeliness KPIs are in place), leads to increased demand - in this case, increased call volumes, and poor quality of service

⁵⁷ www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/2013%2011%2025%20LeOBenchmarkingReportfinal.pdf

Quality

- 4.45 In discussion with the LSB, the OLC changed its approach to measuring the quality of service in April 2015 to measure satisfaction levels amongst complainants and service providers **regardless** of the outcome of the case. The new measure is not comparable to previous years and therefore it has been difficult for the review to draw conclusions on the trend in quality of service over the years.
- 4.46 In 2015/16, the quality of the Ombudsman scheme was measured via independent customer satisfaction surveys at the end of the complaints process. The KPI target set was for at least 40% of service users and service providers surveyed to be satisfied with the service they received, irrespective of the outcome. The OLC achieved a 60% satisfaction rate.
- 4.47 The recent CMA report looked at redress in the legal services market and concluded:

“The evidence we have reviewed indicates that the LeO is a user-friendly and effective way for consumers to deal with service-related issues.”⁵⁹

What improvements are the OLC making to improve the quality of service provided?

- 4.48 The review team agrees with the OLC’s view that quality and customer experience are better indicators of performance than timeliness. Whilst it is still important to measure timeliness and value for money, there is a balance to be found between all three. As previously mentioned, the organisation is working to move away from a focus on resolving cases speedily, to improving the quality of the service and the customer experience. This shift began by ensuring that the service provided by the Ombudsman was both fit for purpose and well led. Work undertaken to improve the quality of service include:

- ✓ undertaking research to get a more sophisticated understanding of the customers’ experiences, needs and expectations. This research provided a focused and robust evidence base that enabled the OLC to develop a set of customer-led service principles, which are linked to the four values Effective, Fair, Independent and Open. The new Customer Service Principles are shown in Annex G;
- ✓ running a pilot to capture concerns raised by customers outside of the formal complaints procedure. It is hoped this data will help identify customer issues and how they can avoid being repeated;
- ✓ training for staff delivered by the Service Complaints Adjudicator in February 2017. A report from the Service Complaint Adjudicator regarding complaints considered in 2016/17 notes that the Legal Ombudsman have been receptive to the service improvements suggested and have taken action to implement them or remind staff about policies and procedures already in place. The second half of the year saw improvements in the Legal Ombudsman’s response to complaints with a more customer-focused approach;
- ✓ establishment of a Service Improvement Group, bringing together representatives from across the business to coordinate the actions identified to improve service. Interventions and actions will be tracked and success measured; and
- ✓ proposing that an objective for 2017/18 should be to improve the volume and value of feedback to service providers, the public and stakeholders. This includes producing consumer guides, sharing case studies and themed reports, and improving the quality and assurance of data. The review team welcomes this objective which is also a recommendation of the Regulatory Futures Review.⁵⁸

Recommendation:

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 recommend it looks for opportunities to increase feedback to the frontline regulators, representative bodies, and the LSB.

Reputation

4.49 The reputation KPI measures how users of the service feel about the Legal Ombudsman, and to what extent their stakeholders are satisfied that they engage with them enough. Data is gathered via independent research, surveying a sample of service users and main stakeholder groups.

4.50 There are two measures that informed the reputation KPI for the three years 2013/14, 2014/15 and 2015/16:

- *Advocacy* – percentage of respondents who are satisfied with the outcome of their case and would speak highly of the Legal Ombudsman; and
- *Stakeholder satisfaction* – percentage of stakeholders satisfied with the overall level of engagement.

4.51 There has been a drop in performance across both the advocacy and stakeholder satisfaction measures that inform the overall reputation KPI over the three years 2013/14, 2014/15 and 2015/16. On the advocacy measure, Table 6 shows that the percentage of complainants satisfied with the outcome of their case and would speak highly of the Legal Ombudsman has fallen by 14%, from 93% in 2013/14 to 79% in 2015/16. Likewise, the percentage of service providers satisfied with the outcome of their case and would speak highly of the Legal Ombudsman has fallen by 11%, from 60% in 2013/14 to 49% in 2015/16.

Why has performance against the reputation KPI fallen?

4.52 Given the internal governance issues identified in 2014/15, it is not surprising that the reputation of the Ombudsman has suffered. In addition to this, the focus on resolving cases quickly rather than focussing on quality and the customer experience may have had a detrimental effect on the organisation's reputation.

Table 6. Performance on advocacy and stakeholder satisfaction measures that inform the reputation KPI

Year	Advocacy (%age satisfied with outcome of their case and would speak highly of the Legal Ombudsman)		Stakeholder satisfaction (%age satisfied with overall level of engagement with the Legal Ombudsman)
	Complainants	Service Providers	Complainants
2013/14	93%	60%	90%
2014/15	85%	53%	92%
2015/16	79%	49%	79%

What is the OLC doing to improve its reputation?

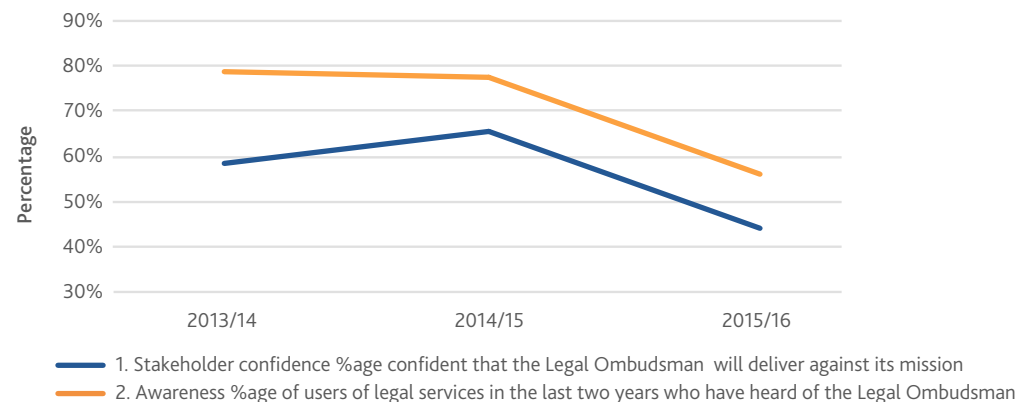
- 4.53 Extensive work has been done, and continues to be done, by the OLC and the Legal Ombudsman leadership team to turn things around from the position they were in two years ago. The reputation of the scheme will no doubt improve as they continue to implement the performance initiatives and Modernising LeO programme outlined in Figure 19, page 39. In addition to this:
- as of April 2016, the Ombudsman ceased to report against the reputation KPI. After five years of measuring this KPI it was felt that the approach added no value to the organisation or to stakeholders in respect of the results. The new balanced scorecard will include measures that reflect purpose in customer terms. The review team are of the view that performance against the Customer Service Principles (outlined in Annex G) could be measured and endorse the implementation of new performance measures from April 2018; and
 - Kathryn Stone was appointed as Chief Legal Ombudsman and is making significant progress in strengthening engagement, re-establishing the legitimacy of the service with key stakeholders and working to improve the culture within the organisation following the identification of financial and governance issues in 2014.

Impact

- 4.54 The final KPI that the Legal Ombudsman measured for the three years 2013/14, 2014/15 and 2015/16 is Impact. There are two measures to this KPI:
- *Stakeholder confidence* - measured by undertaking annual surveys of stakeholder groups to assess their confidence in the Legal Ombudsman's delivery of its objectives; and
 - *Awareness* - annual surveys of the general public and consumers of legal services to determine how many are aware of the Ombudsman scheme.
- 4.55 Figure 22 shows the percentage of those surveyed that have confidence in Legal Ombudsman's ability to deliver against its objectives alongside the percentage of legal services users who had heard of the Ombudsman scheme.

- 4.56 Stakeholder confidence in the ability of the Legal Ombudsman to deliver against its objectives was at 44% in 2015/16, the lowest figure reported since this has been measured. In 2013/14, stakeholder confidence was 59% and increased to 65% in 2014/15.
- 4.57 On the awareness measure, 56% of users of legal services in the last two years had heard of the Legal Ombudsman. This is the lowest figure reported since this has been measured and has fallen consistently since 2013/14 when it was at 78%. The results are used to benchmark and track the impact of signposting, communication and media activity, and to identify any trends in awareness levels across demographic group

Figure 22. The Legal Ombudsman's performance against the stakeholder confidence and awareness measures that make up the Impact KPI



Why has performance against the Impact KPI fallen?

- 4.58 There has been no formal analysis or research undertaken as to why performance against the awareness measure significantly reduced during the 3 year period 2013/14, 2014/15 and 2015/16. However:

- governance issues experienced prior to 2015/16 meant that there was a negative media focus on the organisation and the interim Chief Executive Officer and Chief Legal Ombudsman focussed their attention on internal organisational matters at the expense of external awareness. The review team considers this to be a reasonable approach;
- the sample size was the lowest they have had since they started to conduct the survey (due to fewer stakeholders responding to the survey) and this may have had a negative impact on results; and
- in 2015, fewer events were attended, less research was undertaken and no significant media campaigns were completed.

What are the OLC doing to improve stakeholder confidence and awareness that make up the Impact KPI?

4.59 The OLC and the Legal Ombudsman leadership team are working to improve confidence in its service and to raise the profile of the organisation. Work ongoing in this area includes:

- continuing to address governance and financial management issues raised in the governance review (see page 47 on internal governance review);
- a Chief Legal Ombudsman focused on raising awareness of the Ombudsman scheme with consumers, service providers and wider stakeholders, (including consumer interest groups);
- the development of a 'First Time Buyers Guide' in January 2016, following a number of conveyancing complaints, has generated significant media interest and a renewed focus on how the Legal Ombudsman use and interact with social media;
- implementation of a new process to track and obtain feedback on events attended by the Chief Legal Ombudsman and increased broadcast and social media coverage. This will be used to inform wider discussion about the Ombudsman's reputation and reach; and
- restructuring of the Ombudsman's Operational Insight and Engagement Team to strengthen work in this area, with the creation of the Office of the Chief Legal Ombudsman which will be responsible for parliamentary and policy work, communications and wider work with stakeholders.

4.60 The review team's assessment of performance against the KPIs indicate that there is room for improvement. However, a vast amount of work has already been done to address performance issues and the OLC has demonstrated, through various initiatives, that they are embedding a culture of continuous improvement. The review team acknowledges this approach and the commitment of the OLC and Legal Ombudsman staff to improve performance and drive change within the organisation.

The Legal Ombudsman and Alternative Dispute Resolution

- 4.61** The review process raised the question of the Legal Ombudsman's position on becoming an approved Alternative Dispute Resolution (ADR) provider.
- 4.62** The Ombudsman is already an ADR scheme in the wider sense but does not comply with the specific requirements of the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015. The Legal Ombudsman has previously considered becoming an approved ADR provider but withdrew its application in August 2015 in order to issue a wider consultation (in September 2015) into what changes to scheme rules would be necessary for it to become an approved ADR provider. Following the consultation, the OLC decided not to apply to the LSB to make changes to its scheme rules because it considered the operating risks to be too great. These risks include the capacity to investigate the complaint, the availability of evidence and the likelihood of delivering redress so long after legal advice was sought.

What are the benefits of the Legal Ombudsman becoming an approved ADR provider?

- 4.63** In an evolving legal services market it is important for the Ombudsman to remain relevant. As an approved ADR provider, consumers will benefit from access to a choice of redress from the Ombudsman (e.g. mediation and adjudication) which meet quality standards as set out in the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information)

Regulations 2015. This has the potential to raise consumer confidence in the redress mechanisms available.

- 4.64** In the event that a business and a consumer are unable to settle a dispute, the law requires the business to give consumers details of an approved ADR provider and tell the consumer whether or not they are willing to use ADR to settle the dispute. At the moment, to comply with the law, businesses in this sector are having to give consumers details of two ADR providers, the OLC and an approved ADR provider which they will not use. Having a dedicated approved ADR provider will also reduce the risk of confusion for consumers.

Is it possible for the Legal Ombudsman to become an approved ADR provider under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015?

- 4.65** Research conducted by the review team found that the Financial Ombudsman Service (FOS) (an approved ADR provider) has found a way around the indefinite time limit for investigating complaints by introducing a voluntary jurisdiction without changing the time limits. Instead, they have agreed to look into complaints referred to them late if the business actively agrees to the complaint being considered. FOS introduced new rules for businesses that require them to say earlier – in their final response letters – whether or not they agree to the time limits being waived if their customer contacts them outside the time limits. Previously, businesses told FOS if they objected to the complaint being considered only

when the complaint was referred to them. There is potential for the Legal Ombudsman to approach ADR in a similar way. The review team recognises that this is a complex area, and that what works in the financial sector, may not work in the legal sector. However, it is of the view that the OLC should continue to consider whether to submit an application to the LSB to become an approved ADR provider.

Does the OLC have plans to become an approved ADR provider under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015?

- 4.66** At the time of the review, plans to become an approved ADR provider had been put on hold. However, as part of its Business Plan and Strategy for 2017-20, the OLC intends to explore different approaches to dispute resolution within its existing scheme.

Recommendation:

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.

Internal Governance Assessment

- 4.67** The OLC and the Legal Ombudsman have been through a challenging period since the preparation of the 2013/14 annual accounts identified a number of legacy issues relating to expenditure incurred by the OLC's then Chief Executive Officer and Accounting Officer. Payment to some staff of the Flexible Benefit Scheme (FBS)⁵⁹ and Total Remuneration Supplement (TRS)⁶⁰ were identified as not adhering to the principles of Managing Public Money.⁶¹
- 4.68** The Chief Executive's designation as Accounting Officer was withdrawn in January 2015 and the Permanent Secretary of the MoJ (as Principal Accounting Officer) assumed the responsibilities of the Accounting Officer for the OLC. In August 2015, the Permanent Secretary retired and Accounting Officer responsibility was delegated to the MoJ Director General of Justice and Courts Policy Group.
- 4.69** It also led to the OLC and MoJ jointly commissioning a comprehensive external and independent review of the OLC's internal governance and financial management. The review team considered this review, conducted in late 2015, to be extremely thorough and therefore, did not complete a separate assessment of internal governance. This is in line with the Tailored Review principle of proportionality.⁶²
- 4.70** The independent governance review made a number of recommendations which can be grouped into eight key areas as shown in Figure 23.

Figure 23. Eight areas in which the internal governance and financial management review made recommendations

Governance and Board Structure	Leadership
Control Environment	Accountability
Staff costs and redundancies	Procurement
Non-collectable Debt & Provisions	Flexible Benefit Scheme

- 4.71** In 2015, the OLC produced an Action Plan, agreed by the MoJ, to monitor progress on implementation of all recommendations. The review team's assessment of the Action Plan found that good progress has been made. At the start of the Tailored Review, six of the eight key areas where recommendations have been made, had been given a green RAG status, indicating that they have been implemented or were on track to be implemented by the end of 2016/17.
- 4.72** The review team found that the OLC and Legal Ombudsman has come a long way since the governance and financial issues were first identified. Accounting Officer status returned to the Chief Executive Officer of the OLC in June 2016 and is a reflection of the MoJ's confidence in the organisation during an extremely challenging period of time. With a renewed Board and leadership team, the OLC have risen to the challenge and have made significant progress to transform the organisation.
- 4.73** The LSB used its powers under Section 120 and Section 121 of the LSA 2007 to trigger reporting requirements and set targets for the OLC's performance from 1 June 2015 to 31 March 2016 to address issues in relation to performance in administering the legal jurisdiction side of the scheme. These requirements expired at the end of March 2016 and the LSB set a new S120 reporting

⁵⁹ Flexible Benefit Scheme (FBS) was a salary sacrifice scheme offered to staff and included a further 3% addition to staff's basic salary that was available for use against a number of benefits

⁶⁰ Total Remuneration Supplement (TRS) was provided to a number of senior employees as a recruitment incentive when the OLC was initially set up

⁶¹ www.gov.uk/government/publications/managing-public-money

⁶² www.gov.uk/government/publications/tailored-reviews-of-public-bodies-guidance

requirement to cover the period until March 2017. At the expiry of this requirement, the Board proposed that the OLC agree to a voluntary reporting regime which remained under discussion at the time of drafting.

4.74 By the end of the Tailored Review, the review team found that only a small number of the recommendations remain to be implemented. It is therefore the review team's opinion that the OLC are on track in all eight key areas. This is supported by an internal audit of corporate governance conducted by the Government Internal Audit Agency in March 2017, which concluded that there are no areas of weakness, which in the Audit Agency's opinion, are critical or significant. The OLC should continue to implement the recommendations of the Government Internal Audit Agency audit and the principles of Managing Public Money. The review team notes that a tripartite operating protocol, setting out the roles and responsibilities of the LSB, OLC and MoJ has been implemented, and recommends that this protocol is published, reviewed after six months, and every three years thereafter. It is the reviews team's opinion that whilst there is still work to be done to improve performance, the OLC has good leadership and processes in place to deal with any future challenges to deliver a high performing Ombudsman scheme.

4.75 The roles of Chief Executive Officer and Chief Legal Ombudsman were separated following the identification of financial management issues in 2014. This has proved valuable during a period of recovery. The organisation is now in a stable position and the separation of roles may be inefficient in the longer term. These roles should be merged following the implementation of the Modernising LeO programme – a significant programme of work to drive a fundamental review of the Legal Ombudsman's business processes, staffing structures and supporting IT systems. This will run throughout the three years covered by the new 2017-20 strategy.

Recommendation:

Following the LSB's decision not to renew the additional 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.

Recommendation:

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.

Recommendation:

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.

Recommendation:

To promote efficiency 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.

The Tripartite Relationship

4.76 The LSB and the OLC are statutory bodies established under the LSA 2007. The LSA 2007 sets out the role of both organisations and the lines of accountability. Figure 24 shows the lines of accountability between the LSB, OLC and the MoJ.

Relationship between the MoJ and LSB

The Permanent Secretary of the MoJ holds Principal Accounting Officer status. (The Chief Executive of the LSB is the Accounting Officer and is personally responsible and accountable to Parliament).

The MoJ gives approval for the LSB to lay their annual report and accounts before Parliament.

The MoJ hold the LSB to account through quarterly meetings where financial and operational performance is discussed.

The MoJ appoints the Chair and members of the LSB Board in consultation with the Lord Chief Justice.

Relationship between the MoJ and OLC

The Permanent Secretary of the MoJ holds Principal Accounting Officer status. (The Chief Executive Officer of the OLC is the Accounting Officer and is personally responsible and accountable to Parliament for the use of public money by the OLC).

The MoJ gives approval for the OLC to lay their annual report and accounts before Parliament.

The MoJ hold the OLC to account through quarterly meetings where financial and operational performance is discussed.

Relationship between the LSB and OLC

The LSB appoint the Chair (approval required from the Lord Chancellor) and members of the OLC Board.

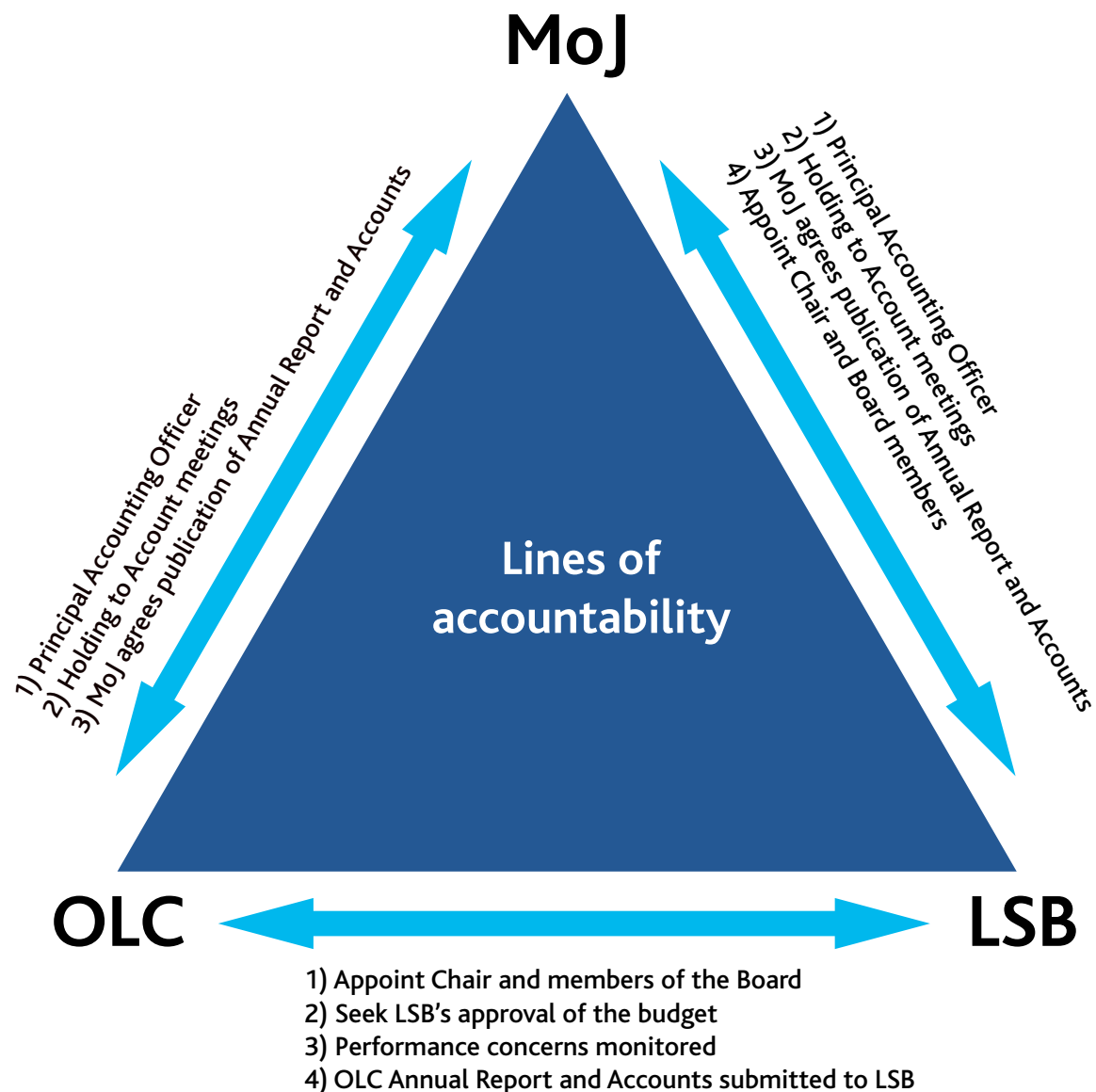
The LSB approves the OLC's budget (agreement of the levy and case fees which funds the budget is approved by the Lord Chancellor).

The OLC are required to provide a copy of their Annual Report and Accounts to the LSB.

The LSA 2007 provides the LSB with statutory powers to require reports or set targets for any aspect of performance by the OLC of its functions.

The LSB holds quarterly performance meetings at Board Member level, supported by the Chief Executive of the LSB and the Chief Executive Officer of the OLC.

Figure 24. Diagram depicting the trilateral relationship between the LSB, OLC and MoJ



4.77 The lines of accountability are complex and do not follow guidance as set out in the Public Accounts Committee report 'Departments' oversight of arm's-length bodies' published in October 2016⁶³ which states:

"Departments should set out clearly, in published accountability system statements, the accountability relationships between arm's-length bodies and departments, in a way that members of the public can understand. They should also clearly set out the responsibilities and accountabilities of each arm's-length body in published, and up to date, framework documents."

PAC Report 2016: Departments' oversight of ALBs

63 www.publications.parliament.uk/pa/cm201617/cmselect/cmpublic/488/48802.htm

4.78 The review team’s research and responses to the online Call for Evidence found that that:

- the lines of accountability in the tripartite relationship are unclear:

“Unclear lines of accountability between departments and arm’s-length bodies mean that it is not clear who to hold to account. Members of the public interacting with an arm’s-length body should be able to find out easily what the chain of command is from arm’s-length bodies through to departments”

(An Ombudsman scheme)

“We believe that confusion may arise over where responsibility for oversight lies and how it is to be effected. In practice a linear relationship may be more appropriate, as it would cut out red tape and lead to greater clarity around lines of accountability”.

(A frontline regulator)

- there is duplication of effort;

“The current system causes confusion and duplication of effort and does not allow for effective oversight.”

(An Ombudsman scheme)

“Over the past two years the OLC has had to report to both the LSB and the MoJ. This is clearly a duplication of effort.”

(A frontline regulator)

- there confusion over roles and accountabilities;

“[consider] current governance arrangements to be clumsy, unwieldy, confusing and leading to duplication of, and unnecessary, effort.”

(An Ombudsman scheme)

4.79 Both the LSB and the OLC agree that there are significant issues with the current governance arrangements.

4.80 The Call for Evidence asked the following question:

‘Do the three-way governance arrangements between the LSB, OLC and MoJ allow for effective oversight of financial and operational performance?’

4.81 46% of those who responded to the question are of the view that current trilateral arrangements do not allow for effective oversight. 35% of respondents were unsure and 19% are of the view that the current arrangements are effective.

4.82 The Call for Evidence also sought suggestions for how governance arrangements might be improved. The most common suggestion received refers to alteration of the lines of accountability, e.g. the OLC reporting directly to MoJ, to another Government department, or directly to Parliament.

4.83 The review team looked at the lines of accountability between other Ombudsman schemes and their sponsoring departments to find out if there are other similar tripartite relationships and if they work well. There are examples of schemes reporting directly to the sponsoring department (the Pensions Ombudsman reports directly to the Department for Work and Pensions) and schemes reporting directly to the regulator (the Financial Ombudsman Service reports to the Financial Conduct Authority). There were no examples of an Ombudsman scheme reporting to **both** the regulator and the sponsoring department indicating the tripartite relationship between the MoJ, LSB and OLC is unusual. The review team notes that the decision that the LSB should hold the OLC to account, as set out in the LSA 2007, was based on the need to ensure the independence of a complaints handling system from frontline regulators (the SRA and Law Society dealt with legal complaints prior to the creation of the LSB and OLC) and Government.

- 4.84** In February 2017, the Cabinet Office published a Code of Good Practice⁶⁴ that set out principles and standards for departments and arm’s-length bodies to use to establish effective working relationships. The Code acknowledges that whilst partnerships will vary according to the purpose, size, structure and public interest in the body, all effective partnerships will be underpinned by common principles, known as PAVE:
- **PURPOSE:** the purpose of the arm’s-length body should be clear and well understood;
 - **ASSURANCE:** there should be a proportionate approach to assurance;
 - **VALUE:** departments and arm’s-length bodies should share skills and experience; and
 - **ENGAGEMENT:** partnerships should be based on open, honest and constructive working relationships.
- 4.85** The Cabinet Office has asked departments to determine the most appropriate model of partnership, within the principles, in consultation with arm’s-length bodies.
- 4.86** The review team is of the view that more can be done within the existing framework to improve the tripartite relationship without altering lines of accountability which would require changes to legislation. To address the issues and concerns surrounding the current tripartite relationship, the review team recommends that the LSB, MoJ, and OLC continue to work together as per the tripartite operating protocol underpinned by the PAVE principles, that sets out the three parties’ roles and responsibilities. This will ensure clarity of roles and lines of accountability. The protocol should be reviewed after the first six months of implementation and every three years thereafter.
- 4.87** The separate holding to account meetings the MoJ and LSB have with the OLC are unclear and may lead to unnecessary disagreement. They should be reviewed to support and reflect the lines of accountability set out in the updated operating protocol. The review team envisages the OLC meeting with the MoJ policy sponsor team on a regular basis and inviting the LSB to attend only if there are concerns about performance.

Recommendation:

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.

Conclusion

Conclusion

5.1 The reviews concluded that there is still a clear need for the functions of both the LSB and the OLC.

LSB

5.2 When considering how best the functions of the LSB should be delivered, the review found that:

- a) the LSB meets the Cabinet Office's three tests to continue operating as an NDPB; and
- b) the current form of the LSB is the most effective and efficient method for delivering its functions.

5.3 The review made the following recommendations regarding the organisation's performance:

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. These 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 CMA'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 of the LSB 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.

OLC

5.4 When considering how best the functions of the OLC should be delivered, the review found:

- a) the OLC meets the Cabinet Office's three tests to continue operating as an NDPB; and
- b) the current form of the OLC is the most effective and efficient method for delivering its functions.

5.5 The review made the following recommendations to enhance the organisation's performance:

10. The functions of the OLC are still required by Government. The OLC should therefore retain its functions with regards to complaints about legal services. The Government has made a commitment to transfer complaints about Claims Management Companies to the Financial Conduct Authority.
11. 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.
12. The OLC is well placed to provide valuable feedback to a range of stakeholders. We support its work to improve the feedback it provides, and recommend it looks for opportunities to increase feedback to the frontline regulators, representative bodies, and the LSB.

13. 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.
14. Following the LSB's decision not to renew the additional 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.
15. 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.
16. 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.

Organisational Relationships

- 5.6 The review also considered the relationships between the LSB, the OLC and MoJ, and the governance in place to support them. For the relationship between all three organisations, the review has recommended:
 17. 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.
 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.
- 5.7 The LSB, OLC and MoJ policy sponsor team should work together in order to fully implement the review's recommendations.

Annex A

Annex A: Call for Evidence Questions

LSB review

Question 1

- a) In your opinion, should the statutory functions of the LSB (as outlined in the Legal Services Act "LSA" 2007) be carried out by a public body? Please give the reason for your answer
- b) If the answer to Q1a is no, which delivery model might be better placed to carry out these functions and why? Please give the reason for your answer

Question 2

In your view, how well is the LSB carrying out its statutory functions (on a scale of 1 to 5, where 1 = very poor and 5 = very well)? Please give the reason for your answer.

Question 3

- a) In your opinion, does the LSB carry out any activities beyond those required to meet its statutory obligations?
- b) If your answer to Q3a is 'yes', or 'unsure' please specify and give reasons for your answer.

Question 4

In your view, how might any of the functions performed by the LSB be improved?

Question 5

- a) The Consumer Panel is an independent advisory panel established by the LSB as a requirement of the LSA 2007. Does it demonstrate sufficient independence from the LSB? Please give reasons for your answer.
- b) Should the LSA require the Consumer Panel to be wholly independent of the LSB? Please give reasons for your answer.
- c) If your answer to Q5b is yes, how could it be held accountable?

OLC review

Question 6

- a) In your opinion, should the statutory functions of the OLC (as outlined in the LSA 2007) be carried out by a public body? Please provide reasons for your answer.
- b) If your answer to question Q6a is no, which delivery model might be better placed to carry out these functions and why?

Question 7

Does the Legal Ombudsman scheme provide a good service to both complainants and regulated service providers? Please explain your answer.

Question 8

Do the statutory functions conducted by the Legal Ombudsman need to be carried out independently of Government?

Please explain your answer.

LSB/OLC relationship

Question 9

- a) Do the three-way governance arrangements between the LSB, OLC and MoJ allow for effective oversight of financial and operational performance? Please explain your answer
- b) If your answer to Q9a is no, how might the governance arrangements be improved?

Annex B

Annex B: Call for Evidence Respondents

In addition to responses from 13 individuals and academics, we also benefited from the considered input of the following organisations and we are extremely grateful to all those who contributed.

Frontline Regulators	Approved Regulators	Public Bodies	Other Organisations
Bar Standards Board	The General Council of the Bar	Legal Services Board	Liverpool Law Society
CILEx Regulation	Chartered Institute of Legal Executives	Legal Ombudsman	Society of Licensed Conveyancers
Costs Lawyer Standards Board	The Chartered Institute of Trade Mark Attorneys	Office of Legal Complaints	
Council for Licensed Conveyancers	The Law Society of England and Wales	Solicitors Disciplinary Tribunal	
Faculty Office			
Intellectual Property Regulation Board	ICAEW		
Solicitors Regulation Authority			

Annex C

Annex C: Challenge Group Members

The Challenge Group was made up of the following six members:

Sir Theodore Agnew

Lead Non-Executive Director, MoJ

Carl Davies

Policy Lead on Competition Law, BEIS

Elizabeth Gibby

Policy Deputy Director, MoJ

Sue Lewis

Chair of the Financial Services Consumer Panel

Katie Pettifer

Director of Offender and Youth Justice Policy, MoJ

Alison Wedge

SRO and Head of the ALB Governance Division, MoJ

Annex D

Annex D: Scope and Purpose of Tailored Reviews

A non-departmental public body (NDPB) should only exist where there is clear evidence that this model is the most efficient and cost-effective way for the organisation to fulfil its statutory functions and only where these functions are still required. In February 2016, the Cabinet Office announced the Government's ALB Review Strategy 2016-2020 which states that all arm's length bodies will undergo a substantive review during the lifetime of each Parliament.

Tailored Reviews have two parts;

1. to provide a robust challenge to, and assurance of, the continuing need for individual organisations as well as assessing their function and form, and;
2. where it is agreed that an organisation is required, it is then necessary to consider its capacity for delivering more effectively and efficiently, and to evaluate the control and governance arrangements in place to ensure compliance with recognised principles of good corporate governance.

As the name suggests, the reviews are tailored to the organisation being looked at. The review team will consider how best to structure and carry out these reviews following discussions with sponsors, investigative work to understand the organisation's operating environment and mapping of the organisation's key stakeholders. The review requires early engagement with senior leaders in the relevant organisation to facilitate a collegiate approach and to agree the process the review will follow.

These reviews are carried out in line with the Cabinet Office principles outlined in "*Tailored Reviews: Guidance on Reviews of Public Bodies*":

- I. **Proportionality** Reviews should not be overly bureaucratic and should be appropriate for the size and nature of the organisation being reviewed
- II. **Challenge** Reviews should be challenging and take a first principles approach to whether each function is required, is being delivered effectively and still contributes to the core business of the organisation
- III. **Being Strategic** All NDPBs must be subject to a tailored review at least once in the lifetime of a Parliament. Departments should define the scope of the review depending on any wider policy or strategic reviews that are being conducted, and also consider combining the requirements of a tailored review within the scope of any other planned review or evaluation of the department's public bodies.
- IV. **Pace** Reviews should be completed quickly to minimise the disruption to the organisation's business and should normally take no longer than 6 months, keeping in mind the principle of proportionality
- V. **Inclusivity** Reviews should be open and inclusive. The organisation under review should be engaged and consulted throughout the review and have the opportunity to comment on emerging conclusions and recommendations
- VI. **Transparency** The final report should set out any recommendations, including any that address areas of non-compliance with corporate governance. Any such issues of non-compliance should be considered by the sponsor. An implementation plan for the agreed recommendations should be agreed between the public body and the sponsor.

Process and Methodologies

Cabinet Office guidance states that the Review should first identify the main functions of the NDPB. It should evaluate how these functions contribute to the core business of both the NDPB and the sponsor department and consider whether these functions are still required. Where the Review finds clear evidence that a particular function is needed, it should then explore how best to deliver this function.

When considering potential delivery models, the Review should explore a wide range of options, including;

- whether the function can be better delivered by local Government or the voluntary sector
- Whether the function should move to the private sector.
- If it would be beneficial to merge with another existing body
- Whether the function can be delivered by the sponsoring department,
- If a less formal structure would deliver better results, or
- Whether the function should transfer to a new Executive Agency or Government body.

The second part of a Review is only carried out if Part One shows that the functions should still be performed by the existing NDPB in its current form. Part Two looks to identify efficiencies, evaluate control and governance arrangements and assess the overall performance of the organisation under review.

Annex E

Annex E: Approach to the reviews of the LSB and OLC

In line with the Cabinet Office guidelines, the tailored review team's approach to the reviews of the OLC and LSB was as follows:

Call for Evidence

A Call for Evidence was issued on 27 October 2016. It was published on GOV.UK and was open to people and organisations with an involvement with or interest in the LSB and OLC. The Call for Evidence closed on 24 November 2016. We received 33 responses, which were analysed by Ministry of Justice officials. A list of respondents can be found in annex B, the Call for Evidence questions can be found in annex A.

Stakeholder Engagement

Ministry of Justice officials met with board members, departmental policy officials, and, where appropriate, staff members of the organisations to gather evidence for the review. This body of evidence was used to build an accurate picture of the organisations, their successes and potential areas for improvement. The team additionally engaged with relevant Government departments and public bodies.

Governance Assessment

The linked nature of the organisations, including their respective statutory responsibilities and accountabilities, meant that governance arrangements were identified as an area of particular interest in these reviews. The team carried out robust assessments of the governance arrangements of both organisations.

Reports and Reviews

The review made use of a number of recent reports and reviews, as well as annual reports, accounts, and performance reports from both bodies. The team additionally examined relevant reports and reviews to understand the wider legal landscape.

Challenge group

A Challenge Group was established to robustly assess and challenge the review's findings and recommendations. The Group sat on two occasions: 14 December 2016, to examine the initial findings and lines of enquiry, and 15 February 2017 to consider more detailed findings and recommendations. Members of the Challenge Group can be found in annex C.

Annex F

Annex F: Updates on the 2012 Triennial Review Recommendations

Recommendations	2016 Update on Implementation
<p>Review Framework Agreements (by end 2012)</p> <p>Both the LSB and the OLC need to have their Framework Agreements with the MoJ updated to reflect changes which have occurred since they were drafted. In the case of the OLC, this will need to specify that it is a statutory body under Cabinet Office classification, rather than an NDPB. The review process will allow for reflection of the wider findings from the Triennial Review.</p>	<p>MoJ began work to revise the LSB's Framework Document in 2013 but this stopped and only was recommenced by MoJ in 2016. The LSB provided comments on a revised draft to MoJ on 4 August 2016 but is awaiting a final draft. The LSB suggestion for a tripartite framework document was not taken up by MoJ – although they do note that the subsequent recommendation made by Grant Thornton in 2015 of a tripartite operating protocol would appear to mirror the suggestion originally made by LSB in 2012.</p>
<p>Diversity of Boards (by April 2013, and ongoing)</p> <p>The LSB is due to appoint two new members by April 2013. Equality and diversity must be considerations in this appointment process, but also for any future appointments to the board of either the LSB or the OLC.</p>	<p>The Lord Chancellor, in consultation with the Lord Chief Justice, makes all appointments to the LSB (with the exception of the Chief Executive) and so the LSB does not determine the diversity of its own Board. However the LSB currently has reasonable gender diversity. Diversity continues to be an important factor for LSB in making appointments to OLC (and LSCP) and is factored into any tender for recruitment consultants and all search and promotion campaigns.</p>
<p>Open board meetings (by end 2012)</p> <p>Although the OLC has an annual event which the Board attends to launch its annual report, neither the LSB nor the OLC has an open board meeting. Each body should give further consideration of whether this is appropriate to its work in order to improve the openness and transparency of the boards</p>	<p>The LSB has considered holding open Board meetings but has decided that the nature and content of discussions preclude this. Instead, the Board has committed to engaging with as wide a range of people with an interest in legal services regulation as possible. This includes holding consultations, seminars and workshops in a variety of geographical locations.</p>
<p>Consider publication of spend over £500 (by end 2012)</p> <p>The LSB does not publish spend data over £500, although they do report other spend over £25,000 or credit card spend over £500. Further consideration should be given to whether publication of spend data over £500 should be published as best practice on transparency.</p>	<p>Since that time, LSB has considered whether it would aid transparency to publish all spend data over £500. The LSB held conversations with the financial transparency team at the MoJ who agreed that the LSB should only publish amounts under £25k where these were part of a single payment of over £25k, which would need to be disclosed and they would need to publish in line with HM Treasury guidance. They did not want the LSB to publish any other items.</p>
<p>Update staff guidance on political activity and appointments or employment after resignation or retirement (by end 2012)</p>	<p>LSB colleagues are not civil servants and therefore not all provisions of the civil service code of conduct are applicable. The LSB's terms and conditions of employment contain a degree of guidance on political activity and confidentiality (both during and after employment). The Executive Service Agreements of senior staff include explicit reference to activity which might risk being seen to compromise impartiality including political activity. The Board considers that these are appropriate contractual provisions for colleagues and after the review, did not consider further action to be necessary.</p>

Annex G

Annex G: Legal Ombudsman Service Principles

Value	Standards	Behaviour
Open	<p>We will always be clear with you</p> <p><i>We will communicate using plain English so you can make appropriate, informed choices.</i></p> <p><i>We will discuss with you at the beginning what you can expect from the service we provide.</i></p> <p><i>We will explain the complaints process and keep you updated about what is happening throughout.</i></p>	<p>Communicate in a way that can be understood, avoiding using jargon, providing clear and relevant information.</p> <p>Listen carefully and ask questions to understand your complaint.</p> <p>Be professional and knowledgeable.</p> <p>Make sure everyone is clear about our process at every stage of the complaint.</p>
	<p>We will be understanding and approachable</p> <p><i>We will recognise each individual's perspectives and experiences</i></p> <p>We will take your individual needs into account.</p> <p>We will offer support in a variety of ways such as BrowseAloud, large print and languages other than English to help you access our service</p>	<p>Be polite and treat you with respect.</p> <p>Listen to you and take your views seriously.</p> <p>Be empathetic and sensitive to your needs and support them.</p> <p>Make reasonable adjustments for people who require them.</p>
Effective	<p>We will make good use of everyone's time</p> <p><i>We will deal with your complaint efficiently and keep you informed about progress.</i></p> <p>We will help both parties resolve the complaint at the earliest opportunity.</p> <p>We understand that some complaints can be complicated, we will be honest about what we can deliver.</p>	<p>Ensure we understand your needs and deal with your complaint promptly.</p> <p>Keep you informed at all times throughout your involvement with us as to what to expect and when to expect it.</p> <p>Let you know as soon as possible if we are unable to help you.</p>
	<p>We will make a differences</p> <p><i>We will be an independent voice and use our experience to inform debate within the legal, claims management and ombudsman sectors.</i></p> <p>We will help improve the complaint practices of service providers.</p> <p>We will identify the main causes of complaints and feed best practice information back to service providers.</p> <p>We will publish ombudsman decisions on our website, which will include information that is accurate, easy to find and understandable</p>	<p>Listen to, consider and learn from feedback we receive.</p> <p>Engage with service providers to provide support based on our learning.</p> <p>Provide information and learning to service providers by delivering external course.</p>

Value	Standards	Behaviour
Fair and Independent	<p>We will be impartial, thorough and base our work on facts <i>We will be clear about what information we need from you.</i></p> <p>We will listen to what you have to say and consider relevant information provided by both parties before any final decision is reached.</p> <p>We will reach our decision based on information and what is balanced, fair and reasonable.</p> <p>We will provide a clear explanation of our decision.</p>	<p>Ensure we are objective, non-judgemental and fair throughout the investigation.</p> <p>Help you identify what information is needed, and be clear what can be used.</p> <p>Be consistent in our approach.</p> <p>Communicate our decisions clearly and concisely.</p>
Open	<p>We will always be clear with you <i>We will communicate using plain English so you can make appropriate, informed choices.</i></p> <p><i>We will discuss with you at the beginning what you can expect from the service we provide.</i></p> <p><i>We will explain the complaints process and keep you updated about what is happening throughout.</i></p> <p>We will be understanding and approachable <i>We will recognise each individual's perspectives and experiences.</i></p> <p>We will take your individual needs into account.</p> <p>We will offer support in a variety of ways such as BrowseAloud, large print and languages other than English to help you access our service</p>	<p>Communicate in a way that can be understood, avoiding using jargon, providing clear and relevant information.</p> <p>Listen carefully and ask questions to understand your complaint.</p> <p>Be professional and knowledgeable.</p> <p>Make sure everyone is clear about our process at every stage of the complaint.</p> <p>Be polite and treat you with respect.</p> <p>Listen to you and take your views seriously.</p> <p>Be empathetic and sensitive to your needs and support them.</p> <p>Make reasonable adjustments for people who require them.</p>
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