



Ministry of
JUSTICE

Triennial Reviews

**Legal Services Board and
Office for Legal Complaints**

Combined report on stages one and two

July 2012

Contents

Introduction – stage one	2
Scope and Purpose of Triennial Reviews – stage 1	2
Process and Methodologies	3
Context	5
Functions and Form	8
Functions of the LSB	8
Functions of the OLC	10
Analysis of LSB functions	12
Analysis of OLC functions	14
Current structure – LSB and OLC	15
Form of the LSB	16
LSB Options Analysis	18
Form of the OLC	23
Options Analysis	25
Summary and Recommendations	28
Functions	28
Form	28
Conclusions	29
Introduction – stage two	32
Scope and Purpose of Triennial Reviews – stage 2	32
Compliance with principles of good governance	35
LSB compliance	35
OLC compliance	38
Conclusions and Recommendations	41
Recommendations	41
Next steps	42
Annex A: List of Respondents	43
Participants in Direct Engagement	43
Responses to Call for Evidence	44
Annex B: Governance compliance	45

Introduction – stage one

The Legal Services Board (“the LSB”) and the Office for Legal Complaints (“the OLC”) were established under the Legal Services Act 2007 (“the LSA”). The two bodies are being reviewed as part of the Triennial Review programme instigated by the Cabinet Office. These are the first Triennial Reviews carried out by the Ministry of Justice (“MoJ”). This report will set out the purpose of the Triennial Reviews, describe the process and methodology used to review the LSB and the OLC, analyse the functions of the two bodies and options for how to deliver such services. It will make formal recommendations on the functions and appropriate forms. It will also expose some of the issues and key themes facing the legal services market which are relevant to this review.

The LSB was established under the LSA¹ to oversee the regulatory functions of ten approved regulators, and ensure adherence to the regulatory objectives. The Act also established a new and independent complaints handling body, the OLC, which administers an ombudsman scheme, known as the Legal Ombudsman, to provide redress regarding service complaints against persons authorised to provide legal services which are regulated (“reserved legal activities”). The LSB was established as a non-departmental public body (“NDPB”) in January 2009, and the OLC as a statutory body in July 2009.

During the passage of the Legal Services Bill, and set out in the framework document between the LSB and the MoJ, it was stated that both the LSB and OLC would be reviewed three years after establishment and every three years thereafter. Although the OLC is not an NDPB, it was agreed with the Cabinet Office to carry out a Triennial Review of the OLC in parallel with the LSB to meet the commitment given during the passage of the Bill.

The Legal Services Act

The move towards legislation resulted from a journey of consultation and engagement. The initial driver came from the 2001 Office of Fair Trading (OFT) report² highlighting a number of concerns about the potentially anti-competitive nature of the legal services sector.

Sir David Clementi undertook an independent review of the regulatory structure of legal services in England and Wales in 2004³. He concluded that the current structure was no longer fit for purpose for the modern consumer and provider. The 2005 independent review on better regulation chaired by Sir Philip Hampton also concluded that good regulation should be tailored to the needs of a specific marketplace, risk based and proportionate⁴. Sir David’s report was accepted by the Government of the time. The model taken forward called for the establishment of a Legal Services Board as a single oversight regulatory body. It would separate oversight functions from Government departments, providing a truly independent system free from both Government and the professions’ influence.

In addition, the Clementi Review identified concerns with complaints handling systems which did not meet the requirements of consumers. His report recommended establishing an Office for Legal Complaints as a single independent body to handle consumer complaints in respect of all legal services regulators (known as approved regulators in the LSA), subject to oversight by the Legal Services Board. These recommendations formed the basis of what was to become the LSA.

Scope and Purpose of Triennial Reviews – stage 1

The Cabinet Office has identified two principal aims for Triennial Reviews:

¹ 2007, c.29 – text of the LSA available at <http://www.legislation.gov.uk/ukpga/2007/29>

² *Competition in Professions*, http://www.oft.gov.uk/shared_oftr/reports/professional_bodies/oft328.pdf

³ *Review of the Regulatory Framework for Legal Services in England and Wales*, <http://www.legal-services-review.org.uk/content/report/report-chap.pdf>

⁴ *Reducing Administrative Burdens: effective inspection and enforcement*, <http://www.bis.gov.uk/files/file22988.pdf>

- to provide robust challenge to the continuing need for individual NDPBs – both their functions and their form (stage one); and
- where it is agreed that a particular body should remain as an NDPB, to review the control and governance arrangements in place to ensure that the public body is complying with recognised principles of good corporate governance (stage two).

This report covers stage one of the reviews of both the LSB and the OLC. The programme of departmental Triennial Reviews is agreed on a rolling basis with the Cabinet Office. As stated above, the Cabinet Office agreed that the MoJ would carry out a Triennial Review of the OLC in parallel with that of the LSB, applying the same principles on the basis that the work of the LSB and the OLC is so closely linked.

All reviews are to be conducted in line with the following principles:

- i. **Proportionate**: not overly bureaucratic; appropriate for the size and nature of the NDPB.
- ii. **Timely**: completed quickly to minimise disruption and reduce uncertainty.
- iii. **Challenging**: robust and rigorous, evidencing the continuing need for functions and examining and evaluating a wide range of delivery options.
- iv. **Inclusive**: open and inclusive. Individual NDPBs must be engaged, key users and stakeholders should have the opportunity to contribute. Parliament should be informed about the commencement and conclusions.
- v. **Transparent**: all reviews should be announced and reports should be published.
- vi. **Value for Money**: conducted to ensure value for money for the taxpayer.

Process and Methodologies

Cabinet Office guidance

This information is taken from the Cabinet Office guidance⁵. The first stage of the review should identify and examine the key functions of the NDPB. It should assess how the functions contribute to the core business of the NDPB and the sponsor department and consider whether the functions are still needed. Where the department concludes that a particular function is still needed, the review should then examine how this function might best be delivered.

The first stage of the review should identify and examine the key functions of the NDPB. It should assess how the functions contribute to the core business of the NDPB and the sponsor department and consider whether the functions are still needed. Where the department concludes that a particular function is still needed, the review should then examine how this function might best be delivered.

When assessing how functions should be delivered, the review should examine a wide range of delivery options. This should include whether the function can be delivered by local government or the voluntary or private sectors. It should also include an examination of different central government delivery models, including whether the function can be delivered by the sponsoring department, by a new or existing Executive Agency or by another existing central government body. It is Government policy that NDPBs should only be set up, and remain in existence, where the NDPB model can be clearly evidenced as the most appropriate and cost-effective model for delivering the function in question. Reviews must evidence that functions have been assessed against a wide range of delivery options.

⁵ See also <http://www.cabinetoffice.gov.uk/sites/default/files/resources/Cabinet-Office-Guidance-on-Reviews-of-Non-Departmental-Public-Bodies.pdf>

In many cases, some delivery options can be quickly rejected. However, for each function under consideration, the review should identify all viable delivery options and undertake a fuller assessment of these options. Where appropriate, this should include a cost and benefits analysis. If one of the delivery options is the NDPB option, this must also include an assessment against the government's 'three tests':

1. Is this a technical function (which needs external expertise to deliver)?
2. Is this a function which needs to be, and be seen to be, delivered with absolute political impartiality (such as certain regulatory or funding functions)?
3. Is this a function which needs to be delivered independently of Ministers to establish facts and/or figures with integrity?

Based on these fuller assessments, the department can then make an informed decision on how the function should be delivered in the future:

- Abolish
- Move out of Central Government (e.g. to voluntary or private sector)
- Bring in-house (e.g. to an existing Executive Agency of the MoJ)
- Merge with another body
- Delivery by a new Executive Agency
- Continued delivery by an NDPB

The Ministry of Justice approach

Triennial reviews are consistent with the MoJ's commitment to review its ALBs. The LSB and the OLC are the first bodies to be reviewed in this way. The reviews have been run as linked projects, governed by a project board and supported by a critical friends group. The project board is comprised of officials from the review team as well as representation from the legal and communications directorates and the arm's-length body governance division.

The critical friends group provides robust challenge to the review and includes representation from the MoJ's triennial review programme, the Department for Business Innovation and Skills ("BIS"), Cabinet Office and the National Audit Office, and is chaired by the Deputy Director from MoJ responsible for Triennial Reviews.

Call for Evidence

The call for evidence on the Triennial Reviews was issued on 10 January 2012, lasting until 30 March 2012. This was published on the MoJ website⁶ and publicised directly to interested stakeholders. A written ministerial statement was made in both Houses of Parliament⁷ confirming the start of the call for evidence and the process being used by the MoJ in the reviews. Anyone could respond to the call for evidence. A list of respondents is included in Annex A of this report.

Workshops, roundtable meetings and other stakeholder engagement

In addition to the call for evidence, workshops were held with key stakeholders to explain the review, explore possibilities and begin to get some responses to the issues. These were followed up by roundtable meetings with groups of stakeholders to explore some of the issues in more detail. The Senior Responsible Officer also attended meetings of the LSB Board, the OLC Board and the Legal Services Consumer Panel ("the LSCP") in order to obtain the views of the bodies being reviewed and give feedback on the evidence received from stakeholders.

⁶ <https://consult.justice.gov.uk/digital-communications/review-lsb-olc>

⁷ Official Report 10 Jan 2012: Column 8WS.

Evidence from both the call for evidence and the subsequent meetings has been incorporated into this report at the appropriate stage of the options analysis and in the concluding section where emerging themes are identified.

Context

There are several areas of work and issues which are relevant to the Triennial Review and need to be highlighted before considering the on-going requirement for the functions of the LSB and the OLC and the delivery model options. They will help to inform any recommendations that are made for stage one.

The Changing Market

The legal services sector is changing at a fast pace, particularly with the recent developments of Alternative Business Structures (ABS) and the changes to legal aid and the funding of civil cases. Two approved regulators are currently licensed to issue ABS licences, and others may follow. At the time of writing, six ABS licences have been issued, and this is expected to increase substantially.

ABS are firms which are partly or wholly owned or controlled by non-lawyers and which provide legal services or a mixture of legal and non-legal services to the public. Several different models are possible under ABS, which encourages increased competition. This should lead to more choice for consumers, which may result in lower prices. Innovation is increased and firms may make savings through cost-effective operations. It also encourages growth in the legal services market. There are risks associated with ABS, including possible conflicts of interest between lawyer and investor and, potentially, fewer smaller firms. The impact of ABS and whether these risks materialise are current issues for consideration. In addition, changes to the scope of legal services regulation are currently under consultation, and there is a major review of the future of legal education and training.

These issues are entirely relevant to the continuing need for both the OLC and the LSB and whether their current functions are still required, as well as whether new functions are required. They may also alter the legal services arena sufficiently to necessitate a new form for the LSB and OLC. Even if this Triennial Review were not taking place, the MoJ would need to monitor the outcomes of these changes to see how the sector may best be served in terms of regulation and redress.

Public Bodies Reform Agenda

This is led by the Cabinet Office, using HM Treasury rules and standards. The Secretary of State for Justice considered MoJ public bodies, applying the Coalition Government's test on whether the function should be carried out by the state. It was decided in June 2010 that the LSB and the OLC would be retained on the grounds of performing a function which requires impartiality. This does not pre-determine the outcome of this Triennial Review, which is based on evidence, but is a relevant consideration.

Better Regulation

The better regulation agenda encompasses ways in which the burden on business can be reduced, while still providing effective monitoring. For example, the 'one in, one out' policy means that new regulations are introduced only when others are repealed. Better regulation is also important to the LSB. It has said in its publications⁸ on Market Trends in Legal Services, Strategic Plan and Business Plan that 'core to [the LSB's work over the coming year and beyond] will be assuring and improving the performance of the legal sector's regulators and embedding better regulation'.

⁸ Publications available at http://www.legalservicesboard.org.uk/news_publications/publications/index.htm

The Red Tape Challenge

The Red Tape Challenge is a crowdsourcing exercise (consulting through a website) to remove burdens, confusion and barriers which statutory instruments and other regulation creates. Outdated legislation could be amended or scrapped if no longer justified. The MoJ will crowdsource legal services material from 31 May to 21 June. Statutory instruments made under the LSA and other pieces of primary and secondary legislation relating to the regulation of legal services will be considered as part of this process.



Growth

Encouraging and stimulating growth is a core principle for the Government, which is one of the main reasons for seeking to reduce regulatory burdens. The potential for encouraging growth should also be considered. It also has relevance to the Triennial Review programme, which looks at reducing the number of unnecessary bodies, which may impose burdens on others.

The MoJ has a number of areas of work which contribute to economic growth, such as ABS. The MoJ has also worked with UK Trade and Industry (UKTI), TheCityUK, the Bar Council, the Law Society and others to promote the UK as a destination in which legal disputes may be resolved⁹. The department's overall work to encourage growth was set out in a new document, Justice for Business, published on 8 May¹⁰.

Other issues relevant to the Triennial Review

Transforming Justice



At the heart of the MoJ's agenda is the determination to increase the responsibility and power of the citizen. It means making changes right across the Department. We want to see legal aid targeted at the most serious cases; increased use of alternative dispute resolution; and simpler, less bureaucratic processes for those who use our services. We will make sure that those who break the law take responsibility for their actions and are properly punished, while we help offenders who want to reform to change their lives, re-enter society, move into work, and – most importantly – to stop committing offences.

The MoJ is implementing policies to encourage the public to resolve their issues out of court without recourse to public funds, using simpler, more informal remedies where they are appropriate. If civil cases need to go to court for a hearing they will be dealt with through a speedy and streamlined process. The MoJ will deliver a civil justice system which is more effective, less costly, and more responsive to the public. This means that there are opportunities to use alternative

⁹ See MoJ Plan for Growth: <http://www.justice.gov.uk/downloads/publications/corporate-reports/MoJ/legal-services-action-plan.pdf>.

¹⁰ See <http://www.justice.gov.uk/downloads/publications/corporate-reports/MoJ/2012/justice-for-business.pdf>

dispute resolution (ADR) to avoid unnecessary court or tribunal appearances. Where litigation is necessary, people should have access to legal representation of good quality. These aims should be kept in mind when making the recommendations for the Triennial Review.

Post-legislative Assessment of the Legal Services Act 2007

A Post-Legislative Assessment (PLA) of the LSA is due to be completed. This will include a preliminary assessment of how the Act has worked in practice, relative to objectives and benchmarks identified during the Bill's passage. It will consider LSA implementation, including Alternative Business Structures (ABS), identifying key areas for Parliament:

- a summary of the objectives of the Act; implementation; secondary legislation;
- legal issues; other reviews (including this review); and
- an assessment of the Act.

The PLA will be submitted to the Justice Select Committee at a date to be confirmed. Responses received which refer to the Act and its operation have been referred to the policy team responsible for taking forward the PLA.

Equality and Diversity

Part 11 of the Equality Act 2010 imposes a duty on public authorities. This requires that, in the exercise of their functions, the authority must have due regard to the need to:

- a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.¹¹

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Schedule 19 of the Act, as amended, applies the public sector equality duty to the Legal Services Board, as well as most approved regulators in respect of their public functions¹². There is a renewed commitment to equality and diversity, connected in the legal services sector with the public sector duty outlined above and the desire to improve diversity in the judiciary and improve social mobility through the legal professions as a whole.

Regulatory Review

This review will look at regulatory systems across Government and ask the public to comment on both good and bad regulatory practice via a crowdsourcing exercise. It seeks to discover how regulations are enforced and how compliance is monitored and ensured. It will look at the total burden placed on businesses and civil society organisations through their interactions with regulators. The fact that a particular Regulator is listed on this website does not necessarily mean that the Government will make changes to it. The regulators due for review as part of this process include the LSB. The precise date for the launch has not yet been fixed, but an announcement is expected in the spring. This exercise is separate from the Red Tape Challenge.

¹¹ Section 149 of the Equality Act 2010 (c.15) – full text available at <http://www.legislation.gov.uk/ukpga/2010/15/part/11>

¹² The Chartered Institute of Patent Attorneys; the Council for Licensed Conveyancers; the General Council of the Bar; the Chartered Institute of Legal Executives; the Institute of Trade Mark Attorneys; and the Law Society of England and Wales.

Functions and Form

This section of the report will look at the functions of the LSB and OLC. It will then consider current and potential structures for the LSB and OLC before comparing the merits and making a recommendation for both bodies, supported by evidence.

Functions of the LSB



The LSB is operationally independent of the government and funded by a levy on the legal profession¹³. Its role is oversight of the legal profession and in carrying out its functions it must promote the regulatory objectives (Part 1 of the LSA¹⁴). The LSB became operational on 1 January 2010. Its mandate is to ensure that regulation in the legal services sector is carried out in the public interest; and that the interests of consumers are at the heart of the regulatory system. The LSB has a budget of £4.5 million in 2012-13 (including £44,000 for the Consumer Panel and £176,000 for the OLC Board costs).

Approved regulators are the regulatory bodies approved by the LSA: the Law Society; the General Council of the Bar; the Master of the Faculties; the Chartered Institute of Legal Executives; the Council for Licensed Conveyancers; the Chartered Institute of Patent Attorneys; the Institute of Trade Mark Attorneys; the Association of Law Costs Draftsmen; and (for the provision of probate services only) the Institute of Chartered Accountants in Scotland and the Association of Chartered Certified Accountants.

Approved regulators authorise individuals or firms to undertake such of the reserved legal activities for which they are approved:

- the exercise of rights of audience (appearing as an advocate before a court);
- the conduct of litigation (issuing proceedings before a court and commencing, prosecuting or defending those proceedings);
- reserved instrument activities (dealing with certain transfers of land or property);
- probate activities;
- notarial activities (activities customarily carried out by notaries); and
- the administration of oaths.

The approved regulators have split any representative functions from their regulatory functions to establish independent regulatory arms. The representative arms act as trade unions, representing the views of their membership by responding to consultations and lobbying business and the Government. The regulatory arms set the qualification requirements for those wishing to join the profession; ensure members comply with rules and regulations; ensure members maintain knowledge and skills; and take disciplinary action against those members who breach rules. The approved regulators regulate individuals and firms, from sole practitioners to larger multi-national law firms and, since, October 2011 ABS¹⁵.

¹³ More information about the LSB is available at <http://www.legalservicesboard.org.uk/>.

¹⁴ The Regulatory Objectives: protecting and promoting the public interest; supporting the constitutional principle of the rule of law; improving access to justice; protecting and promoting the interests of consumers; promoting competition; encouraging an independent, strong, diverse and effective legal profession; increasing public understanding of the citizen's legal rights and duties; and promoting and maintaining adherence to the professional principles.

¹⁵ Approved regulators currently able to license ABS are the Law Society and the Council for Licensed Conveyancers.

The LSB regards the need to ensure independent regulation across the legal services sector as one of its most urgent priorities and ensures that approved regulators' internal governance arrangements comply with its requirements. The LSB also has responsibility for approving applications by approved regulators for changes to their regulations. It is also responsible for approving applications from bodies wishing to become approved regulators and/or Licensing Authorities for Alternative Business Structures.

A table setting out the functions of the LSB was used at stakeholder workshops, as set out below. The final heading refers to Value for Money. This is not a function of the LSB, as confirmed at the workshops, but refers to the need for the LSB to be proportionate in its oversight of regulation in the LSA, which would include its cost.

Functions of the LSB

<p>Approval and recognition</p>	<p>Monitoring and investigating activities</p>	<p>Enforcement and disciplinary activities</p>
<p>Approved Regulators</p> <ul style="list-style-type: none"> • Consult and make rules • Applications and designation • Consult and seek a fee <p>Licensing Authorities</p> <ul style="list-style-type: none"> • Consult and make rules • Applications and designation • Consult and seek a fee 	<p>Monitoring</p> <ul style="list-style-type: none"> • ARs compliance with regulatory objectives • Set OLC performance targets • its own rules and those of ARs are working in practice <p>Investigation</p> <ul style="list-style-type: none"> • market trends and competition issues • regulatory gaps 	<p>Enforcement</p> <ul style="list-style-type: none"> • Power to set targets and directions <ul style="list-style-type: none"> - publicly censure a body - Impose a fine - Intervene in the running - Deauthorisation <p>Disciplinary</p> <ul style="list-style-type: none"> • Consider widespread conduct issues
<p>Regulation, education and training</p>	<p>Office for Legal Complaints and Legal Services Consumer Panel</p>	<p>Value for money</p>
<p>Regulation</p> <ul style="list-style-type: none"> • Duty to promote the regulatory objectives • Consideration of better regulation principles • Consult and make rules • AR and Licensing Authority rule approval • AR or Licensing Authority as last resort • Maintenance and development of standards <p>Education and training</p> <ul style="list-style-type: none"> • Duty to provide education and training for professionals 	<p>Legal Services Consumer Panel</p> <ul style="list-style-type: none"> • Appoint the Board and Chair • Advice <ul style="list-style-type: none"> - consider and report following LSCP advice - request LSCP investigate and report <p>Office for Legal Complaints</p> <ul style="list-style-type: none"> • Appoint the Board and Chair • Annual Report and Accounts to Lord Chancellor <ul style="list-style-type: none"> - agree rules and budgets 	<p>Levy</p> <ul style="list-style-type: none"> • Consult on levy rules • Collect levy to cover <ul style="list-style-type: none"> - Board leviabale expenditure - OLC leviabale expenditure <p>Government Accounting</p> <ul style="list-style-type: none"> • Adhere to Managing Public Money • Prepare Annual Report and Accounts <ul style="list-style-type: none"> - Business Plan - Strategy

Ministry of JUSTICE

The Legal Services Consumer Panel



The Legal Services Consumer Panel (LSCP) was set up by the LSB under section 8 of the LSA¹⁶. It is tasked with advising the LSB on the interests of consumers and scrutinising the effectiveness of the LSB's work on behalf of consumers. There are seven lay members. The LSCP has a budget of £44,000 for 2012-13.

¹⁶ LSCP website: <http://www.legalservicesconsumerpanel.org.uk/>.

The consumer was in many ways at the heart of the reforms brought in under the LSA, because the previous arrangements had not protected or engaged with them to any degree. The roles of the LSCP are set out in the table below.

Proactive roles	Reactive roles
Recommend the Lord Chancellor to extend the Ombudsman scheme, raise the Ombudsman's compensation limit and establish a voluntary scheme for complaints.	Give advice to the LSB on: <ul style="list-style-type: none"> • application for a new approved regulator • application for a new licensing authority • becoming an approved regulator for a reserved legal activity • issuing directions to approved regulators for non-compliance or breach of objectives • cancelling the designation of an approved regulator • OFT report on competition.
Make representations to the LSB.	Carry out research or obtain advice for the LSB.
Consult approved regulators directly and respond to their consultations.	Consult with the approved regulators and communicate with them.
Request the LSB to investigate whether a legal activity should become reserved or cease to be reserved.	Provide advice to the Ombudsman on consumer issues and jurisdiction.
Establish its own committees.	

The LSCP's relationship with the LSB is set out in a Memorandum of Understanding. The LSCP has published research reports on will-writing, referral fees and price comparison websites¹⁷. It puts forward a work programme each year to the LSB for approval and is funded by the LSB, which also provides a secretariat.

Functions of the OLC

Part 6 of the LSA provides for the establishment of the Office for Legal Complaints (OLC) which administers an independent complaint handling scheme known as the Legal Ombudsman¹⁸; the OLC was established on 1 July 2009 and it became fully operational on 6 October 2010. The OLC must have a majority of lay members, with a lay person as the chairperson. The OLC is also bound by the regulatory objectives set out in section 1 of the LSA. The OLC has a budget of £176,000 for 2012-13; the budget for the Legal Ombudsman, funded via levy and case fees, is just under £17 million for 2012-13.

It is important to understand that the OLC itself actually comprises the 7-9 members that appoint the Ombudsmen and administer the complaints handling scheme. The OLC:

- makes the rules by which the complaints handling scheme operates;
- administers the complaints handling scheme;
- appoints Ombudsmen to investigate and determine complaints; and
- produces an annual report showing how it has discharged its functions.

However, approved regulators retain their important role in dealing with misconduct and discipline. The Legal Services Act (LSA) is very clear that ombudsmen will not be able to discipline lawyers.

¹⁷ Research and reports are available at http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/index.html

¹⁸ More information about the Legal Ombudsman and the OLC is available at <http://www.legalombudsman.org.uk/>.

The LSA provides the OLC with flexibility to develop the scheme, to ensure it operates fairly, transparently and effectively. The Legal Ombudsman deals with complaints about the services provided by persons authorised under the LSA, and their employees. It is headed by a lay Chief Ombudsman and his assistants, who cannot be practising lawyers. They determine complaints based on what is fair and reasonable in the circumstances.

The LSB has powers to set the OLC targets. If those targets were not met, or the members of the OLC were failing in discharging their duties, then the members of the OLC can be removed by the LSB. In its first full year of operation, the Ombudsman had 75,000 contacts, of which approximately 7000 became full investigations. This is projected to increase to 80,000 contacts and 8000 investigations in 2012-13. The scheme has its own Key Performance Indicators (on timeliness, quality, cost, reputation and impact) but has not had targets imposed by the LSB to date.

The OLC is funded partly through a levy on the approved regulators¹⁹ and partly through case fees. The LSA allows the flexibility to determine the best way to operate the fee mechanism. The OLC must consult in making those arrangements. Different fees may be set for different types of lawyer or different stages of a complaint, or in some cases can be waived altogether. A table setting out the functions of the OLC, as used at stakeholder workshops, is set out below.

Role and functions of the OLC – this sets out the high level functions of the OLC but is not meant to be an exhaustive list

Appointments	Administration of the Legal Ombudsman scheme	Rules/ Compliance	Budget
<ul style="list-style-type: none"> •Appoint a Chief Ombudsman to administer the Legal Ombudsman scheme. •Appoint assistant Ombudsmen, in consultation with the Chief Ombudsman. •Employment of staff. 	<ul style="list-style-type: none"> •Must have regard to principle of best practice of those who administer Ombudsman schemes. •Act in a way that is compatible with the regulatory objectives. •Ability to establish a voluntary scheme in relation to legal services not covered by the statutory scheme. •Statutory scheme can be extended to claims management services (not in force). •Make recommendations to amend the scheme – parties and limits of redress. 	<ul style="list-style-type: none"> •Requirement to consult and make scheme rules on the remit and rules for the Legal Ombudsman scheme. •Scheme rules are agreed with the LSB. •To consult and make rules on case fees with the agreement of the Lord Chancellor. •Complying with the Freedom of Information Act 2000. 	<ul style="list-style-type: none"> •Adopting a budget at the start of each financial year (the budget must distinguish between the different functional areas of the OLC and be approved by the LSB); •Preparing an annual report dealing with the discharge of the OLC’s functions; •Reporting to the LSB on matters it specifies (financial and non financial); •Producing an annual statement of accounts that the Lord Chancellor will lay before Parliament



The recommendations of stage 1 of this Review are set out after analysis of the functions and the options for service delivery model.

¹⁹ Collected administratively through the LSB.

Analysis of LSB functions

The majority of responses acknowledged the good work which has been carried out by the LSB in meeting its functions under the LSA, in particular singling out the successful introduction of the ABS framework. There were also a number of responses which highlighted the importance of ensuring independence of the regulatory arms of approved regulators.

Evidence received on LSB successes

Chartered Institute of Legal Executives (CILEx) and ILEX Professional Standards (IPS): We applaud the LSB in having achieved its primary targets for the first three years of its operation. The LSB has worked with approved regulators to embed independent governance rules...; establish a new and effective complaints handling scheme...; and establish the framework for the introduction of ABSs.

Individual: In my view, the LSB have an important role to play as the oversight regulator and their functions should be strengthened, particularly where the regulatory and representative functions of the approved regulator have not been institutionally separated.

Solicitors Regulation Authority (SRA): The SRA considers that the Legal Services Board has made significant progress in achieving elements of the purpose for which it was originally established.

Some responses stated that there is a continuing need for the LSB functions, particularly in relation to research to produce evidence-based policy, and to maintain the LSB's oversight of the legal services sector in order to assist the development of appropriate regulation, including the continuing development of the ABS sphere. Other responses also pointed to the fact that the LSB has only been operational a short time and it is therefore too early to review its functions, but that this might be appropriate at the next Triennial Review in 2015.

Evidence received on the continuing need for the LSB

Bar Council: The Bar Council believes that the Legal Services Board has continuing functions to discharge in relation to its role as 'oversight' regulator' of the approved regulators. Principally, this may include the licensing and supervision of alternative business structures.

Faculty Office: The Faculty Office believes that there is a continuing need for the LSB to continue with the functions given to it by the Legal Services Act but it may be that at the next review consideration should be given to either reducing those functions or to ensuring that they are more carefully targeted to the real needs of the legal profession.

The Institute of Trade Mark Attorneys (ITMA): The principal remaining task of the LSB should be to ensure that the new ABS regime beds in smoothly.

Office of Fair Trading (OFT): In the OFT's estimation, the functions of the LSB contribute widely to the provision and regulation of legal services and bear important synergies with the work of the OFT.

Professor John Flood: From this perspective the role of the LSB is to exercise power in a way that does not coerce or cajole but rather sets the agenda and determines the environment of the debates needed. This is not brute force; it is engagement and it is what makes the LSB so valuable. It is also what makes the LSB necessary.

Solicitors Regulation Authority (SRA): We do not see that there would be any merit in abolishing or fundamentally changing the role and functions of the LSB at this time.

However, many responses from the approved regulators – both the regulatory and representative side – had concerns about the way in which the LSB carries out its other functions, such as those relating to approval of rule changes. Other responses believed that there is no further need for the

LSB to carry out its functions, as the approved regulators are capable of doing so themselves, or the LSB should at least reduce the level of oversight that it currently has.

Evidence received on the way functions are carried out

Bar Standards Board (BSB): In the BSB's view the LSB should be exercising oversight of a judicial review nature, intervening only when the front line regulators are acting unreasonably, rather than duplicating the function of the front line regulators.

Chartered Institute of Legal Executives (CILEx) and ILEX Professional Standards (IPS): The case in point is the tendency for the LSB to take an excessive interest in the internal governance assessments of approved regulators, thus creating and reinforcing the perception of micro-managing.

Costs Lawyer Standards Board (CLSB): Perhaps a smaller LSB with a reduced brief to enable them to focus on areas of risk based concern rather than having their resource diverted on other matters of less or no real value (which in our view approved regulators should be trusted to undertake) could be a way forward for consideration.

The Institute of Trade Mark Attorneys (ITMA): We were slightly disappointed therefore to see the LSB requiring the provision of evidence and continued compliance rather than a simple (and less costly process) of confirmation of continuing compliance with Internal Governance Regulations. This requires additional and unnecessary workload, which appears disproportionate to the risk.

In relation to the LSCP, responses accepted that the provision of the consumer view is relevant as a function for the LSB. There were concerns about the visibility of the panel and the impact that its research had; some responses even suggested removing the panel, although perhaps not the consumer advice function. Some respondents felt that the LSCP could have a larger role in engaging with approved regulators to ensure that those without their own consumer panels could engage better in the future.

Evidence received on the Consumer Panel function

Bar Standards Board (BSB): The BSB considers that there is perhaps not an immediate need to abolish the Consumer Panel but the next triennial review should be examining carefully the amount of value added to the overall regulation of legal services. If considerably more is not evidence then it should not continue.

Council for Licensed Conveyancers (CLC): We suggest that the Panel should be invited to assess how far the LSB could help consumers and what part the separate regulators might play in this.

National Consumer Federation (NCF): [LSB] deliberations on regulation in any forum would be enhanced if the consumer voice were heard at the earliest stage in decision making. The Consumer Panel alone should not be expected to fulfil that role entirely.

Office of Fair Trading (OFT): We do consider, however, that further clarification of the LSCP's scope and remit over and above its advisory capacity to the LSB would be beneficial.

Although there is a mixture of views in relation to the LSB, the general theme that has emerged from the responses to the call for evidence and the view of the MoJ is that the functions of the LSB are still required. Whilst it is appreciated that respondents are not always happy with the way in which the LSB carries out its functions, it is not for this Triennial Review to comment on the performance (good or bad) of the LSB. It is only to look at the functions of the LSB and determine if they are still required. The LSCP still has a role to play in ensuring that consumer issues are raised with the LSB, but the Panel could consider how it could improve its communication with approved regulators.

Finally, some responses have suggested that the MoJ could reduce the budget of the LSB to restrict its portfolio of work, set a deadline for it to achieve its remaining functions or potentially set strategic objectives for the next three years. This is more relevant to the business planning cycle and discussions which take place and is not considered here.

Any responses which related to the implementation or performance of the Legal Services Act 2007 have been passed on to the team dealing with the Post-Legislative Assessment of the Act.

Analysis of OLC functions

No evidence has been received to say that the functions of the OLC need amending. There is widespread support for an independent complaints system in the legal services sector and it was felt that the OLC had the right functions to guarantee this. In addition, many respondents felt that it was too early to review the OLC.

Evidence received in support of the OLC

Chartered Institute of Patent Attorneys (CIPA): We believe that the complaints regime being implemented by the Legal Ombudsman is fair and equitable, although it is still early days to assess whether there are aspects which need altering.

The Institute of Trade Mark Attorneys (ITMA): In general we are of the opinion that the Office for Legal Complaints has run successfully during its early existence. We can see no reason to fundamentally change the OLC given that we are still in the relatively early days of its operation and complaints are working their way through the system.

Office of Fair Trading (OFT): The OFT also commends the Legal Ombudsman for the positive relationships it has developed with some of the business that are likely to play a prominent role in the future of ABS.

Society of Trust and Estate Practitioners (STEP): We believe that while more could be done to explain the role of the Ombudsman to the broader public, the OLC in its current form is generally working well, serving effectively both consumers and the industry.

There were some suggestions that the Legal Ombudsman's powers should be extended, although also some concerns about voluntary jurisdiction and other areas.

Evidence received on extension of Ombudsman's remit

Law Society: The Law Society urges caution in extending the remit of the scheme. There is a risk that operating a voluntary jurisdiction – particularly for service providers who are not regulated – will provide a misleading veneer of respectability to the providers concerned.

Professor Cosmo Graham: There are a number of areas which ought to be looked at with a view to seeing whether or not they could usefully be brought within the OLC's jurisdiction: will writing services by non-lawyers, provision of legal services by voluntary agencies and claims management.

Professor Stephen Mayson: The regulatory gap, where some 'legal' services are not regulated, provides more pressure to extend the OLC jurisdiction. However, this should be a transitional treatment of the issue rather than a permanent solution, until the area is regulated.

Which?: For the OLC, one future challenge is whether to include new areas within the ambit of the OLC – in particular claims management firms and non-solicitor will-writing firms (we think both should be at the earliest opportunity).

Some responses commented that information suggesting misconduct was not always reported to the relevant regulator; there was also concern about insufficient generation and publication of complaints data. Both these issues were thought to inhibit the ability of approved regulators to take

action against individuals, to ensure they know about service issues in their area. This concerns performance, which is outside the scope of this review.

Evidence received on publication of complaints information

Chartered Institute of Legal Executives (CILEx) and ILE Professional Standards (IPS): There is an apparent weakness in identifying and reporting to IPS conduct issues which are embedded in services complaints which results in some continuing risk to service providers and their clients... There has been very limited publication of aggregated data on complaints which would help regulators.

Council for Licensed Conveyancers (CLC): Whilst we understand that the Legal Ombudsman has experienced teething difficulties in the generation of reports [on the incidence and nature of service complaints] and that there are issues relating to data confidentiality, we remain disappointed at the current lack of progress.

Faculty Office: [It] would be hoped that in future there would be an annual return issued by the Legal Ombudsman showing the number of complaints it had dealt with from each branch of the profession.

Individual: The OLC must ensure the complaints system is designed to detect and refer suspected misconduct through proper channels to ensure that the risk of regulatory failure is mitigated.

National Consumer Federation (NCF): We have concerns that a too-cautious approach to their role by the OLC may give rise to longer-term problems as well as concerns that not all information of use to complainant, consumers and consumer organisations is currently accessible.

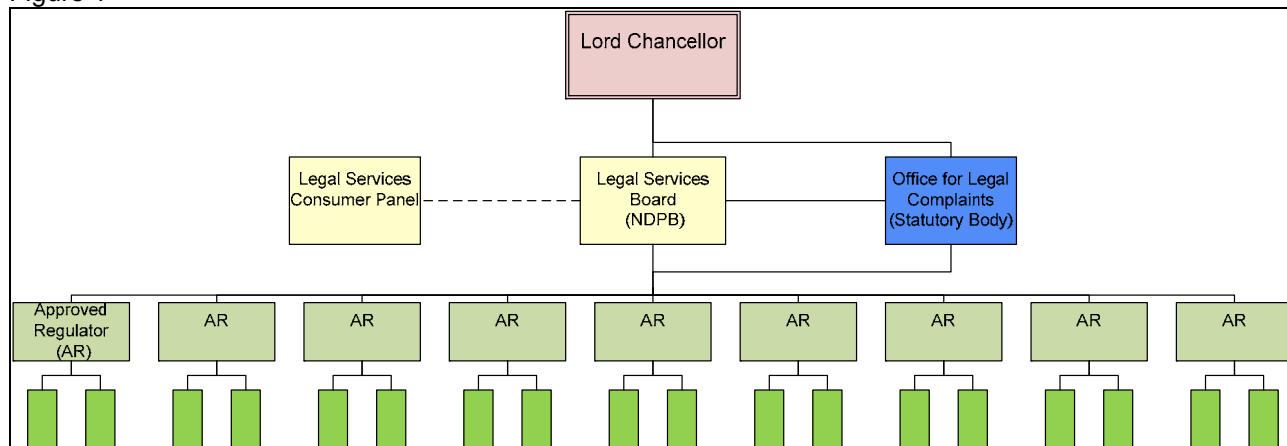
Office of Fair Trading (OFT): [The] OFT would continue to encourage the Legal Ombudsman to provide full disclosure of complaints data where possible, provided this can be done without risks and damage to the legal provider.

The overwhelming evidence is that the OLC is operating well and that the functions are still required. In relation to the extension of remit for the Ombudsman, this is outside the scope of the Triennial Review because it relates to the types of complaint covered by the scheme rather than a new function as such. Under the LSA, the MoJ has a role in the development of any new proposals under the existing legislation and will be engaged in any work to take them forward.

Following consideration of the functions of both the LSB and the OLC, this report moves to consider the forms of delivery which might be appropriate.

Current structure – LSB and OLC

Figure 1



Solid lines are formal oversight, reporting or accountability lines. The dotted line to the LSCP relates to its status as part of the LSB, carrying out an advisory role.

Under this model, as described previously, the LSB has oversight of all the approved regulators. The MoJ has a sponsorship relationship with the LSB and the OLC on behalf of the Lord Chancellor, although both operate at arm's length from the MoJ. This relationship is set out in framework agreements²⁰.

Having determined that the LSB and OLC functions are still required, there are several options which could be considered for the type of delivery model used. These are set out below.

Form of the LSB

The table below sets out an overview of the different possibilities for provision of the functions of the LSB, including the LSCP, and whether they are appropriate. The different models are those set out in the Cabinet Office guidance on Triennial Reviews. Any which are deemed appropriate (highlighted in yellow) will be explored in more detail following the table.

Delivery model	Appropriate?	Comments
Create a non-ministerial department	No	<ul style="list-style-type: none"> • A non-ministerial department is headed by a permanent office holder rather than a Minister, and a Minister in another department is accountable for it to Parliament (e.g. Her Majesty's Revenue and Customs) • Regulatory oversight was moved out of Government to provide independence in dealing with the legal services sector. This level of independence from Government is still required. • No evidence has been received to suggest that this is a viable option.
Utilise a Government Office	No	<ul style="list-style-type: none"> • Regulatory oversight was moved out of Government to provide independence in dealing with the legal services sector. This level of independence is still required, and a Government Office could be seen to be too close to Ministers. • No evidence has been received to suggest that this is a viable option.
Create a public corporation	No	<ul style="list-style-type: none"> • A public corporation is defined as a body that derives more than 50% of its production cost from the sale of goods or services at economically significant prices. This model would not work for oversight regulation, which the LSB currently provides. • No evidence has been received to suggest that this is a viable option.
Maintain the status quo (NDPB – using the three tests)	Yes	<ul style="list-style-type: none"> • The LSB provides oversight of the regulatory system and has built up skills and expertise in the regulatory arena since its inception. • Maintaining the LSB as an NDPB retains the level of independence appropriate for overseeing the regulation of the legal services sector, from both Government and the profession. • The majority of evidence received has supported this option, and this is therefore explored in more detail below.

²⁰ LSB framework agreement is at http://www.legalservicesboard.org.uk/about_us/lsb_framework_document/pdf/moj_framework_agreement_june_2011.pdf. OLC framework agreement is at [http://www.legalombudsman.org.uk/downloads/documents/official_docs/OLC%20Framework%20Document%20-%20FINAL%20-%20September11%20\(signed\).pdf](http://www.legalombudsman.org.uk/downloads/documents/official_docs/OLC%20Framework%20Document%20-%20FINAL%20-%20September11%20(signed).pdf).

Delivery model	Appropriate?	Comments
Bring inside Government department (MoJ)	No	<ul style="list-style-type: none"> Regulatory oversight was moved out of Government to provide independence in dealing with the legal services sector. This level of independence is still required. MoJ does not have the resource to take forward this delivery model and would require investment which is not available. The department was criticised before the LSA for the length of time taken on some functions, which would be likely to arise again. Evidence has been received through oral and written responses that this would be an inappropriate step away from the independent LSB model.
Move to the local or voluntary sector	No	<ul style="list-style-type: none"> To maintain consistency and the proper overview of the approved regulators a national model is necessary. A charity would need a considerable level of expertise to deal with regulatory issues, which would be difficult to obtain initially and then maintain. No evidence has been received to suggest that this is a viable option at present. No voluntary sector providers have responded to the call for evidence, suggesting that there is little desire at present to take this route.
Move to the private sector	Yes	<ul style="list-style-type: none"> In relation to the LSB, this option would probably remove the functions of the body, leaving the approved regulators (private sector) to regulate without oversight of any second-tier organisation. No evidence has been received to suggest that this is a suitable model at present, although it is explored in more detail below.
Establish new NDPB	Yes	<ul style="list-style-type: none"> The NDPB model is appropriate for the LSB because it maintains the required level of independence from Government and is set up with the specific Government aim of increasing the independence of regulation. No evidence has been received to suggest that this is a viable option at present, but there is potential for a different style of NDPB to be considered. This is explored in more detail below.
Move to an existing executive agency	No	<ul style="list-style-type: none"> The Legal Services Commission is currently transitioning to become an executive agency within MoJ. This is the only agency with an overlap with the legal services sector, but it would be inappropriate to deal with oversight regulation and the allocation of legal aid contracts through the same body because of the conflict of interests. It would also interfere with the independence of the body from Government. No evidence has been received to suggest that this is a viable option.
Move to a new executive agency	No	<ul style="list-style-type: none"> An executive agency may appear not to have the required level of independence from Government. The public perception might be one of ministerial interference. No evidence has been received to suggest that this is a viable option.

Delivery model	Appropriate?	Comments
Merge with another body	Yes	<ul style="list-style-type: none"> • There is no other body with which the LSB could easily merge. However, it might be possible for the LSCP, as one of the LSB's functions, to merge with another body. • Some evidence has been received on the possibility of this option, which is explored in more detail below.

LSB Options Analysis

Maintain the LSB as an NDPB

This can be seen as retaining the LSB in its current form and with its current functions. Stage 2 of the review would then consider the governance and accountability arrangements in the NDPB. The structure would remain as shown in the graphic set out in figure 1 above.

This option would require no additional costs because it would continue to be funded by the levy. It would retain a level of independence from Government and the profession which was endorsed by the reports which led to the LSA. The expertise and knowledge built up by the current system would be retained and the bird's eye view of the sector to objectively identify gaps in regulation would be maintained.

The NDPB model also provides the level of independence required by Parliament and observers, especially consumers. For many people, it is no longer appropriate for ministers to have direct oversight of regulation in the way the Lord Chancellor did before, and the NDPB structure resolves this concern. There are no major disadvantages to the NDPB continuing.

A number of responses to the Triennial Review on the LSB argue that the LSB is still required as an NDPB, particularly when the system has only been operational for two full years. Various comments have been made about the style of oversight which the LSB uses, which is useful when considering functions; however, it should be noted that performance matters of the LSB are outside of the scope of this review. Nevertheless, these comments seem to agree with the LSB's more recent view that its role is changing from one of start-up to business as usual.

Evidence supporting the maintenance of the LSB as an NDPB

Chartered Institute of Legal Executives (CILEx) and ILEX Professional Standards joint: It would not be in the public interest, for example, to consider significant changes or even abolition of the LSB at such an early stage.

Professor John Flood: I am therefore convinced the Legal Services Board should continue in its present incarnation.

Individual: Therefore the independent body of the LSB with its remit as oversight regulator should not be abolished.

Which?: We also support the continued existence of a statutorily independent consumer panel able to look at legal issues affecting the whole sector.

Move to the private sector (abolition)

Whilst it would be technically possible for the functions of the LSB to be delivered by a private sector organisation, a private sector oversight regulator overseeing private approved regulators would be perceived to have a lack of independence from the profession as was the case before the LSA. For the purposes of this type of move, therefore, consideration is limited to moving to the private sector by abolishing the LSB and allowing the approved regulators to regulate alone.

Responsibility for regulation would rest entirely with the approved regulators, which can be seen for these purposes as private sector. There is a risk that this would be seen as a return to the situation before the LSA, where consumers had a perception of professional bias. There would also be no regulatory oversight. If approved regulators were to prove their independence and accountability, whilst maintaining an effective redress scheme, this option might be feasible in the future. The market is insufficiently mature at the present time. It would also be difficult to ensure that a joined-up view were maintained between the regulators to address changes in the sector.

Removing the role of the LSB could be achieved in two main ways: all 10 approved regulators to stay as individual regulators; or approved regulators to merge or group together. It might be that the first option gradually moved towards the second option – in other words, the separate approved regulators might decide to merge in order to provide a more coherent regulatory structure for the relevant entities. The regulators would not report directly to the Lord Chancellor, which means that Parliamentary oversight would be lost if any major changes were made to the regulatory structure. For the purposes of this options analysis, it is assumed that the OLC would remain as a redress function for legal services, but no assumption is made as to its delivery model.

Whilst the option of abolition appeals to some of the respondents, most have accepted that there is a continuing need for the LSB to operate as an independent body, particularly in its oversight of the legal market. This might be lost if approved regulators were left to regulate on their own.

Evidence in support of a move to the private sector

Costs Lawyer Standards Board (CLSB): Should approved regulators not now be trusted to regulate in accordance with prevailing law? Each approved regulator has a lay majority board which acts to ensure statutory requirements are met. Is there really a need for two levels of costly regulation, the financial burden of both falling to legal practitioners?

Judiciary: Replacing the LSB with activity-based regulation [...] would require specific regulators regulating specific activities; thus only one regulator would regulate advocacy, and only one other regulator would regulate the right to conduct litigation and so on... [this] approach would render the continued existence of the LSB as an oversight regulator redundant.

A new Non-Departmental Public Body

Creating a new NDPB would require significant resource to bring about a system very similar to the present one; this would be the main disadvantage of this scheme. As well as financial resource, it would also require significant legislative change to unpick all the underlying legislation. Neither would it be consistent with the Government's aim of reducing the number of NDPBs. However, it might provide an opportunity to think more creatively about regulation in the legal services sector and beyond.

There are several options with a new NDPB structure:

1. mirror the new financial services regulatory system;
2. create a new legal services regulator; or
3. create a combined super regulator in professional services (or wider).

We have restricted our analysis to these three options to make analysis easier.

Mirror the new financial services regulatory architecture

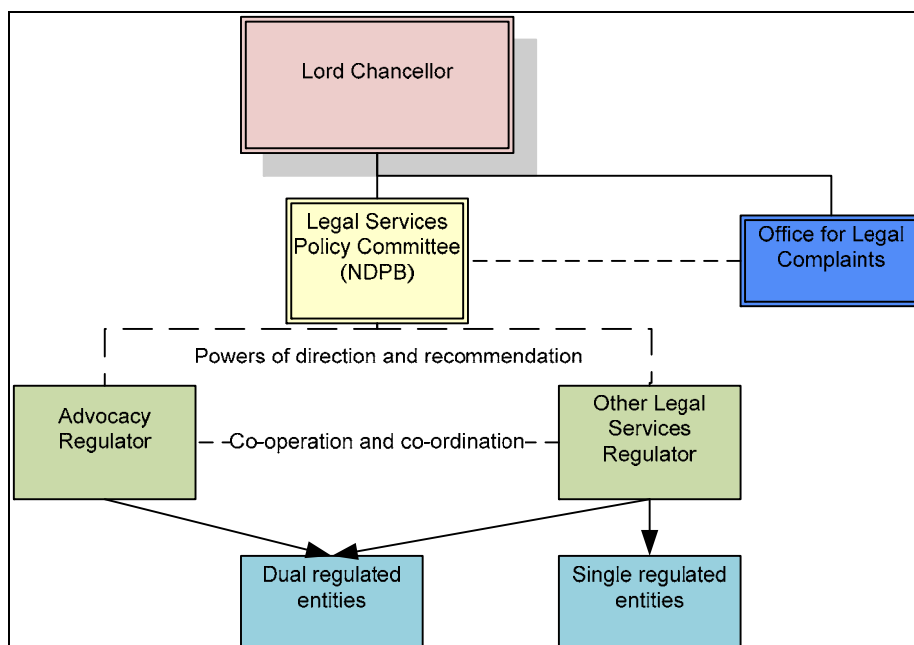
The current model is similar to the financial regulatory system put in place under Financial Services and Markets Act 2000, but which is being changed at present²¹: there will be a dual regulatory structure for 200 firms and single regulation for all others (approximately 25,000). Dual regulation

²¹ For more information on the new structure, see http://www.fsa.gov.uk/static/pubs/events/fca_approach.pdf.

will be appropriate for those firms which form a significant risk to the economy (banks, building societies, insurers and credit unions). The other firms will be singly regulated. Figure 2 shows how this might work in the legal services market.

The LSB could split itself to operate as direct regulator (removing the role of the approved regulators), or it could take on the role of a Committee as an NDPB, which will have powers of direction and recommendation. In this second instance, as reflected below, it would be possible to divide the legal services regulation into advocacy, possibly led by the Bar Standards Board, and all other legal services, possibly led by Solicitors Regulation Authority. Other models could be considered but all would require detailed consultation.

Figure 2



Solid lines are formal oversight, reporting or accountability lines. The dotted lines are advisory, directive, or co-operation relationships.

The advantage of this model is to move towards a situation more reflective of the way the legal services market may develop through ABS to have multi-disciplinary firms including different types of legal services. It also has the potential to rationalise the number of regulators and simplify the regulatory landscape. However, the disadvantage would be that this is an untested model (it is not yet in place for financial services), and it appears to be relatively bureaucratic for those entities which would be dual regulated. In addition, there are only a few ABS firms at present, so it would seem disproportionate to change the regulatory regime on that basis. There is no evidence to support this model at present, although it provides a useful comparator of a new type of NDPB.

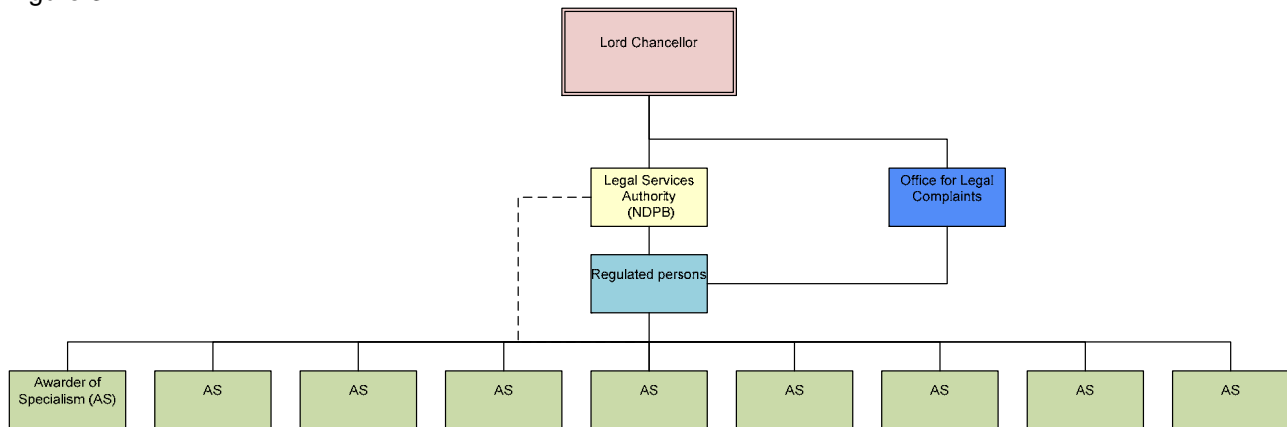
Create a new legal services regulator

It would also be possible for the LSB to transform into a direct regulator of first resort of legal services. This would be similar to the current Financial Services Authority (FSA), which was formed from the merger of several separate regulators. The LSB would need to become much larger to deal with the direct regulation of legal services. This would have the benefit of simplifying the regulatory landscape with fewer regulators for consumers to understand and regulation might be more coherent for those entities which cross over the different legal professions. However, there would be significant financial resources required by this option, and it would require primary legislative change.

This would potentially require the abolition of the regulatory side of approved regulators, and would require significant legislation (which was not felt appropriate at the time of the LSA). It has been suggested that the approved regulators could remain as a way to retain specialism within the market; in other words, the new regulator would give authority to a person to act as a 'lawyer' but

the individual AR would need to grant the person the right to be a ‘notary’, ‘conveyancer’ or other specialism, and would also retain any skill level or training requirements. They would also keep their representative functions. To distinguish between current operations and how it might be in the future, the approved regulators have been renamed as awarders of specialism (“AS”) in figure 3 below.

Figure 3



Solid lines are formal oversight, reporting or accountability lines. The dotted lines indicate lines of co-operation.

There has been an acknowledgement in some of the responses that this could be a workable model in the future, but would not be appropriate at present. Some responses have specifically warned against a ‘super-regulator’ model within legal services; for example, the Council for Licensed Conveyancers, commented that big regulators have a short shelf-life, pointing to the example of financial services, where the regulatory architecture is now being changed.

Evidence in support of a super-regulator

Judiciary: Replacing the LSB and merging all the current front-line regulators to create a single Legal Services Regulator... It could then be organised so that it had specific divisions, each dedicated to a specific regulated activity... In this way regulatory specialism, and excellence, could be properly maintained, while costs could be minimised.

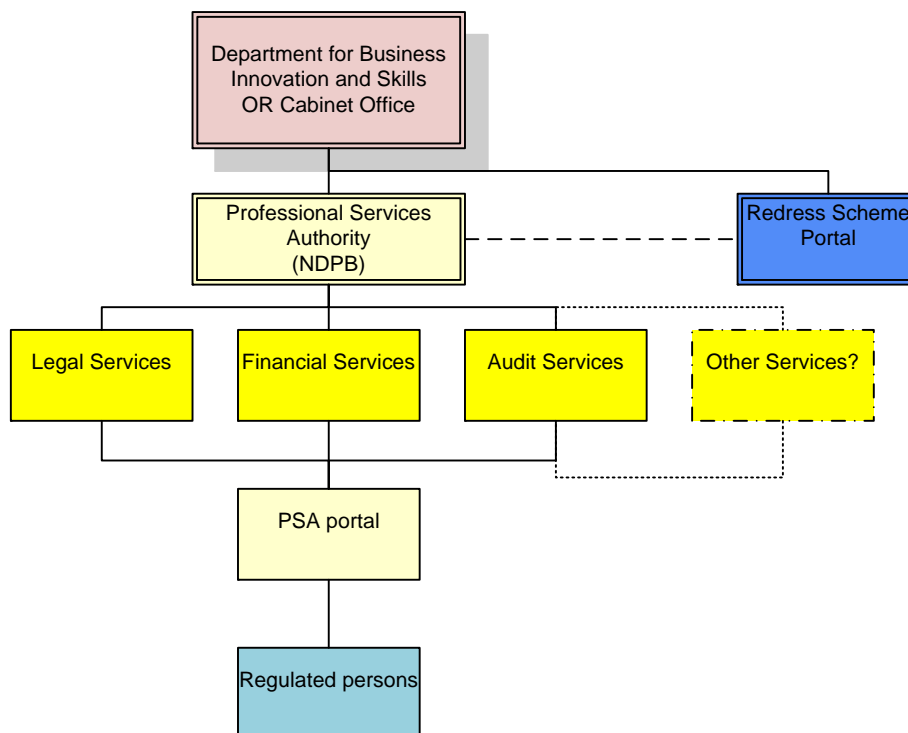
Society of Trust and Estate Practitioners (STEP): The alternative would be for the legal services industry itself to tackle the problems of complexity and cost created by the current regulatory arrangement by consolidating the current hotchpotch of approved regulators into a single ‘super regulator’ that was open to all suitable persons and businesses and more clearly independent of any of the traditional professional bodies.

Create a combined professional services regulator

A radical change to the regulatory system might be to create a combined regulator. This could combine the regulation of professional services sectors including legal, financial and audit, but could be expanded. This would require significant change to the current systems. It has the advantage of reducing the potential for duplicate regulation. It might also be welcomed by the consumer, who would better understand who would take action if a cross-sector organisation breached the regulatory framework. This would effectively require the abolition of the approved regulators, although they could retain a role in awarding specialism and representing those specialists, for example. Again, the main disadvantage would be the level of resource required across Government as well as current regulators (such as the FSA) to bring this about. There is also a risk that it is not possible to create a coherent regime across the differing sectors. Any such change would require primary legislation.

A programme of work would be needed to determine the functions of such a body and the transition from current arrangements. Consideration would also need to be given to sponsorship arrangements given the body would cross several departmental boundaries. Redress schemes in all affected sectors, such as the OLC, might need to be reorganised along the same lines in order to fit with the new structure, using a portal. A suggestion of structure is set out below in figure 4, but identifying all of the professional services which might fall within this option is not possible without more detailed consideration.

Figure 4



Solid lines are formal oversight, reporting or accountability lines. The dotted line to the redress scheme is because the nature of the relationship is not one of the assumptions of the model, so it could be either formal or informal. The dotted line to 'other services' allows for the addition of professional services (e.g. architects).

There has been no evidence received on this option specifically.

Merge with another body

There is no body with which the LSB could merge easily, although various respondents have warned against merging the LSB and OLC. However, the Department for Business, Innovation and Skills (BIS) has consulted on the amalgamation of consumer interest organisations as part of a wider focus on consumer advocacy and empowerment. The response to the consultation has recently been published²².

The idea is to combine consumer panels to provide a more consistent voice for consumer advocacy. These would be joined in a Regulated Industries Unit ("the RIU"), along with economic regulator consumer groups from sectors such as utilities and communications (see further below). BIS also envisages that other areas could join the RIU in the future, which might include legal services. Financial services were not part of the consultation because of the ongoing changes to the regulatory architecture there, but could potentially join the RIU in the future.

The advantage of this option would be to combine consumer advocacy to strengthen it and provide a more vocal consumer view in the economy. The LSB would still be able to ask for advice or research from the RIU, and the funding could be arranged so that legal services levy funding did

²² Consultation and response available at <http://www.bis.gov.uk/Consultations/empowering-and-protecting-consumers?cat=closedwithresponse>

not fund consumer advocacy in utilities, for example. The risk, until the detail of the RIU is known, is that the legal services sector may be lost amongst the other advocacy work being carried out, and expertise would be difficult to maintain; this might dilute the consumer view being taken on board in the sector, which was one of the drivers for the LSA.

Although the BIS response to the consultation has been published, further details are needed on what the RIU would look like and how it would operate. Some respondents believe that the Legal Services Consumer Panel should be moved outside of the LSB. However, the majority of evidence received on this point has acknowledged the possibility of transferring the functions of the LSCP to the RIU in the future, once more information is provided about retaining specialism in relation to the legal services sector and the funding of the unit. For example, the legal services sector would not want to fund research which did not apply to it, if the levy funding were retained. In addition, the LSB values the role that the Panel fulfils and would want to have a similar, non-statutory panel in place if the formal statutory panel were moved.

Evidence on merging the LSCP with the RIU

Chartered Institute of Patent Attorneys (CIPA): If it is felt that the Consumer Panel needs to be maintained, then incorporating its functions and the functions of the approved regulators' Consumer Panels into the RIU, could be a positive move as it would reduce the overall cost of regulation.

Which?: As currently proposed, legal services would not fit comfortably in [the RIU]. However in time, it may be that a wider Consumer Advocacy Unit is formed which includes all consumer sectors (water, transport, telecoms, etc.) and it may then be appropriate for the LSB Consumer Panel to be part of it.

Form of the OLC

The table below sets out the different possibilities for provision of the functions of the OLC and a view on whether they are appropriate. Any which are deemed appropriate will be explored in more detail following the table.

Structural diagrams have not been used in the way they have for the LSB, because options are not so complex in terms of changing the current system. The diagram of the current system at figure 1 is still relevant, however.

Delivery model	Appropriate?	Comments
Create a non-ministerial department	No	<ul style="list-style-type: none"> • A non-ministerial department is headed by a permanent office holder rather than a Minister, and a Minister in another department if accountable for it to Parliament (e.g. Her Majesty's Revenue and Customs) • Separation from Government and the regulators is important for a truly independent redress system. The first of the six principles of good governance in Ombudsmen schemes is independence: ensuring and demonstrating the freedom of the office holder from interference in decision making. • No evidence has been received to suggest that this is a viable option.
Utilise a Government Office	No	<ul style="list-style-type: none"> • Separation from Government and the regulators is important for a truly independent redress system. • No evidence has been received to suggest that this is a viable option.

Delivery model	Appropriate?	Comments
Create a public corporation	No	<ul style="list-style-type: none"> • A public corporation is defined as a body that derives more than 50% of its production cost from the sale of goods or services at economically significant prices. This model does not work for a redress system (which does not sell goods or services) such as that for which the OLC is responsible. • No evidence has been received to suggest that this is a viable option.
Maintain the status quo (statutory body)	Yes	<ul style="list-style-type: none"> • The OLC provides a well-regarded redress system which has built up skills and expertise since its inception. • Maintaining the OLC as a statutory body retains the level of independence required for the Legal Ombudsman. • The majority of evidence received has supported this option. This option is explored in more detail below.
Bring inside Government department (MoJ)	No	<ul style="list-style-type: none"> • Separation from Government and the regulators is important for a truly independent redress system. There would be significant protest from consumers and the profession if this were pursued. • No evidence has been received to suggest that this is a viable option.
Move to the local or voluntary sector	No	<ul style="list-style-type: none"> • To maintain the national overview of complaints and redress, a local model would be inappropriate. The voluntary sector would need to obtain and maintain a high level of expertise. • No evidence has been received to suggest that this is a viable option at present. No voluntary sector providers have responded to the call for evidence, suggesting that there is little desire at present to take this route.
Move to the private sector	Yes	<ul style="list-style-type: none"> • Some sectors, such as glazing and estate agents, have chosen to set up their own ombudsmen schemes, funded by the sector. This would maintain the level of independence required, provided that the sector does not have the opportunity to interfere. • Some evidence has been received to suggest that this is a feasible alternative for the OLC and it is explored in more detail below.
Establish new NDPB	Yes	<ul style="list-style-type: none"> • The NDPB model would be appropriate for the OLC because it maintains the required level of independence from Government. In the case of the OLC, this would be a change from its unusual reporting structure to the LSB. • No evidence has been received to suggest that this is a viable option at present.
Move to an existing executive agency	No	<ul style="list-style-type: none"> • Separation from Government and the regulators is important for a truly independent redress system. There are no appropriate executive agencies which could take on this role. • No evidence has been received to suggest that this is a viable option.
Move to a new executive agency	No	<ul style="list-style-type: none"> • Separation from Government and the regulators is important for a truly independent redress system. There would be significant protest from consumers and the profession if this were pursued. • No evidence has been received to suggest that this is a viable option.

Delivery model	Appropriate?	Comments
Merge with another body	Yes	<ul style="list-style-type: none"> • There is no existing body with which the OLC could easily merge at present. However, there is the possibility that in future ombudsmen schemes could be joined together and accessed through a portal format. • Some evidence has been received to suggest that this is a feasible alternative for the OLC in the future. This is explored in more detail below.

Options Analysis

Maintain the OLC as a statutory body

This would mean that the OLC retains its position in the structure set out in figure 1 above. The main benefit of this option would be to acknowledge the scheme which is working effectively and is well-regarded in the legal services sector, among ombudsmen schemes and with consumers. It would also avoid any new start up costs. There do not appear to be any major disadvantages with retaining the status quo.

The evidence received has been that the OLC has only been operating for a short time and it is too early to consider changes to the system. The OLC has independence from both the profession and the Government, which is a significant consideration in a credible redress scheme, and the Legal Ombudsman (LeO) has good visibility with consumers. The majority of responses therefore argued for retaining the OLC as a statutory body to maintain its level of independence.

Evidence supporting retention as a statutory body

Law Society: The Law Society thus considers that for the immediate future, the OLC Board should continue on the present basis.

Financial Ombudsman Service (FOS): [The] coalition government has re-emphasised the advantages of the Financial Ombudsman Service retaining a board this is operationally independent of the regulator. We suggest that the same considerations apply equally in relation to the OLC.

National Consumer Federation (NCF): We consider the OLC Board should be retained at present as it ensures that the regulatory (LSB) and redress (OLC) functions remain separate and independent of each other.

Move to the private sector

The main advantage of this option is to remove the OLC as a statutory body and make it entirely private sector, with scheme approval by the Lord Chancellor. There is anecdotal evidence from other private sector schemes that the entities subject to the scheme's jurisdiction follow quality guidelines and improve the service to consumers as a result. However, there is no evidence that this is required now in the legal services sector, and might only be needed if the LSB were to be abolished, for example.

Some sectors have chosen to have a private sector redress scheme. This can be done in two main ways:

1. a voluntary scheme set up by the sector and funded by it; or
2. a scheme approved by the Secretary of State and made mandatory, set up by the sector and funded by it.

A voluntary scheme runs the risk of entities not adhering to the quality guidelines, and whilst this can be addressed to a certain extent through regulation, it undermines the scheme because of uneven coverage. The quality of a mandatory scheme can also be ensured by the Secretary of State (in this

case, the Lord Chancellor). If it were decided that this were a feasible option for legal services sector redress, the likelihood would be that the Lord Chancellor would approve the Legal Ombudsman scheme and the governance of the OLC, and it would be funded on similar terms. It should also be provided in the legislation that only one Ombudsman/redress scheme can be authorised.

Most arguments made in favour of a private sector scheme during the call for evidence workshops preferred the second option because it is mandatory. However, there are concerns that private sector schemes are at more risk of bias and were part of the impetus for reform which led to the LSA in 2007.

Evidence on moving to the private sector

Professor Cosmo Graham: The key issue here is whether an industry sponsored self-regulatory solution could be found. I do not think that this is currently possible... There is a strong analogy here with the development of the financial services industry where a number of self-regulatory complaint handling schemes were eventually replaced by the statutory Financial Ombudsman Service.

Establish a new Non-Departmental Public Body

An NDPB provides a good level of independence from the Government and from the profession, which maintains a credible redress system. In the case of the OLC, this would be changing the status quo and would therefore require a significant resource input, and would not be consistent with the Government's aim of reducing the number of NDPBs.

If the LSB functions or nature were to change significantly or be abolished, it might be necessary to put a different structure in place for the OLC. This might legitimately be an NDPB, as it provides the level of independence that is necessary for the redress scheme. However, it could look very similar to the current structure with only the reporting line to the LSB changed.

Although responses have highlighted some surprise at the fact that the OLC Board reports to the LSB Board and suggest that it would be better if it reported to the Lord Chancellor, responses highlight the importance of independence rather than worry about reporting routes and there is no push for creating a new NDPB.

Evidence on changing the reporting line

Law Society: However, if and when the Legal Services Board is abolished, the Law Society would see no particular difficulty with the OLC Board reporting direct to the Ministry of Justice, subject to suitable provisions to secure independence of operation.

Merge with another body

There is no body with which the OLC could merge easily. However, the EU is considering a directive on alternative dispute resolution, which for these purposes means redress schemes²³. Negotiations are ongoing and a directive will not be in place for some time. The idea is to ensure that consumers have access to redress, no matter what sector they had used.

It is not yet certain what the landscape will look like under the directive, so it is difficult to establish what type of merger might be expected. The advantage of this option is expected to be for the consumer in understanding where to obtain redress. The main disadvantage would be the unknown costs – at this stage – and the potential for putting something in place now which either

²³ More information about the EU proposals are available at <http://www.bis.gov.uk/Consultations/call-for-evidence-eu-proposals-dispute-resolution?cat=closedawaitingresponse>

does not meet the needs of the eventual directive, or gold plates it to an extent that creates unfair burdens on business.

More information is needed before this option could be properly considered. The British and Irish Ombudsman Association (BIOA) and the OLC are keen that the Government takes a joined up approach when considering this area.

The OLC was the only respondent to comment in detail on this work and is keen to be involved in the development of Government policy and has engaged with the Department for Business Innovation and Skills and FOS to consider how it might work in practice. Other responses focussed on specifying that the OLC should not merge with the LSB in order to preserve proper independence from both Government and the regulatory side.

Evidence on merging with other bodies

The Legal Services Commission (LSC): We believe that the LSB and OLC should retain their separate legal status, on the basis that they have separate roles and their members would have been appointed with distinct experience to bring to the table.

Judiciary: So far as the OLC is concerned, the reasons for its creation, primarily the need for a single body, independent of every part of the profession, to consider consumer complaints, remain as valid now as they did when [the LSA] was introduced.

Summary and Recommendations

Functions

As set out in the analysis of the functions of the body, there is support for these functions to continue. The Triennial Review also looks at the functions of the bodies according to the ‘three tests’:

Test	LSB	OLC
Is this a technical function (which needs external expertise to deliver)?	Yes – oversight functions and the ability to look across the legal services sector require knowledge and expertise.	Yes – the volume of complaints handling would not be possible within Government.
Is this a function which needs to be, and be seen to be, delivered with absolute political impartiality (such as certain regulatory or funding functions)?	Yes – it is important for the credibility of legal services regulation that the oversight regulator has impartiality and independence from both the Government and the profession.	Yes – impartiality and independence from Government and the profession is vital for a redress system to be seen as effective and credible for the profession, regulators and the consumer.
Is this a function which needs to be delivered independently of ministers to establish facts and/or figures with integrity?	Yes – the oversight regulator must be independent of ministers to ensure that regulation maintains its integrity.	Yes – the redress system must be independent of Ministers to ensure that complaints data has integrity.

It is clear that the functions are still required, at least for the present, and for those to be carried out independently of Ministers.

Stage 1 Recommendation: Functions

Having considered all of the current functions of the LSB and the OLC, the recommendation is to retain them unchanged

Form

The delivery options analysis set out above highlight the difficulties involved in making any changes to the current structure of the LSB and OLC. Even minor changes to function and form would require financial resource, if not legislative change and the associated resources.

There is little support in evidence for the bodies to be moved to the private sector. As many of the responses said, both the LSB and OLC are relatively young organisations, and there is merit in allowing them to continue, to better assess them at the next round of Triennial Reviews in 2015. This will also allow us to assess the impact of some of the changes to the legal services sphere and see if the LSB and OLC are still best placed to provide these services. Creating new NDPBs would require significant resource which would not be supported by the profession and would put an unnecessary financial burden on Government. In addition, some of the options are looking ahead to developments which are yet to be finalised or are untested (for example, the work on consumer advocacy and the EU proposals on alternative dispute resolution). This means that the merging option is not realistic at present, but we will be able to monitor such issues as they develop.

Stage 1 Recommendation: Form

Taking all of this into account, the recommendation is to retain the LSB as an NDPB, and OLC as a statutory body; the LSCP should be kept as part of the LSB.

Conclusions

The recommendations above require stage 2 of the Triennial Review to commence. Nevertheless, reference has been made in the evidence and already in this report to issues which will affect the legal services sector going forward, and it is useful to identify some of the issues here that may impact on the next Triennial Review in 2015. Most of these were raised in some way in the evidence.

The changing legal services market

Alternative Business Structures

The LSA encompasses wide ranging reforms to the way legal services are provided and regulated. A key part of these reforms was to open up the legal services market through ABS, which would allow successful applicants to deliver legal services in new ways. Prior to the LSA, in significant parts of the legal services sector only those with legal qualifications were allowed to own businesses providing legal services. This prevented non-lawyers investing in and contributing to most legal services businesses. The restrictions excluded them from having a stake in the legal services market and contributing to its growth. This had an anti-competitive effect and ultimately meant less choice for consumers and barriers to innovation and alternative ways of doing business.

ABS enables different types of lawyers to work together with other professionals and to accept external investment or ownership which should allow them to explore new ways of structuring their businesses to be more cost-effective, efficient and innovative. Increased competition should also help to lower costs and may lead to improved standards of service for consumers, who will have the choice of having their legal and other professional services dealt with by one entity. ABS is still a young innovation in the UK and it will not be possible to make a full assessment of its impact until some ABS firms have been operating for some time. The full impact on legal services regulation remains to be seen, in particular relating to the interaction between regulators of different professions.

At present, only two approved regulators are able to issue licences for ABS, but more applications could follow. Six ABS firms are currently licensed, and this is expected to increase greatly in the next few months. The issues arising from international investment in ABS are untested and LSB oversight might be important.

Education

There is discussion within the sector on the future of legal education and training resulting in the launch of a review. This is part of wider consideration of social mobility and diversity within the profession.

The legal education and training review has been launched by ILEX Professional Standards, the Bar Standards Board and the Solicitors Regulation Authority²⁴. Some of the issues being considered are a simplification of the training process to make a more streamlined system for lawyers of all types. For example, some of the more radical options are:

- abolition of a qualifying law degree;
- introduction of national assessments at the point of entry;
- specification of sector-wide national standards, and a move to greater activity-based authorisation/regulation;
- removal of distinctions between ‘vocational courses’ and work-based learning;
- facilitation of greater common training between regulated occupations;



²⁴ For more information on the review, see <http://letr.org.uk/>.

- replacement of the pupillage/training contract with a more flexible period of ‘supervised practice’; and
- development of a sector-wide CPD scheme or alignment of schemes.

There is great interest in how different education routes might work, and are relevant to issues of social mobility and equality and diversity within the profession. However, the outcomes of the review may also affect how approved regulators regulate their own professions because of the changes in how they are entered.

Nature of the profession

Traditionally, the legal services sector is divided into several professions. However, increasingly there are individuals working across professional boundaries, and this is expected to increase, with the introduction of ABS, for example. This provides an additional challenge to approved regulators and the LSB, and potentially to the OLC and LeO as and when a complaint is raised. It is not an issue which is likely to disappear, and commentators continue to consider whether a fused profession is possible in the future: ‘I assume, however, that the two separate professional titles of barrister and solicitor will survive for the foreseeable future, if only because there is no strong current of opinion in favour of fusion.’²⁵ Despite the lack of support, the work on education, training and social mobility, in addition to the introduction of more ABS, may lead to a more fused profession in practice, which may force a fused profession more along the lines of continental lawyers.

Consumer advocacy and empowerment

As highlighted in the options analysis, BIS is progressing its reform programme for consumer advocacy and empowerment and considers that the LSCP could be incorporated into the new RIU. Whilst we do not yet have detail on the structures and funding arrangements, we do not make a formal recommendation for or against this possibility. We will see how this develops over the period until the next Triennial Review, as there may be possibilities to explore whether the LSCP could join the RIU before 2015.

Additional function issues

There are a number of issues relating to function which arise with both the LSB and OLC. These areas continue to challenge the legal services sector and may influence how the LSB and OLC are seen at the time of the next Triennial Review. One issue which affects them both is the consultation currently taking place by the Welsh Government on whether there should be a separate legal jurisdiction in Wales²⁶. The consultation closes in June and the response will therefore fall outside of this Triennial Review, but will be relevant for any future review.

Any functional issues considered by either the OLC or the LSB may affect the other, but there are some particular areas currently being considered by each body which are useful to highlight here.

LSB functions

The LSB considers issues around the wider legal services market and has sought evidence on immigration services regulation through a discussion paper. This considers whether immigration advice, currently regulated by the Office of the Immigration Services Commissioner, should fall within the remit of legal services regulation instead. Issues such as whether the LSB would become a frontline regulator will need to be considered in detail.

The LSB’s most recent consultation is on will writing and the administration of estates, and whether it should become a reserved legal activity. We await the outcome of this consultation and

²⁵ Speech made by John Wootton (President of the Law Society) to the Saïd Business School, 24 January 2012 – full text of the speech available at <http://lawsocietymedia.org.uk/Speech.aspx?ID=1571>.

²⁶ Consultation available at <http://wales.gov.uk/consultations/finance/seplegaljurisdiction/?lang=en>

acknowledge that this has caused a significant level of interest in the general media as well as the sector.

The LSB is also consulting on the regulation of special, or non-commercial, bodies, and on approaches to quality. All of the LSB's consultations are available online²⁷.

OLC functions

A number of areas in relation to jurisdiction have been identified by the OLC and the Legal Ombudsman. The most obvious one is around Claims Management Regulation complaints, which can be added to the Legal Ombudsman's jurisdiction through commencement of the relevant provisions in the LSA. No decision has yet been made on this issue.

Voluntary jurisdiction, for example, extending the remit of the scheme to cover will-writing, remains a more controversial area for the sector, with concerns around funding and credibility; work to consider this option is at an early stage. This links in with the current consultation of the LSB on will-writing

The Legal Ombudsman is also consulting on its scheme rules. All of the OLC/LeO consultations are available online²⁸.

EU developments on alternative dispute resolution

The OLC has responded to the consultation on EU alternative dispute resolution and is concerned, as is the British and Irish Ombudsman Association, that the Government ensures a joined-up approach. As with the consumer advocacy work, we will continue to monitor this situation. The work is led by the Department for Business, Innovation and Skills and is currently at the negotiation stage between the EU and Member States.

Final comments

There are some more general questions about the nature of regulation which may arise in the future, either as a result of current consultations or future planned work. For example, there is already some discussion about whether activity based regulation (such as in the financial services sector) is better as a model than entity regulation. There are also links to the Red Tape Challenge, looking at the potential to remove barriers for business, as well as better regulation more generally. It may also be that the weighting of various functions of both the LSB and OLC change as they move to a more mature model of regulation and redress.

All of the above issues show the dynamic nature of the legal services sector, whether driven by the market, consumers or various level of Government. At this stage, the functions and form of the two bodies are appropriate, but the next Triennial Review may need to consider more fundamentally how the legal services sector is best regulated and how consumers can best get redress.

²⁷ See http://www.legalservicesboard.org.uk/what_we_do/consultations/open/index.htm

²⁸ See <http://www.legalombudsman.org.uk/aboutus/consultations.html>

Introduction – stage two

This report follows on from the Ministry of Justice (“MoJ”) report on stage 1 of the Triennial Reviews of the Legal Services Board (“the LSB”) and the Office for Legal Complaints (“the OLC”). That report recommended that the LSB and the OLC continue with their current functions and in their current forms, and that stage 2 of the Triennial Reviews should commence.

Scope and Purpose of Triennial Reviews – stage 2

The Cabinet Office has identified two principal aims for Triennial Reviews:

- to provide robust challenge to the continuing need for individual Non-Departmental Public Bodies (“NDPBs”) – both their functions and their form (stage one); and
- where it is agreed that a particular body should remain as an NDPB, to review the control and governance arrangements in place to ensure that the public body is complying with recognised principles of good corporate governance (stage two).

This report covers stage two of the reviews of both the LSB and the OLC. As stated previously, the Cabinet Office agreed that the MoJ would carry out a Triennial Review of the OLC in parallel with that of the LSB, applying the same principles on the basis that the work of the LSB and the OLC is so closely linked.

All reviews are to be conducted in line with the following principles:

- Proportionate:** not overly bureaucratic; appropriate for the size and nature of the NDPB.
- Timely:** completed quickly to minimise disruption and reduce uncertainty.
- Challenging:** robust and rigorous, evidencing the continuing need for functions and examining and evaluating a wide range of delivery options.
- Inclusive:** open and inclusive. Individual NDPBs must be engaged, key users and stakeholders should have the opportunity to contribute. Parliament should be informed about the commencement and conclusions.
- Transparent:** all reviews should be announced and reports should be published.
- Value for Money:** conducted to ensure value for money for the taxpayer.

Cabinet Office Guidance

This information is taken from the Cabinet Office guidance²⁹. Where the outcome of the first stage of the review is that the NDPB will remain, the Department, working with the Chair and Chief Executive Officer (“the CEO”) of the NDPB concerned, should then review the control and governance arrangements in place to ensure that the public body is operating in line with recognised principles of good corporate governance. This includes requirements in openness, transparency and accountability.

Good corporate governance is central to the effective operation of all public bodies. As part of the review process, therefore, the governance arrangements in place should be reviewed. This should be led by the sponsoring Department, working closely with the Chair and CEO who will have a key responsibility for ensuring that strong and robust corporate governance arrangements are in place. As a minimum, the controls, processes and safeguards in place should be assessed against the principles and policies set out below. These reflect best practice in the public and private sectors

²⁹ See also <http://www.cabinetoffice.gov.uk/sites/default/files/resources/Cabinet-Office-Guidance-on-Reviews-of-Non-Departmental-Public-Bodies.pdf>

and, in particular, draw from the principles and approach set out in the draft *Corporate Governance in Central Government Departments: Code of Good Practice*³⁰.

The Department and NDPB will need to identify as part of the review any areas of non-compliance with the principles and explain why an alternative approach has been adopted and how this approach contributes to good corporate governance – this is known as the “comply or explain” approach, the standard approach to corporate governance in the UK. Reasons for non-compliance might include the need for structures and systems to remain proportionate, commercial considerations or concerns about cost and value for money.

The principles of good corporate governance

Principle ³¹		Descriptor
Accountability	Statutory Accountability	The public body complies with all applicable statutes and regulations, and other relevant statements of best practice.
	Accountability for Public Money	The Accounting Officer of the public body is personally responsible and accountable to Parliament for the use of public money by the body and for the stewardship of assets.
	Ministerial Accountability	The Minister is ultimately accountable to Parliament and the public for the overall performance of the public body.
Roles and Responsibilities	Role of the Sponsoring Department	The departmental board ensures that there are robust governance arrangements with the board of each arm's length body. These arrangements set out the terms of their relationships and explain how they will be put in place to promote high performance and safeguard propriety and regularity. There is a sponsor team within the department that provides appropriate oversight and scrutiny of, and support and assistance to, the public body.
	Role of the Board	The public body is led by an effective board which has collective responsibility for the overall performance and success of the body. The board provides strategic leadership, direction, support and guidance. The board – and its committees – have an appropriate balance of skills, experience, independence and knowledge. There is a clear division of roles and responsibilities between non-executive and executives. No one individual has unchallenged decision-making powers.
	Role of the Chair	The Chair is responsible for leadership of the board and for ensuring its overall effectiveness.
	Role of Non-Executive Board Members	As part of their role, non-executive board members provide independent and constructive challenge.
Effective Financial Management	Annual reporting	The public body has taken appropriate steps to ensure that effective systems of financial management and internal control are in place.
	Internal Controls	
	Audit Committee	
	External Auditors	

³⁰ See http://www.hm-treasury.gov.uk/d/corporate_governance_good_practice_july2011.pdf for the full code of practice.

³¹ Supporting provisions are in the Cabinet Office guidance.

Principle ³¹		Descriptor
Communications	Communications with Stakeholders	The public body is open, transparent, accountable and responsive.
	Communications with the Public	
	Marketing and PR	
Conduct and Behaviour	Conduct	The board and staff of the public body work to the highest personal and professional standards. They promote the values of the public body and of good governance through their conduct and behaviour.
	Leadership	

The Ministry of Justice approach

Questionnaire

The MoJ devised a questionnaire for stage 2 which could be used for all Triennial Reviews in the Department's programme. This required the LSB and the OLC to complete the questionnaire in which they had to 'comply or explain' the following areas, aligning with the principles in the Cabinet Office guidance:

- | | |
|--------------------------------------|--|
| 1. Statutory accountability | 7. Role of the Chief Executive Officer |
| 2. Accountability for public money | 8. Role of Non-Executive Board Members |
| 3. Ministerial accountability | 9. Effective financial management |
| 4. Role of the sponsoring department | 10. Communications and engagement |
| 5. Role of the Executive Board | 11. Conduct and propriety |
| 6. Role of the Chair | |

Evidence was submitted by the LSB and the OLC to support their responses. The two bodies also had to rate themselves on a four point RAG rating (Red, Amber/Red, Amber/Green, Green) for compliance with the areas above. The MoJ as sponsor had input into the questionnaire on the areas of Ministerial accountability and the role of the sponsoring department.

Peer reviewer

A peer reviewer was appointed for stage 2 to look at the evidence gathered about governance and accountability and challenge it as necessary. The expertise of the peer reviewer would stem from their general experience, but more particularly as a Chief Executive of another ALB sponsored by the MoJ. This role is in addition to the critical friends group, which provides robust challenge to the overall review and includes representation from the MoJ's Triennial Review programme, the Department for Business Innovation and Skills, Cabinet Office and the National Audit Office, and is chaired by the Deputy Director from MoJ responsible for Triennial Reviews.

Elaine Lorimer, CEO of the Law Commission, agreed to act as the peer reviewer for the Triennial Reviews of the LSB and the OLC. She met with the Chief Executives of the LSB and the OLC, reviewed the completed questionnaires and agreed this report.

Follow up visit

The process for stage 2 allows for a follow up visit if necessary, once the questionnaire has been completed, to allow the peer reviewer and the ALB Governance Division to explore areas of non-compliance in more detail with the Board or with staff of either the LSB or the OLC.

The evidence from the questionnaires and any visits comprises the basis for this report.

Compliance with principles of good governance

LSB compliance

The LSB provided comprehensive supporting documentation for its questionnaire response, including policies available to the public on its website and internal documents where relevant to governance and accountability issues. A summary of compliance issues is set out below, with a full table of compliance in Annex B.

In addition, since the LSB is part of the governance structure of the OLC, it provided a short statement about the governance approach to that relationship, based on statute and agreed policies.

Accountability

Statutory Accountability

The LSB complies with all the relevant statutory and regulatory requirements, as well as best practice. Many of the policies which apply in this area, such as the publication scheme and information on making freedom of information or data protection requests, are available on the LSB's website³².

On action planned, the LSB has stated that it will be updating its publication scheme and embedding its information retention and disposal policy in summer 2012.

Accountability for Public Money

The LSB complies with all the relevant requirements including the Accounting Officer role and complying with *Managing Public Money*³³. The LSB has guidance for staff on financial issues including expenses, gifts and hospitality, and fraud policies. The Annual Report and accounts for 2011-12 were published on 19 June³⁴.

Ministerial Accountability

The LSB complies with the majority of requirements in this area. The Minister meets the LSB Chair and Chief Executive at least annually to discuss the annual report, and as required on other matters. The Minister takes a keen interest in the development of the legal services sector, in particular in Alternative Business Structures.

However, the LSB has given an explanation of where it deviates from the requirements, by not having the responsible Minister able to remove the Chair and board members, or providing for the Minister to appoint the Chief Executive. Removal of office of the Chair and Board members is a role for the Lord Chancellor, as set out in the Legal Services Act 2007³⁵ ("the 2007 Act"), rather than the responsible Minister. The Chief Executive is appointed by the LSB board, as set out in statute³⁶. This is an appropriate explanation of non-compliance.

³² The website is available at <http://www.legalservicesboard.org.uk/>.

³³ *Managing Public Money* is available on the HM Treasury website – see http://www.hm-treasury.gov.uk/psr_mpm_index.htm.

³⁴ The annual report will be available on the publications page of the LSB website – see http://www.legalservicesboard.org.uk/news_publications/publications/index.htm.

³⁵ Schedule 1 – the 2007 Act is available at <http://www.legislation.gov.uk/ukpga/2007/29/contents>.

³⁶ Schedule 1.

Roles and Responsibilities

Role of the Sponsoring Department

There is a Framework Agreement in place for the LSB and MoJ setting out roles and responsibilities. The MoJ also carries out an annual risk analysis to monitor the status of the body, as required by the ALB Governance Division. The LSB also has a memorandum of understanding with the OLC

The Framework Agreement is due to be reviewed, following this Triennial Review, to take account of any issues arising from evidence in stages one and two.

Role of the Board

The LSB board complies with the relevant requirements. It has a code of practice which is publicly available. The LSB board evaluates its own performance. Sub-committees on Audit and Risk and Remuneration and Nomination each have their own Terms of Reference and provide annual reports to the main board.

The LSB will produce role specifications for members of the Audit and Risk Committee and the Remuneration and Nomination Committee.

The current Board is 25% female with no Black and Minority Ethnic (“BME”) membership. Addressing the diversity of the Board will be a priority for the next round of Board member recruitment – two new members will be appointed from April 2013.

Role of the Chair

The LSB board is led by David Edmonds as a lay member and non-executive Chair. The LSB complies with the requirements in relation to appointment of the Chair and setting out the Chair's role and responsibilities. Much of this is set out in the Framework Agreement with the MoJ.

Role of the Chief Executive Officer (CEO)

The LSB is led by Chris Kenny as the CEO. The LSB complies with the requirements in relation to the appointment of the CEO and his roles and responsibilities. There is reference to this in the Framework Agreement with the MoJ.

Role of the Non-Executive Board Members

The LSB board has a non-executive and lay member majority. The LSB complies with the requirements of this section through setting out roles and responsibilities in appointment letters for Board members, as well as an induction process. Board members are appraised annually. Responsibilities are also set out in the Framework Agreement.

Effective Financial Management

The LSB complies with the requirements, publishing timely annual reports, undertaking risk management and having financial management systems in place, such as internal control for the collection of the levy and comprehensive financial regulations. The LSB's internal audit function is contracted out to KPMG LLP, operating in accordance with the relevant internal audit standards. A gifts and hospitality log is published online.

Communication and Engagement

The LSB complies with most of the requirements in this section. It publishes information regularly under a publication scheme and consults extensively on its policy areas. The complaints handling procedure is due to be reviewed in 2012.

The LSB has explained that while it does not hold open board meetings to enable the board to have free and frank discussions, it does hold seminars around the country on areas of current

debate. It also publishes board minutes and the majority of board papers, within the bounds of its publication scheme. However, it will keep the issue of open board meetings under review.

The LSB publishes spend data over £25,000 and credit card expenditure over £500, but it has decided not publish general spend data over £500 after consideration of the administrative burden.

Conduct and Propriety

The LSB has a code of conduct on behaviour and has procedures in place to deal with conflicts of interest.

At present the LSB does not have rules and guidelines in place relating to political activity for all staff, although Board members have guidelines in place. Relevant guidance will be amended to cover this issue. In addition, the LSB will update guidance for staff on restrictions to accepting appointments or employment after resignation or retirement.

Agreed rating assessment

A joint assessment concluded that compliance with each principle was green, except for conduct and behaviour which is rated as amber/green. The amber/green rating relates to guidance which needs updating and therefore more important to resolve than areas where we are satisfied that the explanation given by the LSB is sufficient for non-compliance. The clear evidence set out by the LSB supports these assessed ratings, and the MoJ agrees with them, as set out in the table below.

Principle	Theme (where relevant)	Theme Rating	Principle Rating	Overall assessment
Accountability	- Statutory	Green	Green	Green
	- Public money	Green		
	- Ministerial	Green		
Roles and responsibilities	- Sponsor Department	Green	Green	
	- Board	Green		
	- Chair	Green		
	- Chief Executive Officer	Green		
	- Non-Executive Board Members	Green		
Effective financial management			Green	
Communication			Green	
Conduct and propriety			Amber/Green	

OLC compliance

The OLC also provided comprehensive documentation to support its response, including policies available to the public on its website and internal documents where relevant to governance and accountability issues. A summary of compliance issues is set out below, with a full table of compliance in Annex B.

The OLC is a statutory body rather than an NDPB and has a relationship with the LSB as well as the MoJ. This is a technical classification by the Cabinet Office. Although the LSB is a body created by statute, its technical classification is an Executive Non-Departmental Public Body. Some of the questionnaire was less relevant to the OLC on this basis, but it made it clear in its response where it relied on LSB governance (such as the appointment of OLC board members).

The Legal Ombudsman (“LeO”), which was set up by the OLC as the complaints scheme for legal services, is also signed up to the British and Irish Ombudsman Association (“BIOA”). BIOA requires its members to adhere to the principles of good governance³⁷:

- independence;
- openness and transparency;
- accountability;
- integrity;
- clarity of purpose; and
- effectiveness.

Although this review has not specifically looked at compliance with the BIOA principles of good governance, there is some overlap with the Cabinet Office principles.

Accountability

Statutory Accountability

The OLC complies with the requirements of statute, regulation and best practice. The OLC website³⁸ contains many of the relevant policies, including annual reports, information policy and equality priorities and objectives.

Accountability for Public Money

The CEO of the OLC is the Accounting Officer, with clear responsibilities on public money. The LSB has guidance for staff on financial matters including bribery, whistle blowing and expenses. The OLC has also asked its auditors, KPMG LLP, to carry out audits on finance and fraud arrangements. The Annual Report and accounts for 2011-12 are due to be published in July³⁹.

The OLC plans to check alternative sources to ensure that *Dear Accounting Officer* letters from HM Treasury are received.

Ministerial Accountability

The OLC complies with the majority of requirements in this area. As with the LSB, the Minister meets the OLC Chair and Chief Executive at least twice each year to discuss the annual report, and as required on other matters. The Minister takes a keen interest in the development of the legal services sector, in particular in the current work on the potential to extend the Ombudsman’s jurisdiction to new areas.

³⁷ For more information, see the BIOA website: <http://www.ombudsmanassociation.org/governance.php>.

³⁸ The website is available at <http://www.legalombudsman.org.uk/>.

³⁹ The annual report will be available on the publications page of the OLC website – see <http://www.legalombudsman.org.uk/aboutus/publications.html>.

As with the LSB, the OLC has explained where it deviates from the requirements. Removal of office of the Chair and Board members is a role for the LSB board, as set out in the 2007 Act⁴⁰. This is an appropriate explanation of non-compliance. This also applies to the requirements for appointment of the Chief Ombudsman, which is set out in statute⁴¹. Power to require information is exercised through the LSB, rather than directly from the OLC⁴², and the OLC has provided an example of this as supporting evidence.

Roles and Responsibilities

Role of the Sponsoring Department

There is a Framework Agreement in place for the OLC and MoJ setting out roles and responsibilities. The MoJ also carries out an annual risk analysis to monitor the status of the OLC, as required by the ALB Governance Division. The OLC also has a memorandum of understanding with the LSB.

The Framework Agreement is due to be reviewed following this Triennial Review, to take account of any issues arising from evidence in stages one and two. One of the issues that was clarified before the Triennial Review began was that the OLC is not an NDPB, but a statutory body. This is due to the governance structure in place, and has been confirmed by the Cabinet Office. The Framework Agreement assumed that the OLC was an NDPB, so the correct classification as statutory body will be reflected when the agreement is reviewed.

Role of the Board

The OLC complies with the relevant requirements. It has a governance statement which is available to the public and has codes of practice, policies and procedures for its members who are also subject to the relevant LSB codes of practice because of the appointment and remuneration process. Sub-committees on Audit and Risk and Remuneration and Nomination each have their own Terms of Reference and provide annual reports to the main Board. The Chair of the LSB appraises the Chair of the OLC annually and has regular meetings to maintain the relationship between the boards.

Board minutes are published online but the papers are not published as a matter of course. The OLC currently has quarterly reviews of its performance in closed session but does not record this information.

Role of the Chair

The OLC board is led by Elizabeth France as a non-executive Chair. There is reference to the role in the Framework Agreement with the MoJ. Since the LSB has a major role in relation to appointment of the Chair and setting out the Chair's role and responsibilities, the OLC does not control the appointment process. This is an appropriate explanation for non-compliance. The OLC does work, however, to ensure that the requirements of the LSB are met.

Role of the Chief Executive Officer (CEO)

The OLC is led by Adam Sampson as the CEO, who is also the Chief Ombudsman of LeO. As with the Chair, the LSB is responsible for the appointment of the CEO. His roles and responsibilities are compliant with the requirements and set out in the Framework Agreement with the MoJ.

Role of the Non-Executive Board Members

The composition of the OLC is subject to the 2007 Act, but it has a non-executive and lay member majority which makes it compliant with the requirements. As mentioned above, the appointment process is the responsibility of the LSB rather than the OLC itself, so this is an appropriate

⁴⁰ Schedule 15 – the 2007 Act is available at <http://www.legislation.gov.uk/ukpga/2007/29/contents>.

⁴¹ Section 122.

⁴² Section 120.

explanation of non-compliance. Board members are inducted in a joint process with the LSB and are then appraised annually. Responsibilities are also set out in the Framework Agreement.

Effective Financial Management

The OLC complies with the requirements, publishing timely annual reports, undertaking risk management and having effective financial management systems in place. The OLC’s internal audit function is contracted out to KPMG LLP. A gifts and hospitality log for OLC members is published online with expenses details.

Communication and Engagement

The OLC complies with the requirements in this section except for two areas, similar to the LSB. There is a programme of regular meetings with key stakeholders and there are memoranda of understanding with approved regulators. Minutes of board and sub-committee meetings are published online and consultations regularly take place.

The OLC, like the LSB, has explained that it does not hold open board meetings to enable the board to have free and frank discussions. However, it does hold an annual event to launch its annual report, which may provide the opportunity for an open meeting in the future.

The OLC publishes spend data over £25,000 and credit card expenditure over £500, but it has decided not to publish general spend data over £500 after consideration of the administrative burden.

Conduct and Propriety

The OLC has a code of practice on behaviour, available online, and has procedures in place to deal with conflicts of interest, including a published register of interests.

Similarly to the LSB, the OLC does not have rules and guidelines in place relating to political activity for all staff, although Board members have guidelines in place; this will be considered by the OLC. Neither does it have guidelines for board members on restrictions to accepting employment after resignation or retirement, but this would be for the LSB to update. Staff have restrictions in relation to confidentiality after they conclude their employment with the OLC or LeO.

Agreed rating assessment

A joint assessment concluded that compliance with each principle was green, except for conduct and behaviour which is rated as amber/green. The amber/green rating relates to guidance which needs updating and therefore more important to resolve than areas where we are satisfied that the explanation given by the OLC is sufficient for non-compliance. The clear evidence set out by the OLC supports these assessed ratings, and the MoJ agrees with them, as set out in the table below.

Principle	Theme (where relevant)	Theme Rating	Principle Rating	Overall assessment
Accountability	- Statutory	Green	Green	Green
	- Public money	Green		
	- Ministerial	Green		
Roles and responsibilities	- Sponsor Department	Green	Green	
	- Board	Green		
	- Chair	Green		
	- Chief Executive Officer	Green		
	- Non-Executive Board Members	Green		
Effective financial management			Green	
Communication			Green	
Conduct and propriety			Amber/Green	

Conclusions and Recommendations

The LSB and the OLC are relatively new organisations: the LSB became operational on 1 January 2010 and the OLC on 6 October 2010. Both bodies are complying with the vast majority of governance and accountability requirements which are placed on them by statute, regulation, the MoJ and governmental guidelines or best practice. They have both achieved a green rating for their assessments in the Triennial Review stage 2. For bodies which are dealing with a relatively complex and changing area of policy, the MoJ congratulates both the LSB and the OLC for the way in which they have complied with the requirements.

In particular, the MoJ has identified some areas of good practice which could be shared more widely with other ALBs.

Consultation on annual business plan

Both the LSB and the OLC consult on their annual business plans before publishing them. This allows stakeholders and the general public to engage in the process of developing objectives for the organisations, strategies for approaching areas of work, and influencing the work plans. It also allows respondents to engage in discussions on budgets and working practices. Consulting in this way ensures that the bodies are open and transparent about their plans.

Budgets

The LSB has made a reduction in budget of 9% and the OLC has made a reduction of 14% between 2011-12 and 2012-13. Whilst some stakeholders have called for a larger reduction in budget of both bodies, the current reductions should be welcomed and will provide some savings to the profession since these costs are recouped through a levy on the legal services regulators. The MoJ will support the consideration of further savings that could be made.

Use of Civil Service Learning

The OLC has recently obtained access to Civil Service Learning, a portal for learning and development which is used across Government to which OLC and LeO staff now have access. There are various types of learning and development opportunities available, including online learning and face to face courses. This shows a commitment to the development of OLC and LeO staff by using the sponsor department's links to obtain a new resource.

People survey

Civil service departments use an annual survey to gauge the engagement levels of staff and how well departmental visions and objectives are being communicated to staff, amongst other areas. The OLC, even early on its existence, has carried out a similar people survey, which will be useful as baseline data for coming years. The LSB is also intending to complete a similar survey in 2012. Such surveys help ALBs to monitor their staff engagement and consider improvements to working practices.

Recommendations

Although both the LSB and the OLC are complying with the majority of requirements from the assessment for stage 2 of the Triennial Review, there are some areas where some action could usefully be taken to improve compliance further. These are set out below.

Recommendation 1: Review Framework Agreements (by end 2012)

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.

Recommendation 2: Diversity of Boards (by April 2013, and ongoing)

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.

Recommendation 3: Open board meetings (by end 2012)

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.

Recommendation 4: Consider publication of spend over £500 (by end 2012)

Neither body publishes 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.

Recommendation 5: Update staff guidance on political activity and appointments or employment after resignation or retirement (by end 2012)

The need to prevent conflicts of interest and protect the interests of the ALB is very important, and the guidance should be updated when a suitable opportunity arises.

Next steps

As part of its ongoing sponsorship relationship with the LSB and the OLC, the MoJ will need to agree any time-limited recommendations set out above. In addition, the LSB and the OLC will explore some of the issues coming from stage 1 of the Triennial Reviews, in particular, any evidence which was received which fell outside the scope.

A meeting will be arranged to learn lessons on the process of the Triennial Reviews with the following attendees:

- the Senior Responsible Officer for the Triennial Reviews;
- the peer reviewer from stage 2;
- the Chair of the relevant board; and
- the Chief Executive of the body.

There will be separate meetings for the LSB and the OLC, but we encourage the two bodies to work closely together on themes arising from the Triennial Reviews as part of managing their ongoing relationship.

Annex A: List of Respondents

Participants in Direct Engagement

Type of Stakeholder	Organisation
LSB workshops	
Reviewee	Legal Services Board (LSB) Legal Services Consumer Panel (LSCP) Office for Legal Complaints (OLC)
Approved regulators (regulatory and representative sides)	Association of Chartered Certified Accountants (ACCA) Bar Council Bar Standards Board (BSB) Chartered Institute of Legal Executives (CILEx) Costs Lawyer Standards Board (CLSB) Council of Licensed Conveyancers (CLC) Faculty Office ILEX Professional Standards Board (IPS) Institute of Trade Mark Attorneys (ITMA) Intellectual Property Regulation Board (IPREG) Law Society Solicitors Regulation Authority (SRA)
Consumer interest	National Consumer Federation Consumer Focus Which?
Academics	Professor John Flood Professor Stephen Mayson Professor Richard Moorhead
Other interested bodies	Solicitors Disciplinary Tribunal
Public/Government bodies	Claims Management Regulation – MoJ Legal Services Commission Office for Fair Trading Office of the Immigration Services Commissioner (OISC)
OLC workshops	
Reviewee	Legal Services Board (LSB) Legal Services Consumer Panel (LSCP) Office for Legal Complaints (OLC)
Approved regulators (regulatory and representative sides)	Bar Council Bar Standards Board (BSB) Chartered Institute of Legal Executives (CILEx) Council of Licensed Conveyancers (CLC) Faculty Office Institute of Trade Mark Attorneys (ITMA) Intellectual Property Regulation Board (IPREG) Law Society Solicitors Regulation Authority (SRA)
Consumer interest	National Consumer Federation Consumer Focus Which?
Academics	Professor Cosmo Graham Professor Stephen Mayson
Other interested bodies	Advice Services Alliance UK British and Irish Ombudsman Association (BIOA) Solicitors Disciplinary Tribunal
Public/Government bodies	Claims Management Regulation – MoJ Financial Ombudsman Service (FOS) Legal Services Commission

Type of Stakeholder	Organisation
Roundtable meetings	
Public/Government bodies - 27 February	Department for Business Innovation and Skills
Consumer interest - 28 February	Consumer Focus Which?
Public/Government bodies - 28 February	Financial Services Authority
Approved regulators (representative side) - 29 February	Bar Council Chartered Institute of Legal Executives (CILEx) Chartered Institute of Patent Attorneys (CIPA) Institute of Trade Mark Attorneys (ITMA) Law Society
Reviewee - 1 March	Legal Services Consumer Panel (LSCP)
Reviewee - 6 March	Office for Legal Complaints (OLC)
Approved regulators (regulatory side) - 9 March	Bar Standards Board (BSB) Costs Lawyer Standards Board (CLSB) Faculty Office ILEX Professional Standards Board (IPS) Intellectual Property Regulation Board (IPREG) Solicitors Regulation Authority (SRA)
Reviewee - 13 March	Legal Services Board (LSB)
Academic - 14 March	Professor Stephen Mayson
Approved regulators (regulatory side) - 9 March	Council of Licensed Conveyancers (CLC)

Responses to Call for Evidence

Type of Stakeholder	Organisation ⁴³
Reviewee	Legal Services Board (LSB) Legal Services Consumer Panel (LSCP) Office for Legal Complaints (OLC)
Approved regulators (representative side)	Bar Council Chartered Institute of Legal Executives (CILEx) – combined with IPS Chartered Institute of Patent Attorneys (CIPA) Institute of Trade Mark Attorneys (ITMA) Law Society – separate LSB response and OLC response
Approved regulators (regulatory side)	Bar Standards Board (BSB) Costs Lawyer Standards Board (CLSB) Council of Licensed Conveyancers (CLC) Faculty Office ILEX Professional Standards Board (IPS) – combined with CILEx Solicitors Regulation Authority (SRA)
Consumer interest	Consumer Focus National Consumer Federation Which?
Academics	Professor Cosmo Graham Professor John Flood Professor Richard Moorhead Professor Stephen Mayson
Other interested bodies	Chancery Bar Association Criminal Bar Association Legal Services Commission Lord Chief Justice and the Master of the Rolls Office of Fair Trading (OFT) Society of Trust and Estate Practitioners (STEP)
Ombudsmen	Financial Ombudsman Service (FOS) Parliamentary and Health Service Ombudsman (PHSO)
Individuals	4 submitted

⁴³ Where available, the name of the organisation is linked to the published response.

Annex B: Governance compliance

The table below sets out whether the LSB and the OLC “comply or explain” against each of the governance statements in the questionnaire which they were asked to complete. Whether explanations were accepted is set out in the narrative of the main report. Documentation and evidence was submitted by both the LSB and the OLC to support their compliance statements.

Compliance Statement	LSB	OLC
Statutory accountability		
The ALB complies with all statutory and administrative requirements on the use of public funds (inc. Treasury Managing Public Money, and Cabinet Office/Treasury spending controls)	Comply – The CEO takes personal responsibility for this as Accounting Officer	Comply – CEO has responsibility as Accounting Officer
The ALB operates within the limits of its statutory authority and in accordance with delegated authorities agreed with MoJ	Comply – Operates within limitations from annual delegations	Comply – Operates within limitations of annual delegations from LSB/MoJ
The ALB operates in line with statutory requirements for the Freedom of Information Act	Comply – Operates in line with the FOI Act, with guidance online	Comply - Operates in line with the FOI Act, with guidance online
The ALB has a comprehensive publication scheme	Comply – Publishes scheme online ⁴⁴	Comply – Publishes scheme online
The ALB proactively releases information that is of legitimate public interest	Comply – Publishes a range of information, including board papers	Comply – Publishes range of information in varied formats
The ALB produces annual reports and accounts which are laid before Parliament	Comply – The LSB has just laid its 2011-12 annual report on 19 June	Comply – The OLC will lay its 2011-12 annual report in July
The ALB complies with data protection legislation	Comply – It has a staff DP policy	Comply – DP policies in place
The ALB complies with Public Records Acts 1958 and 1967	Comply – It has an archiving policy ⁴⁵	Comply – It has an archiving policy ⁴⁶
Accountability for public money		
There is a formally designated Accounting Officer (AO) who in particular has a responsibility to provide evidence-based assurances required by the Principal Accounting Officer (PAO)	Comply – The CEO is appointed as the AO	Comply – CEO is the designated AO

⁴⁴ The LSB will update the publication scheme in summer 2012.

⁴⁵ The LSB will work to embed the information retention and disposal policy in summer 2012.

⁴⁶ The OLC will update the information retention and disposal policy in July 2012.

Compliance Statement	LSB	OLC
The role, responsibilities and accountability of the AO should be clearly defined and understood and the AO should have received appropriate training	Comply – Training on appointment and ongoing; responsibilities are in <i>Managing Public Money</i>	Comply – Training on appointment; responsibilities in <i>Managing Public Money</i> and Framework Agreement
The NDPB should be compliant with requirements set out in <i>Managing Public Money</i> , relevant Dear Accounting Officer letters and other directions	Comply – Complies with requirements and sets out roles in the Governance Statement	Comply – Complies with requirements
Accounting Officer to give evidence-level assurances required Principal Accounting Officer	Comply – Not been required to date	Comply – Not been required to date
<p>The NDPB should establish appropriate arrangements to ensure that public funds:</p> <ul style="list-style-type: none"> • are properly safeguarded; • are used economically, efficiently and effectively; • are used in accordance with the statutory or other authorities that govern their use; • deliver value for money for the Exchequer as a whole 	Comply – Financial regulations cover this area including arrangements for payroll, expenses, gifts and hospitality, budget holder requirements, purchasing, use of corporate card, safeguarding property, data security, and suspicion on fraud	Comply – Financial regulations include expenses and gifts and hospitality; board members required to meet LSB financial requirements
The annual accounts are laid before Parliament after certification by the Comptroller and Auditor General	Comply – The LSB has just laid its 2011-12 accounts on 19 June	Comply – The OLC will lay its 2011-12 accounts in July
Ministerial accountability		
The Minister and Sponsor should exercise appropriate scrutiny and oversight of the ALB	Comply – Chair meets Minister at least annually and officials quarterly.	Comply – Chair meets Minister at least twice a year and officials quarterly
Appointments to the board should be made in line with any statutory requirements and, where appropriate, with the <i>Code of Practice</i> issued by Office of the Commissioner for Public Appointments (OCPA)	Comply – Appointments made in line with OCPA and Legal Services Act requirements	Explain – Appointments made in line with Legal Services Act, through the LSB
The Minister will normally appoint the Chair and all non-executive board members of the ALB and be able to remove individuals whose performance or conduct is unsatisfactory	Comply/Explain – Statutory provisions in LSA require involvement of Lord Chancellor, not responsible Minister	Explain – Statutory provisions in LSA require involvement of the LSB, not responsible Minister
The Minister should be consulted on the appointment of the Chief Executive and will normally approve the terms and conditions of employment	Explain – Appointed in accordance with the LSA, which requires board to appoint CEO	Explain – CEO appointed in accordance with requirements of LSA
The Minister should meet the Chair and/or Chief Executive on a regular basis (at least annually)	Comply – Minister meets Chair/CEO at least annually for annual report	Comply – Minister meets Chair/CEO at least twice each year
A power to require the production of information from the public body which is needed to answer satisfactorily for the body's affairs	Comply – Set out in Framework Agreement	Explain – LSA empowers LSB to require information from OLC

RESTRICTED

Compliance Statement	LSB	OLC
Parliament should be informed of the activities of the ALB through publication of an annual report	Comply – The LSB has just laid its 2011-12 annual report on 19 June	Comply – The OLC will lay its 2011-12 annual report in July
A range of appropriate controls and safeguards should be in place to ensure that the Minister is consulted on key issues and can be properly held to account (e.g. consult on Business Plan, requirement for the exercise of particular functions to be subject to guidance or approval from the Minister, power to require information, a general or specific power of Ministerial direction over the ALB, a power for the Minister to be consulted on key financial decisions.)	Comply – LSA and the Framework Agreements set out controls and safeguards	Comply – Regular meetings are held with officials to facilitate sharing of information
Role of the sponsoring department		
The Department should scrutinise the performance of the NDPB. There should be appropriate systems and processes to ensure effective governance, risk management and internal control in the NDPB	Comply – Quarterly performance data submitted, annual risk analysis carried out by MoJ	Comply – Quarterly performance data submitted, annual risk analysis carried out by MoJ
There should be a Framework Document in place which should be published, accessible and understood by the sponsoring department. It should set out clearly the aims, objectives and functions of the NDPB and the respective roles and responsibilities of the Minister, the sponsoring department and the NDPB. It should be regularly reviewed and updated and follow relevant Cabinet Office and Treasury guidance. The Framework document might include a Financial Memorandum as an appendix. A review of the Framework document should be carried out every three years and in line with the Triennial Review	Comply – Framework Agreement is in place and published online ⁴⁷	Comply – Framework Agreement is in place and published online
A sponsor should be identified, their role defined and there should be regular and ongoing dialogue between the sponsoring department and the NDPB. Senior officials from the sponsoring department may as appropriate attend board and/or committee meetings	Comply – Sponsorship team is in place and available for meetings as required	Comply – Sponsorship team is in place and available for meetings as required.
The role of the board		
The Board of the NDPB should meet regularly, retain effective control over the NDPB, and monitor the SMT, holding the CEO accountable for the performance and management of the NDPB	Comply – Board meets around 10 times each year in accordance with Code of Practice	Comply – Board meets around 12 times each year and holds CEO accountable
The Board of the NDPB should be appropriate in size and its members should be drawn from a wide range of diverse backgrounds	Comply – Diversity to be addressed in new recruitment	Comply – Board members drawn from a range of backgrounds

⁴⁷ LSB and OLC Framework Agreements will be reviewed after the conclusion of the Triennial Review.

Compliance Statement	LSB	OLC
The Board of the NDPB should establish a framework of strategic control (or scheme of delegated or reserved powers), understood by all board members and the senior management team, specifying what matters are reserved for the collective decision of the board	Comply – Board has a framework of matters reserved and scheme of delegations, available online	Comply – Publishes online code of practice, governance statement, scheme of delegations, expenses, procedure rules and reservations
The Board of the NDPB should establish arrangements to ensure it has access to relevant information, advice and recourses as is necessary to carry out its role effectively	Comply – Sub-committees of the board have external advisers as required ⁴⁸	Comply – OLC has access to relevant information as required
The Board of the NDPB should establish formal procedural and financial regulations to govern the conduct of its business	Comply – Governance manual includes finance and procedure issues	Comply – Governance documents include finance and procedure
The Board of the NDPB should make a senior executive responsible for ensuring appropriate advice is given on financial matters, procedures are followed, and that all applicable statutes and regulations and other relevant statements of best practice are complied with	Comply – Corporate Director must ensure CEO gives appropriate finance and procedure advice	Comply – Director of Finance is member of Executive Team and responsible for finance advice
The Board of the NDPB should establish a remuneration committee to make recommendations on the remuneration of top executives. Information on senior salaries should be published in line with Cabinet Office requirements around transparency. Rules for recruitment and management of staff provide for appointment and advancement on merit	Comply – Remuneration and Nomination Committee has appropriate terms of reference available online	Comply – Remuneration and Nomination Committee meets 3 times a year and terms of reference currently being reviewed
There should be an annual evaluation of the performance of the board and its committees, and of the Chair and individual board members	Comply – Board has annual evaluation and Chair appraises board members	Comply – Board has annual evaluation and Chair appraises board members
Role of the Chair		
The Board should be led by a non-executive Chair	Comply – Chair is also lay member	Comply – Chair is also lay member
There should be a formal, rigorous and transparent process for the appointment of the Chair, which is compliant with the Code of Practice issued by OCPA. The Chair should have a role in the appointment of non executives and Commissioners if applicable, and in some instances, the CEO	Comply – Appointment is compliant with OCPA and has a role in appointment of non-executives and the CEO	Explain – Appointment is subject to Legal Services Act and formally completed by LSB

⁴⁸ The LSB will produce role specifications for sub-committee members in 2012.

RESTRICTED

Compliance Statement	LSB	OLC
<p>The duties, roles and responsibilities, terms of office and remuneration should be set out clearly and formally defined in writing. Terms and conditions must be in line with Cabinet Office guidance and any statutory requirement. The responsibilities of the Chair can include:</p> <ul style="list-style-type: none"> • representing the ALB in discussions with Ministers • advising the sponsor department/Ministers about board appointments and performance of non-executive members and Commissioners. • ensuring non executives understand their responsibilities; are trained appropriately and undergo annual assessments. • ensure the board takes account of guidance provided by Ministers; carries out its business efficiently and effectively, has its views represented to the public. • develops effective working relationships with the CEO (role of Chair and CEO must be held by different individuals.) • subject to an annual appraisal • appraises other board members ensuring they are performing to standard, following disciplinary procedures if necessary and ensuring they are committing the appropriate time to the work. 	<p>Comply – Terms are set out in writing and referred to in Framework Agreement</p>	<p>Explain – Terms are set out in writing by LSB rather than OLC, and referred to in Framework Agreement; code of practice also refers to this</p>
Role of the Chief Executive Officer (CEO)		
<p>The NDPB should be led by a CEO</p>	<p>Comply – CEO leads the LSB</p>	<p>Comply – CEO leads the OLC</p>
<p>There should be a formal, rigorous and transparent process for the appointment of the CEO</p>	<p>Comply – Open recruitment process prior to LSB being operational</p>	<p>Explain – Open recruitment process in accordance with Legal Services Act</p>

Compliance Statement	LSB	OLC
<p>The duties, roles and responsibilities, terms of office and remuneration should be set out clearly and formally defined in writing. Terms and conditions must be in line with CO guidance and any statutory requirement. The responsibilities of the CEO can include the responsibilities of the Accounting Officer, the Consolidation Officer and Principal Officer for Ombudsman which involve:</p> <ul style="list-style-type: none"> • Overall responsibility for the NDPB's performance, accounting for any disbursements of grant to the NDPB • establish the NDPB's corporate and business plans reflecting and supporting delivery of the Ministry of Justice's Strategic Objectives and departmental targets • inform the Ministry of Justice of any complaints about the NDPB accepted by the Ombudsman for investigation if applicable. • management of senior staff within the NDPB ensuring they are meeting objectives and following disciplinary procedures if necessary • maintains accounting records that provide the necessary information for the consolidation if applicable (details of accounting officer covered under 9: Effective Financial Management.) 	Comply – Terms are set out in writing and referred to in Framework Agreement	Comply – Terms are set out in writing and referred to in Framework Agreement
Role of the Non-Executive Board Members		
Non-executive members should form the majority of the board, (where appropriate there should be a lay majority.)	Comply – Legal Services Act sets out composition with lay majority	Comply – Legal Services Act sets out composition with lay majority
Non-executive members should be appointed under a formal, rigorous and transparent process compliant with the code of practice issued by OCPA	Comply – Board members appointed in accordance with OCPA	Explain – OLC board members appointed by the LSB in accordance with the Legal Services Act
Non-executive members should be properly independent of management (as set out in the UK Corporate Governance Code.)	Comply – Properly independent in accordance with Code	Comply – Properly independent; register of interests published online
Non-executive members should allocate sufficient time to the board with details of their attendance published	Comply – Details of attendance included in annual report	Comply – Details of attendance included in annual report
Non-executive members should undergo proper induction and appraisals	Comply – All board members have induction and have annual appraisals with the Chair	Comply – OLC board members have induction shared with LSB

RESTRICTED

Compliance Statement	LSB	OLC
<p>Non-executive members should have their duties, roles and responsibilities, terms of office and remuneration set out clearly and formally defined in writing. Their terms and conditions must be in line with Cabinet Office guidance and any statutory requirement. The corporate responsibilities of non-executive board members will normally include:</p> <ul style="list-style-type: none"> • establishing strategic direction of the ALB and oversee development and implementation of strategies, plans, priorities and performance/financial targets. • ensuring the ALB complies with statutory and administrative requirements on the use of public funds and operates within its statutory and delegated authority. • that high standards of corporate governance are observed. • Representing the board at meetings and events as required. 	<p>Comply – Terms are set out in writing and referred to in Framework Agreement; joint board to board meetings have been held with the Bar Standards Board and the OLC</p>	<p>Comply – Terms are set out in writing and referred to in Framework Agreement</p>
Effective financial management		
<p>Publish on time an objective, balanced and understandable annual report which complies with Treasury guidance, and includes an Annual Governance Statement (formerly a statement on internal control)</p>	<p>Comply – The LSB has just laid its 2011-12 annual report on 19 June with governance statement</p>	<p>Comply – The OLC will lay its 2011-12 annual report in July</p>
<p>Comply with NAO requirements relating to the production and certification of their annual accounts</p>	<p>Comply – The LSB has just laid its 2011-12 accounts on 19 June</p>	<p>Comply – The OLC will lay its 2011-12 accounts in July</p>
<p>Have effective systems of risk management as part of their systems of internal control and the annual report should include a statement on the effectiveness of the body's systems of internal control</p>	<p>Comply – Has a risk management strategy and makes annual statement of internal control in annual report</p>	<p>Comply – Annual report has statement on risk; risk management group meets every 6 weeks</p>
<p>Ensure an effective internal audit function is established which operates to Government Internal Audit Standards in accordance with Cabinet Office guidance</p>	<p>Comply – Internal audit is effective and provided by KPMG LLP in accordance with guidance</p>	<p>Comply – Internal audit is effective and provided by KPMG LLP in accordance with guidance</p>
<p>Have appropriate financial delegations in place understood by the sponsoring department, by board members, by the senior management team and by relevant staff across the public body. Effective systems must be in place to ensure compliance with these delegations and the systems are regularly reviewed</p>	<p>Comply – Delegations are in place and part of financial regulations, along with assurance statements</p>	<p>Comply – Delegations are in place and part of financial regulations</p>
<p>Have anti-fraud and anti-corruption measures in place, and clear published rules governing claiming of expenses</p>	<p>Comply – Measures are in place, including financial regulations</p>	<p>Comply – Measures in place; board members follow LSB expenses rules</p>
<p>Have systems in place to ensure compliance (e.g. hospitality logs.) Information on expenses claimed by board members and senior staff should be published</p>	<p>Comply – Gifts and hospitality log and board member/senior team expenses are published online</p>	<p>Comply – Gifts and hospitality log for board member/senior team published online, as are expenses for the board</p>

Compliance Statement	LSB	OLC
Establish an audit (or audit and risk) committee with responsibility for independent review of the systems of internal control and external audit process	Comply – Audit and Risk Committee in place with terms of reference available online	Comply – Audit and Risk Committee in place with terms of reference available online
Take steps to ensure objective and professional relationship is maintained with external auditors	Comply – Has good relationship with National Audit Office	Comply – Audit and Risk Committee includes National Audit Office
Comply with MoJ guidance with regard to any department restrictions on spending	Comply – LSB has implemented pay and recruitment freeze	Comply – OLC has implemented a pay freeze and recruitment restrictions
Report to Corporate Finance with management accounts and Grant In Aid authorities	Comply – Reports to MoJ Corporate Finance team as appropriate	Comply – Reports to MoJ Corporate Finance team as appropriate
Communication and engagement		
The NDPB should establish clear and effective channels of communication with stakeholders	Comply – Meet with approved regulators and regular consultations	Comply – Meets key stakeholders regularly, consults widely
The NDPB should make an explicit commitment to openness in all activities. Engage and consult with public on issues of public interest or concern and publish details of senior staff and board members with contact details	Comply – Consult regularly, publish press releases, contact details for colleagues and information on board members	Comply – Consults widely, publishes news and events, a Chief Ombudsman blog and information on board members
The NDPB should hold open board meetings or an annual open meeting	Explain – Need confidential meetings but keeping under review	Explain – Meet in private but hold annual report event each year
The NDPB should proactively publish agendas, minutes of board meetings and performance data	Comply – Published online, including board papers where possible	Comply – Publishes approved minutes and statistics online
The NDPB should establish and publish effective correspondence handling and complaint procedures, and make it simple for members of the public to contact them/make complaints. Complaints should be investigated thoroughly and be subject to investigation by the Parliamentary and Health Service Ombudsman. Performance in handling correspondence should be monitored and reported on	Comply – Complaints procedure online and due to be updated, and performance is monitored quarterly	Comply – Service complaint procedure available online, and performance is monitored quarterly; will publish information about decisions from July 2012
The NDPB should comply with any Government restrictions on publicity and advertising, with appropriate rules in place to limit use of marketing and PR consultants. Have robust and effective systems in place to ensure the NDPB is not engaged in political lobbying (includes restriction on board members attending Party Conferences professionally)	Comply – Does not undertake marketing or advertising activity; board members expected to comply with Nolan principles	Comply – Complies with restrictions; board members expected to comply with Nolan principles
The NDPB should engage the Sponsor Department appropriately especially in instances where events may have reputational implications on the department	Comply – Monthly meetings with officials at MoJ and consult on issues with reputational impact	Comply – Regular meetings with MoJ officials and consult on issues with reputational impact

RESTRICTED

Compliance Statement	LSB	OLC
The NDPB should In line with transparency best practice, consider publishing spend data over £500	Explain – Does not do so due to administrative burden	Explain – Does not do so due to administrative burden
Conduct and propriety		
A Code of Conduct must be in place setting out the standards of personal and professional behaviour and propriety expected of all board members which follows the Cabinet Office Code and forms part of the terms and conditions of appointment	Comply – Code of Conduct established and reviewed annually, available online	Comply – Code of Practice online and reviewed annually
The NDPB has adopted a Code of Conduct for staff based on the Cabinet Office model Code and form part of the terms and conditions of employment	Comply – Terms and conditions reflect Code where relevant	Explain – Terms and Conditions reflect Code where relevant
There are clear rules and procedures in place for managing conflicts of interest. There is a publicly available Register of Interests for board members and senior staff which is regularly updated	Comply – Policy on conflicts of interests; register of board members' interests available online	Comply – Code of practice for board members covers register of interests, available online
There are clear rules and guidelines in place on political activity for board members and staff with effective systems in place to ensure compliance with any restrictions	Explain – Guidelines in place for board members and senior staff but not all staff ⁴⁹	Explain – Guidelines in place for board members but not staff ⁵⁰
There are rules in place for board members and senior staff on the acceptance of appointments or employment after resignation or retirement which are effectively enforced	Explain – No rules in place for senior staff ⁵¹ and not referred to in Code of Practice for board members	Explain – LSB rules are relevant for board members ⁵² ; some post-employment restrictions for senior staff
Board members and senior staff should show leadership by conducting themselves in accordance with the highest standards of personal and professional behaviour and in line with the principles set out in respective Codes of Conduct	Comply – Expectations are set out in Code of Practice for board members, available online	Comply – Expectations are set out in Code of Practice for board members, available online

⁴⁹ The LSB will update political activity guidelines when possible.

⁵⁰ The OLC will consider political activity guidelines further and update when relevant.

⁵¹ The LSB will update appointment guidelines when possible.

⁵² The LSB will update appointment guidelines which are relevant for OLC board members.

© Crown copyright
Produced by the Ministry of Justice

Alternative format versions of this report are available on request from Triennial Reviews of Legal Services Board and Office for Legal Complaints – Margaret Haig 020 3334 6397 or margaret.haig@justice.gsi.gov.uk