

<b>To:</b>	Legal Services Board	
<b>Date of Meeting:</b>	14 July 2016	<b>Item:</b> Paper (16) 51

<b>Title:</b>	Amendment to the Policy on Colleagues' Expenses	
<b>Workstream(s):</b>		
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<b>Status:</b>	Official	

<b>Summary:</b>
<p>The LSB's Schedule of matters reserved to the Board includes the approval of finance policies including in respect to expenses.</p> <p>In March 2016, the Chief Executive, in his capacity as Accounting Officer, commissioned an analysis to determine whether the LSB's current subsistence rates are in line with HMRC guidance and the rates paid by other bodies, particularly those within the MoJ "family". The recommendation from that work, which was initially reported to the Audit and Risk Assurance Committee at their meeting in May and endorsed by the Committee and both the LSB's internal and external auditors, was that the LSB should make a small amendment to provide simpler but still <i>HMRC compliant</i> guidance for colleagues on what may be claimed. Annex A is an amended annex to the policy on colleagues' expenses to reflect the proposed change.</p>

<b>Recommendation(s):</b>
<p>The Board is invited to approve:</p> <ol style="list-style-type: none"> <li>(1) The replacement of the existing lunch and evening meal subsistence rates with a <i>one meal</i> and <i>two meal</i> rate based on 'time away', and</li> <li>(2) The changes to paragraph 23 of the policy on colleagues' expenses and its annex.</li> </ol>

<b>Risks and mitigations</b>	
<b>Financial:</b>	There are no financial risks as long as the LSB does not reimburse above the approved HMRC scale rates
<b>Legal:</b>	There are no legal risks
<b>Reputational:</b>	The LSB needs to ensure that the amount it reimburses colleagues for expenses is consistent with HMRC guidance and seen as fair and appropriate

<b>Resource:</b>	There are no resources risks apart from making sure that all LSB colleagues, OLC and Panel members are advised of any change and the effective date of this
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<b>Consultation</b>	<b>Yes</b>	<b>No</b>	<b>Who / why?</b>
<b>Board Members:</b>	✓		The Audit and Risk Assurance Committee considered and endorsed the proposal at their meeting in May 2016
<b>Consumer Panel:</b>	✓		The Chair of the Consumer Panel has been notified of the proposed change
<b>Others:</b>	The OLC Chair has been notified of the proposed change as OLC members are also subject to the LSB policy		

<b>Freedom of Information Act 2000 (Fol)</b>		
<b>Para ref</b>	<b>Fol exemption and summary</b>	<b>Expires</b>

## LEGAL SERVICES BOARD

<b>To:</b>	Legal Services Board	
<b>Date of Meeting:</b>	14 July 2016	<b>Item:</b> Paper (16) 51

### **Amendment to the Policy on Colleagues' Expenses**

#### *Recommendation*

1. The Board is invited to approve:
  - (1) The replacement of the existing lunch and evening meal subsistence rates with a *one meal* and *two meal* rate, and
  - (2) The changes to paragraph 23 of the policy on colleagues' expenses and its annex.

#### *Background*

2. The approval of finance policies, including in relation to expenses, is a matter that is reserved to the Board. Normally changes to constituent policies of the *Governance Manual* are addressed as part of the *Manual's* annual review, which is usually presented to the Board at its November meeting.
3. The Chief Executive, as Accounting Officer, wanted to confirm whether the rates the LSB pay are fair and consistent with other public bodies. As a result, he commissioned an analysis to assess the approaches being taken by, the MoJ and the wider 'MoJ family' and other similar organisations and an analysis of the HMRC guidance on this area of spend.

#### *Context*

4. The current day subsistence rate, as set out in the annex to the *Policy on Colleagues' Expenses*, is up to £5 for lunch, and up to £15 for an evening meal (subject to providing receipts). The LSB has historically used the HMRC scale rates but has not published an amount for 'breakfast' and this has been problematic as there could potentially be no ceiling on the amount that could be claimed as 'breakfast'. In addition, the policy does not provide sufficient guidance as to qualifying periods for when reimbursement of meals may be made. This has provided scope for inconsistency in interpretation and claims.
5. The current climate is such that the issue of 'expenses' is highly sensitive and all public bodies are now subject to strict expenditure controls on the reimbursement of expenses. In addition, as an NDPB of the MoJ the LSB is subject to the MoJ's Emergency Spend Controls and this area of spend is subject to an increasing level of scrutiny. In line with good practice the LSB

publishes a detailed listing of all expenses reimbursed to Board and senior LSB colleagues on a quarterly basis on its website.

### *Findings of the analysis*

6. The analysis found that the MoJ itself does not have a rate for breakfast, lunch or an evening meal, but instead reimburses up to £4.25 where a colleague has to be absent from their normal place of work for five to ten hours, and an additional £9.30 for more than twelve hours. Other bodies within the MoJ family reimburse at similar rates. The LSB has historically always used the HMRC scale rates, which avoids any 'benefit in kind' tax charge.
7. There are some bodies who apply the HMRC guidance strictly and do not reimburse breakfast or lunch costs based on the 'eat to live principle'. HMRC's basic premise is that the reimbursement of expenses must be incurred '*wholly and exclusively*' for the purposes of the business only. The guidance contends that everyone has to 'eat to live' so the costs of regular meals (breakfasts, lunch, dinner) are either wholly or partly normal costs of living incurred by each of us and not for the purpose of the business.
8. The HMRC does however publish a table of scale rates, which could be used to avoid any liability for additional tax and national insurance contributions as a 'benefit in kind' but this is subject to certain conditions:
  - a. the benchmark rates are the maximum tax and NIC free amounts that could be paid by employers who choose to use this system
  - b. an employer could pay less than this rate if it wants to do so
  - c. if a higher amount is paid without agreeing a tailored scale rate with HMRC, the excess should be subject to tax and NICs. (We do not have a tailored agreement in place with HMRC- dispensation)
  - d. benchmark scale rates must only be used where all the qualifying conditions are met. These are:
    - i. the travel must be in the performance of an employee's duties or to a temporary place of work
    - ii. the employee should be absent from his normal place of work for a continuous period in excess of five or ten hours
    - iii. the employee should have incurred a cost on a meal (food and drink) after starting the journey.
9. The Executive agrees that it is important for the LSB to follow the HMRC guidance in this area and the practice used by other MoJ bodies and recommend that a *one meal* and *two meal* rate be adopted. These rates are simpler to apply. The proposed rates are:
  - a. One meal (over five hours) rate – up to £5: this would be paid where a person has been undertaking "qualifying travel" (i.e. travel and business away from their normal place of work for which a claim for subsistence

would be paid) for a period of at least five hours and has incurred the cost of a meal, and

- b. Two meal (over ten hours) rate – up to £10: to be paid where a person has undertaken qualifying travel and business away from their normal place of work for a period of at least ten hours and has incurred the cost of meals

10. On this basis, paragraph 23 of the Policy on Colleagues' Expenses would be amended to read as follows:

*Subsistence expenses (based on actual receipts) will be paid to or on behalf of colleagues performing business away from their normal place of work ~~who are prevented from taking a meal that they would normally take at their home (breakfast or evening meal) or place of work (lunch)~~ for a period of at least five hours during which they have purchased one meal, or a period of at least ten hours during which they have purchased one or two meals.*

#### *Next steps*

- 11. If the Board accepts the recommendation to move to the proposed rates, as endorsed by the Audit and Risk Assurance Committee, the LSB internal auditors, KPMG and the NAO, the amendment to paragraph 23 will be made and confirmed to all Board members, LSB colleagues, as well as Consumer Panel and OLC members. They will also be informed of the date from which claims will be dealt with in accordance with the new rates as set out in Annex A.

05.07.16

## Current Rates of Travelling and Subsistence

This Annex may be re-issued, from time to time, to reflect any alterations in the rates paid.

### 1. Travel

- a) By car: rates *per mile*: (in a tax year)
- **First 10,000 miles** 45p
  - **Over 10,000 miles** 25p
- b) Motorcycle allowance: 24p per mile

### 2. Subsistence (based on actual receipts)

#### a) Day

- One meal 5 hour rate<sup>1</sup> - up to £5  
 Two meal 10 hour rate<sup>2</sup> - up to £10

#### b) Night Subsistence per night

In the event that it is necessary, to fulfil LSB business, to stay overnight in a hotel, authority must be obtained in advance from a member of the Senior Leadership Team (or, in the case of Board or Consumer Panel Members, the Corporate Governance Manager).

##### ***Hotels in London***

Actual expenditure up to a ceiling of £120 for bed and breakfast costs plus if away for at least 24 hours up to £21 for lunch and evening meal unless this is provided.

##### ***Hotels elsewhere***

Actual expenditure up to a ceiling of £100 for bed and breakfast costs plus if away for at least 24 hours up to £21 for lunch and evening meal unless this is provided.

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<sup>1</sup> One meal (5 hour) rate – The rate may be paid where a person has been undertaking qualifying travel (i.e. travel and business away from their normal place of work for which a claim for subsistence would be paid) for a period of at least 5 hours and has incurred the cost of a meal

<sup>2</sup> Two meal (10 hour) rate – The rate may be paid where a person has been undertaking qualifying travel (i.e. travel and business away from their normal place of work for which a claim for subsistence would be paid) for a period of at least 10 hours and has incurred the cost of a meal or meals