

To:	Legal Services Board		
Date of Meeting:	26 October 2016	Item:	Paper (16) 64

Title:	Review of the LSB Governance Manual		
Workstream(s):	None		
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Status:	Official		

Summary:

In managing its affairs, the Board is obliged to 'have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it' (Section 5 of the Legal Services Act 2007).

This paper reports on the scheduled annual review of the LSB's Governance Manual, and recommends minor revisions.

These recommendations were considered and endorsed by the Audit and Risk Assurance Committee (ARAC) at its meeting on 5 October 2016.

Subject to securing the approval of the Board, the updated Governance Manual will be circulated to Board Members, colleagues, and Members of Office for Legal Complaints and Legal Services Consumer Panel. The revised Manual will also be uploaded to the LSB website.

Recommendation:

The Board is asked to:

- Consider and **approve** the LSB Governance Manual;
- Propose any further areas for revision; and
- **Note** the Manual will be published on the LSB website.

Risks and mitigations

Financial:	Good corporate governance promotes accountability, transparency and the effective and efficient allocation of resources.
Legal:	
Reputational:	
Resource:	

Consultation	Yes	No	Who / why?
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Board Members:	✓		Members of the Audit and Risk Assurance Committee
Consumer Panel:		✓	N/A.
Others:	LSB colleagues.		

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
N/A		

BOARD MEETING

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Review of the LSB Governance Manual

Background

1. The Audit and Risk Assurance Committee (ARAC) considered and endorsed proposal for revisions to the LSB Governance Manual to go to the Board for approval at its meeting on 5 October 2016.
2. Recommendations for revisions to the Manual are submitted for **approval and adoption**.
3. This year, the scheduled annual review of the Governance Manual was informed by the following:
 - a. Compliance with the **UK Corporate Governance Code and Corporate Governance in central government departments: Code of Good Practice 2011**
 - b. **Consultation** with LSB colleagues, including members of the senior Leadership Team
 - c. Responses to the 2015/16 Board evaluation exercise
 - d. **Lessons learned** from the day-to-day operation of the Manual
 - e. **Engagement** with colleagues from other organisations on their approaches to some of the areas covered in the Governance Manual
 - f. The need to cross-reference guidance within the Manual with that provided in other corporate policies, including those on anti-corruption and bribery, and price sensitive information.

Governance Manual

4. The Governance Manual comprises the following documents:

[LSB Code of practice for Board Members](#)

[LSB Rules of Procedure](#)

[LSB Schedule of Matters reserved to the Board](#)

[LSB Scheme of Delegations](#)

[LSB Audit and Risk Assurance Committee Terms of Reference](#)

[LSB Remuneration and Nomination Committee Terms of Reference](#)

[LSB Policy on Colleagues' Expenses](#)

[LSB Policy on Gifts and Hospitality](#)

[LSB Policy on Colleagues' Interests](#)

[Complaints and Disciplinary Process for Individual Members](#)

[LSB Framework Document](#)

[LSB Finance Regulations](#)

[LSB Internal Whistleblowing Policy](#)

LSB Reporting and Investigation Scheme

Internal Audit findings

5. In recent years, work carried out by the LSB's internal auditors, KPMG, to support the delivery of their opinion on the adequacy of the LSB's risk management, internal control and governance processes has helped to inform the review of the Governance Manual. In 2015/16, one of KPMG's audits reviewed arrangements around the procurement of research input from external sources. This included consideration whether such procurement is carried out in accordance with the LSB's framework and taking account of the Bribery Act 2010 (defined as giving someone a financial or other advantage to encourage that person to perform their functions or activities improperly or to reward that person for having already done so). The review provided a grading of significant assurance, with no recommendations for changes to any LSB policy.

UK Corporate Governance Code and Corporate Governance in central government departments: Code of Good Practice 2011

7. The Executive continues to have regard to provisions of the UK *Corporate Governance Code* and *Corporate Governance in central government departments: Code of Good Practice 2011* ('the Code'). Although the Code is specifically aimed at central government departments, and many of its specific provisions are not relevant to the LSB, the requirement to 'comply or explain' applies to any other bodies within the scope of *Managing Public Money*, including the LSB.
8. Code 5.9 states that at least one, but preferably more, of (the ARAC) members should have recent and relevant financial experience. The size of the LSB's Board, and the skill requirements on Board members set out in the Legal Services Act makes this stipulation too onerous. As there is currently no ARAC or indeed Board members with '*relevant financial experience*', since March 2016, John Ward, a chartered accountant, has provide appropriate technical and expert support to the ARAC.
9. There were no other departures from the Code requiring disclosure or explanation.

Approach for the 2016 review

10. Based on the experience of working with the Manual over the past 12 months and 'good housekeeping', only a number of revisions are proposed this year. These are set out below:

Code of Practice for Board Members

11. No changes or additions are proposed to this policy. In previous years, observations and recommendations emerging from the Board appraisal and

evaluation exercises have helped to inform developments in the code of practice, but on this occasion no substantive changes are indicated by the outcomes from those exercises.

Rules of Procedure

12. No substantive changes are proposed to this policy. In 2015 a review took account of the decision to replace the Gateway and Executive Groups with the Senior Leadership Team as the main executive decision making body, as well as the inclusion of the requirement that Board members who are unable to attend meetings are required to submit in advance written comments on the agenda items.

13. For this year, one presentational change is proposed: that para 4.10 would now read:

“In the absence of the Chief Executive, the powers delegated to him may be exercised by the Corporate Director, Strategy Director, *or Legal Director, or a combination of two or all of the above*, after taking advice as appropriate from the Chairman.”

Schedule of matters reserved to the Board

14. No changes are proposed to this schedule.

Scheme of Delegations

15. Extensive changes were made to this Scheme last year, mainly to reflect the introduction of the Senior Leadership Team (SLT) as a replacement to the Gateway and Executive Groups, as the organisation’s main executive decision making body. This year, a small number of amendments are proposed, mainly to better reflect current working practices:

- References in the schedule to ‘consultees’ have been replaced by ‘contributors’ on the basis that it is not essential that colleagues named in that list are always consulted, and where they are, it is not mandatory for them to respond.
- Page 3, regulatory activity: Agreeing project briefs, Project Initiation Documents, etc – approver to be changed to SLT, and Contributor to project manager and project sponsor
- Page 5, agreeing and amending ToR for executive groups – In the list of contributors, SD and CD is to be replaced by SLT.
- Page 5, the six powers listed starting with agreeing answers to PQs – Legal Director to be included as a contributor.
- Page 6, human resources – the individual powers are to be reordered so that the sequence is: agreeing recruitment processes, shortlisting/interview panels

and then agreeing to appoint. In addition, the approver for agreeing recruitment process is to be the Corporate Director, rather than the line manager.

- Page 7, human resources – agreeing Colleague succession plan – the phrasing in brackets will now read (*below the level of CEO direct reports*). The Legal Director is also to be added as approver.

Committee Terms of Reference

16. Terms of Reference for RNC have not been reviewed at this stage, to give the Chair of this Committee the opportunity to consider its future role and composition.

17. Terms of Reference for ARAC are minor:

- Para 2(b) would now read: “*considering and scrutinising a draft of the annual budget of LSB;*”
- The Corporate Director is to be added to the list of attendees at ARAC meetings as set out in the first sentence of para 9. In addition, the second sentence of that paragraph will now read: “The Chairman of the Board, and other Board members will have a standing invitation to attend meetings of the Committee, *and will receive a full set of Committee papers prior to each meeting.*”
- The words “in particular” are to be removed from the second sentence of para 10.
- The word “available” is to be replaced with “appropriate” in para 15.

Policy on Colleagues’ Expenses

18. The Board agreed to changes to the subsistence rates as set out in Annex A to this Policy, with the aim of bringing the LSB’s rates in line with the rest of the MoJ family and other similar organisations. These changes have now been communicated to all colleagues, including OLC and Legal Services Consumer Panel members.

19. Only one additional change is proposed at this stage: That a new paragraph 3 to be added to Annex A to the policy to set out the LSB’s approach when colleagues travel overseas on LSB business as follows:

3. Overseas travel/subsistence

If a colleague is required to travel overseas on LSB business, reimbursement will be made for meals and accommodation on a ‘reasonable charge’ basis, which should be discussed in advance with the Corporate Governance Manager, and agreed by the Chief Executive as Accounting Officer.

20. The current reimbursement rates for travel by car or motorcycle at **Appendix 1** have been checked against the HMRC rates for employee vehicles (mileage

payments for business travel). These remain as for 2011, and therefore no increase is required.

Policy on Gifts and Hospitality

21. Two relatively minor amendments to this policy are to be made as follows:

- In the first sentence of the last bullet point under para 6, the –phrase “for embarrassing the LSB” is to be replaced by “*undermining the integrity of the LSB and its work*”.
- A further bullet point t is to be added to that paragraph as follows: “Reference should be made to the LSB’s anti-corruption and bribery policy for practical guidance on the types of gifts or hospitality that may or may not be acceptable.”

Policy on Colleagues’ Interests

22. The only amendment to be made to this policy to replace reference to Board Secretary in para 5.1 with Corporate Governance Manager

Complaints and Disciplinary Process for Individual Members

23. No amendments are proposed to this policy.

Internal whistleblowing policy

24. This policy, along with the LSB Reporting and Investigation Scheme, was added to the Governance Manual last year. In considering possible amendments to this policy, reference was made to “Whistleblowing in the Public Sector: a good practice guide for workers and employers”¹ On the basis of the guidance provided, and taking account of the need for proportionality, the following amendments to the LSB’s policy are proposed:

- the text set out in the second set of brackets under para 4 would read: (whether it involves a colleague or any other person or people as named in paragraph 2.1)
- Michael Smyth’s name is to be added to Marina Gibbs as Board members to whom disclosures may be made in exceptional circumstances.
- A new para 4.3 is to be added stating: Disclosures may be made anonymously, and all efforts will be made to investigate any such allegations. This may, however, prove difficult, not least where any

¹ November 2014, jointly published by the public audit offices for England, Scotland, Wales and Northern Ireland, and the charity Public Concern at Work

substantiated allegations made could lead to disciplinary action against another colleague.

- Additional text is to be included in brackets in para 4.8.2 as follows: (the Discloser should be informed of the timescales within which such investigation would be completed)
- Para 4.13.2 is to be amended to read as follows: *if the Chairman has already been involved in the matter, the Discloser should refer it to the Chair of the Audit and Risk Assurance Committee of the LSB. The Chair will, together with two other non-executive LSB Board members, investigate the matter, decide on the appropriate course of action, and then inform the Discloser of this decision. This decision will be final.*
- Para 4.14 is to be amended to read as follows: *If the procedure set out in Paragraphs 4.1 to 4.13 above has been followed in full and the discloser is still not satisfied, then the matter can be raised confidentially with the Permanent Secretary at the Ministry of Justice.*

LSB Reporting and Investigation Scheme

25. A number of changes are proposed to this policy, both in accordance with the guidance set out in the good practice guide, as above, and to give the policy some more clarity:

- Para 9 should read: The scheme is related to the acts or omissions of individuals acting within or ostensibly within the scope of their employment or appointment with the LSB.
- Michael Smyth's name is to be added as the other Board member to whom disclosures could be made.
- The use of the word 'complainant' is to be replaced with 'informant' in para 11 and elsewhere in the document.
- The contents of para 13 are to be simplified and redrafted as follows:

13. *On receipt of an allegation:*

a. The LSB's Legal Director will examine the allegation to determine whether it falls within the scope of the scheme:

- *If it does, the LSB's CEO will determine the appropriate arrangements for investigating the allegation, including responsibility for handling, logging and storing information.*
- *If the allegation does not fall within the scope of the scheme, the LSB will notify the person who raised the concern and give their decision along with supporting reasons.*
- *If it is the case that there is insufficient information to determine whether the allegation falls within the scope of the scheme, or to investigate the matter, the LSB will request further information*

from the person who raised the concern. If such information is not received within a reasonable period from the date of the request, and it is not possible to progress the investigation otherwise, the allegation would be treated as withdrawn.

- The reference in para 14 to the Legal Director as a potential investigating officer is to be removed as he would have had previous involvement in the case.
- A second sentence is to be added to para 16 as follows: “The informant will be notified as to how long the investigation is likely to take, and will be provided with updates at reasonable intervals as to its progress.”
- Para 18 is to read: “If the complainant is dissatisfied with the outcome of the investigation, he or she has the right to refer the matter to the Chairman of the Board, or to the Permanent Secretary at the Ministry of Justice, if the Chairman is implicated in the allegation.”
- Para 19 is to read: For governance oversight purposes, allegations made under this scheme, and the outcome of any investigation, will be reported to the next available meeting of the LSB’s Audit and Risk Assurance Committee.

Framework document

26. This document is owned by the Ministry of Justice who are in the process of preparing an updated draft. The executive has commented on an initial revision from the MoJ and are awaiting the next version.

Next steps

27. Subject to securing the approval of the Board, the updated Governance Manual will be circulated to Board Members, colleagues, and Members of Office for Legal Complaints and Legal Services Consumer Panel. The revised Manual will also be uploaded to the LSB website.

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 rate² - up to £5

Two meal 10 hour rate³ - 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.

² 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

³ 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