

To:	Legal Services Board	Agenda Item No.:	6
Date of Meeting:	28 April 2017	Item:	Paper (17) 24

Title:	Committee on Standards in Public Life (CSPL) Report: <i>Striking the Right Balance</i>
Workstream:	All
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Status:	Official

Summary:
<p>In September 2016, the Committee on Standards in Public Life (CSPL) published a report entitled "<i>Striking the Balance Upholding the Seven Principles of Public Life in Regulation</i>". The report reviews how regulatory bodies in the UK uphold the Seven Principles of Public Life.</p> <p>The review was undertaken as a health check, to see how regulators are upholding the seven Nolan principles within their organisations, and where best practice might be more widely shared. The expectation is that the review will encourage regulators and their sponsor departments to assess their own behaviour against best practice, broken down into six key areas.</p> <p>Annex A sets out the key areas from the report, best practice and recommendations, against the processes in place at the LSB to show how the LSB upholds the Seven Principles of Public life. The Seven Principles can be found at Annex B.</p> <p>The executive summary of the CSPL report is at Annex C.</p>

Recommendation(s):
<p>The Board is asked to:</p> <ol style="list-style-type: none"> 1. consider the LSB processes and evidence which show how the CSPL's best practice recommendations are met; 2. consider and endorse the areas identified by the Executive as warranting further consideration.

Risks and mitigations
Financial: N/A
Legal: N/A

Reputational:	Reputational risk is mitigated by giving this report due consideration.
Resource:	N/A

Consultation	Yes	No	Who / why?
Board Members:		X	The Chairman was interviewed by the CSPL.
Consumer Panel:		X	
Others:			

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Para 9, final sentence	Section 36(2)(b)(ii): information likely to inhibit the exchange of views for the purposes of deliberation	N/A
Annex A: <i>Options for improvement</i> column	Section 36(2)(b)(ii): information likely to inhibit the exchange of views for the purposes of deliberation	N/A

LEGAL SERVICES BOARD

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Committee on Standards in Public Life

Report: *Striking the Right Balance*

Background

1. In September 2016, the Committee on Standards in Public Life (CSPL) published a report entitled '*Striking the Right Balance Upholding the Seven Principles of Public Life in Regulation*'¹. The report's Executive Summary is attached at **Annex C**.
2. The report reviewed how regulatory bodies in the UK uphold the Seven Principles of Public Life. The review was undertaken as a health check, to see how regulators are upholding the seven Nolan principles within their organisations, and where best practice might be more widely shared.
3. The LSB contributed to the Committee's evidence gathering, including providing evidence, attending a workshop and an interview with the LSB Chairman. The report provides a detailed analysis of the seven principles of public life in the context of regulation. It explicitly notes the unique role that oversight regulators, such as the LSB, can play in promoting ethical standards in those they oversee.

The LSB assessment of own behaviour against best practice

4. The Executive has begun to consider the detail of the report in line with the Committee's expectation that the review will encourage regulators and their sponsor departments to assess their own behaviour against the best practice identified.
5. The report presents its best practice recommendations in six areas, between them covering all aspects of the seven principles. In the first instance, we have looked at governance matters and will need to consider whether there are other aspects that should be integrated into our regulatory approach. **Annex A** sets out the report's best practice recommendations, the processes in place at the LSB and ideas for where improvements can be made. As an assurance aid, Annex A sets out what the LSB currently does. There is more detail beyond the recommendations in the report and we will be studying this further.

The Seven Nolan Principles

6. The Principles of Public Life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the civil service, local government, the police, courts and probation services, NDPBs, and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also have application

¹ Link to report: <https://www.gov.uk/government/publications/striking-the-balance-upholding-the-7-principles-in-regulation>

to all those in other sectors delivering public services. **Annex B** sets out the seven principles.

The report's recommendations

7. **Annex C** contains the report's executive summary. This includes the Committee's best practice recommendations for regulatory bodies to help them consider how they can avoid undue influence and demonstrate the decisions they take are fair, well-reasoned and evidence-based.
8. The Committee felt more could be done to maintain integrity through processes to mitigate the risks arising from the 'revolving door', challenges to their independence and some inevitable conflicts of interest.
9. As part of the executive's consideration of the report, the Corporate Governance Manager met representatives from the Civil Aviation Authority, the General Chiropractic Council, the Utility Regulatory Electricity Gas Water for Northern Ireland (UREGNI) and the Financial Reporting Council to understand how other organisations had responded to the report. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

LSB commitment to ethical standards

10. The table at Annex A includes brief narrative of current LSB practice against the recommendations of the CSPL report. To put this into broader context, the following paragraphs highlight in more detail the ways in which the LSB embeds ethical standards into its operations.
11. The LSB has always aimed to operate in line with best regulatory practice and with due regard to generally accepted principles of good corporate governance, including the seven principles. Irrespective of these being statutory requirements, the Board has, since inception, been clear about its commitment to best practice and good governance. The commitment and tone set by the Board cascades through the organisation and is reinforced by collective cultural objectives for all colleagues.
12. The Executive works to ensure that all colleagues understand their role and how it fits into the LSB and that they understand the way LSB works in practice. This includes a comprehensive induction programme, tailored as appropriate for each new Board member and colleague, which includes discussion of the LSB's values and ethical standards. Introductory meetings are arranged for new Board members to meet with the Chairman, Chief Executive, Corporate Director, Executives and colleagues, who provide insight into the LSB and the scope of their role. All colleagues have introductory meetings with their line managers and other colleagues. (Anecdotally, colleagues report 'strong governance processes' as a key LSB strength. This was noted in a recent 'SWOT' workshop).
13. To reinforce this, the LSB has a culture of openness. Alongside routine sharing of information, the LSB has:
 - a. colleague forums: a forum for discussion on policy and operational matters including the opportunity for the Chief Executive (and Board members) to provide feedback to all colleagues following a Board meeting;

- b. the Chief Executive's weekly "huddle" where the Chief Executive provides feedback on recent meetings with stakeholders, regulators, and updates on corporate issues generally.
 - c. all colleagues and Board members are also provided with essential corporate documents including the LSB's governance manual (incorporating the code of practice for board members, rules of procedure, schedule of matters reserved to the Board, and scheme of delegations).
14. With regard to managing and preventing real or perceived conflicts of interests:
- a. everyone is required to declare any gifts or hospitality offered or received. The Register is published on the LSB website;
 - b. Board Members and SLT members are asked to declare any potential or perceived conflicts of interest quarterly;
 - c. at each Board meeting, members are also asked to declare any conflict in the business to be transacted. In circumstances where there is a risk of conflict, such as before someone takes up their position, this is considered by the Corporate Director and Chair (as appropriate) and action taken before a person takes up their position. If there is a conflict in the business to be transacted within the meeting, that person may be asked to excuse themselves whilst the item is discussed.
15. Board members undertake annual appraisals with the Chairman and the Board undertakes an annual evaluation. These exercises include self-assessment of practice against accepted principles of good governance. Where action is identified that could enhance performance, an action plan is agreed.
16. When matters are considered by the Board, the Chairman always seeks input from all Board members: the input of both lay and non-lay members is valued.
17. The LSB is committed to identifying areas of public interest and promotes transparency at all levels. As an example, the papers and minutes considered at Board meetings are published on the LSB website.

Next steps

18. The Executive considers that the LSB operates in line with the seven principles of public life as part of its commitment to operating in line with good governance practice. The Executive considers the LSB always acts with integrity, seeking to ensure ethical outcomes and behaviour from its work, and when setting policy and procedures. It does not simply follow rules or established processes but takes steps to ensure they are embedded behaviours.

Recommendation

19. The Board is asked to:
- a. **consider** the LSB processes and evidence which show how the CSPL's best practice recommendations are met;
 - b. **consider** and **endorse** the areas identified by the Executive as warranting further consideration.

	Key area	Best practice (BP) Recommendation (R)	LSB processes in place Assurance <i>Five fundamental principles of professional ethics: Integrity, Objectivity, Professional Competence and Due Care, Confidentiality and Professional Behaviour.</i>	Options for improvement
			<ul style="list-style-type: none"> • Reporting and investigation scheme • Financial regulations and protocols • Gifts and hospitality register for Board and colleagues • Expenses record for Board and SLT • Declarations of interests (all colleagues declared and recorded but only Board on website) - Board members have a Code of Conduct and members sign Letter of Appointment which sets out the seven principles of public life. - Colleagues have Terms and Conditions which include conduct obligations. Performance appraisal includes appraisal against cultural objectives. - CEO is the Accounting Officer and a member of the Board. - Board members declare potential or perceived conflicts of interest on receipt of board and committee papers; before commencement of meetings. 	

	Key area	Best practice (BP) Recommendation (R)	LSB processes in place Assurance <i>Five fundamental principles of professional ethics: Integrity, Objectivity, Professional Competence and Due Care, Confidentiality and Professional Behaviour.</i>	Options for improvement
			<ul style="list-style-type: none"> - All Board members undertake external training (Civil Service Learning: accountability and governance for ALBs; and diversity training). - Board appointments to Board committees are subject to skills and experience. - All ARAC members attend Civil Service Learning: “introduction to audit and risk assurance committees”. 	
2	Governance	BP: Non-executive and lay members of boards – whether statutory or advisory – have an important role to play in ensuring that the regulatory body is beyond reproach in following the Principles of Public Life. All board members have a responsibility to ensure that adequate discussion of issues occurs before decisions are made.	<p>The Board meets a minimum of eight times during the year. It has a clear schedule of matters reserved and matters delegated.</p> <p>Papers for Board meetings are circulated prior to the meeting to allow time to read and consider (usually provided before the weekend prior to the meeting).</p> <p>The Chairman of the Board asks each Board member for their input for consideration and discussion before the Board decides on whether to approve or endorse any matter. Open discussion and challenge is encouraged and members of the Executive attend to present their papers and answer questions.</p> <p>Board members also ‘shadow’ policy areas as they are developing to help identify key issues for non-executive discussion and scrutiny.</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
3	Governance	BP: Corporate governance	The LSB has in place processes for recognising and managing conflicts of interest. All Board and Executive	<p>[REDACTED]</p> <p>[REDACTED]</p>

	Key area	Best practice (BP) Recommendation (R)	LSB processes in place Assurance <i>Five fundamental principles of professional ethics: Integrity, Objectivity, Professional Competence and Due Care, Confidentiality and Professional Behaviour.</i>	Options for improvement
		arrangements should minimise the risk of conflicts of interest and individuals acting for private gain.	<p>complete a form to declare any conflict or perceived conflict.</p> <p>A monthly reminder is circulated to the Board and to all colleagues. Board and SLT members are also required to declare any membership of a registered political party.</p> <p>At each Board meeting, members are prompted to declare any conflicts in the business to be transacted in the meeting.</p> <p>Part 1 of The Legal Services Act 2007 sets out the objectives of the LSB, which includes “protecting and promoting the public interest”. The Act also sets out the requirement for lay members to the Board who must confirm they have never been an authorised person in relation to an activity (which is a reserved legal activity).</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
4	Governance	BP: Compliance with ethical standards of conduct should be confirmed in the published annual certification by accounting officers. Regular, published information should include up-to-date registers of meetings, conflicts of interest and	<p>The Accounting Officer (AO) prepares an annual governance report for inclusion within the Annual Report and Accounts which references to the extent to which he judges the Board complies with good governance practice.</p> <p>The LSB publishes on its website up to date information on Board meetings (including board papers and minutes); register of the Board’s interests; quarterly gifts and hospitality registers; Board committee membership; the LSB’s Governance Manual.</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

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		gifts and hospitality. These should be publicly accessible.		
5	Codes of Conduct	BP: At least one code of conduct should cover all personnel. This includes executive and non-executive board members, employees, secondees, consultants, and contractors.	The LSB does not have a single Code of Conduct. There is a Code of Conduct for non-executive members and all staff have conduct related provisions in their employment contracts.	[REDACTED]
6	Codes of Conduct	BP: A regulatory body's code of conduct should be at least equivalent to the Civil Service Code, and reflect the ethical risks faced by the regulatory body.	LSB colleagues are not civil servants. Contractual provisions regarding employee conduct were agreed at LSB's inception in light of the role of the LSB and the risks that the organisation expected to face.	[REDACTED]
7	Codes of Conduct	BP: The standards established in the code of conduct should be evident in the recruitment and appraisal processes of the organisation. Staff should be made aware of the importance and significance of upholding these standards at their	Conduct standards form part of the contract of employment for colleagues and as such require active acceptance. Induction includes the LSB's role as a regulator. All colleagues have an objective relating to the LSB's cultural aspirations and whilst these do not explicitly refer to regulatory ethics, they address matters such as respect and continuous improvement.	[REDACTED]

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			not contain any provisions relating to future appointments post-LSB. LSB does not have similar provisions in terms and conditions for OLC or Consumer Panel members either.	
9	Codes of Conduct	BP: Where board members and staff are recruited from the regulated sector, relevant safeguards should be considered, such as isolation from the regulation of recent employers or exclusion from key meetings.	Due diligence in relation to appointments to Board, OLC and Consumer Panel is carried out to ensure none hold appointments (Board or Executive) with a regulatory body that LSB oversees and that lay and non-lay qualifications are observed as appropriate. The work that new colleagues who have previously worked for a regulator would also be considered.	[REDACTED]
10	Codes of Conduct	BP: At every board meeting, members should be asked to declare any actual or potential conflict of interest and these should be publicly recorded. Where the board agrees that a conflict is inappropriate, the member should be recused from both the discussion and decision making.	This is part of LSB's current practice.	

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11	Codes of Conduct	BP: The process for departing board members and senior executives should be in line with arrangements for ministers and senior civil servants as determined by the Advisory Committee on Business Appointments. In order to ensure that such moves are conducted with integrity, and to promote trust in the regulatory body, regulators should be entirely transparent about post-employment destinations and restrictions.	<p>This is not part of current LSB practice for Executive.</p> <p>Members Code of Conduct places an obligation on members to consider conflicts including with posts and employments post-term of office with LSB.</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
12	Codes of Conduct	BP: Additional safeguards should be considered for anyone who leaves the regulatory body. These include explicit prohibitions on disclosing confidential information, restrictions on contact with the	<p>Colleagues' contracts include provisions on confidentiality including post-employment with LSB.</p> <p>LSB has a process for managing conflicts during notice.</p> <p>Members' code of conduct includes provisions on confidentiality.</p>	

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		regulator, and gardening leave requirements.		
13	Codes of Conduct	BP: All individuals taking up positions subject to pre- and post-employment rules should be made aware of them at their appointment.	Code of Practice for Board Members requires members to continue to have regard to conflict issues but no roles are covered by explicit pre and post employment rules	████████████████████ ████████████████████
14	Codes of Conduct	BP: Particular care should be taken where non-executive board members have a live, concurrent post which could give rise to conflicts of interest. Any conflict of interest for non-executives should be established at the start of the selection process and actively managed to ensure there are no material factors impeding independence of judgement.	In place (noting that the appointments process is managed by MoJ).	
15	Independence	BP: The operational independence of regulators must be upheld. Ministerial guidance on operational	Noted	

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		aspects may be transparently considered, but should not be treated as binding, unless there are statutory provisions for such guidance.		
16	Independence	BP: Any ministerial guidance to a regulatory body on its strategic direction should be published online by the regulator.	Noted	[REDACTED]
17	Independence	BP: While constructively engaging with the regulated sector, regulators should guard against the dangers of 'regulatory capture'. Regulators should seek to ensure that staff at all levels are clearly aware of conflicts of interest and are explicitly advised about the risks of bias in decision making.	Noted. No regulatory action can be influenced by any one individual and there is considerable exposure of all issues across groups of colleagues which reduces the risk of bias in decision making.	[REDACTED]
18	Independence	BP: Regulators should regularly publish full and accessible information on their sources of	LSB is funded by the levy as required by statute. This is made clear on the LSB website. There are no restrictions in place on use of funding by those that pay. Where LSB receives sums by way of fees or	[REDACTED]

	Key area	Best practice (BP) Recommendation (R)	LSB processes in place Assurance <i>Five fundamental principles of professional ethics: Integrity, Objectivity, Professional Competence and Due Care, Confidentiality and Professional Behaviour.</i>	Options for improvement
		funding and, specifically, any restrictions proposed by those who provide their funding. Regulatory bodies should demonstrate that funding mechanisms do not have an impact on their independence and integrity.	finances, these amounts are paid to the Consolidated Fund.	████████████████████ ████████████████████ ████████████████████
19	Transparency	BP: Regulators should publish and update their corporate governance documents. These should include minutes of meetings, registers of interests, annual reports, their rules and guidance and their decision making processes.	Published on the LSB website.	
20		BP: Any body with regulatory functions not designated a 'public authority' under the Freedom of Information Act 2000, should have a publication scheme in line with the best practice established by the Information Commissioner's Office.	Not applicable.	

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21	External Leadership	BP: Regulators should actively engage with those they regulate and take a leadership role by encouraging positive attitudes towards compliance.	LSB engages actively with those it regulates and encourages compliance through its regulatory performance work, sharing of best practice and in improving transparency around costs. General compliance with best regulatory practice is an essential component of our regulatory standards work.	<div style="background-color: black; height: 15px; width: 100%;"></div> <div style="background-color: black; height: 15px; width: 95%;"></div> <div style="background-color: black; height: 15px; width: 85%;"></div> <div style="background-color: black; height: 15px; width: 15%;"></div>

ANNEX B: THE SEVEN PRINCIPLES OF PUBLIC LIFE

Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty

Holders of public office should be truthful.

Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.