

To:	Board	
Date of Meeting:	30 November 2011	Item: Paper (11)88

Title:	LSB Governance Manual – Annual Review	
Workstream(s):	None	
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Status:	Unrestricted	

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 Legal Services Act 2007).

To this end, in June 2010 the Board reviewed the existing Code of Practice for the Legal Services Board and agreed a suite of revised and new governance documents, which are published on the LSB website as the LSB Governance Manual.

This paper reports on the scheduled annual review of the LSB Governance Manual and recommends minor revisions. These recommendations were reviewed and endorsed by the Audit and Risk Committee (ARC) on 10 October 2011.

Recommendation:

Based on the recommendation of the ARC, the Board is invited to adopt the revisions to the LSB Governance Manual as set-out in this paper.

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?
Board Members:	✓		Audit and Risk Committee.
Consumer Panel:		✓	N/A.
Others:	KPMG (via internal audit report) and colleagues.		

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

LEGAL SERVICES BOARD

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LSB Governance Manual – Annual Review

Background

1. 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 Legal Services Act 2007).
2. To this end, the Board reviewed in 2010 its existing Code of Practice for the Legal Services Board and agreed a suite of revised and new governance documents, which are published on the LSB website as the LSB Governance Manual (‘the Manual’)¹.
3. This paper reports on the scheduled annual review of the Manual, which was informed by:
 - a. KPMG’s internal audit of LSB’s corporate governance arrangements
 - b. the recommendations of the annual review of the effectiveness of the ARC (which were also agreed on 23 May)
 - c. the ARC’s review of LSB’s policies on expenses, gifts and hospitality, and interests
 - d. Board Members’ feedback to the annual Board Evaluation and Review exercise (which was presented to the Board on 14 September)
 - e. a consultation of colleagues
 - f. the lessons learned from the implementation and day-to-day operation of the Manual.
4. The ARC endorsed the recommendations set out in this paper and they are presented to the Board for approval.

Overview

5. KPMG’s internal audit of LSB’s corporate governance arrangements identified a number of ‘areas of good practice’ and eight Performance Improvement Observations (PIO), two of which were rated as Medium Priority (see **Annex A**). The report went on to conclude that:

‘Management has worked hard to set the tone around governance and embed principles of good governance, accountability and transparency. The Board provides direction, oversight and helps foster good governance within the organisation. The Board and SMT recognise the need for effective governance and are constantly seeking to improve it.

¹ See http://www.legalservicesboard.org.uk/about_us/our_board/board_code_of_practice/index.htm

6. Board Members' feedback to the annual Board Evaluation and Review exercise was also generally positive (see **Annex B**).
7. In light of the above, the Executive did not propose a wholesale review of the Manual to the ARC and instead recommended specific revisions, which are set out below. These were all endorsed by the ARC.

Code of Practice for Board Members

8. The Code of Practice refers to the 'LSB Management Statement' and the 'LSB Financial Memorandum', which were replaced in June 2011 by an LSB Framework Document (which has been uploaded to the 'LSB Governance Manual' section of the website).

***Recommendation 1** – Revise references in the Code of Practice to (provisions from) the 'LSB Management Statement' and the 'LSB Financial Memorandum' to reflect the provisions of the LSB Framework Document.*

9. As noted in the email update circulated to the Board on 27 September, the Cabinet Office released over the summer an updated Code of Conduct for Board Members of Public Bodies. Ministry of Justice officials have agreed that LSB Members should continue to conduct themselves in accordance with their current terms and conditions of appointment (including the LSB's Code), but that Board Members should have due regard to the Cabinet Office's revised Code.

Rules of Procedure

10. Paragraph 6.8 of the Rules of Procedure provide that: 'Committee Chairmen shall present by not later than 30 April of each year a written report about the activities of the Committee in the preceding financial year to the Board and the Accounting Officer'.
11. When the Committee was invited in April to agree its annual report for 2010/11, Sajid Rafiq (Director, National Audit Office) recommended that such reports should in future be presented to the Board when it is invited to agree the Annual Report and Accounts. The Executive agrees that this would provide the Board with much more relevant and timely information relevant to its consideration of the Annual Report.

***Recommendation 2** – Revise Paragraph 6.8 of the Rules to read: 'Committee Chairmen shall present to the meeting of the Board that is scheduled to consider and to agree the LSB's Annual Report and Accounts for the preceding financial year a written report about the activities of the Committee relevant to that financial year'. (See also **Recommendation 4**.)*

Schedule of matters reserved to the Board

12. Paragraph 5.12 of the Schedule reserves to the Board: 'Approving the practising fees of Approved Regulators'. However, the Scheme of Delegations delegates the approval of practising fees to the Chief Executive, in line with the decision of the Board on 30 November 2009 'to delegate authority to determine how to handle applications for rule changes on a case-by-case basis and following an assessment of significance, impact and risk to the Chief Executive, *subject to*

new [Approved Regulator] applications always being submitted for approval to the Board.

Recommendation 3 – *Revise paragraph 5.12 of the Schedule to read: ‘Approving the practising fees of new Approved Regulators and new Licensing Authorities’.*

Scheme of Delegations

13. The Executive does not propose any revisions to the Scheme of Delegations.

Committee Terms of Reference

14. Paragraphs 15 and 17 respectively of the Terms of Reference of the Audit and Risk Committee and the Remuneration and Nomination Committee provide that: ‘The Chairman of the Committee will present by not later than 30 April of each year a written report about the activities of the Committee in the preceding financial year to the Board [and [in the case of the Audit and Risk Committee] the Accounting Officer]’.

Recommendation 4 – *Revise paragraphs 15 and 17 respectively of the Terms of Reference of the Audit and Risk Committee and the Remuneration and Nomination Committee to reflect Recommendation 2.*

15. The Board agreed on 27 January Terms of Reference for a Licensing Authority Committee. The Executive does not propose any revisions to these Terms of Reference, which have been uploaded to the ‘LSB Governance Manual’ section of the website.

Policies on Expenses, Gifts and Hospitality, and Interests

16. These policies were reviewed by the ARC on 28 February. The Executive agreed at that time to review the policies’ provisions in respect of: (a) securing best value travel fares (expenses policy); (b) family members and reciprocal travel arrangements (gifts and hospitality policy); and (c) political affiliations (interests policy).

Policy on Colleagues’ Expenses

17. Paragraph 15 of the Policy on Colleagues’ Expenses provides that: ‘Colleagues should normally travel standard class, except for long journeys (over 90 minutes), unless it is necessary to use first class in order to ensure confidentiality or to enable appropriate work to be carried out’. The Executive recognises, however, that the use of advance purchasing and special offers can on occasion secure better value for money.

Recommendation 5 – *Revise paragraph 15 of the Policy on Colleagues’ Expenses to read: ‘Colleagues should normally travel standard class, except for long journeys (over 90 minutes), unless it is necessary to travel first class travel to ensure confidentiality, or to enable appropriate work to be carried out or to secure best value for money’.*

18. Paragraph 23 of the Policy on Colleagues’ Expenses provides that: ‘Car mileage may be claimed at the appropriate *HMRC* rate for business journeys ...’. Whilst

LSB's practice has been to match the HMRC rate (currently 45p for the first 10,000 miles), the Executive recommends removing this automatic link, not least to allow the Board to exercise its discretion to set the most appropriate rate.

Recommendation 6 – *Revise paragraph 23 of the Policy on Colleagues' Expenses to read: 'Car mileage for business journeys may be claimed at the rate set out at the Annex to this Policy, subject to it being more cost effective to travel by car rather than by public transport or there being no suitable public transport available'.*

19. The Annex to the Policy on Colleagues' Expenses sets out LSB's current rates for reimbursing expenses related to travel and subsistence. It provides that the Annex may be re-issued, from time-to-time, to reflect alterations in the rates, but it does not provide a formal mechanism for approving such alterations. A recent change to the car mileage rate was recommended and agreed by the Board.

Recommendation 7 – *Insert a paragraph into the Policy on Colleagues' Expenses to read: 'Travel and subsistence expenses may be claimed at the rates set out at the Annex to this Policy. The Annex may be re-issued, from time-to-time, to reflect alterations in the rates that will be paid, subject to the approval of the Audit and Risk Committee'.*

Policy on Gifts and Hospitality

20. Paragraph 5 of the Policy on Gifts and Hospitality prohibits: (a) the acceptance of corporate gifts and / or hospitality by colleagues' 'families'; and (b) colleagues from entering into 'reciprocal entertaining arrangements'. The Executive recognises, however, that extending the prohibition to 'families' is disproportionate and that 'reciprocal entertaining arrangements' can be a normal and appropriate expression of business courtesy.

Recommendation 8 – *Revise the first bullet of paragraph 5 of the Policy on Gifts and Hospitality to read: 'Colleagues and their spouses or partners should refuse to accept corporate gifts and/or hospitality ...'.*

Recommendation 9 – *Revise the fourth bullet of paragraph 5 of the Policy on Gifts and Hospitality to read: 'Colleagues should enter into reciprocal entertaining arrangements only where this is a normal and appropriate expression of business courtesy'.*

21. Paragraph 5 of the Policy on Gifts and Hospitality states that only corporate gifts under the value of £25 may be accepted, whereas paragraph 8 provides that gifts up to the value of £25 may be retained.

Recommendation 10 – *Revise the third bullet of paragraph of the Policy on Gifts and Hospitality to read: 'The offering or receipt of corporate gifts (up to the value of £25) and/or hospitality is acceptable within reasonable grounds ...'.*

22. Paragraph 6 of the Policy on Gifts and Hospitality provides that: 'Work-related hospitality from a single stakeholder is acceptable, provided that it can clearly be seen to be of value to LSB's work. For example, working lunches or dinners'. For the avoidance of doubt, it is recommended that this paragraph should refer also to the reimbursement of hotel or other accommodation costs incurred as a result of attending conferences or dinners that are clearly of value to LSB's work.

Recommendation 11 – *Revise the second bullet of paragraph 6 of the Policy on Gifts and Hospitality to read: 'Work-related hospitality from a single stakeholder*

is acceptable, provided that it can clearly be seen to be of value to LSB's work. For example, working lunches, dinners or the reimbursement of necessary hotel or other accommodation costs'.

23. The General Counsel has reviewed the Policy on Gifts and Hospitality in the context of the commencement of the Bribery Act 2010. He is satisfied that LSB's suite of policies and processes are sufficient to ensure compliance with the Act and, therefore, he does not propose any revisions to the Policy.

Policy on Colleagues' Interests

24. Paragraph 3.4 of the Policy on Colleagues' Interests provides that: 'Colleagues should register the following interests: (a) Relevant Securities ...; (b) remunerated employment, office or profession other than LSB; (c) other regular sources of remuneration; (d) directorships, whether remunerated or not; and (e) membership of public bodies ..., trusteeships ... and appointments as an office holder or trustee of a pressure group, trade union or voluntary or not-for-profit organisation'. At the meeting of the Committee on 28 February, the Executive agreed that memberships of political parties should also be registered, but it is proposed that this should apply only to Board Members and the Senior Management Team (who respectively agree and influence most directly LSB's strategic and policy direction).

Recommendation 12 – *Revise paragraph 3.4 of the Policy on Colleagues' Interests to read: 'Colleagues should register the following interests: ... (f) in the case of Board Members and members of the Senior Management Team, membership of a registered political party'.*

Complaints and Disciplinary Process for Individual Members

25. The Executive does not propose any revisions to the Complaints and Disciplinary Process for Individual Members.

LSB Framework Document

26. As noted above, the LSB Management Statement and LSB Financial Memorandum were replaced in June 2011 by an LSB Framework Document, which has now been uploaded to the LSB Governance Manual section of the website.
27. The Executive does not propose any revisions to the LSB Framework Document.

LSB Finance Regulations

28. The Director of Finance and Services has reviewed the LSB Finance Regulations. He does not propose any revisions to the Regulations.

Next steps

29. The Board is invited to approve the recommendations set out in this paper.
30. Subject to securing the approval of the Board, the revised 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.
31. A review of the LSB Governance Manual will be scheduled for the summer of 2012/13.

12.11.11

KPMG's Internal Audit of LSB's Corporate Governance
Executive Summary – Extract

Areas of good practice

- Clear accountability of Board and SMT. There is a schedule of matters reserved for the Board and a scheme of delegations.
- Terms of reference for the Board, Audit and Risk Committee (ARC) and Remuneration and Nomination Committee (RNC) are in place.
- Board, ARC and RNC meetings are held as per the terms of reference. In addition there is adequate informal communication amongst the Members.
- Board and the Committees comprise Members with relevant skills.
- An induction plan for the Board Members is in place. It is currently being developed further for the new Board Member who joined in February 2011.
- A process of annual evaluation of the Board, Committee and its Members and SMT exists.
- There is regular communications by the Chairman of the Board and the Chief Executive with the approved regulators. In additions LSB continues to strengthen its relationship with MOJ and OLC.

Areas for development

- Management should re-consider obtaining insurance to cover Board Member's liability. They should request the MOJ to re-consider their interpretation of Managing Public Money – a document issued by HMT.
- The Chairman of the Board and Chief Executive regularly meet the approved regulators. However, all Board Members should meet the approved regulators / key stakeholders to better understand their workings and interests.
- A formal process of an annual self assessment of the Corporate Governance environment against good practices should be introduced.
- A process for reviewing all policies on an annual basis should be introduced.
- A whistle blowing policy is in place. Management should consider appointing a non-executive Board Members as another person for colleagues to contact with any concerns regarding malpractice.
- Colleagues provide peer / upward feedback to each Member of the SMT on their performance. However, there needs to be a standard set of criteria against which colleagues can provide feedback.
- There is scope to further reduce the length of Board papers without compromising quality. Board Meetings need to be of sufficient duration to allow enough discussion and challenge if required.
- Additional disclosure in the Annual Report on how the Board operates and assesses its effectiveness may be helpful to readers.

LSB Evaluation and Review 2010/11
Summary of Board Member Feedback – Extract

The role and responsibilities of the Board

Governance

1. Does the Board have adequate policies and processes in place to support its internal governance? Are the delegations from the Board to Committees and the Executive functioning effectively? Are the terms of reference of the Board and its Committees clear and sufficient? How has this been tested / demonstrated?

Respondents agreed that the Board had adequate internal governance policies and processes in place. For example, schemes of delegations and terms of reference were included in the LSB's first Governance Manual, which the Board adopted following a review of 'good practice' by the Board Secretary.

The terms of reference of the Board's Committees were clear, although the 'nomination' role of the Remuneration and Nomination Committee would benefit from review (bearing in mind, for example, that the Board does not decide on its own composition).

'In-meeting' delegations were recorded clearly in minutes, however, it was not always clear how the Committees and / or the Executive implemented their delegated powers. The delegated rule approval process was an effective and efficient use of resources.

The Audit and Risk Committee (and, subsequently, the respective Boards) had taken a pro-active role in considering the management of risks relating to OLC.

5. Does the Board ensure that generally accepted principles of good corporate governance are observed at all times? How has this been tested / demonstrated?

Respondents agreed that the Board observed at all times generally accepted principles of good corporate governance. For example, the Board had: established, published and complied with clearly defined policies, processes and other controls appropriate to the role and scale of LSB; fostered an open and transparent culture; submitted to challenge and scrutiny by way of regular public consultations and stakeholder attendance at meetings; challenged appropriately and effectively the Executive; and monitored the implementation of its decisions by the Executive.

The Board's compliance with principles of good corporate governance was tested by the Audit and Risk Committee and the External and Internal Auditors, although it was suggested that this could be demonstrated in a more formal / coherent way. One respondent highlighted the Executive's delay in delivering a framework to assess the effectiveness and impact of LSB.