

To:	Legal Services Board	
Date of Meeting:	29 September 2014	Item: Paper (14) 47

Title:	Board meetings – openness and transparency	
Workstream(s):		
Author / Introduced by:	Adewale Kadiri, Corporate Governance Manager Adewale.kadiri@legalservicesboard.org.uk / 020 7271 0070 Julie Myers, Corporate Director Julie.myers@legalservicesboard.org.uk	
Status:	Unclassified	

Summary:
<p>At the 9 July Board meeting, the Chairman reported that he had been asked by journalists to consider whether the process of publishing LSB Board papers could be speeded up, and whether the Board was prepared to consider holding its meetings in public. The executive were asked by the Board to review current arrangements and to consider whether any adjustments are appropriate or necessary.</p> <p>This paper:</p> <ol style="list-style-type: none"> 1. examines the LSB's current practice and the rationale behind it 2. considers how it compares with that of other parts of the public sector, the approved regulators and regulators from other sectors, and 3. reviews relevant guidance. <p>In light of this analysis, the executive considers that there are some process adjustments that the Board may wish to consider.</p>

Recommendation(s):
<p>The Board is invited to discuss:</p> <ol style="list-style-type: none"> (1) holding one meeting a year in public to coincide with the publication of the Annual Report and Accounts or the Business Plan (2) approving Board minutes by correspondence to allow more rapid publication of minutes and Board papers

Risks and mitigations	
Financial:	In the event that the Board decides to hold all or at least one of its meetings in public, invariably, larger and costlier rooms would be required, and additional costs would also be incurred in ensuring that all those wishing to attend are able to do so. For example, papers may need to be produced in different formats, and meeting rooms would need to be fully accessible.
Legal:	If Board meetings are to be held in public, Members and colleagues would need to ensure that no inadvertent breaches of

	the Data Protection Act (DPA) or the Legal Services Act (LSA 2007) (in respect of information that is required to be kept confidential under the Act) are committed.
Reputational:	There has been historic adverse media comment on the Board's approach to holding meetings entirely in private, and on the time taken for papers to be published. In holding meetings in public, there is the risk of arguments put forward by individual Board members could be misconstrued. This could have the effect of constraining the rigour of debate around the Board table.
Resource:	

Consultation	Yes	No	Who / why?
Board Members:	√		Sir Michael Pitt
Consumer Panel:		√	
Others:			

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

LEGAL SERVICES BOARD

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Board meetings – openness and transparency

Background / context

1. The Board first considered in 2009 whether to hold its meetings in public, and the approach it wished to take to the publication of papers. At that time, the Board expressed its desire to be as open and transparent as possible in carrying out its work, but decided that to open its meetings up to the public would “alter the dynamic of those meetings for the worse”. It therefore concluded that all Board meetings would be held in private, but agreed that agendas, minutes and papers relating to each meeting would be disclosed in full, subject to any exemptions under the Freedom of Information Act 2000 (FOIA), as soon as practicable after each meeting.
2. In practice:
 - a. Board agendas are published on the LSB website within 48 hours of the meeting
 - b. Minutes are published approximately three working days after the following meeting at which they are approved
 - c. Board papers are published two or three days after publication of the minutes.
3. Some media commentators have complained about the time lag at b and c, suggesting that publication of minutes and papers after the following meeting means that the LSB’s position on important issues is not immediately known, and from a media point of view, they have lost currency by the time the information becomes available. This point, along with questions about why all Board meetings are held in private, was raised with the Chairman at his introductory session with media representatives in July 2014.

The current position

4. In taking the position it did in 2009, the LSB was (and continues to be) mindful of its obligations under section 3(3)(a) of the LSA 2007 to have regard to principles of transparency, accountability, proportionality and consistency in fulfilling its role, as well as the duties of accountability and openness imposed on all public bodies by the seven principles of public life¹. In carrying out its work, it seeks to strike a balance between ensuring that as much reliable information as possible is placed in the public domain within a reasonable

¹ <https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2>

period of time on the one hand, and giving the Board a safe space within which to debate the sometimes contentious issues before it, on the other.

5. There is a firm commitment to publishing all Board papers, except where redaction or retention for FOIA, DPA or other legal reason is necessary within set timescales (in practice, only a very limited amount of information is held back, with the presumption being very firmly in favour of full disclosure). The Board has, however, always been conscious that papers presented to it reflect only the executive's thinking at the point of the meeting, and rarely represent the Board's settled policy position. Publishing such papers in advance of the Board's final decision may risk giving regulators or the legal services market an unreliable indicator of the direction of travel on any particular policy issue, and thus papers need to be read in the context of Board deliberation and final conclusions.

Requirements on public bodies to hold meetings in public

6. There is little specific guidance to which bodies may refer in considering whether or not to hold Board or Council meetings in public. For central government departments, the Code of Good Practice² states only that "Boards may permit certain members of the department to observe all or part of their meetings." It then goes on to stipulate that "the Board's activities should be recorded and communicated as appropriate within the department." The provisions of this Code apply also to non-departmental public bodies.
7. Perhaps understandably, there is also no specific overriding guidance that applies to regulatory bodies. The practice adopted by each organisation appears to depend on the sector within which they operate:

Health

8. Section 1(1) of the Public Bodies (Admission to Meetings) Act 1960 states that meetings of "a local authority or other body exercising public functions...shall be open to the public." The Schedule to this Act confirms that apart from local authorities, the legislation applies *inter alia* to most organisations within the National Health Service, including NHS Trusts, and the Professional Standards Authority for health and Social Care (PSA), the oversight regulator for the health and social care professions. To comply with this requirement, the PSA publishes papers relating to the relevant meeting approximately one week in advance. Members of the public attending meetings are also given the opportunity to ask questions at the end of the session. The Board holds a private session at the end of each meeting.

² Corporate governance in central government departments: Code of good practice (2011) HM Treasury

9. Although the 1960 Act does not cover the frontline health regulators, Council meetings of all the nine regulators are held in public, with each setting time aside for private sessions as required. Papers are generally provided a week in advance, and the Nursing and Midwifery Council has the added distinction of running a live Twitter feed during its meetings.

Economic regulators

10. By comparison, three of the main economic regulators: the Office of Gas and Electricity Markets (Ofgem), the communications regulator (Ofcom) and the water regulator (Ofwat) have all adopted similar approaches – Board meetings are held in private, and although agendas are published in advance, minutes (and not papers) are only released after approval at the following meeting.

Others

11. The Food Standards Agency holds its Board meetings entirely in public, including via live webcast, and publishes agendas, papers and previous decisions about a week before the meeting. It also allows for members of the public attending to ask questions on the day. It is worth noting that this practice was adopted following the significant public concerns around food safety that emerged in the 1990s.
12. The Financial Conduct Authority holds its Board meetings in private, and publishes minutes only, six weeks after the meeting.

Approved regulators

The regulatory arms of the approved regulators adopt different approaches:

13. All SRA Board meetings include sessions that are open to the public. Members of the public wishing to attend are required to contact the board secretary beforehand, and papers relating to the session are published 24 hours in advance
14. BSB Board meetings are also separated into public and private sessions. Papers relating to the meetings are published on the Board's website at least four working days before the meeting. However, minutes of the previous meeting are not provided, as these would not have been approved by then
15. ILEX Professional Standards, Council of Licensed Conveyancers, Cost Lawyers Standards Board and the Intellectual Property Regulation Board all hold their meetings in private, and minutes only of previous meetings are published following approval at subsequent meetings. The Faculty Office does not have a Board.

Proposed approach

16. Although there are no statutory or other requirements on the LSB to hold its Board meetings in public, as a public body, it could be argued that its obligation to work openly and transparently mandates this. The question is whether holding public Board meetings is the most effective means of achieving greater transparency in the Board's decision making process. From a good governance perspective, the main advantages of adopting such a practice are:

- Being present when issues are discussed around the Board table, would give key stakeholders better insight into the factors that are taken into account in decision making, and could dispel some misconceptions
- Opening Board discussions to public scrutiny could enhance the LSB's profile, and generate more interest in its work. This could in turn lead to greater engagement from both the profession and consumers
- Taking such a stance would demonstrate leadership in this area, and could help persuade those approved regulators who also hold their meetings in private to consider a more open approach, thus increasing transparency across the sector.

There are of course potential difficulties:

- It is important that the Board is able to debate issues thoroughly, and that all views are fully aired. There is a risk that holding some discussions in the public domain could have the effect of reducing the rigour with which proposals are tested, and ultimately compromise the quality of decision making
- One of the key characteristics of an effective Board is that each member is able to put forward his or her view in the course of debates, but once a decision is reached, all members take collective responsibility for it. There is a danger, in the event of a contentious decision, that stakeholders who disagree could use the publicly aired views of dissenting Board members as a means of questioning or criticising such a decision.

17. A possible alternative to holding meetings wholly in public or in private is to divide the meeting into public and private sessions, and reserving the more contentious matters for consideration in private.

18. The only guidance in existence on how items could be divided between public and private sessions relates to the health sector. Section 152(2) of the Health and Social Care Act 2012 stipulates that NHS Foundation Trusts must hold Board meetings in public, but allows for members of the public to be excluded from a meeting for "special reasons". Trusts have interpreted special reasons in

different ways, including³ in relation to the identity of individuals, financial or business affairs, labour relations or matters for which legal professional privilege could be claimed.

19. The implication is that private sessions of Board meetings are generally reserved for matters that ought legitimately to be kept private, rather than those that are controversial, or debate of which could prove embarrassing. It is also arguable that seeking to use a private session to debate matters deemed unsuitable for discussion in the public domain is in fact less transparent than wholly private meetings – stakeholders may grow tired of a public agenda packed with routine items, knowing that matters of real interest are being debated behind closed doors.
20. In all the circumstances, it is the executive's view that the relationship between the LSB on the one hand and the approved regulators and the profession on the other is not yet at a place where open Board meetings, as are the norm in the health sector, would be appropriate. Looking again at the health sector, apart from the fact that the PSA is mandated by statute to hold its meetings in public, there are two other issues to be borne in mind in comparing the health regulatory landscape to that of the legal sector. Firstly, there is relative stability in that system, with many of the frontline regulators having been in place for some considerable time, while in the legal sector, the separation of regulatory from representative functions has occurred principally as a result of the Clementi reforms and the enactment of the LSA 2007. Indeed, responses to the MoJ's call for evidence revealed that some key players remain unconvinced of the necessity or appropriateness of this development. Secondly, although the frontline health regulators are not required by the 1960 Act to hold their meetings in public, it could be argued, particularly following a number of high profile cases involving NHS and social care organisations and professionals, that there is a clear public interest in an open exploration and scrutiny of how regulation should work to better protect vulnerable people.
21. As noted above, the executive is not persuaded that dividing the agenda into public and private sessions represents an effective alternative for the LSB. It is therefore recommended³ that Board meetings continue to be held in private. However, to increase the visibility of its work, and encourage greater scrutiny, it is recommended that at least one meeting a year be held entirely in public. This could be scheduled to coincide either with the publication of the Annual Report and Accounts, or for 2014/15, the Business and Strategic Plans.
22. If such a meeting is to be held simultaneously with the publication of the Annual report and Accounts, it is proposed that it be in a form similar to an Annual General Meeting. Invitations could be targeted at key stakeholders, including representatives of the approved regulators, consumer groups, legal

³ Arrangements for foundation trust board meetings (Foundation Trust Network October 2012)

commentators, journalists, and academics, but it should also be open to the public at large.

23. The session would start with a summary by the Chairman of the main areas of LSB work during the year, and could then be followed by short sessions on particular areas of work, including findings from LSB research, and contributions from the Consumer Panel on some of their work. However the focus of the meeting would be on giving invitees the opportunity to ask questions and comment. It is proposed that all Board members would be asked to attend, as well as those colleagues who would normally be present at Board meetings, in part to provide responses to questions, and that a note of proceedings be taken, including details of how any actions arising from the discussions would be addressed. The timing for such a meeting would be mid to late June, following the laying of the Annual Report and Accounts before Parliament.
24. If, on the other hand it is proposed that this public meeting should take place as part of the launch of the Business Plan, it could be scheduled in early April to highlight the key areas of focus within the plan. Such a meeting would be of particular benefit in April 2015, to signal the publication of the 2015-18 Strategic Plan. A summary of responses to the consultations on both plans could be provided, along with commentary on how these have been addressed, and there would also be an opportunity for those attending to comment on how the priorities set out might be met.
25. The executive is aware of a number examples of public sector organisations, including the former Legal Services Commission, that hold or have held successful Annual General Meetings or similar stakeholder events. Depending on the organisation's remit and the topicality of its work, these can be quite well attended and provide a rich source of stakeholder engagement. However, there is always the risk that some may have specific reasons for attending that are unrelated to the main purpose of the meeting, with the possibility of disruption. Such a risk would need to be proactively managed by, for example, asking those wishing to attend to pre-register, and, depending on the amount of interest generated, that questions are also submitted in advance. The appropriate use of technology and social media would also need to be considered, both to enhance the accessibility of discussions, but also to limit the possibility of incorrect or unhelpful messages coming out of the session.

Timing of the publication of Board agendas, minutes and papers

26. As mentioned in paragraph 2 above, comment has been made about the amount of time that currently elapses between meetings and publication of Board minutes and papers. ICO guidance⁴ recommends that authorities should

⁴ What should be published? Minutes and agendas, (Information Commissioner's Office June 2013)

be specific about the types of meetings for which minutes and agendas will routinely be made available. In this regard, the LSB's Publication Scheme⁵ specifies the timeline for publishing Board papers on the website:

- Approved minutes: within 3 working days of the meeting at which they are approved
- Papers: shortly after the minutes which refer to them have been published, and subject to any exemptions under the FOIA, DPA or other legal reason, such as commercial confidentiality.

27. Particularly at times of the year when meetings are not held in successive months, it can take some considerable time before the outcome of Board discussions is known; for example this year, minutes and papers of the meeting held on 9 July will not be published until early October. The argument can justifiably be put that such a time lag goes against both the LSB's commitment to transparency and accountability, but also the specific guidance from the ICO⁶ that authorities should ensure that minutes relating to regular meetings are published "reasonably soon after the meeting has been held."

28. The Board will be aware that there have been a number of occasions when announcements of a regulatory position have been made within days of a meeting, or where the decision has been made outside of a formal meeting, for example via correspondence.

29. As part of the review of the LSB Publication Scheme in 2013, a recommendation to reduce the time taken to publish the minutes, after the subsequent Board meeting, from seven to three working days, was accepted and has been implemented.

30. To further reduce this time lag, it is recommended that once the minutes have been produced in draft form, they be circulated electronically among Board members, (as they are at present), and that they are approved for publication in this way. The intention is that minutes and papers, would be published simultaneously no later than two weeks after each Board meeting. The LSB's Rules of Procedure (paragraph 3.7.2) allows for decisions to be "made or ratified following a suitable exchange of correspondence, either electronically or in hard copy".

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http://www.legalservicesboard.org.uk/can_we_help/lbsb_policies_procedures/freedom_of_information/pdf/20140721_Lsb_Publication_Scheme.pdf

⁶ What should be published? (ibid)

Conclusion and recommendation to the Board

31. The Board made a commitment from the outset that it would be open and transparent in the way it operates, both to comply with the provisions of the LSA 2007, but also as an expression of its organisational culture.
32. In publishing the minutes of its meetings and the majority of papers that it considers, there is little argument that this commitment is being met. The size of the organisation, and the range and nature of the issues on its agenda means that routinely holding Board meetings in the public domain would not at this stage be appropriate. However, there is a case to be made for at least one meeting a year to be held publicly, both as further evidence of this commitment, but also as an opportunity to engage constructively with stakeholders.
33. With regard to the timing of the publication of papers, it is essential that the Board continues to approve the minutes of its meetings before these and other papers are released. However, to stop the lengthy gaps that sometimes occur between meetings and the publication of papers, it is recommended that minutes are approved electronically and that all papers are published within two weeks of the date of each meeting.

01.09.14