

<b>To:</b>	Legal Services Board	
<b>Date of Meeting:</b>	30 April 2014	<b>Item:</b> Paper (14) 23

<b>Title:</b>	Abolition of LSB Licensing Authority Committee	
<b>Workstream(s):</b>	All	
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<b>Status:</b>	Unclassified	

**Summary:**

In December 2010, the Board agreed to establish a Licensing Authority Committee (LAC) to advise it on work it would need to undertake should the Board find itself needing to become a 'licensing authority of last resort' for any prospective alternative business structure (ABS) unable to be licensed by an existing licensing authority.

The Board agreed LAC Terms of Reference and membership in January 2011 (attached).

In the intervening period it became apparent that:

- the Ministry of Justice would not 'switch on' the sections permitting the LSB to become a licensing authority until all preparatory work had been completed; and
- in the event, it became likely that the Solicitors Regulation Authority's (SRA) own licensing rules would be sufficiently broad for it to be considered to have suitable regulatory arrangements for all types of ABS (note that this is the strict legal definition and not a comment on the SRA's approach to regulation, which is a separate matter).

Thus the LSB would neither be able to – nor need to be – a licensing authority. As a consequence, the LAC has never been required to meet.

In our recent corporate governance internal audit, auditors queried why the LAC had never met – noting that the Terms of Reference state that it will meet at least three times a year.

For good housekeeping, therefore, the Executive recommends that the LAC be abolished.

**Recommendation(s):**

The Board is invited to abolish the Licensing Authority Committee until such time as it might be required.

**Risks and mitigations**

**Financial:** None

**Legal:** None – should there be any indication that the market is likely to look to the LSB to become a licensing authority we would return to

the Board to resurrect the LAC.
<b>Reputational:</b> None
<b>Resource:</b> None

<b>Consultation</b>	<b>Yes</b>	<b>No</b>	<b>Who / why?</b>
<b>Board Members:</b>	X		ARC members received the internal audit report on corporate governance at their February meeting and are aware of the management response
<b>Consumer Panel:</b>		X	Not relevant
<b>Others:</b>	None		

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

## LEGAL SERVICES BOARD

<b>To:</b>	Legal Services Board		
<b>Date of Meeting:</b>	30 April 2014	<b>Item:</b>	Paper (14) 23

### Abolition of LSB Licensing Authority Committee Executive Summary

#### Background / context

1. At its meeting on 13 December 2010, the Board considered a paper on the steps it would need to take to be able to license alternative business structures (ABS) from 6 October 2011.
2. This was a 'paper of its time': at that point it was unclear whether the SRA (or any other licensing authority) would be able to regulate all types of ABS and it was a real possibility that the LSB would need to become a 'licensing authority of last resort'. The paper therefore outlined what the LSB would need to do to be able to license ABS for which there was no "competent" or "potentially competent" licensing authority (as defined in Schedule 12 paragraphs 5 and 6 of the Legal Services Act 2007 (the Act)) and/or that they did not have "suitable regulatory arrangements" (Schedule 12 paragraph 7).
3. The Board agreed in principle that it should establish a committee to keep the situation under review, to advise the Board and, subject to a future Board decision, to ensure necessary action was taken to enable the Board to undertake a licensing authority role.
4. The Board then agreed Terms of Reference and membership for a LAC in January 2011 (attached at **Annex A**).

#### The intervening period

5. Based on the Board's decision to take preparatory steps, we pressed the Ministry of Justice (MoJ) to commence the relevant sections and schedules in the Act to ensure that an entity could exercise its rights under Schedule 12 paragraph 1 to apply to us for a decision whether it was entitled to apply to the LSB for an ABS licence. Our view was that if there was no competent or potentially competent licensing authority we could use the 12 months allowed by the Act to develop our own licensing rules and procedures. We did not consider that it would be a good use of resources to do that work unless we knew that we had to consider an application for a licence.
6. The MoJ, however, concluded that it was necessary for the LSB to have developed all of its licensing rules and other arrangements fully before they would even consider commencement of the relevant parts of the Act. As, by this time, it

had become apparent that the SRA's licensing rules would be sufficiently broad to capture all types of ABS, we put all work to prepare for the LSB to become a licensing authority on hold on the basis that it was not a good use of resources to prepare for something that had become an increasingly remote possibility.

### **Current status**

7. The relevant Schedules and sections remain to be commenced by MoJ and we have not yet faced a scenario where a prospective ABS has been unable to find a licensing authority with suitable regulatory arrangements. It continues to be a remote possibility but the risk, such as it is, rests with the MoJ.
8. Additionally, with the emergence of additional bodies seeking licensing authority status (Intellectual Property Regulation Board, Institute of Chartered Accountants in England and Wales) and the first signs of the SRA taking a more positive approach to applicants departing from the traditional law firm model, the risk of a competent authority being unavailable is becoming increasingly remote.
9. The need to regularise the status of the LAC (which had been established in January 2011 but which had never met) was highlighted in our recent corporate governance internal audit. Auditors queried why the LAC had never met – noting that the Terms of Reference state that it will meet at least three times a year.
10. For good housekeeping, the Executive recommends that the LAC be abolished.

### **Proposal**

11. The Board is invited to abolish the Licensing Authority Committee until such time as it might be required.

09.04.14

## Annex A

### Licensing Authority Committee Terms of Reference

#### Responsibilities

1) The Legal Services Board (**the Board**) has established a Licensing Authority (**LA**) Committee<sup>1</sup> to fulfil the functions of the Board in preparing to act as, and in its capacity (if any), as a LA and to deal with any matters that arise in relation to those functions.

2) These matters may include, but are not limited to:

a) keeping the need for the Board to become an LA under active review and to advise the Board accordingly;

b) ensuring that necessary action is taken so that the Board can undertake its role (if any) as a LA in a way that is compliant with the Legal Services Act 2007 (**the Act**);

c) setting the operational and policy framework for the Board's decisions about the direct licensing and subsequent regulation of Alternative Business Structures (**ABS**);

d) taking such decisions and making such arrangements that it judges are necessary within that framework;

e) keeping under scrutiny the cost of matters relating to preparing to act as, and acting in its capacity (if any), as a LA.

#### Authorities

3) The Committee is authorised by the Board to:

a) act in relation to any activity or topic covered by these Terms of Reference;

b) enter into agreements (such as memoranda of understanding or similar) with other bodies to facilitate its LA functions;

c) procure, at the expense of the Board, external financial, legal or other independent advice or training, subject to the budgets and any other criteria or policies agreed by the Board;

d) delegate, in a manner consistent with any Board delegation, to the Chief Executive and members of the Senior Management Team any of the matters in 2(d) concerning decisions about the licensing and regulation of ABS.

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<sup>1</sup> LSA 2007, Schedule 1, paragraph 20(1).

**Membership**

4) The Committee and its Chair will be appointed by the Board from amongst its ordinary Members.

5) A majority of the Committee's Members will be lay persons.

**Meetings**

6) The Committee will meet at least three times a year.

7) The quorum for a meeting of the Committee will be three Members, attending in person or, in exceptional circumstances, by telephone, video-conferencing facility or email.

8) LSB colleagues will attend meetings at the invitation or direction of the Committee.

9) The Committee will have the right to direct those attending a meeting to withdraw to facilitate the open and frank discussion of particular matters.

10) A Board Member may request the Chair of the Committee to convene an additional meeting of the Committee.

11) The Board Secretary will be secretary to the Committee.

**Reporting**

12) The minutes and papers of each meeting of the Committee will be circulated to the Board.

13) 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.

Approved by the Board on 27 January 2011