

To:	Legal Services Board	
Date of Meeting:	12 September 2012	Item: Paper (12) 65

Title:	Triennial Review – next steps
Workstream(s):	All
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Status:	Protect

Summary:
<p>The Board discussed the Triennial Review (TR) report at its meeting in July 2012. This paper proposes:</p> <ul style="list-style-type: none"> - Action to address the Review’s specific recommendations on corporate governance (where judged appropriate) - A formal statement responding to the broader concerns raised by stakeholders during the Review process.

Recommendation(s):
The Board is invited to discuss and agree the actions and response proposed.

Risks and mitigations	
Financial:	N/A.
Legal:	N/A
Reputational:	Whilst the conclusions of the Review provided a solid endorsement of the Board’s role and its internal governance arrangements, the process also allowed for negative criticisms of the Board to be widely aired. The Board should be seen to be acting swiftly and appropriately on the formal MoJ recommendations. A formal response also provides an opportunity to rebut the most unfounded criticisms and to reinforce the Board’s rationale.
Resource:	Most work can be accommodated within ‘business as usual’ although changing our spend publication will be an additional administrative burden.

Consultation	Yes	No	Who / why?
Board Members:	X		Steve Green, Andrew Whittaker
Consumer Panel:		X	
Others:	The suggestion of a formal response for the record was discussed with Abigail Plenty, MoJ at the TR feedback meeting.		

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Annex C	S21 - is reasonably accessible by other means	N/A

LEGAL SERVICES BOARD

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Triennial Review – next steps

Background

1. The Ministry of Justice conducted its first Triennial Review of both the Legal Services Board (LSB) and Office for Legal Complaints (OLC) in the first half of 2012. Its concluding report was published in July 2012 and recommended retention of both the LSB and OLC in their current forms and with their current functions.
2. The Review was informed by stakeholders' responses to a call for evidence and a number of workshops and interviews. At its meeting in July 2012, the Board considered the broad themes emerging from stakeholders' submissions, many of which were outside of the scope of the Triennial Review and thus had not been addressed with the MoJ's report itself. The Board agreed, nevertheless, that it was important to take time to reflect on what it had heard from stakeholders and to adjust its approach where criticism was justified.
3. This paper proposes:
 - Action to address the Review's specific recommendations on corporate governance (where judged appropriate)
 - A formal statement responding to the broader concerns raised by stakeholders during the Review process.

Analysis and proposed response to recommendations on LSB corporate governance

4. The Review contained five recommendations for the LSB (and OLC). These are listed below with the response proposed by the executive for the Board's consideration:

Recommendation 1: Review Framework Agreements (by end 2012)

Both the LSB and the OLC need to have their Framework Agreements with the MoJ updated to reflect changes which have occurred since they were drafted. In the case of the OLC, this will need to specify that it is a statutory body under Cabinet Office classification, rather than an NDPB. The review process will allow for reflection of the wider findings from the Triennial Review.

5. The most recent review of the LSB's Framework Document began at the end of 2009 and concluded in June 2011, when the current Framework Document was signed and published. MoJ have always been clear that the Framework Document would be subject to review immediately after each Triennial Review and so this recommendation was expected.

6. Both LSB and MoJ invested considerable time and attention to ensuring that the current version of the Framework Document reflects prevailing best practice for arrangements between an NDPB and its sponsor department, and the particular nuances needed to accommodate and guard the statutory independence of the LSB and the provisions of the Act. We are aware that, as a result, our Framework Document has provided something of a template for other framework document reviews across MoJ.
7. As such, we anticipate that the exercise should not prove anywhere near as time-consuming or contentious as the 2009 to 2011 review and await sight of the changes that MoJ believe need to be made. We would hope to expedite this recommendation with speed. However, we need to continue to be mindful of any attempt to introduce “boiler plate” drafting, which, whilst applicable to the bulk of NDPBs, may not be appropriate in constitutional terms for our position as an independent regulator and/or in terms of practicability, reflecting our small size.
8. One additional option open to the Board is to press the MoJ to give consideration to the idea of a tri-partite Framework Document between MoJ, LSB and OLC. Many of the Framework Document’s provisions are common to both organisations and it would present an opportunity to confirm the unusual nature of the financial and performance management relationships between the three bodies. This idea gained no traction with MoJ (or OLC) when first floated during the establishment of both bodies and it is our sense that it may well receive an equally lukewarm response if we were to raise again now. However, it remains the view of the executive that such a document would reduce to a minimum any risk of confusion of roles and responsibilities and provide a useful platform for explaining to stakeholders where accountabilities lie.

QUESTION: Would the Board like to explore the option of a tripartite Framework Document?

Recommendation 2: Diversity of Boards (by April 2013, and ongoing)

The LSB is due to appoint two new members by April 2013. Equality and diversity must be considerations in this appointment process, but also for any future appointments to the Board of either the LSB or the OLC.

9. Whilst there is little to debate and everything to endorse in relation to this recommendation, it is worth noting for the record that it is the Lord Chancellor and Lord Chief Justice who take decisions regarding the appointment of LSB members, with MoJ officials leading the appointment process. In all submissions from the Board to the MoJ, we have stressed the need for them to ensure a process is adopted that encourages and secures applications from the widest possible range of candidates so that diversity considerations are addressed. To that end, it is disappointing that the MoJ refuses to pay candidate expenses.
10. These are considerations that will also be front of our mind in future OLC and Consumer Panel appointments, which are the responsibility of the LSB. We would note that recent OLC Board recruitment resulted in the appointment of two female Board members.

Recommendation 3: Open board meetings (by end 2012)

Although the OLC has an annual event which the Board attends to launch its annual report, neither the LSB nor the OLC has an open board meeting. Each body should give further consideration of whether this is appropriate to its work in order to improve the openness and transparency of the boards.

11. The Board has considered the question of holding open Board meetings on a number of occasions and has always made clear that it understands the arguments for them. However, the Board has concluded that the free and frank provision of advice to Board Members, the need for confidential and unfettered exchanges of views between Board members and the Board's commitment to cabinet responsibility for Board decisions necessitates private session.
12. Pending any further discussion on this point, we would propose to confirm the Board's intention not to hold open Board meeting, but to reinforce its ongoing commitment to engaging with as wide a range of people with an interest in legal services regulation as possible. This includes continuing to consult widely and openly, holding workshops and seminars on our developing thinking, and to meet, and speak frankly to, all who have interest in our work. We should stress that we will keep our approach under review and, if we can see areas for change that would deliver benefits, we will do what we can. Although the staffing cost is heavy, we have recently held events in Wales and outside London on the education and training review and will look at the scope to re-energise broader engagement outside London.

QUESTION: Does the Board wish to change its position and operate open Board meetings?

Recommendation 4: Consider publication of spend over £500 (by end 2012)

Neither body publishes spend data over £500, although they do report other spend over £25,000 or credit card spend over £500. Further consideration should be given to whether publication of spend data over £500 should be published as best practice on transparency.

13. The LSB complies with all transparency of spend requirements currently asked of it by Cabinet Office and MoJ. As regards spend data, we provide two formal returns at present:
 - a monthly return detailing all transactions over £25,000 (published on www.justice.gov.uk).
 - a return detailing all transactions over £500 paid for by Government Procurement Card (GPC) (<http://www.justice.gov.uk/information-access-rights/transparency-data/gov-procurement-card>) (although we rarely have any transactions over £500).
14. We have no objection in principle to publishing all transactions over £500, but this will place an additional administrative burden on our team and would mean a separate publication of these items on our own website. The MoJ does not publish transaction data lower than £25,000 (other than by virtue of GPC spend

over £500 – in line with the Government’s Transparency agenda and the procedure adopted by LSB already). We suggest that it would be both more satisfactory for stakeholders, and administratively more straight-forward, to collate all of our transaction spend data into a single data return to MoJ for publishing in a central location – rather than to publish a variety of incomplete data sets in a number of places. We plan to discuss this further with the Audit and Risk Committee (ARC) before responding.

QUESTION: Subject to any advice from the ARC, would the Board support in principle an approach to MoJ asking that they collate this additional data through the existing returns to ensure both a comprehensive dataset and one that is published in a single location?

Recommendation 5: Update staff guidance on political activity and appointments or employment after resignation or retirement (by end 2012)

The need to prevent conflicts of interest and protect the interests of the ALB is very important, and the guidance should be updated when a suitable opportunity arises.

15. LSB colleagues are not civil servants and so there should not be an assumption that all provisions of the civil service code of conduct are applicable in the same way.
16. In fact, the LSB’s terms and conditions of employment do contain a degree of guidance on political activity and confidentiality (both during and after employment). The Executive Service Agreements of senior colleagues (original Senior Management Team members) include explicit reference to activity which might risk being seen to compromise impartiality including political activity (see **Annex A** for a summary of relevant contractual terms). These Agreements also contain clauses that would allow for the LSB to require a period of gardening leave ie paid notice whilst excluded from LSB business. These clauses can be found at later in Annex A.
17. For other colleagues, similar provisions on termination apply including discretion to exclude from the premises and/or require no work to be carried out whilst notice is served. Similar conditions around professional standards and confidentiality also apply - although these are not explicit on political activity they do make clear that professional conduct and independence are paramount (see **Annex B** for relevant extracts of General Statement of Terms and Conditions).
18. The executive believes that these are appropriate contractual provisions for colleagues, bearing in mind the non-Crown status of the LSB, and that they allow adequate management flexibility to determine appropriate responses in any particular instance. It does not consider, for instance, that any posts beyond senior management should be classed as ‘politically restricted’ as a matter of course but there may be merit in providing some further guidance on how the LSB might react to a colleague seeking selection as a Prospective Parliamentary Candidate or Local Authority Councillor.
19. This is a matter that might usefully be the subject to discussion at Remuneration and Nomination Committee before finalising our response. At that point we might also usefully consider the extent to which prevailing guidance for OLC non-executives and Consumer Panel members also needs to be reviewed. Requirements on Board members are, of course, a matter for MoJ itself.

Responding to broader concerns

20. In addition to responding to the specific recommendations made by the MoJ, the Board was concerned to make sure that it found an appropriate vehicle for responding to some of the broader themes raised by stakeholders (primarily approved regulators) in the course of the Review. We have considered how best to show that we have listened and are open to adjusting our approach in the face of legitimate criticism, whilst not inadvertently giving credence to unjustified disparagement.
21. We have already written to the Lord Chancellor acknowledging the outcomes of the Review. We recommend that a formal statement of response, also sent to the Lord Chancellor and put in the public domain (and copied to all approved regulators and other Triennial Review respondents) would be appropriate. A draft of the proposed statement is attached at **Annex C**. We will refine this in the light of the Board discussion, but also of the more general briefing material which we will send to the incoming Secretary of State ahead of the Board meeting.

Recommendation

22. The Board is invited to discuss and agree the actions and response proposed

JM/CK

04.09.12

Extracts from Executive Service Agreements

Standards of conduct

- It is essential that you are and are seen to be honest and impartial in the exercise of your duties. You must not allow your judgement or integrity to be compromised in fact or by reasonable implication. During your appointment you must comply with any policy introduced by the Board from time to time governing conflicts of interest, the receipt of gifts and hospitality and standards of conduct and it is a condition of your employment that you agree to be bound by any such policy. Any such policy will be non-contractual and will not be incorporated by reference into this Agreement. In particular but without limitation during your appointment you must not:
 - i. **take part in any political or public activity which compromises or might be seen to compromise your impartiality;**
 - ii. **misuse your official position or information acquired in the course of your official duties to further your private interests or those of others.** Conflicts of interest may arise from financial interests and more broadly from official dealings with, or decisions in respect of, individuals with whom you share private interests (for example freemasonry, membership of societies, clubs and other organisations and family). Where a conflict of interest arises, you must declare your interest to the Board so that they can determine how best to proceed;
 - iii. receive gifts, hospitality or benefits of any kind from a third party which might be seen to compromise your personal judgement or integrity.
- In particular but without limitation during and after your employment you must not:
 - i. publish or broadcast personal memoirs reflecting your experience in the LSB or enter into commitments to do so during or after your employment. You must obtain the permission of the Board before entering into commitments to publish such memoirs after leaving employment; and
 - ii. seek to frustrate the policies or decisions of the Board by the use or disclosure of any information to which you have had access during your employment.
- You must disclose promptly to the Board in writing all your external interests (paid or unpaid) and must notify the Chief Executive immediately of any change in your external interests. During your employment under this Agreement you must not without the written consent of the Board (such consent not to be unreasonably withheld) be directly or indirectly engaged, concerned or interested whether as officer, employee, agent, consultant or adviser (on your own behalf or on behalf of or in association with any other person and whether paid or not) in any external activities (including without limitation charitable or political activities). This clause will not prevent you holding for investment purposes any stock, shares or debentures which are listed or dealt in on a recognised investment exchange and which do not

represent more than four per cent. of the total share or loan capital from time to time in issue in such company.

Confidentiality

- You acknowledge that in the ordinary course of your employment you will be exposed to information about the operation and activities of the LSB, its officers, employees, members, the Ministry of Justice (as the sponsoring department), the Office for Legal Complaints or any regulated entity (as defined below) which is secret or confidential or is commercially or politically sensitive and which may not be readily available to the general public or the press and which if disclosed will be liable to cause significant harm to the LSB. You therefore agree to accept the restrictions in this clause xx.
- For the purposes of this clause and by way of illustration and not limitation unpublished information will be regarded as secret and confidential if it relates to:
 - the performance by the LSB of its regulatory objectives (as defined in the Act);
 - the discharge by the Board of its regulatory functions (as defined in the Act);
 - restricted information as defined in section 167 of the Act (whether or not yet in force);
 - any person or body whose interests or activities are regulated (directly or indirectly) under the Act by the LSB (**regulated entity**);
 - the strategies, tactics or financial information of the LSB or any regulated entity;
 - current activities of the LSB or any regulated entity and current and future plans relating to all or any of the above.
- You will not during your employment with the LSB obtain or seek to obtain any financial or other advantage (direct or indirect) from the disclosure of any information acquired by you in the course of your employment with the LSB.
- You will not either during your employment (including without limitation any period of absence or of exclusion pursuant to clause xx) or after its termination without limit in time for your own purposes or for any purposes other than those of the LSB (for any reason and in any manner) use or divulge or communicate to any person, firm, company or organisation, except to officials of the LSB or other body who are entitled to know, any secret, confidential or sensitive information acquired or discovered by you in the course of your employment with the LSB relating to the affairs or activities of the LSB or its members, officers or employees, the Office for Legal Complaints, the Ministry of Justice or any regulated entity.

Termination

- Without prejudice to clause **Error! Reference source not found.** after notice of termination has been given by either party pursuant to clause **Error! Reference source not found.** or if the LSB commences any disciplinary investigation or proceedings against you, provided that you continue to be paid and to enjoy your full contractual benefits until your employment terminates in accordance with the terms of this Agreement or you are reinstated by the LSB (as the case may be), the Board may in its absolute discretion without breaking the terms of this Agreement or giving rise to any claim against the LSB for all or part of the notice period required under clause **Error! Reference source not found.** or until you are reinstated as the case may be or, if applicable, the duration of any disciplinary investigation or proceedings:
 - exclude you from the premises of the LSB;
 - require you to carry out specified duties (consistent with your status, role and experience) for the LSB or to carry out no duties;
 - make appropriately worded internal and external announcements about your departure or any investigation or disciplinary proceedings (as the case may be) and the Board may notify you in advance of the terms of such an announcement where this is practicable;
 - instruct you not to communicate orally or in writing with any members, officers, employees, agents or representatives of the LSB until your employment hereunder has terminated.
- On commencement of any period of exclusion or suspension pursuant to clause 0 you will:
 - deliver up to the LSB in accordance with clause xx all property belonging to the LSB; and
 - resign in accordance with clause xx from all offices and appointments which you hold in the LSB or externally by virtue of your employment with the LSB.

Extracts from General Statement of Terms and Conditions

Professional standards and independence

- 1.1 There are certain professional standards which are expected of all those who work for the LSB. Any failure to maintain these standards (knowingly or unknowingly) may result in the termination of our relationship with you.
- 1.2 Professional conduct and independence are essential to the work and good reputation of the LSB. You are expected to carry out your work with integrity and objectivity and to comply with any laws applicable to the business or operations of the LSB (including but not limited to the Legal Services Act 2007 (**the Act**) and any secondary legislation and/or codes of practice implemented pursuant to the Act) and all rules, policies and procedures of the LSB from time to time in force. Financial interests and business or personal relationships which appear to or may jeopardise independence must be disclosed and may not be permitted.
- 1.3 You should not accept any gifts or hospitality whilst working on LSB business and you should inform your line manager immediately if any gift or hospitality is offered to you. Failure to do so may result in disciplinary action.

...

2. Activities during your employment

- 2.1 You will not during your employment, except with the written consent of the LSB, be directly or indirectly engaged, concerned or interested in any other trade, business or occupation whatsoever, whether paid or voluntary.

3. Confidentiality

- 3.1 While you are working for the LSB you will be exposed to information about the business and functions of the LSB and of the Approved Regulators which amounts to a trade secret, is confidential or is commercially or politically sensitive. Such confidential information may not be readily available to the business community, the press or the general public and if disclosed will be liable to cause significant harm to the LSB or the Approved Regulators. Accordingly you agree to accept the restrictions below.
- 3.2 By way of illustration and not limitation information will be regarded as **confidential information** if it relates to:

....

- 3.3 You must not obtain or seek to obtain any financial advantage (direct or indirect) from the use of or disclosure of information acquired by you while working for the LSB.
- 3.4 While you are working for the LSB and after you stop working for the LSB you must not use or divulge or communicate to any person, firm, company or organisation (except to officials of the LSB who are entitled to know) any secret or confidential information or information constituting a trade secret acquired or discovered by you in the course of working for the LSB relating to the private affairs or business of the LSB or of any of the Approved Regulators or any of its or their members, employees or agents.