

To:	Legal Services Board		
Date of Meeting:	28 November 2012	Item:	Paper (12) 81

Title:	LSB Governance Manual Review		
Workstream(s):	None		
Author / Introduced by:	Holly Perry, Governance Manager		
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 the Legal Services Act 2007).

The Board last reviewed and approved the LSB Governance Manual at its meeting on 30 November 2011. The Manual is published on the LSB [website](#).

This paper reports on the scheduled annual review of the LSB Governance Manual and provides recommendations for minor revisions endorsed by the Audit and Risk Committee at its meeting on 15 October.

Subject to the Board's approval, the Governance Manual will be uploaded to the LSB website and circulated to members of the Office for Legal Complaints and Legal Services Consumer Panel to draw their attention to the changes.

Recommendation:

The Board is invited to:

- consider the suggested areas for revision to the LSB Governance Manual, as endorsed by the Audit and Risk Committee
- propose any further areas for revision
- agree the revised Manual prior to publication and circulation

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.
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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. The Board last reviewed and approved the LSB Governance Manual at its meeting on 30 November 2011. The Manual is published on the LSB website¹:
3. This paper reports on the scheduled annual review of the LSB Governance Manual and provides recommendations for revisions and following the Audit and Risk Committee's detailed review of the Manual at its 15 October meeting. The Audit and Risk Committee formally submits the Manual to the Board for approval and adoption.
4. This year, the scheduled annual review of the Governance Manual has been informed by the following:
 - a. KPMG's follow up **internal audit** of LSB's corporate governance arrangements conducted in February 2012
 - b. Part 2 of the **Triennial Review** of the LSB (governance review) undertaken by the Ministry of Justice in April and May 2012, and peer reviewed
 - c. Compliance with the **UK Corporate Governance Code and Corporate Governance in central government departments: Code of Good Practice 2011**
 - d. The annual **Board Evaluation and Review** exercise conducted in early summer 2012
 - e. **Consultation** with Executive colleagues, including the Gateway Group and Project Managers
 - f. **Lessons learned** from the day-to-day operation of the Manual.

Governance Manual

5. The Governance Manual comprises the following documents (hard copies will be available at the meeting):

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

[LSB Code of Practice for Board Members](#)
[LSB Rules of Procedure](#)
[LSB Schedule of matters reserved to the Board](#)
[LSB Scheme of Delegations](#)
[LSB Audit and Risk Committee – Terms of Reference](#)
[LSB Remuneration and Nomination Committee – Terms of Reference](#)
[LSB Policy on Colleagues' Expenses](#)
[LSB Policy on Gifts and Hospitality](#)
[LSB Policy on Colleagues' Interests](#)
[Complaints and Disciplinary Process for Individual Members](#)
[LSB Framework Document](#)
[LSB Financial Regulations](#)

Internal Audit findings

6. KPMG's internal audit of LSB's corporate governance arrangements conducted in April 2011 identified eight Performance Improvement Observations (PIO). The follow up audit conducted in February 2012 concluded that five of the eight PIOs had been satisfactorily implemented, with one being in the process of being implemented, as follows:
 - Formal process for self assessment of Corporate Governance against good practice should be introduced (management responded that the process followed for 2012 would be documented and include detailing the various requirements and authorities against which the Manual is being assessed; areas of non-compliance, as relevant, to be identified and an explanation provided for any divergence from good practice – this paper completes that process).
7. A further two PIO had not been implemented as at February 2012:
 - Absence of an annual schedule to review all policies (management gave a commitment to draw up a formal annual schedule of policies to be reviewed by ARC and RNC, which was subsequently agreed at meetings of the ARC and RNC in February and April 2012 respectively).
 - Staff concerns relating to malpractices to be raised with a member of SMT (amendments were made to the policy, which was then communicated to colleagues as part of a wider communication of updated policies issued on 4 April 2012).
8. Implementation of the outstanding items is therefore complete.

Triennial Review part two - governance

9. Stage Two of the Triennial Review was effectively an 'audit' of governance based around a questionnaire prepared by MoJ and designed to be used for all MoJ Triennial Reviews. The MoJ rated both LSB and OLC as 'green' overall in terms of compliance with recognised corporate governance. Both bodies were

explicitly congratulated and a number of areas were cited as being ‘best practice’ for sharing more widely with other ALBs (the Executive have been engaging with other ALBs to share these and our overall experience of the Triennial Review process as and when opportunities have arisen). A small number of areas were identified where action could improve compliance further:

- a. Review Framework Agreement – to reflect changes since they were agreed
- b. Diversity of Boards – improving the diversity of the LSB and OLC Boards
- c. Open Board meetings – giving the further consideration to holding these
- d. To consider publication of all spend over £500 – we already publish all GPC spend over £500 so this is to extend that further
- e. To update staff guidance on political activity and appointments/employment after resignation or retirement

10. The LSB’s public position on the recommendations – as signed off by the Board at its 12 September meeting - is set out at **Appendix 1**.

UK Corporate Governance Code and Corporate Governance in central government departments: Code of Good Practice 2011

11. In drawing up the Governance Statement for the 2011/12 financial year, the Executive assessed the LSB’s governance arrangements against the requirements outlined in the *UK Corporate Governance Code* and *Corporate Governance in central government departments: Code of Good Practice 2011* (‘the Code’). Whilst the Code is specifically designed for central government departments, the requirement to ‘comply or explain’ also applies to any other bodies within the scope of Managing Public Money, including the LSB.

12. The ARC endorsed the Executive’s view that the LSB complies with the Code insofar as it is applicable to it, with the exception of one area of non-compliance: Code 5.9 – At least one, but preferably more, of (the Audit and Risk Committee) members has recent and relevant financial experience

13. Philip Lindsell, a chartered accountant, provides support to the ARC on the basis that none of the three Board Members currently serving on the Committee have recent or relevant financial experience.

14. There were no other departures from the Code requiring disclosure or explanation.

Annual Board Evaluation and Review exercise conducted in early summer 2012

15. Board Members’ feedback to the annual Board Evaluation and Review exercise conducted in early summer 2012 was generally positive and there were no specific issues that arose that suggested amendments to the Governance

Manual were required. A summary of the responses that refer are attached at **Appendix 2**.

Approach for 2012 review

16. In light of the above, the Executive advised the Audit and Risk Committee that a wholesale review of the Manual was not required at the current time and instead specific revisions to individual elements of the Manual be put to the Board for agreement, as set out below:

Code of Practice for Board Members

17. One of the recommendations from the Triennial Review was as follows:

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

This recommendation related to colleagues and requirements on Board members are, of course, a matter for the Ministry of Justice itself.

18. A small number of mainly minor amendments are recommended as follows:

- Updated job titles (paras 12, 38, 39) (Corporate Governance Manager in place of Board Secretary)
- Updates to reflect the fact that various policies are in place (tense changes at paragraphs 25, 32, 33, 34)
- Recommendation to include a new section (between the sections on 'interests' and 'expenses' relating to Employment and Appointments – to reflect the latest model Code of Practice issued by the Cabinet Office in June 2011:

Employment and appointments

While in office, Board Members should have regard to any real or perceived conflicts of interest in relation to the acceptance of employment or appointments. If Board Members wish to take up new employment or appointments during their term of office where real or perceived conflicts of interest may be an issue, they should first discuss details with the Chairman.

On leaving office, and when considering the acceptance of future employment or appointments, Board Members should continue to have regard to conflict issues and should discuss with the Chairman if in any doubt.

- Addition of Police and Crime Commissioners to the list of political activities at paragraph 39

Rules of Procedure

19. No substantive changes are proposed at this time. A small number of minor amendments are recommended as follows:

- Replacement of 'SMT' with 'Gateway Group' (paras 1.1, 3.6.3, 4.10)
- Updated job titles (paras 3.2.5, 3.6.4, 3.8.1, 3.8.2, 4.9) (Corporate Governance Manager in place of Board Secretary)

Schedule of matters reserved to the Board

20. Paper (12) 68 on the Board's 10 October agenda ('Review of process for applications for approval of alterations to regulatory arrangements') describes at paragraphs 11 to 16 the experience of applying the schedule of matters reserved to the Board as well as the scheme of delegations in relation to recent rule change applications.

21. Paragraph 14 of the paper helpfully highlighted that the Cab Rank Rule application required the Executive to develop a process for Warning Notices, requiring the Board's agreement to the approach – with the process having been developed, future applications where a Warning Notice is being considered will fall within the delegation to the Chief Executive.

22. On the basis of discussion of the paper at the Board's 10 October meeting, it is recommended that the following addition is made to the matters reserved to the Board: *'Any recommendation to refuse a rule change, so that the Board corporately can assure itself on matters of policy substance and legal risk'*

23. Otherwise, only minor amendments to the schedule are proposed as follows:

- Para 1.5 (making more specific the point in time when Board approval for the instigation or defence of legal proceedings is required ie once papers are served in court)
- Para 5.4 (cross-referencing the exact clauses in the Act that refer ie sections 31 to 48 of the Legal Services Act)
- Para 8.3 (updating the title of the document ie Framework Agreement)

Scheme of Delegations

24. This document was last updated in March 2012 to reflect the changes to the LSB's Executive groups.

25. Recent communication with the Law Society prompted a discussion within the Executive about authority to issues notices under section 55 of the Legal Services Act. The issuing of notices under s55 are not explicitly referred to in the

schedule of matters reserved nor in the scheme of delegations. Implicitly, the Chief Executive can issue a s55 notice to an approved regulator on the basis that under the scheme of delegations, the s55 power is not one that has been expressly:

- reserved under rule 4.2 of the LSB Rules of Procedure to the Board;
- delegated to a Committee or Sub-Committee;
- covered by any other provision under the LSB Scheme of Delegations; or
- given personally to the Chief Executive as Accounting Officer.

26. It is therefore recommended that this delegation is expressly referenced in the scheme of delegations, together with actions taken under s56 (page 3 refers). This is in line with most other regulators, where use of statutory information gathering powers is seen as an Executive matter.

27. Some further amendments are proposed to the scheme as follows:

- page 5 – reference to the fact that the Chairman also has delegation from the Minister to determine FOIA s36 exemptions
- page 7 – addition of ‘Project Manager’ to the approver, in relation to agreeing formal correspondence

Committee Terms of Reference

28. The Terms of Reference of the ARC were reviewed in light of the annual report of the ARC at the end of 2011/12 and were approved by the Board at its meeting on 30 May 2012. The Terms of Reference for the RNC were substantially rewritten during 2011/12 and were also approved by the Board at its 30 May 2012 meeting. No revisions are proposed at this stage to the Terms of Reference, which will be reviewed again as part of the year end annual reporting process.

Policy on Colleagues’ Expenses

29. A minor amendment is recommended as follows:

- Updated job titles (paragraph 7 and Annex) (Corporate Governance Manager in place of Board Secretary)
- Replacement of ‘SMT’ with ‘Gateway Group’ (Annex)

30. The Annex to the Policy 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, subject to the approval of the Audit and Risk Committee. The figures have been checked against the HMRC rates for employee vehicles (mileage payments for business travel) and these

remain as for 2011 therefore no increase is required. At the Committee's request, the subsistence rates have been checked against the MoJ rates and the rates MoJ rates are no higher than the current LSB rates. There is therefore no need to alter the figures attached to the policy at the current time.

Policy on Gifts and Hospitality

31. No substantive changes are proposed at this time. A small number of minor amendments are recommended as follows:

- Updated job titles (paras 5, 7, 8) (Corporate Governance Manager in place of Board Secretary)

Policy on Colleagues' Interests

32. No substantive changes are proposed at this time. One minor set amendments are recommended as follows:

- Updated job titles (paras 3.2, 3.3, 4.1, 5.3) (Corporate Governance Manager in place of Board Secretary)

Complaints and Disciplinary Process for Individual Members

33. No changes are proposed at this time. RNC and MoJ have been consulted and commented as follows:

- a) MoJ suggested an amendment to the heading of the section entitled "Professional Complaints" to "Procedure for investigating complaints made about members in their professional capacity" and additionally spotted a duplication of some wording
- b) RNC were satisfied with the policy as it stands – it was noted that there is nothing in the policy to indicate what might constitute “personal misconduct or impropriety” – this is on the basis that largely a matter of judgement and at the chairman's discretion.

LSB Framework Document

34. As noted in **Appendix 2**, the MoJ made a recommendation in respect of the Framework Agreement as part of the Stage 2 Triennial Review, as follows:

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.

35. We accepted this recommendation and continue to await advice from the Ministry of Justice as to the changes officials believe need to be made.

LSB Finance Regulations

36. No changes to the LSB Finance Regulations are proposed at this time.

Next steps

37. The Board is invited to agree the recommendations set out in this paper.

38. Once approved, the updated Governance 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.

Response to recommendations on LSB corporate governance

The Review contained five recommendations for the Legal Services Board (LSB) and Office for Legal Complaints (OLC). These are listed below with the LSB's responses:

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.

LSB response

2. We accept this recommendation and await sight of the changes that the Ministry of Justice (MoJ) believe need to be made. We would hope to expedite this recommendation with speed.
3. The MoJ may wish 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.

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.

LSB response

4. 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, the LSB has stressed the need for them for MoJ to adopt a process that encourages and secures applications from the widest possible range of candidates so that diversity considerations are addressed.
5. 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.

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.

LSB response

6. The Board has considered the question of holding open Board meetings on a number of occasions and 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.
7. The Board's position remains not to hold open formal Board meetings, but to re-energise its ongoing commitment to engaging at both member and staff level 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 will keep our approach under review and act on practical opportunities. 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.

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.

LSB response

8. The LSB complies with all transparency of spend requirements currently asked of it by Cabinet Office and the Ministry of Justice. 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).
9. 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 Ministry of Justice 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. We will discuss this further with the Ministry of Justice.

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.

LSB response

10. LSB colleagues are not civil servants and therefore not all provisions of the civil service code of conduct are applicable.
11. The LSB's terms and conditions of employment contain a degree of guidance on political activity and confidentiality (both during and after employment). The Executive Service Agreements of senior staff include explicit reference to activity which might risk being seen to compromise impartiality including political activity. For other colleagues, 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.
12. The Board considers 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 will consider providing some further guidance on how the LSB might react to a colleague being nominated as a Prospective Parliamentary Candidate or Local Authority Councillor. The Board will also 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 the Ministry of Justice itself.

LSB Evaluation and Review 2012/13
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?

There was broad agreement in relation to the Board, the Audit and Risk Committee and, following the approval of its revised Terms of Reference, the Remuneration and Nomination Committee.

There was one comment around the possible need for clarity in relation to consultation with Board Members in developing proposals to be put to the Board ie when Board Members comment on papers, are they then committed to support proposals when they are considered at the Board.

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

There was broad agreement that high levels of corporate governance are observed at all times – and generally this was felt to be adequately tested via regular Board reviews, the annual self assessment exercise as well as internal audit reviews and the ARC's role. The Triennial Review was also cited as a good test in 2012.