



**AN BORD UM CHÚNAMH DLÍTHIÚIL**

#### Corporate Governance Manual

#### A Guide for Board Members and Senior Managers of the Legal Aid Board

September 2016

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# Chapter 1 Introduction

## 1.1 The Purpose of this Manual

This is the fifth edition of the *Corporate Governance Manual*, the first edition having been produced in October 2006, the second in November 2009, the third in December 2011 and the fourth in December 2013. The purpose of the *Corporate Governance Manual (*the *‘Manual’)* isto provide a clear and comprehensive summary of the principal aspects of corporate governance for the Board and senior management of the Legal Aid Board (LAB). It is also intended to ensure that Board Members are fully informed of their legal responsibilities and that they are familiar with statutory provisions relevant to their position and the key organisational issues, policies and strategies that inform their role.

Corporate governance is a key ingredient to enable the LAB in effectively discharging its statutory remit. It ensures that a framework of structures and processes are in place to allow Board members to objectively and effectively assess management and corporate performance.

The *Manual* focuses on key areas of corporate governance which are of particular relevance to the LAB and also points to sources of more detailed guidance. It is envisaged that the manual will continue to be flexible in its format and structure to allow for developments relevant to governance and management in the LAB.

## 1.2 What is Corporate Governance?

Corporate governance is defined in the *Code of Practice for the Governance of State Bodies August 2016 (“the Code of Practice”)* as

“the systems and procedures by which organisations are directed, controlled and managed”. State bodies, says the *Code of Practice,* should serve the interests of Government as shareholder, the taxpayer, and all other stakeholders, and pursue value for money in their endeavours, including managing risk appropriately. State bodies should act prudently, ethically and with transparency as public entities and should conduct their activities consistent with their statutory responsibilities.

The Board and management are accountable for the proper management of the organisation. Board members and employees should be strongly guided by the principles set out in *the Code of Practice* in meeting their responsibility to ensure that all activities, whether covered specifically or otherwise in this document, meet the highest standards of corporate governance.

## 1.3 Code of Practice for the Governance of State Bodies 2016

The *Code of Practice*  provides a framework for the application of best practice in corporate governance and is mandatory for all State Bodies. The original Code of Practice was published in 2009 and the updated *Code of Practice* which was published in 2016. It is based on 4 key pillars.

**Values** – Good governance supports a culture of behaviour with integrity and ethical values;

**Purpose** – Each body should be clear about its mandate with clearly defined roles and responsibilities;

**Performance** – Defined priorities and outcomes to achieve efficient use of resources resulting in the delivery of effective public services;

**Developing Capacity** – Appropriate balance of skills and knowledge within the organisation, to be updated as required.

The *Code of Practice* is split into a suite of documents comprising the main code, as well as more detailed documents setting out its requirements as follows:

1. Business and Financial Reporting Requirements;

2. Audit and Risk Committee Guidance;

3. Remuneration and Superannuation;

4. Board Self-Assessment Evaluation Questionnaire.

A balance has been struck in the *Code* *of Practice* between the need for strong accountability and the requirement to support the appropriate autonomy of the State body under the legal framework and the environment within which it operates.

The key benefit of the *Code of Practice* is that it provides greater clarity regarding the roles and responsibilities of the Board of a State body’. There is a greater emphasis on accountability and transparency, which is underpinned by effective relationships between the Minister/parent Department and the Chairperson of the State body to ensure that the body is effective in achieving its objectives, uses its resources efficiently and operates in a manner which secures the longer-term sustainability of the State body. In light of the scale and diversity of roles carried out by State bodies, the *Code of Practice* is not a ‘one size fits all’ document, but rather acts as a framework to ensure that both commercial and non-commercial State bodies meet the highest standards of corporate governance commensurate with their significant public roles and responsibilities.

Corporate Governance best practice in the wider public and private sectors in Ireland and internationally has evolved since 2009: a number of reference documents have been updated and published since then; such as the Financial Reporting Council’s *“UK Corporate Governance Code”* (2016), CIPFA and IFAC’s *“International Framework: Good Governance in the Public Sector”* (2014), OECD’s *“Principles of Corporate Governance”* (2015). These developments have been taken account of in the update of the *Code of Practice*.

The *Code of Practice* is intended to be a living document and will evolve with best practice. It is effective from 1st September 2016 and is available on the following website:

http://www.per.gov.ie/en/revised-code-of-practice-for-the-governance-of-state-bodies/

The best practice provisions relate both to internal systems and to external relations with the Government, the relevant Minister (in the LAB’s case, the Minister for Justice and Equality), the Minister for Public Expenditure and Reform (and the two Departments).

The Board is required to confirm to the Minister for Justice and Equality that it complies with this *Code of Practice* in its governance practices and procedures. The *Code* *of Practice* states that its provisions do not override existing statutory requirements and other obligations imposed by the Companies Acts, Ethics legislation, Standards in Public Office legislation, the specific statutory provisions relating to the State body itself and any other relevant legislation (e.g. equality and employment legislation).

The following areas of corporate governance are described in the *Code of Practice*:

* Role of the Board
* Role of the Chairperson
* Role of Board Members
* Board Effectiveness
* Codes of Conduct, Ethics in Public Office, Additional Disclosure of Interests by Board Members and Protected Disclosures
* Business and Financial Reporting
* Risk Management, Internal Control, Internal Audit and Audit and Risk Committees
* Relations with the Oireachtas, Minister and Parent Department
* Remuneration and Superannuation.

The high level principles of the *Code of Practice* are set out at the beginning of each section of this Code and are summarised as follows:

1. The Board should be clear about its mandate and from that identify the various functions, roles and responsibilities entailed in the delivery of that mandate.
2. The Board should meet sufficiently regularly to discharge its duties effectively and should have a formal schedule of matters specifically reserved for it for decision to ensure that the direction and control of the State body is firmly in its hands.
3. The preparation and adoption of a strategic plan is a primary responsibility of the Board of the organisation.
4. There should be a clear division of responsibilities between leading and managing the Board and the executive responsibility for running the State body. No one individual should have unfettered powers of decision.
5. The roles of the Chairperson, Board and Chief Executive should be clearly defined.
6. The Board is collectively responsible for the long-term sustainability of the body.
7. All Board members have a fiduciary duty to the State body in the first instance (i.e. the duty to act in good faith and in the best interests of the State body).
8. On the appointment of new Board members, the Secretary of the Board should provide them with the necessary information to enable them to discharge their functions.
9. The Board and its committees should have the appropriate balance of skills and knowledge to enable them discharge their respective roles and responsibilities effectively.
10. The Board and its committees should have the appropriate balance of skills and knowledge to enable them discharge their respective roles and responsibilities effectively.
11. To ensure continued integrity and transparency, and to avoid public concern or loss of confidence, the Board should ensure that appropriate policies are in place so that members and staff take decisions objectively and steps are taken to avoid or deal with any potential conflicts of interest, whether actual or perceived.
12. A fundamental duty of the Board is to ensure that a balanced, true and fair view of the State body’s financial performance and financial position is made when preparing the annual report and financial statements of the State body and when submitting these to the relevant Minister.
13. The Board should have formal and transparent arrangements for governance, risk management and internal control and for maintaining an appropriate relationship with the State body’s auditors.
14. The Board is responsible for ensuring that effective systems of internal control are instituted and implemented in the State body including financial, operational and compliance controls and risk management and the Board should review the effectiveness of these systems annually.
15. The Board should have a properly constituted independent internal audit unit or engage appropriate external expertise which should operate in accordance with the provisions of the Code of Practice.
16. The Board of a State body should establish an Audit and Risk Committee of at least three independent non-executive Board members.
17. Good governance requires effective procedures for the definition of responsibility and accountability, allocation of budgets, defining expected outputs and outcomes and clear procedures for monitoring performance.
18. The Board should agree Performance Delivery Agreements with the relevant Minister/parent Department and report to the Minister on progress against targets. A template for the Agreement is included at appendix E of the Code of Practice.
19. It is the responsibility of the Board to satisfy itself that the requirements for public procurement are adhered to and to be fully conversant with the current value thresholds for the application of EU and national procurement rules.
20. State bodies should be exemplary in their compliance with taxation laws and should ensure that all tax liabilities are paid on or before the relevant due dates.
21. Where a legal dispute involves another State body, unless otherwise required by statute, every effort should be made to mediate, arbitrate or otherwise resolve before expensive legal costs are incurred.
22. In its dealings with the public, the Board should publish a customer charter which outlines the nature and quality of service which customers can expect.
23. All Board members must comply with the relevant provisions of the Ethics in Public Office Acts 1995 and 2001).

**Appointments to the Board**

Arrangements for appointments to the Boards of State bodies are set out in the *Guidelines on Appointments to State Boards,* as amended from time to time, and published by the Department of Public Expenditure and Reform. Additional arrangements for appointments to State Boards may also be set out in the legislation governing the establishment of the State body.

**Compliance Requirements**

The Code of Practice states that all State bodies have a responsibility to implement good corporate governance standards. It also recognises that some State bodies may consider that certain requirements of this Code may have a disproportionate effect on them because of the nature and scale of their activities, their business model, the resources available to them, and/or their governing statutes and in such cases provision is made for the compliance requirements to be agreed with the relevant Minister/parent Department and formally documented and noted in the annual report of the State body.

**Governance Framework**

The Code of Practice sets out the main features of the governance framework relationship between Government and State bodies.

## 1.4 The Role of the Board

The *Code of Practice* sets out the role of the Board as being “collectively responsible for promoting the success of the State body by leading and directing the Board’s activities. It should provide strategic guidance to the State body, and monitor the activities and effectiveness of management. Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the State body, subject to the objectives set by Government. The Board should develop the capacity of the Body including the capability of its leadership and staff.”

The *Code of Practice* also includes provisions regarding the role, entitlements and responsibilities of Board members. These cover the conduct of Board business and the role of Board members, responsibility for assessing performance, financial control and reporting arrangements, compliance with statutory and other obligations and relationships with senior management.

The functions and duties of the Board are set out in the Civil Legal Aid Act 1995. The Code of Practice states that the Board should, using its high level functions and duties as a guide, prepare customised terms of reference for itself.

The Civil Legal Aid Act 1995 is the governing legislation which provides for the appointment (by the relevant Minister) of the Board and the Chairperson, for the approval of the form of the annual report and financial statements, for the appointment of auditors and for the furnishing of such information as the Minister may require. The Chairperson and Board are ultimately responsible to the Minister (who is responsible to Government) for the operation and proper functioning of the State body.

The Code of Practice provides that persons being proposed by Ministers for appointment as Chairpersons of State bodies are required to make themselves available to the appropriate Oireachtas Select Committee to discuss the approach which they will take to their role as Chairperson and their views about the future contribution of the State body or Board in question.

**Conduct of Board Business and Role of Board members**

* The Board should meet regularly. The collective responsibility and authority of the Board should be safeguarded and all Board members must be afforded the opportunity to fully contribute to Board deliberations;
* The Board should have a formal schedule of matters specifically reserved to it for decision – a list of these functions is set out in the *Code of Practice* and is itemised at Section 3.3 of this document;
* The Board is responsible for compliance with all statutory obligations applicable to the State body;
* Board members should bring an independent judgment to bear on issues of strategy, performance, resources, key appointments, and standards of conduct;
* The Board should, in a Board resolution, lay down formal procedures whereby Board members, in the furtherance of their duties, may take independent professional advice, if necessary;
* The Board Audit and Risk Management Committee and other Board committees should have written constitutions and terms of reference;
* Any business or other interests, which could affect a Board member’s independence, should be dealt with as outlined in the Code of Practice;
* All Board members should have access to the advice and services of the Secretary of the body who is responsible to the Board for ensuring that Board procedures are followed and that applicable rules and regulations are complied with;
* The Board should constantly review its own operation and that of its committees and individual members and seek to identify ways of improving its effectiveness. The attendances of each Board Member at Board meetings should be reported in the Annual Report.

**Responsibility for Assessing Performance, Financial Control and Reporting Arrangements**

* The preparation and adoption of a strategic plan is a primary responsibility of the Board. This plan should be for a period of 3-5 years ahead and its implementation should be supported through an annual planning and budgeting cycle. The draft plan should be sent to the relevant Minister before finalisation for views.
* It is the Board’s duty to ensure that a balanced and understandable assessment of the body’s position is made in preparing the annual report and accounts of the body and when submitting these to the relevant Minister.
* The Board members should state in the annual report that they are responsible for preparing the accounts. There should also be a statement by the external auditors about their reporting responsibilities.
* The Board should establish procedures for maintaining an appropriate relationship with the external auditors.
* A performance measurement system should be put in place to assess the effectiveness/outcome of major items of expenditure and this should be reported to the Board.
* The Board is required to confirm annually to the relevant Minister that the State body has a system of internal financial control in place.
* The Board should ensure that the Chairperson keeps the relevant Minister advised of matters arising in respect of the State body.

**Relationship with Senior Management**

* The Board should, in a manner most effective to the State body, deal with any relevant issue of post resignation/retirement employment, appointment and/or consultancy of its Board members and employees by the private sector.
* The Board should have procedures to monitor and manage potential conflicts of interest of management and Board members.
* The Board should put in place procedures whereby employees of the State body may, in confidence, raise concern about possible irregularities in financial reporting or other matters.
* The Board should be supplied with information which is of a suitable quality to enable Board members to satisfactorily discharge their duties.

**Relationship with the Department**

* The *Code of Practice* provides that the Board should have a Performance Delivery Agreement in place which acts as a contract between the Board and the Department in which an agreed level of performance/service is formalised and which ultimately results in the improved effectiveness and efficiency of public services. The Code of Practice provides for:
  + Performance based budgeting;
  + Performance delivery agreements to include high level goals and objectives, key outputs and financial and human resources available to deliver the key outputs; and
  + The strategy to be anchored on the Department’s strategy.

**Ministerial Approval:**

* The *Code of Practice* provides that the Board should obtain the approval of the relevant Minister together with the consent of the Minister for Public Expenditure and Reform for any intended action which would extend or change significantly the nature, scope or scale of the activities in which it engages. The financial consequences of such actions, notably on the issue of debt /profitability and their consistency with the existing statutory remit of the Body should be clearly set out by the State body.

**Periodic Critical Review:**

* The *Code of Practice* provides that a State Body shall be subject to Periodic Critical Review (PCR) no later than every 5 years. This provision is to ensure that the ongoing business case for State bodies will be subject to periodic scrutiny and assessment. The overarching objective of the review process is primarily to secure improvements in accountability, efficiency and effectiveness but also to scrutinise objectively the case for rationalisation and consolidation of public bodies in light of changing requirements, demands and priorities. The review process should also assess the extent to which the governance structure of each public body and the Department’s oversight of that body (if appropriate) is consistent with its legislative underpinning and is strongly aligned to the business needs of the body. The Code of Practice provides, at appendix F, that the periodic review should be guided by the following principles: proportionate, timely, challenging, open and inclusive and transparent.

## 1.5 Briefing for new Board members

On appointment of new Board members, the Secretary should provide them with certain information, including:

* A formal schedule of matters reserved to the Board for decision;
* procedures for obtaining information on relevant new laws and regulations;
* procedures to be followed when, exceptionally, decisions are required between Board meetings;
* a schedule detailing the composition of all committees and their terms of reference;
* a statement explaining the Board members’ responsibilities in relation to the preparation of the accounts, the system of internal control and audit and for reporting on the business as a going concern;
* a statement informing the Board members that they have access to the advice and services of the Secretary;
* a copy of the code of ethics/conduct for Board members, including requirements for disclosure of interests and procedures for dealing with conflict of interest situations;
* specific organisational information;
* a copy of relevant legislation (or excerpts) together with the Code of Practice and any relevant circulars and/or guidance notes;
* a list of the statutory requirements relating to the body; and
* the composition of the Board

**Independent judgement:**

* Non-executive Board members should bring an independent judgement to bear on issues of strategy, performance, resources**,** key appointments, and standards of conduct. Section 3 of the Code of Practice sets out the approach to dealing with any business or other interests of a Board member that could affect the Board members’ independence.

**Attendance Requirement:**

* Board members are appointed as they bring specific knowledge, skills, experiences and expertise to the deliberations of the Board and its committees and this is only possible if members attend all Board meetings and contribute as appropriate. The Board should clarify an expectation of 100% attendance at all Board meetings consideration for re-appointment.

**Access to Secretary of the Board:**

All Board members should have access to the advice and services of the Secretary of the Board, who is responsible to the Board for ensuring that Board procedures are complied with. The Secretary of the Board is also responsible for the formal induction of new Board members and organising mentoring for Board members where required.

## 1.6 Implementing Corporate Governance in the LAB

In implementing the *Code of Practice* and applying the principles of corporate governance, the Board must attend to three broad areas:

1. *Organisational structures and planning processes (Chapters 2, 3 and 4 of this Manual)*

* How the Board is organised
* How its responsibilities are defined
* How it is held accountable
* Its relationship with stakeholders
* Its role in strategic and business planning
* Operational processes requiring Board oversight

1. *Risk management, audit and financial internal controls (Chapters 5 and 6 of this Manual)*

* Risk management
* Auditing
* Accountability
* Budgeting
* Financial controls and financial management
* Value for Money

1. *Standards of behaviour (Chapter 7 of this Manual)*

* Code of conduct
* Ethics
* Disclosures
* Anti fraud and anti-corruption

All publicly funded bodies are required to act in accordance with best practice in relation to corporate governance.

# Chapter 2 Overview of the Legal Aid Board

## 2.1 Introduction

The Legal Aid Board (LAB) is an independent public body established under the Civil Legal Aid Act, 1995 (the Act). Under the Act the principal function of the LAB is:

(a) to provide, within the Board’s resources and subject to the other provisions of the Act—

(i) legal aid and advice in civil cases to persons who satisfy the requirements of this Act, and

(ii) a family mediation service;

(b) where the Board considers it necessary or expedient to do so to make arrangements for the provision of—

(i) family mediation services on its behalf by the engagement of persons appointed by it for that purpose, and

(ii) training in family mediation, either by itself or by persons appointed by it for that purpose.

The Board has also taken on the responsibility for the management and administration of the Garda Station Advice ad hoc scheme, the Legal Aid – Custody Issues Scheme and the Criminal Assets Bureau Ad Hoc Scheme.

## 2.2 The Board

The Board consists of a chairperson and 12 ordinary members appointed by the Minister for Justice and Equality. Under the Act, 2 of the Board members must be barristers practising for at least 7 years prior to their appointment; 2 must be practising solicitors, also for at least 7 years prior to appointment; 2 must be staff members; not less than 5 to be male; and not less than 5 to be female. The term of office of Board members must be not more than 5 years with no appointment for more than 2 terms.

## 2.3 Staffing

Section 11 of the Act empowers the LAB to appoint staff subject to numbers and grades being approved by the Minister for Justice and Equality with the consent of the Minister for Public Expenditure and Reform.

The LAB has an approved staffing complement of 372 posts. This figure includes the approved staffing for the FMS is 28. The actual number of staff in place at 1 November 2013 is lower than this figure.

## 2.4 Organisational Structure

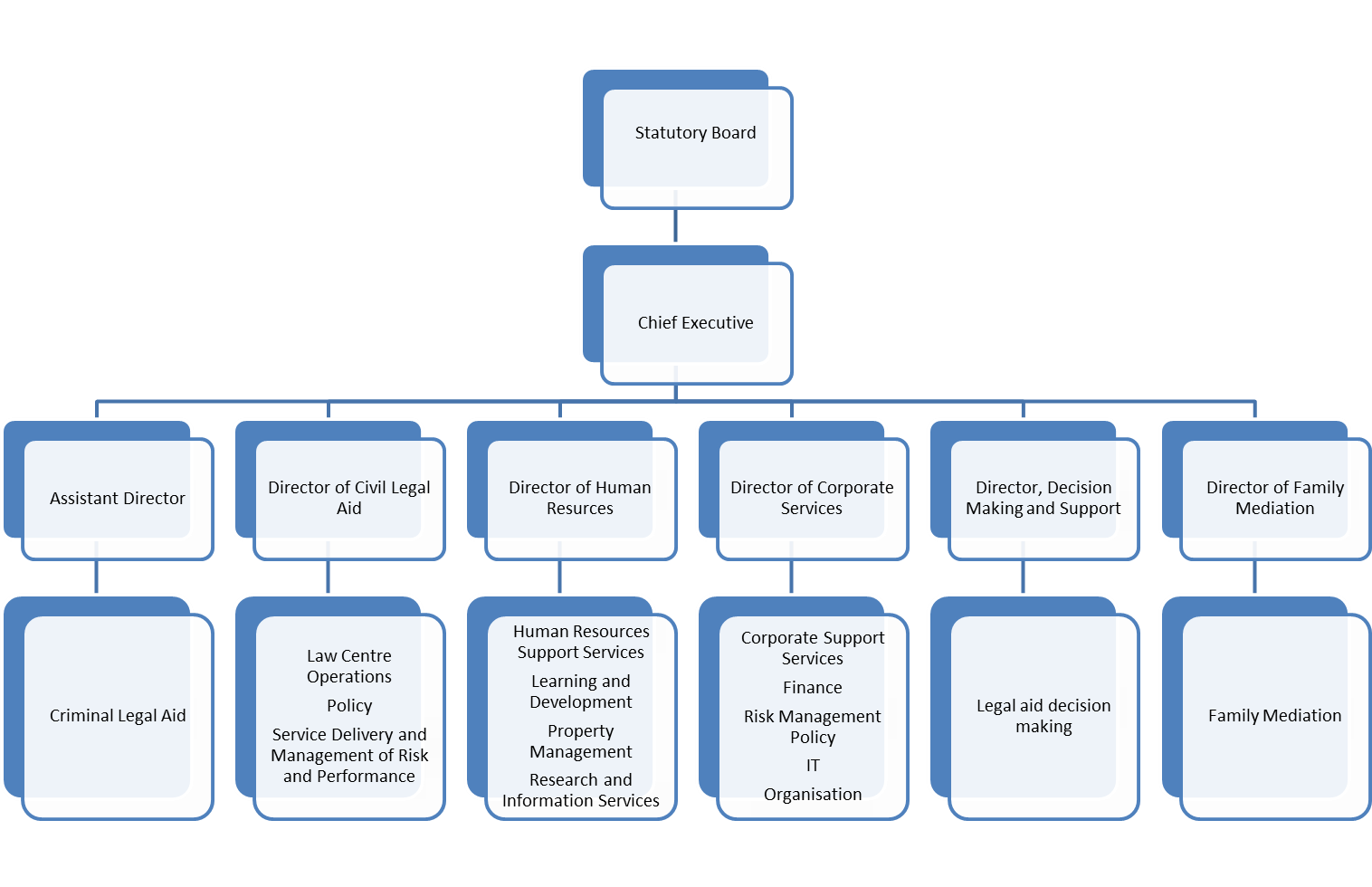
The LAB’s Head Office is located in Cahirciveen, County Kerry and some of the headquarters functions are also located in Dublin.

The Board's staffing complement is governed by the Staffing Resource Management Framework introduced by DPER in August, 2015 and within this framework the Board has delegated sanction to recruit staff up to Principal Officer level, within our overall pay budget. At 1 September, 2016, the number of staff employed in the Board was 422 full time equivalents.

For organisational purposes the work of the LAB is divided into the following areas:

* Legal service delivery (provided through 30 full-time and 12 part-time law centres, three specialist units, and private solicitors and barristers) as well as the development of legal services and civil legal aid policy;
* Family Mediation Service provided through eight full time offices and nine part time offices;
* Service provision in the three Criminal legal aid Ad-hoc schemes currently under the Board’s remit, the Garda Station Advice ad-hoc scheme, the Legal Aid – Custody Issues Scheme and the Criminal Assets Bureau Ad Hoc Scheme is provided through private solicitors and barristers;
* Civil Operations covering the operational delivery of legal services through the network of law centres and through private solicitors;
* Family Mediation operations covering the operational delivery of family mediation services through the network of family mediation offices;
* Human Resources, covering staff support, training and development, property services and research, information, and library services;
* Decision Making and Support covering primarily decision making on applications for legal aid;
* Corporate Services, encompassing finance, information technology, media and external communications and risk management.

The following chart sets out the organisational structure of the Legal Aid Board:



## 2.5 Mission

The mission, vision, values, goals and objectives of the LAB are set out in the Board’s *Corporate Plan 2015 - 17.*

The mission of the LAB is:

* To facilitate the effective resolution of civil disputes through the delivery of efficient and accessible legal aid and mediation services and to effectively manage and administer the State’s criminal legal aid schemes.

Since its establishment, the Board has sought to reflect a series of valuesthat support the implementation of its Mission Statement and underpin the manner in which the Board would like to see its services operate. These include:

* High professional and ethical standards in the provision of all our services
* Having the client and access to justice as central to our services
* A focus on innovation in the delivery of services
* Responsiveness to an ever-changing legal and social environment
* Effective leadership at all levels
* Providing good value for money
* Transparency
* A culture which promotes a team ethic and respect for the human dignity of the client and the colleague
* Effective governance and accountability relationships and structures with the Department of Justice and Equality, Government and the public.

## 2.6 Mandate and Responsibilities

The Civil Legal Aid Act, 1995 which established the Legal Aid Board, provides a statutory framework whereby persons may apply for legal services in civil law matters in accordance with the provisions of the Act.

Since 1st November 2011 and on foot of a legislative amendment, the Board has assumed responsibility for the provision of State funded family mediation services as well as civil legal aid.

The Board assumed responsibility for the administration of the Garda Station Advice ad hoc scheme on the 1st October 2011, the Legal Aid – Custody Issues Scheme in June 2012 and the Criminal Assets Bureau ad hoc legal aid scheme on the 1st January 2014. Draft legislation to transfer the administration of the main legal aid scheme to the Board is awaited. The preparation of this legislation is incorporated in the Programme for Government of the current administration.

## Other Relevant Legislation

A range of other employment and national legislation influences how the *Legal Aid Board* is governed. These Regulations and Acts are summarised below.

**Employment Legislation**

There is a wide body of employment law governing areas such as Recruitment, Contracts and Terms and Conditions of Employment, Payment of Wages, Holidays and different types of Leave of Absence, Grievance and Disciplinary matters, Equality, Health and Safety, Disability, Superannuationand Termination of Employment, with which employers are required to comply.

**Safety, Health and Welfare at Work** **Act, 2005**

The Safety, Health and Welfare at Work Act 2005 (SHWW) represents a modernisation of Irish occupational health and safety laws and has a primary focus on the prevention of workplace accidents, illnesses and dangerous occurrences. It provides also for significantly increased fines and penalties aimed at deterring violations of safety and health laws. Key features of the health and safety legislation include:

* the requirement for all employers to prepare a Safety Statement and to update the Statement annually;
* the requirement to conduct health and safety risk assessments.
* a statutory definition of ‘reasonably practicable’;
* a general duty on employers to manage work activities so that they do not endanger persons at work (whether employees, contractors, contractors’ employees, members of the public, etc.);
* a provision making it an offence for an employer to require an employee to work in a situation of serious and imminent danger or to engage in improper conduct or behaviour, which covers bullying and stress;
* a requirement to train employees where a risk assessment states that such training is required;
* a provision that employees, while at work, must not endanger safety arising from being under the influence of ‘an intoxicant’, which includes alcohol and drugs, whether illegal or legal;
* a provision for joint safety and health agreements between social partners;
* a provision for dispute resolution about safety and health where any penalisation issue can be appealed to a Rights Commissioner and the Labour Court;
* significant new penalties for breach of the duties contained in the 2005 Act.

Failure to comply with many of the general duties in the 2005 Act carry the potential of a prison term for the *Chief Executive and senior managers* of up to 6 months on conviction in the District Court, with up to 2 years imprisonment and/or a maximum fine of up to €3 million on conviction on indictment.

In accordance with the legislative requirements identified above, the Board has developed an updated Safety Statement which includes the identification of hazards and the carrying out of a risk assessment for each of the Board’s 37 locations, in accordance with the overall framework set out in the revised Statement. A considerable amount of health and safety training needs have been identified and these are being met under the organisation’s annual learning and development plans.

**Freedom of Information Act 2014** The Freedom of Information Act 2014 governs access to information held by State bodies, including the Board, and re-established three statutory rights:

* A legal right for each person to access information held by a body to which FOI legislation applies
* A legal right for each person to have official information relating to himself/herself amended where it is incomplete, incorrect or misleading
* A legal right to obtain reasons for decisions affecting himself/herself.

The Act asserts the right of members of the public to obtain access to official information held by the Board to the greatest extent possible consistent with the public interest and the right to privacy of individuals.

In accordance with the Act, the Board prepared and published a Publication Scheme on its website in April 2016 which sets out detailed information about the Board and its operations and about the information and records it makes available, both generally and by way of FOI. The Scheme commits the Board to prepare and publish as much information as possible in an open and accessible manner on a routine basis outside of FOI, having regard to the principles of openness, transparency and accountability as set out in Sections 8(5) and 11(3) of the FOI Act. This allows for the publication or giving of records outside of FOI provided that such publication or giving of access is not prohibited by law.

The Board’s publication scheme is in line with the model publication scheme published by the Department of Public Expenditure and Reform which ensures that the Board’s information is presented in a uniform and consistent manner and that as much information as possible is published on a routine basis.

**The Data Protection Acts, 1988-2003**

TheData Protection Act 1988 was enacted in order to deal with the privacy issues arising from the increasing amount of personal information kept on computer about individuals. The Data Protection Act, 1998 regulates the collection, storage and disclosure of personal information or data which is processed by automated means. The Act gives the following rights to every individual, irrespective of nationality or residence:

* to establish the existence of personal data,
* to have access to any such data relating to him/her
* to have inaccurate data rectified.

Under the Data Protection (Amendment) Act, 2003, the privacy rights of individuals were significantly strengthened and, in particular, data protection rights were extended to include manual files. In addition, the explicit consent of an individual is now required before personal data can be accessed. The Legal Aid Board is subject to the provisions of the Data Protection Acts and, as a result, has a responsibility to make sure it is in compliance with the provisions of the legislation.

In accordance with the Data Protection Acts the Board has therefore:

* Registered with the Data Protection Commissioner on an annual basis, and
* Designated a Data Protection Officer to deal with any issues arising under the Acts

**The Official Languages Act, 2003**

The primary objective of the Official Languages Act, 2003 (OLA) is to ensure better availability and a higher standard of public services through Irish. The Act achieves this by placing a statutory obligation on public bodies to make specific provision for a statutory planning framework, known as a ‘scheme’, to be agreed on a three-year renewable basis between the head of the body concerned and the Minister for Arts, Heritage, and the Gaeltacht. Such a scheme was agreed in 2007 and further schemes have been agreed since.

The principal implications for the Legal Aid Board of the legislation are as follows:

* the duty to publish the Legal Aid Board Annual Report and Accounts and certain documents that would be of interest to the public, in Irish and in English simultaneously;
* the requirement to ensure that the Irish language is included on stationery, on signage and on advertisements;
* the duty to reply to correspondence, in writing or by electronic mail, in the language in which that correspondence was written;
* the duty to prepare a scheme detailing the services that it will provide through the mediums of both Irish and English;
* the duty to ensure that an adequate number of staff are competent in the Irish language and that particular Irish language requirements are met regarding the provision of services in Gaeltacht areas.

In accordance with the OLA, the Board:

* publishes its Annual Report and Accounts in Irish and English simultaneously (Section 10 (b));
* replies to correspondence in the language in which it was communicated (Section 9 (2));
* includes Irish on stationery.

**New law and procedures**

When relevant new laws and procedures arise information is provided to Board members and the matter is placed on the agenda of the Board and / or Policy and Reform Committee if appropriate. Information on relevant new laws and procedures can be requested by Board members by raising the matter at a Board meeting or by contacting the Board Secretary in relation to the matter.

# Chapter 3 Conducting Board Business

## 3.1 Introduction

Section 4 of the 1995 Act sets out the detail of the manner of appointment, membership and functions of the Board and is already covered in Section 2.2. This section proposes to cover in more detail the role of the Board, its reserved functions and those it has delegated, the protocol of Board meetings and the role and functioning of committees of the Board.

## Roles and Responsibilities

The role of the Board of any public body is to provide strategic leadership, direction, support and guidance for the body and promote commitment to its core values, policies and objectives. In addition to the special Board responsibilities set out in Appendix 1 of the *Code of Practice* and in the *1995* *Act*, the Board holds specific governance and management responsibilities that are common to all state bodies:

* to act as trustee for, and be the guardian of, the interests of the minister and any other stakeholders;
* to ensure that the body carries out its responsibilities as set out by statute or by ministerial order;
* to provide leadership, vision and direction for the body;
* to ensure good management, to monitor the achievements of management and to ensure that a proper balance is achieved between the respective roles of board and management;
* to set performance targets, including key financial targets and, in particular, to agree and closely monitor the budget;
* to ensure that the body behaves ethically and in a manner that accords with the core values of the body;
* to define and promote the body’s role in the community by developing mechanisms for gathering the views of customers and stakeholders and by keeping people informed in an open, accountable and responsible way;
* to define the mission of the body, decide its strategic goals and develop the policies required to achieve those goals;
* to appoint a chief executive officer and agree with him/her the short and long-term performance objectives.

In accordance with these general principles, the Board of the LAB has identified its role as one of *governing*. The Board provides the framework for decision-making undertaken by staff who are given the responsibility of delivering the Board’s remit.

The Board's role entails:

* developing the Board’s policies;
* giving the organisation strategic direction;
* monitoring the implementation of effective financial procedures;
* ensuring compliance with public procurement procedures;
* monitoring and reporting on performance;
* providing accountability for the Legal Aid Board;
* ensuring a positive, fair, healthy and safe working environment for staff;
* being a source of guidance, insight, wisdom and judgement; and
* managing the governance process.

The Code of Practice provides that the Board should meet at least twice a year without executive Board members or management present to discuss any matters deemed relevant.

**Code Provisions**

The following six core provisions are specified in the Code of Practice:

**1 Leadership:** The Board’s role is to provide leadership and direction for the organisation within a framework of prudent and effective controls which enables risk to be assessed and managed. The Board should agree its strategic aims with the Minister and parent Department, to the extent relevant, and ensure optimal use of resources to meet its objectives.

**2 Ethical Standards:** The Board has a key role in setting the ethical tone of the organisation, not only by its own actions but also in overseeing senior management and staff. High ethical standards are in the long term interests of the body and a key means to make it credible and trustworthy. It is important that the Board sets the correct ‘tone from the top’. The Board should lead by example and ensure that good standards of governance and ethical behaviours permeate all levels of the organisation.

**3 Compliance:** The Board should review the controls and procedures adopted by the organisation to provide itself with reasonable assurance that such controls and procedures are adequate to secure compliance by the Board with its statutory and governance obligations.

**4 Collective Responsibility:** The collective responsibility and authority of the Board should be safeguarded. All Board members should be afforded the opportunity to fully contribute to Board deliberations, and where necessary to provide constructive challenge, while excessive influence on Board decision-making by one or more individual members should be guarded against.

**5. Board Oversight Role:** The management of the State body has a duty to provide the Board with all necessary information to enable the Board perform their duties to a high standard. The Board of the State body should take all necessary steps to make themselves aware of any relevant information and access all information as necessary.

While the Board of a State body may establish an Audit and Risk Committee to assist with its consideration of issues relating to audit, governance and risk management, the Board of the State body maintains responsibility for and makes the final decisions on all of these areas.

**6 Advice to Minister:** The Board should ensure that the Chairperson keeps the relevant Minister advised of matters arising in respect of the State body.

The Code of Practice provides for the following responsibilities of chairpersons and civil servants on the Board.

**Chairpersons Responsibilities:** The Chairperson is responsible for setting the Board’s agenda and ensuring that adequate time is available for discussion of all agenda items, in particular strategic issues. The Chairperson should also promote a culture of openness and debate by facilitating the effective contribution of non-executive directors in particular and ensuring constructive relations between executive and non-executive directors. The Chairperson is responsible for ensuring that the directors receive accurate, timely and clear information. The Chairperson should ensure effective communication with stakeholders.

**Civil Servants:** Civil servants on the Board must report to the relevant Minister where a matter of serious concern arises. A Circular 12/2010: Protocol for Civil Servants nominated to the boards of non – commercial State bodies was issued by the Department of Finance in August 2010.

**The Code of Practice** specifies the following provisions in relation to Board effectiveness:

**Board Appointments:** Board appointments must be made in compliance with the Public Appointments Service process set down in the Guidelines on Appointments to State Boards published by the Department of Public Expenditure and Reform, except where the manner of such appointment is otherwise prescribed in the specific statutory provisions relating to the State body.

**Skills and Knowledge:** Board members should have the appropriate skills and knowledge, updated as required, appropriate to the activities of the State body, to enable them to discharge their respective duties and responsibilities effectively. This should include the identification by the Board of any gaps in competencies and ways these gaps could be addressed through future appointments. Skill gaps present on the Board should be brought to the attention of the relevant Minister by the Chairperson of the Board sufficiently in advance of a time when Board vacancies are due to arise.

**Specific Skills:** In compliance with the Guidelines on Appointments to State Boards, in preparing a specification for a role on a State Board the relevant Minister will consult with the Chairperson of the Board to seek his or her view on the specific skills that are required on the Board.

**Diversity:** Appointments to State Boards should be made against objective criteria with due regard for the benefits of diversity on the Board. The Chairperson of the Board, in assisting the Department in drawing up the specification for the Board appointment should have due regard for the benefits of diversity on the Board including gender. [In this regard, the Civil Legal Aid Act 1995 provides that the membership of the Board should include at least five women and at least five men.]

**Terms of Appointment:** Consistent with best corporate governance practice it is recommended that no member of a State Board should serve more than two full terms of appointment on that Board, or should hold appointments to more than two State Boards, at the same time, unless the specific statutory provisions relating to the particular State body enable such service. In this context, a full term is regarded as five years. It is recommended that the first appointment be for a period of five years, which can be renewed for up to five years, to a maximum of ten years in total. If exceptionally it is decided that a Board member should serve a further additional Board term, this requires Ministerial approval. The Code of Practice provides that the State bodies should vary the length of terms of appointment to ensure that the Board does not have to be replaced en masse and to ensure that the Board has the necessary experience to discharge their responsibilities effectively.

**Performance Review:** Monitoring of effective corporate governance by the Board includes continuous review of the internal structure of the State body to ensure that there are clear lines of accountability for management throughout the organisation. In addition to requiring the monitoring and disclosure of corporate governance practices on a regular basis, the Board should undertake an annual self-assessment evaluation of its own performance and that of its committees. An external evaluation proportionate to the size and requirements of the State body should be carried out at least every 3 years.

**Statement of How the Board Operates:** The annual report should include a statement of how the Board operates, including a high level statement of which types of decisions are to be taken by the Board and which are to be delegated to management.

**Appointment of CEO as Chairperson:** In general, the CEO should not go on to be the Chairperson of the same State body. Any exception to this requires Ministerial approval.

**Frequency of Board Meetings:** The frequency of meetings of the Board and its committees and the attendance of each Board member at Board meetings should be reported in the annual report. The Board should meet at least twice a year without executive Board members or management present to discuss any matters deemed relevant.

## Matters specifically reserved to the Board

The *Code of Practice* requires that the Board should have a formal schedule of matters specifically reserved to it for decision to ensure that the direction and control of the body is firmly in its hands. Those matters so reserved include:

* *Significant acquisition, disposal and retirement of assets*. The Board must approve acquisitions, disposals and retirement of assets with an anticipated value at or above a threshold level of €65,000. The Board is to be notified of any acquisitions/disposals/retirement of assets with a value at or above €10,000.
* No contract valued over €65,000 can be entered into, directly or by way of draw down, without the prior approval of the Board. The Finance Committee is to be notified of the awarding of contracts with a value over €10,000.
* Approval of terms of major contracts.
* Assurances of compliance with statutory and administrative requirements in relation to the approval of the appointment, number, grading, and conditions of all staff, including remuneration and superannuation;Approval of Annual Budget;
* Approval of the Board’s Corporate Plans which are prepared every 3 years;
* Approval of the annual report and financial statements consistent with the Board’s obligations under the 1995 Act. .
* Approval of recommendations to the Minister for the amendment of legislation;
* Approval of Board policy documents which it is proposed to publish or disseminate;
* Responsibility for systems of internal financial and other controls;
* Delegated authority levels and risk management policies;
* Assurances of compliance with statutory and administrative requirements in relation to the approval of the appointment, number, grading, and conditions of all staff, including remuneration and superannuation;
* Appointment, remuneration and assessment of the performance of, and succession planning for, the Chief Executive; and

Significant amendments to the pension benefits of the Chief Executive and staff (which may require Ministerial approval).

## Delegations to the Chief Executive

Under the provisions of Section 10(2) of the Civil Legal Aid Act, 1995, the Board may assign certain functions to the Chief Executive. It has formally assigned responsibility for the day to day management of the provision of a legal aid and advice service to the Chief Executive, subject to the provisions of the Civil Legal Aid Act, 1995 and any Regulations made under the Act.

Specifically, the Board has assigned the following particular functions to the Chief Executive:

* reporting to and advising the Board on the operation of the legal aid and advice service;
* ensuring that the service is administered in the most efficient and cost effective manner;
* decision making in relation to the provision of legal aid and advice in individual cases;
* management of the dissemination, for the benefit of those for whom its services are made available, of information in relation to those services and their availability;
* the nomination of solicitors and barristers for the purpose of providing a person with legal aid and advice or the referral of a person to the solicitors’ panel as appropriate;
* liaison between the Board and relevant interests including its clients and the public generally;
* monitoring and evaluating the performance of the law centres and their staff;
* maintaining a high standard of communication with the Board, law centres and staff;
* subject to any policy directives of the Minister and / or of the Board, policy development and the formulation and implementation of suitable strategies;
* management of the Board’s resources, including physical resources;
* management of human resource matters; and
* financial management, including the keeping of appropriate accounts and records as provided for in Section 20 of the Civil Legal Aid Act, 1995.

In turn, the Chief Executive may, with the consent of the Board, specify any of these functions to be performed by a member of staff. The Board’s resolutions set out the decisions taken by the Board in these matters.

The Chief Executiveis accountable to the Public Accounts Committee (PAC) of the Oireachtas. This is on the basis that the financial statements of the State body are audited by the Comptroller and Auditor General and laid before the Oireachtas in accordance with the State body’s governing legislation.

**The Role of Secretary to the Board**

The Code of Practice provides as follows in relation to the Secretary to the Board:

* The Board has a duty to ensure that the person appointed as Secretary of the Board has the skills necessary to discharge their statutory and legal duties and such other duties as may be delegated by the Board. Both the appointment and removal of the Secretary of the Board should be a matter for the Board as a whole.15
* The role of the Secretary of the Board should be seen as a support to the Board. The scale and scope of the role will depend on the size, nature and responsibilities of the State body.
* The Secretary of the Board may be assigned such functions and duties as may be delegated by the Board. The duties can be classified as follows:

- statutory duties;

- duty of disclosure;

- duty to exercise due care, skill and diligence; and

- administrative duties.

* In relation to governance, the Secretary of the Board should report to the Chairperson on all Board governance matters and should assist the Chairperson in ensuring relevant information is made available to the Board and its committees.
* The Secretary of the Board is responsible for advising the Board through the Chairperson on all governance matters. The Board should have a list of statutory obligations and regulations that are required to be complied with and the execution of which depends on the Secretary of the Board.
* the Board has a duty to ensure that the person appointed as Secretary to the Board has the skills necessary to discharge their statutory and legal duties and such other duties as may be delegated by the Board;
* Both the appointment and removal of the Secretary to the Board should be a matter for the Board as a whole.
* Each year the Board Secretary must request Board members who have any material interest(s) under the ethics legislation to provide to the Secretary a Statement of Interest prior to 31 January of the following year, and the Board Secretary must then submit a copy of those returns to the Standards in Public Offices Commission by the 31 January. Statements of Interest that are provided to the Board Secretary must be retained for a period of fifteen years.

## Board Remuneration

The fees for the Chairperson and Board members are as follows:

Chairperson: €11,970 p.a.

Board Members: €7,695 p.a.

These fees are paid quarterly and deductions are made at source.

Fees are not now payable to serving civil and public servants having regard to the One Person One Salary (OPOS) policy.

Board members who are paid fees by the Board have the option of waiving those fees by writing a letter to the Board Secretary instructing accordingly.

Board members’ salary details, including payslips, P60s, etc, are available on-line through the CorePortal system that is also used by staff using the following link:

<https://pay.pssc.gov.ie/pls/civilb_live/>

The system is administered by the Payroll Shared Services Centre in Killarney and can be contacted at **Email:** [helpdesk@pssc.gov.ie](mailto:helpdesk@pssc.gov.ie) **or by telephone at** 0761 002 702 (between 9am to 5pm, Monday to Friday).

## Travel and Subsistence

Board members apply for Travel and Subsistence by entering their Travel and Subsistence Claim details on-line through the CorePortal system in the same way that staff apply using the following link:

<https://pay.pssc.gov.ie/pls/civilb_live/>

The system is administered by the Payroll Shared Services Centre in Killarney and can be contacted at **Email:** [helpdesk@pssc.gov.ie](mailto:helpdesk@pssc.gov.ie) **or by telephone at** 0761 002 702 (between 9am to 5pm, Monday to Friday). Receipts are uploaded with a claim, where appropriate. Board members’ claims are submitted electronically to the Board Secretary who approves the claim following which payment is made to the Board member’s bank account.

The Board’s travel and subsistence policy as well as the current travel and subsistence rates are included at **Attachment** **1** to this *Manual*.

## Protocol of Board Meetings

The Board is empowered to fix the date and time of its meetings. Currently 11 Board meetings are held each year. Meetings in Dublin usually take place on Thursdays and those in Cahirciveen on Fridays.

Special meetings may be convened by the Chairperson or, in the absence of the Chairperson, the Chief Executive, subject to the prior agreement of two Board members, for the conduct of urgent or special business. In the absence of the Chairperson, a special meeting for the conduct of urgent or special business may also be called by at least three Board members who will direct their request to the Chief Executive or Secretary to the Board.

The Code of Practice states that the Board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties. In the case of the Legal Aid Board, an agenda for each meeting is prepared and circulated to members. The agenda, minutes of the previous meeting, Chief Executive’s Report and other Board papers are usually circulated a week in advance of all Board meetings except in the case of the December meeting which generally takes place in the first week of the month and therefore papers are provided prior to the meeting.

Minutes of meetings are prepared by the Secretary to the Board. They are approved at Board meetings and are signed by the Chairperson (or acting Chairperson) and operate as the formal record of the business of the meeting to which they relate.

The quorum for Board meetings is five. The Chairperson and each ordinary member of the Board present at a meeting have a vote and every question at a Board meeting may be determined by a majority of the members present voting on the question. In the case of an equal division of the votes, the Chairperson (or acting Chairperson) has a second or casting vote. Where a Board decision on a proposal is required in advance of a Board meeting then the Board Secretary, at the request of the Chairperson, will send the necessary information in relation to the particular proposal to the Board members and request that each Board member reply stating whether or not they agree with the proposal. The Board decision will then be communicated to the Board Secretary by the Chairperson and will be minuted at the following Board meeting.

## Committees

The Board may under Section 4 of the 1995 Act appoint committees. Current committees include a Finance Committee, an Audit and Risk Management Committee, an Appeal Committee a Family Mediation Committee, a, Human Resources Committee and a Policy and Reform Committee. There is also a Performance Committee which is a sub-committee of the HR Committee. The Board has a Lawyers Committee, however at its December 2014 meeting the Board agreed that this Committee would not meet unless otherwise determined. The Policy and Reform Committee was effectively established in its stead. Details of each Committee, including its terms of reference, composition and membership, the manner in which its business is conducted and its procedures have been agreed by the Board and are set out in a booklet entitled “Terms of Reference of Board Committees” which is circulated to each Board member.

***Appeal Committee***

The appeal committee is a statutory committee of the Board. This committee considers requests by legal aid applicants for decisions made by the executive in a particular case to be reversed. The committee is provided for under Regulation 12(3) of the Civil Legal Aid Regulations 1996 which states that:

“*If, following a decision or a review of any decision under the provisions of paragraph (1) other than a decision of the Board, the applicant continues to be aggrieved, he or she may appeal to a committee of Board members which shall be known as the appeal committee.”*

Furthermore, regulation 12(5) states that:

“*The appeal committee may affirm, reverse or otherwise alter any decision which is the subject of an appeal and, if the appeal committee considers it desirable to review not only the particular decision which is the subject of the appeal but the application generally, it may do so and may, following that review, make a decision either affirming, reversing or otherwise altering any decision made in connection with the application.”*

***Certifying Committee***

The 1995 Act enables the establishment of a certifying committee, which is a statutory committee of the Board, to make decisions on applications for legal aid.

Regulation 6 of the Civil Legal Aid Regulations 1996 states that:

“*For the purpose of the exercise of functions referred to in paragraph (8)(a) of Regulation 5 the Board may appoint committees of its members, to be known as certifying committees, each consisting of three members of whom at least one will be a member who had, prior to his or her appointment as a member of the Board, been a practising barrister or solicitor. A majority decision by a certifying committee will be deemed to be the decision of that committee. Certifying committees shall keep such records of their meetings and such other records as the Board may deem necessary*.”

Regulation 5(8)(a) states that :

“*Where the Board so decides and the proceedings the subject of the application for legal aid arise out of or are connected with proceedings in the District Court (as may be specified by the Board under paragraph (7)), the Circuit Court, the High Court or the Supreme Court, the decision on the application may be made by a certifying committee established under Regulation 6 and in accordance with procedures in this Part of these Regulations*.*”*

Responsibility for decisions at first instance has been delegated to staff of the Board. Cases may still be referred to a certifying committee where novel issues arise or where cases might have significant implications for the Board in terms of cost or precedent. It has not been convened for some years.

***Audit and Risk Management Committee***

The role of this committee is, as part of the ongoing systematic review of the business control and corporate governance procedures within the Board, to oversee and advise on matters relating to (a) the business control and risk management environment to give an independent view in relation to risks; (b) the operations and development of the internal audit function; and (c) effective engagement with the external audit process.

The duties of the committee include, inter alia, considering organisational and other risks identified in the risk assessment reports or otherwise and to report to the Board on the extent to which such risks are managed or mitigated in a structured and on an ongoing basis. In addition, the committee communicates with the Board, the Chief Executive and senior management, as appropriate, in relation to any significant shortfalls in the business control and/or risk management environments that come to the attention of and are of concern to the audit committee. It also has the responsibility of reviewing the annual internal audit plan and monitoring implementation of the plan throughout the year. The committee reviews the significant findings and recommendations of the internal audit function and monitors the action taken by management to resolve any issues that have been identified. The committee also advises and makes recommendations to the Board, the Chief Executive and senior management, as appropriate, on any matters pertaining to the internal audit function within the Board that the committee considers necessary or appropriate including its organisation, resources, training, use of technology, effectiveness and its standing within the Board.

The committee also reviews all significant reports received by the Board from the external auditors (including in particular those contained in the C&AG’s Annual Report) and management’s responses thereto and to consider the implications of the issues raised, and ensures that there is as much co-operation and co-ordination as possible between internal audit and external audit.

The *Code* *of Practice* makes provision for specific matters in relation to audit committees and these are listed below at section 5.2:

***Finance Committee***

The role of the finance committee of the Board is to consider the Board’s finances in detail and to report to the Board on the financial affairs and policies of the Board. This includes the review of budgets and financial reports, the approval of the Board’s annual accounts and detailed consideration of financial matters in order to make appropriate recommendations to the Board and to advise management. Decisions are taken either by the Board or by management, as appropriate, having regard to the recommendations and advice of the committee.

***Policy and Reform Committee***

The role of the Policy and Reform Committee is to consider matters relating to new areas of work of the Board and any relevant areas of reform in relation to the approaches adopted by the Board. The Committee considers Board policy and interpretation of legislation and reports and makes recommendations to the Board as deemed appropriate. The Committee has a wide strategic focus. It may consider areas such as international experience in relation to legal aid, mediation and administration and examine the possible approaches that might be adopted by the Board. It may also consider matters such as co-operation with other bodies, co-ordination of certain initiatives, information and education on legal matters, potential for technical innovation and the Board’s website.

***Lawyers’ Committee***

The Board has a Lawyers’ Committee. However at its December 2014 meeting the Board agreed that this Committee would not meet unless otherwise determined.

***Human Resources Committee***

The role of the human resources committee is to consider issues which impact on human resources within the Board.

The committee reviews policy documents such as the Human Resources Strategy, the Learning and Development Strategy and other papers on HR matters being considered in the LAB, in order to make appropriate recommendations to the Board and to advise management. Decisions are taken either by the Board or by management, as appropriate, having regard to the recommendations and advice of the committee.

The Committee is also updated generally on progress with the implementation of relevant policies and strategies and on ongoing HR issues.

***Performance Committee***

The Performance Committee is a sub-committee of the HR committee set up to consider the objectives of the Chief Executive and the extent to which those objectives have been achieved..

***Family Mediation Committee***

The role of the family mediation committee is to consider and make recommendations to the Board on matters relating to the provision of family mediation services by the Board and family mediation matters generally.

The Committee reviews and considers reports from the Working Groups set up to examine various aspects of the mediation service being provided and makes recommendations to the Board on future processes and practices. It also considers the future focus of the service in the light of the resources available, anticipated demand and legislative and other changes as well as existing and proposed synergies between law centres and family mediation offices.

Chapter 4 Organisational Strategy in the Legal Aid Board

## 4.1 Corporate Plan 2015 - 2017

As is required by the *Code of Practice* the Board, as with other Government Departments and Bodies, adopts a statement of strategy (the Board’s Corporate Plan) for a period of 3-5 years ahead and the statement is aligned to specific objectives in the parent Department’s Strategy Statement and also reflects any Government policies for the reform and modernisation of the Public Service. It contains a mission statement, high level objectives and target outputs and outcomes.

The Board’s current Corporate Plan is the seventh produced by the LAB and was drawn up following a consultation process with staff of the Board and external groups and individuals who have a particular interest in the services provided by the Board. In tandem with the consultation process, a review of the organisation’s operating environment and internal operating policies and procedures was undertaken along with research into the models for service delivery in comparable organisations in other jurisdictions. This Plan covers the period to the end of 2017.

The 2015-2017 Plan outlines high level goals and a series of actions to be undertaken during the lifetime of the Plan. The Plan covers the following main areas:.

1. Measures to ensure the efficient and effective delivery of legal aid and mediation services;
2. A focus on integrating family mediation and civil legal aid services to the greatest extent possible;
3. Working with the Department of Justice and Equality to finalise the transfer of responsibility for all elements of legal aid to the Board;
4. Working on a supporting culture to ensure the effective implementation of the initiatives in this Plan.

**Ministerial Views:** A copy of the draft Corporate Plan is sent to the Minister for Justice and Equality before the plan is finalised and adopted by the Board. Views which the Minister/Department wish to have reflected in the final plan are made known to the Board within a maximum period of 12 weeks of submission. While final responsibility for the content of the Corporate Plan rests with the Board, the views of the Minister and consideration of the public interest is carefully weighed by the Board.

## 4.2 Implementation of the Plan

The various commitments and proposed actions in the Corporate Plan are reflected in the annual Business Plans produced by each Directorate and Section of the Board. These plans are monitored and reported on to senior management twice yearly. Proposed progress on the corporate objectives contained in the Corporate Plan are included in a table of organisational priorities which is presented to the Board at the January Board meeting each year and reports on progress achieved are brought to the Board twice yearly.

# Chapter 5 Risk Management, Audit and Reporting

## Risk Management

**Introduction**

The effective management of organisational risk requires robust control processes to support management in achieving the body’s objectives and in ensuring the efficiency and effectiveness of operations. Reliable procedures for internal and external control are an essential element of the risk management process. A number of areas come under the heading of control: risk management, internal audit, audit committees, internal controls and budgeting and financial management.

In carrying out its risk management responsibilities, the Board adheres to three main principles of governance: openness, integrity and accountability.

1. **Openness.** This is required to ensure that stakeholders can have confidence in the decision-making processes and actions of public sector bodies, in the management of their activities and in the individuals within them. Being open through meaningful consultation with stakeholders and communication of full, accurate and clear information leads to effective and timely action and stands up to necessary scrutiny.
2. **Integrity.** This comprises both straightforward dealing and completeness. It is based on honesty and objectivity, and high standards of propriety and probity in the stewardship of public funds and resources and management of a body’s affairs. It is dependent on the effectiveness of the control framework and on the personal standards and professionalism of the individuals within the body. It is reflected both within the decision making procedures and in the quality of the financial and performance reporting.
3. **Accountability.** This is the process whereby public sector bodies and the individuals within them are responsible for their decisions and actions, including their stewardship of public funds and all aspects of performance, and submit themselves to appropriate external scrutiny. It is achieved through all parties having a clear understanding of those responsibilities and having clearly defined roles within a robust structure.

These fundamental principles are reflected in each of the dimensions of the governance of public sector bodies: standards of behaviour, organisational structures and processes, control, and external reporting.

The Board is specifically required by its founding legislation to act in accordance with policies stipulated by the Government. It is also required to act in accordance with a range of legislative and other requirements which apply to it in the context of its various roles, including those of employer, statutory authority and provider of services.

The *Code of Practice* covers a wide variety of issues including the provision of assurance statements in the annual report. Section 7.3 requires the Chairperson to include a statement regarding the system of internal financial control, which should be reviewed by the external auditors to confirm that it reflects the body’s compliance with various reporting requirements contained in Section 7 of the Code of Practice. Sound control processes support management in achieving the body’s objectives, in ensuring the efficiency and effectiveness of operations, the reliability of internal and external reporting, and compliance with applicable laws and regulations and internal policies.

Risk Management in the Board provides a framework to identify, assess and manage potential risks and opportunities, decide on appropriate responses and then provide assurance that the chosen responses are effective. As a management process, risk management must be embedded in the culture and ethos of the organisation so that at all levels there is compliance with current best practice management arrangements. This implies that appropriate controls are always in place. Controls can include any action taken by management, the Board or other parties to enhance risk management and increase the likelihood that established strategies will be implemented.

**What is Risk?**

“Risk can be thought of as a possible loss or other adverse consequence that has the potential to interfere with a Department’s ability to achieve its objectives and fulfil its mission” (Department of Finance, 2004). Risks to the achievement of objectives can be due to both internal and external events. Effective risk management offers organisations a means of improving their strategic, operational and financial management. It can also help to minimise financial losses, service disruption, adverse publicity, and threats to public health or compensation claims.

**What is Risk Management?**

The *Code of Practice* states that risk management and internal control are important and integral parts of a performance management system and crucial to the achievement of outcomes. They consist of an ongoing process designed to identify and address significant risks involved in achieving an entity’s outcomes.

Risk Management is a process of clearly defined steps which support better decision-making by contributing a greater insight into risks and their impacts. Risk management is not seen as a stand-alone activity requiring special skills and resources. The emphasis is on successfully managing risks rather than on the system for managing. This means that bodies should integrate risk management practices into existing organisational or corporate frameworks rather than progressing risk management as an isolated operation. The aim needs to be to create a risk management culture.

The Department of Finance Guidance document suggests that there should be three key messages relating to risk management:

* Risk management is the concern of everyone in the organisation.
* Risk management is part of normal day-to-day business.
* The process of managing risk is logical and systematic and, ideally, should become second nature.

A number of guidelines have been developed for public service organisations in terms of risk management.

They include:

1. Each Department/Office is to initiate risk management as an integral and ongoing part of its management process and it is the Management Advisory Team that should put in place effective mechanisms to carry out risk management accordingly.
2. The risk management process should be kept as simple and straightforward as possible and existing structures should be used as far as possible.
3. Each Department/Office should have clearly defined risk management structures and responsibilities.
4. Departments/Offices should repeat the process of risk identification at least once a year.
5. Departments/Offices should assess identified risks at least once a year.
6. When risks have been identified and assessed, Departments/Offices should determine an appropriate method for addressing them.
7. Risk management systems should provide for monitoring and reporting at various levels of management.

**Board’s Risk Management Policy**

In 2005, the Board established a Risk Management Committee (headed at Director level), assisted by a Risk Management Working Group, with terms of reference to devise and implement a Risk Management Strategy and oversee a risk assessment exercise. The Board conducted a formal Risk Analysis process in accordance with best practice and the requirements of the Department of Finance *Risk Management Guidance for Government Departments and Offices* to identify, quantify, classify and prioritise all risks facing the organisation. A Risk Management Policy was produced to formalise and embed a risk management system into the organisation. In 2005, the Board approved this Policy, which includes the preparation and review of risk registers and reporting on risk management actions. Risk analysis principles have been systematically applied to the objectives of all Business Plans for the Board and risk management forms an integral part of the Business Planning Process.

The Risk Management Policy addresses the necessary elements of a risk management system.

**Board Risk Register**

The 2005 Risk Analysis process resulted in the preparation of a Corporate Risk Register. The composite Risk Register records details of the various key risks identified across the organisation, their grading in terms of likelihood of occurring and seriousness of impact on the objectives at a corporate and directorate and business unit level. This register is maintained and refreshed as it will change regularly as existing risks are re-graded in the light of the effectiveness of the mitigation strategy, and new risks are identified The register indicates ownership/responsibility and includes an appropriate action plan to address the identified risks.

The Corporate Risk Register as revised in April 2016 is included at **Attachment 3** to this *Manual*. The register is currently in the process of being revised and the revised register will be inserted into this manual as soon as it becomes available.

**Risk Monitoring & Reporting**

The registers and associated action plans are reviewed as required and at a minimum are updated on a six monthly basis, consistent with the review of business plans within the Board. It is the responsibility of Directors to review progress regularly on the achievement of the risk action plan. The Directors ensure that all Board staff and other relevant stakeholders are made aware of relevant risk issues and any actions that are necessary to address these risks.

The Audit and Risk Management Committee of the Board has responsibility for Risk Management and has put a mechanism in place for monitoring, reviewing and reporting to the Board on this function.

**Roles & Responsibilities**  
All staff in the Board have a part to play in managing risk by:

* being aware of the nature of risks in their day-to-day work;
* monitoring the effectiveness of management procedures created to mitigate those risks identified; and
* being responsive to the changing nature of the risks faced by the organisation.

Specific responsibilities for policy and processes are as follows:

* The Board and Chief Executive are responsible for establishing and maintaining a sound system of internal control that supports the achievement of policies, aims and objectives. The system of internal control is designed to respond to and manage the whole range of risks that the Board faces. The system of internal control is based on an ongoing process designed to identify the principal risks, to evaluate the nature and extent of those risks, and to manage them effectively.
* The role of the Audit and Risk Management Committee in relation to risk is to consider organisational and other risks identified in the risk assessment report or otherwise and to report to the Board on the extent to which such risks are managed or mitigated in a structured and on an ongoing basis. The Committee will also communicate with the Board, Chief Executive and senior management, as appropriate, in relation to any significant shortfalls in the business control and/or risk management environments that come to its attention or are of concern to the members.
* The Chief Executive and the Directors are collectively responsible for the management of risk within the organisation including:
* Identifying key strategic risks and key issues within each Directorate and business area;
* Ensuring procedures for managing risk are fully understood and implemented by all staff as part of business planning processes;
* Ensuring that the benefits of effectively managing risk are clearly communicated to all staff;
* Ensuring that appropriate staff receive training as and when needed;
* Ensuring that key strategic risks and key issues are regularly reviewed and updated; and
* The implementation of the Risk Management policy.

A Chief Risk Officer or suitable management alternative should be empowered, and have a direct reporting line to the Board to identify, measure and manage risk and promote a risk management culture in the organisation.

Assistant Directors, managers and staff are responsible for identifying and managing risks relevant to the achievement of organisational objectives in line with the policy and processes developed by Board.

Internal Audit is responsible for providing an independent assurance opinion to the Board and managers on the appropriateness and effectiveness of the risk management policy and processes.

**Assurance Statements**

Section 7.3 of the *Code of Practice* requires the Chairperson in the annual report to include a statement regarding the system of internal financial control which should be reviewed by the external auditors to confirm that it reflects the body’s compliance with various reporting requirements contained in Section 7.

The statement of compliance in the financial statements necessitates that an effective system of internal control is maintained and operated for the organisation.

The risk management policy and the control systems operated in the Board facilitate the provision of assurance statements in relation to compliance with best practice governance obligations.

Each Director provides assurance statements twice yearly acknowledging responsibility for the ongoing update, monitoring and review of the risk register in their directorate and for ensuring the implementation of the Risk Management Policy.

The Audit and Risk Management Committee of the Board has responsibility for monitoring and review of the Risk Management system.

For the corporate risks identified, the Board evaluates the effectiveness of the existing controls and risk management responses. The Internal Audit assurance includes an assessment of the reliability and effectiveness of the organisation’s overall Risk Management arrangements.

## 5.2 Internal Controls

**Internal Audit Function**

Internal audit is an essential component of the management control system. It has been defined by the Auditing Practices Board (and quoted in the Mullarkey Report) as “an independent internal appraisal function, established by the management of an organisation for the review of the internal control system as a service to the organisation. It objectively examines, evaluates and reports on the adequacy of internal controls as a contribution to the proper, economic, effective and efficient use of resources”.

Best practice requires that the internal auditors should have sufficient expertise as well as authority to allow them free and unrestricted access to such assets, records and personnel as are necessary for the proper fulfilment of their responsibilities and to report where they feel it is necessary.

The *Code of Practice* states that each State body should have a properly constituted internal audit function or engage appropriate external expertise. It also states that the Board of any body with more than 20 employees should establish an Audit Committee composed of at least three independent non Executive Directors. The *Code of Practice* notes that the internal audit function should follow certain principles:

* The function should have a formal charter, which has been approved by the Board.
* It should have a clear, formally documented reporting structure.
* It should be properly resourced and with the necessary skills.
* It should liaise frequently with the external auditors.
* It should ensure that value-for-money auditing receives adequate attention.
* It should review compliance with procurement and disposal procedures.
* The function should report to the Board Audit Committee

**Charter for Internal Audit**

Appendix III in the *Code of Practice* sets out the matters that should be included in a charter for the internal audit function. There should be:

* a Board policy statement which would state the Board’s policy to support and develop the internal audit function;
* a mission statement for the function;
* terms of reference;
* scope and authority as provided by the Board to act on its behalf in carrying out internal audit and that no operational area or level would be precluded from internal audit review; and
* independence, role and responsibilities.

The Board has established an Internal Audit function in compliance with the *Code of Practice* and has approved a document entitled “Internal Audit Function”, which outlines the purposes, authority and responsibilities of the Internal Audit function. The document also establishes the independence of the Internal Auditors in exercising their role and sets out the reporting relationship between the Internal Auditors and The Audit and Risk Management Committee.

At the request of the Audit and Risk Management Committee the Internal Audit of Law Centres has been expanded to include examination of the following areas:

* Verification of financial assessments
* Applications not pursued
* Anti money laundering legislation
* Letter of engagement
* Prioritisations
* Risk register
* Verification that first consultation information has been entered onto EOS
* File reviews by managing solicitors
* Clean desk policy
* Legal aid certificates and
* PP legal aid certificates.

**Audit and Risk Management Committee**

The *Code* *of Practice states that t*he Board should have formal and transparent arrangements for governance, risk management and internal control and for maintaining an appropriate relationship with the State body’s auditors. Risk management and internal control are important and integral parts of a performance management system and crucial to the achievement of outcomes. They consist of an ongoing process designed to identify and address significant risks involved in achieving an entity’s outcomes. Advising on key risk is a matter for the Board. The Audit and Risk Committee should support the Board in this role.

The *Code* *of Practice* establishes the requirements of audit committees for State bodies. The Board’s audit committee should:

* monitor and review the effectiveness of the internal audit activities;
* have explicit authority to investigate any matters within its terms of reference, the resources which it needs to do so and full access to information; and

support the Board by reviewing the completeness of assurances to satisfy their needs and assessing the reliability and integrity of those assurances.The *Code* *of Practice* also makes provision for following matters in relation to audit committees:

* Terms of Reference to include membership, reporting requirements, timing, conduct and frequency of meetings and information requirements;
* Members to have relevant skills and experience;
* Formal Assessment Criteria for the appointment of the chair and other members and the skills required and understanding of the organisation to be acquired;
* Standard letter of appointment for each new committee member;
* Duration of appointment to be clearly set out at the time of appointment and, rotation to be balanced with the requirement to have members with the necessary skills and experience;
* Training and Development to include a formal induction process;
* Register of conflict of interests of audit committee members,
* Non-executive Directors only to be included in the membership and committee to be chaired by a director other than the Chairperson; Frequency of Meetings at least four times a year and outsiders with relevant experience to be invited to attend meetings if necessary;
* Authority to Investigate any matters within its terms of reference; the resources, including outside professional advice and full access to information;
* Attendance at meetings routinely by the CEO, finance director, head of internal audit, external auditor and executive members as required;
* Effective communication with the Board, the head of internal audit, the external auditor and other stakeholders;
* Annual Report of the committee to present its opinion on the comprehensiveness, reliability and integrity of assurances and as to whether they are sufficient to support board decisions, accountability and management of risk as well as the committee ‘s view of its own effectiveness with advice on how it can be strengthened and developed;
* Responsibilities of the Audit Committee Chair;
* Appraisal of performance to be given to the Audit Committee chair;
* Audit Committee Secretariat to commission papers, support the Chair in preparing reports, circulate documents, keep and circulate minutes of meetings, document actions, keep the committee abreast of development in the body, maintain record of members’ appointments and termination/renewal dates and ensure that appropriate appointment procedures are initiated when necessary;

The Board’s Audit Committee was reconstituted in 2008 as the Audit and Risk Management Committee. It currently comprises five non-executive Board members, one of whom is Chairperson of the Committee, and one external member.

**Internal Audit Plan**

Each year, the Audit and Risk Management Committee approves an annual *Internal Audit Plan* for the organisation. This Audit Plan encompasses key systems in the organisation to be audited. The Plan is structured to ensure that as far as practicable, the Board’s main activities are reviewed at least once every three years, with reviews of each law centre also being carried out over this time-scale or more frequently.

The audit plan is implemented by the Internal Auditors. The Internal Audit Reports are considered by the Committee, which can make recommendations to the Board, Chief Executive and senior management, as appropriate.

The Internal Audit Plan is updated on an annual basis. The Committee also now has extensive responsibilities in relation to risk management and reviews the Board’s Risk Register and meets with senior management in relation to the risks associated with each Directorate.

## External Controls

**The External Auditor**

Section 20 of the *Civil Legal Aid Act,* *1995*, as well as section 12.2 of the *Code of Practice*, requires that the Chairperson’s statement be reviewed by the external auditors and their findings reported.

The external audit of public service agencies and non-commercial state bodies in Ireland is carried out by the Comptroller and Auditor General of Ireland (C&AG). The C&AG can engage a private sector auditor to carry out the Audit on his behalf. Irrespective of the audit service used, the principles and processes and the audit approach is consistent with the professional guidance issued to auditors.

The role of the C&AG is to:

* audit the financial statements of all government departments and other public bodies and report the results of the examinations to Dáil Éireann; examine for efficiency and effectiveness in the use of financial and other resources by those public bodies which are audited.

The C&AG provides an important link in the chain of accountability for public funds. He gives an independent assurance to Dáil Éireann (and ultimately the taxpayer) that all money allocated by the Dáil has been properly spent. The Dáil Committee on Public Accounts (PAC) periodically considers the reports of the C&AG.

Through these reports the C&AG provides Dáil Éireann with independent information, advice and assurance on:

* proper accounting for public money, assets and liabilities by bodies which he audits (financial audit);
* efficiency and effectiveness of the use of public money and other resources (value for money audit).

**Financial Audit**

The Financial Audit is focused on ensuring that the annual financial statements give a true and fair view and properly present the body’s transactions, assets and liabilities and have been prepared in accordance with relevant accounting principles. The audit indicates that the transactions of the body are in accordance with proper authorisation and that funds have been applied for the purposes intended.

The financial audits of public bodies also identify, assess and examine risks to ethical practice and financial control, highlighting significant weaknesses and, where necessary, reporting on them.

On completion of the audit, the auditors write formally to the organisation drawing attention to areas of weakness in systems and controls. Any such matter raised and management responses are considered by the Board. In addition, Government departments and non-commercial state bodies can be subject to Value for Money (VFM) audits by the C&AG.

Audit reports are the subject of an intensive consultation process in order to obtain the agreement of the state body to the content of the report. They are then laid before Dáil Éireann.

Once a report has been published, the PAC may invite the accounting officer concerned to answer any criticisms made by the C&AG.

**Board Responsibilities in External Audit**

The Board’s responsibilities in relation to external auditing are significant. They include:

* analysing the report of the external auditor and taking the actions necessary to correct any problems;
* authorising the submission of accounts for audit to the C&AG;
* analysing the recommendations of the C&AG in their audit management letter following the publication of the external audit;
* ensuring that all remedial actions recommended by the C&AG are implemented.

## Annual Report & Accounts

The Annual Report and Accounts are the primary means by which the Board reports on its activities to the Minister, the sponsor Department, the Dáil and the public.

Preparation of an annual report is a mandatory requirement of the Board under section 9 of the Civil Legal Aid Act, 1995. The Act requires that the Board make a report to the Minister of its activities during the previous year, not later than the 30th September in each year.

The *Code of Practice* also requires the Chairperson to furnish to the relevant Minister, with the annual report and accounts of the body, a comprehensive report:

* outlining all commercially significant developments affecting the body in the preceding year;
* affirming that all appropriate procedures for financial reporting, internal audit, travel, procurement and asset disposal are being carried out;
* including a statement on the system of internal financial control in the required format;
* affirming that Codes of Business Conduct for Board members and staff have been put in place and adhered to;
* affirming that Government policy on the pay of Chief Executives and all employees is being complied with;
* affirming that Government guidelines on the payment of Board members’ fees are being complied with;
* explaining failure to comply with any of the above;
* outlining significant post balance sheet events;
* confirming that the appropriate requirements of the Public Spending Code are being complied with;
* confirming that the Public Spending Code (which has replaced the Guidelines for the Appraisal and Management of Capital Expenditure Proposals in the Public Sector) are being complied with;
* certifying that Government travel policy requirements are being complied with in all respects;
* providing details of legal disputes involving other State Bodies; and
* confirming that the *Code of Practice* has been adopted and that it is being complied with in the governance practices and procedures.

*The Code of Practice* also requires the Chief Executive to confirm in the annual report that the organisation is adhering to the relevant aspects of the Public Spending Code.

The Annual Report includes the Annual Financial Statements (Accounts), external auditor’s certificate, statement of accounting policies and other disclosure obligations. Further details on the financial statements are set out in section 6.

# Chapter 6 Financial Management and Control

## 6.1 Legislative Framework and Government Policy

A range of Government policies, legislation and regulations impose significant requirements on the Board regarding effective financial management and control systems, robust accounting systems for public funds, financial information and reporting systems to facilitate the management of the Board and public accountability obligations including external audit. This chapter explains the main obligations relating to financial transactions.

**Financial Management Framework**

The *Public Financial Procedures, 2008*, define the principles of Government accounting, as derived from the Constitution. The guide outlines essential features of financial management for Government bodies. It also explains the appropriate application of accounting principles to the day-to-day operations of Government bodies.

## 6.2 Board Funding

As a public body, the Board has a duty to deploy its resources to ensure economy, efficiency and effectiveness, thereby maximising the value for money achieved by the organisation.

While the Board and the Management Advisory Team have specific functions relating to finance within the organisation, the designated Accounting Officer for the finances of the Board is the Secretary General of the Department of Justice and Equality. Each Accounting Officer is personally responsible for the safeguarding of public funds and property under his or her control, for the regularity and propriety of all the transactions in each Appropriation Account bearing his or her signature and also for the efficiency and economy of administration. Board funding comes from a limited number of sources:

* **Exchequer Funding** – Through the Department of Justice and Equality (Grant):
* **Costs Recovered** – The Board may recover the costs of providing legal services from:

(a) the other party to a dispute, either as a result of a court order or as part of an agreement to settle a dispute; or

(b) from the legally aided person, out of moneys/property received by the person as a result of the provision of legal services.

* **Contributions** - payable by persons who have been granted legal aid and advice by the Board

## 6.3 Board Budgeting and Budgetary Control

The budgets for the Board are prepared in accordance with the Board’s Corporate Plan and Business Plans. Budgets are used to plan, authorise, monitor and control the way the funding of the Board is determined, allocated and spent. The arrangements for budgetary control include the provision of relevant and timely financial information to assess progress on activities within the work programme and business plan and will facilitate the taking of corrective action, where appropriate, if there are budgetary variances occurring in either income or expenditure.

The Board has a comprehensive budgeting system that

* includes approval by the Board of annual budgets and monitoring of monthly financial reports;
* tracks expenditure against agreed profiles on all areas of expenditure with variance reports, where appropriate.

Corrective action is taken, where necessary. The Finance Committee of the Board reviews detailed analysis reports for each area of expenditure.

In addition, all sections are provided with reports on a monthly basis which show both the expenditure incurred and profiled by them against their annual and monthly budgets.

## 6.4 Board Financial Reporting

Section 20 of the 1995 Act requires the Board to keep, in such form as may be approved by the Minister for Justice and Equality, with the consent of the Minister for Public Expenditure and Reform, all proper and usual accounts of any moneys received or expended by it. In preparing these financial statements, the Board is required to:

* Select suitable accounting policies and then apply them consistently;
* Make judgments and estimates that are reasonable and prudent;
* Prepare financial statements on the going concern basis unless it is inappropriate; and
* State whether applicable accounting standards have been followed, subject to any material departures disclosed and explained in the financial statements.

The Board is responsible for keeping proper books of account which disclose with reasonable accuracy at any time the financial position of the Fund and which enable it to ensure that the financial statements comply with Section 20. The Board is also responsible for safeguarding the assets of the Fund and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

The financial statements of the Board are prepared in accordance with generally accepted accounting practice as reflected in professional financial reporting standards and relevant legislation or regulations.

Key elements of the financial statements (defined in formal accounting and auditing terms) include:

* **Assets** – resources controlled by the organisation as a result of past events and from which future economic benefits are expected to flow to the organisation.
* **Liabilities** – present obligations arising from past events, the settlement of which is expected to result in an outflow from the organisation of resources embodying economic benefits.
* **Income** - increases in economic benefits during the accounting period in the form of inflows or enhancements of assets or decreases of liabilities.
* **Expenses** – decreases in economic benefits during the accounting period in the form of outflows or depletions of assets or incurrence of liabilities.

The Financial Controller has the primary responsibility for the preparation and presentation of the financial statements. The statutory Board is required to approve the statements and acknowledge their responsibility for the accounting policies, the control environment and compliance issues generally. The Annual Accounts form part of the Annual Report which is presented to the Minister for Justice and Equality not later than 30th September each year and a copy of which is laid before each House of the Oireachtas.

The Annual Accounts are audited by the Comptroller and Auditor General, who reports the audit results to the Dáil Public Accounts Committee. Public bodies are invited to appear before the PAC on a periodic basis, to report on how they managed the resources at their disposal, and on any other matters of interest to the Committee.

Under Section 77 of the Civil Law (Miscellaneous Provisions) Act 2008 the Chief Executive, as the accountable officer, is required, whenever required to do so by the Public Accounts Committee, to give evidence on the regularity and propriety of financial transactions, the economy and efficiency of the Board in the use of its resources, the systems, procedures and practices employed by the Board for the purpose of evaluating the effectiveness of its operations, and related matters.

The following specific items are to be included in the Annual Report:

* A statement of how the Board operates, including a high level statement of which types of decisions are to be taken by the Board and which are to be delegated to management - there should be a clear division of responsibilities at the head of the company between the running of the Board and the executive responsibility for the running of the company’s business; no one individual should have sole powers of decision;
* The names of the Chairperson, the Chief Executive and members of the Board committees;
* The number of meetings of the Board and its committees and individual attendance by directors; and
* confirmation that the organisation is adhering to the relevant aspects of the Public Spending Code.

**Key Management Compensation**: State Bodies should also publish in their annual report and accounts aggregate details of the compensation of their key management level (i.e. those employees with authority and responsibility for planning, directing and controlling the activities of the State Body), broken down by the following categories:

(a) Salaries and short term employee benefits;

(b) Post-employment benefits;

(c) Termination benefits;

**Pay Costs:** In addition to disclosing the aggregate pay bill and total number of employees, State Bodies should publish details of the number of employees whose total employee benefits (excluding employer pension costs) for the reporting period fell within each band of €10,000 from €60,000 upwards and an overall figure for total employer pension contributions in their annual report and accounts.

**Pension liabilities:** The standard conventions setting out how public service superannuation liabilities are reflected should be followed in all cases.

**Consultancy costs:** State Bodies should disclose expenditure on an external consultancy/adviser fees in their annual report and accounts;

Consultancy fees include fees paid to external parties providing advisory services in the following areas:

* Legal (legal fees across all areas to be included here e.g. for pension, HR etc.);
* Tax and financial advisory (e.g. due diligence, accounting );
* Public relations /marketing; and
* Pensions and human resources;

The consultancy fees are to be disclosed by each category and to separately include amounts capitalised and expensed by each category. The consultancy fees should be disclosed in the audited accounts of the state bodies. Note that financial advisory excludes what is currently required to be disclosed in respect of fees paid to the auditors.

## 6.5 System of Internal Financial Controls

The Board is required to maintain a system of internal financial controls. Such a system should be based on a framework of regular management information, a system of delegation and accountability, a set of financial procedures, administrative procedures and rigorous ongoing checks by the finance function. Specifically, this includes:

* **Control Environment**: the management and executive functions of the Board are delegated to the Chief Executive and senior management of the organisation by resolutions of the statutory Board, which monitors and reviews the work of senior management, who report to it at its monthly meetings and through its various Committees.
* **Budget Information Systems:** the Board has a comprehensive budgeting system that includes approval by the statutory Board of annual budgets and monitoring of monthly financial reports that track expenditure against agreed profiles on all areas of expenditure, with variance reports, where appropriate. The Finance Committee of the statutory Board reviews detailed analysis reports for each area of expenditure.
* **Risk Management**: the Board has adopted and implemented a clearly defined Risk Management policy and maintains a formal Risk Register that documents business risks and associated mitigations, controls and actions for all aspects of the Board’s activities through the application of risk analysis techniques to its business objectives. The Audit and Risk Management Committee of the statutory Board has responsibility, and has put a mechanism in place, for monitoring, reviewing and reporting to the Board on this function.
* **Procedures:** the Board has clearly defined financial instructions and procedures, including delegated spending and authorisation limits and segregation of duties, approved by resolution of the statutory Board. In addition, the statutory Board has reserved approval of expenditure on contracts with value in excess of €65,000, while the Finance Committee of the statutory Board is notified of all contracts with value in excess of €10,000 and less than €65,000.
* **Monitoring of Internal Control**: the Board has an Internal Audit function whose annual audit programme is approved by the Audit and Risk Management Committee of the statutory Board and one of whose functions is to review all aspects of internal financial controls. The Committee reviews the work and recommendations of the Internal Audit function and monitors the action taken by management to resolve any issues that have been identified. The Committee also reviews all significant reports received by the Board from the external auditors, including management’s responses to these and makes recommendations on the issues raised. Correspondence with the Comptroller and Auditor General, including the audit Management Letter, and any issues raised, are brought to the attention of the Audit and Risk Management Committee and the statutory Board, which ensures that issues raised are pursued.

Section 7.2 of the Code requires the Chairperson of each State body to include in the Annual Report and Accounts, a statement on the system of internal financial control and including, in cases where a breach of this system has been identified, an outline of the steps that will be taken to guard against such a breach occurring in future. The format for this statement should include the following:

1. Acknowledgment by the Chairperson that the Board is responsible for the body’s system of internal financial control.
2. An explanation that such a system can provide only reasonable and not absolute assurance against material error.
3. Description of the key procedures, which have been put in place by the Board, designed to provide effective internal financial control including:
   1. the steps taken to ensure an appropriate control environment (such as clearly defined management responsibilities and evidence of reaction to control failures);
   2. processes used to identify business risks and to evaluate their financial implications;
   3. details of the major information systems in place such as budgets, and means of comparing actual results with budgets during the year;
   4. the procedures for addressing the financial implications of major business risks (such as financial instructions and notes of procedures, delegation practices such as authorisation limits, segregation of duties and methods of preventing and detecting fraud); and
   5. the procedures for monitoring the effectiveness of the internal financial control system which may include: audit committees, management reviews, consultancy, inspection and review studies, the work of internal audit, quality audit reviews and statements from the head of internal audit.
4. Confirmation that there has been a review of the effectiveness of the system of internal financial control.
5. Information (if appropriate) about the weaknesses in internal financial control that have resulted in material losses, contingencies or uncertainties which require disclosure in the financial statements or the auditor’s report on the financial statements.
6. The information relating to weaknesses in internal financial control should be a description of the action taken, or intended to be taken, to correct the weaknesses, or an explanation of why no action is considered necessary.

## 6.6 Procurement Procedures

The Board is required to satisfy itself that the requirements for public procurement are adhered to and to be fully conversant with the current value thresholds for the application of EU and national procurement rules.

Management, and ultimately the Board, should ensure that there is an appropriate focus on good practice in purchasing and that procedures are in place to ensure compliance with procurement policy and guidelines.

The National Public Procurement Policy Framework requires that all non-commercial State bodies complete a Corporate Procurement Plan which should set practical and strategic aims and objectives for improved procurement outcomes and appropriate measures to achieve these aims should be implemented. Such a Plan is in place in the Board. The *Code of Practice* states that the Chairperson should, in the annual report to the Minister, affirm adherence to the relevant procurement policy and procedures and the development and implementation of the Corporate Procurement plan.

## 6.7 Custody of Assets

All Government Departments and Bodies under their aegis are required to have *“…an Assets Register recording the description, historical cost, present value, … date of acquisition and physical location of each material capital asset.”* (Department of Finance Circular 1/95).

The Department of Finance draws up guidelines for the method of calculating the depreciated cost of assets. Details of acquisitions and disposals should be entered on an on-going basis.

The information should be used to compile the financial statements entries for assets. The Asset Register can also be used as a control mechanism over all assets.

**Disposal of Assets**

The *Code of Practice* also imposes duties on State Bodies in relation to the disposal of assets or the granting of access to property or infrastructure for commercial arrangements. The method used should be both transparent and likely to achieve a fair market – related price. The Code also includes provisions regarding disposal of assets to Board members, employees or their families or connected persons.

The Chairperson is required, in the annual report to the relevant Minister, to affirm that the disposal procedures outlined in the Code of Practice have been complied with.

# Chapter 7 Standards of Behaviour

The Legal Aid Board is guided regarding expected standards of behaviour by the provisions of the organisation’s Codes of Conduct for Board members and staff. Relevant legislation and provisions in this area include:

Civil Legal Aid Act, 1995; Sections 4, 8 and 12

The Code of Practice for the Governance of State Bodies

Ethics in Public Office Acts 1995-2001

This chapter summarises these requirements and highlights the Board’s approach to each.

## 7.1 Removal from Office, Conditions of Service, Declarations, Disclosures and Immunity

Section 4 of the Civil Legal Aid Act, 1995 sets out the manner in which the membership of the Board is determined. Section 4(4)(e) empowers the Minister to remove a member of the Board from office for a number of reasons including incapacity to perform his/her functions due to ill-health, committing stated misbehaviour or if the Minister considers that a Board member’s removal from office is necessary for the effective performance by the Board of its functions.

**Declarations of Interests**

The Guidelines on Compliance with the Ethics in Public Office Acts, prepared by the Standards in Public Office Commission, govern the declaration and disclosure of the Interests of Board members and the holders of certain designated posts in the Board. In November 2013 the Commission published on its website the 10th edition of the guidelines on compliance of public servants and Board members with the Ethics Acts. The guidelines can be found at http://www.sipo.gov.ie/en/Guidelines/Guidelines-for-Public-Servants/.

The holders of designated posts in the Board include staff at Principal Officer Grade or equivalent and some staff in more junior managerial grades because of particular features of their positions (e.g., responsibility for procurement of goods and services). The positions involved are set out in S.I. No. 582 of 2012 the Ethics in Public Office (Prescribed Public Bodies, Designated Directorships of Public Bodies and Designated Positions in Public Bodies) (Amendment) (No. 2) Regulations 2012 made under the Ethics in Public Office Act 1995 (No. 2 of 1995).

Under the Ethics Acts, designated directors and designated employees must act in accordance with the guidelines and with any advice given by the Standards Commission, unless by so doing they would be contravening another provision of the legislation. Where requested, advice must be provided by the Standards Commission within 21 days or, alternatively, it may decline to give advice. The guidelines state that, ideally, to eliminate any risk of misunderstanding, requests for advice should be made in writing (including by e-mail to sipo@sipo.gov.ie). Normally, the Standards Commission will provide, or confirm, all advice of a substantive nature, in writing.

The Board Secretary will be in a position to advise Board members about the administrative arrangements giving effect to the Ethics Acts obligations, e.g., the provision of forms, and to deal with queries from individual Board members.

**Disclosures of Interests**

In addition to the requirements under the Ethics Acts, the following procedures are required by the *Code of Practice* to be observed:

* On appointment, each Board member must furnish to the Secretary details relating to his/her employment and all other business or professional interests including shareholdings, directorships, professional relationships etc. that could involve a conflict of interest or could materially influence the member in relation to the performance of his/her functions as a member of the Board.
* Returns must also be submitted annually by any Board member who has a material interest to declare. Any such returns must be submitted to the Board secretary in time to enable them to be forwarded to the Standards in Public Offices Commission by the 31 January of the following year. The statement must be signed and dated after the completion of the period for which it relates, which for most statements is after the end of the calendar year.
* Disclosure is required for each year during any part of which a member held the position on the Board.
* A person who holds more than one designated directorship or occupies more than one designated position of employment or occupies a designated position of employment in addition to holding a designated directorship is required to furnish a statement of interests ***separately*** in respect of each designated directorship held or designated position occupied.
* Where a Board member has no material interest to declare no return is required. The Board may exercise discretion in relation to disclosure of minor shareholdings.A similar requirement for disclosure pertains, where applicable, to any interests of a member’s family of which he/she could be expected to be reasonably aware or a person or Body connected with the member which could involve a conflict of interest or could materially influence the member in the performance of his/her functions should also be disclosed. For this purpose, persons and Bodies connected with a member should include:

(a) a spouse, civil partner, parent, brother, sister, child or step-child;

(b) a Body corporate with which the member is associated;

(c) a person acting as the trustee of any trust, the beneficiaries of which include the member or the persons at (a) above or the Body corporate at (b) above; and

(d) a person acting as a partner of the member or of any person or Body who, by virtue of (a) - (c) above, is connected with the member.

* Similarly, each member should furnish to the Secretary details of business interests on the lines above of which he/she becomes aware during the course of his/her directorship.
* Where it is relevant to any matter arising for the Board, the member must indicate to the Secretary the employment and any other business interests connected with him as above.
* Details of interests are maintained by the Secretary in a confidential register which is updated annually.
* Where a Board member or a holder of a designated position considers that s/he may have a potential financial or other beneficial interest in any matter considered by the Board, the person must withdraw from the meeting for so long as the matter is being discussed or considered and shall not vote or act as a Board member in relation to the matter.
* Board members should not retain documentation obtained during their terms.

**Tax Clearance Obligations of Appointees to “Senior Office”**

The tax clearance provisions of the Standards in Public Office Act 2001 apply to persons appointed to "senior office", i.e. to a designated position of employment or to a designated Board membership in a public body under the 1995 Ethics Act, in relation to which the remuneration is not less than the lowest remuneration of a Deputy Secretary General in the civil service. All persons appointed to a designated Board membership “senior office” must provide to the Standards in Public Office Commission not more than nine months after the date on which he or she is appointed:

* a tax clearance certificate that is in force and was issued to the person not more than nine months before, and not more than nine months after, the appointment date; or
* an application statement that was issued to the person and was made not more than nine months before, and not more than nine months after, the appointment date; and
* a statutory declaration, made by the person not more than one month before, and not more than one month after, the date of appointment, that he or she, to the best of his or her knowledge and belief, is in compliance with the obligations imposed on him or her by the Tax Acts and is not aware of any impediment to the issue of a Tax Clearance Certificate.

**Confidential Information**

Board members and staff are prohibited from making use of, or disclosing, any confidential information gained as a result of membership of the Board or/and employment with the organisation. The unauthorised use or disclosure of confidential information to which a Board member had access may lead to termination of a Board member’s term of office under section 4(4)(e) of the Civil Legal Aid Act, 1995. Unauthorised disclosure of confidential information by a staff member may lead to disciplinary action against the person concerned. The requirement for confidentiality continues to apply even after a Board or staff member have ceased their appointment to, or employment with, the Board.

The obligations set out above are without prejudice to the provisions of the FOI Acts relating to confidentiality which must be applied to a request for information that would be deemed to be confidential under the Civil Legal Aid Act, 1995.

**Immunity and Indemnification**

While there is no express provision for indemnification of Board members or staff in the Civil Legal Aid Act, 1995, section 8 provides that “the Board may do anything which it considers necessary or expedient for enabling it to perform its functions under this Act”. The arrangements governing the indemnification of civil service staff, who may be subjected to threats of legal proceedings during the course of their work, also apply to all staff of the Board.

## 7.2 Legal Aid Board Code of Conduct

All staff of the Board are governed by the Code of Standards and Behaviour which came into effect on 9 September, 2004. The Code covers a wide range of matters including maintaining high standards of service, treating colleagues with respect, conflict of interest issues and many more. The Board’s Staff Handbook, which is available to all staff, sets out the terms of the Code in greater detail.

The *Code of Practice* requires State bodies to have published codes of business conduct for Board members and staff which should be prepared via a participative approach, and should be approved by the Board and be available on the State Body’s website and brought to the attention of all directors, management and employees, addressing matters such as duty to the State body, avoidance of conflict of interest, limits on outside activities, acceptance of gifts, honesty in dealings undertaken and not engaging in any illegal or criminal activities.The Code of Conduct should refer to the need for the Board and staff to comply with the requirements of the Companies Act 2014, if applicable, and any other relevant legislative and regulatory requirements. It should identify the relevant provisions regarding conduct/conflicts of interest in the governing legislation of the body. The Code of Conduct should make clear that obligations regarding the non-disclosure of privileged or confidential information do not cease when Board membership or employment in the State body has ended. This should be brought to the attention of employees and of Board members on their appointment to the Board.

The Code of Business Conduct for Board Members of the Legal Aid Board establishes general principles and standards to govern the professional activities and conduct of Board members and staff of the organisation, with the goal of maintaining a high level of public confidence in the organisation as a public body and as an employer.

The Code addresses the following issues:

General principles guiding business conduct including:

* Integrity
* Information Obligations
* Responsibility
* Loyalty
* Fairness
* Work/External Environment Periodic review of the Code

A copy of the Code of Business Conduct is included at **Attachment 2** to this *Manual*.

7.3 Ethics in Public Office

**Ethics Legislation**

Public bodies are required to ensure that all board members observe the highest standards of business ethics. The key instruments of ethics legislation in Ireland include the following.

*Ethics in Public Office Act 1995 (the Ethics Act)*

* Established the Public Offices Commission and the Committees on Members' Interests of Dáil and Seanad Éireann; it provides for the disclosure of interests by holders of designated directorships and occupiers of designated positions in the civil service and the semi-state sector.
* Provides for investigation of possible contraventions and for publication of guidelines and giving of advice to assist compliance with the provisions of the legislation.
* Prohibits the retention of valuable gifts by office holders.

*Standards in Public Office Act, 2001 (the Standards Act)*

* Provides for the establishment of the Standards in Public Office Commission (Standards Commission)
* The principal functions of the Standards Commission, as inherited from the Public Offices Commission, are to publish guidelines, to give advice and to investigate and report in relation to possible contraventions of the Ethics Acts.
* Requires the Minister for Public Expenditure and Reform to draw up codes of conduct for the guidance of persons who hold or occupy directorships of or positions in public bodies. The codes will indicate standards of conduct and integrity for the persons to whom they relate in the performance of their functions and connected matters.

**Requirements of Ethics Legislation**

The legislation referred to above requires the annual disclosure of registrable interests by Board members and certain employees of specified public bodies if they have a material interest to declare.

An annual statement of registrable interests must be submitted by the Board on an annual basis (under a statutory timetable by 31 January) to the Standards in Public Office Commission for:

* **Designated Directorships,** i.e., Chairperson and other Board members; and
* **Designated Positions,** i.e., staff at Principal level and above and certain designated posts at more junior managerial levels (e.g., positions where the duties involve procurement activities).

The first statement of a Board member, where the member has a material interest to declare, should cover the period up to 31 December of the year of appointment and should be furnished not later than 31 January in the following year. Subsequent annual statements should cover the year up to 31 December and be submitted also not later than 31 January of the following year. If the appointment of a Board member or of a designated position ends during a year s/he must furnish a statement covering the period from 1 January in that year up to the date the appointment ended and must be furnished not later than 31 January of the following year.

* **Board Members** are required to furnish statements if they have a material interest to declare (in the prescribed format) to the Secretary of the Board who then sends a copy of the statement to the Standards in Public Office Commission.
* **Designated Positions** are required to furnish statements to the Chief Executive.
* **Directors and staff** with interests to disclose are requested to furnish their statements in the prescribed format.
* **Directors and staff** **with NO** interests to disclose are not required to make a return.

Statements of interest required under the Act must be signed by the individual concerned and must be retained by the Board Secretary for fifteen years.

**Disclosable Interests Under Ethics Acts**

Registrable interests are set out in Schedule 2 of the *Ethics* *Act* and are further described in paragraph 65 of the *Guidelines for Public Servants*, which specifies that any of the following interests which could materially influence a Board member in, or in relation to, the performance of his or her official functions as a Board member with the Legal Aid Board must be reported. It should be noted that it is not necessary to specify the amount or monetary value of any interest or the remuneration of any trade, profession, employment, vocation or other occupation included in the statement:

* **Occupational Income** - where the remuneration to the person during the period exceeded €2,600.
* **Shares, etc. -**  Holdings of shares, bonds, debentures, or other like investments with an aggregate nominal or market value in excess of €13,000 at any time during the appropriate period. Holding does not include money in a current, deposit or other similar account with a financial institution but does include a holding in unit trusts or managed funds.
* **Directorships** –A directorship or shadow directorship of any relevant company held by the person concerned at any time during the appropriate period.
* **Land (including premises)** – Any relevant interest in land (excluding private residence or holiday homes) in the State and in any other jurisdiction, that exceeded €13,000 in value at any time during the appropriate period. This includes an interest in any relevant contract for the purchase of land, in any option held to purchase land, or in any exercised option where the land has not been conveyed.
* **Gifts** – from the same person, where the aggregate value, exceeds €650.
* **Property and Services** – Property supplied or lent or a service supplied by the same person, where the consideration or price was less than the commercial consideration or price by more than €650. Excluded is a gift for purely personal reasons, by a relative or friend of the person, unless acceptance could have materially influenced the person in the performance of his or her official functions.
* **Travel facilities, etc.** – including living accommodation, meals or entertainment supplied free of charge or at less than the commercial price (aggregate by a single person exceeding €650). Excluded are travel facilities, living accommodation, meals or entertainment provided:
  + within the State;
  + in the course and for the purpose of performing theperson's official functions; or
  + in the course and for the purpose of any trade, profession, employment or other occupation of the person.
* **Remunerated Position** – A remunerated position held by the person concerned as a political or public affairs lobbyist, consultant or adviser during the appropriate period.
* **Contracts** – Any relevant contract, for the supply of goods or services to a Minister of the Government or a public body during the appropriate period, to which the person concerned was a party or in which he or she was interested in any other way, directly or indirectly, if the aggregate value of the goods or services exceeded €6,500.

It should be noted that a statement of interests is not now legally required where the interests could not materially influence the person in, or in relation to, the performance of his or her official functions.

## 7.4 Anti-Fraud

The Board in 2008 adopted a Statement of Policy on Financial Fraud and Corruption Prevention. The Board is firmly committed to maintaining a culture that opposes irregularity, fraud and corruption and that ensures that staff and employees at all levels are confident enough to report allegations of irregularities, fraud or corruption without fear of ridicule or reprisal. In addition, the policy:

* Defines fraud and corruption;
* Sets out the role of the Chief Executive and the Management Advisory Team;
* Defines the role of managers;
* Specifies responsibilities of employees;
* Defines the respective roles of Internal Audit, the Audit Committee and the C&AG;
* Identifies processes for reporting fraud and corruption;
* Outlines the investigation procedure to be followed in the event of allegations of wrongdoing; and
* Defines disciplinary action that will be taken if there is evidence an employee is involved in fraud/corruption activities.

The Board’s Audit and Risk Management Committee also prepares an annual Audit Plan that is implemented and reported on to the Board on an ongoing basis. This process is an important feature of the Board’s oversight of the operation of certain aspects of the financial performance of the organisation.

As per the Circular 12/2010, the Minister must be notified without delay where there are serious concerns about possible illegality or fraud occurring in a State body. A Board member may have obligations under company law (if it applies) in situations where a State body is not being conducted in accordance with law - this may require that action be taken in addition to reporting matters to the Minister.

***7.5 –******Protected Disclosures Legislation***

**Protected Disclosures Act 2014:**

Section 21 of the Protected Disclosures Act 2014 Act requires that every public body shall establish and maintain procedures for the making of protected disclosures by workers who are or were employed by the public body and for dealing with such disclosures. Written information in relation to those procedures must be provided to workers employed by the public body.

**Guidance**

The Minister for Public Expenditure and Reform may issue Guidance for the purpose of assisting public bodies in the performance of these functions and all Public Bodies must ensure that their procedures are in compliance with such Guidance.

**Protected disclosures**

“protected disclosure” is a disclosure of relevant information made by a worker in relation to wrongdoing that has come to his or her attention in the workplace, either before or after the date of the passing of the Act, in the manner specified in the Act.

The definition of ‘worker’ in the Act is broadly drawn and includes not only persons who are direct employees but also contractors, sub-contractors, agency workers, members of the police forces, members of the security forces and any person who interacts with the work place on a contractual basis. In addition protection is also made available to third parties who may suffer detriment as a consequence of a protected disclosure having been made by another.

**Matters in respect of which a protected disclosure may be made**

The following matters are relevant wrongdoings for the purposes of the Act—

**i.** that an offence has been, is being or is likely to be committed,

**ii.** that a person has failed, is failing or is likely to fail to comply with any legal obligation, other than one arising under the worker’s contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services,

**iii.** that a miscarriage of justice has occurred, is occurring or is likely to occur,

**iv.** that the health or safety of any individual has been, is being or is likely to be endangered,

**v.** that the environment has been, is being or is likely to be damaged,

**vi.** that an unlawful or otherwise improper use of funds or resources of a public body, or of other public money, has occurred, is occurring or is likely to occur,

**vii.** that an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement, or

**viii.** that information tending to show any matter falling within any of the preceding paragraphs has been, is being or is likely to be concealed or destroyed.

No type of information is excluded from being reported under the Act. The Act does however recognise that certain types of information are more sensitive than others so that for example, the external reporting of matters relating to law enforcement can only be made to a member of the Oireachtas. In the case of information that might reasonably be expected to adversely affect the security, defence, or international relations of the State, a specific disclosure route is set out which is designed to allow disclosure in a secure and confidential manner.

The Code of Practice provides that the Board shall publish an annual report on protected disclosures in accordance with section 22 of the Protected Disclosures Act 2014 not later than 30 June in each year.

**How does a worker report his/her concerns:**

The simplest form of disclosure, and the form which is to be encouraged, is to the employer where all that is a required is a reasonable belief that the information disclosed shows or tends to show that the wrongdoing is occurring. In the case of a worker in a public body that worker may choose, as an alternative, to report to the relevant Minister.

A worker may choose to report to an external regulatory body with functions in the area which are the subject of the allegations. In such a case the threshold for protection increases to a reasonable belief in the substantial truth of the matters reported.

A worker may choose to report externally to a member of the Oireachtas or to another external source such as the media. Any person proposing to make such an external report whilst at the same time wishing to attract the protections must satisfy a series of strictly drawn conditionalities set out in the Act.

**Confidentiality:**

The Act imposes a burden of confidentiality on the recipient of a protected disclosure or any other person to whom the disclosure is referred in the performance of their duties.

While a failure to comply with this absolute duty is actionable by the person who made the disclosure was made if he/she suffers any loss by reason of that failure the Act also sets out a number of reasonable practical and pragmatic circumstances under which the absolute duty does not apply. Among these are where the recipient reasonably believes that the discloser has no objection to being identified (simply achieved by asking) or where the revelation of the identity of the discloser becomes necessary for the effective investigation of the complaint or where the revelation is necessary to prevent the commission of a crime.

**The protections:**

Workers who are direct employees are provided with access to the existing industrial dispute resolution mechanisms of the state. Employees such as trainees and apprentices who are currently excluded from those mechanisms are provided with access to the mechanisms if they have been penalised for having made a protected disclosure. In the case of all workers who are employees access to the mechanisms is granted on a day one basis without further restriction. In addition, the compensation payable under those mechanisms has been substantially increased in respect of persons penalised for having made a protected disclosure.

In the case of workers who are not direct employees and who are operating under a contract for services an action in tort may be taken against the person who caused them detriment. Similar provisions apply in respect of third parties who claim to have suffered detriment as a consequence of the making of a protected disclosure by another person.

Alternatively, any person who considers that they have suffered detriment as a consequence of the making of a protected disclosure may take an action in tort against the person who has caused the detriment.

## Attachment 1 – Legal Aid Board Travel Policy

1. **Travel Policy for the Legal Aid Board**

The *Code of Practice* requires non-commercial State Bodies to adopt and comply in all respects with the circulars issued from time to time by the Department of Finance regarding travel and subsistence.

The Chairperson of each State body is also required to certify in his/her annual report to the relevant Minister that Government travel policy requirements are being complied with in all respects. In this connection, the Board has procedures and practices in place to ensure compliance with the Travel and Subsistence Regulations contained in the Department of Finance Circular 11/82 and the Department’s Foreign Travel Policy Guidelines 2009. The main principles set out in the Board’s Travel Policy reflect:

* the requirements of these two documents as well as the Framework for a Travel Policy for State Bodies in the Code of Practice; and
* the implications for official travel of the :
  + nature of the Board’s business; and
  + the geographically dispersed structure of the Board’s services.

A Framework Travel Policy that outlines in more detail how the Board of a state body is required to comply with the *Code of Practice for the Governance of State Bodies (2009)* in this area is included as appendix IV to that *Code*.

2. **Main Purpose of Travel Policy**

The main aim of this policy is to facilitate the efficient discharge of the business of the Legal Aid Board where official travel has to be undertaken for this purpose. The Board is also concerned to ensure that allowances payable to cover the “out of pocket” expenses of staff and Board members in respect of official business undertaken away from their headquarters are fully in accordance with the Regulations and Guidelines issued by the Department of Finance from time to time. This includes:

* the necessity for the proper planning of official travel:
* procurement of travel services on the most cost effective basis available and;
* ensuring that the best use of official time/minimisation of time lost due to travelling is also taken into account where alternative modes of transport are being considered.

The details set out in this policy reflect the requirements of the instructions in the Department of Finance’s Travel and Subsistence Regulations (Circular 11/82) and the Foreign Travel Policy Guidelines 2009. The implications arising from the application of these instructions in the Board relating to the nature of the Board’s business and the geographically dispersed structure of the Board’s services are also reflected in this policy.

3. **Purpose of Travelling and Subsistence Allowances**

The Framework for a Travel Policy for State Bodies in the Code of Practice specifies that:

*“the purpose of the Travel Policy should be to ensure that the best value for money is obtained in respect of each official trip undertaken, consistent with the requirements of official business”.*

The arrangements for the implementation of this Travel Policy fully reflect the overriding need for value for money as outlined above. The development of this policy has also had particular regard to the principles governing the Civil Service Travelling and Subsistence Regulations that *“all official travel should be by the shortest practicable routes and by the cheapest practicable mode of conveyance”* and that the subsistence allowance payable *“is not intended to be a source of emolument or profit”.*

4. **General Principles Governing Travel Policy**

The general rules also include requirements to properly plan official travel so as to reduce the amount of travel consistent with efficiency. The 2009 Foreign Policy Guidelines issued by the Department of Finance clearly sets out the principles governing official foreign travel that is undertaken, with particular reference to the need for economy in the expenditure of resources. The Board operates a number of centralised procurement arrangements in respect of:

* all foreign travel (which is only a very limited feature of the Board’s official business); and
* domestic travel undertaken by the Board members and other staff to and from Head Office in Cahirciveen.

This facilitates the acquisition of travel services in a cost effective manner that is also consistent with the requirement to ensure the efficient operation of Board business. In making decisions on the mode of transport to be used, the Board also has regard to the need to minimise the loss of official time spent on travelling and the productive use of time spent travelling on board business. This is reflected in the arrangements set out below.

5. **Impact of Geographically Dispersed Offices and the Nature of the Board’s Services**

The geographically dispersed nature of the Board’s services, with some 50 locations nationwide and the dispersed nature of Courthouses whose services the Board accesses on an ongoing basis, have a significant impact on the volume and nature of official travel undertaken in the Board. These factors result in a considerable number of the Board’s staff being required to undertake official travel in the course of their duties.

The Board endeavours to make the maximum possible use of public transport as required in the Framework for a Travel Policy for State Bodies in the Code of Practice. The use of private cars, as distinct from taxis or other forms of public transport, is only authorised where the following circumstances apply:

* in the absence of accessible public transport:
  + public transport is either not available for journeys to particular locations; or
  + unavailable at times that are consistent with the efficient discharge of official business, (i.e., where there would be an unacceptable loss of official time through travelling between, for example, particular law centres and Courthouses in more remote areas which are not well served by public transport);
* the need for carriage of confidential official files required for representation of clients in court; and
* where it is more cost-effective to pay mileage allowances than public transport and car hire charges when Dublin-based staff have to attend Head Office in Cahirciveen for the efficient discharge of the Board’s business.

6. **Procedures for travel to and from Head Office in Cahirciveen**

The Board operates video conferencing facilities between Dublin and Cahirciveen. The capacity of such facilities to meet business needs is considered as an alternative to official travel between the two locations on an ongoing basis. Where the use of video conferencing is not considered feasible for the discharge of official business, official travel is authorised instead.

The following factors impact on expenditure on travel and subsistence relating to the Board’s Head Office:

* the absence of suitable public transport to Cahirciveen from Farranfore, Tralee and Killarney;
* the distance between Cahirciveen and Dublin and the length of the journey time between the two locations, irrespective of the nature of the transport used;
* the loss of official time spent travelling to and from Head Office;
* the need to make the most productive use of travelling time;
* the requirement for “dual located” and other staff headquartered in Dublin to spend considerable blocks of time in Head Office in Cahirciveen due to dual location of support functions and its impact on reporting structures; and
* the cost of travel and subsistence expenses for staff and Board members not normally based in Head Office who need to attend that location for the efficient discharge of Board business.

7. As a general rule, where feasible, public transport only, inclusive of taxis and car hire facilities, is used for official travel to and from Head Office in Cahirciveen. A centralised booking arrangement has been put in place by the Board to ensure that all such travel facilities are procured in the most cost-effective manner and that factors that impinge on the overall efficiency of the Board relating to loss of official time are also taken into account. The transport options utilised are:

* flights to and from Dublin and Kerry International Airport in Farranfore;
* hired cars or taxis are booked for the journeys to and from Farranfore and Cahirciveen and every effort is made to ensure the pooling of such cars to minimise the costs involved;
* as an alternative to travel by air, travel by train is also arranged having regard to the suitability of flight schedules to and from Dublin and Farranfore and the capacity to continue to work while travelling by train. Having regard to the confidential nature of the work that the Board carries out, including confidential Board papers issued to members of the statutory Board, Business Class tickets may be purchased for Board members and senior managers to better facilitate the review of confidential papers during travel time and ensuring the productive use of such time that would otherwise be lost to the Board;
* as a general rule, private cars are not used for travel to and from Cahirciveen for short-term stays involving a single overnight stay. Any exceptions to this rule require the specific sanction of a Director of the Board or in the case of Directors, the Chief Executive and in the case of Board members, the Chairperson or the Chief Executive. The circumstances where approval may be granted to use a private car would be:
  + if it is consistent with the efficient use of official time[[1]](#footnote-1) (for example where public transport is not available or is only available at times that result in an unacceptable loss of official time);
  + if the travelling officer plans official travel to and from Head Office so as to discharge official business in a number of other Board locations in the course of journeys to and from Head Office;
  + where the carriage of equipment or official files is undertaken and use of a private motor car is deemed to be the most effective way of transporting the equipment and/or files involved;
  + where staff headquartered in Dublin are required to spend considerable blocks of time in Head Office in Cahirciveen due to the dual location of support functions and its impact on reporting structures. In such cases the cost of car hire for a number of days and other public transport costs will be compared to the cost of paying mileage allowances. In considering the payment of such allowances, the cost-effective use of official time will also be evaluated.

8. **Reduced Mileage Rates**

The general rule about reduced mileage rates is that they apply to travel that is related to official duties but not undertaken to facilitate the carrying out of official duties. These rates are normally payable, for example, for attendance at training courses and conferences. They are also payable:

* in respect of return journeys between work locations to which staff have been temporarily assigned and normal headquarters at weekends or for public holidays; and
* in circumstances where :
  + - the exceptional circumstances set out at 6 above do not apply;
    - suitable public transport is available, but a travelling officer chooses to use his/her own car.

9. **Expenditure Control Measures**

Strict budgetary controls are maintained on all aspects of the Board’s expenditure, including Travelling and Subsistence expenses. Allowances are only paid out where it has been necessary to authorise official travel away from normal headquarters for the effective performance of Board business. The Finance Committee of the Statutory Board also review a detailed report on travel and subsistence expenditure on an annual basis while expenditure trends on all aspects of the Board’s Budget are reported to the Senior Management Team and the Board on a monthly basis. The Board has nominated a Travel Officer to carry out the functions recommended in the Department of Finance’s Foreign Policy Guidelines 2009. The Travel Officer’s remit also covers domestic travel which represents the bulk of the Board’s expenditure on official travel undertaken.

10. **Information on Travel and Subsistence Regulations and Processing of Claims**

Staff dealing with the vetting and processing of travel and subsistence claims are fully familiar with the relevant Regulations and Guidelines and a copy of this policy, along with the up-to-date rates of allowances, has been circulated across the organisation. Any updates issued on the policy or the rates of allowances are made available to all staff on the Board’s internal bulletin board.

**Rates per mile Effective from 5 March 2009**

|  |  |  |  |
| --- | --- | --- | --- |
| **Official Motor Travel in a calendar year** | **Engine Capacity up to 1200cc** | **Engine Capacity 1201cc to 1500cc** | **Engine Capacity 1501cc and over** |
| Up to 4000 miles | 62.94 cent | 74.42 cent | 95.05 cent |
| 4001 and over | 34.13 cent | 38.00 cent | 45.79 cent |

**Reduced Motor Travel Rates Effective from 5 March 2009**

|  |  |  |
| --- | --- | --- |
| **Engine Capacity up to 1200cc** | **Engine Capacity 1201cc to 1500cc** | **Engine Capacity 1501cc and over** |
| 23.55 cent per mile | 26.76 cent per mile | 31.36 cent per mile |

**Rates per kilometre Effective from 5 March 2009**

|  |  |  |  |
| --- | --- | --- | --- |
| **Official Motor Travel in a calendar year** | **Engine Capacity up to 1200cc** | **Engine Capacity 1201cc to 1500cc** | **Engine Capacity 1501cc and over** |
| Up to 6437km | 39.12 cent | 46.25 cent | 59.07 cent |
| 6438km and over | 21.22 cent | 23.62 cent | 28.46 cent |

**Reduced Motor Travel Rates Effective from 5 March 2009**

|  |  |  |
| --- | --- | --- |
| **Engine Capacity up to 1200cc** | **Engine Capacity 1201cc to 1500cc** | **Engine Capacity 1501cc and over** |
| 14.64 cent per km | 16.64 cent per km | 19.49 cent per km |

Copies of the circulars and forms are provided to new Board members. Additional forms are available from the Board Secretary on request, or photocopies of forms can be used.

When revised circulars become available they are forwarded to the Board members by the Board Secretary.

The current subsistence rates are as follows:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Domestic Subsistence rates from 1 July 2015** | | | | | | |
| Overnight rates | | | | | Day Rates | |
|  | Normal Rate | Reduced Rate | Detention Rate | 10 hours or more | | 5 hours but less than 10 hours |
|  | €125.00 | €112.50 | €62.50 | €33.61 | | €14.01 |

**Changes to the Distance requirements in Circular 05/2015 in relation to subsistence allowances provide as follow:**

*Overnight Subsistence Allowance*

With effect from 1 July 2015, an overnight allowance will not generally be payable in respect of a necessary absence on official business that is within 100 km of an officer’s home or headquarters (whichever is the lesser). However, in exceptional circumstances and where a department is satisfied that an operational need exists, an overnight allowance may be paid for an absence on official business at any location within the above distance limits but in excess of 50 km of home or headquarters (whichever is the lesser).

*Day Subsistence Allowance*

With effect from 1 July 2015, a day allowance is not payable for an absence on official business that is within 8 km of an officer’s headquarters or home (whichever is the lesser). Payment of the rates authorised in this Circular will be subject to the regulations issued with Circular 11/82 and any other instructions in force from time to time. These regulations apply to all civil servants including departmental grades.

Heads of Departments should continue to appraise, monitor and ensure that only essential travel is undertaken and that the number of officers on any official journey is kept to the absolute minimum.

## Attachment 2 - Code of Conduct for Members of the Legal Aid Board

Introduction

The *Code of Practice for the Governance of State Bodies* (2016) requires all State Bodies to develop and adopt a ‘Code of Conduct for Members of the State bodies’’ binding of all Members of the Board of the State Body. Such a Code is also required to be approved by the Board. Certain matters are specifically required to be included in the Code. The Chairperson of each State body is also required to affirm in his/her annual report to the Minister for Justice and Equality that Codes of Conduct for Board Members and Employees have been put in place and adhered to.

This Code sets out in written form the agreed standards, guiding principles and obligations that inform the conduct of Members of the Board.

Scope

The provisions of this Code of Conduct will apply to the Members of the Board in respect of their duties as members of the Board or as Members of any of its Committees.

Purpose of this code of conduct

* To establish an agreed set of ethical principles that will govern the manner in which the business of the organisation will be conducted by Board Members
* To promote and maintain confidence and trust both within the Board and with stakeholders
* To prevent the development or acceptance of unethical practices and

To meet the requirements of the *Code of Practice for the Governance of State Bodies* (2009).

General principles

Board members will at all times commit to performing their duties to the highest standards of honesty and integrity. The following principles and requirements govern the conduct of Board members in fulfilling their roles:

**1. Integrity**

Board members will:

* Submit an annual declaration of interests statement in accordance with the *Code of Practice for the Governance of State Bodies,* where there are material interests to be declared;
* Disclose outside employment/business interests in conflict or potential conflict with the business of the LAB;
* Not be involved in outside employment/business interests in conflict, or in potential conflict, with the business of the Board; Not participate in discussions or decisions where there may be conflicts of interest whether or not such conflicts have previously been disclosed;
* Avoid giving or receiving corporate gifts, hospitality, preferential treatment or benefits which might affect or appear to affect the ability of the donor or the recipient to make independent judgement on business transactions;
* Ensure that purchasing activities of goods/services are conducted in accordance with best business practice and comply with relevant regulations;
* Ensure that the Legal Aid Board accounts and reports accurately reflect its business performance and are not misleading or designed to be misleading;
* Avoid the use of LAB resources or time for personal gain or for the benefit of persons/organisations unconnected with the LAB or its activities or for the benefit of competitors;
* Not acquire information or confidential business information or business secrets by improper means;
* Not use any information obtained by virtue of their position for the purpose of any dealing (direct or indirect) in property, shares or otherwise.
* Commit to compete vigorously and energetically but also ethically and honestly.

**2. Information**

Board Members should:

* Support the provision of access by the LAB to general information relating to LAB activities in a way that is open and that enhances its accountability to the general public;
* Respect the confidentiality of sensitive information held by the LAB. This would constitute material such as:

♦ commercially sensitive information (including but not limited to future plans or details of major organisational or other changes such as restructuring);

♦ personal information;

♦ information received in confidence by the LAB.

* Ensure the LAB observes appropriate prior consultation procedures with third parties where, exceptionally, it is proposed to release sensitive information in the public interest;
* Ensure the LAB complies with relevant statutory provisions relating to access to information (e.g. Data Protection and Freedom of Information legislation).

**Note:** Where queries arise in relation to the release of information under the provisions of the Freedom of Information Act, these are directed to the Freedom of Information Officer.

**3. Appropriate Confidentiality**

Board members should:

* Maintain appropriate confidentiality in respect of all information received by virtue of their position;
* Note that the provisions regarding confidentiality and disclosure also apply after a Board member’s term has ended or a staff member has left the Board;
* On conclusion of their term, Board members should either dispose of or return to the LAB all manuals, letters, notes, notebooks, reports and other material of a confidential nature.

**4. Obligations**

Board members should:

* Ensure that the LAB fulfils all regulatory and statutory obligations imposed on it;
* Ensure compliance with detailed tendering and purchasing procedures, as well as with prescribed levels of authority for sanctioning any relevant expenditure;
* Ensure that there are adequate controls in place to prevent fraud including controls to ensure compliance with prescribed procedures in relation to claiming of expenses for business travel;
* Board Members should endeavour to attend the Board and Committee Meetings;
* Meet regularly, retain full and effective control over the LAB and monitor the executive management and performance;
* Ensure that the Board has a formal schedule of matters specifically reserved to it for decision;
* Conform with procedures laid down by the Board in relation to conflict of interest situations including in regard to acceptance of positions following employment and/or engagement by a State body that may give rise to the potential for conflicts of interest and to confidentiality concerns;
* Have access to the advice and services of the Secretary of the Board who is

responsible to the Board for ensuring that Board procedures are followed and that applicable rules and regulations are complied with;

* Ensure that a balanced and understandable assessment of the LAB’s position is made in presenting its annual report and accounts to the Minister for Justice and Equality;
* Co-operate with internal audit in the internal audit process.

Acknowledge the duty of all to conform to the highest standards of business ethics.

In addition to the above requirements of Board Members, the Board Secretary should ensure the Board is supplied, in a timely fashion, with information which is of a suitable quality to enable Board members to satisfactorily discharge their duties;

**5. Loyalty**

Board members should:

* Acknowledge their responsibility to be loyal to the LAB and to be fully

committed in all its business activities while mindful that the organisation

itself must at all times take into account the interests of the shareholders;

**6. Fairness**

Board members should:

* Comply with employment equality and equal status legislation;
* Commitment to fairness in all business dealings;
* Value customers and treat all customers equally.

**7. Work/External Environment**

Board members should:

* Promote the development of a culture of ‘speaking up’ whereby workers can raise concerns regarding serious wrongdoing in the workplace without fear of reprisal.
* Place highest priority on promoting and preserving the health and safety of

employees;

* Ensure that community concerns are fully considered.
* Minimise any detrimental impact of operations on the environment.

**5. Responsibility**

* All Board members, management and employees should be circulated with the Code of Conduct and a policy document on disclosure of interests for their retention.
* A process should be put in place to ensure that the above recipients acknowledge the receipt and understanding of same.
* An explanatory booklet should be prepared providing practical guidance and direction on such areas as gifts and entertainment and on other ethical considerations which arise routinely.

Review

* Arrange for, and commit to, reviewing the Code of Conduct as appropriate.

Approval

This Code of Business Conduct was approved by the Board on 16 September 2016 [to be decided on 16 Sept]

## 

1. “Official time” for this purpose also includes the time that Board members could devote, in the normal course, to their own business activities. [↑](#footnote-ref-1)