

Appendix 4 Documentation Review

Legal Aid Board (LAB) Governance Documentation Review - April 2018

1) Introduction

The purpose of the Documentation Review has been to assess the overall fit between key Corporate and Board Documents (as revised) and the requirements of the 2016 Code of Practice for the Governance of State Bodies. In our review, particular attention has been paid to specific changes required by the 2016 Code and the general level of documentation into and reporting out from Board and Committee meetings relative to best practice governance.

From our own exposure to documentation in the Legal Aid Board, we make the following recommendations:

- Link executive reporting to KPI's in the Strategic Plan
- Continue to update all documentation in line with the 2016 Code and review periodically
- Improve risk reporting to the Board, with Risk as a standing item for all Board meetings

Against this backdrop, we make a number of comments in the following table which address specific Code 2016 requirements.

2) Specific Code 2016 Requirements

From our read of the current documentation and our understanding of the changes already adopted by the LAB, we have identified the items listed in the Comment column of the attached table as requiring update and provide recommendations following our more general review of related documents and policies.

Draft Document Review – LAB

Review of Net Points in Governance Documentation relative to Code 2016 – set out under each of the 10 Code Headings

2016 Code Provision	Is current LAB Documentation Compliant?	Comment
1. Role of the Board		
1.7 The Board 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.	Yes, in Governance Manual	No action required
1.10 Post Resignation / Retirement 'it should ensure that any procedures that it has put in place in this regard are monitored and enforced to guard against conflicts of interest or inappropriate disclosure of information	Yes, in Governance Manual under Section 1.4 – Role of the Board	This is currently defined more as a requirement under the role of the Board, but should be defined in terms of an existing procedure.
1.11 Conflicts of Interest – The Board should have procedures in place to monitor and manage potential conflicts of interest of Board members and management	Partly, it is defined for staff under the employee Handbook and referred to in Governance Manual.	The Legal Aid Board should define a separate Conflict of Interest policy attributable to Board members setting out procedures to be followed by both parties and how matters of Conflict of Interest are dealt with by the Board and its Committees
1.13 Written Charters – The Audit & Risk Committee and other Board Committees as well as the Internal Audit Unit should each have written charters. The Board should agree the intervals within which the charters should be reviewed by the main Board and updated as appropriate.	Yes, but some improvements could be made	A document control procedure should be added to the Terms of Reference for Committees, detailing when the document was formally approved by the Board and the date scheduled for the next formal review. The Internal Audit Charter should be revised to be aligned to the Internal Audit Activity Charter per the 2016 Code and best practice in general.

<p>1.14 Protected Disclosures – in line with legal requirement under section 21 of the Protected Disclosures Act 2014, 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 for dealing with such disclosures.</p>	<p>Yes, in Employee Handbook.</p>	
<p>1,17 The Board of each non-commercial State body, including bodies funded by way of levies or fees, should adopt a statement of strategy for a period of 3-5 years ahead, or as otherwise mandated by their governing legislation.</p>	<p>Yes. Corporate Plan 2015-2017 adopted by Board. Plan for 2018-2020 is in draft form.</p>	<p>Going forward, to comply with the Code, the Corporate Plan will need to be aligned to that of the parent Department, include target outputs and outcomes in the key strategic areas of activity, and include a statement on the resources to be deployed to meet the targets.</p>
<p>1.19 The Board should approve an annual plan and/or budget and should formally undertake an evaluation of actual performance by reference to the Corporate Plan and/or budget on an annual basis.</p>	<p>Yes. Board reviews and approves annual budget which is presented by way of Business Plan by management.</p>	<p>The Board might review its level of engagement in the development (level of challenge) and the adoption of the annual budget</p>
<p>1.24 Division of Responsibilities. The division of responsibilities between the Chairperson and the CEO should be clearly established, set out in writing and agreed by the Board.</p>	<p>Partly</p>	<p>The role of the Board and the Chair could be better defined in the Governance Manual, in definitive terms as they apply to the LAB, as opposed to as requirements specified under the Code. This would include alignment of roles to the provisions as set out under Sections 1 and 2 of the 2016 Code, but also aligned to best practice in general. There should also be a statement within the Manual on the Division of Responsibilities between the Chair and the CEO.</p>
<p>Overall Comment and Recommendations – Role of Board: Documents Reviewed: Governance Manual, Charters for Board Committees, Code of Conduct Policy, Corporate Plan 2015-2017, Draft Corporate Plan 2018-2020, Employee Handbook.</p>		

<p>General Conclusions & Recommendations:</p> <ul style="list-style-type: none"> • The role of the Board, Chairperson and Divisions of Responsibilities should be defined set out in the governance manual as the actual roles within the governance framework of the LAB, rather than as that required under the 2016 Code. • A separate Conflict of Interest Policy for Board members should be prepared and adopted and followed by the Board. • The Charters for Committees should be revised to include a document control process and consistency on the structure of the ToR document. See Appendix 2 to this report for a guideline. • The Corporate Plan should include specific quantifiable and qualitative target outcomes and outputs as well as board monitoring mechanisms to enable ease of review by the Board over the life of the Plan. 		
<p>2. Role of the Chairperson</p>		
<p>General Conclusions & Recommendations – Role of Chair:</p> <ul style="list-style-type: none"> • Although there is no specific governance provision within Heading no.2 of the 2016 Code for required documentation, provision 1.24 applies and as stated under the previous section, the role of the Chairperson needs clearer definition within the current Governance Manual, with the role definition aligned to 2016 Code Provisions 2.1 to 2.8 and to best practice in general. 		
<p>3. Role of Board Members</p>		
3.1 Fiduciary Duty of Board members	Not a mandatory requirement to be included in any charter or policy.	The Fiduciary Duties as set out under section 3.1 of the 2016 Code could be included in the Governance Manual under the role of Board members.
3.5 Professional Advice – 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, at the reasonable expense of the State body where they judge it necessary to discharge their responsibilities as Board members. The Board should have in place a procedure for recording the concerns of Board members that cannot be resolved.	It would need to be confirmed if this procedure was adopted by way of a formal resolution.	<p>The Governance Manual should make reference to a resolution having been adopted to enable to engagement of professional advice by Board members.</p> <p>A procedure for recording the concerns of Board members, that cannot be resolved, should also be defined within the Governance manual.</p>

3.6 Letter of Appointment – issued to new Board members by the Minister.	N/A	Secretary to Board should hold a copy of the formal letters of Appointment for all Board and Committee members.
<p>Overall Comment and Recommendations – Role of Board Members:</p> <p>Documents Reviewed:</p> <ul style="list-style-type: none"> • Governance Manual <p>General Conclusions & Recommendations:</p> <ul style="list-style-type: none"> • The Board is well served by the current Governance Manual which is evolving, but this document might be enhanced by including the suggested improvements above. • Board members should be aware of their fiduciary responsibilities and this should be provided for under the Induction Training program for new Board members. 		
<p>4. Board Effectiveness</p>		
4.6 Performance Review. 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.	Yes	ToR for each Committee should set out provision for annual self-assessment and indicate, as relevant, the participation criteria for the evaluation.
<p>Overall Comment and Recommendations – Board Effectiveness:</p> <p>Documents Reviewed under this Heading:</p> <ul style="list-style-type: none"> • Governance Manual, Written Charters for Committees, Board Packs, Committee Packs <p>General Conclusions & Recommendations</p> <ul style="list-style-type: none"> • The Board has just undertaken a self-assessment survey for the Board and for all Committees under this engagement. • The Board Governance Manual should be reviewed to ensure Section 3.2 (Roles and Responsibilities) defines the parameters and processes to be followed by the LAB in response to all relevant provisions from 4.1 to 4.9 of the 2016 Code, specifically 4.2 (Skills and Knowledge), 4.4 (Diversity) and continuous review of the internal structure of the LAB per 4.6 of the Code. Currently these provisions are referred to as requirements to be followed as opposed to defined procedures to be carried out within the LAB. • Board Effectiveness as set out under Section 4 of the Code should be a key component under any Induction Training for Board members. 		

- We have observed that Board packs are comprehensive and consist of the required level of detail that a Board member should need. The quality of executive submissions and reports is excellent but there may be a requirement for a clearer alignment of performance data and project status to the objectives and target outcomes within the Corporate Plan.

5. Codes of Conduct, Ethics in Public Office, Additional Disclosure of Interests by Board Members and Protected Disclosures

<p>5.1 Codes of Conduct - All State bodies should have published Codes of Conduct for their Board and employees. The Code of Conduct should be approved by the Board. Up-to-date Codes of Conduct should be available on the State body's website and brought to the attention of all Board members, management and employees. 5.2 Scope of application, 5.3 Compliance Requirements, 5.4 Ethics in Public Office, 5.5 Conflicts of Interest and 5.6 Non-disclosure of Information all relate to the Code of Conduct policy document.</p>	<p>Yes.</p>	<p>The Code of Conduct for Board members and the Code of Conduct for employees needs to be put on the website.</p>
<p>5.7 Document Retention – Board members should not retain documentation obtained during their terms as a Board member.</p>	<p>The procedure for handover of documents at the end of a tenure or appointment needs to be clearly defined.</p>	<p>The procedure should be defined within the Governance Manual.</p>
<p>5.8 Disclosure of Interests by Board Members</p>	<p>Yes.</p>	
<p>5.9 Section 21 of the Protected Disclosures Act 2014 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.</p>	<p>Yes, procedure set out in the employee Handbook.</p>	

Overall Comment and Recommendations – Code of Conduct, Ethics in Public Office:

Documents Reviewed under this Heading:

- Governance Manual, Employee Handbook.

General Conclusions & Recommendations

- The Code of Conduct document for the Board and for Employees needs to be made available on the LAB’s website.
- The policy for Protected Disclosures requires formal approval by the Board for control purposes (Board approval date should be included in the document) and confirmation is then needed by the Board that the policy has been brought to the attention of all staff.
- The policy documents in this section are all relevant and important inputs into Board oversight and should be covered under the Board Induction Training module.

6. Business & Financial Reporting

Overall Comment and Recommendations – Business & Financial Reporting:

Documents Reviewed:

Annual Reports

General Conclusions & Recommendations:

- Given that Heading 6 of the 2016 Code relates primarily to the layout and reporting requirements of the Annual Financial Statements and the Annual Report, and that these are already subject to independent annual audit within the LAB, then we did not see the benefit of Governance Ireland doing a trawl through these documents to check reporting and disclosure compliance with the 2016 Code.
- To ensure consistency between guidelines and compliance with the 2016 Code, we would recommend that internal audits carried out on financial activities within the LAB, would include a check against the current policy guidelines being followed by the relevant staff, to ensure consistency with the requirements of the Code and the requirements of Dept. of Finance circulars.
- The business and financial reporting requirements under the 2016 Code are extensive and far reaching and it is important, particularly for members of the Audit & risk Committee, to understand what these requirements are and to be able to fully interpret the organisation’s annual financial statements and Annual Report disclosure requirements. Indeed all Board members should be able to read and understand the financial statements and where there is any knowledge or understanding gap, training needs to be undertaken.

7. Risk Management, Internal Control, Internal Audit and Audit and Risk Committee		
7.1 Each State body should develop a Risk Management Policy and the Board should approve the risk management framework and monitor its effectiveness. The Board should review material risk incidents and note or approve management’s actions, as appropriate.	Yes.	The Board needs to formally approve and adopt the current policy and the date of approval/adoption should be included within the document.
7.11.1 Charter: The internal audit unit should have a formal charter, including terms of reference, which has been approved by the Board. The reporting structure for internal audit should be clear and formally documented.	Yes	<p>The current Charter should be aligned to the Internal Audit Activity Charter provided with the 2016 Code and to best practice in general.</p> <p>The Charter should be formally reviewed by the Audit & Risk Management Committee on an annual basis and if revised, presented to the Board for approval.</p>
<p>Overall Comment and Recommendations – Risk Management:</p> <p>Documents Reviewed: Annual Reports, Audit & Risk Management Committee Charter, Audit & Risk Management Committee Packs, Risk Policy, Risk Register, Corporate Risk Materialisation Report, Board Packs.</p> <p>General Conclusions & Recommendations:</p> <ul style="list-style-type: none"> • Risk should be a standing item on the Agenda for the Board (per Code Provision 7.2), where the Board reviews the status of Corporate/Reputational risk. • Our observation of the Audit & Risk Committee packs is that risk does not garner sufficient agenda time currently, and the Committee should try to strike a balance in terms of focus to ensure it can meet the enhanced requirements for risk oversight per the 2016 Code. 		

8. Relations with the Oireachtas, Minister and Parent Department		
8.4 Oversight Agreement – Government Department should ensure that they have a written Oversight Agreement with the State body.	Yes	
8.8 Performance Delivery Agreement	Yes	
Section 6 (Business & Financial Reporting) of Code and the Procurement, Acquisition, Tendering and Asset Disposal governance provisions under Section 8 of the 2016 Code.	N/A	Finance documents should be combed through to ensure all provisions are being followed under existing policy documents, and that the organisation maintains and works to a suitable Corporate Procurement Plan as per 8.20 of the 2016 Code.
<p>Overall Comment and Recommendations – Relations with the Oireachtas, Minister and Parent Department:</p> <p>Documents Reviewed: Annual Reports, Oversight Agreement, Performance Agreement</p> <p>General Conclusions & Recommendations:</p> <ul style="list-style-type: none"> • In terms of procurement, acquisition and disposal provisions, under Heading 8, we have not trawled through existing financial documentation for compliance, as the provisions are extensive and these provisions are subject to annual audit. We do recommend that internal audits relating to procurement, disposal and acquisition should include a review of the existing guidelines that staff are being asked to follow. • Under code provision 8.20 the LAB is expected to complete a Corporate Procurement Plan and from an oversight perspective, this is something which should come under the remit of the Audit & Risk Committee, though it is not a responsibility specifically defined under the current ToR. 		
9. Remuneration and Superannuation		
<p>Overall Comment and Recommendations – Remuneration and Superannuation</p> <p>General Conclusions & Recommendations:</p> <ul style="list-style-type: none"> • There are general reporting requirements relating to Remuneration and Superannuation within the annual statements that are subject to independent audit by the C&AG. • From a Board perspective, it is important that all members of the Audit & Risk Management Committee understand the reporting requirements and disclosures necessary under the 2016 Code, relating to Remuneration and Superannuation. 		

10. Quality Customer Service		
10.1 Customer Charter. All State bodies should have a customer charter setting out the level of service a customer can expect.	Yes	
10.4 Customer Action Plan. The Customer Charter should be supported by a Customer Action Plan, which describes in detail how the commitments and standards, under the Customer Charter, and other customer service improvements will be delivered and evaluated by the State body.	Yes	
Overall Comment and Recommendations – Quality Customer Service General Conclusions and Recommendations: <ul style="list-style-type: none"> • No actions required. 		

Note: This represents our understanding of the current net issues for attention but is not the result of a complete audit. The LAB will need to continuously monitor and refresh all policies and processes to ensure that they achieve and maintain full compliance with the terms of the State Bodies Code 2016 on an on-going basis.