

**Legal Aid Agency**

**Governance Arrangements**

**Version 3.0**

The purpose of this document is to set out the practical arrangements for corporate governance within the Legal Aid Agency that support the Agency’s objective to deliver legal aid efficiently and effectively as part of the justice system. This document will be updated by the Legal Aid Agency to reflect changes in governance arrangements as necessary; each new iteration supersedes the previous arrangements. If a new version of this document has not been published for three years, this document will be formally reviewed.

These arrangements should be read in conjunction with the Framework Document agreed between the Ministry of Justice (MoJ) and Legal Aid Agency. The Framework Document is available from the Ministry of Justice’s website.

**Legal Aid Agency Board**

1. The Legal Aid Agency Board provides overarching governance of the Legal Aid Agency. It provides support, advice and guidance to the Chief Executive on the strategic direction of the Legal Aid Agency.

Purpose

1. Whilst the day-to-day management is the responsibility of the Executive Team, the Board receives update reports and takes decisions on key business priorities as appropriate. Board responsibilities include:

* Defining the values and culture for the Legal Aid Agency and agreeing milestones for how this will be achieved;
* Supporting the Chief Executive to ensure that the Legal Aid Agency is fully accountable to the Ministry of Justice and wider Government by delivering on its objectives and priorities;
* Supporting the Chief Executive in executing his duties as Accounting Officer for the Legal Aid Agency;
* Providing rigorous challenge, oversight and scrutiny of the agency’s performance, including ensuring organisational risks are identified and mitigated and that continuous improvements opportunities are being identified, monitored and progressed;
* Supporting the Chief Executive and Executive Team in the development and implementation of the agency’s strategic and business plans;
* Ensuring that the decision making processes of the Chief Executive and Executive Team are robust and supported by appropriate evidence; and
* Supporting the Director of Legal Aid Casework in carrying out his/her responsibilities, ensuring robust practices are in place to maintain the independent decision making process; and
* Oversight of Agency’s execution of statutory duties including Health & Safety and Equality & Diversity.

Chair

1. The Board is chaired by the Chief Executive of the Legal Aid Agency.
2. The Chief Executive as Legal Aid Agency Accounting Officer is accountable, through the Ministry of Justice’s Principal Accounting Officer, to Parliament for ensuring that the Legal Aid Agency’s resources are used for the purposes authorised by Parliament. S/he is also responsible for answering for the propriety and regularity of Legal Aid Agency expenditure.
3. The Chief Executive may also be appointed as the Director of Legal Aid Casework, a statutory office created by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 to carry out the role of making decisions on individual legal aid applications.
4. In their role as Chair of the Board (supported by the board secretariat) s/he is responsible for:

* Ensuring a high standard of discussion and decision making;
* Facilitating Board meetings and collective working; and
* Ensuring that systems are in place to provide Board members with accurate and timely information of good quality.

Membership

1. The Membership of the Legal Aid Agency Board is:

* Chief Executive, Legal Aid Agency (Chair);
* Director of Finance and Performance, Legal Aid Agency (who will Chair in the CEO’s absence);
* Director of Commissioning and Strategy, Legal Aid Agency;
* Director of Case Management, Legal Aid Agency;
* Principal Legal Adviser, Legal Aid Agency;
* Director General of Finance and Corporate Services, Ministry of Justice;
* Finance Non-Executive Board Member (who is also Chair of the Agency’s Audit Committee);
* Legal Non-Executive Board Member; and
* Commercial Non-Executive Board Member.

All members have equal decision-making rights.

1. All Board members should uphold the seven principles of public life (Nolan principles): selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
2. The following people have standing invitations to attend the Board’s meetings:

* Director for Business Change and Information Technology, Legal Aid Agency,
* HR Director for the Legal Aid Agency;
* Ministry of Justice Director for legal aid policy; and
* Head of Corporate Centre, Legal Aid Agency.

1. If the office of Director of Legal Aid Casework is not held by the Chief Executive, the Director shall also be a member of the Board.
2. The Board will meet ten times a year, with additional meetings as necessary.

Non-Executive Board Members

1. Three Non- Executive Board Members (NEBMs) have been recruited through an open competition. NEBMs cover the specialist areas of audit, legal and commercial as well as providing more general Board oversight roles. They are accountable to the Chief Executive for their conduct as Board members.
2. The role of the NEBMs is to provide effective and objective challenge and support to the rest of the Board and officials as appropriate. The key responsibilities for the NEBMs are to:

* Advise on and challenge, as appropriate, operational issues and the Legal Aid Agency’s capability to implement policy and reform changes as required by Ministers;
* Provide an independent perspective and assurance, including advice to the Chief Executive, on the overall capability of the Legal Aid Agency;
* Provide independent guidance and challenge on the implementation of the Legal Aid Agency’s business plan;
* Support the Board in developing skills and tools to help it engage with strategic issues in ways which have practical resonance; and
* Connect the Board to people and organisations who can provide different perspectives and expertise which will assist in furthering the business of the Legal Aid Agency.

Quorum

1. The Board will be quorate if the Chair, another Legal Aid Agency Director, and a NEBM are present.

Review

1. The Board’s terms of reference will be reviewed at least annually to reflect best practice, or as required by the Legal Aid Agency or the Ministry of Justice.

Board Secretariat

1. The Board Secretariat supports the Board and is responsible for ensuring that the Board is fully informed on issues before it. It will ensure that board papers are of the required quality and are issued in a timely fashion. The secretariat will record the Board meeting proceedings, produce accurate minutes, and publish those minutes (subject to any exemptions under the Freedom of Information Act) on the Legal Aid Agency’s intranet. Board actions will be produced and circulated within one week of the meeting. On behalf of the Legal Aid Agency, the Secretariat reports to the Board in a timely manner on:

* Any action that represents a material deviation from the agency business plan;
* Any action which exceeds agreed practices, as set out in the agency governance framework; and
* Anything which may have a material adverse impact on the agency’s reputation.

1. The Secretariat liaises with Board members on suitable meeting arrangements, any visits required by Board members and any other matter related to the Board.
2. The Secretariat is also responsible for the induction and ongoing support for new NEBMs.

**Legal Aid Agency Audit Committee**

1. The Legal Aid Agency Board is supported by the Legal Aid Agency Audit Committee.

Legal Aid Agency Audit Committee

1. The Legal Aid Agency Board has appointed an Audit Committee as a sub-committee of the Board, in accordance with standards and best practice set by HM Treasury. The Audit Committee will support the Board and Chief Executive in his/her role as Legal Aid Agency Accounting Officer and review the comprehensiveness, reliability and integrity of Legal Aid Agency assurance mechanisms. The Audit Committee meets quarterly, with additional meetings, as necessary, to review and sign off the annual report and accounts. Terms of reference for the Audit Committee are attached at Annex E.

Purpose

1. The Audit Committee is charged with ensuring that the Board and the Accounting Officer of the Legal Aid Agency gain the assurance they need on the adequacy and effectiveness of the agency’s arrangements for risk management, governance and control. Within this, the Audit Committee has particular engagement with the work of Internal Audit, the work of the External Auditor and financial reporting issues. The Audit Committee advises the Board and the Accounting Officer on:

* The strategic processes for risk, control and governance and the Annual Governance Statement;
* The accounting policies, the accounts, and the annual report of the organisation, including the process for review of the accounts prior to submission for audit, and management’s letter of representation to the external auditors;
* The planned activity and results of both internal and external audit;
* Adequacy of management response to issues identified by audit activity; including the management letter issued by the external auditor;
* Assurances relating to the corporate governance requirements for the organisation;
* Where relevant, proposals for tendering for either Internal or External Audit services or for purchase of non-audit services from contractors who provide audit services;
* Review performance of external and internal audit functions;
* Counter-fraud policies, whistle-blowing processes, and arrangements for special investigations; and
* The Audit Committee will also periodically review its own effectiveness and report the results of that review to the Board.

Chair

1. The Audit Committee is chaired by a NEBM with relevant financial experience (the Chair of the Audit Committee). This experience will be sufficient to allow them to engage competently with financial management and reporting in the organisation and related assurances. The Chair is also a member of the Ministry of Justice Corporate Audit Committee and ensures that effective arrangements for communication with the department’s Corporate Audit Committee are maintained.
2. The membership of the Audit Committee is:

* Chair of the Audit Committee;
* Commercial NEBM; and
* Legal NEBM.

1. The Committee’s meetings will also be attended by:

* Legal Aid Agency Chief Executive;
* Legal Aid Agency Director of Finance and Performance;
* Legal Aid Agency Financial Controller;
* Legal Aid Agency Head of Assurance;
* Legal Aid Agency Head of Internal Audit;
* Ministry of Justice Head of Internal Audit (if not also holding the role of Legal Aid Agency Head of Internal Audit);
* A representative from the National Audit Office; and
* Members of the Legal Aid Agency Executive Team as appropriate to agenda items being considered.

**Declarations and Conflict of Interest**

1. The Legal Aid Agency Board must be mindful of the potential for conflicts of interest to arise. Civil Servants who are members or attend the Board or its sub-committees must abide by the Civil Service Code and must raise any conflict, or potential conflict of interest at the first opportunity. NEBMs must raise any conflict, or potential conflict, of interest at the earliest opportunity.
2. Should a conflict, or potential conflict, arise during a Board or sub-committee meeting, it shall be for the Chair of that meeting to consider if the Board or committee member should refrain from partaking in the particular discussion, or should excuse themselves for the relevant agenda item. Should the Chair identify a conflict, they will consider if it is appropriate for a deputy to lead the Board or committee for the particular item.
3. A declaration of any conflicts of interest should be made on appointment, and at any meeting where it is relevant, and the Board Secretary will hold a register of interests which will be updated quarterly.

**Expenses, Gifts and Hospitality**

1. The Chief Executive’s expenses will be published by MoJ alongside those of other MoJ Directors General.
2. The Legal Aid Agency abides by MoJ’s Gifts and Hospitality Policy and Procedures.
3. The Chief Executive’s Office holds a register of Executive Team Gifts and Hospitality which will be updated on a quarterly basis. These will be held for a period of three years.
4. The Legal Aid Agency’s Chief Executive’s register will be submitted to the MoJ on a quarterly basis. The MoJ will be responsible for publishing appropriate extracts.
5. The Legal Aid Agency maintains a register of gifts and hospitality for its staff, who will be responsible for providing information in line with the MoJ’s Gifts and Hospitality Policy requirement.

**Appointments**

1. The Chief Executive is appointed by the Permanent Secretary of the MoJ via the standard Senior Civil Service approval mechanisms.
2. The Legal Aid Agency Board NEBMs are appointed, for a fixed term of three years, by the Chief Executive. They are appointed on merit and in recognition of their respective abilities and experience by a panel including a Ministry of Justice non-executive director and delegated subject specialist (as relevant). For recruitment of the Chair of the Audit Committee, this will be done in conjunction with the Ministry of Justice NEBM who chairs the MoJ Audit Committee, as well as the MoJ Director General of Finance and Corporate Services or a senior MoJ Finance delegate. For the legal and commercial NEBM appointments, the panel will consist of the Chief Executive along with a MoJ non-executive member and relevant subject experts (e.g. Civil Service legal and commercial professionals). Following the conclusion of their term of appointment, NEBMs may be reappointed subject to satisfactory appraisal and needs of the Board.
3. Senior Civil Service Pay Band 2 employees of the Legal Aid Agency are appointed by the Chief Executive, agreed with the MoJ professional lead where necessary and approved by the Permanent Secretary and MoJ Workforce Committee.
4. The appointment of Senior Civil Service Pay Band 1 (Deputy Director) members of staff is made by the Chief Executive and approved by the Permanent Secretary for promotions into the SCS. The Chief Executive will manage Pay Band 1 appointments within the complement agreed by the Ministry of Justice Workforce Committee.
5. Any other Legal Aid Agency staff appointments are the sole responsibility of the Chief Executive.

**Legal Aid Agency Executive Team**

1. The Legal Aid Agency’s Executive Team is responsible for the day-to-day operation of the Agency. Key responsibilities include:
   * Developing and delivering the Agency’s strategic objectives, its values and its culture and ensuring effective delivery plans are in place to do so;
   * Managing the financial and operational performance of the Agency including assessing monthly performance and financial reports, reviewing performance against the Agency’s strategic objective; and
   * Promoting openness and accountability in the Agency’s work.
2. The Legal Aid Agency Executive Team is made up of the following people:

* Chief Executive;
* Director of Finance and Performance;
* Director of Case Management;
* Director of Commissioning and Strategy;
* Director for Business Change and Information Technology;
* Principal Legal Advisor;
* HR Director to the Legal Aid Agency; and
* Head of Corporate centre.

1. Membership of the Executive Team is made at the discretion of the Chief Executive.

Meetings

1. The Executive Team meets weekly (with additional informal meetings as necessary). In addition, the Executive Team will meet for planning and strategy sessions when considered necessary by the Chief Executive. Executive Team meetings are also attended by the Head of the Chief Executive’s Office.
2. Subject experts may be invited by responsible Executive members to cover individual items. Representatives will also be invited to attend on an Executive’s behalf if they are unable to attend. If the Chief Executive is unable to attend a meeting he/she will nominate a Chair in his/her absence.

Legal Aid Agency Health and Safety Committee

1. The Legal Aid Agency Chief Executive has ultimate responsibility for health and safety policy and its implementation within the Legal Aid Agency. The Chief Executive is accountable to the Permanent Secretary for the implementation of the Ministry of Justice’s Corporate Health and Safety Policy within the Legal Aid Agency.
2. Day-to-day responsibility for health and safety within the Legal Aid Agency has been delegated to the Legal Aid Agency’s Director of Case Management, as Chair of the Agency’s Health and Safety Committee.
3. The Health and Safety Committee has been created by the Legal Aid Agency’s Executive Team to support it in meeting its responsibility for health and safety. It shall meet on a quarterly basis with additional meetings as necessary. The committee will report into the Executive Team and the Legal Aid Agency Board.
4. Membership of the Legal Aid Agency’s Health and Safety Committee is:

* Legal Aid Agency Director of Case Management (Chair);
* Representatives of the Legal Aid Agency’s offices (Site Leads);
* A representative of the Public Defender Service;
* Legal Aid Agency Health and Safety representative;
* Ministry of Justice Health and Safety representative; and
* Representatives of the Legal Aid Agency’s recognised Trade Unions.

1. Other Legal Aid Agency and Ministry of Justice Officials may be invited to attend as necessary.
2. The Legal Aid Agency will maintain a Health and Safety Risk Register, and apply a risk based approach to managing significant Health and Safety risks within the Legal Aid Agency. This will be submitted on a quarterly basis to the Ministry of Justice’s Corporate Health and Safety team.

**Independence of Decision Making and supporting the Legal Aid Agency’s administration of legal aid**

Director of Legal Aid Casework

1. The Director of Legal Aid Casework will be designated by the Lord Chancellor under s4 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). The Director is responsible for making the decision whether to grant legal aid on individual applications. The Chief Executive of the Legal Aid Agency may be designated as the Director of Legal Aid Casework. The Director will receive any necessary legal advice and support via the Legal Aid Agency’s Principal Legal Advisor to carry out their role. The arrangements to create the environment for the Director’s decision making are set out in the Legal Aid Agency’s Framework Document.

Independent Review of the Director’s Decision making

1. Two panels provide independent review of the Director of Legal Aid Casework’ s decisions:

* The panel of Independent Funding Adjudicators (IFAs) is responsible for independently reviewing the decision making function on individual civil cases; and
* The Special Controls Review Panel (SCRP) reviews cases subject to special controls, predominantly where the case cost is, or is likely to be over £250,000.

1. The IFA and SCRP panels are made up of barristers, solicitors and Fellows of the Chartered Institute of Legal Executives experienced in legal aid work, appointed by the Legal Aid Agency Chief Executive on behalf of the Lord Chancellor. The roles are governed by published Arrangements.
2. Appointment as an IFA or to SCRP are made in line with the Code of Practice published by the Commissioner of Public Appointments, and for a fixed period. No individual can hold such an appointment for a continuous period of more than 10 years.

Independent Review of assessment of costs

1. A panel of Independent Cost Assessors (ICAs) deals with applications for appeal or review against an assessment of costs (or a refusal of a request for prior authority to incur costs) by the Legal Aid Agency as provided for by regulations or contract. The panel is made up of barristers, solicitors and Fellows of the Chartered Institute of Legal Executives experienced in legal aid work, appointed by the Legal Aid Agency Chief Executive on behalf of the Lord Chancellor. The role is governed by the published Arrangements.
2. Appointment to the panel are made in line with the Code of Practice published by the Commissioner of Public Appointments, and for a fixed period. No panel member can hold such an appointment for a continuous period of more than 10 years.

Panel Chairs

1. A Chair shall be appointed for the panel of IFAs and ICAs and for SCRP. The Chairs are appointed by the Chief Executive (on behalf of the Lord Chancellor) on the recommendation of the Principal Legal Adviser. They will be appointed for a fixed period and cannot serve for a period of longer than 10 years.

Indemnity

1. When carrying out these functions, adjudicators and committee members are provided with a guarantee that they will be financially indemnified and will not have to meet out of their own personal resources any personal civil liability which is incurred whilst carrying out their functions, provided they have acted honestly, in good faith and in accordance with the statutes, regulations and procedures applicable to the decisions they have made, and provided they have not acted recklessly. The Legal Aid Agency Chief Executive determines the applicability of this indemnity to the facts of a particular case. The Chief Executive must initially discuss any proposed payment with MoJ Finance, and consult HM Treasury as necessary, prior to making any payment.

Other Review Functions

1. Standard terms in contracts between the Legal Aid Agency and legal aid providers currently set out two additional review functions. These are set out below.

Costs Appeal Committee

1. A Cost Appeals Committee (CAC) will be established to consider Points of Principle of General Importance in respect of individual legal aid funding decisions as necessary.
2. Applications will be referred to the CAC for consideration if the Legal Aid Agency determine that there is a point of principle which needs consideration. The CAC therefore considers whether a cost assessment principle or a contractual provision requires clarification in relation to individual applications. Any Point of Principle of General Importance certified by the CAC is binding on all future assessments carried out by the Legal Aid Agency and any appeals in relation to such assessments.
3. The CAC will be chaired by the Legal Aid Agency’s Principal Legal Adviser, and shall include an ICA and a nominee of the Law Society.

Contract Review Body

1. Legal Aid Agency contracts with providers contain contractual dispute resolution provisions that are designed to resolve disagreements between the parties. Where a provider disagrees with certain actions or decisions taken by the Legal Aid Agency they have a right of appeal and in particular circumstances this review may be undertaken by the Contract Review Body (CRB). For instance, Legal Aid Agency contracts provide that certain contractual disputes must be referred to a CRB (including appeals against termination of contracts.)
2. The powers and composition of the CRB are defined in the contract between the provider and the Legal Aid Agency. CRB panels are convened on an ad-hoc basis, as and when necessary, and are made up of two members nominated by the Legal Aid Agency and, generally, one member nominated by the Consultative Bodies.

**Risk Management**

1. The Legal Aid Agency operates a comprehensive risk management strategy which identifies, assess and monitors risks through the Executive Team. The risk management strategy is overseen by the Legal Aid Agency Board and is available as a separate document.
2. The Legal Aid Agency’s corporate risk strategy is aligned with that of the MoJ.  In common with other Ministry of Justice Executive Agencies the LAA reports its top level corporate risks to the MoJ for consideration and discussion at Departmental Board meetings.

**Complaints**

1. The Legal Aid Agency has a two tier complaints procedures. Complaints should initially be made to the office that dealt with the case or where the issue arose. Each office has an identified lead for complaints. Complainants who are unhappy with the initial response can escalate their complaint to the Central Customer Services Team for review. Further details of the complaints procedure can be found on the Legal Aid Agency’s internet pages.
2. Any claims for compensation which raise novel, contentious or potentially repercussive issues will ultimately require HMT approval and must be referred initially to MoJ Finance. For compensation claims, which do not meet any of these criteria, the processes detailed in paragraphs 64 to 67 will apply.
3. Legal Aid Agency local offices can consider claims for compensation up to £500, with claims over £500 being the responsibility of the Central Customer Services Team.
4. Claims over £5,000 will be considered by the Legal Aid Agency Director of Finance and Performance. The Director of Finance and Performance may refer an issue further either within the Ministry of Justice or to ask for external advice as necessary for individual cases. External advice includes advice from an Independent Funding Adjudicator or member of the Special Controls Review Panel, who can provide expert advice on practice for legal aid providers.
5. If, following the conclusion of the internal review of the complaint, the complainant is still unhappy with the response they receive, they can refer the matter to the Parliamentary and Health Service Ombudsman (PHSO), via their local MP.
6. The Legal Aid Agency will fully co-operate with the PHSO and any investigation they may undertake. The Legal Aid Agency’s Chief Executive will ensure appropriate learning and feedback mechanisms are in place and that difficult cases are brought to the attention of the MoJ at an appropriate stage.

**Freedom of Information and Data Protection Act**

1. The Legal Aid Agency carries out its obligations under the Freedom of Information Act (FOIA), the Data Protection Act (DPA) and the Environmental Information Regulations, including ensuring requests are handled in line with agreed Departmental processes.
2. MoJ’s Data Access and Compliance Unit has devolved responsibility for handling requests under these regimes to the Legal Aid Agency’s Chief Executive’s Office, who will liaise with Information Champions and Local Records Officers in the wider Legal Aid Agency to ensure requirements are met.
3. The Legal Aid Agency has an agreed approach for handling Freedom of Information Act requests related to high profile client cases. This is set out at Annex B.

**Information Assurance and the Senior Information Risk Owner**

1. The Legal Aid Agency complies with MoJ and wider government standards for the management of security and information risk, and reports on its compliance.
2. The Director of Finance and Performance in the Legal Aid Agency is designated as the Legal Aid Agency’s Senior Information Risk Owner (SIRO). They provide leadership to the Legal Aid Agency on data security and managing information risks and are responsible for ensuring the Legal Aid Agency meets its reporting obligations to MoJ’s SIRO.
3. The Legal Aid Agency reports quarterly to MoJ on security incidents in the proceeding period and its key information assurance risks.
4. Further data protection and handling requirements are placed on the Legal Aid Agency due to the nature of material it received in its role administering legal aid. Guidance has been produced for Legal Aid Agency staff to support them in meeting this requirement.

**Equality and Diversity**

1. The Legal Aid Agency is committed to meeting the Public Sector Equality Duty including MoJ wide Equality Objectives and will its compliance with the duty along with the wider MoJ.
2. A member of the Legal Aid Agency’s Executive Team will be the organisation’s Diversity Champion, ensuring that there is appropriate consideration of equality and diversity by the Legal Aid Agency’s Board.

**Trade Unions**

1. Legal Aid Agency members of staff may join the Agency’s recognised Trade Unions. The agreed working arrangements with the recognised trade unions, are set out in the recognition document. This is available on the Legal Aid Agency’s intranet. The Legal Aid Agency provides facilities that allow its staff to take part in legitimate trade union activities by providing reasonable time off from their normal work duties. Details of the time off allowed for trade-union activities and a departmental facilities agreement, which govern the arrangements for employee representation are those of the MoJ.

**Approvals and Delegations**

1. Legal Aid Agency financial delegated authority limits are detailed at Annex C. These cover general purchase, capital and resource project spend against the LAA Administration Budget, and payments from the Legal Aid Fund. They have been agreed with the Ministry of Justice.
2. Delegations from the Director of Legal Aid Casework to Legal Aid Agency caseworkers and other Legal Aid Agency Case Management staff are detailed at Annex D. These cover the type of case different grades of Legal Aid Agency staff can consider.

**Annex A**

**Legal Aid Agency Board meeting dates - 2013/14**

**Board**

Wed 3 April 2013 14:30 - 16:30 LAA Board

Thurs 2 May 2013 14:30 - 16:30 LAA Board

Wed 5 June 2013 14:30 - 16:30 LAA Board

Tues 2 July 2013 14:30 - 16:30 LAA Board

Tues 3 September 2013 14:30 - 16:30 LAA Board

Tues 1 October 2013 14:30 - 16:30 LAA Board

Tues 5 November 2013 14:30 - 16:30 LAA Board

Tues 7 January 2014 14:30 - 16:30 LAA Board

Tues 4 February 2014 14:30 - 16:30 LAA Board

Tues 4 March 2014 14:30 - 16:30 LAA Board

**Audit Committee**

Wed 22 May 14:30 - 16:30 LAA Audit

Tues 24 September 14:00 - 16:00 LAA Audit

Tues 26 November 10:00 – 12:00 LAA Audit

Wed 26 March 14:30 - 16:30 LAA Audit

**Extraordinary Board and Audit Committee (Annual accounts)**

Thursday 20 June 2 – 5pm

**Strategy session:**

Thurs 2 May 10:00 – 13:00 Strategy session

Tues 5 November 10:00 – 13:00 Strategy session

Dates correct as of April 2013

**Annex B**

**The Legal Aid Agency’s approach to Freedom of Information Act requests relating to high profile client cases**

Section 40(2) of the Freedom of Information Act 2000 (FOIA) provides that third party personal data is exempt from disclosure if its release would contravene the Data Protection Act 1998 (DPA).

The receipt of legal aid is considered to be personal data as it relates to a living identifiable individual and implies something about their financial status. The Legal Aid Agency therefore considers section 40(2) of the FOIA when it receives requests about legal aid for specific named individuals.

When determining if the release of data would contravene the DPA, the Legal Aid Agency applies the following test:

1. Would it be fair to disclose the requested information?
   1. Are details of the case already in the public domain nationally?
   2. Are details of the case already in the public domain locally?
   3. Is it publicly known that the case was funded by legal aid?
   4. Is the existing information in the public domain recent, relevant and reliable?
   5. Does the personal have a public profile rather than being just a private individual?
   6. Has the case been subject to Parliamentary or other significant debate?
   7. Has the case concluded?
   8. Does the case raise any novel legal issues?
   9. Is the case particularly high value/cost?
   10. Will disclosure be likely to impact significantly on the privacy of the data subject?
   11. Will disclosure cause any distress (e.g. upset) to the individual?
   12. Can disclosure be justified compared to the impact on the individual?
   13. Does the case raise any wider public interest issues?
   14. Is the information for disclosure recent, relevant and accurate (including caveats)?
   15. Does the disclosure exclude any sensitive personal data?
   16. Does the individual have a reasonable expectation that their personal information will be disclosed?
   17. Has the individual consented to disclosure?
2. (If sensitive personal data) Can a Data Protection Act 1998, Schedule 3 condition be met?
   1. Has the information has already been made public by the individual themselves?
   2. Has explicit consent been provided?
   3. Is one of the conditions of the Data Protection (Processing of Sensitive Personal Data) Order 2000 met?
3. (If not sensitive personal data) Can a Data Protection Act 1998, Schedule 2, Condition 6(1) be met?
   1. Is there a legitimate public interest in disclosure?
   2. Is the disclosure necessary to meet that public interest (e.g. compared to any reasonable alternatives like anonymisation)?
   3. Does the disclosure not cause unwarranted (i.e. unjustified) harm to the interests of the individual?
4. Would it be lawful to disclose the requested information?
   1. Is the information protected by any duty of confidence?
   2. Is the information protected by any statutory bar? (eg s20 Access to Justice Act 1999, s33-35 Legal Aid, Sentencing and Punishment of Offenders Act 2012, LSC Disclosure Regulations 2000)

**Annex C**

**Financial Delegations in the Legal Aid Agency**

The delegated authority limits for the Legal Aid Agency Administration and the Legal Aid Fund budgets are detailed below:

Legal Aid Agency Administration

|  |  |
| --- | --- |
| **General Purchases** | Limit per order |
| Chief Executive | £2m |
| Finance Director | £500k |
| Other Executive Team Member | £250k |
| MoJ SCS Pay Band 1 (below Executive Team) | £20k |
| MoJ Band A | £10k |
| MoJ Band B | £5k |
| MoJ Band C | £0.5k |

| Description | Amount | Delegated Authority |
| --- | --- | --- |
|  |  |  |
| **Proposed capital/resource project & combined programme:** |  |  |
|  |  |  |
| 1. Estates | Amounts up to £100,000 | LAA Finance Director |
|  |  |  |
|  | £100,000 - £500,000 | LAA Executive Team |
|  |  |  |
|  | £500,000 + | MoJ Estates |
|  |  |  |
|  |  |  |
| 2. ICT | Amounts up to £1,000,000 | LAA ICT Director |
|  |  |  |
|  |  |  |
| **Proposed Disposal of Assets:** |  |  |
|  |  |  |
| 1. Land and Buildings | All amounts | Director of Estates & ICT (MoJ) |
|  |  |  |
|  |  |  |
| 2. All other items | All amounts | Director of Estates & ICT (MoJ) |
|  |  |  |
| **Proposed write-off & bad debt (excluding payroll overpayments);** |  |  |
| All cases where fraud, theft, or irregularity is not suspected | Up to £3,000 | MoJ Band A |
|  |  |  |
|  | £3,000 to £30,000 | MoJ SCS pay Band 1 |
|  |  |  |
|  |  |  |
|  | £30,000 to £50,000 | MoJ SCS Pay Band 2 |
|  |  |  |
|  | Over £50,000 up to £300,000 | Executive Team |
|  |  |  |
|  | Over £300,000 up to | MoJ DG Finance via Executive Team |
|  | £25m write off & £10m bad debt |  |
|  |  |  |
| **Proposed payroll overpayment write-off** |  |  |
|  |  |  |
| Authority for write-off | All Amounts | Executive Team |
|  |  |  |
| Charges | All Amounts | Business Unit Budget Holder |
|  |  |  |
| **Proposed fraud & abandoned claim** |  |  |
|  | Up to £30,000 | LAA Finance Director |
| All cases where fraud, theft, or irregularity **is** suspected | £30,000 to £50,000 | MoJ via Executive Team |
|  |  |  |
|  | Over £50,000 | HM Treasury via MoJ FMC |
|  |  |  |
| **Proposed compensation & special payments** |  |  |
| Where payment is not novel or contentious.  All novel, contentious or potentially repercussive cases must have HMT approval. | Up to £3,000 | MoJ Band A |
|  | £3,000 to £10,000 | SCS Pay Band 1 |
|  |  |  |
|  | £10,000 to £30,000 | Executive Team |
|  |  |  |
|  | £30,000 to £50,000 | MoJ via Executive Team |
|  |  |  |
|  |  |  |
|  | Over £50,000 | HM Treasury via MoJ |
|  |  |  |
| **Proposed severance** | Within statutory scheme or contractual authority | Budget Holder |
|  |  |  |
|  | All proposals outside statutory scheme or contractual authority, regardless of value | HMT via Executive Team |
| **Proposed Contingent Liability** | **No** delegated authority within LAA; identification of potential contingent liabilities must be notified to MoJ FMC | As per Managing Public Money Chapter 5 Annex 5.5 |
| **Proposed gifts (voluntary donations)** | **No** delegated authority within LAA | As per Managing Public Money Chapter 4 Annex 4.12 |
|  |  |  |
| **Consultants, Contractors, Interims and academic research** |  |  |
| **Approval of business case** | Up to £20k | SCS Pay Band 1 |
|  |  |  |
|  | Over £20k | Ministerial approval required via LAA Chief Executive (pre-approved by Director) |
|  |  |  |
| **Legal Spend** | HM Treasury Solicitors/Counsel | SCS Pay Band 1 |
|  |  |
| Any other provider | Refer to MoJ Legal Directorate |
|  |  |

Legal Aid Agency Fund

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Staff Level** | **Merits/Cost Approval**  **Civil Rep Apps, Amendments whether VHCC or not** | **Payments**  **Civil Bills & Crime** | **Merits/Cost Approval**  **VHCC**  **Crime & Public Law Children,**  **Events,**  **Funding Checklists** | **Means**  **SIU, Civil Means & NCT. - Complex Means Investigations** |
| SCS Band 3 (Director of Legal Aid Casework) | Unlimited | Unlimited | Unlimited |  |
| SCS Band 2 | £5,000,000 | £5,000,000 | £5,000,000 |  |
| SCS Band 1 | £3,000,000 | £3,000,000 | £3,000,000 |  |
| MoJ Band A | £500,000 | £500,000 | £500,000 |  |
| MoJ Band B | £250,000 | £250,000 | £250,000 |  |
| MoJ Band C | £150,000 | £150,000 | £150,000 | High risk investigations |
| MoJ Band D | £25,000 | Crime £75,000  Civil  £25,000 | £100,000 | High risk client means, Medium risk client means, Low risk investigations |
| MoJ Band E | £15,000 | Crime £50,000  Civil  £20,000 | £50,000 | Low risk client means |
| MoJ Band F | £7,500 | Crime £20,000  Civil  £12,500  taxed  £10,000  other | Nil | Nil |
| Level 7 | Nil | Nil | Nil | Nil |

**Annex D**

**Delegation by the Director of Legal Aid Casework**

|  |  |  |
| --- | --- | --- |
|  | **CIVIL** | **CRIMINAL** |
| Director Level | Exceptional Case Funding, Extraordinary Civil Cases.  SCS authority to £5m.  Director of Legal Aid Casework above £5m. |  |
| Special Controls | Special Controls – borderline cases wider public interest, Supreme Court cases, multi-party actions, costs over £250,000.  Review by Special Controls Review Panel recommendations.  SCS authority to £5m. |  |
| High Cost Cases | VHCC Civil Cases (over £25,000): Contracts/Case Planning/Risk Rates by VHCC Family and Civil High Cost & Complex Case Unit. | VHCC Criminal Case (over 60 days at trial): Contracts/Case Planning & billing by Civil High Cost Unit. |
| High Risk Means | Complex Means & Fraud – Special Investigations Unit.  Extraordinary: Head Of Unit. | Complex Means – National Courts Team. Refer on to SIU where necessary.  Extraordinary: Head Of Unit. |
| High Risk Merits | Special Categories handled by Specialist Unit: Asylum/SIAC, Mental Health, Clinical Negligence, Actions Against the Police, Public Law and Exceptional Funding. Teams: Mental Health, High Cost Cases Unit.  Reviews by independent Review Panel.  Extraordinary: Head of Unit. |  |
| Basic Scope, Means & Payment. | Scope – in/out – LAA.  Merits – LAA.  Costs – LAA Authority levels.  Means Test – LAA.  Payments – LAA Authority levels.  Reviews by independent Review Panel.  Extraordinary: Head of Unit. | Scope limitation – Mags Court.  Interest of Justice Test – Mags Court, Crown Court, Court of Appeal or Supreme Court.  Means Testing – Courts.  Payments – AGFS/LGFS/Fixed – LAA Authority levels.  Extraordinary: Head of Unit. |
| Very Low Risk | Special Children Act Funding - Non-Means/Non-Merits. |  |

Special Cases Work

Cases subject to the Special Cases Work regime will be the responsibility of the Legal Aid Agency’s High Cost Cases team. Details of cases that meet the criteria for Special Cases Work are in the Procedure Regulations Part 6, The Civil Legal Aid (Procedure) Regulations 2012 (SI 2012/3098).

Extraordinary Cases

Cases considered extraordinary justifying higher level scrutiny by the relevant Head of Case Management Unit. These cases raise reputational issues for the Agency, commit material fund costs, or raise precedent setting issues for the justice system and government.

**Annex E**

**Audit Committee Terms of Reference**

*References to the “Committee” shall mean the Audit Committee*

*References to the “Board” shall mean the full Legal Aid Agency Board*

*References to the “Agency” shall mean the Legal Aid Agency*

*References to “MoJ” shall mean the Ministry of Justice*

**Legal Aid Agency Audit Committee**

1. The Legal Aid Agency Board has appointed an Audit Committee as a sub-committee of the Board, in accordance with standards and best practice set by HM Treasury.

**Purpose**

1. The purpose of the Committee is to support the Agency Board and the Chief Executive in his/her role as Legal Aid Agency Accounting Officer and their responsibilities for issues of audit, corporate governance, risk, internal control, assurance, regularity and propriety and review the comprehensiveness, reliability and integrity of Legal Aid Agency assurance mechanisms.

**Membership and Attendance**

1. The Audit Committee will be chaired by a Non-Executive Board Member (NEBM) with relevant financial experience (the Chair of the Audit Committee). This experience will be sufficient to allow them to engage competently with financial management and reporting in the organisation and related assurances. A Non-Executi**v**e Board Member (NEBM) will be appointed as Chair of the Audit Committee by the Chief Executive of the Legal Aid Agency.
2. The Committee members should consist of at least two NEBMs as appointed by the Agency Chief Executive. The membership of the Audit Committee is:

* Chair of the Audit Committee (Audit Non-Executive Board Member);
* Non-Executive Board Member with commercial sector experience; and
* Non-Executive Board Member with legal services experience.

1. If the Chair of the Audit Committee is unable to attend, s/he will nominate a member of the Committee to take the chair in her/his absence.
2. The Committee may ask any relevant senior management to attend meetings either regularly or by invitation, but the invitees have no right of attendance.
3. The Committee’s meetings will also be attended by:

* Legal Aid Agency Chief Executive (the Accounting Officer);
* Legal Aid Agency Director of Finance and Performance;
* Legal Aid Agency Financial Controller;
* Legal Aid Agency Head of Assurance;
* Legal Aid Agency Head of Internal Audit, supported by relevant members of the Internal Audit team, as appropriate;
* Ministry of Justice Head of Internal Audit (if not also holding the role of Legal Aid Agency Head of Internal Audit);
* A representative from the National Audit Office;
* Members of the Legal Aid Agency Executive Team as appropriate to agenda items being considered.

1. Executive attendees may appoint a deputy to go to the Committee in her/his absence. The Chair may ask any or all of those who normally attend but who are not members to withdraw to facilitate open and frank discussion of particular matters.
2. A member of the Agency’s board secretariat team will provide a secretariat function and attend to record the minutes and actions from each meeting.

## Quorum

1. A minimum of two non-executive Board Members, one of which must be the Chair or his/her nominated deputy, must be present for the meeting to be quorate.

## Frequency

1. The Audit Committee will meet a minimum of four times per year, with additional meetings, as necessary, to review and sign off the annual report and accounts. The Chair may convene additional meetings as he/ she deems necessary. The Agency Board may also ask the Committee to convene further meetings to discuss particular issues on which it requires the Committee’s advice.

**Responsibilities**

1. The Audit Committee is charged with ensuring that the Board and the Accounting Officer of the Legal Aid Agency gain the assurance they need on risk management, governance and control. Within this, the Audit Committee has particular engagement with the work of Internal Audit, the work of the External Auditor and financial reporting issues. The Audit Committee advises the Board and the Accounting Officer on:

* the strategic processes for risk, control and governance and the Annual Governance Statement;
* the accounting policies, the accounts, and the annual report of the organisation, including the process for review of the accounts prior to submission for audit, levels of error identified, and management’s letter of representation to the external auditors;
* the planned activity, results, and effectiveness of both internal and external audit,
* adequacy of management response to issues identified by audit activity, including the management letter issued by the external auditor;
* assurances relating to the corporate governance requirements for the organisation;
* where relevant, proposals for tendering for either Internal or External Audit services or for purchase of non-audit services from contractors who provide audit services;
* counter-fraud policies, whistle-blowing processes, and arrangements for special investigations; and
* the Audit Committee will also periodically review its own effectiveness and report the results of that review to the Board.

#### Reporting

The Audit Committee will:

* report to the Board after every meeting on how it has discharged its duties; and
* review its performance against set measures, targets and best practice and report the results of the review to the Agency. Provide an annual assurance report to the Agency Board about the comprehensiveness of assurances in meeting the Agency and Accounting Officer’s needs.

**Procedure**

1. Except so far as the procedure of the Committee is regulated by the Board, the Committee has power to regulate its own procedure and the ruling of the Chair on any issue of procedure arising at any meeting shall be final.
2. The Director of Finance and Performance, the NAO representative and the MoJ Internal Audit representative will each have free and confidential access to the Chair of the Committee. The Chair may convene additional meetings with Internal and/or External Audit as necessary.
3. The Committee may obtain independent professional advice if it considers this necessary and provided the cost is within the delegated authority limit set out in the Framework Document. Consultancy services above this limit will require prior approval from the Legal Aid Agency Board and, if applicable, MoJ before committing such expenditure from the Agency’s administration budget.
4. The Committee may co-opt additional members for a period not exceeding a year to provide specialist skills, knowledge and experience.

**Relationship with other boards/committees**

*MoJ’s Audit Committee*

1. The Chair is also a member of the Ministry of Justice Corporate Audit Committee and ensures that effective arrangements for communication with the department’s Corporate Audit Committee are maintained. Copies of the Agency’s Audit Committee minutes will also be made available to MoJ.

*The Agency Board*

1. The Audit Committee will report regularly on its work to the Agency Board, escalate any significant strategic risks or issues as appropriate. It will consider and advise on any other matters emerging from or referred by the Agency.

Review

1. These terms of reference will be reviewed to reflect best practice, or as required by the Agency, Ministry of Justice or the Committee.