

## FINANCIAL MEMORANDUM

### Introduction

1. This document outlines the financial relationship and accountabilities which exist between the MoJ and the LSB, taking into account the requirements of the Act and HM Treasury. The overarching principles of the relationship are ones of transparency and mutual co-operation.
2. Unless agreed by the department and, as necessary, HM Treasury, the LSB will follow the principles, rules, guidance and advice in Managing Public Money, referring any difficulties or potential bids for exceptions to the sponsorship team in the department in the first instance. A list with guidance and instructions with which the LSB should comply is in **Annex A**.
3. Once the LSB business plan, including detailed budget requirements, has been produced in consultation with the MoJ, and subject to any restrictions imposed by the Act, the LSB will have authority to incur expenditure as agreed without further reference to the MOJ, on the following conditions:
  - a. Expenditure plans are in line with the amount agreed by the Lord Chancellor as recoverable through the levy on approved regulators. Details on the levy operation will be the subject of detailed consultation in 2009 and the outcome, as agreed between the LSB and MoJ, incorporated in this document at **Annex B**;
  - b. The LSB will comply with the corporate delegations set out in **Annex C**. If required these delegations may be altered with the prior agreement of the MOJ, via the sponsorship team;
  - c. The LSB will comply with Managing Public Money regarding novel, contentious or repercussive proposals;
  - d. LSB will need to consult the MoJ or seek approval where appropriate for any proposed expenditure that is outside the delegated limits, (through the business plan and budget process or separately as appropriate); or is for new schemes which increase expenditure or potentially impact adversely on delivery of the agreed programme, or do not comply with the regulatory objectives as set out in Part 2 of the Act.
  - e. The LSB will provide the MOJ with such information about its operations, performance of individual projects or other expenditure as the MOJ department may reasonably require, within the framework of the overriding principles set out in the Framework Document.

### Accountability

#### LSB Accounting Officer

4. As Accounting Officer the Chief Executive will exercise the following responsibilities in particular:

#### *On planning and monitoring –*

- establish, in informal consultation with the MoJ, the LSB's overall business strategy and plans, for consultation with other stakeholders and final approval by the Board

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- ensure that timely forecasts and monitoring information on operational and financial performance against those plans and the LSB's aims and objective are provided to the Board and to the MoJ at an appropriate level of detail. In particular, notify the MoJ promptly if over/under spends are likely that may require a variation to the Grant-in-aid supplied to the LSB.

### ***On advising the Board –***

- advise the Board on the discharge of its responsibilities as set out in this document, the Framework document, the Act, and in any other relevant instructions and guidance that may be issued from time to time;
- ensure that financial considerations are taken fully into account by the Board at all stages in reaching and executing its decisions, and that standard financial and Value for Money appraisal techniques are followed appropriately; and
- take action as set out in paragraphs 3.7.5 of Managing Public Money if the Board, or its Chair, is contemplating a course of action or a transaction which the Chief Executive considers would infringe the requirements of propriety or regularity or does not represent prudent or economical administration or efficiency or effectiveness.

### ***On managing risk and resources –***

- ensure that a system of risk management is maintained to inform decisions on financial and operational planning and to assist in achieving the LSB's aims and objectives;
- ensure that all public funds made available to the LSB are used economically, efficiently and effectively for the purpose intended by Parliament;
- ensure that adequate internal management, contractual and financial controls are maintained by the LSB, including effective measures against fraud and theft;
- maintain a comprehensive system of internal delegated authorities which are notified to all staff, together with a system for regularly reviewing compliance with these delegations; and
- ensure that effective personnel management policies are developed, implemented and maintained.

### ***On accounting for the LSB's activities -***

- sign the accounts and be responsible for ensuring that proper records are kept relating to the accounts and that the accounts are properly prepared and presented in accordance with any directions issued by the Lord Chancellor and other relevant standards and guidance.;
- sign a Statement of Accounting Officer's responsibilities, for inclusion in the annual report and accounts;

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- sign a Statement on Internal Control regarding the LSB's system of internal control, for inclusion in the annual report and accounts;
  - act in accordance with the terms of this document and with the instructions and guidance in *Managing Public Money* and other instructions and guidance issued from time to time by the MoJ, the Treasury and the Cabinet Office; and
  - give evidence, normally with the MoJ Departmental Accounting Officer and where appropriate, with the Accounting Officer for the Office for Legal Complaints, when summoned before the Committee of Public Accounts on the use and stewardship of public funds by the LSB and/or the LSB's oversight of the budget and performance of the OLC.
5. The Chief Executive may delegate the day-to-day administration of his/her Accounting Officer and Consolidation Officer responsibilities to other employees in the LSB. However, he/she will not assign absolutely to any other person any of the responsibilities set out in this document.

### **Annual Report**

6. The report and accounts will comply with the Treasury document *Executive Non-Departmental Public Bodies: Annual Reports and Accounts Guidance*. The accounts will be prepared in accordance with the relevant statutes and the specific Accounts Direction issued by the MoJ, as well as the Financial Reporting Manual (FRoM).
7. In accordance with Part 2 of the Act the report and accounts will outline the LSB's main activities and performance during the previous financial year and set out in summary form the LSB's forward plans. Information on performance against key financial targets will be included in the notes to the accounts, and will therefore be within the scope of the audit.

### **Internal Audit**

8. The LSB will:
- establish and maintain its own arrangements for internal audit in accordance with the Treasury's Government Internal Audit Standards (GIAS);
  - ensure the MoJ is satisfied with the competence and qualifications of the Internal Auditor and the requirement for approving appointments in accordance with GIAS 5.2;
  - set up an audit committee of its Board in accordance with the Cabinet Office's Guidance on Code of Practice for Public Bodies and the Audit Committee Handbook;
  - forward the audit strategy, annual audit plans and audit report, including the LSB's Internal Auditors opinion on risk management, control and governance as soon as possible after approval by the Audit and Risk Committee to the MoJ; and

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- keep records of and prepare and forward to the MoJ an annual report 9or nil return as appropriate) on fraud and theft suffered by the LSB and notify the department of any unusual or major incidents as soon as possible.

### **External Audit**

9. The Comptroller and Auditor General (C&AG) audits the LSB's annual accounts and passes the accounts to the MoJ who will lay them before Parliament. For the purpose of audit the C&AG has a statutory right of access to relevant documents as provided for in the Government Resources and Accounts Act 2000, including by virtue of any Order made under section 25(8) of that Act.
10. The C&AG will consult the MoJ and the LSB on who - the NAO or a commercial auditor – will undertake the actual audit on his behalf. The final decision rests with the C&AG.
11. The C&AG will share with the LSB and MoJ, information identified during the audit process and the audit report (together with any other outputs) at the end of the audit. This will apply, in particular, to issues, which impact on the Departmental Accounting Officer's responsibilities in relation to financial systems within the LSB. The C&AG has also agreed, where asked, to provide the MoJ with Regulatory Compliance Reports and other similar reports which the MoJ may request at the commencement of the audit and which are compatible with the independent auditor's role.

### **VFM examinations**

12. The C&AG may carry out examinations into the economy, efficiency and effectiveness with which the LSB has used its resources in discharging its functions. For the purpose of these examinations the C&AG has statutory access to documents as provided for under section 8 of the National Audit Act 1983. In addition, the LSB will provide, in conditions to grants and contracts, for the C&AG to exercise such access to documents held by grant recipients and contractors and sub-contractors as may be required for these examinations; and will use its best endeavours to secure access for the C&AG to any other documents required by the C&AG which are held by other bodies.

### **Budgeting Procedures**

13. Each year, based on the LSB business plan and the Lord Chancellor's agreement to the levy, the Ministry of Justice will send to the LSB:
  - a statement confirming the annual budgetary provision allocated by the Ministry of Justice, including provision for any forecast income, identifying the split between Resource and Capital and total Grant in Aid under suitable Resource headings; and
  - a statement of any planned change in financial policies which may affect the LSB.
14. The LSB's business plan should take account both of its funding requirement and of any forecast receipts, and will include a budget of estimated payments and receipts together with a profile of expected expenditure and of draw-down and/or other income over the year and where appropriate surrender of funds to the Consolidated Fund.

### **Risk management**

15. The LSB will ensure that the risks that it faces are dealt with in an appropriate manner, in accordance with relevant aspects of best practice in corporate governance, and develop risk management strategy, taking account of the Treasury guidance Management of Risk: Principles and Concepts. It should adopt and implement policies and practices to safeguard itself against fraud and theft, in line with the Treasury's guide: Managing the Risk of Fraud.

### **Grant-in-aid**

16. Any grant-in-aid provided by the MoJ for the year in question will be voted in the MOJ's Supply Estimate and be subject to Parliamentary control.

17. Grant-in-aid will normally be paid in quarterly installments, on the basis of a written request being received by the sponsorship team from the LSB with supporting documentation including a cashflow forecast. Draw down of funds will require a minimum of 12 working days notice for processing by the MOJ. LSB will ensure that all funds received, outside of Grant-in-Aid, are dealt with in accordance to section 175 of the Act which stipulates items which must be paid to the Consolidated Fund.

18. The LSB will comply with the general principle, that there is no payment in advance of need. Cash balances accumulated during the course of the year from grant-in-aid or other Exchequer funds will be kept to a minimum level consistent with the efficient operation of the NDPB. Grant-in-aid not drawn down by the end of the financial year will lapse. Subject to approval by Parliament of the relevant Estimates provision, where grant-in-aid is delayed to avoid excess cash balances at the year-end, the department will make available in the next financial year any such grant-in-aid that is required to meet any liabilities at the year end, such as creditors.

### **Reporting Performance to the Department**

19. The LSB will operate management, information and accounting systems that enable it to review in a timely and effective manner its financial and non-financial performance against the budgets and targets set out in the corporate and business plans. Officials in the MOJ will liaise regularly with LSB officials regarding LSB performance against plans. The sponsor team will also take the opportunity to explain wider policy developments that might have an impact on the LSB.

### **Providing monitoring information to the department**

20. The LSB will provide the department with information quarterly or more frequently if necessary that will enable the department satisfactorily to monitor:

- The LSB's cash and resource management, including expenditure against its resource and capital allocations;
- The LSB's performance against financial and non-financial targets and objectives, including any performance which may help to deliver MoJ policies;
- Its draw-down of grant-in-aid;
- Forecast outturn by resource headings;

- Other data required for the Treasury Combined On-line Information System (COINS).

### **Delegated authorities**

21. The LSB's corporate delegated authorities are set out in **Annex C**.
22. The LSB will consult with the MoJ and where appropriate obtain its prior written approval before:
- Entering into any undertaking to incur any expenditure that falls outside the delegations or which is not provided for in the LSB's annual budget as detailed in the LSB business plan;
  - Incurring expenditure for any purpose that is or might be considered novel or contentious, or which has or could have significant future cost implications;
  - Making any significant change in the scale of operation or funding of any initiative or particular scheme previously agreed;
  - Making any change of policy or practice which has wider financial implications that might prove repercussive or which might significantly affect the future level of resources required; or
  - Carrying out policies that go against the principles, rules, guidance and advice in Managing Public Money.

### **NDPB Staff**

#### **Staff costs**

23. The LSB will ensure that the number, level and structure of its staffing are appropriate to its functions and the requirements of economy, efficiency and effectiveness.
24. Subject to its delegated authorities, the LSB will ensure the creation of any additional posts does not incur forward commitments that will exceed its anticipated ability to pay for them.

#### **Pay and conditions of service**

25. The staff of the LSB, including the Chief Executive, whether on permanent or temporary contract, will be subject to levels of remuneration and terms and conditions of service as set by the Board. Staff terms and conditions should be set out in an Employee Handbook, which should be provided to the MoJ together with subsequent amendments.
26. The LSB will operate a performance-related pay scheme, which will form part of the annual aggregate pay budget approved by the MoJ through the pay remit process.
27. Travel expenses of board members will be tied to the rates allowed to staff of the LSB. Reasonable actual costs will be reimbursed.
28. The LSB will comply with the EU directive on contract workers – the Fixed Term Employees (Prevention of Less Favorable Treatment) Regulations.

### **Pensions/redundancy/compensation**

29. The LSB will normally offer membership of a pension plan to staff but not public appointees. Staff may opt out of such membership. The minimum employer contribution by LSB to any contracted-out personal pension arrangement, including a stakeholder pension, will normally be the employers' National Insurance contracted-out rebate level as prescribed by HMRC from time to time.
30. Any proposals relating to redundancy or severance payments must comply with the rules in chapter 4 of Managing Public Money.

### **Procurement**

31. The LSB will prepare a framework document setting out its procurement structure, organisation, processes, control mechanisms and the circumstances under which it would be appropriate to consult with MoJ. The amount of detail provided in the framework document should reflect the level and nature of the procurement spend and the procurement capability within the LSB.
32. Periodically and wherever practicable the LSB will benchmark its procurement activities against best practice elsewhere for organisations of a similar size and nature.
33. The LSB will also ensure that it complies with its legal obligations including those under the European Communities' Procurement rules and other international agreements. The LSB will ensure that its staff are aware of the procurement guidance in Annex 4.4 of Managing Public Money and the guidance on procurement which is issued by the Office of Government Commerce.

### **Review of the Financial Memorandum**

34. This financial memorandum will normally be reviewed jointly by MoJ and LSB at least every three years or following a review of LSB's functions as provided for in the management statement, notwithstanding that amendments and additions to this financial memorandum may be undertaken as and when required to take account of changed circumstances or new guidance.
35. The Treasury will be consulted on any significant variation proposed to this financial memorandum.

**December 2008**

## Relevant Documents and Guidance

The LSB will comply with the following general guidance documents:

- this document (both *the management statement and the financial memorandum*);
- *Managing Public Money*, including in particular the Accounting Officer Memorandum for NDPB's ;
- *Non-Departmental Public Bodies - a Guide for Departments*, issued by the Cabinet Office;
- *Government Internal Audit Standards*, issued by the Treasury;
- *Managing the Risk of Fraud*, issued by the Treasury;
- *Management of Risk: Principles and Concepts*, issued by the Treasury;
- *Executive NDPBs - Annual Reports and Accounts Guidance*, issued by the Treasury;
- *Departmental Banking: A Manual for Government Departments*, issued by the Treasury;
- relevant *Dear Accounting Officer letters*;
- *Regularity, Propriety and VFM*, issued by the Treasury;
- *the Consolidation Officer Memorandum*, issued by the Treasury;
- relevant *Dear Consolidation Officer letters*;
- other relevant guidance and instructions issued by the Treasury in respect of Whole of Government Accounts;
- Freedom of Information guidance
- other relevant instructions and guidance issued by the central Departments;

appropriate directions and guidance issued by the Ministry of Justice in relation to financial matters including those arising from powers under the Legal Services Act and as specified in this memorandum and the management statement

- recommendations made by the Public Accounts Committee, or by other Parliamentary authority, which have been accepted by the Government and which are relevant to LSB.

**Levy Arrangements**

To be drafted. LSB to provide levy paper.

**LEGAL SERVICES BOARD**  
**Financial Delegation 2008/09**

£

Capital Projects L&B	100,000
Capital Projects IT	50,000
Capital Projects Other	100,000
Disposals	10,000
Gifts	Limits as set out in the Managing Public Money document
Contingent Liability	Limits as set out in the Managing Public Money document
Compensation & Special Payments	10,000
Severance	0
Write Off & Bad Debt	10,000
Fraud & Abandoned Claim	10,000

**Arrangements in the event that the NDPB is wound up**

1. The sponsor department will put in place arrangements to ensure the orderly winding up of the NDPB. In particular it should ensure that the assets and liabilities of the LSB are passed to any successor organization and accounted for properly. (In the event that there is no successor organization, the assets and liabilities should revert to the sponsor department.) To this end, the department will:
  - ensure that procedures are in place in the NDPB to gain independent assurance on key transactions, financial commitments, cash flows and other information needed to handle the wind-up effectively and to maintain the momentum of work inherited by any residuary body;
  - specify the basis for the valuation and accounting treatment of the NDPB's assets and liabilities;
  - ensure that arrangements are in place to prepare closing accounts and pass to the C&AG for external audit, and that funds are in place to pay for such audits. It will be for the C&AG to lay the final accounts in Parliament, together with his report on the accounts; and
  - arrange for the most appropriate person to sign the closing accounts. In the event that another NDPB take on the role, responsibilities, assets and liabilities, the succeeding NDPB AO should sign the closing accounts. In the event that the department inherits the role, responsibilities, assets and liabilities, the sponsor department's AO should sign.
2. The NDPB will provide the department with full details of all agreements where the NDPB or its successors have a right to share in the financial gains of developers. It should also pass to the department details of any other forms of claw-back due to the NDPB.