

To:	Legal Services Board	Agenda Item:	Out of meeting
Date:	26 September 2017	Item:	Paper (17) 66

Title:	LSB quorum matters
Workstream(s):	All
Author / Introduced by:	Julie Myers, Corporate Director Nick Glockling, Legal Director
Status:	Official

Summary:
<p>The delay in appointing a permanent Chair and a lay member's term of office expiring at the end of September (unless extended) means that the Board risks being unable to meet the quorum requirements of its own Rules of Procedure from 1 October 2017.</p> <p>This paper proposes a change to the LSB's Rules to mitigate this risk.</p> <p>NB: this change is solely designed to mitigate the risk arising from vacancies in membership NOT circumstances that arise as a consequence of inability of members to attend Board meetings.</p>

Recommendation(s):
<p>The Board is invited:</p> <p>(1) to note the potential for non-compliance with its own Rules of Procedure from 1 October 2017 and</p> <p>(2) to agree the proposed amendments to the LSB's Rules of Procedure.</p>

Risks and mitigations	
Financial:	N/A
Legal:	Low: The Legal Services Act 2017 provides for the actions of the Board to remain valid where there are vacancies in membership.
Reputational:	High: The requirement for lay majority membership of regulatory boards is a core tenet of independent regulation. The reason for the Board's membership not being in compliance with this requirement is as a consequence of MoJ appointment processes. However, the Board needs to respond to the circumstances in which it finds itself.
Resource:	N/A

Consultation	Yes	No	Who / why?
Board Members:	X		Helen Phillips

Consumer Panel:		X	N/A
Others:	The Interim Chair has discussed this situation with MoJ officials.		

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Para 8, second sentence to the end of para	Section 36(2)(c): information likely to prejudice the effective conduct of public affairs	

LEGAL SERVICES BOARD

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LSB quorum matters Executive Summary

Background

1. The Legal Services Act 2007 establishes that the Legal Services Board must comprise:
 - a. a Chair (who must be a lay person)
 - b. 7 – 10 other members
 - c. Chief Executive
2. The Act describes the Chair and the non-executive members as ‘ordinary members’ and requires that in appointing ordinary members, the Lord Chancellor must ensure that the majority of members are lay. (This means that the lay or non-lay status of the CEO must be considered in determining the lay majority).
3. The Act goes on to state that any act of the Board is not affected by a vacancy in the office of Chair or amongst the other members. The legal view is that this means the Board’s acts therefore remain valid:
 1. when there are vacancies that take membership below statutory membership ie when it does not have any of a Chair / 7 - 10 members / CEO; and
 2. when there are vacancies that mean there is not a lay majority.

The Board relied on this clause during the period when its membership was below the statutory minimum.

4. Whilst this caveat is helpful, routinely relying on this statutory provision does present a reputational risk and has the potential to undermine our willingness, or legitimacy, to raise governance issues with those we regulate. At the same time, the Board can only rely on this provision if its own rules of procedure allow for such situations. At present, the Board’s own rules of procedure do not allow for a situation in which, by reason of vacancies, the Board has an equal membership or a non-lay majority. This is because the rules of procedure specify that a Board meeting is only quorate when there is a majority of lay members present (see below).

LSB’s own Rules of Procedure

5. The Act states that the Board may regulate its own procedure including quorum. The LSB’s current Rules of Procedure, at 3.7, specify a quorum that:
 - is the higher of three or 1/3 of members AND
 - must have a lay majority

This means, in circumstances where, by reason of a vacancy, the Board has either equal lay and non-lay membership or a non-lay majority and all available members turn up – the LSB cannot satisfy its own Rules of Procedure for a lay majority - even though the Act provides for such circumstances.

Quorum issue

6. On 1 October 2017, assuming the departure of a lay member at the end of his second term, the Board becomes unable to meet the requirements of its own rules of procedure as to quorum. The table below summarises the position:

Member	Up until 30/09/17		30/09/17 (remains case until - new Chair appointed or - HP remains in Chair and HP member post replaced)	
Dr Helen Phillips (interim Chair)	Lay		Lay	
Terry Babbs	Lay			
Jemima Coleman	Non-lay		Non-lay	
David Eveleigh	Non-lay		Non-lay	
Marina Gibbs	Lay		Lay	
Michael Smyth CBE QC (Hon)	Non-lay		Non-lay	
Catharine Seddon	Lay		Lay	
Jeremy Mayhew	Lay		Lay	
Neil Buckley (Chief Executive)	Non-lay		Non-lay	
Total	Chair (vacancy) 8 members 1 CEO	5 lay 4 non-lay	Chair (vac) 7 members 1 CEO	4 lay 4 non-lay
Implications arising from LSB's own rules of procedure (not Act)	Board can meet lay majority requirement of own rules of procedure UNLESS a lay member does not attend all or part of a meeting in circumstances where all non-lay members attend		Board cannot meet lay majority requirement of own rules of procedure when all lay members are present unless at least one non-lay member does not attend. Were any appointed lay member not to attend all or part of a meeting, then at least two non-lay members would need to not attend.	

Seeking an extension to the term of a lay member

7. The current composition of the board could continue if the Lord Chancellor agrees to the extension of the second term of Terry Babbs' appointment. This option was raised by the interim Chair with MoJ officials a number of months ago and we have continued to press MoJ officials for a decision. We were advised a submission was made to the Lord Chancellor seeking a further nine month extension.
8. The Lord Chancellor cannot decide to extend a term of appointment without prior consultation with the Lord Chief Justice. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Proposals to change rules of procedure

9. The executive therefore proposes that the LSB's current rules of procedure be amended to allow for times when – **by reasons of a vacancy only** - membership is either below statutory minimum and/or there is no lay majority. The amended Rules will **not** apply where Board is at full strength and has a lay majority but lay members are merely unable to attend.
10. **It is therefore proposed** to amend Rule 3.7.1, to insert the text in red, below:

“The quorum for a meeting shall be the higher of three or 1/3 of the number of Board Members from time to time, comprised of both non-lay and a majority of lay members save for circumstances where **by reason of a vacancy** the Board is not capable of having a lay majority.”

11. In addition, **it is also proposed** to amend Rule 3.7.3 to allow for a meeting to continue informally where a quorum is not present. The consequences would be that a meeting would move into informal session and any decisions would need to be ratified post-meeting. Amendments, in red, below:

“Where a meeting of the Board:

- (a) is not quorate within 30 minutes from the time appointed for the meeting; or
- (b) becomes inquorate during the course of the meeting,

then the meeting shall either

- a) be adjourned to such time, place and date as may be determined by the Board Members present or
- b) continue informally with a requirement that any decisions required by the Board will be made or ratified following a suitable exchange of correspondence either electronically or in hard copy outside of the

meeting. Such decisions must also have regard to the quorum requirements as per Rule 3.7.1.”

Matter for decision

12. The Board is invited:

- a. to note the potential for unavoidable non-compliance with its own Rules of Procedure from 1 October 2017 and
- b. to agree to the proposed amendments to the Rules of Procedure.