

 **AN BORD UM CHÚNAMH DLÍTHIÚIL**

#### Corporate Governance Manual

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

January 2019

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# Chapter 1 Introduction

## 1.1 The Purpose of this Manual

This is the sixth edition of the *Corporate Governance Manual*, the first edition having been produced in October 2006, the second in November 2009, the third in December 2011, the fourth in December 2013, and the fifth in November 2016. The purpose of the *Corporate Governance Manual (*the *‘Manual’)* isto provide a clear and comprehensive summary of the principal aspects of corporate governance for the Board and senior management of the Legal Aid Board (LAB). It is also intended to ensure that Board Members are fully informed of their legal responsibilities and that they are familiar with statutory provisions relevant to their position and the key organisational issues, policies and strategies that inform their role.

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

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

## 1.2 What is Corporate Governance?

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

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

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

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

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

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

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

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

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

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

1. Business and Financial Reporting Requirements;

2. Audit and Risk Committee Guidance;

3. Remuneration and Superannuation;

4. Board Self-Assessment Evaluation Questionnaire.

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

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

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

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

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

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

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

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

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

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

1. The Board should be clear about its mandate and from that identify the various functions, roles and responsibilities entailed in the delivery of that mandate.
2. The Board should meet sufficiently regularly to discharge its duties effectively and should have a formal schedule of matters specifically reserved for it for decision to ensure that the direction and control of the State body is firmly in its hands.
3. The preparation and adoption of a strategic plan is a primary responsibility of the Board of the organisation.
4. There should be a clear division of responsibilities between leading and managing the Board and the executive responsibility for running the State body. No one individual should have unfettered powers of decision.
5. The roles of the Chairperson, Board and Chief Executive should be clearly defined.
6. The Board is collectively responsible for the long-term sustainability of the body.
7. All Board members have a fiduciary duty to the State body in the first instance (i.e. the duty to act in good faith and in the best interests of the State body).
8. On the appointment of new Board members, the Secretary of the Board should provide them with the necessary information to enable them to discharge their functions.
9. The Board and its committees should have the appropriate balance of skills and knowledge to enable them discharge their respective roles and responsibilities effectively.

10. To ensure continued integrity and transparency, and to avoid public concern or loss of confidence, the Board should ensure that appropriate policies are in place so that members and staff take decisions objectively and steps are taken to avoid or deal with any potential conflicts of interest, whether actual or perceived.

11. A fundamental duty of the Board is to ensure that a balanced, true and fair view of the State body’s financial performance and financial position is made when preparing the annual report and financial statements of the State body and when submitting these to the relevant Minister.

12. The Board should have formal and transparent arrangements for governance, risk management and internal control and for maintaining an appropriate relationship with the State body’s auditors.

13. The Board is responsible for ensuring that effective systems of internal control are instituted and implemented in the State body including financial, operational and compliance controls and risk management and the Board should review the effectiveness of these systems annually.

14. The Board should have a properly constituted independent internal audit unit or engage appropriate external expertise which should operate in accordance with the provisions of the Code of Practice.

15. The Board of a State body should establish an Audit and Risk Committee of at least three independent non-executive Board members.

16. Good governance requires effective procedures for the definition of responsibility and accountability, allocation of budgets, defining expected outputs and outcomes and clear procedures for monitoring performance.

17. The Board should agree Performance Delivery Agreements with the relevant Minister/parent Department and report to the Minister on progress against targets. A template for the Agreement is included at appendix E of the Code of Practice.

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

19. State bodies should be exemplary in their compliance with taxation laws and should ensure that all tax liabilities are paid on or before the relevant due dates.

20. Where a legal dispute involves another State body, unless otherwise required by statute, every effort should be made to mediate, arbitrate or otherwise resolve before expensive legal costs are incurred.

21. In its dealings with the public, the Board should publish a customer charter which outlines the nature and quality of service which customers can expect.

22. All Board members must comply with the relevant provisions of the Ethics in Public Office Acts 1995 and 2001).

**Appointments to the Board**

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

**Compliance Requirements**

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

**Governance Framework**

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

## 1.4 The Role of the Board of a State body

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

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

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

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

* The Board should meet regularly. The collective responsibility and authority of the Board should be safeguarded and all Board members must be afforded the opportunity to fully contribute to Board deliberations;
* The Board should have a formal schedule of matters specifically reserved to it for decision – a list of these functions is set out in the *Code of Practice* and is itemised at Section 3.2 of this document;
* The Board is responsible for compliance with all statutory obligations applicable to the State body;
* Board members should bring an independent judgment to bear on issues of strategy, performance, resources, key appointments, and standards of conduct;
* The Board should, in a Board resolution, lay down formal procedures whereby Board members, in the furtherance of their duties, may take independent professional advice, if necessary;
* The Board Audit and Risk Committee and other Board committees should have written constitutions and terms of reference;
* Any business or other interests, which could affect a Board member’s independence, should be dealt with as outlined in the Code of Practice;
* All Board members should have access to the advice and services of the Secretary of the body who is responsible to the Board for ensuring that Board procedures are followed and that applicable rules and regulations are complied with;
* The Board should constantly review its own operation and that of its committees and individual members and seek to identify ways of improving its effectiveness. The attendances of each Board Member at Board meetings should be reported in the Annual Report.

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

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

 **Relationship with Senior Management**

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

 **Relationship with the Department:**

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

**Ministerial Approval:**

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

**Periodic Critical Review:**

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

## 1.5 Briefing for new Board members

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

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

**Independent judgement:**

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

**Attendance Requirement:**

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

**Access to Secretary of the Board:**

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

## 1.6 Implementing Corporate Governance in the LAB

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

1. *Organisational structures and planning processes (Chapters 2, 3 and 4 of this Manual)*
* How the Board is organised
* How its responsibilities are defined
* How it is held accountable
* Its relationship with stakeholders
* Its role in strategic and business planning
* Operational processes requiring Board oversight
1. *Risk management, audit and financial internal controls (Chapters 5 and 6 of this Manual)*
* Risk management
* Auditing
* Accountability
* Budgeting
* Financial controls and financial management
* Value for Money
1. *Standards of behaviour (Chapter 7 of this Manual)*
* Code of conduct
* Ethics
* Disclosures
* Anti fraud and anti-corruption

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

# Chapter 2 Overview of the Legal Aid Board

## 2.1 Introduction

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

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

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

(ii) a family mediation service;

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

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

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

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

Under Section 5 (2) of the Act, the Board shall, to such extent and in such manner as it considers appropriate, disseminate, for the benefit of those for whom its services are made available, information in relation to those services and their availability.

## 2.2 The Board

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

## 2.3 Staffing

Section 5 (3) of the 1995 Act states that the Board may perform any of its functions through any of its members or any member of its staff duly authorised by the Board in that behalf.

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

The Board's staffing complement is governed by the Staffing Resource Management Framework introduced by DPER in August, 2015 and within this framework the Board has delegated sanction to recruit staff up to Principal Officer level, within our overall pay budget.

## 2.4 Organisational Structure

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

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

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

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

Chief Executive

John McDaid

Statutory Board

Finance

 IT

Governance and Compliance

Property Management

Risk Management

Family Mediation

Legal aid decision making

Criminal Legal Aid

Internal Audit

Law Centre Operations

Policy

Service Delivery and Management of Performance

Human Resources

Support Services

Research, Learning and Development

Director of Corporate Services

Dr. Donal Reddington

Director of Family Mediation

Fiona McAuslan

Director of Decision Making and Support

Angela McDonnell

Director of Human Resources

Barry Murphy

Director of Civil Legal Aid

Niall Murphy

Director of Criminal Legal Aid

Pat Gilheaney

## 2.5 Mission

The mission, vision, values, goals and objectives of the LAB are set out in the Board’s *Corporate Plan 2018 - 2020.*

The mission of the LAB is:

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

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

* The client, access to justice and problem solving being central to our decision making;
* High professional and ethical standards in the provision of all our services at all times delivered impartially and with professionalism and integrity;
* A focus on learning, innovation and problem solving in the delivery of services in response to an ever-changing legal and social environment;
* Effective leadership at all levels and enabling staff to make the best use of their abilities and skills;
* A culture that promotes a team ethic and respect for the human dignity of the client and that of colleagues;
* The provision of good value for money;
* Openness and transparency;
* Effective governance and accountability relationships and structures with the Department of Justice and Equality, Government and the public.

## 2.6 Mandate and Responsibilities

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

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

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

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

## The Board as a Registered Charity

The Board retains charitable status, which dates from the period prior to its founding legislation of 1995. In practical terms the main benefit of such status is that the Board is eligible for considerable savings on the licencing costs for various forms of computer software.

The Chairperson and Members of the Board are also registered with the Charities Regulator as the trustees of the Legal Aid Board as a charity.

## The Board must make an annual return to the Charities Regulator, consisting of its annual report and audited financial statements. Other details must also be provided as part of the return, which is submitted via the website of the Charities Regulator.

## Other Relevant Legislation

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

**Employment Legislation**

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

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

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

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

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

In accordance with the legislative requirements identified above, the Board has developed an updated Safety Statement which includes the identification of hazards and the carrying out of a risk assessment for each of the Board’s office locations, in accordance with the overall framework set out in the revised Statement.

**Freedom of Information Act 2014**

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

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

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

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

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

**The Data Protection Acts 1988 - 2018 and the General Data Protection Regulation (GDPR) 2016**

Data Protection laws arose from concerns over individuals’ right to privacy as increasing amounts of personal information was gathered by businesses and other organisations throughout the 20th century.

Digital technology has changed the way many organisations operate and the evolving means of collecting, storing and processing personal data has meant that laws have needed to be significantly changed to keep pace. **GDPR** takes account of modern methods of capturing and processing people’s data and takes steps to ensure individuals have sufficient control over their information.

It is important to remember though, that data protection isn’t just about digital information but all personal information, including that which is recorded or stored in paper copies.

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

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

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

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

* + - Registered with the Data Protection Commissioner and continues to do so on an annual basis, and
		- Designated a Data Protection Officer to deal with any issues arising under the Acts, to coordinate processing Subject Access Requests and to assist in education staff in data protection matters

**Principles of GDPR**

The General Data Protection Regulation (GDPR) was passed in 2016 and came into force after a two-year preparation period on the 25th May 2018. GDPR considerably strengthens data protection legislation and lays out six principles for processing of personal data. These are:

1. **Lawfulness, fairness and transparency**Data should be gathered and used in a way that is legal, fair and understandable. The public have the right to know what is being gathered and have this corrected or removed.
2. **Purpose limitation**Organisations should only use data for a legitimate purpose specified at the time of collection. This data should not be shared with third parties without permission.
3. **Data minimisation**Data collected by organisations should be limited only to what is required for the purpose stated. Organisations should not collect data without specific purpose.
4. **Accuracy**The personal data held should be accurate, kept up to date, and, if it is no longer accurate, should be rectified or erased.
5. **Storage limitation**Personal data should only be stored for as long as is necessary. Data can be archived securely and used for research purposes in the future. Where possible, the personally identifiable information should be removed to leave anonymous data.
6. **Integrity and confidentiality**Personal data should be held in a safe and secure way that takes reasonable steps to ensure the security of this information and avoid accidental loss, misuse or destruction.

**Definitions**

**Data subject** –Any individual about whom personal data is being stored.

**Subject Access Request (SAR)** – A request made by a data subject for access to personal information held relating to them.

**Processing** – This refers to the collection, storing and transferring of personal data.

**Data protection Commissioner (DPC)** - Ireland’s independent authority set up to uphold information rights in the public interest.

**Data Controller** – Any organisation that collects, maintains or processes data.

**Data Protection Officer** – This role is required in certain circumstances, such as public authorities and those organisations dealing with sensitive data. LAB has appointed a DPO.

**Data Processor** – This refers to anyone, sometimes a third-party organisation or business (eg. printing company), who processes data on behalf of a Data Controller.

**The Official Languages Act, 2003**

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

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

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

In accordance with the OLA, the Board:

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

**New law and procedures**

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

# Chapter 3 Conducting Board Business

## 3.1 Introduction

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

## The Role and Responsibilities of the Legal Aid Board

The role of the Board of any public body is to provide strategic leadership, direction, support and guidance for the body and promote commitment to its core values, policies and objectives.

The Board's role entails:

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

In addition to the special Board responsibilities set out in Appendix 1 of the *Code of Practice* and in the *1995* *Act*, the Board holds specific governance and management responsibilities that are common to all state bodies:

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

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

**Matters specifically reserved to the Board itself**

In compliance with the requirement in the Code of Practicethe Board has a formal schedule of matters specifically reserved to it for decision to ensure that the direction and control of the body is firmly in its hands. In the case of the Legal Aid Board, the matters specifically reserved are:

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

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

In the case of the Legal Aid Board, Section 4 (6) of the 1995 Act states that the Board shall hold such and so many meetings as may be necessary for the performance of its functions.

***Obtaining advice***

By a resolution of the Board on 21 September 2018, the Board may engage professional advice on matters where it is considered appropriate to do so.

***Annual Report***

The Board has a specific reporting responsibility in the 1995 Act. Under Section 9 (1) of the Act, not later than the 30th day of September in each year, the Board shall make a report to the Minister, in such form as he or she may approve, of its activities during the preceeding year.

This report to the Minister is the Board’s Annual Report, and is also published following its approval by Government and presentation to the Oireachtas.

Notwithstanding the deadline referred to above, the Department of the Taoiseach has indicated that annual reports of public bodies should be submitted to the Government, prior to presentation to the Oireachtas, “within six months of the end of the year to which they relate, unless a shorter period is specified by statute”. In the case of the Legal Aid Board, which has a financial year ending 31 December, it effectively means that the Annual Report must be submitted by 30 June in each year.

***Keeping of Accounts***

Section 19 of the 1995 Act states that the Board shall, subject to Ministerial conditions, establish and maintain a fund known as the Legal Aid Fund. This consists of sums advanced to the Board from the Exchequer, and all other payments made to the Fund or to the Board, including contributions by persons who have been granted legal aid and advice, and costs and damages recovered by such persons and paid into the fund under the provisions of the Act.

Section 20 of the 1995 Act requires the Board to keep, in such form as may be approved by the Minister for Justice and Equality, with the consent of the Minister for Public Expenditure and Reform, all proper and usual accounts of any moneys received or expended by it. (See Section 6.4 – Board Financial Reporting).

## Role of the Chairperson

The Chairperson has specific responsibility under Section 4 (9) (a) of the 1995 Act to chair a meeting of the Board if present at such a meeting. (Under S. 4 (9) (b) of the Act, if the chairperson is not present or if the office of chairperson is vacant, the members of the Board who are present shall choose one of their number to chair the meeting.)

Under Section 4 (11) of the 1995 Act, every question at a meeting of the Board shall be determined by a majority of the votes of the members present. In the case of an equal division of votes, the Chairperson shall have a second or casting vote.

The Code of Practice also requires the Chairperson to furnish to the relevant Minister, with the annual report and accounts of the body, a comprehensive report on the Board’s activities in the period covered by the annual report. The Chairperson is also required to provide the Minister with a Statement on the System of Internal Control. (See Section 5.6 – Annual Report and Accounts for further details).

The Chairperson is responsible for leading and guiding the Board in its task of setting the State body’s strategic policies. The Chairperson works with the CEO to manage the Board’s agenda and provides direction to the Secretary to the Board.

The Chairperson shall have responsibility for the selection of chairs of Board Committees from among Board members (see Section 3.8 below).

In line with the Code of Practice for the Governance of State Bodies 2016, the Chairperson and the CEO are responsible for the effective management of the agenda for a Board meeting and ensuring that adequate time is available for discussion of all agenda items, in particular strategic issues. The Chairperson and CEO should meet in advance of the Board meeting to agree the agenda.

The Chairperson should promote a culture of openness and debate at Board meetings by facilitating the effective contribution of key management and all Legal Aid Board members.

The Chairperson is responsible for ensuring that the Board receive accurate, timely and clear information, and ensure effective communication with all relevant stakeholders. The Chairperson should liaise with the CEO and Board Secretary to ensure that Legal Aid Board members have all the necessary information to make informed decisions on key matters.

Where the Chairperson is of the view that specific skills are required on the Board, s/he should advise the relevant Minister of this view for their consideration sufficiently in advance of a time when Board vacancies are due to arise. (See Section 3.9 – ‘Arrangements at the end of Board’s term of office’ below for further details.)

The Chairperson shall provide direction to the Board Secretary to ensure effective flow of information within the Board and its Committees, and between senior management and non-executive Board members.

A person being proposed by the Minister for appointment as Chairperson is required to make themselves available to the appropriate Oireachtas Committee to discuss the approach they will take to their role as Chairperson and their views about the future contribution of the Legal Aid Board.

## Delegations to the Chief Executive

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

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

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

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

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

**The Role of Secretary to the Board**

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

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

- statutory duties;

- duty of disclosure;

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

- administrative duties.

* In relation to governance, the Secretary of the Board should report to the Chairperson on all Board governance matters and should assist the Chairperson in ensuring relevant information is made available to the Board and its committees.
* The Secretary of the Board is responsible for advising the Board through the Chairperson on all governance matters. The Board should have a list of statutory obligations and regulations that are required to be complied with and the execution of which depends on the Secretary of the Board.
* Each year the Board Secretary must request Board members who have any material interest(s) under the ethics legislation to provide to the Secretary a Statement of Interest prior to 31 January of the following year, and the Board Secretary must then submit a copy of those returns to the Standards in Public Offices Commission by the 31 January. Statements of Interest that are provided to the Board Secretary must be retained for a period of fifteen years.

## Board Remuneration

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

Chairperson: €11,970 p.a.

Board Members: €7,695 p.a.

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

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

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

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

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

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

## Travel and Subsistence

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

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

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

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

## Protocol of Board Meetings

The Board is empowered to fix the date and time of its meetings. Currently 10 Board meetings are held each year. Meetings in Dublin usually take place on Thursdays and those in Cahirciveen and elsewhere on Fridays.

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

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

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

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

## Committees

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

The Chairperson of the Board will, with due regard to the skillset of individual Board members, request individual Board members to act as Chair of a Board Committee. The Chairperson’s nominations shall be put for approval by a resolution of the Board.

In consultation with the Chairperson of the Board, the chair of a Board Committee may step down from the role after a period of time in order to enable the responsibilities of chair to be rotated. The Chairperson of the Board may also request Committee chairs to stand down or rotate from time to time for this purpose. When the Chair of a Board Committee changes during the term of office of a Board, the changes shall be put for approval by a resolution of the Board.

***Appeal Committee***

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

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

Furthermore, regulation 12(5) states that:

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

***Certifying Committee***

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

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

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

Regulation 5(8)(a) states that :

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

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

***Audit and Risk Committee***

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

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

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

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

***Finance and Effectiveness Committee***

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

***Strategy and Opportunity Committee***

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

***Lawyers’ Committee***

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

***Performance Committee***

The Performance Committee’s role is to consider and develop the objectives of the Chief Executive and to monitor the extent to which those objectives have been achieved.

***Family Mediation Committee***

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

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

## Arrangements at the end of Board’s term of office

As noted above, the usual term of office of a Board member is five years, with a maximum of two terms of office.

In practice a new Board is appointed at the end of each five year term, and the majority of the incoming Board are likely to be new members. In line with the recommendation in the Code of Practice for the Governance of State Bodies 2016, the Chairperson shall write to the Minister for Justice and Equality between twelve and six months before the end of the existing Board’s term of office, outlining the mix of skills and experience which the Chairperson considers would be appropriate among the incoming Board members.

This is in order to seek to ensure that the process undertaken under the Guidelines for Appointments to State Boards identifies candidates with those skills and so that the Minister may take the Chairperson’s views into consideration when making appointments from qualified candidates from the Stateboards.ie process.

In this regard, it should be noted that Section 3 of the 1995 Act lays down that the Minister shall have regard to the desirability of Board members having knowledge or experience across a specified range of skills and subject areas.

During the term of office of a Board, a number of vacancies may arise as individual Board members may step down for professional or personal reasons. Where a new Board member is appointed to fill a vacancy in this way, the Chairperson shall give consideration to requesting the Minister to consider the re-appointment of that person to the new Board to assist in knowledge transfer to new members.

## Post Resignation / Retirement

On the resignation or retirement of a Board member, the Board is required under Section 1.10 of the Code of Practice for the Governance of State Bodies 2016 to ensure that any procedures that it has put in place in this regard are monitored and enforced to guard against conflicts of interest of Board members or inappropriate disclosure of information.

In this regard, the Code of Conduct for Members of the Legal Aid Board (see Section 7.6) specifies that the provisions regarding confidentiality and disclosure also apply after a Board member’s term has ended or a staff member has left the Board.

The Code of Conduct also specifies that, on conclusion of their term, Board members should either dispose of or return to the LAB all manuals, letters, notes, notebooks, reports and other material of a confidential nature.

A resigning Board member should include in their letter of resignation a confirmation that s/he will comply with the Code of Conduct in respect of confidentiality and disclosure, and the treatment of all material of a confidential nature.

On the retirement of a Board, the members shall be asked to provide a declaration to the Board Secretary regarding the matters above.

## Board annual performance evaluation

The Board shall review its performance on an annual basis. This review shall take the form of a questionnaire distributed to Board members, the results of which shall be subsequently examined by the Board collectively and any issues arising out of the review shall be given due consideration by the Board.

The review shall take place in the last quarter of each year. In the case of the final year of a Board’s term of office, the results of the review will be shared with the incoming Chairperson to assist them in developing the new Board effectively.

## Board Committees annual performance evaluation

Board Committees shall carry out an annual performance evaluation of similar but less extensive form to that used by the Board. The findings will be examined by the respective Committee chair and assist them in effective management of the Committee.

Chapter 4 Organisational Strategy in the Legal Aid Board

## 4.1 Corporate Plan 2018 – 2020

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

The Board’s current Corporate Plan is the eigth produced by the LAB and was drawn up following a consultation process with staff of the Board and external groups and individuals who have a particular interest in the services provided by the Board. In tandem with the consultation process, a review of the organisation’s operating environment and internal operating policies and procedures was undertaken along with research into the models for service delivery in comparable organisations in other jurisdictions. This Plan covers the period to the end of 2020.

The 2018-2020 Plan outlines high level goals and a series of actions to be undertaken during the lifetime of the Plan. The Plan covers the following main areas:.

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

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

## 4.2 Implementation of the Plan

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

# Chapter 5 Risk Management, Audit and Reporting

## Risk Management

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

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

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

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

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

## Risk Management Policy

The Board’s Risk Management Policy sets out the Legal Aid Board’s principles, policy objectives, responsibilities and instruments that collectively represent the Board’s overall response to risk.

The Policy is reflective of recent developments, primarily the 2016 update of the Code of Practice for the Governance of State Bodies[[1]](#footnote-1), and the associated Audit and Risk Committee Guidance. Where appropriate, provisions in this Policy are cross referenced to the Code.

**Guiding Principles**

In carrying out its risk management responsibilities, the Board adheres to the three main principles of governance: openness, integrity and accountability. These principles shall guide the statutory Board, its committees and the executive in their work of managing risk in the organisation.

**Risk Management Policy Objectives**

Risk is defined as the threat that an event, action or failure to act will affect an organisation’s ability to achieve its objectives and to successfully execute its strategies. The essence of risk is the uncertainty of outcome (whether positive or negative). The risk has to be assessed in respect of the combination of the likelihood of something happening, and the impact which arises if it does actually happen. Risk Management includes identifying and assessing risks and then responding to them.

The objectives of the Legal Aid Board’s Risk Management Policy[[2]](#footnote-2) are to:

* Integrate risk management into the culture of the organisation.
* Manage risks in accordance with best practice.
* Anticipate and respond to changing social, environmental, legislative, political, economical, technological, competitive, and customer requirements.
* Prevent injury, damage and losses and reduce the cost of risk.
* Raise awareness of the need for risk management by all those connected with the delivery of services.

These objectives will be achieved by:

* Establishing clear roles, responsibilities and reporting lines within the Board for risk management.
* Providing opportunities for shared learning on risk management across the organisation.
* Reinforcing the importance of effective risk management as part of everyday work.
* Incorporating risk management considerations into all aspects of the Board’s work including the corporate and business planning process.
* Monitoring arrangements on an ongoing basis.

Within the Board, particular care is needed in taking any action which could:

* Impact on the reputation of the Board;
* Impact on inter agency relations;
* Impact on organisational performance;
* Undermine the efficiency and effectiveness of operations;
* Cause a significant financial loss;
* Prevent adherence to governance, legal and regulatory obligations.

While all staff or managers should be willing and able to take reasonable risks to achieve their own and the Office’s objectives and to benefit the Board, the associated risks of proposed actions and decisions shall be properly identified, evaluated and managed to ensure that exposures are acceptable.

Any threat or opportunity which has a sizeable potential impact on any of the above should be examined, its exposure defined and it shall be discussed with the Director in that area.

## Responsibility for managing risks

This policy recognises that responsibility for internal control shall rest primarily with individual managers who, without regard to audit activity, should identify and manage the risks and ensure that appropriate and adequate control arrangements exist within their area of responsibility.

All staff in the Board shall actively participate in managing risk by:

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

The following specific responsibilities shall be held:

1. ***Board and Chief Executive***

The Board and Chief Executive are responsible for establishing and maintaining a sound system of internal control that supports the achievement of policies, aims and objectives. The system of internal control is designed to respond to and manage the whole range of risks that the Board faces. The system of internal control is based on an ongoing process designed to identify the principal risks, to evaluate the nature and extent of those risks, and to manage them effectively.

The Board has included in the formal schedule of matters specifically reserved for its decision the issue of risk management policy[[3]](#footnote-3).

The Board reviews any material risk incidents and note or approve management’s actions, as appropriate[[4]](#footnote-4).

While the Board has established an Audit and Risk Committee to assist with its consideration of issues relating to audit, governance and risk management, the Board maintains responsibility for and makes final decisions on all of these areas[[5]](#footnote-5).

The Board approves the Risk Management Policy, and approves the risk management plan and risk register at least annually[[6]](#footnote-6).

The Board reviews management reporting on risk management and notes/approves actions as appropriate[[7]](#footnote-7).

The Board may, at its discretion, seek an external review of the effectiveness of the risk management framework [[8]](#footnote-8).

1. ***Audit and Risk Committee***

The Audit and Risk Committee[[9]](#footnote-9) is a Committee of the Board which, as part of the ongoing systematic review of the business control and corporate governance procedures within the Board, oversees and advises on matters relating to:

* the business control and risk management environment;
* the operations and development of the internal audit function; and
* in tandem with the Finance and Effectiveness Committee, the relationship with external audit.

The Audit and Risk Committee considers organisational and other risks identified in risk assessment reports or otherwise and reports to the Board on the extent to which such risks are managed or mitigated in a structured and ongoing basis.

The Committee shall oversee the continued implementation of this Risk Management Policy in the organisation, taking account the 2016 update of Code of Practice for the Governance of State Bodies.

The Audit and Risk Committee has written terms of reference[[10]](#footnote-10).

1. ***Chief Executive and Directors***

The Chief Executive and the Directors are collectively responsible for the management of risk[[11]](#footnote-11) within the organisation including:

* Identifying key strategic risks and key issues within each Directorate and business area;
* Ensuring procedures for managing risk are fully understood and implemented by all staff as part of business planning processes;
* Ensuring that the benefits of effectively managing risk are clearly communicated to all staff;
* Ensuring that appropriate staff receive training as and when needed;
* Ensuring that key strategic risks and key issues are regularly reviewed and updated; and
* The implementation of the Risk Management Policy.
1. ***Assistant Directors, managers and staff***

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

1. ***Internal Audit Function[[12]](#footnote-12)***

The Board has an Internal audit function, the role of which is to provide independent, objective assurance to the Board and to management on the adequacy and effectiveness of the Board’s system of internal controls as well as on the management of risk and on the achievement of proper, efficient, effective and economic use of resources.

In fulfilling its role the Internal Audit function critically reviews on a risk focused basis:

* The reliability and integrity of internal financial and other controls and of management information;
* Internal controls to ensure risks are effectively identified and managed and that the Board’s assets and interests are properly accounted for and safeguarded. This includes ensuring that the audit programme and methodology takes due account of the possibility of fraud and fully investigating any fraud or suspected fraud;
* Compliance with relevant objectives, policies, plans and procedures;
* Reporting on units and the materialisation of risks;
* That value for money is obtained across relevant activities.

The Internal Audit function operates independently and preserves this independence and objectivity in relation to operations under examination[[13]](#footnote-13). The function is headed by a member of the senior management team (Director level). The function reports administratively to the Chief Executive and functionally to the Audit and Risk Committee. The internal auditors have unrestricted access to all functions, records, property and personnel. They have full and free access to the Audit and Risk Committee and to the Chairperson of the Board and the Chief Executive[[14]](#footnote-14).

The Head of Internal Audit / Internal Auditors / Chairperson of the Committee liaise with the Comptroller and Auditor General’s Office as appropriate in relation to their carrying out of the annual external audit.

1. ***Chief Risk Officer***

The Board has a Chief Risk Officer[[15]](#footnote-15), who is a member of the senior management team. The Chief Risk Officer leads the engagement between the executive and the Audit and Risk Committee, and in tandem with the Committee has responsibility for implementation of this policy and the implementation of any corrective actions that need to be taken to ensure that risk is properly managed.

***g) External audit***

The external audit of public service agencies and non-commercial state bodies in Ireland is carried out by the Comptroller and Auditor General of Ireland (C&AG). The role of the C&AG is to audit the financial statements of all government departments and other public bodies and report the results of the examinations to Dáil Éireann; examine for efficiency and effectiveness in the use of financial and other resources by those public bodies which are audited.

## 5.4 Instruments to manage risk

The Board’s risk management policy shall be implemented through a range of instruments that are designed to provide a comprehensive response to organisational risks. These instruments are as follows:

1. ***Corporate Plan and annual organisational priorities***

The preparation and adoption of a three-year corporate plan is a primary responsibility of the Board of a State body[[16]](#footnote-16). Organisational priorities are devised at the beginning of each year to ensure that there is a consistent and strategic focus through the year.

Risk management shall be embedded in the corporate business planning process and in the formulation of annual organisational priorities.

1. ***Corporate Risk Register***

The Board maintains a Corporate Risk Register[[17]](#footnote-17), which records details of the various key risks identified across the organisation, their grading in terms of likelihood of occurring and seriousness of impact on the objectives at a corporate and directorate and business unit level.

The register includes:

* a unique identifier for each risk;
* a brief description of each risk;
* an assessment of the likelihood it will occur and the possible seriousness/impact if it does occur (low, medium, high);
* who is the risk owner and accountable and responsible for managing that risk;
* an outline of suggested and proposed mitigating actions; and
* A timescale for implementation of these mitigations.

This Register is maintained and refreshed as existing risks are re-graded in the light of the effectiveness of the mitigation strategy, and new risks are identified. The register indicates ownership / responsibility of each risk, and includes an appropriate action plan to address the identified risks.

***c) Law Centre risk registers***

The case management system, EOS, generates a report for each law centre called the Risk Register Report which identifies cases designated as risk cases (e.g. where there are statutory deadlines to be met).

***d) Corporate Risk Materialisation Report***

The executive prepares a Corporate Risk Materialisation Report[[18]](#footnote-18). The risk materialisation report is modelled on the Board’s Corporate Risk Register and is updated in conjunction with the risk register on a twice yearly basis. Following the materialisation of a risk or a near miss, the risk incident will be reviewed with the risk holder and, if necessary, changes will be made to the Board’s Risk Register in terms of solutions, impact and likelihood of a specific risk.

***e) Internal Audit and Risk Management Plan***

Each year, an Internal Audit and Risk Management Plan is prepared[[19]](#footnote-19), setting out the planned activity of Internal Audit function, reflecting the range of risks faced by the Board. The Plan is submitted for approval by the Audit and Risk Committee of the Board. The Committee also oversees the implementation of the Plan when finalised.

***f) Advice to Minister regarding risk management experience / expertise***

The Board advises the Minister for Justice and Equality of the need to include risk management experience/expertise in the competencies of at least one Board member[[20]](#footnote-20).

***g) Inclusion of risk management as a standing item***

Risk management shall be a standing item on the Board meeting agenda[[21]](#footnote-21).

***h) Litigation Report***

A litigation report, setting out the litigation against the Board, is furnished to the Audit and Risk Committee for consideration twice yearly.

***i) Review of effectiveness of internal controls***

A review of the effectiveness of internal controls[[22]](#footnote-22) is prepared on an annual basis. This is submitted for approval by the Audit and Risk Committee.

***j) Annual Report of the Audit and Risk Management Committee***

The Audit and Risk Committee shall provide an annual report to the main Board, outlining the activities undertaken in relation to internal audit and risk management during the year in question.

***k) Confirmation in Legal Aid Board annual report***

The annual report of the Legal Aid Board includes a confirmation that the statutory Board has carried out an assessment of the organisation’s principal risks, including a description of these risks, where appropriate, and associated mitigation measures or strategies.[[23]](#footnote-23)

***l) Financial Audit***

The Financial Audit undertaken by the C&AG, in addition to its focus on ensuring that the annual financial statements give a true and fair view, will also identify, assess and examine risks to ethical practice and financial control, highlighting significant weaknesses and, where necessary, reporting on them.

***m) Protected disclosures policy/procedures***

In accordance with the Section 21(1) of the Protected Disclosures Act 2014, the Board maintains appropriate Protected Disclosures Procedures for the making of protected disclosures by workers who are or were employed by the Board and for dealing with such disclosures.[[24]](#footnote-24)

The Board also has in place procedures for dealing with disclosures from a person or entity who is/are external to the Legal Aid Board.

***n) Anti-fraud policy***

The Board has in place a Statement of Policy on Financial Fraud and Corruption Prevention.

As per Circular 12/2010, the Minister shall be notified without delay where there are serious concerns about possible illegality or fraud occurring.[[25]](#footnote-25)

***o) Complaints procedure and complaints database***

The Board is committed to the provision of a quality service in line with its Customer Charter. A detailed complaints procedure sets out how a client may submit a complaint with respect to a solicitor, managing solicitor, mediator, private practitioner, barrister, or administrative decision of the Board.

The Board has in place a Customer Liaison Officer who acts as a contact point with regard to complaints about the broader service provided by the Board. A complaint by a customer may be an early indicator of a potential future risk materialisation. Therefore, a complaints database is in place in which is analysed in the preparation of the Corporate Risk Materialisation Report referred to at (c) above.

In addition, a report on client complaints is submitted to the Audit and Risk Committee on an annual basis.

***p) Data protection***

The Board upholds as a priority the confidentiality and integrity of data held by it in documentary or electronic form. It has a Data Protection Officer who is responsible for the implementation of national and EU legislation on data protection, including the EU General Data Protection Regulation 2016. The Board’s IT systems are updated regularly to ensure the most up-to-date level of protection against malicious intrusion.

***q) Health and safety***

The Board is committed to providing a safe environment for staff and clients. It has a Health and Safety Committee that meets regularly and the Board’s Health and Safety Statement, and its Risk Assessments are updated two years. The Board regularly reviews the compliance of its premises with the requirements of the Disability Act.

***r) Directors Declaration***

Directors are required, on a six-monthly basis, to complete a declaration that the appropriate procedures in place in areas of the Board under their responsibility and that staff are adhering to them. These declarations will be forwarded to the Chief Risk Officer.

## 5.5 Risk Management Procedures

The effective management of organisational risk requires robust control processes to support management in achieving the body’s objectives and in ensuring the efficiency and effectiveness of operations. Reliable procedures for internal and external control are an essential element of the risk management process.

The Legal Aid Board has in place a range of procedural arrangements that are intended to minimise the likelihood that a material risk item will occur. These procedures (or controls) address every area of the Board’s activities. The following is a summary of the principal risk management procedures that are in place.

1. ***Circular on Legal Services***

The Board’s Circular on Legal Services is a guide to decision making and best practice. The Circular seeks to meet the requirements for fair procedures and natural justice, as well as other constitutional and human rights principles, in how the Board processes and make decisions on applications for legal services – as well as how it provides legal services. All members of staff involved in providing legal services are expected to be familiar with the contents of this Circular.

1. ***Administrative Procedures Handbook for Law Centres***

The Board has in place an Administrative Procedures Handbook, the purpose of which is to provide a reference detailing all necessary procedures for the running of a law centre. This handbook is an “operating manual” for all law centre staff, and is distinguished from the separate Circular on Legal Services (see above) which contains information specific to legal matters.

Solicitors are required to declare that they are broadly familiar with the contents of the Administrative Procedures Handbook. Managing solicitors must sign a different version of the declaration also stating that they regularly discuss the contents of the Handbook with staff, and that the risk register is up to date and they monitor it regularly.

1. ***Performance Reviews***

Having regard to the need to ensure effective risk management the Board has put in place a formal structured systems of case file reviews. The systems are designed to contribute to the effective management of performance and of the appropriate management of risk. A regular review of all cases in law centres is essential for the purpose of assuring the quality of legal services provided and to ensure that there is a proper structure in place to limit the scope for potential professional negligence actions against the Board.

The process requires that solicitors review their files and ensure that the workflow/case status on EOS system is up to date. Each solicitor is required to review their files three times a year to ensure the workflow/status is up to date. As stated above a risk register is generated by the case management system and this is reviewed for the purpose of submission of the declarations. Managers are expected to generate and review this report frequently. In addition various EOS reports, including the inactivity report and age profile report are generated to assist in identifying cases which are not progressing sufficiently.

Each solicitor is also required to submit a Declaration every four months that they have reviewed their files and that there are no issues that might give rise to a claim in respect of breach of professional duty against the solicitor or the Board. The Declaration should be suitably qualified if a solicitor has concerns about a particular case.

To assure performance to the satisfaction of the Board, file reviews of the documented aspects of the legal service provided will be carried out. These file reviews should take place with each solicitor on an annual basis.

1. ***Staff Handbook***

The Staff Handbook, produced by the HR Unit of the Legal Aid Board, informs all employees of the Legal Aid Board of the procedures and policies that relate to the Human Resource function and to their employment in the Board. It includes the procedures to be followed in matters such as making a protected disclosure, the procedure for a dealing with grievance problems, as well as guidelines on induction, probation, PMDS, annual leave and sick leave, and the computer usage policy.

1. ***Family Mediation Service Procedures Handbook***

The Family Mediation Procedures Handbook provides a reference detailing all necessary procedures for the running of a family mediation office. The handbook is an operating manual for the administrative staff and details the administrative process particular to mediators regarding administration of their work load.

1. ***Finance Manual***

The Finance Unit Manual describes in detail the procedures to be followed by staff of the Board’s Finance Unit in carrying out their work. It includes general accounting procedures, request for and receipt of monthly grant funding, lodgements and bank reconciliations, payroll procedures, transfer of funds for travel and subsistence, tax clearance certificates, professional services withholding tax, invoice processing, management of client funds, monthly law centre returns, the fixed asset register, end of year procedures and compiling of the audit file for the C&AG.

1. ***Organisation Unit Manual***

The Organisation Unit Manual describes the procedures to be followed by staff of the Organisation Unit in carrying out their work. It addresses the procedures to be followed in areas such as the ordering of supplies for offices, the purchase and maintenance of office equipment, acquisition of new premises, services and maintenance, travel arrangements for Board meetings, security, health and safety, and insurance.

1. ***Legal Services Handbook***

The Legal Services Procedures Handbook is a guide to procedures relating to decision making and other functions carried out by the Legal Services Unit of the Board, and aims to allow the Board to perform its functions under the Civil Legal Aid Act 1995 in a way that reflects its commitment to providing a professional legal aid and advice service.

1. ***Governance Manual***

The Board’s Governance Manual provides a comprehensive summary of the principal aspects of corporate governance for the statutory Board and senior management. It describes the roles and responsibilities of the Chairperson, Board members and Chief Executive, the protocol for Board meetings, and refers to risk management, financial management and control, and standards of behaviour.

## 5.6 External Controls

**The External Auditor**

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

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

The role of the C&AG is to:

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

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

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

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

**Financial Audit**

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

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

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

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

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

**Board Responsibilities in External Audit**

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

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

## 5.7 Annual Report & Accounts

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

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

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

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

The Chairpersons report to the Minister regarding the system of internal control should be included in the annual report of the State body. This should be reviewed by the external auditors prior to submission to the Minister.

There is also a requirement to furnish, as part of the Annual Report, a Governance Statement and Board Members’ Report.

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

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

# Chapter 6 Financial Management and Control

## 6.1 Legislative Framework and Government Policy

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

**Financial Management Framework**

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

## 6.2 Board Funding

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

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

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

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

 (b) from the legally aided person, out of moneys/property received by the person as a result of the provision of legal services. **Contributions** - payable by persons who have been granted legal aid and advice by the Board

## 6.3 Board Budgeting and Budgetary Control

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

The Board has a comprehensive budgeting system that

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

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

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

## 6.4 Board Financial Reporting

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

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

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

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

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

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

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

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

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

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

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

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

(a) Salaries and short term employee benefits;

(b) Post-employment benefits;

(c) Termination benefits;

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

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

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

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

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

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

## 6.5 System of Internal Controls

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

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

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

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

## 6.6 Procurement Procedures

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

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

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

## 6.7 Custody of Assets

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

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

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

**Disposal of Assets**

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

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

# Chapter 7 Standards of Behaviour

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

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

The Code of Practice for the Governance of State Bodies

Ethics in Public Office Acts 1995-2001

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

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

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

**Declarations of Interests**

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

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

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

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

**Disclosures of Interests**

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

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

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

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

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

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

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

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

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

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

**Confidential Information**

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

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

**Immunity and Indemnification**

While there is no express provision for indemnification of Board members or staff in the Civil Legal Aid Act, 1995, section 8 provides that “the Board may do anything which it considers necessary or expedient for enabling it to perform its functions under this Act”. The indemnity in the appendix to General Council Report 1357 applies to external members of the Board of the Legal Aid Board. The indemnification only applies to the official duties undertaken by the external members of the Board of the Legal Aid Board. The arrangements governing the indemnification of civil service staff, who may be subjected to threats of legal proceedings during the course of their work, also apply to all staff of the Board.

## 7.2 Legal Aid Board Code of Conduct

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

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

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

The Code addresses the following issues:

General principles guiding business conduct including:

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

A copy of the Code of Business Conduct is included at **Section 7.6.**

7.3 Ethics in Public Office

**Ethics Legislation**

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

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

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

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

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

**Requirements of Ethics Legislation**

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

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

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

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

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

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

**Disclosures of Interests under Ethics Acts**

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

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

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

## 7.4 Anti-Fraud

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

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

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

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

## 7.5 Protected Disclosures Legislation

**Protected Disclosures Act 2014:**

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

**Guidance**

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

**Protected disclosures**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Confidentiality:**

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

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

**The protections:**

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

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

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

## 7.6 Code of Conduct for Members of the Legal Aid Board

**Introduction**

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

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

Scope

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

Purpose of this code of conduct

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

General principles

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

**1. Integrity**

Board members will:

* Submit an annual declaration of interests statement in accordance with the *Code of Practice for the Governance of State Bodies,* where there are material interests to be declared;
* Disclose outside employment/business interests in conflict or potential conflict with the business of the LAB (see Conflicts of Interest Policy Section 7.7);
* Not be involved in outside employment/business interests in conflict, or in potential conflict, with the business of the Board; Not participate in discussions or decisions where there may be conflicts of interest whether or not such conflicts have previously been disclosed;
* Avoid giving or receiving corporate gifts, hospitality, preferential treatment or benefits which might affect or appear to affect the ability of the donor or the recipient to make independent judgement on business transactions;
* Ensure that purchasing activities of goods/services are conducted in accordance with best business practice and comply with relevant regulations;
* Ensure that the Legal Aid Board accounts and reports accurately reflect its business performance and are not misleading or designed to be misleading;
* Avoid the use of LAB resources or time for personal gain or for the benefit of persons/organisations unconnected with the LAB or its activities or for the benefit of competitors;
* Not acquire information or confidential business information or business secrets by improper means;
* Not use any information obtained by virtue of their position for the purpose of any dealing (direct or indirect) in property, shares or otherwise.
* Commit to compete vigorously and energetically but also ethically and honestly.

**2. Information**

Board Members should:

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

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

♦ personal information;

♦ information received in confidence by the LAB.

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

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

**3. Appropriate Confidentiality**

Board members should:

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

**4. Obligations**

Board members should:

* Ensure that the LAB fulfils all regulatory and statutory obligations imposed on it;
* Ensure compliance with detailed tendering and purchasing procedures, as well as with prescribed levels of authority for sanctioning any relevant expenditure;
* Ensure that there are adequate controls in place to prevent fraud including controls to ensure compliance with prescribed procedures in relation to claiming of expenses for business travel;
* Board Members should endeavour to attend the Board and Committee Meetings;
* Meet regularly, retain full and effective control over the LAB and monitor the executive management and performance;
* Ensure that the Board has a formal schedule of matters specifically reserved to it for decision;
* Conform with procedures laid down by the Board in relation to conflict of interest situations including in regard to acceptance of positions following employment and/or engagement by a State body that may give rise to the potential for conflicts of interest and to confidentiality concerns (see Conflicts of Interest Policy Section 7.7);
* Have access to the advice and services of the Secretary of the Board who is responsible to the Board for ensuring that Board procedures are followed and that applicable rules and regulations are complied with;
* Ensure that a balanced and understandable assessment of the LAB’s position is made in presenting its annual report and accounts to the Minister for Justice and Equality;
* Co-operate with internal audit in the internal audit process.
* Acknowledge the duty of all to conform to the highest standards of business ethics.

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

**5. Loyalty**

Board members should:

* Acknowledge their responsibility to be loyal to the LAB and to be fully committed in all its business activities while mindful that the organisation itself must at all times take into account the interests of the shareholders;

**6. Fairness**

Board members should:

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

**7. Work/External Environment**

Board members should:

* Promote the development of a culture of ‘speaking up’ whereby workers can raise concerns regarding serious wrongdoing in the workplace without fear of reprisal.
* Place highest priority on promoting and preserving the health and safety of employees;
* Ensure that community concerns are fully considered.
* Minimise any detrimental impact of operations on the environment.

**8. Responsibility**

* All Board members, management and employees should be circulated with the Code of Conduct and a policy document on disclosure of interests for their retention.
* A process should be put in place to ensure that the above recipients acknowledge the receipt and understanding of same.

**Concerns of a Board member**

Should the Board contemplate a course of action which a Board member considers would infringe on the requirements of propriety or regularity, or does not represent prudent or economic administration, or efficiency or effectiveness, or value for money, s/he should draw the matter to the attention of the Chairperson and Chief Executive.

In the event that the concerns of the Board member are not addressed, the Board member may request that their concerns on the matter are formally recorded in the minutes of a Board meeting.

Review

The Board should arrange for, and commit to, reviewing the Code of Conduct as appropriate.

Approval

This Code of Business Conduct was approved by the Board on 28 February 2019.

## 7.7 ***Legal Aid Board Conflicts of Interest Policy***

**Introduction**

The Code of Practice for the Governance of State Bodies specifies that, to ensure continued integrity and transparency, and to avoid public concern or loss of confidence, the Board should ensure that appropriate policies are in place so that members and staff take decisions objectively and steps are taken to avoid or deal with any potential conflicts of interest, whether actual or perceived.

**Declarations**

The Chairperson and other Board members must declare any personal or business interests which may conflict with their responsibilities as Board members, as set out under Section 7 of the Governance Manual.

**Absenting from discussion on matters where a member may have an interest**

Members of the Board should not participate in the discussion or determination of matters in which they have a direct pecuniary interest of any kind.

Where the interest is not of a direct pecuniary kind, members should consider whether participation in the discussion or determination of a matter would suggest a real risk of bias. This should be interpreted in the sense that members might unfairly regard with favour, or disfavour, the case of a party to the matter under consideration. In considering whether a real risk of bias exists in relation to a particular decision, Board members should assess whether they, a close family member, a person living in the same household as the Board member, or a firm, business or other organisation with which the Board member is connected are likely to be affected more than the generality of those affected by the decision in question.

Where, in accordance with the above, members do not participate in the discussion or determination of a matter, they should normally withdraw from the meeting while the matter is under discussion or determination.

In addition to absenting directly from the discussion, Board members should not seek to influence the views of other Board members on the matter in question in advance of the meeting at which it is due to be discussed.

Board members should declare as soon as practicable after a Board meeting begins if they have an interest, pecuniary or other, in a matter being considered.

**Concerns of a Board member**

Should a Board member have concerns that the Conflicts of Interest Policy is not being adhered to by another Board member, s/he should raise the matter with the Chairperson.

Whether on the advice of another Board member or not, if the Chairperson has concerns that a Board member may have an interest in a matter under discussion, and the Board member does not voluntarily bring the matter to the Chairperson’s attention, the Chairperson may raise the matter with the Board member in advance of the meeting, and the Chairperson may ask the member to absent themselves from the discussion on the matter in question.

Review

The Board should arrange for, and commit to, reviewing the Conflict of Interest Policy as appropriate.

Approval

This Conflict of Interest Policy was approved by the Board on 28 February 2019.

## Attachment 1 – Travel Policy for the Legal Aid Board

**1. Introduction**

The *Code of Practice for the Governance of State Bodies (2016)* states that non-commercial State bodies should adopt, and comply in all respects with, the Department of Public Expenditure and Reform Office circulars and office notices, as amended from time to time, regarding travel and subsistence and official entertainment.

The Board of the State body should satisfy itself that the principles of its travel policy are adhered to and that the internal audit process is effective in ensuring that the State body is fully complying with the policy. Board members and employees must only claim travel and subsistence allowances in respect of official travel and must not make a claim from more than one State body for the same journey.

The Code states that the purpose of the travel policy should be to ensure that value for money is obtained in respect of each official trip undertaken, consistent with the requirements of official business. Alternatives to frequent travel, such as use of video conferencing facilities, should also be considered.

It specifies that maximum use to be made of public transportation options for official travel; and the use of taxi services should be rationalised as much as possible.

The Chairperson of each State body is also required to certify in his/her annual report to the relevant Minister that Government travel policy requirements are being complied with in all respects.

In this connection, the Board has procedures and practices in place to ensure compliance with the Travel and Subsistence Regulations contained in the Department of Finance Circular 11/82 and the Department’s Foreign Travel Policy Guidelines 2009. The main principles set out in the Board’s Travel Policy reflect:

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

A Framework Travel Policy that outlines in more detail how the Board of a state body is required to comply with the *Code of Practice for the Governance of State Bodies (2016)* in this area is included as appendix IV to that *Code*.

**2. Main Purpose of Travel Policy**

The main aim of this policy is to facilitate the efficient discharge of the business of the Legal Aid Board where official travel has to be undertaken for this purpose.

The Board is also concerned to ensure that allowances payable to cover the “out of pocket” expenses of staff and Board members in respect of official business undertaken away from their headquarters are fully in accordance with the Regulations and Guidelines issued by the Department of Public Expenditure and Reform from time to time. This includes:

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

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

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

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

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

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

**4. General Principles Governing Travel Policy**

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

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

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

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

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

The Board is committed to reducing its outlay on travel and subsistence over time, and will actively pursue opportunities in this regard, for example through the further deployment of video communication, and the centralised procurement of transport services, that enable a net saving on the annual outlay on travel and subsistence.

1. **Travel by public transport, taxis and private car**

The Board endeavours to make the maximum possible use of public transport as required in the Framework for a Travel Policy for State Bodies in the Code of Practice. Official travel on public transport is reimbursed at cost (tickets/receipts must be retained and submitted with a claim – see the Core Portal User Guide for more details).

Taxis should be hired only when no suitable public transport is available. Where taxis are used for travel to court, an arrangement with a taxi or local hackney service should be made, if such an arrangement is not already in place, and payments made from the law centre’s local bank account. A separate heading e.g. Court Travel should be used for this expenditure and included in their monthly local bank return to Accounts Section. This is essential in order to facilitate the effective monitoring and review by Head Office of this arrangement.

Further details on the arrangements in place for taxi services in Dublin and Cahirciveen are included in Appendix A of the main Travel Policy Document, which is available on the Board’s iLAB bulletin board.

For travel by taxi not covered by a local arrangement as described above, receipts should always be supplied with all Core Portal claims for reimbursement of travel expenses.

The use of private cars, as distinct from taxis or other forms of public transport, is only authorised where the following circumstances apply:

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

Where a member of staff or a Board member is obliged to use a private car for official business (subject to the conditions above), mileage at the full rate may be claimed in respect of the journey undertaken. The mileage rates currently in place are shown at Appendix B of the main Travel Policy Document, which is available on the Board’s iLAB bulletin board. These rates may be subject to revision from time to time by the Department of Public Expenditure and Reform.

Subject to the conditions above, full rate mileage is granted for the following:

* Meetings
* Meeting with clients
* Court attendance
* Settlement meetings
* Prison visits
* Journey to and from airport on Irish side when attending foreign conferences.

In certain circumstances, the full rate mileage is not payable for a journey. The general rule about reduced mileage rates is that they apply to travel that is related to official duties but not undertaken to facilitate the carrying out of official duties.

Reduced rate mileage is granted for the following:

* Courses
* Seminars
* Conferences (including the Board’s Annual Conference)
* Attending for interview
* Attending for Exams

Reduced mileage rates are also payable:

* in respect of return journeys between work locations to which staff have been temporarily assigned and normal headquarters at weekends or for public holidays; and
* in circumstances where suitable public transport is available, but a travelling officer chooses to use his/her own car.

Full details of current mileage rates are shown at Appendix B of the main Travel Policy Document, which is available on the Board’s iLAB bulletin board...

Certain types of trip which are peripherally related to a staff member’s role but are not official travel, are specifically excluded from entitlement to T&S. Examples of the type of trips for which T&S is not payable include (but are not confined to):

* Travel to classes or seminars in connection with a third-level or other course which the staff member is pursuing in their own time. This applies whether or not the staff member is supported in their studies under the Refund of Fees Scheme, and applies whether or not the staff member has been granted study leave to attend a class or seminar on what would otherwise be a working day.
* Travel to funerals (unless the staff member is specifically directed to attend the funeral as the Board’s representative).
* Travel to staff social events of any kind.

In certain circumstances a trip may involve a combination of journey by private car and public transport, for example where the nearest mainline railway station is some distance from the officer’s home or headquarters. The mileage rate applicable for the portion of the journey undertaken by private car will depend on the purpose of the trip. Where an officer does not select the closest point of access to public transport, the reduced rate of mileage shall apply to the remainder of the distance to the point of access chosen by the officer.

**7. Subsistence payments**

Staff who are required to travel on official business may claim subsistence amounts in line with the Travel and Subsistence Regulations. These include an overnight subsistence allowance, and a day subsistence allowance which is payable at different rates for trips of longer than 5 hours or longer than 10 hours.

Certain restrictions are in place with regard to subsistence allowances:

*Overnight Subsistence Allowance*

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

For example, the locations shaded on the map below are within 100km of Dublin and an overnight allowance will not generally be payable for staff travelling to Dublin from locations within this radius. The rule applies similarly where the destination is outside of Dublin but is within 100km of the officer’s home or usual place of work.

It should be noted that the map below is by way of illustration only, and it is the actual distance of travel from the person’s home or headquarters to the destination that is at issue, rather than a ‘straight line’ distance between the two locations.



**If a staff member intends to claim an overnight subsistence allowance where the distance from home or headquarters is less than 100km, they must email their manager in advance of the trip, explaining why it is considered necessary and request approval to do so. The email correspondence with the manager should be printed off and kept with the hardcopy of the claim for audit purposes.**

*Day Subsistence Allowance*

With effect from 1 July 2015, a day allowance is not payable for an absence on official business that is within 8 km of an officer’s headquarters or home (whichever is the lesser). Payment of the rates authorised in this Circular will be subject to the regulations issued with Circular 11/82 and any other instructions in force from time to time. These regulations apply to all civil servants including departmental grades. Heads of Departments should continue to appraise, monitor and ensure that only essential travel is undertaken and that the number of officers on any official journey is kept to the absolute minimum.

*Vouched Accommodation Rate in Dublin*

A separate Vouched rate (VA) for accommodation in Dublin can now be claimed as a Vouched expense to the value of €133.73 plus the claimant’s meals of €33.61. Please note the standard Overnight rate will still apply whereby a claimant sources accommodation and meals within the rate of €133.73.

Full details of the current subsistence rates are shown at Appendix C of the main Travel Policy Document, which is available on the Board’s iLAB bulletin board.

*Deductions for meals provided*

It is important that all staff are aware that there is an obligation to make a deduction from a subsistence claim in any situation where one or more meals are provided at no cost to the claimant, for example a lunch provided at a training course. This deduction is mandatory, including where a light lunch (e.g. sandwiches with tea and coffee) is provided. Details on the relevant deductions are in the Core Portal Claimant User Guide.

**8. Specific procedures for travel to and from Head Office in Cahirciveen**

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

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

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

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

The transport options utilised are:

* flights to and from Dublin and Kerry International Airport in Farranfore;
* hired cars or taxis are booked for the journeys to and from Farranfore and Cahirciveen (every effort is made to ensure the pooling of such cars to minimise the costs involved);
* as an alternative to travel by air, travel by train is also arranged having regard to the suitability of flight schedules to and from Dublin and Farranfore and the capacity to continue to work while travelling by train. Having regard to the confidential nature of the work that the Board carries out, including confidential Board papers issued to members of the statutory Board, Business Class tickets may be purchased for Board members and senior managers to better facilitate the review of confidential papers during travel time and ensuring the productive use of such time that would otherwise be lost to the Board;
* as a general rule, private cars are not used for travel to and from Cahirciveen for short-term stays involving a single overnight stay. Any exceptions to this rule require the specific sanction of a Director of the Board or in the case of Directors, the Chief Executive and in the case of Board members, the Chairperson or the Chief Executive. The circumstances where approval may be granted to use a private car would be:
* if it is consistent with the efficient use of official time[[26]](#footnote-26) (for example where public transport is not available or is only available at times that result in an unacceptable loss of official time);
* if the travelling officer plans official travel to and from Head Office so as to discharge official business in a number of other Board locations in the course of journeys to and from Head Office;
* where the carriage of equipment or official files is undertaken and use of a private motor car is deemed to be the most effective way of transporting the equipment and/or files involved;
* where staff headquartered in Dublin are required to spend considerable blocks of time in Head Office in Cahirciveen due to the dual location of support functions and its impact on reporting structures. In such cases the cost of car hire for a number of days and other public transport costs will be compared to the cost of paying mileage allowances. In considering the payment of such allowances, the cost-effective use of official time will also be evaluated.

*Rental Cars*

Where rental cars are required for Board members or staff travelling by air from Dublin to attend a Board meeting in Cahirciveen, Organisation Section books all rental cars and are invoiced for all use.

**9. Expenditure Control Measures**

Strict budgetary controls are maintained on all aspects of the Board’s expenditure, including Travelling and Subsistence expenses. Allowances are only paid out where it has been necessary to authorise official travel away from normal headquarters for the effective performance of Board business.

**Particular attention is drawn to the restrictions on the use of private cars. Any claim for private car usage may only be approved by the line manager if it meets the conditions set out above.**

The Finance and Effectiveness Committee of the Statutory Board also review a detailed report on travel and subsistence expenditure on an annual basis while expenditure trends on all aspects of the Board’s Budget are reported to the Senior Management Team and the Board on a monthly basis.

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

Staff dealing with the vetting of travel and subsistence claims should be fully familiar with the relevant Regulations and Guidelines. **Managers have the primary responsibility to ensure that a claim is compliant with this policy before approving it.**

All staff are required to sign the declaration at Appendix D A of the main Travel Policy Document, which is available on the Board’s iLAB bulletin board, and forward it to their manager. No claims shall be approved by a manager in respect of a staff member who has not provided a signed copy of the declaration at Appendix D.

Where staff are required to travel on a frequent basis between their usual place of work and other offices or Courts, the specifics of each journey shall be recorded in their claim for travel and subsistence, and journeys shall not be grouped together into a single claim. Managers are specifically required to not sign off on a travel and subsistence claim that groups various trips into a single claim or provides insufficient detail of the destination or purpose of the trip.

Where trips are undertaken for the purpose of progressing a specific case or cases, the EOS case number(s) shall be included in the description of the claim.

Staff are required to submit all claims on a timely basis, and all claims should be submitted within three months of the trip. Where a claim is submitted after three months, the claimant should write to their manager explaining why the claim was not submitted within the three month timeframe.

The C&AG’s audit of the Board’s 2016 accounts recommended that the Board’s travel policy be refined to restrict processing of prior year claims to defined limited circumstances with appropriate senior management approval. Therefore, **a claim that is submitted in respect of a prior year, must firstly be referred to the relevant Director for attention, and may not be approved without prior permission of the Director. As an exception, claims for trips made in December may be submitted up to 15 January of the following year.**

Any updates issued on the policy or the rates of allowances are made available to all staff on the Board’s internal bulletin board. When revised circulars become available they are forwarded to the Board members by the Board Secretary.

**11. Arrangements for Travel and Subsistence in connection with Board meetings**

Organisation Section is responsible for organising Board meetings. Board Members contact the Section direct to arrange flights, trains, accommodation, taxis and rental cars.

Recognising that Board members may find it more personally convenient to drive, Board members who drive may claim the notional costs of public transport in lieu of claiming mileage.

##

## Attachment 2: Core Provisions on the role of a State Board

The following six core provisions are specified in the Code of Practice for the Governance of State Bodies 2016:

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

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

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

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

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

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

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

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

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

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

The Code of Practicespecifies the following provisions in relation to Board effectiveness:

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

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

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

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

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

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

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

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

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

1. Code of Practice for the Governance of State Bodies 2016 Para. 7.1 [↑](#footnote-ref-1)
2. Code of Practice for the Governance of State Bodies Para. 7.2 [↑](#footnote-ref-2)
3. Code of Practice for the Governance of State Bodies 2016 Para. 1.7 ‘Matters for Decision of the Board’. [↑](#footnote-ref-3)
4. Code of Practice for the Governance of State Bodies 2016 Para. 7.1 [↑](#footnote-ref-4)
5. Code of Practice for the Governance of State Bodies 2016 Para. 1.5 [↑](#footnote-ref-5)
6. Code of Practice for the Governance of State Bodies 2016 Para. 7.2 fifth bullet point [↑](#footnote-ref-6)
7. Code of Practice for the Governance of State Bodies 2016 Para. 7.2 sixth bullet point [↑](#footnote-ref-7)
8. Code of Practice for the Governance of State Bodies 2016 Para. 7.2 seventh bullet point [↑](#footnote-ref-8)
9. Audit and Risk Committee Guidance Para. 1.2, and Code of Practice for the Governance of State Bodies 2016 Para. 7.2 first bullet point [↑](#footnote-ref-9)
10. Audit and Risk Committee Guidance Para. 1.3 [↑](#footnote-ref-10)
11. Code of Practice for the Governance of State Bodies 2016 Para. 7.2 fourth bullet point [↑](#footnote-ref-11)
12. Code of Practice for the Governance of State Bodies 2016 Paras. 7.7 [↑](#footnote-ref-12)
13. Code of Practice for the Governance of State Bodies 2016 Para. 7.8 [↑](#footnote-ref-13)
14. Code of Practice for the Governance of State Bodies 2016 Para. 7.9 [↑](#footnote-ref-14)
15. Code of Practice for the Governance of State Bodies 2016 Para. 7.2 fourth bullet point [↑](#footnote-ref-15)
16. Code of Practice for the Governance of State Bodies 2016 Para. 1.15 [↑](#footnote-ref-16)
17. Code of Practice for the Governance of State Bodies 2016 Para. 7.2 fifth bullet point [↑](#footnote-ref-17)
18. Code of Practice for the Governance of State Bodies 2016 Para. 7.2 sixth bullet point [↑](#footnote-ref-18)
19. Code of Practice for the Governance of State Bodies 2016 Para. 7.10 [↑](#footnote-ref-19)
20. Code of Practice for the Governance of State Bodies 2016 Para. 7.2 third bullet point [↑](#footnote-ref-20)
21. Code of Practice for the Governance of State Bodies 2016 Para. 7.2 second bullet point [↑](#footnote-ref-21)
22. Code of Practice for the Governance of State Bodies 2016 Para. 7.5 [↑](#footnote-ref-22)
23. Code of Practice for the Governance of State Bodies 2016 Para. 7.2 eighth bullet point [↑](#footnote-ref-23)
24. Code of Practice for the Governance of State Bodies 2016 Paras. 5.9-5.11 [↑](#footnote-ref-24)
25. Code of Practice for the Governance of State Bodies 2016 Para. 3.4 [↑](#footnote-ref-25)
26. “Official time” for this purpose also includes the time that Board members could devote, in the normal course, to their own business activities. [↑](#footnote-ref-26)