Ministry of JUSTICE

Legal Services Commission move to Agency Status

Business Case

Version 2

June 2012

CONTENTS

1 BACKGROUND & PURPOSE

1.1 This document sets out the Business Case for changing the status of the Legal Service Commission (LSC) from an Executive Non-Departmental Public Body (NDPB) to an Executive Agency (EA) of the Ministry of Justice (MoJ). Its purpose is to provide sufficient information for the Programme Board, Ministry of Justice Management Board, HM Treasury and the Cabinet Office to be informed of the costs and benefits arising from a change to the LSC's status and ultimately proving there is a sound case for the change in status. A version of this business case was originally published in June 2011; it has been updated to reflect developments in the programme since that date, including the change in planned go live date for the Agency to 1st April 2013.

1.2 A rudimentary legal aid system was established in 1949 and was administered by The Law Society until an independent public body – the Legal Aid Board (LAB), with its own governance structure – was created in 1988. The Access to Justice Act 1999 created the Community Legal Service (CLS) and Criminal Defence Service (CDS). Both schemes were to be run by the newly established LSC. This would operate, with broadly the same governance arrangements as the LAB, as an Executive NDPB, reporting to and sponsored by the then Lord Chancellor's Department.

1.3 The LSC was given wide powers when it was set up, but the Access to Justice Act was not explicit about where responsibility for policy development lay between the MoJ and the LSC. There have been several policy reviews of legal aid since then, but none has looked at delivery and governance arrangements.

1.4 Despite a commitment from the LSC and the MoJ to ongoing improvement in the organisations' relationship, over recent years the LSC has received a number of fundamental criticisms culminating in qualification of the 2008 – 2009 accounts. The relationship between the LSC and the MoJ and its Ministers had become increasingly remote and the clarity around the policy role of Ministers and the MoJ as opposed to the LSC was creating discord and confusion for legal aid providers. This led to a 'Review of Legal Aid Delivery and Governance' conducted by Sir Ian Magee. Since the publication of his findings in March 2010 the Government has stated its intention to change the status of the LSC to become an EA of the MoJ.

1.5 In his review, Sir Ian was asked to assess the delivery and governance arrangements of the legal aid system and make recommendations to:

- Explore the separation of the CDS and CLS and options for doing so effectively and efficiently should that be the recommended way forward;
- Provide for effective and transparent financial management of both funds and their administration;
- Provide for effective Ministerial accountability and policy direction in respect of both the CDS and CLS, while continuing to ensure that every application to the CLS and CDS funds is decided fairly, within the criteria, at arm's length from government; and

- Identify appropriate delivery models for both the CDS and CLS and their relationship with the Ministry.

1.6 The Executive Agency Transition Programme (EAT) will create the Agency, providing a catalyst for modernising the administration of legal aid and addressing the above

2 STRATEGIC CONTEXT

2.1 As well as addressing the issue of delivery model identified by the Magee review, the replacement of the LSC NDPB by an executive agency supports two of the strategic objectives contained in the MoJ's business plan for the period 2011-2015. Firstly, objective 5 of the MoJ to "reform and rationalise the Ministry of Justice's arm's length bodies". Secondly, it supports MoJ objective 3 "reform courts, tribunals and legal aid and work with others to reform the criminal justice system". In respect of this latter it will serve to provide a framework to assist in the achievement of objective 3.2 to "reform the legal aid system to provide a more efficient, cost effective and sustainable scheme, ensuring that we provide support for those who need it most and for those cases that require it".

2.2 The current system for decision making with regard to policy, with the LSC as a NDPB, is unclear and confusing and is compounded by organisational barriers between the MoJ and LSC. In particular:

- Accountability for decisions about legal aid policy and procurement is ambiguous;
- Legal aid policy has been considered separately from wider justice policy issues, particularly within the LSC; and
- Financial control of the legal aid budget by the LSC has been weak.

2.3 Additionally there is a need to ensure the role of Ministers (their direct accountability and responsibility) is both transparent and understood by those who use legal aid services and the wider public.

2.4 If the LSC does not become an agency and remains as an independent NDPB, it will not be possible to fully address the shortcomings in policy ownership and overall accountability for legal aid services (whether financial or otherwise) identified in the Magee review or to meet fully the objectives set out in the MoJ's business plan for 2011 - 2015.

2.5 Further to improving political and financial accountability, the EAT programme is also an enabler for wider reforms to legal aid. The MoJ and LSC aim to achieve a saving of £325m on the annual spend of approximately £2.1bn that it costs to provide legal aid services. The Legal Aid Reforms (LAR) will reform the scope, eligibility, and remuneration for legal aid. The necessary legislative provisions are included in the Legal Aid, Sentencing and Punishment of Offenders Act 2012, as are the measures to abolish the LSC. The LAR reforms contained in the legislation are predicated on the new structure for administering legal aid that the transition to executive agency status will bring about. If there is delay to the implementation of the agency, or it does not happen, then there will be a consequential loss of savings to the LAR programme, or it will not make the savings expected.

3 THE CASE FOR CHANGE

3.1 The case for change centres on achieving:

- Clarity of accountability for legal aid (both politically and financially);
- One policy voice;
- Clarity around roles and responsibilities;
- Improved financial management and performance; and
- More robust governance and collaborative working and sponsorship arrangements between MoJ and LSC.

3.2 The rationale is that a change to Agency status provides the best opportunity to:

- Put in place a governance structure and, thereby, clarity of accountability which will assist both the agency in its delivery of legal aid services and management of its budget and the MoJ in development of overarching legal aid policy;
- Create an organisation that is sufficiently flexible to manage future change, thereby improving services to providers and end users, and to enable improvements to a system which currently lacks clarity and transparency and has had poor financial control.

3.3 A change in status will also encourage readier sharing of accommodation and utilisation of shared corporate services (where deemed effective), thereby driving efficiency savings, alongside greater organisational accountability.

3.4 Any programme to change the LSC's status will need to interact with other significant work programmes already underway to improve the control frameworks within which legal aid is administered and deliver efficiency savings, namely:

- Introduction of new technology and infrastructure, which will deliver significant benefits to clients, providers and LSC staff and provide a sharper control environment for payments (the Integrated Delivery Programme, IDP);
- Improvement of financial stewardship – responding to the criticisms reported in the NAO report, developing and implementing standard accounting systems; and
- Legal Aid Reform (LAR) – the wider reform of legal aid scope and eligibility being taken forward under the Legal Aid, Sentencing and Punishment of Offenders Act.

3.5 This interaction is essential both for planning purposes and because failure to deliver on the above three programmes will impact on the qualification of the LSC's accounts which will in turn impact on the MoJ accounts as a part of new 'clear line of sight' accounting rules. It would also put at risk delivery of planned efficiency savings.

3.6 This Business Case considers two options: for the LSC to continue but as a revitalized NDPB with a streamlined organisational structure **(Do minimum option)**; or to change its status to an Executive Agency **(Preferred option)**. The business case assumes a start date for the agency of 1st April 2013, due to the need for primary legislation to abolish the LSC and transfer legal aid functions to MoJ. Provision for the abolition of the LSC is included in the Legal Aid, Sentencing and Punishment of Offenders Act, which received Royal Assent on 1st May 2012. The version of the business case published in June 2011 was premised on the agency going live on 1st October 2012. This change was announced by a Written Ministerial Statement published on 1st December 2011. The go live date has moved due to the link with the implementation with the LAR reforms.

3.7 It is intended that the implementation of both LAR and EAT will take place on 1st April 2013. However, provision has been made in the Act to enable the reforms and the creation of the LAA to take place at different times, should that be necessary.

3.8 Additionally the Business Case:

- Considers the strategic context for change, highlighting potential service benefits to clients and providers;
- Describes the key assumptions used in determining the cost/savings analysis;
- Sets out financial and resource requirements describing the economic and value arising from any change; and
- Considers whether the financial plan is both affordable and achievable within the timescale assumed, given all the dependencies and risks.

4 OUR VISION

4.1 It is the intention of both the MoJ and the LSC to give providers and the public, strong and clear strategic direction. That is, one legal aid strategy which removes the confusion and administrative difficulties caused by lack of clarity on who develops and drives policy for legal aid. The MoJ and Ministers must lead on policy development, whilst the LSC must be able both to influence policy development and to, implement that policy and deliver the resultant service. Furthermore, the MoJ needs clear and unambiguous alliances with other Government departments ensuring a co-ordinated approach to policy making in recognition of the wider impact of legal aid policy across both the justice system and wider public policy.

4.2 Sir Ian Magee's report on the 'Review of Legal Aid Delivery and Governance' describes significant shortcomings in the existing organisational arrangements and concludes that:

> "…*given the evolution of the requirement on the LSC, and the different positioning of the Ministry, it would be surprising if the delivery vehicle appropriate to ten years ago was still fit for purpose today. However the length and breadth of concern is now substantial and there is an urgent need for action.*"

4.3 Key stakeholders have welcomed the decision to change the status of the LSC. They believe that the creation of an executive agency and the closer working with MoJ inherent in the structure will be more efficient in supporting the ever-increasing demands on legal aid services.

4.4 As an NDPB, the LSC is not part of the Crown, but is a legal entity in its own right employing staff who are public servants rather than civil servants. Despite some similarities in the way NDPBs and EAs operate, the most significant difference and the one that has caused the most concern, is the extent to which the LSC is able to operate at 'arms length' from its sponsor Government department. This is especially pertinent as the legal aid fund, of which the LSC has stewardship, constitutes approximately a quarter of the MoJ's budget. This came to a head in 2009 following the qualification of the LSC's 2008-2009 Accounts. The MoJ, as sponsor department, was carrying the burden of accountability despite its distance from the Commission and its limited formal ability to influence the LSC's approach, due to the Commission's statutory foundation.

4.5 These concerns additionally highlighted shortcomings in the MoJ's sponsorship of the LSC as an NDPB and the need for review and reform of the existing arrangements to ensure appropriate accountability.

4.6 This vision and clarity of roles will be most easily achieved by changing the status of the LSC from an NDPB into an EA of the MoJ. This will ensure improved governance, greater accountability to Ministers, stringent scrutiny in relation to fund control and stronger performance management

4.7 Through a change in status the LSC and MoJ will be able to jointly provide for better and improved:

- Performance Management:

  - the MoJ will be able to operate a standard, consistent performance management framework across all the businesses within its remit and better align all justice policies, performance and benchmark service provision with other agencies;
  - it will allow a rapid MoJ response to pressures, changes in priorities and new government initiatives both on legal aid and where legal aid interacts with the wider justice system.

- Management of Resources:

  - it will enable consistent and tighter control of financial management by MoJ corporate finance with complete financial transparency to the Departmental Accounting Officer and Ministers;
  - legal aid supports the operation of courts and tribunals and interacts with many justice agencies. Policy development and policy implementation should be considered in conjunction with sister organisations/agencies in order to ensure wider efficiency and service improvements through improved resource management across the justice system; and
  - it will provide greater opportunity for efficiency savings through rationalisation of areas of duplication such as the estate portfolio, and through sharing corporate functions with the wider MoJ family.

- 'Joined Up' Services

  - In linking into the streamlined processes being developed within the wider justice system the agency will contribute to reduction of the cost of the wider justice system;
  - ensure a focus on early advice and alternative dispute resolutions with other MoJ agencies and partners in line with the reforms to legal aid being taken forward through the Legal Aid, Sentencing and Punishment of Offenders Act.

Governance

4.8 The Agency will have in place effective arrangements to provide assurance on governance, risk management and internal control. These arrangements will be in line with Cabinet Office best practice 'Guide for Departments' which provides an overview of the processes and responsibilities within Departments and their Executive Agencies.

4.9 The Agency will therefore have a governance structure with the following key features in place:

- An Agency (Management) Board supported by an Executive Board and Audit Committee;
- Three non-executive Board members who will be supportive, advisory and enabling while, also providing leadership, strategic direction and constructive challenge and the ability to identify associated risks to business delivery;
- One non-executive will chair the audit committee and will therefore be required to have relevant finance and audit experience. Additionally a second non-executive might usefully have proven knowledge and relevant experience in delivering an operational service to customers. Finally, one non-executive should have experience and knowledge of operating in the sector, while not being an economic operator with a contract for legal aid funding; and
- The appointment of non-executives will be by an open and transparent process and allow for a suitable induction period prior to the vesting of the Executive Agency.

5 OPTIONS

5.1 This section sets out the options considered and the rationale in terms of value for money and other benefits that would be derived through the move to agency status.

5.2 The Business Case considers the following options:

- **Do minimum option** - LSC to continue in its present form and deliver reform and change as an NDPB but with a streamlined organisational structure and some sharing of corporate services with MoJ; and

- **Preferred option** - changing the LSC's status to Executive Agency with effect from 1 April 2013.

5.3 The business case is assessed against the following critical success factors:

- Clear line of financial and wider management accountability from the Chief Executive of the agency, through the MoJ Principal/Departmental Accounting Officer to Ministers;
- A clear delineation of responsibilities so that MoJ (currently Justice Policy Group) holds responsibility for the development of policy on legal aid and the agency responsibility for (a) advising on the delivery aspects of policy development, (b) translating policy into a deliverable service, and (c) delivering such service through the commissioning and administration of legal aid services;
- The cost of the new agency's operating model should be less than that of the existing operation; and

- Decisions on the grant of legal aid to individuals remain protected from Ministerial influence.

5.4 The strengths and weaknesses of each option are detailed below. The working assumption is that transition costs will be kept to a minimum and met from existing budgets within the LSC and MoJ. While the changeover to the MoJ’s ICT platform (DOM1) will help to reduce any IT migration costs, it is highly likely that there will be additional IT costs in becoming an Executive Agency.

5.5 Both options assume a transfer to the civil service of functions, staff and budgets (highly limited, to the extent that it would not require staff transfer, in the case of the “do minimum” option). The transfer of functions within the preferred option is much greater in that the shared services arrangement within MoJ can be maximised as the LSC will no longer be a separate legal entity. This will facilitate greater efficiencies.

5.6 Regardless of whether there is a change in status, work is underway to develop and implement a new high level organisational structure; this work is being taken forward outside and in parallel to the agency transition programme.

5.7 The **Do Minimum option** does not change the governance status of the LSC, but assumes that it continues with its current reform and change agenda, with a streamlined organisational structure.

5.8 The strengths and weakness of the do minimum option are:

Strengths

- *Continuity* - continuing with the current structure would preserve the LSC brand which is widely recognised;
- Transfer of staff into the civil service not necessary;
- *Independence of decision-making* - by remaining a NDPB there will be no need to change existing arrangements, safeguarding the independence required around consideration of decisions in individual cases, particularly those taken against the state; and
- Ministers are able and could seek to disassociate themselves from unpopular delivery decisions.

Weaknesses

- The division and duplication between policy within the LSC and MoJ will continue to cause confusion, continuing the practice of un-collaborative working;
- The total cost of LSC fund and administration budgets represents approximately 25% of the entire MoJ budget. There is a significant risk that indirect management of this budget could lead to poor risk control and consequentially poor value for money;
- Perception from external stakeholders that nothing has changed – and confusion around ‘who calls the shots’ remains;
- The organisation would remain at arm’s length – and issues around accountability and lack of clarity would continue; Ministers would have limited direct control;
- The LSC would not be able to achieve the full saving required on its admin budget by 2015 (SR10 reduction in its administration budget), as it would need to retain its own service provision in areas that could otherwise be shared or centralised;
- Limits the opportunity to align service delivery systems across the MoJ family e.g. debt recovery, payments;

- Limits the opportunity of taking advantage of shared corporate services within the MoJ; and
- The staff of the LSC would remain accountable to Commissioners and not Ministers.

5.9 Remaining as an NDPB, the LSC would need to retain a greater level of separation in regard to corporate functions as mentioned above. This means savings through management efficiencies and shared and centralised services will not be as great and wide ranging as is achievable as an Executive Agency.

5.10 The staff of the LSC are not civil servants and this is a significant barrier to combining corporate services. In order to introduce fully shared and centralised services, even if the LSC remained an independent NDPB, a proportion of staff would need to be transferred under COSOP to the Ministry.

5.11 Despite these constraints, limited improvements could be made around financial control and some streamlining of shared services. However the risk in relation to control of the fund and the potential for the relationship to continue to be independent and remote from Government will remain a strong possibility. This option will not, therefore, mitigate the reputational and political risk for Ministers.

5.12 **The Preferred Option** is that the LSC becomes an Executive Agency. The current planning assumption is that this will take effect on 1st April 2013 to coincide with the implementation of the Legal Aid Reforms. This option delivers improved political and financial accountability. It also provides for a more effective contribution to wider MoJ and justice modernisation, leading to faster and increased delivery of efficiencies and improved service delivery.

5.13 The strengths and weaknesses of the preferred option are detailed below:

Strengths

- *Sole* accountability at a ministerial level for the decisions taken on legal aid policy;
- *Benefits to MoJ (policy)* - in the development of cross justice system policy;
- *Benefits to MoJ (other)* – economies of scale should lead to a reduction in the overall level of resources deployed on both policy development and corporate services;
- *Quicker* decision making on spending review implications of changes to legal aid;
- *Focus* on developing skills and expertise in the areas it has responsibility for: commissioning, procuring and administering legal aid services, rather than having to focus on a wider range of areas;
- *Improved relationships with stakeholders* - stakeholders have welcomed Ministers' decision to change the status of LSC. This has been continually voiced and supported by evidence of dissatisfaction with the current system; and
- *Provides* for the MoJ's Principal Accounting Officer and Ministers to have direct control of risk, potential risk to the fund and staffing.

Weaknesses

- The current economic climate is fragile and this option presents the highest costs in terms of redundancy and possible IT migration; and
- Potential adverse implications associated with perceived reduced independence of case-by-case funding decisions. Also, potential challenge under ECHR if solution not considered robust enough.

- Need to find a solution to the crystallisation of the deficit in the LSC's pension scheme at the point of transfer.

5.14 A move to agency status and implementation of the target organisational structure will enable a more ambitious change to the LSC operating model and will facilitate the rationalisation of how core business is undertaken. The maximum savings deliverable over the 2010 Spending Review will only be attainable through a change in status and full movement to MoJ Shared Services and Corporate Functions, as detailed under the 'preferred option'.

6 FINANCIAL CASE

6.1 **Introduction**

6.1.1 This section captures the financial case for EAT Implementation, considering costs and benefits of implementation, cash flow forecasts for the next two financial years as well as the Net Present Value of scenarios.

6.1.2 Table 6.1 outlines the costs of EAT implementation. All figures in this section have been produced on a nominal basis.

Table 6.1 –EAT costs by cost category

Table 6.1: COSTS - EA Transition

	£ million	SR 2010				TOTAL
		2011/12 + previous years	2012/13	2013/14	2014/15	
		I	II	III	IV	
RESOURCE COSTS						
A	**STAFF COSTS**					
A1	Staff Salaries - Programme Team	0.550	0.150	0.075	-	0.775
A2	Agency Staff Costs	-	-	-	-	-
A3	Costs of Severance	-	4.625	-	-	4.625
A4	Contingency (5% excl Severance)	-	0.008	-	-	0.008
A5	*Subtotal*	**0.550**	**4.783**	**0.075**	**-**	**5.408**
B	**OTHER COSTS - Workstreams**					
B1	Framework & Governance	-	-	-	-	-
B2	Contracts	-	-	-	-	-
B3	HR & Payroll Costs	-	-	-	0.283	0.283
B4	IT Transition Costs	-	2.000	0.700	-	2.700
B5	Pension Costs - Other	0.247	0.324	0.040	-	0.611
B6	EATT Other Costs (Travel etc)	0.004	0.020	0.010	-	0.034
B7	Contingency (5% excl Pensions)	-	0.117	0.038	0.014	0.169
B8	*Subtotal*	**0.251**	**2.461**	**0.788**	**0.297**	**3.797**
C	**TOTAL RESOURCE COSTS**	**0.801**	**7.244**	**0.863**	**0.297**	**9.205**
D	**TOTAL RESOURCE BUDGETS**	**0.801**	**7.119**	TBC	TBC	**TBC**
	of which:					
D1	MoJ Funded (Assumption)	**0.000**	**6.125**	TBC	TBC	**TBC**
D2	LSC Funded (Assumption)	**0.801**	**0.994**	TBC	TBC	**TBC**
E	**Surplus/(Deficit)**	0.000	-0.125	TBC	TBC	**TBC**

Current estimate of risk adjusted costs of EAT Implementation across the SR period equates to c. **£9.2m**. These costs are assessed as "directly attributable" to vesting to Executive Agency status. Main areas of spend are:

- **£4.6m (Row A3) - Severance Costs**: It is expected that LSC & the MoJ will incur costs of severance of c. £6.9m across the SR period (mainly in 2012/13) to enable staff exits and, therefore, savings to be delivered. LSC has bid for c. £8.1m for severance funding in 2012/13 – however, it is expected that c. £4.625m of this is directly attributable to staff exits as a result of EAT Programme.

- **£2.7m (Row B4) - IT Transition Costs:** Costs of the LSC/ MoJ project team to manage and execute the IT EA Transition staff to validate & complete the Target Operating Model, design the future service model etc, system surveying and due diligence costs from Logica and other key changes (e.g. systems documentation) required for "on-boarding" the LSC on the MoJ IT platform.

- **£2.1m - Other Costs**: Includes costs of project team, branding in relation to move to Exec Agency status, HR & payroll costs of work transferred to the MoJ, Pension costs related to work on transfer of terms for employees, costs of travel and subsistence and management contingency of c. 5%.

6.2 **Income and Expenditure Account**

6.2.1 Breakdown of spend is covered in Table 6.1

6.3 **Balance Sheet**

6.3.1 The transfer to Executive Agency results in the existing two LSC Pension schemes closing to new members and future benefit accrual. The two schemes will also be merged into a single scheme. As a result – and accounted for within the MoJ as the principal employer - application of IAS19 generates an asset or a liability in the MoJ books as at year ending 31 March 2014 (the first full year as an Executive Agency). It is recommended that the MoJ and the LAA seek significant actuarial input closer to the time to evaluate the full impact on the MoJ books.

6.4 **Cash Flow Forecast**

6.4.1 Table 6.2 outlines the cashflow forecast for the next two years.

Table 6.2 – EA Transition cashflow for the next two years by cost category

		2012/13												
	£ million	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	**TOTAL**
RESOURCE COSTS														
A	**STAFF COSTS**													
A1	Staff Salaries - Programme Team	0.013	0.013	0.013	0.013	0.013	0.013	0.013	0.013	0.013	0.013	0.013	0.013	0.150
A2	Agency Staff Costs	-	-	-	-	-	-	-	-	-	-	-	-	-
A3	Costs of Severance	-	-	-	0.025	0.025	0.025	0.025	0.025	0.025	1.000	2.000	1.475	4.625
A4	Contingency (5% excl Severance)	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.008
A6	*Subtotal*	**0.013**	**0.013**	**0.013**	**0.038**	**0.038**	**0.038**	**0.038**	**0.038**	**0.038**	**1.013**	**2.013**	**1.488**	**4.783**
B	**OTHER COSTS**													
B1	Framework & Governance	-	-	-	-	-	-	-	-	-	-	-	-	-
B2	Contracts	-	-	-	-	-	-	-	-	-	-	-	-	-
B3	HR & Payroll Costs	-	-	-	-	-	-	-	-	-	-	-	-	-
B4	IT Transition Costs	-	-	0.500	-	-	0.500	-	-	0.500	-	-	0.500	2.000
B5	Pension Costs - Other	0.027	0.027	0.027	0.027	0.027	0.027	0.027	0.027	0.027	0.027	0.027	0.027	0.324
B6	EATT Other Costs (Travel etc)	0.002	0.002	0.002	0.002	0.002	0.002	0.002	0.002	0.002	0.002	0.002	0.002	0.020
B7	Shared & Centralised Services	TBC	TBC	TBC	TBC	TBC	TBC	TBC	TBC	TBC	TBC	TBC	TBC	-
B8	Contingency (5% excl Pensions)	0.010	0.010	0.010	0.010	0.010	0.010	0.010	0.010	0.010	0.010	0.010	0.010	0.117
B9	*Subtotal*	**0.038**	**0.038**	**0.538**	**0.038**	**0.038**	**0.538**	**0.038**	**0.038**	**0.538**	**0.038**	**0.038**	**0.538**	**2.461**
C	**TOTAL RESOURCE COSTS**	**0.052**	**0.052**	**0.552**	**0.077**	**0.077**	**0.577**	**0.077**	**0.077**	**0.577**	**1.052**	**2.052**	**2.027**	**7.244**

		2013/14												
	£ million	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	TOTAL
RESOURCE COSTS														
A	**STAFF COSTS**													
A1	Staff Salaries - Programme Team	0.075	-	-	-	-	-	-	-	-	-	-	-	0.075
A2	Agency Staff Costs	-	-	-	-	-	-	-	-	-	-	-	-	-
A3	Costs of Severance	-	-	-	-	-	-	-	-	-	-	-	-	-
A5	Contingency (5% excl Severance)	-	-	-	-	-	-	-	-	-	-	-	-	-
A6	*Subtotal*	**0.075**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**0.075**
B	**OTHER COSTS**													
B1	Framework & Governance	-	-	-	-	-	-	-	-	-	-	-	-	-
B2	Contracts	-	-	-	-	-	-	-	-	-	-	-	-	-
B3	HR & Payroll Costs	-	-	-	-	-	-	-	-	-	-	-	-	-
B4	IT Transition Costs	-	-	0.175	-	-	0.175	-	-	0.175	-	-	0.175	0.700
B5	Pension Costs - Other	0.003	0.003	0.003	0.003	0.003	0.003	0.003	0.003	0.003	0.003	0.003	0.003	0.040
B6	EATT Other Costs (Travel etc)	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.010
B7	Shared & Centralised Services	-	-	-	-	-	-	-	-	-	-	-	-	-
B8	Contingency (5% excl Pensions)	0.003	0.003	0.003	0.003	0.003	0.003	0.003	0.003	0.003	0.003	0.003	0.003	0.038
B9	*Subtotal*	**0.007**	**0.007**	**0.182**	**0.007**	**0.007**	**0.182**	**0.007**	**0.007**	**0.182**	**0.007**	**0.007**	**0.182**	**0.788**
C	**TOTAL RESOURCE COSTS**	**0.082**	**0.007**	**0.182**	**0.007**	**0.007**	**0.182**	**0.007**	**0.007**	**0.182**	**0.007**	**0.007**	**0.182**	**0.863**

6.5 **Sources of Available Funding**

6.5.1 Table 6.3 outlines the sources of funding for EA Transition

Table 6.3 – EAT sources of funding

Table 6.3 - Affordability Assessment

		IMPLEMENTATION			
	£ million - RESOURCE	2011/12	2012/13	2013/14	2014/15
A	**COSTS**				
A1	EAT Base Costs	0.801	7.119	0.825	0.283
A2	Contingency	-	0.125	0.038	0.014
A3	***Total RESOURCE***	**0.801**	**7.244**	**0.863**	**0.297**
B	**BUDGETS**	**0.801**	**7.119**	**TBC**	**TBC**
	Breakdown as follows:				
B1	Funding Secured	**0.650**	**0.994**	**-**	**-**
	of which				
	MoJ	-	-	-	-
	LSC	0.650	0.994	-	-
B2	Funding to be agreed	**-**	**6.125**	**0.863**	**0.297**
	of which				
	Via Workforce Committee (VEDS Funding)	-	4.625	-	-
	IT Transition Costs		1.500		
	LSC - Future years (pending allocations)	-	-	0.863	0.297
C	**PROGRAMME SURPLUS/SHORTFALL**	**-**	**(0.125)**	**TBC**	**TBC**

6.5.2 EAT was fully funded for FY 2011/12 and funding of £0.99m has been agreed in setting the financial allocations for LSC Admin for 2012/13. Table 6.3 shows a funding shortfall of **£0.125m** (Row C) in 2012/13 reflecting the inclusion of a contingency in the programme costs, as per MoJ practice; if this contingency (5% of costs) is needed, necessary funding will be sought from other areas of the LSC's Admin budget.

6.5.3. For the FY 2012/13, at this stage, funding is yet to be agreed for severance payments via the MoJ Workforce Committee, which will be considered later in 2012. Therefore, funding has not been agreed at this stage. Equally, costs related to IT Transition are yet to be agreed as the current 2012/13 allocations for MoJ ICT and LSC does not include a budget for transition costs.

6.5.4 Allocations for 2013/14 & 2014/15 yet to be agreed but the projected spend reported in Table 6.3 will be used in the LSC bid for funding in future years.

6.6 **Costs of Procurement**

6.6.1 N/a

Benefits

LSC move to Agency Status (Business Case)

6.7.1 The four year savings profile is shown by type in Table 6.4.

Table 6.4 – 4 year savings profile

Table 6.4 - BENEFITS - EA Transition

	£ million - RESOURCE	SR 2010				TOTAL
		2011/12	2012/13	2013/14	2014/15	
F1	Shared & Centralised Services	-	-	-	0.230	0.230
F2	VAT Savings due to change in status	-	-	3.000	3.000	6.000
F3	Commissioner Savings due to change to Non Exec	-	-	0.100	0.100	0.200
F4	Staff Savings (assuming VEDS funding received)	-	-	3.000	3.000	6.000
F5	Staff Savings (from previous years)	1.100	1.100	1.100	1.100	4.400
G	**TOTAL BENEFITS**	**1.100**	**1.100**	**7.200**	**7.430**	**16.830**

6.7.2 Current estimate of benefits of EAT Implementation across the SR period equates to c. £16.8m. These benefits are assessed as "directly attributable" to vesting to Executive Agency status. Main areas of include:

- **£6.0m (Row F2) – VAT savings**: It is expected that the LSC will save on VAT as a result of vesting to EA status, especially on its Service Level Agreement with HMCTS (VAT saving of c. £1.8m per annum) and on LSC's payment of the ATOS contract (c. £1.2m saving on VAT per annum).

- **£6.0m (Row F4) – Staff savings:** Following a detailed review of the staff exit strategy, it is assumed that of the c. 120 FTE exits as a direct result of vesting to EA status, c. 70 FTE is expected from Voluntary Redundancy or Outsourcing. The balance of c. 50 FTE is expected to be transferred to MoJ via Corporate Services areas (ICT, HR and other MoJ Shared Services). At this stage, it is assumed that the annual saving of c. 70 FTE equates to c. £3m annual saving. Work is underway to break this down by grade and by department to assess the full long term saving to LSC and the MoJ.

- **£4.4m (Row F5) – Staff savings**: Savings already realised from reducing senior staff (c. 11 FTE) in 2010/11 in preparation for a streamlined Senior Management Team in the Executive Agency.

- **£0.43m – Other (Rows F1 & F3)**: Savings as a result of centralising the HR and Payroll workstream within MoJ Shared Services and savings in reducing the number of commissioners with the Agency to be replaced by Non Executive Directors.

6.7 **Payback (SR Period)**

6.8.1 The estimated savings are approximately £16.8m over the SR period and with estimated one-off costs of £9.2m, the financial benefits are forecast to offset costs by 2014/15. The payback period of the transition to Executive Agency status is approximately three years.

6.8 **Net Present Value Table**

6.9.1 Table 6.5 sets out an NPV analysis for the most likely scenario which includes the risk adjusted costs set out in table 6.1 and benefits as per table 6.4. The NPV has been calculated for a 10 year period

6.9.2 NPV has been calculated using a discount rate of 3.5% as set out at paragraph 5.49 of the HMT Green Book (http://www.hm-treasury.gov.uk/d/green_book_complete.pdf)

Table 6.5 – 10 year NPV (Most Likely Case)

Most Likely Scenario – Positive NPV of £40.99m

MOST LIKELY CASE	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	Ten Year
Costs	-0.80	-7.24	-0.86	-0.30	-0.30	-0.30	-0.30	-0.30	-0.30	-0.30	-10.99
Benefit	1.10	1.10	7.20	7.43	7.43	7.43	7.43	7.43	7.43	7.43	61.41
Net Benefit	0.30	-6.14	6.34	7.13	7.13	7.13	7.13	7.13	7.13	7.13	50.42
Discounted Net Benefit	0.30	-5.94	5.92	6.43	6.22	6.01	5.80	5.61	5.42	5.23	**40.99**
Cumulative NPV	0.30	-5.64	0.28	6.71	12.93	18.93	24.74	30.34	35.76	40.99	

6.9.3 This scenario calculates the NPV based on latest estimate of costs and benefits (tables 6.1 and 6.4) assuming figures in the final year of Spending Review carry forward through to 2020/21

Table 6.6 – 10 year NPV (Best Case Scenarios)

Best Case Scenario – Positive NPV of £54.51m

BEST CASE	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	Ten Year
Costs	-0.80	-7.12	-0.83	-0.28	-0.28	-0.28	-0.28	-0.28	-0.28	-0.28	-10.73
Benefit	1.10	1.10	9.20	9.43	9.43	9.43	9.43	9.43	9.43	9.43	77.41
Net Benefit	0.30	-6.02	8.38	9.15	9.15	9.15	9.15	9.15	9.15	9.15	66.68
Discounted Net Benefit	0.30	-5.82	7.82	8.25	7.97	7.70	7.44	7.19	6.95	6.71	**54.51**
Cumulative NPV	0.30	-5.52	2.30	10.55	18.52	26.22	33.67	40.85	47.80	54.51	

6.9.4 This scenario calculates the NPV based on latest estimate of costs and benefits (tables 6.1 & 6.4) with changes as follows:

- Assumes programme is delivered without the use of any contingencies
- Assumes all c. 120 FTE exits the LSC on voluntary terms/natural attrition and NONE transfer to the MoJ. This is expected to result in c. £5m saving per annum.

LSC Pension Schemes

6.10.1 The LSC is the sponsor of two trust based pension schemes – the No.3 and No.4 schemes – both are run by a Board of Trustees. As at 31 March 2012 there were c. 2,900 members in total and the schemes' assets stood at £307m.

6.10.2 The Trustees set the contributions that are payable by the LSC and, whilst the Trustees are obliged to consult with the LSC, they can ultimately set the contribution rate unilaterally. Changes to the scheme that have been authorised by MoJ on behalf of the Lord Chancellor can only be implemented if they have Trustee consent. The No.3 scheme is fully funded and closed to new members. It has 84 pensioner and preserved members (those who have left the LSC, and will receive a pension from the Scheme when they attain the schemes retirement age). The No.4 scheme has just over 1,050 active members and around 1,850 pensioner and preserved members.

6.10.3 A formal valuation of the No.4 scheme was performed by the scheme actuary at 31st March 2010. This concluded that the scheme had a £5m surplus. The main reason for the improvement since the 2008 valuation (£17m deficit) was the Government's decision to change the method of increasing public sector pensions from the Retail Prices Index (RPI) to the Consumer Prices Index (CPI). The actuarial funding updates of the No.4 Scheme since the valuation have highlighted a deterioration in the funding position with a deficit of £19m at the most recent update (31 March 2012). The level of the deficit continues to fluctuate significantly and the movement since the last formal valuation is set out below:

£m	31-Mar-10	31-Mar-11	31-Jan-12	31-Mar-12
Assets	249	273	295	303
Liabilities	244	262	336	322
Surplus/(deficit)	5	12	(41)	(19)
Funding Level	102%	104%	88%	94%

6.10.5 The Ministry of Justice (MoJ) previously committed to the Trustees that the LSC pension schemes would be fully funded at the point of transfer. Following the deterioration of the funding position the MoJ have requested approval from HM Treasury to issue a Crown Guarantee to the LSC pension schemes. This will provide the Trustees with the security they require for members and allow the MoJ to manage the deficit over the longer term. . HM Treasury have provided agreement in principle to grant the guarantee, subject to some conditions which the MoJ have indicated they will accept, the programme is working on the assumption that such a Guarantee will be provided. For this reason the cost associated with the crystallisation of any deficit has not been included in Table 6.1.

6.10.6 LSC staff that transfer to the Ministry of Justice or the Legal Aid Agency will be offered the opportunity to transfer their LSC pension service into the Principal Civil Service Pension Scheme (PCSPS), as well as allowing them to build up benefits from future service. In June 2011, the Government Actuary's Department (GAD) confirmed that the LSC No4 scheme was broadly comparable with the PSCPS Premium section and the Cabinet Office has given agreement to re-open this section for LSC staff that transfer. Any change in the contribution rates of the PCSPS scheme brought about by the Hutton review may require GAD to reconfirm comparability between the schemes

7 PROGRAMME IMMPLEMENTATION

7.1 This section provides details and information of the programme structure and deliverables required to change the LSC to agency status.

7.2 There are some key challenges to tackle in changing the status of the LSC. The organisation is quite different to that of the MoJ and the business model varies in many ways.

7.3 The administrative and legal relationships of the LSC and MoJ do not have a great deal in common. Examples where there are differences include: terms and conditions of employment, pension arrangements, provision of finance, supply and service contracts, use of shared and centralised services and IT services. For all these reasons changing the status of the LSC will be a significant management challenge.

7.4 A Programme team is in place. The programme is delivered through joint MoJ/LSC workstreams which comprise members with experience of both organisations, change management in different settings, and technical expertise and/or knowledge in finance, HR, policy and sponsorship. Work during the initiation stage has produced a high-level programme plan which will further define, in the forthcoming stages, the required outcomes from the change and key milestones.

7.5 A summary of key programme and workstream deliverables is shown in the table below.

Programme Workstream	**Description**
Programme management & support	• Programme management and programme support office • Business case development and benefit realisation • Data gathering and analysis • Programme plans and structures
Stakeholder Management & Communications	• Communications and stakeholder management • Stakeholder awareness • Design, production and distribution of communications material • Preparation and management of workshops, events including launch of agency
Finance & Governance workstream	• Development of agency governance arrangements, including framework document • Design and implementation of agency Board structure • Recruitment of Board non-executive members • Design of performance management framework • Negotiation and management of funding for new agency (replacement of grant in aid and changes to provision of fund budgets if necessary) • Developing performance management packs for agency management • Production of closing accounts for the LSC

Pensions workstream	• Manage transfer of pensions
HR workstream (including shared services)	• Plan staff transition • Manage transition to MoJ shared services, including transfer of payroll systems • Develop HR policies and visions and values of the Agency
Contracts workstream	• Develop plan for transfer of contracts from LSC to MoJ • Manage transition of contracts and other sourcing arrangements
IT workstream	• Manage systems transition • Implement common intranet and e-mail address format • Establish LSC agency website • Assess systems for IT security compliance and implement common MoJ policy (if not already compliant)
Branding workstream	• Identify change required to documentation etc, whether or not LSC system generated, consequent on change to agency status; • Implement changes required.

Governance

7.6 The programme was initiated in April 2010. The Senior Responsible Owner for the programme is Matthew Coats, LSC Chief Executive, who leads the Programme Board. This in turn reports to a joint LSC/MoJ Oversight Board (chaired by the Director General, Justice Policy Group) since its scope extends beyond the LSC and impacts on the overall structure of MoJ. This ensures that any decisions in the programme, which have a significant impact on the MoJ structures, and corporate strategy or policies, will be referred up to the corporate management board. A Memorandum of Understanding provides more detailed information on the governance arrangements for the programme of work to change the status of the LSC from an NDPB to an Executive Agency.

Programme Management

7.7 A programme team has been mobilised and members of all workstreams identified. Staff for the programme have been appointed from within the LSC and MoJ.

7.8 A programme wide risk register has been developed and risk owners identified. The individual workstreams within the programme will develop plans to mitigate these risks and this will help ensure the programme is realised in line with the assumptions (included in the Business Case).

Dependencies and Risks

7.9 Significant dependencies with other LSC programmes (paragraph 3.4) will be managed through close liaison with those programmes, and joint consideration of risks and benefits.

Other dependencies are with MoJ programmes (estates rationalisation/Transforming Justice/Shared Services Programme) which will need proactive management.

7.10 There will be a number of risks and issues around changing the status of the LSC, most notably around staff. Risk and issues logs are in place at both programme and workstream level and are regularly monitored and risks/issues escalated where necessary. The key risks identified to date are:

- Delay in passage of the Legal Aid, Sentencing and Punishment of Offenders Bill puts at risk the agency launch date of 1st April 2013;
- Future operating cost of the agency (a) increases; (b) increases to a point at which it is unaffordable under current funding arrangements;
- MoJ shared services may not be able to take on LSC payroll and allied services to timescale resulting in LSC staff not being paid on transfer to MoJ.

Plans to address these risks have been developed.

8 KEY ASSUMPTIONS

8.1 The Business Case is underpinned by a number of key assumptions which are detailed below.

- Organisational Assumptions
  - Executive Agency Status achieved on 1st April 2013;
  - Core Operational functions for the administration of legal aid remain un-changed;
  - Move to shared services following vesting;
  - Organisational structure - redesign takes place outside the agency programme, in a parallel project providing an interim structure on vesting date. Further changes will be made in the first year with a target structure model, taking into account the impact of implementation of the IDP and the Legal Aid reform programme.

- Staffing and HR Assumptions
  - COSOP-like arrangements will apply and staff will transfer to the Agency/MoJ on present terms and conditions, save pensions and severance;
  - At transfer to MoJ, all staff will become civil servants and be enrolled into the Premium scheme of the PCSPS;
  - Redundancy will be managed to maintain continuity, skills and to minimise costs at agency launch.
  - A Crown Guarantee will be secured, so that any deficit in the LSC's pension schemes does not crystallise at the LSC's abolition.

- Systems and Processes Assumptions
  - Current systems and processes where possible will be implemented on a 'lift and shift basis' to keep changes to a minimum so as not to incur costs;

- Contract Assumptions

- Contract novation to take place in line with abolition of the LSC.

- Estates Assumptions
  - Changes to location take place in line with lease breaks and implementation of organisational structure;
  - Estates services/facilities management are provided under the aegis of the MoJ Estates Integration Programme;
  - London based Headquarters' staff to be relocated into Petty France.

8.2 The majority of these assumptions are within the control of LSC and/or MoJ officials and the programme team. Others are outside the control of these groups, in particular the pension assumptions. All of these assumptions will be assessed and included in the Programme Risk Register where required.

9 CONCLUSION

9.1 The business case recognises organisational shortcomings with the current arrangements. Changing the status of the LSC will overcome them and ensures that legal aid services:

- Are delivered within a robust framework of political and financial accountability;
- are informed by a consistent and single legal aid strategy which meets the needs of users and Government;
- benefit from the use of shared corporate services with the MoJ driving future economies of scale; and
- are focussed clearly and consistently on delivery for the agency's customers, suppliers and providers.