Industry and consortium funding

Purpose of document

1. To establish some principles for guiding the LSB's approach towards accepting industry funding on a consortium basis to support its research activities.

Background

2. The LSB has carried out co-funded research projects on numerous occasions. Partners have included Ministry of Justice, Competition and Markets Authority, Legal Education Foundation, regulatory bodies, approved regulators and the Legal Ombudsman. On each occasion, the organisation contributed a share of the costs for a specific project and was a named partner in the initiative.

3. To the best of our knowledge, LSB has never received funding from businesses. There has been recent discussion of accepting industry funding on a consortium basis to assist with work on professional indemnity insurance. At the time, this was on the basis that the total research needs for the work could be extensive and external funding would allow LSB to collect the necessary evidence without compromising research needed for other business plan projects.

4. SLT has taken the view that there should be no principles-based objection to receiving money from businesses. The remainder of this paper takes this as the starting point and focuses on the governance of any such arrangements.

Nature of arrangement

5. The original proposition was for 'crowdfunding' but we consider this is more properly conceived as consortium funding. Consortium funding would entail a partnership between a small number of named partners for a specific purpose. By contrast, crowdfunding can often involve a very large number of parties contributing various amounts. Sometimes the parties can be anonymous and their contributions very small. There could potentially be unvetted sources of income and this would increase risk in terms of LSB reputation, compromising our position of independence, acting outside of our remit and so potentially risking having our Annual Report and Accounts qualified by the auditors.

6. The proposed arrangements are intended to support specific projects rather than provide a general 'pot' that may be accessed at any time. This would be more problematic from an accounting perspective given scrutiny of our cash position.

7. These arrangements do not constitute fundraising activities, but rather involve accepting offers from partners to contribute to work that we undertake.

Principles

8. Accepting funding from businesses carries some potential risks, including reputational and perceived or real conflicts of interest. Therefore, we propose applying the following principles before accepting any funding:

    a. Funding from businesses may be accepted only where consistent with the Legal Services Act 2007 and Managing Public Money
    b. Transparency
        i. The identity of each funder and the amounts contributed would be recorded in the Annual Report and Accounts
        ii. Contributors would be acknowledged in the research report
    c. Independence
        i. A written agreement with each funder would set out the terms of the arrangement on a project-by-project basis
        ii. Funders may discuss project aims and approach with the LSB at the outset, but decisions on the objectives, scope, questions and presentation of findings would rest with the LSB.
        iii. Funders may not set conditions that compromise LSB's independence or create real or perceived conflicts of interest
    d. Values
        i. Accepting funding from each source must be consistent with LSB's values and status as a public body
        ii. Reputational risk would be considered before accepting funding. This would include consideration of the partner's motives and precautions such as checking the business's regulatory history
        iii. LSB should be able to return funding should it transpire that the principles in this document have been compromised

Governance

9. Given the novel nature of these arrangements, it is proposed that the CEO approve each proposal for accepting funding on a case-by-case basis. The CEO may wish to take soundings from the ARAC Chair or wider Board as necessary.

10. Once the funding is in place and the overall objectives and scope are agreed, the LSB would normally run a procurement process and contract with the research company. LSB would normally invoice partners when payments fall due. There would a partnership agreement setting out practical arrangements, payment milestones, expectations and rights of the various parties, including in relation to intellectual property. This would be consistent with our approach for other partnership projects.

11. In the interests of transparency, once industry funding is accepted for the first time, the principles in this document would be published on the LSB's website and specific arrangements documented in the Annual Report and Accounts.

Annex – Frameworks

Legal Services Act

The Act contains various references to funding, summarised as follows:

- Section 172 sets out that the Lord Chancellor may pay to the Board sums to meet its expenditure consistent with the purposes of the Act
- Section 173 makes various provisions concerning the levy.
- Under Schedule 1, para 19, the Board may make arrangements with such persons as it considers appropriate for assistance to be provided to it. The next sub-section says this may include the paying of fees to such persons.
- Under Schedule 1, para 24, the Board may not borrow money except with the Lord Chancellor's approval (note that the proposed arrangements would not constitute borrowing since there is no intention to repay the funds).
- Schedule 1, para 25, deals with preparation of the Accounts.

Therefore, the Legal Services Act is silent on the Board's ability to accept any funds other than through the levy or government funding. Clearly, over the years the LSB has co-funded research with partners on the basis that each partner receives direct benefit from this activity (even though LSB has formally contracted with the supplier). However, this may be viewed as an administrative arrangement rather than receiving funds or generating income. Questions include whether the proposed arrangements with industry funders would be any different in kind and if the Act's silence on these matters would preclude any such arrangements.

Managing Public Money

The MPM guidance encourages partnerships with others. For example, it says that it may be helpful to harness the expertise of a commercial or civil society sector organisation with skills and leverage not available to the public sector.

The MPM documents are intended to cover a wide variety of situations, so it is necessary to translate some general principles to the issue at hand. Key issues identified by the guidance include safeguarding independence, managing conflicts of interest and ensuring accountability. It suggests that cultural fit should be close enough to give each confidence to trust the other.

The guidance envisages that relationships are formalised in a framework agreement and suggests a long list of things to cover in the document.