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Dear Antony,

### **SRA investigation and enforcement activity**

I said that I would write to you to put on the record the work we have undertaken and the conclusions we have reached following the issuance of our section 55 notice dated 10 January 2013 and our receipt of the required documentation from the SRA on 25 January 2013.

The information was first used to inform Board discussion of the SRA's regulatory standards self-assessment on 30 January. However, we also undertook a more detailed review of the information and discussion with our Board over a longer timescale. With the help of SRA staff in the Supervision and the Legal and Enforcement departments, for which we were grateful, we produced a schematic document to graphically represent the SRA's investigation and enforcement process as described by the SRA's submission. We populated this with the statistics provided by the SRA. We also produced a paper for our board discussing our main observations. Our Board considered this at its meeting on 18 March 2013. It is available on our website at [http://www.legalservicesboard.org.uk/about\\_us/board\\_meetings/18\\_march\\_2013.html](http://www.legalservicesboard.org.uk/about_us/board_meetings/18_march_2013.html)

Our main observation is that the SRA were unable to provide the average length of time or range of times it takes to conduct an investigation, to refer it to the SDT and to have a hearing at the SDT – the 'end to end' process. This is because the assessment files, investigation file and tribunal files are recorded separately on the system. The Board considers that the inability for the SRA to measure the end-end process is a potentially important systemic weakness. We note that health regulators, amongst other reporting requirements, are required to report to the Professional Standards Authority the median, slowest and quickest time taken from initial complaint to final determination as well as age

of the work in progress. While we do not want to replicate that centralised reporting, we do invite your Board to consider information at that level as we consider that this type of end to end information most closely represents what consumers and the subjects of an investigation experience.

The Board also concluded that the investigation and enforcement process remains complex. Our schematic shows that the decision on whether to build a case that can be referred to the SDT can be taken at three different points in the process. The complexity has also led to the situation where KPIs (where they exist) appear to be related to files being formally opened by different departments rather than the outcome of the process. For instance, once a casework investigation concludes that a file requires an SDT referral, the case is closed by supervision. It is then passed to the Legal and Enforcement Department who then consider again whether to refer the matter to the SDT. If they decide to do so a file is opened by Legal and Enforcement and the KPI measurement begins. That KPI measurement is completed once the SRA issues the file to the SDT.

Clearly, proper quality control is important and legal scrutiny can, on occasion, identify evidential matters which need further exploration. But there does seem to be a significant danger both of double handling the substantive consideration and of there being a potential gap in measurement between the casework investigation closing their file and the TRI file being opened and no hearing has occurred. The information we were provided with did not indicate how many files were in that latter situation and for how long they might remain there. There does seem to be the opportunity for some process simplification to address these concerns.

Looking at performance, the information suggested that at the end of 2012 there were 3723 open casework investigations being handled by the Supervision department. Nearly 10% of these investigations were over 12 months old. The average age for an open casework investigation was 5.6 months. The average age of casework investigations closed during 2012 was two months and the oldest closed case was 48 months. Unless exceptional circumstances apply, supervisors are expected to complete all casework investigations within 12 months. Given that "exceptional circumstances" should be a high test, the Board was surprised to see that so many cases appeared to fall into that category and would have expected to see some form of reporting to explain whether there was a pattern of subject matter or some other reason which explained the scale.

The figures provided by the Legal and Enforcement department showed that they have made very welcome progress in reducing the number of open files since submission of the regulatory standards self-assessment. At the end of December it had 367 'TRI' files open and we understand that a further reduction has occurred in recent months and the KPI in relation to SDT issuance has also been made more demanding. The average age of TRI files at closure during 2012 was 19 months. The average age of unissued TRI files was 9 months and there were 18 unissued TRI files aged between 12 and 36 months old. Considering this information it appears that the average time from the opening of a casework investigation to the closure of a TRI file could be in the region of 21 to 30

months. We would be grateful for any view on the accuracy or not of this assessment of overall performance.

The Board recognised that some of the drivers of complexity and time may derive from existing statute and SDT processes will necessarily have a considerable impact on the figures. We therefore welcome the SRA's participation in the SDT User Group initiative, which may make a helpful contribution to improving end-to-end processes. However some are more directly under your control and we encourage the SRA to develop the ability to measure the end to end performance so it can better understood by your Board and senior team, the market and profession more widely and those subject to investigations or who may be required to provide information to the SRA in particular.

In terms of the impact of statute, the LSB's sanctions and appeals project, which we are dovetailing with our wider work on cost and complexity of regulation, is looking at best practice in this area and seeking to identify statutory and other barriers to achieving this in the Legal Service market. The project team are happy to discuss this with you and explore how barriers to achieving a higher level of performance can be reduced.

In conclusion I would like to thank SRA staff for providing the information and for reviewing our work. If you would like to discuss any of the matters in this letter please contact me or one of my team.

As the original notice was sent to David Fisher in his capacity as Chairman of the Business and Oversight Board I am sending a copy to him. I am also copying this letter for information to Susan Humble at the SDT and will be placing it on our website on 13 June.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Chris Kenny', followed by a horizontal line and a small vertical tick at the end.

**Chris Kenny**  
Chief Executive

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