

# Chairs of regulatory boards

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Summary of responses to consultation

Decision document on a proposed amendment to the Internal Governance Rules to require that the chairs of the boards of the regulatory arms of each applicable approved regulator be a lay person

20 February 2014

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## Executive summary

1. This paper sets out our decision on lay chairs and:
  - summarises responses to the Legal Services Board (LSB's) October 2013 consultation paper on a proposed amendment to the Internal Governance Rules (IGRs) to require that the chairs of the boards of the regulatory arms of each applicable approved regulator (AAR<sup>1</sup>) be a lay person<sup>2</sup>
  - provides our feedback to the 17 consultation responses received. Most legal regulators and representative bodies were opposed to the proposal, but two consumer groups were in favour
  - outlines the LSB's decision to consult on a new proposal in relation to appointments and reappointments to regulatory boards that was put forward in response to our original consultation on lay chairs. That consultation document is published alongside this decision document<sup>3</sup>
  
2. The Legal Services Act 2007 (the Act) enables the LSB to make rules securing the independence of legal services regulation from the representative functions of professional bodies<sup>4</sup>. After five years of experience, it is our view that amending the IGRs to require lay chairs is a wholly rational route to embedding and strengthening independence in legal services regulation. Further, we believe that additional restructuring of the appointments and reappointments process is needed as a proportionate route to secure that independence.
  
3. This will contribute to better regulatory outcomes. It will enable faster progress towards the development of modern, risk and outcomes based regulation that is likely to deliver the regulatory objectives and principles of better regulation. Our assessment is that at present strong ties to the history, culture and rules of the profession in general and professional self-regulation in particular can act as a significant drag on the better regulation principles and therefore put the regulatory objectives at risk.
  
4. This view has been reached on the basis of:
  - day to day interaction with approved regulators
  - four years' experience of carrying out the dual self certification process<sup>5</sup>

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<sup>1</sup> An AAR is defined in paragraph 2 of the IGRs as 'an Approved Regulator that is responsible for the discharge of regulatory and representative functions in relation to legal activities in respect of persons whose primary reason to be regulated by that Approved Regulator is those person's qualifications to practise a reserved legal activity that is regulated by that Approved Regulator'

<sup>2</sup>

[http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/pdf/lwb\\_consultation\\_on\\_lay\\_chairs\\_08\\_10\\_13.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/pdf/lwb_consultation_on_lay_chairs_08_10_13.pdf).

<sup>3</sup> [http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/open/index.htm](http://www.legalservicesboard.org.uk/what_we_do/consultations/open/index.htm)

<sup>4</sup> Section 30 of the Legal Services Act 2007 (the Act)

<sup>5</sup> [http://www.legalservicesboard.org.uk/Projects/independent\\_regulation/index.htm](http://www.legalservicesboard.org.uk/Projects/independent_regulation/index.htm)

- four years' experience of dealing with rule change applications<sup>6</sup>
  - knowledge gained from our regulatory standards work<sup>7</sup>
5. Having considered the responses to our October 2013 consultation, the LSB has decided to make the proposed amendment to rule C of part 1 of the schedule to our IGRs. The amended rules can be found at annex 1 and will be published alongside this document. The rules will take immediate effect. It will, however, be acceptable to the LSB for a commitment to be given to appoint a lay chair at the end of the current chair's term<sup>8</sup> by any regulator currently without a lay chair.
  6. In response to feedback to our October 2013 consultation, most notably from the Solicitors Regulation Authority (SRA), we are consulting on a further change to the IGRs. We propose to amend the IGRs to require that regulatory bodies, rather than professional bodies, are responsible for certain aspects of the appointments and reappointments process for board members and their chairs.
  7. This second consultation document is published alongside this decision document and can be found on the consultations section of the LSB website<sup>9</sup>. The consultation will run for 6 weeks, closing on 3 April 2014.

### Next steps

8. This document is published in combination with the amended IGRs (see annex 1), which replace version 1 of 15 December 2009. The IGRs take immediate effect but, as set out in paragraph 5, the change will only apply to future appointments.

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<sup>6</sup>

[http://www.legalservicesboard.org.uk/Projects/statutory\\_decision\\_making/alterations\\_to\\_regulatory\\_arrangements.htm](http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/alterations_to_regulatory_arrangements.htm)

<sup>7</sup> [http://www.legalservicesboard.org.uk/Projects/developing\\_regulatory\\_standards/index.htm](http://www.legalservicesboard.org.uk/Projects/developing_regulatory_standards/index.htm)

<sup>8</sup> Unless the existing professional chair was acting unreasonably, resulting in regulation being carried out contrary to the regulatory objectives

<sup>9</sup> [http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/open/index.htm](http://www.legalservicesboard.org.uk/what_we_do/consultations/open/index.htm)

## Introduction

9. Independent regulation is central to the aims of the Legal Services Act 2007 (the Act). The perception that the regulation of legal services was skewed in favour of lawyers, rather than the public or consumers, was a significant driver of the reforms brought in by the Act.
10. The Act requires the chair of the LSB to be a lay person<sup>10</sup>, as well as the chair of the Office for Legal Complaints (OLC)<sup>11</sup> and the Chief Ombudsman<sup>12</sup>. The issue of independence from both government and from the professional bodies is also critical in relation to the approved regulators and in particular to the AARs. Detail of how this should be achieved is not specified in the Act. The LSB was instead placed under a duty to make rules for the purpose of ensuring that the exercise of an approved regulator's regulatory functions is not prejudiced by its representative functions and that decisions relating to the exercise of an approved regulator's regulatory functions are so far as practicable taken independently from decisions relating to the exercise of its representative functions<sup>13</sup>. These are our IGRs 2009 (as amended February 2014)<sup>14</sup>.
11. The IGRs include a range of requirements for regulators. Central to them is a duty to both have in place arrangements that observe and respect the principle of regulatory independence and also to act in a manner compatible with that principle at all times. The IGRs explain the principle of regulatory independence as being the principle that structures or persons with representative functions must not exert, or be permitted to exert, undue influence or control over the performance of regulatory functions, or any person(s) discharging those functions<sup>15</sup>.
12. The general duty in the IGRs to have in place arrangements that respect the principle of independence, and to act in a manner compatible with that principle, applies to each of the approved regulators. However, the schedule to the IGRs, which contains more detailed principles, rules and guidance, applies only to the AARs. AARs are approved regulators that discharge both regulatory and

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<sup>10</sup> Schedule 1, para 2(2) Legal Services Act 2007. At section 8 the Act also requires the members of the Legal Services Consumer Panel to be lay but uses a different definition of lay for the Panel

<sup>11</sup> Schedule 15, para 2(2) Legal Services Act 2007

<sup>12</sup> Section 122, Legal Services Act 2007

<sup>13</sup> Section 30, Legal Services Act 2007

<sup>14</sup> [http://www.legalservicesboard.org.uk/Projects/independent\\_regulation/index.htm#igr](http://www.legalservicesboard.org.uk/Projects/independent_regulation/index.htm#igr)

<sup>15</sup> This contrasts with the more widely understood notion of regulatory independence as being independence from the executive arm of government. See Yarrow, George *Response to the MoJ's legal services review call for evidence* (2013) at p9

representative functions in respect of providers that are primarily regulated by them to undertake reserved legal activities.

13. Membership of the regulatory boards was considered by the LSB in 2009, when determining the contents of the IGRs. In light of the other duties imposed by the IGRs it was decided at that time to require the boards to have a lay majority, with no restrictions on whether the chair was a professional or a lay person. Since those rules were set the LSB has benefited from almost four years' experience of overseeing regulation of legal services.

### **Consultation on lay chairs for the regulatory boards**

14. In October 2013 we consulted on amending the IGRs to require that the chair of the board of the regulatory arm of each AAR be a lay person<sup>16</sup>. The consultation closed on 19 November 2013.

15. The proposed change was built on the LSB's view that although the AARs have made significant progress by accepting the principle of independent regulation and structurally separating regulatory functions out from their representative arms, the regulatory bodies remain tied too closely to the individual branches of the profession that they oversee.

16. In consultation we highlighted our view that this proximity is detrimental to both the public and consumer interests. We also outlined our view that overly strong ties to the history, culture and rules of professional self regulation within specific sub-groups can act as a significant drag on the better regulation principles and therefore put the regulatory objectives at risk. In particular this negatively impacts on the objective of promoting competition in legal services in order to improve innovation, value, consumer choice and therefore access to justice<sup>17</sup>.

17. Further, we outlined our view that requiring the chairs of the regulatory boards to be lay would be likely to provide a proportionate route to greater regulatory independence. In proposing this change we acknowledged the crucial role played by chairs in leading their boards. In many cases, an inevitable effect of membership of a profession will be to influence behaviour when chairing a regulator. Given the importance of the chair and the greater time and staff

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<sup>16</sup> [http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/pdf/lsb\\_consultation\\_on\\_lay\\_chairs\\_08\\_10\\_13.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/pdf/lsb_consultation_on_lay_chairs_08_10_13.pdf).

<sup>17</sup> See Regulatory Policy Institute *Understanding the Economic Rationale for Legal Services Regulation* Report for the Legal Services Board prepared by Dr Christopher Decker & Professor George Yarrow (October 2010) <https://research.legalservicesboard.org.uk/wp-content/media/Why-regulate-legal-services-RPI-report.pdf>. In their analysis of the impact of self regulation Decker and Yarrow observed that well-recognised problems can arise when the remit of self regulation moves beyond what is necessary to certify quality. In extreme cases these can lead to some of the familiar adverse consequences associated with monopolisation and cartelisation.

support s/he has to shape discussion and consider issues, this influence could be disproportionately important.

18. We acknowledged that this was ultimately a matter of judgement based on our nearly four years of experience rather than on quantifiable evidence. Indeed, the very nature of the issues being considered here makes it unlikely that quantifiable evidence would be available. We did not argue that all lay chairs will perform to an exceptional standard, or that all professional chairs would be unable to take appropriate regulatory decisions in any circumstances. It seems logical that the tendency of the regulators to hold on to what they know would be diminished by having a fresh pair of eyes at chair level provided that, overall, boards have the right balance of skills and knowledge including, of course, requisite professional expertise. The fact that the Act requires a lay chair for the LSB strengthens this case.
19. We highlighted our view that having lay chairs of regulatory boards would be likely to bolster public confidence in the independence of regulation. The public perception that this was not the case was one of the main drivers for the reforms introduced by the Act. We further argued that a lay chair is likely to help raise the relative importance of the voices of non-lawyer stakeholders more effectively than a non-lay chair.

## Main arguments against the proposed change and LSB response

20. The key arguments<sup>18</sup> made against the LSB's proposal were that:

- **It is inconsistent with the principle of appointment on merit:** the only criterion for the role of chair should be that it is the best person for the job. Appointments should be non-discriminatory in terms of professional qualification/ background
- **LSB lacks the necessary powers:** section 30 of the Act does not give the LSB the power, either expressly or impliedly, to make rules to determine who chairs the boards
- **There is a lack of evidence** (and so the proposal fails to meet the better regulation principles): as both lay and professional chairs now exist evidence should be available regarding their relative performance

### LSB response

21. We do not consider that the proposed change impinges on the principle of appointment by merit. Qualifying criteria are imposed in many cases where selectors are obliged to select candidates on merit. For example, the Judicial Appointments Commission is under a statutory duty to appoint judges on merit. But there are often other criteria too, such as qualification as a lawyer, number of years of experience etc. If there are good public policy reasons justifying the adoption of qualifying criteria, it would be an abuse of language to say that judges appointed subject to these criteria are not appointed on merit.

22. Lay status is already accepted as a criterion for over half of the appointments to the regulatory boards. We are not suggesting removing a professional board member and adding a lay member. The amended IGRs do not change the number or the proportion of members of each board to who lay is an applicable criterion. The change merely strengthens the rules guaranteeing independence of regulation from the representative functions.

### *The argument that the LSB lacks legal powers*

23. Several respondents argued that the LSB would be acting beyond its powers in amending the IGRs to require lay chairs of the regulatory boards. For example, the Honourable Society of Lincoln's Inn stated that it 'does not accept that the LSB has the *vires* to make the change on which it is consulting'.

24. Having taken external legal advice we disagree with this analysis, and consider that section 30 provides a valid legal basis for the proposed change to the IGRs.

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<sup>18</sup> For a full summary of responses received see annex 3



The purposes which may be served by rules made under section 30(1) include ensuring:

- (a) that the exercise of an approved regulator's regulatory functions is not prejudiced by its representative functions
- (b) that decisions relating to the exercise of an approved regulator's regulatory functions are as far as reasonably practicable taken independently from decisions relating to the exercise of its representative functions.

25. Plainly, rules guaranteeing the structural independence of regulatory from representative decision-making serve such a purpose. But they are not the only rules which can do so. Section 30(1) is deliberately broadly drafted. It authorises rules designed to ensure (among other things) that those taking regulatory decisions are not consciously or unconsciously influenced by any stance taken by the profession (which will often express its collective view through its representative arm). When considering regulatory proposals on which the representative arm of the profession may have expressed strong views, we consider that lay persons are less likely to be influenced, consciously or subconsciously, by such views than members of the profession directly affected by the proposals or with strong ties to those that will be. In this context, there does not appear to be any difference in vires terms between a rule requiring a lay chair and the established rule mandating lay majorities. IGRs requiring lay chairs for regulatory boards are within the power conferred by section 30(1).

### ***The argument that there is a lack of evidence***

26. We outlined our bases for determining that further action was needed to secure greater regulatory independence at paragraph 16 of the consultation document. They were:

- day to day interaction with approved regulators
- almost four years' experience of carrying out the dual self certification process
- almost four years' experience of dealing with rule change applications
- knowledge gained from our regulatory standards work
- learning gleaned from the ongoing Bar Council investigation

27. We have dismissed point five, relating to the now concluded investigation into the Bar Council. As that investigation did not relate to the professional status of the BSB chair or issues related to her conduct, it did not form any part of our decision on this proposal.

28. It is unclear what more evidence respondents feel the LSB should have. Direct evidence of a causal link between professional chairs and the independence of regulators' decisions would be very unlikely to exist. It would be difficult to identify a 'control' situation in which the LSB could observe the outcome of a decision a regulator may have made if a lay person had held the chair. Equally, it is possible to envisage a situation in which a lay chair was subject to professional capture to a greater or lesser degree. In spite of this, we consider it logical that if (for example) a professional body denounced a policy as being contrary to the interests of its branch of the profession, a chair who is also a member of that profession is more likely to be influenced by professional considerations, either consciously or unconsciously, than a lay person would be.
29. The LSB was tasked by Parliament to make rules regarding the independence of legal services regulation. The LSB was required to use its judgement in making rules to serve the purposes specified in section 30(1). We believe that the evidence we have gained from our experience is sufficient to take a reasoned judgement in favour of introducing lay chairs.
30. Some respondents suggested that the current IGRs had not been in force long enough to justify the proposed change. We believe that our experience to date provides adequate experience of approved regulators' behaviour.

## LSB decision on chairs of the regulatory boards

31. We agree with the reasons provided by the Legal Services Consumer Panel (the Panel) in its consultation response for strongly supporting a requirement for lay chairs<sup>19</sup>. The Panel gives five key reasons:

- this could further strengthen the independence of regulation from the profession – a key theme of both the Panel’s and the LSB’s response to the Ministry of Justice Simplification Review<sup>20</sup>
- chairs have a key influence on the strategic direction, culture and operation of their organisations and are often its public face
- boards operate in an environment where conservative attitudes towards legal services as a market persist and there has been resistance to the idea that consumers should be put at the heart of regulation – lay chairs would help to counter this culture
- the chair has a formative influence on key decisions. Decisions by boards may be made with good intentions, but inevitably they are shaped by attitudes and beliefs stemming from the professional backgrounds of their members. Decisions to support measures that protect a profession from competition can be made subconsciously
- lay chairs could bolster public confidence that regulation is working in their interests, in an environment where low public trust of lawyers is partly due to a perception they are a law unto themselves and complaints would not be considered fairly<sup>21</sup>

32. We note here that recent YouGov research found that, although a significant minority did have concerns, lay chairs were not a high priority for a representative sample of the public<sup>22</sup>. The LSB takes such polling evidence seriously but it is only one input to its decision-making, rather than being a determinative voice.

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[http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/pdf/Submissions\\_Received\\_To\\_The\\_Consultation\\_On\\_Lay\\_Chairs\\_For\\_Front\\_Line\\_Legal\\_Regulators/20140120\\_Legal\\_Services\\_Consumer\\_Panel.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/Submissions_Received_To_The_Consultation_On_Lay_Chairs_For_Front_Line_Legal_Regulators/20140120_Legal_Services_Consumer_Panel.pdf)

<sup>20</sup> <http://www.redtapechallenge.cabinetoffice.gov.uk/moj-review-of-legal-services-regulation/>. LSB response available at:

[http://www.legalservicesboard.org.uk/what\\_we\\_do/responses\\_to\\_consultations/pdf/a\\_blueprint\\_for\\_reforming\\_legal\\_services\\_regulation\\_lsb\\_09092013.pdf](http://www.legalservicesboard.org.uk/what_we_do/responses_to_consultations/pdf/a_blueprint_for_reforming_legal_services_regulation_lsb_09092013.pdf)

<sup>21</sup>

[http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/pdf/Submissions\\_Received\\_To\\_The\\_Consultation\\_On\\_Lay\\_Chairs\\_For\\_Front\\_Line\\_Legal\\_Regulators/20140120\\_Legal\\_Services\\_Consumer\\_Panel.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/Submissions_Received_To_The_Consultation_On_Lay_Chairs_For_Front_Line_Legal_Regulators/20140120_Legal_Services_Consumer_Panel.pdf)

<sup>22</sup> Between 17-19 December 2013 a representative sample of 2,113 adults was asked: ‘at present, the person who chairs a body which authorizes, sets rules and enforces the regulation of lawyers can

33. We set out in paragraph 29 of the consultation document other options that we have considered for securing greater regulatory independence. We rejected each option for being likely to be less effective and/or more prescriptive and onerous to comply with than the chosen option.

34. Having considered all the responses to consultation, the LSB has decided to proceed with the proposed change to the IGRs to require lay chairs of the boards of the AARs.

35. Rule C of part 1 of the schedule to the IGRs has been amended as follows:

In appointing persons to regulatory boards, AARs must ensure that:  
a majority of members of the regulatory board are lay persons; and

~~the selection and appointment of a chair is not restricted by virtue of any legal qualification that person may or may not hold, or have held *the chair of the regulatory board is a lay person.*~~

36. The complete IGRs version 2: 20 February 2014 can be found at annex A and have been published on the LSB website<sup>23</sup>. This replaces version 1 of the IGRs from 15 December 2009. Version 2 takes immediate effect.

37. We consider that in a closely balanced argument in which the representative arm and other representative interests of the profession had expressed a clear view, or where it is clear that professional as well as public interest issues are at stake, a lay person as chair would demonstrate to the external world that professional interests would not have undue influence on a decision. Perception is important to the maintenance of public confidence in regulators. We do not consider a clear line can be drawn between the interests of the representative bodies and the interests of the profession. When any branch of the profession forms a joint view, that view will be articulated by its representative body as the mouthpiece of the profession. The provisions enabling the LSB to make the IGRs enable it to make

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either be someone who is professionally qualified as a lawyer or a lay person (i.e. someone who is not and has never been part of the legal profession). Would you have MORE or LESS confidence in the bodies that regulate lawyers if only lay people could chair their boards?'. They answered:

Much more confidence	7%
More confidence	16%
Neither more or less confidence	38%
Less confidence	17%
Much less confidence	7%
Don't know	15%

<sup>23</sup> [http://www.legalservicesboard.org.uk/Projects/independent\\_regulation/index.htm#igr](http://www.legalservicesboard.org.uk/Projects/independent_regulation/index.htm#igr)

rules ensuring that the chair of the regulators is someone less likely to be influenced by the views expressed by the representative bodies.

38. The LSB remains of the view that greater independence from the representative functions of professional bodies and cultural ties to the regulated communities will help safeguard the delivery of the regulatory objectives aligned to the principles of better regulation. We remain of the view that the influence of the chair may be disproportionately important in making regulatory decisions. Consultation respondents did not supply any evidence that such bias or influence could not arise, particularly in cases where the representative arm of the profession has expressed a strong view about a proposal.
39. The change detailed above is to the schedule to the IGRs, and therefore only applies to the AARs. The Association of Chartered Certified Accountants (ACCA), the Institute of Chartered Accountants of Scotland (ICAS) (should they become active approved regulators/ licensing authorities under the Act) and the Institute of Chartered Accountants in England and Wales (ICAEW) (should they be designated) are excluded. This is because the providers that these bodies regulate are primarily regulated in relation to accountancy services and not reserved legal activities. It is likely that in the initial stages of any such body being designated an approved regulator for legal services, the numbers of their regulated community delivering legal services will be small. Legal services regulatory activity is likely to be a small proportion of these bodies' overall regulatory effort. Being subject to the change to the IGRs would therefore be disproportionate for these bodies. We maintain our commitment to keep this position under review.
40. The Council for Licensed Conveyancers (CLC) has no representative functions. It is therefore not defined within the IGRs as an applicable approved regulator to whom the schedule applies. However, we note that the CLC currently operates with both a lay chair and a lay majority.
41. The Master of Faculties will also be excluded from the proposed change. As a non-AAR he is excluded from the scope of the schedule to the IGRs. Further, the exclusion of the Master is in line with the legislative requirement that the Master has to be a person capable of being appointed to judicial office.

## **Consultation on appointments and reappointments to regulatory boards**

42. The LSB has decided to consult on a new proposal put forward most strongly by the SRA in response to our October 2013 consultation. We propose amending the IGRs to require that the regulatory bodies, rather than their parent professional bodies, are responsible for certain aspects of the appointments and reappointments process used for regulatory board members and chairs.
43. We propose that these changes be made in addition to the change requiring lay chairs. The consultation paper for this proposal is published alongside this decision document and can be found on consultations section of the LSB's website<sup>24</sup>. The consultation will run for 6 weeks, closing on 3 April 2014.

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<sup>24</sup> [http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/open/index.htm](http://www.legalservicesboard.org.uk/what_we_do/consultations/open/index.htm)

## Glossary of Terms

<b>Applicable approved regulator</b>	An Approved Regulator that is responsible for the discharge of regulatory and representative functions in relation to legal activities in respect of persons whose primary reason to be regulated by that Approved Regulator is those persons' qualifications to practise a reserved legal activity that is regulated by that Approved Regulator
<b>Approved regulator</b>	A body which is designated as an approved regulator by Parts 1 or 2 of schedule 4, and whose regulatory arrangements are approved for the purposes of the LSA and which may authorise persons to carry on any activity which is a reserved legal activity in respect of which it is a relevant approved regulator
<b>Authorised Person</b>	A person authorised to carry out a reserved legal activity
<b>BSB</b>	Bar Standards Board – the independent regulatory arm of the Bar Council
<b>CLC</b>	Council for Licensed Conveyancers – the regulator of licensed conveyancers
<b>Consultation</b>	The process of collecting feedback and opinion on a policy proposal
<b>Consumer Panel or the Panel</b>	The panel of persons established and maintained by the Board in accordance with Section 8 of the Legal Services Act 2007 to provide independent advice to the Legal Services Board about the interests of users of legal services
<b>Lay Person</b>	<p>Has the meaning given in Schedule 1, paragraphs 2(4) and (5) of the Act:</p> <p>(4)... a reference to a “lay person” is a reference to a person who has never been—</p> <ul style="list-style-type: none"> <li>(a) an authorised person in relation to an activity which is a reserved legal activity;</li> <li>(b) a person authorised, by a person designated under section 5(1) of the Compensation Act 2006, to provide services which are regulated claims management services (within the meaning of that Act);</li> <li>(c) an advocate in Scotland;</li> <li>(d) a solicitor in Scotland;</li> <li>(e) a member of the Bar of Northern Ireland;</li> <li>(f) a solicitor of the Court of Judicature of Northern Ireland.</li> </ul> <p>(5) For the purposes of sub-paragraph (4), a person is deemed to have been an authorised person in relation to an activity which is a reserved legal activity if that person has before the appointed day been—</p> <ul style="list-style-type: none"> <li>(a) a barrister;</li> <li>(b) a solicitor;</li> <li>(c) a public notary;</li> <li>(d) a licensed conveyancer;</li> <li>(e) granted a certificate issued by the Institute of Legal Executives authorising the person to practise as a legal executive;</li> <li>(f) a registered patent attorney, within the meaning given by section 275(1) of the Copyright, Designs and Patents Act 1988 (c. 48);</li> <li>(g) a registered trade mark attorney, within the meaning of the Trade Marks Act 1994 (c. 26); or</li> <li>(h) granted a right of audience or a right to conduct litigation</li> </ul>

	in relation to any proceedings by virtue of section 27(2)(a) or section 28(2)(a) of the Courts and Legal Services Act 1990 (c. 41) (rights of audience and rights to conduct litigation).
<b>LSB or the Board</b>	Legal Services Board – the independent body responsible for overseeing the regulation of lawyers in England and Wales
<b>the Act</b>	Legal Services Act 2007
<b>Principles of Better Regulation</b>	The five principles of better regulation, being proportional, accountable, consistent, transparent and targeted
<b>Regulatory Objectives</b>	There are eight regulatory objectives for the LSB that are set out in the Legal Services Act (2007): <ul style="list-style-type: none"> <li>• protecting and promoting the public interest</li> <li>• supporting the constitutional principle of the rule of law improving access to justice</li> <li>• protecting and promoting the interests of consumers promoting competition in the provision of services in the legal sector</li> <li>• encouraging an independent, strong, diverse and effective legal profession</li> <li>• increasing public understanding of citizens legal rights and duties</li> <li>• promoting and maintaining adherence to the professional principles of independence and integrity; proper standards of work; observing the best interests of the client and the duty to the court; and maintaining client confidentiality.</li> </ul>
<b>SRA</b>	Solicitors Regulation Authority - Independent regulatory body of the Law Society



## **Annex 1: Internal Governance Rules 2009 (as amended)**

### **Internal Governance Rules 2009 (as amended)**

**Version 2: 20 February 2014**

The Legal Services Board has, on 9 December 2009, made the following rules under Legal Services Act 2007 (c.29), section 30(1):

#### **A. DEFINITIONS**

1. In these Rules, a reference to “the principle of regulatory independence” is a reference to the principle that:

**structures or persons with representative functions must not exert, or be permitted to exert, undue influence or control over the performance of regulatory functions, or any person(s) discharging those functions.**

2. The words defined in these Rules have the following meanings:

**Act** the Legal Services Act 2007 (c.29)

**Applicable Approved Regulator**

an Approved Regulator that is responsible for the discharge of regulatory and representative functions in relation to legal activities in respect of persons whose primary reason to be regulated by that Approved Regulator is those person’s qualifications to practise a reserved legal activity that is regulated by that Approved Regulator

**Approved Regulator** has the meaning given in Section 20(2) of the Act

**Board** the Legal Services Board

**Consumer Panel** the panel of persons established and maintained by the Board in accordance with Section 8 of the Act

**lay person** has the meaning given in Schedule 1, paragraphs 2(4) and (5) of the Act

**legal activities** has the meaning given by section 12(3) of the Act

**OLC** the Office for Legal Complaints established under Section 114(1) of the Act

<b>person</b>	includes a body of persons (corporate or unincorporated)
<b>prejudice</b>	the result of undue influence, whether wilful or inadvertent, causing or likely to cause the compromise or constraint of independence or effectiveness
<b>regulatory board</b>	has the meaning given by Rule B in Part 1 of the Table in the Schedule to these Rules
<b>regulatory functions</b>	has the meaning given by Section 27(1) of the Act
<b>regulatory objectives</b>	has the meaning given by section 1(1) of the Act
<b>representative functions</b>	has the meaning given by Section 27(2) of the Act
<b>representative interests</b>	the interests of persons regulated by the Approved Regulator
<b>reserved legal activities</b>	has the meaning given by section 12(1) of the Act
<b>undue influence</b>	pressure exercised otherwise than in due proportion to the surrounding circumstances, including the relative strength and position of the parties involved, which has or is likely to have a material effect on the discharge of a regulatory function or functions.

## **B. WHO DO THESE RULES APPLY TO?**

3. These Rules are the rules that the Board has made in compliance with 30(1) of the Act relating to the exercise of Approved Regulators' regulatory functions.
4. Accordingly, these Rules apply to each Approved Regulator.
5. In the event of any inconsistency between these Rules and the provisions of the Act, the provisions of the Act prevail.

## **C. GENERAL DUTY TO HAVE IN PLACE ARRANGEMENTS**

6. Each Approved Regulator must:
  - (a) have in place arrangements that observe and respect the principle of regulatory independence; and

- (b) at all times act in a way which is compatible with the principle of regulatory independence and which it considers most appropriate for the purpose of meeting that principle.
7. Without limiting the generality or scope of Rule 6, the arrangements in place under that Rule must in particular ensure that:
- (a) persons involved in the exercise of an Approved Regulator's regulatory functions are, in that capacity, able to make representations to, be consulted by and enter into communications with any person(s) including but not limited to the Board, the Consumer Panel, the OLC and other Approved Regulators;
  - (b) the exercise of regulatory functions is not prejudiced by any representative functions or interests;
  - (c) the exercise of regulatory functions is, so far as reasonably practicable, independent of any representative functions;
  - (d) the Approved Regulator takes such steps as are reasonably practicable to ensure that it provides such resources as are reasonably required for or in connection with the exercise of its regulatory functions; and
  - (e) the Approved Regulator makes provision as is necessary to enable persons involved in the exercise of its regulatory functions to be able to notify the Board where they consider that their independence or effectiveness is being prejudiced.

#### **D. REQUIREMENTS FOR APPLICABLE APPROVED REGULATORS**

8. In the case of each Applicable Approved Regulator, the arrangements in place under Rule 6 must also meet the requirements set out in the Schedule to these Rules.

#### **E. ENSURING ONGOING IMPLEMENTATION**

9. Each Applicable Approved Regulator, jointly with its regulatory board, must:
- (a) if it considers itself to be compliant with these Rules, certify such compliance in the form and manner prescribed by the Board from time to time; or
  - (b) if it considers itself not to be compliant with these Rules, in some or all respects, notify such non-compliance and set out:

- (i) why it has been unable to comply in such respects as it has identified;
- (ii) when it considers that it will be compliant; and
- (iii) how it plans to achieve compliance, and by when, and how much it is expected to cost.

10. Subject to the agreement of the Board, an Applicable Approved Regulator may invite any other appropriate body, including a consumer panel associated with the Applicable Approved Regulator, to provide a certification in a similar form and manner.

## **F. GUIDANCE**

11. Approved Regulators must, in seeking to comply with these Rules, have regard to any guidance issued by the Board under this Rule.

12. For the avoidance of doubt, any guidance issued under Rule 11 does not, of itself, constitute a part of these Rules.

## Schedule to Internal Governance Rules

The requirements set out in this Schedule are that Applicable Approved Regulators, in making arrangements under these Rules, must:

- (a) adhere to the principles set out in the table below in respect of specified areas which arrangements must cover;
- (b) comply with the rules set out in the table below in respect of demonstrating compliance with the principles; and
- (c) take account of the illustrative guidance set out in the table below when seeking to comply with the principles and rules.

Principle	Rule	Illustrative guidance
<p><b>Part 1: Governance</b></p> <p>Nothing in an Applicable Approved Regulator's (<b>AAR's</b>) arrangements should impair the independence or effectiveness of the performance of its regulatory functions.</p>	<p><b>A.</b> Each AAR must delegate responsibility for performing all regulatory functions to a body or bodies (whether or not a separate legal entity/separate legal entities) without any representative functions (hereinafter '<b>the regulatory body</b>' or '<b>the regulatory bodies</b>').</p>	<p>An AAR should take all reasonable steps to agree arrangements made under these Rules with the regulatory body or, as the case may be, the regulatory bodies.</p> <p>If an AAR wishes otherwise than through its regulatory body/bodies to offer guidance to its members or more widely on regulatory matters, it should:</p> <ul style="list-style-type: none"> <li>• ensure that it does not contradict or add material new requirements to any rules or guidance made by the regulatory body/bodies; and</li> <li>• consult with the regulatory body/bodies when developing that guidance.</li> </ul>
	<p><b>B.</b> The regulatory body or, if more than one, each of the regulatory bodies, must be governed by a board or equivalent structure (herein after the '<b>regulatory board</b>').</p>	
	<p><b>C.</b> In appointing persons to regulatory boards, AARs must ensure that:</p> <ul style="list-style-type: none"> <li>• a majority of members of the regulatory board are lay persons;</li> </ul>	

	<p>and</p> <ul style="list-style-type: none"> <li>the selection and appointment of a chair is not restricted by virtue of any legal qualification that person may or may not hold, or have held. <i>the chair of the regulatory board is a lay person</i></li> </ul>	
<p><b>Part 2: Appointments etc</b></p> <p>(1) Processes in place for regulatory board members' appointments, reappointments, appraisals and discipline must be demonstrably free of undue influence from persons with representative functions.</p>	<p><b>A.</b> All appointments to a regulatory board must be made on the basis of selection on merit following open and fair competition, with no element of election or nomination by any particular sector or interest groups.</p>	<p>If regulatory boards do not lead on managing the appointments process, it should have a very strong involvement at all stages.</p>
	<p><b>B.</b> The selection of persons so appointed must itself respect the principle of regulatory independence and the principles relating to "appointments etc" set out in this Part of this Schedule.</p>	<p>Best practice for public appointments should be taken into account. In particular, account should be taken of the Code of the Commissioner of Public Appointments insofar as relevant.</p>
		<p>Appointment panels or equivalent should be established following the guidance set out in the Board's letter of 2 December 2008<sup>25</sup>.</p>
		<p>The chair of the regulatory board (or an alternate) should always form part of that panel, unless the panel is established to select the chair (in which case another member of the regulatory board should participate).</p> <p>The appointments process should be conducted with regard to the desirability of securing a diverse board with a broad range of skills. The framework applied at Schedule 1 paragraph 3 of the Act serves as a useful template.</p>
<p><b>C.</b> Decisions in respect of the remuneration, appraisal, reappointment and discipline of persons appointed to regulatory</p>	<ul style="list-style-type: none"> <li>Remuneration – decisions in respect of regulatory board pay and conditions should be made having regard to best practice and in any event should not be</li> </ul>	

<sup>25</sup> See: <http://www.justice.gov.uk/news/docs/legal-services-board-open-letter-021208.pdf>

<p>(2) All persons appointed to regulatory boards must respect the duty to comply with the requirements of the Legal Services Act 2007.</p>	<p>boards must respect the principle of regulatory independence and the principles relating to “appointments etc” set out in this Part of this Schedule.</p>	<p>controlled wholly or mainly by persons responsible for representative functions;</p> <ul style="list-style-type: none"> <li>• Appraisals – while persons with representative functions may be consulted about regulatory board members’ appraisal, they should not be involved formally in agreeing the outcome, or future objectives;</li> <li>• Reappointments – decisions should be guided by objective appraisals and the desirability of ensuring a balance between regular turnover <u>and</u> continuity.</li> </ul>
	<p><b>D.</b> Except insofar as an AAR would be, or would reasonably be considered likely to be, exposed to any material legal liability (other than to pay wages, salaries etc) as a consequence of the delay required to obtain the concurrence of the Board, no person appointed to a regulatory board must be dismissed except with the concurrence of the Board.</p>	<p>While the LSB accepts that there may be <u>exceptional</u> reasons which justify immediate dismissal without concurrence having first been obtained, it would expect a full explanation if such circumstances were ever to arise. An AAR should accordingly be prepared to justify why it could not comply with the relevant Rule.</p>
		<p>Where an AAR proposes to discipline one or more member(s) of a regulatory board, where such discipline is short of dismissal, the Board should be consulted privately in advance of the action being taken, and the AAR should consider any representations the Board may chose to make.</p>
	<p><b>E.</b> No person appointed to and serving on a regulatory board must also be responsible for any representative function(s).</p>	<p>Where possible, a person appointed should not have been responsible for any representative functions immediately prior to appointment. The longer the gap between holding responsibility for representative functions and taking up regulatory functions, the more likely it is that the principle of regulatory independence will be observed.</p>
		<p>Codes of conduct or equivalent for board members should highlight the importance of observing and respecting the regulatory objectives and the principles of better regulation, rather</p>

		<p>than operating to represent any one or more sectoral interests.</p> <p>Codes should also highlight the importance of respecting the principle of regulatory independence, as underlined by the provisions of sections 29 and 30 of the Act.</p>
<p><b>Part 3: Strategy and Resources etc</b></p> <p>Subject only to the oversight permitted under Part 4 of this Schedule, persons performing regulatory functions must have the freedom to define a strategy for the performance of those functions and work to implement that strategy independently of representative control or undue influence.</p>	<p><b>A. Defining and implementing a strategy</b> should include:</p> <ul style="list-style-type: none"> <li>• access to the financial and other resources reasonably required to meet the strategy it has adopted;</li> <li>• effective control over the management of those resources; and</li> <li>• the freedom to govern all internal processes and procedures.</li> </ul>	<p>The Act requires separation of regulatory and representative functions. Absent of corporate management structures that are robustly and demonstrably separated from the control of persons with representative functions, these Rules are likely to require a high degree of delegation to regulatory bodies in respect of the control of strategy and resourcing.</p> <p>What is or is not a regulatory function is determined in accordance with the Act. Subject to the Act, whether something is ‘regulatory’ should be for each regulatory body to determine, in close consultation with respective AARs.</p> <p>Where members of staff are employed by an AAR to discharge regulatory functions under the delegated remit of a regulatory body, the position of the AAR as legal employer should be recognised in the arrangements made under these rules. However, in complying with these Rules, those arrangements should make clear how decisions with respect to the management and control of such members of staff are to be exercised. The presumption under such arrangements should be – subject only to being exposed to unreasonable liability (such as in creating a pension scheme) – that an AAR should always agree a reasonable request from its regulatory body. While an AAR has a right of veto, therefore, it also carries a</p>



		<p>responsibility to justify that decision in light of the principle of regulatory independence.</p> <p>The Board may from time to time issue further illustrative guidance on these issues under Rule 11 of these Rules.</p>
		<p>Each regulatory body should act reasonably when defining and implementing its strategy, and should in particular have regard to the provisions of Section 28 of the Act. It should also have due regard to the position of the AAR and in particular to any responsibilities or liabilities it may have as AAR.</p>
	<p><b>B.</b> The regulatory body (or each of the regulatory bodies) must have the power to do anything within its allocated budget calculated to facilitate, or incidental or conducive to, the carrying out of its functions.</p>	<p>Each regulatory body should act reasonably when exercising its functions in accordance with this Rule, and should in particular have regard to the provisions of Section 28 of the Act. It should also have due regard to the position of the AAR and in particular to any responsibilities or liabilities it may have as AAR.</p>
	<p><b>C.</b> Insofar as provision of resources is concerned, arrangements must provide for transparent and fair budget approval mechanisms.</p>	<p>The process established by the AAR should provide appropriate checks and balances between it and the regulatory body (or bodies) so as to ensure value for money and observe the wider requirements of the Act, without impairing the independence or effectiveness of the regulatory body (or bodies).</p>

	<p><b>D.</b> Insofar as provision of any non-financial resources is concerned (for example, services from a common corporate service provider, or staff), arrangements must provide for transparent and fair dispute resolution mechanisms.</p>	<p>Subject only to the formal budgetary approval process and the operation of its dispute resolution mechanism(s) , an AAR's arrangements should not prevent those performing regulatory functions, where they believe their independence and/or effectiveness is compromised or prejudiced, from obtaining required services otherwise than through the AAR.</p> <p>AARs and regulatory bodies should be particularly careful to ensure that, in respect of public and/or consumer-facing services (including media relations and marketing-type activities), the principle of regulatory independence should be seen to be met, as well as being met.</p> <p>When considering whether arrangements meet the required standards, the Board will consider factors such as:</p> <ul style="list-style-type: none"> <li>• evidence that the provision of services to the regulatory body (or bodies) is not subordinate to the provision of services to any other part of the AAR;</li> <li>• provision being made for service level agreements agreed between respective parties; and</li> <li>• transparent, fair and effective dispute resolution mechanisms being in place.</li> </ul>
<p><b>Part 4: Oversight etc</b></p> <p>Oversight and monitoring by the AAR (which is ultimately</p>	<p><b>A.</b> Arrangements in place must be transparent and proportionate.</p>	<p>In making its arrangements, an AAR should balance its ultimate responsibility for the discharge of regulatory functions with its responsibilities to ensure separation of regulatory and representative functions.</p>

responsible and accountable for the discharge of its regulatory functions) of persons performing its regulatory functions must not impair the independence or effectiveness of the performance of those functions.		In considering proportionality, AARs should consider the risk of Board intervention. Note the Board’s policy statement on compliance and enforcement powers, and in particular the Board’s intention to use its most interventionist powers only when other measures (including informal measures) have failed.
	<b>B.</b> Arrangements in place must prohibit intervention, or the making of directions, in respect of the management or performance of regulatory functions unless with the concurrence of the Board.	In determining whether to give concurrence, the Board will consider the extent to which the process leading to the proposed intervention or directions complies with the principle of regulatory independence.

## **Annex 2: List of respondents to consultation on chairs of the regulatory boards**

The Association of Chartered Certified Accountants

The Bar Council

Birmingham Law Society

The Bar Standards Board

The City of Westminster & Holborn Law Society

The Council for Licensed Conveyancers

The City of London Law Society Professional Rules & Regulation Committee

Costs Lawyer Standards Board

The Council of the Inns of Court

The Chartered Institute of Legal Executives & ILEX Professional Standards

Legal Services Consumer Panel

The Honourable Society of Lincoln's Inn

Liverpool Law Society

The Midland Circuit

Solicitors Regulation Authority

The Law Society

Which?

## Annex 3: Summary of responses to consultation

44. 17 responses were received to the consultation that closed in November 2013. The majority of respondents were representative bodies and regulators of the legal profession (14 respondents). Of these the majority were opposed to the proposed change to IGRs (12 respondents). Two consumer bodies<sup>26</sup> submitted responses. Both were in favour of the proposed change, as was the Association of Chartered Certified Accountants (ACCA)<sup>27</sup>.
45. The Chartered Institute of Legal Executives and ILEX Professional Standards (CILEx and IPS)<sup>28</sup> highlighted both benefits and limitations of the proposed change. They noted that while the field of possible candidates for the position of chair would be narrowed by the proposal, a professional chair could raise actual or perceived conflicts of interest due to the overlap between their regulatory and professional roles. The Council for Licensed Conveyancers (CLC)<sup>29</sup> noted that their board had been chaired by a lay person since May 2010, and were in favour of excluding practising authorised persons from the role of chair. However, they argued that the definition of lay in the Act and used in the IGRs was overly restrictive and suggested the notion of independence should be used instead. CLC felt that using independence as a criterion would usually result in a lay person as chair, but that lay status as defined in the Act should not be mandated.
46. The submission from the Solicitors Regulation Authority (SRA)<sup>30</sup> focused primarily on what it saw as the key issue: the independence and robustness of the process for appointing the chair and members of regulatory boards. This was the area the SRA felt the LSB could most usefully concentrate its efforts on. ACCA encouraged the LSB to consider developing a new definition of lay, which did not

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<sup>26</sup> Which?

[http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/pdf/Submissions\\_Received\\_To\\_The\\_Consultation\\_On\\_Lay\\_Chairs\\_For\\_Front\\_Line\\_Legal\\_Regulators/20140120\\_Which.PDF](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/Submissions_Received_To_The_Consultation_On_Lay_Chairs_For_Front_Line_Legal_Regulators/20140120_Which.PDF) and the Legal Services Consumer Panel

[http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/pdf/Submissions\\_Received\\_To\\_The\\_Consultation\\_On\\_Lay\\_Chairs\\_For\\_Front\\_Line\\_Legal\\_Regulators/20140120\\_Legal\\_Services\\_Consumer\\_Panel.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/Submissions_Received_To_The_Consultation_On_Lay_Chairs_For_Front_Line_Legal_Regulators/20140120_Legal_Services_Consumer_Panel.pdf)

<sup>27</sup>

[http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/pdf/Submissions\\_Received\\_To\\_The\\_Consultation\\_On\\_Lay\\_Chairs\\_For\\_Front\\_Line\\_Legal\\_Regulators/20140120\\_ACCA.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/Submissions_Received_To_The_Consultation_On_Lay_Chairs_For_Front_Line_Legal_Regulators/20140120_ACCA.pdf)

<sup>28</sup>

[http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/pdf/Submissions\\_Received\\_To\\_The\\_Consultation\\_On\\_Lay\\_Chairs\\_For\\_Front\\_Line\\_Legal\\_Regulators/20140120\\_IPS\\_CILEx.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/Submissions_Received_To_The_Consultation_On_Lay_Chairs_For_Front_Line_Legal_Regulators/20140120_IPS_CILEx.pdf)

<sup>29</sup>

[http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/pdf/Submissions\\_Received\\_To\\_The\\_Consultation\\_On\\_Lay\\_Chairs\\_For\\_Front\\_Line\\_Legal\\_Regulators/20140120\\_CLC.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/Submissions_Received_To_The_Consultation_On_Lay_Chairs_For_Front_Line_Legal_Regulators/20140120_CLC.pdf)

<sup>30</sup>

[http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/pdf/Submissions\\_Received\\_To\\_The\\_Consultation\\_On\\_Lay\\_Chairs\\_For\\_Front\\_Line\\_Legal\\_Regulators/20140120\\_SRA.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/Submissions_Received_To_The_Consultation_On_Lay_Chairs_For_Front_Line_Legal_Regulators/20140120_SRA.pdf)

centre on authorisation to provide reserved activities and so would be relevant to all the approved regulators.

47. Which? argued that consumers must have confidence that regulators will act in their interests in the event of a conflict with professional interests, and highlighted that as early as 2007 they were calling for both lay chairs and lay majorities for the regulatory boards. The key points raised in the response from the Legal Services Consumer Panel have been summarised above at paragraph 31.

**Question 1: Do you agree with the proposed change to the IGR in order to require that chairs are lay?**

48. The majority of respondents disagreed with the proposed change. The key arguments made against it were:

- The only criterion for the role of chair should be that it is the best person for the job. Appointments should be non-discriminatory in terms of professional qualification/ background. Those in charge of appointing chairs of the regulatory boards should not have their discretion fettered in any way.
- Section 30 does not give LSB the power, either expressly or impliedly, to make rules that determine who chairs the Boards. LSB either does not understand the scope of its powers or intentionally did not disclose the limits on its power to those it is consulting with
- The proposal is not based on any evidence. As both lay and professional chairs exist now evidence should have been available regarding their relative performance
- The proposal is not:
  - transparent - no evidence of need for change has been shown
  - proportionate - no need for change has been identified
  - targeted - it is targeted at a case where no action is needed

49. The City of Westminster and Holborn Law Society<sup>31</sup> objected to an unreasonably short consultation period. Liverpool Law Society<sup>32</sup> argued that the LSB's contention that lawyers cannot have leadership experience in a risk based regulatory context did not take into account recent developments in the market, such as the introduction of the role of Compliance Officers for Legal Practice.

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[http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/pdf/Submissions\\_Received\\_To\\_The\\_Consultation\\_On\\_Lay\\_Chairs\\_For\\_Front\\_Line\\_Legal\\_Regulators/20140120\\_City\\_Of\\_Westminster\\_And\\_Holborn\\_Law\\_Society.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/Submissions_Received_To_The_Consultation_On_Lay_Chairs_For_Front_Line_Legal_Regulators/20140120_City_Of_Westminster_And_Holborn_Law_Society.pdf)

32

[http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/pdf/Submissions\\_Received\\_To\\_The\\_Consultation\\_On\\_Lay\\_Chairs\\_For\\_Front\\_Line\\_Legal\\_Regulators/20140120\\_Liverpool\\_Law\\_Society.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/Submissions_Received_To_The_Consultation_On_Lay_Chairs_For_Front_Line_Legal_Regulators/20140120_Liverpool_Law_Society.pdf)

50. The Bar Standards Board (BSB)<sup>33</sup> felt that it should never be the case that their appointments panel could not appoint the candidate it considered best qualified because that candidate happened to be legally qualified. It highlighted that the lack of evidence behind this proposal was at odds with the LSB's usual insistence on evidence to support decisions made by the approved regulators. They further disagreed with the LSB that:

- reform would have moved further under regulators less tied to the profession
- a regulator would be able to separate itself from the profession more easily under a lay chair

51. ACCA supported the proposed change but raised concerns that 'such a specific requirement could weaken the focus on the fundamental principle of regulatory independence of the regulatory function as a whole'. Both consumer groups fully supported the proposal. The Consumer Panel explained that:

- it could further strengthen independence from the profession
- chairs have a key influence on direction, culture and operation of their organisations and are often its public face
- the proposal would help to counter conservative attitudes and resistance to the idea that consumers should be put at the heart of regulation
- the chair has a formative influence on key decisions
- the proposal would bolster public confidence that regulation is working in their interests in an environment where low public trust of lawyers is partly due to a perception they are a law unto themselves and complaints would not be considered fairly

52. CLC<sup>34</sup> agreed that currently practising authorised persons should be prevented from holding the role of chair. However, they felt the definition of lay in the Act was unnecessarily restrictive as it excluded a candidate with a legal qualification (who has never practised or is no longer practising), regardless of whether they have all the other skill sets, experience and specialist knowledge sought by the regulator.

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[http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/pdf/Submissions\\_Received\\_To\\_The\\_Consultation\\_On\\_Lay\\_Chairs\\_For\\_Front\\_Line\\_Legal\\_Regulators/20140120\\_BSB.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/Submissions_Received_To_The_Consultation_On_Lay_Chairs_For_Front_Line_Legal_Regulators/20140120_BSB.pdf)

34

[http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/pdf/Submissions\\_Received\\_To\\_The\\_Consultation\\_On\\_Lay\\_Chairs\\_For\\_Front\\_Line\\_Legal\\_Regulators/20140120\\_CLC.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/Submissions_Received_To_The_Consultation_On_Lay_Chairs_For_Front_Line_Legal_Regulators/20140120_CLC.pdf)

## **LSB Response**

53. *The LSB has set out its response to the key points raised in response to question 1 above in the 'main arguments against the proposed change and LSB response' section of this document. We have set out our decision to proceed with the proposed change to the IGR to require lay chairs for the boards of the AARs above in the 'LSB decision' section of this document.*
54. *The IGRs already contain a definition of lay in respect of lay majorities. The definition mirrors the definition used in the Act in relation to the chairs of the LSB and the Office for Legal Complaints. This definition was adopted when the IGRs were formulated in 2009. The LSB sees no justification for applying one definition of lay in relation to board members and a different definition in relation to chairs. The reasons for the IGRs' adoption of the Act's definition of lay in 2009 were set out in some detail at the time<sup>35</sup>.*

### **Question 2: Do you think the proposed change should take immediate effect or only be applicable to future appointments?**

55. Five respondents declined to answer this question, or stated that as they disagreed with the proposal the question became irrelevant. Except for ACCA, those that responded were unanimous that any change should only apply to future appointments.
56. ACCA considered that to impose the requirement for lay chairs immediately would be unreasonable, but also that simply applying the change to any future appointments could result in unintended consequences. Their preferred option would be to require chairs to be lay from a prescribed date in 2015.

## **LSB Response**

57. *The LSB has set out details of how the change to the IGRs will be implemented at paragraph 5 of this document. The amended IGRs will take immediate effect. However, where the incumbent chair is not a lay person, the LSB will accept a commitment by a regulator to appoint a lay chair at the end of the current chair's term. Enforcement action will not be taken in this scenario.*

### **Question 3: Do you agree that the requirement for lay chairs should apply only to the AARs?**

58. Most respondents felt that any change should be consistent across the approved regulators. The Law Society<sup>36</sup> stated that it was at a loss why the LSB would not

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<sup>35</sup>

[http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/pdf/response\\_lsb\\_101209\\_2.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/response_lsb_101209_2.pdf), please see section 4

<sup>36</sup>

[http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/pdf/Submissions\\_Received\\_T](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/Submissions_Received_T)



apply the principle of independence to the accountancy bodies. It felt that the proposed change would create a less independent class of regulators.

59. The City of London Law Society<sup>37</sup>, the City of Westminster and Holborn Law Society, and CILEx and IPS argued that the change should apply equally to all the regulators. In contrast, ACCA considered that restricting the change to the AARs was appropriate due to the definition of AAR excluding those bodies whose members' main business was not to practise a reserved legal activity.

### **LSB response**

60. *The LSB has set out in paragraph 39 – 41 of this document that the change to require lay chairs is being made to the schedule to the IGRs and will therefore apply only to the AARs.*

61. *The purpose of the LSB's duty to make IGRs under section 30(1) of the Act is to ensure that the exercise of an approved regulator's regulatory functions is not prejudiced by its representative functions and that decisions relating to the exercise of an approved regulator's regulatory functions are so far as practicable taken independently from decisions relating to the exercise of its representative functions<sup>38</sup>.*

62. *In this context the IGRs, as formulated in 2009, made a distinction between applicable approved regulators that discharge both regulatory and representative functions in respect of providers that are primarily regulated by them to undertake reserved legal activities and other approved regulators that do not. The reasons for this distinction were laid out in our decision document<sup>39</sup> at the time and remain valid today.*

63. *We set out in paragraph 39 of this document that we maintain our commitment to keep the exclusion of the accountancy bodies under review. This is because these bodies do carry out both regulatory and representative functions but have been excluded on grounds of proportionality given their current circumstances. This may change over time.*

64. *The position of the Master of the Faculties is set out in response to question 4.*

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[o The Consultation On Lay Chairs For Front Line Legal Regulators/20140120 The Law Society.pdf](#)

<sup>37</sup>

[http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/pdf/Submissions\\_Received\\_To\\_The\\_Consultation\\_On\\_Lay\\_Chairs\\_For\\_Front\\_Line\\_Legal\\_Regulators/20140120\\_CLLS\\_Professional\\_Rules\\_And\\_Regulation\\_Committee.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/Submissions_Received_To_The_Consultation_On_Lay_Chairs_For_Front_Line_Legal_Regulators/20140120_CLLS_Professional_Rules_And_Regulation_Committee.pdf)

<sup>38</sup> Section 30, Legal Services Act 2007

<sup>39</sup>

[http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/pdf/response\\_lsb\\_101209\\_2.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/response_lsb_101209_2.pdf)

**Question 4: Do you agree with the proposed exclusion of the Master of Faculties from the proposed change?**

65. Most respondents did not answer this question. The City of London Law Society, ACCA, the City of Westminster and Holborn Law Society, and CILEx and IPS all agreed with the exclusion of the Master of Faculties from the proposal.

66. The Consumer Panel conceded that by law the Master had to be a legal professional. However, it argued that there was no risk-based reason why notaries should be subject to a different set of rules and noted that 'the historical and cultural ties that the LSB sees as holding back progress are particularly in evidence among notaries'.

***LSB response***

*67. The Master of Faculties will be excluded from the proposed change. This is both because he is not defined within the IGRs as an applicable approved regulator to whom the schedule applies and because of the legislative requirement that the Master has to be a person capable of being appointed to judicial office.*