

## **Regulatory Independence Certificate: LSB's Initial Assessment Summary**

1. This note responds to the points of concern raised in the Legal Services Board's "Initial Assessment Summary" about the Law Society/SRA dual self certification on the Internal Governance Rules.
2. We welcome the Legal Services Board's recognition of the progress which we have made in complying with the Internal Governance Rules.
3. We recognise that our proposals do not provide for the SRA Board to have a lay majority on the timetable sought by the Legal Services Board. We have explained the reasons for that in the letter from the two Chief Executives which accompanies this document.
4. However, we think that the Legal Services Board's reported concern about some other aspects of our arrangements are misplaced. In some cases, the concerns arise from the view – which we do not believe the Legal Services Board can legitimately hold – that all decision making on all regulatory issues should be the responsibility of Boards or Committees with a lay majority. Given that rule making is reserved to the Board, and that the IGRs contain no requirement for a lay majority on committees, our view is that for the LSB to seek to claim that a lay majority on committees was a requirement for compliance would be legally challengeable, even assuming that the requirement for a lay majority on the Board itself was legitimate, which is not beyond doubt.
5. On other aspects, the Legal Services Board's concerns appear to result from an attention to theoretical risks arising from particular arrangements. For the reasons set out in the covering letter from the Chief Executives, and below, our view is that there are already adequate safeguards to prevent these theoretical risks, and that periodic review of the operation of the arrangements will provide further comfort that those safeguards are sufficient. That is the proportionate approach.
6. The remainder of this note deals with the particular points on which the Legal Services Board seeks a response.

### Composition of the SRA Board and its Committees

7. The Law Society/SRA approach to these issues is set out in the letter from the Chief Executives
8. The detailed information requested by the LSB on the composition of each of the SRA's formal regulatory committees is attached at annex A

### Eligibility to chair the SRA Board

8. The Law Society accepts that the post of Chair of the SRA Board should in future be open to lay persons, as well as to solicitors. We will in due course amend the General Regulations so that that applies from the next time the Society needs to make a new appointment to the post.
9. It would not be acceptable to the Society to terminate the current Chair's appointment early in order to re-advertise the post on a basis under which lay

persons were also eligible. The Chair was appointed after a proper appointment process, and it is not open to the Legal Services Board effectively to legislate retrospectively by seeking an early termination of the appointment. In our view, any attempt to do so would be open to successful legal challenge.

10. In addition to the impropriety of such an approach, re-opening the post of Chair of the SRA Board at present would also be highly disruptive, at a time when the SRA Board is faced with a number of complex challenges over the next eighteen months or so.

#### Powers to dismiss SRA Board members

12. The Law Society recognises that under the Internal Governance Rules, it would be necessary for us to seek the concurrence of the Legal Services Board in the unlikely event that it became necessary to take disciplinary action (including dismissal) against an SRA Board member. We do not think it is necessary to amend the General Regulations to reflect that.
13. We do not think that the current position in the General Regulations creates any appreciable risk. The circumstances in which the Law Society would wish to substitute its process for that of the SRA would be where the Society considered that the SRA Board had failed to handle properly a serious allegation against a Board member. We have no reason to suppose that that is at all likely to arise, but – given that the Society could not direct the SRA Board to investigate the matter in a particular way – it does not seem appropriate to divest the Society of the power to so.
14. It is inconceivable that the Society would take action of that sort without prior consultation with the Legal Services Board. The Society recognises that to do so would be in breach of the Internal Governance Rules. But we do not consider it necessary to codify that proposition in our General Regulations.

#### Composition of the Remuneration Committee

15. The Law Society's Remuneration Committee membership is
  - (a) a Chair, who shall not be a Council member or a member of a regulatory board, appointed by the Council;
  - (b) the Chair of the Management Board;
  - (c) two other non-Council solicitor members who shall not be members of a regulatory board, appointed by the Council;
  - (d) one other Council member elected by the Council; and
  - (e) one member, who shall be a member of the Solicitors Regulation Authority Board, appointed by the Council on that Board's recommendation
16. The SRA Board is represented on the selection panel for the external solicitor members and will be on the selection panel for the new Chair when recruited.

### Arrangements for defining strategy and securing the resources to deliver it

17. The Law Society/SRA approach to these issues is largely set out in the letter from the Chief Executives. There are however some other points we should make in response to the LSB's concerns
  - The Law Society Council does not "retain overall control of approving SRA's objectives and plans". Those are matters for the SRA alone. The SRA is in sole control of its strategy, and the arrangements we have jointly put in place should ensure that to the extent that that is reasonably practicable, the SRA has the resources reasonably required to do so.
  - The new Joint Board will make decisions only by consensus. In the absence of consensus, matters are referred to the Support Services Resolution Board, which includes two external members. There is no risk of decisions being influenced by an inequality in the number of members present. In any event, both the SRA and the Law Society are entitled to appoint alternate members if their standing members cannot attend a particular meeting. It follows that the LSB concerns about the joint Board being chaired by the President (who has no vote) – which is a matter which was readily agreed between the Law Society and SRA – are equally ill-founded.
  - The General Regulations entitle the SRA to determine for itself which SRA members should be on the Joint Board. All SRA Board members – whether solicitor or lay – are appointed to serve the public, not the professional, interest. Currently, two of the four SRA representatives on the Joint Board are lay, and it is very unlikely that that figure would be reduced. In our view, seeking to make requirements for the make-up of the SRA's appointments to the Joint Board go well beyond the proper scope of the IGRs.
18. As indicated in the Chief Executives' letter, we intend to review the arrangements early next year, and we will be happy to let the Legal Services Board know our conclusions from that review. We will also be happy to let LSB have copies of the Service Level Agreements concerning shared services when they are settled.
19. The key principles on shared services, which the Law Society and SRA jointly agreed, make clear that 'shared services will be delivered to the SRA's reasonable requirements in accordance with service level agreements agreed with the Law Society..' These principles were agreed to give practical effect to the internal governance rules and to ensure that the SRA's effectiveness in the discharge of regulatory functions is not compromised.

### Complexity of Oversight Arrangements

20. We do not accept that there is any appreciable risk of the oversight arrangements leading to improper influence on SRA policy and procedures.
21. The Legal Services Board have themselves recognised (and this is in any case obvious from the structure of the Act) that the Law Society as approved regulator is entitled – and arguably required – to put in place oversight

arrangements so as assure itself that its regulatory arm is carrying out its responsibilities effectively.

22. This would pose a risk to SRA autonomy only if the Society sought, in the context of exercising oversight, to direct the SRA to act in a particular way. The Law Society has explicitly accepted that it can not properly direct the SRA to discharge its responsibilities in any particular way, except in relation to requiring SRA to comply with directions of the Legal Services Board.
23. The Law Society recognises that if there was an issue arising from oversight on which the Society remained concerned that the SRA's approach was unacceptable, the Society's recourse would be to raise the issue with the Legal Services Board, and to seek the LSB's assistance.
24. We do not have any plans to develop metrics for monitoring the success of the arrangements. Their key purpose is to enhance mutual understanding, and to ensure that the Law Society is satisfied that regulatory responsibilities are being carried out effectively. We are not persuaded that that is best done by developing metrics.