



The Law Society



Solicitors
Regulation
Authority

Chris Kenny
Chief Executive
Legal Services Board
Victoria House
Southampton Row
WC1B 4AD

7 September 2010

Dear Chris

Internal Governance Rules: The Law Society/SRA response

Thank you for your letter of 15 July setting out the Legal Services Board's response to the Joint Self Certification provided by the Law Society and SRA in relation to the Legal Services Board's Internal Governance Rules. As you know, it was not practical for us to complete the necessary consultation during August, and we are grateful to you for giving us a little longer to respond.

You comment in your letter that the Legal Services Board regards this as the "final stage of an informal resolution of the matter". We share the LSB's wish to conclude this issue informally, without the need for more formal steps.

However, the Law Society considers there is a real doubt as to whether the approach taken in the IGRs to the question of composition of regulatory boards is a proper use of the Legal Services Board's powers under section 30 of the Act. Accordingly, the Law Society must reserve the right to challenge any formal action which the Board may decide to take against us.

We will deal in the body of this letter with the comments made in your letter itself. The annex to the letter responds to the points made in the LSB's "summary assessment".

Composition of the SRA Board

We have already indicated that we will ensure that the SRA Board has a lay majority as from the next major recruitment round, which will take place in 2012 for the Board which will come into office in January 2013. We are disappointed that the Legal Services Board considers that approach inadequate, particularly as the experience of SRA is that there has never been an issue on which any differences within the SRA Board could be described as a division between the lay and the solicitor members.

The Law Society could only guarantee to comply with the Legal Services Board Internal Governance Rules before January 2013 if we were willing either to increase the size of the SRA Board, or to terminate the appointment of some existing members of the SRA Board prematurely. Each option has its significant drawbacks.

The SRA Board is already at the upper end of the size of membership provided for by the Council (12-16 members). There is a significant risk that an increase in the size of the Board even for an interim period would make it less effective.

So far as early termination is concerned, both the Law Society and the SRA consider that curtailing the term of office of members properly appointed following a public appointments process would be unacceptable.

There will be two vacancies arising on the SRA Board at the end of 2011 – one solicitor and one lay member who were members of the original SRA Board, and will thus complete six years' service at the end of 2011. It would be possible, without increasing the size of the Board, to achieve parity between the solicitor and lay memberships of the Board by filling both vacancies with lay members. However, we have concluded that that would be undesirable, since it would mean there were no solicitors from a BME background, and only one solicitor member from the smaller firm sector on the SRA Board. Whilst we accept that there cannot properly be any particular number of places reserved for BME or small firm solicitors (since that would not be consistent with appointment on merit) it is clearly highly desirable that there should be at least one BME solicitor and solicitors from small firms on the SRA Board. We would therefore plan to target our recruitment to maximise our ability to replace the retiring solicitor member with another solicitor from a BME and small firm background.

However, different considerations would apply if there were to be a casual vacancy on the SRA Board before the end of 2012 as a result of resignation of a solicitor member. We would be willing to undertake that, in that event, we would replace the departing member(s) with lay people to the extent necessary to achieve a lay majority.

We believe the overall result of our proposed approach is that the composition of the SRA Board will be brought into compliance with the Internal Governance Rules as soon as can be achieved without having a damaging impact either on the diversity of the SRA Board, or on its effectiveness. Furthermore, since all substantive policy issues are decided by the Board in its public sessions, it will be a matter of public record whether or not the Board's view was divided. If it would provide reassurance to the LSB, we would be prepared to provide a periodic breakdown of any votes taken by the SRA Board, to demonstrate that voting is not taking place on solicitor/lay lines.

We will of course be happy to expand on our thinking about this, or to discuss it with you further.

Professional Majorities on Regulatory Committees

We have set out the information requested by the LSB in the attached annex to this letter.

The IGRs themselves do not require lay majorities on the committees of regulatory boards. The SRA Board has adopted the practice of not considering for membership of its committees individuals who concurrently serve on the Law Society's Council. Furthermore, only the SRA Board itself can exercise any formal rule making powers. In those circumstances, we do not share the LSB's view that there is an appreciable risk that the spirit and perception of independence is compromised if advice provided to the SRA Board comes from groups some of which have solicitor majorities, and we do not think that any question of non-compliance arises.

The SRA periodically reviews and refreshes the membership of its committees to ensure that the Board obtains the best advice. As the terms of office for committee members (who are not SRA Board members) come to an end this year, the SRA will continue to ensure that the committees have an appropriate balance of membership to fulfil their functions.

Complexity of Arrangements

The arrangements we have now put in place for resolving disagreements about budgetary matters or the provision of support services, and for carrying out the Law Society's oversight role in relation to SRA, have been the subject of prolonged and detailed discussion between the Law Society and SRA. There is no appetite either in the Law Society or in SRA to revisit the arrangements at this stage. We are confident that they comply with the Internal Governance Rules, and indeed the LSB do not assert that they do not.

We recognise that, the arrangements appear complex, but we are satisfied that they fully satisfy the three key tests.

- Regulatory decisions are solely within the province of the SRA Board.
- There are arrangements in place to ensure that the SRA have the resources they reasonably need to discharge their responsibilities. Furthermore, 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 there could be no perception that shared services could be used as a tool to undermine the SRA's regulatory effectiveness.
- The SRA Board has an unrestricted right to alert the Legal Services Board if they should ever feel that action or inaction of the Society undermined their independence or impaired their effectiveness.

In the circumstances, there could only be a risk to the regulatory objectives if the Legal Services Board felt that the SRA Board was in some way a captive of the Law Society, rather than an independent body. We do not think the Legal Services Board could reasonably think that. Accordingly, we do not accept that the Legal Services Board could reasonably hold a concern that the arrangements could "hide levers of control that could prejudice the ability of the SRA to deliver its strategy without (undue) hold up or disruption."

Both the Law Society and SRA are fully committed to working cooperatively together to ensure that these arrangements work. We strongly believe that is both in the public interest, and in the interests of the profession. We plan to review the arrangements early next year, and we will let the Legal Services Board know the conclusions we reach in that process.

We look forward to hearing from you. If there is anything you would like to discuss in advance of your Board's consideration of the matter, we would naturally be happy to do so.

Yours sincerely

The image shows two handwritten signatures in black ink. The signature on the left is 'Desmond Hudson' and the signature on the right is 'Antony Townsend'. Both are written in a cursive, flowing style.

Desmond Hudson
Chief Executive, The Law Society

Antony Townsend
Chief Executive, SRA