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Dear Mandie

Internal Governance Rules (IGR) – Dual self certification

You will have seen the letter from David Edmonds to Baroness Deech, written following our 30 September Board meeting at which your compliance with the IGRs was discussed. In that letter David said that the Board was delighted with the progress that you have made in meeting the requirements of the IGRs. I would like to re-emphasise this and also my appreciation of the way that our respective teams have engaged with each other on this matter. You have been serious in addressing the concerns raised in our assessment of your arrangements and have made significant changes to the proposals originally put to us as a result. This includes accelerating the pace of moving towards a lay majority and of putting in place service level agreements for shared services.

This letter sets out the Board's final assessment of the dual Bar Council / Bar Standards Board independence certificate for 2010/11.

Overall conclusion

The Board has concluded that whilst your arrangements are not yet compliant with the IGRs, given your progress and the commitments that you have made going forward we are willing to accept your position this year.

This year is the first time that the dual self-certificates have been returned since the establishment of the BSB as the regulator of members of Bar and since the introduction of the IGRs in January 2010. Therefore, we have looked in detail at the structures that have been put in place in establishing a regulatory body to deliver regulation independently from the representative functions of the professional body. We have tested compliance against the framework provided by the IGRs.

We provided you with our initial assessment in July. This set out areas where we had concerns and provided you opportunity to respond. In some areas we asked for proposals to move to compliance faster than was being proposed and in others for further explanation including about the level of risk associated with certain arrangements and how the risks are being managed and mitigated.

The Board's decision was made on the basis of the suite of information that you have provided to us in response to our assessment and on condition of the satisfactory execution of agreed future actions.

There are five issues that I would particularly like to draw your attention to:

1. Lay majority

The Board has accepted your revised action plan that, leaving aside the issue of your chair who qualified as a barrister but has never undertaken pupillage or practised, will rapidly bring parity between lay and professional members of the Board following your current recruitment exercise.

Full compliance is then to be achieved by the end of 2011 following the next annual recruitment round. It was noted that your constitution has been amended to cement the requirement for a lay majority from 1 January 2012.

2. Shared services

We were anxious to see in place robust service level agreements in areas where the Bar Council's Central Services Department provides services to the BSB. Such agreements should make clear that the BSB is the independent user of services and the level and quality of service that it can expect as such. We believe that this is integral to the BSB's ability to deliver its regulatory objectives, strategy and functions.

The Board noted the progress was being made in developing the agreements and appreciated drafts having been presented to my team. However, as these have yet to be finalised the certificate was agreed without any detailed analysis of their content and it was proposed that further discussions take place at executive team level. To this end I propose that a meeting is put in the diary before the end of the year or at the beginning of next year to present and explain the agreements to us. We would anticipate finalised documents signed by both the Bar Council and the BSB to be provided in advance of that meeting.

3. Budget and expenditure

The Board also noted that the finance manual produced by the Finance and Audit Committee of the Bar Council was not available to be reviewed at the time of its September meeting. This is because it is being amended following a review by the Performance and Best Value Committee of the BSB.

The Finance Manual sets out (amongst other things) procedures for the authorisation of expenditure and other financial controls – vital arrangements when considering the regulator's ability to access the funds it requires to effectively undertake its decided upon operational activities. The Board settled that my team are to review the final arrangements and work through any concerns with you. As set out in my 8 November letter to Andrew Mitchell approving the Bar's practising fees levels for 2011, we will be particularly interested in the protocols for settling the practising fee levels internally and submitting the application to the Board. We consider this to be a regulatory function that rightly sits with the BSB in consultation with the Bar Council. It would be sensible to undertake discussions alongside reviewing the service level agreements, as set out above.

4. Selection of chair and vice-chair

You have acknowledged our assessment that as currently drafted the BSB's constitutional requirement that "one (but not both)" of your chair and vice-chair shall be a practising barrister is likely to lead to conflict with the IGRs at a future point. The Appointments Panel would only be able to consider a practising barrister for chair if the vacancy arose at a time when the vice-Chairman was a lay member and vice versa. This would not be compliant with the requirement that the selection of the chair must not be restricted by the virtue of any legal qualification.

You have committed to rectify this issue. We ask that you do this in the near term to avoid any possibility of an issue arising in practice. We will check on progress at the time that next year's certificate is submitted.

5. Dismissal of board members

In our initial assessment we asked for confirmation that concurrence from the Board would be sought in any instance where the dismissal of a Board member is being proposed as part of the appraisal / disciplinary process. You have confirmed this in instance of the Bar Council exceptionally moving dismissal of a Board member as provided in (A21(7)) of the BSB constitution. However, you have said that in instances where the BSB resolves to dismiss a member it is not envisaged that LSB concurrence would be required as the IGRs are aimed at undue influence from persons with representative functions rather than a proper resolution from the regulatory arm itself. The IGR does not distinguish between the person (or body) carrying out the dismissal but the level of Board interest in practice will align to the level of risk in the different circumstances.

Looking forward

As you know, dual self-certification of compliance with the IGRs is an annual process and certificates will be due again in April 2011. Our focus next year will move away from reviewing the newly established governance arrangements and towards reviewing the practical effectiveness of embedding those arrangements. Or in other words that independent regulation is being delivered in practice. This is important as obstacles to the regulatory body's ability to determine and deliver its own strategy may be undesigned and cultural as much as systemic.

Next year we will be pro-active in identifying areas of risk to the delivery of independent regulation in practice and the 2011 review will be targeted at these areas, employing intelligence on real issues. A key test will also be regulatory decision making in light of pressure legitimately brought from practitioners, either individually, or through their professional body. We will also consider how risk is monitored and managed on an on-going basis. We will be in touch with the BSB and the Bar Council with further details early next year.

I have written to David Hobart in the same terms and copied to Nick Green. Letters will be published on the LSB web-site early next week.

If you have any further queries please contact Chris Handford on 020 7271 0074 or chris.handford@legalservicesboard.org.uk. I also remain available to discuss these matters with you.

Yours sincerely



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Chief Executive

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Cc: Baroness Deech, Chair

