

## Regulatory Independence Certification

On behalf of General Council of the Bar of England and Wales, an approved regulator designated under section 20 and Schedule 4 of the Legal Services Act 2007, we jointly certify that we have in place arrangements that comply with the requirements of the Internal Governance Rules 2009 and that in particular:

- (1) observe and respect 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) ensure that persons involved in the exercise of our 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 Legal Services Board, the Consumer Panel, the OLC and other Approved Regulators;
- (3) ensure that the exercise of our regulatory functions is not prejudiced by our representative functions or interests;
- (4) ensure that the exercise of our regulatory functions is, so far as reasonably practicable, independent of our representative functions;
- (5) ensure that such steps are taken as are reasonably practicable to ensure the provision of such resources as are reasonably required for or in connection with the exercise of our regulatory functions; and
- (6) ensure that persons involved in the exercise of our regulatory functions are able to notify the Legal Services Board where they consider that their independence or effectiveness is being prejudiced.

**Signed:**  
**Applicable Approved Regulator**

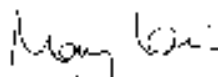


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[Nicholas Green QC, Chairman]

[David Hobart, Chief Executive]

**Regulatory board**



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[Baroness Ruth Deech, Chairman]

[Mandie Lavin, Director]

**Principle 1: Governance**

Internal Governance Rule	Relevant arrangements in place	Summary of those arrangements	Summary of practical issues that have arisen over [past year] in respect of these issues
<p><b>A.</b> Each AAR must delegate responsibility for performing all regulatory functions to a body or bodies without any representative functions.</p>	<p>Constitution of the General Council of the Bar Standing Orders for the Bar Council Bar Standards Board Constitution (all attached)</p>	<p>Bar Standards Board (BSB) established to carry out all regulatory functions. All powers granted to it to do so. Express prohibitions on BSB carrying out representative functions and on Bar Council carrying out regulatory functions.</p>	<p>None</p>
<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</p>	<p>Preamble and paragraphs 2 and 3 of BSB Constitution</p>	<p>Establishes board structure for BSB.</p>	<p>None</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; and</li> <li>• the selection and appointment of a chair is not restricted by virtue of any legal qualification</li> </ul>	<p>Paragraphs 2 and 3 of BSB Constitution</p>	<p>BSB required to have a lay majority No requirements or restrictions regarding qualifications held by chair of BSB (Appointment process outlined under principle 2 below)</p>	<p>No practical issues over last year. Lay majority requirement creates immediate compliance issues. BSB Constitution contains transitional provisions to move to lay majority (in paragraph 20).</p>

that person may or may not hold, or have held.		
<p><b>LSB Guidance</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><b>Extent to which guidance has been followed, with any reasons for departing from guidance explained</b></p> <p>A joint working group was established to develop the new constitutional documents for the BSB, as well as necessary changes to the Bar Council's Constitution and Standing Orders to facilitate that. New arrangements agreed by Bar Council on 13 March 2010 and were endorsed by the BSB.</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>Paragraphs 9(e) and (f) of the Bar Council's Standing Orders address this point.</p>	

<b>The Principle</b>	<b>Explanation of any other arrangements in place that bear on the principle and in particular how those arrangements comply with the principle</b>
<p>Nothing in an Applicable Approved Regulator's (AAR's) arrangements should impair the independence or effectiveness of the performance of its regulatory functions</p>	<p>Bar Council's Standing Orders (paragraphs 7,8,9,10 and 11) enshrine the principle of regulatory independence. BSB's Constitution (Preamble and paragraphs 13 and 14) also reflect this principle. The Chairmen's Committee has been established to keep the relationship constantly under review and deal with issues that may arise.</p>

**Principle 2: Appointments etc**

<b>Internal Governance Rule</b>	<b>Relevant arrangements in place</b>	<b>Summary of those arrangements</b>	<b>Summary of practical issues that have arisen over [past year] in respect of these issues</b>
<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>Schedule A of BSB Constitution</p>	<p>Open competition required. Balanced appointments panel with a lay chair.</p>	<p>New arrangements established that will be tested in 2010.</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 the Schedule.</p>	<p>Schedule A of BSB Constitution</p>	<p>Principles reflected in Schedule.</p>	<p>As above, new procedures take effect on 30 April 2010 and will be tested during 2010 for appointments commencing 1 January 2011.</p>
<p><b>C.</b> Decisions in respect of the remuneration, appraisal, reappointment and discipline of persons appointed to regulatory boards must respect the principle of regulatory independence and</p>	<p>Remuneration: Emoluments Committee in paras 52-55 of Bar Council Standing Orders Appraisal and</p>	<p>All decisions made by committees or panels with strong lay representation and no majority by either BSB or Bar Council. Further criteria for appraisal and dismissal able to be set by BSB in own Standing Orders, which are entirely within BSB control.</p>	<p>New arrangements mostly reflect existing arrangements so do not anticipate any difficulties.</p>

<p>the principles relating to “appointments etc” set out in the Schedule.</p>	<p>Reappointment Schedule A of BSB Constitution  Dismissal: Bar Council’s dismissal powers limited to those in SOs and BSB Constitution</p>		
<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>Paragraph 10 of Bar Council Standing Orders</p>	<p>Provision reflects requirement.</p>	<p>No issues have arisen.</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>Bar Council Standing Orders, para 13  BSB Constitution, para 6 and Schedule A</p>	<p>Controls on both Bar Council and BSB to reflect this requirement.</p>	<p>Queries regarding eligibility arise occasionally but no issues that have required resolution.</p>

LSB Guidance	Extent to which guidance has been followed, with any reasons for departing from guidance explained
<p>If regulatory boards do not lead on managing the appointments process, it should have a very strong involvement at all stages.</p>	<p>Schedule A to BSB Constitution requires a lay chair, strong lay membership and no representative or regulatory majority.</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>Schedule A to BSB Constitution requires OCPA accredited members on Appointments Panel.</p>
<p>Appointment panels or equivalent should be established following the guidance set out in the Board's letter of 2 December 2008<sup>1</sup>.</p>	<p>Followed.</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>BSB Chair is a member of Appointments Panel, see para A2(3) of Schedule A to BSB Constitution.</p>

<sup>1</sup> See: <http://www.justice.gov.uk/news/docs/legal-services-board-open-letter-021208.pdf>

<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>Schedule A to the BSB Constitution (particularly paragraphs A12, A13, A15) reflect the need to balance the board appropriately.</p> <p>The Nolan principles reinforce this undertaking.</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 controlled wholly or mainly by persons responsible for representative functions;</li> <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 and <u>continuity</u>.</li> </ul>	<p>Emoluments Committee established which contains independent members for this purpose. See paragraphs 52-55 of Bar Council’s Standing Orders.</p> <p>Wholly within BSB’s own control and will be reflected in BSB’s Standing Orders, currently under development.</p> <p>Appointments Committee established with lay chair and strong lay participation. Schedule A of BSB Constitution allows flexibility. Paragraphs A12, A13, A17 and A18 reflect this desire with A18 particularly reflecting the need for continuity. In practice this works with a rolling programme of appointments so continuity is ensured from year to year with some Board members ending their terms almost every year.</p>
<p>While the LSB accepts that there may be <u>exceptional</u> reasons which justify</p>	<p>Obligation understood and agreed. There is no formal requirement to enshrine this in the constitutional arrangements.</p>



<p>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 choose to make.</p>	<p>The Bar Council does not envisage that it would ever take action of this kind. Short of dismissal, the AAR envisages all discipline to be undertaken by the Chair of the Regulatory Board. No power is given to the Bar Council to intervene in matters of discipline short of dismissal.</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>Schedule A of the BSB Constitution reflects this (para A16).</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</p>	<p>BSB's own standing orders will reflect this requirement for the Board and individual members. BSB Standing Orders are currently under development and will be completed by end of July 2010. The BSB itself is required to act in accordance with the regulatory objectives, as provided in paragraph 8 of the BSB Constitution.</p>

<p>regulation, rather 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>Noted and will be reflected.</p>
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<p><b>The Principle</b></p>	<p><b>Explanation of any other arrangements in place that bear on the principle and in particular how those arrangements comply with the principle</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>(2) All persons appointed to regulatory boards must respect the duty to comply with the requirements of the Legal Services Act 2007.</p>	<p>As explained above, an agreed process with strong lay influence and no representative or regulatory majority is included in Schedule A of the BSB Constitution.</p> <p>BSB Constitution reflects and BSB Standing Orders will reflect this principle.</p>

**Principle 3: Strategy and Resources etc**

Internal Governance Rule	Relevant arrangements in place	Summary of those arrangements	Summary of practical issues that have arisen over [past year] in respect of these issues
<p><b>A.</b> Defining and implementing a strategy 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>Part Three of Bar Council Standing Orders BSB Constitution</p>	<p>Recognition of Bar Council's need to comply with obligation to take such steps as are reasonably practicable to provide such resources as are reasonably required for or in connection with the exercise of its regulatory functions.</p> <p>Paragraphs 56 to 62 govern the provision of resources to the BSB.</p> <p>BSB has obligation to co-operate with the Bar Council and comply with relevant Bar Council Standing Orders</p> <p>BSB has the power to do all things calculated to facilitate, or incidental or conducive to, the performance of its functions or duties. That includes the power to regulate its own procedure and to make its own rules (paras 13 and 14 of BSB Constitution).</p>	<p>New procedures and controls are in place (including reconstituted Finance and Audit Committee, Budget Review Group and Chairmen's Committee) to ensure any future differences are resolved between the parties.</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</p>	<p>Paragraph 13 of BSB Constitution</p>	<p>BSB has power to do all things to facilitate its functions in accordance with the policies and procedures in the Finance Manual as approved by the Finance and Audit Committee..</p>	<p>No issues</p>

<p>incidental or conducive to, the carrying out of its functions.</p>			
<p><b>C.</b> Insofar as provision of resources is concerned, arrangements must provide for transparent and fair budget approval mechanisms.</p>	<p>Paras 58, 59, 60, 61, Bar Council Standing Orders Disputes may be referred to Budget Review Group (paras 63 to 66 of Bar Council Standing Orders)</p>	<p>Process for developing and refining budgets outlined in Finance Manual approved by Finance and Audit Committee. Obligation on Finance and Audit Committee and BSB to attempt to reach agreement on budget provision. Budget Review Group in place to resolve any issues. Explicit recognition of obligations of Officers of the Bar Council and Chief Executive to promote and protect the application of the principle of regulatory independence in relation to the BSB (para 11 or Bar Council Standing Orders).</p>	<p>No issues</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>Paras 62 and 67 to 69 of Bar Council's Standing Orders.</p>	<p>Escalation process outlined in paragraph 62. Chairmen's Committee to keep entire arrangement under review.</p>	

<b>LSB Guidance</b>	<b>Extent to which guidance has been followed, with any reasons for departing from guidance explained</b>
<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>Independence enshrined in Bar Council's Standing Orders and BSB Constitution.</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>Reflected in BSB Constitution, paragraph 5, with BSB solely responsible for determining whether a matter involves the exercise of a regulatory function.</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</p>	<p>Recognised in Bar Council Standing Orders and BSB Constitution. BSB has power to do all things calculated to facilitate the performance of its functions or duties (BSB Constitution para 13). The Bar Council's provision of resources includes the provision of staff (paragraphs 57 and 58 of Bar Council Standing Orders). Overriding requirement to observe regulatory independence on Bar Council, Officers and Chief Executive reinforces this provision.</p>

<p>management and control of such members of staff are to be exercised.</p> <p>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 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>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</p>	<p>BSB has is required to prepare and keep under review a plan for the discharge of its regulatory functions. It is also required to co-operate with the Bar Council in relation to all financial and other resources provided.</p> <p>Paragraphs 11(5) and (6) of BSB Constitution.</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</p>	<p>As above.</p>

<p>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>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>As above plus the BSB obligation to comply with Bar Council's oversight and monitoring requirements contained paragraph 11(7).</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>No prohibition on this occurring.</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</p>	<p>Requirements to observe regulatory independence in Bar Council Standing Orders and BSB Constitution.</p>

<p>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>Noted.</p>
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<p><b>The Principle</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>Explanation of any other arrangements in place that bare on the principle and in particular how those arrangements comply with the principle</b></p> <p>Recognition of independence of BSB in Bar Council Standing Orders and BSB Constitution, as already referenced.</p>
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**Principle 4: Oversight etc**

Internal Governance Rule	Relevant arrangements in place	Summary of those arrangements	Summary of practical issues that have arisen over [past year] in respect of these issues
<p><b>A.</b> Arrangements in place must be transparent and proportionate.</p>	<p>Paras 11(7) and (8) of BSB Constitution</p>	<p>Requirement to co-operate with Bar Council, provide information and documents which Bar Council may reasonably request, comply with reasonable requests and produce an annual report</p>	<p>None</p>
<p><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.</p>	<p>Para 10 of Bar Council Standing Orders</p>	<p>As required in B.</p>	<p>None</p>

LSB Guidance	Extent to which guidance has been followed, with any reasons for departing from guidance explained
<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>	<p>Noted and reflected in constitutional documents.</p>
<p>In considering proportionality, AARs should</p>	<p>Noted and understood.</p>

<p>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.</p>	
<p>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.</p>	<p>Noted.</p>
<p><b>The Principle</b></p> <p>Oversight and monitoring by the AAR (which is ultimately 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.</p>	<p><b>Explanation of any other arrangements in place that bear on the principle and in particular how those arrangements comply with the principle</b></p> <p>Oversight and monitoring requirements are reasonable and do not involve intrusive involvement in regulatory activities by the Bar Council.</p>

## General Evaluation

### The Approved Regulator

The Bar Council agrees with the BSB comments below.

### The Regulatory Body

The new constitutional arrangements arose out of a negotiation between the BSB and Bar Council with a free and frank exchange of views involved and compromise achieved by both parties. The BSB is confident that the new arrangements set out a workable framework for future operation with its regulatory independence appropriate enshrined and supported by the Bar Council.