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Dear Diane

Internal Governance Rules (IGR) – Dual self certification

Thank you for submitting the completed dual Regulatory Independence Certificate and accompanying documents. As you will recall, the IGRs came into effect on 1 January and approved regulators were required to self-assess their compliance with the rules by the end of April. In areas where it had not proved possible to achieve compliance by that date, regulators were asked to provide an action plan that would deliver compliance by no later than 31 October 2010.

It is clear that very considerable progress has been made and the Board, which has discussed your submission, appreciates the efforts that all sides have made. This letter sets out the result of our initial analysis of your arrangements, against the substance of the IGRs and the timetable for implementation. A copy of the summary report is enclosed.

The assessment highlights residual areas of concern and areas where we do not feel that we have sufficient information to assess compliance. It also sets out the actions that we now believe are necessary as the final stage of informal resolution. This is in accordance with our compliance and enforcement statement of policy.

The Board wants to make its final decision on internal governance at its September meeting and therefore this letter sets out remaining issues as well as the timetable for response. There are four significant issues to which we draw your attention, although it will also be necessary for you to review the issues in the summary report in full and to consider the required steps that are set out in that report.

1. **Approaching the LSB:** The Legal Services Act includes the provision that regulatory bodies and those involved in exercising regulatory functions are free to approach the LSB if they feel that their ability to regulate effectively or independently is under threat. The protocols governing the working relationship between ILEX and IPS that you have provided recognise this provision. Both these protocols and the underpinning service level agreement explicitly authorise either party to refer matters to the LSB as part of the dispute resolution process. However, there is also a requirement for either party, in the event of a dispute, to provide five days notice to the other before referring a dispute to the LSB. The

service level agreement requires that any dispute currently subject to independent mediation must not be referred until independent mediation has terminated. We believe that it is difficult to reconcile codified restrictions on when the LSB may be approached with the provisions of the Act and the IGRs. The Board would therefore be grateful if by the end August you could confirm that you recognise this issue and the steps that you might propose to address it. Alternatively please provide a rationale for why you believe maintaining these restrictions is compatible with the independence requirements. We would also be grateful if you could confirm that, other than the restrictions set out above relating to the referral of disputes, there are no other restrictions on when the LSB may be approached.

2. **Accessing resources and dispute resolution:** As you are aware the Board has long been concerned that having free access to and control of appropriate resources and services is the key to enabling (or frustrating) the development and delivery of regulatory strategy and policies by the regulatory board. The protocols and service level agreements that you have put in place appear to provide appropriate safeguards. However, the arrangements are built on principles of discussion and negotiation followed by formal dispute resolution. The Board has a real concern that this may cause issues in practice given the potential inequality of bargaining power between IPS and its parent body; and given the likely unattractiveness of formally approaching the LSB or initiating potentially lengthy and costly independent mediation. On the same timescale as above, we would welcome your views on whether you recognise this risk and if so the extent of the risk and the actions that you may take in mitigation. It would be helpful if you could provide details of the metrics that you currently or prospectively collect to monitor whether arrangements do operate successfully in practice and deliver the necessary degree of independence.
3. **ILEX Council members on regulatory committees:** You have told us that there are two committees that fall under the remit of the regulatory board have members who are also ILEX council members (and are therefore seen to have responsibility for representative duties). You have further told us that the composition of both committees will change so as to not have any Council members serving on them by the end of the year. This is as a result of near concluded work relating to applications to extend the reserved activity that ILEX regulates that will shortly be made to the LSB. You have proposed that in these circumstances it may be reasonable to allow the composition of the committees to remain unchanged until the end of the year. The Board is content with this proposal but you should not extend non-compliance beyond 31 December unless the Board has agreed this in advance.
4. **Committees and working groups more generally:** The final issue is that it is common for approved regulators have regulatory groups with strong professional membership sitting beneath their regulatory board. The IGR requiring lay majorities for regulatory boards does not explicitly extend to these groups but in our view there is an appreciable risk that the spirit and perception of independence is compromised if a significant proportion of the advice provided to a regulatory board comes from groups seen to be dominated by the provider interest. To help us better understand what our level of concern should be about this issue, we would be grateful if you could provide details of the role of any regulatory committees or working groups that you may have - their delegations and decision making authorities, their reporting lines, composition and the appointment process for members.

The forward looking timetable for final decisions around compliance and acceptability of action plans is set out below:

Action	Date / deadline
LSB initial response to regulatory independence certificates and action plans	Thursday 15 July
Further submissions from approved regulators following LSB initial analysis as the final stage	Friday 27 August

of informal resolution. If you believe that our interpretation of any of the information that you have provided is incorrect please inform us within your submission.	
LSB analysis of further submissions	To 30 September 2010
LSB Board to consider recommendations to approve one of the following positions <ul style="list-style-type: none"> • Accept as having a clean bill of health; • Accept as having a proportionate plan to become compliant by the set date or having provided a legitimate justification for a slower timetable; or • Move to formal enforcement where informal resolution has failed. 	30 September 2010
Approved Regulators informed of outcome of final assessment and next steps	October 2010

If your Team would like to meet urgently to clarify any of the issues that I have raised, please contact Chris Handford on 020 7271 0074 or chris.handford@legalservicesboard.org.uk. I also remain available to discuss these matters with you think that would be helpful.

Yours sincerely

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