



**LEGAL SERVICES
BOARD**

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15 July 2010

Dear David

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 in some detail, 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 three 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. **Lay Majority:** We understand the reasons for the current non-compliance with the requirement for the majority of the BSB Board to be lay persons. However, as you know, it has been a fundamental principle for the LSB that a lay majority is an essential component of transparent regulatory good governance. Your submission implies that the BSB would not become compliant before the end of the current Board terms in January 2012. The LSB does not feel that a further one and a half years of non-compliance is an acceptable outcome. The Board would therefore be grateful if by the end of August you could provide an action plan that will deliver compliance on a much earlier timescale. If you do not believe

this to be possible, please provide a justification for why it might be reasonable to move to a lay majority by a later date alongside a detailed plan for reaching compliance.

2. **Professional majorities on regulatory committees:** The second issue is that approved regulators have regulatory groups with strong professional membership sitting beneath their regulatory board. We understand that the BSB has six formal regulatory committees of which five have a barrister majority. 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 the BSB comes from groups seen to be dominated by the provider interest. It would be helpful if you could provide details of the role of the regulatory committees, their delegations and decision making authorities, their reporting lines, composition and the appointment process for members. The Board would also welcome your views on the extent of the risk that you perceive, and the steps that you might propose to mitigate that risk, again by the end of August.

3. **Shared services, securing resource and dispute resolution:** As you are aware the Board has long been concerned that having free access to appropriate resources and services is the key to enabling (or frustrating) the delivery of the regulatory strategy and policies developed by the regulatory board. We have highlighted transparent processes for accessing resources and robust service level agreements (and protocols) being in place when services are shared as important markers of arrangements meeting the requirements of the IGRs. The information that you have provided does not include details of the processes governing the BSB's access to resources. Neither does it include details of the range of shared services or any service level agreements that are in place. Therefore, on the same timescale as above, the Board would be grateful to receive the additional information requested in the assessment summary. This includes service level agreements (and protocols), details of the regulatory services that fall under the control of the Director of Central Services and the procedures for the authorisation of expenditure and connected authorisations and financial controls.

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 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.	Friday 27 August
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 a 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

A handwritten signature in blue ink, appearing to read 'Chris Kenny', with a stylized flourish at the end.

Chris Kenny
Chief Executive

E chris.kenny@legalservicesboard.org.uk

A short, curved handwritten flourish in blue ink, located below the email address.

