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Dear Antony

Internal Governance Rules (IGR) – Dual self certification

You will have seen the letter from David Edmonds to Charles Plant, 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 pleased with the progress that you have made towards compliance. I would like to re-emphasise this. I note in particular your movement in two areas where our initial assessment found progress fell short of that which we could consider acceptable and which your initial response to the assessment did not adequately address. You agreed to accelerate the pace of movement towards having a lay majority on your Board and to amend the General Regulations to embed the requirement for all future Boards to have a lay majority.

This letter sets out the Board's final assessment of the dual Law Society / Solicitors Regulation Authority 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 SRA as the regulator of solicitors (and solicitors practices) 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 having considered 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 three issues in particular that I would draw your attention to:

1. Lay majority

The Board has accepted your revised action plan that, leaving aside the issue of your chair, will bring parity between lay and professional members of the Board by summer 2011 – immediately after the conclusion of the recruitment process beginning in the first part of next year. Full compliance is then to be achieved by January 2013 following the next annual recruitment round.

We note that the General Regulations were amended by the Council at its 10 November meeting. This cements the requirement for all future Boards to have a lay majority. You have accepted that the General Regulations must also be amended to open the position of Chair to lay members as well as solicitors and that this must be completed so as to apply from the next time you need to make a new appointment to the post.

2. Shared services

Where services supporting your regulatory operation are obtained from the Law Society, service level agreements must be in place that make clear that the SRA is the independent user of services and the level and quality of service that it can expect as such. Agreements should also cover service levels and protocol in relation to the SRA accessing its allocated resources in a timely fashion. We believe that this is integral to the SRA's ability to deliver its regulatory objectives, strategy and functions.

The Board noted the key principles in relation to budgets and resources have been agreed and appear fit for purpose but that the next level down protocol and service level agreements will be the key to their success in practice. As these have yet to be finalised the certificate was agreed without any analysis of their content and it was proposed that further discussions take place at executive team level to review progress. To this end I propose that a meeting is put in the diary before the end of this year or at the beginning next year. We would like to be presented with the draft content of the agreements, details of the next stages of development and firm dates for introduction. We would anticipate draft documents to be provided in advance of that meeting. I note that Linda Lee's letter to David dated 29 October states that the framework within which the detailed agreements are being developed have been recently agreed between the SRA and the Society.

3. Dismissal of board members

In our initial assessment we sought reassurances about the arrangements for requiring that concurrence from the Board would be sought in any instance where the dismissal of an SRA Board member is being proposed as part of the appraisal / disciplinary process. The SRA and the Society have confirmed that they recognise the requirement to seek concurrence from the Board and that it would be a breach of the IGRs if this was not done. In light of this commitment we will not insist that the General Regulations be amended immediately to spell out the requirement. However, we ask that they are amended as part of the next scheduled review of those regulations.

We also raised concerns about the provision within the General Regulations that the Law Society's Council may substitute its own procedures for investigating and determining complaints if it believes that the procedure established by the regulatory board is inadequate. The Board remains concerned about this provision but in light of the further explanation of the circumstances that this clause could be utilised, the low likelihood of this happening in practice and the commitment to consult the Board before it ever was we are willing to accept that this provision may remain. The Board will review the working of the disciplinary process if it is ever initiated.

Looking forward

As you know, dual self-certification of compliance with the IGRs was established as 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.

Correspondence from the SRA and the Society highlights that our initial assessment raises theoretical risks from particular arrangements. The SRA and the Society accept that current arrangements may appear complex but are confident that they will provide appropriate safeguards in practice and this will be tested by periodic review. It is argued that on top of this the regulatory body may alert the LSB if it considers a problem to have arisen in practice and this provides adequate further safeguard.

The Board does not think it sufficient to wait for the regulatory body to report problems and to react to these. This is particularly so in these early days and when full compliance with the IGRs has not yet been achieved. 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. We will also consider how risk is monitored and managed on an on-going basis. We will be in touch with the SRA and the Society with further details early next year. This timing coincides with your internal timetable for review of your internal governance arrangements.

I have written to Des Hudson in the same terms and copied to Linda Lee. 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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cc. Charles Plant, Chair

