

Annex C

Law Society/SRA Assurance Protocol

Background

The Law Society is an independent professional body, representing and promoting the interests of solicitors in England and Wales (the Representative Functions). It also has Regulatory Functions under section 27(1) of the Legal Services Act 2007 (the Act), and the Law Society is an "Approved Regulator" for the purposes of section 28 of the Act.

Under the Legal Services Board's Internal Governance Rules (the IGR) the Law Society has an overarching duty to ensure that the exercise of its Regulatory Functions is not prejudiced by its Representative Functions and, under rule 1, must put in place arrangements to separate its Representative and Regulatory Functions that are as effective as reasonably practicable and consistent with section 28 of the Act.

To ensure the separation and independence of its Regulatory Functions, the Law Society has incorporated the Solicitors Regulation Authority Limited (the SRA), a company limited by guarantee incorporated in England (company registration no xxx) and a wholly owned subsidiary, to which the Regulatory Functions have been delegated under terms of reference set out in the Law Society's General Regulations. The Law Society's role as sole member of the company is subject to the requirements of the IGR.

The Legal Services Board (LSB) may only enforce the IGR against an "Approved Regulator". The Law Society, as an Approved Regulator under the Act, holds the ultimate responsibility for the performance of the Regulatory Functions and must therefore retain a Residual Role pursuant to rule 2(2) of the IGR.

The LSB is clear that the Law Society should not duplicate the oversight role of the LSB, in particular in assessing regulatory performance, assessing practising certificate fee applications or applications to change regulatory arrangements.

However, in discharging its assurance function under the IGR, the Law Society is entitled to information to assure it that the SRA is in practice functioning appropriately as it is set up to do. It should perform a limited role to the extent reasonably necessary to be assured that the Regulatory Functions are being properly and lawfully discharged by the regulatory body in a way that is consistent with section 28 of the Act.

The IGR impose mutual obligations on the Law Society and the SRA with regard to the assurance function, which are reflected in this Protocol. Under Rule 3(1) of the IGR the SRA shall provide sufficient information to the Law Society as is reasonably required for it to be assured of the SRA's compliance with section 28 of the Act. However, under Rule 3(2) the Law Society may only require further information from the regulatory body if it has reasonable grounds to do so and must not require the regulatory body to provide information which may reasonably be considered likely to undermine the regulatory body's independence or effectiveness. The Law Society must not use the information it receives for the representation, protection or promotion of the interests of the persons it represents unless and until it receives the information for that purpose or that information is made publicly available.

This Protocol, agreed between the Law Society and the SRA, sets out the form and frequency of the information to be provided by the SRA which will be sufficient to allow the Law Society to discharge this assurance function and the methods by which the Law Society may seek further information, clarification or detail where appropriate, if this is justified under the IGR.

This Protocol is an agreed assurance arrangement as contemplated by Article 29.2 of the SRA's Articles of Association.

Scope of assurance

1. The Law Society and the SRA agree to cooperate with one another to provide and accept assurance consistent with the IGR.
2. The Law Society Council will receive from the SRA:
 - 2.1. The constitution and governance arrangements for the SRA and the governance arrangements established by the SRA (for example in relation to committees of the company);
 - 2.2. The arrangements the SRA has in place for financial management and control; and
 - 2.3. The systems and processes for risk management and internal audit;so as to assure itself that the company has appropriate governance systems and controls in place.
3. The SRA will volunteer such further information as it considers reasonable that the Law Society should be aware of in order to be assured of its compliance, including information on any issue of non-compliance with regulatory functions and the action taken to remedy it. It shall report to the Council in the event that it is made aware of any adverse regulatory decision against it from the LSB or Office of the Professional Body Supervisors and will provide a copy of the decision and any action plans agreed to address compliance issues.
4. It is agreed that it is not necessary for assurance purposes for the information provided by the SRA to include minute detail or evidence of day to day adherence in the performance of its regulatory functions.
5. The Law Society agrees not to use the information it receives for assurance purposes to further its representative functions unless and until it receives that information for that purpose or that information is made publicly available.

Reporting mechanisms

6. The SRA will report to the Law Society Council three times a year, in March/April, June/July and September/October:
 - 6.1. At the March/April meeting, the SRA's annual report for the previous financial year will be provided. This will give information on:
 - 6.1.1 The SRA Board's oversight and governance of the SRA including how the SRA Board has discharged its responsibilities both directly and through its committees.

- 6.1.2 The SRA's financial performance for the year.
- 6.2 The report at paragraph 2.1 shall include:
- an overview of the SRA's governance arrangements and Board activity;
 - strategic priorities for the SRA Board and decisions it has made;
 - a table showing financial performance broken down into expenditure, income and recoveries.
- 6.3 At the June/July meeting the SRA Board will provide:
- 6.3.1 a copy of the SRA's annual accounts as filed with the Registrar of Companies.
- 6.3.2 The amount required by the SRA to be collected from the regulated profession for the following budget year, to allow the section 51 practising fees to be agreed for submission to the LSB.
- 6.4 At the September/October meeting, the SRA's budget for the next financial year will be provided.
- 6.5 The SRA will also provide a report on the SRA's response to any assessment of its regulatory performance by the LSB.
7. The Law Society Group Audit Committee will receive in each financial year:
- 7.1 The Management letters from the Law Society's external auditors on the audit of the SRA element of the Law Society's accounts including those for the Compensation Fund.
- 7.2 A report on the operation of effective systems of financial control to include accounting principles, financial policies and controls adopted by the SRA.
- 7.3 A report on the operation of the arrangements in place for the management of risk and internal audit.

Information sharing

8. The Law Society shall provide to the SRA such information and documents as may reasonably be required or requested from time to time by the directors of the SRA in order for the SRA to discharge its functions in accordance with the terms of delegation in the General Regulations, the IGR and the Act.
9. The Law Society and the SRA shall promptly inform each other of any decision, plan, communication or other arrangement which may reasonably be considered likely to undermine the discharge of Regulatory Functions by the SRA (in compliance with section 28 of the Act) or the discharge of Representative Functions by the Law Society and to promptly inform each other of any decision, plan, communication or other arrangement which relates to the other's role.

Requests for further information

10. The parties agree that the information to be provided under paragraph 6 should in most circumstances be sufficient to discharge the assurance function. However, it is agreed that the Law Society may request in writing, and the SRA may provide, further information where this is justified on reasonable grounds in accordance with this Protocol

and the IGR. It is agreed that requests in the following instances may be appropriate, for example:

- 10.1 to provide additional detail to matters referred to above where the level of detail is inadequate to allow the Law Society to comply with other statutory obligations;
 - 10.2 if there appears to be a material inconsistency with other information the Law Society has received;
 - 10.3 where the information received indicates that there have been issues of non-compliance with delegated duties which have not been disclosed to the Law Society.
11. Such circumstances might include potential failures in corporate governance, financial impropriety, and other significant failures in systems of financial control or risk management.
 12. The Law Society may not make a request for further information under this Protocol in order to challenge the SRA's rationale of how to meet the regulatory objectives or how to uphold the better regulation principles, unless the SRA's view appears to be one which is outside the range of reasonable responses.
 13. The SRA may refuse to provide further information in response to a request by the Law Society if providing the information would undermine the SRA's independence or effectiveness. It is agreed this issue might arise if:
 - 13.1 the request is targeted at an issue in dispute between the Law Society and the SRA relating to the IGR or other matters affecting their separation;
 - 13.2 the request is for overly onerous, repetitive or duplicative requirements which would impair the SRA's ability to carry out its duties on a day to day basis;
 - 13.3 the request would unduly divert the SRA away from pursuing its legitimate strategy; or
 - 13.4 the request would otherwise require the SRA to allocate resources to meeting it, to the detriment of effective regulation.
 14. When refusing to provide information in full or in part in response to a request made by the Law Society, the SRA shall provide the Law Society with written reasons as to why the SRA considers the request not to be justified on reasonable grounds. The parties agree to endeavour to discuss and reach an agreement, failing which they will refer to the LSB as required under the IGR.

Intervention in regulatory functions

15. The Law Society may only seek to amend or revoke the terms of delegation or to intervene in the exercise of regulatory functions in exceptional circumstances. The expectation is that such circumstances would only arise if:
 - a. the SRA becomes ineffective or ceases to operate within the ambit of the Act and the IGR and, due to delegation, the issues fall outside the Law Society's control; and,

- b. the SRA has been given a reasonable opportunity to rectify the issues of concern and has failed to do so in a reasonable time.

- 16. If there is a dispute between the Law Society and the SRA about whether the Law Society's intervention is reasonably necessary, it will be referred to the LSB before any action is taken. Approval from the LSB is required before the Law Society takes any action to intervene in the exercise of regulatory functions.

Resolving disputes under this Protocol

- 17. If there is any dispute between the Law Society and the SRA about the application of this protocol with respect to compliance with the IGR, the matter shall first be raised between the parties. If the matter cannot be resolved, consideration should be given to obtaining independent legal advice. If the matter remains unresolved, it shall be raised with the LSB for clarification under rule 14(1) of the IGR or, if it is not appropriate to do so, then for determination under rule 14(2).