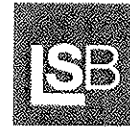


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14 October 2011

Dear Des

Regulatory independence

Many thanks for providing me with an update on the independence discussions that took place at your most recent council meeting and the accompanying draft papers from that meeting.

This letter has two purposes:

- First, it gives some initial comments on the contents of the proposals. These do not represent the final views of the Board and are, at this stage, designed to help you and the SRA finalise the proposals;
- Second, it sets out the information which the Board will need in order to reach a rapid and, I hope, favourable decision on the final proposals. These requirements are set out at some length, reflecting the concern of the Board about the long delay in finalising the issue and the importance which it therefore attaches to receiving the most robust and evidence-based assurances that the arrangements put in place command full confidence on all sides as the basis for a long-term settlement. They are therefore designed to facilitate decision-making and remove any residual uncertainties, thereby avoiding the need for any use of the Board's formal powers, whether for information gathering or more widely.

To deal with substantive policy content first:

- We note that some important issues remain open, notably on the chairing of the Business and Oversight Board (BOB). For the Committee to fulfil the role envisaged and be fully effective, we believe that it needs an independent chair and lay majority. We are likely to see real difficulty in how BOB can be chaired by somebody who also holds any representative function – and can quite understand why you might consider that an SRA representative chairing a body with oversight duties would also be inappropriate.

- We also note that there is a tension in the documents, between most of the text of the main paper and the job description for the MD Shared Services, which – rightly, in our view – focus on providing different services to meet the differing business needs of the different wings of the organisation and the ToRs of BOB, which seem to start from a presumption of a single policy from which there can only be variation in restricted circumstances. As you know, it has always been the view of the Board, as set out in the IGR rules and associated guidance, that the SRA should have freedom in defining the services it requires and in deploying resources in order to secure them. Hence, we consider that it is the perceived need for common group policies in any given area that calls for justification rather than the reverse;
- Finally, we note that the terms of reference for the BOB talk about it “recommending” the SRA Budget to Council. We consider that such a recommendation can only come from the SRA Board, although BOB can clearly provide Council with both assurance on the process followed by the SRA Board and its own views on the substance of the proposal.

On the next steps on process, our starting point is to ensure compliance with the requirements of the Act and the Internal Governance Rules . It is through this lens and against the contents of the draft certificate and risk assessment submission provided during May that we will review any final proposals.

Once arrangements are finalised, we will therefore require sight of all relevant documents, supporting papers, and Board and Council papers, as well as any side letters of agreement, which set out the detailed arrangements. We, of course, have the power to request this under S55 of the Act.

Through this material or separately, we will need to see a clear explanation of how the combination of new, retained and reorganised arrangements, comply with the Act, the IGRs and, in particular, the schedule of principles within them. This schedule contains clear requirements – supported by guidance where appropriate – on governance, shared services, access to resources, the freedom to set strategy and oversight.

The final submission will also need to address individually each issue of perceived threat to independence and effectiveness noted in the draft certificate and risk assessment received from the SRA. I should note that, in asking for this information, the Board is not seeking to endorse the SRA’s view as presented in that document. It does, however, need to assure itself that actual or perceived risks to independence have been removed and hence it needs to understand how the areas rated ‘red’ and / or ‘amber’ are now seen as being ‘green.’ once the new arrangements are in place.

To assist in this we enclose the original submissions from the SRA and have picked out a non-exhaustive list of areas where we would expect a clear explanation as to how these proposals will solve those areas of concern.

[REDACTED]

- [REDACTED]
- [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

In addition, we will need a clear statement of any matters which remain unresolved, the reason for this and when and how a final decision will be reached.

We leave it to the Law Society and SRA to determine precise responsibilities for drafting and producing the necessary documentation between you, although we will, naturally, expect to see assurances that each are fully content with what is proposed.

As I noted earlier, this process is designed to facilitate rapid agreement to robust arrangements that can “stick” and so prevent the need for further effort to be expended on the issue on all sides, rather than contributing to further delay. The Board is grateful for the work that the Law Society and the SRA have both put into this exercise. From the draft proposals, it is clear that each party is moving towards a level of change that was difficult to conceive earlier in the year. We now look forward to final compliant proposals being agreed at the November of Law Society Council meeting and SRA Board meeting for submission and approval by the LSB and remain happy to offer any assistance in the intervening period to help to ensure that this is achieved.

I am also sending this letter to Antony Townsend at the SRA.

Yours sincerely


Chris Kenny
Chief Executive

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