

To:	Board	
Date of Meeting:	30 November 2011	Item: 11(77)

Title:	Independence - IGR Compliance – November Update	
Workstream(s):	Securing independent regulation	
Introduced by:	Crispin Passmore, Strategy Director crispin.passmore@legalservicesboard.org.uk/ 020 7271 0086	
Author:	James Meyrick, Regulatory Project Manager James.meyrick@legalservicesboard.org.uk/ 020 7271 0083	
Status:	Protect	

Summary:

This year's Internal Governance Rule (IGR) exercise shifted the focus of the work from reviewing the newly established governance arrangements to insisting on practical and effective measures to embed those arrangements in systems and the conduct of personnel. To do so we required Applicable Approved Regulators (AARs) to complete a risk assessment and answer a series of AAR specific questions.

As part of this year's IGR process the Law Society and SRA were asked to submit separate draft certificates and risk matrices. Upon receipt of these submissions it became clear that there were significant differences in opinion as to how the arrangements were operating. Additionally the SRA in their responses made a number of allegations about practices that, if substantiated, would be a breach of the IGRs. Because of these issues we asked the Law Society and SRA to work together to agree new arrangements that would comply with our rules and reduce the potential of the Law Society fettering the independence of the SRA.

The two organisations have now reached an agreement (**Annex A**). The agreement, although not as "clean" as the related proposal put forward in the Hunt Review of 2009, is an improvement on existing arrangements and, if implemented properly, has the potential to deliver independent regulation and be compliant with the IGRs. Subject to the outcome of the work set out below, we would therefore expect to be able to publish an assessment in mid December saying that the Law Society/SRA are "potentially compliant" and that we expect full implementation to resolve outstanding issues.

In order to ensure that such a conclusion was soundly based, we have asked for the following items to be provided to the LSB:

- an explanation as to how the agreement will resolve the issues raised by the SRA in May
- a response to our letter of 14 October (**Annex C**)
- a copy of the final agreement, including all supporting papers and any side letters of agreement
- a response to the points made in our letter of 9 November
- a timetable, including milestones and responsibilities, for implementing the new arrangement. This should also include the timetable for the formal delegations to the business and Oversight Board and SRA
- Signed abridged copy of the regulatory independence certificate.

The responses we have seen in draft and which we are continuing to discuss with the Law Society and SRA do not raise any significant concerns in terms of organisational design, although, at the time of writing, we still await sight of a timetable and formal delegations. We

will update orally at the meeting. However, given the nature of the issues that have arisen in the past and some of the issues highlighted in our letter to the Law Society and SRA dated 9 November 2011 (**Annex B**), we also intend to undertake substantive behavioural monitoring, using a section 55 information request.

The purpose of such monitoring is to ensure momentum in the delivery of the arrangements and to check compliance with the IGRs in implementation. In practice, this would primarily be through sight and scrutiny of the BoB papers, which we think is both more reliable and more proportionate than triggering specific reports from either body.

We understand that the Law Society Council will be asked to agree to the changes in delegations at their 14 December council meeting. Therefore, subject to a satisfactory response to our questions and the final delegation of regulatory functions to the SRA at that meeting, the LSB executive recommends that the Board accepts the position of the Law Society and SRA this year on the basis set-out in para 3.

The acceptance of the Law Society and SRA's position this year will conclude this year's regulatory independence exercise – aside from the monitoring proposed by this paper. Following completion we propose to undertake a short review of the issues that have arisen during this year's exercise and appraise the processes we followed. This short review will feed into our proposals for next year's IGR exercise which will begin again next April and which we hope, in the light of the progress made this year, should be a significantly less intensive exercise.

Risks and mitigations	
Financial:	N/A.
FoIA:	Annexes exempt under s22: As we will publish a full assessment document and correspondence at the end of the exercise.
Legal:	We propose to use our information gathering powers under section 55 of the Legal Services Act 2007 (LSA) to conduct the proposed monitoring of the new arrangement between the Law Society and SRA. This may be resisted and so we may have to use our additional powers under that section and section 56. It could also lead to further enforcement activities.
Reputational:	High profile area which is one of three key LSB business priorities.
Resource:	

Consultation	Yes	No	Who / why?
Board Members:		✓	
Consumer Panel:		✓	
Others:	No		

Recommendations:

The Board is invited:

- a. to note the current position of the Law Society and SRA work resolving the issues that the 2011 IGR exercise exposed.
- b. to agree to conduct substantive monitoring of the new arrangements, including use of our information gathering powers under section 55 LSA.
- c. to delegate final acceptance of the Law Society / SRA regulatory independence certificate for 2011 to the Chairman and Chief Executive; with the presumption that if they are content with the responses received and the delegations are granted at the Law Society December Council they will approve the arrangements.

LEGAL SERVICES BOARD

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IGR 2011 – November update

List of Annexes:

Annex A: Law Society and SRA revised oversight arrangements

Annex B: Letter from LSB to Law Society and SRA dated 09 November 2011

Annex C: Letter from LSB to Law Society and SRA dated 14 October 2011