

<b>To:</b>	Legal Services Board	
<b>Date of Meeting:</b>	23 May 2013	<b>Item:</b> Paper (13) 30

<b>Title:</b>	SRA performance	
<b>Workstream(s):</b>	Developing regulatory standards	
<b>Author / Introduced by:</b>	Fran Gillon, Director of Regulatory Practice fran.gillon@legalservicesboard.org.uk / 020 7271 0087 James Meyrick, Regulatory Project Manager james.meyrick@legalservicesboard.org.uk / 020 7271 0083	
<b>Status:</b>	Unclassified	

### Summary:

At its March meeting, the Board agreed that the SRA's performance on the authorisation of alternative business structures (ABS), recognised bodies and sole practitioners should be a priority area of focus for the LSB and that the Board should receive regular updates. At its April meeting, the Board asked for a draft scope of investigation to be presented to this meeting.

Our concerns about the SRA's performance on authorisations fall into three main categories:

- The application process
- Information and transparency
- Board and senior management scrutiny

This paper, reflecting our analysis of the SRA's last submission on 15 May, sets out the proposed scope of an investigation to understand whether, in the way it has structured, implemented and monitored its application process(es), the SRA's acts or omissions, or a series of acts or omissions had, or are likely to have, an adverse impact on the regulatory objectives.

### Recommendations:

The Board is invited to:

- a) note and discuss the issues raised in this paper
- b) note the proposed production of a letter requiring the SRA to detail all its planned improvements and the timings for the implementation of those changes and the publication of this letter
- c) to comment on the draft scope of the investigation as set out in the

<p>paper</p> <p>d) to postpone making a decision on whether to formally commence any investigation until July.</p>			
<b>Risks and mitigations</b>			
<b>Financial:</b>		None	
<b>Legal:</b>		<p>We have used our information gathering powers to support this project. If we decide to embark on a detailed investigation, potentially leading to enforcement, then greater legal resource will be required. Pending the outcome of any investigation, we should assume the Law Society would be willing to challenge any decision to take formal enforcement action.</p> <p>We have sought additional legal advice on our powers in relation to enforcement and oversight. We have involved the legal team in all major activities.</p>	
<b>Reputational:</b>		<p>Our strong pursuit of this subject is impacting relationships and co-operation with the SRA – both staff and Board - and may also potentially do so with other regulators. Other stakeholders – government, Law Society and investors – to the extent that it is visible to them, regard it as necessary action.</p> <p>We may also be open to the challenge that in effect we approved the SRA's process when we recommended its designation as a licensing authority. Our view is that what was described to us during the application process was fit for purpose; its implementation has not been</p>	
<b>Resource:</b>		<p>This work remains a significant, but thus far manageable, burden on staff, especially the senior team, but this reflects the priority which the Board has given to authorisations. Stepping up the activity level further would potentially have wider impacts.</p>	
<b>Consultation</b>	<b>Yes</b>	<b>No</b>	<b>Who / why?</b>
<b>Board Members:</b>	<b>X</b>		David Edmonds, Steve Green and Bill Moyes
<b>Consumer Panel:</b>		<b>X</b>	N/A
<b>Others:</b>	None		
<b>Freedom of Information Act 2000 (Fol)</b>			
<b>Para ref</b>	<b>Fol exemption and summary</b>		<b>Expires</b>
2 (a) – (i), Annex A (a) – (h)	Section 44 - restricted information obtained by the Board in the exercise of its functions [and therefore] must not be disclosed (s167 LSA)		

**LEGAL SERVICES BOARD**

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<b>Date of Meeting:</b> 23 May 2013	<b>Item:</b> Paper (13) 30

**SRA performance**

**Background**

1. We have been monitoring the SRA's performance on authorisations for a number of months following increasing frustration and concern from a number of sectors about the way the SRA is considering applications for ABS licences. In addition to its poor performance on ABS licensing, our formal requirement for information revealed that there were also backlogs in applications for recognised body and sole practitioner authorisation. It does not appear that the SRA Board was aware of the extent of these issues and backlogs until the LSB's intervention.
2. When we met the SRA on 26 April they reported progress on clearing the backlog of cases and some potentially significant changes in their approach to authorisation. The main changes we were told about were:

a) [Redacted]

b) [Redacted];

c) [Redacted];

d) [Redacted]

e) [Redacted];

f) [Redacted]

[REDACTED]

g) [REDACTED]

h) [REDACTED];

i) [REDACTED].

3. The data provided by the SRA on 15 May 2013 showed the following findings:

- It takes an average of 7 months from the submission of a second stage application for a firm to be granted an ABS licence, 20% of applicants had to wait over 9 months for their licence and the longest took over 400 days;
  - The SRA's performance continues to peak and trough. In April only 5 licences were granted, this compares poorly to previous months where a number of months were above 25. The data for the first half of May shows a similarly reduced level of performance;
  - The SRA has reduced its work in progress from 142 applications in January 2013 to 100 in May and during this time it has closed (mainly through withdrawals) or licensed 101 applications;
  - The average work in progress file is four months old. 25% of the work in progress files are over 6 months old, 6 are over 12 months old and one is nearly 450 days old;
  - The spreadsheet does not contain any obvious errors. However, two work in progress records from April did not appear in the May spreadsheet as expected.
4. Despite the proposed changes and progress to date, it is important to ensure that the SRA does not lose momentum. It does not have a good track record of sustaining delivery, as opposed to short-term "bursts", and we have not seen evidence of its Board having previously paid much attention to the authorisation process. In addition, its Chief Executive resigned on 2 May leading to the possibility of drift and lack of strategic direction before a new CEO is appointed. We therefore consider it likely to be appropriate to move to the next step – consideration of the scope of a formal investigation and to obtain written confirmation from the SRA of its plans and timetable – to continue the work already underway.

## **Next steps**

5. The Executive consider that the immediate next step should be to seek confirmation in writing about the changes to the application process that were discussed in our visit on 26 April. This would include dates for the implementation of planned improvements. We consider that the letter (at Annex A) and the commitments made in response should be in the public domain.
6. The SRA has made significant progress in eliminating the backlog however, the processes and capacity and capability issues remain. However, we are not currently confident that we could reduce our focus on authorisation without risk of the SRA lapsing into the negative behaviours that led to the backlog building up. This is why we must consider whether to undertake a formal investigation into the past and current processes and identify areas that the SRA must improve.
7. We consider that we can wait until July to make a decision on whether to formally investigate the SRA (and to publish the scope of that investigation). This is because we will have clarity on the implementation of the improvements detailed by the SRA in our meeting and we will have some indication on the priorities of the SRA's new director of authorisation. However, we do consider that it would be appropriate for the Board to discuss the proposed scope so the LSB can begin the task of considering what information sources are available and what additional information will be required.

## **Proposed scope of investigation**

8. We want to understand whether, in the way it has structured, implemented and monitored its application process(es), the SRA's acts or omissions, or a series of acts or omissions had, or are likely to have, an adverse impact on:
  - promoting competition in the provision legal services because, amongst other things, authorisation (and therefore market entry) is or has been delayed across all forms of legal businesses
  - improving access to justice because, amongst other things, new entrants who may have innovative ways of improving access to justice have been delayed in entering the market; and
  - protecting and promoting the interests of consumers because, amongst other things, delaying all forms of entry means that consumers are

denied access to additional services which may be available at lower cost or are easier to access

9. We will examine the following issues in detail in order to try to assess the impact on the regulatory objectives and the reasonableness or otherwise of the SRA's acts or omissions:

### **The application process**

- For ABS - whether the way in which the SRA have structured and implemented its ABS application process and in particular its approach to the interpretation of the statutory timetable in paragraph 2 of Schedule 11 to the LSA is reasonable
- For ABS - whether the information required (previously and for any changed processes) by the SRA is proportionate and targeted to that required by the LSA in order to assess an application
- For ABS - whether the SRA takes appropriate steps to understand the impact of the way it had structured and implemented its approach to risk and authorisation on potential new entrants, innovation and competition
- Whether the SRA is acting sufficiently quickly to take action to reduce and clear the backlog of applications and to ensure backlogs do not arise in the future
- Whether, for recognised bodies and sole practitioners, the SRA's application process is proportionate and targeted on risks
- Whether the SRA's approach to risk is consistent between ABS, recognised bodies and sole practitioners

### **Information and transparency**

- Whether the information provided by the SRA (previously and for any changed processes) on its website is sufficiently comprehensive and easy to navigate so that potential applicants can understand (a) the application process and (b) the SRA's criteria for analysing the information provided

### **Board and senior management scrutiny**

- Whether the SRA's senior managers and Board has had sufficiently comprehensive, regular reports about the SRA's performance in the application process
- Whether the SRA should set and publish comprehensive, targeted KPIs for its application process and whether any already published KPIs are sufficiently comprehensive and targeted

- Whether the SRA should publish its performance against any KPIs it sets
- Whether the SRA is sufficiently transparent about its authorisation criteria and its decision making processes to assist applicants in drafting their applications and to enable them to appeal against SRA decisions if necessary

## **Recommendations**

10. The Board is invited to:

- note and discuss the issues raised in this paper
- note the proposed production of a letter requiring the SRA to detail all its planned improvements and the timings for the implementation of those changes and the publication of this letter
- to comment on the draft scope of the investigation as set out in the paper
- to postpone making a decision on whether to formally commence any investigation until July.

**ANNEX A**

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24 May 2013

Dear Antony,

**ABS authorisation**

This letter is to summarise some of the main points arising from the LSB's visit to the SRA on 26 April. It also seeks confirmation of the activities the SRA is planning in relation to authorisation and requests a timetable for these developments.

First, I would like to thank Samantha and the authorisation team for the meeting. We thought it was very useful and provided an insight into the improvements and changes you have already implemented and that you have planned. We note the progress made in clearing the backlog and improving the data quality in the spreadsheet provided to the LSB.

From our meeting we noted that the following changes to firm based authorisation had been implemented or were planned in the near future:

- a) [REDACTED]
- b) [REDACTED]  
[REDACTED]  
[REDACTED]
- c) [REDACTED];
- d) [REDACTED];
- e) [REDACTED]  
[REDACTED];
- f) [REDACTED];

g) [REDACTED]

h) [REDACTED].

We would be grateful if you could provide planned implementation dates for the above and for anything else you feel relevant but not noted. One additional area where we would be interested to know your thinking is the handling of additional applications from current licence holders.

In addition, you and I discussed on 20 May the need to progress the development of more effective IT-based systems of risk-based assessment and supervision to underpin the operation of the arrangements. As you know, we made clear that we expected to see developments in this area at the time of the decision to recommend LA status for the SRA and, whilst accepting that tough prioritisation decisions have been needed in the intervening period, this is an issue that we expect to see remaining high on your agenda. We would be grateful to see the latest specification and to have a general update on plans and progress with specific dates for deployment if possible.

As you know, my Board considers the area of authorisation a priority and wishes to see sustained and sustainable improvements. I intend to pass your reply on to my Board at its meeting on 10 July. So, if you would like to provide any additional information on your plans, I am sure it will be appreciated.

Yours sincerely,

**Chris Kenny**  
Chief Executive

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