

<b>To:</b>	Board
<b>Date of Meeting:</b>	10 July 2013
<b>Item:</b>	Paper (13) 44

<b>Title:</b>	Internal Governance Rules compliance: dual self-certificates 2013
<b>Workstream(s):</b>	C: Statutory decision making ( <a href="#">Business Plan 2013/14</a> )
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<b>Status:</b>	Unclassified

### Summary:

This paper provides an overview of the dual-self certificates submitted so far by the Applicable Approved Regulators (AAR) and proposes the nature of the response to each.

Overall the returns so far have not identified any issues of concern although a final view on the Bar Council and the Bar Standards Board will be deferred until after the completion of the current investigation.

At the time of preparing the report the final certificates had not been received from the Law Society nor the Chartered Institute of Patent Attorneys and the Institute of Trade Mark Attorneys. A supplementary paper will be issued if these are received before the Board meeting.

### Recommendation(s):

The Board is invited:

- (1) to note the summary of the returns submitted by BSB, CLSB, IPS, IPReg (**Annex A**; the full returns are available on request and will be available at the Board meeting)
- (2) approve the proposed approach to each AAR

### Risks and mitigations

**Financial:** N/A

**Legal:** N/A

**Reputational:** N/A

**Resource:** N/A

Consultation	Yes	No	Who / why?
<b>Board Members:</b>	√		Barbara Saunders and Andrew Whittaker: nominated non-executive directors for this workstream
<b>Consumer Panel:</b>		√	

<b>Others:</b>	None
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<b>Freedom of Information Act 2000 (Fol)</b>		
<b>Para ref</b>	<b>Fol exemption and summary</b>	<b>Expires</b>
None		

## LEGAL SERVICES BOARD

<b>To:</b>	Board		
<b>Date of Meeting:</b>	10 July 2013	<b>Item:</b>	Paper (13) 44

### Internal Governance Rules compliance: dual self-certificates 2013

#### Background / context

1. At its meeting in January 2013 the Board decided that we should again ask for the applicable approved regulators (AARs)<sup>1</sup> to complete and submit a dual-self certificate on the standard of compliance with the LSB's Internal Governance rules (IGRs)<sup>2</sup>.
2. With the exception of the Law Society (TLS)/Solicitors Regulation Authority (SRA), it was agreed that we should adopt a focused approach, reflecting the fact that this is the fourth year that this exercise has been completed and through the previous exercises and our regular interactions with the AARs we have a reasonable knowledge of their arrangements. The AARs were asked to complete a dual self-certificate covering
  - Changes to the governance arrangements since the last certificate
  - Specific independence issues that have arisen since the last certificate
  - Whether the AAR has had to use the dispute resolution procedures
  - Where applicable, an update on specific issues identified by LSB in last year's review. This section was tailored to each AAR, inviting comments on specific issues noted in our response last year
  - Any other information that they should tell us which does not fit into the other headings
  - Representative arm's comments (if any) on the regulatory arm's submission
  - "Declaration" to be completed by both the regulatory and representative arms
3. We developed a set of outcomes based on the IGRs. These describe what will have been achieved if there has been compliance with the rules. In signing the declaration, the representative and regulatory arms confirmed not only that there had been compliance with the IGRS but also that they have read the outcomes for IGRs and that those outcomes have been achieved.

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<sup>1</sup> Applicable Approved Regulator is an approved regulator that is responsible for the discharge of regulatory and representative functions in relation to legal activities in respect of persons whose primary reason to be regulated by that approved regulator is those persons' qualifications to practise a reserved legal activity that is regulated by that approved regulator (LSB Internal Governance Rules, Rule 2)

<sup>2</sup> [http://www.legalservicesboard.org.uk/Projects/pdf/internal\\_governance\\_rules%202009\\_final\\_km.pdf](http://www.legalservicesboard.org.uk/Projects/pdf/internal_governance_rules%202009_final_km.pdf)

4. A different approach was agreed for TLS/SRA. In the 2012 self certification exercise we did not require TLS/SRA to submit a certificate since they would not have been able to certify compliance at that time. Nor did we ask them to explain the non-compliance, as a range of specific monitoring was put in place. Since the last certificate was completed (November 2011) significant changes had been introduced to the TLS/SRA arrangements and it was agreed for 2013/14 that they be required to submit a certificate which covers all of the issues in the Schedule to the IGRs to give us a new baseline. Our stated intention was to gain sufficient assurance to allow us to remove the requirement for regular reporting under s55 notice.
5. The request to the AARs was issued on 15 April. Returns have been received from the Association of Costs Lawyers(ACL)/Costs Lawyer Standards Board (CLSB), the Chartered Institute of Legal Executives(CILEx)/ILEX Professional Standards Limited (IPS) and the the Bar Council/Bar Standards Board (BSB). This report sets out the Executive's conclusions from the review of those returns and proposed responses to the AARs.
6. At the time of preparing the report, complete returns have not been received from TLS/SRA and Chartered Institute of Patent Attorneys (CIPA)/Institute of Trade Mark Attorneys (ITMA)/Intellectual Property Regulation Board (IPReg). A supplementary paper will be issued if these returns are received before the Board meeting.

#### **Assessment and proposed responses**

7. Annex A contains a summary of the completed returns from all AARs. The full responses are available on request and will be available at the Board meeting.

#### ***Chartered Institute of Legal Executives(CILEx)/ ILEX Professional Standards Limited(IPS)***

8. The certificate has not identified any changes to the governance and delegation arrangements nor have any issues been reported.
9. *Proposed response to CILEx/IPS:*
  - that the certificate has been accepted and that there are no issues to raise at this time
  - the governance arrangements may be looked at in more detail as part of the assessment of the current designation application

#### ***The Bar Council (BC)/Bar Standards Board(BSB)***

10. There have been no changes to the governance arrangements or the delegations. It is noted that changes to the Bar Council constitution will be necessary to allow for the authorisation of entities

11. The BSB asserts that it is able to exercise its functions independently. It specifically comments on the Standard Contractual Terms rules change application (which is currently the subject of an LSB investigation) asserting that the proposed changes were considered independently by the BSB (while recognising that this work was initiated by the BC).
12. 4 specific points were raised in respect of previous certificates
  - The separation of the Bar Council Audit and Finance Committees appears to have had the effect of allowing the BSB to have independent control of its resources and resourcing decisions though it is noted that given the limited number of meetings it not yet possible to confirm that this is fully effective
  - BSB has not been constrained by its budget “envelope”; additional funds have been sought and granted for unbudgeted activities
  - BSB has not had to assure itself that it has sufficient resources before returning any under-spend to the BC since no under-spend has arisen
  - The review of service level agreements has not yet commenced due to the lack of suitably experienced resource (in place from July 2013)
13. Both the BSB and the BC comment on periodic differences that arise between the two organisations. While discussions are described as constructive and the two do not always agree, there is a deliberate policy not to air such disagreements in public. We have received assurance from the BSB that there are adequate records of the areas of disagreement which would demonstrate how matters were resolved, thus evidencing that the BSB can and does act independently.
14. At the beginning of June the LSB commenced its investigation into the involvement of the BC in the BSB application for approval to changes to the Code of Conduct in relation to the Cab Rank Rule and the standard contractual terms. That investigation is specifically concerned with whether there has been a breach of the IGRs. The formal investigation commenced after the deadline for submitting the dual self-certificate and so no modifications were made to certification process. However, we have concluded that no final view should be formed on the certificate until that investigation is complete.
15. *Proposed response to the BC/BSB*
  - That we note the assertions as to independence made by both the BC and the BSB. However, we have decided to defer forming any final view until we have concluded the ongoing investigation on the role of the BC in the Standard Contract Terms rules change application
  - In respect of the issues previously raised, confirm that the only item on which we still require reporting is the review of the service level agreements

### ***Association of Costs Lawyers (ACL)/Cost Lawyers Standards Board (CLSB)***

16. This is the second certificate completed following the establishment of CLSB with its full powers from 1 October 2011.
17. The Certificate displays a historical tension between the ACL and CLSB which has, in CLSB's view, impacted on its ability to deliver independent regulation. CLSB have sought out ways to work round this and have twice sought intervention from the LSB (under the dispute resolution arrangements).
18. One specific issue was raised relating to the need to stagger the terms of appointments of CLSB Board members. This has been addressed with all appointments/re-appointments now having different end dates to achieve an appropriate balance between continuity and board member turnover
19. Both CLSB and ACL in the certificates recognise previous tensions and the aim to work together more collaboratively in the future.
20. *Proposed response to ACL/CLSB*
  - a. That the certificate is accepted; that we note that there have been tensions in the past and that both the ACL and the CLSB are committed to improving communications going forward
  - b. We note the steps that CLSB has taken in the past to deal with what are seen as "blockages" by the professional arm to allow it to deliver its regulatory responsibilities. These appear to be appropriate actions. While improved communications in the future may mean that this is less likely to occur, we would encourage CLSB to be transparent as to the steps it has taken or is planning to take.

### **Other matters**

#### *Legal Services Consumer Panel report on financial protection*

27. The recent Legal Services Consumer Panel Report, Financial Protection Arrangements, makes reference to the role of LSB and its IGRs in relation to Compensation Funds. In Section 5 of the Report, Adequacy of arrangements, what would success look like, it states  
  
"[Financial Protection] schemes should be operated independently of the profession. As a regulatory arrangement, financial protection regimes should be administered in a way consistent with the LSB's Internal Governance Rules framework. Underpinning this is the principle that the structures or persons with representative functions must not exert or be permitted to exert, undue influence or control over the performance or regulatory functions. This is important given, for example, the decisions over the size of the levy which funds the scheme as well as exercise of discretion on individual claims to Compensation Funds. (This

aspect has not been reviewed since compliance is assessed by the LSB in its IGRs audit process)”

28. It should be noted that the dual self-certification approach that the LSB has adopted to gain assurance on compliance with the IGRs should not necessarily be considered an “audit”. While the certificates are considered in the light of other information known to us, there is very limited validation.
29. The assurance process around IGRs to date has focused on the organisational structures rather than consideration of specific regulatory arrangements. As part of the response to the LSCP Report we will consider whether as part of the next round of IGR compliance assurance we should specifically look at the governance arrangements of compensation funds.

#### *Review of IGR process*

30. When we completed the self-certification process in 2012 we indicated to the AARs that we intended to consider whether the assurance process for compliance with the IGRs should be developed to cover whether the AARs were culturally independent (rather than focus on the structural arrangements). It has not been possible to take this work forward as yet due to resource constraints. thought it remains in the Business Plan 2013/14<sup>3</sup>.

#### **Recommendations and ‘next steps’**

31. The Board is invited to:
  - (1) note the summary of the returns submitted by BSB, CLSB, IPS (Annex A; the full returns are available on request and will be available at the Board meeting)
  - (2) approve the proposed approach to each AAR
  - (3) consider prioritisation of the work noted in paragraph 30
32. Letters to the AARs to be issued by 31 July 2013.

01.07.2013

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<sup>3</sup> Business Plan 2013.14, paragraph 86