

To:	Legal Services Board	
Date of Meeting:	30 January 2013	Item: Paper (13) 04

Title:	Internal Governance Rules: approach to self-certification in 2013
Workstream(s):	Statutory Decisions
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Status:	Unclassified

Summary:
This paper sets out the proposed approach for 2013/14 to dual self-certification with the Internal Governance Rules by the Applicable Approved Regulators.

Recommendation(s):
The Board is invited to approve the proposed approach and timetable.

Risks and mitigations
Financial: N/A.
Legal: N/A
Reputational: N/A
Resource: N/A

Consultation	Yes	No	Who / why?
Board Members:	√		Barbara Saunders and Nicole Smith
Consumer Panel:	√		Steve Brooker
Others:	None		

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
None	N/A	N/A

LEGAL SERVICES BOARD

To:	Legal Services Board		
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Internal Governance Rules: approach to self-certification in 2013

Background

1. In July 2012 the Board considered and approved the dual self-certificates on compliance with the Internal Governance Rules (IGRs) from most of the Applicable Approved Regulators (AAR)¹. At that time we indicated that we intended to explore ways in which the process by which we gain assurance on compliance with the IGRs could be developed.
2. We recognised that our assurance on independence thus far has been focused around the institutional arrangements that the AARs have in place. This had been a deliberate and appropriate approach considering that the AARs need some time to put in place arrangements that are fully aligned with the governance objectives of the Legal Services Act 2007. However, we have always recognised that the concept of independence is much broader, extending beyond organisation structures to how the AARs operate in practice, e.g. organisation culture and leadership, and that assessment of these factors is much less straightforward than structures.
3. Such a change in approach requires careful consideration and consultation. We did explore adding this to the work programme for 2012/13 but resource constraints have meant that this work will be factored into the preparation of the final business plan for 2013/14. In the draft business plan for 2013/14 (which was considered by the Board in November) we have indicated that we will be reviewing our processes and considering whether to issue a discussion document during 2013/14. This work is expected to commence in April 2013 with a view to any revised process being implemented in 2014/15.
4. Our Rules require that an AAR certify compliance with the IGRs in the form and manner prescribed by the LSB from time to time. Given the importance we place on independence (and pending completion of the wider review), the Executive proposes that we seek certification in the form adopted last year in 2013/14, rather than make any interim change which may only be in place for one year. This paper sets out the proposed approach and timetable.

¹ An "Applicable Approved Regulator" is defined in the LSB's IGRs as "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 at persons' qualifications to practise a reserved legal activity that is regulated by that Approved Regulator".

Proposed approach for 2013

5. For the majority of AARs we propose a relatively short certificate; the exception to this is the Law Society (TLS)/Solicitors Regulation Authority (SRA).

The Law Society/Solicitors Regulation Authority

6. The Board will recall that TLS/SRA were not required to provide a certificate in 2012/13 on the basis that they would not be in a position to certify compliance. At that time we were receiving regular information from them (as set out in a s55 notice) and this continues. A new s55 notice issued on 28 September 2012 reduced the amount of information that they are required to submit to the papers sent to and minutes of meetings of the Business and Oversight Board.
7. Given the significant changes that have been implemented since the last certificate completed by TLS/SRA (November 2011), we propose 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. It is anticipated that this could remove the requirement for regular reporting under s55 notice; this anticipated outcome will be made clear in our communications with the SRA.
8. The certificate which the SRA will be asked to complete is contained in Annex A.

Other AARs

9. For the remaining AARs, we propose a targeted exercise of dual self- certification in the form set out in Annex B. This “light touch” approach reflects 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.
10. We consider that the “dual self-certification” approach is a valuable mechanism as it requires both the regulatory and representative arms to actively consider and confirm compliance (or explain why not).
11. We have considered whether we should require self-certificates this year. With the exception of CILEx/ILEX Professional Services Limited, in all of the assessments last year issues for future consideration were noted. This, coupled with our view that the proposed approach is not unduly burdensome for the AARs, has led us to conclude that we should seek assurance again this year. In reaching this conclusion we are not making any assumption about the form or frequency of future requests for assurance.
12. The regulatory arm of the AAR will complete the certificate and the representative arm will have the opportunity to include their own comments. The certificate will be signed by both.
13. The proposed certificate covers the following:

- 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
- Update on specific issues identified by LSB in last year's review (if applicable). This section will be tailored to each AAR, inviting comments on specific issues noted in our response last year
- A section for 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.

14. We have developed a set of outcomes for IGRs (Annex 1 of the Certificate) based on the IGR rules. These describe what will have been achieved if there has been compliance with the rules. In signing the declaration the representative and regulatory arms will be confirming that they have read the outcomes for IGRs and that those outcomes are being achieved.

Timetable

15. The following timetable is proposed:

Action	Date
Chief Executive letter to AARs outlining the approach and timetable	Mid March
Certificates for completion issued to AARs <ul style="list-style-type: none"> • The Law Society/Solicitors Regulation Authority • Other AARs 	Mid March Mid April
Completed certificates to be returned	31 May 2013
LSB assess certificates and raise any queries with AARs	June 2013
Report to the LSB Board	10 July 2013
Publish Returns	By 31 July 2013

Recommendations

16. The Board is invited to approve the proposed approach and timetable for the 2013 dual self certificates on compliance with the IGRs.

16.01.2013

Full certificate to be completed by the Law Society/Solicitors Regulation Authority

Regulatory Independence Certification

On behalf of [*insert name of AAR*], an approved regulator designated under section 20 and Schedule 4 of the Legal Services Act 2007, we jointly certify that we have in place arrangements that comply with the requirements of the Internal Governance Rules 2009 and that in particular:

- (1) observe and respect the principle that structures or persons with representative functions must not exert, or be permitted to exert, undue influence or control over the performance of regulatory functions, or any person(s) discharging those functions;
- (2) ensure that persons involved in the exercise of our regulatory functions are, in that capacity, able to make representations to, be consulted by and enter into communications with any person(s) including but not limited to the Legal Services Board, the Consumer Panel, the OLC and other Approved Regulators;
- (3) ensure that the exercise of our regulatory functions is not prejudiced by our representative functions or interests;
- (4) ensure that the exercise of our regulatory functions is, so far as reasonably practicable, independent of our representative functions;
- (5) ensure that such steps are taken as are reasonably practicable to ensure the provision of such resources as are reasonably required for or in connection with the exercise of our regulatory functions; and
- (6) ensure that persons involved in the exercise of our regulatory functions are able to notify the Legal Services Board where they consider that their independence or effectiveness is being prejudiced.

Signed:

Applicable Approved Regulator

_____ and _____

[*President/equivalent*]

[*Chief Executive/equivalent*]

Regulatory board

_____ and _____

[*President/equivalent*]

[*Chief Executive/equivalent*]

Principle 1: Governance

Internal Governance Rule	Relevant arrangements in place	Summary of those arrangements	Summary of practical issues that have arisen over [past year] in respect of these issues
<p>A. Each AAR must delegate responsibility for performing all regulatory functions to a body or bodies without any representative functions.</p>	<p>[AAR to cite relevant arrangements, such arrangements to be annexed in full to the certificate]</p>	<p>[AAR to summarise the meaning and effect of those arrangements]</p>	<p>[AAR to summarise any significant issues with the working of the arrangements and explain the extent to which they comply with the rule's requirements]</p>
<p>B. The regulatory body or, if more than one, each of the regulatory bodies, must be governed by a board or equivalent structure</p>	<p>[AAR to cite relevant arrangements, such arrangements to be annexed in full to the certificate]</p>	<p>[AAR to summarise the meaning and effect of those arrangements]</p>	<p>[AAR to summarise any significant issues with the working of the arrangements and explain the extent to which they comply with the rule's requirements]</p>
<p>C. In appointing persons to regulatory boards, AARs must ensure that:</p> <ul style="list-style-type: none"> • a majority of members of the regulatory board are lay persons; and • the selection and appointment of a chair is not restricted by virtue of any legal qualification that person may or may not hold, or have held. 	<p>[AAR to cite relevant arrangements, such arrangements to be annexed in full to the certificate]</p>	<p>[AAR to summarise the meaning and effect of those arrangements]</p>	<p>[AAR to summarise any significant issues with the working of the arrangements and explain the extent to which they comply with the rule's requirements]</p>

LSB Guidance	Extent to which guidance has been followed, with any reasons for departing from guidance explained
<p>An AAR should take all reasonable steps to agree arrangements made under these Rules with the regulatory body or, as the case may be, the regulatory bodies.</p>	<p>[AAR to summarise the extent to which guidance has been followed]</p>
<p>If an AAR wishes otherwise than through its regulatory body/bodies to offer guidance to its members or more widely on regulatory matters, it should:</p> <ul style="list-style-type: none"> • ensure that it does not contradict or add material new requirements to any rules or guidance made by the regulatory body/bodies; and • consult with the regulatory body/bodies when developing that guidance 	<p>[AAR to summarise the extent to which guidance has been followed]</p>

The Principle	Explanation of any other arrangements in place that bare on the principle and in particular how those arrangements comply with the principle
Nothing in an Applicable Approved Regulator's (AAR's) arrangements should impair the independence or effectiveness of the performance of its regulatory functions	<i>[For AAR to complete]</i>

Principle 2: Appointments etc

Internal Governance Rule	Relevant arrangements in place	Summary of those arrangements	Summary of practical issues that have arisen over [past year] in respect of these issues
<p>A. All appointments to a regulatory board must be made on the basis of selection on merit following open and fair competition, with no element of election or nomination by any particular sector or interest groups.</p>	<p>[AAR to cite relevant arrangements, such arrangements to be annexed in full to the certificate]</p>	<p>[AAR to summarise the meaning and effect of those arrangements]</p>	<p>[AAR to summarise any significant issues with the working of the arrangements and explain the extent to which they comply with the rule's requirements]</p>
<p>B. The selection of persons so appointed must itself respect the principle of regulatory independence and the principles relating to “appointments etc” set out in the Schedule.</p>	<p>[AAR to cite relevant arrangements, such arrangements to be annexed in full to the certificate]</p>	<p>[AAR to summarise the meaning and effect of those arrangements]</p>	<p>[AAR to summarise any significant issues with the working of the arrangements and explain the extent to which they comply with the rule's requirements]</p>
<p>C. Decisions in respect of the remuneration, appraisal, reappointment and discipline of persons appointed to regulatory boards must respect the principle of regulatory independence and the principles relating to</p>	<p>[AAR to cite relevant arrangements, such arrangements to be annexed in full to the certificate]</p>	<p>[AAR to summarise the meaning and effect of those arrangements]</p>	<p>[AAR to summarise any significant issues with the working of the arrangements and explain the extent to which they comply with the rule's requirements]</p>

“appointments etc” set out in the Schedule.			
D. Except insofar as an AAR would be, or would reasonably be considered likely to be, exposed to any material legal liability (other than to pay wages, salaries etc) as a consequence of the delay required to obtain the concurrence of the Board, no person appointed to a regulatory board must be dismissed except with the concurrence of the Board.	<i>[AAR to cite relevant arrangements, such arrangements to be annexed in full to the certificate]</i>	<i>[AAR to summarise the meaning and effect of those arrangements]</i>	<i>[AAR to summarise any significant issues with the working of the arrangements and explain the extent to which they comply with the rule’s requirements]</i>
E. No person appointed to and serving on a regulatory board must also be responsible for any representative function(s).	<i>[AAR to cite relevant arrangements, such arrangements to be annexed in full to the certificate]</i>	<i>[AAR to summarise the meaning and effect of those arrangements]</i>	<i>[AAR to summarise any significant issues with the working of the arrangements and explain the extent to which they comply with the rule’s requirements]</i>

LSB Guidance	Extent to which guidance has been followed, with any reasons for departing from guidance explained
If regulatory boards do not lead on managing the appointments process, it should have a very strong involvement at	<i>[AAR to summarise the extent to which guidance has been followed]</i>

all stages.	
Best practice for public appointments should be taken into account. In particular, account should be taken of the Code of the Commissioner of Public Appointments insofar as relevant.	<i>[AAR to summarise the extent to which guidance has been followed]</i>
Appointment panels or equivalent should be established following the guidance set out in the Board's letter of 2 December 2008 ² .	<i>[AAR to summarise the extent to which guidance has been followed]</i>
The chair of the regulatory board (or an alternate) should always form part of that panel, unless the panel is established to select the chair (in which case another member of the regulatory board should participate).	<i>[AAR to summarise the extent to which guidance has been followed]</i>
The appointments process should be conducted with regard to the desirability of securing a diverse board with a broad range of skills. The framework applied at Schedule 1 paragraph 3 of the Act serves as a useful template.	<i>[AAR to summarise the extent to which guidance has been followed]</i>
<ul style="list-style-type: none"> • Remuneration – decisions in respect of regulatory board pay and conditions 	<i>[AAR to summarise the extent to which guidance has been followed]</i>

² See: <http://www.justice.gov.uk/news/docs/legal-services-board-open-letter-021208.pdf>

<p>should be made having regard to best practice and in any event should not be controlled wholly or mainly by persons responsible for representative functions;</p> <ul style="list-style-type: none"> • Appraisals – while persons with representative functions may be consulted about regulatory board members’ appraisal, they should not be involved formally in agreeing the outcome, or future objectives; • Reappointments – decisions should be guided by objective appraisals and the desirability of ensuring a balance between regular turnover <u>and</u> continuity. 	
<p>While the LSB accepts that there may be <u>exceptional</u> reasons which justify immediate dismissal without concurrence having first been obtained, it would expect a full explanation if such circumstances were ever to arise. An AAR should accordingly be prepared to justify why it could not comply with the relevant Rule.</p>	<p><i>[AAR to summarise the extent to which guidance has been followed]</i></p>
<p>Where an AAR proposes to discipline one</p>	<p><i>[AAR to summarise the extent to which guidance has been followed]</i></p>

<p>or more member(s) of a regulatory board, where such discipline is short of dismissal, the Board should be consulted privately in advance of the action being taken, and the AAR should consider any representations the Board may chose to make.</p>	
<p>Where possible, a person appointed should not have been responsible for any representative functions immediately prior to appointment.</p> <p>The longer the gap between holding responsibility for representative functions and taking up regulatory functions, the more likely it is that the principle of regulatory independence will be observed.</p>	<p><i>[AAR to summarise the extent to which guidance has been followed]</i></p>
<p>Codes of conduct or equivalent for board members should highlight the importance of observing and respecting the regulatory objectives and the principles of better regulation, rather than operating to represent any one or more sectoral interests.</p> <p>Codes should also highlight the importance of respecting the principle of regulatory independence, as underlined by the provisions of sections 29 and 30 of the Act.</p>	<p><i>[AAR to summarise the extent to which guidance has been followed]</i></p>

The Principle	Explanation of any other arrangements in place that bare on the principle and in particular how those arrangements comply with the principle
<p>(1) Processes in place for regulatory board members' appointments, reappointments, appraisals and discipline must be demonstrably free of undue influence from persons with representative functions.</p> <p>(2) All persons appointed to regulatory boards must respect the duty to comply with the requirements of the Legal Services Act 2007.</p>	<p><i>[For AAR to complete]</i></p>

Principle 3: Strategy and Resources etc

Internal Governance Rule	Relevant arrangements in place	Summary of those arrangements	Summary of practical issues that have arisen over [past year] in respect of these issues
<p>A. Defining and implementing a strategy should include:</p> <ul style="list-style-type: none"> • access to the financial and other resources reasonably required to meet the strategy it has adopted; • effective control over the management of those resources; and • the freedom to govern all internal processes and procedures. 	<p><i>[AAR to cite relevant arrangements, such arrangements to be annexed in full to the certificate]</i></p>	<p><i>[AAR to summarise the meaning and effect of those arrangements]</i></p>	<p><i>[AAR to summarise any significant issues with the working of the arrangements and explain the extent to which they comply with the rule's requirements]</i></p>
<p>B. The regulatory body (or each of the regulatory bodies) must have the power to do anything within its allocated budget calculated to facilitate, or incidental or conducive to, the carrying out of its functions.</p>	<p><i>[AAR to cite relevant arrangements, such arrangements to be annexed in full to the certificate]</i></p>	<p><i>[AAR to summarise the meaning and effect of those arrangements]</i></p>	<p><i>[AAR to summarise any significant issues with the working of the arrangements and explain the extent to which they comply with the rule's requirements]</i></p>

<p>C. Insofar as provision of resources is concerned, arrangements must provide for transparent and fair budget approval mechanisms.</p>	<p><i>[AAR to cite relevant arrangements, such arrangements to be annexed in full to the certificate]</i></p>	<p><i>[AAR to summarise the meaning and effect of those arrangements]</i></p>	<p><i>[AAR to summarise any significant issues with the working of the arrangements and explain the extent to which they comply with the rule's requirements]</i></p>
<p>D. Insofar as provision of any non-financial resources is concerned (for example, services from a common corporate service provider, or staff), arrangements must provide for transparent and fair dispute resolution mechanisms.</p>	<p><i>[AAR to cite relevant arrangements, such arrangements to be annexed in full to the certificate]</i></p>	<p><i>[AAR to summarise the meaning and effect of those arrangements]</i></p>	<p><i>[AAR to summarise any significant issues with the working of the arrangements and explain the extent to which they comply with the rule's requirements]</i></p>

<p>LSB Guidance</p>	<p>Extent to which guidance has been followed, with any reasons for departing from guidance explained</p>
<p>The Act requires separation of regulatory and representative functions. Absent of corporate management structures that are robustly and demonstrably separated from the control of persons with representative functions, these Rules are likely to require a high degree of delegation to regulatory bodies in respect of the control of strategy and resourcing.</p>	<p><i>[AAR to summarise the extent to which guidance has been followed]</i></p>

<p>What is or is not a regulatory function is determined in accordance with the Act. Subject to the Act, whether something is 'regulatory' should be for each regulatory body to determine, in close consultation with respective AARs.</p>	<p><i>[AAR to summarise the extent to which guidance has been followed]</i></p>
<p>Where members of staff are employed by an AAR to discharge regulatory functions under the delegated remit of a regulatory body, the position of the AAR as legal employer should be recognised in the arrangements made under these rules. However, in complying with these Rules, those arrangements should make clear how decisions with respect to the management and control of such members of staff are to be exercised. The presumption under such arrangements should be – subject only to being exposed to unreasonable liability (such as in creating a pension scheme) – that an AAR should always agree a reasonable request from its regulatory body. While an AAR has a right of veto, therefore, it also carries a responsibility to justify that decision in light of the principle of regulatory independence.</p>	<p><i>[AAR to summarise the extent to which guidance has been followed]</i></p>

<p>The Board may from time to time issue further illustrative guidance on these issues under Rule 11 of these Rules.</p>	
<p>Each regulatory body should act reasonably when defining and implementing its strategy, and should in particular have regard to the provisions of Section 28 of the Act. It should also have due regard to the position of the AAR and in particular to any responsibilities or liabilities it may have as AAR.</p>	<p><i>[AAR to summarise the extent to which guidance has been followed]</i></p>
<p>Each regulatory body should act reasonably when exercising its functions in accordance with this Rule, and should in particular have regard to the provisions of Section 28 of the Act. It should also have due regard to the position of the AAR and in particular to any responsibilities or liabilities it may have as AAR.</p>	<p><i>[AAR to summarise the extent to which guidance has been followed]</i></p>
<p>The process established by the AAR should provide appropriate checks and balances between it and the regulatory body (or bodies) so as to ensure value for money and observe the wider requirements of the Act, without impairing the independence or effectiveness of the</p>	<p><i>[AAR to summarise the extent to which guidance has been followed]</i></p>

regulatory body (or bodies).	
<p>Subject only to the formal budgetary approval process and the operation of its dispute resolution mechanism(s) , an AAR’s arrangements should not prevent those performing regulatory functions, where they believe their independence and/or effectiveness is compromised or prejudiced, from obtaining required services otherwise than through the AAR.</p>	<p><i>[AAR to summarise the extent to which guidance has been followed]</i></p>
<p>AARs and regulatory bodies should be particularly careful to ensure that, in respect of public and/or consumer-facing services (including media relations and marketing-type activities), the principle of regulatory independence should be seen to be met, as well as being met.</p>	<p><i>[AAR to summarise the extent to which guidance has been followed]</i></p>
<p>When considering whether arrangements meet the required standards, the Board will consider factors such as:</p> <ul style="list-style-type: none"> • evidence that the provision of services to the regulatory body (or bodies) is not subordinate to the provision of services to any other part of the AAR; • provision being made for service level 	<p><i>[AAR to summarise the extent to which guidance has been followed]</i></p>

<p>agreements agreed between respective parties; and</p> <ul style="list-style-type: none"> • transparent, fair and effective dispute resolution mechanisms being in place. 	
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The Principle	Explanation of any other arrangements in place that bare on the principle and in particular how those arrangements comply with the principle
<p>Subject only to the oversight permitted under Part 4 of this Schedule, persons performing regulatory functions must have the freedom to define a strategy for the performance of those functions and work to implement that strategy independently of representative control or undue influence.</p>	<p><i>[For AAR to complete]</i></p>

Principle 4: Oversight etc

Internal Governance Rule	Relevant arrangements in place	Summary of those arrangements	Summary of practical issues that have arisen over [past year] in respect of these issues
<p>A. Arrangements in place must be transparent and proportionate.</p>	<p>[AAR to cite relevant arrangements, such arrangements to be annexed in full to the certificate]</p>	<p>[AAR to summarise the meaning and effect of those arrangements]</p>	<p>[AAR to summarise any significant issues with the working of the arrangements and explain the extent to which they comply with the rule's requirements]</p>
<p>B. Arrangements in place must prohibit intervention, or the making of directions, in respect of the management or performance of regulatory functions unless with the concurrence of the Board.</p>	<p>[AAR to cite relevant arrangements, such arrangements to be annexed in full to the certificate]</p>	<p>[AAR to summarise the meaning and effect of those arrangements]</p>	<p>[AAR to summarise any significant issues with the working of the arrangements and explain the extent to which they comply with the rule's requirements]</p>

LSB Guidance	Extent to which guidance has been followed, with any reasons for departing from guidance explained
<p>In making its arrangements, an AAR should balance its ultimate responsibility for the discharge of regulatory functions with its responsibilities to ensure separation of regulatory and representative functions.</p>	<p>[AAR to summarise the extent to which guidance has been followed]</p>

<p>In considering proportionality, AARs should consider the risk of Board intervention. Note the Board’s policy statement on compliance and enforcement powers, and in particular the Board’s intention to use its most interventionist powers only when other measures (including informal measures) have failed.</p>	<p>[AAR to summarise the extent to which guidance has been followed]</p>
<p>In determining whether to give concurrence, the Board will consider the extent to which the process leading to the proposed intervention or directions complies with the principle of regulatory independence.</p>	<p>[AAR to summarise the extent to which guidance has been followed]</p>

The Principle	Explanation of any other arrangements in place that bare on the principle and in particular how those arrangements comply with the principle
<p>Oversight and monitoring by the AAR (which is ultimately responsible and accountable for the discharge of its regulatory functions) of persons performing its regulatory functions must not impair the independence or effectiveness of the performance of those functions.</p>	<p>[For AAR to complete]</p>

General Evaluation

The Approved Regulator

[Opportunity for AR to give overall commentary on operation of arrangements during the past year]

The Regulatory Body

[Opportunity for AR to give overall commentary on operation of arrangements during the past year]

Annual dual certificate of compliance with the Legal Services Board’s internal governance rules.

[AAR – regulatory and representative arms]

[Regulatory arm] should complete the certificate. A section is included for [representative arm] to note any comments it wishes to make on [regulatory arm’s] submission.

The certificate should be signed by both [regulatory arm] and [representative arm]

Please describe any changes to the governance arrangements since your last submission. This should include, but is not limited to, any changes to the delegated functions from the representative to regulatory arms of the [add AAR name] and any changes to the Board/Council

Have there been any specific issues that have arisen since the last return that have resulted in the regulatory arm not being able (or been at risk of not being able) to exercise its functions independently of representative influence. If so, please describe the event and the actions taken.

Have there been any instances where the dispute resolution arrangements have had to be used. If yes, please describe the event and the outcome

The following issues were noted in the LSB review of the self certificate for 2012. Could you please provide an update on each point.

The Bar Council/Bar Standards Board (from CK letter 24 July 2012)

- Please describe how the BSB assured itself that the creation of separate Bar Council Finance and Audit Committees has resulted in independent control of resources and resourcing decisions
- Have there been any instances where the BSB’ ability to operate as a regulator has been adversely affected by the constraints of the “budget envelope”? Has the BSB been able to address all [major] issues that arose during the year that were not anticipated at the time the budget was set
- If applicable, how did the BSB assure itself that it had all the necessary resources needed for regulatory purposes before returning any underspend to the Bar Council
- What is the current position on the review of service level agreements?

Association of Cost Lawyers/Cost Lawyers Standards Board (from CK letter 18 July 2012)

- The composition of the CLSB Board was to be discussed at its meeting in October 2012. Please summarise the results of its deliberations; please comment particularly on any decision taken on the phasing of the terms of appointment

Chartered Institute of Patent Attorneys/Institute of Trade Mark Attorneys/Intellectual Property Regulation Board (CK letter 18 July 2012)

- Have any joint committees (i.e. made up of members representing both the regulatory and representatives arms) been established since the last IGR return? If so, how have you assured yourself that they not made any decisions a way which has an adverse impact on IGR compliance?

There were no specific issues for CILEx/IPS

Are there any other matters concerning the independence of the regulatory functions (including anticipated future events) that you should bring to our attention.

The [representative arm] is invited to use this section to include any comments on the regulatory's arm submission

Declaration

We have read Annex 1 and in signing this declaration confirm that each of the outcomes described have been achieved.

We certify that we are satisfied that the above reflects a true and accurate representation of the effectiveness of arrangements to ensure independent regulation and that we comply with the requirements of the Internal Governance Rules 2009

Signature _____ Signature _____

Position _____ Position _____

[Regulatory Arm]

[Representative Arm]

Date _____ Date _____

Outcomes for Internal Governance Rules

The principle of independence between the representative and regulatory arms of legal services approved regulators is a critical element of the legal services regulatory framework. This has been embraced by all of the approved regulators who have in place arrangements to deliver this separation.

The Legal Services Board's Internal Governance Rules set out specific requirements on approved regulators. Compliance with these requirements will deliver the following outcomes.

Part 1: Governance - *nothing in an Applicable Approved Regulator's arrangements impairs the independence or effectiveness of the performance of its regulatory functions*

Outcomes

- Regulatory functions are delegated to a body/bodies which have no representative function
- The body/bodies responsible for regulatory functions are governed by a Board or similar with independent decision making powers
- The regulatory board (or similar) has a lay majority at all times

Part 2: Appointments – *processes are in place for regulatory board members appointments, reappointments, appraisals and discipline which are free of undue influence from persons with representative functions. All persons appointed to the regulatory boards must respect the duty to comply with the Legal Services Act 2007*

Outcomes

- All appointments are made on the basis of merit following an open and fair competition, with the strong input from the regulatory board
- All appointment panels are established in accordance with the LSB's Guidance (LSB letter 2 December 2008)
- Decisions on remuneration, appraisal, reappointment and discipline of regulatory board members are made by the regulatory board without inappropriate influence or input from the representative functions
- No person has been dismissed from the regulatory board without the concurrence of the Legal Services Board
- No person appointed to the regulatory board has at the same time or immediately prior to the appointment had responsibility for any representative function(s)

Part 3: Strategy and resources - *subject only to the permitted oversight [see below], persons performing regulatory functions must have freedom to define a strategy for the performance of those functions and work to implement that strategy independently of representative control*

Outcomes

- The regulatory board has had access to the financial and other resources reasonably required to deliver the adopted strategy
- The regulatory board has had effective control over the management of the resources, including the power to do anything necessary, incidental or conducive to the delivery of its regulatory functions
- The regulatory board has had the freedom to govern and control all internal processes and procedures
- The budget approval mechanism is transparent and fair
- There is a transparent and fair mechanism for resolving disputes between the representative and regulatory bodies

Part 4: Oversight - *oversight and monitoring by the AAR (which is ultimately responsible and accountable for the discharge of its regulatory functions) of persons performing its regulatory functions must not impair the independence or effectiveness of the performance of those functions*

Outcomes

- There are transparent and proportionate arrangements in place for oversight of the regulatory board by the representative arm
- The arrangements do not allow the representative arm to intervene in the management and performance of the regulatory body without the concurrence of the Legal Services Board