

Response of the CLLS Professional Rules and Regulation Committee to the LSB's Consultation on an amendment to the Internal Governance Rules to require that the Chairs of the Boards of the regulatory arms of each applicable approved regulator (AAR) be a lay person

Introduction

1. The City of London Law Society (CLLS) represents approximately 15,000 City lawyers through individual and corporate memberships including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments and high net wealth individuals, often in relation to complex, multi-jurisdictional legal issues.
2. The CLLS responds to a variety of consultations of importance to its members through its specialist committees. This response to your October 2013 consultation paper on the above has been prepared by the CLLS Professional Rules and Regulation Committee (see list of members attached).

Background

In this response, given the members which we represent, we have addressed the position primarily as it relates to the Solicitors Regulation Authority.

Response to Q1: Do you agree with the proposed change to the Internal Governance Rules in order to deliver lay chairs.

3. We note that this consultation was flagged in the LSB's response to the MoJ's recent Call for Evidence – and springs from the LSB's view that the existing regulatory regime is in need of reform. We don't disagree with that. However, we see little merit in a rule change which necessarily narrows the field of candidates for the role of Chair of these bodies, where no evidence is given to show that the presence of a non-lay Chair has meaningfully impeded the independence of the regulator.
4. Any move to exclude lawyers should be evidence-based and no meaningful evidence is tabled. The consultation simply alludes to its experience over the last four years in dealings with the AARs as the basis for its proposal for lay

chairs and gives no concrete examples of the alleged bias it's proposed to address. Reference to an unfinished investigation into an interaction between the Bar Council and the Bar Standards Board is insufficiently persuasive, in our view, to support the proposal.

5. As the LSB acknowledges, three of the relevant regulators have lay chairs – even where, as now, it is permissible to have a lay or non-lay chair. One would hope that this evidences a decision to appoint the right candidate, regardless of their professional qualification. Moreover, we would have thought that a comparison between the relative performance of the approved regulators which currently have lay chairs with that of the regulators which do not should have yielded some evidence in support of the LSB's proposal, if the former were in any meaningful way proving more effective than the latter in supporting the regulatory objectives. The absence of such a comparison suggests either that the evidence does not support the LSB's proposition or that, at best, it is inconclusive.
6. Further, we think that the LSB exaggerates the power that the Chair exerts and the role he or she performs. It speaks of the profession's voice in the regulator being "uniquely determinative" where the Chair is not a lay person, but gives no evidence to support this.
7. It strikes us as perverse to rule out of contention those with practical experience of the legal sector – particularly where the Boards of all of the relevant regulators already have a lay majority.
8. No comparable bodies in other professional fields (save for the General Optical Council) are required to have a lay chair. That hasn't prevented the appointment of lay chairs by, for example, the General Dental Council, the General Osteopathic Council and the General Pharmaceutical Council.
9. While it is the LSB's view, expressed in its response to the MoJ's Call for Evidence, that "full independence of regulators from the professions" is a necessary pre-requisite to risk-based regulation, that is not an argument to exclude the practitioner. The current debate over press regulation and the importance of a free press, should remind us that, similarly, the independence of the legal profession constitutes "an essential guarantee for the promotion and protection of human rights and is necessary for effective and adequate access to legal services."¹
10. We do not therefore support the proposed change, as:
 - we do not agree with the underlying presumption that independent regulation should exclude the practitioner
 - there is no evidence adduced that a non-lay chair, where the majority of the members are, in any event, lay members, sways the regulator to favour the profession
 - it unnecessarily reduces the pool of talent from which to draw for such appointments.

¹ IBA Standards for the independence of the Legal Profession
(Adopted 1990)

Q2: Do you think the proposed change should take immediate effect or only be applicable to future appointments.

11. If, despite our view, the rule change goes ahead it would clearly be unwarrantedly disruptive to curtail current terms of appointment. Any change should be applicable to future appointments.

Q3: Do you agree that the requirement for lay chairs to apply only to the applicable approved regulators.

12. Again, subject to our view that there should not be such a requirement, for consistency, we think that this requirement should apply to all approved regulators.

Q4: Do you agree with the proposed exclusion of the Master of Faculties from the proposed change.

13. Yes.

Date 14 November 2013

© CITY OF LONDON LAW SOCIETY 2013

All rights reserved. This paper has been prepared as part of a consultation process. Its contents should not be taken as legal advice in relation to a particular situation or transaction.

**THE CITY OF LONDON LAW SOCIETY
PROFESSIONAL RULES AND REGULATION COMMITTEE**

Individuals and firms represented on this Committee are as follows:

Chris Perrin (Clifford Chance LLP) (Chair)

Tracey Butcher (Mayer Brown International LLP)

Roger Butterworth (Bird & Bird LLP)

Raymond Cohen (Linklaters LLP)

Sarah de Gay (Slaughter and May)

Antoinette Jucker (Pinsent Masons LLP)

Jonathan Kembery (Freshfields Bruckhaus Deringer LLP)

Heather McCallum (Allen and Overy LLP)

Douglas Nordlinger (Skadden Arps Slate Meagher & Flom UK LLP)

Mike Pretty (DLA Piper UK LLP)

Clare Wilson (Herbert Smith Freehills LLP)