

## **The Legal Services Board**

31 May 2018

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### **Statement of censure against the Law Society**

#### **Under section 35 of the Legal Services Act 2007 (the Act)**

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1. On 31 May 2018<sup>1</sup> the Legal Services Board (“LSB”) published an Investigation Report into the compliance by the Law Society of its obligations under the Legal Services Board’s Internal Governance Rules (“the Report”).
2. The Report identifies the following matters of concern:
  - (a) The Solicitors Regulation Authority (“SRA”), as the regulatory body, was not responsible for designing the competency requirements and designing and managing the appointments and reappointments process for its own Board members. This is in breach of rule 2B and therefore a breach of Principle 2(1) of the Schedule to the Internal Governance Rules<sup>2</sup> (IGR).
  - (b) The oversight and monitoring arrangements were not proportionate or transparent as:
    - (i) There was an overlap and ambiguity in the terms of reference for the oversight bodies resulting in duplicative reporting requirements and a lack of clarity as to who was accountable for scrutiny of each aspect of the oversight of the SRA and the related decisions; and

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<sup>1</sup> The Report is dated May 2018, the relevant period of the investigation is autumn 2014 – 15 February 2017

<sup>2</sup> [Legal Services Board Internal Governance Rules 2009](#) (as amended)

- (ii) In relation to oversight arrangements, the Law Society's General Regulations were incomplete and out of date; and
    - (iii) There was a lack of a shared understanding as to what each body in the oversight arrangements should do, see and discuss and how they linked with each other. This in breach of rule 4A of the Schedule.
  - (c) The outcome of the oversight and monitoring arrangements was that the combination of multiple reporting demands and associated delay had a direct impact on the SRA's efficiency, and so impaired the SRA's effectiveness in performing its regulatory functions to some degree. This is therefore a breach of Principle 4 of the Schedule to the IGR in respect of the effectiveness of the SRA's performance of regulatory functions.
  - (d) Rule 8 of the IGR was breached because the SRA's effectiveness was impaired by the Law Society's oversight and monitoring arrangements. However, the oversight and monitoring arrangements did not impair the SRA's independence.
3. The LSB has considered the Report and formed the view that it discloses acts or omissions that, either individually or collectively, have had or are likely to have an adverse impact on one of the regulatory objectives. In particular, the Law Society failed to protect or promote the public interest. In addition, it considers that the failings of the Law Society are unreasonable. This view relies not only upon the nature of the matters identified in the Report but also (1) the size and resource of the Law Society (2) that the IGR and the statutory framework that underpins them has been in operation for a number of years; (3) the Law Society was aware of the significance that the LSB attaches to compliance with the requirements of regulatory separation and (4) previous action taken in respect of another approved regulator.
4. The LSB considered that the complexity, ambiguity and burdensome nature of the Law Society's monitoring and oversight arrangements for the SRA are unacceptable. Its actions have impaired the effectiveness of the SRA, thereby undermining the public interest in effective regulation of legal services.
5. The LSB was also deeply concerned that the Law Society failed to update its General Regulations to ensure that the SRA was responsible for designing and managing the

process for appointing its own Board members when the LSB amended the IGR in 2014 to require this.

6. In the light of the matters set out above the LSB decided it was appropriate to take statutory enforcement action against the Law Society. In deciding to impose a Censure the LSB has also taken account of the fact that the LSB has agreed informal undertakings with the Law Society. The terms of the undertakings will allow the LSB to closely monitor the progress of steps taken by the Law Society to address the failures identified during the investigation.
7. Accordingly, the LSB hereby formally censures the Law Society pursuant to Section 35 of the Legal Services Act.