Sir Bob Neill MP
Chairman
Justice Committee
House of Commons
London
SW1A 0AA

LEGAL SERVICES
BOARD

The Chairman's Office
Legal Services Board
2 Dyott Street
London
WC1A 1DE

T 020 7271 0050

www.legalservicesboard.org.uk

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Dear Sir Bob,

Further to the evidence that my Chief Executive, Matthew Hill, and I gave to the Committee on the regulation of the legal professions, I wanted to follow up in writing regarding the LSB's internal governance rules (IGR). As you're aware, the IGR were discussed in evidence with a range of witnesses – both from approved regulators and regulatory bodies – but did not feature in our own session. That being the case, I wanted to ensure the Committee is aware of the LSB's position on the rules and the arguments made in relation to them.

As I said in my opening remarks, one of the great benefits of the Legal Services Act 2007 (The Act) is that it introduced, for the first time, regulation that is independent from both the profession and government. The Act provides for this by obliging the LSB to make internal governance rules (IGR) which set out requirements for each approved regulator to ensure the separation of regulatory and representative functions (amongst other obligations).[1] These requirements must ensure that:

- the exercise of regulatory functions by an approved regulator is not prejudiced by its representative functions or interests; and
- decisions relating to the exercise of regulatory functions by an approved regulator are, so far as reasonably practicable, taken independently from decisions relating to the exercise of any representative functions or interests.

The IGR are therefore an essential component of delivering Parliament's intention of achieving independent regulation, within a broader framework in which approved regulators retain both representative and regulatory functions subject to LSB oversight.

Putting IGR in place in 2009 was one of the LSB's first priorities. A comprehensive review of the IGR was undertaken between 2017 and 2019, following which the current rules and accompanying statutory guidance were put in place. The maturity of the regulatory framework at that time meant that the LSB was able to update the rules to focus wherever

[1] Section 30 of the Legal Services Act 2007

possible on the outcomes approved regulators and regulatory bodies must achieve rather than specifying how they should do so.

During the Committee’s evidence sessions, some witnesses from the approved regulators argued that the IGR constrain their ability to operate in way that is disproportionate. The Chair of the Bar Council suggested that the IGR “drive too strong a wedge between the approved regulator and the body to which it delegates its functions”, and the Chair of CILEX said that under the IGR, approved regulators “are not allowed to comment publicly on […] the performance [of a regulatory body].”[2]

We do not agree with these views. The IGR are intended to enhance regulatory independence as far as reasonably practicable; to create and maintain clear separation to prevent the representative functions prejudicing the regulatory functions, to promote the regulatory objectives and to uphold the better regulation principles. They aim to balance the interest of the approved regulator in ensuring that its regulatory body is accountable and the public interest in fair and proper regulation is not, and is not seen to be, undermined or prejudiced by any representative interests.

While the IGR do not prevent an approved regulator criticising a regulatory body, they do require an approved regulator to think carefully about whether that criticism is likely to undermine the regulatory functions. In fact, the IGR require an approved regulator to inform its regulatory body if the approved regulator makes or intends to make a decision, plan, communication or other arrangement which may undermine the discharge of regulatory functions. In our view, this is an important safeguard in ensuring that public trust in the regulation of legal professionals is upheld.

We consider that the IGR and accompanying guidance provide clear rules and advice to approved regulators and their regulatory bodies. However, consistent with regulatory best practice, we committed in our Business Plan for 2023/24 to evaluate the operation and effectiveness of the IGR given they have now been in place for several years. We have been in regular dialogue with approved regulators such as the Bar Council, the Law Society and CILEX about regulatory independence and we will look forward to hearing their views, and the views of others, on the effectiveness of the IGR when we commence our evaluation.

We will shortly be writing to approved regulators and regulatory bodies to invite them to share their experiences of how the IGR have worked in practice, as well as proposals for improvement while safeguarding regulatory independence. Should we decide it is necessary to amend the IGR, we will of course consult publicly in the usual way.

I hope this is helpful.

Yours sincerely

Alan Kershaw

[2] Justice Committee - Oral Evidence: Regulation of the Legal Professions HC 266