BAR
STANDARDS
BOARD

REGULATING BARRISTERS

Chris Kenny
Chief Executive
Legal Services Board
7th Floor
Victoria House
Southampton Row
London
WC1B 4AD

28 May 2012

Dear Chris

Legal Services Board Internal Governance Rules 2009 – compliance exercise for 2012

Further to your letter of 27 April 2012, please find attached the signed self-assessment from the Bar Standards Board, counter-signed by the Bar Council as Approved Regulator.

We look forward to discussing this with you.

Yours sincerely

Vanessa Davies
Director
BSBDirector@barstandardsboard.org.uk

Self - assessment of compliance with the Legal Services Board's Internal Governance Rules 2009

Section 1: Please provide an update on the issues that we identified as part of our 2011 assessment of your compliance with the IGRs. *Guidance: A summary of the issues we highlighted in 2011 is set out below (we have not included reference to a lay majority owing to the issue being resolved in January 2012).* *Please refer to our full assessment as set out in our letter to you of 6 September 2011: http://www.legalservicesboard.org.uk/Projects/pdf/lsb_final_response.pdf*
• Confirmation that you have changed the requirement that "one (but not both)" of the BSB chair and vice-chair must be a practising barrister. • An assessment of how the service level agreements have been working in practice. • An assessment of the operation of the new arrangements for the Finance and Audit Committee. In particular, BSB access to financial and other resources reasonably required to meet its strategy and the arrangements in place to audit compliance.
BSB response: The Constitution was amended in November 2011 so there is now no requirement for either Chair or Vice Chair to be barrister or lay. It is unfettered. This action is therefore complete. Service Level Agreements have been working adequately in practice. They will need reassessment in the light of internal developments (such as Authorisation to Practise and use of IT systems) and external motivation (eg implementation of Regulatory Standards Framework). The BSB will be seeking to make SLAs more like contracts than is currently the case and will be putting a programme in place to review and complete as part of RSF implementation. The Finance and Audit Committee was split into the Finance Committee and Audit Committee by Bar Council in April 2012. The Finance Committee is operating reasonably effectively. The Audit Committee yet to be fully operative as suitable office holders with the necessary experience are still in the process of being recruited. The Finance Manual has been rewritten to reflect current needs, including those of the BSB, with those changes being agreed by the Finance Committee on 22 May 2012. This includes the BSB having control over virement within its own budget envelope. The Finance Committee will receive reports of when this has happened rather than its approval being sought. The BSB has internal controls in place to ensure that virement only occurs where it is proper to do so. As those changes have only been made very recently, we are yet to test them in practice. In summary, structural amendments have been made which ought to facilitate appropriate independent control of resources and resourcing decisions by the BSB but we are yet to see them operate fully. Vigilance may yet still be required.
Section 2: Please provide evidence to demonstrate that oversight by the AAR is in line with the principles of the IGRs. *Guidance: We will assess the evidence provided in line with the IGRs. Evidence might include, but is not limited to:*

Governance • *An assessment of the functioning and performance of any joint regulatory and representative committees during the year.* • *An assessment of any sub-committees of the Board and the extent to which non-lay majority sub-committees exercise powers and influence that could have a bearing on the independence of the organisation as a whole.* • *Any relevant changes to organisational structures.* *Appointments* • *Level of involvement by professional body in any appointments processes that have taken place in the year.* *Strategy and resources* • *An assessment of any involvement by the AAR in the regulatory arm's business planning processes, including budgeting.* • *Evidence that the provision of services to the regulatory body is not subordinate to the provision of services to any other part of the AAR.* • *Operation of any Service Level Agreements and any issues arising.* *Oversight* • *Assessment of the level of and nature of information requests between the organisations.* • *Any interventions during the year by the AAR in decisions made by the regulatory arm.* *You may also wish to refer to any relevant responses to Section 1 above.*
BSB response: *Governance* • *An assessment of the functioning and performance of any joint regulatory and representative committees during the year.* There are no joint regulatory committees, ie no joint committees which deal with the substance of regulatory business. The intersection points are the Finance Committee and the Chairmen's Committee - both of which are operating smoothly. As stated above, the Audit Committee is not yet operative so no comment can be passed on that as yet. That is not to say that all parties agree at all times but the joint committees provide fora within which all parts of the organisation are able to operate effectively. The BSB has an equal voice within them and has no difficulty in exercising its voice within them. • *An assessment of any sub-committees of the Board and the extent to which non-lay majority sub-committees exercise powers and influence that could have a bearing on the independence of the organisation as a whole.* The Board makes most significant decisions itself and has a lay majority so there is no possibility of representative capture. All committees have a strong lay person involvement. Individuals are prohibited from serving on both BSB and Bar Council committees so there is no representative capture at that level. • *Any relevant changes to organisational structures.* The only other significant structural change that impacts upon the BSB is the absence of a Chief Executive when the previous office holder left the Bar Council. The BSB has

made proposals about future possibilities for the structure of the Bar Council and BSB senior management, as well as the Central Services function. To date no final decisions have been made about the future. Constitutionally, the Chief Executive is part of the Approved Regulator so some changes will be necessary if the post is no longer to exist. The BSB awaits a decision from the Bar Council in this regard.

Appointments

- *Level of involvement by professional body in any appointments processes that have taken place in the year.*

The Bar Council is not involved in any committee appointments. The Bar Council is represented by the Chairman of the Bar on the Appointments Panel for Board level recruitment, as per the BSB Constitution, as well as the Chairman jointly with the BSB Chair nominating one further member of the Panel. In practice, the Appointments Panel has to date always had a lay majority when recruiting new Board members. This is not seen as an issue by the BSB.

Strategy and resources

- *An assessment of any involvement by the AAR in the regulatory arm's business planning processes, including budgeting.*

The Bar Council has no involvement in developing the BSB's business plan in terms of either determining strategy or deciding upon activities that will be undertaken. The involvement comes in budgeting setting but this year was more along the lines of determining an envelope (ie % budget increase/decrease/no change) within which we had to fit expenditure. To be fair, the BSB's own PBVC committee required staff to look at budgeting scenarios before the Bar Council did but the combined effect was similar. The new Finance Manual provisions are designed to give the BSB more flexibility for deciding how to utilise resources within the overall budget agreed but as stated above, this is a new development. This requires vigilance in relation to the budgeting aspect, however, as stated above, the Bar Council is not involved in the BSB's wider planning processes. Questions about the overall cost of regulation and the necessary level of support for regulatory activity are ongoing discussions that will be required. The Finance Committee and Chairmen's Committee provide appropriate vehicles for that to be addressed in the first instance.

- *Evidence that the provision of services to the regulatory body is not subordinate to the provision of services to any other part of the AAR.*

This does not seem a particular issue from the BSB's perspective. The BSB has more staff than the Representation and Policy arm of the Bar Council, being approximately twice the size of Representation and Policy. The BSB's budget is consequently approximately twice the size of the representative arm's budget. A higher proportion of Central Services' costs are also attributable to the BSB. To date, the BSB has not been asked to give funds to the Bar Council or told that it could not do something because BC wants to do something else. That said, the Bar Council has made it clear that if the BSB underspends and the Bar Council needs funds to undertake a s51 activity then the BSB may not be able to keep any underspend. In practice this has not occurred to date.

- *Operation of any Service Level Agreements and any issues arising.*

As above – no particular issues other than the need to revise them in the light of organisational developments.

Oversight

- *Assessment of the level of and nature of information requests between the organisations.*

The BSB does not consider the Bar Council to have made any unreasonable requests. Board papers are provided in advance, as agreed. The Chair of the BSB provides regulator briefings to the Bar Council. The BSB does not consider this to be an issue.

- *Any interventions during the year by the AAR in decisions made by the regulatory arm.*

The Bar Council Chairman and any others nominated by the Chairman are entitled to attend Board meetings and speak but not vote. In practice, the Bar Council office holders have not attended several meetings over the last 6 months, due to other work commitments, which raises different issues. There have been no inappropriate interventions in decision-making in the BSB's view.

Section 3: Please provide an assessment of the risks to your continued compliance with the IGRs and how you manage those risks.

Guidance: You should consider the principles set out at Schedule 1 to the IGRs to inform your response.

BSB response:

In general the BSB does not perceive any particular risks with compliance overall with Schedule 1 of the IGRs. As outlined above, some arrangements are new and have not been fully tested yet so vigilance is still required. The BSB seeks to manage these risks through using its voice effectively at the Finance Committee and Chairmen's Committee. No other escalation has been necessary in the past and the BSB does not see that the risks to independence are sufficiently high to necessitate any other action (including escalation to the LSB) at this stage.

Section 4: Any additional comments from the Bar Council.

The Bar Council as the Approved Regulator, under Section 20 and Schedule 4 Part 1 of the LSA 2007, is ultimately accountable for the discharge of the regulatory functions undertaken on its behalf by the BSB. As such it is content that:

- *Appropriate oversight arrangements are in place,*
- *the BSB has the freedom to define and implement regulatory strategy independent of representative control or undue influence, and*
- *in accordance with s28(3) of LSA 2007, the BSB's regulatory activity is transparent, accountable, proportionate and consistent. However, the Bar Council has some concerns over whether it is always targeted at cases where action is needed consequent*

upon the diversion of planned effort or resource caused by LSB initiatives. Examples are to be found in the Bar Council's response to the Triennial review of the LSB. The Bar Council specifically notes the diversion of effort and significant unbudgeted additional costs associated with developing regulatory standards. Whatever the merits of the latter, there should be prior discussion with the regulatory community of the impact of initiatives before they are imposed. Failing which regulatory resources cannot be applied most effectively.

Section 5: 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. [1]

Signed on behalf of the BSB:

Name: DR V. DAVIES
Title: DIRECTOR BSB
Date: 30 May 2012.

Signed on behalf of the Bar Council:

Name: MICHAEL TODD QC
Title: CHAIRMAN of THE BAR COUNCIL
Date: 29.5.12

[1] If the AAR does not think that it can endorse the assessment, it does not need to sign here, but evidence based reasons for not signing should be provided in the space provided at section 4.