



### Law Society/SRA proposals on Governance

1. This document sets out the proposals on future arrangements for the provision of shared services, and Law Society oversight of SRA, agreed by the Law Society/SRA negotiating teams, and subject to the approval of Council.
2. The discussions, and the proposals which have been developed, are based upon the following understandings:
  - The proposals are intended to be a lasting solution which complies with the Internal Governance Rules and with the Legal Services Act, and enjoys the confidence of both the Law Society Council and the SRA Board, rather than as a transitional arrangement;
  - None of the proposals put forward affects the position of Council as the ultimate governing body of the Law Society, or its oversight responsibilities, or the Law Society's status as approved regulator;
  - There is a shared commitment to ensuring that the agreed governance arrangements operate effectively to the mutual benefit of the regulatory and representative bodies.
3. The negotiating group considers that the proposals below are consistent with those understandings, and represent the basis for a lasting solution.

### Business and Oversight Board

4. A new Board - provisionally entitled the Business and Oversight Board - will take over the functions in respect of management of shared services and Law Society oversight of the SRA currently exercised by the Management Board, the Joint Law Society/SRA Resources Board, and the Support Services Resolution Board. A sub committee of the Board, including SRA Board members not eligible for reappointment at any time (and, if necessary, co-opted SRA Board members) would advise the Council on matters concerning appointments to the Board. The Chair of the SRA Board will be eligible to sit on this sub committee even if s/he is eligible for re-appointment when the sub committee is only considering the appointment of ordinary members. The Management Board would continue with its remaining responsibilities, whilst the Joint Law Society/SRA Resources Board and the Shared Services Resolution Board would be abolished.
5. The new Board would not assume any function currently exercised by the Council or by the SRA Board. It simply represents a reorganisation of functions below the level of the Council. In respect of matters such as approval of budgets throughout the Group, which are currently reserved to the Council, the new Board's role would be advisory only. The Board will recommend to Council the SRA budget, including any requests for in year funding.
6. The new Board would comprise four members each drawn from the Law Society and from SRA (including in both cases their Chief Executive and in the case of the Law Society, the Treasurer) together with three external members, appointed for their particular expertise. Members of the Business and Oversight Board will be appointed for three years, on a staggered basis. (The provision of staggered three-year appointments



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does not apply to the ex officio members of the Board.) Where a Law Society or SRA Board member is unable to attend a meeting of the new Board, the President or SRA Chair (as appropriate) may nominate an alternate for that meeting. The new Board would initially be chaired jointly by the Treasurer of the Law Society and the Chair of SRA's Finance and Resource Committee. The new Board would be required within six months (or three meetings) of being established to prepare proposals for future arrangements for chairing, to be ratified by the SRA Board and by the Council. If Council and the SRA Board both ratified the recommendation, this would be implemented immediately; if however Council and/or the SRA Board did not approve the recommendation within a three month period, the Business and Oversight Board would elect a Chair from within their membership.

7. The draft Terms of Reference of the new Board, are set out at Annex A

### **Management of Support Services**

8. Responsibility for management of Support Services would be transferred from the Chief Executive of the Law Society to a new post, provisionally entitled Managing Director, Shared Services.
9. The new Managing Director would be accountable and report to the Business and Oversight Board. S/he would be expected to work closely with the two Chief Executives to ensure that the delivery of shared services meets their respective needs. The Managing Director of Shared Services would be a member of the Law Society's Executive Management Board and of the SRA Senior Management Team. S/he would be expected routinely to attend meetings of the Law Society's Council and Management Board, and meetings of SRA's Finance and Resource Committee and Board.
10. The process for appointment of the Managing Director would be jointly agreed. Once the Business and Oversight Board is in place, the appointment would be the responsibility of the Business and Oversight Board.
11. The draft Job Description for the Managing Director is at Annex B

### **Oversight**

12. The arrangements for the Law Society's oversight of the SRA are set out in at Annex C.
13. The Council will receive an annual report (Annex D) which the Chair and CEO of the SRA Board will present and on which they will take questions, at a Council meeting. The Business and Oversight Board will receive quarterly reports from the SRA. The template for these reports is attached Annex E.
14. Council will discharge its oversight function in a manner which does not inhibit the independence of the regulator.

### **Access to papers**

15. The Managing Director of Shared Services will have access to all papers of TLS and SRA.



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16. The Chief Executives of the Law Society and the SRA will make available to the Business and Oversight Board, acting in its business management role, papers, including confidential papers, that directly relate to shared services and that are necessary for it to carry out its shared services functions.
17. With regard to access to SRA Board documents for oversight purposes, the SRA will not be obliged to provide their confidential Board papers to the Business and Oversight Board for the purposes of oversight. However, the SRA will, following each meeting, publish a list of issues discussed at its confidential sessions, and , in relation to decisions that have been made , will publish previously confidential Board papers unless:
  - they contain personally confidential information, for example about an individual regulatory matter;
  - they contain commercially confidential material;
  - they contain sensitive information relating to the SRA's relationship with the Law Society;
  - they contain other material the publication of which might be damaging to the public interest.
18. To ensure that as much material as possible is put in the public domain, the SRA Board may decide to publish redacted versions of confidential papers that would otherwise fall within one of the above exceptions.

#### **Observers at SRA Board meeting**

19. The Law Society will not have an entitlement to send observers to the non public parts of SRA Board meetings.
20. The SRA proposes the following mechanisms to overcome the practical issues which underlie the Law Society's proposal that Law Society observers should attend SRA Board meetings:
  - Informal engagement between executive members/teams in the development of consultation papers in the following circumstances: the SRA will seek the expertise of the Law Society on issues where the Law Society has particular experience, and seek the Law Society's informal reaction to proposals, where it is proper to do so in advance of consultation. (there will be issues on which prior consultation with professional interests in the absence of consultation with consumer interests will not be appropriate).
  - Informal engagement between the SRA and the Law Society in the formulation of Law Society responses wherever the Law Society considers that appropriate.
  - Advance warning and discussion of impending contentious issues - the President, Chair of the SRA, and the two chief executives already meet regularly to discuss such matters, and this can be built upon;
  - Regular periodic engagement between the SRA and the Law Society's representative boards and committees to discuss live issues while policies are being developed and before formal responses are finalised



### **Arrangements concerning remuneration**

21. It will be for the Business and Oversight Board to decide whether the Law Society and SRA should continue to operate as a single bargaining unit, or should become separate bargaining units.
22. It will be for the Business and Oversight Board, subject to the ultimate role of the Council, to decide the overall strategy concerning remuneration within the Law Society group.
23. It will be for the Business and Oversight Board to decide the extent to which individual Chief Executives should be free to depart from any standard approach to remuneration, or to approve requests for ad hoc departures outside any prescribed flexibility.
24. The Remuneration Committee will continue to operate as a single committee, covering relevant posts in both the Law Society and SRA.
25. The Terms of Reference of the Remuneration Committee will be adjusted to make clear that, when dealing with Chief Executives' remuneration, the Committee's role is to ensure that the President/Chair of the SRA Board has come to a reasonable conclusion, and has followed a reasonable process, rather than to substitute its judgement for that of the President or Chair.
26. Membership of the Remuneration Committee will be adjusted so as to ensure parity between the number of Law Society Council members and SRA Board members on the Committee.

### **Communication**

27. The Chief Executives will seek to agree both the timing and content of communications on issues involving joint working which affect both the Law Society and SRA.
28. Where agreement cannot be reached, individual Chief Executives will be free to issue whatever communications they think fit, subject to giving 48 hours' notice to their opposite number.
29. The agreed protocol is attached Annex F.

### **Implementation timetable**

30. We will develop a provisional timetable setting out when we expect to:
  - a) Start recruitment for MD;
  - b) Appoint MD;
  - c) Recruit BOB members;
  - d) Hold the first meeting of BOB.

**Business and Oversight Board: Draft Terms of Reference**

The terms of reference for the Business and Oversight Board will be:

- To make arrangements for the appointment of, and hold to account, the Managing Director for Shared Services.
- To determine policy concerning the way in which support services are provided to the Law Society and to SRA.
- To oversee the way in which any services provided on a shared service basis are delivered, including Financial and Risk, Human Resources Policies, IT and Remuneration Policy
- To approve and monitor the Group Risk Register
- To recommend to the Council the SRA's budget.
- To carry out oversight and scrutiny of the SRA Board's:
  - Business (annual) plan and performance against that plan and in relation to the regulatory objectives and the principles of good regulation;
  - Budget and budgetary control;
  - Strategic Risk Register
- To monitor Law Society and SRA compliance with the agreed arrangements concerning oversight.
- To recommend to Council any changes to the arrangements for recruitment to vacancies on the SRA Board. (Note: SRA Board members with an interest in the recruitment process under discussion would be excluded from such discussions.)

**Managing Director of Shared Services - the Managing Director should have his/her primary base in the Midlands, where the large majority of his/her staff and customers will be located, but with accommodation at Chancery Lane and Martin Lane when required.**

**Key features of Role profile**

*Main purpose of Job*

The Managing Director Support Services will assume overall responsibility for the effective delivery of support services to the Law Society and SRA including: -

- Maintenance of efficient financial controls, reporting systems and ensuring the timely and accurate implementation of financial reporting;
- Responsibility for the exercising of prudential control and stewardship of all associated financial commitments and risk management will be a key feature of the role;
- Ensuring the Society's compliance with all statutory, regulatory and best practice obligations including the combined code (Greenbury, Cadbury, Flint) and audit and disclosure arrangements;
- Ensuring the effective provision of all shared services to both the Law Society and SRA which contribute effectively to the delivery of each body's strategy;
- Supporting the Business and Oversight Board;
- Supporting the Chief Executives of the Law Society and SRA in the delivery of their strategies

The Managing Director will report to the Business and Oversight Board.

The Managing Director will be a key member of the Law Society's Executive Management Board and of the SRA's Senior Management Team, and will be required routinely to attend meetings of the Law Society's Council and its Management Board, and the SRA Board and its Finance and Resources Committee.

Where the Managing Director considers that the provisions for access to, and publication of, papers in paragraphs 16-18 have not been met s/he will, in the first instance, raise the matter with the relevant Chief Executive and, if that does not resolve the matter, raise it with the chairs of the Business and Oversight Board.

*(Note: A more detailed job description is currently being developed by the two Chief Executives which will include all the responsibilities contained in this draft)*

## **Oversight protocol**

### **Introduction**

1. This document sets out the arrangements agreed between the Law Society and SRA concerning the way in which the Law Society will carry out its oversight role in respect of SRA. The protocol will come into force on the same date as the Business and Oversight Board becomes operational.
2. First tier responsibility for scrutiny and oversight of SRA is the responsibility of the SRA Board. The SRA Board is entitled to direct the SRA executive as it thinks fit.
3. The Law Society, as approved regulator, also has an oversight role. Although the Law Society has delegated to the SRA Board responsibility for carrying out the Law Society's regulatory functions, the Law Society remains legally responsible for carrying out those functions. The powers of the Legal Services Board – including the making of directions, and the imposing of financial penalties – are exercisable against the Law Society.
4. Accordingly, the Council needs to satisfy itself that the SRA Board is carrying out the Law Society's regulatory responsibilities. In exceptional circumstances, the oversight information provided to Council could be used to enable Council to decide whether or not its intervention is required to either change the SRA Board, or to redesign the regulatory arrangements.
5. Except where necessary to secure compliance with a direction from the Legal Services Board, the Law Society's oversight role does not entitle it to direct the SRA Board to act, or not to act, in a particular way.

### **Approach to oversight role**

6. The Law Society's oversight role is part of its approved regulator role. It follows that in carrying out that role, the Law Society is bound by the regulatory objectives in the Legal Services Act.
7. The Law Society's discharge of its oversight role should not be, nor be regarded as, a burdensome process designed to criticize or interfere: it should be a positive, proportionate process of engagement by both the Law Society and SRA.
8. The Law Society and SRA have agreed the format for regular reporting to the Council and Business and Oversight Board (BOB). Where that information is insufficient to enable the Law Society to exercise its oversight function, then the Law Society will be entitled to require the provision of detailed information.
9. The Law Society will carry out the oversight role as follows:-
  - The Council itself will receive the SRA Business Plan, and will receive an annual report on progress against that plan. This will be coupled with annual attendance at a Council meeting by the SRA Board Chair and/or Chief Executive to answer questions on the performance of the SRA Board. The day to day conduct of the Society's oversight role will be carried out under the auspices of the Business and Oversight Board.

10. The Law Society recognises, that in the conduct of this scrutiny role through the Business and Oversight Board:-
  - The Society is entitled only to seek information, and explanation of the thinking behind particular decisions. It is not entitled to seek to instruct the SRA.
  - Any requirements for information and explanation must be proportionate. It is not legitimate either to require such a volume of information and explanation as to detract from the SRA's management of the regulatory function, or to demand detailed explanation about comparatively trivial matters.
  - The SRA cannot properly give information about live regulatory cases where that would prejudice regulatory action. The judgement of whether giving particular information would prejudice regulatory action must be for SRA to make.

#### **Handling requests for information**

11. Requests for information in the Law Society's oversight capacity will be made only through the Business and Oversight Board. Except in emergencies or where the co-chairs confirm a query requires an urgent response the SRA will be provided with details of the requests for information in advance of a BOB meeting, and, if it has not done so beforehand, will respond to these requests in a report for the meeting.
12. Wherever requests for information are not being made in the oversight role (that is through the Business and Oversight Board), then the SRA will treat them as having been made in the Society's representative role.
13. The SRA will log all requests for information to ensure that it responds in a timely manner, as well as to monitor the number and nature of requests received from the Law Society.
14. Where the SRA considers that, either in an individual case or more generally, Law Society requests for information in the oversight role are disproportionate or inappropriate, the matter will in the first instance be discussed by SRA Chief Executive and Chair(s) of the BOB. If it cannot be resolved through such discussions, the matter may be referred to the BOB to determine whether the SRA should be required to provide the information sought.

## **SRA Annual Report to Council: Template**

### **Background**

This template represents the SRA annual report to the Law Society Council. The report will be the main method by which the Council is able to discharge its oversight function.

In exceptional circumstances, the report could also be used to enable Council to decide whether or not its intervention is required to either change the SRA Board, or to redesign the regulatory arrangements.

We envisage this type of oversight arrangement being confined to the annual report coupled with annual attendance at a Council meeting by the SRA Board Chair and/or Chief Executive to answer questions on the performance of the SRA Board. This will need to be discharged in a manner which does not inhibit the independence of the regulator.

### **About the report**

The report is divided into the following sections:

- Chair's introduction - this will provide confirmation to Council that the regulatory objectives are being achieved and that the SRA is complying with the better regulation principles.
- Section one - this provides details of progress against the SRA's Business Plan for [year]. It includes any significant achievements and developments against the agreed objectives.
- Section two - this will set out the key regulatory outcomes data and reporting against the agreed SRA budget and headcount.
- Section three - this provides a more general commentary on the SRA's work over the course of the year. It includes information on any important external developments, consultation and engagement activity and details of any particular trends or issues that have emerged in the course of the year.
- Section four – this sets out a summary of the public SRA Board meetings for the year, and includes details of the decisions taken at those meetings.

**Chair's - Introduction**

- This will set out the Chair of the Board's confirmation that the regulatory objectives are being achieved and that the SRA is complying with the better regulation principles

**Section One: SRA Business Plan [year] - Report**

**Our Progress in [year]**

This section sets out the progress the SRA has made against the key delivery areas in our [year] Business Plan. It includes a summary of progress against each of the objectives that were identified, highlights some of the key achievements.

**Objective [a]**

During [year]:

- For example.... We launched the '*Freedom in Practice: Better Outcomes for Consumers*' campaign. This campaign marked the start of the SRA's comprehensive dialogue with the profession on the changes to the way the profession will be regulated. Nine OFR roadshows and pre-roadshow dinners have been held. The OFR roadshows have attracted in excess of 1,000 solicitors from a range of practice backgrounds, and have been an excellent opportunity for and example of SRA Board members and SRA staff working together to deliver something very successful.

▪

**Objective [b]**

During [year]:

- For example.... The Board approved our new Strategic Plan in May. '*Regulating for the Future: the SRA Strategic Plan: 2010-13*' sets out our vision for the coming three years and our purpose. It details our four key objectives which represent the main outcomes we will deliver for our stakeholders.

▪

**Objective [c]**

During [year]:

- For example.... In September 2010, the SRA, Law Society and Legal Services Board to reached an agreement on the SRA and Law Society's compliance with the Internal Governance Rules.

▪

**Objective [d]**

During [year]:

- For example.... We have published in '*The architecture of change: the SRA's new Handbook*', an introduction to the regulatory requirements for alternative business structures (ABSs), which we intend to license from October 2011.

▪

**Section Two: Our Performance in [year]**

This section sets out a report showing our performance in terms of key regulatory outcomes for [year]. It also includes a report against the agreed SRA budget and headcount.

It will cover the following information:

- The outcomes data by each of the key regulatory functions, for example;
  - Authorisation
  - Risk
  - Supervision
  - Legal and Enforcement
  - Post Enforcement
- Each set of regulatory outcomes will be accompanied by commentary providing analysis and explanation.
- This section will be a redeveloped version of the existing, quarterly Stakeholder Report.
- In terms of budget, the section will show the SRA spend to date and detail any over/under spends.
- The section on headcount will be a report showing the number of staff by Directorate.

**Section Three: Our Activities in [year]**

This section provides a general commentary on the SRA's work over the course of the [year].

**External developments affecting the SRA's work**

During [year]:

- For example... On 23 March the Law Society Council approved the application to the Legal Services Board to become a Licensing Authority for Alternative Business Structures. The LSB is now considering the application.

**Consultations carried out by the SRA**

During [year]:

- For example... We have consulted on the SRA's Equality Framework and Engagement Strategy for 2011/12. The consultation presented our stakeholders with an opportunity to comment on our equality objectives, proposals for publishing equality information and our engagement strategy. It closed on 8 June 2011.

**Engagement activity**

During [year]:

- For example.... The next round of SRA roadshows will begin on 4 May 2011 in Central London, and will conclude in Liverpool on 16 June. We also have a further five webinars planned for May through to July.

**Emerging trends or issues in the legal services market**

During [year]:

- For example....a rise in [x] type of complaints by [x] type of people

**Section Four: Our Board**

This section sets out details of the public SRA Board meetings held in [year]. It provides a summary of the public agendas, and of decisions taken at the meetings.

▪ **SRA Board Meeting - 11 January 2012**

At the meeting the Board considered the following items:

It was agreed that ..... and the Board made the following rules

▪ **SRA Board Meeting - 29 February 2012**

At the meeting the Board considered the following items:

It was agreed that ..... and the Board made the following rules

▪ **SRA Board Meeting - 4 April 2012**

At the meeting the Board considered the following items:

It was agreed that ..... and the Board made the following rules

▪ **SRA Board Meeting - 16 May 2012**

At the meeting the Board considered the following items:

It was agreed that ..... and the Board made the following rules

▪ **SRA Board Meeting - 4 July 2012**

At the meeting the Board considered the following items:

It was agreed that ..... and the Board made the following rules

▪ **SRA Board Meeting - 5 September 2012**

At the meeting the Board considered the following items:

It was agreed that ..... and the Board made the following rules

▪ **SRA Board Meeting - 17 October 2012**

At the meeting the Board considered the following items:

It was agreed that ..... and the Board made the following rules

▪ **SRA Board Meeting - 28 November 2012**

At the meeting the Board considered the following items:

It was agreed that ..... and the Board made the following rules

## **SRA Quarterly Report to the Business and Oversight Board Template**

### **Background**

This template represents the SRA quarterly report to the Business and Oversight Board (BOB). The report will be the main method by which the BOB discharges its oversight function.

### **About the report**

The report is divided into the following sections:

- Section one - this provides details of quarterly progress against the SRA's Business Plan for [year]. It includes any significant achievements and developments against the agreed objectives.
- Section two - this will set out the suite of KPIs which have been agreed as part of the business planning process.
- Section three - this will include an update on the SRA Strategic Risk Register
- Section four - this will include details reporting against the agreed SRA budget and headcount, including information on financial controls
- Section five - this provides a commentary on any of the SRA's specific programmes of work - for example the Enabling Programme. Highlighting any particular issues, risks and key deliverables

**Section One: SRA Business Plan [year] - Report****Our Progress in [year]**

This section sets out the progress the SRA has made against the key delivery areas in our [year] Business Plan for the [ ] quarter. It includes a summary of progress against each of the objectives that were identified, highlights some of the key achievements.

**Objective [a]**

During the [ ] quarter:

- For example.... We launched the '*Freedom in Practice: Better Outcomes for Consumers*' campaign. This campaign marked the start of the SRA's comprehensive dialogue with the profession on the changes to the way the profession will be regulated. Nine OFR roadshows and pre-roadshow dinners have been held. The OFR roadshows have attracted in excess of 1,000 solicitors from a range of practice backgrounds, and have been an excellent opportunity for and example of SRA Board members and SRA staff working together to deliver something very successful.

**Objective [b]**

During the [ ] quarter:

- For example.... The Board approved our new Strategic Plan in May. '*Regulating for the Future: the SRA Strategic Plan: 2010-13*' sets out our vision for the coming three years and our purpose. It details our four key objectives which represent the main outcomes we will deliver for our stakeholders.

**Objective [c]**

During the [ ] quarter:

- For example.... In September 2010, the SRA, Law Society and Legal Services Board to reached an agreement on the SRA and Law Society's compliance with the Internal Governance Rules.

**Objective [d]**

During the [ ] quarter:

- For example.... We have published in '*The architecture of change: the SRA's new Handbook*', an introduction to the regulatory requirements for alternative business structures (ABSs), which we intend to license from October 2011.

**Section Two: Our Performance in [quarter]**

- This section sets out the suite of KPIs which have been agreed as part of the business planning process.
- It would show the performance trends over the year and an overall summary of performance for the year - highlighting the relevant quarter's performance.
- Where there is under performance/over performance, this will be accompanied by detailed commentary including any actions or activities in place to address that.

**Section Three: Our Strategic Risk Register**

- This will include a quarterly review of the SRA's strategic risks and will be supplemented by a commentary detailing any changes to the risks, any emerging risk and associated actions.

**Section Four: Our Resources**

- In terms of budget, the section will show the SRA spend to date and detail any over/under spends.
- The section on headcount will be a report showing the number of staff (by Directorate?), sickness and turnover rates - along with commentary.
- This section will also include details of any financial controls.

**Section Five: Our Programmes**

- This provides a commentary on SRA's specific programmes - for example the Enabling Programme.
- It will highlight any particular issues, risks and key deliverables

**Communications Protocol**

1. The Law Society and SRA are each entitled to determine the content and timing of their internal communications, subject to the provision below.
2. Where a communication relates to a matter which requires a joint decision, the Chief Executives will discuss and seek to reach agreement on:
  - the content of the communication;
  - the timing of the communication;
  - whether the communication should be issued in joint names, or by the two CEOs individually.
3. Where agreement cannot be reached, individual Chief Executives will be free to issue whatever communications they think fit, subject to giving 48 hours' notice to their opposite number.