

Consultation response

LSB: Appointments and reappointments to regulatory boards

Overview

1. **We agree that allowing professional bodies to design and manage the appointments and reappointments process for regulatory board members and their chairs presents a potential risk to regulatory independence. Public confidence will be hard to sustain so long as representative bodies can continue to install and reappoint those who head the industry watchdogs.**
2. **The risks of undue influence in reappointments may be even greater once the representative body has seen the chair and board members in action during their initial terms of office. This may also alter the behaviour of existing members as their initial terms expire.**
3. **In relation to the proposed safeguards:**
 - **Regulatory bodies should design the competency requirements for their board members and chair – this is about ensuring quality as well as bolstering independence**
 - **Regulatory bodies should be responsible for designing and managing the appointments and reappointments process for their board members and chair**
- **The process and decisions on appointments and reappointments of chairs should be delegated to an independent appointment panel**
- **If each of the above measures is put in place, we are not convinced it is necessary for the LSB to approve the appointments and reappointments arrangements as conforming with the Internal Governance Rules**
4. **In addition, for reasons of independence and quality, we agree with the SRA that appointments panels should have an independent chair and lay majority including people with broad regulatory and consumer experience. The LSB might also consider selection processes for appointments panels.**
5. **Independence would be strengthened further if marketing for the recruitment process was led by the regulatory arm with advertisements jointly branded by the regulatory and representative arms. This is the most visible part of the appointments process and will thus shape public and candidate perceptions.**

The proposals

6. The LSB is consulting on proposals to amend the Internal Governance Rules (IGRs) to strengthen the independence of the process for appointing and reappointing regulatory board members and their chairs, as follows:
 - Regulatory bodies to be responsible for designing the competency requirements for their board members and chair
 - Regulatory bodies to be responsible for designing and managing the appointments and reappointments process for their board members and chair
 - The process and decisions on appointments and reappointments of regulatory chairs to be delegated to an independent appointment panel
 - Appointments and reappointments arrangements must be approved by the LSB as conforming with the IGRs

The Panel's response

7. The Panel responded to the LSB's previous consultation on requiring the Boards of the applicable approved regulators (AARs) to have lay chairs. We are delighted that the LSB went ahead with that set of proposals and we welcome the new proposals on the appointments and reappointments process.

Q1. Do you agree that the current IGRs allowing professional bodies to design and manage the appointments and reappointments process for regulatory board members and their chairs presents a potential risk to regulatory independence? Please set out your reasons.

8. Yes, we share the Solicitors Regulation Authority's (SRA) concerns that '*a chair may be appointed because of his or her perceived willingness to advance the interests of the professional body and the profession*'. Public confidence will be hard to sustain so long as representative bodies can continue to install and reappoint those who head the industry watchdogs.
9. While this risk to regulatory independence has been mitigated somewhat by the new lay chair requirement, the LSB also needs to consider public perception. This includes consumers of legal services, but also potential candidates for the post. The field of candidates could be stronger if any doubts about undue influence by the representative body can be removed.
10. The LSB is right to look at reappointments alongside appointments. The risks of undue influence might be even greater once the representative body has seen the chair and board members in action during their initial terms of office. Equally, there is a risk that chairs and board members seeking reappointment may adjust their behaviour as their initial terms expire in order to avoid upsetting the representative body.
11. In making its decision, the LSB should bear in mind any evidence of undue influence by representative bodies as a whole to date.

Certainly the SRA has been critical of the Law Society encroaching on regulatory matters, while the Bar Council has been formally investigated by the LSB. The Panel shares the LSB's general concern that the current regulatory framework is insufficiently independent of the profession and welcomes reforms to strengthen this within the confines of the Legal Services Act.

12. We are also mindful of wider public concern about political considerations influencing the reappointments of chairs to public bodies. While not commenting on individual cases, wider concerns about ensuring decisions are based on merit and free from inappropriate external considerations, are relevant context for the LSB's decision.

Q2. Do you agree that all, or some, of the provisions [in the proposals section above] would help to safeguard the independence of regulation from the interests of professional bodies and the regulated professions? Please set out the reasons for your viewpoint.

13. We strongly agree that regulatory bodies should be responsible for designing the competency requirements for their board members and chair. This would safeguard independence, but also contribute to better quality appointments. Regulation and representation involve very different roles and demand different skill sets; regulatory arms are clearly best placed to decide what type of individual is needed for the roles being recruited for/reappointed.
14. We also agree regulatory bodies should be responsible for designing and managing the appointments and reappointments process for their board members and chair. The

LSB's current guidance already suggests that AARs should consider charging the regulatory body with practical management of such exercises so this would be a logical step within a set of changes designed to put regulatory arms in control of appointments and reappointments whilst consulting their representative arms at key stages.

15. Delegating the process and decisions on appointments and reappointments of regulatory chairs to an independent appointment panel would also be sensible. The OCPA process promotes consistency of standards, equality and fairness and may also bolster public confidence in a process that takes place behind closed doors. While a full-blown OCPA process could be disproportionate for the smaller AARs, the principle of an independent appointment panel with cross-membership of regulatory and representative is a sensible approach.
16. If each of the above measures was put in place, we are not convinced that it is necessary for the LSB to approve the appointments and reappointments arrangements as conforming with the IGRs. With regulatory arms essentially in control, the risks to independence are considerably reduced. Involving the LSB would add delay and a layer of cost. If there are concerns about a particular process, the right to raise these with the LSB will continue to exist.

Q3. Do you think we need to go further and specify how the membership of appointment panels should be composed?

17. We agree with the SRA that appointments panels should have an independent chair and lay majority including people with broad

regulatory and consumer experience. This would send a healthy signal about the independence of the appointments process. Just as important, it would underpin a good quality selection process as the members of the appointments panel would have similar knowledge and skills to the selection criteria they are assessing candidates against.

18. The LSB might also consider selection of panel members. We note the Bar Council/ Bar Standards Board (BSB) panel has seven individuals variously nominated by the Lord Chief Justice, Bar Council chair, BSB chair and the President of the Inns' Council. This seems too large a number and the nominations system does not help signal that the appointments themselves are merit-based. However, this system also has good practice: one of the lay people is chair and one must be OCPA accredited.

Q4. Are there other safeguards that should be put in place?

19. In addition, marketing for the recruitment process should be led by the regulatory arm with advertisements jointly branded by the regulatory and representative arms. This is important because the 'job ad' is the most visible part of the appointments process and will shape the perceptions of the public and candidates about the independence of the regulator from the profession. Even though the regulatory arm would control the appointments process in future, the legal position remains that the professional body is the approved regulator under the 2007 Act; given this it would be necessary to retain joint logos for transparency reasons.

Q5. How do the above provisions compare to current practice?

20. This question is directed at others. However, a website trawl reveals mixed transparency about how each AAR deals with appointments and reappointments. That the LSB is required to ask for this information is telling. Given the nature of the topic we would not expect details of these procedures to be prominently displayed on websites, but a greater level of transparency would help build confidence in the independence of the various processes.

21. **Q6. Is there any specific circumstance where one or more of the proposed changes would cause particular issues in terms of proportionality and/or workability?**

22. This question is directed at others.

March 2014