

SOLICITORS DISCIPLINARY TRIBUNAL

RESPONSE TO THE LEGAL SERVICES BOARD
CONSULTATION ON REVIEWING THE INTERNAL
GOVERNANCE RULES

FEBRUARY 2018

INDEPENDENT - IMPARTIAL - TRANSPARENT



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LEGAL SERVICES BOARD CONSULTATION ON REVIEWING THE INTERNAL GOVERNANCE RULES

1. When responding to this and other Consultations, the Solicitors Disciplinary Tribunal ("the Tribunal") must have in mind that it should not make public statements (even in the context of consultation) which might give rise to a complaint at a future date from those appearing before it of predetermination and/or apparent bias. The Tribunal is able to respond to a Consultation highlighting difficulties or issues that have been encountered while sitting to determine cases. That is an appropriate function enabling the Tribunal to pass on knowledge and experience to policy makers. However the Tribunal must not stray outside that parameter. The observations in this response pay due regard to the Tribunal's overriding objective when managing cases, as expressed in its Practice Direction No. 6, namely to ensure that they are dealt with justly. Numbers in square brackets below refer to numbered paragraphs in the Consultation. Acronyms are defined in the same document.
2. The Tribunal makes this general response, recognising that the subject matter of the Consultation does not directly relate to its core function as a disciplinary and appellate tribunal. This response is intended to assist the LSB in its review of the IGR.
3. The Consultation records that, across the regulatory bodies, there have been 30 *ad hoc* independence issues since April 2014 [21]. Only 2 possible breaches of the IGR have been initiated and investigated by the LSB since 2010 [34]. 'Turf War' type disputes between AARs and ARs, who should be working towards aligned objectives for the public good, result in wasted resources (time and money), diversion from the achievement of excellence, and conflict. Such disputes are, realistically, inevitable and can, if managed carefully and appropriately, be a catalyst for significant improvement. It is however important to retain a sense of proportion and to recognise that adding layers of bureaucracy may aggravate disputes, not least by provoking new areas of disagreement. It is clear from this Consultation that the LSB has that risk in mind.
4. The LSB and regulators are required to protect and promote the public interest (regulatory objective number 1). Any steps taken by the LSB to review the IGR should have that goal in sight. The interests of the public must come first, not the interests of the regulators and their ambitions. The questions to ask are "what is in the best interests of the public, the ultimate consumers of regulated legal services?", followed by "how can we empower regulated legal services providers to perform to the highest professional standards?"
5. The Tribunal would be concerned if disputes between those who are required to serve consumers and protect them from harm impacted in such a way that the LSB levy on the regulated community was increased [49]. That outcome would potentially increase the cost of access to justice for all but the most well-resourced of clients, and would certainly increase the regulatory costs burden on service providers, particularly those working in the less profitable areas of the law serving the most vulnerable. This would not be a proportionate way forward in terms of addressing areas of dispute between AARs and ARs. Further, an increase in the levy would be unfair unless a "polluter pays" approach was adopted.
6. Any changes must preserve the independence of the Tribunal. For example, the Tribunal could not accept, without challenge, a situation where the Solicitors Regulation Authority, the prosecutor, was responsible for invoicing solicitors for the regulatory component of the practising certificate fee [61].