

Open letter to the Chief Executives/Directors of all  
Approved Regulators and their respective regulatory  
arms.

2 December 2008

Dear colleague,

## **Regulatory independence: appointments to regulatory boards**

I wrote to the regulatory and representative arms of all Approved Regulators on 16 July seeking information on the extent to which the exercise of their regulatory functions was independent of any representative functions also undertaken. We are grateful for the replies received and for the constructive way in which Approved Regulators have engaged with the Board on this issue in the intervening period.

Ensuring the separation of regulatory and representative functions in line with the spirit and the letter of the Legal Services Act is an issue to which the Board attaches great importance. Indeed, the issue of regulatory independence is crucial to the credibility of the Act with consumers and the general public. As Chairman of the Board, David Edmonds has spoken publicly about these issues on a number of occasions. The Board is now developing policy proposals with a view to issuing a public consultation paper early in the New Year as a precursor to making rules under Section 30 of the Act later in 2009.

Ahead of those publications, however, and in the light of recent public discussion on the specific issue of independence in relation to appointments and re-appointments to Regulatory Boards, this letter sets out the Board's emerging thinking in this area. We would of course welcome views ahead of our more formal consultation.

In relation to any appointments or re-appointments process, Approved Regulators should always consider regulatory and public appointments best practice. For example, there is helpful guidance available on the Office of the Commissioner for Public Appointments' website (<http://www.publicappointmentscommissioner.org/>). However, the Commissioner's remit does not extend to cover appointments to regulatory boards in our sector and so neither the Commissioner nor her office would be able to undertake any formal role, whether in an advisory capacity or otherwise.

It is essential that any appointments process for members of a Regulatory Board must be – and must be seen to be by outside observers, including the public at large – capable of producing a demonstrably qualified and genuinely independent regulatory organisation. What this means in practice will differ between the creation of a new body and appointments to an already existing organisation.

In the former case, in order to command public credibility, it is important that there is significant involvement of both lay representatives and those who are demonstrably independent of the Approved Regulator itself in the appointments process. However, particularly for smaller organisations, practical considerations may lead to a greater degree of involvement from Approved Regulators themselves than would be appropriate for a more mature organisation.

In the latter case, the considerations are different. In developing proposals for appointments to existing Boards, Approved Regulators should consult fully and transparently with the regulatory arm itself and with its Chair on such issues as composition of the Appointments Panel; the competencies sought in Chair and members; the duration of the term of office; the remuneration offered to attract candidates of the right calibre; and the mechanics to be used, for example, in relation to appointing search consultants. When the appointment is of a Chair, the regulatory arm should be fully consulted, usually through discussion with its entire Board.

Approved Regulators should also consider to what extent the Regulatory Organisation itself should be charged with practical management of the mechanics of the exercise. Although this may not always be appropriate in relation to the appointment of a Chair, it may well be the sensible route for managing member appointments. There should, in any event, be clear governance and an audit trail to show how this process of discussion has been undertaken, the points raised considered and final decisions made.

I should add that the focus of this letter on appointments and re-appointments should not be interpreted as a signal that we regard this as the only important issue in relation to regulatory independence, but recent comments on the issue suggested that some early clarification would be helpful. Queries about this letter should be addressed to Craig Robb at the LSB.



**CHRIS KENNY**  
Chief Executive (Designate), Legal Services Board

#### Schedule

Copies of this letter are being sent to each of the following:

**Keven Bader**, Chief Executive, Institute of Trade Mark Attorneys, Canterbury House, 2-6 Sydenham Road, Croydon, Surrey CR0 9XE (and by email)

**Peter F B Beesley**, Registrar of the Faculty Office, 1 The Sanctuary, Westminster, London SW1P 3JT (and by email)

**Diane Burleigh**, Chief Executive, Institute of Legal Executives, Kempston manor, Kempston, Bedford, MK42 7AB (and by email)

**Sheila Chapman**, Administrative Secretary, Association of Law Costs Draftsmen, Equity Law Costing, The Barn, Cowels Lane, Lindsell, Essex, CM3 3QG (and by email)

**Anton Colella**, Chief Executive, Institute of Chartered Accountants of Scotland, CA House, 21 Haymarket Yards, Edinburgh, EH12 5BH (and by email)

**David Hobart**, Chief Executive, General Council of the Bar and England and Wales, 289-293 High Holborn, London, WC1V 7HZ (and by email)

**Desmond Hudson**, Chief Executive, Law Society of England and Wales, 113 Chancery Lane, London WC1A 2PL (and by email)

**Mike Knight**, Acting Chief Executive, Intellectual Property Regulation Board, 95 Chancery Lane, London WC2A 1DT (and by email)

**Mandie Lavin**, Director of the Bar Standards Board, 289-293 High Holborn, London, WC1V 7HZ

**Victor Olowe**, Chief Executive, Council for Licensed Conveyancers, 16 Glebe Road, Chelmsford, Essex, CM1 1QG (and by email)

**Michael Ralph**, Secretary and Registrar, Chartered Institute of Patent Attorneys, 95 Chancery Lane, London WC2A 1DT (and by email)

**Antony Townsend**, Chief Executive, Solicitors Regulation Authority, 8 Dorner Place, Leamington Spa, Warwickshire, CV32 5AE (and by email)

**Ian Watson**, Head of Regulation, ILEX Professional Standards, Kempston manor, Kempston, Bedford, MK42 7AB (and by email)