



Michael Mackay
Legal Services Board
One Kemble Street
London
WC2B 4AN

3 April 2014

Dear Mr Mackay

BSB response to Appointment and reappointments to regulatory boards consultation

Thank you for the opportunity to comment on the proposed amendments to the Internal Governance Rules relating to the processes for appointing and reappointing regulatory board members and their chairs.

Broadly speaking, we agree with the proposals put forward by the Legal Services Board in this consultation. Reaching this view was considerably assisted by the fact that the Bar Standards Board already has in place a recruitment process that is compliant with the proposed requirements.

It is our view that the IGRs requirement that a process be “demonstrably free of undue influence” is a high standard, against which an objective assessment of compliance should have been possible. However, given that the previous feedback outlined in the consultation document shows that other regulators have not found this to be the case, stronger requirements seem necessary.

We do not think it necessary to go further and specify how appointments panels should be composed as a one-size-fits-all for all regulators is likely to be disproportionate. The size and resources of a regulator will have a direct bearing on the size of the appointments panel. At most, guidance could be considered. Guidance could suggest, for instance, that having a lay chair for the panel or lay people experienced in recruitment to public appointments on the panel would be advantageous in demonstrating independence and serve to ensure current best practice is adopted.

As outlined, our current practice is compliant with the proposed new IGR and making it apply immediately is not therefore problematic for the Bar Standards Board. The Legal Services Board should note that the Bar Standards Board’s recruitment process for the new Chair and new Board members is already underway. Advertisements will appear very shortly in the national press.

In relation to the Legal Services Board’s assessment of compliance with the IGRs, we consider that this should simply be part of the annual IGR compliance certification process. There is not, and ought not to be, any requirement for the LSB to approve any of the other IGR aspects before they take effect. This new aspect is not sufficiently different or creating risk to justify a new approach. The LSB assesses the extent to which the statutory requirement to separate regulatory and representative activities has been achieved through a single process – the IGR certification – and that should remain the case. We caution against using the term “regulatory arrangements” in relation to IGR matters to avoid confusion with those aspects that fall within the ambit of section 21 and the statutory approval process required for those changes (Schedule 4).

We do not consider that the composition of an appointment panel for Board membership constitutes a regulatory arrangement. For the avoidance of doubt, we consider that no general or specific recruitment process should require LSB approval before or while it is undertaken.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Vanessa Davies', written in a cursive style.

Dr Vanessa Davies
Director, Bar Standards Board