



## **Bar Standards Board Response to the Legal Services Board's consultation "Chairs of Regulatory Boards"**

The Legal Services Board issued a consultation paper entitled "Chairs of regulatory bodies" on 8 October 2013. The consultation proposed an amendment to the Internal Governance Rules to require that the Chairs of the Boards of the regulatory arms of each applicable approved regulator be a lay person. The Bar Standards Board makes the following submission in response:

1. The Bar Standards Board is strongly of the view that a prescriptive approach is inappropriate: the key issue is to ensure that the right calibre of person is appointed as Chair of a regulatory Board and it is illogical to restrict the pool of applicants, rather than treating any potential benefits of a lay appointment as, at most, a factor to be weighed by the appointment Panel within a Nolan-compliant appointment process.
2. The proposal is based on unevidenced and unwarranted assumptions that lay chairs will behave independently in circumstances where legally qualified chairs would not and moreover that the board as a whole would behave differently with a lay chair. There is no evidence to support the conclusions regarding the degree of progress that the regulators have made. This lack of evidence is significantly at odds with the LSB's usual insistence that evidence be available to support decisions being made by the frontline regulators. The lack of evidence should indicate to the LSB that intervention is not warranted.
3. The LSB tries to justify its proposal with its statement that there is "no doubt that reform would have come further under regulators who were not tied to their particular arms of the profession". Let us leave aside the assumption that reform should have "come further" under certain un-named regulators. The LSB makes two classic errors. First it assumes that this correlation is causal. If there are regulators that should have come further, and these regulators have "registrant' chairs" (see paragraph x below), it does not follow that the latter was the cause of the former. Any number of other factors could have been causal (eg lack of resources, organisational difficulties, legal challenges). The second error is the leap of logic. The document moves from the existence of a registrant chair to being "tied to their particular arms of the profession". In the unlikely event that a regulator is unable to separate itself from its profession it is not self-evident that it would be able to do so more easily under a lay chair. It is as likely that the fault would lie in its professional members. It might be harder for a lay chair than for a registrant chair to control this. There is no evidence to support the leap of logic in the paper, just as there is no evidence to support the assumption that the correlation it purports to observe is causal.
4. The Chairs of many comparable regulatory bodies are not lay persons. Moreover the BSB already has a lay majority whereas many of these Boards do not, having equal numbers of

lay members and members who are part of the profession being regulated (often called “registrants”). In that sense, the BSB already goes beyond the norm. A small amount of evidence gathering reveals the following:

<b>Regulator</b>	<b>Board composition</b>	<b>Status of Chair at present</b>	<b>Appointment method</b>
General Medical Council	Equal lay and registrant	Registrant (ie member of the profession)	Appointment by Privy Council from membership of Council
General Pharmaceutical Council	Equal lay and registrant	Registrant	Appointment by Privy Council from membership of Council
ICAEW	All elected members of profession	Member of profession	Election by membership
General Dental Council	Equal lay and registrant	Lay	Appointment by Privy Council from membership of Council
RIBA	All elected members of profession	Member of profession	Election by membership
Nursing and Midwifery Council	Equal lay and registrant	Lay	Appointment by Privy Council from membership of Council
<i>Bar Standards Board</i>	<i>Lay majority</i>	<i>Lay when appointed, now viewed as member of profession</i>	<i>Independent Appointments Panel chaired by lay person</i>

5. The Bar Standards Board’s constitution already provides that the Panel responsible for appointing the BSB Chair is itself chaired by a lay person. This method should continue and the Panel should appoint on merit as it sees fit without undue restriction on the range of candidates it may consider. This is hardly a controversial position. It accords with the Nolan principles, which drive how the Commissioner for Public Appointments operates. So selection for many government appointed posts is founded on identifying the most suitable applicant.
6. Where the Appointments Panel was faced with making a choice between equally meritorious candidates, one of whom was lay, then any potential benefits of making a lay appointment (for example, in terms of the overall balance of skills and experience on the board, or in terms of public confidence) would be a factor which the Panel could weigh and take into account. The Panel would equally need to take into consideration that the complexity of the market and the legal system in general may mean that a lay chair with no previous association with the profession or the legal system could take longer to become familiar with the demands of the chairmanship and effective in their role. These are matters for the Panel to weigh on the specific evidence in the particular case and are not apt for generalization or for external prescription. It should never be the case that the Panel was unable to appoint the candidate it considered best qualified because that candidate happened to be legally qualified. The effect of the proposal in narrowing the pool of candidates would be significant and wholly disproportionate to any perceived benefits. ;
7. The existing Internal Governance Rule is specific that the selection of chair should not be restricted by virtue of any legal qualification that person may or may not hold, or have held. This would seem sensible in that it broadens the scope of appointment to be fully inclusive. What is proposed seems regressive by comparison.

So in summary, to answer each of the 4 questions posed in the consultation, the BSB says:

**Do you agree with the proposed change to the IGRs in order to deliver lay chairs?**

No, for the reasons stated above, the IGRs should not be amended as proposed. Mandating a lay chair would be unnecessarily restrictive.

**Do you think the proposed change should take immediate effect or only be applicable to future appointments?**

The proposed change is not required and should not take effect at all.

**Do you agree that the requirement for lay chairs to apply only to the AARs?**

The rule should not apply at all. To then propose a rule that only applies to half of the organisations that the LSB oversees seems to make the rule disproportionate, especially when there is no evidence given to support the rule. We would also point out that the Chair of the BSB is not appointed by the professional body but by an Appointments Panel with an independent lay chair. As such, the BSB is like the CLC, for whom the LSB proposes an exemption.

**Do you agree with the proposed exclusion of the Master of Faculties from the proposed change?**

There will be no need for any exclusions if the rule remains as it stands. In the BSB's view, the change should not be made, meaning there is no need for an exclusion.

Bar Standards Board  
19 November 2013