

**SRA BOARD****CLASSIFICATION – PUBLIC****SOLICITORS REGULATION AUTHORITY  
Minutes of the SRA Board meeting  
held on 14 July 2020 at 10.45 by Microsoft Teams**

*Subject to final approval by the SRA Board at its meeting on 15 September 2020*

Present: Anna Bradley (Chair)  
Peter Higson  
Paul Loft  
Barry Matthews (for items 7 to 12)  
Geoff Nicholas (for items 4 to 12)  
Dame Denise Platt  
Selina Ullah  
Elaine Williams  
Tony Williams  
David Willis

In attendance: Paul Philip, Robert Loughlin, Jane Malcolm, Juliet Oliver, Liz Rosser, Tracy Vegro, Julie Brannan, Chris Handford, Dominic Tambling

**1 WELCOME AND APOLOGIES**

1.1 The Chair welcomed Board members to the meeting. Apologies had been received from David Heath.

**2 MINUTES OF PREVIOUS MEETING ON 22 JUNE 2020**

2.1 The minutes of the meeting held on 22 June 2020 were approved as a true and accurate record.

**3 MATTERS ARISING AND DECLARATIONS OF INTEREST**

3.1 There were no matters arising that would not be covered elsewhere on the agenda and all actions due had been completed or were in hand.

3.2 Interests were as previously declared and available to view on the SRA website. Members would declare any additional particular interest in an individual item if necessary.

**4 CHAIR'S UPDATE**

4.1 The Chair reminded the Board that a note had been circulated to the Board the previous day on the transfer of assets and liabilities from the Law Society to Solicitors Regulation Authority Limited (SRA) at the point at which we assumed our distinct legal entity status.

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- 4.2 In order to authorise the opening of an account with Cazenove to manage these investments a Board resolution was required which would also approve the signatories on that account. The Board therefore:
- a) agreed to the opening of an account with Cazenove Capital for the purpose of receiving a proportion of the existing Law Society investment portfolio
  - b) agreed that Paul Philip, Liz Rosser and Juliet Oliver be signatories on this account with two signatures required to withdraw or transfer funds
  - c) accepted the 'medium risk' rating of the investment in line with the current Law Society portfolio.
- 4.3 Board members were also reminded that they had been asked to individually confirm whether they were or had been employed in the financial services sector and, if so, in what capacity and for how long.
- 4.4 The Chair asked the Board to submit comments on a forward planner which had been circulated setting out planned agendas for Board meetings for the remainder of the year and 2021. This would be regularly updated and provided to the Board on a quarterly basis.
- 4.5 Since the previous Board meeting a paper had been circulated which provided information about the anticipated candidate fee for the SQE and asked for the Board's agreement to a proposal for managing the costs associated with the decisions about SQE delivery that the Board had made. Responses had been provided to questions raised by some Board members and the Chair asked for confirmation that the Board agreed the proposal, which was given.
- 4.6 The Chair said that a note had also been circulated on plans for transferring the regulatory functions from the SRA Board to SRA Limited as part of the process of keeping Board members informed of progress. Board members would also shortly be receiving updated contracts as current contracts with the SRA would end, and new agreements with SRA Ltd would be required. Training for the new Board director roles would also be provided.

## 5 COMMITTEE CHAIR REPORTS

- 5.1 The Board considered a written update from the Chair of the Audit and Risk Committee, which had met for the first time on 30 June 2020, and oral reports from the chairs of Remuneration and Nominations committee which had met on 13 July 2020.
- 5.2 The Audit and Risk Committee had considered progress on the Modernising IT Programme, including the RegOps1(authorisation) system which had gone live since the Committee's meeting. It had also discussed an updated risk framework and would give that further consideration following the Board workshop discussion earlier that morning. The Committee had also asked for a minor change to its

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terms of reference relating to the frequency of its meetings. This was agreed by the Board. Finally, the Committee had briefly discussed the SRA's budget for 2020/21 and noted that detailed early consideration of future budgets would in future be undertaken by the Board rather than in committee.

- 5.3 The Chair of Nominations Committee reported that at the meeting the previous day there had been further consideration of the process for appointing new lay and solicitor members to the Board. A timetable, with adverts for the posts going live in September and appointments being made in time for new members to take up post in January 2021, had been agreed as had the membership of the appointment panel. Recruitment criteria were being refined and Board members would be asked to assist with efforts to attract the widest possible field of candidates.
- 5.4 The Chair of the Remuneration Committee reported that it had reviewed the Board member appraisal framework and agreed some changes which would streamline the process. These would be reflected in an updated Governance Handbook which the board would be asked to agree later in the year.

*NB: the paper relating to this item will not be published as it relates to issues that are commercially sensitive.*

## 6 PERFORMANCE REPORTING UPDATE

- 6.1 As part of the development of the suite of performance reporting material, the Board was asked to consider the pack which it received each quarter ( with the June report annexed for information) and confirm that it was now content with the information provided and that the pack enabled the Board to fulfil its role in holding the Executive to account.
- 6.2 The Board noted that for each section of the pack the paper set out information on the core measures included as well as on alternative measures which had been were considered. The Board also noted that topical measures, such as the outcome of the two yearly Firm Diversity Data collection, would be included in addition to the core set of measures. The Chair noted that in the workshop discussion that morning on strategic risk the Board had reinforced this point and that additional measures would be considered for inclusion as the importance of particular issues changed.
- 6.3 Board members commented that the paper was helpful in providing clarity on the core measures included in the pack. They noted the relationship between the measures included and those in the management level reporting and that the Board would be made aware of problems identified by that through exception reporting. Further detail on this mechanism would be provided with the third quarter performance report in September.
- 6.4 Board members confirmed that they were satisfied with the content of the performance reporting pack.

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*NB: Annex 1 of this paper will not be published because it contains information which is commercially sensitive and annex 4 will not be published as it includes sensitive information*

## 7 CEO REPORT

- 7.1 The Chief Executive presented his report. The Board noted the ongoing work within the organisation to address the impact of Covid-19 and the introduction of new IT systems, including a new customer relationship management system, which underpinned our ability to provide the required levels of service.
- 7.2 The Board also noted an update on the management of disciplinary cases that had been delayed due to Covid-19 related issues in the sector. The Board noted that because of the nature of the pandemic and the implications for health and localised firm arrangements, the group of delayed cases would be dynamic with further cases added to the list as others came off it. Board welcomed the steps taken to progress these cases.
- 7.3 The Board was reminded that amendments to the assessment arrangements for the Qualifying Law Degree (QLD), Common Professional Examination (CPE) and Legal Practise Course (LPC) had been agreed earlier in the year to help to mitigate the impact of Covid-19. A number of providers had requested that these arrangements be extended for the whole of the forthcoming academic year in order to give them, and their students, certainty. Such an extension would be covered by previous Board decisions and the intention was to agree to it, subject to further information being supplied by the providers seeking to extend their arrangements. Any move to a more permanent arrangement for these provisions would be brought to the Board for decision.
- 7.4 The Board noted that an updated report from the independent Bridge Group on diversity and inclusion in relation to the introduction of the SQE had been published that day. The report had concluded that the assessment design is fair and overall SQE could help address diversity issues in the legal profession. An updated SQE equality, diversity and inclusion (EDI) risk assessment would be published later in the month. The Board agreed that it should consider the SQE implementation risk assessment with a focus on the Bridge Report within the next few months.
- 7.5 The Chief Executive drew the Board's attention to paragraph 18 of his report which provided an update on requests from some providers to delay the introduction of SQE and allow QLD and CPE courses to be run in the 2021/22 academic year. As previously reported to the Board, we did not think it is in the public interest to further delay the introduction of SQE, but were exploring whether there is flexibility within the transition arrangements to help aspiring solicitors and providers manage the impact of Covid-19. A further note on this matter would be circulated to the Board.
- 7.6 The Chief Executive reminded the Board that at its meeting on 2 June 2020, it had agreed the draft Solicitors Qualifying Examination (SQE) Assessment Regulations.

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As we move forward to implementation, and once the assessment is live, there would be minor changes to the Assessment Regulations which would need to be made. The Board agreed that the Chair should be given the power to make minor changes from time to time to the SQE Assessment Regulations.

- 7.7 The Chief Executive reminded the Board that at its meeting on 2 June 2020 it had agreed to a one-year extension to the post six-year run-off cover provision provided by the Solicitors Indemnity Fund. This required an amendment to the SRA's Indemnity Rules which was set out in annex 1 of the paper. The Board agreed to make the amendments to the SRA Indemnity Rules to enable the one-year extension to the post six year-run off cover provision provided by the Solicitors Indemnity Fund. This would now be submitted to the Legal Services Board for approval ahead of the 29 September 2020 commencement date for the amended rule.
- 7.8 The Chief Executive highlighted paragraph 34 of the paper which dealt with the Board's request for consideration to be given to whether, given the impact of Covid-19 and its potential implications, we could collect the PC fee in instalments in the forthcoming year as opposed to collecting the full fee in October. It had been concluded that this would not be possible for 2020/21 but the Board asked for further work to be done on whether it might be an option that could be offered in future years.
- 7.9 The Chief Executive informed the Board that the Legal Services Board (LSB) required it to make a resolution confirming that it understood the obligations of the LSB's Internal Governance Rules and that the SRA was compliant with them. A note on this matter would be circulated to the Board.<sup>1</sup>
- 7.10 Finally, the Chief Executive asked the Board to note that the directors of SRA Assessment Limited (SRAAL) had met as the board of the company for the first time on 18 June 2020 and dealt with a number of administrative matters as well as discussing next steps.

### **8 2020/21 PRACTISING FEES AND COMPENSATION FUND CONTRIBUTIONS: FINAL DECISIONS**

- 8.1 The Board was asked to consider and finalise the 2020/21 Practising Fees and Compensation Fund contributions.
- 8.2 The Board had previously discussed the indicative fee and contribution levels and there were no changes to these to report. The fees and contributions were based on those for the current year and the Board was asked to note that in preparation for the UK's final departure from the European Union, Registered European Lawyers who did not subsequently become Registered Foreign lawyers would not be charged a fee for the short period in the new practice year in which they would be able to practise.

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<sup>1</sup> The Board took receipt of the note and confirmed that it certifies compliance.

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- 8.3 The Board noted that the consultation which the Law Society ran on fees had had a higher than usual number of respondents though the nature of responses was similar to previous years.
- 8.4 Although this consultation was primarily run by the Law Society, we had directly contacted non-commercial and not for profit organisations employing solicitors urging them to respond. Our 2020/21 Business Plan consultation also included information on the detail of our budget for 2020/21. Board members asked that the Executive should engage with the Law Society on how the fee setting process, including any consultation, would run in 2021 once the SRA had been established as a distinct legal entity.
- 8.5 Board members noted that following their decisions, the fee and contribution levels would be considered by the Law Society Council later in the week and a joint application would then be made to the Legal Services Board.
- 8.6 The Board made the following determinations:
- (a) the Practising Certificate Fee Determination [2020] in annex 1 of the paper
  - (b) the Recognised Body and Recognised Sole Practice Fee Determination [2020] in annex 2
  - (c) the Licensed Body Fee Determination [2020] in annex 3
  - (d) the Determination of Compensation Fund contributions [2020] in annex 4
  - (e) the Determination of Compensation Fund contributions for Licensed Bodies [2020] in annex 5.

## 9 COMPENSATION FUND 2019 FINANCIAL STATEMENTS

- 9.1 The Board was asked to consider the Compensation Fund 2019 Financial Statements, Letter of Representation and Statement of Disclosure for the year ending 31 October 2019.
- 9.2 The Finance and Audit Committee had considered these documents in detail at its meeting in May 2020 and the paper included an update from the Chair of the Committee. The Statements had been prepared on a going concern basis and a going concern assessment was annexed to the paper. A financial update had also been provided which demonstrated that assumptions made were prudent and that the Fund presently had a good level of reserves.
- 9.3 The Board agreed the Compensation Fund 2019 Financial Statements prepared on a going concern basis and the Letter of Representation to be signed by the Chief Executive. The Board also noted the financial update.

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*NB: annexes 1 to 4 and 6 and 7 of this paper will not be published because they contain commercially confidential information discussion of risk that might be exacerbated by publication or legal or other professional advice on sensitive or confidential matters.*

#### 10 REVIEW OF THE SRA'S COMPENSATION FUND

10.1 The Board was asked to consider a paper asking for final decisions to be made following two consultations proposing reforms to the operation of the Compensation Fund.

10.2 The Board had discussed these proposals in a workshop session in 22 June 2020 and asked for further information on three of the proposals which were summarised in paragraph 8 of the paper. The Board had asked that this should include further consideration of the responses to the first, as well as the second, consultation.

##### *Limiting scope to consumers for whom legal service is provided*

10.3 The first of these three proposals was to limit the scope of claims to those for whom the legal service was being or had been provided. This proposal built on proposals previously consulted on to remove claims from barristers and experts from scope.

10.4 At its workshop discussion, the Board had noted that there had been significant opposition to this proposal in responses to the consultation with arguments that the legal system involved an inbuilt reliance on the solicitor acting for the other side, and that a limited extension to protect those on the other side should therefore be considered.

10.5 The Board had also noted that one respondent had suggested that although our proposal must be right in 'general terms' it would be possible to set out a series of scenarios where we might want to reserve the right to accept claims from non-clients.

10.6 The Executive reported that following further examination of these points it was now proposed that claims should be allowed from non-clients in certain circumstances. These might include be for example where the solicitor is holding money in accordance with an undertaking given to them or their solicitor (as is common in conveyancing) or where the third party relied on the solicitor to transmit damages in a personal injury case. Board members agreed to the amendment to the proposal.

##### *Excluding large charities and trusts from eligibility*

10.7 The second proposal was to exclude claims on the Fund from any charity with an income net of tax in the last financial year of £2m or above, or from a trust with an asset value of £2m or more. This was on the basis that they could be regarded in a similar way to large businesses as they often had significant reserves and should also have strong governance arrangements.

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- 10.8 At its workshop discussion the Board had noted that in the case of funds lost to charities through misconduct by solicitors in relation to probate, it should be possible for the charity to take proceedings against an individual solicitor. The executors of the will concerned should also be able to undertake recovery proceedings.
- 10.9 The Board had also noted that the Charity Commission required charities to take steps to recover lost funds, irrespective of their overall financial position including in relation to reserves, and that the reserves point was not therefore conclusive.
- 10.10 The Executive reported that following further consideration of the points raised in the workshop it had confirmed that where there were other individual executors of an estate, or other beneficiaries, they will continue to be eligible to make an application to the Fund and they could make a payment to the charity or trust on receipt of a payment.
- 10.11 Further discussions had also taken place with the Charity Commission around the governance of charities and in particular their management of reserves and following these it was recommended that the proposal should stand. The Board agreed this position.

#### ***Excluding claims for seeking professional help to make an application from scope***

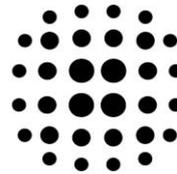
- 10.12 The final proposal which the Board has asked for further work to be undertaken on was to exclude claims for costs for making an application to the Fund. In its workshop discussion the Board had agreed that if this proposal was taken forward then we must make arrangements to help people make applications and not run the Fund in an overly bureaucratic way. This should include special support for those with particular needs which might make it difficult for them to submit an application. It was also suggested that consideration be given to paying a third party to assist claimants in applying to the Fund.
- 10.13 The Executive reported that a number of actions to address these points were set out in paragraphs 54 to 62 of the paper. These included reviewing our online guidance to make sure that it clearly sets out: who is able to claim, what types of claim we will consider, what information we will need, how to complete the application form, top tips for common issues. We were also working with other organisations which might be asked to assist applicants to ensure that they had the information that they needed. On the basis of these actions the Board agreed to support the proposal.
- 10.14 The Board reviewed and agreed the complete set of recommendations set out in paragraphs 2 to 5 of the paper.

## 11 ASSURING ADVOCACY STANDARDS – CONSULTATION RESPONSE DOCUMENT

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- 11.1` The Board was asked to consider the proposed response to our assuring advocacy standards consultation.
- 11.2 The consultation had taken place in 2019 and further stakeholder feedback on our plans had been considered earlier in 2020. The proposals in the consultation were summarised in paragraph 9 of the paper.
- 11.3 The Board was particularly asked to note that the proposal to continue to grant rights of audience for solicitors practising in the lower courts without introducing a requirement to be assessed in witness handling had received broad support and that measures to support this position were set out in paragraph 12 of the paper.
- 11.4 Proposals to strengthen Higher Rights of Audience (HRA) advocacy including the appointment of a single assessment provider were set out in detail in paragraphs 13 to 24 of the paper and would require a minor amendment to our existing HRA regulations to introduce this rule (annex 2).
- 11.5 Other proposals included the provision of online resources to support solicitors practising criminal and civil advocacy and resources for the public and other stakeholders that explain the criminal and civil advocacy standards we expect of solicitors. We would also encourage appropriate reporting on advocacy and publish an annual report on concerns raised about criminal and civil advocacy and practice which would include a summary of regulatory action taken.
- 11.6 The Board was also asked to note that there was one proposal which it was not recommended be taken forward. This would have required that solicitors advocating serious cases in the youth court should have a higher rights qualification. We would instead work with youth court practitioners to use training record checks to gain assurance and understanding about how they maintain their competence.
- 11.7 Board members discussed the proposals and noted the need to remain in touch with the judiciary on these matters given that it had been critical of advocacy standards of solicitors in the past. It was agreed that the Board Chair should write to the Lord Chief Justice asking if he wished to discuss the Board's conclusions.
- 11.8 The Board:
- (a) agreed the various policy positions to assure advocacy standards
  - (b) agreed to make a minor amendment to regulation 9.10 of the SRA Authorisation of Individuals (Higher Rights of Audience) Regulations so that only admitted solicitors can take the Higher Rights of Audience assessment
  - c) noted the consultation response for publication.



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#### 12 REVIEW OF MEETING AND ANY OTHER BUSINESS

- 12.1 There was no other business. The next meeting would be held on 15 September 2020.