

**SOLICITORS REGULATION AUTHORITY**  
**Minutes of the SRA Board meeting**  
**held on 31 January 2023 at 09.00 by Zoom**

*Subject to final approval by the SRA Board at its meeting on 27 February 2023*

Present: Anna Bradley (Chair)  
Claire Bassett  
Ann Harrison  
Paul Loft  
Lisa Mayhew  
Vikas Shah  
Liz Smart  
Selina Ullah  
Nicola Williams

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

## **1 WELCOME AND APOLOGIES**

- 1.1 The Chair welcomed Board members to the meeting, including Claire Bassett who was attending her first meeting following her appointment as a lay member of the Board from 1 January 2023. There were no apologies.

## **2 MINUTES OF THE PREVIOUS MEETING ON 6 DECEMBER 2022**

- 2.1 The minutes of the meeting held on 6 December 2022 were approved as a true and accurate record, with one amend to clarify the point in paragraph 7.13 which should have emphasised the need for more information to be provided in the Chief Executive's report on our engagement with stakeholders in England as well as in Wales.

## **3 MATTERS ARISING AND DECLARATIONS OF INTEREST**

- 3.1 There were no matters arising that would not be covered elsewhere on the agenda. All actions due had been completed or were dealt with in the papers for this meeting.
- 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 CONSUMER PROTECTION FOR POST SIX-YEAR NEGLIGENCE**

- 4.1 The Board was asked to consider a report on the outcome of our October 2022 consultation on consumer protection arrangements for post six-year negligence and our proposed responses, and to make the final rules of a future scheme.
- 4.2 Following discussion and consultation in 2021 and 2022, the Board had, at its meeting on 13 September 2022, agreed: that we should maintain consumer

protection for post six-year negligence as a regulatory arrangement with the same level of cover as is provided by the Solicitors Indemnity Fund (SIF); to provide this protection via an indemnity scheme operating under the direct control of the SRA; and that we should consult on our approach and the detailed rules setting out how the SRA-controlled indemnity scheme will operate.

- 4.3 We had then held a consultation from October 2022 until 3 January 2023 inviting views on the arrangements and draft rules for the scheme and on its regulatory and equality impact.
- 4.4 The consultation had noted that control of SIF would give us clear oversight of operating costs and risk management decisions, and access to relevant management information about operations and claims. It would also enable us to report transparently on, and keep under review, the costs and benefits of post-six-year consumer protection. And finally it would ensure that this consumer protection is delivered in a way that is aligned and consistent with our other consumer protection arrangements. The scheme would be governed within and by the SRA as the regulator responsible for consumer protection.
- 4.5 Annex 4 detailed a summary of consultation responses and our analysis of the key points raised was set out in annex 3 of the paper. Responses had been broadly supportive but some had questioned the independence of an indemnity scheme being run by us as the regulator and whether there would be conflicts of interest between our indemnification and disciplinary roles. The Board noted that 'Indemnification arrangements' are a regulatory function in the Legal Services Act 2007. Whilst claims would be handled separately, where they raised questions of misconduct these would be referred for investigation, as is currently the case when regulatory issues are highlighted in claims being considered for the Compensation Fund.
- 4.6 Some respondents had also questioned whether we had the capacity and capability to run the scheme ourselves. The Board noted that the proposal was to use our existing infrastructure – which is well established to manage the Compensation Fund – and outsource the handling of claims to a partner experienced in complex professional negligence claims. We would also be commissioning expert advice on the transition plans, and the expert will support the procurement of a suitable partner in time for the October start date, as well as advise on the best approach to future provisioning policies, capital reserves and asset and liability management strategies – including whether and when we would need to consider future levy funding from the profession. The Board noted the high level implementation plan at annex 5, and received assurance that this was achievable. The Board would receive regular updates on progress through the regular CEO and performance reports.
- 4.7 We had also consulted on the SRA Indemnity Fund (Amendment) Rules [2023] and the Board was asked to make the Rules. These were framed in a way which was more consistent with our existing regulatory arrangements but did not reduce the scope of the indemnity provided by the scheme.
- 4.8 Two changes to the rules were proposed as a result of responses received to the consultation. Firstly, to provide that where an arbitrator is required in relation to a

dispute about whether a claim is within the scope of the indemnity we will invite an appropriate independent body to appoint the arbitrator. Secondly, we proposed to amend the final rules to provide that in the event of the scheme closing, and where we do not identify an alternative indemnification purpose for the residual funds, they will be transferred to the Law Society so it can determine how they will be used for the benefit of the profession.

4.9 The Board agreed to:

- a) with effect from 1 October 2023, designate the SRA as the person responsible for holding, managing and administering the Solicitors Indemnity Fund (SIF) pursuant to rule 4.5 of the SRA Indemnity Rules 2012
- b) make the SRA Indemnity Fund (Amendment) Rules [2023].

4.10 Board members underlined the need for optimum communication of these decisions and it was agreed that as well as the usual channels briefing might be provided via webinar for those who were particularly interested. It was noted that we will provide web resources helping the profession and the public to understand what the Fund is there for and how to make a claim. The consultation had highlighted that there was a fairly widespread misunderstanding of how the current scheme worked and it was important to use this opportunity to try and correct some of that misunderstanding as we moved to the new arrangements.

*NB: annexes 3(i) and 4 of this paper will not be published because they relate to emerging strategy or policy*

## **5 PUBLICATION OF REGULATORY DECISIONS – RECOMMENDED NEXT STEPS**

- 5.1 The Board was asked to consider recommendations for next steps following a recent consultation on our approach to publishing regulatory decisions and the steer received from the Board at a workshop held in October 2022. At that time the Board had noted the mixed views received about the issues that we had consulted on and said that we should carefully consider our way forward in the context of our wider priorities.
- 5.2 Recommendations were being made in five areas: the principles governing our approach to publication of regulatory decisions, our approach to how much information is published; withholding information in exceptional circumstances; timing of publication; and length of publication.
- 5.3 Board members highlighted the overrepresentation of those from Black, Asian and minority ethnic backgrounds in our enforcement processes. A research team had been appointed to explore the reasons for this and progress would be reported to the Board during the year. In the meantime, however, and following the undertaking of an equality impact assessment, it was agreed that publication of regulatory decisions relating to this overrepresented group should be treated consistently with decisions relating to others.

- 5.4 Board members suggested that we might publish an anonymised case digest to highlight the learning points for firms and individuals from the decisions we had made. Further consideration would be given to this.
- 5.5 Board members also suggested that we might look again at how we disseminated information about ongoing cases, in light of public scrutiny over particular areas of our work. It might be worthwhile for the Board to spend some time considering our interpretation of the public interest in this context given that this was not a clear cut matter.
- 5.6 Board members asked about how we handled requests for non-publication of decisions on mental health grounds and it was confirmed that staff were trained to identify and handle the issues around this. Board members were also reminded that we had recently amended our processes so that respondents who were not fit to have their case heard by the Solicitors Disciplinary Tribunal could also be deemed to be not fit to practise.
- 5.7 The Board agreed:
- a) to adopt new principles for our approach to publishing regulatory decisions aligned to the Better Regulation Principles of the Legal Services Act 2007
  - b) our approach to improving the quality of the information that we publish in our regulatory decisions
  - c) that we should maintain our existing approach on withholding publication in exceptional circumstances
  - d) that we continue with our existing policy of publishing our decisions promptly after the review period (or the conclusion of any review)
  - e) that we continue to publish decisions to prosecute allegations before the Solicitors Disciplinary Tribunal (SDT) at the point that the SDT certifies that it will hear the case
  - f) that we should link the length of publication of regulatory decisions to severity of sanction and the associated publication lengths for different sanctions and controls.

## **6 FINANCIAL PENALTIES – IMPLEMENTATION OF NEW ARRANGEMENTS**

- 6.1 The Board was asked to consider recommended final positions on the implementation of new arrangements for financial penalties, following our second consultation on this matter, and to make rules where required to implement these positions.
- 6.2 Following our first consultation in November 2021 and decisions made by the Board in April 2022, we had announced decisions to make significant changes to our financial penalties framework. Our second consultation between August and November 2022 set out the detail of how we intended to take those changes

forward. As part of that consultation we published updated draft fining guidance and proposed rule changes.

- 6.3 A number of the proposals in the consultation were uncontentious with respondents. Concerns had however been raised that it was not appropriate for us to hold hearings, urging us to refer all appropriate cases to the Solicitors Disciplinary Tribunal (SDT). We did currently have the power to hold hearings and although we had never used it, we needed to retain it because the SDT had no jurisdiction over alternative business structures (ABS). We had proposed changes in our rules to say that we would only hold a hearing where the SDT could not (i.e. for ABS) and where certain other conditions were met. Board members accepted this as a necessary residual power but asked that we make it clear that ABS were a special case and provisions required for handling ABS claims would not be applied to traditional firms.
- 6.5 In relation to how we took turnover into account when setting a fine, the Board was reminded that following our first consultation it had decided that the maximum amount we would usually fine firms should rise from 2.5% to 5% of annual domestic turnover. The second consultation had looked at how we would bring this change into effect.
- 6.6 Board members discussed how this might work in practice, including in relation to international firms which might have significant turnover relating to work done in other jurisdictions and which we did not regulate. It was noted that a similar provision did already exist but had never been used.
- 6.7 It was agreed that we should make clear that if we did ever choose to use an alternative to annual domestic turnover to calculate a fine then we would do so on an exception basis and explain why we could not achieve what we wanted to without taking that course of action.
- 6.8 The Board also noted that if the Economic Crime and Corporate Transparency Bill was enacted and, as was currently proposed, gave us unlimited fining powers in relation to some economic crimes, then we may need to review our position on the setting of fines.
- 6.9 Board members noted that proposals to publish levels of fines and how they had been calculated had been strongly objected to on the basis that it would be possible for income for individuals or turnover for firms to be calculated. This was though considered proportionate given the public interest benefits of being transparent, both about the sanction imposed and the reasons for that sanction being appropriate. It was noted that other regulators took the same approach. We had also received legal advice and were satisfied that our proposed approach was General Data Protection Regulations (GDPR) and Human Rights Act compliant. Further thought would though be given to the occasions when an individual refused to provide us with information about their salary.

6.10 The Board agreed:

- a) that we amend our rules to implement the proposed enhancements to our decision making procedures on which we consulted, save that we make express provision for adjudicators or panels to interview respondents only
- b) that we take forward a pilot on personal impact statements in relation to sexual misconduct, discrimination and harassment
- c) that we implement our proposed updated fining frameworks for firms and individuals
- d) that when we impose fines for individuals and firms which take into account their income, we publish the level of the fine and how this has been calculated, unless we decide to withhold publication because the impact on the respondent would be disproportionate
- e) to approve the implementation of the fixed financial penalty regime
- f) to make the SRA Financial Penalties and Adjudication (Amendment) Regulations 2023 which will implement the changes recommended at a) and e) through amendments to the SRA Regulatory and Disciplinary Procedure Rules, the SRA Application, Notice, Review and Appeal Rules and the Glossary; to come into force from 20 May 2023.

*NB: annex 4 of this paper will not be published because it relates to emerging strategy or policy*

## **7 REVIEW OF MEETING AND ANY OTHER BUSINESS**

7.1 The Chair thanked the Board and Executive for their contributions. The next meeting would be held on 27 February 2023.