



The Law Society

## **Code and protocols for ensuring the effective functioning of the regulatory and non-regulatory arms of the Law Society**

**Constitutional Affairs**  
**23 January 2007**

1. The following Code and Protocols were agreed by Council on 30 March 2006, following consultation with the SRA Board and Legal Complaints Service Boards ("the Boards").

[Code on Council Members' Access to Information](#)

[Protocol for SRA Board and Legal Complaints Service Board Consultation with Council](#)

[Budget Plan and Timetable](#)

[Protocol for Media Relations](#)

[Protocol for Corporate Branding](#)

[Protocol for Responding to Consultations by Third Parties](#)

[Protocol on External Appointments](#)

The following protocol was agreed by the Corporate Governance Board on 28 June 2006

[Protocol for devolved handling of high profile litigation during the interim state](#)

2. In December 2005 Council delegated functions to the Boards in its General Regulations. The General Regulations do not set out in detail how the Society will operate on a day to day basis. In order to enable the regulatory and non-regulatory arms of the Law Society to function effectively, it is necessary to establish agreed working practices and rules.
3. The Protocols were drafted to establish the maximum transparency and certainty between the Society's different functions. They can be modified in the light of experience, but until then they will govern Council and the Boards.

4. The documents which follow deal with different aspects of the Society's operations but they interconnect. Thus
- the *budget* is approved by Council after consultation with the Boards (**Budget Plan and Timetable**)
  - the Boards consult with Council on their *workplans* (**Protocol for SRA Board and Legal Complaints Service Board Consultation with Council**). They: give Council the opportunity to comment on the intentions and priorities of the Boards; inform Council's decision on budgetary matters; enable Council to plan its own decision making timetable and ensure that the Boards' timetables allow sufficient time for Council to be properly appraised of matters within its remit.
  - The contents of a workplan are set out in paragraph 5 of the Protocol. Extra information requirements for matters within Council's remit are set out in paragraph 3(c) of the **Code on Council Members' Access to Information**.

## **Code on Council Members' access to information**

1. Council members are entitled to information which is available to the public and the profession under the Society's Freedom of Information Code ('the Code').
2. In addition, so far as matters not delegated to the Regulation and Legal Complaints Service Boards are concerned, individual Council members are entitled to factual information held by the Society, and to papers coming to Boards, Committees or other Law Society groups involving Council members, whether or not the information or papers are disclosable under the Code. This entitlement is subject to the following exceptions –
  - (a) information about specific complaints or disciplinary investigations being dealt with, or dealt with in the past, by the Society (including the Consumer Complaints Service, its predecessors and the regulatory Boards) except where the information is in the public domain;
  - (b) information about regulatory casework matters, including related intelligence or personal information held by the Society (other than information which is publicly available under the Solicitors Act);
  - (c) information which would be classed as 'personal data' under the Data Protection Act 1998;
  - (d) information in respect of which the Society is entitled to claim legal professional privilege;
  - (e) information about specific Presidential appointments of experts and arbitrators (including the litigation or other matter to which an appointment relates) and persons whose details are held in any database of potential experts and arbitrators;
  - (f) information about any matter where the Council member concerned has a conflict of interest as registered in the Register of Interests or which appears to arise under the Code of Practice on Conflicts of Interest;
3. Where matters have been delegated by Council to the Regulation or Legal Complaints Service Boards ("the Boards") the following will apply to information held by the Boards and their committees:
  - (a) where the matters are non reserved matters i.e. they not matters where Council has reserved to itself ultimate discharge of the function, then Council members have the same rights of access to the information as members of the public under the Council's Freedom of Information Code
  - (b) where the matters are reserved matters i.e. matters where Council has reserved to itself ultimate discharge of the function, access to information is determined by Council in accordance with this sub paragraph. When the Boards present their workplans to the Council

(or, if the matter was not in the workplan, when the Council is made aware of the matter), Council and the Boards must take into account Council members' need for sufficient information at an appropriate time in order to carry out their duties in respect of the reserved matters. At that stage, Council will consider whether, taking into account that any paper to be presented to it will contain the material set out in paragraph 3 (c), the timescales are adequate and whether it needs to specify any specific information which needs to be made available to it.

- (c) In presenting a reserved matter to Council for decision the Boards will present a balanced paper which provides all the information which a Council member requires in order to make the decision required of them. It will
- Set out the issues, the arguments for and against a proposal, and make a recommendation to Council
  - Include the materials and evidence in support of the proposed change
  - Include, where appropriate, budgetary and financial information, a regulatory impact assessment, an equality and diversity impact assessment, a Human Rights Act assessment, any relevant research, and a summary of the responses to any consultation
  - Set out which committees of the Board have considered the matter and whether their recommendations were adopted by the Board.

4. Boards will

- post their non-confidential agendas and the non confidential papers on Corporate Business 5 days before meetings. Where papers are delivered late they will be posted as soon as they are received;
- review all confidential papers at the conclusion of their meetings to determine whether they should still remain confidential and publish all papers immediately afterwards where it revises the categorisation;
- post draft minutes of the non-confidential part of their meetings on Corporate Business as soon as possible after approval by the Chair. Where they have not been approved within 3 weeks of a meeting the draft minutes will be posted on Corporate Business in any event.

5. Where information is supplied to a Council member under this Code which would not be disclosable to a member of the public under the Code, it shall be conditional on the member undertaking that the information will not be disclosed to anyone other than another Council member, and subject to the same undertaking.

6. A Council member may only attend meetings of a Law Society board or committee of which he or she is not a member with the agreement of the Chair (in accordance with any policy decision of the board or committee regarding attendance of non-members) provided that he or she shall withdraw

from the room for those items where access to the information under discussion would be denied in accordance with this Code. No travelling or other expenses will be claimable by any Council member seeking to attend such a meeting without a prior invitation or the prior agreement of the Chair.

# **Protocol for SRA Board and Legal Complaints Service Board (“the Boards”) Consultation with Council**

This protocol will operate from 1 January 2006 until the implementation of the ‘end-state’ Law Society following the enactment of the Regulation of Legal Services legislation, unless modified before then by the Law Society after consultation with the Boards. It is supplementary to the requirement in General Regulation 25 (2) that the Boards take into account the recommendations of the Better Regulation Task Force in exercising their functions.

## **Introduction**

1. Professional regulation is a partnership between the profession and the public, and between the regulator and the regulated. For this partnership to be effective, the profession and the public are consulted on significant changes to regulatory policies or procedures that may impact upon them.
2. The General Regulations require that the regulatory Boards must take into account the recommendations of the Better Regulation Task Force (BRTF) in exercising their functions. The BRTF reproduces Cabinet Office guidance on public consultations by public bodies <sup>1</sup>. These guidelines are mainly applicable to the Boards’ wider consultations with the public and the profession, but they also inform the relationship between the Boards and the Council.

## **The purpose of consultation**

‘The purpose of consultation is to improve decision-making by ensuring that decisions are soundly based on evidence, that they take into account the views and experience of those affected by them, that innovative and creative options are considered and that new arrangements are workable.’ [Cabinet Office guidelines]

3. Consultation with the Council and the profession has a purpose that goes beyond this, of securing solicitors’ confidence in, and commitment to, the regulatory framework in which they work. Everyone concerned should feel that they have had an opportunity to have had their say.

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<sup>1</sup> See [www.brtf.gov.uk/reports/principlesentry.asp](http://www.brtf.gov.uk/reports/principlesentry.asp)

## Effective consultation

4. To be effective, the Boards' consultations must be clear about who is being consulted, about what questions, in what timescale, and for what purpose. The principal tool for this will be the "workplan".
5. Workplans. The workplan of a Board will set out the following matters:
  - the main areas of work which the Regulation or Consumer Complaints function (as appropriate) will be involved with in the year concerned, particularly where consultation is likely to be required
  - the broad level of resources to be allocated to each area
  - what consultations it is expecting to undertake during the following year and what its expected timetable for those consultations will be
  - who it intends to consult, where this is known
  - what decisions will be required of other Boards and/or Council, and when it expects those decisions to be made
  - what information it expects to put before other Boards and/or Council to enable those decisions to be made in addition to the information specified by paragraph 3 (c) of the Code on Council Members' Access to Information.
6. The Boards will produce their annual workplan in August/ September each year or such other time as the Budget Plan and Timetable specifies. The draft workplan itself will be sent for consultation to the Representation, Law Reform and Corporate Governance Boards and will be submitted to Council in December.
7. The Boards consulted and Council will consider whether the time allowed for decisions and the information to accompany the request for decisions is adequate.
8. The LSCC Plan year is April to April. As a result there may be a need for an additional consultation with the CCS Board to agree any amendments to the work programme and budget to meet the requirements of the LSCC.

### *Timescale for consultation*

9. The Boards must allow sufficient time for considered responses from the Council and any other groups with an interest. For public body consultations, twelve weeks is the standard minimum consultation period.
10. The Boards must take into account the Council's and other consultees' circumstances in fixing a consultation period. The issues being consulted on may be complex, requiring a period of weeks to draft responses.

11. The Council may have specific members, committees or staff which need to be consulted. The Council, the Representation and Law Reform Boards and Law Society committees may not be able to meet simply to fall in with a consultation timetable. These considerations also apply to other organisations being consulted.
12. The Boards should consider that an otherwise adequate period may be compromised if a substantial holiday period falls within it.
13. There will be circumstances which unavoidably require a consultation period less than twelve weeks. Among these may be the need to respond to timetables imposed by the Government or other public authorities; to meet budget or other financial cycles; or because there is an issue which has to be addressed urgently.
14. The Boards will normally give the Council and other consultees twelve weeks in which to respond to consultation, but where this is not possible, the Boards will state the reasons why not, and what measures they are putting in place to ensure that the consultation is nevertheless effective.
15. Where reconsultation takes place on the basis of amendments made in the light of earlier consultation, the Boards may feel that a shorter period is justified.
16. The Boards should allow sufficient time to consider responses and where appropriate to amend their proposals in the light of those responses.

#### *Impact*

17. The Boards' consultations should include an assessment of the impact of the proposals on groups likely to be particularly affected, and specific efforts should be made to ensure that views are received from such groups.
18. Under the General Regulations, the Boards must ensure that the principles of equal opportunity and diversity are incorporated within every aspect of its work; consultation papers should therefore always explain whether there is a likely to be an equality impact.

#### *Financial and resourcing implications*

19. Consultation papers should set out the best available estimate of the resource requirements and the costs (or savings) of a proposal. This should include an assessment of the direct compliance costs for the profession directly; and the impact upon the Society's budget.
20. The consultation paper should distinguish between one-off or start-up costs and continuing costs. The Council will require to know whether the costs of a proposal have already been budgeted for, and if not, what the likely budgetary impact will be and whether there is scope for offsetting savings within the relevant Board's budget. Boards must notify the Corporate Governance Board as soon as possible if the Boards are likely to need to make a request for more money.



21. The Council should be informed if the adoption of a new initiative would cause (either on grounds of available staff time or available budget) the termination or postponement of other work that will mean that Corporate Plan objectives incorporated into the annual Work Plan are not being met.
22. For reasons both of cost and efficient communications, the Society encourages moving towards greater reliance on electronic communications.

#### *Regulatory compatibility*

23. Consultation papers from the Boards should demonstrate how the proposals are compatible with the BRTF principles requirements for good regulation. In broad terms, the principles are
  - Proportionality: Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.
  - Accountability: Regulators must be able to justify decisions, and be subject to public scrutiny.
  - Consistency: Rules and standards must be consistent and implemented fairly.
  - Transparency: Regulators should be open, and keep regulations simple and user friendly.
  - Targeting: Regulation should be focused on the problem, and minimise side effects.

#### *Feedback*

24. Following a consultation, the Boards should report on the outcome, and on their response to the views expressed by respondents. The Council will expect to see that its views, and those of its Boards or committees, have been specifically addressed. It is good practice to give reasons for rejecting a view. There will be a list of those consulted, and who replied.
25. The Boards will make it clear that consultation responses are to be made public unless confidentiality is specifically requested and is appropriate. The Boards will consider whether processes for ensuring even greater transparency can be introduced.

## **The Council's position**

26. As the profession's representative body, the Council is the primary professional consultee on Rule changes or other regulatory initiatives put forward by the Boards.
27. This does not preclude the Boards from consulting other professional bodies directly, or the profession more widely. It does mean that the Council will expect:
  - Normally to be informed first of a proposed consultation not anticipated in the workplan, its scope and timetable, and who else will be consulted.
  - To be consulted at the same time as, if not before, other consultees, but certainly no later.
  - To have due weight attached to its response
28. The Council may also wish to consult the profession or other professional bodies. To avoid confusion among respondents or duplication of Society resources, there should be a dialogue between the Board and the Council about the scope of wider consultations and how the feedback will be dealt with.
29. Unless otherwise specified, consultations with Council should be addressed to the President.

## Budget Plan and Timetable

The SRA Board, Legal Complaints Service Board and the Council's non-regulatory boards (the Boards) are required to produce appropriate business plans linking activities to budgets.

1. Business plans will include information about the work and activities planned for the year ahead together with the budget as follows:
  - An overview of each directorate, together with a summary of the staffing establishment and the budget for the coming year
  - A separate section for each business unit, setting out: the purpose of the unit; key priorities for the next year; staffing establishment; revenue budget for both years; and capital bids.
2. Budgets must be compatible with the Board's objectives set out in the Corporate Plan.
3. The following will be required:

### *Objectives and priorities*

- Clearly identified objectives, projects and priorities for the budget year.
- Details of the unit's staffing establishment for the current year and the budget year. .

### *Revenue Budget*

A detailed budget which will contain:

- (a) Non-salary costs based on current prices with adjustments for known future price changes.
- (b) Salary costs adjusted to reflect estimated inflation and increment increases and changes to salary related costs [src] rate. The src – relating to employer's NI and pension contributions will be taken as a defined rate.
- (c) One-off payments to the pension scheme to fund the deficit will be budgeted centrally.

### *Capital Budget*

A detailed capital budget

## Timetable

Item	Activity	Timing
1	Finance directorate guidelines on budget submissions issued including salary and inflation assumptions etc	July
2	6 month figures and budget forms sent out	July
3	Chief Executives meet with heads of units to discuss operational priorities and objectives for 2006	August/September
4	Practising Certificates – numbers and fee income forecast	August
5	Preliminary business plan and budget and workplan including comments of the Regulation and Legal Complaints Service Boards, for CMT and the Corporate Governance Board	End-August/early September
6	Joint review by Chief Executives Law Society, Regulation and Consumer Complaints	End September/early October
7	Draft business plans submitted to Regulation board, Complaints board & Non Regulatory boards	October
8	Complete draft business plan/budget paper	November
9	First full draft of business plans for joint review by Chief Executives	November
10	Review with Treasurer	November
11	Budget, business plans and workplans to CG Board for review	November
12	Council approval	December

## **Transition protocols on media relations, corporate branding and responding to consultations**

These protocols will operate until the implementation of the 'end-state' Law Society following the enactment of the Regulation of Legal Services legislation, unless modified before then by the Law Society after consultation with the Boards.

The Corporate Governance Board will ensure that there is a consistent mechanism for resolving disputes, whether within the representational part of Law Society, or between regulation, consumer complaints and representation.

### **Protocol for media relations**

1. This protocol set out the way the Council, the SRA Board and the Legal Complaints Service Board will work to ensure that communications in the media are coordinated and effective for all three parts of the organisation.
2. The Council, the SRA Board (RB) and the Legal Complaints Service Board (CCB) recognise the importance of effective communication in the media. The three bodies will, from time to time, have distinct messages and it is important to present these in a way which achieves clarity, not confusion, among external stakeholder groups.
3. In order to achieve this, the Council, the SRA Board and the Legal Complaints Service Board agree the following arrangements:
  - i. The Law Society Press Office will deal with Representation and Law Reform issues and corporate issues affecting the Law Society as a whole. Media activity on these issues will be authorised by the Chief Executive or the President of the Law Society.
  - ii. The Regulation Press Office will deal with issues relating to regulation and complaints handling. Media activity on these issues will be authorised by the Chief Executive Regulation and/or the Chair of the SRA Board; and the Chief Executive CCS and/or the Chair of the Legal Complaints Service Board, as appropriate.
  - iii. The two press offices will work closely and cooperatively so that each is aware of the media contacts that are taking place and the enquiries that are being dealt with by the other.
  - iv. The clearance procedures are set out in full in the procedures manuals for the press offices.

- v. The following guidelines will apply with regard to named spokespeople:
  - a) The President of the Law Society and the Chief Executive will normally be the lead spokespersons on representation and Law Reform issues affecting solicitors and on all general matters relating to the Law Society as a whole, in particular in relation to its reputation. If neither of them is available, or in order to ensure continuity, this function could be delegated to the Office Holders or the most appropriate senior members of Council or Chairs of the Law Reform Committees;
  - b) The Chair of the SRA Board will be the lead spokesperson on regulatory matters concerning solicitors, including, if necessary, issues concerning the Society's regulatory powers which may arise in connection with the forthcoming legislation on reform of legal services as it affects policy and operations regarding regulation of solicitors and alternative Business Structures. The role of lead spokesperson may be delegated to the Chief Executive Regulation, or as decided by the SRA Board from time to time;
  - c) The Chair of the Legal Complaints Service Board will be the lead spokesperson on all matters relating to complaints, including, if necessary, points relating to the legislation on reform of legal services as it affects policy and operations on complaints handling. The role of lead spokesperson may be delegated to the Chief Executive of the Consumer Complaints Service, or as the Legal Complaints Service Board may decide from time to time.
- v. There will be a centrally maintained media diary which will log all planned statements and media events.
- vi. The diary will be reviewed, whenever necessary, at the Corporate Governance Board meetings when the Chairs of the RB and the CCB are present.

## **Protocol for corporate brand and visual identity**

1. This protocol sets out the way the Council, the SRA Board and the Legal Complaints Service Board will work together to ensure that appropriate branding is achieved to reflect the different roles and needs of the three parts of the organisation.
2. The Council, the SRA Board (RB) and the Legal Complaints Service Board (CCB) recognise that it is important to have a coherent, well-managed corporate brand and visual identity. This helps to reinforce perceptions of credibility, efficiency and professionalism among the public, solicitors and other stakeholders.
3. The current brand identity is set out in a document entitled Guide to Corporate Identity and the Council, the RB and the CCB agree that all communications that are produced must adhere to standards set out in the Guide. Adherence will be monitored by the branding team in the Public Affairs Directorate. The design and production of all printed and electronic materials will be coordinated by the branding team.
4. The Council, the SRA Board and the Legal Complaints Service Board recognise that during 2006 it will be desirable to develop brands that reflect the distinct roles of regulation and complaints handling and that these should have regard to the inter-relationship with the Law Society brand and thus be managed by the branding team.
5. The Council, the SRA Board and the Legal Complaints Service Board recognise that proposed changes to the brand and corporate identity must be executed in a planned and coherent way. The respective Boards will have input into the development how the branding is developed to meet their strategic need to demonstrate separation and independence. They agree that any developments to reflect the distinct roles of consumer complaints handling and regulation will also need to be discussed at the Corporate Governance Board when the Chairs of the RB and the CCB are present; and that no Board will authorise unilateral changes to the brand or visual identity.

## **Protocol for responding to consultations by third parties**

1. This protocol sets out the way the Council, the SRA Board and the Consumer Complaints Board will work together to ensure that separate or collective responses to consultations by third parties are appropriately co-ordinated
2. The Law Society responds to numerous consultations by Government and third parties. A vast range of issues have a legal dimension where it can be useful to give the perspective of practitioners. Equally, the Society has a useful contribution to make on a range of issues drawing on its experience as a regulator and in dealing with consumer complaints.
3. The Council, the SRA Board (RB) and the Legal Complaints Service Board (CCB) recognise that, in many cases, consultations will fall within the exclusive remit of the Council, or the SRA Board, or the Legal Complaints Service Board, and there will be no need for the other parts of the organisation to be involved. However, when more than one part of the organisation intends to prepare its own response, it is important that this is coordinated.
4. The Council, the SRA Board and the Legal Complaints Service Board agree that:
  - i. A list of all major consultations that the Law Society, the RB or the CCB wishes to respond to will be maintained in the Strategic Policy Directorate;
  - ii. Where one response is agreed, it will be signed off by the Chief Executives, the President and the Chairs of the relevant Board(s);
  - iii. The SRA Board and the Legal Complaints Service Board will notify the Corporate Governance Board as soon as possible when they wish to prepare a separate response to a consultation and vice versa;
  - iv. When separate responses are being prepared, they will be copied to the Corporate Governance Board for noting;
  - v. The media protocol will apply if the Law Society, the SRA Board and the Legal Complaints Service Board wish to publicise consultation responses in the media.



## **Protocol on external appointments**

This protocol will operate until the implementation of the 'end-state' Law Society following the enactment of the Regulation of Legal Services legislation, unless modified before then by the Law Society after consultation with the Boards.

### **Preamble**

1. The purpose of this Protocol is to set out the arrangements for dealing with appointments to external bodies after 1 January 2006, when the Society's regulatory functions are vested on a ring-fenced basis in the SRA Board.
2. It is recognised that it would be inappropriate for any appointment which may be defined as of a regulatory nature to be dealt with other than by the SRA Board.
3. The protocol does not purport to cover every situation which could arise, and any exceptional cases should be dealt with through discussion between the Chairs of the Corporate Governance Board and the SRA Board.

### **Procedure**

4. When a request for an appointment clearly falls within the representative role of the Society it will be referred to the Appointments Sub-Committee and dealt with in accordance with the usual procedures of that Sub-Committee and in accordance with the criteria for appointments agreed by the Main Board, or the Corporate Governance Board.
5. Where an appointment clearly falls within the regulatory role of the Society it will be referred to the SRA Board for action by that Board or any sub-committee with delegated powers in accordance with such arrangements have been agreed by the SRA Board. The SRA Board may wish to adopt a modified version of the criteria for appointments, consistent with the Society's Equality and Diversity policies.
6. Where it is not clear whether an appointment falls within the representative or regulatory role of the Society, the Society will inform the body to which the appointment is being made whether it is appointing a representative or regulatory nominee.
7. Once an appointment has been agreed the secretary of the Appointments Sub-Committee or the staff member acting for the SRA Board will notify the organisation concerned directly of the nominee. Records of appointments made will be kept separately by the Corporate Governance Board and the SRA Board.

## **Presidential appointments**

8. Some appointments are formally vested in the President by statute or the governing instrument of an external organisation. In such cases the President will act either on the recommendation of the Appointments Sub-Committee, or the recommendation of the SRA Board (or any sub committee established by the Board).

## **Categories of appointments**

9. The following lists (which are not exhaustive) show the categories of appointments which would fall under the jurisdiction of the Appointments Sub-Committee and the SRA Board respectively –

### Appointments Sub-Committee

- Appointments to the Incorporated Council of Law Reporting
- Appointments to boards of trustees of public and private charities
- Appointments to university courts
- International appointments, such as to the IBA and CCBE
- Appointments to rules committees and equivalent bodies
- Joint tribunals on counsels' fees
- Appointments to bodies concerned with the professional interests of solicitors

### SRA Board

- Appointments to other regulatory bodies
- Appointments to the disciplinary committees or equivalent of other professional bodies
- Appointments to joint committees and equivalent with the General Committee of the Bar or other bodies on education and training matters
- Appointments to joint bodies dealing with licensing of insolvency practitioners and similar matters
- Any other appointments related to the functions vested in the SRA Board

## **Criteria on the filling of appointments**

**[Revised June 2004 and March 2006]**

### **Preliminary**

1. These criteria have been approved by the Main Board to guide the Appointments Sub-Committee in dealing with internal appointments and those external appointments which fall to be filled by the Sub-Committee, that is to say those which are not deemed to be “high-profile” and therefore need not be dealt with by the Main Board itself.
2. The criteria are not exhaustive and need to be applied with some flexibility. They also cover only member appointments rather than appointments or nominations of staff members, which are a matter for the Chief Executive.

### **The Appointments Sub-Committee**

3. Appointment of chairs and members of Law Society Committees, on the recommendation of the relevant subsidiary board, is vested in the Main Board by the General Regulations. This has been delegated to the Appointments Sub-Committee.
4. The Regulations also vest in the Main Board the making of arrangements for the nomination of Society representatives to outside bodies. The appointments may be vested in the Society itself or in the President. The Sub-Committee is empowered under its terms of reference to agree such appointments on behalf of the Society or the President, unless they fall into the “high-profile” category, when the Main Board itself will approve the appointment.

### **Central principles**

5. The central principles which should apply to the filling of all appointments (internal or external) are:
  - Maximum transparency
  - Complying with Equality and Diversity policies
  - Consideration should be given to the widest choice of names possible
  - Avoidance of any actual or perceived conflicts of interest

## **Classification of external appointments dealt with by the Sub-Committee**

6. Broadly, the external appointments dealt with by the Sub-Committee fall into two categories:
  - Category A: appointments involving real work and a significant time commitment but there is no policy or representational significance
  - Category B: appointments which are effectively of an honorary or ceremonial role
7. Category A appointments would include, for example, appointments to the Incorporated Council of Law Reporting. Category B appointments would include university courts, where the commitment is one meeting a year.
8. The criteria to be applied and the procedure to be followed will reflect the category into which a particular appointment falls. The overriding aim in all these appointments is to find a person who will do the best job and thus reflect credit on the Society.

## **Category A external appointments**

9. The body concerned will normally supply details of the duties of the appointment, the qualifications they envisage candidates should have, time commitment and any remuneration that may be involved. On the basis of this information, the Sub-Committee will formulate a “person specification” for the appointment, by which candidates will be assessed.
10. Where time permits, as will normally be the case, the appointment should be advertised in the Gazette, with an outline of the person specification, so that all members of the profession have the opportunity to apply for the appointment. Candidates should be asked to submit an application saying why they consider they are qualified for the appointment giving details of their professional career. The Sub-Committee will then review the applications in the light of the specification. Best practice in the field of employment should be followed, and all relevant Law Society HR policies should also be complied with so far as is applicable.
11. Council members have no priority as such for Category A appointments, although experience on the Council or one of its boards or committees may well be relevant. Expertise is the most relevant factor.
12. If there is a tight timetable for the making of the appointment (and the body concerned is not able to grant an extension of time), it may not be possible to advertise it in the Gazette. However, every effort should be made to canvass the views of Council members who may have a knowledge of the relevant field or specialist groups or associations to identify candidates who can be approached to see if they are interested in their names going forward.

## **Category B external appointments**

13. The full procedures outlines above for Category A appointments may not be appropriate for the Category B appointments. If, as is likely to be the case, the appointments are of a local nature (such as a university court), it may be appropriate for one of the local Council members to be appointed. However, all Council members in the locality should be informed of the appointment and given an opportunity to indicate whether they wish to be considered.

## **Re-appointments**

14. Many appointments covered by these procedures are of a continuing nature, even though an appointee holds office for a particular term. The question of re-appointments arises.
15. The underlying principle is that no re-appointment is automatic, and the appointee must still be the most appropriate person to represent the Society. It is also desirable to give as many people as possible the opportunity to take part in this kind of work on behalf of the Society.
16. However, this has to be balanced against the desirability of continuity for the organisation concerned, especially if the Society appointee is holding some significant position, which will sometimes indicate that it would welcome the re-appointment of that person. On the other hand, sometimes an organisation may indicate that a change would be desirable, and clearly the Sub-Committee will wish to bear that in mind.
17. The Sub-Committee may consider that in normal circumstances one further term of office in an appointment may be justifiable. Abnormal circumstances would include an indication from the body concerned that a change would be desirable. After two terms, the balance begins to shift and it is a reasonable starting point that a person will not then be re-appointed unless this is clearly to the advantage of the organisation and/or the Society.

## **Suggestions for appointments to outside bodies**

18. The above criteria relate to actual appointments, where the Society or the President has a specific right to make the appointment under the governing documents of the organisation concerned.
19. In some cases, however, all the Society or the President has is the opportunity to put forward suitable names for consideration by the actual appointing authority. With rules committees, for example, the Society has a statutory right to be represented and puts forward two or three names, but the actual appointment is made by the Lord Chancellor.

20. In other cases, the Society may be one of a range of bodies consulted by the organisation and given the opportunity to suggest names who then go into competition with other nominees from other bodies. The Society will normally be taken to endorse these candidates unless all it is doing is act as a convenient means of communication between interested candidates and the organisation which is making the appointment.
21. Generally, the same principles should apply to all these nominations as apply to actual appointments, but some adjustment in the procedures may be sensible depending on the circumstances.

### **CCS clearance**

22. It has not hitherto been the practice to obtain clearances from the Consumer Complaints Service (CCS) for persons appointed or nominated to outside bodies, although clearance is obtained for certain internal appointments such as Law Society Committees. However, appointment by the Society does normally carry a seal of respectability and the Sub-Committee may feel it appropriate to seek such clearances (or information about matters dealt with at the CCS) in view of the nature of a particular appointment or if it is on notice in some way that there is a possible difficulty. The documentation for applicants should ask the applicant to sign a form of consent under the Data Protection Act for the CCS as well the Regulation directorate to be consulted.
23. Where an applicant is not a solicitor and is a member of another professional body such as the Institute of Chartered Accountants, a clearance should be obtained from that body. Where the applicant is neither a solicitor nor a member of another body, the referees named in the application should be consulted. Where appropriate, the applicant should be asked in the application form to consent to such approaches being made.

### **Conflicts of interest**

24. The Appointments Sub-Committee will bear in mind in considering all appointments, but particularly certain types of internal appointment such as membership of the Audit Committee, whether any candidate or class of candidate (such as recent members of the Finance and Resources Board for the Audit Committee) should be excluded from consideration on the grounds of an actual or perceived conflict of interest. The Code of Practice on Conflicts of Interest will be applied appropriately.

# **Protocol for devolved handling of high profile litigation during interim state**

## **Background**

1. The principle underlying interim state is that the exercise of the regulatory functions should be devolved to the two new regulatory boards to the maximum extent legally possible. The Corporate Governance Board has accepted that the devolution of functions should include risk management and that, when it is satisfied that the regulatory boards have established appropriate risk management procedures, devolution should include the strategic management of high profile litigation too.
2. Until the end state, the Society will remain one legal entity, despite being divided into three constituent parts. Devolution of the management of high profile litigation will make it vital that all three constituent parts remain sensitive to the fact that during interim state high profile litigation can have an impact on the organisation as a whole and that on occasion a co-operative or co-ordinated approach will be necessary.
3. This protocol sets out an agreed approach to managing these issues, which, together with the litigation risk management procedures which already exist within the Compliance Directorate, provide for appropriate risk management procedures.

## **Regulatory high profile litigation**

4. With the exception of judicial reviews involving the Legal Services Complaints Commissioner, high profile litigation which arises out of the functions delegated to the Regulation and Legal Complaints Service Boards shall be reported to and controlled by a new Regulatory High Profile Litigation Working Group. This shall be a sub-committee of the SRA Board, comprising no less than three members appointed by the SRA Board. When the litigation arises out of the functions delegated to the Legal Complaints Service Board, the Group will also include at least one member of the Legal Complaints Service Board, and will also be constituted as a sub-committee of the Legal Complaints Service Board.

## **Other high profile litigation**

5. All other high profile litigation shall continue to be reported to and controlled by the existing High Profile Litigation Working Group, which shall continue to be a sub-committee of the Corporate Governance Board, but with a revised membership to comprise the Deputy Vice-President, Chief Executive (Law Society) and the Chair of the Representation Board.

## **Risk management requirements for the new RHPLWG**

6. The RHPLWG shall meet regularly to consider detailed reports on all its high profile litigation cases and to make any necessary decisions on strategic or material steps to be taken in any of those cases.
7. It shall maintain procedures for keeping its information flows secure and confidential.
8. It shall establish procedures to enable decisions to be taken urgently in appropriate situations.
9. It shall keep minutes of its proceedings.
10. It shall report regularly to the SRA Board.

## **Strategic considerations to be borne in mind**

11. Both HPLWG and RHPLWG shall in exercising their litigation functions be mindful of the fact that during interim state the Society remains one legal entity and, as a consequence, that the Society cannot seek to take two positions in relation to one piece of litigation, that any disputes between the constituent parts of the Society cannot be resolved by litigation between them and that the outcome of high profile litigation can affect the organisation as a whole.
12. HPLWG should in particular be mindful of the need to avoid taking positions in litigation which may undermine or weaken the Society's position as a regulator or as a complaint-handling body or which may compromise the independence or integrity of any decisions, policies, guidance, processes or procedures of the regulatory boards.
13. RHPLWG should in particular be mindful of the need to keep the centre informed of litigation risks which may have a large strategic impact on the Society as a whole. A case which may have a large strategic impact shall normally include-
  - a case in which the Society's constitutional arrangements are under serious challenge
  - a case in which the lawfulness of any decision made by the Council under the reserved functions (as defined in Section 79 Solicitors Act 1979) is under serious challenge
  - a case which is likely to have financial implications for the Society which either cannot be absorbed within the budget set for the relevant regulatory board or which exceed £1 million
  - a case which is likely to impact in a seriously negative way on the Society's relationship with its professional indemnity insurers or with the Information Commissioner



- a case in which any order or direction of a court against the Society will affect or potentially affect other parts of the organisation; examples will include disclosure orders and injunctions.

14. In particular RHPLWG shall-

- on behalf of the SRA Board, keep HPLWG informed of progress on the statutory trusts litigation; and
- on behalf of the Legal Complaints Service Board, inform HPLWG of all cases where judicial reviews against the Legal Services Ombudsman are considered and will consult HPLWG before any such action is taken.

### **Role of Society lawyers**

15. In order to ensure that there is a bridge between HPLWG and RHPLWG, both the Head of Legal Services and the Head of Investigation and Enforcement shall be copied into the papers, emails and communications of both Groups and shall have the right to attend meetings of both Groups and to speak in their proceedings.
16. The function of the lawyers shall be to ensure that both Groups bear in mind the strategic considerations set out above, to act as a bridge to ensure where appropriate that the perspective of one part of the Society is given to the other, to advise a Group when it may be appropriate for them to inform the other about a particular litigation situation and to give a second legal view on matters facing decision.