SRA BOARD

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SOLICITORS REGULATION AUTHORITY
Minutes of the SRA Board meeting
held on 8 June 2021 at 09.00 by Microsoft Teams

Subject to final approval by the SRA Board at its meeting on 20 July 2021

Present:	Anna Bradley (Chair) Ann Harrison Peter Higson (for items 1 to 6 and 9 to13) Paul Loft Barry Matthews Dermot Nolan (for items 1 to 9) Geoff Nicholas Vikas Shah Liz Smart Tony Williams
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 Selina Ullah.

2 MINUTES OF THE PREVIOUS MEETING ON 27 APRIL 2021

2.1 The minutes of the meeting held on 27 April 2021 were approved as a true and accurate record other than that the drafting of the final section in paragraph 7.6 should be reviewed.

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 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 thanked Board members for their support for her reappointment for a further period of three years from 1 January 2022 which had been confirmed in mid-May.

4.2 The Chair reminded the Board that the meeting on 19 and 20 July 2021 would be held in person, subject to any changes in Government guidance around Covid-19 restrictions which we would continue to monitor. The Chair also set out plans for managing the reappointment and recruitment of Board members in 2021, which would include co-opting some Board members to the Nominations Committee given that some of the current members were eligible for reappointment or leaving the Board at the end of the year.

COMMITTEE CHAIR REPORTS

5.1 The Board was asked to consider reports from the Chairs of Remuneration and Audit and Risk Committees (ARC) on their meetings held on 13 April 2021 and 20 May 2021 respectively.

5.2 The Chair of ARC reported that an assessment by our internal auditors of our risk management framework had assessed it as ‘mature’. The Committee had discussed what the organisation would need to have in place to be assessed as ‘advanced’ and the auditors confirmed that the ‘mature’ assessment was an appropriate fit for this type of organisation.

5.3 The Committee had also undertaken a deep dive into cyber security, including discussion of the main risks and controls in place, and concluded that we had appropriate arrangements in place in this area.

6 CHIEF EXECUTIVE’S REPORT

6.1 The Chief Executive presented his report. The Board noted plans for staff to return to our offices, beginning from 21 June 2021 with familiarisation days for those who had joined the organisation during lockdown. A more general return would begin from 5 July 2021, though plans were subject to further government announcements on the relaxation of Covid-19 restrictions.

6.2 Staff would be expected to attend the office for a minimum of one and maximum of two days per week. In response to questions from Board members it was confirmed that arrangements were being put in place for greater attendance in the office for those whose home working circumstances presented particular challenges. Engagement with staff on the new working arrangements would continue. The Board would be kept up to date with how the arrangements were bedding in, including developments in relation to business needs and preferred ways of working for staff in a post Covid-19 world.

6.3 The Chief Executive drew the Board’s attention to paragraph 18 of the report and the expectation that the Government’s response to its consultation on the introduction of an economic crime levy would be published imminently. The Board also noted the positive feedback received from our anti-money laundering (AML) oversight supervisor the Office for Professional Body Anti-Money laundering Supervision (OPBAS) following its visit in January of this year to assess our effectiveness as an AML supervisor.

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6.4 The Board noted the appointment of a new Head of Welsh Affairs which would establish, for the first time, an SRA presence in Wales. Work to identify suitable office premises would begin shortly

6.5 The report provided information about the external accreditations that the organisation currently held. It also set out criteria for the assessment of any future potential accreditations and Board members suggested areas for consideration for future accreditations.

6.6 The Board noted the Chief Executive's report.

7 SRA SECOND QUARTER PERFORMANCE REPORT

7.1 The Board was asked to consider an overview of the performance report for the second quarter of 2020/21. The overall picture was positive with the effects of Covid-19 having largely receded and the benefits of IT changes being realised.

7.2 The Board noted that the overall finance position was also positive largely due to higher numbers of PC fees collected than anticipated. The move to becoming a distinct legal entity from 1 June 2021 meant that there would be two short sets of accounts (from 1 October 2020 to 21 May 2021 and from 1 June 20201 to 31 October 2021) for this financial year which would require careful management.

7.3 The opening balance sheet for SRA Ltd from 1 June 2021 would be shared with the Board and the financial report would be updated to reflect our new status as a separate legal entity with the inclusion of balance sheet and cashflow information.

7.4 In response to questions from Board members it was confirmed that we had come to a mutually satisfactory agreement with the Law Society on the transfer of cash and investments from 1 June 2021 and that there would be a balancing payment later in the year following an audit of the 31 May 2021 position.

7.5 Board members asked the Executive to give further thought to what impact reporting on our activities might be needed in future, for instance on environmental, social and governance activities. This might include discussions with Board members on what they considered to be relevant. It was also noted that successful registration as a charity would incur further reporting requirements.

7.6 The Board noted the Business Plan update which had been reformatted so that RAG ratings for individual activities were shown alongside them in the table.

7.7 The Board also noted the latest balanced scorecard. In relation to the section on delivery it was noted that performance had largely returned to pre Covid-19 levels. Higher than expected levels of staff turnover in the Contact Centre had affected performance there but this had now been addressed.

7.8 It was also reported that performance against the Investigation and Supervision measure had been affected by a reduction in the overall number of cases and that the 95% target was not therefore being met, even though the number of cases taking more than 12 months had reduced.

7.9 Board members underlined the need to consider the effects on those being investigated in those cases which took a lengthy period of time to conclude. The Board asked for consideration of measures which gave both the overall position on time taken (current data on complaints and investigations) plus a measure of performance in relation to those cases that naturally take longer, perhaps on the basis of overall time taken.

7.10 Board members' attention was also drawn to an increase in traffic to the Solicitors' Register which was increasingly engaging people's attention and was being used by the profession as well as the public.

7.11 The Board noted the content of the quarterly performance reports and the commentary provided.

NB: annex 1 of this paper will not be published because it contains information which is commercially sensitive.

8 SRA STRATEGIC RISK UPDATE

8.1 The Board was asked to consider the Strategic Risk Register (SRR) for the second quarter ended 30 April 2021. The paper included responses (at annex 2) to points previously raised in discussion on the SRR. These responses had been reviewed by ARC at its meeting in May 2021.

8.2 Board members noted that Executive Directors and directors had undertaken a comprehensive review of the Mid-tier Risk Register and this register would be considered at the next meeting of ARC.

8.3 An additional mitigating control was suggested for SRR1 on the Solicitors Qualifying Examination (SQE). It was confirmed that we were now in a position to ensure that candidate fees for the SQE would not attract VAT.

8.4 The Board noted the Strategic Risk Register and requested that ARC further review the risks on it to ensure that they were appropriately shaped and not too broadly drawn.

8.5 The Board also noted the Executive's responses to points raised on the quarter one SRR by the Board: and the progress taking place on the further development of risk management.

NB: the annexes to this paper will not be published as they include discussion of risk that might be exacerbated by publication.

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9 SOLICITORS INDEMNITY FUND – PROVISION OF POST SIX YEAR RUN OFF COVER

9.1 The Board was asked to consider an update on recent developments in relation to termination of post six year run off cover (PSYROC) provided through the Solicitors Indemnity Fund (SIF).

9.2 As set out in the Board paper, PSYROC was set up by the Law Society for a period, until September 2017. Since the SRA Board took on responsibility for PSYROC, it has extended the provision of PSYROC on several occasions, most recently in June 2020, when the SRA Board agreed to a one-year extension until 30 September 2021. The reason for the extension in June 2020 was to give the Law Society more time to work with the insurance market to work out whether and, if so, how alternative PSYROC products might be developed.

9.3 The Board considered the recent communications from the Law Society, individual solicitors, Members of Parliament and a jointly signed letter from the Law Society and the Legal Services Consumer Panel. It also noted the active discussions with the Law Society, the Legal Services Board (LSB) and the Solicitors Indemnity Fund Limited (SIFL). The Board recognised that there was now wide awareness amongst those affected, as the September date drew closer. This was in turn causing more people to engage with the issues and as they did so, changes of view are emerging.

9.4 Board members discussed in detail the issues raised, including strong representations from the Law Society, individuals and others to extend the SIF provision of PSYROC, and their view that alternative insurance products are not available in what is a hardening Professional Indemnity Insurance market, as well as concerns about consumer protection.

9.5 The Board noted that we had been working with the Law Society, and SIFL, on a project to explore winding up the Fund and replacing the way its ongoing liabilities are met, through a master policy solution. It was noted that in recent months the Law Society's position had developed and its preference was now that PSYROC should be provided indefinitely through SIF. It had also expressed reservations about its role in developing a hardship fund or similar.

9.6 The Board noted the evidence around the affordability of PSYROC through the SIF. Expert actuarial advice on the solvency of the SIF, reflecting the need for appropriate capital reserves, had been commissioned by the Solicitors Indemnity Fund Limited. This had led to SIFL concluding, in June 2020, that "an extension to 30 September 2022 would still be affordable". This is likely to still be the case, but work would have to be undertaken to confirm affordability at this point in light of claims notified since that date and updated actuarial advice.

9.7 The Board also noted that the SIF had been placed in run off by the Law Society in 2000, and it could not continue to provide current levels of cover, indefinitely, without further funding. At this stage, there is a real question to be answered about the viability of SIF continuing to provide PSYROC for a further year, as well as concerns about the disproportionate costs of maintaining the Fund going forward. The Board discussed the importance of the work to consider opportunities for closing the Fund and exploring alternative uses for the surplus. One Board member suggested extending PSYROC provision for a limited period, to 31 December 2021, to resolve the question of the master policy solution.

9.8 The Board expressed its regret that the otherwise welcome engagement in the next steps for the SIF and its provision of PSYROC was so late in the day, reducing the opportunities for careful consideration of what are complex matters around proportionality, consumer protection and the viability of any potential options. It also noted stakeholder misconceptions about the affordability of SIF.

9.9 The Board went on to have a wide-ranging discussion on the relationship between the longstanding mandatory regulatory requirement for six year run off cover, which is currently provided through the Professional Indemnity Insurance market, and PSYROC, which has to date been funded and delivered through other means.

9.10 After lengthy debate, the Board decided to extend the provision of PSYROC through the SIF to 30 September 2022, subject to confirmation by the Solicitors Indemnity Fund Limited of affordability.

9.11 If the extension proved affordable, this would provide an opportunity to do further work.

9.12 The SRA will use this time to determine our long-term position regarding the role of the SIF and ongoing provision of PSYROC, whether provided by SIF or otherwise. This work would include:

- Analysing comparable run off cover provisions with other regulators including other legal regulators
- Undertaking further work to analyse claims patterns to assess impacts on consumers and on solicitors/firms, including how this might be affected by variations in cover.
- Working with SIFL to understand the affordability of the SIF in the longer term, and the viability of possible options as they emerge through our work.
- Continuing to work collaboratively to explore the options for the wind up of the Fund.
- Undertaking equality and regulatory impact assessments.
- Consulting widely on the closure of SIF, our regulatory role in relation to PSYROC, and any alternative indemnity and discretionary use for residual surplus, including the equality and other impacts.

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NB: the annexes to this paper will not be published because: they relate to emerging strategy or policy, contain personal data or matters involving a named individual, an individual who can be identified or who has a reasonable expectation that the matter will remain confidential: or include legal or other professional advice on sensitive or confidential matters.

10 UPDATE ON THE TRANSFER OF REGULATORY FUNCTIONS TO SRA LTD

10.1 The Board was asked to consider an update on the transfer of the regulatory functions to Solicitors Regulation Authority Ltd (SRA Ltd) and next steps.

10.2 The Board noted that it was now sitting as the Board of trustees and Directors of SRA Ltd. The Board congratulated the Executive on achieving this milestone, which we had been working towards for some time.

10.3 The Law Society's General Regulations have the effect of transferring the regulatory functions to the new company, and legal documents had transferred all associated assets and liabilities. Whilst this allowed for continuity of operations, it would be prudent for the SRA Ltd Board to formally adopt any decisions, rules and policies made by the previous Board, as a way of formally recording the position. A resolution to achieve this was annexed to the paper.

10.4 The paper also set out next steps, including the development of investments and reserves policies which would be taken forward as previously agreed by the Board. The Chair would identify which Board memebrs would be involved in this work.

10.5 Work would also proceed on the application to the Charity Commission for charitable registration. In responding to the Commission's response to our initial application we would be reframing the way in which we articulated our charitable objects in our Articles of Association. If the Commission was content, then these would be brought to the Board and Law Society for formal approval.

10.6 The Board agreed to make the resolution which formally adopted the decisions and policies for the delivery of the regulatory business made by the SRA Board prior to transfer.

11 IMPLEMENTING PERMANENT FEE RULES THAT RESTRICT CHARGES FOR CLAIMS MANAGEMENT ACTIVITIES

11.1 The Board was asked to consider a proposal to issue a discussion paper to gather data to inform our approach to meeting the statutory duty placed on us in the Financial Guidance and Claims Act 2018 ('the Act') to make rules which prevent excessive fees being charged by law firms for all claims management agreements and claims management activities relating to financial products or services.

11.2 The Board noted that the Act had given us and the Financial Conduct Authority (FCA) a duty to make rules which prevent excessive fees being charged by law firms for all claims management agreements and claims management activities relating to 'financial products or services'. It had also conferred a discretionary power for us to make rules in relation to fees charged in other claims management sectors, for example, personal injury.

11.2 There were a number of reasons (set out in paragraph 20 of the paper) why it was sensible that we should benchmark our proposals on this issue against those of the FCA, including that it is the primary regulator of claims management activity and has access to significant amounts of quantitative and qualitative data upon which it has developed its proposals for how fees might be restricted in this market. We had been working closely with the FCA accordingly. Board members agreed that we would need to have good reason for departing from whatever process the FCA introduced.

11.4 The FCA had consulted on its proposals and was likely to publish its conclusions in the autumn. Given this, and that our gathering of further information was supported by HM Treasury and legal advice which we had received, it was proposed that we should issue a discussion paper to meet a number of objectives set out in paragraph 15 of the paper including that Consumers have access to information to be able to make better-informed decisions about why they might want to use a law firm to process their claim and the cost of those services.

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11.5 In addition to issuing the discussion paper, we would also consider carrying out a consumer survey and engaging with consumer groups to help understand the factors that they consider relevant in deciding to seek professional help to make a claim and what benefits they think they will achieve.

11.6 The Board agreed the approach to gathering more information by issuing a discussion paper and noted proposed next steps on engaging stakeholders to develop our data sources.

12 COMPENSATION FUND 2020 FINANCIAL STATEMENTS

12.1 The Board was asked to consider the Compensation Fund 2020 Financial Statements and Letter of Representation for the year ending 31 October 2020. These had been presented to the Audit and Risk Committee (ARC) at its meeting on 20 May 2021.

12.2 The Board noted that the Statements had been prepared on a cash basis and that they had received a clean external audit report. In addition, the internal audit of the control environment for the Compensation Fund had resulted in a positive report.

12.3 The Board also noted that the Statements had been prepared on a going concern basis and the evidence provided to the auditors to confirm this included a ‘reverse stress test’ which had looked at what circumstances would be required to make the fund unviable.

12.4 The Board noted that ARC looked at the Compensation Fund in detail and had good visibility of likely claims. A conservative approach to the balance of the Fund had been taken given possible impacts of Covid-19 and other factors. It was also

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noted that there would be significant payments from the Fund in this financial year, but that this was expected and planned for.

12.5 The Board noted that the process for approval of the Letter of Representation and financial statements was that the Executive provided assurances to ARC, which in turn provided assurances to the Board that it could be signed.

12.6 On this basis the Board agreed the Compensation Fund 2020 Financial Statements prepared on a going concern basis and the Letter of Representation to be signed by the Chief Executive.

12.7 The Board agreed further consideration should be given to the optimum route for approval and signing of letters of representation in future, recognising this should be consistent with the approach that is agreed for SRA Limited.

NB: annexes 2 to 4 and 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.

13 REVIEW OF MEETING AND ANY OTHER BUSINESS

13.1 There was no other business. The next meeting would be held on 1 July 2021.