

Developing Regulatory Standards

May 2013

An assessment of the Bar Standards Board

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1. Executive summary

- 1.1. In December 2011, the Legal Services Board (LSB) set out¹ how it would assess whether the approved regulators are acting in ways that are compatible with the statutory requirements they have been given by the Legal Services Act 2007 (the Act).
- 1.2. The statutory requirements include the duty to, as far as is reasonably practicable, act in a way that is compatible with the regulatory objectives and to have regard to the better regulation principles and best regulatory practice. The LSB considers that best regulatory practice for legal services regulation consists of four constituent parts. These are:
 - an outcomes-driven approach to regulation that gives the correct incentives for ethical behaviour and has effect right across the increasingly diverse market;
 - a robust understanding of the risks to consumers associated with legal practice and the ability to profile the regulated community according to the level of risk;
 - supervision of the regulated community at entity and individual level according to the risk presented; and
 - a compliance and enforcement approach that deters and imposes sanctions appropriately.
- 1.3. In addition to these, we explained the importance of regulators assessing their overall capacity and capability. Without the appropriate level of capacity and capability the regulator will struggle to deliver the four constituent parts of regulation and, therefore, all the requirements of the Act.
- 1.4. All regulators were therefore required to assess their own performance against the four regulatory standards criteria and to assess their own capacity and capability to deliver the regulatory objectives. We published a report in December 2012 that covered the self-assessments submitted by the Council for Licensed Conveyancers (CLC), the Costs Lawyer Standards Board (CLSB), the Faculty Office, the Intellectual Property Regulation Board (IPReg) and ILEX Professional Standards (IPS). We published a report on the Solicitors Regulatory Authority (SRA) in February 2013.
- 1.5. This report contains the findings from the LSB's first performance review of the Bar Council's regulatory functions, which have been delegated to the Bar Standards Board (BSB). This is the final report of the first cycle of regulatory standards self-assessments to be published by the LSB.
- 1.6. The BSB is responsible for regulating 15,581 practising barristers,² 13 registered European lawyers and it is also able to regulate registered foreign lawyers but has not done so recently. Practising barristers can be classed as sole practitioners, employed or self employed operating from chambers. They

¹LSB (December 2011), *Developing Regulatory Standards: Summary of responses to the consultation on developing regulatory standards and decision document*, <http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/20111214_regulatory_standard_v11.pdf>



²The General Council of the Bar of England and Wales (November 2012), *Bar Barometer: Trends in the profile of the Bar*, <https://www.barstandardsboard.org.uk/media/1436638/bar_barometer_nov_2012_web_upload_higher_res.pdf>

specialise in providing advocacy services but also provide immigration services, will writing and probate and legal advice and opinion. The BSB also has a role in regulating non-practising barristers.

- 1.7. The BSB's self-assessment has been produced at a time of change at the BSB. The BSB is preparing to make changes to its handbook and make applications to regulate entities and litigation as well as to become an ABS licensing authority. It has also recently introduced changes that are likely to expand the number of individuals it regulates who are able to offer services directly to the public.
- 1.8. The BSB's submission is characterised by a frankness which we welcome. The BSB gave itself a realistic assessment for each section of the self-assessment. The BSB has set itself the ambitious task of improving each aspect of regulation by one assessment level by the end of the 2013/14 financial year and achieving a level of "satisfactory" for all aspects of regulation by the end of its most recent strategic plan (2015/16). Such ambition is welcome and the activities already carried out in the area of appointments of staff, staff training and development and the development of new policy and procedures, such as its recent consultation on supervision, demonstrate that the BSB is serious about these ambitions. However, they are not without significant challenges.
- 1.9. We consider that the BSB has painted an overly optimistic picture about the progress it has made in moving towards outcomes-focused regulation (OFR), especially given previous statements on OFR and its lack of evidence on the risks to the regulatory objectives and on the needs of consumers. For the BSB to move into a fully functioning outcomes focused regulatory environment it will need to adhere to its ambitious action plans. The stretching nature of those action plans makes their delivery in the timescales the BSB has set itself particularly challenging.
- 1.10. One major deficiency that the BSB will need to overcome to deliver OFR is its lack of evidence about those who use the services of those it regulates and how they deliver those services to consumers. This evidence must form the basis for an effective risk based regulatory regime. Supervision is currently more reactive than proactive and enforcement has been hampered by the poor performance of the Council of the Inns of Court.
- 1.11. In terms of capacity and capability, the LSB considers that the BSB's forward work programme is very challenging and there are real risks about whether it is able to deliver all of the things it has proposed in the timescale it has set. A significant number of improvements are reliant on a successful IT upgrade, with the risks that implies. More fundamentally perhaps, many will represent a culture change for the BSB and others. In particular, the shift to risk based supervision will change the way the BSB interacts with those it regulates. For OFR to be properly embraced and implemented, the BSB Board will need to show leadership to ensure significant cultural change to take hold across the organisation: any disconnect between the Board and executive may hinder delivery of the overall work programme significantly.

2. Background

- 2.1. The LSB has conducted this assessment exercise to establish whether the approved regulators are acting in ways that are compatible with the statutory requirements they have under the Act and that they are not allowing, or risking, unacceptable consumer detriment in the markets they regulate.
- 2.2. The statutory requirements on legal services regulators include the duty to, as far as is reasonably practicable, act in a way which is compatible with the regulatory objectives and to have regard to the better regulation principles and best regulatory practice.³
- 2.3. Annex A contains details of the LSB's role and why it has conducted this piece of work. It provides some information on the standards of regulation the LSB expects from legal services regulators, the LSB's overall approach to regulation and details of how it arrived at those standards. Annex B provides information on the design of the assessment process, how the LSB decided on the process it adopted and the process it followed for each of the legal services regulators. Annex C is the self-assessment template that was provided to regulators for their completion.
- 2.4. Full details on both the reports published to date and our process can be found on the webpage:
http://www.legalservicesboard.org.uk/Projects/developing_regulatory_standards/index.htm

Next steps

- 2.5. The LSB expects the conclusions of this report to influence BSB plans and activities for the future. The BSB has ambitions to expand the reserved legal activities those whom it regulates are allowed to provide, as well as to regulate entities and ABS firms. We will expect the BSB to demonstrate significant progress in embedding the regulatory standards into their day to day operations when it submit its applications to expand the areas and businesses it is able to regulate.
- 2.6. The LSB will be monitoring the BSB's adherence to its action plan closely and will, where appropriate, take action for failure to keep to its plan without good reason.
- 2.7. Decisions on the longer-term framework for future self-assessments will depend on progress made by regulators during the course of 2013. Any LSB mandated re-assessment will therefore take place in 2014 at the earliest. The decision to mandate a re-assessment will be influenced by progress, or problems, identified during 2013, and will also be dependent on the timescales of the BSB's action plan.
- 2.8. However, the LSB would not wish to fetter the discretion of the BSB, or any other regulator, to undertake the exercise; on its own initiative ahead of a more general exercise and we would take the outcome of any such exercise into account in determining how we would proceed. The LSB will also consider

³ LSA section 28

whether any thematic reviews are necessary and will evaluate the merits of publishing examples of good and poor practice that emerge.

Bar Council / Bar Standards Board (BSB)

3. Context

- 3.1. The BSB was established by the Bar Council as an independent regulator in January 2006. It is governed by a lay majority Board consisting of 15 members. The current chair qualified as a barrister and is an honorary Queen's Counsel (QC), the vice chair is a practising barrister and QC. The BSB has 80 members of staff (73.8 FTE) and also utilises a number of shared services provided by the Bar Council; the central services directorate of the Bar Council consists of 35 members of staff.
- 3.2. The BSB is responsible for regulating 15,581 practising barristers,⁴ 13 registered European lawyers and it is also able to regulate registered foreign lawyers but has not done so recently. Practising barristers can be classed as sole practitioners, employed or self employed operating from chambers. They specialise in providing advocacy services but also provide immigration services, will writing and probate and legal advice and opinion. There are currently 768 chambers in England and Wales of which 427 are sole practitioner chambers, the remainder are multiple tenant chambers. In 2011, there were 12,674 self employed barristers and 2,907 employed barristers. Self employed barristers therefore account for 81% of practising barristers.⁵ There are also 6,141 unregistered barristers (often known as non-practising barristers). These are barristers that have been called to the Bar but have not completed their practical training (pupillage) or have decided to no longer hold a practising certificate. Of these, 223 are able to use the title "barrister" and offer legal services. The remaining 5,918 may be supplying some form of legal services but not using the title "barrister". These individuals are subject to some of the regulatory requirements imposed by the BSB and the disciplinary arrangements of the BSB.
- 3.3. LSB analysis of the unaudited figures from the Bar Council's Practising Certificate Fee (PCF) application for 2012/13⁶ found that the Bar Council collected £8.5 million in mandatory practising fees from barristers during the financial year 2012/13. 13% of this was for the use of the BSB for regulatory matters, 17% went to the Bar Council's representative side for use on other permitted purposes, 58% was allocated to the central services directorate and the remaining 12% was collected to pay the levies for the Legal Ombudsman and the LSB. This means that the BSB was allocated £1.13 million from the mandatory practising fee. The central services directorate was allocated £4.9 million of the practising fee revenue; the Bar Council estimates that 58% of the central services allocation is used to provide services to the BSB.⁷ The practising fee for barristers is calculated according to whether the barrister has

⁴ The General Council of the Bar of England and Wales (November 2012), Bar Barometer: Trends in the profile of the Bar, <https://www.barstandardsboard.org.uk/media/1436638/bar_barometer_nov_2012_web_upload_higher_res.pdf>

⁵ The General Council of the Bar of England and Wales (November 2012), Bar Barometer: Trends in the profile of the Bar, <https://www.barstandardsboard.org.uk/media/1436638/bar_barometer_nov_2012_web_upload_higher_res.pdf>

⁶ The General Council of the Bar of England and Wales (December 2011), Bar Council 2012/13 Practising Certificate Fee ("PCF") – Application for approval by the Legal Services Board, <http://www.legalservicesboard.org.uk/Projects/pdf/application_to_lsb_1.pdf>

⁷ LSB (2012), Breakdown of the Bar Council and Bar Standards Board budgets showing Practising Certificate Fee (PCF) expenditure, <http://www.legalservicesboard.org.uk/Projects/pdf/20130226_BSB_PCF2011App_WEB.PDF>

been granted Queen's Council status (QC), the number of years since the barrister completed the vocational stage of his or her training (called to the Bar) and whether the barrister is self-employed or employed. In 2013/14 the top rate of the practising certificate fee band is £1,244, and the lowest is £83 (this does not include the mandatory pension levy that is charged at a rate of £3 per year of call or the optional member services fee).⁸

- 3.4. The BSB further augments its revenue from other regulatory activities. This is primarily related to the accreditation of legal education and training providers and other fees from, for instance, foreign lawyers. The BSB's total budget for 2013/14 is £5.1 million.⁹
- 3.5. The BSB has set itself significant ambitions for the future and has undertaken a lot of work in the years since the Act was passed. In the last few years, it has introduced an aptitude test for prospective student barristers and it has introduced changes that are likely to expand the number of individuals it regulates who are able to offer services directly to the public. It hopes to regulate authorised persons offering the reserved legal activity of the conduct of litigation, as well as to expand its regulatory framework to include entities as well as individuals. It also hopes to become a licensing authority and so regulate alternative business structures. It has been necessary for the BSB to consider what these changes mean for their regulatory arrangements and regulatory activity. Therefore, we expected the self-assessment to reflect these recent changes and possible future developments.
- 3.6. The BSB has also said that it hopes to improve each aspect of the regulatory standards required by one assessment level by the end of financial year 2013/14 and achieve the level of "satisfactory" for all of the constituent parts of regulation by the end of its most recent strategic plan (2015/16).
- 3.7. The BSB's regulatory standards self-assessment was provided to the LSB on 20 February 2013 and so relates to activity planned or completed at that time. Since that submission, the BSB has published its business plan for 2013/14¹⁰ and its strategic plan for 2013 to 2016.¹¹

⁸Bar Council (2012), *2013 – 14 PCF application to the LSB*,

<<http://www.legalservicesboard.org.uk/Projects/pdf/2013budgetsubmissionlsb.pdf>>

⁹Page 18, Bar Council (2012), *2013 – 14 PCF application to the LSB*,

<<http://www.legalservicesboard.org.uk/Projects/pdf/2013budgetsubmissionlsb.pdf>>

¹⁰BSB (April 2013), *Business Plan 2013-14*, <https://www.barstandardsboard.org.uk/media/1465505/bsb_business_plan_2013-14.pdf>

¹¹BSB (April 2013), *Strategic Plan 2013-16*, <https://www.barstandardsboard.org.uk/media/1465501/bsb_strategic_plan_2013-16.pdf>

4. Outcomes focused regulation

BSB assessment	Needs improvement and work has started recently
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- 4.1. Outcomes focused regulation (OFR) recognises that those providing legal services must be free to innovate without unnecessary regulatory prescription or restrictions. Those running legal businesses (including barristers' chambers) are best placed to decide how they can provide the services that consumers need. For areas where there is more risk, regulation may increase; but where there is less risk, regulation must be reduced.
- 4.2. The BSB has incorporated some aspects of an OFR approach into its work programme. This can most clearly be seen through its recent consultation¹² and application to amend its handbook.¹³ For the first time, the handbook will include outcome based content, most notably, the inclusion of core duties for barristers, which have been proposed to create a link between the barristers' code of conduct and the delivery of the necessary outcomes for consumers. However, the BSB currently acknowledges that it has very little evidence about the consumers that use the services provided by barristers. It attributes this to the fact that historically the Bar's work has been based on referral activity and so it has had difficulty engaging consumers and had not gathered consumer evidence to inform its approach. Without information about consumers, the BSB will not be able to target its regulation more proportionately and move away from prescriptive regulation, thereby enabling barristers the freedom to innovate.
- 4.3. The BSB's self-assessment suggests that it has realised that it must begin to understand consumer needs to secure safe and satisfactory outcomes for them. The BSB stated that to achieve this it consulted publicly on the amendments of its handbook. While it did not conduct a full analysis to identify consumer needs before drafting the update to the handbook, it says that it has made its own assumptions about what their needs are. In doing this, the BSB recognises that the current update will need to be revisited once data on consumers has been collected. The Legal Services Consumer Panel's impact reports¹⁴ published in 2011 and 2012 have, while noting the positive signals of

¹²BSB (March 2012), *New BSB Handbook and Entity Regulation*, <<https://www.barstandardsboard.org.uk/about-bar-standards-board/consultations/closed-consultations/new-bsb-handbook-and-entity-regulation/>>

¹³ BSB (April 2013), *BSB new handbook application*, <http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/bsb_new_handbook_application.pdf>

¹⁴ Legal Service Consumer Panel (2011), *Consumer Impact Report 2011*, <http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/ConsumerPanel_ConsumerImpactReport_2011.pdf> and Legal Services Consumer Panel (2012), *Consumer Impact Report 2012*, <http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/CIR%20final%20report%20pub%20on%20website%202012%2008%2002.pdf>

intent from the BSB, been critical of the lack of consumer research that has been carried out by the BSB and other approved regulators. The Panel noted in its 2012 report that “[t]he almost complete absence of consumer engagement [by approved regulators] is a serious omission in a period defined by massive market change and transformation. It casts doubt both on the legitimacy and quality of regulatory decision making, as the approved regulators have not tested the likely impact of their proposals directly with the people they are designed to protect.”¹⁵

- 4.4. Given that the BSB lacks evidence about consumer needs and risks, there is room for doubt about how effective its proposed link between core duties and outcomes will be. Without having an understanding of consumer needs, the BSB’s approach to incorporating an outcomes-based approach may well be less effective than it would have been if it had sought evidence about how it could best achieve those outcomes. As a result, the amended handbook will still focus primarily on the tasks of those regulated by the BSB, rather than on the delivery of outcomes for consumers.
- 4.5. To improve this position, the BSB has agreed in its strategy¹⁶ and 2013/14 business plan¹⁷ to become more evidence based through the identification of existing evidence and a research programme, which it will develop by the end of 2013/14.
- 4.6. The LSB has asked all approved regulators to use the Oxera framework¹⁸ to understand better how consumers behave in the market and to identify where they can target regulation on issues that present higher risks to consumers. The LSB is pleased that the BSB is planning to conduct some work on consumer segmentation and originally planned to commission work in the autumn of 2012, which it did not do. This work will now be commissioned in mid to late summer 2013. The LSB considers that the BSB should not allow such work to be subject to further delays.
- 4.7. Once the BSB has completed its segmentation research, the LSB considers that the BSB will need to revisit its position on consumer risk outlined in its handbook application. The application states that “*the BSB has concluded that the risks are very much the same irrespective of the nature of the client and that it is therefore not necessary to have different rules for different types of*

¹⁵ Page 61, Legal Services Consumer Panel (2012), *Consumer Impact Report 2012*, <http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/CIR%20final%20report%20pub%20on%20website%202012%2008%2002.pdf>

¹⁶ Page 8, BSB (April 2013), *Strategic Plan 2013-16*, <https://www.barstandardsboard.org.uk/media/1465501/bsb_strategic_plan_2013-16.pdf>

¹⁷ Page 16, BSB (April 2013), *Business Plan 2013-14*, <https://www.barstandardsboard.org.uk/media/1465505/bsb_business_plan_2013-14.pdf>

¹⁸ Oxera (September 2011), A framework to monitor the legal services sector. Prepared for the Legal Services Board, <http://www.legalservicesboard.org.uk/news_publications/latest_news/2011/280911.htm>

client, unless they are instructing barristers on a public access basis, where additional rules will apply (although the behaviour required to meet a rule may well differ according to the type of client)".¹⁹ The LSB agrees on the final point, but considers that the conclusion about the common nature of risk is unlikely to be borne out by evidence, as research shows that consumer segmentation is not homogenous.²⁰ Without appropriate segmentation, therefore, the BSB may not be able to ensure that its regulation is proportionate and targeted, with the risk of both excessive burdens and the failure to act in necessary circumstances being possible. The LSB therefore encourages the BSB to put in place an effective research programme, founded on proper market segmentation, to enable it to arrive at a more realistic position in a reasonable timescale.

- 4.8. By bringing together all rules that apply to those regulated by the BSB into one publication, the BSB believes it will make regulation clearer to consumers. It also believes that, by including its first outcomes-based content, it will be able to build on this as a foundation and then grow its evidence base to make continued improvements to its regulatory arrangements. These first steps are welcomed, but the LSB considers that more work could be done to improve the effectiveness of the handbook's new core duties both in terms of their place within the BSB's broader regulatory activity and also in how they are expressed.
- 4.9. The BSB has developed a link from the regulatory objectives in the Act, to the outcomes in its amended code of conduct, then through its new core duties and finally to its future enforcement decisions. The LSB considers that this link could be made clearer. Also, the language used in the BSB's proposed handbook remains overly prescriptive, focusing on the role of those regulated by the BSB rather than on outcomes for consumers, and lacks the supporting evidence required to retain such a prescriptive approach. This is particularly apparent in the way that the BSB has chosen to express its core duties which read essentially as rules (or "*positive personal duties*"²¹ as the BSB describes them). Direct statements beginning, "you must" may be necessary on some occasions, but on others may cause those regulated by the BSB to focus on their own behaviour to the detriment of the wider outcomes sought through effective regulation. While the BSB may consider it necessary to retain more detailed prescription to provide the right tone, the LSB does not consider that

¹⁹Paragraph 1.12, BSB (April 2013), *BSB new handbook application*,

<<http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/bsb_new_handbook_application.pdf>>

²⁰ See for instance: BDRC Continental (June 2012), *Legal Services Benchmarking Report*,

<<<https://research.legalservicesboard.org.uk/wp-content/media/2012-Individual-consumers-legal-needs-report.pdf>>>and AIA research (May 2010), *Legal Advice for Small Businesses Qualitative Research*, <<<https://research.legalservicesboard.org.uk/wp-content/media/2010-Small-Business-legal-needs.pdf>>>

²¹Paragraph 1.28 BSB (April 2013), *BSB new handbook application*,

<<http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/bsb_new_handbook_application.pdf>>

the language used creates either a consistent outcomes-focused approach or a framework that would necessarily be easily understood by consumers.

- 4.10. The LSB is therefore not convinced that the BSB's intention to be "*operationally outcomes focused, whilst maintaining an element of prescription in rules*"²² is a fully effective application of OFR. The BSB has removed rules from some parts of its handbook based on evidence of low level risk. For instance, it concluded that because its rules of associations (that prevented barristers from sharing premises with anyone other than other barristers) had not generated consumer complaints they could be removed. The BSB also noted that this change would allow those it regulates freedom to work in new, flexible ways. In its self-assessment, the BSB accepts that its handbook cannot be said to be entirely based on evidence of risks to consumers. However, it does intend to continue to amend the handbook as it builds an evidence base. The LSB considers that this is necessary, rather than simply desirable, and therefore urges the BSB to continue to reduce prescription in its handbook and to ensure that detailed rules remain in place only where risks can be tackled in a prescriptive way. A continued programme to reduce prescriptive content will also allow the BSB's regulatory community to innovate further.
- 4.11. The suggestion that there is very little appetite from the BSB's regulatory community to move to an outcomes-based approach (as shown by the handbook consultation) demonstrates that the BSB will need to work concertedly to communicate the benefit of moving towards OFR to its regulatory community as well as to consumers. The LSB notes that the BSB has included an aim in its strategic plan for 2013-16 to "*promote greater public and professional understanding of and support of [the BSB's] role and mission*".²³ This will be an important aim in increasing both a positive image of OFR and to show how it really works in regulating barristers.
- 4.12. The BSB proposes that by establishing new consumer networks over 2013/14, publishing more user-friendly material and encouraging a wider range of responses to its consultations, it should improve its engagement with consumers and increase understanding and support. Current engagement with consumers has been limited, which it has highlighted as an area that requires a good deal more focus. The BSB's current user group has provided input into specific issues when requested, though the BSB would like to revisit the group's memorandum of understanding to better focus its remit. The BSB has participated in other topic-specific consumer forums, which it has found useful. We also note that the BSB had considered holding focus groups with

²²Paragraph 1.27, *ibid* (April 2013)

²³Page 7, BSB (April 2013), *Strategic Plan 2013-16*,

<https://www.barstandardsboard.org.uk/media/1465501/bsb_strategic_plan_2013-16.pdf>

consumers to explore the core duties in the proposed handbook. However, it did not proceed because it felt there was no practical way to access consumers of the services provided by those regulated by the BSB.

- 4.13. In its self-assessment, the BSB rated itself as “satisfactory” for the indicator that *“all members of its staff and Board understand the organisation’s approach to focusing regulation on the consumer and public interest”*. The BSB acknowledges that its view of what this means *“does not always appear to coincide”* with the LSB’s definition.²⁴ Nevertheless, regardless of the differing interpretations, the BSB’s acknowledged gaps in evidence about consumer needs and their expectations must render it difficult to focus regulation on their interests.
- 4.14. However, the BSB’s submission does suggest a welcome advance in its thinking about regulating in an outcomes-focused manner to more effectively deliver the regulatory objectives and protect the consumer and public interest, in contrast with public statements made by its Chair in the past. It is important now that consistent communication at all levels is maintained in order to build understanding of the BSB’s commitment to OFR and to minimise risks to implementation.
- 4.15. It will also be important for the BSB Board and senior executives to ensure that the activities detailed in its action plan to train staff and Board members about the new handbook are implemented in full, and at all levels, and that the BSB’s commitment in the self-assessment to improving its staff’s understanding of OFR receives appropriate support and resources.
- 4.16. Given the preliminary stage that the BSB is currently in, the LSB agrees that the low self-assessment it gives itself of “needs improvement and work has started recently” is accurate, however it is overly optimistic about the progress it has made to date. The LSB is also supportive of the BSB in its recent decision to split its forthcoming rule change applications, by putting its handbook amendments first, followed by entity regulation and finally its application to become an ABS licensing authority. We consider that this is a logical order, which should improve the quality of all of the submissions overall. It is right to consider approving the handbook first as it will affect the BSB’s overall strategic approach to OFR. Although the BSB still has significant work to do to understand how to implement OFR, and how to communicate its benefits to consumers and those regulated by the BSB, the direction of travel is the right one. It will be for the BSB Board to support, and hold to account the

²⁴ The LSB has set out its interpretation of the regulatory objectives which includes protecting and promoting the interests of consumers and the public interest in a document published in July 2010 and available on our website (http://www.legalservicesboard.org.uk/news_publications/publications/pdf/regulatory_objectives.pdf). No approved regulator has defined their approach to the regulatory objectives.

executive in making progress without taking on an operational role itself; there are encouraging signs that it is developing the mechanisms to do so.

Main LSB observations
The LSB agrees that the BSB's self-assessment of "needs improvement and work has started recently" is realistic. However, the LSB considers that the language used in the BSB's proposed handbook still remains overly prescriptive and that the case to retain the majority of rules has not been supported by uniformly strong evidence. The BSB continues to lack evidence about consumers. As the BSB makes efforts to build up its evidence base we will expect to see the handbook continue to be reformed so that it offers a full OFR approach. For OFR to be properly embraced and implemented the BSB Board will need to show leadership for significant cultural change to take hold across the organisation.
LSB assessment: needs improvement and work has started recently

5. Risk assessment

BSB assessment	Needs improvement and work has started recently
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- 5.1. Currently, the BSB cannot be said to have an effective, structured, transparent and evidence-based approach to identifying and mitigating risks in relation to regulatory objectives. Risk assessment, the BSB acknowledges, has never been used to monitor its regulatory community in this way. Those regulated by the BSB have instead been expected to self-regulate and comply with the code of conduct. The BSB has not identified and assessed the risks to the regulatory objectives by those it regulates. However, it does have an internal risk management policy in place for the organisation and does make decisions based on risk at a corporate level to inform its strategic development and project operation. It also makes some ad-hoc risk assessments in the development of policy, although this is not yet commonplace.
- 5.2. With the advent of OFR, the BSB is taking first steps to build a risk identification framework. Proposed changes to the handbook will mean that supervision and enforcement activity will no longer be substantially based on complaints made by consumers, other authorised persons and on a self-reporting basis. The BSB proposes that it will start to proactively focus its supervision, based on its risk assessments, which will allow it to manage and respond to risks in a structured way for the first time.
- 5.3. The BSB has developed a strategic aim to “*Become more evidence and risk-based in all [the BSB] do[es]” over the next three years.*²⁵ For 2013/14 that will mean putting in place systems to enable it to analyse both existing and new information about risk. This will include intelligent use of IT systems and the implementation of a risk and supervision database during Q4 2013/14.²⁶ The BSB will also be developing a risk framework for policy and decision making. Alongside this, the BSB will need to develop an understanding of the risks presented to consumers in the markets it regulates through using the Oxera framework and through its broader research programme. While the BSB has yet to determine a cost-effective way of building an evidence base about how its regulatory community is segmented and operates, it has committed to develop an approach through cross-sector workshops, alongside the LSB, other regulators and consumer groups.
- 5.4. The LSB supports the BSB’s aim to develop an evidence base from which it can develop and implement an effective risk framework, although we consider that it will be a stretching goal to have this ready to roll-out by December 2013. The extent to which the BSB has been able to develop and implement its risk framework (as well as the other aspects of the self-assessment) is one of the factors that the LSB will take into account when it assesses the BSB’s

²⁵Page 7, BSB (April 2013), *Strategic Plan 2013-16*,

<https://www.barstandardsboard.org.uk/media/1465501/bsb_strategic_plan_2013-16.pdf>

²⁶ Page 17, BSB (April 2013), *Business Plan 2013-14*,

<https://www.barstandardsboard.org.uk/media/1465505/bsb_business_plan_2013-14.pdf>

forthcoming applications to regulate entities and for designation to become a licensing authority. For this reason, the BSB will need to be disciplined over the coming months to remain on track. When these elements have all been developed, rolled-out and become part of business as usual the LSB will expect the BSB to review whether they are working well in practice.

- 5.5. As a part of this, the BSB will need to ensure that risk identification and management becomes a key part of its organisational culture. For the BSB's new supervisory activity and improvements to enforcement to work well, they will need to be underpinned by an effective and robust risk management process. This will be a large shift in culture for the BSB Board and staff to make the transition from the current somewhat ad hoc approach to risk to delivering consistent, risk-based regulation.
- 5.6. The BSB has been realistic in this self-assessment section on risk by realising that it is at the very beginning of a process. Therefore, the LSB agrees that "needs improvement and work has started recently" is a credible position. However, the BSB has set stretching targets to develop and deliver an entire risk identification and management framework by December 2013. Strong leadership will need to be shown from the BSB Board and senior executives to turn these goals into reality. Even if the BSB is able to get policies and processes in place within its ambitious timetable, it may find that embedding the significant cultural change that will be needed will take more time than expected.

<p>Main LSB observations</p>
<p>The BSB's self assessment acknowledges the low base from which it has started. It has stretching targets to introduce a comprehensive and effective risk assessment and identification system by December 2013. This will involve significant IT dependencies, process and policy change, as well as embedding the BSB's new approach to risk. We consider that there is a significant risk that the BSB will not be able to deliver full implementation of its plans by the timelines set. Even if the BSB is able to deliver on schedule, it may not necessarily have the required level of evidence, capability and capacity to make effective risk assessments at that time. If there are delays to, or the sub-optimal implementation of, the risk management framework, then it may have an impact on the BSB's effectiveness if it achieves its ambitions to regulate entities and to become a licensing authority.</p>
<p>LSB assessment: Needs improvement and work has started recently</p>

6. Supervision

BSB assessment	Recognise this needs to be done but work has not yet started.
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- 6.1. In common with the BSB's assessment of its position on risk assessment, the BSB has been candid about its past approach to supervision and has set itself significant targets for improvement. The BSB's self assessment makes it clear that the current approach to supervision has lacked co-ordination, has not had clear links to risks to the regulatory objectives and has tended to be driven by specific concerns or departmental activities.
- 6.2. For instance, the education standards department of the BSB does undertake supervision visits of chambers but only in relation to pupillage (the practical stage of the training to become a barrister). The supervision visits are usually undertaken after the receipt of a complaint. Following the visit the BSB may consider it necessary to undertake additional inspections of the chambers in question in relation to training issues. However, it does not appear that, if other non-training related compliance issues are observed they are picked up and resolved as part of that visit process. The example pupillage report, with which we were provided, referred to passing on issues to the Professional Conduct Department (PCD). We therefore assume that any issues were investigated separately rather than as part of the supervisory visit or any ongoing monitoring and supervision programme. The LSB does not consider that this is an appropriate approach to supervision for a number of reasons. This is because the roles undertaken by supervision and enforcement should be very different, with a risk based assessment for passing cases between the two (in either direction). Supervision is an opportunity to identify potential issues early and correct non-compliance. This avoids harm to consumers and adopting this approach should provide more clarity about the different roles as the supervision function of the BSB matures.
- 6.3. We also consider that undertaking a visit to corroborate a complaint, and possibly identifying additional compliance issues, is one of the more reactive supervisory models and not one to be relied on to the exclusion of other regulatory tools. It relies on individuals realising that there is a potential compliance issue and knowing of, and being willing to inform, the relevant regulator. In addition, the BSB requires complainants to provide a significant amount of information before it will begin an investigation.²⁷ In many

²⁷ A consumer must fill out a 12 page form and provide supporting evidence if they wish to make a complaint about an individual regulated by the BSB

(https://www.barstandardsboard.org.uk/media/1427767/bsb_guidance_notes_and_complaints_form_02_13_digital_version.pdf)
. The regulator for Patent Attorneys and Trade Mark Attorneys (IPReg) will accept a complaint in any written form and only

circumstances, particularly in the provision of complex services to individuals that lack information about what constitutes appropriate conduct and/or individuals that are very vulnerable, it cannot be assumed that they will make such complaints. The research into the regulation of legal services demonstrates that it is a complex market of services that are often provided to vulnerable consumers. Indeed it is the combination of complexity and vulnerable users, together with other characteristics, that justify the regulation of legal services.²⁸ Considering this, a more proactive and risk based level of supervision of legal service providers is required.

- 6.4. The most significant work the BSB has undertaken that is relevant for this area is the chambers monitoring exercise. These are surveys of all chambers, including sole practitioner chambers, which it has undertaken in 2010 and 2012. All chambers completed the survey in 2012. The activity is not targeted directly at the risks posed by any particular characteristics of chambers or the consumer segments served by chambers. The principal objective of the survey is to understand whether chambers and sole practitioners are complying with key elements of the BSB's code of conduct. A secondary objective is to identify characteristics of barristers and chambers that increase the risk of non-compliance.
- 6.5. The chambers monitoring exercise does provide the BSB with some evidence to help it understand how chambers and sole-practitioners administer their practices. However, the past two surveys have been limited in scope and have tended to cover only a few key handbook requirements rather than conduct and business characteristics more broadly. We consider that the information gathered from the chambers monitoring exercise will help the BSB to plan its future supervision policies and enable it to consider, with evidence, how best to target its resources on segments of the market that exhibit higher risks. However, as the self-assessment submission acknowledges, the BSB does not gather any detailed information about consumers' experiences of services provided by barristers so it cannot understand the risks to the regulatory objectives without this information. The BSB's submission states that it hopes to fill this gap through a research project due to be completed by mid-2013.
- 6.6. The BSB says that it aims to develop and operate a risk based supervisory policy in line with the required regulatory standards during 2013-14. The exact details of the supervisory strategy have not been finalised. On 26 February the BSB published a consultation paper on the proposed supervision

requires complainants to specify which aspects of the IPReg code of conduct are relevant for the complaint (http://www.ipreg.org.uk/information/complaints_procedure.php)

²⁸Decker and Yarrow (2010), *Understanding the economic rationale for legal services regulation*,

<<https://research.legalservicesboard.org.uk/wp-content/media/Why-regulate-legal-services-RPI-report.pdf>>

approach.²⁹ The implementation of such an approach, if approved following consultation, will involve the setting up of a supervision department and the development of detailed policies and procedures, as well as recruitment where needed and the provision of appropriate information systems. The BSB has an ambitious target of commencing risk-based supervision in targeted areas during Q4 2013/14. Considering the amount of work required this is a very challenging target, but a necessary one.

- 6.7. The BSB must also be conscious of the challenge that altering its approach to supervision from a more passive monitoring style to a more active risk focused, and potentially more intrusive, approach will pose. Those regulated by the BSB are likely to be wary and, in some cases, possibly actively opposed to such changes and the BSB itself must also continue to drive change in culture internally. The workshops held for those regulated by the BSB were an excellent opportunity to discuss the proposed shift and explain the benefits of any change. However, the BSB executive will need support from BSB Board members to ensure that the new model of supervision is a success and delivers benefits to all.
- 6.8. The BSB's self-assessment voices some concerns about the manner in which information from the Legal Ombudsman is presented. The BSB says that it has had difficulty using the current format of information to identify issues for future activity. The BSB is committed to working with the Legal Ombudsman to explore how this can be resolved. We encourage both to work together to share information more effectively. Information from the Legal Ombudsman can be a useful source to influence supervisory activity. However, it should not be viewed as the only possible source of information.
- 6.9. The BSB self-assessment states that it has sufficient resources to conduct its current level of supervision and it is investing resources and employing new staff to create a new supervision department. One aspect of supervision that the BSB cited in its self-assessment as having sufficient resources to discharge its supervisory activity, without backlogs, is the work it undertakes to ensure barristers comply with the BSB's continuing professional development requirements (CPD). The latest report on the professional conduct department suggested that at the end of quarter 3 2013 the department had not completed the disciplinary referrals for those barristers that had failed to complete the CPD requirements in 2010 and 2011.³⁰ This is discussed more in the section on enforcement. However, such long delays in referrals suggest that something in the process, whether due to resource availability, technology

²⁹BSB (2013), *The development of a risk-based approach to supervision*,

<https://www.barstandardsboard.org.uk/media/1454464/risk-based_supervision_consultation.pdf>

³⁰Page 9, BSB (2013), *Professional Conduct Department Trends and Performance. Third Quarter Report 2012/13*,

<https://www.barstandardsboard.org.uk/media/1460472/performance_report_2012-13_q3_-_final_version.pdf>

issues or some other factor has led to a backlog which the LSB considers significant. It appears to the LSB that a number of those regulated by the BSB, who have not complied with the BSB's own requirements, have remained able to practise without sanction or remediation for up to three years. The self-assessment did not address these backlogs.

- 6.10. The success of the BSB's plans for development in this area is significantly dependent on the development of an IT system – essentially an extension of the core database – that will provide the BSB with required functionality. IT development is often beset by delays, for instance the BSB's March 2013 Board papers noted that there had been slippage in the delivery of core database functionality for the professional conduct department.³¹ The BSB will have to manage the IT development process carefully to ensure that the required functionality is implemented by Q4 2013/14 as the strategic plan suggests.
- 6.11. Good supervision is reliant on clear and structured feedback loops between supervisory activity, risk assessment and staff learning. The BSB tends to have fairly detailed processes for reporting on projects and making recommendations for future and different projects. Indeed much of what is done already is good practice – particularly the inclusion of lessons learned logs and the role of the independent observer for the professional conduct department. However, as the BSB acknowledges, the lack of structured risk assessment has not allowed for formal feedback loops between those responsible for assessing risk and those completing supervisory activities. The BSB also acknowledges the need to embed structured feedback into policy formation and staff learning. The BSB will need to ensure that this is delivered by the new supervision strategy.

³¹Page 439, BSB (2013), "IT report", *Meeting of the Bar Standards Board, Thursday 21 March 2013*, <https://www.barstandardsboard.org.uk/media/1461039/130321_bsb_part_1_agenda.pdf>

Main LSB observations

The BSB's supervisory regime is currently not very sophisticated. It is project and policy specific, rather than targeted at risk at either the thematic or organisational level. It could be more accurately characterised as a monitoring regime rather than a supervisory regime. As a result, the BSB will need to be conscious of the challenge that altering its approach to supervision from a more passive monitoring style to a more active risk focused will pose. The main examples of passive supervision that the BSB can point to are chambers monitoring (which is not particularly targeted), CPD (which appears to have been subject to significant backlogs delays with no way of assessing whether there has been any impact on overall risk) and the work of the pupillage sub-committee. The BSB has published a consultation on its future plans for supervision. Its action plan is ambitious and we understand that thinking on CPD reform is progressing rapidly. However, successful implementation relies on the effective development and implementation of the risk framework as well as a number of significant dependencies particular to supervision, a sustained change in culture and a willingness to closely supervise those that pose the greatest risks to the regulatory objectives. Close scrutiny by the Board will be required to ensure successful delivery

LSB assessment: Recognise this needs to be done but work has not yet started.

7. Enforcement

BSB assessment	Undertaking improvement and work is well underway.
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- 7.1. The BSB undertook a review of its complaints and enforcement process in 2009/10, which made a number of recommendations about the BSB's enforcement process. The BSB has been in the process of implementing many of these recommendations since January 2011. The review created the Professional Conduct Department (PCD). The aims of this review were to streamline and create a more efficient and proportionate system. The BSB considers that these changes appear to have delivered a satisfactory enforcement system in isolation.³² However, the performance of the Councils of the Inns of Court (COIC), the body responsible for hearing cases and deciding whether to impose sanctions on barristers, has been a significant weakness. During 2012 a review commissioned by COIC uncovered significant failings in the administration of its disciplinary hearings and it is undergoing a significant level of reform.³³
- 7.2. However, the LSB has a number of other observations about the BSB's process that need further consideration. The LSB have been made aware of a number of long running disciplinary cases that date back, in some cases, nearly ten years, and an approach to the disclosure of documents relating to individual cases that has been criticised by the Visitors to the Inns of Court (the current appellate body for COIC's decisions) and by COIC.³⁴ The LSB also notes, and this is recognised by the BSB, that while the BSB is supposed to consider the risks to the regulatory objectives as well as the prospect of success when weighing up whether to proceed with an enforcement investigation, there has been a tendency to rely on the latter.
- 7.3. We also consider that the current approach of relying on a large professional conduct committee appears overly complex and bureaucratic. The committee currently has 56 members (reducing to 46 over the next three years) divided into two teams. The committee must have 10 lay members (with a maximum of 24 lay members) and a barrister majority at all times. Members of this committee produce and consider reports on each complaint referred to it and make decisions on whether to refer a complaint to COIC for enforcement, whether to make a determination on the matter (with the consent of the barrister in question) or whether to take no further action. We note that recent changes have given more decision making powers to executive staff. However, the LSB considers that more should be done to empower the

³² For more on the changes and BSB performance see the report entitled *Professional Conduct Department: Report of Restructure Committee Review Project* in this set of board papers:

<https://www.barstandardsboard.org.uk/media/1436573/bsb_agenda_part_1_121115.pdf>

³³ Browne et al (2012), *Final Report from the Council of the Inns of Court (COIC) disciplinary tribunals and hearing review group*, <<http://www.innertemple.org.uk/downloads/newsevents/COIC%20FINAL%20REPORT.pdf>>

³⁴ Various judgements at appeal and at disciplinary tribunal, while many were dismissed, the decisions were critical of the BSB's approach to disclosure: *Veen v BSB* (2011), 27 October 2011, Mrs Justice Thirlwall, sitting as a Visitor to the Inns of Court; *McCarthy v BSB* (2012), 24/25 January 2012, Sir Mark Waller, sitting as a visitor to the Inns of Court; and, *Sivanandan v BSB* (2011/2012), 18 October 2011 and 30/31 January 2012, Mr John Hendy QC, sitting at the Council of the Inns of Court.

executive staff to make decisions and to use the committee and other experts only for more complex matters and, even then, perhaps primarily in an advisory rather than decision-making capacity. Such an approach would be appropriate considering the vast majority of decisions are whether to prosecute rather than reaching a determination by consent. It would also reflect best practice found in other regulators.

- 7.4. The BSB has undertaken a number of positive efforts to engage with consumers that have had cause to make a complaint and with barristers that are subject to an enforcement investigation. It has published a significant number of documents – including guidance, information packs and all findings of disciplinary tribunals (except where charges are dismissed). It has produced information leaflets for complainants and for those regulated by the BSB that have been reviewed by the plain English campaign. It has also undertaken user satisfaction surveys³⁵ to understand what complainants and the subject of those complaints think of the process. The user satisfaction surveys have found that a significant number of those that have had reason to complain about an individual regulated by the BSB do not consider the process open and fair (67%). In response to this the BSB has commissioned research to baseline the findings from its user satisfaction surveys against other sectors³⁶ and we welcome this. However we encourage the BSB to remain vigilant about this perception of unfairness and a perceived lack of transparency.
- 7.5. The BSB has appointed an independent observer to offer views on the operation of the PCD department.³⁷ It has commissioned, and published, research about whether its current enforcement processes raise any equality issues.³⁸ Following the research into equality issues the BSB has commissioned a specialist consultancy to review its current system to determine whether there is systematic bias against male and BME practitioners.
- 7.6. The PCD publishes a quarterly report including fairly detailed data on the complaints it has received, timeliness and performance against adopted KPIs.³⁹ Generally its performance can be said to be broadly positive. However, there appears to be a lengthy period between receipt of a complaint or information about a potential compliance issue, the investigation of that information, the referral to a disciplinary hearing and final determination by COIC. The BSB has carefully thought about some of the drivers for those delays and identified that these include the need for further information, requirements for advice, additional evidence gathering and requests for time extensions from relevant parties.⁴⁰ We encourage the BSB to make efforts to

³⁵ See the user satisfaction surveys for 2009, 2010 and 2011: <https://www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/our-staff/professional-conduct-department/user-satisfaction-surveys/>

³⁶ IFF Research (2010), *Understanding Complaints Data*, <https://www.barstandardsboard.org.uk/media/1428966/uss_annex_1_-_iff_report.pdf>

³⁷ See the Independent Observers Annual Report May 2011 – May 2012: https://www.barstandardsboard.org.uk/media/1418891/independent_observer_-_annual_report_-_june_2012.pdf

³⁸ BSB (2013), *Report on diversity of barristers subject to complaints 2013*, <https://www.barstandardsboard.org.uk/media/1451930/diversity_report_2012_report.pdf>

³⁹ See all of the BSB's annual a quarterly performance reports: <https://www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/our-staff/professional-conduct-department/performance-reports/annual-and-quarterly-performance-reports/>

⁴⁰ Page 15 – 17, BSB (2013), *Professional Conduct Department Trends and Performance. Third Quarter Report 2012/13*, <https://www.barstandardsboard.org.uk/media/1460472/performance_report_2012-13_q3_-_final_version.pdf>

measure and monitor the end to end process to help it understand its performance in totality.

- 7.7. Examples of disciplinary investigations and activity taking a lengthy period of time include that during 2013 the BSB estimates that the PCD will have handled 316 referrals relating to the possible failure of barristers to comply with CPD requirements during 2010 and 2011.⁴¹ This means that the PCD is working on a significant number of matters relating to possible code infractions from three years ago.
- 7.8. Additionally, one of the independent observer's reports looked at very old cases and identified a number of 'inactive' cases on other compliance issues that have been the subject of a BSB investigation for a considerable period of time, in one case since 2004. The LSB recognises that there are a number of specific complexities relating to such cases and processes. But the LSB considers that every effort should be made to ensure that allegations of non-compliance with regulatory requirements are investigated and dealt with as promptly as possible. Such delays are not fair to those regulated by the BSB who face such allegations for such a long period and raise risks to consumers who receive services from barristers who may be unfit to practise or need to undertake remedial action.
- 7.9. Since January 2013, BSB executive staff have been given greater powers to make decisions on enforcement activity. This is welcomed and we consider that further extension (with appropriate oversight) should help deliver more timely enforcement investigations. A shift from the criminal standard of proof to the civil standard of proof may reduce delays and backlogs, as well as having public protection benefits (the Law Commission considers that there are strong public protection arguments for adopting the civil standard of proof in the regulation of health and social care professionals,⁴² and it is possible to conclude that this is also the case for legal regulation). The BSB's enforcement action plan submitted with their self assessment includes work to review the standard of proof for professional misconduct findings. Additionally the LSB's sanctions and appeals project is also looking at the standard of proof issue in relation to all legal regulators.
- 7.10. The issues with COIC have taken up significant amounts of the PCD's time and resources. The BSB has endorsed most of the review recommendations made about reform of COIC.⁴³ The BSB is involved with the project Board implementing these recommendations and the BSB is working on formalising the relationship between the BSB and COIC with the development of a contract for services with agreed service levels that the BSB will monitor. We consider that this approach is appropriate to ensure that the BSB is able to carry out its regulatory functions effectively and efficiently.

⁴¹ Page 9, BSB (2013), *Professional Conduct Department Trends and Performance. Third Quarter Report 2012/13*, <https://www.barstandardsboard.org.uk/media/1460472/performance_report_2012-13_g3_-_final_version.pdf>

⁴² Page 185, Law Commission, Scottish Law Commission, Northern Ireland Law Commission (2012), *Regulation of Health Care Professionals*, <http://lawcommission.justice.gov.uk/docs/cp202_regulation_of_healthcare_professionals_consultation.pdf>

⁴³ BSB (2012), *Report of the Council of the Inns of Court (COIC) Disciplinary Tribunals and Hearings Review Group: Bar Standards Board Response*, <https://www.barstandardsboard.org.uk/media/1436756/bsb_response_to_coic_review.docx>

- 7.11. The BSB hopes to move its rating to “satisfactory” by April 2014. It states that a new enforcement database will be up and running by July 2013. It also states that the new handbook will enable the BSB to move from an approach where focus was placed on sufficiency of evidence to an approach that takes better account of the risks to regulatory objectives and the outcomes the new code demands. The LSB considers that these activities are commendable. We would be particularly interested in how the BSB intends to measure the impact the change to the new code has on its approach to enforcement.
- 7.12. In order to move towards a “satisfactory” rating we consider that the BSB must resolve the issues with COIC. The BSB and COIC must become more transparent to those subject to investigation and to consumers involved in such investigations. The BSB also needs to retain its focus on examining the timeliness of process – from end to end – and the drivers of delays in the process. If these activities are completed successfully then the BSB will be closer to achieving its objective of being ‘satisfactory’.
- 7.13. Additionally, we do consider that without adequate risk based supervision it is difficult to conclude that the enforcement process is focused on breaches that are serious and undermine the regulatory objectives. This is because it will remain a system reliant on the current more passive monitoring work conducted by the BSB (which on its own is unlikely to capture those that are actively non-compliant/dishonest), complaints from consumers and other authorised persons and self reporting. Therefore improvement in enforcement is also dependent on the delivery of the risk identification and supervision aspects of regulation. However, the current assessment is a fair one.

Main LSB observations
<p>The BSB has many of the aspects of an effective enforcement system in isolation. It makes a lot of documents available to the public, it publishes reports on performance, is subject to independent review and has made efforts to communicate more effectively with consumers. However, it is hampered by a number of issues. The primary current issue is the poor performance of the Councils of the Inns of Court (COIC), the body responsible for hearing cases and deciding whether to impose sanctions on barristers. Progress is being made to resolve these performance issues. The BSB’s internal system, while improved, still appears overly bureaucratic and does not appear to empower the executive as much as it perhaps could. We also encourage the BSB to have greater appreciation of the end-to-end investigation and enforcement process. There are a number of examples of enforcement and compliance issues taking a long time to resolve. However the current assessment is a fair one.</p> <p>As with other areas, the BSB has ambitions to further improve its enforcement process and, as with those other areas, the BSB is reliant on successful delivery of new IT systems as well as successful delivery in the other areas of regulation covered by this report. This will require careful monitoring.</p>
LSB assessment: Undertaking improvement and work is well underway.

8. Capacity and capability

BSB assessment	Needs improvement and work has started recently.
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- 8.1. The BSB assessed itself as needs improvement and work has started recently for this area. It aims to improve this to “needs improvement and work is well underway” by March 2014.
- 8.2. The BSB states that it spends significant resources on core activities (75% - 80%). This has constrained the BSB’s ability to develop further. The BSB is expanding its head count and is investing in significant IT resources that it anticipates will make its operations more efficient.
- 8.3. The BSB acknowledges that it has taken time to achieve full compliance with the LSB’s internal governance rules (IGR). The 2012 IGR exercise undertaken by the LSB found that the BSB had achieved near full compliance. However, the LSB concluded that it was necessary to monitor the BSB during 2012/13 to ensure that the BSB was compliant in practice.⁴⁴ The BSB also recognises that it has not made it clear how it will engage with consumers and ensure that its regulatory framework focuses on the needs of consumers. The BSB intended to commission market segmentation work in autumn 2012. However this has not progressed as quickly as planned by the BSB and we understand that it should now be commissioned by mid to late summer 2013. The completion of such work will assist the BSB’s understanding of the areas in which it should focus. The BSB should work to prevent further delays to this work.
- 8.4. The BSB has invested heavily in developing staff capability and improving performance assessment. To achieve this the BSB has introduced, or is about to introduce, three different development programmes: one to build and enhance the leadership skills of BSB staff, which began in October 2011, a second on performance management and change management, which is currently in development and a third that is a training programme on the theory and practice of modern regulation, which began in October 2012 and has now been completed. These developments are welcomed and will assist the BSB to achieve the organisational changes and improvements it seeks. The BSB is also planning to collaborate with a university on a qualification in regulatory skills. A skills audit of staff has also been undertaken and the LSB understands that a similar exercise for the Board is under consideration.

⁴⁴ LSB (2012), *Regulatory Independence 2012 assessment: Bar Standards Board (BSB) and The Bar Council*, <http://www.legalservicesboard.org.uk/Projects/pdf/9_lsb_assessment_of_the_bsb_and_the_bar_council_as_potentially_compliant_with_the_igr.pdf>

- 8.5. The BSB recognises the constraints on its budget and while it is, and will be, expanding its headcount it is conscious of the barriers to further expansion. The LSB recognises these barriers. However, we have a number of observations. A shift to genuine outcomes focused regulation with effective risk assessment and supervision would also help the BSB target scarce resources on the areas in which focus is required and the investment in IT systems that the BSB is proposing may help drive efficiencies.
- 8.6. The BSB is currently proposing significant IT developments to deliver its risk identification framework, its supervision policy and to implement a new enforcement database. This will build on the current 'immature' systems and could deliver efficiencies for the BSB quite rapidly. The success of this IT upgrade will play a significant part in whether the BSB is able to achieve its ambition of moving all its self-assessment ratings up one step by the end of its business plan for 2013/14 and moving all aspects of regulation to satisfactory by the end of 2015/16. Therefore the IT improvements will need careful management and we note that the March 2013 Board papers reported some slippage.⁴⁵
- 8.7. The BSB has set itself significant ambitions. In the last few years it has introduced an aptitude test for prospective student barristers, it has created a reformed professional conduct department, it has widened direct and public access and introduced a number of reforms more directly related to the Act. It has rewritten its code of conduct, it hopes to regulate the conduct of litigation, it hopes to regulate entities and it hopes to become a licensing authority and so regulate alternative business structures. The BSB has set itself these targets: they have been enabled by the Act but they have not been driven by it directly or the LSB indirectly.
- 8.8. The BSB has made good progress identifying and planning steps in order to deliver on these ambitions and on improving existing process. The work to improve staff capacity is very important, particularly the efforts to improve staff understanding of modern regulatory practices.
- 8.9. The appointment of an experienced change manager and other proposed appointments should help the BSB to achieve its ambitions. But an equally significant factor in its success is the need for the BSB Board and executive to fully understand the dependencies between their different action plans and work programmes. The BSB Board also needs to continue to support, encourage and challenge the executive, and to provide the strategic leadership that a modern regulator must have.

⁴⁵ Page 439, BSB (2013), "IT report", *Meeting of the Bar Standards Board, Thursday 21 March 2013*, <https://www.barstandardsboard.org.uk/media/1461039/130321_bsb_part_1_agenda.pdf>

- 8.10. As we made clear in our first regulatory standards publication (published December 2012)⁴⁶ those regulators seeking changes to their regulatory arrangements and / or extension of their scope of regulation will be expected to demonstrate significant progress embedding the regulatory standards into their day to day operations. The BSB has stated that it spends significant amounts resource on core activities yet it is keen to expand its regulatory remit to cover entities and other legal services during 2013/14. The BSB can expect significant challenge from the LSB to explain how it will have the capacity and capability for such expansions considering the constraints on further expansion that the BSB's self-assessment identifies.
- 8.11. The concerns we have about the BSB's capacity and capability reside primarily in two areas. Its understanding of, and engagement with, the needs of consumers and its independence, or the perception of the BSB's independence, from the profession and its representative arm, the Bar Council. In many respects the two, it could be argued, are linked.
- 8.12. It remains the case that the Bar Council retains significant oversight and an amount of control over the BSB's finances. For instance the Bar Council's Finance Committee governs the BSB's finances and includes six members representing or nominated by the Bar Council (but only 4 from the BSB) and currently at least six members out of 10 are barristers. The Finance Committee can refer any item of a proposed BSB budget back to the BSB for further consideration. The Bar Council's finance manual stipulates that BSB staff require a counter-signature from either the Bar Council or Central Services when writing cheques above £1,000. When the BSB has spare capacity in its budget it cannot hire additional staff without the approval of the Finance Committee. The LSB's conclusion on its assessment of the BSB's compliance with the LSB's internal governance rules highlighted some of these issues.⁴⁷ Over 2012/13, our general observation is that the BSB has sought to maintain its independence from the Bar Council. However there have been incidents where the LSB has been concerned about the Bar Council's attempts to fetter this independence. We remain willing to take appropriate action if we find evidence of such issues.
- 8.13. Moreover, the LSB remains concerned about the potential for Bar Council staff or committees to assume responsibility for regulatory functions. Involvement of the representative body in regulatory matters raises risks to the legitimacy of the independent regulatory body and also the risk breaching the requirements for regulatory independence demanded by the Act. The LSB's internal

⁴⁶ LSB (2012), *Developing Regulatory Standards: An assessment of the legal services regulators*, <http://www.legalservicesboard.org.uk/Projects/pdf/regulatory_standards_assessment_of_five_of_seven_regulators.pdf>

⁴⁷ LSB (2012), *Regulatory Independence 2012 assessment: Bar Standards Board (BSB) and The Bar Council*, <http://www.legalservicesboard.org.uk/Projects/pdf/9_lsb_assessment_of_the_bsb_and_the_bar_council_as_potentially_compliant_with_the_igr.pdf>

governance rules provide guidance on what constitutes appropriate oversight and on the approach to the provision of non-financial services. The Bar Council must be mindful of the rules and the accompanying guidance.⁴⁸ The BSB must have the capacity and capability to carry out all regulatory functions. The LSB must be assured of this and this is particularly the case at a time when the BSB is seeking significant amendments to its regulatory arrangements and wishes to significantly increase its remit.

- 8.14. The BSB was quite open about its lack of evidence about consumers. It has committed to conducting research to address these gaps. However, additional information provided to support the BSB's self-assessment showed that planned consumer segmentation work has already been delayed, the BSB's user group does not appear to be functioning as well as it should be and a proposal to carry out focus groups of consumers was abandoned because the BSB said it was difficult to identify users of the services provided by barristers. We acknowledge that reaching the most vulnerable consumers is a difficult task. However, as the BSB wishes to regulate additional reserved legal activities, provided by different models of barrister businesses and increasingly direct to consumers it must make significantly more effort to understand the risks facing consumers and engage with them.
- 8.15. The LSB is also concerned more generally about the BSB's governance structure, which remains large for the size of the organisation. The BSB has 80 members of staff (76.4 full time equivalents), excluding central services shared with the Bar Council. The BSB delegates various activities to eight different committees. There are a total of 131 different individuals involved in these committees – 9 of whom sit on more than one committee (excluding Board members who may sit on more than one committee). This makes a total of 140 posts, plus a Board of 15 above these committees, this is an extraordinarily large number. Apart from the cost of the operation of this structure, the LSB does not believe that it can deliver effective or efficient governance. A focus on secretariat activities for staff may constrain the markets from which staff can be recruited and reduce both the satisfaction and contribution of the Executive, which has implications for their efficiency and effectiveness. Research carried out for the Professional Standards Authority (PSA, formerly the CHRE), the oversight regulator for the regulators of healthcare professionals (e.g. Doctors), supports the LSB's position.⁴⁹ The PSA found that smaller Boards across healthcare regulation are more effective as they communicate better and make decisions more quickly. In addition, they are less fragmented and more likely to develop an inclusive

⁴⁸ LSB (December 2009), Internal Governance Rules 2009,

<http://www.legalservicesboard.org.uk/Projects/pdf/internal_governance_rules%202009_final_km.pdf>

⁴⁹CHRE (now PSA) (September, 2011), Board size and effectiveness: advice to the Department of Health regarding health professional regulators, <http://www.chre.org.uk/img/pics/library/pdf_1320922005.pdf>

culture. The LSB urges the BSB to consider streamlining its governance arrangements to make similar gains.

Main LSB observations

We consider that this is a fair assessment of the BSB's current capacity and capability. However, the BSB will be stretched to achieve its considerable ambitions. The BSB needs to ensure that its Board and executive fully understand the dependencies between their different action plans and work programmes, particularly with regard to the IT upgrade, but we welcome the strong governance framework put in place to manage the change.

We remain concerned about the BSB's lack of understanding of the needs of consumers and the risks they face, particularly with the changes taking place in the legal services market. Unless it fills these gaps with a reasonable body of evidence, the BSB will find it difficult to show that its regulation is proportionate, targeted and supports all the regulatory objectives. This could, potentially, have an adverse impact on its effectiveness were it to expand to entity regulation and become a licensing authority on its current timetable. We will continue to explore the tension between the two timetables with the BSB.

Our observation about the size of the BSB governance structure deserves further consideration by the BSB. We will also continue to monitor issues relating to the BSB's independence from the Bar Council and the profession more generally and take action where appropriate.

LSB assessment: Needs improvement and work has started recently.

9. Action plan

9.1. This summary has been compiled by the LSB from information in the self-assessment and the BSB's strategic plan for 2013/16 and the business plan for 2013/14/ The BSB checked its accuracy before publication. The BSB's reporting year runs from 01 April to 31 March. Actions shown in purple are for the BSB, in gold – the LSB.

ACTION PLAN TIMETABLE	2013/14				2014/15	2015/16
	Q1	Q2	Q3	Q4		

OUTCOMES FOCUSED REGULATION

Implementation of the new Handbook and non-ABS entity regulation						
LSB decision on new Handbook		Gold				
Carry-out training and publicity on Handbook		Purple	Purple			
Ensure education and training arrangements are in place			Purple			
Launch new Handbook				Purple		
Monitor compliance and adjust					Purple	Purple
Business as usual						Purple
Licensing authority application						
LSB decision	Gold	Gold	Gold	Gold		
Licensing regime in place and processing applications					Purple	
Review take up and operational effectiveness						Purple
Entity regulation implemented						
Skills analysis	Purple					
Publicity and training			Purple			
New systems in place to authorise, supervise & prosecute			Purple			
Monitor impact of changes				Purple		
Rules and guidance established for barristers to conduct litigation						
LSB approval anticipated		Gold				
Publicity and training		Purple	Purple			
Authorisation and supervision processes in place				Purple		
Monitoring impact of changes				Purple		
Waiver system reviewed						
Review commences completed		Purple				
Recommendation implemented			Purple			
Business as usual					Purple	
Business as usual						Purple
Development and operation of QASA						
Seek LSB approval, continue training, start research	Purple					
Implement communications strategy, more research		Purple				
Implement Phase One of the scheme			Purple			
Develop quality assurance of advocacy in Youth Courts			Purple			
Implement Phase Two of scheme				Purple		
Agree approach to Youth Court quality assurance				Purple		
Roll out in third circuit					Purple	
Review scheme						Purple

ACTION PLAN TIMETABLE	2013/14				2014/05	2015/16
	Q1	Q2	Q3	Q4		
Contribute to the Legal Services Act review						
Consultation published						
Implement recommendations from LETR						
Plan established						
Feasibility and development work						
Implement changes as required						
Deliver BCAT 2013 and evaluate first year of operation						
Delivery complete						
Evaluation commences						
Business as usual						
Review effectiveness and impact						
Commence implementation of CPD regulations						
Proposal and plan agreed						
Development commences						
Feasibility and development work						
Implement						
Review arrangements for will writing and probate – On hold						
Establish project Board – On hold						
Start delivery – On hold						
Implement recommendations for immigration						
Respond to LSB with outcome of review						
Implement; business as usual						
Business as usual						
Consider regulatory arrangements for special bodies						
Establish project to review arrangements and proposal						
Make recommendations to the BSB Board						
RISK MANAGEMENT						
Risk assessment framework						
Framework developed						
Refinement of framework						
Complete implementation and move to business as usual						
Business as usual						
Evidence base						
Identify existing evidence						
Develop research programme to enhance evidence						
Business as usual						
Business as usual						
Policy framework development						
Policy framework in place						
Train and implement						
Business as usual						

ACTION PLAN TIMETABLE	2013/14				2014/05	2015/16
	Q1	Q2	Q3	Q4		

SUPERVISION

Development of risk based supervision						
Consult on new approach	■					
Analyse consultation responses		■				
Board approval and comms strategy developed			■			
Commence in targeted areas				■		
Implement					■	
Business as usual						■

ENFORCEMENT

Develop new enforcement strategy						
Enforcement strategy development completed		■				
Strategy published			■			
Enforcement work commences				■		
Roll out					■	
Business as usual						■

Legal research in support of enforcement						
Develop systems and implement	■	■	■	■		
Business as usual					■	
Business as usual						■

CAPACITY AND CAPABILITY

IT systems in place						
New enforcement database implemented		■				
Intranet and DMS implemented			■			
Risk / supervision database implemented				■		
Train staff; business as usual					■	
Business as usual						■

Freedom of Information Act compliance						
Development work					■	
Implement and comply						■

Stakeholder engagement						
Contribute editorial content to relevant publications		■				
Launch internal interaction enforcement policy/guidelines			■			
Formal review on web content			■			
New leaflets and online material developed				■		
Develop strategy, resource and implement				■		
2 nd Biennial survey				■		
Business as usual; adjust in light of survey results					■	
3 rd Biennial Survey						■

Review of website content						
New leaflets about enforcement department work				■		
Make user feedback possible online				■		
Develop stakeholder engagement strategy				■		

Review contract management system						
New manager in post	■					
COIC service contract signed	■					

ACTION PLAN TIMETABLE	2013/14				2014/05	2015/16
	Q1	Q2	Q3	Q4		
Current system reviewed						
Improvements implemented						
First year of COIC agreement evaluated						
TRIP (the regulatory improvement programme) implemented						
Discovery phase and skills audit completed						
Learning and development plan agreed						
Learning and development plan implemented						
New organisational structure identified						
Competency framework and appraisal system in place						
Carry-out a fees and charges review						
Restructure PCF – policy proposals and consultation						
New fees and charging policy and consultation						
New structure PCF in place; roll out new fees and charges						
Roll out new fees and charges (continued)						
Governance structure review						
Review and develop required changes						
Implement and recruit new chair						
Business as usual						
Develop international strategies						
Research and policy work						
Effective tribunal and adjudication service operation						
Adopt new contractual relationship and specification / KPIs						
Adjust service for entities						
Business as usual						
Change programme						
Complete review and design of new business processes						
Complete introduction of new processes						
Effect internal re-structuring						
Business as usual						
Staff capacity and capability						
Develop new competence framework and appraisal process						
Develop/implement revised skills training programme						
Implement new framework and recruit to it						
First appraisals under new system and framework						

Annex A: The role of the Legal Services Board and the required regulatory standards

Overview

1. The LSB is the independent body responsible for overseeing the regulation of legal services in England and Wales. The LSB has a very simple goal - to reform and modernise the legal services marketplace in the interests of consumers, enhancing quality, and ensuring value for money and improving access to justice across England and Wales.

The LSB's vision

2. The regulatory objectives described in the Act provide the framework for regulation. The LSB has used these to develop a vision for the legal services market that it considers regulators must strive to deliver. The LSB's vision takes as its starting point that a competitive legal services market, underpinned by appropriate regulation, will deliver the regulatory objectives most effectively.
3. A market that works better for consumers and providers alike would be characterised by:
 - greater competition and innovation in service delivery;
 - access to justice for all;
 - empowered consumers, able to choose a quality service at an affordable price;
 - an improved customer experience with swift and effective redress when things go wrong;
 - a constantly improving and consistently ethical legal profession, as diverse as the community they serve; and
 - clear and proportionate regulation, that removes barriers to entry and targets market failure and which commands wide confidence from the public and the market.
4. The LSB works to stimulate a healthy and improving market for legal services that is constantly evolving towards our vision. The LSB knows that it must work with and through a wide variety of organisations to achieve it. The LSB is fortunate that it shares its regulatory objectives with the approved regulators and the Legal Ombudsman.

The regulatory standards and the LSB's approach to regulation

5. The LSB works with the regulators to ensure that they embed the principles of better regulation across their activities so that there is a consistent and transparent approach to the oversight of the legal sector. This work is fundamental to how the LSB operates in its oversight role. It also contributes to the development of legal services regulation so that it meets the needs of consumers but does so in the most efficient way for practitioners. How the LSB developed the standards, our legal powers for carrying out this work and the assessment process can be found in annex B.

The regulatory standards

6. The LSB concluded that only with the effective implementation of all of the constituent parts of regulation by the regulators will a more flexible, consumer focused and responsive regulatory regime for legal services emerge. This should result in a regulatory regime that delivers efficient and appropriate regulation for practitioners while ensuring that the public and consumers are protected from unacceptable levels of risk.
7. Effective delivery of the constituent parts of regulation should lead to higher standards of professional conduct and competence. It should catalyse a legal services market with increased consumer choice and confidence. It should encourage innovative practitioners who, if posing few risks, are not subject to intrusive or inflexible regulation. It should introduce a level of consistency in the approach to the regulation of legal services. Therefore it is against these constituent parts that the LSB has assessed all regulators.
8. The four regulatory standards were framed with explicit reference to the Act's requirement that legal services regulators must, as far as is reasonably practicable, act in a way which is compatible with the regulatory objectives and also that their regulatory activities must have regard to the principles that regulatory activity should be transparent, accountable, proportionate, consistent and targeted. The regulators also have a general requirement to adhere to any other principle appearing to it to represent best regulatory practice. The LSB, when devising the standards, paid particular attention to Government policy on regulation and other regulatory regimes – including both professional regulatory frameworks and academic work on regulation.
9. Within this work all the regulatory objectives are important. However, it remains the LSB's view that the regulators must prioritise the protection and promotion of the interests of consumers. They should do so by setting out clear outcomes that consumers can expect from providers of legal services. The LSB does accept that on some occasions the regulatory objectives may be in tension. However, such tension is more easily resolved through a focus on the outcomes expected rather than rules, which will not be able to cover every conceivable eventuality.
10. The next sections set out some of the factors that we consider important in order for a regulator to show that it has embedded all the standards appropriate in its organisation and uses them to inform day to day working practices.

Outcomes focused regulation

11. The goal of this standard is that each legal services regulator will have regulatory arrangements that can deliver the outcomes that all consumers, whether existing or potential, individual or corporate, can expect from authorised people. Regulators should only have detailed rules or requirements where they have clear evidence and analysis that justifies such an approach.
12. To deliver this, legal services regulators must have high quality, up to date and reliable evidence about how all groups of consumers need and use the legal services provided by those they regulate. Regulators must also have evidence to show whether the outcomes are being achieved. Each legal services

regulator must also ensure that it reviews and updates its regulatory arrangements based on the evidence it gathers.

13. The benefit of such an approach is that it can enable authorised people to use their professional judgement to determine how they can best achieve the required outcomes. It can deliver greater clarity and increased freedom to innovate in the provision of services without reducing protection for individual consumers and accountability of providers. It can future proof the regulatory arrangements so that they are flexible enough to allow market change and they remain relevant in the face of changing practices.
14. Competence in this regulatory standard will require legal services regulators to have evidence that the activities of those they regulate do not have an adverse impact on interests of consumers, the public interest and/or the rule of law. They must also avoid having detailed requirements that hinder competition and innovation. The LSB made it clear in its decision document⁵⁰ that it would not compel regulators to move instantly to an outcomes focused approach. But the LSB does expect regulators to have a clear plan on how they intend to develop their regulatory arrangements so that they will accord with best regulatory practice, as required by the Act.

Risk

15. The Hampton principles,⁵¹ from which the better regulation principles within the Act⁵² were drawn, and the Regulators' Compliance Code⁵³ make it clear that regulators are expected to use comprehensive risk assessment to concentrate their resources in the areas that most need them.
16. The LSB considers that legal services regulators must have a formal, structured, transparent and evidence-based approach to the identification and mitigation of risk across all those they regulate. One of the key issues regulators should focus on is consumer detriment and those in vulnerable circumstances. The approaches adopted must also enable the identification of future trends as well as responding to current issues.
17. The clear benefit of risk assessment is to provide regulators with the information to enable them to target scarce resources at areas of highest risks to the regulatory objectives. This may be certain areas of work, certain types of practitioners or an array of different risk factors. By understanding risk, regulators can tailor their approaches and so deliver proportionate regulation.
18. Legal services regulators with effective risk assessment processes are likely to be able to deliver regulation that is targeted, proportionate and consistent. In doing this they will be able to ensure that the regulatory objectives are not being exposed to unacceptable risks and specifically that consumers,

⁵⁰ LSB (2011), *Developing Regulatory Standards: Summary of responses to the consultation on developing regulatory standards and decision document*, LSB

<http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/20111214_regulatory_standard_v11.pdf>

⁵¹ Hampton (2005), *Reducing administrative burdens: effective inspection and enforcement*, HM Treasury.

<<http://www.bis.gov.uk/files/file22988.pdf>>

⁵² See section 28 of the Legal Services Act 2007

⁵³ Department for Business Enterprise and Regulatory Reform (2007), *Regulators Compliance Code: Statutory Code of Practice for Regulators*, 17 December 2007, BERR <<http://www.berr.gov.uk/files/file45019.pdf>>

especially those that are vulnerable, are not exposed to high risks of detriment.

Proportionate supervision

19. The regulatory standard of supervision is linked to that of risk assessment. It requires that legal services regulators have a supervision policy that is determined with reference to identified risks and is underpinned by an evidence-based understanding of the different market segments in which those they regulate operate.
20. To achieve this standard, supervision must be pro-active as well as reactive. For instance, if there was an elevated risk to any of the regulatory objectives from certain providers offering certain services, the LSB would expect the regulator to develop an appropriate supervisory response. This is in addition to more reactive approaches that may be determined by firm complaint volumes or specific compliance issues or concerns.
21. Similar to the risk assessment section, adopting such an approach helps to focus scarce resources on the highest priorities. However, active supervision helps ensure that the activities of individual firms, individuals or groups are not having an adverse impact on the regulatory objectives. The regulatory objectives that are particularly pertinent for this standard are the maintenance of adherence to the professional principles, protecting the interests of consumer and the public interest. Regulators that meet this standard will ensure that regulation is targeted, consistent and proportionate.

Appropriate enforcement

22. Effective regulators will have a range of effective and proportionate enforcement tools. They should be timely, fair and there should be published policies and guidance that enable others to understand the regulator's criteria for deciding to take action. The sanctions available to the regulator should deter others as well as impose sanctions on those who do not comply with the regulatory arrangements. Decisions to take action must be based on evidence and reliable sources. An appeals process that follows generally agreed best practice must also be in place.
23. The benefit of legitimate and effective enforcement procedures is that regulators can be confident that the enforcement decisions they reach are likely to survive any resulting legal challenges. Enforcement is the ultimate tool to deliver compliance and punish non-compliance with regulatory arrangements. Furthermore, such activities will help ensure that the professional principles are being maintained and that the interests of consumers and public interest are being protected.

Capacity and capability

24. This indicator is about whether the regulator has the capacity and capability to deliver the four regulatory standards as well as any other statutory responsibilities and has governance arrangements in keeping with best practice for similar organisations.
25. The LSB expects regulators to have clear leadership and strong consumer engagement so that consumers will be confident that the regulator is

independent from those it regulates. Regulatory budgets and staffing must be linked to the nature of the market they regulate and the risks therein, not simply the level of regulatory fees they believe practitioners are willing to pay. A good quality regulator will have transparency and continuous improvement at its heart. It will have documented governance procedures and processes in line with best practice. It will also have a systematic approach to knowledge and information management at all levels.

26. Without the appropriate level of capacity and capability the regulator will struggle to deliver the four constituent parts of regulation and the requirements of the Act. This is why it forms an important part of the assessment.

Annex B: The consultation, the LSB's powers and the assessment process

Consultation

1. In May 2011 the LSB published a consultation paper entitled Developing Regulatory Standards. The paper discussed how the LSB would assess whether the regulatory standards and performance of the approved regulators were consistent with the regulatory objectives in the Act and whether they act in a way that is compatible with the principles of better regulation and best regulatory practice.
2. To do so, the LSB consulted on what it considered to be the constituent parts of good regulation and the standards and criteria against which it would assess the approved regulators' performance.
3. These four criteria were:
 - an outcomes-driven approach to regulation that gives the correct incentives for ethical behaviour and has effect right across the increasingly diverse market;
 - a robust understanding of the risks to consumers associated with legal practice and the ability to profile the regulated community according to the level of risk;
 - supervision of the regulated community at entity and individual level according to the risk presented; and
 - a compliance and enforcement approach that deters and punishes appropriately.
4. It is also important that the regulators have the capability and capacity to deliver the regulatory standards and adhere to other relevant statutory responsibilities.
5. The LSB consulted for a 12 week period which ended on 12 July 2011 and received 10 written consultation responses. The submissions and our decision document have been published on the LSB website.⁵⁴

The LSB's powers

6. We consider that the LSB must be able to assure itself that the approved regulators are carrying out their functions in ways that are compatible with the statutory requirements in the Act and that they are not allowing, or risking, unacceptable consumer detriment in the markets they regulate. In addition, the requirement on the LSB and the approved regulators to have regard to the principles of better regulation and best regulatory practice (sections 3 and 28 of the Act) provides a firm basis for setting out our view of appropriate regulatory standards for legal services regulation.

⁵⁴The discussion paper can be found here:

http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/21110420_developing_reg_std_finalrb_proof_3.pdf

The responses to that discussion paper can be found here:

http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/submissions_received_to_the_consultation_on_developing_regulatory_standards.htm

The LSB's decision document can be found here:

http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/20111214_regulatory_standard_v11.pdf

7. The requirement to have regard to best regulatory practice implies a continuing evolution of how approved regulators regulate; regulating in a way that is more efficient for those regulated but still protects consumers from detriment. The regulatory standards draw heavily on the latest thinking to set out a modern approach to the regulation of legal services providers.
8. Sections 3 and 28 of the Act require that all approved regulators and the LSB act in a manner compatible with the regulatory objectives. In order to act in a way that is compatible with the regulatory objectives, the LSB must assure itself that approved regulators are protecting the interests of consumers, ensuring that authorised people adhere to the professional principles⁵⁵ and that the public interest is protected. There can be no doubt that the language of the Act – “protecting”, “promoting”, “improving” in the regulatory objectives - requires the LSB to be proactive on this issue.
9. We consider that the Act places a positive (not a passive or purely responsive) responsibility on the LSB: “*The Board must [emphasis added] assist in the maintenance and development of standards in relation to, (a) the regulation by approved regulators of persons authorised*”.⁵⁶ Therefore, we need to be satisfied that approved regulators are effective regulators that operate in a way that is consistent with the better regulation principles. This assessment fulfils a significant part of the work to assure ourselves that approved regulators are meeting statutory requirements. However it is not the only piece of work and this report does not amount to a final assessment on whether approved regulators are meeting their statutory requirements.

The assessment process for the BSB

10. In December 2011, the LSB wrote to the regulators, to set out a timetable for the self-assessment process. Prior to receiving the regulators’ draft submissions, the LSB carried out an intelligence gathering exercise to build a picture about each regulator’s regulatory standards. This information was used in the initial challenge against each regulator’s draft self-assessment.
11. By the end of May 2012, the LSB had received a draft self-assessment from the BSB and we met with them to discuss the submission. These meetings were followed up with a letter from the LSB Chair drawing attention to the fact that none of the regulators had used the Oxera Framework. In order to promote the value of using the Framework, the LSB held two seminars in July, where the regulators received a detailed explanation of how the Framework operates as well as a practical demonstration of how it could be used.
12. The BSB submitted its final self-assessments on 20 February 2013.

⁵⁵ The professional principles include: that authorised persons; act with independence and integrity; that proper standards of work are maintained; act in the best interests of the client; comply with their duty to the court; and maintain client confidentiality.

⁵⁶ Section 4, Legal Services Act 2007

Annex C: Self-assessment template

Regulatory standards

The overall approach is for Approved Regulators and Licensing Authorities (AR/LAs) to self-assess their own level for each constituent part of regulation as well as their own capacity and capability.

The self-assessment is on the following scale:

- Good- all indicators embedded appropriately in the organisation and inform day to day working practices
- Satisfactory – significant progress is being made to embed indicators and use them in day to day working practices
- Undertaking improvement and work is well underway– indicators have been introduced but are not yet embedded appropriately in the organisation and do not yet inform day to day working practices
- Needs improvement and work has started recently

Alternatively, the AR/LA has the option to state: recognise this needs to be done but work has not yet started

We consider that all of the constituent parts apply to all ARs and so “not applicable” is not an acceptable response. Below each of the constituent parts are factors that indicate where an organisation might be on the scale. AR/LAs must use these factors to assess initially whether they are towards the top or bottom of the scale and provide that information in the self-assessment. However, AR/LAs are free to add sector-specific factors as well. All additional sector specific factors must be justified with reference to evidence. AR/LAs may also wish to use the indicators in box 3 on page 28 of the regulatory standards decision document as a guide.

In order to provide a consistent framework for understanding the legal services market, AR/LAs must use the Oxera report “A framework to monitor the legal services sector” published by the LSB on 28 September 2011 when considering the extent of their knowledge about consumers, the supply of legal services and the market(s) they regulate. For example, paragraph 2.1.3 of that report explains why there may be limited demand-side substitution because consumers need a specific type of legal advice for their problem; there may also be limited supply side-substitution if it is not possible for lawyers to switch to providing a different type of advice within a reasonable timescale. We would expect an AR/LA with a good understanding of the market(s) it regulates to be able to provide evidence about the types of consumer problems that occur, the extent to which supply-side substitution is possible, the

barriers to supply-side substitution, the risk of consumer detriment that arises and an assessment of whether any regulatory action is required to mitigate that risk.

AR/LAs must provide clear analysis and evidence of how it arrived at the rating together with an Action Plan for development going forward with challenging but realistic targets/timescales.

Lay Board involvement is preferable in completing the self-assessment; additional independent scrutiny may also be appropriate. Board sign off on the final submission is required.

LSB will publish a high level summary of the AR/LA's assessment and Action Plan.

For AR/LAs completing the self-assessment with any questions on the process or would like further details on what is expected please contact Fran Gillon (fran.gillon@legalservicesboard.org.uk) or James Meyrick (james.meyrick@legalservicesboard.org.uk)

Please provide details of a senior contact at the AR/LA who will be responsible for responding to LSB queries on the self-assessment:

Full name:
Job Title:
Contact details (including telephone and email address):

Outcomes focused regulation

To what extent does the AR/LA have regulatory arrangements based on the outcomes that consumers need?

Factors that indicate that the AR/LA is towards top of the scale:

- Regulatory arrangements deliver the outcomes that consumers need; there is clear evidence and analysis to justify any detailed rules; those regulated understand and accept approach to regulation;
- All members of staff and Board understand the organisation's approach to focusing regulation on the consumer and public interest;
- High quality, up to date, reliable evidence from a range of sources about how all groups of consumers need and use the legal services the AR/LA regulates; evidence about whether outcomes are being achieved; consumers have confidence in regulation. Regularly reviews and updates its regulatory arrangements based on that evidence.

Factors that indicate that the AR/LA is towards bottom of the scale:

- Predominately rule based regulation; high levels of prescription with no clear evidence base;
- Some resistance to moving to consumer-based outcomes by Board and/or those regulated;
- Little or no up to date evidence about consumers; decisions often based on lawyers' needs/views.

Outcomes focused regulation	To what extent does the AR/LA have regulatory arrangements based on the outcomes that consumers need?	
Scale	Please mark your overall assessment against the scale for this standard	
Good		
Satisfactory		
Undertaking improvement and work is well underway		
Needs improvement and work has started recently		
Recognise this needs to be done but work has not yet started		
Questions for response	Text	
Rationale for assessment:		
Evidence to support assessment:		
References to relevant supporting documentation:		
Details of action plan with timescales and milestones (including work identified but not begun, work recently started and work already underway):		
References to relevant action plan documentation:		

Risk assessment

To what extent does the AR/LA have a formal risk assessment processes at key stages of its regulatory decision making processes?

Factors that indicate that the AR/LA is towards top of the scale:

- Formal, structured, transparent and evidence-based approach to identification and mitigation of risks across the whole range of entities and individuals that the AR/LA regulates. Risk analysis focuses predominantly on consumer detriment, including those in vulnerable circumstances. Evidence that approach to risk works in practice;
- Approach to evidence gathering for risk assessment enables the identification of future trends as well as current issues;
- Relevant staff and Board understand the reasons for risk assessment, how it informs other aspects of the AR/LA's activities. Staff share best practice and lessons learned in a structured and effective way.

Factors that indicate that the AR/LA is towards bottom of the scale:

- Some understanding of the main areas of risk but little evidence on which to base its approach;
- Relatively static approach, often or predominantly retrospective;
- No clear link between view of risk and other activities.

Risk assessment	To what extent does the AR/LA have formal risk assessment processes at key stages of its regulatory decision making processes?	
Scale	Please mark your overall assessment against the scale for this standard	
Good		
Satisfactory		
Undertaking improvement and work is well underway		
Needs improvement and work has started recently		
Recognise this needs to be done but work has not yet started		
Questions for response	Text	
Rationale for assessment:		
Evidence to support assessment:		
References to relevant supporting documentation:		
Details of action plan with timescales and milestones (including work identified but not begun, work recently started and work already underway):		
References to relevant action plan documentation:		

Supervision

To what extent does the AR/LA have supervisory processes that are consistent with the principles of better regulation?

Factors that indicate that the AR/LA is towards top of the scale:

- Supervisory activity:
 - is underpinned by an evidence-based understanding of different market segments and providers that the AR/LA regulates;
 - is determined by reference to identified risks;
 - is informed by data from the Legal Ombudsman;
 - facilitates innovation, change and commercial freedom; and
 - is adequately resourced (including the use of fit for purpose technology) to provide good quality, consistent decisions without backlogs.
- Clear and structured feedback loops between supervisory activity, risk assessment, staff learning and best practice;
- Regular senior management and Board monitoring of effectiveness and value for money of supervisory activity leads to improved processes.

Factors that indicate that the AR/LA is towards bottom of the scale:

- Supervisory activity is predominately reactive;
- Little co-ordination of experience and best practice development;
- Few incentives to improve effectiveness or value for money.

Supervision	To what extent does the AR/LA have supervisory processes that are consistent with the principles of better regulation?	
Scale	Please mark your overall assessment against the scale for this standard	
Good		
Satisfactory		
Undertaking improvement and work is well underway		
Needs improvement and work has started recently		
Recognise this needs to be done but work has not yet started		
Questions for response	Text	
Rationale for assessment:		
Evidence to support assessment:		
References to relevant supporting documentation:		
Details of action plan with timescales and milestones (including work identified but not begun, work recently started and work already underway):		
References to relevant action plan documentation:		

Enforcement

To what extent does the AR/LA have enforcement processes that are consistent with the principles of better regulation?

Factors that indicate that the AR/LA is towards top of the scale:

- Published policies and guidelines are written in plain language that enables others to understand the criteria for deciding to take action; appeal processes follow best practice;
- A wide range of effective, proportionate enforcement tools that can be deployed quickly by staff who have appropriate levels of experience and are well trained; enforcement powers provide appropriate incentives for compliance; enforcement penalties punish as well as deter; regular senior management and Board monitoring of effectiveness and value for money of enforcement activity feeds back to improved processes and reduced costs;
- Decisions to take (and not to take) enforcement action are evidence based and use reliable sources.

Factors that indicate that the AR/LA is towards bottom of the scale:

- Little or no evidence of structured approach to enforcement activity. Lack of appropriate levels of expertise amongst staff;
- Narrow range of enforcement powers; powers tend to be inflexible;
- Appeal processes that are time consuming and expensive with little control over costs.

Enforcement	To what extent does the AR/LA have enforcement processes that are consistent with the principles of better regulation?	
Scale	Please mark your overall assessment against the scale for this standard	
Good		
Satisfactory		
Undertaking improvement and work is well underway		
Needs improvement and work has started recently		
Recognise this needs to be done but work has not yet started		
Questions for response	Text	
Rationale for assessment:		
Evidence to support assessment:		
References to relevant supporting documentation:		
Details of action plan with timescales and milestones (including work identified but not begun, work recently started and work already underway):		
References to relevant action plan documentation:		

Capacity and capability

To what extent does the AR/LA have the necessary Board and staff capacity and capability to deliver the regulatory objectives?

Factors that indicate that the AR/LA is towards top of the scale:

- Clear and consistent leadership at Board and senior management level that ensures that the whole organisation has strong consumer engagement and consumer focus. Consumers are confident that regulation is independent;
- Appropriate levels of budget and staffing linked to the nature of the market(s), entities and individuals regulated; required skill sets are defined and linked to the key challenges facing the organisation, to the regulatory objectives and to the AR/LA's regulatory outcomes – which are achieved in practice. Organisation's structure enables effective decision making by appropriate delegation of powers to staff;
- Evidence-based understanding of the market(s) it regulates and the commercial realities of operating in it. High levels of knowledge management and analytical skill at all levels in the organisation drives culture of transparency, continuous improvement and embeds best regulatory practice from legal regulation and other industries.

Factors that indicate that the AR/LA is towards bottom of the scale:

- Consumer interest not yet embedded at all levels across Board or staff, or in regulatory arrangements;
- Budget/staffing levels/structure that inhibit regulatory capacity; Board members heavily involved in many aspects of day to day work; little focus on LSA requirements;
- Little management information about those regulated; little or no analysis or understanding of the market(s) they operate in.

Capacity and capability	To what extent does the AR/LA have the necessary Board and staff capacity and capability to deliver the regulatory objectives?	
Scale	Please mark your overall assessment against the scale for this standard	
Good		
Satisfactory		
Undertaking improvement and work is well underway		
Needs improvement and work has started recently		
Recognise this needs to be done but work has not yet started		
Questions for response	Text	
Rationale for assessment:		
Evidence to support assessment:		
References to relevant supporting documentation:		
Details of action plan with timescales and milestones (including work identified but not begun, work recently started and work already underway):		
References to relevant action plan documentation:		

Self-assessment certification

In order to assure the LSB of the accuracy of the self-assessment we require the following to certify the contents of the self-assessment and any accompanying documents:

- A member of the regulatory Board, preferably lay, who has been involved in the completion of the assessment;
- The Chair or equivalent of the regulatory Board on behalf of the entire regulatory Board;
- The independent scrutiniser (where used) or alternatively the member of the regulatory Board, preferably lay, who has been involved in the completion of the assessment must confirm the reasons for not seeking independent scrutiny.

Regulatory Board Member: On behalf of [the AR/LA's] regulatory Board, I, member of said regulatory Board, certify that I have taken reasonable steps to satisfy myself that the information contained within this self-assessment and accompanying documents are accurate, that the procedures followed to make the assessment provided a reasonable basis to reach a judgement and each ranking represent a fair and reasonable assessment:

<p style="text-align: center;">X _____ Member of regulatory board</p>	<p>Full name and date:</p>
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Regulatory Board: On behalf of the [the AR's] regulatory Board, I certify that the regulatory Board has reviewed this completed self-assessment and has come to a reasonable opinion, after having made due and careful enquiry, that the information and judgements contained within this assessment are made on a reasonable basis:

<p style="text-align: center;">X _____ Chairman/equivalent of regulatory board</p>	<p>Full name and date:</p>
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Independent scrutiny

The LSB requires that each regulator either subjects their completed self-assessment to independent scrutiny or explains why they chose not to do so. The independent scrutiny can be completed by an appropriate professional, expert or consultant. This can include individuals sitting on other legal services regulatory Boards. They should not be current or previous members of the regulatory Board under consideration. This individual must provide their contact details, any professional accreditation and signature on the submitted self-assessment.

If the self-assessment was independently reviewed: I confirm that I, as an independent scrutiniser of this self-assessment, have taken reasonable steps to satisfy myself that the regulatory Board and its executive have followed appropriate procedures which provide a reasonable basis for them to make the judgements contained within this self-assessment and in any other documents submitted alongside this self-assessment:

	<p>X _____ Independent scrutiniser</p>
	Full name:
	Date:
Job title and / or profession:	
Business name and address:	

If the self-assessment was not independently reviewed:

On behalf of the AR/LA's regulatory Board, I, member of said regulatory Board declare that the regulatory Board decided against seeking independent scrutiny of the completed self-assessment for the following reasons:

This self assessment was not independently reviewed for the following reasons:	
<p>X</p> <hr/> <p>Member of regulatory board</p>	<p>Full name and date:</p>

Annex D: Glossary of terms

ABS	Alternative Business Structures. From October 2011 non-legal firms have been able to offer legal services to their customers in a way that is integrated with their existing services. Or law firms will be able to develop their portfolios to compete across wider areas compared with their existing experience.
AR or approved regulator	A body which is designated as an approved regulator by Parts 1 or 2 of schedule 4 to the Legal Services Act 2007, and whose regulatory arrangements are approved for the purposes of the LSA and which may authorise persons to carry on any activity which is a reserved legal activity in respect of which it is a relevant AR
BSB	Bar Standards Board – the independent regulatory arm of the Bar Council
CLC	Council for Licensed Conveyancers – the regulator of Licensed Conveyancers
Consultation	The process of collecting feedback and opinion on a policy proposal
ILEX Professional Standards Board	Institute of Legal Executives – the independent regulatory arm of the Institute of Legal Executives
LA or Licensing Authority	An AR which is designated as a licensing authority to license firms as ABS
LSB or the Board	Legal Services Board – the independent body responsible for overseeing the regulation of lawyers in England and Wales
LSA or the Act	Legal Services Act 2007
Principles of Better Regulation	The five principles of better regulation: proportional, accountable, consistent, transparent and targeted

Regulatory Objectives	<p>There are eight regulatory objectives for the LSB that are set out in the Legal Services Act (2007):</p> <ul style="list-style-type: none"> • protecting and promoting the public interest • supporting the constitutional principle of the rule of law • improving access to justice • protecting and promoting the interests of consumers • promoting competition in the provision of services in the legal sector • encouraging an independent, strong, diverse and effective legal profession • increasing public understanding of citizens legal rights and duties • promoting and maintaining adherence to the professional principles of independence and integrity; proper standards of work; observing the best interests of the client and the duty to the court; and maintaining client confidentiality.
Reserved Legal Activity	Legal services within the scope of regulation by the Approved Regulators
SRA	Solicitors Regulation Authority – independent regulatory Arm of the Law Society

Annex E: The legal regulators in numbers

Approved regulator	Regulatory body	Reserved Activities	Licensing Authority	No. of Authorised Persons	No. of regulated entities	Practising certificate fee	Annual AR budget for representative & regulatory functions, centralised costs, set-up (SU) and running costs (RC)	Number of regulatory staff
Law Society	Solicitors Regulation Authority	The exercise of a right of audience The conduct of litigation Reserved instrument activities Probate activities The administration of oaths	YES	124,968 Aug-12 (SRA web report)	11,115 Aug-12 (SRA web report)	From 01-Nov-12 £344 (Individual PC fee) £10 (extra) Firm fees are based on a percentage of turnover between 0.86% and 0.08% Approved by LSB 01-Aug-12	Total Budget to 31-Dec-12: £98.310m Rep: 13.6% Reg: 34.1% SDT: 2.2% Central: 28.8% LSB SU: 1.3% LSB RC: 3.9% LeO RC: 16.0%	600+ FTEs (11-Sep-12 SRA press release)
General Council of the Bar	Bar Standards Board	The exercise of a right of audience The conduct of litigation Reserved instrument activities Probate activities The administration of oaths	NO	15,204 At 01-Apr-12 (levy figures)	N/A	From 01-Apr-12 <u>Self employed Bar:</u> £1,198 (QC) £811 (13 years +) £414 (8-12 years) £220 (5-7 years) £300 (3-4 years) £300 (1-2 years) Excl pension levy <u>Employed Bar:</u> £890 (QC) £622 (13 years +) £342 (8-12 years) £184 (5-7 years) £80 (3-4 years) £80 (1-2 years) Excl pension levy Approved by LSB 29-Jan-12	Total Budget to 31-Mar-13: £7.411m Rep: 19.9% Reg: 15.3% Central: 51.6% LSB SU: 0.0% LSB RC: 6.5% LeO RC: 6.7%	73.8 FTEs 32 shared FTEs (Bar Council website Sept-12)
Faculty Office		Reserved instrument activities Probate activities The administration of oaths Notarial activities	NO	858 At 01-Apr-12 (levy figures)	N/A	From 01-Nov-12 £400 (annual fee) £40 (contingency fee) Approved by LSB 27-Jul-12	Total Budget to 31-Dec-12: £0.291m Rep: 0.0% Reg: 85.6% LSB SU: 3.2% LSB RC: 9.2% LeO RC: 2.1%	4 FTEs (Faculty Office self assessment)

Representative Bodies	Regulatory Bodies	Reserved Activities	Licensing Authority	No of Authorised Persons	No of regulated entities	Practising certificate fee	Annual AR budget for representative & regulatory functions, centralised costs, set-up (SU) and running costs (RC)	Number of regulatory staff
Chartered Institute of Legal Executives	ILEX Professional Standards	The exercise of a right of audience The administration of oaths The conduct of litigation (for associate prosecutors)	NO	7,907 At 01-Apr-12 (levy figures)	N/A	From 01-Jan-13 £290 (fellow) £150 (associate prosecutor) Approved by LSB on 06-Sep-12	Total Budget to 31-Dec-12: £2.071m Rep: 52.4% Reg: 31.8% LSB SU: 4.0% LSB RC: 11.4 % LeO RC: 0.5%	7.7 FTEs 4.5 shared FTEs (IPS self-assessment)
Council for Licensed Conveyancers		Reserved instrument activities Probate activities The administration of oaths	YES	1,139 29-Mar-12 (CLC self assessment)	221 29-Mar-12 (CLC self assessment)	From 01-Nov-12 £400 licence fee Plus a practice fee based on turnover bands And/or a % of practice turnover fee between 1.0% and 1.3% Approved by LSB on 20-Sep-12	Total Budget to 31-Dec-12: £2.922m Rep: 0.0% Reg: 90.6% LSB SU: 0.4% LSB RC: 1.2 % LeO RC: 7.8%	24 FTEs 31-Dec-11 (Annual Report)
Chartered Institute of Patent Attorneys	Intellectual Property Regulation Board	The exercise of a right of audience The conduct of litigation Reserved instrument activities The administration of oaths	NO	1,745 * At 01-Apr-12 (levy figures)	185	From 01-Jan-12 Individual £140 (non-practicing) £170 (other attorneys) £280 (sole traders) £55 (attorneys working in entities or sole traders) Entities £280 + £55 per register attorney +225 per unregistered professional providing legal services Approved by LSB 27-Oct-12	Total Budget to 31-Dec-12: £0.508m Rep: 0.0% Reg: 69.0% LSB SU: 5.6% LSB RC: 14.3 % LeO RC: 1.9% IPREG contract w ITMA/CIPA to run website until end of 2012: 9.3% of PCF	3 FTEs (IPReg self assessment)
Institute of Trademark Attorneys			NO	639 * At 01-Apr-12 (levy figures)				
Association of Costs Lawyers	Cost Lawyers Standards Board	The exercise of a right of audience The conduct of litigation The administration of oaths	NO	565 At 01-Apr-12 (levy figures)	N/A	From 01-Jan-12 £450 (annual fee) (£250 proposed for 2013 with ACL invoicing fees separately - not yet accepted)	Total Budget to 31-Dec-12: £0.237m Rep: 47.3% Reg: 45.4% LSB SU: 1.2% LSB RC: 5.6% LeO RC: 0.5%	2 FTE incl 1 at ACL (CLSB self-assessment)