

To:	Legal Services Board	
Date of Meeting:	27 January 2015	Item: Paper (15) 02

Title:	Regulatory standards report for 2014/15
Workstream(s):	Developing standards and performance
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Status:	Unclassified

Summary:
<ol style="list-style-type: none"> 1. This paper includes a draft LSB report on the regulatory standards update exercise 2014/15. 2. In April 2014 the LSB asked regulators to report to the LSB on the progress they had made on delivering the regulatory standards since the first self-assessment exercise undertaken in 2012/13. The template produced by LSB for the regulators included three questions in relation to each of the regulatory standards. These were to provide an assessment of their: <ul style="list-style-type: none"> • progress against the action plans provided as part of the 2012/13 self-assessment; • activities undertaken to respond to observations made by the LSB in the reports published on their 2012/13 self-assessment; and • additional activities relevant to the regulatory standards; 3. They were also invited to provide details of their updated action plans with timescales and milestones. We received the completed update self-assessments and supporting documents in October and November 2014. Full details on the self-assessment process followed can be found in Annex B of the draft report. 4. Annex A of this paper summarises the self-assessments and details the ratings given. 5. Overall the LSB considers that progress has been made since the 2012/13 self-assessment process. Examples include: <ul style="list-style-type: none"> • Efforts to improve their understanding of those they regulate;

- the introduction of, and improvements to existing, risk assessment processes;
- the development of proactive supervision policies; and
- programmes to improve the capacity and capability of executive staff and improve transparency.

6. However, there is considerable scope for improvement:

- There are gaps in their understanding of the consumers of the legal services provided by those they regulate;
- Little evidence appears to exist to justify the retention of the detailed rules that they apply to those they regulate (although the production of evidence to justify reform has also taxed regulators); and,
- Some questions remain about whether they have the right governance and management processes in place to deliver the changes they have committed to and to achieve a satisfactory level in the regulatory standards.

Next steps

7. Once the Board is content with the proposed format and content of the draft report we will share relevant sections of the draft report with each of the regulators for an accuracy check and to ensure that all statistics used in the report are the most relevant. Following that exercise we will publish the report in full. We hope to publish before the end of February 2015.
8. During 2015/16 the LSB will undertake a full assessment of the performance of the regulators against the regulatory standards. The findings from the assessment will be used to inform the areas that we target in the 2015/16 self-assessment template.

Recommendations:

The Board is invited to:

1. Review and comment on the draft report structure.
2. To agree the next steps and to delegate final sign off of the report to the Chairman and LSB Director of Strategy.

Risks and mitigations

Financial:

[Redacted]

Legal:

[Redacted]

Reputational:

[Redacted]

Resource:

[Redacted]

Consultation	Yes	No	Who / why?
Board Members:		X	
Consumer Panel and others:		x	

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Risks and mitigations: Financial, Legal, Reputational and Resource. Para 11	Section 36(2)(b)(i) – information likely to inhibit the free and frank provision of advice	None
Annexes A and B	Section 22 – information intended for future publication	None

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Regulatory Standards report 2014/15

1. This paper includes a draft LSB report on the regulatory standards update exercise 2014/15.

Background

2. The LSB has developed a series of regulatory standards that we expect regulators to meet in order to deliver the requirements of the Legal Services Act 2007 (the Act). The standards we developed were as follows:
 - **outcomes focused regulation:** An approach that gives the correct incentives for ethical behaviour across diverse markets
 - **effective risk identification:** An evidence-based understanding of the risks in the markets they regulate and the ability to profile those regulated according to the risks they pose
 - **proportionate supervision:** Supervision of the regulated community according to the risks they present
 - **an appropriate enforcement strategy:** A compliance and enforcement approach that deters and punishes appropriately.
3. The LSB consider that regulators must also have the capability and capacity to comply with the requirements of the Act and any other statutory requirements. The Regulators assessed themselves against these standards during 2012/13. The LSB published reports of those assessments.
4. In January 2014 the LSB Board agreed that the LSB should require regulators to provide an update self-assessment on the progress regulators have made improving their regulatory standards. In April 2014 the LSB provided regulators with a template to complete. The template produced by LSB for the regulators included three questions in relation to each of the regulatory standards. These were to provide an assessment of their:
 - progress against the action plans they produced as part of the 2012/13 self-assessment;
 - activities undertaken to respond to the performance observations made by the LSB in the reports published on their 2012/13 self-assessment; and
 - additional activities relevant to the regulatory standards;
5. They were also invited to provide details of their updated action plans with timescales and milestones. We received the completed update self-assessments and supporting documents in October and November 2014.

Purpose

6. The primary purpose of the update assessment was to assure ourselves that the approved regulators have made progress in improving their regulatory standards since the completion of the first exercise in 2012/13.
7. A secondary purpose was to uncover areas where progress remains less than satisfactory. The final purpose is to keep a focus on the need to achieve satisfactory regulatory standards in advance of the full regulatory standards assessment timetabled for 2015/16
8. The draft report (annex B) attempts to achieve these purposes by highlighting where progress has been made; pointing out where less progress has been made and informing regulators of what areas we may focus on during the 2015/16 regulatory standards assessment. We have also included a number of regulator specific case studies to highlight some of the positive work undertaken by the regulators.

Process

9. Regulators were provided with the update self-assessment template in April 2014. Completed self-assessments and supporting documents were received in October and November 2014. All regulators submitted their self-assessment on or just after the deadlines we had set them. Most regulators adopted appropriate governance processes for the completion of the update self-assessments (for instance the involvement of senior independent directors and discussion in Committee and at Board level). Only one regulator, IPReg, sought a third party review of their self-assessment.
10. We comment on the quality of the self-assessments later on in this paper but it is worth noting that:
 - (i) each regulator took a slightly different approach to answering each of the questions;
 - (ii) the relevance of the supporting documentation varied; and
 - (iii) the LSB sought out additional relevant information to assist our assessment where we knew it existed.

11. [REDACTED]

¹ Regulators were asked to provide a rating for each regulatory standard on the following scale: Good; satisfactory; undertaking improvement and work is well underway; needs improvement and work has started recently; and, recognises this needs to be done but work has not yet started. For example, for the regulatory standard of risk assessment, regulators are expected to rate the extent to which they have formal risk assessment processes at key stages of their regulatory decision making processes.

[REDACTED]

12. The LSB assessment process for each of the self-assessments included a detailed review of each submission and supporting documents; a review of relevant LSB documents and correspondence on the performance of the approved regulators (for instance correspondence with the BSB on its performance in enforcement and with the SRA on ABS authorisation); a review of relevant correspondence sent to the LSB by individuals; and stakeholder engagement on the performance of the approved regulators (for instance we received correspondence from the Law Society regarding its views on SRA performance). The LSB's initial conclusions for each approved regulator were presented to the LSB's gateway group as part of a challenge and refining process.

Status of draft report

13. Annex B includes the latest draft of the report. The main body of the report considers each regulatory standard in turn and highlights progress and aspects of good practice. In the annex A of the draft report we include reports on each of the regulators. We are in the process of revising those reports into a new more concise structure. The new structure is reflected in the reports of the BSB and SRA. The others are in the process of being amended.

Limitations

14. This exercise is an update self-assessment so the LSB is not looking at overall performance of the regulator. This is an important limitation of this exercise and the report.

15. The quality of the self-assessments varied. The differences in quality limited our ability to assess the extent to which particular regulators have improved performance against the regulatory standards as compared to their assessments in 2012/13.

16. Our expectation was that

- (i) regulators should have completed the activities detailed in their own action plans submitted as part of the 2012/13 exercise;
- (ii) they should have conducted work or have plans to conduct work to address our concerns detailed in the published reports; and
- (iii) they should have evidence (whether anecdotal or otherwise) that the changes they have made have improved performance against the standards.

17. This information should then have been reported in the self-assessment. Some regulators met our expectations in some areas. Yet this was not the case for all regulators and no regulator's self-assessment was without flaws. In many instances this is not due to the failure of the regulators. Some of the changes implemented by the regulators are very new (and some are not yet complete or fully implemented). This limited the regulators' ability to assess the extent to which such changes improved performance against the standards. Additionally some regulators (and some regulators in specific areas) provided very limited action plans as part of the 2012/13 exercise.

18. A final limitation is that this is a qualitative review of the regulators' own performance. Regulators are able to place their own interpretation on performance and to decide what content they choose to include in the self-assessment. The governance processes for sign off of the self-assessment, which includes the involvement of a member of the regulatory board and, where utilised, independent scrutiny, is designed to ensure disclosure of appropriate information. But discretion on content remains with the regulator and the possibility of limited disclosure remains a risk.

Findings

19. Annex A of this paper summarises the self-assessments and details the regulators' ratings where they provided these. It also includes a short paragraph on the LSB's view of each of the self-assessments. Annex B includes a draft of the report on the 2014/15 regulatory standards self-assessment.

20. Overall the LSB considers that progress has been made since the 2012/13 self-assessment process. The regulators that provided action plans with their 2012/13 self-assessments have delivered substantial aspects of those plans. Many have made efforts to improve their understanding of those they regulate and the services they provide and they have, on the whole, improved their risk assessment processes. Most have moved to a risk-based approach to supervision.

21. A number of positive initiatives have also been undertaken to address significant failings identified in the last self-assessment and to improve the overall capacity and capability of the regulators.

22. However, there is considerable scope for improvement. Despite positive moves to understand the markets they regulate, most of this has focused solely on the supply side (i.e. those they regulate). Very little appears to have been achieved in engaging and understanding the consumers of the legal services provided by those they regulate despite some welcome initiatives highlighted in the report. There are large gaps in the evidence base held by the regulators in relation to the needs of consumers. Reform to reduce the amount of detailed rules that apply to practitioners has been uneven and little evidence appears to exist to justify the retention of detailed rules (although the production of evidence to justify reform has also taxed regulators).

23. There have been improvements in the capacity and capability of the regulators (although they are all at different stages). But a number of challenges exist and it is not clear whether they all have appropriate governance and management processes in place to deliver the changes they have committed to and to achieve a satisfactory level in the regulatory standards. Many of the regulators will be undergoing significant change during 2015/16, whether this is new IT, regulating new areas, personnel change or simply undertaking regulation in a different way to previously. All of these changes will require effective management and scrutiny from their respective boards to ensure that they are delivered.

Next steps

24. Once the Board is content with the draft report we will share relevant sections of the draft report with each of the regulators for an accuracy check and to ensure that all statistics used in the report are the most relevant. Following that exercise

we will publish the report in full. We hope to publish before the end of February 2015.

25. The November 2014 LSB Board meeting agreed that in 2015/16 the LSB would complete a full assessment of all the regulators against the regulatory standards. This will comprise of a number of elements including: a data request sent to the regulators; a survey on the performance of the regulators; and a targeted self-assessment.
26. The targeted approach will involve the production of a tailored self-assessment for each regulator. The targeted self-assessment will focus on areas where we consider that there is the greatest risk to achieving a satisfactory performance against the regulatory standards.
27. The findings in this report will be used, along with the information from the data request and survey, to inform the targeted self-assessment. For instance we are likely to seek information from all regulators about what they have done, or have planned to improve, their understanding and engagement with consumers and to build up the evidence they hold. For individual regulators we may ask about specific programmes of work. For example, this may mean requiring the BSB to provide details on the progress of its governance review; for the SRA this may include requiring a detailed report on its supervision function.

Annex A: Summary table of ratings given by each approved regulator, the LSB's views and a short summary of comments from the LSB

Annex B: Regulatory standards 2014/15: A draft report on the performance of legal services regulators