

To:	Legal Services Board	
Date of Meeting:	27 April 2016	Item: Paper (16) 21

Title:	Regulatory performance report 2015/16
Workstream(s):	Performance, evaluation and oversight
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Status:	Unclassified

Summary:
<p>This paper provides the Board with the 2015/16 assessment of performance of the eight legal services regulators overseen by the LSB, against the LSB's five regulatory standards.</p> <p>An overview of performance by the regulators against the five standards and general themes and trends are set out in the report: <i>Regulatory Standards 2015/16, A report on the performance of legal services regulators</i>, attached at Annex A. Individual performance reports for regulators are at Annex B. To save Board members' time, we have distributed the individual performance reports among Board members. A hard copy of the performance report for each regulator will be available at the meeting.</p> <p>The key conclusions from the review are:</p> <ul style="list-style-type: none"> • We have seen evidence of substantive progress since our first review of regulators' performance against our regulatory standards in 2012/13. There is a more outcomes-focused approach to regulation and all the regulators have risk assessment processes in place. Almost all regulators have a developed approach supervision (to varying degrees of sophistication). There has been positive change in performance against the capacity and capability standard. The regulators perform best against the enforcement standard. • A further key area of progress is that, with the exception of CLSB, the regulators are better able to judge how they are performing against the

standards. The grades they have awarded themselves are more aligned with our view than they have been in the past. We think this is a good sign that the regulators have an improved understanding of their strengths and weaknesses.

- While progress has been made, there is still more work to do and we have concerns about the performance of the CLSB, which we are addressing. We have identified areas for improvement throughout the reports and we will be following up on these areas with the regulators by working with them to develop action plans. We intend to publish the action plans later on in year.

During 2016/17 we will consider whether our current approach to assessment will continue to provide us with the right level of assurance about how the regulators perform.

The Board is asked to note and agree the assessment, approve the reports for publication, and delegate sign-off of the final versions of the reports to the Chairman and Chief Executive.

Recommendation(s):

The Board is invited to:

- note and agree the assessment of regulators' performance for 2015/16 against the LSB's regulatory standards (set out in the reports at **Annex A** and **Annex B**)
- approve the reports for publication
- delegate authority to the Chairman and Chief Executive to sign-off the final versions of the reports in advance of publication.

Risks and mitigations

Financial: N/A

Legal: Minimal – the entire report has been reviewed by the legal team.

Reputational: There is a risk that the regulators do not act upon the suggestions for improving their performance, which are set out in the reports. To mitigate this risk we propose to develop, agree and publish separate action plans for each regulator.

Resource: Resource is in line with our business plan commitments.

Consultation	Yes	No	Who / why?
Board Members:	X		Helen Phillips and David Eveleigh have been kept updated on the project throughout.
Consumer Panel:	X		See paragraph 8.
Others:	See paragraph 8.		

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Para 21, second sentence	Section 36(2)(b)(ii): information likely to inhibit the exchange of views for the purposes of deliberation	
Annexes A and B	Section 22: information intended for future publication	

LEGAL SERVICES BOARD

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Regulatory performance report 2015/16

Recommendation

1. The Board is invited to:
 - note and agree the assessment of regulators' performance for 2015/16 against the LSB's regulatory standards (set out in the reports at **Annex A** and **Annex B**)
 - approve the reports for publication
 - delegate authority to the Chairman and Chief Executive to sign-off the final versions of the reports in advance of publication.

Background

2. Section 4 of the Legal Services Act 2007 (the Act) places a positive responsibility on the LSB to assist in the maintenance and development of standards in relation to regulation by approved regulators of authorised persons.¹ Our regulatory standards work is a key means through which we drive improvements in the performance of legal services regulators and ensure that there can be public confidence in legal services regulation.
3. We have therefore set out the regulatory standards that we expect legal services regulators to meet in order to deliver the requirements of the Act:²
 - **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.
4. The legal services regulators must also demonstrate that they have the **capability and capacity** to comply with the requirements of the Act, any other

¹ Section 4 of the Act states that "The Board must assist in the maintenance and development of standards in relation to – (a) the regulation by approved regulators of persons authorised by them to carry on activities which are reserved legal activities."

² We further set out the statutory basis for our regulatory standards work in our 2011 paper, [Developing regulatory standards](#).

statutory requirements and to be an effective regulator of that which they regulate.

5. Our first assessment of the regulators' performance against the regulatory standards was completed in 2012/13. This exercise involved the regulators undertaking a self-assessment of performance against the regulatory standards. The LSB reviewed the assessments and set out our views of regulators' performance in reports published in 2012 and 2013.³ This work led to the development of action plans by the regulators, which sought to address any gaps identified in the self-assessment.
6. In April 2014, we asked the regulators to update us on progress made against the action plans and in delivering the regulatory standards. We published a report of our review of progress in February 2015.⁴ That report set out common priority areas for all regulators in relation to each of the regulatory standards as well as priority areas and expectations specific to each regulator.

The 2015/16 regulatory standards process

7. Our approach to reviewing regulators' performance has evolved since our first assessment in 2012/13. Since then, the regulators have started to integrate the regulatory standards across all areas of their work, and our learning from past regulatory standards exercises and regulatory performance work in other sectors has developed. This was reflected in the *Business Plan 2015/16*, where we committed to undertake a complete review of the regulatory standards of all of the regulators and base our assessment of performance on a range of evidence, including a targeted self-assessment by the regulators. At its April 2015 meeting, the Board endorsed our approach to collecting that evidence.
8. To undertake a full assessment, our activities during 2015/16 have included:
 - Developing and assessing a data request, which was completed by the regulators.
 - Undertaking a survey to gather feedback on user experiences of the regulators. This provided us with 54 useable responses in our first year of running it.
 - Asking the regulators to complete a targeted self-assessment between 31 July and 30 October 2015. The targeted self-assessment was based on the information we gathered from the data request, the survey and previous self-assessments.

³ See: [Developing regulatory standards, An assessment of the legal services regulators \(December 2012\)](#), [Developing regulatory standards, An assessment of the Solicitors Regulation Authority \(February 2013\)](#), [Developing regulatory standards, An assessment of the Bar Standards Board \(May 2013\)](#).

⁴ [Regulatory standards 2014/15, An update report on the performance of legal services regulators \(February 2015\)](#).

- Meeting 27 different organisations that work closely with or are affected by the work of the legal services regulators, over the summer of 2015. We also considered seven written responses, including one from the Legal Services Consumer Panel.
 - Considering in detail the information gained in other areas of the LSB's work, such as statutory decisions, thematic reviews and investigations.
 - Holding meetings with each of regulators in January and February 2016. Our discussions with the regulators helped us to address gaps in our knowledge and evidence base and provided an opportunity to discuss any areas of concern that had emerged during our assessment process.
 - Considering in detail the findings from previous self- assessments of regulators, in particular the 2015 update exercise, which set out a number of priority areas for regulators.
9. The extensive evidence base that we have developed has meant that we have been able to undertake a comprehensive and very rigorous exercise that has highlighted best and good practice and identified areas for development. It has also enabled us to provide a complete picture of the journey that the regulators have been on since our first assessment of their performance in reports published in 2012 and 2013. In particular, our programme of engagement with the regulators' stakeholders provided us with valuable evidence that we have not accessed in the past. We were also able to share feedback from stakeholders with the relevant regulator.

Findings

10. *Regulatory Standards 2015/16, A report on the performance of legal services regulators* is attached at **Annex A**. This report provides an overview of performance by the regulators against the five regulatory standards and identifies the general trends and themes which emerged from this work. Aspects of this report have been shared with the regulators for a factual accuracy check.
11. The individual performance reports for regulators are at **Annex B** (to save Board members' time, we have distributed the individual performance reports among Board members). These reports include a table setting out the grades⁵ the regulator awarded itself in 2012/13 and in 2015/16 shown against the grades we awarded the regulator. We have not included a table that combines all of the regulators and their grades in this paper. In our view, the publication

⁵ The LSB's regulatory standards grades are as follows: 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. Recognise this needs to be done but work has not yet started.

of such a table (which would be necessary under our Freedom of Information Act 2000 obligations) would risk inappropriate and unfair comparisons being made between the regulators. A regulator should only be compared against itself and how it performed in our previous performance assessment of it.

12. The individual reports highlight areas where we think a regulator has performed well against a particular standard and areas where we think there is scope for improvement. Each regulator has reviewed a draft of their individual report and undertaken a factual accuracy check. Overall, the comments we received from the regulators were minor and there were no comments received about our conclusions.
13. The regulators we oversee vary widely in terms of the number of individuals and entities they regulate. This means the risks and complexities faced by each regulator can be very different. While we have subjected all regulators to scrutiny in the same areas, our expectations for each must be proportionate. We have therefore taken the context of the regulator into account when considering performance against the regulatory standards and have not compared the regulators with each other. However, we consider that despite their differences, the regulators can learn from each other and have highlighted areas of particular good practice against each standard throughout the main report.
14. We consider that our regulatory standards work has had a positive impact on the performance of the regulators and we have seen clear evidence of progress since the 2012/13 self-assessment process from the regulators – CLSB being the one exception. In some cases, we have also seen evidence of progress since our 2015 Update report and many of the regulators have taken steps to address the priority areas which we highlighted in our 2015 report.
15. In summary, since 2012/13:
 - BSB has made progress against all five standards. It is 'satisfactory' in two areas – supervision and enforcement.
 - CLC has made progress against all five standards. It is 'satisfactory' in all five areas.
 - CLSB has not yet made sufficient progress against four of the five standards and our grades for its performance remain as they were in 2012/13 in all but one area (enforcement). In addition, there was a fundamental difference in view between us and CLSB about its performance. CLSB considers that its performance is 'good' across all areas, whereas we have graded it 'needs improvement and work has recently started' for three areas and awarded it the lowest grade for supervision (recognise this needs to be done but work has not yet started).

We have only seen an improvement against the enforcement standard, where CLSB has gone from 'needs improvement and work has recently started' to 'satisfactory'.

- CILEx Regulation has made progress against all five areas. We have graded it 'good' for enforcement and 'satisfactory' for outcomes-focused regulation and capability and capacity.
- This was ICAEW's first assessment. We graded it 'satisfactory' in supervision and enforcement.
- IPReg has made progress in all areas and is graded 'satisfactory' in all areas, other than supervision, where we agreed with IPReg's assessment that it was 'undertaking improvement and work is well underway'.
- Master of Faculties has made progress in all areas and is 'satisfactory' in two areas - supervision and enforcement.
- SRA has made progress in three areas – risk, enforcement and capability and capacity. For risk in particular, we grade SRA higher than it had graded itself. Its grades remain the same for supervision and outcomes-focused regulation. We consider that there has also been progress in these areas but the grades reflect that SRA is in the midst of an extensive programme of reform across all of its activities.

16. Key themes to emerge from our assessment of performance included:

- All of the regulators, with the exception of CLSB, graded themselves at a level which was more aligned with our view than has been the case in the past. That the regulators are better able to judge how well they are performing against each of our standards is a good sign that they have an improved understanding of their strengths and weaknesses.
- All of the regulators have adopted an **outcomes-focused** approach to regulation but there is still scope for this to be better reflected in regulatory arrangements. For example, in education and training arrangements.
- All of the regulators responded to a priority area from our 2015 Update report and are developing or have plans to develop an evidence base on what legal services consumers need and how they use services. For example, the BSB and CILEx Regulation jointly funded research on a common area of interest (youth advocacy).
- Many of the regulators appear to be struggling to demonstrate that outcomes that consumers need are being achieved.
- All of the regulators have **risk assessment processes** in place. In particular, we consider that SRA's approach is embedded and well tested. However, the sophistication of the approach taken by regulators varies widely. To some extent we accept variation because of the differences between the regulators, but we have highlighted in the reports where we are concerned that the approach to risk management is not appropriate.

- With the exception of CLSB, all of the regulators have a well-developed approach to **supervision**, supervisory tools and a capacity and willingness to use them. BSB and the Faculty Office have made significant progress in this area.
- The regulators perform best against the **enforcement** standard. All of the regulators have fit for purpose enforcement processes, the majority of which have been tested and proved to be effective. All of the regulators have met our other requirements for delivery against this standard, although there is still some room for improvement - particularly in relation to transparency.
- All of the regulators (except the CLSB) have improved in their performance against the **capacity and capability** standard. The degree of improvement varies across the regulators. Transparency was also a theme for this standard – there is still scope for improvement, specifically in relation to publication of governance papers.

Follow-up work – development of action plans

17. Overall, we are pleased with how well the regulators have responded to our regulatory standards work since 2012 and consider that real progress has been made. However, there is still more to do. This is demonstrated by the grades which have been awarded – despite almost all of the regulators making progress in almost all standards, we have only awarded a grade of ‘good’ to one regulator for one standard (CILEx Regulation for enforcement). We therefore consider that an important aspect of this work is how we follow-up with each of the regulators on the areas for development, which we have identified in individual reports.
18. Unlike our previous regulatory standards reports, we have decided not to include any “action plans” in the reports. Our experience of previous exercises was that it could often be challenging to agree forward looking actions with the regulators at the same time as considering past performance. We have also listened to feedback from the regulators about the need to recognise that each of the regulators is different and may respond to a particular issue differently. Therefore, the report indicates the areas (either individually or collectively) where we think that there is scope for improvement, but we have not set out specific actions or expectations.
19. Instead, following publication of the performance reports, our intention is to agree with each regulator a specific action plan (which will be published) as the basis for future monitoring. Many of these actions will be activities that the regulators are already planning. We think that this will improve transparency and allow us to agree actions, and timescales for completing those actions, that are targeted, proportionate and appropriate for each regulator. This

approach also helps to mitigate the risk of regulators not acting upon the suggestions for improving performance set out in the report. We will be aiming to agree and publish all of the action plans by the end of June.

20. We consider this approach the most appropriate and proportionate way in which to oversee the regulators' work to address the areas we have highlighted for improvement, not least because in many cases regulators have themselves identified what they need to do next. While we have powers under section 31 of the Act to set performance targets for a regulator or direct a regulator to set performance targets relating to any of its functions, the bar for taking action is set high. We must be satisfied that there will be an adverse impact on the regulatory objectives. We therefore consider that by taking a more collaborative approach to action plans with the regulators, we are more likely to see progress.

21. That said, the extent of our concerns with CLSB's performance are such that we have been clear in our report that we expect CLSB to have made progress in the areas we have highlighted. [REDACTED]
[REDACTED]
[REDACTED]

Next steps

22. Subject to the Board's comments, we will publish the final version of the reports at shortly after the Board meeting.

23. We will provide the Board with an update at its May meeting via the Chief Executive's report, on progress with developing the action plans.

24. During 2016/17, we will consider whether our current regulatory standards approach will continue to provide us with the right level of assurance about how the regulators perform and we will assess whether changes are needed.

Annexes

Annex A – *Regulatory Standards 2015/16, A report on the performance of legal services regulators*

Annex B – Individual performance reports for each of the regulators – to save time for Board members, we have distributed the individual performance reports among Board members. A hard copy of the performance report for each regulator will be available at the meeting.

19.04.16