

<b>To:</b>	Legal Services Board	<b>Agenda Item:</b>	04
<b>Date of Meeting:</b>	25 May 2017	<b>Item:</b>	Paper (17) 37

<b>Title:</b>	<b>Regulatory Performance Assessment</b>
<b>Workstream(s):</b>	Performance, Evaluation and Oversight
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<b>Status:</b>	Official

#### **Summary:**

The LSB's work to hold the legal services regulators to account for their performance is a core statutory function and is key to delivering public confidence in legal services. Through it, we drive improvements in the eight regulators' performance and challenge them to become more effective and efficient.

In line with the 2016/17 Business Plan we have reviewed and revised the framework we use for assessing the regulators' performance to ensure that it enables us to carry out our oversight role effectively and efficiently. In developing our proposed revised model we have had regard to the regulatory objectives, the better regulatory principles and best regulatory practice.

As set out in the 2017/18 Business Plan, we now wish to consult on our proposals for changes to the regulatory performance framework.

In this paper we summarise the:

1. areas for improvement we identified through our review
2. changes to the regulatory performance assessment framework which we propose to consult upon.

#### **Recommendation(s):**

The Board is invited to:

- (1) consider the work we have done in reviewing the regulatory performance assessment framework and developing a new model
- (2) agree that we can consult on our proposed new model
- (3) note that a final version will be presented for approval in November 2017.

<b>Risks and mitigations</b>	
<b>Financial:</b>	N/A
<b>Legal:</b>	Our legal team has reviewed our proposed approach to regulatory performance assessments and has raised no concerns in relation to potential legal risks.
<b>Reputational:</b>	Our approach to regulatory performance assessments is core to our ability to assure ourselves about the regulators' performance and to address the risks to performance where we are unable to do so.  If we do not introduce an improved model in a timely fashion, it may hamper our ability to assure ourselves about the regulators' performance in a risk-based and proportionate manner.
<b>Resource:</b>	We will factor the resources required to progress this work into the 2018/19 business plan.

<b>Consultation</b>	<b>Yes</b>	<b>No</b>	<b>Who / why?</b>
<b>Board Members:</b>	<b>x</b>		Discussion with board sponsors Dr Helen Phillips and Michael Smyth QC (Hon)
<b>Consumer Panel:</b>	<b>x</b>		Preliminary views of the Legal Services Consumer Panel members on the proposed model were sought
<b>Others:</b>			Pre-consultation engagement was undertaken with the frontline legal regulators to discuss their views on the proposal. The proposal was also discussed with, and informed by other regulators who perform similar roles.

<b>Freedom of Information Act 2000 (Fol)</b>		
<b>Para ref</b>	<b>Fol exemption and summary</b>	<b>Expires</b>
Annexes AA - C	Section 22: information intended for future publication	N/A / Date

## LEGAL SERVICES BOARD

<b>To:</b>	Legal Services Board	<b>Agenda Item:</b>	4
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### **Holding the regulators to account for their performance**

#### **Introduction**

1. A core role for the LSB is to hold the legal services regulators to account. The main way we have achieved this is through our assessment of their performance against the regulatory standards framework. This work has, so far, provided us with a 'snapshot' of the regulators' performance against a set of agreed standards and enabled us to follow up on areas for improvement through individual action plans.
2. After the last full regulatory standards assessment (May 2016), we acknowledged that it would be an appropriate time to review the framework to consider whether it operated in a risk-based, proportionate and targeted way which was clearly linked to the regulatory objectives and the better regulation principles and enabled us to have confidence and assurance about the regulators' performance.
3. In this paper we set out how we have undertaken this review, the improvements that were identified, and our preferred revised model for regulatory performance assessments.
4. We are seeking the Board's agreement to consulting on the proposed revised model. Following this, we will make any amendments necessary in light of the Board's comments prior to launching the consultation in mid-June.

#### **Review of existing processes and the areas for improvement identified**

5. In reviewing the existing framework we held discussions with the regulators and with colleagues at the LSB who had been involved in delivering previous regulatory performance assessment exercises (previously known as regulatory standards). We also benchmarked the process against those used by other regulators. From this, we identified the following opportunities for improvement:
  - The standards could be more representative of the key areas of regulatory risk (for example, they could cover authorisation and education and training) and there was scope to remove duplication and ambiguity amongst the indicators outlined under each standard.
  - There was an opportunity to be more systematic and to use an ongoing and consistent approach to gathering information and evidence about the regulators' performance.
  - The assessment process could be more proportionate, risk-based and targeted. It was also noted that greater clarity was needed as to whether

the process assesses performance against minimum standards required for effective regulation or 'gold-plated' regulation.

- The grading scale could more accurately reflect the regulators' current performance rather than the progress the regulators' have made and intend to make.
6. In addressing these opportunities for improvement, and in developing the proposed model outlined in this paper, we reviewed processes across the UK and internationally, and held conversations with UK regulators from other sectors about their approach to performance assessment.
7. The proposed framework:
- builds on our previous 'regulatory standards' work
  - benefits from the learning we have gained from reviewing other processes and speaking with colleagues and interested parties
  - takes account of the regulatory objectives, the better regulatory principles and best regulatory practice
  - is in line with government policy as set out in the Regulators' Code which said regulation should be risk-based and the Cabinet Office's Regulatory Futures review which said regulation should be targeted and proportionate.
8. The proposed framework was also tested with the LSB's internal auditors who gave a grading of 'significant assurance' for the proposed revised framework. They made four minor recommendations for improvement which were focused on the adoption of best regulatory practice. We accepted three of the four recommendations. We discuss the recommendation which was not accepted at paragraph 20.

### **Our regulatory approach**

9. We have recently developed a document which sets out our regulatory approach. The proposed regulatory performance framework is consistent with our approach:
- *Identifying the key risks* – our regulatory performance standards focus on the key risks to an effective regulator's performance and our process allows us to target our resources on addressing areas of performance which are most in need of improvement or where we have insufficient assurance.
  - *Setting our expectations* – the regulatory performance standards outline the minimum outcomes we expect regulators to achieve through their performance.
  - *Seeking assurance through oversight* – our assessments of the regulators' performance are the main way in which we deliver our oversight and obtain assurance. They provide us with an ongoing assessment of the regulators' performance against the regulatory performance standards.
  - *Tackling concerns* – where our completed regulatory performance assessments do not provide assurance we will consider appropriate activities in order to manage risks to the delivery of effective regulation.
  - *Taking formal action* – it will allow us to take formal action to tackle concerns about a regulator's performance.

## **The proposed new approach**

10. The new regulatory performance framework will provide us with an ongoing assessment of the regulators' performance against the regulatory performance standards. The framework contains four key elements:
- the regulatory performance standards
  - evidence-gathering
  - the assessment process
  - gradings.

This can be seen in pictorial form on page 3 of the consultation document.

### *Regulatory performance standards*

11. We propose that performance is assessed against five-function based standards.
- Regulatory approach
  - Authorisation
  - Supervision
  - Enforcement
  - Governance and Leadership
12. The first four of the standards reflect the core regulatory functions carried out by the regulators. The fifth standard allows us to review the regulator's ability to carry out its functions well.
13. Under each function are between four to six outcomes. These clearly identify the minimum standard of performance expected of a regulator under each of the standards. Where we identify good practice we may choose to share this amongst the regulators where we consider it would be beneficial. The regulatory performance standards can be found at Annex A.

### *Evidence-gathering streams*

14. We propose that we formalise the evidence-gathering streams used in previous performance assessment exercises. These are: the collection of a performance management dataset from the regulators (see Annex C); the collection of third-party feedback; informal information requests; and reviews of other available information.
15. All the evidence we collect will be reviewed, analysed and balanced to provide us with a well-rounded picture of the regulators' performance.
16. We will gather evidence to:
- assure ourselves the regulators are meeting the standards
  - identify where we may need to ask more detailed questions or carry out a review to be assured about a regulator's performance
  - where appropriate, identify good practice which can be shared.

### *The assessment process*

17. The new model uses a risk-based approach to provide us with an ongoing assessment of the regulators' performance. The ongoing assessment will allow us to either be assured (or not) about a regulator's performance. For areas where specific concerns are identified, we will be able target further activity using appropriate regulatory tools, for example information requests and thematic reviews.
18. The assessment process and its elements are described in full in the regulatory performance assessment process document (this is available to the Board should it wish to see it) and in summary, in the consultation document at Annex AA from page 7. As described in the consultation document, there are three parts to the assessment process:
  - ongoing monitoring of the regulators' performance to identify if any regulatory action is needed such as a performance assessment or thematic review
  - internal annual reviews to identify if any regulatory action is needed such as a performance assessment or thematic review
  - benchmark assessments which would only be used if we had not reviewed a regulator at all or only a small part of it over a three-year period.
19. In order for a risk-based assessment process to be effective, a transitional assessment of each regulator's performance is required. Transitional assessments will be performed over an approximately 18 month period starting in the 2018/19 financial year. We will only review regulators against those standards and/or outcomes where we have concerns, or are unable to assure ourselves, about a regulator's performance. Following a transitional review, assessment of the regulator's performance will move to the risk-based process discussed above.
20. Our approach to transitional assessments is not that recommended by our internal auditors. They considered our transitional reviews should be full reviews of the regulators' performance against all of the standards. We did not consider this necessary as we already have a large amount of information about the regulators' performance and it was our view that to carry out such reviews would be disproportionate and not a good use of our or the regulators' resources.

### *Gradings and reporting*

21. We are proposing to assess performance against a three-level grading scale. The scale measures whether a regulator has or has not met a particular standard or outcome. Use of the grading scale will be flexible and can be used to score overall standards or individual outcomes.

22. The grading scale is as follows:

<b>Met</b>		The regulator meets the minimum standard of regulatory performance.
<b>Not met</b>	1	The regulator does not meet the minimum standard of regulatory performance and, in agreement with us, the regulator is working to address this.
	2	The regulator does not meet the minimum standard of regulatory performance and, after fully considering all circumstances, we will advise on our chosen response.

23. We propose that performance assessment reports will set out the way in which we have reviewed a regulator's performance, include the findings of the review and the grading awarded.

### **Integration with other LSB work streams**

24. The regulatory performance framework is central to our role as an oversight regulator and there are, therefore, strong linkages between it and other LSB work streams.

25. There are strong synergies between regulatory performance and the monitoring of the Competition and Markets Authority (CMA) action plans. The regulatory performance project team is working with colleagues responsible for the CMA action plan work stream to determine how these work streams may work alongside each other going forward.

26. Where possible, monitoring and assessment of regulatory performance will inform, and will be informed by, work streams set out in our Business Plans. Our planned work on 'developing LSB's oversight of standards of education and training' and 'reviewing delivery of enforcement activities', as identified in our 2017/18 Business Plan, represent examples of where this might occur.

### **Next steps**

27. We are seeking the Board's agreement to consulting on the proposed revised model. A draft consultation paper has been prepared and is provided at Annex AA.

28. We intend to open the consultation in mid-June for a 12 week period. This is a significant piece of work for the LSB, and holding a three month consultation period demonstrates that we are allowing stakeholders the necessary time to consider our proposals. It also addresses any concerns the regulators and others may have with us consulting over the summer period and us consulting on this work when they are implementing the CMA recommendations.

29. Following consultation we will make any necessary amendments to the regulatory performance assessment model. We would then submit the final version to the Board for approval in November 2017, with a view to commencing the transitional assessments in April 2018.