

To:	Legal Services Board	Agenda Item No.:	6
Date of Meeting:	25 May 2017	Item:	Paper (17) 38

Title:	The LSB's regulatory approach
Workstream(s):	Performance, Evaluation and Oversight
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Status:	Official Sensitive

Summary:
In March 2017 the Board agreed that we should seek comments from the regulators on a draft document setting out our regulatory approach. This paper summarises the feedback received and seeks the Board's approval to publish a final version of the paper (once purdah has ended).

Recommendation:
The Board is invited to: <ul style="list-style-type: none"> • approve publication of a document setting out our regulatory approach (Annex A) • note that worked examples of LSB activity mapped against our regulatory approach (Annex B) and a paper detailing our view on the regulatory objectives (Annex C) will also be published.

Risks and mitigations	
Financial:	N/A
Legal:	This paper provides a high level discussion of the LSB's statutory powers. Specific use of these powers will be subject of legal advice on a case by case basis. (NG)
Reputational:	Setting out our regulatory approach helps to address the risk that oversight of regulators and allied activity becomes inefficient or ineffective.
Resource:	We will factor the resources required to progress this work into the 2017/18 business plan.

Consultation	Yes	No	Who / why?
Board Members:	x		Discussion with sub-group of Terry Babbs, Marina Gibbs, Jeremy Mayhew and Helen

			Phillips and discussion of a previous draft of the document at the March Board meeting.
Consumer Panel:	X		Views were sought from the LSCP and their feedback is referenced in this paper.
Others:			The regulators were asked to provide feedback on a draft document and the feedback that we received is summarised in this paper.

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Annex A, B and C	s.22 (Future publication)	

LEGAL SERVICES BOARD

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The LSB's regulatory approach

Background

1. In March 2017 the Board considered a draft document setting out the LSB's regulatory approach.
2. At this meeting, the Board noted and discussed the benefits of setting out our regulatory approach. The benefits include supporting transparency, consistency and predictability in how we exercise our functions. The Board agreed that we should seek comments from the regulators on this draft document. It was noted that a final version, reflecting any feedback received, would be presented to the Board in May.
3. Following this meeting, some minor drafting changes were made to the document to reflect comments made by Board members. The document was also substantially reformatted, to make it as clear and accessible as possible. The updated version was sent to regulators and the Legal Ombudsman, with a request for comments on the value of the LSB setting out its approach in this fashion and the clarity of the document. Feedback was also sought from the Legal Services Consumer Panel.

Feedback received

4. We received a written response from the following organisations:
 - CILEx Regulation
 - Costs Lawyer Standards Board
 - Council for Licensed Conveyancers
 - Institute of Chartered Accountants of England and Wales
 - Legal Services Consumer Panel
5. The BSB did not provide a written response but has confirmed that they have reviewed the document and have no significant concerns. The SRA has confirmed that the document has been received and reviewed but that they will not be providing a response.
6. Overall, the feedback was positive and supportive of the LSB setting out its regulatory approach. Most responses noted potential benefits, including improved understanding and transparency, and the clarity and accessibility of the document.

7. The responses also offered suggestions for amendments or improvements to the document. Aside from a repeated request for the document to prescribe the sources of evidence we rely upon, no other suggestions were raised by more than one organisation. However, broadly speaking, comments on the paper fell into the following two categories:

- (a) **Points on how the regulatory objectives should be interpreted and balanced** – the regulatory approach document should contain detail on the LSB’s interpretation of the regulatory objectives.

LSB Response: There is a document on our website from 2010 which sets out how we view the regulatory objectives. In preparation for publication of our regulatory approach, an updated version of this document has been prepared, which reflects learning from our oversight activities since 2010. This is included below at Annex C, for noting. Links to this document will be included in the explanation of our regulatory approach.

- (b) **Recommendations for including greater detail in the approach document** – for example, we received suggestions to list specific sources of evidence that we gather and to set out how we will seek to build a consensual approach, as well as recommendations related to the detail of our approach to regulatory performance.

LSB Response: We have sought to keep the regulatory approach document concise and high level. Further detail will be provided in additional supporting information and in papers associated with projects and programmes of work. For example, in May 2017 the Board will also be considering significant material on the LSB’s regulatory performance assessment process. It is important that the approach document and associated pages on the website include references and links to all relevant supporting information and detail. This is preferable to seeking to increase the detail in the main document.

8. A couple of respondents also made minor comments on some aspects of the LSB’s recently agreed vision statement. The vision was published in the 2017/18 Business Plan, so amending this now is beyond the scope of this work stream. We will address the individual comments in our replies to respondents.

9. The comments that we have received are useful, but it is our view that none of them require substantive changes to be made to the document. A final version of the document is included below at Annex A, for the Board’s approval.

10. Also below, at Annex B, is a document with worked examples of LSB activity mapped against our regulatory approach. It is proposed that these examples are published alongside the main approach document, as recommended by Board members in March. In due course, further examples from LSB’s projects and workstreams will be added.

OLC tripartite operating protocol

11. The Board will be aware that a tripartite operating protocol has now been agreed between the LSB, OLC and MoJ. Whilst primarily designed to clarify roles, responsibilities and accountabilities, the protocol is reflective of our regulatory approach as it sets out the key principles for creating the conditions for effective and proportionate governance. This helps to clarify how the LSB will “seek assurance through oversight” in relation to the OLC’s performance and in recognition to the MoJ’s interest in this area. The protocol references the LSB’s ability to deploy formal powers but does not set thresholds or trigger points for doing so.

Next steps

12. If the Board approves the document for publication, it will be published on our website on 14 June, shortly after the end of purdah.

13. In advance of publication, all appropriate references and links to relevant supporting documents will be added. The website will be updated and will provide a description of the purpose of setting out our approach. Ahead of publication, we will also write to all those who provided detailed comments with our response.

15.05.17