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| To: | Legal Services Board | Agenda Item: | 5 |
| Date of Meeting: | 26 October 2017 | Item: | Paper (17) 68 |

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| Title: | Managing issues arising from disagreements between approved regulators and front line regulators |
| Workstream: | Performance, evaluation and oversight |
| Author / Introduced by: | Neil Buckley, Chief Executive Neil.buckley@legalservicesboard.org.uk , 020 7271 0043 |
| Status: | Official |

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| Summary: |
| This paper outlines the approach being taken when issues about the interactions between approved regulators and frontline regulators (many of which relate to independence issues) are brought to our attention on an informal basis. |

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| Recommendation(s): |
| The Board is invited to note the approach being taken. |

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| Risks and mitigations | |
| Financial: | N/A |
| Legal: | Decisions on any issues that are considered under the process described may have individual risks. Decisions on action will be taken in consultation with the legal team to ensure we act within our remit. |
| Reputational: | If we are not clear as to the decisions we take on our response to an emerging issue, we may be open to challenge on whether we are exercising proper oversight. |
| Resource: | Resource requirements will be assessed as individual issues arise. Significant issues may need other work to be re-prioritised; this will be considered on a case-by-case basis |

| Consultation | Yes | No | Who / why? |
|------------------------|-----|----|------------|
| Board Members: | | √ | |
| Consumer Panel: | | √ | |
| Others: | N/A | | |

| Freedom of Information Act 2000 (Fol) | | |
|--|---------------------------|---------|
| Para ref | Fol exemption and summary | Expires |
| Cover | None | |
| Annex | None | |

Managing issues arising from approved regulators

Background

1. As oversight regulator, the LSB has a role in ensuring the independence of the frontline regulators. The rules in this regard are set out in the Internal Governance Rules. Issues, falling short of complaints, are frequently brought to us relating to the relationship between the front line regulator and the approved regulator. Some of these issues may be covered by the IGRs while others can be outside of that framework. The issues are often (though not exclusively) related to concerns about 'interference'.
2. The LSB has at various times taken differing approaches in responding to such issues. This has risked inconsistency in dealing with such matters ranging from being silent or non-committal on subjects to the opposite whereby we are intervening in a myriad number of issues that the front line regulators should arguably be able to resolve themselves.
3. The approach taken affects our relationships with both the frontline regulators and the approved regulators. It also has resource implications. Indeed, by referring multiple matters to the LSB this could on occasions use LSB resources that would otherwise be used on oversight of the performance of the front line regulators.
4. This paper summarises how we are now approaching such issues. We consider this establishes a more systematic way of assessing issues in order to determine an appropriate response – which could include no response. This paper sets out a framework for that assessment (which we intend to discuss and share with the regulators). In general, the outcome is to be slightly more 'pro-active' but balanced with a determination that the front line regulators should, wherever possible, endeavour to resolve issues themselves.
5. We have applied this framework to a number of cases and have decided on some case specific actions described below.

Assessing “issues”

6. The overall objective is to ensure that issues that come to our attention are considered in a consistent manner and there is an active decision on how (and whether) we should respond. In deciding the appropriate response we take account of the published [Regulatory Approach](#).

Key stages

- On receipt of information a colleague is appointed to assess whether it is an issue on which an LSB response is needed
 - A range of factors are considered; a non-exhaustive list is contained in Annex A
 - Further information may be sought as appropriate
 - The range of responses includes but is not limited to
 - No action
 - Facilitate discussions between parties to enable a solution to be reached
 - LSB expressing a view on the issue
 - A summary of the issue is produced and recommends the type of response
 - The summary and the recommendation are considered by the CEO who decides what action is needed
 - The conclusion will be documented and communicated to relevant parties
7. In assessing the issue we will, where relevant, want to consider it in the context of the IGR and our overall approach to ensuring regulatory independence. Other key factors in determining our approach include our own resources and the potential impact (both positive and negative) on relationships with both the approved and front line regulators. For some issues, if we take a view this may have implications for other regulators – that also needs to be taken into account. In terms of our resources, while initially issues may seem to be small (and an earlier more proactive intervention may keep it this way), they can escalate.
8. If a matter is referred to us it should be because the approved regulator and its frontline regulator are unable to resolve it themselves. In the majority of cases it is the frontline regulator that will be seeking our support for their position and perhaps inevitably any decision has an impact on our ongoing relationships with the approved regulators. Our response sometimes may be that the issue is one for them to resolve and that we expect them to be able to do so. On other occasions a ‘watching brief’ might be the right approach.

Recommendation and next steps

9. The Board is invited to note the approach that the executive is adopting.
10. I will be discussing the framework with the CEOs of both the approved regulators and the frontline regulators at my routine meetings with them.

11 October 2017

Annex A

The matters that will be considered in assessing an issue include:

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| Source of information | Front line regulator Approved regulator Legal Ombudsman Member of the public Authorised person Our own intelligence gathering |
| Reliability of information | |
| Nature of the subject matter and are the IGR (and our approach to regulatory independence) relevant to the issue | Independence of regulation Quality of regulation Actions of regulator |
| Seriousness of the matter in relation to the regulatory objectives / IGR | |
| Why is the matter being referred to LSB | For information – default position would be to acknowledge and ask to be kept informed developments For assistance in resolving the matter For specific action |
| Importance of issue | To the front line regulator To the approved regulator To LSB |
| Impact on regulators | Single regulator Multiple regulators All regulators |