



<b>To:</b>	Board		
<b>Date of Meeting:</b>	30 November 2011	<b>Item:</b>	Paper (11)78

<b>Title:</b>	Developing Regulatory Standards – Decision and Next Steps
<b>Workstream(s):</b>	Developing regulatory standards
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<b>Status:</b>	Unclassified

<b>Summary:</b>
<p>At its October meeting the Board discussed an update on the work on regulatory standards and the proposed approach to self-assessment by Approved Regulators (<b>ARs</b>) against the four constituent parts of regulation: (i.e. outcomes focused regulation (<b>OFR</b>), risk identification framework, proportionate supervision and an appropriate enforcement strategy). This paper sets out how we will take that self-assessment process forward. We have produced a draft decision document, <b>Annex A</b>, which explains how we have considered the responses to the consultation and the Board's discussion in October. <b>Annex B</b>, which will be published with the decision document, shows our proposed template for assessing the performance of the ARs and the changes that have been made since the last Board meeting.</p>

<b>Recommendation(s):</b>
<p>The Board is invited to:</p> <ul style="list-style-type: none"><li>• Endorse the approach to self-assessment</li><li>• Agree that the decision document can be published subject to the Chief Executive and Chairman agreeing any final changes in the light of the Board discussion.</li></ul>

<b>Risks and mitigations</b>	
<b>Financial:</b>	N/A
<b>Legal:</b>	We have been challenged about whether we have the powers to undertake this work. We are confident that we do, given the relevance that it has to the better regulation principles as well as maintaining and developing regulatory standards (S3 and 4 of the Act).
<b>Reputational:</b>	High profile area which is one of three new LSB business priorities. Publication of self-assessment summaries and action plans may lead to controversy. We will develop appropriate approach to communications.
<b>Resource:</b>	The project plan has identified the necessary resources to carry out this work to date, although resources are stretched across the whole organisation following the resignation of two Project Managers and a Regulatory Associate. Analysis of the responses will require additional resources and we will allocate these nearer the time by redirecting resources from other projects and subsequent reprioritisation of work.

<b>Consultation</b>	<b>Yes</b>	<b>No</b>	<b>Who / why?</b>
<b>Board Members:</b>	✓		Bill Moyes and Steve Green
<b>Consumer Panel:</b>	✓		Steve Brooker
<b>Others:</b>	ARs – workshop and feedback on self assessment indicators		

<b>Freedom of Information Act 2000 (Fol)</b>		
<b>Para ref</b>	<b>Fol exemption and summary</b>	<b>Expires</b>
4	Exemption FoIA s36 – these issues need to be discussed by the Board in a free and frank way	None
Annex A	Exemption FoIA s22 – the decision document is intended for future publication	None
Annex B	Exemption FoIA s22 – this is a tracked changes version of the self assessment that will be included in the decision document. The final clean version will be published. The decision document is intended for future publication	None

## LEGAL SERVICES BOARD

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### Developing regulatory standards – decision and next steps

#### Background / context

1. In April, LSB published the consultation paper, 'Developing Regulatory Standards'. The consultation closed on 12 July. The paper suggested a focus on four constituent parts of regulation and also detailed a series of indicators of, or criteria for, regulatory standards below each constituent part. The consultation also proposed that we would require each approved regulator to carry out an assessment of its regulatory regime against each of the constituent parts. We would review these assessments as well as the related Action Plans to improve performance. The consultation also committed the LSB to review its own rules, procedures and guidance to ensure that they are consistent with the position we expect of ARs.
2. The main objective of this work is to embed the better regulation principles across the legal sector and to put in place a consistent and transparent approach to the oversight of the ARs. A key outcome is to help deliver a legal services market in which all Authorised Persons are regulated in an efficient manner that reflects best regulatory practice, that all users of legal services are protected from unacceptable levels of risk, and that the ARs promote the regulatory objectives.
3. A decision document that explains how we have considered the responses to the consultation is attached at **Annex B**. sets out our proposed approach to self-assessment. This version contains tracked changes to enable Board members to see the changes to it.
4. This paper discusses in more detail:
  - The self-assessment process
  - In addition to drafting the decision document we have also developed the approach to self-assessment. We have done this with input from Board members and Consumer Panel staff as well as the ARs, most of whom attended a workshop on 13 October to discuss our proposed approach. An updated version of the requirements showing tracked changes is at **Annex B**. We are also developing the precise requirements of the LSA section 55 information request
  - Issues arising from the previous Board meeting
  - At its October meeting, the Board raised a number of issues and concerns that we have considered:

a. Does LSB have the relevant expertise to assess the responses from the ARs?

We consider that the progress we have made in developing our approach, compared to two years ago, shows an increase both in our understanding of the regulation of legal services and, increasingly, the capacity and capability of each AR in developing their own approach to regulation. We have used the self-assessment process as part of our assurance on internal governance for two years. In both years we have been able to deal with discrepancies about the content of the assessments and what we knew was happening between representative and regulatory bodies. We have used the concept of action plans in first tier complaint handling where we were able to challenge ARs that we considered were not sufficiently ambitious in their approach.

In addition, we now have a considerable amount of data and evidence against which to judge ARs' responses. We are considering establishing a wider group of staff to analyse the responses and involve Board members in the challenge of our analysis. We do not consider that it is necessary at this stage to get external expertise because we consider that we have considerably more expertise in legal services regulation and understanding the legal services markets than, say, a traditional auditor or consultancy firm. If specific areas emerge where external advice would be useful once we receive the self-assessments we will consider how best to get that input.

b. How can we ensure honest and accurate responses from the ARs?

We consider that this can be done by:

- formalising the request using our LSA s55 information gathering power. That would allow a route in for enforcement action if it was later found that ARs had knowingly or recklessly provided incorrect or misleading information. However, if that happens, the LSB Board will need to be prepared to use those powers to set a precedent about the importance of providing correct and complete information to the LSB;
- making it clear that we expect full Board involvement, especially from lay members and an assumption that there will be independent scrutiny before the formal submission to the LSB (see (c));
- publication of high level summaries of the self-assessment and detail of the action plans. Transparency will act as a check on any tendency to exaggerate effectiveness;

c. To what level of external scrutiny should ARs subject their responses?

We will make it clear that we expect ARs to get independent scrutiny unless they have very good reasons not to. However, we need to accept that the level of this scrutiny must be proportionate to the AR's size and impact on the overall legal services market. We do not consider that it would be reasonable to insist that each AR engaged an auditor to scrutinise its response; in some cases that would be have significant financial impact. In any event, it is not clear that we have the power to require this.



appropriate to meet the regulatory objectives, it is unlikely that we could reject an entire Action Plan in practice.

**Conclusion / 'next steps'**

5. The Board is invited to:

- Endorse the approach to self-assessment
- Agree that the decision document can be published