

<b>To:</b>	Legal Services Board	
<b>Date of Meeting:</b>	11 September 2013	<b>Item:</b> Paper (13) 56

<b>Title:</b>	SRA performance in ABS authorisations	
<b>Workstream(s):</b>	Developing regulatory standards	
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<b>Status:</b>	Unclassified	

**Summary:**

We have been monitoring the SRA's performance on authorisations since January 2013. This followed increasing frustration and concern from a number of sectors about the way the SRA appears to have been considering applications for ABS licences.

We have seen notable improvements in performance over the last six months. Over the last three months the SRA has reached a stable (albeit still short of ideal) level of performance in relation to general ABS applications and has a plan to implement changes which have been long advocated by the LSB. These changes will, we hope, further improve performance. However, there do appear to be issues related to Business Services firms and MDP type firms.

Our survey of licence holders suggests that SRA performance is below that of the CLC. However, we should bear in mind that the relative complexity of applicants and of services offered by applicants is likely to be different and that our survey had a small sample size.

We consider that the SRA is continuing to deliver improvements and appears to be increasingly keen on looking at the fundamental regulatory issues that may be hampering potential ABS applicants and existing applications. We consider that we should continue to monitor the SRA's progress until Christmas whilst making clear the improvements we expect to see by then. In January we will report to you on next steps.

**Recommendations:**

The Board is invited to:

- a) Agree that the LSB should continue to monitor and report on the SRA's performance in ABS authorisation
- b) To agree that the LSB executive will report fully to the LSB Board in January on:
  - a. SRA performance on ABS authorisation (and whether expected improvements have been delivered)
  - b. on the SRA's progress in introducing other changes in relation to regulatory scope and action on issues surrounding MDPs (and

<p>whether this is credible and acceptable)</p> <p>c. the sustainability of the improvements put in place over the following six months</p>			
<b>Risks and mitigations</b>			
<b>Financial:</b>	None		
<b>Legal:</b>	We have used our information gathering powers to support this project. We have sought additional legal advice on our powers in relation to enforcement and oversight. The legal team are involved in all major activities.		
<b>Reputational:</b>	<p>Our strong pursuit of this subject is impacting relationships and co-operation with the SRA – both staff and Board - and may also potentially do so with other regulators. Other stakeholders – government, Law Society and investors – to the extent that it is visible to them, regard it as necessary action.</p> <p>We may also be open to the challenge that in effect we approved the SRA's process when we recommended its designation as a licensing authority. Our view is that what was described to us during the application process was fit for purpose; its implementation has not been</p>		
<b>Resource:</b>	This work remains a significant, but thus far manageable, burden on staff, especially the senior team, but this reflects the priority which the Board has given to authorisations.		
<b>Consultation</b>	<b>Yes</b>	<b>No</b>	<b>Who / why?</b>
<b>Board Members:</b>		<b>X</b>	
<b>Consumer Panel:</b>		<b>X</b>	N/A
<b>Others:</b>	None		
<b>Freedom of Information Act 2000 (Fol)</b>			
<b>Para ref</b>	<b>Fol exemption and summary</b>		<b>Expires</b>
14	Section 44 - restricted information obtained by the Board in the exercise of its functions [and therefore] must not be disclosed (s167 LSA)		

## LEGAL SERVICES BOARD

<b>To:</b>	Legal Services Board		
<b>Date of Meeting:</b>	11 September 2013	<b>Item:</b>	Paper (13) 56

### SRA performance in ABS authorisations

1. We have been monitoring the SRA's performance on authorisations since January 2013. This followed increasing frustration and concern from a number of sectors about the way the SRA is considering applications for ABS licences.
2. In addition to its poor performance in relation to its timeliness of dealing with ABS applications, our formal requirements to provide information under S55 of the Act revealed that there were also backlogs in applications for recognised body and recognised sole practitioner authorisation. It does not appear that the SRA Board was aware of the extent of these issues and backlogs until the LSB's intervention.
3. The SRA has, since the start of year, been running a project to make significant improvements to the area of authorisation. The SRA has now delivered a single form for all firm authorisation applicants (which is available here: <http://www.sra.org.uk/solicitors/firm-based-authorisation/forms-guidance.page> and is 28 pages long) and it has devised KPIs (that will be reported to the SRA Board from Q3). The SRA also told the LSB in its letter dated 10 June 2013 that it will conduct a *"survey of applicants at point of decision on an application, beginning in Q3"*. It subsequently stated on 25 July that it is now the SRA's intention for the *"survey to have a backwards focus, as well as an ongoing focus."* LSB staff are meeting with SRA staff on 10 September 2013 to discuss the survey. They will feedback additional information at the meeting.
4. A new Director of Authorisation took up post in June with a view to sharpening performance in this area. Conversely, other senior staffing changes at the SRA – with the imminent departure of both the Chief Executive and relevant Executive Director in the next six months – may have an opposite effect.
5. The data provided by the SRA on 14 August 2013 showed a similar level of performance to the July and June figures. The data showed that:
  - It takes an average of 7 months from the submission of a second stage application for a firm to be granted an ABS licence, 21% of applicants had to wait over 9 months for their licence.
  - The SRA has reduced its work in progress from 142 applications in January 2013 to 101 in August and during this time it has closed 50 applications through withdrawals and granted 174 ABS licences;

- The average age of a work in progress application has increased slightly and is now 4.6 months. 27% of the work in progress applications are over 6 months old.
6. On review of these figures it appears that:
- a) Performance is still below the level of the new SRA KPIs in terms of work in progress. This is because as the average age of work progress is above 3 months;
  - b) Over the last three months a stable level of performance appears to have been reached in terms of:
    - the number of work in progress applications (there have been around 100 work in progress applications);
    - the number of work in progress applications older than 6 months (it has been around 25% - although for this month there has been a slight uptick);
    - the overall time taken to grant ABS licences (for about 20% of applications it has taken over 9 months and 45% have been completed under 6 months); and,
  - c) The quality and accuracy of the data in the spreadsheet provided to the LSB has improved significantly.
7. This month, as we did in July, we conducted analysis of the SRA's data to see if we could determine whether applicants from certain categories of business or whether new entrants are encountering greater difficulties or a significantly longer decision making period than firms already regulated by the SRA.
8. The data provided does not make it easy to determine which applications were from existing SRA regulated firms or from new entrants. However, desk research has been undertaken by the LSB to attempt to determine figures. The figures from our analysis on the August data are not dramatically different from those presented to the Board in July.
- a) Of the applicants 195 were from existing SRA regulated firms, 96 from those not regulated by the SRA at the time of application and for 71 their regulatory status at point of application could not be determined.
  - b) The SRA has licensed 103 firms that were already regulated by the SRA (59 of whom were LDPs).
  - c) 55 licences have been issued to firms not already regulated by the SRA at point of application and 18 to firms who it has not been possible to determine whether they were regulated by the SRA or not.
    - Therefore around 31% of licences have been granted to firms that were not already regulated by the SRA.

	<b>Applicants</b>	<b>Licensed</b>	<b>WIP</b>	<b>Withdrawn / Other</b>
<b>Already SRA regulated</b>	<b>195</b>	103	35	35
<b>Not SRA regulated</b>	<b>96</b>	55	19	19
<b>Not known</b>	<b>71</b>	18	22	22

- d) 59% of applicants who were not already regulated by the SRA at point of application have been granted licences whereas only 54% of those already regulated by the SRA have.
  - e) The figures suggest that it takes the SRA, on average, slightly longer to grant an ABS licence to a firm that was not already regulated by the SRA than one it already regulated (7.1 months compared to 6.5 months).
9. As mentioned in the LSB Board paper in July this data should not be over interpreted because length of application time may be more a function of complexity of applicant as opposed to any other delay. However, considering the data It is possible to conclude that the SRA is not obviously discriminating against new entrants. Also, the time taken for new entrants to be granted a licence, while on average longer than existing firms regulated by the SRA, does not on its own give rise to performance concerns above any existing concerns.
10. We also looked at whether different types of service offering are encountering particular difficulties when applying for an ABS licence. Definitions were determined with reference to published information on individual firms' websites and the absolute numbers are relatively low so the information is indicative at best.
11. The two most prevalent categories of applicants remained the self styled „full service law firms' (consumer and commercial lawyers in the chart below), and those firms that describe themselves as „niche' or „specialist' (single legal discipline/consumer type in the chart below), excluding those who specialise in Personal Injury (PI) which we have recorded separately.

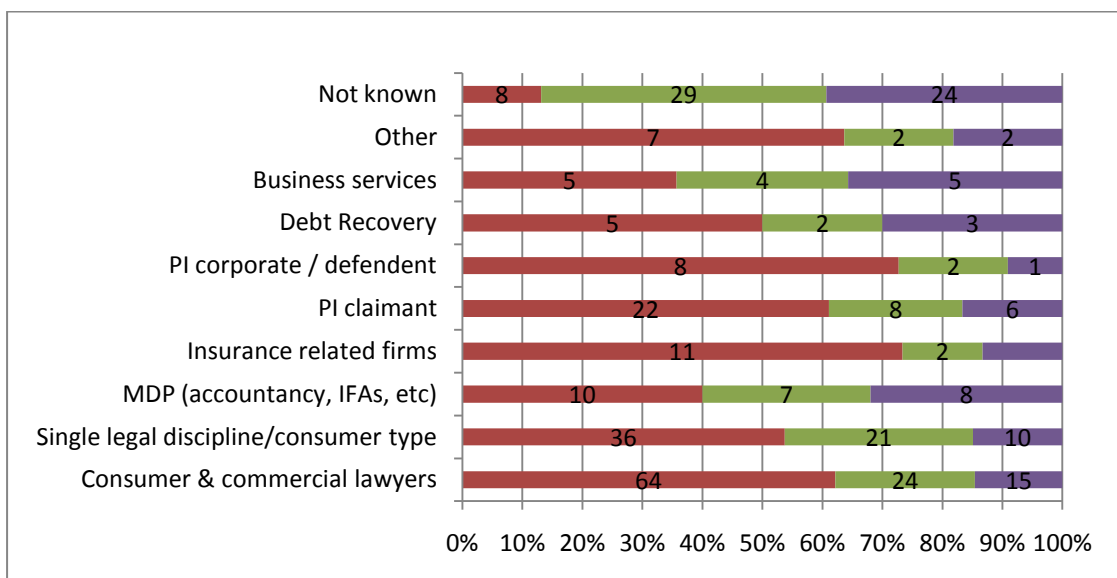


Figure 1: Breakdown of category of applicant and current status

12. The data labels in figure 1 show the absolute numbers of applicants and on the x-axis the percentage for each category. The figure shows that, aside from firms who it was not possible to determine what services they offer, firms that we have classified as business services firms have been the least successful applicants so far, with only 35% of applicants being granted a licence. These

are firms that typically offer HR, employment or other services to businesses. The next least successful are accountants, IFAs or wealth managers and 40% applications from this category have been granted a licence. For this paper we are referring to them as multi-disciplinary practices – MDPs. These applicants are typically firms that are seeking to offer, or already do offer, a number of regulated services in addition to legal services. (e.g. they are regulated by the FCA, the accountancy regulators or other statutory regulator).

13. The data does not tell us what is driving these figures. For instance it may simply be that the forms submitted by these applications are particularly prone to error or require further investigation. However, we do consider that one of the issues driving the low success rate is the SRA's views regarding the discretion (or lack of discretion) to not regulate all activities undertaken by an ABS. The SRA has reported to the LSB that it is working to determine the different approaches available to the SRA and the impact of these approaches on the SRA handbook. We will update the Board orally on the progress of this work.

14. [REDACTED]

### **The LSB survey of applicants – some initial findings**

15. As the LSB Board are aware the LSB has conducted an online survey of ABS licence holders. Emails were sent to 179 ABS licence holders. Of these 38 were licensed by the CLC and 141 by the SRA. There were a total of 62 responses, and 2 pilot responses. Therefore respondents accounted for 33% of all ABS licence holders as of June 2013.

16. 77% of respondents were already regulated by the SRA or the CLC and had applied to become an ABS, 9% respondents already provided legal services but were not previously regulated by the CLC or SRA, and 14% were new to the provision of legal services. Isolating just those firms regulated by the SRA, gives a split of 28% new entrants and 71% existing firms converting. This is in line with our analysis of the applicant data shown in paragraph 6(c) above.

17. 51 respondents opted to answer an optional set of questions on their experiences of the licence application process. Of these respondents 40 were regulated by the SRA – 26% of those licensed at the time of the survey.

18. The length of time it took all these respondents (SRA and CLC) to become an ABS varied significantly. For 8% the process took just three months, while for 18% the process took over a year. Setting up the ABS involved a range of activities in most cases, however 90% of respondents identified the licence application process as the main factor. The next most common factor identified

as having a major impact on the timescale was the need to reorganise legal structure and governance; this was mentioned by 25% of respondents.

19. Figures 2 and 3 show the time taken for the licence application process according to whether the applicant was eventually licensed by the SRA or the CLC. Care should be taken because the absolute numbers are low and the relative complexity of CLC applications as compared to SRA applications is likely to be different. Additionally those authorised by the SRA are able to carry out more additional services.

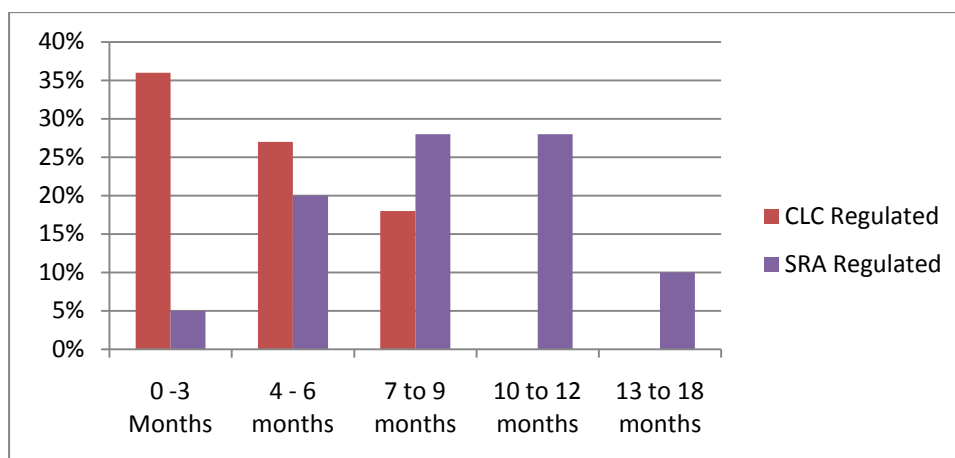


Figure 2: Timescale to licence (percentage of responses)

	CLC Regulated		SRA Regulated	
	Number of responses	Percentage of total	Number of responses	Percentage of total
0-3	4	36%	2	5%
4-6	3	27%	8	20%
7-9	2	18%	11	28%
10-12	0	0%	11	28%
13-18	0	0%	4	10%
More than 18 months	0	0%	0	0%
Comment made not covering months	1	9%	2	5%
No answer	1	9%	2	5%
<b>Total</b>	<b>11</b>	<b>100%</b>	<b>40</b>	<b>100%</b>

Figure 3: Timescale to licence

20. As mentioned above we cannot draw too much from this data as it does not speak to the complexity of the applicants or the services they are seeking to offer. However the data suggests that if you apply to the CLC you are more likely to be granted your licence in a shorter timescale. Additionally if firms were simply converting to an ABS and were already regulated by either the CLC or SRA (as the data suggests) then, barring significant external investment, the process should be a relatively simple administrative task. In these cases the performance between the SRA and CLC should be comparable. However, from the comment received we do not think this is the case.

21. A number of respondents took the opportunity to comment on their experience of the authorisation process and regulation in general by their respective licensing authority. While a number took the opportunity to vent specific grievances, a number made reference to issues regarding the SRA's successor practice rule and the separate business rule. A good quote on the SRA is shown below:

*Some aspects of regulation are good (e.g. outcomes focus, relationship management) but others are unnecessary (e.g. pre-authorisation of individuals who are effectively unrelated to the licensed entity).*

22. The Board will be provided with full details of this survey in October as part of the competition analysis.

### **General conclusions**

23. In the last few months the SRA has reached a stable (albeit not ideal) state of performance in relation to the timeliness of general ABS applications and has a plan to implement process improvements which have been long advocated by the LSB. It is important that these changes are seen through and the expected performance increases in relation to timeliness are delivered.

24. Since the SRA has been authorising ABS firms it has licensed a number of new entrants and the data available does not suggest that its authorisation processes are weighted against new entrants in the round. However, there does appear, both in the data and anecdotally, to be an issue with MDPs and business services firms.

25. Our concern remains that applications are put off, modified or withdrawn as a result of the SRA's authorisations process. We consider that to liberalise the market, the business structure of the applicant should be chosen not to satisfy the regulator's rules but instead be appropriate for the business needs of the applicant. It is not clear, for example, that decisions on "forced" restructuring have been predicated on poor compliance records with other regulators or on hard evidence of business plans that might run the risk of deliberately or inadvertently misleading consumers, as opposed to a rigid interpretation of the demands of the Separate Business rule. Equally, the negotiation of waivers from the SBR can, on the evidence of some ABS applicants, of itself be a lengthy process with clear adverse commercial consequences.

26. The LSB is in regular dialogue with the SRA and we will feedback the current position on these issues to the Board. We consider that the SRA should be given until Christmas to demonstrate hard results from what has already been put in place and to show how it will ensure that senior staff changes do not lead to any loss of focus in the first half of 2014. The Board will need to make clear decisions on the way ahead at its January meeting.



## What is required from the SRA?

27. Annex A provides detail of the concerns that were included in the LSB's Board paper of April 2013 and some commentary on the SRA's progress in relation to each concern and the LSB's views. Below is summary of the remaining issues from the annex:

- a) In August 27% the SRA's work in progress was older than six months. The SRA has not issued any extension notices. Therefore we consider that the SRA's approach to deeming applications complete is still of concern and it is not clear whether its interpretation of paragraph 2 of schedule 11 of the LSA is reasonable.
- b) The SRA's information requirements in the new form go beyond the requirements of the LSA. Yet they are targeted at risk and it may be that in practice the requirements are proportionate. However this will need monitoring as applicants use the new form.
- c) The SRA approach appears to have had a negative impact on new entrants that are business services type firms and MDPs. These firms are potentially innovative. We also consider that many of the licences have been granted to firms that only provide legal services and not "one stop shops" envisaged by the LSA. The SRA has suggested that it is looking at the impact of the SRA's approach to the scope of regulation and the separate business rule and are meeting with some of the MDP applicants but little public activity has taken place. Nor is the timetable is known. We have offered to facilitate a group to support and challenge on this work, but this offer has not been taken up.
- d) The backlog been significantly resolved. There remains a minority of old work in progress applications (11% over nine months old) and we have not seen further increases in timeliness over the last three months. The process improvements should start to deliver this.
- e) The criteria and staff information for considering applications has not been made publically available. The relevant web pages are due to be fully updated by 31 October 2013, it is not clear whether this will included more detail on criteria for authorisation.
- f) There remains some concern about the comprehensiveness of the KPIs adopted. For instance they only look at total age of work in progress on average and do not have a KPI in relation to cost per application or the length of time taken to deem an application complete.
- g) Actual performance data and KPIs are not currently publically available, However the SRA has committed to doing so during Q3 2013/14.

28. We consider that the most important issue to resolve is the potentially negative impact that the SRA authorisation process is having on applicants that are regulated by other regulators or seeking to offer a "one stop shop" for businesses or individual consumers. This includes looking at the SRA's regulatory scope as well as certain regulatory arrangements – including the separate business rule. This has been a theme in a number of powerful responses to the MoJ exercise.

29. The LSP propose making this paper available to the SRA, or a letter summarising its contents, and setting out what we expect to see from the SRA by Christmas. The Chairman and CEO are seeing their opposite numbers on 9 October and will begin to “roll the pitch” to prepare for this.

## **Recommendation**

30. The Board is invited to:

- a) Agree that the LSB should continue to monitor and report on the SRA’s performance in ABS authorisation
- b) To agree that the LSB executive will report fully to the LSB Board in January on:
  - a. SRA performance on ABS authorisation (and whether expected improvements have been delivered)
  - b. on the SRA’s progress in introducing other changes in relation to regulatory scope and action on issues surrounding MDPs (and whether this is credible and acceptable)
  - c. its assessment of the sustainability of performance in the first half of 2014

## Annex A: Table of concerns from April 2013 LSB Board paper and commentary on the current position

LSB concerns from April 2013 board paper	Current position / LSB view
<b>For ABS applications</b>	
<b>The application process</b>	
<p><i>whether the way in which the SRA has structured its ABS application process and in particular its approach to the interpretation of the statutory timetable in paragraph 2 of Schedule 11 to the LSA is reasonable</i></p>	<p>The SRA has simplified the application process and it now only consists of a one stage application form and it has published this form. The SRA intend to assess the completeness of applications within 28 days and then issue the invoice (once it is paid the statutory timetable „clock’ starts).</p> <p>The figures in August shows that: 20% of licences have been issued nine months after submission of the second stage application, 33% were issued between six and nine months after and 27% of the current work in progress is over six months old. The SRA has not, as far as we are aware, issued any extension notices to the decision period under paragraph 2(4) schedule 11. This suggest that the issue of applications taking a number of months to be deemed complete remains to some extent. The KPIs to complete all applications within six months does not include those that have not been deemed complete and so applicants could go beyond the statutory timetable.</p>
<p><i>whether the information required by the SRA is proportionate and targeted to that required by the LSA in order to assess an application</i></p>	<p>The SRA has simplified the information it requires and the information is now linked to its risk framework. The information required is focused on the applicant’s risks and how they manage them.</p> <p>The information requirements do go beyond the requirements of the LSA however, they are designed to assist in the SRA’s risk work and future supervision approach. However, it may be the case that the SRA is expending significant resource attempting to determine whether the applicant’s business plan will be successful or not. As opposed to whether the applicant meets the requirement of prevailing laws.</p>
<p><i>whether the SRA has taken appropriate steps to understand the impact of its approach to risk and authorisation on potential new entrants, innovation and competition</i></p>	<p>The SRA has changes its firm based authorisation process so that it is more closely linked to its risk framework. <b>The SRA has committed to surveying applicants at point of decision from Q3 and has suggested that the survey will include those it has already issued a licence to.</b> This will help it understand the impact of its approach.</p> <p>Our research has suggested that the SRA, in aggregate, is not adopting a discriminatory approach to new entrants as opposed to existing SRA regulated firms. However, we have evidence that suggests that business services firms or firms already regulated by other regulators are more likely to have a longer authorisation process or withdraw their applications. <b>The SRA has recently suggested that it is looking at potential different approaches to the scope of regulation. But no timetable is known for this work.</b></p>

<b>LSB concerns from April 2013 board paper</b>	<b>Current position / LSB view</b>
<i>whether the SRA is making sufficient progress in clearing the backlog of applications and ensuring backlogs do not arise in the future</i>	The SRA has made progress in clearing its backlog and has introduced process and administrative improvements to help prevent future backlogs arising. It has also adopted KPIs which will monitor the average of age of the work in progress from date of application. This is not an ideal measure as it can be skewed by a high number of new applications and so not capture the very old applications.  In August 11% of work in progress was over nine months old since submission of final application and 16% were between six and nine months old.
<i>whether the SRA's approach to risk is consistent between ABS, recognised bodies and sole practitioners</i>	The SRA has made its process for all applicants consistent and only one form is required whether you are an ABS applicant, a recognised body applicant or a recognised sole practitioner applicant.
<b>Information and transparency</b>	
<i>whether the information provided by the SRA on its website is sufficiently comprehensive and easy to navigate information so that potential applicants can understand (a) the application process and (b) the SRA's criteria for analysing the information provided</i>	The SRA has collated all information available on its website and place all the forms on the website. <b>The SRA has promised further improvements to its website information by 31 October 2013.</b> They have held events for potential applicants and a webinar is available. Guidance has also been produced although the SRA's criteria and risk assessment form for use during authorisation is not currently publicly available.
<i>whether the SRA has a comprehensive staff handbook or manual to guide and assist staff assessing applications.</i>	The SRA has produced a detailed risk assessment document to assist staff when considering applications.
<b>Board and senior management scrutiny</b>	
<i>whether the SRA's senior managers and Board has sufficiently comprehensive, regular reports about the SRA's performance in the application process</i>	The SRA has introduced KPIs for the timeliness and quality of authorisation decisions. These were reported to the SRA board in June 2013. The SRA chief executive report includes commentary on the firm based authorisation function.
<i>whether the SRA should set and publish comprehensive KPIs for its application process</i>	The SRA has set itself KPIs for the application process. <b>The SRA have stated that publication of KPIs will commence in Q3 2013/14</b>
<i>whether the SRA should publish comprehensive information about its performance in assessing applications</i>	The SRA have increased the amount of information in the quarterly regulatory outcomes report and have provided more detail on performance to the press. <b>The SRA have stated that publication of KPIs will commence in Q3 2013/14.</b>
<i>whether the SRA took appropriate steps to monitor and clear the backlog of applications</i>	We consider that the backlog has been substantially cleared and the performance in relation to considering ABS applications is not
<b>For recognised bodies and sole practitioners</b>	
<b>The application process</b>	
<i>whether the SRA has an application process that is proportionate and targeted on risks</i>	As the approach to all firm based authorisations is the same please see the answer provide in relation ABS applicants.

<b>LSB concerns from April 2013 board paper</b>	<b>Current position / LSB view</b>
<i>whether the SRA is making sufficient progress in clearing the backlog of applications and ensuring backlogs do not arise in the future</i>	We consider that the SRA has made significant progress resolving the backlog in relation to RBs and RSPs and the average age of work in progress was 2.5 months in April.
<b><i>Information and transparency</i></b>	
<i>whether the information provided by the SRA on its website is sufficiently comprehensive and easy to navigate information so that potential applicants can understand (a) the application process and (b) the SRA's criteria for analysing the information provided</i>	As the approach to all firm based authorisations is the same please see the answer provide in relation ABS applicants.
<i>whether the SRA has a comprehensive staff handbook or manual to guide and assist staff assessing applications</i>	As the approach to all firm based authorisations is the same please see the answer provide in relation ABS applicants.
<i>whether the SRA is sufficiently transparent about its decision making processes to assist applicants in drafting their applications and to enable them to appeal against SRA decisions if necessary</i>	As the approach to all firm based authorisations is the same please see the answer provide in relation ABS applicants.
<b><i>Board and senior management scrutiny</i></b>	
<i>whether its senior managers and Board has sufficiently comprehensive, regular reports about the SRA's performance in application process</i>	As the approach to all firm based authorisations is the same please see the answer provide in relation ABS applicants.
<i>whether the SRA should set and publish comprehensive KPIs for its application process</i>	As the approach to all firm based authorisations is the same please see the answer provide in relation ABS applicants.
<i>whether the SRA should publish comprehensive information about its performance in assessing applications</i>	As the approach to all firm based authorisations is the same please see the answer provide in relation ABS applicants.
<i>whether the SRA took appropriate steps during 2012 to monitor and clear the backlog of applications</i>	As the backlog developed during 2012 and we have no evidence that the SRA Board were made aware of it before November we do not consider that the SRA took appropriate steps during 2012. However the backlog and average work in progress appears to be under control now.