

To:	Legal Services Board	
Date of Meeting:	15 October 2013	Item: Paper (13) 66

Title:	Regulatory standards – report on AR progress and discussion on next steps for 2014/15	
Workstream(s):	Developing standards and performance	
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Status:	Protect	

Summary:

This paper sets out the findings from the LSB's monitoring of each regulator's actions plans. These plans were submitted as part of the regulatory standards self-assessments during 2012. It also considers options for a 2014/15 regulatory standards assessment exercise.

Generally regulators have been carrying out their action plans as described, albeit that there have been reprioritisations in relation to changing circumstances. Regulators have also completed activities in relation to the observations made by the LSB in the different reports on the self-assessments. Our observations in relation to consumer understanding and transparency have not been progressed as far as others.

Annex A is an example of the quarterly reports that we have been producing to monitor regulators' delivery of their actions plans.

To deliver the 2014/15 assessment, we have concluded that a combination of requiring all regulators to provide a progress report against their action plans and the activities they have taken in relation to our observations together with targeted thematic reviews would be the most appropriate way of delivering our commitment in the 2013/14 business plan of a "*self-assessment process... that it is targeted and risked based and takes into consideration the regulators own action plans*". This approach would also be in line with the regulators' compliance code and make the optimal use of our resources.

This also allows a degree of tailoring to the specific circumstances of individual regulators. In the case of the SRA, there will be some specific challenges to ensure the most effective synergy with and oversight of their r-view programme.

Recommendation(s):

The Board is invited to:

- a. note the progress report of the performance of approved regulators

against their action plans and the activities they have undertaken in relation to our observations;

- b. approve the proposal that the 2014/15 regulatory standards assessment takes the form of a progress report from all regulators and targeted thematic reviews; and,
- c. note that we will provide the Board with a list of potential thematic reviews in the new year.
- d. note the need for the final programme to dovetail effectively against the r-view programme in particular.

Risks and mitigations

Financial:	Financial impact of recommendation for 2014/15 assessment will be minimal.
Legal:	Regulators have previously challenged our powers to conduct the assessments. However, all completed the exercise.
Reputational:	The recommendation for 2014/15 assessment is in line with the previous statement in our business plan
Resource:	Our recommendation can be managed within existing resources

Consultation	Yes	No	Who / why?
Board Members:		X	N/a
Consumer Panel:		X	N/a
Others:			

Freedom of Information Act 2000 (Fol)

Para ref	Fol exemption and summary	Expires
Annex A (in part)	Section 44 - restricted information under s167 LSA which was obtained by the Board in the exercise of its functions and therefore must not be disclosed	
Annex D	Section 36(2)(b)(ii) – likely to inhibit the exchange of views for the purposes of deliberation	

LEGAL SERVICES BOARD

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Regulatory standards – report on AR progress and discussion on next steps for 2014/15

The first regulatory standards reviews and business plan 2013/14

1. The regulatory standards project began as the LSB was moving from a set-up phase to focusing on its core business of consumer protection, as set out in the Legal Services Act (the Act). The Act requires the regulators and the LSB to carry out their functions in ways that are compatible with the regulatory objectives. The Act also requires the LSB to assist in the maintenance and development of standards in relation to the regulation of authorised persons by approved regulators. In addition, regulators should also be adhering to the government's principles of better regulation and best regulatory practice. As a way of monitoring this part of its remit, the LSB set out how it would assess whether the regulators were achieving this in its discussion document on regulation standards that was published in December 2011.
2. The decision document set out four regulatory standards - outcomes focused regulation, risk identification, proportionate supervision and appropriate enforcement. The LSB also determined that regulators must have appropriate capacity & capability to deliver the regulatory objectives. During 2012 all of the regulators were required to self-assess their own performance against the standards and to identify what future actions they were planning to undertake that would help deliver the required standards.
3. During 2012 and 2013 the LSB reviewed completed self-assessments and produced reports on them. These reports can be found on this page: http://www.legalservicesboard.org.uk/Projects/developing_regulatory_standards/index.htm. Each of the reports included regulators' action plans and, where relevant, reproduced the strategic plans of the regulators.
4. The reports identified our expectations and next steps as:
 - We would expect regulators to use the conclusions of the reports to influence their future plans.
 - Regulators must be able to demonstrate progress on the regulatory standards in applications to extend their regulatory scope or alter their regulatory arrangements.
 - The LSB will monitor regulators' adherence to their action plans.
 - Any decisions on the future of the regulatory standards assessments will depend on the progress made by regulators during 2013.
 - The LSB will consider whether any thematic reviews are necessary and will evaluate the merits of publishing examples of good and poor practice that emerge.

5. The LSB in its 2013/14 business plan noted that in relation to the developing standards and performance work we would:
 - *review reports from each regulator on their delivery of their action plans (tailored for each regulator and based on their own timescales) and hold them to account for progress. Where we see failure to deliver plans, we will decide whether this represents a risk to the regulatory objectives and will consider an appropriate response*
 -
 - *use the information that we receive to highlight good practice and provide an end of year overview to feed into our 2014/15 Business Plan and future strategic planning*
 - *plan the 2014/15 self-assessment process so that it is targeted and risked based and takes into consideration the regulators own action plans.*
6. This paper sets out what the LSB executive has done since the publication of the reports into the approved regulators (the last report was published at the end of May 2013). The paper sets out some emerging issues and options for an assessment project in 2014/15. It explains the progress regulators have made in relation to their action plans and, where appropriate, what has been done in relation to the LSB's observations in the relevant reports.

Current monitoring

7. An ongoing part of the 2012/13 project is the monitoring the regulators' achievements against their action plans, strategic plans and the issues that we raised in the final reports. All monitoring is being recorded in an Excel spreadsheet called the "action management log". A report produced using this log is presented to the Programme Board on a quarterly basis and an example is provided at annex A.
8. The quarterly reports:
 - a. detail whether the regulators have achieved the actions set out in their action plans
 - b. detail activities that could reasonably support the issues the LSB raised in its report on each regulator's self-assessment
 - c. list the main progress that was achieved in the previous quarter by each regulator
 - d. provide a narrative on actions/issues that were not completed or only partially completed
 - e. provide a view on what action the LSB should take in regard to uncompleted actions/issues.
9. The LSB is complementing this monitoring by reviewing published information by the regulators. This includes: reports, research, board papers and other information publicly available. In the event that we are unable to find information publicly available we have been using meetings with the regulators, emails and letters to confirm that progress is being made. We have adopted this methodology so as to avoid continuous information requests to regulators.
10. Annex B includes a brief summary of the observations made about each of the regulators in our published reports, their progress against their action

plans, remaining actions to be completed and some broad observations on current performance.

2014/15 options

11. The 2013/14 business plan stated that during 2013/14 we would be planning a 2014/15 self-assessment that would be targeted, risk based and take into consideration the regulator's own action plans. However, the executive considered that we should consider alternatives to self assessment. The table below therefore explains a number of options, sets out the pros and cons and considers the implication of adopting each option.



Table one – options for regulatory standards assessment and monitoring

<i>Name</i>	<i>Explanation</i>	<i>Pros</i>	<i>Cons</i>	<i>Implications</i>
Full self-assessment	This would involve carrying out the same (or a very similar) self assessment template to the 2011/12 one.	<ul style="list-style-type: none"> • Regulators are familiar with the template. • The 2011/12 was relatively effective • Repetition will not be as resource intensive as other options. • Will be able to more clearly track improvements. 	<ul style="list-style-type: none"> • Self-assessment remains an exercise in disclosure by the regulators and so may not catch all issues that the LSB should be aware. • Not in line with the statement in our business plan (not targeted, risk based or reflective of the existing action plans) • Will take considerable resource for LSB and regulators. 	<ul style="list-style-type: none"> • Regulators will be familiar with the template. • Some action plans still have milestones planned for 2014/15 and beyond. • Not in line with business plan statement • More resource intensive.
Partial self-assessment / progress report	This would involve asking for a statement from each regulator on their progress delivering their action plans and embedding the regulatory standards (and to provide details of further activity).	<ul style="list-style-type: none"> • Should be simpler for the regulators to complete. • Will provide closure of the last exercise. • Will not be resource intensive for the LSB or regulators. • Will meet our statement in the Business plan. 	<ul style="list-style-type: none"> • Will not provide much information to assess where the regulators are. • May not compel the regulators to continue their improvement plans. • May be seen by others as letting the regulators “off the hook” 	<ul style="list-style-type: none"> • Less resource intensive • In line with business plan statement • Potentially limited in effectiveness.

Name	Explanation	Pros	Cons	Implications
Inspection based assessment against the regulatory standards	This is akin to the FRC's approach to the accountancy regulators (see Box 2, annex C). It would involve LSB staff spending a significant period of time with each (or a few) regulators and producing a report.	<ul style="list-style-type: none"> • Will get first hand evidence of regulatory standards • Will reduce the risk of issues not being disclosed to the LSB. • Will improve the LSB's understanding of the front line regulators. 	<ul style="list-style-type: none"> • Risk of Hawthorne effect – i.e. behaviour changes under observation. • Resource intensive for both LSB and regulators • Risk of being shown a selected picture. • Not in line with business plan (unless targeted at risks) 	<ul style="list-style-type: none"> • Resource intensive • Not in line with business plan statement • Likely to be effective.
Data driven assessment of performance against regulatory standards (with third party feedback)	This is akin to the PSA (CHRE) approach to the healthcare profession regulators (see Box 1, annex C). It would involve the completion by regulators of a standardised data request and inviting commentary on relevant areas of regulation. The PSA formally seeks third party feedback to assist in its assessment. A report is published at the end of the process.	<ul style="list-style-type: none"> • Will provide the LSB with detailed figures on the regulators. • Will provide the LSB with a more formal method of collecting information on regulator performance. • Reduces the ability for regulators to be subjective and / or omit details. 	<ul style="list-style-type: none"> • Will be resource intensive for the regulators and the LSB (PSA has 6 FTE on its assessment). • Not in line with the business plan statement. • Regulators do not have the necessary data (and or data in a standard form across the sector) – e.g. SRA information request on enforcement showed that it cannot track end to end investigations. • 3rd party feedback may lead individuals to believe that the LSB can act in their cases (the PSA can require cases be reconsidered). • Difficult to pick data variables for all of the regulatory standards – e.g. how do you measure OFR? 	<ul style="list-style-type: none"> • Resource intensive • Not in line with the business plan statement • Regulators likely to be unable to comply.

Name	Explanation	Pros	Cons	Implications
Third party audit / review	The LSB (or regulators) would commission a third party organisation to review the regulators against the regulatory standards.	<ul style="list-style-type: none"> • Will ensure that the reviews are independent/ impartial. • Will bring experience of the other performance assessment disciplines. • Will not be labour intensive for LSB or regulators. 	<ul style="list-style-type: none"> • Will be expensive. • Not in line with business plan statement. • Unclear that a third party will have the expertise to complete the work • Likely to be resisted by regulators 	<ul style="list-style-type: none"> • Expensive and resource intensive as it takes a lot of resource to commission and implement these kind of reviews. • Not in line with the business plan statement. • Not clear that it will be successful. • Likely to meet resistance.
New LSB assessment model	The LSB would commission a consultancy to design an assessment framework and standards for the regulators. The LSB would carry out assessments using the new framework.	<ul style="list-style-type: none"> • External expertise on alternative assessment frameworks. • New framework may be more credible. 	<ul style="list-style-type: none"> • The regulators have a legitimate expectation that the standards would remain the same. • Likely to be very expensive • Uncertain of success considering last attempt to commission such work. • May damage LSB's reputation. • Not in line with business plan 	<ul style="list-style-type: none"> • Potentially very expensive and resource requirements from LSB and regulators unknown until framework development. • Regulators are working to and have invested significant sums in achieving existing regulatory standards and may challenge any significant changes. • Not in line with business plan statement. • Not clear that it will be successful.

Name	Explanation	Pros	Cons	Implications
Thematic review (regulator and / or issue specific)	The LSB would select a number of issues at the regulators or specific regulators and conduct an in-depth review of them. The review may be in the form of inspection, a requirement to produce a report, review of information or a mix of those methods.	<ul style="list-style-type: none"> • In line with the business plan statement. • Allows LSB to focus resource on areas of greatest need / priority. • Reduces burden on regulators and issues not deemed a priority. • In line with regulators compliance code 	<ul style="list-style-type: none"> • May miss the “unknowns” • Not as comprehensive as other issues. • Need to ensure have a method to prioritise. • May be seen as letting the regulators off the hook. 	<ul style="list-style-type: none"> • In line with business statement. • Resource intensity can be better controlled. • Will need to develop a framework to prioritise areas for thematic review. • Risk of missing unknowns needs to be mitigated

12. The executive recommends a combination of two options:
 - a. The requirement for all regulators to provide the LSB with a progress report on their action plans, to provide commentary on the improvements they feel they have made in relation to achieving the regulatory standards and detail any specific plans they have made for the future.
 - b. The LSB to undertake targeted thematic reviews on topics identified by it. These may be related to a specific regulator or a specific topic for all (or some) regulators.
13. This will allow the LSB to concentrate on areas of most need while also keeping the pressure up on all regulators to deliver the required regulatory standards. It will be the most effective use of our resources and those of the regulators. It is also in line with the statement within our business plan and it will enable the refinement of the regulatory standards but not their wholesale reform. This is attractive because the regulators have a legitimate expectation that the standards (to which they are still working) will not change.
14. This two pronged approach is also in line with the BIS regulators' code which we are required to adhere to. The code requires the LSB to act in a way that:
 - avoids imposing unnecessary regulatory burdens
 - is based on risk.
15. Thematic reviews will be also able to utilise the different assessment methods described in the table. For instance if we embarked on a thematic review of supervision we may wish to visit a regulator's supervision department and / or accompany them on a visit, require regulators to provide detailed information on their supervision departments or alternatively commission a third party assessment of the regulator's supervisory policies.
16. We consider that the thematic reviews are most likely to be aimed at supporting our work on cost and complexity. So we will be drawing on our submission to MoJ, Kyla Malcolm's research for us on how to prioritise areas to investigate for complexity and other sources of intelligence, such as individual firms' submission to the MoJ Review.
17. Of the other options, the data driven assessment with the use of third party feedback is attractive. However, if we were to move towards this it would require standardisation of data collection amongst regulators (and data collection by regulators). The need to use our formal powers to compel this would be time-consuming and controversial: it would certainly, if unfairly, be presented as an example of LSB micro-management. It will also require greater resource than currently allocated to this work.
18. In our response to the Consumer Panel's advice on financial protections we have suggested discussing with regulators whether it is appropriate to collect standardised data in relation to the operation of compensation arrangements. If this is successful we can explore whether further standardisation is desirable and / or possible. But we would not wish to put the achievement of standardised data on the critical path towards a performance assessment

Next steps

19. If the Board agrees with the executive's recommendation, we will be required to produce a template progress report for all regulators to complete and

proposals for specific thematic reviews, related to risk and impact on the regulatory objectives in the context of the final business plan – at draft stage we will invite thoughts on what the topics may be and then test that further against emerging intelligence across the regulators, both individually and as a group.

20. One specific issue which will need careful dovetailing with this process is the LSB's consideration of the development and implementation of the SRA's r-view programme – effectively the mechanism by which they are re-engineering their processes across the organisation to deliver outcome focussed regulation. The programme carries both expense and risk and, as our reaction to an initial presentation documented in the letter at Annex D shows, there are some considerable challenges ahead. However, it is clear that some lessons have been learned and applied from previous projects and there is, in reality, no less ambitious alternative if the SRA is to achieve its strategic aims.

Recommendations

21. The Board is invited to:

- a. note the progress report of the performance of approved regulators against their action plans and the activities they have undertaken in relation to our observations.
- b. approve the proposal that the 2014/15 regulatory standards assessment takes the form of a progress report from all regulators and a number of thematic reviews
- c. note that we will provide the Board with a list of potential thematic reviews in the new year
- d. note the need for the final programme to dovetail effectively against the r-view programme in particular.