

To:	Legal Services Board	
Date of Meeting:	29 January 2014	Item: Paper (14) 05

Title:	Regulatory standards – proposed approach for 2014/15 & 2015/16
Workstream(s):	Developing standards and performance
Author / Introduced by:	James Meyrick, Project Manager james.meyrick@legalservicesboard.org.uk / 0207 271 0083 Nicholas Baré, Regulatory Associate nicholas.bare@legalservicesboard.org.uk / 020 7271 0089 Fran Gillon, Director of Regulatory Practice fran.gillon@legalservicesboard.org.uk / 020 7271 0087
Status:	Protect

Summary:

This paper sets out how the LSB proposes to develop its work on regulatory standards. It proposes that in 2014/15 we will require regulators to update us on the progress they have made implementing the action plans they developed as part of the first regulatory standards self-assessment exercise. We will require details of:

- an assessment, at Board level, of progress made against the action plan submitted during the first self-assessment;
- activities undertaken to respond to observations made by the LSB in its regulatory standards reports;
- any additional relevant activities;
- relevant supporting documentation; and
- any revisions to the action plan with timescales and milestones (including work identified but not begun, work recently started and work already underway).

In addition we will signpost recent important developments to which we expect them to develop their approach and which will become part of a full, in depth self-assessment during 2015/16.

For the 2015/16 exercise, we propose to build on the current framework to take into account the following:

- the new Regulators' Code¹

¹ <http://news.bis.gov.uk/Press-Releases/New-Regulators-Code-will-shape-new-partnership-with-business-69075.aspx>

- the proposed growth duty in the Deregulation Bill²
- the Consumer Panel's new Consumer Principles which will be published soon and
- our work on quality.

The Regulators' Code and the growth duty reinforce our emphasis on the importance of reducing unnecessary burdens on legal services providers. So in addition to informing the development of regulatory standards work, we will also take them into account when deciding what thematic reviews to carry out during 2014/15. A paper on this will accompany the final Business Plan which will be considered by the Board in March.

Recommendations:

The Board is invited to

1. discuss and agree the recommendations for the 2014/15 update exercise the proposed approach to the development of the in-depth 2015/16 self-assessment exercise
2. delegate sign-off for communications and the 2014/15 template to the Chief Executive.

Risks and mitigations

Financial:	Financial impact of recommendations for 2014/15 & 2015/16 self-assessment exercises will be minimal.
Legal:	Regulators have previously challenged our powers to conduct the assessments. However, all completed the exercise and, in the case of the BSB in particular, have genuinely "bought into" the process.
Reputational:	The recommendation for 2014/15 & 2015/16 assessments are in line with our commitments in the business plan and previous board discussions.
Resource:	Resource impacts of the recommendation are in line with business plan commitments.

Consultation	Yes	No	Who / why?
Board Members:	X		At the 15 October 2013 Board meeting, the overall approach was agreed at a high level
Consumer Panel and others:	X		Selected colleagues to ensure regulatory standards work complements other projects

Freedom of Information Act 2000 (Fol)

Para ref	Fol exemption and summary	Expires
Annex C	Section 22 – information intended for future	

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/263264/13-684-growth-consultation.pdf

	publication	
--	-------------	--

LEGAL SERVICES BOARD

To:	Board		
Date of Meeting:	29 January 2014	Item:	Paper (14) 05

Regulatory standards - proposed approach for 2014/15 & 2015/16

Executive Summary

1. In July 2011, the LSB published a discussion document setting out how it would ensure that approved regulators act in a way that is consistent with the regulatory objectives, the better regulation principles and best regulatory practice. In December of that year, all approved regulators received a Section 55 information request requiring them to complete a self assessment against the constituent parts of regulation. These are:
 - outcomes focused regulation
 - an effective risk identification framework
 - proportionate supervision; and
 - an appropriate enforcement strategy.
2. Once completed, these self-assessments were reviewed by the LSB and three reports were published outlining the LSB's findings. Since that time, regulators have been working to actions plans developed to improve their regulatory standards based on the findings of the LSB's reports.
3. At its 15 October 2013 meeting, the Board agreed that the LSB would carry-out an "update self-assessment exercise" in 2014/15, rather than asking the approved regulators to repeat the full exercise. A full self-assessment exercise will be carried out in 2015/16. Against that background, this paper makes recommendations about how the LSB should continue its regulatory standards work programme in 2014/15 and 2015/16.
4. Since the LSB carried out the first self-assessment exercise there have been two significant relevant developments in better regulation initiatives. These are:
 - a new Regulators' Code to provide a flexible, principles based framework for regulatory delivery; and
 - the inclusion in the draft Deregulation Bill of a duty on non-economic regulators to have regard to growth.
5. In addition, the Consumer Panel has developed a set of consumer principles for regulators and the LSB itself has advanced its approaches to quality work programme. We will integrate these into the next full self-assessment exercise in 2015/16 and will draw regulators' attention to them for the 2014/15 update exercise.
6. As noted in the cover paper summary, we believe that these changes should be made in two steps as regulators are still currently delivering against their action plans that were developed as a part of the first self-assessment exercise. This

means that the 2014/15 exercise will simply signpost regulators to changes to regulatory best practice ahead of these becoming compulsory elements of the 2015/16 exercise. This paper sets out in detail:

- The legal framework in the Legal Services Act 2007 (the Act) that provides the basis for the LSB carrying out its regulatory standards self-assessment process
- How the LSB has developed and carried out the regulatory standards work programme
- New regulatory best practice Improvements that can be made based on the first self-assessment exercise.

7. The table below sets out a proposed forward approach.

Quarter	LSB actions	Regulator actions
Jan – Mar 2014	<ul style="list-style-type: none"> - Letter to regulators setting out approach following Jan Board meeting including signposting to new factors - Finalise and send guidance and self-assessment update template 	<ul style="list-style-type: none"> - Prepare for self-assessment update exercise
Apr – Jun 2014	<ul style="list-style-type: none"> - Send requests for the self-assessments including a specific question for the SRA on how it intends to implement its new statutory requirements 	
Jul – Sep 2014	<ul style="list-style-type: none"> - LSB develops 2015/16 template 	<ul style="list-style-type: none"> - Regulators to complete self-assessments
Oct – Dec 2014	<ul style="list-style-type: none"> - Review self-assessment submissions - Develop response reports on self-assessments - Finalise 2015/16 template with input from regulators and others 	<ul style="list-style-type: none"> - participate in development of 2015/16 template
Jan – Mar 2015	<ul style="list-style-type: none"> - Plan for full review of all regulators - Finalise and send guidance and self-assessment template 	<ul style="list-style-type: none"> - Prepare for full self-assessment exercise
Apr – Jun 2015	<ul style="list-style-type: none"> - Send request for the self-assessments including a new compulsory requirements 	
Jul – Sep 2015		<ul style="list-style-type: none"> - Regulators to complete self-assessments
Oct – Dec 2015	<ul style="list-style-type: none"> - Review self-assessment submissions - Develop response reports on self-assessments 	

Basis for improving regulatory standards

8. The LSB and the approved regulators have a clear responsibility set out in the Act to promote the regulatory objectives and have regard to the principles of the better regulation; this is the basis for our regulatory standards work programme.

Regulatory objectives

9. Sections 3(2) and 28(2) of the Act make clear that the LSB and the approved regulators must, as far as reasonably practicable, act in a way that is compatible with the regulatory objectives, and act in a way that they consider most appropriate for the purpose of meeting the objectives.
10. The Act while defining the regulatory objectives also provides the LSB with a range of powers to use against the approved regulators if their acts or omissions have an adverse impact or are likely to have an adverse impact on the objectives. The LSB can also use its enforcement powers if an approved regulator does not comply with a requirement under the Act – including obligations to have regard to the better regulation principles. These powers are one of the main incentives for the approved regulators to deliver the regulatory objectives and the requirements of the Act.

Principles of better regulation

11. Section 3(3) of the Act states that the LSB's Board must have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed. The Board must also have regard to any other principle appearing to it to represent the best regulatory practice.
12. For the LSB, this has meant a focus on the principles of better regulation (the principles), which were developed during the Hampton Review in 2005, with an aim to reduce administrative burden without compromising the UK's regulatory frameworks. These principles have been central to the LSB's development of its regulatory standards approach. The principles are:
 - Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most
 - Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take
 - No inspection should take place without a reason
 - Businesses should not have to give unnecessary information, nor give the same piece of information twice
 - The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions
 - Regulators should provide authoritative, accessible advice easily and cheaply
 - Regulators should be of the right size and scope, and no new regulator should be created where an existing one can do the work

- Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.

Standards of legal services regulation

13. Section 4(a) of the Act requires the LSB to assist in the maintenance and development of standards in relation to regulation for the approved regulators, which we interpret as requiring a proactive approach. It is important to appreciate that while the regulatory objectives do not change, other pieces of best regulatory practice and standards of regulation will evolve to reflect risks present in a changing market. One way in which the LSB fulfils its Section 4(a) obligations is by assessing regulators against best regulatory practice.
14. Two significant developments have taken place since the LSB completed its first self-assessment exercise on regulatory standards. The Better Regulatory Delivery Office (BRDO) has released an updated Regulators' Code (the Code) and the government has published the draft Deregulation Bill which proposes to impose a duty on non-economic regulators to have regard to the desirability of promoting economic growth when carrying out their functions (the growth duty). Both the Code and the growth duty will definitely apply to the LSB and the Solicitors' Regulation Authority (SRA). The BRDO is also consulting informally about applying them to all approved regulators / licensing authorities.
15. Regardless of the decision reached by the BRDO, we consider that both of these initiatives will form an important part of the evolution of best regulatory practice and will therefore need to be reflected in the LSB's new requirements for the next self-assessment exercise. The growth duty in particular will give added impetus to our emerging thinking on deregulation as a means of increasing consumer value and improving access to justice.
16. Through section 4(a) of the Act, the LSB has a clear obligation to maintain and develop regulatory standards in all regulators, whether they are specifically named in the Code or the growth duty or not. For this reason we intend to signpost regulators to these changes in our 2014/15 exercise before making them a compulsory element of the 2015/16 exercise. Both of these requirements are discussed later in this document in more detail, as are other developments that will influence our future approach, including the need to reduce unnecessary regulatory burdens on legal services providers.

Delivering regulatory standards

Elements of regulation

17. The LSB's original decision document on regulatory standards in 2011 defines four elements of regulation for the approved regulators to focus on to deliver the required regulatory standards. These are:
 - outcomes focused regulation
 - an effective risk identification framework
 - proportionate supervision; and
 - an appropriate enforcement strategy.

18. The LSB also determined that regulators must have appropriate capacity and capability to deliver the regulatory objectives. Regulators have since completed their first regulatory standards self-assessment exercise to evidence their own levels of regulatory standards and provided action plans to deliver the improvements that they considered necessary. The LSB has reviewed and reported on these assessments and plans.
19. During the first exercise, we received complaints that the regulatory standards' broad headings and supporting factors did not fit perfectly match each regulator's strategy and operations. However since the exercise, regulators have begun to understand better that the regulatory standards work programme is not a standalone exercise, and that it should be used to complement and support their chosen strategic approach. We were pleased particularly to see the BSB make substantial changes to its structure and planning to reflect regulatory standards best practice.

Additional better regulation initiatives

20. In the 2012 self-assessment exercise, the LSB developed a set of factors to show whether regulators were towards the top or the bottom of the scale for each standard. We initially asked each regulator to use these factors when assessing themselves, but also made it clear that other sector specific factors could be used should they wish if relevant evidence was provided.
21. To ensure that the approved regulators are aware of new best practice, we intend to signpost them to new developments that we consider relevant to developing good regulatory standards and which are likely to be included in the 2015/16 full re-assessment. We believe that making changes to the update exercise would 'move the goal posts' and reduce our ability to compare year-on-year results from the regulators' self-assessments. We have used the following resources to update the factors:
 - the updated Regulators' Code;
 - the government's proposed duty in the De-regulation Bill for non-economic regulators to have regard to growth;
 - the government's "one-in two-out" policy for regulation;
 - the micro business moratorium;
 - the Legal Services Consumer Panel's (the Panel) guidance on the Consumer Principles (to be published in February 2014); and
 - the LSB's Approaches to Quality work programme.

Best regulatory practice

22. As a part of the government's strategy to reduce regulatory burden, it has developed a number of responses that the LSB is considering in relation to changes to our regulatory standards work programme.

The updated Regulators' Code

23. BRDO published an updated version of its Regulators' Code³ in July 2013. Regulators whose functions are specified in an Order made under section 24(2) of the Legislative and Regulatory Reform Act 2006 must have regard to the Code when developing policies and operational procedures that guide their regulatory activities. Although the Code only names the LSB and the SRA, we hope that BIS will extend compliance requirements to all approved regulators.
24. However, we regard the Code as representing best regulatory practice. As such, we expect all regulators to have regard to it as a result of their duty under section 28(3) of the Act. We will therefore take the Code's requirements into account when we exercise our functions in making decisions on regulators:
- rule change applications;
 - designation applications; and
 - section 51 practising fee applications.
25. These decisions will provide us with a way to encourage the approved regulators to implement the Code through changes to their regulatory arrangements and a way to monitor their progress during 2014/15. In 2015/16, we will require a more explicit response from all approved regulators about their progress. Since the SRA is required to have regard to the Code, we will expect an explicit response from it in this year's update on progress.
26. The updated Code sets out six areas of focus: Annex A maps requirements against the LSB's regulatory standards factors from the 2012/13 self-assessment exercise. The annex shows that most of the new Code reinforces the LSB's existing regulatory standards factors. However, other factors build on new themes. To reflect this, we will signpost these new factors in our covering letter to the 2014/15 update exercise. Our analysis shows that all but 11 of the current 34 factors are covered by the Code. Annex B contains a list of the factors that are not covered. However, we do not consider that any of these factors merit deletion simply because they do not appear in the updated Code. We also consider that they should remain for the sake of consistency.
27. The original timetable for implementing the updated Code was as follows (we have asked BIS for an update but have not received a reply at the time of writing):
- End October 2013 – Listing Order finalised in preparation for Cabinet clearance
 - Early November 2013 – Code and Listing Order laid and debated in both Houses
 - April 2014 – Implementation of the Code for those named in the legislation.

³ <http://news.bis.gov.uk/Press-Releases/New-Regulators-Code-will-shape-new-partnership-with-business-69075.aspx>

Duty to have regard to growth

28. The government has also introduced a new requirement, the growth duty, in the draft Deregulation Bill 2013. This will require named non-economic regulators to have regard to the desirability of promoting economic growth when they exercise their functions. In carrying out this duty, the regulators will need to, in particular, consider the importance of ensuring that any regulatory action they take is necessary and proportionate. In its draft guidance, BRDO has set-out three primary ways that regulators can demonstrate the regard for economic growth:

- ensuring regulatory activities are time / cost efficient
- ensuring interactions are necessary and proportionate
- understanding the wider business environment and lifecycle.

29. In the BIS consultation, only the LSB and SRA are named as being subject to the duty but we have asked BIS to include all approved regulators and they are consulting the other bodies at the moment. The original timetable for introducing the duty was:

- Early November – BIS will share drafts of its guidance for comment (this has been completed)
- End November – final list of regulators subject to the growth duty determined, draft guidance ready (not yet seen)
- Joint Committee on the Deregulation Bill will present a report to Parliament following pre-legislative scrutiny of the Bill (published 11 December 2013)
- January/February 2014 - Government to respond to the Committee's report
- February 2014 (estimated) - Deregulation Bill introduced to Parliament.

(We have asked BIS for details of current thinking, but have yet to receive an update)

30. The requirements of the growth duty dovetail with changes that we will be making to reflect the updated Regulators' Code. Annex A is a review of the factors set out in the updated Code against the factors that the LSB used in the first regulatory standards exercise. Factors 1.1 and 1.2 show clear links to the growth duty. Factor 6.5 is also linked, suggesting regulators should publish service standards on, amongst other activities, the growth duty.

31. The growth duty is consistent with the regulatory objectives to promote competition in the provision of legal services as well as to encourage an independent, strong, diverse and effective legal profession.

32. It is also consistent with one of the existing factors in the regulatory standard for outcomes-focused regulation which states: "regulatory arrangements, policies and processes [must be] designed, and regularly reviewed, to ensure that they support or enable economic growth". The challenge for us will be to ensure that regulators focus as much on growth in the wider economy as on the growth of legal businesses.

33. We propose to link these separate strands together and will signpost the approved regulators to the growth duty for the 2014/15 exercise, in much the same way as for the updated Code. Additionally, the SRA will be required to

make an explicit response in 2014/15 given that it is likely to have this as a statutory duty and we may extend this further if governmental thinking about coverage of the duty is clarified in the next few weeks. In any event, however, in 2015/16, we will require an explicit response from all the approved regulators on how they take the duty into account.

One-in two-out and the moratorium

34. In January 2013, the government introduced a “One-in, Two-out” rule for regulation, in an attempt to reduce costs and burden for business. This requires that government policymakers can only create new regulations that increase costs for business and voluntary organisations when they have identified measures that can be removed or modified to reduce the costs imposed by double the amount.
35. Operating alongside one-in two-out is a regulatory moratorium. The moratorium policy applies to all new domestic regulation that impacts micro-businesses. From the LSB’s perspective, we consider that both initiatives are consistent with the factor in our section of the self-assessment framework on outcomes-focused regulation that states: “there is clear evidence and analysis to justify any detailed rules”. Some approved regulators still have very complex, large regulatory frameworks that include unnecessary regulatory burdens. We consider that these must be slimmed down and unnecessary regulation removed. We will therefore consider as part of the development of the 2015/16 exercise how best to reflect the need to reduce regulation; for example it may be appropriate to include a requirement to regularly review existing regulatory arrangements with a specific focus on removing unnecessary requirements and overly prescriptive rules. The reduction in unnecessary regulation will also form part of our consideration of which thematic reviews to conduct when we finalise the 2014/15 Business Plan.

Consumer Principles

36. The Legal Services Consumer Panel is in the process of developing new consumer principles for regulators to use to test whether consumer interests’ are being met. These principles are wide-ranging and go much further than either the LSB’s current regulatory standards or the factors in the new Regulators’ Code. Over the last few months, the Panel has been carrying out workshops with regulators to introduce them to the principles, which aim to assist them to improve their consumer understanding and engagement. These issues were identified during the 2012/13 exercise as being an area on which all regulators were weak. The Panel use the principles to help assess what the consumer interest is on any given policy issue and then to develop and communicate our policies. The principles are:
 - Access – can people get the goods and services they need or want?
 - Choice – is there any?
 - Quality – are there good quality outcomes for consumers?
 - Information – is it available, accurate and useful?
 - Fairness – are some or all consumers unfairly discriminated against?

- Representation – do consumers have a say in how goods or services are provided?
 - Redress – if things go wrong, is there a system for putting them right?
37. The Panel sees the principles as being useful as a checklist for the regulators in their own work. It intends to develop a practical tool ahead of publication for the regulators to use. This strikes us as a potentially very useful initiative: regulators have on the whole found it hard to turn good intentions on consumer issues into hard action although the recent launch of the “Legal Choices” website is a useful, tangible first step.
38. We see the use of the consumer principles as a way of getting the approved regulators to address consumer issues in their decision making. In 2012, we required regulators to use the Oxera framework when considering the extent of their knowledge about consumers, the supply of legal services and the markets they regulate, though none of them were able to do so. We consider that the consumer principles can serve as an additional way of helping regulators to consider issues about consumer detriment. Feedback from the Council for Licensed Conveyancers (CLC) has suggested that the LSB and Panel should link the regulatory standards work programme with the principles in a complementary way, so that there is not a duplication of effort for the regulators. A further avoidance of duplication could come from linking the principles and regulatory standards to the BSI standard BS 18477 that specifies critical procedures to ensure inclusive services are available and accessible to all consumers equally, regardless of their personal circumstances. We will signpost the regulators to the principles for the 2014/15 update exercise. We will also work with the regulators and the Panel to consider how the principles can be integrated into the 2015/16 exercise.

Approaches to quality in legal services

39. Alongside our regulatory standards work programme, the LSB has a workstream that is developing its approach to quality in legal services. Our view is that while entry controls and education and training requirements can be important tools in mitigating quality risks, they are not in themselves sufficient for ongoing quality assurance. To do this, the full range of regulatory tools need to be utilised at both individual and entity level. We have identified the following key themes in relation to the management of risks to quality:
- Provision and transparency of performance information to allow a greater understanding of where issues in relation to quality exist
 - Development of improved assessment and segmentation of risks to quality in legal services through greater evidence based analysis
 - Using an outcomes focused approach to ensure regulatory interventions drive an improvement in quality standards without hindering innovation
40. There are very strong linkages between this and the regulatory standards work, which makes it important for regulators to consider when assessing their own regulatory standards.
41. To progress the approaches to quality workstream, a paper is being developed to consider whether the key themes above and a set of “success factors” that sit

below them are the right approach. Once these have been confirmed, the LSB will be looking for specific evidence from the approved regulators to show that they are taking action to deliver the success factors and that areas for development are outlined in their respective action plans. However, for the purpose of the 2014/15 regulatory standards exercise, we will signpost the approved regulators to the key themes and success factors, but we will not explicitly require them to assess themselves against them.

Improvements to the self-assessment request

Regulators' perspectives

42. Following the completion of the first regulatory standards self-assessment exercise, the LSB sought feedback from the approved regulators to see if improvements could be made generally. Regulators considered that the process was resource intensive, although there was little recognition that well governed organisations would be likely to initiate similar exercises of their own volition regularly in any event. However, there was acknowledgment from most of them that the exercise had helped them to improve their operations. The main points that came out of the feedback are listed below, with the LSB's response recorded alongside.

Regulators' feedback	LSB response
Regulators preferred that a deficiency highlight report be required, rather than a complete new report as a less time consuming exercise would be welcome	The LSB agreed at its October Board meeting that an update self-assessment exercise should be carried-out in 2014/15, supported by thematic reviews.
External assurance should not be required	As the 2014/15 exercise is simply an update we will not require external assurance. However, we will continue to require significant board involvement and sign-off. For 2015/16 we will revert to the preference for an externally validated submission.
The LSB could be clearer on how a 'grading' is achieved for each of the assessed areas That grading is important, as it allows the regulators to benchmark their performance against other regulators	The LSB does not accept that the grading was unclear. We will continue to use the grading scale as we believe the four levels are clear. The scale will also be more useful in a second exercise as regulators will be able to benchmark their scores to show their development.
More thought should be given to the layout of the template to allow it to work for different sizes, structures and rights	Regulators are free to respond as they see fit provided they address each regulatory standard and consider the relevant factors. Regulators must report on all their activities however, the structure in which they do so is up to them.
Repetition in giving the same answers for different sections could be addressed	This relates to the point above. Regulators will be reminded that it is possible to refer to separate evidence or points already made rather than duplicate responses.
Action plans should be developed following the release of each report to allow regulators to be focused in their activities	This is each regulator's own assessment and it should contain their own plans for improvement. The Act's responsibilities bear down on them and it is their job to deliver the requirements.
Each regulator's report against their self-assessment should be released as soon as possible so the public see an up-to-	The LSB's responses to the regulators' self-assessments need to be reviewed and agreed by the LSB Board. We will endeavour to release them as soon as possible

date picture (that if the report was released several months later)	considering this constraint.
All regulators should respect deadlines irrespective of their size	We will be clear in our accompanying information about the importance of responding to the exercise within the set timeframe. Regulators will be given a long lead time to plan for the 2014/15 and 2015/16 exercises.

LSB perspective

43. As well as seeking the regulators' feedback, we considered how well the exercise worked from our own perspective, and what changes could be made. Based on our considerations we recommended to the LSB Board that regulators should be required to provide an update self-assessment on the progress of regulatory standards. Therefore, in 2014/15 each regulator will be expected to provide details of:
- an assessment, at Board level, of progress made against the action plan submitted during the first self-assessment;
 - activities undertaken to respond to observations made by the LSB in its regulatory standards reports;
 - any additional relevant activities;
 - relevant supporting documentation; and
 - any revisions to the action plan with timescales and milestones (including work identified but not begun, work recently started and work already underway).
44. We consider that by carrying out an update exercise this should alleviate concerns about the scale of the exercise. Regulators will also know what to expect now having completed the first exercise. However, we will continue to expect a professional exercise which regulators take seriously and deliver to an appropriate standard.
45. We do not consider it proportionate to *require* regulators to get external assurance for the 2014/15 update exercise, although we certainly do not preclude it. However, we will require each regulator to provide us with information about how its Board has monitored progress against the action plan. A draft of the 2014/15 template is at Annex C.
46. We consider that, for the 2015/16 exercise, we should retain the "comply or explain" approach to external assessment to provide the approved regulators with a degree of practical flexibility. We will stress the importance of the "critical friend" in our covering letter, pointing to the improvements that third party reviews created in the 2012/13 exercise. However, to reduce the risk of inadequate self-assessments we will include an additional requirement for the assessment to explain the governance process for the production of the document and we will continue require a signature from a board member and the relevant Chair of each Board (on behalf of the Board). We will also seek assurances that each action plan is linked to both strategic and operational planning within each approved regulator.

Annex A: Assessment of Regulatory standards factors against Regulators' Code

Not covered by current factors		
Covered to some extent by current factors		
Covered by current factors		
1	Regulators should carry out their activities in a way that supports those they regulate to comply and grow	
1.1	Regulators should avoid imposing unnecessary regulatory burdens through their regulatory activities and should assess whether similar social, environmental and economic outcomes could be achieved by less burdensome means. Regulators should choose proportionate approaches to those they regulate, based on relevant factors including, for example, business size and capacity.	<p>Partially covered: Enforcement 3: A wide range of effective, proportionate enforcement tools that can be deployed quickly by staff who have appropriate levels of experience and are well trained</p> <p>OFR: Clear evidence and analysis to justify detailed rules.</p> <p><u>Regulatory standards 2014/15 recommendation:</u> The factor we include only relates to enforcement tools. However, the code point is about regulators using alternatives to regulation, less burdensome approaches and consideration of issues of business size. Therefore a factor should be included in the OFR section. The additional factor should reflect that:</p> <ul style="list-style-type: none"> Regulation only imposed where evidence and analysis suggests that alternative approaches would not deliver required outcome. Regulators use evidence and analysis to consider impact on market segments.
1.2	When designing and reviewing policies, operational procedures and practices, regulators should consider how they might support or enable economic growth for compliant businesses and other regulated entities, for example, by considering how they can best: <ul style="list-style-type: none"> understand and minimise negative economic impacts of their regulatory activities; minimising the costs of compliance for those they regulate; improve confidence in compliance for those they regulate; and encourage and promote compliance. 	<p>Supervision 4: Activity facilitates innovation change and commercial freedom.</p> <p><u>Regulatory standards 2014/15 recommendation:</u> This factor can be added to the OFR section as it related to the Growth duty requirement:</p> <ul style="list-style-type: none"> Regulatory arrangements, policies and processes are designed, and regularly reviewed, to ensure that they support or enable economic growth in the legal services sector and wider economy.
1.3	Regulators should ensure that their officers have the necessary knowledge and skills to support those they regulate, including having an understanding of those they regulate that enables them to choose proportionate and effective approaches	<p>Capacity & capability 6: Evidence-based understanding of the market(s) it regulates and the commercial realities of operating in it</p> <p>Outcomes focused regulation 4: All members of staff and Board understand the organisations approach to focusing regulation on the consumer and public interest</p>

		Regulatory standards 2014/15 recommendation: Covered by current factors
1.4	Regulators should ensure that their officers understand the statutory principles of good regulation and of this Code, and how the regulator delivers its activities in accordance with them	<p>Outcomes focused regulation 4: All members of staff and Board understand the organisations approach to focusing regulation on the consumer and public interest</p> <p>Capacity and capability 5: High levels of knowledge management and analytical skill at all levels in the organisation drives culture of transparency, continuous improvement and embeds best regulatory practice from legal regulation and other industries</p> <p>Regulatory standards 2014/15 recommendation: While general knowledge about regulation is covered, a specific reference to the new Code will be added to the capacity and capability factor.</p> <ul style="list-style-type: none"> Board and staff are aware of, act on and embed the requirements of the Act, the regulators' code, the growth duty and other regulatory developments appearing to it to represent best regulatory practice as set out in the LSB's regulatory standard guidance.
2	Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views	
2.1	Regulators should have mechanisms in place to engage those they regulate, citizens and others to offer views and contribute to the development of their policies and service standards. Before changing policies, practices or service standards, regulators should consider the impact on business and engage with business representatives.	<p>Outcomes focused regulation 8: Regularly reviews and updates its regulatory arrangements based on that evidence</p> <p>Regulatory standards 2014/15 recommendation: The existing rules on the approval of alterations to regulatory arrangements include the need for consultation.</p>
2.2	In responding to non-compliance that they identify, regulators should clearly explain what the non-compliant item or activity is, the advice being given, actions required or decisions taken, and the reasons for these. Regulators should provide an opportunity for dialogue in relation to the advice, requirements or decisions, with a view to ensuring that they are acting in a way that is proportionate and consistent.	<p>Enforcement 1: Published policies and guidelines are written in plain language that enables others to understand the criteria for deciding to take action</p> <p>Enforcement 3: A wide range of effective, proportionate enforcement tools that can be deployed quickly by staff who have appropriate levels of experience and are well trained</p> <p>Enforcement 4: Enforcement powers provide appropriate incentives for compliance</p> <p>Regulatory standards 2014/15 recommendation: This is not explicitly covered by the current factors. All regulators have, as far as we are aware, the ability to resolve issues informally. We could highlight this more explicitly. However given limited space we feel it is not an issue we should prioritise.</p>
2.3	Regulators should provide an impartial and clearly explained route to	Enforcement 2: Appeal processes follow best practice

	appeal against a regulatory decision or a failure to act in accordance with this Code. Individual officers of the regulator who took the decision or action against which the appeal is being made should not be involved in considering the appeal. This route to appeal should be publicised to those who are regulated.	<u>Regulatory standards 2014/15 recommendation:</u> We currently do not specify the scope of the appeal arrangements or suggest appeal arrangements should cover the right to appeal against transgressions of the regulators' code. We should not do so in the regulatory standards work unless the code is made mandatory for all approved regulators. .
<u>2.4</u>	Regulators should provide a timely explanation in writing of any right to representation or right to appeal. This explanation should be in plain language and include practical information on the process involved.	Enforcement 2: Appeal processes follow best practice <u>Regulatory standards 2014/15 recommendation:</u> This level of detail exists for most regulators. We consider best practice requirement meets the requirement of the code.
<u>2.5</u>	Regulators should make available to those they regulate, clearly explained complaints procedures, allowing them to easily make a complaint about the conduct of the regulator.	Regulatory standards 2014/15 recommendation: This is not covered by the current factors. However, most have complaint arrangements and individuals can make the LSB aware of misconduct. Although the LSB lacks the power to issue directions in relation to individual cases, we have on occasion used such intelligence to raise systemic issues with regulators.
<u>2.6</u>	Regulators should have a range of mechanisms to enable and regularly invite, receive and take on board customer feedback, including, for example, through customer satisfaction surveys of those they regulate.	OFR 5: High quality, up to date, reliable evidence from a range of sources about how all groups of consumers need and use the legal services the AR/LA regulates <u>Regulatory standards 2014/15 recommendation:</u> No change. We have stressed the need for regulators to understand the needs of consumers in our reports. It is up to regulators to determine how they do so.
3	Regulators should base their regulatory activities on risk	
<u>3.1</u>	Regulators should take an evidence based approach to determining the priority risks in their area of responsibility, and should allocate resources where they would be most effective in addressing those priority risks.	Outcomes focused regulation 5: High quality, up to date, reliable evidence from a range of sources about how all groups of consumers need and use the legal services the AR/LA regulates Risk 1: Formal, structured, transparent and evidence-based approach to identification and mitigation of risks across the whole range of entities and individuals that the AR/LA regulates Supervision 1: Activity is underpinned by an evidence-based understanding of different market segments and providers that the AR/LA regulates Supervision 2: Activity is determined by reference to identified risks <u>Regulatory standards 2014/15 recommendation:</u> Covered by current factors

3.2	Regulators should consider risk at every stage of their decision-making processes, including choosing the most appropriate type of intervention or way of working with those regulated; targeting checks on compliance; and when taking enforcement action.	<p>Risk assessment 2: Formal, structured, transparent and evidence-based approach to identification and mitigation of risks across the whole range of entities and individuals that the AR/LA regulates</p> <p>Risk assessment 4: Relevant staff and Board understand the reasons for risk assessment, how it informs other aspects of the AR/LA's activities</p> <p>Supervision 2: Activity is determined by reference to identified risk</p> <p>Regulatory standards 2014/15 recommendation: Covered by current factors. However, risk assessment factors should be strengthened to reflect need for risk to inform <u>all</u> their processes. Therefore we should add that:</p> <ul style="list-style-type: none"> ▪ Evidenced based assessment of risk informs all regulatory processes.
3.3	Regulators designing a risk assessment framework, for their own use or for use by others, should have mechanisms in place to consult on the design with those affected, and to review it regularly.	<p>Risk assessment 1: Formal, structured, transparent and evidence-based approach to identification and mitigation of risks across the whole range of entities and individuals that the AR/LA regulates</p> <p>Regulatory standards 2014/15 recommendation: Covered by current factors. However, consultation / transparency of risk frameworks varies across regulators.</p>
3.4	Regulators, in making their assessment of risk, should recognise the compliance record of those they regulate, including using earned recognition approaches and should consider all available and relevant data on compliance, including evidence of relevant external verification.	<p>Risk assessment: Formal, structured, transparent and evidence-based approach to identification and mitigation of risks across the whole range of entities and individuals that the AR/LA regulates</p> <p>Regulatory standards 2014/15 recommendation: Covered by current factors. However, earned recognition is not specifically mentioned. But compliance records must and should be a part of any risk based regulatory system.</p>
3.5	Regulators should review the effectiveness of their chosen regulatory activities in delivering the desired outcomes and make any necessary adjustments accordingly.	<p>Risk assessment: Risk analysis focuses predominantly on consumer detriment, including those in vulnerable circumstances. Evidence that approach to risk works in practice</p> <p>Capacity and capability 7: High levels of knowledge management and analytical skill at all levels in the organisation drives culture of transparency, continuous improvement and embeds best regulatory practice from legal regulation and other industries</p> <p>Regulatory standards 2014/15 recommendation: No addition although may be worth while stressing the need for regulators to review, assess and (if necessary) improve all regulatory processes.</p>
4	Regulators should share information about compliance and risk	

4.1	Regulators should collectively follow the principle of “collect once, use many times” when requesting information from those they regulate.	<p><u>Supervision 3: Activity is informed by data from the Legal Ombudsman</u> <u>Outcomes focused regulation 5 – High quality, up to date, reliable evidence from a range of sources about how all groups of consumers need and use the legal services the AR/LA regulates</u></p>
4.2	When the law allows, regulators should agree secure mechanisms to share information with each other about businesses and other bodies they regulate, to help target resources and activities and minimise duplication.	<p><u>Regulatory standards 2014/15 recommendation:</u> We know from the first self-assessment exercise that not enough information is shared in an effective way. Therefore we should amend supervision 3 to:</p> <ul style="list-style-type: none"> ▪ Activity is informed by all relevant data available to the regulator, including data from the legal ombudsman, other regulators and other relevant sources. Regulators should consider cost, operational impact and alternatives before seeking additional information from authorised persons.
5	Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply	
5.1	Regulators should provide advice and guidance that is focused on assisting those they regulate to understand and meet their responsibilities. When providing advice and guidance, legal requirements should be distinguished from suggested good practice and the impact of the advice or guidance should be considered so that it does not impose unnecessary burdens in itself.	<p><u>Outcomes focused regulation 3: Those regulated understand and accept approach to regulation</u> <u>Outcomes focused regulation 6 – Evidence about whether outcomes are being achieved</u></p>
5.2	Regulators should publish guidance, and information in a clear, accessible, concise format, using media appropriate to the target audience and written in plain language for the audience.	<p><u>Regulatory standards 2014/15 recommendation:</u> Regulators should be made aware of this requirement, but it should not be added to the factors for regulatory standards. Requirements on the alteration of regulatory arrangements should cover the need to separate rules from guidance. But we should be conscious of regulators that use guidance in too many circumstances that produce guidance that is overly prescriptive or produce guidance that goes beyond regulatory arrangements.</p>
5.3	Regulators should have mechanisms in place to consult those they regulate in relation to the guidance they produce to ensure that it meets their needs.	<p>There are no requirements to consult in relation to guidance. <u>Regulatory standards option:</u> Regulators are required to conduct appropriate consultation in relation to rule changes. However, no such requirement exists for guidance. Regulators should be made aware of this as best practice but it should not form part of the assessment factors as factors in relation to evidence for regulation should suffice.</p>
5.4	Regulators should seek to create an environment in which those they regulate have confidence in the advice they receive and feel able to seek advice without fear of triggering enforcement action.	<p><u>Outcomes focused regulation 3: Those regulated understand and accept approach to regulation</u> <u>Regulatory standards 2014/15 recommendation:</u> Regulators should be made aware of this as best practice but it should not form part of the assessment factors.</p>
5.5	In responding to requests for advice, a regulator’s primary concerns	

	should be to provide the advice necessary to support compliance, and to ensure that the advice can be relied on.	<p><u>Regulatory standards 2014/15 recommendation:</u> Linked to 5.4, this is about creating a trusting relationship between practitioners and the regulator. A factor should be added to supervision.</p> <ul style="list-style-type: none"> Supervision should be used to support authorised persons' and entitites' compliance with regulatory arrangements as well as assuring the regulator of compliance.
<u>5.6</u>	Regulators should have mechanisms to work collaboratively to assist those regulated by more than one regulator. Regulators should consider advice provided by other regulators and, where there is disagreement about the advice provided; this should be discussed with the other regulator to reach agreement.	<p>Links to new factor 4.1</p> <p><u>Regulatory standards 2014/15 recommendation:</u> The Act covers the approach to regulatory conflict. The suggested wording at 4.1 / 4.2 should cover information sharing.</p>
<u>6</u>	Regulators should ensure that their approach to their regulatory activities is transparent	
<u>6.1</u>	Regulators should publish a set of clear service standards, setting out what those they regulate should expect from them.	<p><u>Regulatory standards 2014/15 recommendation:</u> We consider that regulators should be encouraged to do this and many do so already. We propose adding the following factor to the Capacity and Capability section:</p> <ul style="list-style-type: none"> Regulators have service standards for dealing with consumers and those they regulate. They publish up-to-date performance against those standards. These standards and performance figures are easily accessible

6.2	<p>Regulators' published service standards should include clear information on:</p> <ul style="list-style-type: none"> ▪ how they communicate with those they regulate and how they can be contacted; ▪ their approach to providing information, guidance and advice; ▪ their approach to checks on compliance, including details of the risk assessment framework used to target those checks and protocols for their conduct, clearly setting out what those they regulate should expect; ▪ their enforcement policy, explaining how they respond to non-compliance; ▪ their fees and charges, if any. This information should clearly explain the basis on which these are calculated, and should include an explanation of whether compliance will affect fees and charges; and ▪ how to comment or complain about the service provided and routes to appeal. 	<p>New</p> <p><u>Regulatory standards 2014/15 recommendation:</u> This relates to 6.1</p>
6.3	<p>Information published to meet the requirements of this Code should be easily accessible, including being available at a single point on the regulator's website that is clearly signposted, and it should be kept up to date.</p>	<p>New</p> <p><u>Regulatory standards 2014/15 recommendation:</u> See 6.1</p>
6.4	<p>Regulators should have mechanisms in place to ensure that their officers act in accordance with their published service standards, including their enforcement policy.</p>	<p>Capacity and Capability 4: Required skill sets are defined and linked to the key challenges facing the organisation, to the regulatory objectives and to the AR/LA's regulatory outcomes – which are achieved in practice</p> <p>Enforcement 7: Decisions to take (and not to take) enforcement action are evidence based and use reliable sources</p> <p><u>Regulatory standards 2014/15 recommendation:</u> Covered to a sufficient extent by existing factors.</p>
6.5	<p>Regulators should publish, on a regular basis, details of their performance against their service standards, including feedback received from those they regulate, such as customer satisfaction surveys, and data relating to complaints about them and appeals against their decisions.</p>	<p>New</p>

Annex B: Regulatory standards factors not reflected in the Regulators' Code

Regulatory standard	Factor not reflected in the regulators code
Outcomes-focused regulation	<ul style="list-style-type: none"> ▪ OFR 1: Regulatory arrangements deliver the outcomes that consumers need ▪ OFR 7: Consumers have confidence in regulation
Risk assessment	<ul style="list-style-type: none"> ▪ Risk 3: Approach to evidence gathering for risk assessment enables the identification of future trends as well as current issues
Supervision	<ul style="list-style-type: none"> ▪ Sup 5: Activity is adequately resourced (including the use of fit for purpose technology) to provide good quality, consistent decisions without backlogs ▪ Sup 6: Clear and structured feedback loops between supervisory activity, risk assessment, staff learning and best practice ▪ Sup 7: Regular senior management and Board monitoring of effectiveness and value for money of supervisory activity leads to improved processes
Enforcement	<ul style="list-style-type: none"> ▪ Enf 5: Enforcement penalties punish as well as deter ▪ Enf 6: Regular senior management and Board monitoring of effectiveness and value for money of enforcement activity feeds back to improved processes and reduced costs
Capacity and Capability	<ul style="list-style-type: none"> ▪ C&C 1: Clear and consistent leadership at Board and senior management level that ensures that the whole organisation has strong consumer engagement and consumer focus ▪ C&C 2: Consumers are confident that regulation is independent ▪ C&C 3: Appropriate levels of budget and staffing linked to the nature of the market(s), entities and individuals regulated

Annex C: The 2014/15 update exercise template

[REDACTED]