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| <b>To:</b>              | Legal Services Board |
| <b>Date of Meeting:</b> | 26 November 2014     |
| <b>Item:</b>            | Paper (14) 64        |

|                                |                                                                                                                                                                                                                                                                                                                       |
|--------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Title:</b>                  | Development of regulatory standards approach for 2015/16                                                                                                                                                                                                                                                              |
| <b>Workstream(s):</b>          | Developing standards and performance                                                                                                                                                                                                                                                                                  |
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| <b>Status:</b>                 | Protect                                                                                                                                                                                                                                                                                                               |

**Summary:**

This paper sets out how the LSB proposes to develop its work on regulatory standards. It proposes that in 2015/16 we will operate a two stage process for the regulatory standards assessment.

This will consist of:

- Stage one: Regulatory data and intelligence gathering from informed third parties
- Stage two: Targeted regulatory standards self-assessment

At stage one regulators will be asked to provide the LSB with data on regulatory performance. This will be linked to the regulatory standards and will include information on their activities, the markets they regulate and their performance against any standards they set themselves. We will also, at the same time, send a questionnaire to informed users (bulk purchasers of legal services, representative bodies, other relevant bodies (e.g. the Legal Ombudsman)) for their views on the performance of the legal services regulator. The questions will be linked to the regulatory standards.

The information gathered through the two exercises will be used to produce a targeted regulatory standards self-assessment for each regulator. The template will direct regulators to provide specific comments on the regulatory standards indicators where the evidence gathered suggests that there may be an issue or where we do not have enough evidence to reach a judgement.

The purpose of adopting this approach is to be more targeted and proportionate in our approach to regulatory standards. A more targeted approach will focus on areas of need and risk. We hope it will lead to simpler, more focused assessment requests and so slimmer, more concentrated submissions from the regulators. This will, it is hoped, reduce the burden on approved regulators, particularly for the smallest regulators.

**Recommendations:**

The Board is invited to:

1. Decide whether to conduct the two stage approach to the 2015/16 regulatory standards approach as detailed in the paper or to conduct a full self-assessment that would be largely the same as the full exercise conducted in 2012/13
2. If the Board does agree to conducting the two stage approach, to consider whether the LSB should:
  - a. retain the current “comply and explain” approach to independent scrutiny of the completed self-assessment; and
  - b. retain the current scoring approach to the self-assessment.
3. The Board is also asked to approve the indicative timeline. A full project document with detailed timings will be produced pending Board approval.

**Risks and mitigations**

**Financial:** Financial impact of recommendations for 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 have been briefed on our plans.

**Reputational:** The recommendation for 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   |    | Initial plans discussed with Board sponsors Bill Moyes and David Everleigh |
| Consumer Panel and others: |     | X  |                                                                            |

**Freedom of Information Act 2000 (Fol)**

| Para ref | Fol exemption and summary | Expires |
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## LEGAL SERVICES BOARD

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|-------------------------|------------------|--------------|---------------|
| <b>To:</b>              | Board            |              |               |
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### Development of regulatory standards approach for 2015/16

#### Background

1. In December 2011, each regulator received a self-assessment template. Using the template regulators were required to assess their performance against four regulatory standards. These were:
  - **outcomes focused regulation:** An approach that gives the correct incentives for ethical behaviour across diverse markets
  - **effective risk identification:** An evidence-based understanding of the risks in the markets they regulate and the ability to profile those regulated according to the risks they pose
  - **proportionate supervision:** Supervision of the regulated community according to the risks they present
  - **an appropriate enforcement strategy:** A compliance and enforcement approach that deters and punishes appropriately.
2. The LSB asked regulators to assess their capability and capacity to deliver the regulatory standards and adhere to other relevant statutory responsibilities. Regulators were also required to provide the LSB with actions plans detailing ongoing work or activities planned to address the deficiencies identified by their self-assessments.
3. Once completed, these self-assessments were reviewed by the LSB and three separate reports (the smaller regulators, the SRA and the BSB) were published outlining the LSB's findings.
4. In April 2014 we requested that the regulators update the LSB on the progress made since the first self-assessments were completed. We received these update self-assessments during October and November 2014. We expect to provide the LSB Board with the executive's' view of these self-assessments in the first Board meeting of 2015. A report will be published soon after.
5. The LSB's 2014/15 business plan states that we will complete a full assessment of approved regulators' performance against the regulatory standards during 2015/16 and that this assessment would incorporate the latest developments in best regulatory practice.
6. The LSB Board last discussed the regulatory standards exercise in its meeting on 29 January 2014. The LSB Board reviewed a gap analysis of the existing indicators of regulatory standards against the UK Government's regulatory code, the duty of regulators to have regard to economic growth, the Legal Services Consumer Panel's consumer principles and the LSB quality indicators. The LSB Board agreed that these elements of best practice should be integrated into the next full self-assessment exercise in 2015/16.

7. This paper outlines the work the LSB executive has completed in planning for the 2015/16 regulatory standards exercise, sets out our proposals for 2015/16 and details proposed next steps.

### **The 2015/16 self-assessment exercise**

8. The LSB's 2014/15 business plan states that we will complete a full assessment of approved regulators' performance against the regulatory standards during 2015/16 and that this assessment would incorporate the latest developments in best regulatory practice. The Board agreed in January 2014 that the new regulators' code and the forthcoming requirement to promote economic growth will become a part of the full assessment in 2015/16. This will be done by making minor adjustments to the supporting indicators for each regulatory standards. The existing four regulatory standards and the requirement to have the capacity and capability to deliver the regulatory objectives remain the same. The revised indicators that sit underneath the standards are shown in Annex A.
9. We are conscious of the need to be proportionate in our approach and have considered how we can be more targeted in the regulatory standards assessment exercise for 2015/16. A more targeted approach will focus on areas of need and risk. It will also, hopefully, reduce the burden on approved regulators. As a result we are currently considering the merits of a two stage approach to the 2015/16 regulatory standards assessment. This will consist of:
  - **Stage one: Regulatory data and intelligence gathering from informed third parties**
  - **Stage two: Targeted regulatory standards self-assessment**

### **Stage one: Regulatory data and intelligence gathering from informed third parties**

10. Stage one will involve two discrete elements. The first element is a **data request sent to regulators**. The second element is a **questionnaire on the regulatory performance of the approved regulators** to be sent to informed third parties who have an understanding of and/or experience with legal services regulation, in order to gather their feedback. An abridged questionnaire will also be placed on our website to be completed by individuals with experience of the approved regulators.

### **Data request**

11. A data request will be sent to regulators requesting specific pieces of data relevant to each of the regulatory standards. The purpose of this request will be to help the LSB determine the context for each of the regulators, conduct a limited assessment of performance of the regulator and to prioritise areas for further assessment. The data that we request will include figures that we expect that the regulators should be collecting to both understand the legal services market and effectively manage their day to day regulatory functions. While in 2015/16, it may be the case that some regulators do not hold all the data we require, we will be sending a very clear message that our request is a minimum baseline.

12. For example, in order to determine whether a regulator has a “*wide range of effective, proportionate enforcement tools that can be deployed quickly*” we may ask for details of their service standards in this area and for figures on their performance against those service standards. We may also ask for details of the number of closed cases during the last year, the oldest closed case, the median age of all closed cases and for similar data on open cases. This information will be used to determine whether a) there may be an issue in need of further assessment and b) whether it is a priority (for example a regulator with one or two cases a year may not be a priority for further enquiry).
13. The data we request could include requests to see original documents. This could include management information reports and, as was discussed at a recent Audit and Risk Committee meeting, risk registers.
14. The benefits of such an approach is that the data should be relatively easy to compile (the LSB will assist by adding the answers we know in advance). The request is likely to be simpler for the smaller regulators to complete (some regulators plan for only two or so conduct investigations per year).
15. However, we must be mindful that the data request can only provide us with output measures, and on its own, it will not necessarily provide a definitive view on performance against the regulatory standards. For some of the regulatory standards, for instance risk identification, a data request is unlikely to capture an idea of performance. In some areas it can only provide context and not illumination. This is why we consider it must go together with other assessment activities.
16. We will be clear with regulators that a nil return is possible – although it may make it more likely that we return to the issue(s) as part of the second stage assessment. We will also be clear that we do not expect to substitute our judgements on the regulator’s performance, if it has its own service standards and is performing well against them. However, it may be that we challenge them on specific aspects related to this performance.

### **Questionnaire**

17. A questionnaire will be produced and sent to informed, third party users to gather their feedback on regulators’ regulatory standards. This will include bulk purchasers of legal services, representative groups, other informed service users (for instance those that appear for or against regulators at tribunals) and other relevant organisations (for example LeO). They will be asked a series of questions regarding their experiences of the performance of the approved regulators. The questions will be linked to the required regulatory standards and the supporting indicators. An abridged version of this questionnaire will be made available online for individuals with experience of the approved regulator (for instance those that have had cause to report a lawyer to a regulator or an individual lawyer’s view of their regulator).
18. The purpose of this exercise will be to collate, in a systematic manner, intelligence about the (perceptions of) performance of the approved regulators. This information will be used, together with the information from the data request, to determine areas in which further investigation may be necessary. This will then be used to inform the tailored self assessment request at stage two. However, we will be clear with respondents that they should not expect any

specific action to be taken as a result of them providing us with their responses. The purpose of collecting the information is to point to areas where the regulators' standards can be improved.

19. Questions could include asking an informed user to rate the level of transparency shown by the legal regulator. The individual users may simply be asked to describe their experience of interacting with the regulator. If informed users, and individuals, highlight a particular area that lacks transparency, for instance in relation to rule making or investigations, we may consider that this area merits further investigation.
20. The LSB currently undertakes an intelligence gathering exercise for the regulatory standards exercise. We collate information from published reports, meeting notes, contacts from members of the public and other ad-hoc sources of information (including LSB project work). This is time intensive, informal and necessarily incomplete. The benefit of using a questionnaire is it formalises and makes systematic the work already undertaken by the LSB. It will help collect information we currently miss and ensure that the information gathered is geared more directly to the regulatory standards.
21. The limitations of such an approach is it may be difficult to disentangle useful intelligence from the less useful 'axe-grinding.' There is also a risk of being swamped with information from individuals that may not be of use to the regulatory standards assessment. Individuals may also have an expectation that when they provide information action will be taken by the LSB that may have an impact on their particular issue. To limit the risk of 'axe grinding' we will ask a question about how satisfied the respondent was with the outcome of their interaction with the regulator. This is a common surveying technique used to disentangle concerns about performance from the outcome achieved. The survey will be clear that the LSB will only use the information provided to assist its work and we will not act in any individual cases. We currently make this clear to individuals who contact the LSB directly.
22. The Professional Standards Authority (PSA and formerly known as the CHRE) has a similar approach to performance assessment. It is responsible for assessing the performance of the regulators of the health and social care professions, such as the General Medical Council, the regulator of Medical Doctors. The PSA produces a survey requesting information on the performance of the regulators. It sends this questionnaire to interested parties (e.g. NHS groups, patient public involvement organisations and other regulators). It also makes this questionnaire available online to others. The PSA produces clear communication lines that this information is for the PSA's use only and it will not have any impact on an individual's case or circumstances.<sup>1</sup> In 2013/14 exercise the PSA received feedback from 25 organisations and 135 individuals.<sup>2</sup>
23. We consider that the use of a questionnaire, if the questions are appropriately drafted and the purposes for which the information will be used are made clear,

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<sup>1</sup> For the latest PSA survey see: <http://www.professionalstandards.org.uk/footer-pages/news-and-media/latest-news/news-article?id=ef96599e-2ce2-6f4b-9ceb-ff0000b2236b>

<sup>2</sup> Page 178, Professional Standards Authority for Health and Social Care, *Annual Report and Accounts and Performance Review Report 2013/14: Volume II, Performance Review Report 2013/14*, <http://www.professionalstandards.org.uk/docs/default-source/scrutiny-quality/performance-review-report-2013-2014---print-ready-black.pdf?sfvrsn=0>



will be a useful addition to our current approach of gathering views on regulation from market participants. However, clearly there is a risk of poor quality information being provided by individuals.

## **Stage two: Targeted regulatory standards self-assessment**

24. This stage is likely to largely repeat the exercise that regulators are already familiar with. It will involve regulators producing a qualitative self-assessment of their regulatory performance in a template provided by the LSB. The only difference is that we will target this template so it only asks for information regarding the regulatory standards (and the supporting indicators of good practice) that we consider merit investigation. We may also supplement the indicators of good practice for each regulatory standard with additional, relevant, questions.
25. An example of this might be a regulator that does not supervise entities that provide services directly to the public may not be asked to provide detailed information on its performance on supervisory activities. Conversely if we discover significant third party concerns about the transparency of a regulator's enforcement processes we may request that the regulator focuses on that area in its assessment of their performance. Broadly we would expect each regulator to receive a slimmer self-assessment template than previously and the submissions from regulators to the LSB to be commensurately slimmer.
26. While the self-assessment will be targeted to areas where we do not feel standards are being satisfactorily met, the LSB will reserve the right to ask questions in other areas that may not easily be addressed by the standards and the supporting indicators. These might be around the quality of governance, decision making and independence, for example.
27. The benefit of such an approach is that we will be able to focus on areas of highest risk and where concerns have been highlighted (whether through our review of the data request, analysis of the questionnaire returns or based on previous regulatory standards assessments). This will hopefully lead to a lower burden for the regulators. This is especially likely to be the case for the smallest regulators and / or those regulating areas of lowest risk.
28. The limitations of such an approach is that we may not assess all areas of the regulatory standards to the same level of detail and so there is a risk that areas may be missed that actually merit further investigation. We also will not be able to easily compare progress since the first exercise or easily assess regulator performance against their peers. Some regulators have voiced disquiet about whether it is necessary to make changes at this point. They wish to have their achievements assessed in full against all of the regulatory standards (and supporting indicators). They see the process as a three to four year cycle with a full assessment at either end. They also worry that by only focusing on areas where there may be issues, the opportunity to highlight best practice is missed.
29. It may also be the case that the self-assessment template for the largest regulators is actually similar in size to the original full self-assessment template.
30. On balance we consider that delivering a more proportionate assessment is an objective that is achievable without undue risk. But it does involve accepting a level of risk. However, by its nature a self-assessment gives those completing it

freedom to choose what is included and what is not. Therefore, even with a full assessment there remains the risk that issues that the LSB considers should be covered be omitted. Although we have no evidence that regulators have made deliberate omissions to avoid scrutiny. By targeting a self-assessment with areas that need to be covered our expectations will be clear and regulators should be able to complete their forms simply and effectively. In doing so it must be made clear to the regulators and the wider market that in the areas where we are not seeking additional information this is because we are content with the regulators performance in those areas.

## Feedback from regulators

31. The LSB executive has discussed our initial ideas with all of the regulators. We have also raised the possibility of formally seeking views on regulators' performance from some of the representative bodies. Two regulators felt we should not introduce the changes until the next iteration of the regulatory standards assessment, although they did not necessarily oppose the basis of the proposals. They just felt it was appropriate to complete, what they saw as a, four year process. All the regulators made a number of useful observations for consideration.
32. Regulators want to ensure that the data request is not too onerous and that the data requested aligns with the data they already collect. We accept it will be difficult to please all regulators as each will collect slightly different data and have different service standards. In our meetings we made it clear that regulators will be free to provide a nil return and or provide relevant data even if it is not quite the exact data being requested. We also propose to work with the regulators when designing the data request so it takes into account their views and, where possible, reflects the data they collect.
33. Some regulators expressed concern about the quality of information we would gather from the questionnaire. We recognise the risk of getting information from those with agendas and 'axes to grind.' We will also ask a specific question on satisfaction of the outcome. However, it is worth noting that the questionnaire simply formalises what we already do and if anything it should enable us to get a more balanced picture of performance. This is because currently a lot of the intelligence we log and use to inform our assessment is skewed to those with a particular grievance about a regulator.
34. We also consider that by asking informed third parties clear questions on performance we are more likely to get a balanced view. For example, recently we have received specific feedback from the Law Society on the performance of the SRA. This, while obviously from the Law Society's own perspective, did recognise positive work by the SRA and was fairly even handed in its criticisms of the SRA's performance.
35. In our discussion we were clear with the regulators that we would not view criticism from an individual market player as gospel. It is simply part of the intelligence we would use to assist us when deciding what to target in the self-assessment.
36. In relation to the targeted self-assessment, regulators were concerned about whether we would still include the "comply or explain" approach to the external,



third party review of the completed self-assessment that we requested from them in the 2012 and 2014 exercises (not to be confused with the proposed third party questionnaire). Some were also concerned about whether we would still expect them to score themselves for each regulatory standard if they would not be giving a full self-assessment (the scale for scoring the assessments is shown in annex A).

37. There are valid arguments about either retaining or removing both requirements. The regulators feel that in order to score themselves in each regulatory standard, they will need to assess themselves across the whole standard not simply the aspects we have asked them to focus on in the targeted self-assessment template. It was suggested by one regulator that this would mean that there would be no reduction in burden for the exercise if we retained the requirement to score themselves across the regulatory standard. Another regulator took the view that if we do not ask about a specific regulatory standard or indicator(s) of good practice within a standard, it would become impossible for them to give themselves an overall score for that standard. By not requesting self-assessment on certain standards or indicators, we would have to be clear that we are satisfied with the regulator's performance in those areas, to allow them to assign a meaningful, overall score for a particular standard.
38. We accept that, by targeting the self-assessment, we are saying that we are satisfied that no additional information on the regulators' performance needs to be provided in other areas. We think it is reasonable to make this clear to regulators and the market. While we understand the logic of the regulators' argument, it is disappointing that some at least see the activity as a means of satisfying the LSB, rather than an activity that they should be undertaking in any event to satisfy their own governance responsibilities. We would be interested in the Board's view.
39. The argument for removing the "comply or explain" approach to the external, third party review of the completed self-assessment is not as strong. It seems predicated on a view that the third party review of the completed self-assessment is attesting to the regulatory standards of the regulator and the score the regulator has awarded itself. In fact, the reviewer is attesting that the procedures followed by the regulator were appropriate and provided a reasonable basis for the regulator to make the judgements they reach in the self-assessment. We welcome the Board's views on this specific issue.

## Alternatives

40. In terms of decisions about the regulatory standards work programme, the Board discussed a number of alternative approaches to self-assessment at its October 2013 meeting (a table of options produced for that meeting is reproduced at Annex B). The Board concluded that the most effective approach would be to conduct a partial assessment in 2014/15, together with a number of thematic reviews. As a result, regulators would be required to complete a full assessment in 2015/16 to provide us with a more robust assessment of their overall progress. Both the LSB and the regulators believe that this approach was correct, with regulators now prepared, indeed some enthusiastic to demonstrate the progress that they have made since their last full self-assessment in 2012.

To complement the full 2015/16 exercise, the LSB will continue to carry out thematic reviews in 2015/16, as set out in our business plan.

41. If the Board does not consider the two stage approach appropriate, we consider that the next best option would be to ask regulators to complete a full self-assessment based on the existing standards (although with indicators updated to reflect best regulatory practice).

## Conclusion

42. Overall, we recommend using a two stage process for the self-assessment. We consider that it is likely to deliver a more risk based and proportionate assessment process. It is likely to be more productive use of LSB staff time. However, it is not without its own risks which are detailed in this paper.
43. An alternative approach is to revert to a full self-assessment approach. This would have the benefit of being familiar to the regulators. However, it will require them to assess all areas of performance rather than those areas that we consider need coverage.
44. Either way, an important factor that must be considered is that the LSB needs to retain the ability to compare year on year progress, be that through quantitative or qualitative analysis. We would welcome Board views on our recommendation. If the Board does consider the two stage approach appropriate we would like its views on the retention of our current “comply and explain” approach to independent scrutiny and whether to retain the scoring approach.

## Next steps

45. If the Board agrees with our recommendation we expect to follow the indicative timeline set out below:

| Date                  | Action                                                                                              |
|-----------------------|-----------------------------------------------------------------------------------------------------|
| January to March 2015 | LSB and regulators agree data request content. Questionnaire designed.                              |
| April to June 2015    | Data request sent to regulators and questionnaire sent to informed users and made available online. |
| June to July 2015     | Targeted self-assessments agreed and sent to regulators.                                            |
| December 2015         | Regulators submitted completed self-assessments to LSB                                              |
| March 2016            | LSB produces and publishes a report on the performance of the regulators.                           |

46. The allocated Board members will be consulted on the content of the data request and the design of the questionnaire.

## Annex A: the regulatory standards

The self-assessment is currently on the following scale:

- Good- all indicators embedded appropriately in the organisation and inform day to day working practices
- Satisfactory – significant progress is being made to embed indicators and use them in day to day working practices
- Undertaking improvement and work is well underway– indicators have been introduced but are not yet embedded appropriately in the organisation and do not yet inform day to day working practices
- Needs improvement and work has started recently

Alternatively, the AR/LA has the option to state: recognise this needs to be done but work has not yet started

|                                                                                                                                                                                                                                                                                                                                                                                                  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Outcomes focused regulation</b>                                                                                                                                                                                                                                                                                                                                                               |
| To what extent does the AR/LA have regulatory arrangements based on the outcomes that consumers need?                                                                                                                                                                                                                                                                                            |
| <b><i>Factors that indicate that the AR/LA is towards top of the scale:</i></b>                                                                                                                                                                                                                                                                                                                  |
| <ul style="list-style-type: none"> <li>• Regulatory arrangements deliver the outcomes that consumers need; there is clear evidence and analysis to justify any detailed rules; those regulated understand and accept approach to regulation;</li> </ul>                                                                                                                                          |
| <ul style="list-style-type: none"> <li>• All members of staff and Board understand the organisation’s approach to focusing regulation on the consumer and public interest;</li> </ul>                                                                                                                                                                                                            |
| <ul style="list-style-type: none"> <li>• 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; evidence about whether outcomes are being achieved; consumers have confidence in regulation. Regularly reviews and updates its regulatory arrangements based on that evidence.</li> </ul>    |
| <ul style="list-style-type: none"> <li>• 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.</li> </ul>                                                                                                                                     |
| <ul style="list-style-type: none"> <li>• 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.</li> </ul>                                                                                                                                                  |
| <b><i>Factors that indicate that the AR/LA is towards bottom of the scale:</i></b>                                                                                                                                                                                                                                                                                                               |
| <ul style="list-style-type: none"> <li>• Predominately rule based regulation; high levels of prescription with no clear evidence base;</li> </ul>                                                                                                                                                                                                                                                |
| <ul style="list-style-type: none"> <li>• Some resistance to moving to consumer-based outcomes by Board and/or those regulated;</li> </ul>                                                                                                                                                                                                                                                        |
| <ul style="list-style-type: none"> <li>• Little or no up to date evidence about consumers; decisions often based on lawyers’ needs/views.</li> </ul>                                                                                                                                                                                                                                             |
| <b>Risk assessment</b>                                                                                                                                                                                                                                                                                                                                                                           |
| To what extent does the AR/LA have a formal risk assessment processes at key stages of its regulatory decision making processes?                                                                                                                                                                                                                                                                 |
| <b><i>Factors that indicate that the AR/LA is towards top of the scale:</i></b>                                                                                                                                                                                                                                                                                                                  |
| <ul style="list-style-type: none"> <li>• 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. Risk analysis focuses predominantly on consumer detriment, including those in vulnerable circumstances. Evidence that approach to risk works in practice;</li> </ul> |

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| <ul style="list-style-type: none"> <li>• Approach to evidence gathering for risk assessment enables the identification of future trends as well as current issues;</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <ul style="list-style-type: none"> <li>• Evidenced based assessment of risk informs all regulatory processes</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <p><b><i>Factors that indicate that the AR/LA is towards bottom of the scale:</i></b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <ul style="list-style-type: none"> <li>• Some understanding of the main areas of risk but little evidence on which to base its approach;</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <ul style="list-style-type: none"> <li>• Relatively static approach, often or predominantly retrospective;</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <ul style="list-style-type: none"> <li>• No clear link between view of risk and other activities.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <p><b>Supervision</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <p>To what extent does the AR/LA have supervisory processes that are consistent with the principles of better regulation?</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p><b><i>Factors that indicate that the AR/LA is towards top of the scale:</i></b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <ul style="list-style-type: none"> <li>• Supervisory activity: <ul style="list-style-type: none"> <li>○ is underpinned by an evidence-based understanding of different market segments and providers that the AR/LA regulates;</li> <li>○ is determined by reference to identified risks;</li> <li>○ is informed by all relevant data available to the regulator including data from the legal ombudsman, other regulators and other relevant sources;</li> <li>○ facilitates innovation, change and commercial freedom; and</li> <li>○ is adequately resourced (including the use of fit for purpose technology) to provide good quality, consistent decisions without backlogs.</li> </ul> </li> </ul> |
| <ul style="list-style-type: none"> <li>• Regulators consider cost, operational impact and alternatives before seeking additional information from authorised persons.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <ul style="list-style-type: none"> <li>• Clear and structured feedback loops between supervisory activity, risk assessment, staff learning and best practice;</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p><b><i>Factors that indicate that the AR/LA is towards bottom of the scale:</i></b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <ul style="list-style-type: none"> <li>• Supervisory activity is predominately reactive;</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <ul style="list-style-type: none"> <li>• Little co-ordination of experience and best practice development;</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <ul style="list-style-type: none"> <li>• Few incentives to improve effectiveness or value for money.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

## Enforcement

To what extent does the AR/LA have enforcement processes that are consistent with the principles of better regulation?

### *Factors that indicate that the AR/LA is towards top of the scale:*

- Published policies and guidelines are written in plain language that enables others to understand the criteria for deciding to take action; appeal processes follow best practice;
- 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; enforcement powers provide appropriate incentives for compliance; enforcement penalties punish as well as deter; regular senior management and Board monitoring of effectiveness and value for money of enforcement activity feeds back to improved processes and reduced costs;
- Decisions to take (and not to take) enforcement action are evidence based and use reliable sources.

### *Factors that indicate that the AR/LA is towards bottom of the scale:*

- Little or no evidence of structured approach to enforcement activity. Lack of appropriate levels of expertise amongst staff;
- Narrow range of enforcement powers; powers tend to be inflexible;
- Appeal processes that are time consuming and expensive with little control over costs.

## Capacity and capability

To what extent does the AR/LA have the necessary Board and staff capacity and capability to deliver the regulatory objectives?

### *Factors that indicate that the AR/LA is towards top of the scale:*

- Clear and consistent leadership at Board and senior management level that ensures that the whole organisation has strong consumer engagement and consumer focus. Consumers are confident that regulation is independent;
- Appropriate levels of budget and staffing linked to the nature of the market(s), entities and individuals regulated; 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. Organisation's structure enables effective decision making by appropriate delegation of powers to staff;
- Evidence-based understanding of the market(s) it regulates and the commercial realities of operating in it. 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.
- 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.
- Regulators have service standards for dealing with consumers and those they regulate. They publish up-to-date performance figures against those standards. These standards and performance figures are easily accessible.

### *Factors that indicate that the AR/LA is towards bottom of the scale:*

- Consumer interest not yet embedded at all levels across Board or staff, or in regulatory arrangements;
- Budget/staffing levels/structure that inhibit regulatory capacity; Board members heavily involved in many aspects of day to day work; little focus on LSA requirements;
- Little management information about those regulated; little or no analysis or understanding of the market(s) they operate in.

## Annex B: Options for regulatory assessments (from October 2013 LSB Board meeting)

| <i>Name</i>                                      | <i>Explanation</i>                                                                                                                                                                                 | <i>Pros</i>                                                                                                                                                                                                                                                                       | <i>Cons</i>                                                                                                                                                                                                                                                                                                                                                                             | <i>Implications</i>                                                                                                                                                                                                                                                   |
|--------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Full self-assessment</b>                      | This would involve carrying out the same (or a very similar) self assessment template to the 2012/13 one.                                                                                          | <ul style="list-style-type: none"> <li>Regulators are familiar with the template.</li> <li>The 2012/13 was relatively effective</li> <li>Repetition will not be as resource intensive as other options.</li> <li>Will be able to more clearly track improvements.</li> </ul>      | <ul style="list-style-type: none"> <li>Self-assessment remains an exercise in disclosure by the regulators and so may not catch all issues that the LSB should be aware.</li> <li>Not in line with the statement in our business plan (not targeted, risk based or reflective of the existing action plans)</li> <li>Will take considerable resource for LSB and regulators.</li> </ul> | <ul style="list-style-type: none"> <li>Regulators will be familiar with the template.</li> <li>Some action plans still have milestones planned for 2014/15 and beyond.</li> <li>Not in line with business plan statement</li> <li>More resource intensive.</li> </ul> |
| <b>Partial self-assessment / progress report</b> | 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"> <li>Should be simpler for the regulators to complete.</li> <li>Will provide closure of the last exercise.</li> <li>Will not be resource intensive for the LSB or regulators.</li> <li>Will meet our statement in the Business plan.</li> </ul> | <ul style="list-style-type: none"> <li>Will not provide much information to assess where the regulators are.</li> <li>May not compel the regulators to continue their improvement plans.</li> <li>May be seen by others as letting the regulators “off the hook”</li> </ul>                                                                                                             | <ul style="list-style-type: none"> <li>Less resource intensive</li> <li>In line with business plan statement</li> <li>Potentially limited in effectiveness.</li> </ul>                                                                                                |



| <b>Name</b>                                                                                           | <b>Explanation</b>                                                                                                                                                                                                                                                                                                                              | <b>Pros</b>                                                                                                                                                                                                                                                                                                           | <b>Cons</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <b>Implications</b>                                                                                                                                                                 |
|-------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Inspection based assessment against the regulatory standards</b>                                   | This is akin to the FRC's approach to the accountancy regulators 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"> <li>• Will get first hand evidence of regulatory standards</li> <li>• Will reduce the risk of issues not being disclosed to the LSB.</li> <li>• Will improve the LSB's understanding of the front line regulators.</li> </ul>                                                      | <ul style="list-style-type: none"> <li>• Risk of Hawthorne effect – i.e. behaviour changes under observation.</li> <li>• Resource intensive for both LSB and regulators</li> <li>• Risk of being shown a selected picture.</li> <li>• Not in line with business plan (unless targeted at risks)</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                      | <ul style="list-style-type: none"> <li>• Resource intensive</li> <li>• Not in line with business plan statement</li> <li>• Likely to be effective.</li> </ul>                       |
| <b>Data driven assessment of performance against regulatory standards (with third party feedback)</b> | This is akin to the PSA (CHRE) approach to the healthcare profession regulators 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"> <li>• Will provide the LSB with detailed figures on the regulators.</li> <li>• Will provide the LSB with a more formal method of collecting information on regulator performance.</li> <li>• Reduces the ability for regulators to be subjective and / or omit details.</li> </ul> | <ul style="list-style-type: none"> <li>• Will be resource intensive for the regulators and the LSB (PSA has 6 FTE on its assessment).</li> <li>• Not in line with the business plan statement.</li> <li>• 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.</li> <li>• 3<sup>rd</sup> party feedback may lead individuals to believe that the LSB can act in their cases (the PSA can require cases be reconsidered).</li> <li>• Difficult to pick data variables for all of the regulatory standards – e.g. how do you measure OFR?</li> </ul> | <ul style="list-style-type: none"> <li>• Resource intensive</li> <li>• Not in line with the business plan statement</li> <li>• Regulators likely to be unable to comply.</li> </ul> |

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

| <i>Name</i>                                                | <i>Explanation</i>                                                                                                                                                                                                                                        | <i>Pros</i>                                                                                                                                                                                                                                                                                              | <i>Cons</i>                                                                                                                                                                                                                                        | <i>Implications</i>                                                                                                                                                                                                                                                                         |
|------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Thematic review (regulator and / or issue specific)</b> | 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"> <li>• In line with the business plan statement.</li> <li>• Allows LSB to focus resource on areas of greatest need / priority.</li> <li>• Reduces burden on regulators and issues not deemed a priority.</li> <li>• In line with regulators compliance code</li> </ul> | <ul style="list-style-type: none"> <li>• May miss the “unknowns”</li> <li>• Not as comprehensive as other issues.</li> <li>• Need to ensure have a method to prioritise.</li> <li>• May be seen as letting the regulators off the hook.</li> </ul> | <ul style="list-style-type: none"> <li>• In line with business statement.</li> <li>• Resource intensity can be better controlled.</li> <li>• Will need to develop a framework to prioritise areas for thematic review.</li> <li>• Risk of missing unknowns needs to be mitigated</li> </ul> |