

To:	Legal Services Board	
Date of Meeting:	10 October 2012	Item: Paper (12) 70

Title:	Report on regulatory standards self-assessments	
Workstream(s):	Developing regulatory standards	
Author / Introduced by:	Fran Gillon, Director of Regulatory Practice fran.gillon@legalservicesboard.org.uk / 020 7271 0087 James Meyrick, Regulatory Project Manager james.meyrick@legalservicesboard.org.uk / 020 7271 0083 Nicholas Baré, Regulatory Associate nicholas.bare@legalservicesboard.org.uk / 020 7271 0089	
Status:	Protect	

Summary:
<p>This paper gives a general update on the regulatory effectiveness project, covers a detailed report on the assessment of all the regulators, bar the SRA and BSB, and sets out some initial proposals for immediate action on handling, development of the work in 2013 and how it may develop thereafter.</p>
Recommendations:
<p>The Board is invited to:</p> <ol style="list-style-type: none"> (1) comment on the content of the report; (2) delegate its final sign-off and arrangements for its publication to the Chairman and Chief Executive Officer; and (3) comment on the proposed next steps.

Risks and mitigations	
Financial:	None
Legal:	There is some risk that we will be challenged on the content of each regulator's report. To reduce this risk we will give regulators the opportunity to make factual corrections before publication.
Reputational:	This is a high profile area, which is one of three LSB business priorities. Improving regulators' performance is an essential part of making the legal services market(s) work well for consumers. Publication of this report is likely to attract press interest. For this reason, the absence of the SRA and BSB reports is likely to be noted. We will develop an appropriate approach to communications to minimise risks.
Resource:	The project plan has identified the necessary resources to carry out this work to date.

Consultation	Yes	No	Who / why?
Board Members:	✓		Bill Moyes and Steve Green were consulted on the content of the individual regulator reports.
Consumer Panel:		✓	N/A
Others:	None		
Freedom of Information Act 2000 (Fol)			
Para ref	Fol exemption and summary		Expires
Annex A	Exemption FoIA s22		On publication

LEGAL SERVICES BOARD

To:	Legal Services Board		
Date of Meeting:	10 October 2012	Item:	Paper (12) 70

Summary of progress of the regulatory standards project and considerations of limitations and next steps

1. This paper sets out:
 - a brief summary of the current position of the regulatory standards project;
 - the conclusions we have reached on each of the five regulators,
 - an update on progress on the SRA and BSB;
 - some discussion on the next steps for the work.

More broadly, It also sets out some of the benefits and limitations of the review.

2. It covers the latest draft of our full analysis of the regulatory standards assessment, which includes the review of the self-assessments received to date, detail on the expected regulatory standards, the process we have followed and some consideration of the general themes that have emerged from the regulatory standards self-assessment.

Background

3. We have defined four essential constituent parts of regulation:
 - an outcomes-focused code or handbook
 - a risk identification framework
 - proportionate supervision targeted at risk
 - an appropriate approach to compliance and enforcement.
4. Underpinning these is the need to ensure that the better regulation principles are embedded across the existing approved regulators and licensing authorities and that they have the capability and capacity to deliver consumer-focused regulation. New approved regulators and licensing authorities (or existing ones wanting to expand or change their regulation) must also be able to demonstrate that their proposed approach meets the required standards.
5. During 2012, we asked the approved regulators to assess their progress towards embedding the four constituents of legal services regulation, and to assess their own overall capacity and capability. Five of the approved regulators have now provided us with their self-assessments, together with their action plans for development.

6. These regulators are:

- The Association of Law Costs Draftsmen (trading as the Association of Costs Lawyers – ACL) which has delegated its regulatory responsibilities to the Costs Lawyer Standards Board (CLSB)
- The Chartered Institute of Legal Executives (CILEX) which has delegated its regulatory responsibilities to ILEX Professional Standards (IPS)
- The Chartered Institute of Patent Attorneys and the Institute of Trade Mark Attorneys who have delegated their regulatory responsibilities to the Intellectual Property Regulation Board (IPReg)
- The Council for Licensed Conveyancers (CLC)
- The Master of the Faculties (the Faculty Office).

Report findings

7. **Annex A** contains the findings from Part One of LSB's first ever performance review of the approved regulators. We completed this assessment to assure ourselves that the approved regulators and licensing authorities are acting in ways that are compatible with the statutory requirements and that they are not allowing, or risking, unacceptable consumer detriment in the markets they regulate and to identify any areas for improved performance. To do so, we assessed them against the four constituent parts of regulation and also assessed them for the capacity and capability of their staff and Boards to deliver the required standards.
8. The report does not cover the accountancy approved regulators or the BSB or the SRA.
9. The quality of the regulatory standards self-assessments was variable. The CLC, in particular, was able to produce a high quality response by demonstrating its ability to be self-reflective and open with the LSB. IPReg's submission also was of a higher quality than other regulators of a similar scale. It is noteworthy that these two regulators sought external review for their self-assessments and we consider that their self-assessments have benefited from these independent reviews.
10. For those that did not seek external review, not only was the quality of their assessments poorer, but the lack of external challenge limited our ability to place reliance on assertions made, which often had no supporting evidence
11. Generic areas of concern arising from our analysis of the self-assessments were:
 - a lack of understanding of the needs of the consumers who use the legal services provided by those they regulate
 - a lack of consumer engagement
 - a failure to use the common framework that has been developed by Oxera as the basis for understanding the markets they regulate
 - some problems regarding the provision of sufficient data to regulators from the Legal Ombudsman. (LeO have recently raised equal and

opposite concerns with us and we are considering what scope the LSB may have to seek to facilitate better data exchange more generally);

- general information sharing issues between regulators.

12. However, it is important to bear in mind the context of the legal regulators that are covered by this first report. Many of them are relatively new, many of them regulate firms with sophisticated consumers and many of the authorised persons they regulate are also regulated by other approved regulators or they operate in entities regulated by other approved regulators. Nevertheless, whilst our judgements must be proportionate, the approved regulators are responsible for delivering all the requirements in the Act and we do expect them to regulate in accordance with the regulatory objectives and to have regard to the requirements of better regulation.

13. The LSB does consider that most regulators have made significant progress in putting together ambitious work plans to collect and utilise more information about those they regulate. However, substantial work is still required.

Summary of assessments

Intellectual Property Regulation Board (IPReg)

- The submission displayed a level of realism and self-reflection.
- As the regulator was only given its delegated powers at the start of 2010, IPReg has had considerable work to do to deliver the regulation required by the standards.
- The regulatory arrangements in place allow commercial flexibility to achieve stipulated outcomes.
- The regulator's enforcement process has had limited use so it is difficult to make an assessment on this aspect.
- It has a number of appropriate and necessary activities planned to help it understand those it regulates and to build an appropriate risk assessment and supervision model. It also has plans to undertake research into consumers who use intellectual property services.
- The actions are strongly linked to their licensing authority application and the LSB is confident that IPReg is on course to deliver on these actions.

ILEX Professional Standards (IPS)

- A significant proportion of those regulated by IPS are employed in SRA-regulated entities; therefore risk assessment and supervision has historically been left to the SRA.
- Its enforcement section was stronger than most. For instance, it conducts surveys of consumers that complain about CILEX Fellows and has feedback arrangements that it can demonstrate have led to process improvements.
- However, the regulator showed little understanding of consumers' needs and / or the risks faced by consumers. It has planned significant work on risk to fill gaps on supervision, improve its understanding of consumer needs and to gather greater information on the services provided by CILEX Fellows.

- IPS's action plan does not go beyond February 2013 and the LSB is particularly concerned that, given its ambitions to increase the scope of its regulation, its action plan is extremely limited both in content and timescale;
- IPS did not seek independent scrutiny. This was because they are undergoing a development phase and many of its proposals will be subject to consultation. The LSB were minded to accept this. However we did note that consultation will not cover all aspects of the self-assessment.

Costs Lawyer Standards Board (CLSB)

- The CLSB was given its delegated powers at the end of October 2011. It inherited very little information about those it regulates and about the consumers who use services provided by costs lawyers.
- It has quickly built an organisation with clear procedures and appropriate governance arrangements.
- The regulator did not provide evidence for a number of aspects of its assessment and did not provide a clear picture on supervision and risk identification.
- The regulator's enforcement processes have not yet been tested and so it is difficult to make an assessment on this aspect.
- Its action plan did not include significant activities related to the lifting of the Act's transitional provisions. The lifting of these will impact its ability to regulate costs lawyers in the manner it currently does.
- Its action plan did not include milestones that go beyond April 2013.

Council for Licensed Conveyancers (CLC)

- The CLC provided the most complete and realistic self-assessment. It also provided a detailed and extensive action plan that stretches into 2016.
- The regulator provided convincing detail on how it risk assesses each regulated entity and how it inspected nearly a third of its entities during 2011.
- On enforcement, it appears that the CLC has an appropriate range of sanctions and the requisite skills to carry-out effective enforcement activity.
- The CLC has told us that there have been difficulties with its Management Information System (MIS) and in response the regulator has revised details in its self-assessment.
- The LSB expects the CLC to develop a coherent plan, in a specified timescale to address the identified IT shortcomings.
- The regulator also provided very little information on consumer engagement activities or actions taken to understand the needs of consumers who use the services provided by CLC regulated entities.

The Faculty Office

- The Faculty Office only provided its existing rules and a practising certificate application form as evidence to support its self-assessment.
- The regulator does not have any integral risk management tools. It knows little about the consumers who use notarial services and does not believe it would be proportionate to carry-out any research about them.

- The Faculty Office has taken steps to introduce new regulatory requirements for those that pose higher regulatory risks.
- The regulator did not provide an action plan besides acknowledging that in line with better regulation principles it will keep all matters under review.

Table of regulator assessments

	Area	Their assessment	LSB assessment	
CLSB	Outcomes focused regulation	Undertaking improvement and work is well underway	Needs improvement and work has recently started	
	Risk	Undertaking improvement and work is well underway	Needs improvement and work has recently started	
	Supervision	Undertaking improvement and work is well underway	Recognise this needs to be done but work has not yet started	
	Enforcement	Undertaking improvement and work is well underway	Undertaking improvement and work is well underway	
	Capacity and capability	Undertaking improvement and work is well underway	Needs improvement and work has recently started	
IPS¹	Outcomes focused regulation	Individual	Satisfactory	Undertaking improvement and work is well underway
		Entity	Needs improvement and work has started recently	
	Risk	Individual	Satisfactory	Needs improvement and work has recently started
		Entity	Needs improvement and work has started recently	
	Sup.	Individual	Satisfactory	Needs improvement and work has recently started
		Entity	Needs improvement and work has started recently	
	Enf.	Individual	Good	Good
		Entity	Needs improvement and work has started recently	
	Capacity and capability	Individual	Good	Undertaking improvement and work is well underway
		Entity	Needs improvement and work has started recently	
	IPReg	Outcomes focused regulation	Satisfactory	Undertaking improvement and work is well underway
		Risk	Needs improvement and work has started recently	Needs improvement and work has recently started
Supervision		Undertaking improvement and work is well underway	Recognise this needs to be done but work has not yet started	
Enforcement		Needs improvement and work has started recently	Needs improvement and work has recently started	
Capacity and capability		Satisfactory	Undertaking improvement and work is well underway	
CLC	Outcomes focused regulation	Undertaking improvement and work is well underway	Undertaking improvement and work is well underway	
	Risk	Needs improvement and work has started recently	Needs improvement and work has recently started	
	Supervision	Undertaking improvement and work is well underway	Undertaking improvement and work is well underway	
	Enforcement	Undertaking improvement and work is well underway	Undertaking improvement and work is well underway	
	Capacity and capability	Undertaking improvement and work is well underway	Undertaking improvement and work is well underway	
Faculty Office	Outcomes focused regulation	Satisfactory	Recognise this needs to be done but work has not yet started	
	Risk	Satisfactory	Recognise this needs to be done but work has not yet started	

¹ IPS split their self-assessment into two; individuals and entities. The LSB reviewed and commented on both but our assessment is focused towards the regulation of individuals.

	Supervision	Satisfactory	Recognise this needs to be done but work has not yet started
	Enforcement	Good	Recognise this needs to be done but work has not yet started
	Capacity and capability	Satisfactory	Recognise this needs to be done but work has not yet started

Limitations of the self-assessment process

14. The findings of this project are necessarily limited by a number of factors. The main limitation is that the LSB's conclusions are based on a review of a self-assessment completed by the approved regulator in question, and sometimes without any external validation. Therefore, we are only able to review what they were willing to share with the LSB. To combat this limitation, we compiled a database of information relevant to each regulatory standard for each regulator. Over 100 items have been logged in this database and it proved a useful way to challenge some of the assertions that the approved regulators made.
15. A further limitation is the lack of supporting evidence provided by the regulators themselves. If we do not see any source material then we can either disregard assertions in the self-assessments or accept them with caveats. The process of requiring regulators to submit draft self-assessment and the LSB challenging them on these drafts resulted in regulators providing greater evidence with their final submissions. Yet a number of regulators still did not provide a great deal of evidence. We were more willing to accept assertions from those that submitted their self-assessment to external review. The reason from this lack of evidence may be that they have yet to formalise much of their activity and so do not have information in a format that they are able to provide to LSB.
16. It is also important to stress that the process does not provide a *comprehensive* overview of all aspects of performance. What has been undertaken so far is a qualitative assessment of regulatory strategy and its implementation. We should not assert that it offers, for example, an overview of all regulatory processes and a quantitative assessment of performance on routine work via KPIs. We can consider such a development in future iterations – although one might expect that, as outcome focussed regulation rolls forward, that the nature of such routine work might well change considerably.

The BSB and SRA

17. The BSB wrote to the LSB informing us that it would not be able to comply with the original timetable and proposed an alternative, which we accepted. We have received a draft self-assessment from the BSB which lacked an action plan and we have now received a subsequent completed section for the regulatory standard of supervision. Both documents showed a level of realism and represented a fair assessment. We have made clear to the BSB that its final submission (expected in early 2013) must take into account its significant ambitions, for example its potential licensing authority application, allowing barristers to conduct litigation, allowing greater direct access and

developing entity regulation. Its action plan must be consistent with the changes it needs to make to fulfil these ambitions.

18. Because of the many organisational pressures the SRA was under during spring 2012, the LSB agreed to an extension for the final deadline. We received the regulator's final version on 24 September. The LSB will provide a full assessment to the board at a forthcoming meeting.

Next steps

19. More detailed next steps for this work will form part of the 2013/14 business plan, but broadly we propose the following next steps.

Immediate

20. We propose to provide a copy of our analysis to the relevant Chairman and Chief Executive and meet them to discuss the report. Regulators will have the opportunity at this point to suggest any factual corrections; we will consider any suggestions. However, we will only amend our conclusions and analyses if they are based on incorrect or incomplete information. The Chairman and CEO have their annual meetings with these bodies fixed in the second half of October and November to provide a vehicle for those discussions.
21. We have considered whether, in the course of those meetings, we should formally challenge the Regulators to update their action plans in the light of our assessment. On balance, we have concluded that this is not the right approach: we would rather that they focussed on implementing what is already planned than get into potentially acrimonious debate about the validity of what we have concluded. However, the extent to which they show themselves receptive to feedback will be one key issue in judgements about competence going forward and will therefore be an important factor in determining the tone of the LSB's communications on the issue in the medium-term. For that reason, we have not yet drafted a Chairman's foreword to the summary report, so that we can reflect on how the bilateral meetings go.
22. The Chief Executive's speech at the Westminster Policy Forum on 18 October provides one way of starting to signal the importance which the Board wants to give to maintaining performance improvement as a key focus in the next Business Plan. A draft will be circulated separately.
23. We will also adopt the same process for the BSB and SRA self-assessments. However, given the timelag in handling the applications from those bodies, we would plan to publish the assessment paper at Annex A as a standalone document at the end of November, once the first round of bilateral discussions have concluded.

Short-term (2012/13)

24. We will expect our conclusions to influence regulators' plans and activities for the future. For those seeking extended rights or regulatory changes we will

make it clear that they will analyse those applications in the light of our regulatory standards analysis.

25. We have identified a number of generic competence issues across all regulators, for instance consumer engagement, information sharing and market segmentation. We expect the regulators to take action to develop these competency issues, working together if appropriate.

Medium-term (2013/14)

26. We will be monitoring the regulators' adherence to their action plans closely and, as the Board agreed in its strategic session, will, where appropriate, will take action for failure to keep to them without good reason. Progress on implementing the plans will be a key factor in making decisions on rule changes and designation applications.
27. Those regulators seeking changes to their regulatory arrangements and / or extension of their scope of regulation will be expected to demonstrate significant progress embedding the regulatory standards into their day-to-day operations.

Longer-term (2014/15 and beyond)

28. Decisions on the longer-term resourcing and prioritization of this work will depend crucially on progress in the course of 2013. Our aim will be for the Board to be in a decision to determine the way ahead in Autumn 2013 in the context of the 2014-15 business plan. We may want to conduct a review of the assessment criteria and we may wish to re-conduct an assessment and require the production of action plans. This will be influenced by progress, or lack thereof, identified the year before, and is also dependent on the timescales of each regulator's action plan. We could also consider whether any thematic reviews are necessary. We will evaluate the merits of publishing examples of good and poor practice that are emerging.