

To:	Legal Services Board	
Date of Meeting:	30 January 2013	Item: Paper (13) 03

Title:	Report on SRA regulatory standards self-assessment	
Workstream(s):	Developing regulatory standards	
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Status:	Protect	

Summary:
<p>This paper is a detailed report on the regulatory standards self-assessment submitted to the LSB by the SRA. The annex is our draft first report on the regulatory standards of the SRA and so one of our most important publications in our role as an oversight regulator. It will therefore attract significant comment.</p> <p>The self assessment process so far both with the SRA and with other regulators (specifically BSB, IPReg and CLC) has led to significant changes within those regulators and we anticipate that our previous publication and this publication will help accelerate these positive changes.</p> <p>The SRA's submission was generally balanced and reflective about its performance. The LSB considers that the SRA Board needs to improve how it holds its executive to account for the operational performance of the SRA. At a minimum it needs to develop more intelligent and detailed management information for the Board and a shift in Board focus from policy consideration to a deeper scrutiny of SRA activity and the outcomes it achieves. The submission contained very little information on ABS authorisation which was disappointing considering the extensive comments that have been made over the last 12 months by the LSB and others. Greater work also needs to be done to ensure that the SRA operates in line with its stated strategy, especially in the area of enforcement. The enforcement section of the SRA's self assessment lacked the level of self-reflection found in the other sections and limited information or evidence was provided to support its assertions.</p> <p>For enforcement and overall capacity and capability we consider that the SRA has assessed itself too highly. But our judgement on whether we agree with the SRA's self-assessment on the other aspects of regulation - outcomes focused regulation, risk assessment and supervision - is finely balanced. While it is evident that the SRA has not just started work recently on transforming its approach on these factors it is clear that there is substantial work to do before the SRA can be considered satisfactory on any of them. We therefore welcome a discussion with the Board on this.</p>

The BSB's self assessment is not covered in this paper. We expect to receive its final self-assessment towards the end of February and propose to produce a report on that submission for the April Board meeting.

Recommendations:

The Board is invited to:

- (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

Risks and mitigations

Financial: None

Legal: There is some risk that we will be challenged on the content of the SRA report. To reduce this risk we will give the SRA 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. We will develop an appropriate approach to communications to minimise risks. Additionally the continued absence of the BSB report is likely to be commented on.

Resource: The project plan has identified the necessary resources to carry out this work to date.

Consultation	Yes	No	Who / why?
Board Members:	✓		Steve Green and Bill Moyes were sent an advanced version of the draft publication.
Consumer Panel:		✓	N/A
Others:	None		

Freedom of Information Act 2000 (Fol)

Para ref	Fol exemption and summary	Expires
Paragraphs 10 to 15	Exemption FoIA s21- Information reasonably accessible by other means: Developing Regulatory Standards	
Annex A	Exemption FoIA s21- Information reasonably accessible by other means: Developing Regulatory Standards	

LEGAL SERVICES BOARD

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Report on SRA regulatory standards self-assessment

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

Additionally, the paper also sets out some of the limitations of the review.

Background

2. We have defined four essential constituent parts of regulation:
 - an outcomes-focused code or handbook;
 - a risk identification framework;
 - proportionate supervision targeted at risk; and
 - an appropriate approach to compliance and enforcement.
3. 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.
4. 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.
5. In December 2012 we published a document that covered the regulatory standards self-assessments submitted by the CLC, CLSB, Faculty Office, IPReg and IPS. Our assessments were informed, not simply by views about the assessments themselves, but also by documented intelligence drawn from our interaction with the bodies concerned over an extended period and the commentary of other stakeholders where this can be seen to be more than merely anecdotal. Our findings in that report noted that the quality of the submissions was variable. We observed that those that were of greater quality and more reflective had sought external review.

6. Some generic areas of concern arising from our analysis of those (and the SRA's were) 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. (The Legal Ombudsman has raised equal and opposite concerns with us); and
 - general information sharing issues between regulators.
7. The publication of the report received a small amount of media coverage. We also received correspondence from a number of the regulators covered by the report. Some of this correspondence included some comments on a number of our findings and processes followed but also suggested that they were taking the findings seriously and would be discussing them in board meetings and acting on the findings.

SRA findings

8. **Annex A** contains the full findings from the LSB's review of the SRA's self-assessment. This follows our recently published report on the smaller approved regulators. We propose to publish this document early in February.
9. The SRA submitted its self-assessment on 24 September 2012. The SRA have undertaken a number of activities since the submission of their self-assessment relevant to the regulatory standards. These actions have been noted, where appropriate but our report is based on the detailed information provided in the final self assessment.

10. [REDACTED]

11. [REDACTED]

[REDACTED]

12. [Redacted]

13. [Redacted]

14. [Redacted]

15. [Redacted]

16. Since submission of the self-assessment the SRA has published its three year strategy and has also launched a red tape initiative. This initiative and the steps already taken to reform onerous regulations and processes is the sort of work we would expect from a mature regulator. Although technically outside the scope of this exercise, we have therefore drawn attention to the action now underway.

Summary table of the assessment of different aspects of regulation

[Redacted]

Limitations of the self-assessment process

17. 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 SRA, albeit benefiting from external validation. Therefore, we are only able to review what the SRA was willing to share with the LSB. To combat this limitation, we compiled a database of information relevant to each regulatory standard for each regulator.
18. A further limitation is the lack of supporting evidence provided by the SRA. 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.
19. 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 the SRA's 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

20. 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 two draft self-assessment from the BSB. Both versions 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.

Next steps

Immediate	<ul style="list-style-type: none">• A copy will be provided to the SRA for them to suggest any factual inaccuracies, a specific request for the SRA to ensure that the action plan remains an accurate reflection of their plans will be made.• After this the report will be published. We aim to publish in early to mid February (ideally week commencing 11 February), although this may change to avoid a clash on the LSB's will writing publications.
Short-term (Q4 2012/13)	<ul style="list-style-type: none">• We will expect our conclusions to influence SRA's plans and activities for the future.• 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.

<p>Medium-term (2013/14)</p>	<ul style="list-style-type: none"> • We will be monitoring the SRA's adherence to its action plan closely and will, where appropriate, will take action for failure to keep to it without good reason.
<p>Longer-term (2014/15 and beyond)</p>	<ul style="list-style-type: none"> • Decisions on the longer-term resourcing and prioritisation 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 further action plans. This will be influenced by progress, or lack thereof, identified the year before. • 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.