

<b>To:</b>	Legal Services Board	
<b>Date of Meeting:</b>	30 April 2013	<b>Item:</b> Paper (13) 21

<b>Title:</b>	Report on BSB regulatory standards self-assessment	
<b>Workstream(s):</b>	Developing regulatory standards	
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<b>Status:</b>	Protect	

**Summary:**

Annexed to this paper is a detailed report on the regulatory standards self-assessment submitted to the LSB by the Bar Standards Board (BSB) that contains our draft findings. Given the size and profile of the BSB, this will be an important publication for the LSB as an oversight regulator.

The self-assessment process with the BSB has been protracted, involving two extensions beyond the initial deadline of 31 July 2012. Despite this, we believe that the additional time given to the regulator has allowed it to produce a more thorough and considered submission, based on its recent strategic and operational planning.

The BSB's self-assessment has been produced at a time of change at the BSB. The BSB is preparing to make changes to its handbook, and make applications to regulate entities and litigation as well as to become an ABS licensing authority. It has also recently significantly widened the scope of public access services.

The BSB's submission is characterised by a frankness, which we welcome. The regulator gives itself realistic scores for each section of the self-assessment. It has set itself the ambitious task of improving each aspect of regulation by one assessment level by the end of 2013/14 financial year and of achieving an assessment level of "satisfactory" for all aspects of regulation by the end of its most recent strategic plan (2015/16). Such ambition is welcome and the activities already carried out in the area of appointments of staff, staff training and development and the development of new policy and procedures, such as its recent consultation on supervision, demonstrate that the BSB is serious about these ambitions. However, they are not without significant challenges.

We consider that the BSB has painted an overly optimistic picture about the progress it has made in moving towards outcomes-focused regulation (OFR), especially given previous statements on OFR and its lack of evidence on the risks to the regulatory objectives and on the needs of consumers. For the BSB to move into a functioning outcomes focused regulatory environment, it will need to adhere to its ambitious action plans. The stretching nature of those action plans will be challenging to deliver in the timescales the BSB has set itself.

One major deficiency that the BSB will need to overcome to deliver OFR is its lack of evidence about those who use its regulatory community's services and how that community delivers services to consumers. This evidence must form the basis for an effective risk-based regulatory regime. Supervision is currently more reactive than proactive and enforcement is hampered by the poor performance of the Council of the Inns of Court.

In terms of capacity and capability, the executive considers that the BSB's forward work programme is very challenging and there are real risks about whether it is able to deliver all of the things it proposes in the timescale it has set. The Board will wish to form a view, not least in the light of its recent discussions, about the leadership shown by the BSB's board in tackling all of the regulatory objectives and its understanding of the full potential of OFR: any disconnect between the board and executive may hinder delivery of the overall work programme.

We invite the Board to consider and discuss our findings which are detailed in the attached report.

**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 Chair and Chief Executive

**Risks and mitigations**

**Financial:** None

**Legal:** There is some risk that we will be challenged on the content of the BSB report. To reduce this risk we will give the BSB 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.

**Resource:** The project plan has identified the necessary resources to carry out this work to date. The project now moves to a business as usual phase that will involve monitoring the commitments set-out by the regulators in their respective action plans.

<b>Consultation</b>	<b>Yes</b>	<b>No</b>	<b>Who / why?</b>
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<b>Board Members:</b>	✓	✓	?
<b>Consumer Panel:</b>		✓	N/A
<b>Others:</b>	None		
<b>Freedom of Information Act 2000 (Fol)</b>			
<b>Para ref</b>	<b>Fol exemption and summary</b>		<b>Expires</b>
Para 8 and table	Section 22 - Information intended for future publication		
Annex A	Section 22 - Information intended for future publication		

## LEGAL SERVICES BOARD

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### **Report on BSB 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 BSB;
  - 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. In February 2013 we published our report into the regulatory standard self-assessment submitted by the SRA. The BSB report is our final report of this cycle of work.

## BSB findings

6. **Annex A** contains the full findings from the LSB's review of the BSB's self-assessment. We propose to publish this document during May. The BSB's regulatory standards self-assessment was provided to the LSB on 20 February 2013 and so relates to activity planned or completed at that time.
7. The BSB is responsible for regulating 15,581 practising barristers<sup>1</sup> and a number of registered European lawyers and registered foreign lawyers. Practising barristers are either sole practitioners, employed or self employed, operating from chambers. They specialise in providing advocacy services but also provide immigration services, will writing and probate and the provision of legal advice and opinion.
8. [REDACTED]

## Summary table of the assessment of different aspects of regulation

[REDACTED]

## Limitations of the self-assessment process

9. 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 BSB, albeit benefiting from external validation. Therefore, we are only able to review what the BSB 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.
10. The process is limited if regulators provide limited supporting evidence. The process of requiring the BSB to submit draft self-assessment and the LSB

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<sup>1</sup> The General Council of the Bar of England and Wales (November 2012), Bar Barometer: Trends in the profile of the Bar, <[https://www.barstandardsboard.org.uk/media/1436638/bar\\_barometer\\_nov\\_2012\\_web\\_upload\\_higher\\_res.pdf](https://www.barstandardsboard.org.uk/media/1436638/bar_barometer_nov_2012_web_upload_higher_res.pdf)>

challenging them on these drafts resulted in the BSB providing greater evidence with their final submissions.

11.

12. 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 BSB'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.

### Next steps

13.

Immediate	<p>14. A copy will be provided to the BSB for them to suggest any factual inaccuracies, a specific request for the BSB to ensure that the action plan remains an accurate reflection of their plans will be made.</p> <p>15. After this the report will be published. We aim to publish in early to mid May</p>
Short-term (Q1 2013/14)	<p>16. We will expect our conclusions to influence BSB's plans and activities for the future.</p> <p>17. 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>18. We will be monitoring the BSB'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>19. Decisions on the longer-term resourcing and prioritisation of this work will depend crucially on progress in the course of 2013.</p> <p>20. 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.</p> <p>21. 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.</p> <p>22. We could also consider whether any thematic reviews are necessary.</p> <p>23. We will evaluate the merits of publishing examples of good and poor practice that are emerging.</p>