

To:	Legal Services Board	
Date of Meeting:	30 April 2013	Item: Paper (13) 22

Title:	SRA performance	
Workstream(s):	Developing regulatory standards	
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Status:	Unclassified	

Summary:

At its March meeting, the Board agreed that the SRA's performance on the authorisation of alternative business structures (ABS), recognised bodies and sole practitioners should be a priority area of focus for the LSB and that the Board should receive regular updates. This paper therefore updates the Board on our investigations and the progress that the SRA is making to improve its performance.

Annex A is a diagrammatic representation of the SRA's ABS application process taken from information on its website. We will be checking that our understanding of this is correct when we meet the SRA on 26 April.

Our concerns about the SRA's performance on authorisations fall into three main categories:

- The application process
- Information and transparency
- Board and senior management scrutiny

More detail on each of these is in the body of this paper. The outcome we are seeking to achieve is to resolve each of these issues. While the list is long, its contents are, in reality, just the basic elements of a satisfactory authorisation process that would enable the SRA to monitor its own performance at an appropriately granular level and identify any systemic issues that may call for action.

Our analysis of the April version of the spreadsheet that the SRA uses to monitor ABS "stage 2" applications is that it has made some progress. It has reduced the backlog (the number of open files has fallen from 142 to 103 (including new applications)) and the percentage of open files over six months old has reduced from 36% in January to 25% in April.

However, a backlog remains, it takes on average 7 months to get a licence and 20% of licences took over 9 months for the SRA to authorise them. Continuing our focus

on the SRA's performance on authorisation therefore remains both necessary and proportionate.

Our concern is that, if the SRA does not continue to act decisively to improve its performance significantly on all three issues and to sustain that improvement, there is likely to be an adverse impact on one or more of the regulatory objectives, notably:

Promoting competition in the provision legal services (because authorisation is being delayed across all forms of legal businesses)

Improving access to justice; and

protecting and promoting the interests of consumers (because delaying all forms of new entry means that consumers are denied access to additional services which may be available at lower cost or are easier to access than currently)

On 8 April we wrote to the SRA to ask it to provide additional information with its April response to our formal section 55 requirement for information. The issues we asked the SRA to provide information about were:

- Progress on clearing all the backlogs and whether the target to do so by Easter 2013 was achieved;
- The provision for generation and review of full and regular management information on authorisation, who reviews it in the SRA and how often;
- Current or planned KPIs, their consistency with the LSA's requirements and how performance is made public;
- Current time to process applications;
- Whether the overall processes are consistent with LSA requirements, avoid undue focus on business models, and provide further information for applicants;
- How far changes to processes are underpinned by comprehensive staff guidance/handbooks etc to ensure consistent decision making; and
- Progress on a survey of applicants.

We received a response from the SRA on 17 April, attached at **Annex B**. Although it contains some new management information it does not cover all the above points and almost half of the Board paper with which we have been provided is simply information taken from the SRA website about the application process. We will update the Board on any further progress after the 26 April meeting.

Recommendations:

The Board is invited to:

- (1) note and discuss the issues raised in this paper
- (2) Agree that, depending on our analysis of any further information provided by the SRA and the outcome of the meeting on 26 April we should:
 - a. continue to pursue getting information on all aspects of its authorisation process
 - b. determine whether to present a detailed scope of investigation and any other options for further action to the 23 May meeting

Risks and mitigations

Financial: None

Legal:**Reputational:**

Our strong pursuit of this subject is impacting relationships and co-operation with the SRA – both staff and Board - and may also potentially do so with other regulators. Other stakeholders – government, Law Society and investors – to the extent that it is visible to them, regard it as necessary action.

Resource:

This work remains a significant, but thus far manageable, burden on staff, especially the senior team, but this reflects the priority which the Board has given to authorisations. Stepping up the activity level further would potentially have wider impacts.

Consultation	Yes	No	Who / why?
Board Members:	X		David Edmonds, Steve Green and Bill Moyes
Consumer Panel:		X	N/A
Others:	None		

Freedom of Information Act 2000 (Fol)

Para ref	Fol exemption and summary	Expires
8(i), (iv), (viii), (ix) and (xiii)	Section 44 - restricted information obtained by the Board in the exercise of its functions [and therefore] must not be disclosed (s167 LSA)	
Paras 9 and 10	Section 36(2)(b)(ii) - Likely to inhibit the exchange of views for the purposes of deliberation the board	
Para 12	Section 36(2)(b)(i) - Likely to inhibit the free and frank provision of advice	
Annexes A and B	Section 44 - restricted information obtained by the Board in the exercise of its functions [and therefore] must not be disclosed (s167 LSA)	

LEGAL SERVICES BOARD

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SRA performance

Background

1. We have been aware for a number of months about increasing frustration and concern from a number of business people about the way the SRA is considering applications for ABS licences. In addition to its poor performance on ABS licensing, our formal requirement for information revealed that there were also backlogs in applications for recognised body and sole practitioner authorisation. It does not appear that the SRA Board was aware of the extent of these issues and backlogs until the LSB's intervention.
2. In January, in response to our formal request for information, the SRA set out its project's objectives for dealing with the existing backlogs and avoiding a recurrence. These were:
 - a) to eliminate all unnecessary delays by Easter 2013. The SRA says that this meant that all applications would be actively assessed from the date of receipt and that it would have re-categorised each application to more accurately describe its current status;
 - b) to assess all incoming cases to determine approach to handling based on risk and to keep SMT informed of peaks/spikes and impact on resources;
 - c) to move the authorisation function for both ABS and mainstream firms to a more effective risk-based process using defined regulatory tools and appropriately skilled staff; and
 - d) to extract learning to inform future management of the process including robust future targets and systematic approach to engagement with applicants.
3. At its March 2013 meeting the LSB Board considered information obtained from the SRA about ABS applications using our powers under section 55 of the Legal Services Act 2007 (LSA); it agreed that the LSB should focus on the SRA's performance on authorisations as a priority. Our investigation has therefore continued and this paper updates the Board. We received information in response to the section 55 Order on 15 April. We are due to meet the SRA on 26 April to discuss its plans in more detail and will update the Board on further developments.

4. The Board should note that the SRA only uses a simple Excel spreadsheet to monitor ABS applications. By definition, this is a limited tool that only provides very basic information about each application. It does not provide a history of what has happened on each application and it is not suitable for monitoring overall progress, providing a detailed overview or for easily conducting analysis of trends. However, in the absence of other sources, the analysis in this paper has been done by the LSB using information from the spreadsheet. The patchy information we have seen in terms of presentations to the SRA Board suggests that its information is rather more limited, although improved reporting against KPIs is promised.
5. We do not at this stage know what the SRA uses to monitor recognised body and sole practitioner applications.
6. On 15 March, the SRA announced that it had combined its ABS and non-ABS authorisation teams into a single “Firm-Based Authorisation” unit. All applications from ABS, recognised bodies and sole practitioners are now processed through this unit. A new Director of Authorisations is due to start in early June.
7. A diagram setting out our understanding of the SRA’s ABS authorisation process is at **Annex A**. We will validate this with them in the meeting on 26 April.

Concerns and current position

8. In addition to analysing in detail the information provided by the SRA, we have also given more consideration to the specific issues that are giving us cause for concern. These issues, which could form the basis of a formal regulatory investigation should the Board judge that necessary if progress is not maintained, are:

For ABS applications:

The application process

- i. whether the way in which the SRA has structured its ABS application process and in particular its approach to the interpretation of the statutory timetable in paragraph 2 of Schedule 11 to the LSA is reasonable*

The LSA requires a licensing authority to decide an application, notify the applicant of its decision and, for refusals, set out the reasons for refusal within 6 months (extendable to 9 months) from the day the application is made “in accordance with its licensing rules”. The SRA has divided its application process into a three stage process. This starts with “Stage 1” a “high level summary application”. “Stage 2” is called “preparing the detailed application” and is, confusingly, subdivided into 5 further stages; at some point during these, once the SRA considers that the application is complete, it issues an invoice and

considers that this is the start of the statutory decision period of 6 months. “Stage 3” (“reaching a decision”) is also described on the SRA’s website as stage 4 of “Stage 2”. The SRA has not provided us with any data about the time taken from end to end of its authorisation process. [REDACTED]

Our concern is that the end to end process lasts significantly longer than that envisaged by the LSA and that the SRA’s approach to “starting the clock” seems to have the effect of concealing this: the “tightened up” changes still seem to give scope for significant discretion, with potentially odd incentive properties for the SRA. One reason for the delay may be the nature of the information the SRA provides to applicants about what information is required and its criteria for assessing that information – see below.

ii. whether the information required by the SRA is proportionate and targeted to that required by the LSA in order to assess an application

There is a general consensus that the information the LSA requires ABS applicants to produce is extremely onerous. We have made clear to MoJ that we see the Sch 13 requirements, in particular, as a candidate for simplification in due course.

Nevertheless, our concern is that the SRA demands substantially more information, as a matter of routine, than that required by the LSA (for example it asks for details of *all* non-lawyer shareholders for CRB checks rather than just those *with a material interest* and it requires information about each legal service being provided together with details of which professions are providing each of those services) . This, together with uncertainty about what exactly *is* required and how it will be assessed, could lead to substantially more costs for applicants.

iii. whether the SRA has taken appropriate steps to understand the impact of its approach to risk and authorisation on potential new entrants, innovation and competition

One of the general themes from our contact with potential and actual ABS applicants is that the SRA does not appear to understand the commercial reality of operating a business in a liberalising market, or the impact on businesses and funders of long delays in authorisation. The SRA has been described as failing to move in “market time” by Professor Stephen Mayson. The SRA has rejected our suggestion of conducting a survey of previous applicants to get feedback on the impact of its processes, although it says that it will start a feedback process in the third quarter of this calendar year.

An inability to understand commercial reality and the market(s) it regulates would mean that the SRA cannot be proportionate and targeted.

iv. *whether the SRA is making sufficient progress in clearing the backlog of applications and ensuring backlogs do not arise in the future*

Analysis of the April section 55 response shows the following information:

- It takes an average of 7 months from the submission of a second stage application for a firm to be granted an ABS licence, 20% of applicants had to wait over 9 months for their licence and the longest took over 400 days;
- The SRA got off to a very slow start to licensing and has a number of peaks and troughs throughout that are difficult to explain. It is only since December 2012 that it has consistently licensed over ten applications per month;
- The SRA has reduced its work in progress from 142 applications in January 2013 to 103 in April and during this time it has closed (mainly through withdrawals) or licensed 89 applications;
- The average work in progress file is four months old. 25% of the work in progress files are over 6 months old, 7 are over 12 months old and one is over 400 days old;
- The spreadsheets provided contained a number of obvious errors and there may be a number of errors that we have been unable to detect.

Figure 1: Time taken to from 2nd stage application to licence granted (by month of spreadsheet)

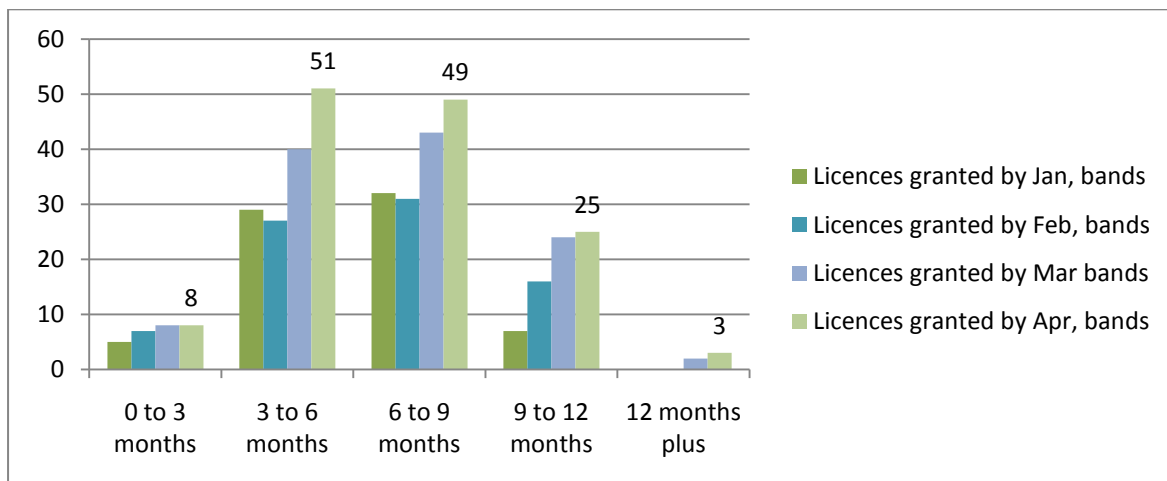


Figure 2: Status of SRA's work in progress (by month of spreadsheet)

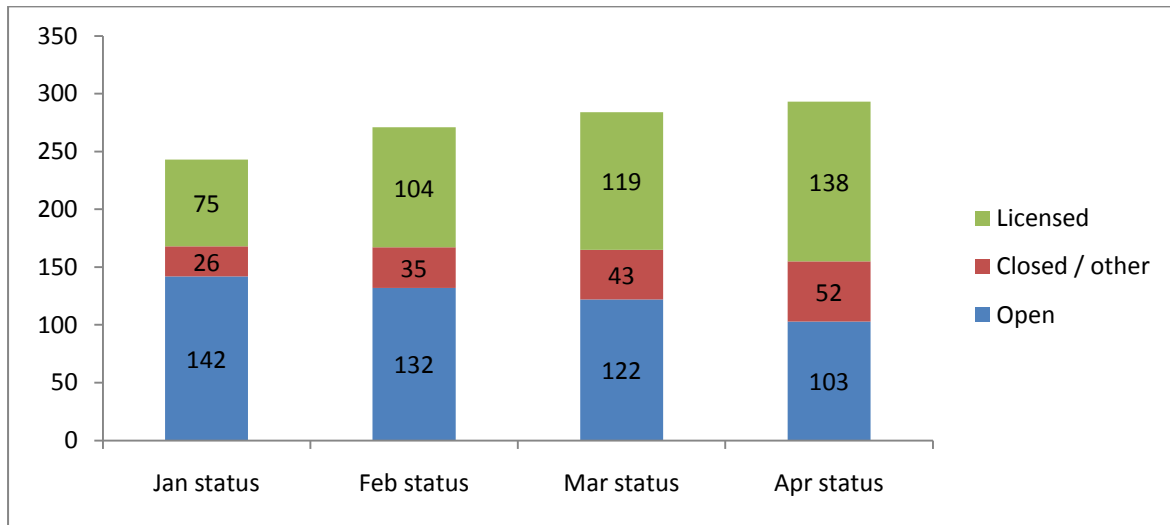


Figure 3: Age of work in progress (by month of spreadsheet)

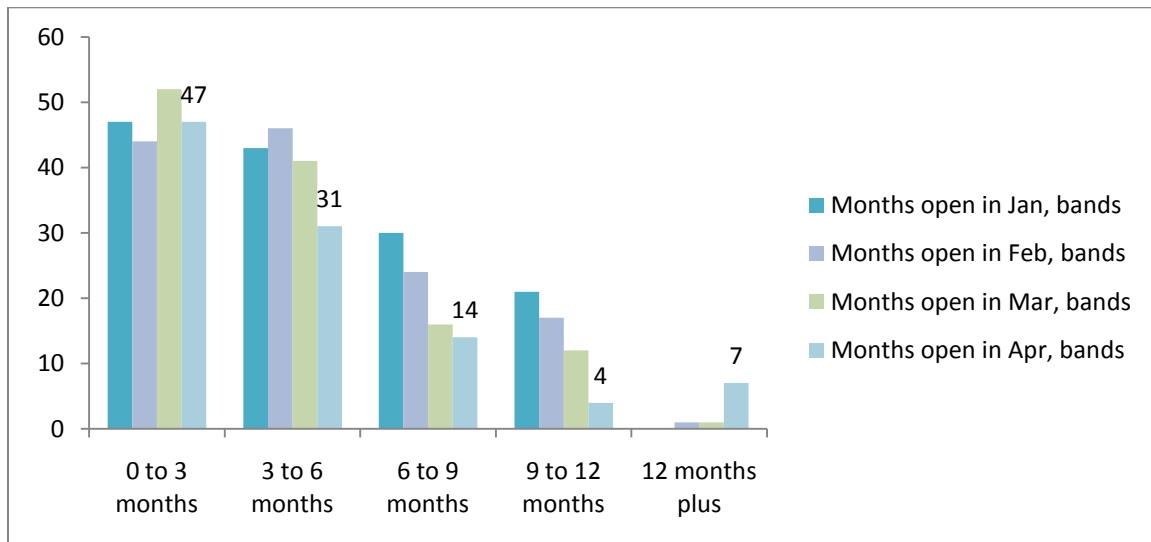


Figure 4: Age of work in progress in percentages (by month of spreadsheet)

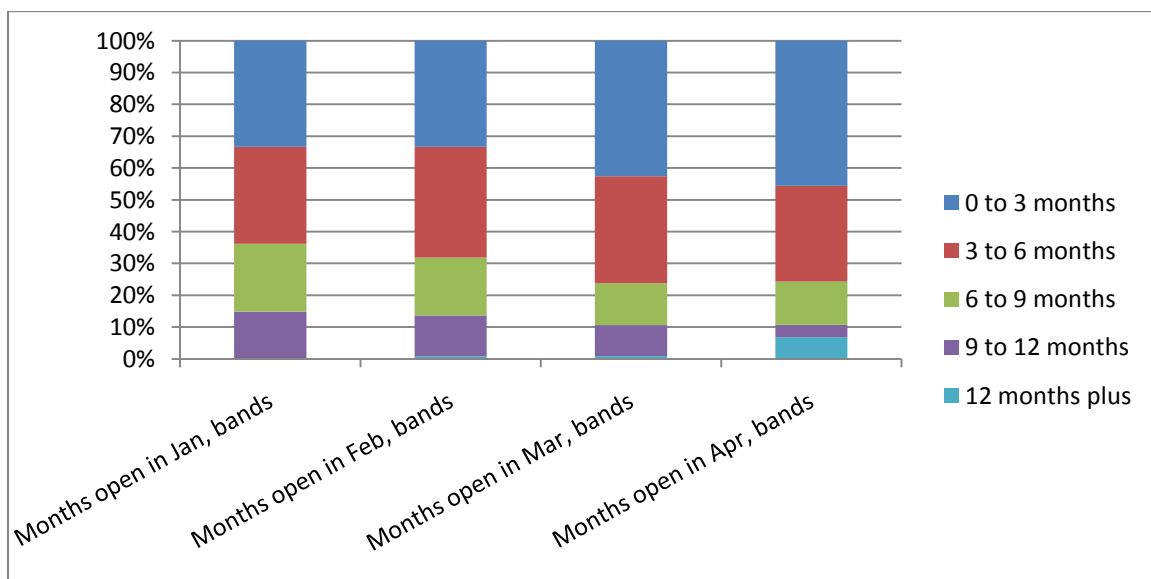
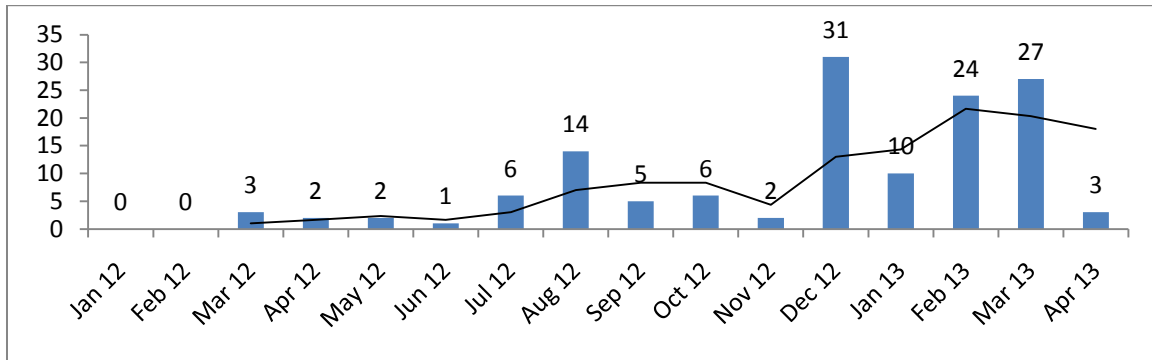


Figure 5: Frequency of licence decisions by month



[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

- v. *whether the SRA's approach to risk is consistent between ABS, recognised bodies and sole practitioners*

Although the SRA has told us that its risk assessment framework applies across all its functions, we know that in the past it has not conducted risk assessment on applications for authorisation as a recognised body or sole practitioner. It

gathers information from those applicants but does not appear to assess it in any way. This contrasts with its approach to ABS applicants where enormous amounts of information have to be provided and are scrutinised in great detail.

While we would not want to see an approach that had the effect of discriminating between authorisation for recognised bodies and ABS in a way that could be viewed as either “sponsorship” or “hobbling” of either class, it is clearly important that authorisation requirements in each case can be properly justified on a risk basis.

Information and transparency

- vi. *whether the information provided by the SRA on its website is sufficiently comprehensive and easy to navigate information so that potential applicants can understand (a) the application process and (b) the SRA’s criteria for analysing the information provided*

On 21 March 2013, the SRA updated its website information for ABS applicants. It provided more information about its authorisation process and, for the first time, it put specimen “stage 2” application forms on its website. It also introduced a category of “lower risk” application, for example for LDPs with limited change to their business model. Information on “stage 1” has not been updated since 31 May 2012. However, there are also some important gaps in terms of inviting applicants to focus on issues which will be of concern to the SRA: a statement asking firms to point out “issues to do with the business model” is not particularly helpful without further information.

Overall, our impression is that the way the information is organised/structured is difficult to follow and the more information that the SRA provides, the greater the danger that this problem is compounded.

- vii. *whether the SRA has a comprehensive staff handbook or manual to guide and assist staff assessing applications*

Some form of documentation like this seems essential to ensure consistency of decision making, as well as being general good practice for any authorisation process.

Board and senior management scrutiny

- viii. *whether the SRA’s senior managers and Board has sufficiently comprehensive, regular reports about the SRA’s performance in the application process*

The SRA’s 24 April Board paper (**Annex B**) contains some management information. However, as noted above, this is less comprehensive than the limited analysis we have been able to do from the SRA’s own spreadsheet.

As far as we are aware, the spreadsheet provided as a result of the January section 55 request is the SRA’s sole management tool. It simply records the name of applicant, the date that the “stage two” application was received, whether the “stage two” application had been deemed complete, whether the

application was from an existing LDP, the current status and a space for comments. It did not provide a history of what has happened on each application and does not provide a means to monitor overall progress, providing a detailed overview or for easily conducting analysis of trends.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ix. *whether the SRA should set and publish comprehensive KPIs for its application process*

[REDACTED]

[REDACTED]

x. *whether the SRA should publish comprehensive information about its performance in assessing applications*

The SRA publishes a quarterly Regulatory Outcomes Report. Although this contains information about the number of applications for authorisation that it has received, there is no information about authorisation performance in it. There is

no information in the SRA April Board paper about whether the SRA plans to publish its performance against the proposed KPIs.

The same concerns occur as in relation to the previous point.

- xi. whether the SRA took appropriate steps to monitor and clear the backlog of applications*

Despite several letters from, and conversations with, the LSB during 2012 expressing increasing concern about the time the SRA was taking to consider ABS applications, progress in terms of an increased number of authorisation decisions and a clear commitment to change process did not become visible until December 2012. Correspondence also revealed no routine reporting to the SRA Board, with only very abbreviated information being presented via the CEO report.

For recognised bodies and sole practitioners

We do not currently have sufficient information about what the SRA is doing to comment in detail on these issues.

The application process

- xii. whether the SRA has an application process that is proportionate and targeted on risks*

See comments on risk at v above.

- xiii. whether the SRA is making sufficient progress in clearing the backlog of applications and ensuring backlogs do not arise in the future*

[REDACTED]

Information and transparency

- xiv. whether the information provided by the SRA on its website is sufficiently comprehensive and easy to navigate information so that potential applicants can understand (a) the application process and (b) the SRA's criteria for analysing the information provided*

The SRA website contains information and forms about its authorisation process for non-ABS firms and sole practitioners. These were updated most recently on 12 February.

- xv. *whether the SRA has a comprehensive staff handbook or manual to guide and assist staff assessing applications*
- xvi. *whether the SRA is sufficiently transparent about its decision making processes to assist applicants in drafting their applications and to enable them to appeal against SRA decisions if necessary*

Board and senior management scrutiny

- xvii. *whether its senior managers and Board has sufficiently comprehensive, regular reports about the SRA's performance in application process*
- xviii. *whether the SRA should set and publish comprehensive KPIs for its application process*
- xix. *whether the SRA should publish comprehensive information about its performance in assessing applications*

The SRA publishes a quarterly Regulatory Outcomes Report. Although this contains information about the number of applications for authorisation that it has received, there is no information about authorisation performance in it.

- xx. *whether the SRA took appropriate steps during 2012 to monitor and clear the backlog of applications*

Assessment

- 9. Our tentative view of the progress that the SRA has made so far is that, although it has increased the pace of licensing and made progress in making decisions on its ABS "Stage 2" cases and is also making progress on reducing the backlog of non-ABS authorisations, it did not achieve its aim of clearing the backlog by Easter. The LSA, in our view, requires an end to end process of 6-9 months.

[REDACTED]

[REDACTED]

11. Hence, given the Board's previous steer about the importance of this subject and the fact that our engagement has been crucial, we consider that it remains important to maintain the current level of engagement on the issue and to not rule out further action at this stage.

Next steps

12. We will assess what additional information we need after we meet the SRA on 26 April and, if necessary, use our section 55 powers to obtain it. [REDACTED]

[REDACTED]

Conclusion

Recommendations

13. The Board is invited to:

- a) note and discuss the issues raised in this paper
- b) agree that, depending on our analysis of any further information provided by the SRA and the outcome of the meeting on 26 April we should:
 - continue to pursue getting information on all aspects of its authorisation process
 - decide whether to present a detailed scope of investigation and options for further action to your May meeting.