

Regulatory performance assessment

Regulatory performance standards

1. The Regulatory performance standards

1.1 Introduction

- 1. We assess the regulators' performance against five function-based standards. These are:
 - Regulatory approach
 - Authorisation
 - Supervision
 - Enforcement
 - Governance and leadership.
- 2. The first four standards cover the core regulatory functions carried out by the regulators: The fifth standard, governance and leadership, allows us to review the regulator's ability to carry out its functions well. Under each standard are between four to six outcomes we expect the regulators to achieve.
- 3. The standards form the basis of our regulatory performance assessments. The standards describe the minimum standard of performance we consider all regulators must meet in order to perform the basic role of a regulator. The regulatory objectives were considered in the development of the standards. Efforts undertaken by the regulator to meet the standards are likely to promote achievement of the regulatory objectives.

1.2 How we use the regulatory performance standards

- 4. We monitor the regulators' performance on an ongoing basis using a variety of sources of evidence. We use this evidence to assess if and how the regulators are meeting the standards. The process we use to do this is set out in a separate document and can be found on our website¹.
- 5. The standards are outcomes-focused. We do not generally prescribe how the regulators should demonstrate they meet the standards. We recognise this will vary across the regulators and performance against some outcomes may need to be assessed within the context of the specific regulator. However, there are some instances where we have described what we consider equates to minimum performance, for example, the use of the civil standard of proof in the enforcement process in relation to Outcome E3 (enforcement). These have been identified through our previous policy and research work.
- 6. In order to develop a shared understanding of the process we will use, we have set out against each outcome examples of the types of evidence that could be provided by the regulators, or used by us, to assess the regulators' performance. This is an illustrative list, it is not exhaustive. We will refine it over time.
- 7. When assessing the regulators' performance against these five standards we will also consider the five principles of good regulation: transparency, proportionality, accountability, consistency, targeted.

¹ The regulatory performance assessment process document is Annex B to the consultation document.

2. The Standards

2.1 Regulatory Approach

All regulators are responsible for developing and implementing regulatory arrangements and supporting guidance that are outcomes-focused, based on evidence, address areas of risk, address consumers' needs and enable economic growth whilst maintaining professional standards and protecting the public interest.

Outcome	Examples of evidence	Previous LSB statements about standards of performance ²
RA1: Regulatory arrangements and supporting guidance documentation are: • outcomes-focused • written in plain English • maintain professional principles with detailed rules limited to where evidence and analysis justifies them.	 Regulatory arrangements. Guidance documents. Information on how clarity of rules has been tested. Justification for detailed rules. Post implementation reviews of changes. 	 Approved regulators must: have in place regulatory arrangements to tell consumers and the market about referral fees and arrangements. require those they authorise to notify their clients of their rights to complain to them and the process for doing so, as well as any rights the consumer may have to complain to the Legal Ombudsman. ensure that Authorised Persons must keep clients' money separate from their own have a code of conduct that:

² The reference documentation is listed at annex A.

2

Outcome	Examples of evidence	Previous LSB statements about standards of performance ²
		ensure their regulatory arrangements support the provision of performance information. Intervention may need to be prescriptive, particularly where standardisation for the purposes of comparability is an important component of effectiveness. There may be a need to dictate more precisely the format in which information is provided.
RA2: Regulatory arrangements and supporting guidance documentation are regularly reviewed and, where necessary, updated based on a robust evidence-base.	 Documented policy development process/strategy. Consultation strategy, documents and response reports. Systematic approach to periodic reviews of arrangements including schedule for reviews reports on completed reviews, including assessment of whether there continues to be a need for regulation responding to issues raised on arrangements and guidance between periodic reviews. Use of waivers and exemptions. Consumer engagement strategy, including vulnerable consumers; examples where consumers have influenced thinking. Regulated community engagement strategy. Use of diversity data and analysis. 	 Regulators should have a clear plan on how they intend to develop their regulatory arrangements so that they will accord with best regulatory practice, as required by the Act. Regulators should assess risk by sector and service provided, in order to identify what are the appropriate steps to mitigate the risk.

Outcome	Examples of evidence	Previous LSB statements about standards of performance ²
RA3: The regulator has a robust evidence base from a range of sources on: (a) consumers' needs and use of legal services (b) new and emerging policy developments (c) the regulated community and (d) the market(s) regulated by it which informs its regulatory arrangements and approach.	 Use of equality impact assessments Use of risk information to identify areas where further evidence is needed. Outcomes of the regulators' collaborative work with others to understand consumers' needs. Research plan. Diversity data collection, analysis and publication; awareness and understanding of diversity initiatives and work being undertaken by others. Identification and use of others' evidence to inform the regulators' work plans. Learning from the work/experience of other regulators, government bodies, representative organisations, etc. Identification of emerging policy developments and consideration of the potential impact of the regulators' work. 	 Regulators should prioritise filling the gaps in their evidence base and set out plans to do so. Regulators should demonstrate their knowledge of the size of each consumer segment. Regulators should continue collecting data on the diversity profiles of their respective professions. Regulators should also work together and agree a common methodology, including common definitions, for diversity data collection. Regulators should conduct targeted research to understand quality issues and identify risks. Regulators should consider whether information remedies are appropriate. This should take into consideration the level of risk and the ability of consumers to adequately comprehend the significance of the information. Regulators should carry out consumer testing before implementing information remedies as it has been found to play a significant role in the design and effectiveness of newer information remedies.

Outcome	Examples of evidence	Previous LSB statements about standards of performance ²
		 Regulators should ensure information is given at the right time, the right place, and for the intended consumer groups. Regulators should design an effective disclosure regime to help consumers understand and engage better. They should also seek to minimise risks of firms, and even themselves, adopting a 'tick-box' approach to their disclosure regimes. Regulators should accompany information remedies with measures around the prominence and timeliness of the disclosure to increase consumer awareness. Regulators should give consideration to the early evidence that information remedies might affect groups of consumers differently, including vulnerable consumers, and to the emerging recognition that information may need to be targeted differently.
RA4: Regulatory arrangements and associated guidance documentation are informed by learning gathered from all of the regulators work including its risk assessment and enforcement work.	 Risk assessment strategy and policy. Process to obtain learning from the regulators' work, for example case reviews, reviews of learning from supervisory activity or appeals against regulatory decisions. Outcomes of the work identified above and examples of how it has been used to influence thinking. 	No published statements.

Outcome	Examples of evidence	Previous LSB statements about standards of performance ²
	Examples of how risk has informed development/revision of regulatory arrangements and associated guidance.	
RA5: The regulator understands the impact of its regulatory arrangements and guidance on consumers, the regulated community, the market and the regulatory objectives.	 Consumer engagement strategy; including vulnerable consumers. Risk identification process. Regulated community engagement strategy. Research plan. Evaluation of impact of rule changes, including on the regulatory objectives and market transparency. Tracker and stakeholder perception surveys. 	 Regulators should fully consider the implications of regulatory developments both in encouraging and inhibiting innovation, and display how they have done this. When designing information remedies, regulators must build in an evaluation stage which allows regulators to assess effectiveness. This will empower regulators to make adjustments and improve future designs.

2.2 Authorisation

All regulators are responsible for having systems in place at the point of authorisation that ensure the regulated community meets their standards and can maintain professional principles, and those that have met the standard are accurately recorded on a publicly accessible register.

Outcome	Examples of evidence	Previous LSB statements about standards of performance
A1: Only those who meet the regulator's standards are authorised to provide education and training.	 Published standards for education and training providers. Process for becoming an authorised education and training provider. Information requirements for education and training providers. Information on how the information requirements map to the standards for authorisation. Quality assurance mechanisms in place to test decisions and outcomes. 	Over time regulators should have in place regulatory arrangements for education and training that deliver the following outcomes: • providers of education and training have the flexibility to determine how to deliver training, education and experience that meets the outcomes required • regulators place no inappropriate direct or indirect restrictions on the numbers entering the profession.
A2: The regulator's standards of education and training set the competencies required for authorisation for entry to the profession.	 Qualification and training requirements. Mapping of the standards to the authorisation standards. Assurance process including who carries out the assurance programme, how they are appointed and trained, and guidance provided. 	Over time we expect regulators to have in place regulatory arrangements for education and training that deliver the following outcomes: • education and training requirements focus on what an individual must know, understand and be able to do at the point of authorisation • regulators successfully balance obligations for education and training between the individual and the entity both at the point of entry and on an ongoing basis • standards are set that find the right balance between what is required at the point of authorisation and what can be

Outcome	Examples of evidence	Previous LSB statements about standards of performance
A3: Only those who meet the regulator's standards are authorised to practise.	 Authorisation information requirements. Information on how the information requirements map to the standards for authorisation. CPD policy. Information on CPD checks undertaken and the outcomes of these checks. Standards for those who provide immigration advice or services. 	 fulfilled through ongoing competency requirements regulators place no inappropriate direct or indirect restrictions on the numbers entering the profession. Regulators must ensure that definitions of appropriate skill and competence are proportionate in order to ensure both value and professionalism. Regulators must demonstrate how regulated persons and entities are indemnified against losses arising from claims in relation to any description of civil liability incurred by them, or by employees or former employees of theirs, in connection with their activities as such regulated persons or entities. Licensing authorities (LAs) must have regard for all the regulatory objectives and they must be able to demonstrate how they have taken these into account when considering applications for a licence.
A4: The authorisations process, including the management of appeals, is fair, based on the regulator's standards, efficient and transparent.	 Documents that describe the process used for all types of authorisation applications across individuals, entities and alternative business structures (ABS). Consumer facing guidance on who is regulated and what this means. 	 LAs must publish their application process and make it as straightforward as possible. LAs must publish their target times for assessing licence applications and publish its performance on an ongoing basis.

Outcome	Examples of evidence	Previous LSB statements about standards of performance
	 Authorisation timeframes and performance against them for all types of authorisation applications. Process for appeals; timeframes and performance against them; number and outcomes of any authorisation appeals. Guidance for staff and any other decision-makers who are carrying out this work. Information sharing arrangements with other regulators. Information on what documentation and performance information is published. Information on how the regulator ensures the process is demonstrably free from bias, including data collection methods. 	 LAs must make provisions as to the criteria and procedure they will use in deciding whether to suspend or revoke a licence, to disqualify a person, to decline or withdraw approval for a HOLP or HOFA. LAs must have a published process, which is both comprehensive and quick, to consider representations against a decision: to refuse a licence and the terms of conditions of a licence, to suspend or revoke a licence, to disqualify a person to decline, or to withdraw approval for a HOLP or HOFA.
A5: The regulator's list of those they regulate is accessible, accurate and provides information on the disciplinary records of the professional.	 Consumer facing information on the content of the list of those regulated and what it means to be on the list. Information on how the register can be accessed. Information on: what information is contained on the register how and when the register is updated how and when the accuracy of the register is tested what enforcement information is publicly available and what will not be disclosed 	No published statements.

Outcome	Examples of evidence	Previous LSB statements about standards of performance
	 how the regulator is assured the register is checked by employers etc. 	

2.3 Supervision

All regulators are responsible for having systems in place which ensure the regulated community's and education and training providers' performance is monitored so that steps can be taken to improve performance or share good practice.

Outcome	Examples of evidence	Previous LSB statements about standards of performance
S1: The regulator has an: outcomes- focused, evidence-based, transparent, risk- based and consumer-focused approach to supervisory activity. Supervisory activity is both proactive and reactive and uses a range of tools.	 Supervision policy is published and easily located on website. Evidence on how the activity is focused on consumers and in particular, vulnerable consumers. Evidence on how the activity is outcomes-focused. Description of evidence base used to determine general approach to supervision. Description of evidence base used to inform supervisory activity undertaken. Risk management policy which explains evidence-based approach to identifying risks both current and future. Risk outlook and an explanation as to how this has informed its approach to supervision. Feedback on the process from those under review. 	 Regulators should assess voluntary accreditation schemes, establishing how useful they can be in guaranteeing competence. Regulators should develop a system to monitor compliance whilst designing and developing information remedies as limited compliance will have an impact on the remedy.
S2: Education and training providers are monitored to provide assurance that	Standards for education and training providers.Outcomes of activity.	No published statements.

Outcome	Examples of evidence	Previous LSB statements about standards of performance
standards are met. If they are not, steps are taken to remedy this.	 Publication of individual supervision reports. Examples of actions taken when standards are not met. Information on how information is shared with others who have a common interest. Assurance process including who carries out the assurance programme, how they are appointed and trained and guidance provided. Guidance in place for staff who are carrying out this work. Timetable for undertaking this work. Testing of process that education and training providers use to attract a diverse student population. Information about how any concerns identified have been assessed, addressed or monitored. Process for determining what is a concern. 	
S3: The regulated community are monitored to provide assurance that standards are met. If they are not, steps are taken to remedy this.	 Standards for the regulated community. Monitoring plan. Activities undertaken and outcomes. Examples of actions taken when standards are not met. Examples of data collected from the regulatory community such as number of complaints made. 	Regulators must ensure that authorised persons have effective first-tier complaints handling processes in place.

Outcome	Examples of evidence	Previous LSB statements about standards of performance
	 Information on how immigration advisers or those who provide immigration services are supervised. Information on how information is shared with others who have a common interest. 	
S4: Those under review and the wider regulatory community have the opportunity to benefit from the learning and good practice identified from the supervisory activity.	 Published reports sharing examples of poor and good practice, including examples related to promoting and respecting diversity. Inclusion of learning in the regulator's other communication, such as newsletters, conferences etc. Use of learning to inform training opportunities. Information-sharing protocols with other regulators and examples of their use. 	No published statements.

2.4 Enforcement

All regulators are responsible for ensuring they have systems in place to ensure they can take proportionate and prompt action where issues arise.

Outcome	Examples of evidence	Previous LSB statements about standards of performance
E1: The regulator has an accessible and clear process so that concerns can be raised about an authorised person which sets out who a person can complain to, the process that will be used and the possible outcomes.	 Published process document. Information on how the accessibility of the process and any associated documentation/web content has been tested. Process and timeframe for reviewing this content. Process for sharing information with LeO and/or other regulators. Process for managing complaints from LeO. Process for sharing information with other internal departments. Published guidance for decision-makers. 	 Regulators should give information to complainants on the way in which they should be treated. This includes guidance on timescales for initial and subsequent communication and information about the role of the Legal Ombudsman. Regulators should give information on how members of staff who are investigated will be treated.
E2: The regulator ensures that all complaints are reviewed on receipt and serious cases are prioritised and, where appropriate, referred to an interim orders panel.	 Process in place to assess and prioritise cases. Guidance for staff and decision-makers. 	No published statements.

Outcome	Examples of evidence	Previous LSB statements about standards of performance
	 Process for review and risk-assessment of cases throughout the lifetime of a case. Outcomes of checks on the process/reviews. 	
E3: The enforcement process and any associated appeals process is: Consistent Independent risk-based evidence-based documented transparent proportionate focused on consumer protection, maintaining professional principles and protecting the public interest.	 Process for risk assessment of cases throughout the lifetime of a case. Enforcement process. Appeals process. Information on how staff and decision-makers are appointed, trained and managed. Information on how the processes and decisions are consumer-focused. Composition of decision-making boards/committees. Information on how the regulator ensures the process is demonstrably free from bias, including data collection methods. Information on the assistance provided to vulnerable participants in the process. Feedback surveys and outcomes. Guidance for staff and decision-makers. Publication of decisions. Publication of process documentation. Information on learning is shared with regulated community and internally. 	 Regulators must ensure that their approach to sanctions for ABS and non-ABS are harmonious. Regulators must be able to demonstrate that their approach to compliance and enforcement of regulatory arrangements relating to referral fees and referral arrangements promote good regulatory practice. Registrants should have the right to appeal any regulatory sanctions imposed. Appeal arrangements must be independent from the body or persons who made the original decision, they must be transparent and efficient and there should not be multiple routes of appeal. The preferred option is use of the First-tier Tribunal. Civil standard of proof should be used at all stages of the enforcement process. Regulators should have sufficient financial penalty powers to be able to eliminate any financial gain or benefit from non-compliance and, where

Outcome	Examples of evidence	Previous LSB statements about standards of performance
		possible, restore the harm caused to individual consumers and/or the public interest.
		Regulators should be transparent about:
		 the processes used to reach decisions/impose sanctions
		 the reasons for the decision
		 the decision itself which should be easily searchable
		 who the action has been taken against
		 their enforcement policies, processes and guidance, and they should be written in plain language
		 their approach to assessing what level of financial penalty to impose. This should be at least an indication of what type of factors will be taken into account, including mitigating and aggravating factors
		 the end to end timeframes of its enforcement processes.
E4: The enforcement and any associated appeals process is timely taking into account the complexity and type of case, and the conduct of both sides.	 Timeframes for enforcement and appeals process and performance against them. Explanation as to why performance does not meet or exceeds timeframes. Actions taken to address delays. 	No published statements.

Outcome	Examples of evidence	Previous LSB statements about standards of performance
E5: During the process, and at each key decision stage, the regulator keeps those involved and any others affected by the case (for example in cases of dual regulation, the regulator, the complainant and those under investigation) informed of progress.	 Information-sharing mechanisms with other regulators and examples of these in use. Process in place for keeping those involved updated. Example template letters used. 	No published statements.
E6: The regulator clearly explains the reasons for its decisions to take or not to take things forward at each stage of the process.	 Outcomes of feedback surveys. Complaints about clarity of reasoning of decisions. Processes in place to ensure plain English approach taken to communications. 	No published statements.

2.5 Governance and Leadership

All regulators have to ensure that they have the leadership, capability and capacity, and corporate governance to manage their organisation effectively; and have a culture that encourages and uses learning to improve performance, and that promotes a transparent and consumer-focused environment.

Outcome	Examples of evidence	Previous LSB statements about standards of performance
GL1: The Board/Council holds the executive to account for the regulator's performance to ensure that it operates effectively and efficiently and in a way which is compatible with the regulatory objectives.	 Board and Committee attendance levels. Number of Board and Committee meetings. Board agendas – number of times Board is asked to note rather than decide. Diversity of Board members. Board papers and minutes. Complaints received about the regulator. Timing of papers to the Board. 	No published statements.
GL2: The regulator understands the resources (financial, human and technical) and organisational structure it needs to carry out its regulatory functions (including authorisation, supervision and enforcement) effectively and efficiently and these are implemented.	 Progress made against planned activity. Performance against KPIs. Description of IT and how it helps each workstream/gaps in workstreams. Numbers of staff in each regulatory function against number of vacancies. Guidance on how to carry out the regulatory functions for staff and committee members. Training available to staff and decision-makers. Costs of regulation information. 	No published statements.

Outcome	Examples of evidence	Previous LSB statements about standards of performance
GL3: The regulator is transparent about its own: • decision-making • regulatory approach • the risks it and its regulated community faces and how these are being mitigated • performance • regulated community and related markets • financial costs.	 Strategy/vision. Business plan. Annual report. Risk outlook. Risk assessment policy. KPIs and performance reports. Annual accounts and reporting of data to Board and publicly. Diversity report. Complaints about the regulator. Alignment of costs and performance reporting. Costs report. Board papers and minutes. Board engagement with stakeholders. Regulatory fees. Information on the market that is available. Information on the regulated community that is available such as publication of complaints data. 	Regulators should be transparent about their decision-making and how the Board holds the executive to account (this would include publication of Board papers, minutes, annual reports and planning documents).
GL4: The regulator learns from its own work, stakeholders, the legal sector and other sectors and uses that learning to improve its work.	 Internal/external audit. Quality assurance of decisions and workstreams. Feedback surveys. Complaints about the regulator. Diversity data and analysis, sharing of good practice. Horizon scanning. 	 Regulators should have a systematic approach to knowledge and information management at all levels. Regulators should use consumer feedback information in assessment of quality risks where appropriate.

Outcome	Examples of evidence	Previous LSB statements about standards of performance
	Examples of collaborative working.Examples of innovative work.	
GL5: The Board considers its own effectiveness in ensuring the regulator is a well-led, independent, transparent, and consumer-focused organisation, which acts in a way that is compatible with the regulatory objectives.	 Code of conduct. Board review process. Board away day. Board involvement in development and direction of strategy. Clear terms of reference for the Board and associated committees. Appointment process and terms. Disciplinary process. Skills review process. Clear accountabilities and well-defined roles for Board members. Consideration of diversity of the Board. Consideration and evaluation of Board engagement with the regulated community and others. 	Regulators must comply with the internal governance rules.

Annex A

References to where we have published statements on what equates to minimum performance can be found in the following documents:

- Alternative business structures: approaches to licensing Guidance to licensing authorities on content of licensing rules
- Approaches to quality: Summary of responses to consultation and LSB response
- Developing Regulatory Standards: An assessment of the Bar Standards Board
- Developing Regulatory Standards: An assessment of the SRA
- Encouraging a diverse workforce: LSB decision document on changes to statutory guidance for regulators under Section 162 of the LSA 2007
- First-tier complaints handling: section 112 requirements and section 162 guidance for approved regulators
- Guidance on referral fees, referral arrangements and fee sharing to approved regulators
- Guidance on regulatory arrangements for education and training
- Internal Governance Rules 2009
- Regulatory sanctions and appeals processes: an assessment of the current arrangements
- Regulatory standards 2014/15: An update report on the performance of legal services
- Rules for applications for Approved Regulator and Qualifying Regulator designation
- <u>Legal Services Consumer Panel report on information remedies</u>