

Legal Services Board – Consultation on Regulatory Performance Assessment Process

IPReg welcomes the opportunity to engage with the LSB consultation on revising the regulatory performance assessment framework.

Background

IPReg has consistently approached the performance assessment process with analysis and candour. In the 5 years since introduction of the Regulatory Standards process, we have submitted two full, and independently verified, performance assessments, and two updates (one effectively signing off the first full assessment, ready for the second, the other an action plan update).

The most recent full assessment (late 2015) had each of its five performance ratings endorsed by the LSB (and an [LSB commentary](#) on the [IPReg Regulatory Standards Action Plan - Spring 2017 Update](#) was published in July 2017).

Response to consultation

Risk-based

We welcome the LSB's intention to apply a more risk-based approach to standards review. Historically, performance assessment has taken the form of each regulator undertaking a resource-intensive self-assessment exercise using the LSB's framework template of standards, performance ratings and indicators. The intent for a more tailored, evidence and risk-based, approach is accountable, proportionate and targeted.

Expected standard

The IPReg Executive has long called for a qualification of the standard the performance management framework is seeking. We endorse the proposed principle as a minimum standard, it being the ambit of each individual regulator to determine any value added, as appropriate to their regulated community and resources. That said, we suggest the terminology would be better expressed as "expected standard" given the negative connotations likely to accompany "minimum".

Management dataset template

Timeliness of complaints handling: we have concerns regarding the dataset requirement of timeliness of complaints, the handling of which is necessarily a product of complexity. Instead, we suggest a constructive operating context would be provided through application of a minimum threshold number of complaints. Only when that threshold is reached, will the minimum, maximum and median figures be calculated. In line with the Legal Ombudsman threshold to applying a costs-related fees levy, it is proposed this should be triggered when 10 complaints have been received in the applicable timeframe.

Business Plan activities: it is the role of each regulator's Board to monitor objectives regularly, adapt as appropriate to changing market conditions and require explanation from its Executive of any missed targets. It does not seem necessary for the LSB to do this as well.

In addition, if this dataset remains, there is a risk that requiring a figure regarding non-completion of Business Plan activities creates perverse incentive for setting fewer (or readily attainable) objectives in the first instance.

Transitional arrangements

The most recent regulatory standards exercise comprised a full self-assessment by IPReg, using the LSB Regulatory Standards framework template, a performance management dataset and stakeholder feedback. The IPReg self-assessment was independently verified before submission. Each of its 5 performance ratings were endorsed by both the independent verifier and the LSB. The LSB therefore already has large amounts of data and information from previous assessments. In these circumstances, we do not consider that it would be proportionate to introduce transitional arrangements; these seem to us to have the potential to add an unnecessary layer of complexity (and therefore cost) to this process. We would therefore encourage the LSB to move to a risk-based performance framework from the outset.

Conclusion

We welcome the principle of a risk-based approach. We do not consider that transitional arrangements are a proportionate requirement before that risk-based approach is introduced.

We welcome the application of a clearer definition of the standard the performance assessment framework seeks, though we consider it would be better defined as "expected standard" rather than "minimum standard".

We consider that the proposed dataset requirements should be linked to receipt of a minimum number of complaints (10) in any year. To do otherwise would not only be disproportionate but would not generate statistically useful information.

We do not consider it is necessary for the LSB to monitor the implementation of IPReg's Business Plan; that is a matter for the IPReg Board.

Thank-you for the opportunity of allowing IPReg to contribute to this consultation. We hope these views are of assistance to you. Please feel free to get in touch if that might be helpful.



Fran Gillon, Chief Executive (31st August, 2017)