

# The Legal Services Board's regulatory approach

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June 2017

## Our vision

### **Legal services that everyone can access and trust**

We deliver this by:

- Supporting the rule of law and the effective administration of justice – promoting the public interest.
- Acting as an agent of change in the sector – enabling innovation and pursuing greater transparency and data collection to build a sound evidence base for progress.
- Holding the legal services regulators and the Office for Legal Complaints to account – protecting consumers from harm and making sure redress is available if things go wrong.

## Purpose of this document

This document sets out the LSB's regulatory approach, to support transparency, consistency and predictability in how we exercise our powers and deliver our functions.

## Our regulatory role

The Legal Services Board was established to regulate legal services regulation in England and Wales. This was in response to long-standing concerns about the handling of consumer complaints and the broader impact that self-regulation of legal service providers had on the competitiveness of the market. The LSB's role and responsibilities are outlined in the Legal Services Act 2007 (the Act). In particular, the LSB was set up to support a series of essential reforms to modernise the sector.

Our statutory role and responsibilities give us a direct influence over four different aspects of the regulated legal services sector in England and Wales:

- regulation of approved regulators and the Solicitors Disciplinary Tribunal (SDT)
- provision of redress for regulated services
- the list of reserved legal activities
- voluntary arrangements to improve standards.

The Act is clear that our principal role is to hold the approved regulators to account. This primary responsibility sits alongside others, notably oversight of the Office for Legal Complaints (OLC) in its delivery of the Legal Ombudsman consumer redress scheme. The LSB also has a role to oversee who and what should be regulated in legal services. This power is exercised through recommendations to alter the list of reserved legal activities, statutory exemptions from regulation, and transitional protections from regulation for certain types of provider. We also have the power to consider where voluntary arrangements may help to improve standards of legal services.<sup>1</sup>



The approach we take in fulfilling our role is guided by the Act. The regulatory objectives, described in section 1 of the Act, are ongoing responsibilities rather than specific targets. One consequence is that the nature of the regulatory challenges the LSB must address changes over time. We have produced a separate document explaining how we interpret the regulatory objectives, which can be accessed [here](#).

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<sup>1</sup> We have not previously sought to exercise our powers in relation to voluntary arrangements. In 2015/16 we considered their use as part of a project considering unregulated legal services providers and identified limited interest amongst providers in participation in a voluntary arrangement.

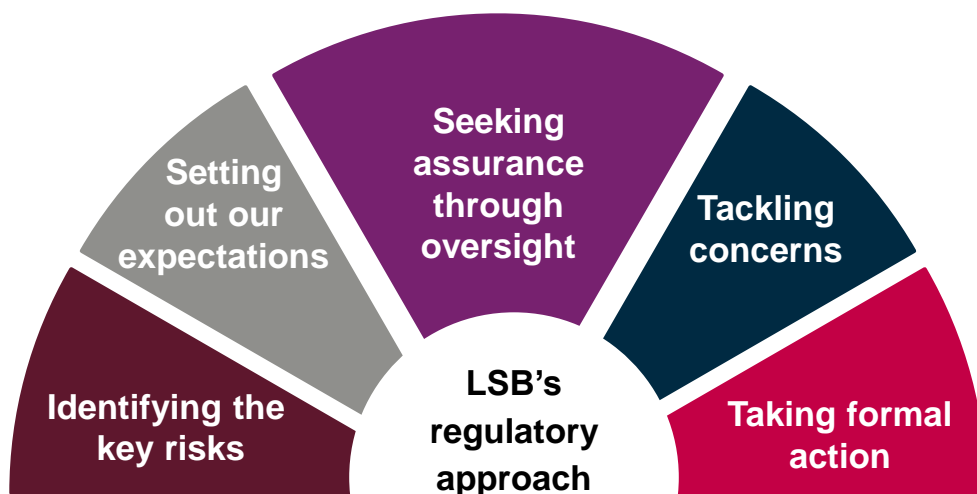
## Our regulatory approach

We are evidence-based and use evidence to determine which of our tools to use to address the regulatory issues that we identify. Our tools include:

- advocacy and communications
- publishing research findings, best practice recommendations and guidance
- making statutory decisions (for example about proposed new rules and regulations, practising fees, or applications from regulators to regulate new areas)
- assessing regulatory performance (in general and in relation to specific thematic issues)
- agreeing action plans and monitoring performance against them
- using formal enforcement powers
- exercising other statutory powers - such as requiring the provision of information or reports by approved regulators or the OLC.

Across all our work, timely and effective progress on issues requires collaboration and cooperation with others: including regulatory bodies, professions, government, consumer bodies. It involves good relationship management, influencing and advocacy, as well as proportionate and targeted use of our powers. We will only take formal enforcement action in response to the most serious or sustained failings.

Our approach to meeting our responsibilities can be broadly characterised by the diagram below. The five activities are connected and there is feedback between different activities as necessary.



Oversight is at the heart of what we do. The expectations that guide our oversight are based on evidence and intelligence about the state of the market (including consumers' experience of legal services), as well as the theory and practice of better regulation. This helps us to identify the risks and problems that need our attention.

These expectations act as a benchmark for holding organisations to account.<sup>2</sup> Our oversight identifies whether there are particular areas of concern needing to be addressed. Such concerns can be tackled through action plans or monitoring activity. If such steps fail to resolve our concerns, we will consider formal action using the powers available to us in the Act, such as taking enforcement action against regulators or making formal recommendations for changes to legislation.

Our regulatory approach recognises that regulation is unlikely to offer a solution to each and every problem we see in the legal services market. There are limits to its effectiveness and not all problems will have regulatory solutions within the framework laid down by the Act. For those problems without a direct regulatory solution, or where a regulatory intervention is disproportionate in the face of other options, it is more appropriate for the LSB to adopt an approach that encourages good practice or action by non-regulatory organisations.

Below, there is further detail on each stage of our approach. Worked examples of our approach in action can be found [here](#).

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<sup>2</sup> With other responsibilities our expectations set the terms by which, for example, we examine whether the scope of regulation needs to change

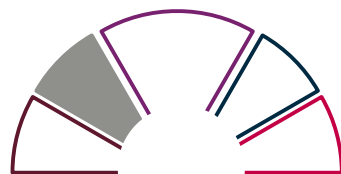
## Regulatory approach - activities

Within each stage in the model above, we may undertake a range of activities - discussed below in more detail. Context will determine the precise form and nature of our activities.



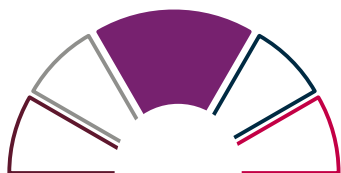
### Identifying the key risks

This stage of our approach focuses on identifying and understanding the potential risks and problems in the sector and where our oversight may have an impact. The breadth of our role means we may identify problems from a range of different sources, for example, in the services needed and received by consumers, in progress in reforming the legal services market, in the regulation of providers, and in the collective impact of regulation on legal services. Our analysis of problems is also informed by the policy and practice of better regulation such as that captured by the Regulators' Code and the experience of other regulated sectors.



### Setting out our expectations

Based on the problems and risks we identify, we aim to set out clearly our expectations for the areas we regulate and oversee. Our expectations may contain a range of obligations for those we oversee, such as procedural rules, regulatory rules, statutory guidance or policy statements, and other assessment frameworks, such as regulatory standards, that capture good practice. These are reviewed from time to time to ensure that they remain fit for purpose.



### Seeking assurance through oversight

Oversight is central to our approach. Principally this is delivered through our assessments of performance, but also when we assess applications to change regulatory arrangements. Our Market Evaluation, which we undertake every three years, allows us to assess the collective impact of the Act on the market. Collectively these activities provide us with an ongoing assessment about performance “on the ground” against the expectations we set. Specifically, the outcome of our oversight work allows us to target efforts on addressing concerns in areas where improvement is required. This may be in the delivery of regulated redress, in specific aspects of a regulator's performance, or in the management of risk around a particular activity.



### **Tackling concerns**

From time to time our oversight will not provide assurance: a regulator may fall short of regulatory standards; internal governance arrangements may indicate potential non-compliance with the LSB's rules; the collective impact of regulatory changes may point to new risks emerging in the sector. In managing these risks to the delivery of effective regulation, a number of activities may be appropriate, such as agreeing action plans with regulators for making required improvements, requesting performance reports from the OLC or monitoring of specific topics.

If we become aware of a serious concern that could require consideration of deploying our enforcement powers, we will consider launching an investigation. A decision to escalate to a formal investigation will be taken against transparent criteria. Following an investigation, we may provide the regulator with an opportunity to commit to an informal undertaking to address our identified concerns. If so, we would actively monitor and scrutinise its delivery. Failure to deliver against an informal undertaking would result in formal action being pursued.



### **Taking formal action**

The Act gives the LSB specific formal powers across the four areas of responsibility highlighted above.

For example, if a regulator's performance has the potential to undermine the regulatory objectives and informal action to tackle concerns has not achieved a positive outcome, or if the direct impact of the underperformance on consumers is significant, we can use one or more of a range of enforcement powers. Our enforcement policy sets out how we will exercise our enforcement powers. Formal powers also include making recommendations to the Lord Chancellor where changes are needed to the scope of regulated activities and powers to recommend licensing authority designation and changes to a regulator's statutory powers.

We will always use our powers proportionately and will use the least intrusive measure that we think will be effective at achieving the required improvement. If a measure proves to be ineffective we will consider different and stronger interventions.

## References and further information

Topic	Source of powers and further information
The regulatory objectives	<ul style="list-style-type: none"> <li>• S.1 of the Act</li> </ul>
Regulation of approved regulators	<ul style="list-style-type: none"> <li>• Part 4 of the Act</li> </ul>
Regulation of SDT	<ul style="list-style-type: none"> <li>• Ss.178-180</li> </ul>
Provision of redress for regulated services	<ul style="list-style-type: none"> <li>• Part 6 of the Act</li> <li>• S.120 (reporting to the Board)</li> <li>• S.121 (performance targets)</li> <li>• S.156 (powers in respect of rules)</li> </ul>
Reserved legal activities	<ul style="list-style-type: none"> <li>• Ss.24-26 set out powers in relation to altering the list</li> </ul>
Voluntary arrangements to improve standards	<ul style="list-style-type: none"> <li>• Ss.163-166</li> </ul>
Setting out our expectations	<ul style="list-style-type: none"> <li>• S.30 on internal governance rules</li> <li>• Ss.49-50 and 82 on policy statements</li> <li>• S.83 on licensing rules</li> <li>• S.162 power to issue guidance</li> </ul>
Taking formal action	<ul style="list-style-type: none"> <li>• Enforcement policy</li> <li>• S.31 (performance targets)</li> <li>• Ss.32-34 (directions)</li> <li>• Ss.35-36 (public censure)</li> <li>• Ss.37-40 (financial penalties)</li> <li>• Ss.41-44 (intervention)</li> <li>• Ss.45-48 and Ss. 76-79 (cancellation of approval)</li> </ul>