

Developing Regulatory Standards

February 2013

An assessment of the Solicitors Regulation Authority

Contents

1. Executive summary	3
2. Background.....	6
3. The Law Society/Solicitors Regulation Authority	8
Context	8
Outcomes focused regulation	9
Risk assessment.....	13
Supervision	16
Enforcement	19
Capacity and Capability	23
Action plan.....	26
Annex A: The role of the Legal Services Board and the required regulatory standards	31
Annex B: The consultation, the LSB’s powers and the assessment process ..	36
Annex C: Self-assessment template.....	38
Annex D: Glossary of terms	54
Annex E: The legal regulators in numbers	56

1. Executive summary

- 1.1. In December 2011 the Legal Services Board (LSB) set out¹ how it would assess whether the approved regulators are acting in ways that are compatible with the statutory requirements they have been given by the Legal Services Act 2007 (the Act).
- 1.2. The statutory requirements include the duty to, as far as is reasonably practicable, act in a way which is compatible with the regulatory objectives and to have regard to the better regulation principles and best regulatory practice. The LSB considers that best regulatory practice for legal services regulation consists of four constituent parts. These are:
 - an outcomes-driven approach to regulation that gives the correct incentives for ethical behaviour and has effect right across the increasingly diverse market;
 - a robust understanding of the risks to consumers associated with legal practice and the ability to profile the regulated community according to the level of risk;
 - supervision of the regulated community at entity and individual level according to the risk presented; and
 - a compliance and enforcement approach that deters and imposes sanctions appropriately.
- 1.3. In addition to these, we explained the importance of regulators assessing their overall capacity and capability. Without the appropriate level of capacity and capability the regulator will struggle to deliver the four constituent parts of regulation and, therefore, all the requirements of the Act.
- 1.4. All regulators were therefore required to assess their own performance against the four regulatory standards criteria and to assess their own capacity and capability to deliver the regulatory objectives. We published a report in December 2012 that covered the self-assessments submitted by the Council of Licensed Conveyancers (CLC), the Costs Lawyer Standards Board (CLSB), the Faculty Office, the Intellectual Property Regulation Board (IPReg) and ILEX Professional Standards (IPS). This report contains the findings from the LSB's first performance review of the Law Society's regulatory functions, which have been delegated to the Solicitors Regulatory Authority (SRA). A report covering the performance of the General Council of the Bar's regulatory functions, which have been delegated to the Bar Standards Board (BSB) will be published later this year.
- 1.5. The SRA is the largest of all the approved regulators and in December 2012 was responsible for regulating 128,419 practising solicitors (and 4,449 other lawyers) and 10,892 entities and their employees and managers.² It has over 600 employees. Compared to other regulators, it regulates markets that are more complex, markets that pose greater risks to the regulatory objectives and

¹ LSB (December 2011), *Developing Regulatory Standards: Summary of responses to the consultation on developing regulatory standards and decision document*,

http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/20111214_regulatory_standard_v11.pdf

² SRA (9 January 2013), *Regulated population statistics*, accessed 16 January 2013. <http://www.sra.org.uk/sra/how-we-work/reports/statistics/regulated-community-statistics.page>

markets where consumers are more likely to be vulnerable. These challenges are significant and for the SRA to successfully deliver the required regulatory standards it, therefore, needs to have excellent systems and processes, substantial market intelligence and appropriate regulatory capacity and capability throughout the organisation. This level of complexity also means that, while the SRA is required to meet the same standards as the other approved regulators, the context is fundamentally different.

- 1.6. One further element in which the context is different is the scale of the changes which the SRA has implemented since 2009. The challenge of becoming a licensing authority, developing and implementing the movement to outcome focused regulation, establishing itself as an independent regulator, managing the move to a single site and making major operational changes in a tough financial environment has been different in degree to that faced by other front-line regulators. Significant progress has been made on a wide range of issues in the intervening period and the comments made in this report – both by the SRA in their submission and by the LSB in our commentary – highlighting areas where further improvement is needed to embed, sustain or complete change needs to be seen against the backdrop of this considerable achievement.
- 1.7. The SRA submitted a draft self-assessment in May 2012. This was developed and improved further over the following months, including through a process of external review. Its final self-assessment was submitted on 24 September 2012. The SRA has undertaken a number of welcome activities since the submission of its self-assessment that are relevant to the required regulatory standards. Where appropriate, these are mentioned in this report. In addition, we have taken into account other information that we have, for example from external sources and statutory requests, where relevant.
- 1.8. On Outcomes Focused Regulation (OFR), the LSB recognises the steps taken so far by the SRA and the top level commitment to the development and delivery of this important aspect of regulation. There is evidence of a deeper embedding of this approach across the SRA. However, this needs to feed through to all aspects of regulation, including enforcement. The revised handbook is a step forward but it continues to include a large number of rules without clear evidence to justify the restrictions they impose and thus their retention. There are also areas where outcomes and rules are unhelpfully elaborated in detail and/or by very detailed guidance, which may have the effect of limiting innovation.
- 1.9. On risk identification and supervision, there have been significant delays in recruitment and IT issues that have hampered delivery, though during these delays, progress has been made on developing risk team structures, skills and work methodologies. The SRA recognises that the current approach, while a step forward that appropriately addresses many of the most significant risks, remains sub-optimal.
- 1.10. The enforcement section was the least reflective of all aspects of the submission as few documents were provided to support the SRA's judgements and those documents that it did provide were often functional descriptions rather than analysis of performance. Though the SRA did not provide the LSB with detailed management information on enforcement as

part of the self-assessment, we requested it subsequently using our powers under section 55 of the Act. As a result, we remain concerned that the information that the SRA has on enforcement may be too narrow in focus and not adequate to aid the management of the complex nature of some of the workflow.

- 1.11. One area the LSB considers requires greater focus is how the SRA Board holds its executive to account for the operational performance of the SRA. We recognise that the SRA Board has dealt with significant operational issues recently including, in conjunction with the Law Society's Business and Oversight Board, the enabling programme, practising certificate renewal and the move to new premises as well as beginning the transformation of the organisational structure and workforce. However, the SRA Board also needs to scrutinise the performance of the SRA's core operational functions. For example, it has until recently received only limited management information on the delays in the ABS and recognised body authorisation processes. It must insist on the development of more intelligent and detailed management information.
- 1.12. We were surprised that the SRA's self-assessment did not deal in detail with the concerns that have been expressed over a considerable period of time both in public and in private, about the SRA's approach to ABS licensing and in particular the delays assessing licence applications. Although the focus of the concerns is on the SRA's authorisation process (and authorisation is not a specific element of the self-assessment) we consider that the SRA should have included the issue in the sections on risk assessment and/or supervision, as the advent of ABS provided an opportunity to embed new approaches to each of these areas more comprehensively.
- 1.13. None of the actions that the SRA did include mentioned how it plans to deal with the backlog which arose in the course of 2012. However, since it completed its self-assessment, and in response to a formal request for information by the LSB using its powers under section 55 of the Act, the SRA has committed to making material changes in its approach to ABS licensing decisions. These changes are designed to ensure earlier identification of substantive regulatory risk and the development of substantive supervisory strategies to manage this, as well as both system and IT changes. The LSB has made it clear that it expects the SRA Board to prioritise holding its executive to account for delivery of this work. The recent increase in licences granted during December 2012 and January 2013 is a positive sign of process improvement, but it is important that this momentum is maintained, rather being a "one-off" exercise.
- 1.14. The SRA's response to the section 55 request also revealed that there is a large backlog in applications for recognised body status. The SRA reports that it is also taking action to tackle this and its most recent regulatory outcomes³ report showed progress. The LSB is receiving reports each month from the SRA about its progress on clearing its ABS backlog.

³ Page 7, SRA (2013), SRA regulatory outcomes report: December 2012, <http://www.sra.org.uk/documents/SRA/performance/regulatory-outcomes-q4-2012.pdf>

2. Background

- 2.1. The LSB has completed this assessment exercise to assure itself that the approved regulators are acting in ways that are compatible with the statutory requirements they have under the Act and that they are not allowing, or risking, unacceptable consumer detriment in the markets they regulate.
- 2.2. The statutory requirements on legal services regulators include the duty to, as far as is reasonably practicable, act in a way which is compatible with the regulatory objectives and to have regard to the better regulation principles and best regulatory practice.⁴
- 2.3. Annex A contains details of the LSB's role and why it has conducted this piece of work. It provides some information on the standards of regulation the LSB expects from legal services regulators, the LSB's overall approach to regulation and details of how it arrived at those standards. Annex B provides information on the design of the assessment process, how the LSB decided on the process it adopted and the process it followed for each of the legal services regulators. Annex C is the self-assessment template that was provided to regulators for their completion.

The December 2012 report

- 2.4. The regulatory standards report we published in December 2012, which covered the CLC, CLSB, Faculty Office, IPReg and IPS, observed there were a number of generic areas of concern arising from our analysis of their self-assessments. These were:
 - a lack of understanding of the needs of the consumers who use the legal services provided by those they regulate;
 - a lack of consumer engagement;
 - a failure to use the common framework that has been developed by Oxera as the basis for understanding the markets they regulate;
 - some problems regarding the provision of sufficient data to regulators from the Legal Ombudsman; and
 - general information sharing issues between regulators.

Full details on this report and our process can be found on the webpage: http://www.legalservicesboard.org.uk/Projects/developing_regulatory_standards/index.htm

Next steps

- 2.5. The LSB will be monitoring the SRA's achievement of its action plan and its strategic plan, reflecting the issues identified in this report closely and will, where appropriate, take action for failure to keep to them without good reason.
- 2.6. Decisions on the longer-term framework for future self-assessments will depend on progress made by regulators during the course of 2013. Any LSB mandated re-assessment will therefore take place in 2014 at the earliest. The decision to mandate a re-assessment will be influenced by progress, or

⁴ LSA section 28

problems, identified during 2013, and will also be dependent on the timescales of each regulator's action plan. However, the LSB would not wish to fetter the discretion of any front-line regulator to undertake the exercise at its own initiative ahead of a more general exercise and would take the outcome of any such exercise into account in determining how it will proceed. The LSB will also consider whether any thematic reviews are necessary and will evaluate the merits of publishing examples of good and poor practice that emerge.

3. The Law Society/Solicitors Regulation Authority

Context

- 3.1. The SRA regulates solicitors, other types of lawyer (for example registered foreign lawyers), many firms offering legal services in England and Wales and the managers and employees of those firms. It was established formally by the Law Society of England and Wales in January 2007. The SRA is able to regulate all of the reserved legal services defined by the Act, except for notarial activities, and is a licensing authority for alternative business structures (ABS).
- 3.2. During 2012, the Law Society group's practising certificate fee income was £98.3 million. This income was distributed across the various organisations that make up the group and was used to pay the levies for the Legal Ombudsman, LSB and the Solicitors Disciplinary Tribunal (SDT). Out of this income, the SRA and the shared services department were each allocated £33.5 million. About 70% of the shared services practising certificate fee income is used to provide services to the SRA. The Law Society's representative arm was allocated £13.4 million of the practising certificate fee income for use on activities allowed by the Act (permitted purposes). Over this same period (2012), solicitors were required to pay a practising fee of £344, and entities regulated by the SRA were required to pay a practising fee based on a percentage of their turnover of between 0.86% and 0.08%, together with a minimum fee according to a turnover band into which the entity falls.⁵ Individuals are also required to make a compensation fund contribution of £92 and entities must make a contribution of £1,340.
- 3.3. The SRA is the largest of all the approved regulators in England and Wales and in December 2012 was responsible for regulating 128,419 practising solicitors (and 4,449 other lawyers) and 10,892 entities and their employees and managers.⁶ It has over 600 employees.
- 3.4. The SRA's self-assessment was submitted to the LSB at the end of September 2012 and therefore relates to the activities it had already completed and/or planned at that time. Since that submission, the SRA has published its three year strategy, a regulatory risk framework and has also launched a red tape initiative. This final initiative makes some proposals on the removal, curtailment or simplification of regulatory processes or rules that do not work in the public interest and seeks further suggestions from stakeholders. This very welcome initiative and the steps already taken to reform onerous regulations and processes is the sort of work we would expect from a mature regulator.

⁵ Full details on how the entity fee is calculated can be found here: <<http://www.sra.org.uk/solicitors/pc-registration-renewal/fees/fee-policy-2012-2013.page>>

⁶ SRA (9 January 2013), *Regulated population statistics*, accessed 16 January 2013. <<http://www.sra.org.uk/sra/how-we-work/reports/statistics/regulated-community-statistics.page>>

The SRA's self-assessment – Detailed LSB analysis

Outcomes focused regulation

SRA Assessment	Undertaking improvement and work is well underway
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- 3.5. In October 2011, the SRA's new handbook, including a principles based code of conduct, came into force. This was an important first step towards delivering an outcomes focused approach. Today, the SRA has a strategic commitment to embed change in its day to day activities and its culture as a regulator. The SRA states in its self-assessment that it understands the changes in the legal services market. It notes that these have been driven by a combination of changing consumer demands, technological changes and the current economic environment, as well as the introduction of ABS. Because of such changes the SRA must keep consumers at the heart of all of its regulatory decision making if it is to be effective in its role. The LSB considers that there is board and senior management level commitment to delivering outcomes focused regulation, but there is clearly a large work programme ahead of the SRA, as detailed in its 2013-15 strategic plan, to turn this commitment into a reality.
- 3.6. As it stands, the SRA handbook continues to include very detailed rules for issues such as authorisation, practising requirements, handling client money, for specific Financial Services Authority (FSA) and Office of Fair Trading (OFT) requirements and for cross-border practice. The SRA says that such rules have been left in place as these areas present higher risks to consumers and the public, though when these risks have been reduced, it will remove the rules and extend its principles based approach. We recognise that the regulatory framework is complicated by the quantity of relevant legislation. This creates a level of complexity for the SRA and the interplay between the different statutes is often problematic.⁷ However, these statutes often give the SRA the discretion to make rules and over the content of those rules, rather than an active duty to do so. This means that the SRA has the ability to simplify and improve them and in some areas (such as the holding of client money) it is reviewing its approach. Other requirements and restrictions (for example the practising framework rules and the separate business rule) are likely to remain significant barriers.
- 3.7. No provision for a review of the separate business rule was included in the action plan. Analysis of information provided to the LSB by the SRA in January 2013 in response to its section 55 request for information shows that the separate business rule is a factor in around 10% of ABS applications. In addition, the LSB has been told by several ABS licence applicants that the rule has caused delay and increased costs. The LSB expressed its concern about the possible effects of the rule in the decision document on the SRA's

⁷ The primary legislation affecting the SRA's delivery of its regulatory functions stretches across the Solicitors Act 1974, The Administration of Justice Act 1985, Courts and Legal Services Act 1990, and the Legal Services Act 2007

licensing authority application and has written⁸ to the SRA expressing its concerns in the light of the more recent information. Given the SRA's disinclination to give priority to a review of the rule, the LSB will consider whether and, if so, when and how to undertake more structured evidence gathering to test how general the concerns highlighted in the letter are proving to be in practice.

- 3.8. The LSB notes that the SRA has already had to update the code six times since its publication in October 2011.⁹ Many of these updates have simply been technical changes but each change has tended to include a number of other clarifications, alterations and additions; some of these changes were more significant than others.¹⁰ The regularity of such updates could suggest that too many detailed rules remain in the handbook and that the process of clarifying detail is failing to provide the level of certainty intended.
- 3.9. We therefore consider that the SRA should complement these regular updates by undertaking more activity to understand the outcomes consumers, and the wider regulatory objectives, required in order to shape the regulatory framework to deliver those outcomes. The LSB expects the SRA, through its research into the changing market and by educating its regulatory community, to be proactive in its assessment of both the level and likelihood of risks to consumers and the wider regulatory objectives occurring and of the scope for greater variety in the ways in which they can be mitigated effectively.
- 3.10. Helping solicitors to understand OFR should also make future improvements to the SRA's regulatory framework easier to embed and more effective. The SRA has undertaken a series of initiatives to educate its regulatory community; these have included road shows and webinars. It also states that it has been proactive in engaging about OFR during supervisory visits. The SRA has also recently published research into the level of understanding and acceptance of OFR amongst those it regulates, which highlights some significant progress given the scale of the endeavour, whilst also highlighting that work remains to tackle remaining uncertainties and misunderstanding¹¹
- 3.11. Similarly, the LSB is interested to know what consumers' views are about the effectiveness of the SRA's approach to regulation, which was not discussed in the SRA's self-assessment. The research evidence that does exist indicates that consumers are not always well informed about what they should expect by way of regulatory protection and it is therefore important that the SRA gives increasing weight to dialogue with consumers and their representative bodies in both the design and ongoing communication of regulatory arrangements.

⁸See Letter from Chris Kenny, LSB to Antony Townsend, SRA dated 30 January 2013
<http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/20130130_letter_chris_kenny_to_antony_townsend.pdf>

⁹ As of 1 January 2013,

¹⁰ Full details of the changes made during each version of the code can be found here:
<<http://www.sra.org.uk/solicitors/handbook/release-notes.page>>

¹¹ See SRA (February 2013), *Measuring the impact of Outcomes Focused Regulation (OFR) on firms*,
<<http://www.sra.org.uk/impactofr>>

- 3.12. One area where the SRA recognises that it must improve is its knowledge about how consumers need and use legal services. As the SRA has the largest regulatory coverage of all the approved regulators and it regulates the most diverse range of legal businesses from sole practitioners through to large corporate entities, understanding the different characteristics and needs of businesses and individual consumers in each market is challenging but vital. To understand more about consumers, the SRA's research and risk teams are working together to determine what factors make consumers vulnerable, so that they can focus activities on those consumers that are likely to be more at risk. Improvements to the SRA's information collection and analysis should also deliver better outcomes for consumers. The SRA has demonstrated this by making changes to its website based on its consumer focus group feedback. However, we were not provided with comprehensive evidence that research on consumer needs and broader research activity is shaping and driving policy development and policy decisions.
- 3.13. The SRA does not mention in the self-assessment using the Oxera framework to understand more about how consumers need and use different legal services markets. Doing so would enable the SRA to isolate areas of consumer detriment. However, we understand that the SRA's research and risk teams are increasingly making use of the framework and we welcome this. The LSB expects all legal services regulators to use the framework in order to improve regulatory consistency across the legal services markets and as a way of analysing whether regulation is targeted and proportionate.
- 3.14. As the SRA is still in the relatively early stages of the introduction of OFR, it is perhaps not surprising that it does not yet have evidence about whether its regulatory approach has started to deliver improved outcomes for consumers. The examples given, such as the 200 baseline supervisory visits that were carried out to understand handbook compliance, did not show whether the new code was achieving the outcomes expected for consumers. However, we welcome the fact that the SRA is conducting research to evaluate the impact of OFR and look forward to discussing this with them in due course.
- 3.15. Given that the SRA is, by its own admission, at an early stage in implementing OFR, the LSB considers that its self-assessment of "undertaking improvements and work is well underway" could be seen as somewhat optimistic. The new handbook only came into force in October 2011 and is already on its sixth iteration, the SRA lacks systematic collection of information on consumers and, despite much work, there remains a considerable operational management challenge in changing the culture of the entire SRA itself to an OFR approach, as well as leading the change through the sector. It is, however, clear that the SRA has not just started work recently on OFR. While the LSB therefore accepts the SRA's self-assessment, it considers that there is substantial work to do before the SRA can consider its own performance to be satisfactory and expects the SRA to make clear progress against its action plan to realise the planned improvements.

Main LSB observations
There is senior executive commitment and recent evidence of a deeper embedding of OFR into the SRA but this needs to feed through more consistently to all aspects of regulation across the whole of the SRA at all levels. The SRA Board should also ensure it has clear understanding of the measurement and progress made during this operational and cultural change programme. More work needs to be undertaken to engage and understand the needs of consumers and understand whether the outcomes delivered by the SRA support the regulatory objectives.
LSB assessment: Undertaking improvement and work is well underway

Risk assessment

SRA Assessment	Undertaking improvement and work is well underway
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- 3.16. As part of the SRA's move towards OFR, it has been changing how it identifies, analyses and manages risk. This new approach will continue to be developed through to 2015. One completed part of this development is the creation of the SRA's Risk Centre, which provides an operational structure to carry out the SRA's risk based assessment. A risk framework has also been put in place to identify the main risks to the delivery of the regulatory objectives across three main areas: entities (assessing individual firms), thematic risk (assessing a section of the legal market or group of firms) and the SRA's internal operations (assessing risks that may impact the SRA's delivery of regulation). The self-assessment states that risk based decisions are made through a risk index after risks have been rated against a set of categories. The SRA believes that this new approach will help to develop a consistent treatment of risk and will improve the achievement of the regulatory objectives.
- 3.17. However, the self-assessment noted that one fundamental component of the SRA's approach to risk management is not yet in place. The Information Capture Form (ICF) was to become the principal way for the SRA to gather and record intelligence about its regulatory community. Suffering from delays, the SRA reported that the form is still in development. In its absence, the SRA is currently unable to carry out detailed, automated analysis of the information it holds. Instead the SRA is still relying on its previous, Excel-based systems to make risk based decisions. While this approach is adequate in the short term, it is more labour intensive and according to the SRA self-assessment cannot provide the cross-organisational analysis that the ICF was aiming to deliver. It recognises that the Excel-based systems are sub-optimal because careful scrutiny and manual effort is required to ensure that significant risks to consumers and the wider regulatory objectives are not overlooked.
- 3.18. The SRA is working to implement a new risk assessment system known as "r-view" (this is commented on in more detail in the supervision section). The SRA is committed in its Strategic Plan to delivery of "r-view" during the period 2013 to 2015. It says that the system will be designed to ensure a single consistent approach to the capture and recording of information about the entities and individuals the SRA regulates. The LSB will monitor progress in this important area against the SRA's ambition, stated in the strategic plan, to have implemented "r-view", including the necessary information systems, in 2014; it is essential that the SRA Board does the same.
- 3.19. In terms of vulnerable consumers, the SRA is currently carrying out research that aims to create a definition of what a vulnerable consumer is and how that vulnerability can lead to outcomes being put at risk. The LSB sees this as a sound first step in understanding consumer detriment and a basis for developing the SRA's approach to risk management in this area. It also notes that the SRA's risk profiling has uncovered emerging risks through thematic reviews, such as on conveyancing transactions through the Land Registry, which uncovered a need for more targeted supervision and improved

practices. However, in addition to this work, the SRA will need to incorporate the Oxera Framework into its consumer research programme, to build a greater understanding of the markets in which those it regulates operate and to assess whether its regulation is targeted and proportionate. As noted in 3.13 above, the LSB understands that some work has been undertaken to incorporate the Oxera framework into the SRA's research and risk identification activity but the self-assessment did not provide any details on this work and the extent to which it is being used is unclear.

- 3.20. The SRA has also given a commitment to identifying future trends through risk monitoring and its research programme. Monthly reports developed by the Risk Centre are reviewed at the regulator's Strategic Risk Group meetings to manage current risk and identify future trends. The Risk Centre also works closely with the SRA's research team to ensure that research projects are coordinated strategically to understand the market and wider context. The LSB would be interested to understand how effective the SRA considers these initiatives have been to date and how their effectiveness will continue to be assessed in future.
- 3.21. Efforts have also been made to embed the SRA's new approach to risk management across its Board and staff through changes to governance structures, educational sessions and internal communications. However, the SRA remains uncertain to what extent these efforts have created a real understanding of its new approach to risk-based decision making or fundamentally altered the behaviours of all staff. The LSB expects the SRA to continue to build Board and staff understanding of the new approach to risk throughout the 2013-15 implementation period and track its implementation in practice.
- 3.22. The SRA is also unclear in its self-assessment about the links between its risk management and enforcement activity. While an adequate explanation is provided about the connection between the risk and supervisory work programmes, little narrative or evidence has been provided on how those carrying out enforcement activity use the Risk Centre's analysis; this link needs to be clarified.
- 3.23. On risk identification, there have been significant delays in recruitment and IT issues that have hampered delivery. Despite these delays, progress has been made on developing risk team structures, skills and work methodologies. The SRA recognises that its current approach, while a step forward that appropriately addresses many of the most significant risks, remains sub-optimal. It also recognises that the IT issues need resolution so that the SRA can deliver risk management in a systematic manner that works across all its various teams and processes.
- 3.24. Despite some shortcomings and the amount of work still to do, it is clear that the SRA has not just started work recently on its risk framework. While the LSB therefore accepts the SRA's self-assessment of its risk management as "undertaking improvement and work is well underway", it considers that there is substantial work to do before the SRA can consider its performance to be satisfactory and expects it to make clear progress against its action plan to realise the planned improvements.

Main LSB observations

Despite progress which has clearly been made, there are significant improvements to be made before the SRA can consider itself to be 'satisfactory' in this area. Specifically, there are significant delays and IT issues that need to be resolved in order to deliver risk management in a systematic manner that works across the SRA's various teams and processes. The current interim approach appears to work sufficiently but certainly suffers from its reliance on key people and new/temporary systems.

LSB assessment: Undertaking improvement and work is well underway

Supervision

SRA Assessment	Undertaking improvement and work is well underway
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- 3.25. Successful reform of SRA supervision is one of the major components of its regulatory reform programme. The SRA has made significant progress in moving towards a supervisory approach that is risk based and outcomes focused. However, in a number of respects, supervision has been one of the more challenging areas of reform for the SRA. It is an area that demanded significant culture change as well as development of technical competencies, the deployment of suitably skilled individuals and the provision of reliable and complete firm and individual data and risk information.
- 3.26. The SRA has encountered a number of difficulties ensuring that it has the right mix of skills and competency to deploy in this area. It has been operating at a lower head count than expected due to recruitment difficulties. It has been reliant on a sub-optimal approach to risk assessment due to the non-delivery of the expected IT system and the previously planned ICF. However, despite these difficulties the SRA was able to provide a positive account of its position in this aspect of regulation.
- 3.27. The SRA reported that the work of the Risk Centre, while not currently at the planned level due to the non-delivery of the expected IT system, underpins its work. The Risk Centre identifies specific trends through the examination of relevant evidence. This information is then used to determine supervisory policy and has led to a number of specific pieces of thematic work, for example the work undertaken with firms that may have been facing financial difficulties. The Risk Centre identified firms likely to be encountering such issues and these were contacted by the supervision department.
- 3.28. The self-assessment detailed the SRA's approach for identifying firms whose size, complexity and/or risk may require some form of permanent or temporary supervision. This includes the relationship management pilot for larger and global firms. These groups of firms were chosen because they potentially present a greater range of regulatory issues and so require greater engagement to understand and address their specific risks in the context of their significantly better informed customer base. This is a welcome development. A key challenge will be ensuring that supervision is able to meet the challenges posed not just by the large and global firms, but by smaller firms, niche firms and new firms entering the market in a way that is proportionate to the risks that they pose: firm size of itself is unlikely to be either the sole or the most important determinant of risk. The SRA must ensure that this supervision remains focused on risk and is typified by constructive engagement with firms.
- 3.29. The self-assessment detailed the process by which supervisors risk profile their firms and suggests that there is a good flow of information between the Risk Centre and supervision department. In terms of the Legal Ombudsman, the SRA uses information received in a manner akin to other information received about particular firms. All information is used in the risk profiles developed by supervisors and this process appears to be working

appropriately for this function. Ensuring that the SRA delivers a consistent approach in the absence of the expected IT functions is a key challenge. The SRA reports that it has instigated regular meetings between supervisors and has a common training framework for employees to help ensure that this consistency of approach is maintained.

- 3.30. Perhaps because of the date it was written, the self-assessment made less reference to the roll-out of the Compliance Officer for Legal Practice and for Finance and Administration functions (COLP and COFA) than might have been expected. The SRA has undertaken been significant effort to develop and roll-out the policy framework and the operational systems to underpin this, backed by considerable communications activity. This has been a considerable implementation project and the SRA will need to keep the detailed arrangements under review as the process beds in. The SRA will need to take account of the reported levels of non-compliance with this regime and look at their own systems and processes. The robustness of these arrangements within firms will be crucial to the success of the exercise and outcomes focused regulation as a whole. SRA supervisory approaches will need to develop, both to assess the adequacy of arrangements within firms; but also, where those arrangements are robust, to explore where other demands made by the SRA can be scaled back.
- 3.31. The self-assessment lacked detail as to how the supervision process links with the enforcement function. The SRA has produced an integrated supervision and enforcement strategy for conveyancing, which recognises the symbiotic link between enforcement and supervision. However, it is not clear whether this positive approach is replicated across all activities regulated by the SRA. Anecdotal evidence has suggested that SRA enforcement and supervision functions are disconnected. It has been alleged both that the initiatives from senior staff are not reflected in work on a day to day basis and that a pattern of prosecution for trivial infringements has been observed, when early intervention to secure a return to compliance may have been more appropriate. We have made no judgement on the veracity of such allegations but, when considered alongside the large number of open enforcement cases and the lack of detail on the links between supervision and enforcement, it appears that there may be a need for SRA to consider the issues further.
- 3.32. The self-assessment notes that the resourcing of the supervisory function is due to be completed during quarter 1 of 2013 (in fact a full headcount was achieved by the end of 2012), but it does not believe that it will be on a fully firm foundation until the end of 2013. A number of activities are planned during 2013, including the introduction of named supervisors for medium impact firms. The SRA also intends to commission and implement an IT solution called “r-view” during the period of its strategic plan (2013 – 2015). This will provide the supervision department as well as the Risk Centre with a single consistent approach to data capture, the systems to analyse information about those they regulate and on external factors that may impact each firm. This system will provide supervisors with a single view of the firms they regulate.
- 3.33. The timing for and expectations of these activities are demanding. The “r-view” project is essentially a re-scoped version of the IT project that was due for

delivery in early 2012 but, according to the strategic plan will not now be implemented until 2014 at the earliest. The project formed part of the Enabling Programme which has itself encountered significant delays and cost overruns as well as some quality concerns about the products delivered. To deliver on these significant ambitions the SRA, and those it commissions to provide the system, are going to have to carefully project manage this work. The SRA needs to assure itself that its timescales and ambitions are achievable and must be rigorous in managing the development, transition and training processes through to delivery. SRA Board oversight and scrutiny will be essential, reflecting lessons learned from both the earlier problems with the Enabling Programme and the recent more successful delivery of the functionality for the Practising Fee Certificate (PCF) collection in 2012

- 3.34. The self-assessment states that, during 2013, the SRA will attempt to get a better understanding of the costs and benefits of its supervisory approach. This is welcome. Ensuring that the benefits and costs of its new approach to supervision are understood better will help the SRA to explain the features of a risk-based approach to supervision to those it regulates and the public in general. However, the LSB is of the view that adoption of a risk-based supervision policy does not of itself complete the task. Supervisors and all those that engage with firms need to deliver the policies in practice so that benefits can be delivered. This is a significant challenge for the SRA. As it acknowledges in its self-assessment, supervision has too often in the past been slow, bureaucratic, operational in focus and lacked necessary analysis of common or emerging themes or broader firm specific issues. The LSB considers that the activities detailed by the self-assessment have the potential to lead to the necessary culture change and so deliver benefits to firms and reduce risks faced by consumers and the public interest, but their effective implementation will need to be tightly managed.
- 3.35. The challenges of supervision are recognised in the submission and it appears that the resourcing issues have now been resolved. A key challenge that remains is ensuring that the risk, supervision and enforcement functions are better co-ordinated, that they are targeted appropriately and that all action is risk based. It is clear that the SRA has not just started work recently on changing its approach to supervision. While the LSB therefore accepts the SRA's self-assessment it considers that there is substantial work to do before the SRA can consider itself to be satisfactory and expects the SRA to make clear progress to realise the planned improvements.

Main LSB observations
The SRA submission suggests that it has a realistic view of the challenge of this aspect of regulation. However, the submission did not entirely reflect the challenge and impact of the SRA taking time to reach full headcount during such an important year. For the SRA to be able to consider itself as satisfactory at a future assessment it will have to successfully specify, deliver and embed the “r-view” IT project and show that it has delivered the required improvements in risk assessment as well as organisational efficiency and culture. Careful project management and Board scrutiny, particularly but not exclusively on IT issues, will be needed to ensure this process is a success.
LSB assessment: Undertaking improvement and work is well underway

Enforcement

SRA Assessment	Undertaking improvement and work is well underway
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- 3.36. This section was the hardest section of the self-assessment for the LSB to review. This is because, unlike most of the other sections, the LSB was provided with few documents to support the statements made in it. The documents that we were provided with were often functional documents already in the public domain that contained little reflection on the SRA's processes and performance. For instance, the self-assessment referred to work to modernise the Legal and Enforcement function of the SRA, yet we were not provided with any details on the terms of reference of such activity or any detail of the objectives and specific targets of such a review. The assessment indicates that this activity is focused on recruitment from the Birmingham legal market and to expand the enforcement function by 10 posts (to 60). The submission states that this increase in size of enforcement function will enable the SRA to use in-house legal advice more often and so reduce overall legal spend. Such a reduction in legal spend and the accretion of more expertise within the organisation may well be beneficial, but the LSB does not consider that this expansion of previously outsourced activity on its own can be considered a modernisation. This is because, for instance, it does not appear to address the ways in which the additional staff will operate in order to deliver a risk-based, outcomes focused enforcement function that provides incentives for compliance, flexibility and appropriate sanctions.
- 3.37. Some aspects of the submission appear concerning. For instance, the submission noted that the enforcement department has a policy of encouraging enforcement staff to take decisions according to their own judgement of risk. It is not clear from the submission if such decisions are taken within the existing risk frameworks or whether other ways of assessing risk (e.g. in terms of an assessment of likelihood of success of a prosecution) are influencing the decisions of the enforcement department. Nor was there evidence that assessments of risk were joined up or consistent across authorisation, supervision and enforcement. It was not clear, for example, if all or any of the existing enforcement cases had been reviewed in the light of the shift to OFR to assess whether an enforcement path remains appropriate or whether the case should be returned to supervision to bring the firm or individual back into compliance via alternative routes.
- 3.38. The submission states that the SRA's enforcement is well established and effective, particularly in respect of disciplinary proceedings and general litigation. We acknowledge that the SRA takes a wide range of enforcement action across many different types of alleged Code breaches. It has significant experience in doing so and it has identified and tackled serious bad practice. However, to support its statement, the SRA said that there are around 500 open files for SDT prosecution at any one time. The LSB does not consider that such an example on its own suggests that the process is effective. We therefore sought additional information from the SRA using our powers under section 55 of the Act. The SRA has told us that since submission of the self-assessment the number of open cases has gone down due to specific efforts

to reduce the number of open files. However a significant number of cases which remain open may well relate to alleged infringements of the previous regulatory framework. In particular, given the improved effectiveness of the supervision function, we would expect to see greater coordination between the two departments on the extent to which supervision of older cases is now more appropriate than enforcement action.

- 3.39. In addition, the length of time from the opening of an enforcement file to issuance to the SDT appears long, especially because the bulk of the investigation work should have been completed before the case is given to the enforcement team. For 2012, information suggests that once a file has been given to the enforcement team (and they have made a decision to refer it to the SDT) it took, on average, 6 months for the case to be issued to the SDT. During 2011/12 in only 43% of cases referred to the SDT was a determination made by the SDT within 6 months¹² and, based on information received from our formal information request, for cases heard during December 2012 the average length of time from issuance by the SRA to the SDT hearing was 9 months. This suggests that the vast majority of files handled by the SRA enforcement team take over a year to resolve; and this is excluding the significant investigation work carried out before referral to the enforcement team. Clearly, not all aspects of the end to end process are in the control of the SRA, but there are clearly issues for review, both in terms of the SRA's own activity and its interaction with others.
- 3.40. Information provided since the self-assessment in response to our use of formal information gathering powers has raised LSB concerns about whether the KPIs that the SRA has set itself are comprehensive enough to drive efficiencies in the overall process and inform the Board about potential problems. In particular, the LSB considers that a closer aligning of key performance indicators on timeliness between the SRA and the SDT will increase transparency of the process and possibly act as an incentive to deliver improvements. We welcome the initiative of the SDT in establishing an SDT "user group committee" as one potential mechanism for achieving this and expect the SRA to participate in it actively.
- 3.41. The SRA says that it is increasing the use of regulatory settlement agreements to deliver appropriate sanctions. The LSB considers such agreements are an appropriate part of a regulator's toolkit. However, the SRA needs to be confident that such agreements are not being used because of the concerns about the time it would take to impose formal sanctions and/or because the SRA has insufficient powers to impose appropriate sanctions on non-ABS firms.¹³ Similarly, although the SRA cites its success rate at the SDT (and a lack of subsequent appeals) as evidence that its enforcement is effective, it does not appear to have considered whether there are perverse

¹² Page 13, Solicitors Disciplinary Tribunal (2012), *Annual Report 2011/2012*.

<<http://www.solicitortribunal.org.uk/Content/documents/Annual%20Report%202011-2012%20final.pdf>>

¹³ The SRA can only impose a maximum penalty of £2,000 on solicitors and recognised bodies; anything that may require a larger penalty must be taken to the SDT. However, when acting as a licensing authority, the SRA can impose financial penalties of up to £250 million on ABS firms and £50 million on ABS managers or employees; there is a right of appeal to the SDT.

incentives that may contribute to those outcomes. For example, appeals to the High Court are expensive and the multiple decision making points during the SRA's internal process potentially militates against all but the strongest cases reaching the SDT.

- 3.42. The LSB notes that significant efforts have been made to inform consumers and practitioners about the SRA's enforcement and sanctions activity. This includes publishing its guidelines on sanctions and its criteria for deciding to take action. This transparency is necessary for good regulation. A number of initiatives, such as 'You Tube' videos aimed at consumers are innovative and welcome. However, the submission did not detail any analysis or research that may have been undertaken to find out whether consumers or solicitors do actually understand the policies and guidelines that have been published. The LSB considers such an initiative would be beneficial and enable the SRA to target its activities at areas that prove to be the most effective at communicating with those regulated and the public.
- 3.43. The submission states that the OFR focus of the SRA ensures that it directs regulatory resources at the areas of highest risk. In the area of enforcement, the SRA says that this risk focus has meant that it is well positioned to consider on a case by case basis the most appropriate tool to use in any given situation. The SRA cites new policies on the use of financial penalties and whistle blowing as exemplifying this. However, no examples or evidence were provided to show that a risk based approach is used in individual enforcement activities and/or how such policies will operate in practice.
- 3.44. The submission takes a functional approach to describe the SRA's processes for gathering information and targeting breaches that are serious and undermine the regulatory objectives. The SRA states that it undertakes decision making audits on a quarterly basis to ensure that the foundations are in place to facilitate fair, robust and proportionate regulatory decision making and that this audit, together with its separate quality assurance audit, assists in demonstrating SRA compliance with its published decision making framework.¹⁴ The LSB was not provided with any examples of these audits or any discussion or indicative examples of the sort of issues these audits have identified and/or the steps taken to rectify any adverse findings. Nor was it provided with any description of the integration of the audit process into wider governance systems. The LSB is therefore unable to state one way or another whether these activities do in fact contribute to achieving the required regulatory standard.
- 3.45. The submission states that staff in the Legal and Enforcement Directorate work closely with colleagues across the organisation (and with others) to make sure that a balanced and well-informed view is taken and translated into appropriate remedies to mitigate the biggest risks in the market. No additional information was provided on how this operates and the level of formality of this close working is unclear. In an organisation as large as the SRA, there is a risk that a 'silo mentality' develops which limits the effectiveness of the organisation. There is some anecdotal evidence that suggests that there is a

¹⁴ The SRA's decision making framework can be found on these web pages: www.sra.org.uk/decisionmaking

level of disconnect with other parts of the organisation: if true, this implies that the systems may not be in place to secure coordination between matters of supervision, the imposition of administrative penalties and formal hearings before the SDT. For instance, the supervision team and enforcement team record very different management information. The management information recorded by the Supervision department relates to assessments and investigations. Yet the Legal and Enforcement department have their own recording conventions centred on the individual(s) or firms in question. Therefore it is not possible to calculate the length of the end to end process without looking at each file individually. The LSB considers that more formal and effective processes for the enforcement function's engagement with risk and supervision will be beneficial and it may help to ensure a consistency of approach to risk based regulation across the SRA. It may be that such formal feedback processes and liaison are already in place, however the LSB was not provided with any details of such activity.

- 3.46. We recognise that many of the cases that the SRA deals with involve serious misconduct and are complex to investigate. But, whatever the nature of the allegation, it is important that regulators ensure that their processes are effective, proportionate and lead to timely outcomes. There must be regular senior management and Board monitoring of effectiveness and value for money. The information provided by the SRA (as part of the self-assessment and subsequently) did not show that this is being done. Nor did it provide evidence that there is an appropriate level of engagement and clarity of roles between the enforcement and the risk and supervision functions. In the LSB's judgement, the SRA has not provided sufficient evidence that its work on this element of regulation is "well underway"; our view is that there is considerable progress to make to reach that standard. However, it is clear that work has started and, although the exact terminology of the LSB's scale may not fit the precise circumstances in this case, we consider that, on the evidence presented to us, the SRA's actual performance is one level lower than its self-assessment.

Main LSB observations
The LSB considers that this section was the weakest of the self-assessment. This is because it did not contain the levels of self-reflection and detail present in the other sections. Much of the evidence provided was simply links to documents on the SRA's website. These documents, although relevant, did not provide evidence as to how the SRA is assuring itself that it is delivering the required indicators and delivering an effective enforcement process. A number of statements did not have evidence to support them. It is also not clear how the enforcement work links with the other sections of the SRA and whether those links are effective. It is not clear whether the KPIs that the SRA has set itself are comprehensive enough to drive efficiencies in the overall process and inform the Board about potential problems.
LSB assessment: Needs improvement and work has started recently.

Capacity and Capability

SRA Assessment	Undertaking improvement and work is well underway
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- 3.47. The SRA's response on capacity and capability did not include significant discussion beyond detail on the governance structures that are in place. There was notably very little on the activity of the Board, for example, by way of analysis of time spent on specific issues, and how it holds the executive to account on the various change programmes and operational matters. It appears that the Board may, at least until recently, have placed undue weight on its involvement in the detail of policy matters when there are significant operational and performance issues confronting the organisation.
- 3.48. The LSB considers that the SRA Board should assess the extent to which it and the other senior decision-making tiers of the organisation are getting management information covering crucial areas in the right volume and detail, with the proper frequency and analysis to enable the Board to challenge the performance of the SRA executive.
- 3.49. Clarity of vision is crucial, but for the SRA to translate this into good performance there must be a golden thread of performance and accountability that cascades through the SRA staff team. There is an acknowledged gap in building the SRA capability and capacity at senior and middle manager level, which was recognised in 2011. Not enough consistent progress has been made in this area and that is reflected in some of the earlier assessments.
- 3.50. The SRA reshaped its corporate governance arrangements and remit in December 2011 to reflect the needs of delivering OFR. This involved redrawing the terms of reference of the various SRA committees, a review of committee membership and the appointment of individuals with experience of consumer affairs to these committees. From January 2013 the SRA have had a Board with a lay majority. New arrangements with the Law Society on shared services and oversight were introduced at the start of 2012 and have proved relatively effective.
- 3.51. The SRA provided information on the consumer affairs function and how it works to ensure that the consumer voice is accurately captured in key policies and activities. The LSB considers that this is an appropriate response to a difficult area. This function is also working with research to explore the issue of vulnerable consumers and has worked well with the Legal Services Consumer Panel. It has also established panels for vulnerable groups and held a number of public workshops.
- 3.52. The SRA has gone through significant transformation, including moving to a single site in a new city. The SRA states that the move to Birmingham and the transformation programme as a whole has made positive changes to the culture of the organisation. A visit by the LSB suggested that there is merit in this conclusion, although clearly this is a partial picture and staff engagement will be required to evaluate the full impact of the move on the culture of the organisation in the longer term. Care will need to be taken to ensure that the move is a success and remains a success at all levels of the organisation.

- 3.53. The SRA detailed the steps that have been taken to strengthen its senior management. It engaged a consultancy to review the overall senior capacity of the organisation, has already implemented some changes and will be adopting the remainder of its recommendations during 2013. This includes the creation of new directors for performance and delivery and external affairs. The SRA is also building a leadership group of individuals below the senior management team and has provided them with leadership development training. The development of such a team is designed to provide greater support to the senior management team by widening the pool of individuals with sufficient management skills and regulatory experience. The LSB considers this move essential as an organisation the size of the SRA must be able to delegate responsibility to a wider field of individuals. Such delegation helps ensure that activities move at a proper business-like pace and are given the appropriate level of attention at the right time. This can avoid issues being handled at inappropriately senior levels or triggering the need for “crisis management” interventions.
- 3.54. The SRA is also in the early stages of developing a “talent management programme”, which gives talented staff members a range of stretching experiences at a relatively early stage of their careers. The LSB considers this to be a welcome development, but it is important that it is not implemented at the expense of development activity targeted at the bulk of staff.
- 3.55. The LSB is aware that the SRA has, during 2012, faced particular strain on resources. This has led to a reprioritisation of activities and in some instances some aspects of work have ceased. This includes work on will writing being rescheduled to 2013. Some major projects have been subject to significant delays, delivery issues and/or budgetary overruns. These projects have often involved the entire Law Society group and not simply the SRA. The Law Society group as a whole has also been criticised during internal audit for having deficiencies in its control environment. The Law Society, with the SRA, is taking steps to resolve these deficiencies. However, the LSB considers that greater project planning and programme management may enable the SRA to identify likely pinch points in advance and manage them accordingly. Achieving this will be one of the key tests of the new organisational arrangements currently being put in place.
- 3.56. The SRA has put efforts into its research programme and the further development of its Risk Centre is likely to deliver benefits. However, one aspect not addressed was knowledge management and quality of the data held by the SRA. We are aware of some concerns about the quality of data held by the SRA. We also observed in our first report on the regulatory standards of legal regulators published in December 2012 that the quality and quantity of information sharing between regulators and between regulators and the Legal Ombudsman is something of a concern across the sector.¹⁵ Knowledge management for large organisations is always a challenge and the concerns about quality of information and the issues regarding delivery of

¹⁵ LSB (December 2012), *Developing Regulatory Standards: December 2012*
<http://www.legalservicesboard.org.uk/Projects/pdf/regulatory_standards_assessment_of_five_of_seven_regulators.pdf>

elements of the enabling programme and the delay of the risk information systems are particularly relevant. The action plan does cover many of these aspects, yet their successful delivery is an important for the SRA to enable it to be a more efficient and consistent regulator.

- 3.57. We recognise that the SRA Board has dealt with significant operational issues recently including, in conjunction with the Law Society’s Business and Oversight Board, the enabling programme, practising certificate renewal and the move to new premises, as well as beginning the transformation of the organisational structure and workforce. However, the Board also needs to scrutinise the performance of the SRA’s own core operational functions and, in the LSB’s judgement, it has not done so with sufficient rigour to date, particularly on ABS and non-ABS authorisation and enforcement performance.
- 3.58. In the LSB’s judgement, the SRA has not provided sufficient evidence that its work on this element of regulation is “well underway”; our view is that there is considerable progress to make to reach that standard. Internal auditors have identified deficiencies in the SRA’s (and the Law Society’s) control environment, although progress has been made since the arrival of the Law Society’s Director of Shared Services. Its Board appears to have been unaware until after the submission of this self-assessment of the true extent of the backlogs in ABS and recognised body authorisations. Its management information across authorisations and enforcement does not enable proper scrutiny of its efficiency or effectiveness. There is a pressing need for the Board to hold its Executive to account for operational performance. The terminology of the LSB’s scale does not fit the precise circumstances in this case: we consider that the SRA’s actual performance is that it needs improvement and work has started.

<p>Main LSB observations</p> <p>The self-assessment provided little information on the operation of the SRA Board and in particular on how it focuses on setting strategic direction and holding the executive to account on the various change programmes and operational performance. The development of more intelligent and detailed management information will assist in this, but the Board will also need to continue to shift its focus from policy consideration to a deeper scrutiny of SRA activity and the outcomes it achieves.</p> <p>At executive level the SRA needs to continue to build capacity and capability quickly to embed the change that it has been driving in recent years. The SRA has invested in greater consumer engagement and this is welcome. More generally the SRA is undertaking significant change and has planned a number of appropriate activities for such a change and with some significant successes. However, some projects and areas have experienced significant budgetary and delivery issues and the controls across the entire Law Society group have been criticised.</p>
<p>LSB assessment: Needs improvement and work has started</p>

Action plan

- 3.59. The SRA submission contained a detailed action plan for each constituent part of the regulatory standards. Each of these plans contained detailed activities for 2012 and 2013. It also provided an early version of its now published strategic plan for 2013-15. The action plans provided as part of the self-assessment are shown below. Additionally the LSB analysed and extracted relevant activities from the 2013-15 strategic plan published by the SRA in December 2012.¹⁶ These are shown in the second table.
- 3.60. Many of the activities detailed in the submission and in the strategic plan appear appropriate, although the LSB would have preferred to see more work planned in terms of reviewing and assessing operational effectiveness of the SRA. For example, despite a number of requests we were not provided with the delivery plan for supervision for 2013. The Capacity and Capability action plan does include proposals to develop the SRA's approach to cost benefit analysis further and says that the SRA intends to refresh its political, economic, social and technological (PEST) analysis and these are welcome.

ACTION	COMPLETION QUARTER
Outcomes focused regulation	
Updating SRA Handbook	Ongoing
Transformation Champions – appointed and carrying out roles	Ongoing
Staff Technical Training	Ongoing
Vision and Values reviewed and adopted	Ongoing
First Tier complaints handling visits and research	Q2 2012
SRA Board lay majority	Q1 2013
Regulatory Scheme for Special Bodies	Ongoing
International Review	Q3 2013
Review of Decision Making Framework and Criteria	Q4 2012
Development of Quality Assurance Framework	Q4 2012
Strategic Plan for 2013-15 developed and approved	Q3 2012
Development and implementation of Performance Monitoring and	Q4 2012

¹⁶ SRA (December 2012), *Strategic Plan 2013/15*, <<http://www.sra.org.uk/sra/strategy/strategic-plan-2013.page>>

Reporting Framework	
LETR	Ongoing
Review of ABS licensing	Q2 2013
Delivering of the following research: <ul style="list-style-type: none"> • Impact assessment of OFR • Vulnerability, consumer outcomes and the role of information • Policing the perimeter – risks associated with breaches of the perimeter of legal services and review of SRA processes • Review of the SRA’s approach to supervision high impact firms • Review of the scope of SRA regulation • Market segmentation of in-house lawyers • Research into the disproportionality of SRA interventions • Best practice review and analysis of conveyancing practices 	Q2 2012 – Q2 2013
Risk management	
Approval of ‘R-view’	Q4 2012 (now not until during 2014 at earliest)
Implementation of ‘R-view’	Ongoing (now not until 2014 at earliest)
Policing the Perimeter - the risks associated with breaches of the perimeter of legal services and review of SRA processes	Q4 2012
Vulnerability, consumer outcomes and the role of information	Q2 2013
Delivery of the following research: <ul style="list-style-type: none"> • Review of the SRA’s approach to supervising high impact firms • Research into the disproportionality of SRA interventions • Best practice review and analysis of conveyancing practices 	Q2 2012 – Q2 2013
Supervision	
The LSB was not provided with supervision delivery plan for 2013. The self-assessment document suggested that this would be provided to the LSB in October 2012. Despite repeated requests this was not provided.	
Enforcement	
Finalisation of the Supervision and Enforcement Strategy for conveyancing	Q4 2012

Continued publication of the most recent SRA decisions	Ongoing
Review of delivery of 'credible deterrent'	Ongoing
Continued use of Regulatory Settlement Agreements	Ongoing
Implementation of the Enforcement Strategy for the ARP and associated prosecutions before the SDT	Q3 2013
Continue to deliver timely adjudications to agreed service levels	Ongoing
Continue to ensure the timely consideration of cases at the SDT	Ongoing
Complete recruitment to the new roles in the Legal and Enforcement Directorate	Q4 2012
Advertise and recruit to the post of Director of Enforcement	Q4 2012
SRA Board approves consultation paper and policy on co-operation agreements	Q3 2012
SRA Board considers and approves consultation on consultation the paper on indicative fining guidance	Q3 2012
SRA publishes statement "Whistleblowing to the SRA"	Q3 2102
Capacity and capability	
All staff successfully move to the Cube	Q3 2012
Develop our approach to Cost Benefit Analysis further	Q2 2013
Talent management programme cohort begins first placement	Q4 2012
Proposals on senior leadership development considered by the SRA Board	Q3 2012
Proposals on senior leadership development implemented	Q4 2012
Board with lay majority in place	Q1 2013
Recruitment (including two posts for Consumer Affairs specialists) for Standards and Regulatory Risk Committees completed	Q3 2012
PC renewals successfully implemented	Q1 2013
Strategic Plan for 2013-15 developed and approved	Q3 2012
Development and implementation of Performance Monitoring and Reporting Framework	Q4 2012

Recruitment of additional resources to support the delivery of the Consumer Affairs function	Q1 2013
Delivering of the following research: <ul style="list-style-type: none"> • Impact assessment of OFR • Vulnerability, consumer outcomes and the role of information • Policing the perimeter – risks associated with breaches of the perimeter of legal services and review of SRA processes • Review of the SRA’s approach to supervision high impact firms • Review of the scope of SRA regulation • Market segmentation of in-house lawyers • Research into the disproportionality of SRA interventions • Best practice review and analysis of conveyancing practices 	Q2 2013
Business planning and budget setting	Q4 2012
PEST refreshed	Q2 2013
Development of rolling budget setting programme	Ongoing

Strategic plan – 2013 -2015: selected extracts

Year	LSB summary of activity
January 2013	Review of learning from first year of ABS licensing. Outcomes of this review to inform approach to authorisation and supervision.
Beginning 2013	Analysis and consideration LETR report
April 2013	Implement ban of referral fees in personal injury cases. Begin a programme of supervision activity and if required enforcement.
October 2013	Closure of assigned risk pool and its replacement.
2013	Completion of development and implementation of the risk framework
2013	Embedding of risk based and outcome focused regulation
2013	Revision of consumer empowerment strategy. Formalisation of consumer engagement approach and the creation of a legal services public network
2013	Complete review of overseas practice and in-house practice and implement any required changes.
2013	Review of IT systems for regulated persons that were meant to go online during 2012 but were delayed
2013	Emphasis on ensuring that benefits of IT systems are being realised.

2013/14	Resolution of significant legacy information systems issues across Law Society Group
2013/14	Development of framework for licensing of special bodies
2013/14	Review of regulatory fee setting
October 2014	Implement changes to compensation arrangements arising from the current review.
October 2014	Regulatory fees to be set based on the outcome of the review set to take place during 2013/14
2014	The full implementation of R-view, including the necessary information systems, should take place during 2014
2014	Development of information systems to provide core IT functionality to enable the SRA to delivery proactive risk based regulation.
2014	Implementation of next stage of entity based regulation.
2015	Completion of the licensing of all LDPs
2013 – 2015	Delivery of core R-view programme.
2013 – 2015	Comprehensive development programme for staff. Including leadership development, technical training and talent management programme
2013 – 2015	Continual review of enforcement strategy to ensure it remains appropriate and a credible deterrent
2013 – 2015	Implementation of the outcomes of the review of the post enforcement activities.
2013 – 2015	Licensing of the first entities undertaking new reserved legal activity of will writing.

Annex A: The role of the Legal Services Board and the required regulatory standards

Overview

1. The LSB is the independent body responsible for overseeing the regulation of legal services in England and Wales. The LSB has a very simple goal - to reform and modernise the legal services marketplace in the interests of consumers, enhancing quality, and ensuring value for money and improving access to justice across England and Wales.

The LSB's vision

2. The regulatory objectives described in the Act provide the framework for regulation. The LSB has used these to develop a vision for the legal services market that it considers regulators must strive to deliver. The LSB's vision takes as its starting point that a competitive legal services market, underpinned by appropriate regulation, will deliver the regulatory objectives most effectively.
3. A market that works better for consumers and providers alike would be characterised by:
 - greater competition and innovation in service delivery;
 - access to justice for all;
 - empowered consumers, able to choose a quality service at an affordable price;
 - an improved customer experience with swift and effective redress when things go wrong;
 - a constantly improving and consistently ethical legal profession, as diverse as the community they serve; and
 - clear and proportionate regulation, that removes barriers to entry and targets market failure and which commands wide confidence from the public and the market.
4. The LSB works to stimulate a healthy and improving market for legal services that is constantly evolving towards our vision. The LSB knows that it must work with and through a wide variety of organisations to achieve it. The LSB is fortunate that it shares its regulatory objectives with the approved regulators and the Legal Ombudsman.

The regulatory standards and the LSB's approach to regulation

5. The LSB works with the regulators to ensure that they embed the principles of better regulation across their activities so that there is a consistent and transparent approach to the oversight of the legal sector. This work is fundamental to how the LSB operates in its oversight role. It also contributes to the development of legal services regulation so that it meets the needs of consumers but does so in the most efficient way for practitioners. How the LSB developed the standards, our legal powers for carrying out this work and the assessment process can be found in annex B.

The regulatory standards

6. The LSB concluded that only with the effective implementation of all of the constituent parts of regulation by the regulators will a more flexible, consumer focused and responsive regulatory regime for legal services emerge. This should result in a regulatory regime that delivers efficient and appropriate regulation for practitioners while ensuring that the public and consumers are protected from unacceptable levels of risk.
7. Effective delivery of the constituent parts of regulation should lead to higher standards of professional conduct and competence. It should catalyse a legal services market with increased consumer choice and confidence. It should encourage innovative practitioners who, if posing few risks, are not subject to intrusive or inflexible regulation. It should introduce a level of consistency in the approach to the regulation of legal services. Therefore it is against these constituent parts that the LSB has assessed all regulators.
8. The four regulatory standards were framed with explicit reference to the Act's requirement that legal services regulators must, as far as is reasonably practicable, act in a way which is compatible with the regulatory objectives and also that their regulatory activities must have regard to the principles that regulatory activity should be transparent, accountable, proportionate, consistent and targeted. The regulators also have a general requirement to adhere to any other principle appearing to it to represent best regulatory practice. The LSB, when devising the standards, paid particular attention to Government policy on regulation and other regulatory regimes – including both professional regulatory frameworks and academic work on regulation.
9. Within this work all the regulatory objectives are important. However, it remains the LSB's view that the regulators must prioritise the protection and promotion of the interests of consumers. They should do so by setting out clear outcomes that consumers can expect from providers of legal services. The LSB does accept that on some occasions the regulatory objectives may be in tension. However, such tension is more easily resolved through a focus on the outcomes expected rather than rules, which will not be able to cover every conceivable eventuality.
10. The next sections set out some of the factors that we consider important in order for a regulator to show that it has embedded all the standards appropriate in its organisation and uses them to inform day to day working practices.

Outcomes focused regulation

11. The goal of this standard is that each legal services regulator will have regulatory arrangements that can deliver the outcomes that all consumers, whether existing or potential, individual or corporate, can expect from authorised people. Regulators should only have detailed rules or requirements where they have clear evidence and analysis that justifies such an approach.
12. To deliver this, legal services regulators must have high quality, up to date and reliable evidence about how all groups of consumers need and use the legal services provided by those they regulate. Regulators must also have evidence to show whether the outcomes are being achieved. Each legal services

regulator must also ensure that it reviews and updates its regulatory arrangements based on the evidence it gathers.

13. The benefit of such an approach is that it can enable authorised people to use their professional judgement to determine how they can best achieve the required outcomes. It can deliver greater clarity and increased freedom to innovate in the provision of services without reducing protection for individual consumers and accountability of providers. It can future proof the regulatory arrangements so that they are flexible enough to allow market change and they remain relevant in the face of changing practices.
14. Competence in this regulatory standard will require legal services regulators to have evidence that the activities of those they regulate do not have an adverse impact on interests of consumers, the public interest and/or the rule of law. They must also avoid having detailed requirements that hinder competition and innovation. The LSB made it clear in its decision document¹⁷ that it would not compel regulators to move instantly to an outcomes focused approach. But the LSB does expect regulators to 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.

Risk

15. The Hampton principles,¹⁸ from which the better regulation principles within the Act¹⁹ were drawn, and the Regulators' Compliance Code²⁰ make it clear that regulators are expected to use comprehensive risk assessment to concentrate their resources in the areas that most need them.
16. The LSB considers that legal services regulators must have a formal, structured, transparent and evidence-based approach to the identification and mitigation of risk across all those they regulate. One of the key issues regulators should focus on is consumer detriment and those in vulnerable circumstances. The approaches adopted must also enable the identification of future trends as well as responding to current issues.
17. The clear benefit of risk assessment is to provide regulators with the information to enable them to target scarce resources at areas of highest risks to the regulatory objectives. This may be certain areas of work, certain types of practitioners or an array of different risk factors. By understanding risk, regulators can tailor their approaches and so deliver proportionate regulation.
18. Legal services regulators with effective risk assessment processes are likely to be able to deliver regulation that is targeted, proportionate and consistent. In doing this they will be able to ensure that the regulatory objectives are not being exposed to unacceptable risks and specifically that consumers,

¹⁷ LSB (2011), *Developing Regulatory Standards: Summary of responses to the consultation on developing regulatory standards and decision document*, LSB

<http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/20111214_regulatory_standard_v11.pdf>

¹⁸ Hampton (2005), *Reducing administrative burdens: effective inspection and enforcement*, HM Treasury.

<<http://www.bis.gov.uk/files/file22988.pdf>>

¹⁹ See section 28 of the Legal Services Act 2007

²⁰ Department for Business Enterprise and Regulatory Reform (2007), *Regulators Compliance Code: Statutory Code of Practice for Regulators*, 17 December 2007, BERR <<http://www.berr.gov.uk/files/file45019.pdf>>

especially those that are vulnerable, are not exposed to high risks of detriment.

Proportionate supervision

19. The regulatory standard of supervision is linked to that of risk assessment. It requires that legal services regulators have a supervision policy that is determined with reference to identified risks and is underpinned by an evidence-based understanding of the different market segments in which those they regulate operate.
20. To achieve this standard, supervision must be pro-active as well as reactive. For instance, if there was an elevated risk to any of the regulatory objectives from certain providers offering certain services, the LSB would expect the regulator to develop an appropriate supervisory response. This is in addition to more reactive approaches that may be determined by firm complaint volumes or specific compliance issues or concerns.
21. Similar to the risk assessment section, adopting such an approach helps to focus scarce resources on the highest priorities. However, active supervision helps ensure that the activities of individual firms, individuals or groups are not having an adverse impact on the regulatory objectives. The regulatory objectives that are particularly pertinent for this standard are the maintenance of adherence to the professional principles, protecting the interests of consumer and the public interest. Regulators that meet this standard will ensure that regulation is targeted, consistent and proportionate.

Appropriate enforcement

22. Effective regulators will have a range of effective and proportionate enforcement tools. They should be timely, fair and there should be published policies and guidance that enable others to understand the regulator's criteria for deciding to take action. The sanctions available to the regulator should deter others as well as impose sanctions on those who do not comply with the regulatory arrangements. Decisions to take action must be based on evidence and reliable sources. An appeals process that follows generally agreed best practice must also be in place.
23. The benefit of legitimate and effective enforcement procedures is that regulators can be confident that the enforcement decisions they reach are likely to survive any resulting legal challenges. Enforcement is the ultimate tool to deliver compliance and punish non-compliance with regulatory arrangements. Furthermore, such activities will help ensure that the professional principles are being maintained and that the interests of consumers and public interest are being protected.

Capacity and capability

24. This indicator is about whether the regulator has the capacity and capability to deliver the four regulatory standards as well as any other statutory responsibilities and has governance arrangements in keeping with best practice for similar organisations.
25. The LSB expects regulators to have clear leadership and strong consumer engagement so that consumers will be confident that the regulator is

independent from those it regulates. Regulatory budgets and staffing must be linked to the nature of the market they regulate and the risks therein, not simply the level of regulatory fees they believe practitioners are willing to pay. A good quality regulator will have transparency and continuous improvement at its heart. It will have documented governance procedures and processes in line with best practice. It will also have a systematic approach to knowledge and information management at all levels.

26. Without the appropriate level of capacity and capability the regulator will struggle to deliver the four constituent parts of regulation and the requirements of the Act. This is why it forms an important part of the assessment.

Annex B: The consultation, the LSB's powers and the assessment process

Consultation

1. In May 2011 the LSB published a consultation paper entitled Developing Regulatory Standards. The paper discussed how the LSB would assess whether the regulatory standards and performance of the approved regulators were consistent with the regulatory objectives in the Act and whether they act in a way that is compatible with the principles of better regulation and best regulatory practice.
2. To do so, the LSB consulted on what it considered to be the constituent parts of good regulation and the standards and criteria against which it would assess the approved regulators' performance.
3. These four criteria were:
 - an outcomes-driven approach to regulation that gives the correct incentives for ethical behaviour and has effect right across the increasingly diverse market;
 - a robust understanding of the risks to consumers associated with legal practice and the ability to profile the regulated community according to the level of risk;
 - supervision of the regulated community at entity and individual level according to the risk presented; and
 - a compliance and enforcement approach that deters and punishes appropriately.
4. It is also important that the regulators have the capability and capacity to deliver the regulatory standards and adhere to other relevant statutory responsibilities.
5. The LSB consulted for a 12 week period which ended on 12 July 2011 and received 10 written consultation responses. The submissions and our decision document have been published on the LSB website.²¹

The LSB's powers

6. We consider that the LSB must be able to assure itself that the approved regulators are carrying out their functions in ways that are compatible with the statutory requirements in the Act and that they are not allowing, or risking, unacceptable consumer detriment in the markets they regulate. In addition, the requirement on the LSB and the approved regulators to have regard to the principles of better regulation and best regulatory practice (sections 3 and 28 of the Act) provides a firm basis for setting out our view of appropriate regulatory standards for legal services regulation.

²¹ The discussion paper can be found here:

http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/21110420_developing_reg_std_finalrb_proof_3.pdf

The responses to that discussion paper can be found here:

http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/submissions_received_to_the_consultation_on_developing_regulatory_standards.htm

The LSB's decision document can be found here:

http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/20111214_regulatory_standard_v11.pdf

7. The requirement to have regard to best regulatory practice implies a continuing evolution of how approved regulators regulate; regulating in a way that is more efficient for those regulated but still protects consumers from detriment. The regulatory standards draw heavily on the latest thinking to set out a modern approach to the regulation of legal services providers.
8. Sections 3 and 28 of the Act require that all approved regulators and the LSB act in a manner compatible with the regulatory objectives. In order to act in a way that is compatible with the regulatory objectives, the LSB must assure itself that approved regulators are protecting the interests of consumers, ensuring that authorised people adhere to the professional principles²² and that the public interest is protected. There can be no doubt that the language of the Act – “protecting”, “promoting”, “improving” in the regulatory objectives - requires the LSB to be proactive on this issue.
9. We consider that the Act places a positive (not a passive or purely responsive) responsibility on the LSB: “*The Board must [emphasis added] assist in the maintenance and development of standards in relation to, (a) the regulation by approved regulators of persons authorised*”.²³ Therefore, we need to be satisfied that approved regulators are effective regulators that operate in a way that is consistent with the better regulation principles. This assessment fulfils a significant part of the work to assure ourselves that approved regulators are meeting statutory requirements. However it is not the only piece of work and this report does not amount to a final assessment on whether approved regulators are meeting their statutory requirements.

The assessment process for the SRA

10. In December 2011, the LSB wrote to the regulators, to set out a timetable for the self-assessment process. Prior to receiving the regulators’ draft submissions, the LSB carried out an intelligence gathering exercise to build a picture about each regulator’s regulatory standards. This information was used in the initial challenge against each regulator’s draft self-assessment.
11. By the end of April 2012, the LSB had received a draft self-assessment from the SRA and we met with them to discuss the submission. These meetings were followed up with a letter from the LSB Chairman drawing attention to the fact that none of the regulators had used the Oxera Framework. In order to promote the value of using the Framework, the LSB held two seminars in July, where the regulators received a detailed explanation of how the Framework operates as well as a practical demonstration of how it could be used.
12. The SRA submitted its final self-assessments on 24 September 2012.

²² The professional principles include: that authorised persons; act with independence and integrity; that proper standards of work are maintained; act in the best interests of the client; comply with their duty to the court; and maintain client confidentiality.

²³ Section 4, Legal Services Act 2007

Annex C: Self-assessment template

Regulatory standards

The overall approach is for Approved Regulators and Licensing Authorities (AR/LAs) to self-assess their own level for each constituent part of regulation as well as their own capacity and capability.

The self-assessment is on the following scale:

- Good- all indicators embedded appropriately in the organisation and inform day to day working practices
- Satisfactory – significant progress is being made to embed indicators and use them in day to day working practices
- Undertaking improvement and work is well underway– indicators have been introduced but are not yet embedded appropriately in the organisation and do not yet inform day to day working practices
- Needs improvement and work has started recently

Alternatively, the AR/LA has the option to state: recognise this needs to be done but work has not yet started

We consider that all of the constituent parts apply to all ARs and so “not applicable” is not an acceptable response. Below each of the constituent parts are factors that indicate where an organisation might be on the scale. AR/LAs must use these factors to assess initially whether they are towards the top or bottom of the scale and provide that information in the self-assessment. However, AR/LAs are free to add sector-specific factors as well. All additional sector specific factors must be justified with reference to evidence. AR/LAs may also wish to use the indicators in box 3 on page 28 of the regulatory standards decision document as a guide.

In order to provide a consistent framework for understanding the legal services market, AR/LAs must use the Oxera report “A framework to monitor the legal services sector” published by the LSB on 28 September 2011 when considering the extent of their knowledge about consumers, the supply of legal services and the market(s) they regulate. For example, paragraph 2.1.3 of that report explains why there may be limited demand-side substitution because consumers need a specific type of legal advice for their problem; there may also be limited supply side-substitution if it is not possible for lawyers to switch to providing a different type of advice within a reasonable timescale. We would expect an AR/LA with a good understanding of the market(s) it regulates to be able to provide evidence about the types of consumer problems that occur, the extent to which supply-side substitution is possible, the

barriers to supply-side substitution, the risk of consumer detriment that arises and an assessment of whether any regulatory action is required to mitigate that risk.

AR/LAs must provide clear analysis and evidence of how it arrived at the rating together with an Action Plan for development going forward with challenging but realistic targets/timescales.

Lay Board involvement is preferable in completing the self-assessment; additional independent scrutiny may also be appropriate. Board sign off on the final submission is required.

LSB will publish a high level summary of the AR/LA's assessment and Action Plan.

For AR/LAs completing the self-assessment with any questions on the process or would like further details on what is expected please contact Fran Gillon (fran.gillon@legalservicesboard.org.uk) or James Meyrick (james.meyrick@legalservicesboard.org.uk)

Please provide details of a senior contact at the AR/LA who will be responsible for responding to LSB queries on the self-assessment:

Full name:
Job Title:
Contact details (including telephone and email address):

Outcomes focused regulation

To what extent does the AR/LA have regulatory arrangements based on the outcomes that consumers need?

Factors that indicate that the AR/LA is towards top of the scale:

- Regulatory arrangements deliver the outcomes that consumers need; there is clear evidence and analysis to justify any detailed rules; those regulated understand and accept approach to regulation;
- All members of staff and Board understand the organisation's approach to focusing regulation on the consumer and public interest;
- High quality, up to date, reliable evidence from a range of sources about how all groups of consumers need and use the legal services the AR/LA regulates; evidence about whether outcomes are being achieved; consumers have confidence in regulation. Regularly reviews and updates its regulatory arrangements based on that evidence.

Factors that indicate that the AR/LA is towards bottom of the scale:

- Predominately rule based regulation; high levels of prescription with no clear evidence base;
- Some resistance to moving to consumer-based outcomes by Board and/or those regulated;
- Little or no up to date evidence about consumers; decisions often based on lawyers' needs/views.

Outcomes focused regulation	To what extent does the AR/LA have regulatory arrangements based on the outcomes that consumers need?	
Scale		Please mark your overall assessment against the scale for this standard
Good		
Satisfactory		
Undertaking improvement and work is well underway		
Needs improvement and work has started recently		
Recognise this needs to be done but work has not yet started		
Questions for response	Text	
Rationale for assessment:		
Evidence to support assessment:		
References to relevant supporting documentation:		
Details of action plan with timescales and milestones (including work identified but not begun, work recently started and work already underway):		
References to relevant action plan documentation:		

Risk assessment

To what extent does the AR/LA have a formal risk assessment processes at key stages of its regulatory decision making processes?

Factors that indicate that the AR/LA is towards top of the scale:

- Formal, structured, transparent and evidence-based approach to identification and mitigation of risks across the whole range of entities and individuals that the AR/LA regulates. Risk analysis focuses predominantly on consumer detriment, including those in vulnerable circumstances. Evidence that approach to risk works in practice;
- Approach to evidence gathering for risk assessment enables the identification of future trends as well as current issues;
- Relevant staff and Board understand the reasons for risk assessment, how it informs other aspects of the AR/LA's activities. Staff share best practice and lessons learned in a structured and effective way.

Factors that indicate that the AR/LA is towards bottom of the scale:

- Some understanding of the main areas of risk but little evidence on which to base its approach;
- Relatively static approach, often or predominantly retrospective;
- No clear link between view of risk and other activities.

Risk assessment	To what extent does the AR/LA have formal risk assessment processes at key stages of its regulatory decision making processes?	
Scale	Please mark your overall assessment against the scale for this standard	
Good		
Satisfactory		
Undertaking improvement and work is well underway		
Needs improvement and work has started recently		
Recognise this needs to be done but work has not yet started		
Questions for response	Text	
Rationale for assessment:		
Evidence to support assessment:		
References to relevant supporting documentation:		
Details of action plan with timescales and milestones (including work identified but not begun, work recently started and work already underway):		
References to relevant action plan documentation:		

Supervision

To what extent does the AR/LA have supervisory processes that are consistent with the principles of better regulation?

Factors that indicate that the AR/LA is towards top of the scale:

- Supervisory activity:
 - is underpinned by an evidence-based understanding of different market segments and providers that the AR/LA regulates;
 - is determined by reference to identified risks;
 - is informed by data from the Legal Ombudsman;
 - facilitates innovation, change and commercial freedom; and
 - is adequately resourced (including the use of fit for purpose technology) to provide good quality, consistent decisions without backlogs.
- Clear and structured feedback loops between supervisory activity, risk assessment, staff learning and best practice;
- Regular senior management and Board monitoring of effectiveness and value for money of supervisory activity leads to improved processes.

Factors that indicate that the AR/LA is towards bottom of the scale:

- Supervisory activity is predominately reactive;
- Little co-ordination of experience and best practice development;
- Few incentives to improve effectiveness or value for money.

Supervision	To what extent does the AR/LA have supervisory processes that are consistent with the principles of better regulation?	
Scale	Please mark your overall assessment against the scale for this standard	
Good		
Satisfactory		
Undertaking improvement and work is well underway		
Needs improvement and work has started recently		
Recognise this needs to be done but work has not yet started		
Questions for response	Text	
Rationale for assessment:		
Evidence to support assessment:		
References to relevant supporting documentation:		
Details of action plan with timescales and milestones (including work identified but not begun, work recently started and work already underway):		
References to relevant action plan documentation:		

Enforcement

To what extent does the AR/LA have enforcement processes that are consistent with the principles of better regulation?

Factors that indicate that the AR/LA is towards top of the scale:

- Published policies and guidelines are written in plain language that enables others to understand the criteria for deciding to take action; appeal processes follow best practice;
- A wide range of effective, proportionate enforcement tools that can be deployed quickly by staff who have appropriate levels of experience and are well trained; enforcement powers provide appropriate incentives for compliance; enforcement penalties punish as well as deter; regular senior management and Board monitoring of effectiveness and value for money of enforcement activity feeds back to improved processes and reduced costs;
- Decisions to take (and not to take) enforcement action are evidence based and use reliable sources.

Factors that indicate that the AR/LA is towards bottom of the scale:

- Little or no evidence of structured approach to enforcement activity. Lack of appropriate levels of expertise amongst staff;
- Narrow range of enforcement powers; powers tend to be inflexible;
- Appeal processes that are time consuming and expensive with little control over costs.

Enforcement	To what extent does the AR/LA have enforcement processes that are consistent with the principles of better regulation?	
Scale	Please mark your overall assessment against the scale for this standard	
Good		
Satisfactory		
Undertaking improvement and work is well underway		
Needs improvement and work has started recently		
Recognise this needs to be done but work has not yet started		
Questions for response	Text	
Rationale for assessment:		
Evidence to support assessment:		
References to relevant supporting documentation:		
Details of action plan with timescales and milestones (including work identified but not begun, work recently started and work already underway):		
References to relevant action plan documentation:		

Capacity and capability

To what extent does the AR/LA have the necessary Board and staff capacity and capability to deliver the regulatory objectives?

Factors that indicate that the AR/LA is towards top of the scale:

- Clear and consistent leadership at Board and senior management level that ensures that the whole organisation has strong consumer engagement and consumer focus. Consumers are confident that regulation is independent;
- Appropriate levels of budget and staffing linked to the nature of the market(s), entities and individuals regulated; required skill sets are defined and linked to the key challenges facing the organisation, to the regulatory objectives and to the AR/LA's regulatory outcomes – which are achieved in practice. Organisation's structure enables effective decision making by appropriate delegation of powers to staff;
- Evidence-based understanding of the market(s) it regulates and the commercial realities of operating in it. High levels of knowledge management and analytical skill at all levels in the organisation drives culture of transparency, continuous improvement and embeds best regulatory practice from legal regulation and other industries.

Factors that indicate that the AR/LA is towards bottom of the scale:

- Consumer interest not yet embedded at all levels across Board or staff, or in regulatory arrangements;
- Budget/staffing levels/structure that inhibit regulatory capacity; Board members heavily involved in many aspects of day to day work; little focus on LSA requirements;
- Little management information about those regulated; little or no analysis or understanding of the market(s) they operate in.

Capacity and capability	To what extent does the AR/LA have the necessary Board and staff capacity and capability to deliver the regulatory objectives?	
Scale	Please mark your overall assessment against the scale for this standard	
Good		
Satisfactory		
Undertaking improvement and work is well underway		
Needs improvement and work has started recently		
Recognise this needs to be done but work has not yet started		
Questions for response	Text	
Rationale for assessment:		
Evidence to support assessment:		
References to relevant supporting documentation:		
Details of action plan with timescales and milestones (including work identified but not begun, work recently started and work already underway):		
References to relevant action plan documentation:		

Self-assessment certification

In order to assure the LSB of the accuracy of the self-assessment we require the following to certify the contents of the self-assessment and any accompanying documents:

- A member of the regulatory board, preferably lay, who has been involved in the completion of the assessment;
- The Chair or equivalent of the regulatory board on behalf of the entire regulatory board;
- The independent scrutiniser (where used) or alternatively the member of the regulatory board, preferably lay, who has been involved in the completion of the assessment must confirm the reasons for not seeking independent scrutiny.

Regulatory Board Member: On behalf of [the AR/LA's] regulatory board, I, member of said regulatory board, certify that I have taken reasonable steps to satisfy myself that the information contained within this self-assessment and accompanying documents are accurate, that the procedures followed to make the assessment provided a reasonable basis to reach a judgement and each ranking represent a fair and reasonable assessment:

<p style="text-align: center;">X _____ Member of regulatory board</p>	<p>Full name and date:</p>
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Regulatory board: On behalf of the [the AR's] regulatory board, I certify that the regulatory board has reviewed this completed self-assessment and has come to a reasonable opinion, after having made due and careful enquiry, that the information and judgements contained within this assessment are made on a reasonable basis:

<p style="text-align: center;">X _____ Chairman/equivalent of regulatory board</p>	<p>Full name and date:</p>
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Independent scrutiny

The LSB requires that each regulator either subjects their completed self-assessment to independent scrutiny or explains why they chose not to do so. The independent scrutiny can be completed by an appropriate professional, expert or consultant. This can include individuals sitting on other legal services regulatory boards. They should not be current or previous members of the regulatory board under consideration. This individual must provide their contact details, any professional accreditation and signature on the submitted self-assessment.

If the self-assessment was independently reviewed: I confirm that I, as an independent scrutiniser of this self-assessment, have taken reasonable steps to satisfy myself that the regulatory board and its executive have followed appropriate procedures which provide a reasonable basis for them to make the judgements contained within this self-assessment and in any other documents submitted alongside this self-assessment:

	<input checked="" type="checkbox"/> _____ Independent scrutiniser
	Full name:
	Date:
Job title and / or profession:	
Business name and address:	

If the self-assessment was not independently reviewed:

On behalf of the AR/LA's regulatory board, I, member of said regulatory board declare that the regulatory board decided against seeking independent scrutiny of the completed self-assessment for the following reasons:

This self assessment was not independently reviewed for the following reasons:

<p>X</p> <hr/> <p>Member of regulatory board</p>	<p>Full name and date:</p>

Annex D: Glossary of terms

ABS	Alternative Business Structures. From October 2011 non-legal firms have been able to offer legal services to their customers in a way that is integrated with their existing services. Or law firms will be able to develop their portfolios to compete across wider areas compared with their existing experience.
AR or approved regulator	A body which is designated as an approved regulator by Parts 1 or 2 of schedule 4 to the Legal Services Act 2007, and whose regulatory arrangements are approved for the purposes of the LSA and which may authorise persons to carry on any activity which is a reserved legal activity in respect of which it is a relevant AR
BSB	Bar Standards Board – the independent regulatory arm of the Bar Council
CLC	Council for Licensed Conveyancers – the regulator of Licensed Conveyancers
Consultation	The process of collecting feedback and opinion on a policy proposal
ILEX Professional Standards Board	Institute of Legal Executives – the independent regulatory arm of the Institute of Legal Executives
LA or Licensing Authority	An AR which is designated as a licensing authority to license firms as ABS
LSB or the Board	Legal Services Board – the independent body responsible for overseeing the regulation of lawyers in England and Wales
LSA or the Act	Legal Services Act 2007
Principles of Better Regulation	The five principles of better regulation: proportional, accountable, consistent, transparent and targeted

Regulatory Objectives	<p>There are eight regulatory objectives for the LSB that are set out in the Legal Services Act (2007):</p> <ul style="list-style-type: none"> • protecting and promoting the public interest • supporting the constitutional principle of the rule of law • improving access to justice • protecting and promoting the interests of consumers • promoting competition in the provision of services in the legal sector • encouraging an independent, strong, diverse and effective legal profession • increasing public understanding of citizens legal rights and duties • promoting and maintaining adherence to the professional principles of independence and integrity; proper standards of work; observing the best interests of the client and the duty to the court; and maintaining client confidentiality.
Reserved Legal Activity	Legal services within the scope of regulation by the Approved Regulators
SRA	Solicitors Regulation Authority – independent regulatory Arm of the Law Society

Annex E: The legal regulators in numbers

Approved regulator	Regulatory body	Reserved Activities	Licensing Authority	No. of Authorised Persons	No. of regulated entities	Practising certificate fee	Annual AR budget for representative & regulatory functions, centralised costs, set-up (SU) and running costs (RC)	Number of regulatory staff
Law Society	Solicitors Regulation Authority	The exercise of a right of audience The conduct of litigation Reserved instrument activities Probate activities The administration of oaths	YES	124,968 Aug-12 (SRA web report)	11,115 Aug-12 (SRA web report)	From 01-Nov-12 £344 (Individual PC fee) £10 (extra) Firm fees are based on a percentage of turnover between 0.86% and 0.08% Approved by LSB 01-Aug-12	Total Budget to 31-Dec-12: £98.310m Rep: 13.6% Reg: 34.1% SDT: 2.2% Central: 28.8% LSB SU: 1.3% LSB RC: 3.9% LeO RC: 16.0%	600+ FTEs (11-Sep-12 SRA press release)
General Council of the Bar	Bar Standards Board	The exercise of a right of audience The conduct of litigation Reserved instrument activities Probate activities The administration of oaths	NO	15,204 At 01-Apr-12 (levy figures)	N/A	From 01-Apr-12 <u>Self employed Bar:</u> £1,198 (QC) £811 (13 years +) £414 (8-12 years) £220 (5-7 years) £300 (3-4 years) £300 (1-2 years) Excl pension levy <u>Employed Bar:</u> £890 (QC) £622 (13 years +) £342 (8-12 years) £184 (5-7 years) £80 (3-4 years) £80 (1-2 years) Excl pension levy Approved by LSB 29-Jan-12	Total Budget to 31-Mar-13: £7.411m Rep: 19.9% Reg: 15.3% Central: 51.6% LSB SU: 0.0% LSB RC: 6.5% LeO RC: 6.7%	40FTEs 32 shared FTEs (Bar Council website Sept-12)
Faculty Office		Reserved instrument activities Probate activities The administration of oaths Notarial activities	NO	858 At 01-Apr-12 (levy figures)	N/A	From 01-Nov-12 £400 (annual fee) £40 (contingency fee) Approved by LSB 27-Jul-12	Total Budget to 31-Dec-12: £0.291m Rep: 0.0% Reg: 85.6% LSB SU: 3.2% LSB RC: 9.2% LeO RC: 2.1%	4 FTEs (Faculty Office self assessment)

Representative Bodies	Regulatory Bodies	Reserved Activities	Licensing Authority	No of Authorised Persons	No of regulated entities	Practising certificate fee	Annual AR budget for representative & regulatory functions, centralised costs, set-up (SU) and running costs (RC)	Number of regulatory staff
Chartered Institute of Legal Executives	ILEX Professional Standards	The exercise of a right of audience The administration of oaths The conduct of litigation (for associate prosecutors)	NO	7,907 At 01-Apr-12 (levy figures)	N/A	From 01-Jan-13 £290 (fellow) £150 (associate prosecutor) Approved by LSB on 06-Sep-12	Total Budget to 31-Dec-12: £2.071m Rep: 52.4% Reg: 31.8% LSB SU: 4.0% LSB RC: 11.4 % LeO RC: 0.5%	7.7 FTEs 4.5 shared FTEs (IPS self-assessment)
Council for Licensed Conveyancers		Reserved instrument activities Probate activities The administration of oaths	YES	1,139 29-Mar-12 (CLC self assessment)	221 29-Mar-12 (CLC self assessment)	From 01-Nov-12 £400 licence fee Plus a practice fee based on turnover bands And/or a % of practice turnover fee between 1.0% and 1.3% Approved by LSB on 20-Sep-12	Total Budget to 31-Dec-12: £2.922m Rep: 0.0% Reg: 90.6% LSB SU: 0.4% LSB RC: 1.2 % LeO RC: 7.8%	24 FTEs 31-Dec-11 (Annual Report)
Chartered Institute of Patent Attorneys	Intellectual Property Regulation Board	The exercise of a right of audience The conduct of litigation Reserved instrument activities The administration of oaths	NO	1,745 * At 01-Apr-12 (levy figures)	185	From 01-Jan-12 Individual £140 (non-practicing) £170 (other attorneys) £280 (sole traders) £55 (attorneys working in entities or sole traders) Entities £280 + £55 per register attorney +225 per unregistered professional providing legal services Approved by LSB 27-Oct-12	Total Budget to 31-Dec-12: £0.508m Rep: 0.0% Reg: 69.0% LSB SU: 5.6% LSB RC: 14.3 % LeO RC: 1.9% IPREG contract w ITMA/CIPA to run website until end of 2012: 9.3% of PCF	3 FTEs (IPReg self assessment)
Institute of Trademark Attorneys			NO	639 * At 01-Apr-12 (levy figures)				
Association of Costs Lawyers	Cost Lawyers Standards Board	The exercise of a right of audience The conduct of litigation The administration of oaths	NO	565 At 01-Apr-12 (levy figures)	N/A	From 01-Jan-12 £450 (annual fee) (£250 proposed for 2013 with ACL invoicing fees separately - not yet accepted)	Total Budget to 31-Dec-12: £0.237m Rep: 47.3% Reg: 45.4% LSB SU: 1.2% LSB RC: 5.6% LeO RC: 0.5%	2 FTE incl 1 at ACL (CLSB self-assessment)