

# Regulatory standards 2014/15

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**An update report on the performance of legal services  
regulators**

**February 2015**

**This paper will be of interest to:**

Approved regulators and related disciplinary tribunals

The Judiciary of England and Wales

Providers of legal services

Legal representative bodies

Legal advisory organisations

Third Sector organisations (representing the interests of consumers or providers of legal services)

Consumer groups

Law schools/universities

Law students (and prospective students)

Legal and regulatory academics

Members of the legal profession

Accountancy bodies

Potential new entrants to the ABS market

Government departments

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## 1. Foreword

1.1. The Legal Services Board ensures that the various regulators for legal services do their job effectively so they are able to command consumer and public confidence. We set standards based on best practice that each of the regulators must meet. This report evaluates the progress that regulators have made against our standards since we completed our first full assessment in 2012/13.



- 1.2. Taken as a whole, the regulators have made good progress. They have improved their understanding of, and accountability for, their performance levels. They have also improved their ability to identify and assess risks. They know more about their role and their impact; and they have better information about those that they regulate. Regulators have started to get to grips with some of their arrangements that are complex, prescriptive and, in many cases, lack any meaningful evidence base to support their retention. This progress has been underpinned by investment by regulators in the skills and the capabilities of their staff.
- 1.3. But there is more to do and this document contains our specific expectations for each of the regulators. However, there is one pervasive theme that represents both our biggest disappointment and the largest lost opportunity. The regulators have continued to display a lack of focus and energy on understanding the users of the legal services they regulate. Not one of the regulators has published new research into the needs of consumers since the publication of the first of our reports on regulatory standards in 2012 and 2013. Greater effort has been made on consumer engagement and there are some notable efforts to collect information on the consumer experience, which are highlighted in this report. But it is scarcely credible for regulators to claim to understand all the risks in the markets they regulate when they don't undertake activities to help them understand the consumer perspective.
- 1.4. The legal services landscape continues to evolve. Many of the regulators are going through significant changes. Others have embarked on ambitious reform. In the next year, some regulators will be regulating entities for the first time, some will be regulating different reserved legal activities and some will be authorising alternative business structures. To support their front line activities, they are investing in change programmes and introducing new IT systems. Maintaining and enhancing performance against our standards while making such changes will be a challenge. Regulators must be confident that they have the right skills, performance management information and governance procedures to rise to these challenges.

- 1.5. Finally, the regulators we oversee are varied. They regulate different numbers of individuals and firms with varying degrees of complexity and so face different risks. They operate within a complex legislative and governance framework and with very different budgets and resources. We appreciate that one size cannot fit all. In this document, we have highlighted notable good practice from regulators which shows what can be done, whether big or small, to deliver the required standards. We are confident that delivering the regulatory standards is consistent with deregulation and reducing costs for regulated professionals, not the other way around.
- 1.6. We will return to our assessments of regulators in 2015/16. We have set out our expectations of what they need to achieve. We now look to each regulator to seize the initiative and deliver.

A handwritten signature in blue ink, appearing to read 'Michael Pitt', with a stylized flourish at the end.

Sir Michael Pitt  
**Chairman**

## 2. Executive summary

- 2.1. The Legal Services Board (LSB) is an independent body responsible for overseeing the regulation of lawyers in England and Wales. We ensure that that the front line regulators that have direct responsibility for the day-to-day regulation of the different types of lawyers act in ways that are compatible with the statutory requirements set out in the Legal Services Act (the Act). To do this, the LSB has developed four regulatory standards.<sup>1</sup> The standards are:
- **Outcomes focused regulation:** An approach that gives the correct incentives for ethical behaviour across diverse markets;
  - **Effective risk assessment:** An evidence based understanding of the risks in the markets they regulate and the ability to profile those regulated according to the risks they pose;
  - **Proportionate supervision:** Supervision of the regulated community according to the risks they present; and
  - **An appropriate enforcement strategy:** A compliance and enforcement approach that deters and punishes appropriately.
- 2.2. The LSB considers that regulators must also have the **capability and capacity** to deliver the regulatory objectives in the Act and adhere to other relevant statutory responsibilities.
- 2.3. In April 2014 the LSB asked regulators to report to the LSB on the progress they had made on delivering the regulatory standards since the 2012/13 self-assessment exercise. The template produced by LSB for the regulators included three questions in relation to each of the regulatory standards and capacity and capability. These were to provide an assessment of their:
- progress against the action plans provided as part of the 2012/13 self-assessment;
  - activities undertaken to respond to observations made by the LSB in the reports published on their 2012/13 self-assessment; and
  - additional activities relevant to the regulatory standards.
- 2.4. They were also invited to provide details of their updated action plans with timescales and milestones. We received the completed update self-assessments and supporting documents in October and November of 2014.
- 2.5. In the main, we are pleased with the progress made by the regulators since the 2012/13 regulatory standards exercise. Those that have made the most progress have done so because they have made improving their performance against the regulatory standards intrinsic to their organisational improvement plans. However, not all aspects of the regulatory standards have seen the same level of progress and we expect all regulators to demonstrate concrete progress in all areas in their next self-assessments.

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<sup>1</sup> LSB (April 2011), Developing regulatory standards: Summary of responses and decision document, [http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/pdf/20111214\\_regulatory\\_standard\\_v11.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/20111214_regulatory_standard_v11.pdf)

- 2.6. Regulators that provided action plans with their 2012/13 self-assessments have delivered substantial aspects of those plans. Many have made efforts to improve their understanding of those that they regulate and the services they provide. They have, on the whole, improved their risk assessment processes and most have moved to a risk based approach to supervision. A number of positive initiatives have also been undertaken to address significant failings identified by the LSB and to improve overall capacity and capability.
- 2.7. However, most of this evidence gathering has focused on the practitioners they regulate. Very little appears to have been achieved in engaging and understanding consumers of legal services, although there have been some welcome initiatives highlight in this report. Some regulators continue to maintain detailed and complex rules without any evidence to support their retention. We expect substantial improvements to be made in these areas.
- 2.8. Many of the regulators will be undergoing significant change during 2015/16, whether this is the introduction of new IT systems, regulating new areas, managing changes in personnel or simply undertaking regulation in new ways. Ensuring effective delivery and maintaining the standards of the regulators will be difficult, particularly for those that have yet to improve their governance and scrutiny processes.
- 2.9. During 2015/16, there will be an assessment of all regulators against the regulatory standards. This will be targeted at areas of greatest risk. We will use the findings from the current exercise to inform our targeting exercise (along with additional information from regulators and third parties). To help prepare regulators for the 2015/16 assessment the LSB has set out its expectations in the table below. These are separated into those that apply to all regulators (to varying degrees) and those that apply to specific regulators.
- 2.10. In 2015/16 The LSB expects **all** the regulators to focus on the following priority areas (although the extent to which they will need to will vary):

<b>Outcomes focused regulation</b>	<ul style="list-style-type: none"> <li>• The collection of high quality up to date evidence about how all groups of consumers need and use the legal services they regulate.</li> <li>• The collection of evidence to understand the impact of the rules they impose and whether those rules are delivering the outcomes consumers expect.</li> </ul>
<b>Risk assessment</b>	<ul style="list-style-type: none"> <li>• The building of a usable evidence base to identify the risks faced by consumers that use regulated legal services.</li> <li>• The development of learning programmes and tools to ensure that a consistent evidence based assessment of risk informs all regulatory processes.</li> </ul>
<b>Supervision</b>	<ul style="list-style-type: none"> <li>• The publication of proactive supervision policies that are informed by evidence and risk.</li> <li>• Monitoring and reporting on the effectiveness, proportionality and value for money of supervision approaches.</li> </ul>
<b>Enforcement</b>	<ul style="list-style-type: none"> <li>• Improving the timeliness and transparency of enforcement processes (this includes end-to-end reporting, procedures in plain language and easily searchable records of determinations).</li> <li>• Ensuring that the process for notifying a regulator of potential misconduct of a regulated person is accessible and user friendly, and works effectively alongside the Legal Ombudsmen complaints scheme.</li> </ul>

<b>Capacity and capability</b>	<ul style="list-style-type: none"> <li>• Ensuring that management and governance processes are capable of scrutinising the performance of the regulator and holding it to account.</li> <li>• Improving the transparency of all of the regulators' activities, specifically decision making and how boards hold executive staff to account (this would include board minutes, papers, annual reports and planning documents).</li> </ul>
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2.11. In addition to the activities above, the LSB expects each regulator to focus on the following priority areas during 2015/16:

<b>BSB</b>	<ul style="list-style-type: none"> <li>• Analysis of whether the BSB has appropriate enforcement powers, arrangements and processes.</li> <li>• Reform of large governance and committee structure to increase its focus on scrutinising performance.</li> </ul>
<b>CLSB</b>	<ul style="list-style-type: none"> <li>• The development of a more proactive approach to risk identification and mitigation by collecting more evidence about consumers and those regulated.</li> <li>• The development and publication of an evidence based supervision policy that incorporates the use of a wider range of supervisory tools as necessary.</li> <li>• Improved understanding of its regulatory role.</li> </ul>
<b>CLC</b>	<ul style="list-style-type: none"> <li>• Assessment of whether the expected improvements to the CLC's performance against the regulatory standards is being delivered following recent reforms.</li> <li>• Prioritise work on increasing its understanding of the market it regulates and make that information publicly available.</li> </ul>
<b>The Faculty Office</b>	<ul style="list-style-type: none"> <li>• Proper consideration about how the Faculty Office can cost effectively engage with consumers of the services provided by those it regulates.</li> <li>• Assess whether its enforcement arrangements and processes are appropriate, value for money and effectively punish misconduct.</li> </ul>
<b>IPReg</b>	<ul style="list-style-type: none"> <li>• Monitor and publicly report on progress and performance in authorising alternative business structures (ABS) and the experience of implementing its new arrangements and powers.</li> </ul>
<b>IPS</b>	<ul style="list-style-type: none"> <li>• Monitor and publicly report on progress and performance in authorising entities and the challenges of regulating new areas.</li> <li>• The development and publication of an evidence based supervision policy for individual Chartered Institute of Legal Executives (CILEx) fellows that incorporates the use of a wider range of supervisory tools.</li> </ul>
<b>SRA</b>	<ul style="list-style-type: none"> <li>• Report on the implementation of new IT systems and the extent to which new systems and processes are improving the consistency of risk assessment and supervision.</li> <li>• Maintain work to hold executive to account for regulatory performance.</li> <li>• Increase transparency of the SRA's performance and the accessibility of information on the activity of the SRA Board (including a reduction of board papers being discussed in private).</li> </ul>



### 3. Introduction

- 3.1. During 2011, the LSB developed and consulted on four regulatory standards. These are the standards that the LSB considered were necessary to regulate lawyers in England and Wales in accordance with the requirements of the Act).<sup>2</sup> 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 in the Act and 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.<sup>3</sup>
- 3.2. The standards we developed were:
- **Outcomes focused regulation:** An approach that gives the correct incentives for ethical behaviour across diverse markets;
  - **Effective risk assessment:** An evidence based understanding of the risks in the markets they regulate and the ability to profile those regulated according to the risks they pose;
  - **Proportionate supervision:** Supervision of the regulated community according to the risks they present; and
  - **An appropriate enforcement strategy:** A compliance and enforcement approach that deters and punishes appropriately.
- 3.3. The LSB consider that regulators must also have the **capability and capacity** to deliver the regulatory objectives in the Act and adhere to other relevant statutory responsibilities. To assist regulators the LSB produced a series of indicators for each regulatory standard and for capacity and capability. These indicators can be found in annex B of this report.
- 3.4. Effective delivery of the regulatory standards should lead to higher standards of professional conduct and competence amongst lawyers. It should help to create a legal services market with increased consumer choice and consumer confidence. It should encourage innovative practitioners who, if posing fewer risks, are not subject to intrusive or inflexible regulation. It will introduce a level of consistency in the approach to the regulation of legal services.

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<sup>2</sup> For the original discussion document and decision document please see this webpage: [http://www.legalservicesboard.org.uk/Projects/developing\\_regulatory\\_standards/index.htm](http://www.legalservicesboard.org.uk/Projects/developing_regulatory_standards/index.htm)

<sup>3</sup> Section 28, Legal Services Act 2007

### The 2012/13 self-assessment exercise

- 3.5. In December 2011, we asked regulators to assess themselves against the regulatory standards and to assess their capacity and capability. The LSB published reports into these self-assessments during 2012 and 2013.<sup>4</sup>
- 3.6. As part of that exercise the regulators were required to provide the LSB with action plans detailing ongoing work or activities planned to address the deficiencies identified by their own 2012/13 self-assessments. The LSB monitored the delivery of the action plans throughout 2013/14 and we published the outcomes of that monitoring as part of our quarterly reporting.<sup>5</sup>

### The 2014/15 update exercise

- 3.7. In April 2014, we required the regulators to report to the LSB on the progress made since the 2013/14 self-assessments were completed. We received these update self-assessments during October and November 2014. This report is based on those update self-assessments.
- 3.8. The LSB required the regulators to answer three questions about each of the four regulatory standards and about their capacity and capability. The regulators were asked to provide an assessment of their:
- progress against the action plans they provided as part of the 2012/13 self-assessment;
  - activities undertaken to respond to observations by LSB in the reports published on their 2012/13 self-assessments; and <sup>6</sup>
  - any additional activity relevant to the update self-assessment.

They were also asked to provide details on their updated action plans with timescales and milestones (including work identified but not begun, work recently started and work already underway)

- 3.9. The update self-assessment was ranked by regulators 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; and
  - Recognise this needs to be done but work has not yet started.

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<sup>4</sup> The first set of reports can be found on this webpage:

[http://www.legalservicesboard.org.uk/Projects/developing\\_regulatory\\_standards/index.htm](http://www.legalservicesboard.org.uk/Projects/developing_regulatory_standards/index.htm)

<sup>5</sup> LSB Board paper (30 April 2014), Paper (14) 26 – Q4 performance report: January to March 2014 (appendix 1a) [http://www.legalservicesboard.org.uk/about\\_us/board\\_meetings/pdf/Paper\\_\(14\)\\_26\\_Q4\\_perf\\_report\\_App\\_1a.pdf](http://www.legalservicesboard.org.uk/about_us/board_meetings/pdf/Paper_(14)_26_Q4_perf_report_App_1a.pdf)

<sup>6</sup> The first set of reports can be found on this webpage:

[http://www.legalservicesboard.org.uk/Projects/developing\\_regulatory\\_standards/index.htm](http://www.legalservicesboard.org.uk/Projects/developing_regulatory_standards/index.htm)

- 3.10. We did ask all the regulators to score themselves for their 2014/15 update assessments. However, two regulators felt they were unable to do so for this update exercise. As comparisons across regulators will, therefore, be difficult we have not presented the scores in this document.

### **The 2014/15 update report and its scope**

- 3.11. This report is necessarily not as detailed as our previous reports into the performance of the regulators. This is because we are not looking at their overall performance. We will produce a full report on performance during 2015/16. Instead, for this report we have considered the progress made by the regulators against the actions plans they produced in 2012/13. We have also reviewed what they have done in response to the observations we made in the reports we published in 2012 and 2013.
- 3.12. For this report we have considered the progress of the regulators, collectively, against each of the four regulatory standards and in terms of their capacity and capability. This has enabled us to highlight examples of good practice, to note where progress has not been as advanced as we might expect and reflect on the current landscape of the regulation of legal services in England and Wales.
- 3.13. This report considers each regulatory standard in turn and then concludes with some wider observations. The observations in these sections cover all of the regulators. The LSB has also produced a short summary of our reflections on each of the regulators' update self-assessments. These are included in Annex A.

### **The 2015/16 regulatory standard exercise**

- 3.14. In 2015/16 we will be assessing the regulators' overall performance against the regulatory standards. We intend to target this assessment on the areas in which there is the highest risk of poor performance by the regulators.
- 3.15. During 2015/16, regulators will be provided with tailored self-assessment templates in addition to other data gathering that the LSB will undertake. In the report for each of the regulatory standards and for each of the regulators we have highlighted areas of priority for the LSB. Regulators can expect the LSB to focus on these issues in the 2015/16 exercise.

## 4. Outcomes focused regulation

- 4.1. The goal of this standard is that each legal services regulator will have regulatory arrangements that can deliver the outcomes that consumers expect, whether they are existing or potential, individual or corporate consumers. In addition, regulators should only have detailed rules or requirements where they have clear evidence and analysis that justifies such an approach.
- 4.2. To deliver this regulatory standard, legal services regulators must:
  - have high quality, up to date and reliable evidence on what legal services consumers need and how they use the services;
  - have effective engagement with consumers;
  - demonstrate that outcomes are being achieved; and
  - review and update their arrangements based on the evidence they gather.
- 4.3. All of the regulators have taken steps to collect evidence about those they regulate. For the most part, this has been collected as additional information alongside the annual practising certificate fee exercises. A number of regulators have also conducted and published research about those they regulate.
- 4.4. Regulators have worked collectively to produce the *Legal Choices* website in an attempt to better inform and engage with consumers.<sup>7</sup> Some regulators have also used the Legal Services Consumer Panel's *Consumer Principles*<sup>8</sup> toolkit and the *Consumer Empowerment* report to assist in their policy development.<sup>9</sup>
- 4.5. Efforts to increase the evidence base held by the regulators about the needs and experiences of consumers of legal services have been poor. Since 2012, the LSB has surveyed nearly 25,000 consumers (individuals and small businesses). We have published reports on these surveys and made the data available. No regulator has made comparable efforts since the 2012/13 self-assessment.
- 4.6. Regulators have suggested that such research is expensive and, in relation to the provision of less common legal services, difficult in terms of putting together a valid sample. However, some regulators have introduced innovative and affordable approaches to the collection of information about consumers of the legal services they regulate. Both the CLC and IPS have undertaken such initiatives. More detail on this work is included in the case study below.

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<sup>7</sup> See [www.legalchoices.org.uk](http://www.legalchoices.org.uk)

<sup>8</sup> Legal Services Consumer Panel (January 2014), The consumer interest: Using consumer principles, <http://www.legalservicesconsumerpanel.org.uk/ourwork/ConsumerEngagement/documents/UsingConsumerPrinciples2014.pdf>

<sup>9</sup> Legal Services Consumer Panel (March 2013), Empowering consumers, [http://www.legalservicesconsumerpanel.org.uk/publications/research\\_and\\_reports/documents/ChooseUse\\_Phase1report.pdf](http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/ChooseUse_Phase1report.pdf)

### Case study: IPS and CLC consumer understanding and engagement

IPS have developed a feedback questionnaire that CILEx fellows are encouraged to provide to their clients to assess whether consumer outcomes are being met. Feedback is then assessed on a quarterly basis to see how the regulated community can improve outcomes for consumers. Entities will be required to provide this survey to all clients.

IPS also gathers information from CILEx fellows on the service complaints made against them. A report on the findings is produced annually to identify where practitioner education is needed or where regulation may need to be altered.

These surveys are two of several activities undertaken by IPS to understand and engage with the consumers of services provided by CILEx fellows. By building an evidence base from a range of sources, the regulator is aiming to deliver the outcomes that consumers need.

The CLC has also developed a consumer survey that is similar to the IPS feedback questionnaire, although it is not a requirement on CLC entities to notify consumers of the existence of the survey.

- 4.7. The LSB expects that regulators will only have detailed rules where there is evidence to justify their inclusion, though they are starting from a very low evidence base to justify the rules they impose. Despite some reform, the largest regulators still have extensive rulebooks. The BSB handbook is 277 pages long and the SRA's is over 400 pages long. On the other hand, other regulators have relatively slim rule books, for instance, IPReg's regulatory arrangements are around 75 pages long and the CLSB's are 28 pages long.<sup>10</sup> Counting page numbers does not give a complete view of how detailed and complex the rules are but it provides an indication of likely detail and complexity.
- 4.8. We recognise that a driver of detail and complexity stems from the underlying legislation, legacy arrangements and the breadth (and complexity) of those they regulate. But it is incumbent on regulators to regulate in line with best regulatory practice and to review requirements with a view to simplifying what is imposed.
- 4.9. Generally, regulators have tended to review their requirements as a part of wider regulatory reform projects, which inevitably leads to piecemeal reforms. In the absence of more significant reform (driven by government for instance), we consider that while this is not the best response, it is acceptable. We welcome the current significant reforms and reviews proposed by the SRA, with the regulator setting out that: "*The continuation of any existing regulatory intervention needs to be justified, rather than one of focusing on justifying its removal*".<sup>11</sup> We expect all regulators to take a similar view.

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<sup>10</sup> All assessed February 2015: BSB (January 2014), BBS handbook, [https://www.barstandardsboard.org.uk/media/1553795/bsb\\_handbook\\_jan\\_2014.pdf](https://www.barstandardsboard.org.uk/media/1553795/bsb_handbook_jan_2014.pdf); SRA (October 2014), SRA handbook version 12, <http://www.sra.org.uk/solicitors/handbook/welcome.page>; CLSB rules and regulations, <http://clsb.info/>; and IPReg rules and regulations, <http://ipreg.org.uk/pro/rules-and-regulations/>

<sup>11</sup> Paragraph 4.12, SRA (May 2014), Approach to regulation and its reform, <http://www.sra.org.uk/sra/policy/regulation-reform.page>

4.10. The imposition of detailed and complex rules imposes costs on practitioners and may hamper innovation and competition. The LSB considers that detailed and complex rules are acceptable only where evidence of the necessity of such an approach for consumers or the wider regulatory objectives exists. Despite some good work as a whole, the regulators have not sufficiently progressed work to collect evidence to help them understand the impact of the rules they impose and whether those rules are delivering the outcomes consumers can expect. In fact, in some instances it is research that is reprioritised or delayed.<sup>12</sup> We expect regulators to prioritise filling the gaps in their evidence base and to set out plans to do so.

#### **LSB regulatory standards expectations for 2015/16**

In 2015/16 The LSB expects **all** the regulators to focus on the following priority areas (although the extent to which they will need to will vary):

- The collection of high quality up to date evidence about how all groups of consumers need and use the legal services they regulate.
- The collection of evidence to understand the impact of the rules they impose and whether those rules are delivering the outcomes consumers expect.

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<sup>12</sup> For instance in 2012 the SRA had a research underspend of £200,000 and it was reporting a £233,000 underspend in June 2013 (out of a full year budget of £553,000). Its research budget for 2014 is £400,000. It has published four research reports in 2014. See: [http://governance.lawsociety.org.uk/secure/meeting/205184/23\\_P1\\_SRA\\_Annual\\_Report\\_to\\_Council.pdf](http://governance.lawsociety.org.uk/secure/meeting/205184/23_P1_SRA_Annual_Report_to_Council.pdf).

## 5. Risk assessment

- 5.1. To achieve a satisfactory level of performance for risk assessment, regulators must have formal, structured, transparent, evidence based approaches to the identification of risk across their regulated communities. Risks to consumers in vulnerable circumstances and consumer detriment are likely to be prioritised but risks to the other regulatory objectives will also be relevant. Our expectations are supported by the Regulators' Code which states:

*“Regulators should take an evidence based approach to determining the priority risks in their area of responsibility, and should allocate resources where they would be most effective in addressing those priority risks.*

*Regulators should consider risk at every stage of their decision-making processes, including choosing the most appropriate type of intervention or way of working with those regulated; targeting checks on compliance; and when taking enforcement action”.*<sup>13</sup>

- 5.2. Effective risk assessment processes give regulators the ability to target scarce resources at areas of highest risk to the regulatory objectives. This could mean targeting more resources at certain legal services (eg conveyancing), certain types of practitioners, certain consumers or an array of other different risk factors. By understanding risk, a regulator can tailor its approach to improve consumer outcomes through proportionate regulation.
- 5.3. Satisfactory delivery of this regulatory standard requires a structured approach to collecting and identifying risks. A number of regulators have made significant progress by introducing more formal risk assessment processes. Many regulators have increased the amount of information they collect from those they regulate, which they have used to help risk assess the firms and individuals they regulate.
- 5.4. Most of the regulators have developed a more proactive approach to risk assessment. Below is a case study on the positive work undertaken by the SRA to identify risks and communicate information about these risks. IPReg has also undertaken good work to risk assess the entities that it regulates.

### **Case study: SRA identifying and communicating risks**

The SRA has made improvements to the way it identifies and mitigates risks through its risk regulatory framework, which was rated “Highly Commended” by the Institute of Risk Management at its Global Risk Awards in 2014.

The regulator has released two editions of its Risk Outlook. This document sets out key issues and trends relating to risks to the regulatory objectives, based on a wide range of evidence gathered from the public, the regulated community and stakeholders.

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<sup>13</sup> Page 4, paragraph 3.1, BIS: Better Regulation Delivery Office (April 2014), Regulators' Code, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300126/14-705-regulators-code.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf)

The SRA also publishes more in-depth risk papers to help firms understand how they can identify and mitigate their own risks. Together, the Outlook and guidance provide a transparent view on SRA priorities in relation to risk.

All staff are encouraged to contribute on the content of Risk Outlook. The SRA also holds monthly team briefings and distributes to staff its “r,” a newsletter on risk. These channels of communication highlight important emerging risks and issues that all staff need to be aware of, and allow staff to share best practice and lessons learned in a structured way.

- 5.5. Despite some progress, challenges remain for regulators to meet the requirements of this standard. As noted in the section on outcomes focused regulation, many of the regulators do not yet possess an evidence base about the risks faced by consumers that use regulated legal services. A few are only now building their understanding of the services provided by those they regulate. Without such information, it is difficult to understand how a regulator can consider that its performance is satisfactory for this regulatory standard.
- 5.6. To achieve a satisfactory rating in this regulatory standard, the LSB expects that relevant staff will understand the need for risk assessment and share best practice in a structured way. This implies embedding risk assessment and feedback loops into everything the regulator does. Such feedback loops are likely to be easier to implement in the smaller regulators. However, it is the larger regulators who appear to have made the most progress. This is despite greater organisational, technological and cultural challenges.
- 5.7. In conclusion, there have been a number of positive steps taken in relation to this regulatory standard. The regulators are at different stages of development but most have moved away from the static and retrospective approach to risk assessments that typified the 2012/13 self-assessments. There have been prize winning examples of good practice and good work undertaken to understand and assess the likely risks in the markets that they each regulate. However, challenges remain in relation to the evidence base used to generate the risk assessments, although we expect these to improve over time, and the ability to embed risk assessment across the regulators.

### **LSB regulatory standards expectations for 2015/16**

In 2015/16 The LSB expects **all** the regulators to focus on the following priority areas (although the extent to which they will need to will vary):

- The building of a usable evidence base to identify the risks faced by consumers that use regulated legal services.
- The development of learning programmes and tools to ensure that a consistent evidence based assessment of risk informs all regulatory processes.



## 6. Supervision

- 6.1. The regulatory standard of supervision is linked to that of risk assessment. It requires that legal services regulators have a supervision policy that is carried out with reference to identified risks and is underpinned by an evidence based understanding of the different market segments.
- 6.2. In addition to the effective deployment of scarce resources, good supervision can prevent problems before they occur. It is in line with the Regulators' Code, which requires regulators to support those they regulate to comply with their regulatory requirements.<sup>14</sup>
- 6.3. We consider that supervision is more likely to be effective if regulators have access to a range of supervisory tools and a willingness to use them. This can include everything from annual desk-based monitoring exercises (such as reviewing continued professional development (CPD) records or accountant reports); targeted reviews of firm documentation or practices; to onsite inspections. A regulator is unlikely to be considered satisfactory in this standard if it simply relies on the most limited and reactive of supervisory tools.
- 6.4. Almost all of the regulators have made progress in this area. At the time of the last assessment, CLC and SRA were the only regulators taking an actively risk-based approach to supervision. We are now seeing the other regulators either implementing or planning to implement a risk-based supervisory approach (with the exception of CLSB).
- 6.5. We are particularly pleased with the work undertaken by the BSB and the Faculty Office in developing their supervision approaches. The BSB has put significant resource into this work and is reporting that it has been successful and welcomed by those chambers involved so far. The Faculty Office's approach is likely to be a cost effective approach to supervising according to risk. Its approach is detailed in more depth in the case study below.

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<sup>14</sup> Page 3, paragraph 1.3, BIS: Better Regulation Delivery Office (April 2014), Regulators' Code, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300126/14-705-regulators-code.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf)

### **Case study: Faculty Office supervisory inspection regime**

The Faculty Office has developed a notarial inspection framework, which was implemented in May 2014. This framework builds on the regulator's updated principles-based practice rules. It gives the Faculty Office the ability to inspect the records and practices of those it regulates. It also complements the regulator's ongoing supervision of accountants' reports and CPD records.

The Faculty Office is currently meeting its target to carry out a minimum of 20 supervisory visits each year, which are being conducted by two experienced notaries.

The regulator has developed its understanding of what activities its practitioners carry out. As a result, the Faculty Office is focusing half of all inspections on those that carry out probate activities and conveyancing, which it considers to pose the highest risks.

Although no issues of concern have been found during the initial visits, all reports are being reviewed by the Master and progress is being reported to the Advisory Board.

Developing and implementing this inspection regime has been a step forward for the Faculty Office. We consider that it is a proportionate and cost effective approach based on risk.

- 6.6. A number of regulators have only just introduced, or will shortly be introducing, active supervision according to identified risks. The effectiveness, proportionality and value for money of these new supervisory approaches will need to be monitored carefully by their respective management and regulatory Boards. During the 2015/16 self-assessment, we will expect the regulators to report on their initial experiences of their new supervisory approaches.
- 6.7. There are two notable exceptions to the improvements seen in this area, albeit for different reasons - the CLSB, which continues to take a reactive approach to supervision and the SRA, which has assessed itself as being at a lower level of achievement against this standard than it was at the time of the 2012/13 exercise.
- 6.8. The CLSB still needs to make improvements to its intelligence collection in order to understand risks and proactively supervise.
- 6.9. The SRA's supervision department has a significant workload and this has increased. Expected information technology improvements have also not been delivered in line with the timetable provided during the 2012/13 self-assessment and will not be operational until the middle of 2015. The SRA needs to ensure that this increased workload has the appropriate level of management and Board scrutiny. We expect the regulator to provide a full and detailed assessment of its performance in this area in the 2015/16 self-assessment.

6.10. In conclusion, the LSB considers that this regulatory standard is the one that it the most divergent in terms of performance. The LSB does not expect one size to fit all in terms of supervisory policy. However, we do expect policies to be informed by evidence, risk assessments and to be effective and proportionate. This is what we require regulators to be able to demonstrate during the full 2015/16 regulatory standards exercise.

<b>LSB regulatory standards expectations for 2015/16</b>
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In 2015/16 The LSB expects <b>all</b> the regulators to focus on the following priority areas (although the extent to which they will need to will vary):
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- |   |
|---|
| <ul style="list-style-type: none"><li>• The publication of proactive supervision policies that are informed by evidence and risk.</li><li>• Monitoring and reporting on the effectiveness, proportionality and value for money of supervision approaches.</li></ul> |
|---|

## 7. Enforcement

- 7.1. Regulators should have a range of effective and proportionate enforcement tools. The operation of enforcement functions 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 LSB has published its views about what constitutes best practice in sanctions and appeals.<sup>15</sup> The standards we have set as a part of this exercise should be read in conjunction with that publication.
- 7.2. Effective enforcement functions are vital to consumer and public confidence in regulated legal services. The benefit of legitimate and effective enforcement procedures is that regulators can be confident that the enforcement decisions they reach are fair and proportionate, and are likely to survive any resulting legal challenges. Enforcement is the ultimate tool to deliver compliance and punish non-compliance with regulatory arrangements.
- 7.3. In 2012/13, a number of the regulators' enforcement arrangements were very new and often untested. Most of these arrangements have now been tested successfully.
- 7.4. The BSB and SRA in particular have reported improvements in areas of their enforcement activity. In response to significant issues in the functioning of the tribunal responsible for imposing sanctions on barristers, the Council of the Inns of Court (COIC)<sup>16</sup> has established the Barristers Tribunal and Adjudication Service (BTAS). This is welcome and early indications suggest that BTAS is operating in a transparent and efficient manner. SRA has introduced tougher performance indicators to ensure cases are issued to the Solicitors Disciplinary Tribunal (SDT) more quickly than previously. It has also published statistics on the time taken for potential misconduct to be investigated and proceedings to be issued to the SDT (currently an average of 550 days).<sup>17</sup>
- 7.5. However, for both SRA and BSB in particular, we have concerns about the time it takes for potential misconduct to be investigated. While we welcome the publication of the SRA's figure, it does not capture the time to the imposition (or not) of a sanction by the SDT. This may add a further six months on to the SRA's published figure of 550 days.
- 7.6. An information request issued to the BSB revealed that the BSB had yet to address the issue of very old open enforcement cases as highlighted in our 2012/13 report.<sup>18</sup> Regulators still need to prioritise timely investigations and decisions. We expect the length of investigations to be an area assessed fully by regulators in their 2015/16 self-assessments.

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<sup>15</sup> LSB (March 2014), Regulatory sanctions and appeals processes: an assessment of the current arrangements, [http://www.legalservicesboard.org.uk/Projects/thematic\\_review/pdf/20140306\\_LSB\\_Assessment\\_Of\\_Current\\_Arrangements\\_F\\_or\\_Sanctions\\_And\\_Appeals.pdf](http://www.legalservicesboard.org.uk/Projects/thematic_review/pdf/20140306_LSB_Assessment_Of_Current_Arrangements_F_or_Sanctions_And_Appeals.pdf)

<sup>16</sup> Browne (July 2012), COIC disciplinary tribunal and hearings review group – final report, <http://www.graysinn.info/index.php/disciplinary-tribunals-review-coic>

<sup>17</sup> SRA (17 November 2014), SRA statement – handling concerns about solicitors <http://www.sra.org.uk/sra/news/press/handling-concerns-solicitors-time-figures.page>

<sup>18</sup> LSB (8 October 2014), BSB enforcement and investigation (letter from the LSB to BSB). [http://www.legalservicesboard.org.uk/about\\_us/board\\_meetings/pdf/20141027\\_27\\_October\\_2014/Paper%20\(14\)%2058%20CE%20Progress%20Report%20October%202014%20Anx%20B.pdf](http://www.legalservicesboard.org.uk/about_us/board_meetings/pdf/20141027_27_October_2014/Paper%20(14)%2058%20CE%20Progress%20Report%20October%202014%20Anx%20B.pdf)

- 7.7. Most of the regulators have made efforts to improve transparency. This includes improvements to websites (for example the Faculty Office's and IPReg's). This gives consumers the ability to inform themselves about disciplinary findings. We think that there should be a presumption of disclosure in relation to the imposition of sanctions. Overall improvements in transparency are likely to increase consumer confidence in the enforcement processes of regulators.
- 7.8. Generally the regulators have made improvements in this area and can be said to be delivering enforcement functions that are working. However, most could do more to improve transparency, timeliness and consistency. If existing systems do not act as a deterrent, or do not punish or operate effectively, then public confidence in the regulation of lawyers and trust in lawyers is likely to be tested.

#### **LSB regulatory standards expectations for 2015/16**

In 2015/16 The LSB expects **all** the regulators to focus on the following priority areas (although the extent to which they will need to will vary):

- Improving the timeliness and transparency of enforcement processes (this includes end-to-end reporting, procedures in plain language and easily searchable records of determinations).
- Ensuring that the process for notifying a regulator of potential misconduct by those they regulate is accessible and user friendly.

## 8. Capacity and capability

- 8.1. This indicator measures whether regulators have the capacity and capability to deliver the four regulatory standards; promote the regulatory objectives; adhere to any other statutory responsibilities; and ensure that their governance arrangements are in keeping with best practice for regulatory organisations.
- 8.2. The LSB expects regulators to have clear and consistent leadership that ensures that the whole organisation has a strong consumer focus. This can help consumers to be more confident that regulators are independent from those that they regulate. Regulatory budgets and staffing must be set at an appropriate level for risks associated with the market, rather than simply the level of practising fees that regulators believe practitioners are willing to pay. Regulators delivering the regulatory standards will have transparency and continuous improvement at their heart. They will have documented governance, project management and scrutiny procedures. We also expect a systematic approach to knowledge and information management at all levels.
- 8.3. The seven regulators covered by this paper are all at different levels of development and are responsible for regulating different levels of risk and complexity. It is therefore difficult to simply summarise the progress made since the 2012/13 self-assessment. All of the regulators have made improvements in their capacity and capability and most have taken steps to address concerns raised by the LSB in our first reports on regulatory standards.
- 8.4. One area where we have seen general improvements is with provision of information to the public and those regulated. A culture of transparency is important for regulators. The CLC, Faculty Office and IPReg have all launched new websites with improved consumer focus. We also welcome the improvements to the websites of the other regulators and, generally, a greater willingness to put more information in the public domain.
- 8.5. Some of the most positive work detailed in the update self-assessments has been in improving the regulatory understanding and awareness of staff within the regulators. External recruitment (for example IPReg and IPS) and training and development schemes (such as those at the BSB, CLC and SRA) have improved the capacity and capability of the regulators. Others have made efforts to appoint those with regulatory experience to their Boards (for example, the CLSB). These improvements have been evident in the LSB's ongoing engagement with the regulators.
- 8.6. One of the most ambitious schemes undertaken by a regulator to improve its capacity and capability has been the BSB's regulatory improvement programme (known as TRIP). A case study is shown below.

### **Case study: The BSB's regulatory improvement programme (TRIP)**

The BSB's TRIP programme was designed to help the regulator to modernise its regulatory approach and help it improve its regulatory standards. The programme was a large undertaking and included work to map and cost all of the BSB's existing regulatory processes as well as to drive improvements in the BSB's culture.

To deliver the TRIP programme, the BSB appointed a change programme manager and set up a programme board to provide oversight. The programme, which was delivered under budget, included the development of a risk assessment framework, a supervision strategy and an enforcement strategy. It also included an independent skills audit of its regulatory staff and linked the BSB's learning and development plans to the findings of that audit.

The programme involved mapping out the BSB's current and future regulatory processes and associated costs. Once the BSB had mapped and costed its existing regulatory processes (142 in total), it was able to identify options to improve some processes and develop others to create a set of arrangements that would be fit for the regulator's future. This should enable the BSB to become more efficient and less costly for practitioners.

Overall, the project is a good example of effectively managing significant regulatory change and improving the BSB's regulatory processes. This work should play a role in ensuring that the BSB has appropriate levels of budget and staffing for the nature of its regulatory tasks. The skills audit and learning and development programmes show how the BSB has linked the challenges it faces to ensuring that its staff have the right set of skills.

- 8.7. However, despite the significant effort in improving executive capacity and capability, the BSB appears to have made little progress in improving its governance structure to bring it in line with best regulatory practice. The LSB recommended that this be done in our report on the BSB's 2012/13 self-assessment. There are currently over 130 BSB board and committee positions, with the majority of these occupied by barristers, or those with an interest in the commercial success of the sector. This current dominance may be compliant with the LSB's internal governance rules.<sup>19</sup> However, it is unlikely to improve consumers' confidence in the independence of its regulation.
- 8.8. In contrast, the SRA has responded to LSB comments and moved its governance processes on so that its Board is now more keenly focused on scrutinising the performance of the SRA. We want the BSB to undertake such a reorientation and to simplify and better focus its governance arrangements.

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<sup>19</sup> LSB (April 2014), Internal Governance Rules 2009: version 3, [http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/Internal\\_Governance\\_Rules\\_Version%203\\_Final.pdf](http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/Internal_Governance_Rules_Version%203_Final.pdf)

- 8.9. There are several large-scale organisational changes occurring across the regulators. All of these changes will test the capacity and capability of regulators to deliver the regulatory standards and to promote the regulatory objectives. We are conscious of the challenges that lie ahead. As part of the 2015/16 exercise, we will be looking at how effectively regulators have been able to manage these changes and whether they still have the capacity and capability to deliver the regulatory objectives in these changed environments.
- 8.10. In conclusion, we have seen good progress against this regulatory standard. We support, and are encouraged by, the investment that the regulators have made in improving their capacity and capability. However, a number of simple improvements to transparency still need to be made. Additionally, regulators must ensure that their governance procedures are capable of scrutinising their performance and are fit for modern regulation.

#### **LSB regulatory standards expectations for 2015/16**

In 2015/16 The LSB expects **all** the regulators to focus on the following priority areas (although the extent to which they will need to will vary):

- Ensuring that management and governance processes are capable of scrutinising the performance of the regulator.
- Improving the transparency of all of the regulators' activities, specifically governance and scrutiny (this would include board minutes, papers, annual reports and planning documents).



## **9. Next steps**

- 9.1. This regulatory standards update self-assessment exercise has given the LSB the opportunity to assess the progress made by the regulators and to highlight examples of best practice. We have attempted to show throughout that there are simple and cost effective methods of improving performance for each of the regulatory standards.
- 9.2. In the main, we are pleased with the progress made by the regulators since the last regulatory standards exercise in 2012/13. We consider that those that have made the most progress have done so because they have made improving their performance against the regulatory standards intrinsic to their own organisational improvement plans. However not all aspects of the regulatory standards have seen the same level of progress and we expect all regulators to demonstrate concrete progress in all areas in their next self-assessments.
- 9.3. During 2015/16, there will be a full assessment of all regulators against the regulatory standards, which will be targeted at areas of greatest risk. Findings from the 2014/15 exercise will inform this targeting exercise, along with additional information from regulators and third parties. The LSB will pay particular attention to the areas in the self-assessments that we have highlighted as priorities for all regulators, as well as specific issues for each regulator. These are detailed in in the executive summary. We advise regulators to carefully consider these priority areas.

## **Annex A: Reports on the performance of individual regulators**

<b>10.</b>	Bar Standards Board (BSB) .....	24
<b>11.</b>	Costs Lawyer Standards Board (CLSB) .....	29
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<b>15.</b>	Master of the Faculties (the Faculty Office) .....	46
<b>16.</b>	Solicitors Regulation Authority (SRA) .....	51

## 10. Bar Standards Board (BSB)

### Context

No. authorised persons (est):	15,453 practising barristers <sup>20</sup>
Reserved legal activities:	<ul style="list-style-type: none"> <li>▪ Exercise of a right of audience</li> <li>▪ Conduct of litigation</li> <li>▪ Reserved instrument activities</li> <li>▪ Probate activities</li> <li>▪ Administration of oaths</li> </ul>
Entity regulator:	No – Application approved by LSB 28 November 2014 and first authorised entities expected in April 2015
Licensing authority:	No
Regulatory budget estimate: (01 Apr 15 – 31 Mar 16)	BSB budget (excluding LSB/OLC levies): £5.240m Shared services for BSB budget: £2.383m BSB provisions and contingency budget: £0.878m <sup>21</sup>
Regulatory Income estimate: (01 Apr 15 – 31 Mar 16):	Practising certificate: £9.3m Inns subvention: £0.556m Other regulatory income: £2.12m <sup>22</sup>
Employees:	80 – BSB 33 – Shared services with Bar Council <sup>23</sup>

10.1. The update self-assessment was received on time and consisted of a short completed self-assessment template and a larger document covering each of the regulatory standards that was produced for the BSB's regulatory improvement programme (known as TRIP). It was not subject to review by a third party but oversight was provided through the BSB's Governance, Risk and Audit Committee.

### General observations

10.2. We observed in the 2012/13 report that the timetable for improvements and action plan against the regulatory standards that the BSB had set was extremely ambitious.<sup>24</sup> This proved to be the case and a number of the planned actions (for example commencing entity regulation, submitting an application licensing authority designation) have not yet been completed. We recognise that in part this is due to complex and challenging issues emerging, not all of which are in the BSB's control. In its future planning, the BSB should ensure that it allows sufficient time and resources so that late changes and issues do not have an adverse impact on delivery dates.

<sup>20</sup> Page 3, Bar Council / BSB (January 2015), PCF application and budget submission 2015/16, [http://www.legalservicesboard.org.uk/Projects/independent\\_regulation/PDF/2015/Bar\\_Council\\_PCF\\_And\\_Budget\\_Submission\\_2015\\_16.pdf](http://www.legalservicesboard.org.uk/Projects/independent_regulation/PDF/2015/Bar_Council_PCF_And_Budget_Submission_2015_16.pdf)

<sup>21</sup> ibid

<sup>22</sup> Page 13, ibid

<sup>23</sup> BSB (January 2015), <https://www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/our-staff/>

<sup>24</sup> LSB (May 2013), Developing Regulatory Standards: An assessment of the Bar Standards Board, [http://www.legalservicesboard.org.uk/Projects/pdf/bsb\\_regulatory\\_standards\\_final.pdf](http://www.legalservicesboard.org.uk/Projects/pdf/bsb_regulatory_standards_final.pdf)

- 10.3. The BSB acknowledges that there has been little progress in the development of an evidence base to support its policy making because of a lack of market information. The evidence base is critical since it will inform the risk assessment framework which, once fully embedded, will be a key driver for all of BSB's regulatory activity, including its developing supervision programme.

### **Outcomes focused regulation**

- 10.4. The implementation of the new Handbook, which includes the ten Core Duties for barristers, is presented as a key achievement for this standard. The submission does not include any assessment as to whether the arrangements in the Handbook are delivering the outcomes that consumers need, but we recognise that it might be too soon to form a view on this.
- 10.5. Work has commenced on consumer engagement (including the development of a stakeholder engagement programme and working with the Legal Services Consumer Panel), but the BSB still does not have quality information on what consumers need and how consumers use barrister services; it is anticipated that this will remain the case until at least October 2015. Having an evidence base about consumers is important as it allows risks to be assessed. It will also be key in understanding whether the regulatory arrangements are delivering the right outcomes for consumers and for any assessment of whether detailed rules need to be retained. The delays to this part of the programme are, therefore, regrettable.
- 10.6. The BSB aims to have achieved a "satisfactory" self-assessment on this standard at the conclusion of the 2015/16 self-assessment exercise. Our view is that having a reliable evidence base to support its work and decisions will be essential to achieving that assessment. This is a significant challenge for the BSB given that it is starting from a low evidence base.

### **Risk assessment**

- 10.7. There has been progress in this area but key activities are still to be completed. Under the action plan, a comprehensive and effective risk management system was due to be in place across the BSB by December 2013. This deadline was not fully met.
- 10.8. A risk assessment framework and initial risk index have been developed, though these have not been comprehensively embedded across the whole organisation. Although not as advanced as planned, the BSB has made significant steps and investment (both internal and external) to improve the organisation's ability to identify, assess and react to risks to the regulatory objectives. This is most notable in the development of the approach to supervision. Further work is planned on staff competencies and training to fully embed the framework by October 2015.
- 10.9. Performance in this standard is affected by the lack of development of the evidence base. We note that there are plans for a new research strategy and policy framework. We have been provided with a copy of the policy framework but not the research strategy. As noted above, it could be a significant challenge to build the right level of information from which to identify risks that the BSB should consider.

## Supervision

- 10.10. A significant amount of work has been undertaken in relation to this standard.
- 10.11. A supervision strategy has been developed and implemented for chambers. Risk information from the index is being used to determine this activity. The BSB reported in the update self-assessment that it was on target to risk assess 200 high impact and 200 medium impact chambers by the end of 2014.
- 10.12. BSB has significantly developed its supervisory approach from the rather static and reactive arrangements it had previously had in place. Although it is too soon to fully assess what impact the new approach is having, the LSB welcomes these changes. The BSB reports that anecdotal feedback suggests that chambers appreciate the active engagement which is designed to help them, achieve compliance rather than being “enforcement” led. Continued progress in this area will contribute to improved confidence in the BSB’s regulation.

## Enforcement

- 10.13. Steps have been taken to address the issues identified in the Browne Review<sup>25</sup> of the Council of the Inns of Court (COIC), which is responsible for providing tribunals to hear and decide disciplinary cases against barristers. The Barristers Tribunal and Adjudication Service (BTAS) has been established and appears to be working well, with contractual service standard agreements between the BSB and BTAS.
- 10.14. A new enforcement database has been introduced which helps the BSB to monitor and improve performance against its key performance indicators (KPIs).
- 10.15. Although these developments represent good progress, there continues to be a pipeline of long running disciplinary cases, something on which the BSB’s own independent reviewer has commented.<sup>26</sup> Enquiries have established that at 31 May 2014, 37% of open cases (90) were either inactive (ie no activity in the preceding 30 days) or were outside the BSB’s KPIs. 20% of these cases were over two years old, with one being nearly ten years old (though this was closed in December 2014).<sup>27</sup> While the BSB’s new processes and enforcement database should reduce the risk of other cases reaching a similar age, the number of long-standing cases is a matter for concern.

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<sup>25</sup> Middle Temple (July 2012), COIC Disciplinary Tribunal and Hearings Review Group - Final Report, <https://www.middletemple.org.uk/news/coic-group-final-report/>.

<sup>26</sup> Paragraph 7.8, page 24, LSB (May 2013), Developing Regulatory Standards: An assessment of the Bar Standards Board, [http://www.legalservicesboard.org.uk/Projects/pdf/bsb\\_regulatory\\_standards\\_final.pdf](http://www.legalservicesboard.org.uk/Projects/pdf/bsb_regulatory_standards_final.pdf)

<sup>27</sup> LSB (October 2014), BSB enforcement and investigation (letter from the LSB to BSB), [http://www.legalservicesboard.org.uk/about\\_us/board\\_meetings/pdf/20141027\\_27\\_October\\_2014/Paper%20\(14\)%2058%20CEO%20Progress%20Report%20October%202014%20Anx%20B.pdf](http://www.legalservicesboard.org.uk/about_us/board_meetings/pdf/20141027_27_October_2014/Paper%20(14)%2058%20CEO%20Progress%20Report%20October%202014%20Anx%20B.pdf)

- 10.16. The recent publicity following the Legal Ombudsman's decision to make public its concerns about an individual barrister again threw a spotlight on the enforcement process.<sup>28</sup> We understand that the BSB itself has a number of ongoing cases in relation to the barrister concerned, which it has been addressing. While the regulator was considering imposing an interim suspension at the time, it did not act before the Legal Ombudsman made its public statement. Restrictions have now been placed on the individual barrister concerned.<sup>29</sup>
- 10.17. As observed in our last report, the BSB's survey data shows that the majority of consumers who inform the BSB of cases of potential misconduct do not think that the process is either open or fair.<sup>30</sup> Effective enforcement outcomes (both the speed at which they are delivered and the clarity of the decisions) are critical to building public confidence in the regulator. There have been some improvements but the LSB considers that making good progress in concluding the backlog of longstanding cases is key to achieving a satisfactory rating for this standard.

### Capacity and capability

- 10.18. As covered in the case study on page 19 of this report, the delivery of the TRIP work programme has been a significant success.
- 10.19. The BSB has mapped and estimated the cost of each its regulatory processes, introduced new IT systems, invested in staff training and changed the organisation's structure and culture.
- 10.20. In our last report, we commented on the need for the BSB to review its governance structure, but there appears to have been little progress on this. We previously observed that there were some 131 people on the boards and committees (covering 155 posts).<sup>31</sup> The number of positions has now been reduced but it still stands at 131,<sup>32</sup> in total more than the number of employees at the BSB. The majority of these are occupied by barristers, or those with an interest in the commercial success of the sector. This current dominance may be compliant with the LSB's internal governance rules.<sup>33</sup> However, it is unlikely to improve consumers' confidence in the independence of its regulation. Given this, and its top heavy nature, we again question whether the current governance structure is either necessary or effective. A fundamental review of the governance arrangements would appear to be appropriate to make progress in this standard.

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<sup>28</sup> Legal Ombudsman press release (December 2014), Barrister named in first public interest case, [http://www.legalombudsman.org.uk/downloads/documents/press\\_releases/1014-Public-interest-decision.pdf](http://www.legalombudsman.org.uk/downloads/documents/press_releases/1014-Public-interest-decision.pdf)

<sup>29</sup> BSB press notice (December 2014), Independent panel decides not to suspend Birmingham based barrister Tariq Rehman on an interim basis but imposes restrictions on him taking on new public access cases, <https://www.barstandardsboard.org.uk/media-centre/press-releases-and-news/independent-panel-decides-not-to-suspend-birmingham-based-barrister-tariq-rehman-on-an-interim-basis/>

<sup>30</sup> Paragraph 7.4, page 23, LSB (May 2013), Developing Regulatory Standards: An assessment of the Bar Standards Board, [http://www.legalservicesboard.org.uk/Projects/pdf/bsb\\_regulatory\\_standards\\_final.pdf](http://www.legalservicesboard.org.uk/Projects/pdf/bsb_regulatory_standards_final.pdf)

<sup>31</sup> Paragraph 8.15, page 29, LSB (May 2013)

<sup>32</sup> Information gathered from BSB website February 2014. The figure includes currently vacant posts but not special advisers entitled to attend the BSB Board and committees.

<sup>33</sup> LSB (April 2014), Internal Governance Rules 2009: version 3, [http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/Internal\\_Governance\\_Rules\\_Version%203\\_Final.pdf](http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/Internal_Governance_Rules_Version%203_Final.pdf)

## 11. Conclusion

- 11.1. The BSB has made significant progress against its very challenging and ambitious action plans. In many respects, the introduction of the new handbook was a success. The work it has undertaken designing and implementing a new active approach to supervision show early positive signs. Issues surrounding COIC appear to have been resolved. The TRIP work programme also demonstrates the BSB's ability to improve its performance as a whole.
- 11.2. Against this, little progress has been made on developing a reliable evidence base, most notably in relation to the consumers of barristers' services, which will be essential if the developing risk assessment framework is to be effective. This report notes our concerns about the enforcement process and the governance arrangements. These are likely to be areas targeted for review in the 2015/16 self-assessment.

### **LSB regulatory standards expectations for 2015/16**

In addition to the activities applicable to all regulators, the LSB expects **the BSB** to focus on the following priority areas during 2015/16:

- Analysis of whether the BSB has appropriate enforcement powers, arrangements and processes.
- Reform of large governance and committee structure to increase its focus on scrutinising performance.

## 12. Costs Lawyer Standards Board (CLSB)

### Context

No. authorised persons:	563 <sup>34</sup>
Reserved legal activities:	<ul style="list-style-type: none"> <li>▪ The exercise of a right of audience</li> <li>▪ Conduct of litigation</li> <li>▪ Administration of oaths</li> </ul>
Entity regulator:	No – Currently considering an application
Licensing authority:	No – Question for the LSB around transitional arrangements
Regulatory budget estimate: (01 Jan 15 – 31 Dec 15)	Regulatory budget (including levies): £149.1k <sup>35</sup> <i>The ACL do not receive any practising certificate income for non-regulatory permitted purposes or provide shared services to the CLSB</i>
Regulatory income estimate: (01 Jan 15 – 31 Dec 15)	£0.149m <sup>36</sup>
Employees:	1 – the chief executive

12.1. The CLSB's update self-assessment was received ahead of time and provided a well-structured response to the LSB's request, supported by a wide range of evidence. While the regulator sought feedback from its solicitor, its regulatory board decided against seeking formal independent scrutiny as it decided it would be disproportionate for an update self-assessment.

### General observations

- 12.2. The CLSB has made progress in collecting information and data on both costs lawyers and those that use their services. Progress has been better on the supply side with more work needed to understanding the consumer side.
- 12.3. The CLSB should consider how it can better understand the consumers of services from costs lawyer to ensure that its regulatory arrangements are delivering the right protections and outcomes for consumers, and that its regulatory activity can be focused on improving consumer outcomes.
- 12.4. The regulator has started to develop a regulatory framework which, if approved, would permit it to authorise and regulate costs lawyer entities. The CLSB should take into consideration the contents of this report as it continues to develop these plans.

<sup>34</sup> LSB (April 2014), Number of persons authorised to undertake reserved legal activities as reported to the LSB by the CLSB

<sup>35</sup> Page 2, CLSB (September 2014), Budget 2015,

[http://www.legalservicesboard.org.uk/Projects/independent\\_regulation/PDF/2014/20140923\\_Budget\\_2015\\_Full.pdf](http://www.legalservicesboard.org.uk/Projects/independent_regulation/PDF/2014/20140923_Budget_2015_Full.pdf)

<sup>36</sup> Ibid



## Outcomes focused regulation

- 12.5. All actions on the CLSB's plan were completed or are ongoing in nature. However, it is difficult to see how these completed actions have led to an improvement in performance against the indicators for this regulatory standard.
- 12.6. Since the 2012/13 self-assessment, the CLSB has gathered more data about those that it regulates and the users of costs lawyer services. The data shows that one third of costs lawyers receive some instructions from lay clients (with twenty cost lawyers receiving 90% or more of their instructions from lay clients). This is a higher percentage than previously thought.<sup>37</sup>
- 12.7. Numbers of service and conduct complaints about costs lawyers remain very low. However, we note that the CLSB has decided to discontinue the collection of data about the number of first-tier complaints received by costs lawyers. The CLSB discontinued this because the data provided by costs lawyers appeared confused. Our guidance is clear that regulators are expected to have appropriate monitoring and data gathering systems of complaints at first-tier.<sup>38</sup> We set out an expectation in July 2012 that the CLSB should conduct analysis on the information in collected from individuals on complaints received and whether additional information should be collected.<sup>39</sup> We are therefore surprised at the CLSB's decision to halt collection of such information.

## Risk assessment

- 12.8. The CLSB has developed its understanding of the issues that it faces. It has developed three risk registers covering consumers, business (CLSB operational risk) and the profession. The development of these registers is welcome. However, the lack of understanding about the needs of consumers means that risks identified may not be complete or focused in the right areas.
- 12.9. The CLSB has demonstrated that it is alert to the emerging risks facing costs lawyers and has issued guidance notes to the profession. For example, guidance on professional indemnity insurance was updated following the implementation of changes following the Jackson review. This reactive approach has value. However, we expect all approved regulators to be proactive by mitigating risks before they crystallise.
- 12.10. The CLSB should think about whether it is collecting the right information to facilitate analysis of future risks and how it uses the data it already has. For example, the CLSB should consider the consumer risk register in the light of the data collected that shows a large number of lay clients using costs lawyers.

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<sup>37</sup> Page 26, Smedley (June 2011), The smaller approved regulators: An assessment of their capacity and capability to meet the requirements of the Legal Services Act 2007, with analysis and recommendations, A report for the LSB [http://www.legalservicesboard.org.uk/what\\_we\\_do/research/Publications/pdf/20110622\\_sar\\_report\\_final.pdf](http://www.legalservicesboard.org.uk/what_we_do/research/Publications/pdf/20110622_sar_report_final.pdf)

<sup>38</sup> Page 3, LSB (May 2010), First tier complaints handling: Guidance on first-tier complaint handling, requirements under s112(2), [http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/lbsb\\_first\\_tier\\_complaints\\_handling\\_requirements\\_and\\_guidance\\_final.pdf](http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/lbsb_first_tier_complaints_handling_requirements_and_guidance_final.pdf)

<sup>39</sup> LSB to CLSB (26 July 2012), First tier complaints handling, [http://www.legalservicesboard.org.uk/projects/pdf/clsb\\_ftch\\_letter.pdf](http://www.legalservicesboard.org.uk/projects/pdf/clsb_ftch_letter.pdf)

## Supervision

- 12.11. The CLSB approach to supervision consists of random audits of continued professional development (CPD) records (which uncovered a false declaration leading to disciplinary action); a requirement to provide complaint handling procedures; and reviews of practicing certificate fee applications (which includes various declarations and a requirement to provide proof of professional indemnity insurance).
- 12.12. In our report on the 2012/13 self-assessment we made clear that we expected CLSB to consider a more proactive approach to supervision. This would focus on identified risks. Improved data collection will allow a better understanding of risk. In particular, the CLSB should reconsider its decision to discontinue collecting complaints information from costs lawyers.

## Enforcement

- 12.13. The CPD and practising certificate audits identified instances of misconduct which were handled under the CLSB's disciplinary process, testing the conduct committee and conduct appeal committee arrangements for the first time. The outcome of these decisions are published on the CLSB's website on an anonymous basis (as is the outcome of all conduct complaints referred to the CLSB by the Legal Ombudsman). This increased transparency is welcome but could be further improved by naming the individuals against whom the enforcement action is taken. Failure to publish names limits the deterrence effect of such actions.
- 12.14. CLSB has a clear set of regulatory enforcement arrangements in place that have proved to be effective. This is the area where the regulator shows the highest performance against the regulatory standards.

## Capacity and capability

- 12.15. The action plan for this element of the framework has been completed.
- 12.16. As the CLSB executive resources consists solely of the chief executive, it was considered essential that a disaster recovery plan be put in place. This has been done, including appropriate arrangements to access records and systems should the chief executive not be available.
- 12.17. Changes to the website have improved the information available to practitioners and consumers. We note that the CLSB Board minutes continue to be published. But, as previously noted, we think that transparency could be enhanced by the publication of board papers.
- 12.18. We think that the update demonstrates that there has been some progress against this standard. However, since the 2012/13 self-assessment, the LSB has refused an application from CLSB to introduce regulatory arrangements for the regulation of trainees. The LSB concluded that proposal was seriously flawed.<sup>40</sup> In this instance the CLSB sought to be able to regulate individuals who are not allowed to provide reserved legal activities

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<sup>40</sup> Page 6, LSB (December 2013), LSB decision notice: The Costs Lawyer Standards Board (CLSB) application for approval of the proposed regulation of Trainee Costs Lawyers, [http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/final\\_version\\_decision\\_notice\\_2.pdf](http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/final_version_decision_notice_2.pdf)

(and so there is no statutory requirement for them to be regulated). It was unable to provide evidence of any problems leading it to conclude that that trainees required regulating. We recognise that the CLSB is a small regulator regulating a small (but growing) number of cost lawyers. Given its limited capacity, the CLSB needs to focus on the role regulating those undertaking reserved legal activities.

## Conclusion

- 12.19. Overall, a mixed message. The enforcement processes have been shown to be effective (though as noted above we think there is scope to improve transparency) and the development of the disaster recovery plan has addressed a key organisational risk. There has been a start to developing its understanding of the costs lawyer market. However more needs to be done on the demand side to inform the CLSB's risk framework and in turn the CLSB's supervision activity. It may be necessary for the CLSB to become more proactive rather than reactive and remote in its supervisory approach.
- 12.20. We have had concerns about the CLSB's priorities. It has been delegated its regulatory powers by the Association of Costs Lawyers and its primary role is to regulate those that it authorises to provide reserved legal activities. In the past it has had ambitions to go beyond this (for example regulating trainees) without evidence or statutory requirement. We advise the CLSB to concentrate on performing its defined role before considering other activities.
- 12.21. As it develops plans to regulate entities, the CLSB will need to consider its priorities and whether it needs to adapt its approach if it is to become an effective entity regulator.

### LSB regulatory standards expectations for 2015/16

In addition to the activities applicable to all regulators, the LSB expects **the CLSB** to focus on the following priority areas during 2015/16:

- The development of a more proactive approach to risk identification and mitigation by collecting more evidence about consumers and those regulated.
- The development and publication of an evidence based supervision policy that incorporates the use of a wider range of supervisory tools as necessary.
- Improved understanding of its regulatory role.

## 13. Council for Licensed Conveyancers (CLC)

### Context

No. authorised persons:	1,222 practicing conveyancers <sup>41</sup> <i>The majority working in SRA regulated firms</i>
Reserved legal activities:	<ul style="list-style-type: none"><li>▪ Reserved instrument activities</li><li>▪ Probate activities</li><li>▪ Administration of oaths</li></ul>
Entity regulator:	Yes – 187 recognised bodies <sup>42</sup>
Licensing authority:	Yes – 46 licensed bodies <sup>43</sup>
Budget estimate: (01 Nov 14 – 31 Oct 15)	Regulatory budget (including levies): £2.527m <sup>44</sup> <i>CLC has no representative function</i>
Income estimate: (01 Nov 14 – 31 Oct 15)	£2.588m <sup>45</sup>
Employees:	22

13.1. The CLC's update self-assessment was received ahead of time and provided a succinct response to the LSB's request. It was supported by links to published documents. The CLC chose to not give ratings for each of the areas in the update self-assessment, as it decided that this would only be appropriate for a full assessment exercise. The regulator also chose to not seek third party assurance, but instead developed its update self-assessment through a Council workshop and subsequent staff, senior management and Council meetings.

### General observations

- 13.2. The CLC provided a very thorough self-assessment in 2012/13, which provided a solid basis for this update report and included a detailed action plan. The 2014 update detailed all of the activities that the regulator has undertaken to achieve its actions and the vast majority have now been completed. Of the remainder, almost all are underway or, in one or two cases, no longer relevant.
- 13.3. The CLC's 2012/13 action plan set out intended outcomes for each of its actions. Unfortunately the update self-assessment does not provide a great amount of supporting evidence to explain if these outcomes have (or have not) been achieved. Where necessary, we have drawn on our knowledge of the regulator's progress from our ongoing interaction to assist our assessment.

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<sup>41</sup> LSB (April 2014), Number of persons authorised to undertake reserved legal activities as reported to the LSB by the CLC

<sup>42</sup> CLC (January 2015), Number of recognised bodies as reported to the LSB by the CLC

<sup>43</sup> CLC (January 2015), ABS register, <http://www.conveyancer.org.uk/CLC-Consumers/ABS-Register.aspx>

<sup>44</sup> Page 6, CLC (August 2014), Licence and practice fee rates application, [http://www.legalservicesboard.org.uk/Projects/independent\\_regulation/PDF/2014/20140821\\_CLC\\_Practising\\_Fee\\_Application\\_To\\_LSB\\_2014.pdf](http://www.legalservicesboard.org.uk/Projects/independent_regulation/PDF/2014/20140821_CLC_Practising_Fee_Application_To_LSB_2014.pdf)

<sup>45</sup> *ibid*

## Outcomes focused regulation

- 13.4. The CLC has made progress in improving its performance against this regulatory standard. It has a commitment to comprehensively review its Handbook in 2016 and to remove unnecessary regulatory burdens. It has begun this process by making a number of evidenced based changes to minor rules; developing guidance; and providing information and updating policy documents to assist firms and consumers. The regulator has also repeated its stakeholder perceptions audit. This identified the need to increase its engagement (particularly for technical guidance) with practitioners.
- 13.5. It has introduced a voluntary consumer feedback survey. However, so far this has received a poor response rate. The CLC need to consider what it can do to increase participation and / or what it can do to greater understand consumers of CLC regulated entities. To do so the CLC plans to run focus groups on client care, complaints handling and insurance matters for practitioners.
- 13.6. The regulator is aware that it has more work to do to close the gaps in the information it collects and the knowledge it has about the consumers of licensed conveyancer services. This evidence will be essential for the CLC to successfully complete the comprehensive update its Handbook it has planned, as well as to effectively risk assess those it regulates.

## Risk assessment

- 13.7. Based on information provided in the 2012/13 self-assessment, the LSB is aware that the CLC has effective, well evidenced risk assessment processes in place for both ABS and non-ABS firms.
- 13.8. The regulator has continued to develop its standards for risk assessment. . The CLC participated in a number of panels and groups aimed at sharing and collecting information about the sector (eg on stamp duty land tax) in order to inform its risk approach. It reviewed its overall processes for risk assessment. Its legal practice inspectors have now put this new approach to risk assessment into practice. It has also developed a '*Watch List*' of firms that appear to the CLC to present higher levels of risk to expected consumer outcomes.
- 13.9. Since the 2012/13 self-assessment, the CLC has developed a greater understanding of how conveyancing services are supplied by those it regulates. This has primarily been through the information gathered from its annual regulatory returns. The regulator has also begun to use information provided by the Legal Ombudsman to identify areas of concern for individual practice risk profiles. However, in terms of understanding the needs of consumers and the risks that they face, the regulator has only analysed transactional demand and 'client types' from the returns it receives from firms. It has not been able to demonstrate its knowledge of the size of each consumer segment, which the LSB expects.

## Supervision

- 13.10. The CLC has made progress with its goal to improve its performance against the regulatory standard of supervision. Firstly, the regulator has completed work on interrogating distance learning and college pass rates. It has worked with training providers to obtain better information and accountability from them. Secondly, the CLC is reviewing the structure of its regulatory fees so they better reflect the risk presented by an entity or activity. The regulator is considering whether to introduce a fee structure based on activities undertaken. The review is due to be completed by quarter two/three of 2015.
- 13.11. In the LSB's 2012/13 report we observed that improvements to IT architecture would allow the CLC to draw on all of its intelligence when making supervisory decisions and address known risks.<sup>46</sup> Since then, the regulator has introduced a new 'Customer Relationship Model.' This is discussed in more detail in the capacity and capability section below. It has also participated in an industry led conveyancing standards group and a BIS recognised apprenticeship scheme for licensed probate practitioners to improve education and training standards.
- 13.12. The CLC had sound supervisory processes in place in 2012/13. However, the LSB recognised that the CLC could further improve its performance against this regulatory standard with better IT infrastructure. The regulator will need to demonstrate how the IT improvements and its new customer relationship model has delivered the expected outcomes in the 2015/16 self-assessment.

## Enforcement

- 13.13. The CLC completed the activities from its 2012/13 action plan in relation to enforcement, which consisted of two specific actions. It has simplified its disciplinary processes and now all decisions are made by the CLC's Adjudication Panel. Previously either the Adjudication Panel or the Discipline and Appeals Committee would hear cases. It has also harmonised the sanctions it can impose for ABS and non-ABS regulated entities. Prior to this harmonisation the CLC was more limited in the sanctions it could impose on non-ABS entities.
- 13.14. Based on its 2012/13 self-assessment, the LSB observed that the CLC should improve the accessibility and transparency of its enforcement activity. The CLC has developed and implemented a new policy to publish hearing dates and the findings from all disciplinary determinations (although no decisions or hearing dates have been published so far because no hearings have been set since the introduction of the policy).
- 13.15. A key indicator for enforcement is the transparency of enforcement activities. Therefore, the CLC's planned publication of information related to its enforcement activities will be vital to it demonstrating an improvements in performance in this area.

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<sup>46</sup> Page 51, LSB (December 2012), Developing regulatory standards: An assessment of the legal services regulators, [http://www.legalservicesboard.org.uk/Projects/pdf/regulatory\\_standards\\_assessment\\_of\\_five\\_of\\_seven\\_regulators.pdf](http://www.legalservicesboard.org.uk/Projects/pdf/regulatory_standards_assessment_of_five_of_seven_regulators.pdf)

## Capacity and capability

- 13.16. The CLC committed to a range of activities to improve its capacity and capability in 2012. The majority of these have now been completed, are ongoing or are due to be completed soon. A key challenge that emerged from the first exercise was to ensure that the CLC's IT architecture was fit for purpose.<sup>47</sup> In response, the regulator had introduced a new 'Customer Relationship Model,' though its implementation required the timetable for practitioner licence renewal to be extended due to the closure of its IT supplier. In addition to implementing the system, the CLC has now ended the ability for practitioners to update their own information online to mitigate risks of impersonation and fake identity creation.
- 13.17. In 2012, the regulator was going through a period of strategic and structural change, driven by its council and delivered by its interim chief executive. A permanent chief executive, who took up post in January of 2013, has continued in this task by moving the organisation from a period of transition into one of implementation.<sup>48</sup> The CLC now needs to further strengthen its structure by building succession planning into its new operating model and into job descriptions across the organisation.
- 13.18. Since the 2012/13 self-assessment, the CLC has focused on becoming a 'property specialist' regulator. To do so it has sought to develop managerial/staff knowledge and skills in this area. The CLC has also improved its transparency. The CLC now publishes its Council minutes, client feedback summaries and its responses to consultations online.
- 13.19. The CLC has made progress on a large number of the actions for capacity and capability. Continued improvements in IT performance will allow the CLC to demonstrate that it is delivering high performance against all of the indicators for this regulatory standard.

## Conclusion

- 13.20. The CLC's update report demonstrates solid progress against all of the actions which it committed to undertake in 2012. We welcome the work that the regulator has carried out to improve its Handbook, to understand more about risks from stakeholders and to understand more about its regulatory community. Harmonising penalties for ABS and non-ABS businesses is in line with best practice for sanctions and appeals as identified in the LSB's published review.<sup>49</sup>

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<sup>47</sup> Page 53, LSB (December 2012) Developing regulatory standards, [http://www.legalservicesboard.org.uk/Projects/pdf/regulatory\\_standards\\_assessment\\_of\\_five\\_of\\_seven\\_regulators.pdf](http://www.legalservicesboard.org.uk/Projects/pdf/regulatory_standards_assessment_of_five_of_seven_regulators.pdf)

<sup>48</sup> Page 47, *ibid*

<sup>49</sup> LSB (March 2014), Regulatory sanctions and appeals processes: an assessment of the current arrangements, [http://www.legalservicesboard.org.uk/Projects/thematic\\_review/pdf/20140306\\_LSB\\_Assessment\\_Of\\_Current\\_Arrangements\\_for\\_Sanctions\\_And\\_Appeals.pdf](http://www.legalservicesboard.org.uk/Projects/thematic_review/pdf/20140306_LSB_Assessment_Of_Current_Arrangements_for_Sanctions_And_Appeals.pdf)

13.21. However, as the regulator realises, it needs to develop greater understanding about the needs of consumers and the risks that they face. Such understanding will determine the success of its comprehensive review of its Handbook that it is carrying out in 2016. Detailed segmentation of consumer types should also make the regulator's risk assessment processes more targeted, which will in turn allow for improvements in supervision. Alongside these points, we will be interested to see how the new IT system supports the CLC's performance and how succession planning is integrated into the regulator's operating model.

#### **LSB regulatory standards expectations for 2015/16**

In addition to the activities applicable to all regulators, the LSB expects **the CLC** to focus on the following priority areas during 2015/16:

- Assessment of whether the expected improvements to the CLC's performance against the regulatory standards is being delivered following recent reforms.
- Prioritise work on increasing its understanding of the market it regulates and make that information publicly available.



## 14. Intellectual Property Regulation Board (IPReg)

### Context

No. authorised persons:	2,034 patent attorneys 794 trademark attorneys <sup>50</sup>
Reserved legal activities:	<ul style="list-style-type: none"> <li>▪ Exercise of a right of audience</li> <li>▪ Conduct of litigation</li> <li>▪ Reserved instrument activities</li> <li>▪ Administration of oaths</li> </ul>
Entity regulator:	Yes – 215 <sup>51</sup>
Licensing authority:	Yes – currently taking applications
Budget (estimate): (01 Jan 15 – 31 Dec 15)	Regulatory budget (including levies): £0.688m <sup>52</sup> <i>CIPA and ITMA do not receive any practising certificate income for non-regulatory permitted purposes and do not provide any shared services.</i> <sup>53</sup>
Income (estimate): (01 Jan 15 – 31 Dec 15)	£694k
Employees:	1 full time, 5 part time (2015 budget for new activities) <sup>54</sup>

14.1. IPReg submitted its update self-assessment before the due date. The update contained responses to the LSB's questions, supported by hyperlinks to various pieces of supporting evidence. It was reviewed by the Chair of IPReg's governance committee and the regulator's Chairman. IPReg was the only regulator to seek independent scrutiny of their completed update self-assessment. It was scrutinised by a Board member of the CLC before submission.

### General observations

14.2. IPReg's 2012/13 action plan contained a lot of activities related to its need to apply to the LSB for designation as a licensing authority. This was because, since its creation in 2010, IPReg has regulated practitioners that work in mixed partnerships which are licensable bodies. To provide them with a clearer framework, IPReg has recently been designated as a licencing authority. IPReg will begin to receive applications from prospective licensed bodies from 1 January 2015, so its imminent challenge will be to manage a successful authorisation process and to implement the new powers and processes it will have as a licensing authority.

<sup>50</sup> LSB (April 2014), Number of persons authorised to undertake reserved legal activities as reported to the LSB by IPReg

<sup>51</sup> IPReg (December 2014) Entity register, <http://ipreg.org.uk/wp-content/files/2014/12/Registered-Entity-List-2014-141210.pdf>

<sup>52</sup> IPReg (September 2015), 2015 Budget,

[http://www.legalservicesboard.org.uk/Projects/independent\\_regulation/PDF/2014/20141017\\_IPReg\\_Application\\_To\\_LSB\\_2015\\_Fees.pdf](http://www.legalservicesboard.org.uk/Projects/independent_regulation/PDF/2014/20141017_IPReg_Application_To_LSB_2015_Fees.pdf)

<sup>53</sup> Page 5, IPReg (September 2014), Application for approval of practice fees 2015,

[http://www.legalservicesboard.org.uk/Projects/independent\\_regulation/PDF/2014/20141017\\_IPReg\\_Application\\_To\\_LSB\\_2015\\_Fees.pdf](http://www.legalservicesboard.org.uk/Projects/independent_regulation/PDF/2014/20141017_IPReg_Application_To_LSB_2015_Fees.pdf)

<sup>54</sup> Page 4, *ibid*

## Outcomes focused regulation

- 14.3. As part of its preparation to become a licensing authority, IPReg has delivered a substantial programme of work including updating its Code of Conduct, developing a consumer engagement strategy, making its website more consumer friendly, publishing first tier complaints data and creating guidance for practitioners on dealing with vulnerable and disadvantaged consumers.
- 14.4. It has built a good understanding of the supply and demand side of the intellectual property market through a survey of firms and analysis of Intellectual Property Office (IPO) and European Trademark (OHIM) applications from which it has been able to identify two areas (direct applications to IPO/OHIM and litigants in person) that require a more detailed analysis of the risks.
- 14.5. IPReg has made solid progress in developing an evidence base on the market it regulates which will allow it to assess whether its regulatory arrangements are delivering the outcomes that its consumers need. IPReg also plans to conduct work with partners to fill information gaps.

## Risk assessment

- 14.6. IPReg has developed a risk assessment framework, which has been informed by information collected from practitioners via a questionnaire. This framework has allowed IPReg to understand the services provided by those it regulates and to segment consumers of those services.
- 14.7. In response to specific risks identified regarding individual and micro business consumers, IPReg has created a dedicated area on its website, "Got an idea?" This is to provide consumers with practical advice about making decisions when protecting intellectual property and when to seek advice.
- 14.8. IPReg has made significant progress in the development this framework and it will be strengthened by further work on the supply and demand side and from the information gathered in the authorisation process.

## Supervision

- 14.9. Since the 2012/13 self-assessment, IPReg has developed an assurance and supervisory policy, which will be implemented during the course of 2015. This will represent a significant change for the regulator as its current, reactive approach focuses on reviewing CPD records, complaints information and responding to general enquiries. IPReg's new approach to assurance and supervision will begin with the authorisation process when any areas of potential regulatory risk will be identified which will determine the ensuing assurance and supervision approach. Those firms identified as potentially higher risk will be subject to closer or targeted reporting (and potentially visits). In addition to this, firms will be reviewed through the annual return process.
- 14.10. IPReg's new approach to supervision is currently untested. But, it does represent progress and, potentially, an example of how effective supervision can be delivered proportionately by a smaller regulator.

## **Enforcement**

- 14.11. IPReg has reviewed and updated its complaints and enforcement strategy as part of its preparations to be a licensing authority. The revised strategy clarifies IPReg's position on industry whistle-blowers and vexatious complainants. Additional tests (related to consumer detriment) will now need to be met when one registrant makes a misconduct complaint against another.
- 14.12. As a licensing authority, IPReg will have much greater statutory powers than previously. The arrangements it has put in place are consistent with the indicators of good performance for this regulatory standard. However, effective implementation of its new powers will be necessary.

## **Capacity and capability**

- 14.13. IPReg's re-launched website has a clear distinction between its consumer and professional content. It sets out the regulators role and includes written policies, procedures and guidance in accessible, plain language. Registrants are able to submit electronic reports.
- 14.14. In preparation for designation as a licensing authority, IPReg has taken on additional resources with relevant experience to assist with authorisation and assurance/supervisory activities.
- 14.15. But, IPReg remains a small organisation which relies on a number of key people, notably the chief executive. So appropriate contingency plans are necessary and IPReg has put such plans in place.

## **Conclusion**

- 14.16. IPReg's designation as a licencing authority has given IPReg greater statutory powers. IPReg has also made the decision to regulate ABS and non-ABS in a consistent manner. As a consequence many of IPReg's regulatory arrangements are changing and are yet to be tested. We consider that the planning that IPReg put into its preparation to be a licensing authority has resulted in a significant improvement in performance against the all of the regulatory standards. The development of the risk framework has provided IPReg with a greater understanding of those it regulates, their services and their customers; this will help improve the targeting of its regulatory activities.
- 14.17. The implementation of IPReg's licensing rules and other changes to its regulatory arrangements and processes are likely to be challenging. However, IPReg is well prepared for this new role and delivers most of the regulatory standards to an adequate level. While IPReg has completed a large programme of work since the 2012/13 self-assessment exercise and has addressed all of the LSB's comments, we do expect it to continue to monitor and report on its progress.

### **LSB regulatory standards expectations for 2015/16**

The LSB expects that, in addition to the activities applicable to all regulators, the following issues will be prioritised for action, or actions to address the issue be planned, by **IPReg** during 2015/16:

- Monitor and publicly report on progress and performance in authorising ABS and the experience of implementing its new arrangements and powers.

## 15. ILEX Professional Standards (IPS)

### Context

No. authorised persons:	7,947 chartered legal executives, legal executive advocates and associate prosecutors <sup>55</sup>
Reserved legal activities:	<ul style="list-style-type: none"> <li>▪ Exercise of a right of audience*</li> <li>▪ Conduct of litigation**</li> <li>▪ Reserved instrument activities</li> <li>▪ Probate activities</li> <li>▪ Administration of oaths</li> </ul> <p>* <i>Family and civil:</i></p> <p style="padding-left: 20px;">1. <i>judge's room hearings – all</i></p> <p style="padding-left: 20px;">2. <i>open court rights – qualifying advocates</i></p> <p><i>Criminal: qualifying advocates</i></p> <p>** <i>in civil, criminal &amp; family proceedings</i><sup>56</sup></p>
Entity regulator:	Yes – As of 1 Jan 2015
Licensing authority:	No
Budget estimate: (01 Jan 15 – 31 Dec 15)	IPS budget (including levies): £1.178m Services provided by CILEx to IPS budget: £1.164m <sup>57</sup>
Income estimate: (01 Jan 15 – 31 Dec 15)	Practising certificate: £2.478m Other regulatory income: £0.65m <sup>58</sup>
Employees:	21 <sup>59</sup>

15.1. IPS submitted its update self-assessment shortly after the set deadline. The update itself was very detailed and a lot of supporting evidence was provided. The IPS Board oversaw the production of the update. IPS did not seek external scrutiny as in its view, it would not be appropriate, given the large changes that the regulator is going through.

### General observations

15.2. IPS's 2012/13 action plan was aimed at achieving its ambitions to expand its regulatory scope. Much of this has been achieved as IPS has recently been designated to regulate the reserved legal activities of probate activities and reserved instrument activities (conveyancing). It has also extended its right to award litigation rights to include CILEx fellows. The LSB has also approved changes to the IPS' regulatory arrangements so that it can regulate entities providing reserved legal activities. It has also introduced a scheme to regulate immigration advice and services.

### Outcomes focused regulation

15.3. In developing its new regulatory arrangements for entities and the new designations, IPS have demonstrated a good understanding of outcomes focused approach for individuals and entities.

<sup>55</sup> LSB (April 2014), Number of persons authorised to undertake reserved legal activities as reported to the LSB by IPS

<sup>56</sup> Page 3, LSB (December 2013) rule change decision notice, [http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/ips\\_litigation\\_application\\_dec\\_notice\\_final.pdf](http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/ips_litigation_application_dec_notice_final.pdf)

<sup>57</sup> CILEx (July 2014), Group draft budget 2015, [http://www.legalservicesboard.org.uk/Projects/independent\\_regulation/PDF/2014/20140721\\_PCF\\_Budget\\_2015.pdf](http://www.legalservicesboard.org.uk/Projects/independent_regulation/PDF/2014/20140721_PCF_Budget_2015.pdf)

<sup>58</sup> *ibid*

<sup>59</sup> IPS (November 2014), Structure chart

- 15.4. IPS CPD rules have moved away from counting hours and it now requires practitioners to consider their individual development needs and how these might be most effectively addressed. A new work-based learning scheme allows more routes to membership based on experience rather qualifications.
- 15.5. IPS have taken on board LSB's observations and created a consumer policy and engagement function. A consumer engagement action plan is now being delivered which includes client feedback and complaints data. This should be a rich source of information that could inform risk assessment and supervision activities (highlighted on page 10). Web communications with consumers have been improved through the joint work on the Legal Choices website as well as improvements to the IPS website.
- 15.6. IPS's 2014 survey on first tier complaints handling has allowed the regulator to identify areas of consumer dissatisfaction and identify where further guidance may be needed.

### **Risk assessment**

- 15.7. A risk framework has been developed, which was based on research into likely operating models and testing with self-employed practitioners and those considering making an entity application. Following this testing it has been refined. IPS has appointed dedicated staff to carry out risk assessments, as well as review and report on risks identified from a wide range of intelligence sources. A Strategic Risk Committee oversees IPS's approach to risk and review the risk ratings.
- 15.8. In the first regulatory standards report the LSB questioned the appropriateness of IPS's reactive approach to risk assessing individuals.<sup>60</sup> In their update self-assessment IPS set out its view that this justified given the small number of misconduct complaints. It added that guidance is produced for practitioners when risks to consumers are identified.
- 15.9. We had also suggested to IPS that a formal information exchange on risks with the SRA (considering the high number of CILEx fellows that work in SRA regulatory entities) and other regulators would be helpful to IPS.<sup>61</sup> In response, IPS has developed a memoranda of understanding which has been signed by CLSB, with other regulators currently seeking internal approval. This was agreed at the January 2015 regulators' forum.
- 15.10. The approach IPS has taken to testing its risk assessment process is welcome. However, it is only when it is used in a "live" situation IPS will be able to assure itself that it is identifying the right risks. We expect IPS to monitor its implementation and refine as needed.

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<sup>60</sup> Page 34, LSB (December 2012), Developing regulatory standards: An assessment of the legal services regulators, [http://www.legalservicesboard.org.uk/Projects/pdf/regulatory\\_standards\\_assessment\\_of\\_five\\_of\\_seven\\_regulators.pdf](http://www.legalservicesboard.org.uk/Projects/pdf/regulatory_standards_assessment_of_five_of_seven_regulators.pdf)

<sup>61</sup> Page 33, *ibid*

## **Supervision**

- 15.11. Supervision for individuals continues to be predominantly based on CPD records, complaints data and misconduct investigations. This may be appropriate for those working in entities regulated by other approved regulators (such as the SRA). However, entity supervision will require a more proactive approach.
- 15.12. IPS intend to supervise entities according to personalised monitoring plans. These will be developed initially as part of the authorisation process and supplemented with reviews of accountants' reports and annual returns. IPS are also intending to use data from a wide number of sources to help it to identify emerging trends and themes. It will then use this information to inform its activities.
- 15.13. This proactive approach to supervision is new to IPS and it will be important that it is kept under review to ensure that it is delivering the intended outcomes. Once it has gained more experience of this IPS should consider what elements of the proactive approach could improve its supervision of individuals.

## **Enforcement**

- 15.14. In anticipation of wider scope of regulation, IPS has made changes to its Investigation Disciplinary and Appeals Rules. This is to make them to appropriate for entities. As IPS did not regulate any entities when it submitted its update self-assessment, these have yet to be tested.
- 15.15. Consumer facing guidance has been developed on IPS enforcement procedures. This sets out what consumers can expect from the changes to IPS regulatory scope and arrangements. Complainants will continue to be encouraged to contribute to the customer satisfaction survey.

## **Capacity and capability**

- 15.16. IPS continues to make regulatory decisions across the organisation at the right level, with a scheme of delegations allowing day-to-day decisions to be made at officer (rather than executive) level, with appropriate review and reporting arrangements.
- 15.17. Recognising the increased scope of regulation and IPS' reliance on a number of key members of staff, a succession plan has been put in place.
- 15.18. In preparation for the increased scope of regulation, a review of IPS's structure and staffing was completed. Additional resource and training and development needs were identified. Regulatory staff headcount has increased from seven to 21 and there is contingency to scale this up if a higher than expected number of entity applications are received.
- 15.19. IPS has developed its existing IT database to allow it to manage entity regulation records. As with other areas, the LSB will focus its attention in the 2015/16 self-assessment to see if the updated database is delivering as expected.
- 15.20. Overall, our view is that these organisational changes means that IPS is well positioned to take on its new regulatory responsibilities and activities.

## Conclusion

15.21. IPS has recently been designated for two additional reserved legal activities and it is now able to regulate entities. To do this it has had to make significant changes to its approach to regulation. It has made positive steps in relation to consumer engagement and understanding. However, it will face a significant challenge when it starts to use its new powers. Despite extensive planning, this will test its capability and capacity and its approach to supervision.

### **LSB regulatory standards expectations for 2015/16**

In addition to the activities applicable to all regulators, the LSB expects **IPS** to focus on the following priority areas during 2015/16:

- Monitor and publicly report on progress and performance in authorising entities and the challenges of regulating new areas.
- The development and publication of an evidence based supervision policy for individual CILEx fellows that incorporates the use of a wider range of supervisory tools.



## 16. Master of the Faculties (the Faculty Office)

### Context

No. authorised persons:	792 notaries <sup>62</sup>
Reserved legal activities:	<ul style="list-style-type: none"><li>▪ Reserved instrument activities</li><li>▪ Probate activities</li><li>▪ Administration of oaths</li><li>▪ Notarial activities</li></ul>
Entity regulator:	No – Not currently considering an application
Licensing authority:	No – Not currently considering an application
Budget estimate: (01 Jan 15 – 31 Dec 15)	Regulatory budget (including levies): £0.403m <sup>63</sup> <i>The Faculty Office has no representative functions</i>
Income estimate: (01 Jan 15 – 31 Dec 15)	£0.405m <sup>64</sup>
Employees:	7

16.1. The Faculty Office submitted its update self-assessment by the date agreed with the LSB.

### General observations

16.2. The Faculty Office's 2013/14 action plan was limited with only two specific actions. Despite this, the content of the 2014/15 update self-assessment showed a much improved understanding of the required regulatory standards and demonstrated where the regulator has improved its performance. Given that this was an update self-assessment, the regulator did not feel that it was appropriate to award itself a mark for each standard, or proportionate to seek external independent scrutiny. It was instead reviewed by a lay member of the Advisory Board who does not exercise a regulatory function within the Faculty Office or on behalf of the Master of the Faculties.

### Outcomes focused regulation

16.3. The Faculty Office only had one specific action in its 2012/13 action plan for this regulatory standard. This was to review and amend the Notaries Practice Rules (2009). This was completed and the new rules came into force on 1 May 2014. In our decision notice, we noted that we were encouraged to see the inclusion of a set of general principles in the practice rules to reflect a move towards outcomes focused regulation, including express recognition of responsibilities to the consumer.<sup>65</sup> The Faculty Office reported that anecdotal evidence suggests that notaries regard the principles as helpful in the day to day conduct in their practices. However, it is too early to make a more

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<sup>62</sup> LSB (April 2014), Number of persons authorised to undertake reserved legal activities as reported to the LSB by the Faculty Office

<sup>63</sup> Page 5, Faculty Office (August 2014), Application for approval of practising fees 2014/15, [http://www.legalservicesboard.org.uk/Projects/independent\\_regulation/PDF/2014/20140806\\_Application\\_For\\_Practising\\_Fees\\_2014\\_15.pdf](http://www.legalservicesboard.org.uk/Projects/independent_regulation/PDF/2014/20140806_Application_For_Practising_Fees_2014_15.pdf)

<sup>64</sup> *ibid*

<sup>65</sup> Paragraph 9, Page 3, LSB (3 April 2014), Decision notice: The Master of the Faculties application for approval of changes to the regulatory arrangements relating to the Notaries Practice Rules and introduction of the Notaries (Inspections) Regulations, [http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/20140403\\_MoF\\_Dec\\_Not\\_Practice\\_Rules.pdf](http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/20140403_MoF_Dec_Not_Practice_Rules.pdf)

detailed assessment of whether the expected outcomes for consumers are being delivered.

- 16.4. The Faculty Office has now improved its evidence base about the services being offered by those it regulates, the amount of income they generate and some details about who their consumers are; this is a significant step forward. For instance, when asked to take part in the Nick Smedley research (for the LSB), the Faculty Office was unable to tell the researcher how many notaries provided conveyancing services.<sup>66</sup> The Faculty Office can now provide supply side figures for all of its regulatory community.<sup>67</sup>
- 16.5. The regulator is taking a steady approach to improve the outcomes focus of its regulatory arrangements. It has taken a number of significant and important steps. However, the Faculty Office still needs to understand more about the demand side of the market and what the consumers of notarial services need and expect. Although the LSB recognises that in the main, notaries' transactions are one-off in nature, they are still a source of information on both good and bad consumer outcomes.

### **Risk assessment**

- 16.6. The Faculty Office's 2012/13 self-assessment action plan contained no specific actions for this regulatory standard. It noted that it would keep this area under review. As mentioned above, the Faculty Office has taken significant steps to improve its understanding of the supply side of the market for notarial services. This includes information regarding those who hold client money and provide services that are known to be higher risk.
- 16.7. It has used this information to help it to understand those it regulates and to identify areas of likely risk. This information has also informed changes to its practice rules and to its supervisory strategy. The regulator points to its new practice rule "23" which responds to ID fraud risk<sup>68</sup> and its anti-money laundering guidance<sup>69</sup> as examples of this. Despite this progress, its approach to risk assessment remains relatively unsophisticated in regard to understanding the interests of consumers and areas of potential consumer detriment.
- 16.8. Nonetheless, the work the Faculty Office has completed to understand those it regulates and to identify risks to the regulatory objectives is welcome. As this approach is still very new and developing, the Faculty Office must now consider risks to consumers in more depth and to think about any emerging risk trends.

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<sup>66</sup> Page 14, Nick Smedley for the LSB (June 2011), The smaller approved regulators, [http://www.legalservicesboard.org.uk/what\\_we\\_do/research/Publications/pdf/20110622\\_sar\\_report\\_final.pdf](http://www.legalservicesboard.org.uk/what_we_do/research/Publications/pdf/20110622_sar_report_final.pdf)

<sup>67</sup> <http://www.facultyoffice.org.uk/wp-content/uploads/2014/09/FacultyOfficeNotariesAnnualReport2013.pdf>

<sup>68</sup> Page 12, Faculty Office (2014), Notaries practice rules 2014, <http://www.facultyoffice.org.uk/wp-content/uploads/2014/09/Notaries-Practice-Rules-2014.pdf>

<sup>69</sup> Paragraph 3, Master of Faculties (September 2008), Notaries (prevention of money laundering) rules 2008, <http://www.facultyoffice.org.uk/wp-content/uploads/2013/12/Notaries-Prevention-of-Money-Laundering-Rules-2008.pdf>

## Supervision

- 16.9. The Faculty Office's 2012/13 self-assessment contained no specific actions for this regulatory standard. It noted simply that it would keep this area under review. Since the submission of the 2012/13 self-assessment, the Faculty Office has introduced new arrangements for the supervision of notarial practices (highlighted in the case study on page 15). Prior to the introduction of these arrangements, the regulator had no mechanism to carry out proactive inspections of notary practices. It has now appointed two individuals to act as inspectors. They intend to inspect a minimum of 20 notarial practices each year, focusing on practices that are considered to be high risk.
- 16.10. The Faculty Office's update self-assessment also explained work it has undertaken to review accountants' reports, which led to remedial work with a particular notary to improve relevant systems. This is a good example of supervisory engagement. This is because it has brought a practitioner into compliance and prevented consumer detriment before it may have occurred.
- 16.11. This is a step forward for the Faculty Office. It has introduced proactive supervision based on risks identified from the information it has on those it regulates. It also states that a feedback loop into wider regulatory policy development and/or the production of guidance is planned. These are all positive indicators for this regulatory standard.

## Enforcement

- 16.12. The Faculty Office's 2012/13 self-assessment contained no specific actions for this regulatory standard. It noted simply that it would keep this area under review. The regulator highlights activities in its update to improve transparency, including the publication of enforcement decisions and the update to its website. It considers that these improvements will help individuals understand how they can notify the Faculty Office of any concerns about the conduct of a notary.
- 16.13. The Faculty Office receives only a handful of potential misconduct reports each year. It received five in 2013, of which, only one led to misconduct proceedings, with another being placed on hold pending the outcome of ongoing criminal proceedings. Very few service complaints from the Legal Ombudsman result in a referral to the Faculty Office (only two including potential misconduct in 2013).
- 16.14. However, the low number of notifications does not mean that the scale of potential misconduct and consumer detriment is similarly low. A recent decision by the Court of Faculties concerning the misconduct of an individual regulated by the Faculty Office involved an investment scheme in which investors lost \$3 million.<sup>70</sup> We are pleased that the Faculty Office pursued this case to its conclusion. But, we note that the cost of doing so proved a significant drain on the Faculty Office's contingency fund. This has led to a

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<sup>70</sup>Court of Faculties (May 2014), IN THE MATTER OF ELLA ELIZABETH IMISON, A NOTARY, <http://www.facultyoffice.org.uk/wp-content/uploads/2014/08/Imison-DecisionOfTheCourt.pdf>

doubling of contributions from notaries for the fund in 2014.<sup>71</sup> We are concerned that enforcement procedures may not be sufficiently clear or simple to use to meet the requirements of this regulatory standard. This may have contributed to the relatively high cost of the case.<sup>72</sup>

- 16.15. If cases are perceived to be too expensive then the Faculty Office may be reluctant to pursue them. Additionally, if the sanctions are too lenient then they are unlikely to punish (or even disgorge profits) or deter others. The Faculty Office has confirmed that it is reviewing its disciplinary procedures and the operation of its contingency fund (this began in September 2014). We encourage the regulator to consider our report on best practice in sanctions and appeals to assist in this review.<sup>73</sup>

### Capacity and capability

- 16.16. The Faculty Office's 2012/13 self-assessment contained no specific actions for this regulatory standard. Its update self-assessment focused on the work it has undertaken to improve the transparency of the work of the Faculty Office. This has been mainly achieved through the introduction of a new website, which publishes annual reports, disciplinary decisions and figures on those that it regulates. The Faculty Office has also provided the LSB with copies of the minutes of its Advisory Board. However, these are not available online. Even though the board only has an advisory function, the LSB encourages the Faculty Office to be as transparent as possible with how it conducts its business.
- 16.17. The Faculty Office has improved the evidence base about those that it regulates. However, it still lacks evidence about those it seeks to protect through regulation; the consumers of services provided by notaries. The Faculty Office considers that its relative lack of resources restricts its ability to undertake research on consumers' needs.
- 16.18. The LSB is unconvinced by such arguments and has, earlier in this report, highlighted the simple steps that can be taken by regulators to understand consumers. Despite this, we are encouraged by the Faculty Office's statement that it is keen to establish a cost effective mechanism for understanding and engaging with consumers. We will expect this to be discussed in the 2015/16 self-assessment.

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<sup>71</sup> Page 1, Faculty Office (August 2014), Application for approval of practising fees 2014/15, [http://www.legalservicesboard.org.uk/Projects/independent\\_regulation/PDF/2014/20140806\\_Application\\_For\\_Practising\\_Fees\\_2014\\_15.pdf](http://www.legalservicesboard.org.uk/Projects/independent_regulation/PDF/2014/20140806_Application_For_Practising_Fees_2014_15.pdf)

<sup>72</sup> For instance in a recent decision of the Court of Faculties the court spent some time deciding what the appropriate standard of proof for notary misconduct cases. This should have been clear from the Faculty Office's rules and processes.

<sup>73</sup> LSB (March 2014), Regulatory sanctions and appeals processes, [http://www.legalservicesboard.org.uk/projects/thematic\\_review/pdf/20140306\\_LSB\\_Assessment\\_Of\\_Current\\_Arrangements\\_for\\_Sanctions\\_And\\_Appeals.pdf](http://www.legalservicesboard.org.uk/projects/thematic_review/pdf/20140306_LSB_Assessment_Of_Current_Arrangements_for_Sanctions_And_Appeals.pdf)

## Conclusion

- 16.19. The Faculty Office's 2012/13 self-assessment contained very few specific actions, those it did include were delivered. The regulator has responded to observations made by the LSB and completed a number of additional activities that are likely to help it to improve its performance against the regulatory standards. This included the introduction of its new principles based Notarial Practice Rules and research to understand what services notaries supply to their clients. A new risk based approach to supervision is proactively inspecting notarial practices. The Faculty Office also updated its website in an effort to be more transparent with both its regulated community and their clients. It is too early to say whether these changes will help deliver the required outcomes for consumers, we see no reason why they will not.
- 16.20. Challenges remain for the Faculty Office in regard to its understanding of and engagement with consumers. The regulator does not hold any meaningful evidence about the interests of consumers of services from notaries. The more the regulator understands about consumers, the better it can design its regulatory arrangements to meet their needs and reduce risks in the market. Developing and implementing more sophisticated risk assessment policy and processes based on evidence must be seen as a priority. The Faculty Office's enforcement experience shows that consumers of services from notaries can be exposed to significant risks. The Faculty Office must ensure that it has the arrangements in place and the resources to minimise these risks; and the ability to punish appropriately when detriment occurs.

### **LSB regulatory standards expectations for 2015/16**

In addition to the activities applicable to all regulators, the LSB expects **the Faculty Office** to focus on the following priority areas during 2015/16:

- Proper consideration about how the Faculty Office can cost effectively engage with consumers of the services provided by those it regulates.
- Assess whether its enforcement arrangements and processes are appropriate, value for money and effectively punish misconduct.

## 17. Solicitors Regulation Authority (SRA)

### Context

No. authorised persons:	132,636 practising solicitors 5,094 registered European, foreign & exempt lawyers <sup>74</sup>
Reserved activities:	<ul style="list-style-type: none"> <li>▪ Exercise of a right of audience*</li> <li>▪ Conduct of litigation</li> <li>▪ Reserved instrument activities</li> <li>▪ Probate activities</li> <li>▪ Administration of oaths</li> </ul> <p>* including advocacy in civil and/or criminal higher courts (6,514 solicitors with higher rights of audience)</p>
Entity regulator:	Yes – 10,360 firms <sup>75</sup>
Licensing authority:	Yes – 344 alternative business structure firms <sup>76</sup>
Regulatory budget estimate: (01 Nov 14 – 31 Oct 15)	SRA budget (excluding levies): £47.727m Law Society shared services for SRA: £26.975m LEO, LSB and SDT levies: £20m <sup>77</sup>
Regulatory income estimate: (01 Nov 14 – 31 Oct 15)	Practising certificate fee: £104.9m Other regulatory income: £3.478m Regulatory recoveries: £13.365m <sup>78</sup>
Employees:	650 excluding shared services <sup>79</sup>

17.1. The update self-assessment was received on time and consisted of a detailed report that was supported by a substantial amount of evidence. It also included a detailed programme of work to November 2016. The submission was not subject to review by a third party. It was produced with the involvement of the Chair and Chair designate and was discussed at an SRA Board meeting.

### General observations

17.2. The SRA is the largest of all the approved regulators. Compared to the other regulators, it regulates markets that are more complex, markets that pose greater risks to the regulatory objectives and 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.

<sup>74</sup> SRA (November 2014), Population of practicing solicitors, [http://www.sra.org.uk/sra/how-we-work/reports/data/population\\_solicitors.page](http://www.sra.org.uk/sra/how-we-work/reports/data/population_solicitors.page)

<sup>75</sup> SRA (November 2014), Data for breakdown of solicitor firms, [http://www.sra.org.uk/sra/how-we-work/reports/data/solicitor\\_firms.page](http://www.sra.org.uk/sra/how-we-work/reports/data/solicitor_firms.page)

<sup>76</sup> SRA (January 2015), Register of licensed bodies (ABS), <http://www.sra.org.uk/solicitors/firm-based-authorisation/abs/abs-search.page>

<sup>77</sup> *ibid*

<sup>78</sup> Page 5, SRA (July 2014), Practising certificate fee application 2014/15, [http://www.legalservicesboard.org.uk/Projects/statutory\\_decision\\_making/pdf/20140714\\_SRA\\_TLS\\_To\\_LSB\\_Section\\_51\\_Application.pdf](http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/20140714_SRA_TLS_To_LSB_Section_51_Application.pdf)

<sup>79</sup> Page 7, Law Society (July 2014), Annual general meeting minutes, [http://governance.lawsociety.org.uk/secure/meeting/207071/Part\\_1\\_Council\\_papers\\_9\\_and\\_10\\_July\\_2014.pdf](http://governance.lawsociety.org.uk/secure/meeting/207071/Part_1_Council_papers_9_and_10_July_2014.pdf)

17.3. Since the last submission there has been extensive change in the senior management team at the SRA, which has led to widespread reviews of how it delivers its functions. A revised strategic plan has been developed (published November 2014), which runs to October 2017. This supersedes many of the actions contained within its previous plan which was submitted as part of the 2012/13 self-assessment.

### Outcomes focused regulation

17.4. Good progress has been made in completing the majority of the action plan that accompanied the 2012/13 self-assessment.

17.5. In response to observations made by the LSB during the 2012/13 self-assessment exercise, the SRA has developed and published an approach to consumer engagement. It is unclear how effectively (or if at all) the information that is collected on consumers is being used to assess whether the existing regulatory arrangements are based on the outcomes that consumers need.

17.6. Research projects have been completed and the SRA has not shied away from commissioning research that is likely to be critical of the SRA policy or performance (for example conducting and publishing research on the experience of the authorisation process for those seeking a licence as an alternative business structure<sup>80</sup>). However, we note that the research that has been published in this self-assessment period has focused on solicitors and not consumers (A research paper on the quality of legal advice for asylum seekers was timetabled for release in December 2014).

17.7. SRA is changing its approach to how it communicates with consumers who report misconduct. The previous policy of not keeping those who informed the regulator about potential cases of misconduct up to date with case progress led to dissatisfaction which could have undermined confidence in the SRA. The SRA's new approach is to be more proactive and transparent in its communications on how investigations are progressing.<sup>81</sup>

17.8. SRA continues to review and revise its Handbook of regulatory arrangements and has completed three "Red Tape Challenge" consultation exercises. We welcome the SRA's recent statement that *the continuation of any existing regulatory intervention needs to be justified, rather than one of focusing on justifying its removal*.<sup>82</sup>

17.9. In 2013 we observed that evidence needed to be built about consumer needs and that the SRA could be more consumer focused in its activities.<sup>83</sup> In this update, there is a commitment to improve on this aspect, ensuring consumers are considered in all SRA activities and processes. But clearly progress has not been as rapid as the LSB would have liked.

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<sup>80</sup> SRA (May 2014), Research on alternative business structures (ABSs): Findings from surveys with ABSs and applicants that withdrew from the licensing process, <http://www.sra.org.uk/sra/how-we-work/reports/research-abs-executive-report.page>

<sup>81</sup> SRA (January 2015), <http://www.sra.org.uk/consumers/problems/report-solicitor/providing-information.page>

<sup>82</sup> SRA (May 2014), Approach to regulation and its reform, <http://www.sra.org.uk/sra/policy/regulation-reform.page>

<sup>83</sup> Page 12, LSB (February 2013), Developing regulatory standards: An assessment of the Solicitors Regulation Authority, [http://www.legalservicesboard.org.uk/Projects/pdf/20130226\\_regulatory\\_standards\\_SRA\\_final.pdf](http://www.legalservicesboard.org.uk/Projects/pdf/20130226_regulatory_standards_SRA_final.pdf)

## Risk assessment

- 17.10. There has been a lot of progress on risk assessment and the positive work on the Risk Outlook highlighted on page 12 of the main report. There has been good work on identifying and communicating current and future risks trends.
- 17.11. There has also been significant engagement activity to ensure all SRA Board and staff members understand and can apply the approach to risk. This investment is welcomed and we are beginning to see evidence of its effectiveness in our interactions with SRA staff.
- 17.12. There has been slippage in the delivery of information technology solutions and there is still a reliance on a number of spreadsheets. This approach has the risk of inconsistency and incoherence in decisions on risk matters. The effective delivery of the expected IT solutions is key to embedding risks assessment into the SRA's systems and regulatory decisions processes. We note the delay and significant re-scoping of the R-view project; there will need to be careful monitoring of the delivery of the project, which is due to be implemented through 2015.

## Supervision

- 17.13. The SRA's own update self-assessment is that this area "*needs improvement and work has started recently*"; this is lower from the 2012/13 self-assessment of "*undertaking improvement and work is well underway*".
- 17.14. The action plan that accompanied the 2012/13 self-assessment did not have any activity under this regulatory standard. The LSB's view at that time, on the information provided, was that the 2012/13 self-assessment was realistic but that there was a challenge to ensure that risk, supervision and enforcement activities were coordinated.
- 17.15. The SRA's view is that the downward assessment is a reflection of that fact that higher standards have now been set for this area. Since the 2012/13 self-assessment, the SRA has failed to deliver the integrated customer relationship management and risk systems, which has probably contributed to a lack of consistency in supervision approaches. Again, there is reliance on a number of spreadsheets, which compounds risks.
- 17.16. To turn around performance in this area, a number of senior staff changes have been made and there is increased reporting to the Board. This should enable the SRA Board to exercise greater oversight of supervisory activity. We welcome the candid assessment provided by the SRA.
- 17.17. We recognised that the challenge for the SRA in this area is significant. The regulator reported in its update self-assessment that it is receiving an increased number of event notifications (8000 in 2012; 11,000 in 2013) and there has been a doubling of the number of high risk events; there were 2,300 open events in July 2014. Alongside this, the SRA must deliver the day-to-day supervision of the firms it regulates (4362 firms were being actively supervised in Q1 2014).



- 17.18. SRA has committed to improve its operational performance and to develop quality assurance measures.
- 17.19. When completing the 2015/16 self-assessment, the SRA Board will need to consider whether it has enough of the right information to decide the correct assessment for this (and for the other) regulatory standards. This area will be a major focus in the 2015/16 self-assessment process.

## Enforcement

- 17.20. No update was provided against the specific action plan in this area on the basis that actions were either complete or ongoing in nature. The SRA did not take the opportunity to assess whether the actions that have been completed have delivered the expected improvements in SRA's own performance (as it did in other areas).
- 17.21. The report on activities undertaken to respond to LSB observations shows that there has been investment in improving the skills and resources of the enforcement staff which has led to more cases being handled in house, with a consequent reduction in expenses. The SRA report that the number of open cases is now 200, this is down from 500 in 2012.<sup>84</sup>
- 17.22. The SRA is now measuring and publishing data starting from the receipt of information that leads to an investigation to the issuing of proceedings at the Solicitors Disciplinary Tribunal (SDT). The first data published reported that the average (in July 2014) was 550 days.<sup>85</sup> The SDT's target is for 70% of cases to have a substantive hearing six four months of the issuance of proceedings; it follows that 30% of cases take at least six months on top of the investigation time to conclude.<sup>86</sup>
- 17.23. In 2013 we were critical of performance under this standard, so we are encouraged by the improvements that have been made. The time taken to complete investigations and, where needed, disciplinary hearings is important for consumer confidence in the effectiveness of the regulator. We continue to encourage the SRA and the SDT to work together to better align KPIs.

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<sup>84</sup> Paragraph 3.39, page 20, LSB (February 2013), Developing regulatory standards: An assessment of the Solicitors Regulation Authority, [http://www.legalservicesboard.org.uk/Projects/pdf/20130226\\_regulatory\\_standards\\_SRA\\_final.pdf](http://www.legalservicesboard.org.uk/Projects/pdf/20130226_regulatory_standards_SRA_final.pdf)

<sup>85</sup> SRA (November 2014), SRA statement – handling concerns about solicitors <http://www.sra.org.uk/sra/news/press/handling-concerns-solicitors-time-figures.page>

<sup>86</sup>Page 33, Solicitors Disciplinary Tribunal, Annual Report 2013/14, <http://www.solicitortribunal.org.uk/Content/documents/Solicitors%20Disciplinary%20Tribunal%20Annual%20Report%202013-2014.pdf>

## Capacity and capability

- 17.24. All of the actions in the plan that accompanied the 2012/13 self-assessment have been completed. Notably, there has been significant investment in staff development programmes and risk training which is welcome.
- 17.25. The SRA has detailed a number of initiatives to improve operational capability and capacity, including a comprehensive people change programme. As noted elsewhere in this report, there has been positive work in improving risk understanding across the organisation.
- 17.26. Following the first exercise, the LSB was critical of the backlogs that had developed for firm based authorisations (including ABS). Since then actions taken by the SRA have been successful at bringing down the average decision time from nearly seven months for applications (made between January 2012 and December 2013) to just over three months (for applications made after January 2014).<sup>87</sup>
- 17.27. We have previously commented on the how the SRA Board assures itself on the operational performance and how it needs to focus more on holding its management to account. Much has been done to address this. A board effectiveness review has been completed which led to a number of governance changes, including the appointment of a senior independent director. In addition, a KPI pack had been developed for the Board with the information it needs to provide effective oversight of the executive.
- 17.28. We have observed many improvements in the capacity and capability of the SRA. However, the organisational changes envisaged by the SRA and the ambitions of their reform programme represent significant challenges, which still requires effort and investment at all levels.

## Conclusion

- 17.29. The SRA's update self-assessment is much improved from 2012/13 self-assessment. It is credible, detailed and addresses many of the observations from the report that the LSB published in 2013.<sup>88</sup> While there is still work to do, the SRA has successfully delivered programmes related to risk and consumer empowerment and has also addressed issues in the authorisation process.
- 17.30. However, it is not without issues. The apparent deterioration in supervisory standards is concerning and delivery of the IT solutions will need to be carefully monitored.
- 17.31. The SRA has set itself a challenging reform project, both in terms of regulatory reform and developing its organisational capacity. There are very real execution risks to the regulators plans and its commitments. We will continue to monitor the SRA's progress and will look forward to a formal update in the regulator's 2015/16 self-assessment.

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<sup>87</sup> Page 3, LSB Board (November 2014), Chief executive progress report – November 2014, [http://www.legalservicesboard.org.uk/about\\_us/board\\_meetings/pdf/20141126\\_26\\_November\\_2014/Paper\\_14\\_66\\_CEO\\_Progress\\_Report\\_Nov\\_2014.pdf](http://www.legalservicesboard.org.uk/about_us/board_meetings/pdf/20141126_26_November_2014/Paper_14_66_CEO_Progress_Report_Nov_2014.pdf)

<sup>88</sup> LSB (February 2013)

### **LSB regulatory standards expectations for 2015/16**

In addition to the activities applicable to all regulators, the LSB expects **the SRA** to focus on the following priority areas during 2015/16:

- Report on the implementation of new IT systems and the extent to which new systems and processes are improving the consistency of risk assessment and supervision.
- Maintain work to hold executive to account for regulatory performance of the SRA
- Increase transparency of the SRA's performance and the accessibility of information on the activity of the SRA Board (including a reduction of board papers being discussed in private).

## 18. Annex B: The regulatory standards and assessment process

### Background

- 18.1. In April 2014 we updated the template and requested that the regulators report to the LSB on the progress made since the 2012/13 self-assessments were completed. We received these update self-assessments during October and November 2014.
- 18.2. The template required the regulators to answer four questions about each regulatory standard and about their capacity and capability. They were also asked to rank themselves against the same scale used in 2012/13.
- 18.3. The regulators were asked to provide an assessment with supporting documents of:
  - Progress against action plan since 2012/13 self-assessment.
  - Activities undertaken to respond to observations by LSB
  - Any additional activities relevant to the update self-assessment
  - Details of updated action plan with timescales and milestones (including work identified but not begun, work recently started and work already underway).
- 18.4. The update self-assessment was ranked by regulators 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
  - Recognise this needs to be done but work has not yet started
- 18.5. To assist regulators the LSB produced a series of indicators for each regulatory standard and for capacity and capability. The purpose of the indicators was to aide regulators when assessing where, approximately, they may be on the scale. For each regulatory standard there were indicators that, if carried out by the regulator, would tend to suggest that they were towards the top of scale and those that would indicate they were towards the bottom. Regulators were free to use other specific factors. The indicators used for each regulatory standard and for capacity and capability is shown in the table below.

## 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 the 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 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 regulations. Regularly reviews and updates its regulatory arrangements based on that evidence.

### Factors that indicate a regulator is towards the 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

## Risk assessment

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

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

- Formal, structured and 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 a regulator is towards the 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.

## 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 the 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;
  - 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 a regulator is towards the bottom of the scale:

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

## 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 the 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 process 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 a regulator is towards the bottom of the scale:

- Little or no evidence of a 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.

## 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 the 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 a regulator is towards the 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.

18.6. The LSB required that a member of the regulatory board, preferably lay, was involved in the production of the update self-assessment to certify that the information in the update self-assessment was accurate, that the procedures followed to make the assessment provided a reasonable basis to reach a judgement and that each ranking represented a fair and reasonable assessment. The Chair of the regulatory board was also required to certify, on behalf of the regulatory board, that the board had reviewed the completed update self-assessment and considered that the information and judgments in the update self-assessment were made on a reasonable basis. Regulator were also required to explain the process followed to produce the update self-assessment.

18.7. The LSB also included a 'comply or explain' approach to independent scrutiny. Regulators were required to get an appropriately qualified individual to review the process followed by the regulator or to explain why they chose not to do so. If the regulator did subject their update self-assessment to independent scrutiny the individual was required to certify that the procedures followed by the regulator provided a reasonable basis for them to make the judgements the update self-assessment and supporting documents reach.