

Meeting: Legal Services Board

Date: 16 July 2019

Item: Paper (19) 34

Title: Update paper on regulatory performance

Introduced by: Tom Peplow

Status: Official

Introduction: Purpose of the paper

1. In late 2018 we assessed the regulatory bodies' performance against our new regulatory performance framework. In January 2019 we published action plans for each regulator, identifying outcomes that were *Not met* and setting them actions to address this. We requested formal updates from regulators by 31 May. This paper presents an update on regulators' progress and identifies next steps, providing an opportunity for Board discussion before the next stage of this workstream.

Recommendation

2. The Board is invited to discuss progress and themes arising from our regulatory performance work, prior to publication of our latest assessments. In particular, the Board should note:
 - the limited progress on collaboration across regulators on outcomes A5 and WL3
 - [REDACTED]
 - the proposed next steps and opportunities for future Board engagement

Background

3. We launched our new regulatory performance framework in December 2017. The new framework introduced new performance standards and moved us away from the previous approach of periodic self-assessment by the regulatory bodies to a more dynamic programme of ongoing monitoring by the LSB.¹

¹ Information on the LSB's regulatory performance framework is available here: <https://www.legalservicesboard.org.uk/our-work/regulatory-performance#regulatory-performance-assessment-process>

4. In 2018, we completed a transitional review of each regulatory body's performance against the five standards and 26 underpinning outcomes in the new framework. We found the regulatory bodies to have met the minimum required level of performance against the majority of required outcomes.
5. In January 2019, we published a report on our transitional review. We also published individual regulatory performance assessments for each regulator and the action plans that we had set them for any unmet outcomes.² The action plans set out the steps that regulatory bodies needed to take to meet any outcomes assessed as *Not met*, and the timescales to complete them.
6. A summary of our assessment of each regulatory bodies' performance was shared with the Board in November 2018. All regulatory bodies had areas where improvement was required, ranging from 1 to 8 outcomes that were not being met. In most cases, the required actions related to longer-term, infrastructure and policy approach type issues.
7. We set a milestone of 31 May 2019 for formal reporting of progress to the LSB. In the meantime, since January 2019 each regulatory body has had a relationship manager at the LSB who meets with them on a regular basis and is responsible for the ongoing monitoring of their performance.
8. [REDACTED]

Progress update

9. As set out above, of the 27 *Not met* outcomes the majority related to more complicated issues of structure and approach. There were only limited examples of outcomes that we expected regulators to have a short-term solution to. As a result, we did not expect to be in a position, at this stage, to change our overall assessment to *Met* for most of the 27 unmet outcomes.

² The LSB's Regulatory performance transitional assessment report is published here: [http://www.legalservicesboard.org.uk/Projects/developing_regulatory_standards/pdf/2019/FW_Web_update_for_12pm_on_Thursday/Regulatory_Performance_Review_report_FINAL_\(1\).PDF](http://www.legalservicesboard.org.uk/Projects/developing_regulatory_standards/pdf/2019/FW_Web_update_for_12pm_on_Thursday/Regulatory_Performance_Review_report_FINAL_(1).PDF)

However, we wished to see evidence of meaningful plans and concrete progress in addressing the issues that we had identified.

10. Encouragingly, [REDACTED] all of the regulatory bodies have responded positively to the new regulatory performance framework and we have assurance that they are all working to address the issues in their action plans. In particular, the regulatory bodies have welcomed the introduction of dedicated relationship managers, as well as the regular contact we now have with them on their regulatory performance. Through our relationship management work we have confirmed the regulatory bodies' plans to meet any unmet outcomes and the timing of these actions.
11. We plan to publish updated assessments following the Board meeting. These will summarise the additional assurance that we have received on the progress that regulatory bodies are making. We will use these updated action plans to monitor progress and to hold regulators to account. A summary of our updated assessment of the performance of each regulatory body is available at Annex A to this paper.

Progress highlights

12. For the CLC, we have changed our assessment for outcome E6 (*The regulator clearly explains the reasons for its decisions to take or not to take things forward at each stage of the process*). This was assessed as *unmet* because the CLC was reviewing its approach to keeping complainants informed of enforcement decisions. The CLC has now completed this review and published a guidance note on the information complainants will receive from the CLC during its enforcement processes.
13. Whilst we are retaining our existing assessment of *Not met – action being taken* for the remaining 26 outcomes, we now have a clearer sense of progress, future actions and timeframes for addressing these outcomes. Some noteworthy progress towards addressing these outcomes include:
 - a. The SRA published a new public engagement charter in June, its IT improvement programme is also progressing on track and it expects to launch a new register with improved accessibility and functionality for consumers in November.
 - b. IPReg has significant improvement plans in place and is introducing a programme of change over the coming months to improve the transparency of its decision-making. IPReg is also introducing a new IT

system to improve the accessibility of its register and its analysis of its registrants; this is on target to go live in the Autumn.

- c. The BSB has provided detailed information on the work streams and timings of its programme of work to address the advocacy quality risks in 2020. This follows on from its withdrawal of its QASA rules last year.
- d. The CLC has confirmed details on the redesign of its register and that it is on track to complete this by December 2019.

14. There are two outcomes where we have identified less progress across regulators. These are outcomes A5 and WL3, which are dealt with below.

Outcomes A5 and WL3

15. As referenced in the November 2018 regulatory performance Board paper and our January 2019 regulatory performance transitional review report, a common issue for a number of the regulatory bodies is not meeting outcomes A5 and WL3. Progress on these outcomes has relied to some extent on collaborative working across the regulators and it is in relation to such collaborative working there has been less progress, as set out below.

Outcome A5 - *Availability of information on regulatory bodies' professional registers on the disciplinary records of those they regulate.*

Update

- a. The five regulatory bodies who have not yet met outcome A5 have taken some positive action, putting in place work programmes to improve the accessibility of their registers and to include disciplinary information in them.

- b. [REDACTED]

LSB action

- c. [REDACTED]

[REDACTED]

Update

- d. There has been progress amongst the six regulatory bodies that are yet to meet outcome WL3. We have seen some increased publication of information on their regulatory work and decision-making, as well as the development of work programmes to improve the transparency of decision-making and performance information.
- e. The Regulators' Chairs also discussed cross regulator work on developing better approaches to transparency at their meeting in January. However, we have seen limited collaboration on this outcome, which could have helped promote common standards and sharing of good practice.

LSB action

- f. We will continue to hold each regulatory body to account for their performance against this outcome and delivery of the work programmes they have developed. In light of the lack of collaboration, we will do our own work to identify best practice on the transparency of decision-making and performance information and clarify our expectations in these areas.

[REDACTED]

16. [REDACTED]

17. [REDACTED]

18. [REDACTED]

19. [Redacted]

(i) [Redacted]

(ii) [Redacted]

(iii) [Redacted]

20. [Redacted]

21. [Redacted]

22. [Redacted]

[REDACTED]

23. [REDACTED]

Next steps

24. The next steps on regulatory performance are as follows:

- a. Publish updated assessments for each regulator on our website, alongside a statement confirming the positive impact our new regulatory performance approach is having and the progress regulatory bodies are making with their action plans. The draft statement is available at Annex B to this paper.
- b. Complete the actions set out above to support regulatory bodies with meeting outcomes A5 and WL3.
- c. [REDACTED]
- d. Bring a further paper to the Board in January 2020. By this point, the new framework will have been in operation for 12 months. The paper will present a further update on regulators' performance, as well as findings from an internal review of how the framework is operating.
- e. Prior to the end of the IGR transitional period, publish a revised framework to incorporate compliance with the new IGR and the approach for LSB oversight of the approved regulators who have delegated their regulatory functions.

Annexes

Annex A: Regulatory performance assessment table

Annex B: Regulatory performance statement – six months on

Risks and mitigations	
Financial:	N/A

Legal:	The legality of requirements to disclose information, for example disciplinary records, may receive challenge. Legal advice will be obtained and the legitimacy our approach tested to mitigate any such risks.
Reputational:	The progress achieved in the first six months of operation of the new framework will enhance the LSB's reputation as an effective oversight regulator.
Resource:	No immediate issues as resource input is spread across the LSB team.

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Para 2, bullet point 2	s36(2)(b) - Sensitive advice about a workstream	
Para 8 Para 10, first sentence - wording in commas	s36(2)(b) - Sensitive advice about a workstream	
15b-c	s36(2)(b) - Sensitive advice about a workstream	N/A
16-23	s36(2)(b) - Sensitive advice and views / opinions about a workstream and relationship with a stakeholder	N/A
24c	s36(2)(b) - Sensitive advice about a workstream	N/A
Annexes A and B	Section 22: information intended for future publication	