

BSB Regulatory performance assessment November 2019

| REGULATORY APPROACH | | | | | AUTHORISATION | | | | | SUPERVISION | | | | ENFORCEMENT | | | | | | WELL-LED | | | | | |
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| Met | | Not met – action being taken | | | | | | | | Not met – action required | | | | | | | | | | | | | | | |

Overview

The BSB has continued to make progress against actions identified in the last progress update. Since the original transitional review in January 2019, one previously *not met* outcome has been assessed as *met* - S3 (Regulated community is monitored to ensure standards are met) and one remains under review through the IGR transition procedures - A4 (Authorisation process).

Two further outcomes appear as no longer *met* in November 2019; *not met – action required* on WL5 (Board ensures the regulator is independent, transparent consumer-focused) and the other *not met – action being taken* on RA2 (Regulatory arrangements updated based on robust evidence).

- WL5: In our view, the BSB’s decision to withdraw funding from Legal Choices without a clear commitment to investing in alternatives is a diminution of the BSB’s performance in respect of this outcome. The BSB has informed us that it is currently devising a new public legal education strategy. However, we await detailed information on the ways the BSB proposes to address its obligations currently delivered through Legal Choices.
- We also have concerns about outcome RA2 which has been added as a new action and reflects issues with the quality

Not met – action required

| Outcome | | WL5: The Board considers its own effectiveness in ensuring the regulator is a well-led, independent, transparent and consumer-focused organisation, which acts in a way that is compatible with the regulatory objectives. |
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| November 2019 | LSB assessment | <p>The LSB considers the provision to consumers of good quality information about legal services is a key element of improving access to justice, one of the regulatory objectives contained in the Legal Services Act 2007. In our view, the BSB's decision to withdraw funding from Legal Choices without a clear commitment to investing in alternatives is a diminution of the BSB's commitment to this objective and therefore its performance in respect of this outcome.</p> <p>We acknowledge that the predominantly referral nature of barrister services means that services are delivered to consumers primarily through other providers, however, we consider that providing good quality information to the public will create the opportunity to expand public access work. Moreover, we also see barristers as being part of an important value chain delivering services to an end user, whether that is an individual, a business or other organisation. We consider it important for regulators and those whom they regulate to see that value chain primarily from the point of view of that end user and not that of the profession being regulated.</p> <p>While the redesign of the BSB's own website may make a helpful contribution, on its own it seems unlikely to make a significant difference to providing the support available through Legal Choices.</p> <p>In their letter dated 5 December (in reply to our letter of 9 October), the BSB informed us that it is currently devising a new public legal education strategy. We await detailed information on the ways the BSB proposes to address its obligations currently delivered through Legal Choices.</p> |
| | Action needed | <p>The BSB to provide detailed information including costed and specific deliverables which explain how the BSB proposes to fulfil its consumer obligations previously delivered through Legal Choices. We will also expect the BSB to provide records of the Board-level discussions which informed the decision to withdraw from supporting the service.</p> |
| | Timing | <p>BSB to submit a report by 31 January 2020.</p> |

Not met – action being taken

| Outcome | | RA2: Regulatory arrangements and supporting guidance documentation are regularly reviewed and, where necessary, updated based on a robust evidence-base. |
|---------------|----------------|---|
| November 2019 | LSB assessment | <p>A key component for meeting this outcome is effective engagement with the LSB's rule approval process. A recent deterioration in the quality of the BSB's rule change applications, means that we cannot currently consider this outcome is met.</p> <p>In respect of some recent rule change applications, including those which have proposed to implement significant policy changes, there have been a number of issues which have had an impact on the LSB's ability to assess the applications. These issues range from;</p> <ul style="list-style-type: none"> • lack of clarity about the rules in respect of which the BSB is seeking approval • incomplete applications (e.g. consequential amendments are omitted) • errors in the proposed rules submitted for approval (some of which have been discovered by the BSB after the LSB has approved the rules) • poor presentation of applications which makes the impact of the proposed rule changes more difficult to assess. <p>The BSB has informed us that it now has a new Head of Legal Support in place who will review all applications before they are submitted to the LSB. It will also consider developing a template for all rule change applications to ensure quality issues are addressed.</p> |
| | Action needed | The BSB to review its current procedures and take the necessary steps to ensure that future rule change applications are complete and that all quality issues have been addressed before applications are submitted for approval. |
| | Timing | Immediate action and prior to submission of any future rule change application. We will review progress against this outcome at each rule change application. |

| Outcome | | A4: The authorisation process, including the management of appeals, is fair, based on the regulator's standards, efficient and transparent |
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| Progress update (at November 2019) | LSB assessment | <p>BSB is required to take the necessary actions, in relation to its authorisation function, to enable compliance with the IGR.</p> <p>Currently the barrister authorisation to practise process, sits within the Bar Council and not within BSB's direct control, which is not in compliance with the current IGR as authorisation to practise is a regulatory arrangement. We determined in January that as there was an open consultation on new IGR, it would be more practical that BSB takes action to address this issue through compliance with the new IGR when they come into force.</p> <p>The LSB published the new IGRs in July 2019. Our assessment from January 2019 remains, pending the BSB's response to the new IGR.</p> |
| | Action needed | <p>BSB to take the necessary actions, in relation to its authorisation function, to enable compliance with the IGR.</p> <p>The BSB to submit certificate of compliance under IGR transition procedures.</p> |
| | Timing | To be completed by 23 July 2020, the end of the transition period when full compliance must be certified. |

CILEx Regulation Regulatory performance assessment November 2019

| REGULATORY APPROACH | | | | | AUTHORISATION | | | | | SUPERVISION | | | | ENFORCEMENT | | | | | | WELL-LED | | | | | |
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| Met | | | Not met – action being taken | | | | | | | Not met – action required | | | | | | | | | | | | | | | |

Overview

CILEx Regulation has made progress on the one outstanding outcome previously assessed as *not-met – action being taken* on outcome S3 (Regulated community is monitored to ensure standards are met).

- Proposals for alternative plans for monitoring and responding to advocacy quality risks and an implementation plan had been submitted with a rule change application. This was subsequently withdrawn on 10 December 2019 and we await further plans from CILEx Regulation.

We will maintain our ongoing monitoring of CILEx Regulation regulatory activities against the outcomes through our regular meetings and discuss any emerging issues.

Not met – action required

| Outcome | | S3: The regulated community are monitored to provide assurance that standards are met. If they are not, steps are taken to remedy this. |
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| Progress update November 2019 | LSB assessment | <p>To meet this outcome, CILEx Regulation is expected to implement changes identified in its education and training review to address advocacy quality risks.</p> <p>CILEx Regulation submitted a rule change application on 29 October 2019 on education and standards which proposes removal of references to the Quality Assurance Scheme for Advocates (QASA) for authorisation and reaccreditation of criminal advocates and Associate Prosecutors from CILEx Regulation’s rules.</p> <p>CILEx Regulation proposes to revert to the previous quality assurance requirements for CILEx criminal advocates and Associate Prosecutors upon which Level 1 of the QASA was based.</p> <p>The implementation plans that were included in the rule change application note that subject to the LSB’s approval, it will seek to implement the plans for addressing and monitoring advocacy quality risks in January 2020. However, this was subsequently withdrawn on 10 December 2019. We await further plans from CILEx Regulation, therefore we cannot assess this action as complete and so the outcome remains as Not met – action being taken</p> |
| | Action needed | This outcome is assessed as Not met - action being taken. |
| | Timing | We await further plans from CILEx Regulation. |

CLSB Regulatory performance assessment November 2019

| REGULATORY APPROACH | | | | | AUTHORISATION | | | | | SUPERVISION | | | | ENFORCEMENT | | | | | | WELL-LED | | | | | |
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| Met | | | Not met – action being taken | | | | | | | Not met – action required | | | | | | | | | | | | | | | |

Overview

CLSB has made considerable progress since the transitional review and the LSB has maintained close contact with CLSB throughout the year.

The work of the new Chief Executive with support from the Board has resulted in very positive progress on each of the unmet outcomes. At this stage in the reform of the CLSB procedures and practices, none of the outcomes have yet been met. This is not surprising given the extent of the changes required but the LSB recognises the amount of effort which has contributed to a noticeable difference in the performance of CLSB.

Notwithstanding the progress, CLSB has continued to be tested on two areas in particular:

- WL2 (Understanding of resources needed to carry out regulatory functions): CLSB has limited fixed resources and the recent departure of its Head of Operations has created additional immediate challenges in this regard. We will maintain close contact with CLSB on their interim resourcing solutions to ensure they are sufficient.
- RA2 (Regulatory arrangements updated based on robust evidence): This has been added as a new action and reflects issues with the quality of the content of the rule change application to introduce a new Costs Lawyers Competency Assessment (CLCA).

Not met: action being taken

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| Outcome | | RA1: Regulatory arrangements and supporting guidance documentation are: <ul style="list-style-type: none"> • outcomes-focused • written in plain English • maintain professional principles with detailed rules limited to where evidence and analysis justifies them |
| Progress update (at November 2019) | LSB assessment | <p>The actions for the CLSB were to consider implementation of a revised approach to CPD and to complete the review of its older handbook content.</p> <p>CLSB has made progress against this outcome. It has now completed its review of its current CPD arrangements and expects to consult shortly.</p> <p>In order to meet this outcome we need to see:</p> <ul style="list-style-type: none"> • consistent use of its evidence base and that CLSB is taking steps to develop (as set in actions under RA3 and RA4) • consistent evidence of the learning through board decision notes, such as the note produced recently in relation to reopening the cost lawyers training course run by ACL Training. |
| | Action needed | <p>CLSB must follow through on the work it has done in developing new CPD arrangements and new Disciplinary Rules and Procedures. This will be done by completing consultations, setting final policy positions and applying to the LSB for alterations to its regulatory arrangements.</p> <p>Additionally, CLSB must continue to make use of its evidence base to inform any further guidance or alterations to regulatory arrangements identified by its review of older handbook content.</p> |
| | Timing | <p>Actions to be complete by 31 May 2020.</p> |

| Outcome | | RA2: Regulatory arrangements and supporting guidance documentation are regularly reviewed and, where necessary, updated based on a robust evidence-base. |
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| November 2019 | LSB assessment | <p>A key component for meeting this outcome is effective engagement with the LSB's rule approval process. In January of 2019 the CLSB applied to introduce a new Costs Lawyers Competency Assessment (CLCA). The application was later withdrawn but only after the LSB issued a warning notice.</p> <p>Despite significant engagement with the CLSB prior to the application, there were a number of significant issues which had an impact on the LSB's ability to assess the application. These issues ranged from a lack of:</p> <ul style="list-style-type: none"> • information and evidence to support the stated rationale for the CLCA • detail in the competence and threshold standard being proposed • evidence on the potential equality impact or costs implications of the proposal • detail of the plan for implementation. <p>The CLSB is in the process of an organisational restructure and it is currently taking steps that include consultation on possible alterations to its regulatory arrangements. As a result it is expected to apply to the LSB for further rule changes early in 2020.</p> |
| | Action needed | <p>The CLSB to review its current procedures and take the necessary steps to ensure that future rule change applications are complete and that all quality issues have been addressed before applications are submitted for approval.</p> |
| | Timing | <p>Immediate action and prior to submission of any future rule change application. We will review progress against this outcome at each rule change application.</p> |

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| Outcome | | RA3: The regulator has a robust evidence base from a range of sources on: (a) consumers' needs and use of legal services (b) new and emerging policy developments (c) the regulated community and (d) the market(s) regulated by it which informs its regulatory arrangements and approach. |
| Progress update (at November 2019) | LSB assessment | <p>The main action for the CLSB was to demonstrate through examples how learning from its evidence base has informed its regulatory approach and identify what elements of the SRA evidence base can be used by the CLSB to inform its policy development. The CLSB should also consider and engage with other regulatory bodies.</p> <p>CLSB has produced an interim report on costs lawyers and consumers. This report considers evidence the CLSB already holds along with other evidence and potential sources of evidence from within the sector. It is a first report that will inform further CLSB evidence gathering.</p> <p>CLSB is continuing to make progress in its steps to widen its engagement.</p> <p>In order to meet this outcome CLSB will need to evidence that it is consistently gathering and using evidence from a range of sources over time. Good evidence in relation to this outcome is likely to come from CLSB's future rule change applications – the CLCA application in early 2019 lacked the requisite evidence and ultimately resulted in the application being withdrawn.</p> |
| | Action needed | CLSB to evidence its learning from engagement, the work it has done in relation to consumers and other policy developments. This will come from CLSB's future rule change applications and its board decision notes. It will also come from the actions set out in CLSB's interim report on costs lawyers and consumers. |
| | Timing | CLSB to provide a progress update by 31 May 2020. |

| Outcome | | RA4: Regulatory arrangements and associated guidance documentation are informed by learning gathered from all of the regulators work including its risk assessment and enforcement work. |
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| Progress update (at November 2019) | LSB assessment | <p>The action for CLSB was to provide information on how its evidence base, including learning gained from its regulatory returns and client surveys, as well as risk assessment and enforcement work, has been used to influence the Board and Executive's thinking and the development/revision of regulatory arrangements and associated guidance.</p> <p>CLSB must continue to demonstrate the impact of its learning on its regulatory arrangements and guidance. This will be evidenced as it takes forward its proposals on both CPD and its Disciplinary Rules as well as in how it makes use of the consumer engagement strategy that is being developed.</p> |
| | Action needed | <p>CLSB must follow through on the work it has done in developing new CPD arrangements and new Disciplinary Rules and Procedures. This will be done by completing consultations, setting final policy positions and applying to the LSB for alterations to its regulatory arrangements.</p> <p>Any future applications to the LSB must evidence the learning gathered from its own work which have helped inform the proposed alterations.</p> |
| | Timing | CLSB to provide a progress update by 31 May 2020. |

| Outcome | | E2: The regulator ensures that all complaints are reviewed on receipt and serious cases are prioritised and, where appropriate, referred to an interim orders panel. |
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| Progress update (at November 2019) | LSB assessment | <p>CLSB was asked to review whether, in the absence of interim orders powers, it is able to ensure consumers and others are protected should immediate suspension of a costs lawyer's authorisation be needed.</p> <p>CLSB must continue to progress its work on changes to its Disciplinary Rules and Procedures. The changes include proposals to introduce interim suspension orders and CLSB has now completed its consultation. It is currently on track to meet this outcome by May 2020, subject to its final policy decision and subsequent application to the LSB.</p> |
| | Action needed | CLSB must analyse consultation responses, issue a decision document and then amend its rules as appropriate as soon as practicable. |
| | Timing | Action to be complete by 31 May 2020. |

| Outcome | | E3: The enforcement process and any associated appeals process is: consistent; independent; risk-based; evidence-based; documented; transparent; proportionate; focused on consumer protection, maintaining professional principles and protecting the public interest. |
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| Progress update (at November 2019) | LSB assessment | <p>The action for CLSB was to undertake a review of its enforcement process against this standard and produce a report setting out its findings.</p> <p>CLSB must continue to progress its work on changes to its Disciplinary Rules and Procedures. It is currently on track to implement new rules by May 2020, subject to its final policy decision and subsequent application to the LSB. However, in order to meet this outcome the CLSB will have to show the new processes work in practice.</p> |
| | Action needed | CLSB must analyse consultation responses, issue a decision document and then amend its rules as appropriate as soon as practicable. |
| | Timing | New rules to be implemented by 31 May 2020. |

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| Outcome | | WL2: The regulator understands the resources (financial, human and technical) and organisational structure it needs to carry out its regulatory functions (including authorisation, supervision and enforcement) effectively and efficiently and these are implemented. |
| Progress update (at November 2019) | LSB assessment | <p>CLSB has two actions:</p> <ol style="list-style-type: none"> 1) to review its risk register and to consider the inclusion of risks such as board member recruitment. 2) to consider and to provide the LSB with an updated contingency plan explaining the ongoing risks and mitigations associated with a single member of staff support and the provider of contingency support if needed <p>CLSB has amended and is regularly updating its risk registers to reflect changes in risk. Additionally, it has produced a new Business Plan which sets out 20 actions which are all pinned to its five mid-term strategy objectives and sit under three priorities. This is good progress towards this outcome.</p> <p>However, the level of its internal fixed resources continue to be a concern, particularly with the recent departure of the Head of Operations. We have raised this in the last PCF decision notice and we will maintain close contact with CLSB on their interim resourcing solutions to ensure they are sufficient.</p> |
| | Action needed | CLSB must provide the LSB with a detailed resourcing plan including actions and steps it will take in deciding its resourcing needs before next PCF application in 2020. |
| | Timing | CLSB to submit an update on its resourcing plan by 30 June 2020. |

| Outcome | | WL3: The regulator is transparent about its own: decision-making; regulatory approach; the risks it and its regulated community faces and how these are being mitigated; performance; regulated community and related markets; financial costs. |
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| Progress update (at November 2019) | LSB assessment | <p>CLSB has two actions:</p> <ol style="list-style-type: none"> (1) to review current publication policy and ensure that the supporting evidence for decisions taken by the Board or Executive which impact on the regulated community is published as soon as possible after decisions are taken. This should include Board papers which should only be withheld or with content removed in limited circumstances. (2) to review the transparency of its performance information (e.g. KPIs and performance reports, complaints about the regulator etc.) and that this information should be published as soon as possible after the Board consideration. <p>CLSB's board has reviewed and approved the CLSB's updated KPI policy which will result in greater transparency of CLSB performance going forward. Further, we have now been able to see CLSB's first use of its new transparent decisions policy. It is a significant improvement on the transparency of board decision making and reflects good practice for any significant decisions. To date CLSB has not given further consideration to drafting and publishing board papers and at this time, whilst improvements have been made, we are unable to consider this outcome met.</p> |
| | Action needed | CLSB has implemented a transparent decisions policy and now must turn its attention to drafting and publishing board papers. |
| | Timing | CLSB to provide a progress update by 31 May 2020. |

| Outcome | | WL4: The regulator learns from its own work, stakeholders, the legal sector and other sectors and uses that learning to improve its work. |
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| Progress update (at November 2019) | LSB assessment | <p>The action for CLSB was to improve the transparency of how its evidence base is regularly shared with the Board and utilised to drive change/developments, for example risk management, guidance and revised policy.</p> <p>The work CLSB is doing under other outcomes should lead to it being able to meet this outcome over time. In particular, in order to meet this outcome CLSB must:</p> <ul style="list-style-type: none"> • improve and make use of its evidence base as it develops. This will include the work it is doing in relation to costs lawyers and consumers and all of its engagement within the sector. • evidence its learning through transparent decision making as required under WL3. The transparency of sharing CLSB's evidence base with the board will be particularly aided by board decision notes but would be even further aided by the production and publication of board papers. |
| | Action needed | CLSB must progress its work to better understand consumers of costs lawyers services and work towards the next steps identified in its interim report. It must draft and publish board papers to demonstrate how evidence is informing discussions and decisions taken by its board. |
| | Timing | CLSB to provide a progress update by 31 May 2020. |

CLC Regulatory performance assessment November 2019

| REGULATORY APPROACH | | | | | AUTHORISATION | | | | | SUPERVISION | | | | ENFORCEMENT | | | | | | WELL-LED | | | | | |
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| Met | | | Not met – action being taken | | | | | | | Not met – action required | | | | | | | | | | | | | | | |

Overview

CLC has made considerable progress on the two outstanding outcomes previously assessed as *not-met – action being taken*: A5 (Register including disciplinary records) and WL3 (Transparency of decision-making and performance) with A5 now considered *met*.

On WL3 the key outstanding action is the publication of performance information about the CLC (e.g. KPIs and performance reports and complaints about the regulator) and firm plans are in place to meet this outcome. We would note that progress on publication of KPIs under WL3 has been slower than expected. We would encourage CLC to consider the pace of implementation of future changes it makes to its practices and procedures.

We will maintain our ongoing monitoring of the CLC’s regulatory activities against the outcomes through our regular meetings and discuss any emerging issues.

Not met - action being taken

| Outcome | | WL3: The regulator is transparent about its own: decision-making; regulatory approach; the risks it and its regulated community faces and how these are being mitigated; performance; regulated community and related markets; financial costs. |
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| Progress update (at Nov 2019) | LSB assessment | <p>The CLC has made positive progress in publishing the supporting information for decisions taken by its Council or Executive which impact on the regulated community. In a revised publication schedule papers for Council will be published ahead of meetings and minutes published soon after Council meetings. The publication schedule also confirms that non confidential responses to consultations will be published.</p> <p>The key outstanding action is to how the CLC will provide performance information about the CLC (e.g. KPIs and performance reports and complaints about the regulator) in a transparent manner as soon as possible after Council consideration. The CLC has committed to start publishing KPIs and their performance against them in May 2020.</p> |
| | Action needed | <p>To complete its actions as set out below:</p> <ul style="list-style-type: none"> • Jan 2020: Council to agree KPIs • Apr 2020: Council to review performance against first set of KPIs • May 2020: CLC to start publishing KPIs and CLC performance against those KPIs |
| | Timing | CLC to report to LSB by 31 May 2020. |

Met (November 2019)

| Outcome | | A5: The regulator's list of those they regulate is accessible, accurate and provides information on the disciplinary records of those regulated. |
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| Progress update (at Nov 2019) | LSB assessment | <p>The action for CLC was to ensure that the register of those regulated is easily accessible and contains information on all disciplinary action taken against individuals or entities.</p> <p>In line with the deadline noted in January 2019 and action required by the LSB, the CLC has met this outcome. A consumer is now able to carry out a search of the register and establish whether disciplinary action has been taken against individuals or entities.</p> |
| | Action needed | Action complete |
| | Timing | Not applicable |

ICAEW Regulatory performance assessment November 2019

| REGULATORY APPROACH | | | | | AUTHORISATION | | | | | SUPERVISION | | | | ENFORCEMENT | | | | | | WELL-LED | | | | | |
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| Met | | | Not met – action being taken | | | | | | | Not met – action required | | | | | | | | | | | | | | | |

Overview

ICAEW has continued to engage positively with the LSB and we are encouraged by some of the reforms it is carrying out. In particular, progress has been made on WL1 (Board/Council holds executive to account), as part of wider reforms within ICAEW, which should enable compliance with the new internal governance rules. However, two outcomes have been downgraded to not met – action required; A5 (Register including disciplinary records) and WL3 (Transparency of decision-making and performance). Specifically, on the ongoing *not met* outcomes:

- A5: The Find a Chartered Accountant (FACA) register does not include probate disciplinary data. Additionally, the register is not fully accessible for all users.
- WL3: The pace of progress on improving transparency of decision making has been slow and the information provided to the LSB does not offer sufficient assurance that work in 'Project Light' is progressing at a rate to meet the requirements of this outcome.

We also have concerns about outcome RA2 (Regulatory arrangements updated based on robust evidence) which has been added as a further action and reflects issues with the quality of the content of the Section 51, 2020 Practising Certificate Fee (probate fee) application and also the practice of publishing changes to practitioner rules without LSB approval for those carrying out probate services.

Not met - action required

| Outcome | | A5: The Regulator's list of those they regulate is accessible, accurate and provides information on the disciplinary records of those regulated. |
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| November 2019 | LSB assessment | <p>The July 2019 action plan had two ongoing actions:</p> <ol style="list-style-type: none"> 1. Improve the accessibility of the probate register and to ensure that it contains disciplinary information <p>The probate register remains a downloadable pdf on ICAEW website which is now signposted in the consumer's area of the website. ICAEW has added a 'yes/no' column for any disciplinary probate matters relating to a firm with a link to email ICAEW for more details. However, there is no link to further information. The probate register does not have a search bar and is searchable only by using cntrl+F function which is not fully accessible for all users.</p> <ol style="list-style-type: none"> 2. Include probate and disciplinary information on the FACA register <p>The Find a Chartered Accountant (FACA) register does not include probate disciplinary data, although ICAEW is continuing work in this area with an expected decision on publication in late 2019.</p> <p>LSB acknowledges the progress that has been made against the first action. However, the accessibility objective has not been fully achieved, and ICAEW has not shared a timeline for completing this work.</p> |
| | Action needed | ICAEW to provide a detailed plan and timetable for further changes to the probate register, including adding disciplinary information, on the FACA register |
| | Timing | A plan should be submitted by 31 January 2020. |

| Outcome | | WL3: The regulator is transparent about its own decision-making; regulatory approach; the risks it and its regulated community faces and how these are mitigated; performance; regulated community and related markets; financial costs. |
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| November 2019 | LSB assessment | <p>The actions from January and July 2019 required ICAEW to:</p> <ul style="list-style-type: none"> (1) review current publication policy to ensure that the supporting evidence for decisions taken by the Board or Executive which impact on the regulated community are published as soon as possible after decisions are taken; and (2) review the transparency of its performance information, <p>and provide the LSB with a detailed plan, with deadlines, for their implementation.</p> <p>ICAEW has completed some work in this area and is set to undertake the next phase of 'Project Light'. The work in progress is largely behind the scenes and further milestones with defined dates have not been shared with the LSB. We recognise that visit information is now being published, however the latest published Probate Committee annual report is dated 2015/16.</p> <p>Overall, ICAEW has not provided sufficient evidence progress to meet this outcome. The actions stated in the January 2019 performance assessment are for the most part, still applicable.</p> |
| | Action needed | <p>ICAEW should provide a detailed plan explaining what steps it will take, including a timetable, to meet the following actions:</p> <ul style="list-style-type: none"> (1) Review current publication policy and ensure that supporting evidence for decisions taken by the Board or Executive which impact on the regulated community are published as soon as possible after decisions are taken. This should include Board papers, which should only be withheld or with content removed in limited circumstances. (2) Review the transparency of its performance information (eg financial statements, KPIs and performance reports, complaints about the regular etc) and that information should be published as soon as possible after Board consideration. |
| | Timing | <p>ICAEW to submit the plan by 31 January 2020.</p> |

Not met - action being taken

| Outcome | | RA2: Regulatory arrangements and supporting guidance documentation are regularly reviewed and, where necessary, updated based on a robust evidence-base. |
|---------------|----------------|--|
| November 2019 | LSB assessment | <p>Recent issues with ICAEW engagement with the LSB rule approval process mean that we cannot currently consider this outcome is met.</p> <p>The 2020 PCF/probate fee application did not contain sufficient information or evidence, and it took several reiterations to reach a position where the LSB had sufficient evidence to assess and approve the application.</p> <p>There has also been an issue with disciplinary by-laws being published on the ICAEW website before LSB have given final approval. This has occurred on at least two instances. ICAEW should ensure the LSB approval timings are included in the wider approval process for by-laws approved by the Privy Council before publication and implementation.</p> |
| | Action needed | ICAEW to review its current procedures and take the necessary steps to ensure that future rule change and PCF applications are complete and that all quality issues have been addressed before applications are submitted for approval. |
| | Timing | Immediate action and prior to submission of any future rule change or PCF application. We will review progress against this outcome at each rule change application. |

| Outcome | | WL1: The Board/Council holds the executive to account for the regulator's performance to ensure that it operates effectively and efficiently and in a way which is compatible with the regulatory objectives. |
|----------------------|-----------------------|--|
| November 2019 | LSB assessment | <p>The action for ICAEW was to update the LSB on the timing of its planned probate review, complete implementation and following that to provide assurance to the LSB about the efficiency and effectiveness of governance arrangements.</p> <p>ICAEW progress in this area has been connected to IGR compliance. ICAEW plans to make significant changes to its governance arrangements to be compliant with the IGRs during the transitional period.</p> <p>ICAEW and LSB have had constructive discussions on IGR compliance to explore how the different regulatory requirements for legal services and accountancy can be accommodated within the ICAEW structure. Further operational changes are also under review in a more extensive reform programme and we look forward to further updates from ICAEW on how these are progressing should they relate to legal services regulation.</p> <p>Progress is continuing has been made on this outcome and we are aware of the live and ongoing discussions around the most appropriate regulatory framework under the new IGRs.</p> |
| | Action needed | <p>ICAEW needs to take the necessary actions in relation to its governance arrangements to enable compliance with the IGR.</p> <p>The ICAEW to submit certificate of compliance under IGR transition procedures.</p> |
| | Timing | To be completed by 23 July 2020, the end of the transition period when full compliance must be certified. |

IPReg Regulatory performance assessment November 2019

| REGULATORY APPROACH | | | | | AUTHORISATION | | | | | SUPERVISION | | | | ENFORCEMENT | | | | | | WELL-LED | | | | | |
|---------------------|---|---|------------------------------|---|---------------|---|---|---|---|---------------------------|---|---|---|-------------|---|---|---|---|---|----------|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 1 | 2 | 3 | 4 | 5 | 6 | 1 | 2 | 3 | 4 | 5 | 6 |
| | | | | | | | | | | | | | | | | | | | | | | | | | |
| Met | | | Not met – action being taken | | | | | | | Not met – action required | | | | | | | | | | | | | | | |

Overview

IPReg has demonstrated that it has taken action to address all three of the outcomes previously assessed as *not met – action being taken*; A5 (Register including disciplinary records), WL3 (Transparency of decision-making and performance) and WL5 (Board ensures the regulator is independent, transparent consumer-focused) and these have now been *met*.

Specifically, on the outcomes now assessed at Met:

- A5: Implementation of its new CRM system and website has resulted in the publication of a more accessible and accurate register for consumers which includes information on the disciplinary records of the attorneys and firms that it regulates.
- WL3: Confirmation that the performance management dataset has been adopted by the Board as key performance indicators and that the dataset is also published.
- WL5: A new board appraisal system has been introduced and is being implemented.

IPReg is the first regulatory body to have achieved a *Met* scoring on all the performance outcomes.

Met

| Outcome | | A5: The regulator's list of those they regulate is accessible, accurate and provides information on the disciplinary records of those regulated. |
|------------------------------------|----------------|---|
| Progress update (at November 2019) | LSB assessment | <p>IPReg's new online registers and website went live on 30 September 2019.</p> <p>The new online registers are searchable by attorney or firm name, postcode/location and country. The following information is now provided in the online registers:</p> <ul style="list-style-type: none"> • any disciplinary information, or where there is no disciplinary record this is stated • date of admission to a register, as well as the name of an attorney's employer and their practice address (unless IPREG has agreed to keep this confidential) • whether the attorney can advise the public (they are in private practice or a sole trader) or cannot advise the public (they only do corporate work) • whether an attorney is registered on the trademark and/or patent attorney registers, rather than using the term "dual attorney" • registered firms and licensed bodies including details of the HOLP and HOFA • guidance on how to search the registers <p>We now assess this action as complete and have amended our assessment to Met.</p> |
| | Action needed | Action complete. |
| | Timing | Not applicable. |

| Outcome | | WL3: The regulator is transparent about its own: decision-making; regulatory approach; the risks it and its regulated community faces and how these are being mitigated; performance; regulated community and related markets; financial costs. |
|---|-----------------------|--|
| Progress update (at November 2019) | LSB assessment | <p>In our transitional assessment we said the following actions were needed:</p> <ol style="list-style-type: none"> (1) IPReg to review current publication policy and ensure that the supporting evidence for decisions taken by the Board or Executive which impact on the regulated community are published as soon as possible after decisions are taken. This should include Board papers which should only be withheld or with content removed in limited circumstances. (2) IPReg to review the transparency of its performance information (e.g. KPIs and performance reports, complaints about the regulator etc.) and that this information should be published as soon as possible after the Board consideration. <p>IPReg has confirmed that from July 2019, Board agendas and minutes have been divided into confidential and non-confidential sections and they are on track to publish, from January 2020, non-confidential agendas, papers and supporting documentation as soon as possible after Board meetings. However, we understand that ahead of IPReg's planned publication of Board papers, changes are required to its approach to Board paper drafting and because these changes were not introduced in July, they were implemented after the October 2019 Board meeting.</p> <p>In July 2019, IPReg published its 2018 Annual Report as well as the latest performance management dataset that it provided to the LSB. IPReg publishes some performance information in its Annual Report and the performance management dataset (PMD) includes information on IPReg's authorisation, supervision and enforcement work. The IPReg Board use the PMD as the indicators to hold the executive to account. IPReg may revisit the transparency of its performance information in the future with the data collected from the new CRM system which was introduced in October.</p> |
| | Action needed | Action complete. |
| | Timing | Not applicable. |

| | | |
|---|-----------------------|--|
| Outcome | | WL5: The Board considers its own effectiveness in ensuring the regulator is a well-led, independent, transparent and consumer focused organisation, which acts in a way that is compatible with the regulatory objectives. |
| Progress update (at November 2019) | LSB assessment | <p>Earlier in 2019, IPReg's new Chair completed a review of its Board appraisal and review processes. IPReg has confirmed that the new appraisal and review process has been introduced and appraisals with the IPReg Chair have been scheduled for all Board members. Availability issues meant it has not been possible to schedule all appraisals by the original target date of the end of October. These will now be completed by mid-December and IPReg will then consider how information from the process can be used to improve its work.</p> <p>IPREG has now introduced its Board appraisal system and therefore this action is now complete.</p> |
| | Action needed | Action complete. |
| | Timing | Not applicable. |

Faculty Office Regulatory performance assessment November 2019

| REGULATORY APPROACH | | | | | AUTHORISATION | | | | | SUPERVISION | | | | ENFORCEMENT | | | | | | WELL-LED | | | | | |
|---------------------|---|---|------------------------------|---|---------------|---|---|---|---|---------------------------|---|---|---|-------------|---|---|---|---|---|----------|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 1 | 2 | 3 | 4 | 5 | 6 | 1 | 2 | 3 | 4 | 5 | 6 |
| | | | | | | | | | | | | | | | | | | | | | | | | | |
| Met | | | Not met – action being taken | | | | | | | Not met – action required | | | | | | | | | | | | | | | |

Overview

The Faculty Office has been making progress on its actions and has provided sufficient assurance that the actions against outcome RA4 (Guidance informed by learning) and A5 (Register including disciplinary records) have been taken and these outcomes are now considered to be met. However, sufficient progress has not been made against outcomes WL3 (Transparency of decision-making and performance) and WL4 (Using learning to improve its work) and urgent assurance is required on these.

Our main concerns centre on the pace of the Faculty Office’s work to deliver the agreed actions and in particular:

- WL3: Supporting papers have not been published for the monthly regulatory meetings and advice from the Advisory Board and minutes from Advisory Board meetings are not published. The Faculty Office intends to publish KPIs in relation to the timeliness of applications for admission to the register, the progress of disciplinary cases and its inspection work. The KPIs will be embedded in 2019/20 and reviewed after 12 months of reporting. Publication of KPIs is scheduled to commence in 2021. We do not see this timeframe as appropriate.
- WL4: With few decision documents available there is limited evidence of how the Faculty Office is using learning from engagement with the notarial profession to inform its decisions.

We also have concerns about outcome RA2 (Regulatory arrangements updated based on robust evidence) which has been added as a further action and reflects issues with the quality of the rule change applications submitted by the Faculty Office to introduce new transparency measures and changes to its training and supervision rules.

Not met: action required

| Outcome | | WL3: The regulator is transparent about its own: decision-making; regulatory approach; the risks it and its regulated community faces and how these are being mitigated; performance; regulated community and related markets; financial costs. |
|---|-----------------------|--|
| Progress update (at November 2019) | LSB assessment | <p>The transparency obligations on decision-making and key performance indicators have not been met.</p> <p>The Faculty Office has confirmed that monthly meetings are held to discuss regulatory matters with the Master and these are usually oral and don't include written reports. For seven of the meetings held in 2019, brief two-page notes of the decisions made have been published. Supporting papers have not been published for these meetings. Advice from the Advisory Board and minutes from Advisory Board meetings are made available to the Master but are not published. The Faculty Office has confirmed that it intends to publish Advisory Board minutes and relevant papers in January 2020.</p> <p>The Faculty Office has confirmed it intends to develop and publish KPIs in relation to the timeliness of applications for admission to the register, the progress of disciplinary cases and its inspection work. The KPIs will be embedded in 2019/20 and reviewed after 12 months of reporting. Publication of KPIs will commence in 2021.</p> <p>While the Faculty Office is making progress towards meeting this outcome, the changes it is implementing are not imminent and in relation to KPIs remain more than a year away. We do not see this length of delay as acceptable and have amended our assessment to "Not met – action required."</p> |
| | Action needed | <p>The Faculty Office to provide a detailed plan explaining what steps it will take, including a timetable, to meet the following actions:</p> <ol style="list-style-type: none"> (1) The Faculty Office to ensure it publishes the supporting evidence for regulatory decisions as soon as possible after they are taken. This should include the following: evidence considered by the Master when making regulatory decisions; the advice offered by the Advisory board and the rationale behind it; analysis of information on the notarial profession and market that is gathered through work such as the practising certificate renewal process. (2) The Faculty Office to continue to develop the publication of its performance information. This needs to include information on the timeliness of its regulatory processes and performance against key performance indicators. and to ensure that this work is completed by April 2020. |
| | Timing | The Faculty Office to submit the plan by 31 January 2020 |

| Outcome | | WL4: The regulator learns from its own work, stakeholders, the legal sector and other sectors and uses that learning to improve its work. |
|---|-----------------------|---|
| Progress update (at November 2019) | LSB assessment | <p>The main action was for the Faculty Office to improve the transparency of how its evidence base is regularly shared with the Master (along with the Master’s Qualification Board and Advisory Board where relevant) and utilised to drive change/developments, for example risk management, guidance and revised policy.</p> <p>The Faculty Office has provided a list of the “Outreach events” it participated in during 2019 which it has used to engage with members of the notarial profession and other stakeholders. A working party, established for the Faculty Office’s examination and qualification regime review, met in October and November. The working party will be preparing a report for the Advisory and Qualifications Boards in January 2020 ahead of their provision of guidance to the Master on any changes recommended by the working party. No information has been provided on the timing of the Master’s consideration of this work, or how it will potentially inform any improvements to the Faculty Office’s examination and qualifications regime.</p> <p>There remains limited evidence of how the Faculty Office has used the learning from its engagement with the notarial profession or other stakeholders to improve its work. The outcome therefore remains “unmet”.</p> |
| | Action needed | <p>The Faculty Office to explain how the evidence it collects from its “Outreach events”, as well as any other engagement it has with its regulated community, consumers, or other stakeholders, has been used to improve its work. Evidence should also be provided on how the examination and qualification regime review, or similar reviews of its work, have improved the Faculty Office’s work.</p> |
| | Timing | <p>The Faculty Office to submit a report by 31 January 2020.</p> |

Not met: action being taken

| Outcome | | RA2: So they are effective and operate as intended, regulatory arrangements and supporting guidance documentation are regularly reviewed and, where necessary, updated based on a robust evidence-base. |
|------------------------------------|----------------|---|
| Progress update (at November 2019) | LSB assessment | <p>A key component for meeting this outcome is effective engagement with the LSB's rule approval process. The quality of the Faculty Office's rule change applications in 2019, means that we cannot consider this outcome is met.</p> <p>In respect of the rule change applications, some of which have proposed to implement significant policy changes, there have been a number of issues which have had an impact on the LSB's ability to assess these applications. These issues range from:</p> <ul style="list-style-type: none"> • the LSB's Rules and Guidance for rule change applications not being adhered to, • the applications lacking significant information • significant delays in responding to LSB enquiries once an application has been submitted. |
| | Action needed | The Faculty Office to review its current procedures and take the necessary steps to ensure that future rule change applications are complete and that all quality issues have been addressed before applications are submitted for approval. |
| | Timing | Immediate action and prior to submission of any future rule change application. We will review progress against this outcome at each rule change application. |

Met

| Outcome | | RA4: Regulatory arrangements and associated guidance documentation are informed by learning gathered from all of the regulators work including its risk assessment and enforcement work. |
|------------------------------------|----------------|---|
| Progress update (at November 2019) | LSB assessment | <p>The Faculty Office was asked to provide information on how its evidence base, including learning gained from its risk assessment and enforcement work, has been used to influence its thinking and the development/revision of regulatory arrangements and associated guidance.</p> <p>Through the Faculty Office's 2019 practising certificate renewal process, notaries provided the following information: their practise status (sole practitioner, LLP or company); their post-admission supervision status; whether they undertake conveyancing or probate; whether client money is held, and if it is held an accountants report; fidelity insurance documentation; professional indemnity insurance documentation; a disclosure and barring service certificate; and a risk assessment of their practice.</p> <p>This information is used to inform the risk profile the Faculty Office allocates to the notary and the regulatory activity they are subject to. For example, the inspection regime and enhanced inspection requirements.</p> <p>In the 2018 renewal period, notaries were asked to provide information on their anti-money laundering processes. The Faculty Office confirmed that this resulted in the expansion this year of its assurance policy to include the risk of money laundering (however, we note the published assurance policy states it was last updated in October 2018).</p> <p>In addition to the two enforcement guidance notes published in March 2019 in response to a thematic review of Faculty Office inspectors' reports completed in 2018, a third guidance note on price transparency was published in September 2019 and a fourth guidance note on wills and probate is scheduled to be published in December.</p> <p>The Faculty Office has also confirmed that a review of the risk assessments submitted during the 2019 renewal process will be completed to identify whether there are any issues which need to be addressed.</p> <p>We now assess this action as complete and have amended our assessment to Met. However, through our regulatory performance work with the Faculty Office, we will continue to monitor how the learning gathered from its work informs its evidence base and how this informs its regulatory arrangements.</p> |
| | Action needed | The outcome is now assessed as met. |
| | Timing | Not applicable. |

| Outcome | | A5: The regulator's list of those they regulate is accessible, accurate and provides information on the disciplinary records of those regulated. |
|------------------------------------|----------------|--|
| Progress update (at November 2019) | LSB assessment | <p>The new Faculty Office online register went live on 21st November. The new register includes disciplinary information and is searchable by the name of the notary, postcode/location and languages spoken.</p> <p>We now assess this action as complete and have amended our assessment to Met.</p> <p>Action to improve the accessibility of information on the Faculty Office website continues to be needed and the Faculty Office has confirmed development on a new website has started. We expect this work to be completed promptly and will monitor delivery of improvements to the Faculty Office website which we expect to have been launched by May 2020.</p> |
| | Action needed | The outcome is now assessed as met. |
| | Timing | Not applicable. |

SRA Regulatory performance assessment November 2019

| REGULATORY APPROACH | | | | | AUTHORISATION | | | | | SUPERVISION | | | | ENFORCEMENT | | | | | | WELL-LED | | | | | |
|---------------------|---|---|------------------------------|---|---------------|---|---|---|---|---------------------------|---|---|---|-------------|---|---|---|---|---|----------|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 1 | 2 | 3 | 4 | 5 | 6 | 1 | 2 | 3 | 4 | 5 | 6 |
| | | | | | | | | | | | | | | | | | | | | | | | | | |
| Met | | | Not met – action being taken | | | | | | | Not met – action required | | | | | | | | | | | | | | | |

Overview

At the start of this assessment the SRA had three outcomes with a rating of *not met - action being taken*; WL3 (Transparency of decision-making and performance), S3 (Regulated community is monitored to ensure standards are met) and A5 (Register including disciplinary records). The SRA has made progress on all three actions and one is now assessed as *met*. A summary of our assessment on each outcome is as follows:

- A5: The SRA launched its new register in November 2019. At launch its new register contains all relevant information for individuals and firms except for disciplinary information, which will be provided by links in the new register to the SRA’s currently separate disciplinary registers. The SRA has told us that it expects to fully integrate its disciplinary information for individuals and firms into its new register by the end of December 2019. We have upgraded this outcome to *met* on the basis that by 31 December 2019 disciplinary information for both individuals and firms will be integrated into the new register.
- S3: The SRA has provided us with a timetable for possible changes to its standards on advocacy, including the schedule for consultation, analysis and planned date for implementation of potential new standards. Given that a consultation is involved the outcome of this process is uncertain and timings for this work are therefore approximate. The original action for this outcome was for the SRA to implement changes identified in its advocacy review programme to address advocacy quality risks. Therefore, we consider that until the SRA publishes its consultation findings, which should make clear what changes it intends to implement and when, this outcome will remain as *not met – action being taken*.
- WL3: The SRA has made progress towards implementing steps to improve its accountability to stakeholders and provide more transparency of the performance measures its Board considers. However, it has not yet provided detailed plans as to how and when it will fully implement these practices. We understand that its Board will be considering a package of measures to meet this outcome at its December 2019 Board meeting. We therefore cannot consider this outcome to be *met* and have changed its grading to *not met – action required* given the passage of time.

Not met - action required

| Outcome | | WL3: The regulator is transparent about its own: decision-making; regulatory approach; the risks it and its regulated community face and how these are being mitigated; performance; regulated community and related markets; financial costs. |
|------------------------------------|----------------|---|
| Progress update (at November 2019) | LSB assessment | <p>The SRA has provided us with substantive information about its progress in meeting this outcome. We review its progress on each of the required actions below:</p> <p><i>Action 1: SRA to review current publication policy and ensure that supporting evidence for decisions taken by the Board or Executive which impact on the regulated community is published as soon as possible after decisions are taken. This should include Board papers which should only be withheld or have content removed in limited circumstances.</i></p> <p>Action 1 Assessment: The SRA is making good substantive and practical progress towards meeting this element of the outcome by providing information about its Board meetings via a Chair's blog and by publishing some Board papers. It is also in the process of setting up a new governance webpage to make it easier to access its Board papers and related information. However, it has not submitted the detailed plan required in our June assessment explaining the deadlines for the implementation of these measures. Also, we note that the SRA's Board will not be considering the package of measures until its December 2019 Board meeting, which means that they will not be implemented until later in December 2019.</p> <p><i>Action 2: SRA to review the transparency of its performance information (e.g. KPIs and performance reports, complaints about the regulator etc.) and that this information should be published as soon as possible after Board consideration.</i></p> <p>Action 2 Assessment: The SRA has explained that it is reviewing its Board performance reporting with the aim of providing more meaningful ways to report and publish performance information seen and relied on by its Board. It explains that it is likely to do this via a 'scorecard' and by providing information on progress against its business plan, strategy and risk management framework. It also notes that it intends to move away from annual updates towards more regular and targeted pieces of work over the course of a business year. The SRA will be considering the package of measures in December and publishing the first scorecard shortly afterwards. It has not yet provided information about what performance information it will publish and how it will do so.</p> <p>We cannot consider this outcome to be met, and its grading will be changed to <i>Not Met - Action Required</i>.</p> |
| | Action needed | SRA to provide a detailed plan, including a timetable, setting out the measures it intends to implement for both Actions 1 and 2 in order to meet this outcome. |
| | Timing | The plan should be submitted by 31 January 2020. |

Not met - action being taken

| Outcome | | S3: The regulated community are monitored to provide assurance that standards are met. If they are not, steps are taken to remedy this. |
|---|-----------------------|--|
| Progress update (at November 2019) | LSB assessment | <p>The action for the SRA was to implement changes identified in its advocacy review programme to address advocacy quality risks.</p> <p>In its performance update, the SRA has provided us with its timetable for consultation on possible changes to its advocacy standards and regulations, its analysis and its planned dates of implementation for new measures. The timetable covers the period from the close of its consultation (13 November 2019) to the introduction of new HRA standards and assessment (Q4 2021).</p> <p>The milestones included in the timetable are approximate, given that they are dependent on the results of consultations, and the SRA should provide us with regular updates to its timetable and in doing so clarify any rule change applications that may be involved and include these in future timetables.</p> <p>This outcome is not yet met.</p> |
| | Action needed | The SRA should provide details of its implementation plans following the close of the consultation, to include changes made. The LSB will monitor the SRA's progress on consulting on and implementing these possible new standards. |
| | Timing | An update report should be provided following the publication of the SRA Board's response to its consultation which is scheduled for the first half of 2020. |

Met (November 2019)

| Outcome | | A5: The regulator's list of those they regulate is accessible, accurate and provides information on the disciplinary records of those regulated. |
|------------------------------------|----------------|--|
| Progress Update (at November 2019) | LSB assessment | <p>The SRA action was to ensure that the register of those they regulate is easily accessible and contains information on all disciplinary action taken against individuals or entities.</p> <p>The SRA has provided a significant amount of information about how it has trialled its register with solicitors and customers in respect of its accessibility and ease of use. It has adopted a user-centred design approach which involved testing the register's accessibility and intelligibility with both members of the public and solicitors and as a result made changes to the design of the register to provide more information about consumer protections offered by different types of solicitors. It has adopted the World Wide Web Consortium's (the main international standards body for the internet) Web Content Accessibility Guidelines. The register will have speech browser and other types of assistive device compatibility.</p> <p>Following the register's launch the SRA will continue to review users' experience with emphases on vulnerable consumers and small business owners. It will test further design changes to ensure they benefit users.</p> <p>SRA confirms that the new register contains firms' disciplinary information as well as that of individuals.</p> <p>SRA confirms that integration into the register of disciplinary information for individuals and firms will follow by the 31 December 2019.</p> <p>We now consider that this outcome has been met.</p> |
| | Action needed | Action complete. |
| | Timing | Not applicable. |