

Meeting: Legal Services Board

Date: 30 November 2021

Item: Paper (21) 59

Title: Regulatory Framework review – Emerging thinking

Author(s): David Fowles, Regulatory Policy Manager; Margie McCrone, Regulatory Policy Manager

Status: Official

Introduction: Purpose of the paper

1. This paper presents the Board with our initial proposals for developing the LSB's regulatory performance framework.
2. Overall, we are seeking to develop a performance framework that:
 - Places sufficient emphasis on effective leadership, capability and capacity
 - Encourages regulators to take ownership of the regulatory objectives and holds them to account for putting these at the centre of what they do
 - Is sufficiently flexible to account for developments in the market and the policy environment.

Recommendation

3. The Board is invited to:
 - **Discuss and agree** the proposals for the proposed basis for revision of the regulatory framework (paragraphs 6-12)
 - **Discuss and agree** next steps (paragraph 13)

Why we are undertaking this review

4. The LSB's first approach to assessing the regulators' performance was developed in 2011 and was used for assessment exercises in 2012/13, 2015, 2016 and 2017. The current framework was introduced in 2018, following a lengthy period of development and with an expectation that it would be reviewed every three years. Apart from this commitment, we and the regulators have built up sufficient experience of how the current framework works, what it does well and what it could do better, for a review to be justified.
5. The current framework has enabled the LSB to improve its understanding of regulatory bodies' ('RBs') performance and better tackle instances of poor performance through regular assessments and thematic reviews. However, there

are a number of areas where experience now suggests the framework could be made more effective. These include:

- a) A clearer focus on strategic leadership, resources and capability
- b) Putting the regulatory objectives unequivocally at the centre of the regulators' purpose
- c) Providing the flexibility to adapt to changing circumstances
- d) Incorporating assessment of regulators' implementation of our expectations on LSB statutory policies and guidance
- e) Streamlining and improving clarity of standards and outcomes (some of which overlap or are ambiguous)
- f) How the rating system can be made more informative and encourage continuous improvement
- g) Making better use of the performance management data we already collect and considering what other data would be useful in generating early insight into emerging performance issues.

Proposed changes to the regulatory performance framework

6. At this stage our emerging thinking envisages the new framework as comprising three domains:

1. Strategic leadership:

- Does the Board set the organisation's strategy and purpose effectively?
- Does the Board take responsibility for the organisation's performance?
- Does the Board take responsibility for the organisation's performance?
- Does the organisation have means in place to understand the environment it operates in and shape its strategy accordingly, including:
 - mechanisms for listening to stakeholders and considering the differential impacts of their activities on different groups
 - In ways analogous to systems regulators, making the best use of intermediaries such as employers to deliver standards
- Does the organisation have access to sufficient resources, capability and capacity (where of course there is a link to the PCF)?

2. Focus on the public interest

- Does the Board exercise clear ownership of *all* the regulatory objectives?
- Does the organisation have clear programmes of activity designed to meet and further the regulatory objectives?
- To what extent is the organisation complying with requirements set out in LSB statutory policies and guidance?

3. Operational delivery

- Assessment of performance in defined operational areas including:
 - Education and training
 - Authorisation
 - Supervision
 - Enforcement

Rating performance

7. Our current Red-Amber-Green ('RAG') rating system, which signals when an outcome is not met – action required; not met – action being taken; and met, has struggled to address the nuances of regulators' performance. For example, it has proved difficult to:
 - Reflect whether regulators are only meeting minimum expectations, doing more, or are examples of best practice;
 - Reflect changes to our expectations for regulators' performance, and for us take account of these in our assessments; and
 - Distinguish between where a regulator has a suitable plan in place to address an issue and where we are not assured about the adequacy of the plan.
8. We propose that in future our assessments of how regulators' work programmes address the ROs would include a more narrative assessment while possibly retaining the current RAG system or a modified, more nuanced version of it, for example with more granulated rating levels (eg 1-5). We are also considering whether more rating levels would provide a more informative assessment to address the issues noted above, for operational regulatory activities.

Assessment tools

9. Our current assessment toolbox includes annual assessments, informal 'deep dives' conducted by relationship managers, and formal thematic reviews such as those recently of the BSB and FO's performance against the Well-led standard. We have found these tools to be effective and plan to continue to make use of them when necessary, while taking into account the need to do so in a proportionate manner. Additionally, we will consider whether there are any other tools we should introduce, such as audits.
10. Our internal discussions have also identified other improvements we could make, including:
 - Allowing time for regulators to review our assessments and develop their own action plans to respond to our findings.
 - Being more targeted in the information we request from regulators annually as part of the Performance Management Dataset ('PMD') and, importantly, making better use of that data.
11. We have had initial discussions with the LSCP and regulatory bodies about their experience of the framework and how it might be improved. Key points they have raised are:
 - LSCP
Consumer-focused regulation should be more prominent, whether via a new cross-cutting standard, or through strengthened standards/outcomes.

Regulators should be more proactive and responsible for their effectiveness.

- **Regulatory Bodies**

LSB needs to be transparent about what it expects of regulators, including in relation to its own policies (eg EDI).

LSB should provide more context about performance concerns.

The current RAG grading system should be changed to show which regulators are excelling and which are simply meeting standards/examples of best practice. The current system focuses too much on what is wrong, as opposed to what regulators do well, and could undermine confidence in them.

The framework should focus more on outcomes than outputs/prescription.

12. We are also looking at other regulators' approaches, including the PSA, the financial regulators and the NAO and have identified some methodologies and techniques we should consider incorporating into our revised framework and assessment process.

Next steps

13. The Board's steer will assist us in further developing a draft revised performance framework and assessment process. As part of that work we will discuss our detailed proposals with the Board leads for regulatory performance and enforcement. An updated draft version of the revised process will be presented to the Board at its February 2022 meeting, where we will seek the Board's permission to formally consult. We intend to consult from March to May 2022. We will take account of responses to the formal consultation and seek the Board's approval of a new finalised framework, which we expect to publish in late 2022 and will be in place from 1 January 2023.

Risks and mitigations	
Financial:	N/A
Legal:	The legal team have been engaged throughout the development of this project and advice sought, acted upon and incorporated accordingly.
Communications and engagement:	This will be the first outline of our emerging thinking to be made public. The thinking is consistent with our focus on other policy areas and therefore we do not consider the paper to be contentious.
Equality and diversity:	We will include an equality impact assessment as part of our consultation document.
Resource:	N/A

Annexes

None

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
None		