



# **The Council for Licensed Conveyancers' Regulatory Standards report 2015/16**

**May 2016**

## Background

### Who we are and what we do

1. The Legal Services Board (LSB) is responsible for overseeing legal services regulators in England and Wales. We are independent of Government and of the legal profession. We hold to account regulators for the different branches of the legal profession. We drive change in pursuit of a modern and effective legal services market: one that better meets the needs of consumers, citizens and practitioners.

### Regulatory standards

2. We have a process in place to hold the regulators to account for their performance. We consider the legal services regulators' performance against five regulatory standards: outcomes-focused regulation, risk assessment, supervision, enforcement and capability and capacity.
3. 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.
4. This is our second full assessment of the Council for Licensed Conveyancers' (CLC) performance against the regulatory standards. To undertake this assessment we asked the CLC to complete a self-assessment against the five regulatory standards. We also considered other evidence such as the results of a questionnaire aimed at understanding the experiences of individual users of the CLC, the outcomes of in-depth interviews with, and written responses from, key stakeholder organisations and information gained in other areas of our work, such as statutory decisions and thematic reviews.
5. This report sets out our view on the performance of the CLC against each regulatory standard as well as the grades we allocated to it. It should be read in conjunction with our thematic report on the performance of all of the regulators against the regulatory standards.<sup>1</sup> At Annex A we have provided some facts and figures about the CLC.
6. Individual reports have been produced for each of the eight regulators. Care should be taken, if reading the other reports, to ensure misleading comparisons are not made, particularly in relation to the grades given. There are differences in: the size of the regulators, in terms of staff numbers, budget, and the regulated communities; the risk profiles; who they regulate (individuals, entities and

---

<sup>1</sup> The thematic report can be found here: [http://www.legalservicesboard.org.uk/Projects/developing\\_regulatory\\_standards/index.htm](http://www.legalservicesboard.org.uk/Projects/developing_regulatory_standards/index.htm)

alternative business structures (ABS)); and the types of consumers their regulated communities engage with. We have taken the context of the CLC into account when considering its performance against the regulatory standards. The grades available are listed below.

- 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.

### **The next steps**

7. The report indicates the areas where we think that there is scope for improvement. We will agree with the CLC a specific action plan as the basis for our future monitoring of performance. We aim to publish the action plan by the end of June 2016.
8. We would like to thank all those who contributed time, energy and insights to this regulatory standards review.

## Overall assessment

9. The CLC has demonstrated solid improvement across each of the regulatory standards since our 2012/13 Regulatory Standards report and 2015 Update report.<sup>2</sup> In particular we are pleased that it has made progress in two key areas: consumer knowledge and its IT architecture. It has begun to develop an understanding of the consumers of its regulated community and apply this learning across its work. We expect it to continue to develop this knowledge either using its own means or through joint projects with the other regulators. It has also completed the implementation of a new IT system which should enable its core work to be carried out in an even more effective and efficient manner. It is too early to assess whether this outcome is being achieved but we expect the CLC to monitor and evaluate the success of the system. It is notable that the CLC has managed these improvements during a period of transition. At the same time, it has moved office and completed a review of its staffing structure and management.
10. One general issue remains which relates to the transparency of the CLC's work. It is clear that the CLC is committed to being transparent, as evidenced later in this report. Yet its current approach does not seem to be fully aligned with its commitment and good intentions of being a transparent regulator. The CLC needs to consider more carefully how it makes information available so that it can be easily located and accessed by the public. It also needs to consider making more information available such as Council papers, performance information and its approach to supervision. Transparency is a key regulatory principle and as such we will monitor the CLC's progress in this area.

---

<sup>2</sup>This is a reference to the following reports: *Developing Regulatory Standards: an assessment of the legal services regulators* report (December 2012) and our *Regulatory Standards 2014/15: an update report on the performance of the legal services regulators* (February 2015). Hereafter referred to as 2012/13 Regulatory Standards report and the 2015 Update Report. These reports can be found here: [http://www.legalservicesboard.org.uk/Projects/developing\\_regulatory\\_standards/index.htm](http://www.legalservicesboard.org.uk/Projects/developing_regulatory_standards/index.htm)

## Grades

11. We set out below the grades that the CLC awarded itself in 2012/13 and 2015/16 and those awarded by the LSB. As highlighted in this report and illustrated in the table below we consider that the CLC has a good understanding of its performance and that it has demonstrated real improvement against all of the standards since 2012/13.

Grade \ Standard	Recognise this needs to be done but work has not yet started	Needs improvement and work has recently started	Undertaking improvement and work is well underway	Satisfactory	Good
Outcomes focused-regulation				LSB 2015/16	
				CLC 2015/16	
	LSB 2012/13				
	CLC 2012/13				
Risk assessment				LSB 2015/16	
				CLC 2015/16	
	LSB 2012/13				
	CLC 2012/13				
Supervision				LSB 2015/16	
				CLC 2015/16	
	LSB 2012/13				
	CLC 2012/13				
Enforcement				LSB 2015/16	
				CLC 2015/16	
	LSB 2012/13				
	CLC 2012/13				
Capability and capacity				LSB 2015/16	
				CLC 2015/16	
	LSB 2012/13				
	CLC 2012/13				

## Assessment against the regulatory standards

### Outcomes-focused regulation

To deliver this regulatory standard, we consider that 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
- review and update their arrangements based on the evidence they gather.

12. In our 2012/13 and 2015 reports we noted that the CLC needed to do more to close gaps in the information it held on consumers of its regulated community and that it needed to continue to reduce and remove unnecessary rules as its approach to outcomes-focused regulation becomes embedded. We have seen encouraging progress in both of these areas.

13. The CLC has demonstrated a genuine commitment to understand the needs of consumers and how they use the services of the regulated community. It has made efforts to engage with consumers of its regulated community in a proportionate and cost-effective manner, examples are set out below.

- It determined that its voluntary consumer feedback survey was not generating sufficient responses. It therefore reconsidered how it could obtain this feedback and instead held small focus groups with consumers in the north and south of England. The feedback received has been taken into account in the CLC's work. For example, it was a contributing factor in the decision to review the CLC's professional indemnity insurance arrangements.
- It has amended its annual regulatory return so that it is gathering greater information on how consumers use the regulated community's services.
- It has also committed to working with the other legal services regulators on specific consumer related projects, one which relates to improving the approach to client engagement letters, and the other to developing a unity of approach and voice to consumer umbrella organisations.

We welcome the approach being taken by the CLC. It is in line with our expectation that all regulators should collect evidence on how consumers need and use legal services.

14. In 2012/13 we reported that the CLC had introduced a principles-based code of conduct which was designed to deliver outcomes for consumers. At that time, the code still included rule-based "specific requirements" and we encouraged the CLC to keep these under review. Since that time we have seen the CLC make a number of evidence-based changes to minor rules. These changes have been aimed mainly at addressing areas of particular risk or changes in the law. For example, it expanded the "vulnerability" definition used in the Handbook to ensure that the regulated community were aware of the different ways that a

client could be potentially vulnerable in a conveyancing transaction. It has also published guidance on anti-money laundering to ensure its regulated community was up-to-date with changes in the law.

15. The CLC is now in the process of preparing for a comprehensive review of its regulatory arrangements (which should be complete by October 2016) to ensure that they are proportionate, effective and provide the right incentives. We have been told that it will expect a high level of evidence before imposing any additional requirements and equally it will need to be convinced that removing a provision will not create a risk to the consumer which cannot be appropriately mitigated. As part of the review it will also consider the evidence it holds on the outcomes of its existing regulatory arrangements to see if they deliver what consumers need. This seems like a sensible approach. It is also in line with our expectation of all regulators.
16. As well as improving its knowledge of consumers, the CLC has acted on our expectation noted in the 2015 Update report that it should improve its understanding of the market it regulates. As noted above it issued a targeted annual regulatory return to the regulated community. It has analysed the returns and published this information. This published report details how the CLC will act on this information. For example, in response to the information that high numbers of non-legally qualified staff work in the delivery of legal services, it will focus its monitoring and inspection activity more closely on the standard of supervision provided to these staff members by the legally qualified staff members.
17. It has also taken steps to improve its engagement with the regulated community. This was in part due to the results of its stakeholder perceptions audit which highlighted that the regulated community needed more from the CLC. The CLC has created the “Lawyers News” section of the website which it uses to disseminate news, best practice as well as regulatory changes to the regulated community. This is used alongside its weekly newsletter and its webinars. From the evidence we have seen we consider that the CLC has made a good effort to engage with its regulated community.

## Risk assessment

To deliver this regulatory standard, we consider the legal services regulator must:

- have formal, structured, transparent, evidence-based approaches to the collection, identification and mitigation of current and future risks which inform all regulatory processes
- focus their risk analysis on vulnerable consumers and consumer detriment
- have processes in place which are understood by the Board and staff
- demonstrate that outcomes are being achieved.

18. We consider that the CLC continues to have effective, transparent and appropriate risk assessment and management processes in place. The CLC's resourcing of its risk assessment and supervisory function have undergone some recent changes. Three new regulatory supervision managers (previously legal practice inspectors) have been appointed and trained and are each responsible for approximately 75 practices. Implementation of the customer relationship model was also completed in December 2015. The aim of the final phase of implementation was to allow the CLC to monitor and risk assess its regulated community in a more straightforward manner. It is too early to say whether these changes will further enhance the quality of the CLC's risk assessment and supervisory functions.

19. As well as changes to the CLC's resources, it has said that it is taking a more strategic approach to risk assessment. For example, it has introduced a triage system for managing intelligence from different sources where new information is logged centrally, assessed by a regulatory supervision manager and a decision taken and recorded on whether any further action is needed. It has also tasked the regulatory supervision managers with building up greater knowledge of regulated practices on a day-to-day basis by developing closer working relationships. These changes could improve the CLC's processes which could then enhance its ability to identify and respond to risk earlier. Given the significance of the potential outcomes of the changes highlighted in this and the above paragraph we will monitor this aspect of the CLC's work.

20. The CLC has continued to increase the number of sources of evidence that it uses to inform its risk assessments. It has refined its annual regulatory return and gathered more targeted information on the regulated community. This has allowed the CLC to carry out segmented analysis of the regulated market and enabled the CLC to assess the vulnerability of a client group using factors such as transaction type and business arrangement. It has also developed good working relationships with other organisations with a common interest. For example it recently was accepted onto an intelligence sharing network for lenders and given immediate access to information on suspicious behaviours in both the lending and conveyancing segments of the market. We said it should be a priority



for all regulators to develop an evidence base to identify the risks faced by the consumer that use regulated legal services, therefore the work undertaken in this area is encouraging. We hope that the CLC continues to look for opportunities to expand the number of its sources of evidence.

21. The CLC has processes in place to share information internally between different strands of work, for example, supervision and enforcement. This, alongside the tools mentioned earlier, enables a consistent risk-based approach to be taken. We have also seen evidence of the CLC sharing its learning on risks externally with its regulated community. For example it has developed a specific webpage dedicated to tackling fraud and cyber-crime. This includes advice on how the regulated community can protect themselves and their clients.
22. From the Council minutes we can see that there is oversight of the risk process and that the Council receive reports on interventions and on the 'watchlist' (the list of firms that appear to the CLC to present higher levels of risk to expected consumer outcomes). What is less apparent is whether the CLC can demonstrate that the correct outcomes are being achieved for consumers as a result of its risk assessment. This is an area of work where many of the regulators need to carry out further work and we would expect the CLC to do this too.

## Supervision

To deliver this regulatory standard, we consider the legal services regulator must:

- have a supervision policy that is carried out with reference to identified risks, all available information and is underpinned by an evidence-based understanding of the different market segments
- have access to a range of supervisory tools and willingness and capacity to use them
- have processes in place to enable learning to be shared and performance to be monitored.

23. We consider that the CLC continues to have appropriate and effective risk assessment and management processes which enable supervisory activity to be undertaken. The CLC has access to a range of supervisory tools such as inspections and reviews of accountants' reports which enables it to take targeted action depending on the risk posed. Its approach to supervision focuses on the protection of the interests of consumers and allows practitioners to be innovative in the way they deliver their products. This is in line with our view that supervision should be outcomes-focused, risk-based and proportionate.
24. The CLC has developed good information sharing arrangements with key stakeholders such as the Council of Mortgage Lenders and the Legal Ombudsman. This, alongside its improved approach to gathering information from the regulated community and its efforts to build an evidence base on consumer needs, should ensure that its supervisory activity is informed by all relevant evidence.
25. From reviewing the Council minutes there appears to be effective oversight of the supervisory activity. However, it is difficult to ascertain this for certain as there is little publicly available information on the process used, the activity undertaken and planned, as well as any generalised learning identified through supervisory activity. We had set out in our 2015 Update report our expectation that the publication of supervision policies and monitoring and reporting on the effectiveness, proportionality and value for money of supervision approaches should be priority areas for all the regulators.
26. The CLC has said that it accepts it needs to make more documentation available. It said that such documentation is being prepared. The CLC also told us that all supervisory visits have been planned, and are scheduled to take place before the next licensing renewal cycle (November 2016). Following these visits, the next stage will be for the CLC to share learning from these visits with the regulated community. It is considering the best way to share both targeted and general learning with the community so that the information is easily accessible and

absorbed. We welcome this commitment and will monitor the CLC's progress in this area.

## Enforcement

To deliver this regulatory standard, we consider the legal services regulator must:

- have a range of effective and proportionate enforcement tools
- have published policies and guidance that enables others to understand the regulator's criteria for deciding to take action
- operate the enforcement function in a timely, evidence-based, fair and proportionate manner
- have appeal processes that are independent from the body or persons who made the original decision
- have processes in place to ensure that learning is shared and performance is monitored.

27. As we set out in our 2012/13 Regulatory Standards report we consider that the CLC has in place enforcement processes which appear to be proportionate and appropriately focused on those matters which are not suitable for resolution through other means such as supervision. These processes have been tested and appear to be effective and to enable cases to be decided in a timely manner. The CLC uses the civil standard of proof at both stages of its enforcement process (early stage decisions made by staff and those made by the adjudication panel) and any appeals against the adjudication panel's decisions are considered by the First-tier Tribunal. This is in line with our view on best regulatory practice as we set out in our report [\*Regulatory sanctions and appeals processes report – an assessment of the current arrangements \(March 2014\)\*](#).<sup>3</sup>

28. We set out in our 2015 Update report our expectation that all regulators would improve the transparency of their enforcement processes and ensure that the process for notifying a regulator of potential misconduct was accessible. The CLC has told us that it is committed to being transparent and that this is demonstrated by the information it already makes available on its website: its rules, disciplinary determinations and hearing dates, and responses to frequently asked questions. We welcome this commitment but we consider that there is scope for improvement. It would be helpful if there was a single source of information which explained in simple consumer-friendly terms each stage of the enforcement process, from making a complaint to the appeals stage.

29. Further, we consider that transparency is more than just making documents available. It is equally as important that documentation is easy to locate and written using language which is easy for consumers to understand. As noted above, the CLC does make information available on its website but it can be difficult to locate, even for informed and repeat visitors like LSB staff. In addition,

---

<sup>3</sup> LSB report on Regulatory sanctions and appeals processes -an assessment of the current arrangements. (March 2014)  
[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)

some information seems not to be published in line with the CLC's own publication policy on disciplinary cases (for example, no summary of the case is included on the forthcoming hearings page). We consider the CLC should review its webpages to ensure that the correct information is published and it should consider how it can best make its information accessible to consumers and others. At the moment the difficulty in accessing the information is not aligned with the CLC's commitment and good intentions of being a transparent regulator.

30. From the Council minutes we can see that the performance of the enforcement function is scrutinised and any learning identified. This is evidenced by the statement on the CLC's website that the Council had considered a case concluded by the adjudication panel and decided that sanctions imposed may have appeared "light". The Council went on to say that decision-making guidance should be developed to assist the adjudication panel in making proportionate decisions that reflect the standards licensed conveyancers should uphold and the need for consumer protection. We note that this guidance is being developed and will be consulted upon shortly. We welcome this development and look forward to its publication.

## Capability and capacity

To deliver this regulatory standard, we consider the legal services regulator must:

- have clear and consistent leadership that ensures the whole organisation has a strong consumer focus
- have regulatory budgets and staffing set at appropriate levels for the risks associated with the market
- have a culture of transparency and improvement
- have management and governance processes in place which are capable of scrutinising the performance of the regulator.

31. As noted earlier in this report the CLC has demonstrated a commitment to being consumer focused. It recognised that its approach of using a voluntary consumer feedback survey was not yielding results which would enable it to understand consumers' needs. It therefore took action to obtain this information in another way. We welcome the efforts made to address a gap in its knowledge in a proportionate and focused manner. The above example also demonstrates that the CLC has a culture of improvement and is not static in its approach to regulation. Other examples of this are its work in revising its anti-money laundering regime and its simplification of the licence renewal process.
32. The improvements and the maintenance of its core functions are positive given that it has completed a "root and branch" review of its staffing structures, established a performance review process for staff which has aligned strategic goals with those of individuals and teams, and had an office move which resulted in high staff turnover. All of these activities had the potential to cause instability and potentially a downturn in productivity. The CLC said that the drivers for these actions were the need to be closer to key stakeholders and partners and the need to ensure that its staffing structure reflected its current and future needs. The CLC has said that these changes have delivered a more agile and flexible staff base which places it in a better position to maintain and enhance its approach to regulation.
33. We consider that the CLC has good corporate governance processes in place which enable performance to be scrutinised. This is in line with our expectation set down in the 2015 Update report. However, we consider that confidence that consumers and the regulated community may have in these processes could be bolstered by more transparency. Since 2012/13 the CLC has begun to publish Council minutes and its responses to consultations online, which is good progress. However, the lack of published Council papers and performance information means it is difficult to have a clear understanding of how the CLC is performing. The regulators are working in the public interest and an important statutory duty is to have regard to the need for transparency. Therefore only where there are real issues of confidentiality should decisions be taken outside of

public scrutiny. In addition, depending on the route a visitor to the website takes, there is differing information available on the Council minutes pages, which can cause confusion. The CLC has told us that it plans to review its approach to transparency in the forthcoming year and that it also intends to publish a Regulatory Activity Information Report which will include performance information. We would expect (as set down in our 2015 Update report) the CLC to take both of these steps and when it reviews its approach to transparency we would ask it to take account of the comments we have made in this report.

## Annex A

### What is the Council for Licensed Conveyancers?

#### Key facts

- As at 31 March 2015, a total of 1262 individuals were regulated by CLC (up from 1222 12 months previously).<sup>4</sup>
  - As at 31 March 2015, a total of 179 entities were regulated by CLC (up from 178 12 months previously).<sup>5</sup>
  - The CLC gained licensing authority status in October 2011 and as at 31 March 2015 listed 47 ABS on their ABS register (up from 38 12 months previously).
  - For the calendar year 2016, CLC's budget totals £2,703,745.<sup>6</sup> This is down 1.5% from £2,740,539 total expenditure in 2015 (calendar year).<sup>7</sup>
  - As at March 2015, the CLC employed a total of 22 full time equivalent staff.
1. The CLC regulates licensed conveyancers and licensed conveyancing practices working throughout England and Wales. It also regulates probate practitioners. It is the approved regulator under the Legal Services Act 2007; it does not have a representative function. The regulatory activities of the CLC include:
- setting educational and training standards for entry to the profession
  - issuing licences to practise to those qualified to provide conveyancing and probate services and to ABS
  - maintaining a register of all licensed conveyancers and regulated bodies
  - setting standards to regulate the professional practice, conduct and discipline of licensed conveyancers and regulated bodies
  - setting standards to maintain adequate professional indemnity insurance and a compensation fund to protect consumers
  - monitoring the work and conduct of regulated bodies
  - providing guidance and advice to regulated bodies to maintain compliance with our regulatory requirements
  - investigating allegations of misconduct and where appropriate taking disciplinary action.<sup>8</sup>

---

<sup>4</sup> Information provided in response to a data request issued by the LSB.

<sup>5</sup> Information provided in response to a data request issued by the LSB.

<sup>6</sup> Information obtained from the CLC's application for practising fees 2015:[http://www.legalservicesboard.org.uk/Projects/independent\\_regulation/PDF/2015/20150731\\_CLC\\_Practising\\_Fee\\_Application\\_To\\_LSB\\_2015.PDF](http://www.legalservicesboard.org.uk/Projects/independent_regulation/PDF/2015/20150731_CLC_Practising_Fee_Application_To_LSB_2015.PDF)

<sup>7</sup> Information obtained from the CLC's website: <http://www.clc-uk.org/CLCSite/media/Corporate-Docs/The-Council-for-Licensed-Conveyancers-AFS-2015.pdf>

<sup>8</sup> Information obtained from the CLC's website: [http://www.clc-uk.org/About-Us-\(1\)/About-Us.aspx](http://www.clc-uk.org/About-Us-(1)/About-Us.aspx)



2. The CLC Council is the governing body which consists of nine members with a lay majority including a lay chair. It has a wide and direct responsibility for determining the CLC's strategic direction, finance and governance arrangements. A total of four committees report to the CLC's Council.