



LEGAL SERVICES
BOARD

Developing Regulatory Standards

December 2012

An assessment of the legal services regulators:

- the Costs Lawyer Standards Board
- ILEX Professional Standards
- the Intellectual Property Regulation Board
- the Council for Licensed Conveyancers
- the Master of the Faculties.

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1. Chairman's foreword

- 1.1. This is the Legal Services Board's (LSB) first report on the performance of the legal services regulators in England and Wales. This report is part one of a two part suite of documents and covers the regulators of costs lawyers, licensed conveyancers, legal executives, notaries, patent attorneys and registered trade mark attorneys. We will publish in early 2013 our reviews of the Solicitors Regulation Authority and the Bar Standards Board.
- 1.2. The LSB is resolute in its focus on improving the performance of legal services regulators. The Legal Services Act 2007 (the Act) requires regulation that meets the better regulation principles - legal services providers are rightly demanding it and the public deserves it too. This is central to our view of what oversight regulation means in practice.
- 1.3. Our vision for legal services regulation is one which imposes the lowest possible regulatory burden on legal services providers, consistent with safeguarding consumers, the rule of law, the professional principles and the wider regulatory objectives from unacceptable levels of risk. This is a challenging vision and achieving it is predicated on a more sophisticated approach to the regulation of legal services – professionals, providers and the wider market - than has hitherto existed.
- 1.4. To deliver this vision, regulators need to give legal services providers the freedom to innovate in order to deliver the outcomes that consumers and the regulatory objectives require in a variety of ways, rather than being constrained by detailed rules. Regulators need to understand who they regulate, who the consumers are and to identify the highest risks in the markets they regulate. Regulators need to have appropriate supervisory processes that use knowledge of the market to concentrate scarce resources on the highest risks. Finally, when things do go wrong, regulators need to have effective and quick enforcement processes that deter wrongdoing and impose sanctions rapidly and proportionately. Regulators must also have the appropriate capacity and capability in their Board and staff to deliver regulation that is consistent with best regulatory practice. The LSB's regulatory standards set out these, but regulators must also comply with statutory responsibilities and act in accordance with existing best practice and continue to develop such practice further.
- 1.5. The legal services regulators are a diverse group of bodies. They vary dramatically in maturity, in size, in the scope of services regulated and how the services they regulate are provided. This is why we put the onus on the regulators to assess themselves. We asked them to tell us how they thought they were doing, provide a rationale and evidence as to why they thought as they did and to tell us what plans they had for the future. This was not a detailed audit or statistics-heavy exercise; this is the sort of performance assessment process that should be expected of all organisations. However, the quality of submissions received by the LSB varied dramatically.
- 1.6. The highest quality submissions were those that were able to be self-reflective and open with the LSB and who sought external review of their assessments: the Council for Licensed Conveyancers and Intellectual Property Regulation Board. However, overall, there are significant shortcomings. Regulators lack

understanding of the needs of the consumers who use the legal services provided by those they regulate. There is a lack of consumer engagement, a failure to use the common framework to also understand the legal services markets in which those they regulate operate and some issues around the provision and sharing of data between legal services regulators themselves and the Legal Ombudsman.

- 1.7. It is of significant concern that some regulators continue to question the need to know more about consumers and how they use legal services. Such an approach would be unacceptable from a regulator of any other sector and I believe should be unacceptable in legal services regulation. Being a regulator of a “profession” does not exempt you from focusing on those who need and use its services – indeed, I would argue that the ability to focus both on the needs of the individual client and broader consumer population AND on the wider public interest is at the very heart of what being a professional is all about.
- 1.8. A number of regulators covered by this report have made and continue to make significant progress in putting together ambitious work plans to collect and utilise more information about those they regulate. A number also have significant ambitions to expand the services and business types they are able to regulate. This is welcome. However substantial work will be required for each one to achieve these ambitions and the LSB will support those who set out clear plans to improve their regulatory performance.
- 1.9. In 2011, when we published research into the smaller approved regulators by Dr. Nick Smedley, the regulators told the LSB that they were up for the challenges of modern regulation and wished to forge their own identities. With some notable exceptions, we are not sure that the regulators covered by this report have grasped what this requires – let alone what the Act stipulates. As our draft business plan makes clear, we will be concentrating our work on ensuring that regulators deliver on their performance improvement plans and on commitments already made. Improvements are required across the board if regulators are indeed to show that they can meet successfully the challenges that they face.

2. Executive summary

2.1. This report contains the findings from the LSB's first ever performance review of the legal services approved regulators. The regulators were asked to assess their own performance against the four regulatory standards criteria defined by the LSB. They were also required to assess their own capacity and capability to deliver the regulatory standards, to adhere to statutory responsibilities and deliver best practice. The four criteria are:

- an outcomes-driven approach to regulation that gives the correct incentives for ethical behaviour and has effect right across the increasingly diverse market
- a robust understanding of the risks to consumers associated with legal practice and the ability to profile the regulated community according to the level of risk
- supervision of the regulated community at entity and individual level according to the risk presented
- a compliance and enforcement approach that deters and imposes sanctions appropriately.

2.2. This report covers the following approved regulators:

- the Association of Law Costs Draftsmen (trading as the Association of Costs Lawyers – ACL) which has delegated its regulatory responsibilities to the Costs Lawyer Standards Board (**CLSB**)
- the Chartered Institute of Legal Executives (CILEX) which has delegated its regulatory responsibilities to ILEX Professional Standards (**IPS**)
- the Chartered Institute of Patent Attorneys and the Institute of Trade Mark Attorneys who have delegated their regulatory responsibilities to the Intellectual Property Regulation Board (**IPReg**)
- the Council for Licensed Conveyancers (**CLC**)
- the Master of the Faculties (**the Faculty Office**).

2.3. The self-assessments considered by this report were submitted at the end of July 2012. Each of the regulators have made progress since the submission of their self-assessments. However, while such actions have been noted where appropriate, our report is based on the detailed information provided in the relevant self assessment.

2.4. The quality of the regulatory standards self-assessments was variable. The CLC in particular was able to produce a high quality response by demonstrating its ability to be self-reflective and open with the LSB.

2.5. Generic areas of concern arising from our analysis are:

- a lack of understanding of the needs of the consumers who use the legal services provided by those they regulate
- a lack of consumer engagement
- a failure to use the common framework that has been developed by Oxera as the basis for understanding the markets they regulate
- some problems regarding the provision of sufficient data to regulators from the Legal Ombudsman
- general information sharing issues between regulators.

- 2.6. The LSB was also extremely disappointed that only two of the bodies complied with its guidance that their assessment should be subject to external evaluation.
- 2.7. Only one regulator (the CLC) was able to demonstrate coherent systems to analyse and assess risks posed by the entities and individuals it regulates, although others had significant plans to develop such systems, particularly its IT function. Only a few regulators appear to have a systematic approach to supervision. Little thinking was evident on how each regulator would deliver the outcomes that consumers require and promote the wider regulatory objectives. Most regulators had limited or non-existent consumer engagement.
- 2.8. It is important to bear in mind the context of the legal regulators that are covered by this first report. Many of them are relatively new: the CLSB was only delegated the responsibility to regulate costs lawyers at the end of October 2011. Nevertheless, the approved regulators designated by the Act are responsible for delivering all the requirements in it. The LSB considers that it is significant that most regulators have put together ambitious work plans to collect and utilise more information about those they regulate.
- 2.9. Some of the risks associated with the deficiencies we have identified may be partly mitigated by the fact that some consumers will be sophisticated, often professional, clients. Another mitigating factor may be the fact that there is a high proportion of authorised people subject to dual or multiple regulation, either through entity regulation above the individual's regulation or by individuals authorised by two approved regulators. This acts to reduce the risks arising from any regulatory deficiencies. However, the regulators do not appear to have data on the percentage of consumers in that are sophisticated or who the providers are that provide services to the sophisticated consumers. Regulators will have to develop an evidence-base capable of identifying the risks present within the markets they regulate

Intellectual Property Regulation Board (IPReg)

- 2.10. The submission displayed a level of realism and self-reflection. As it was only given its delegated powers at the start of 2010, IPReg has had considerable work to do to deliver the regulation required by the standards. The regulatory arrangements in place allow commercial flexibility to achieve stipulated outcomes. IPReg has a number of appropriate and necessary activities planned to help it understand those it regulates and to build an appropriate risk assessment and supervision model. It also has plans to undertake research into consumers who use intellectual property services. Its enforcement process has had limited use so far and it is difficult to make an assessment on this aspect.

ILEX Professional Standards (IPS)

- 2.11. A significant proportion of those regulated by IPS are employed in SRA-regulated entities and risk assessment and supervision has historically been left to the SRA. IPS in its submission did provide greater detail about outcomes focused regulation and enforcement and its enforcement section was stronger than most. For instance it conducts surveys of consumers that

complain about CILEX fellows and has feedback arrangements that it can demonstrate have led to process improvements. However, it showed little understanding of consumers' needs and / or the risks faced by consumers. It has planned significant work on risk, to fill its gaps on supervision, improve its understanding of consumer needs and gather greater information on the services provided by CILEX fellows. These ambitions are welcome but will require appropriate resources and may prove challenging. The fact that IPS's action plan did not go beyond February 2013 is a significant omission considering the long term nature of its ambitions. The LSB is particularly concerned that, given its ambitions to increase the scope of its regulation, its action plan is extremely limited both in content and timescale. Although IPS has since produced an action plan to support its ambitions to apply for wider regulatory rights which goes to December 2013.

Costs Lawyer Standards Board (CLSB)

- 2.12. The CLSB was given its delegated powers at the end of October 2011. It inherited very little information about those it regulates and about the consumers who use services provided by costs lawyers. Because of this, any assessment against our standards or other regulators is inevitably more developmental. However, it has quickly built an organisation with clear procedures and appropriate governance arrangements. The CLSB has a number of aspirations and a view of the activities it wishes to undertake but provided little detail and little information as to what activities will be carried out over the medium to long term. The CLSB did not provide evidence for a number of aspects of its assessment and did not provide a clear picture on supervision and risk identification. Its enforcement process has only recently been utilised and so it is difficult to make an assessment on this aspect.

Council for Licensed Conveyancers (CLC)

- 2.13. The CLC provided the most complete and realistic self-assessment of the five assessed in this report. The CLC identified a number of areas where it is undertaking improvements and detailed the actions it has planned to address the known issues. It provided detail on how it risk assesses each regulated entity and how it inspected nearly a third of its entities during 2011. On enforcement, it appears that the CLC has an appropriate range of sanctions and the requisite skills to carry out effective enforcement activity although the performance of this function may be hindered by inefficient management information systems. The CLC has told us that its management information systems are operating sub-optimally. The LSB expects it to develop a coherent plan, in a specified timescale to address the current inefficiencies of the IT architecture. The CLC also provided very little information on consumer engagement activities or actions taken to understand the needs of consumers who use the services provided by CLC regulated entities.

Faculty Office

- 2.14. The Faculty Office provided very little evidence to support its self-assessment. The only supporting evidence that the regulator did provide was its existing rules and a practising certificate application form. It appears that the Faculty Office does not have any integral risk management tools, there was little evidence that better regulation principles inform its regulatory framework and

there was little transparency or evidence on how its strategy and operational direction are set and delivered. The Faculty Office has taken steps to introduce new regulatory requirements for those that pose higher regulatory risks. However, the process of identifying these risks appeared weak (reliant largely on the observations of the LSB and the findings of the research commissioned by the LSB into the smaller approved regulators) and not systematic. The Faculty Office does not appear to have accessible information on its enforcement processes and the documents that were provided were not in plain language. Since submission the Faculty Office has provided the LSB with information on activity to introduce risk-based inspections, embed the better regulation principles and to begin work on consumer engagement.

3. Introduction

- 3.1. This part one report contains the findings from the LSB's first ever performance review of the legal services regulators. The LSB has completed this assessment to assure itself that the legal services regulators (also known as approved regulators) are acting in ways that are compatible with the statutory requirements they have under the Act and that they are not allowing, or risking, unacceptable consumer detriment in the markets they regulate.
- 3.2. The statutory requirements on legal services regulators include the duty to, as far as is reasonably practicable, act in a way which is compatible with the regulatory objectives and to have regard to the better regulation principles and best regulatory practice (see section 28 of the Act).
- 3.3. This report contains details of the LSB's role and why it has conducted this piece of work. It provides some information on the standards of regulation the LSB expects from legal services regulators, the LSB's overall approach to regulation and details of how it arrived at those standards. The report also provides information on the design of the assessment process, how the LSB decided on the process it adopted and the process it followed for each of the legal services regulators. Finally, it includes an overview of general findings about the performance against the standards and our individual detailed reports on each of the legal services regulators covered by this report.
- 3.4. This report covers the following approved regulators:
 - the Association of Law Costs Draftsmen (trading as the Association of Costs Lawyers – ACL) which has delegated its regulatory responsibilities to the Costs Lawyer Standards Board (**CLSB**)
 - the Chartered Institute of Legal Executives (CILEX) which has delegated its regulatory responsibilities to ILEX Professional Standards (**IPS**)
 - the Chartered Institute of Patent Attorneys and the Institute of Trade Mark Attorneys who have both delegated their regulatory responsibilities to the Intellectual Property Regulatory Board (**IPReg**)
 - the Council for Licensed Conveyancers (**CLC**)
 - the Master of the Faculties (**the Faculty Office**).
- 3.5. This report does not cover the following approved regulators:
 - the Association of Chartered Certified Accountants (**ACCA**)
 - the General Council of the Bar (more commonly known as the Bar Council) which has delegated its regulatory responsibilities to the Bar Standards Board (**BSB**)
 - the Institute of Chartered Accountants in Scotland (**ICAS**)
 - the Law Society, which has delegated its regulatory responsibilities to the Solicitors Regulation Authority (**SRA**).
- 3.6. The LSB did not think it appropriate to include the two accountancy based approved regulators (ACCA and ICAS) as neither of these bodies has regulatory arrangements in place, therefore neither are able to authorise any individuals or entities to provide regulated legal services.
- 3.7. The BSB was unable to meet the deadline set by the LSB. An extended timetable was agreed; the BSB will now submit a final assessment and action

plan in December. Similarly, the LSB agreed with the SRA an extension to the provision of its final self-assessment. We received the SRA's final assessment at the end of September 2012. We will publish a review of these two regulators in early 2013.

Next steps

- 3.8. The LSB expect the conclusions to influence regulators' plans and activities for the future. Those regulators seeking changes to their regulatory arrangements and / or extension of their scope of regulation will be expected to demonstrate significant progress embedding the regulatory standards into their day to day operations.
- 3.9. The LSB has identified a number of generic competence issues across all regulators considered in this report, for instance consumer engagement, information sharing and market segmentation. We expect regulators to take action to develop these competency issues, working together if appropriate.
- 3.10. The LSB will be monitoring the regulators' adherence to their action plans closely and, will, where appropriate, take action for failure to keep to them without good reason.
- 3.11. Decisions on the longer-term activity for this work will depend on progress made by regulators during the course of 2013. Any re-assessment will take place in 2014 at the earliest. The decision to do a re-assessment will be influenced by progress, or lack thereof, identified during 2013, and is also dependent on the timescales of each regulator's action plan. The LSB will also consider whether any thematic reviews are necessary and will evaluate the merits of publishing examples of good and poor practice that are emerging.

4. What is the role of the Legal Services Board?

Overview

- 4.1. The LSB is the independent body responsible for overseeing the regulation of legal services in England and Wales. The LSB has a very simple goal - to reform and modernise the legal services marketplace in the interests of consumers, enhancing quality, and ensuring value for money and improving access to justice across England and Wales.

The LSB's vision

- 4.2. The regulatory objectives described in the Act, provide the framework for regulation. The LSB has used these to develop a vision for the legal services market that it considers regulators must strive to deliver. The LSB's vision takes as its starting point that a competitive legal services market, underpinned by appropriate regulation, will deliver the regulatory objectives most effectively.
- 4.3. A market that works better for consumers and providers alike would be characterised by:
- greater competition and innovation in service delivery
 - access to justice for all
 - empowered consumers, able to choose a quality service at an affordable price
 - an improved customer experience with swift and effective redress when things go wrong
 - a constantly improving and consistently ethical legal profession, as diverse as the community they serve
 - clear and proportionate regulation, that removes barriers to entry and targets market failure and which commands wide confidence from the public and the market.
- 4.4. The LSB works to stimulate a healthy and improving market for legal services that is constantly evolving towards our vision. The LSB knows that it must work with and through a wide variety of organisations to achieve it. The LSB is fortunate that it shares its regulatory objectives with the approved regulators and the Legal Ombudsman.

The regulatory standards and the LSB's approach to regulation

- 4.5. The LSB works with the regulators to ensure that they embed the principles of better regulation across their activities so that there is a consistent and transparent approach to the oversight of the legal sector. This work is fundamental to how the LSB operates in its oversight role. It also contributes to the development of legal services regulation so that it meets the needs of consumers but does so in the most efficient way for practitioners. How the LSB developed the standards, our legal powers for carrying out this work and the assessment process can be found in annex A.

The regulatory standards

- 4.6. The LSB concluded that only with the effective implementation of all of the constituent parts of regulation by the regulators will a more flexible, consumer

focused and responsive regulatory regime for legal services emerge. This should result in a regulatory regime that delivers efficient and appropriate regulation for practitioners while ensuring that the public and consumers are protected from unacceptable levels of risk.

- 4.7. Effective delivery of the constituent parts of regulation should lead to higher standards of professional conduct and competence. It should catalyse a legal services market with increased consumer choice and confidence. It should encourage innovative practitioners who, if posing few risks, are not subject to intrusive or inflexible regulation. It should introduce a level of consistency in the approach to the regulation of legal services. Therefore it is against these constituent parts that the LSB has assessed all regulators.
- 4.8. The four regulatory standards were framed with explicit reference to the Act's requirement that legal services regulators must, as far as is reasonably practicable, act in a way which is compatible with the regulatory objectives and also that their regulatory activities must have regard to the principles that regulatory activity should be transparent, accountable, proportionate, consistent and targeted. The regulators also have a general requirement to adhere to any other principle appearing to it to represent best regulatory practice. The LSB, when devising the standards, paid particular attention to Government policy on regulation and other regulatory regimes – including both professional regulatory frameworks and academic work on regulation.
- 4.9. Within this work all the regulatory objectives are important. However, it remains the LSB's view that the regulators must prioritise the protection and promotion of the interests of consumers. They should do so by setting out clear outcomes that consumers can expect from providers of legal services. The LSB does accept that on some occasions the regulatory objectives may be in tension. However, such tension is more easily resolved through a focus on the outcomes expected rather than rules, which will not be able to cover every conceivable eventuality.
- 4.10. The next sections set out some of the factors that we consider important in order for a regulator to show that it has embedded all the standards appropriate in its organisation and uses them to inform day to day working practices.

Outcomes focused regulation

- 4.11. The goal of this standard is that each legal services regulator will have regulatory arrangements that can deliver the outcomes that all consumers, whether existing or potential, individual or corporate, can expect from authorised people. Regulators should only have detailed rules or requirements where they have clear evidence and analysis that justifies such an approach.
- 4.12. To deliver this, legal services regulators must have high quality, up to date and reliable evidence about how all groups of consumers need and use the legal services provided by those they regulate. Regulators must also have evidence to show whether the outcomes are being achieved. Each legal services regulator must also ensure that it reviews and updates its regulatory arrangements based on the evidence it gathers.

- 4.13. The benefit of such an approach is that it can enable authorised people to use their professional judgement to determine how they can best achieve the required outcomes. It can deliver greater clarity and increased freedom to innovate in the provision of services without reducing protection for individual consumers and accountability of providers. It can future proof the regulatory arrangements so that they are flexible enough to allow market change and they remain relevant in the face of changing practices.
- 4.14. Competence in this regulatory standard will require legal services regulators to have evidence that the activities of those they regulate do not have an adverse impact on interests of consumers, the public interest and / or the rule of law. They must also avoid having detailed requirements that hinder competition and innovation. The LSB made it clear in its decision document¹ that it would not compel regulators to move instantly to an outcomes focused approach. But the LSB does expect regulators to have a clear plan on how they intend to develop their regulatory arrangements so that they will accord with best regulatory practice, as required by the Act.

Risk

- 4.15. The Hampton principles², from which the better regulation principles within the Act³ were drawn, and the Regulators' Compliance Code⁴ make it clear that regulators are expected to use comprehensive risk assessment to concentrate their resources in the areas that most need them.
- 4.16. The LSB considers that legal services regulators must have a formal, structured, transparent and evidence-based approach to the identification and mitigation of risk across all those they regulate. One of the key issues regulators should focus on is consumer detriment and those in vulnerable circumstances. The approaches adopted must also enable the identification of future trends as well as responding to current issues.
- 4.17. The clear benefit of risk assessment is to provide regulators with the information to enable them to target scarce resources at areas of highest risks to the regulatory objectives. This may be certain areas of work, certain types of practitioners or an array of different risk factors. By understanding risk, regulators can tailor their approaches and so deliver proportionate regulation.
- 4.18. Legal services regulators with effective risk assessment processes are likely to be able to deliver regulation that is targeted, proportionate and consistent. In doing this they will be able to ensure that the regulatory objectives are not being exposed to unacceptable risks and specifically that consumers, especially those that are vulnerable, are not exposed to high risks of detriment.

¹ LSB (2011), *Developing Regulatory Standards: Summary of responses to the consultation on developing regulatory standards*

² Hampton (2005), *Reducing administrative burdens: effective inspection and enforcement*, HM Treasury. <<http://www.bis.gov.uk/files/file22988.pdf>>

³ See section 28 of the Legal Services Act 2007

⁴ Department for Business Enterprise and Regulatory Reform (2007), *Regulators Compliance Code: Statutory Code of Practice for Regulators*, 17 December 2007, BERR <<http://www.berr.gov.uk/files/file45019.pdf>>

Proportionate supervision

- 4.19. The regulatory standard of supervision is linked to that of risk assessment. It requires that legal services regulators have a supervision policy that is determined with reference to identified risks and is underpinned by an evidence-based understanding of the different market segments in which those they regulate operate.
- 4.20. To achieve this standard, supervision must be pro-active as well as reactive. For instance, if there was an elevated risk to any of the regulatory objectives from certain providers offering certain services, the LSB would expect the regulator to develop an appropriate supervisory response. This is in addition to more reactive approaches that may be determined by firm complaint volumes or specific compliance issues or concerns.
- 4.21. Similar to the risk assessment section, adopting such an approach helps to focus scarce resources on the highest priorities. However, active supervision helps ensure that the activities of individual firms, individuals or groups are not having an adverse impact on the regulatory objectives. The regulatory objectives that are particularly pertinent for this standard are the maintenance of adherence to the professional principles, protecting the interests of consumer and the public interest. Regulators that meet this standard will ensure that regulation is targeted, consistent and proportionate.

Appropriate enforcement

- 4.22. Effective regulators will have a range of effective and proportionate enforcement tools. They should be timely, fair and there should be published policies and guidance that enable others to understand the regulator's criteria for deciding to take action. The sanctions available to the regulator should deter others as well as impose sanctions on those who do not comply with the regulatory arrangements. Decisions to take action must be based on evidence and reliable sources. An appeals process that follows generally agreed best practice must also be in place.
- 4.23. The benefit of legitimate and effective enforcement procedures is that regulators can be confident that the enforcement decisions they reach are likely to survive any resulting legal challenges. Enforcement is the ultimate tool to deliver compliance and punish non-compliance with regulatory arrangements. Furthermore, such activities will help ensure that the professional principles are being maintained and that the interests of consumers and public interest are being protected.

Capacity and capability

- 4.24. This indicator is about whether the regulator has the capacity and capability to deliver the four regulatory standards as well as any other statutory responsibilities and has governance arrangements in keeping with best practice for similar organisations.
- 4.25. The LSB expects regulators to have clear leadership and strong consumer engagement so that consumers will be confident that the regulator is independent from those it regulates. Regulatory budgets and staffing must be linked to the nature of the market they regulate and the risks therein, not simply the level of regulatory fees they believe practitioners are willing to pay.

A good quality regulator will have transparency and continuous improvement at its heart. It will have documented governance procedures and processes in line with best practice. It will also have a systematic approach to knowledge and information management at all levels.

- 4.26. Without the appropriate level of capacity and capability the regulator will struggle to deliver the four constituent parts of regulation and the requirements of the Act. This is why it forms an important part of the assessment.

5. How are the regulators performing against the regulatory standards?

- 5.1. This is the first report of two and so does not cover all of the approved regulators, therefore the general findings are limited. However, it is useful to reflect on some of the general conclusions we have reached. Of the regulators that completed the self-assessment, it is important to bear in mind the context in which these regulators operate.
- 5.2. Each regulator was required to complete the self-assessment shown at Annex B. For each regulatory standard and for the section on capacity and capability they were required to assess themselves on the following scale:
 - good – all indicators embedded appropriately in the organisation and inform day to day working practices
 - satisfactory – significant progress is being made to embed indicators and use them in day to day working practices
 - undertaking improvement and work is well underway – indicators have been introduced but are not yet embedded appropriately in the organisation and do not yet inform day to day working practices
 - needs improvement and work has started recently.
- 5.3. Alternatively, the regulators had the option to state: recognise this needs to be done but work has not yet started.

The importance of context

- 5.4. A number of the regulators are relatively new organisations, IPReg and the CLSB were formed in the last few years and the CLSB was only given its regulatory responsibilities at the end of October 2011. In IPS's case it was formed from the existing professional standards department of the representative body in October 2008.
- 5.5. The bodies considered in this first report are relatively small in comparison to the SRA and the BSB. This lack of scale has an impact on the size of the regulatory budget available to each organisation; of those reviewed in this report only the CLC and IPS have a regulatory budget above £1million.
- 5.6. The final observation on context is that the authorised people regulated by those organisations covered by this report have a number of different features. These features differ for each regulator and each changes the existing risks in a different way. For instance, a number of the regulators have a significant proportion of authorised people who are either authorised for certain services by another approved regulator or offer their services within an entity authorised by another approved regulator. This is the case for the Faculty Office and IPS, and there is also a significant number of CLC regulated individuals operating in SRA regulated firms – this is estimated to be as high as 50% but there is no reliable data.⁵ The other broad issue is the prevalence of sophisticated consumers. Such consumers are less likely to suffer from asymmetries of information or other associated vulnerabilities and so

⁵ Smedley (2011), The smaller approved regulators; an assessment of their capacity and capability to meet the requirements of the Legal Services Act 2007, with analysis and recommendations, Legal Services Board
<http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/20110622_sar_report_final.pdf >

potentially require a lower level of regulatory protection.⁶ This is apparently the case for many those regulated by IPReg and reportedly for the CLSB too.

- 5.7. Despite the importance of context, the statutory requirements apply equally to all approved regulators and they all have a duty to, so far as reasonably practicable, act in manner compatible with the regulatory objectives and to have regard to the better regulation principles. The LSB's expectation is that each regulator should be able to demonstrate, with evidence, the impact their particular context has on the risks to the regulatory objectives and how they are achieving the better regulatory principles.
- 5.8. Many of the organisations under review have significant ambitions for the future. In order to achieve these ambitions they will be subject to significant scrutiny by the LSB. They must be able to demonstrate that they understand risks in the new areas they seek to regulate and have credible implementation plans to mitigate those risks and regulate effectively.
- 5.9. It is also not just those with ambitions that need to heed market developments. The legal services market is likely to change significantly over the next few years. There are a number of drivers for this change, including the Act, and regulators will have to ensure that their regulatory arrangements are capable of meeting the challenges of a changing legal services landscape.
- 5.10. Finally, it is worth noting that few of the regulators under consideration were able to provide detailed evidence about consumers, the incidence of dual regulation or oversight from other regulators. Very often they relied on estimates or assertion. Paucity of data is one of the overriding themes from the self-assessment process.

Overall

- 5.11. Only two (the CLC and IPReg) of the five regulators under consideration sought external review for their self-assessments, despite the fact that it was made clear that the LSB Board strongly endorsed the use of an independent review. It is significant that the CLC and IPReg provided the most complete and compelling self-assessments. The LSB considers that having their assessments reviewed has benefited them significantly.
- 5.12. A number of the submissions, whether externally reviewed or not, demonstrated the ability of the regulators to be self-reflective and open with the LSB; many provided sufficient evidence to allow the LSB to be confident that the assessment was sound. However, the CLSB and Faculty Office responses relied on assertion and provided limited evidence to support their assessments. This made it difficult for the LSB to reach conclusions. In areas where an assertion is made and little convincing argument, analysis or supporting evidence is provided, the LSB has been unable to rely on such statements to support the self-assessment.
- 5.13. Similarly, the LSB was disappointed with the failure of a number of the regulators to reflect fully on each of the indicators identified by the LSB. The

⁶ Decker and Yarrow (2010), Understanding the economic rationale for legal services regulation, Regulatory Policy Institute, <http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/economics_of_legal_services_regulation_discussion_papers_publication_final.pdf>

assessment made it clear that to assess itself highly for each section, a regulator must have either embedded or made substantial progress to embed the identified indicators into their everyday regulatory practice. It seems to us that regulators, in assessing themselves highly without providing evidence to show that they had these indicators embedded, have failed to engage with the self-assessment process. It may also indicate an inability to recognise the importance of providing the appropriate rationale or evidence or may be a failure to understand the extent to which the LSB would analyse their responses.

- 5.14. One of the key areas missing (and this has also been identified by the Legal Services Consumer Panel) is the lack of consumer engagement and paucity of data held on consumers or research into consumer needs conducted by the regulators. A number of self-assessments demonstrated that they have made positive efforts and others are planning such activities in the coming years. This is welcome; it is imperative that regulators understand and have evidence about who the different types of consumers are and the different risks they face.
- 5.15. The LSB was also concerned about regulators' failure to use the Oxera framework⁷ as the basis for segmenting and understanding the markets they regulate. This was explicitly asked for and largely ignored, despite the fact that we wrote to each regulator noting the failure to use the Oxera framework in their draft submissions and arranged a workshop to discuss the framework in detail. If regulators do not understand the markets they regulate they cannot target their regulation in a proportionate way and are therefore not acting in a way that is consistent with the requirements of better regulation.
- 5.16. There also seem to be some problems regarding the provision of sufficient data to regulators from the Legal Ombudsman and information sharing between regulators. The use of intelligent information sharing can minimise the need for multiple information requests and/or separate research and evidence gathering exercises. It will also help provide a fuller picture of the risks present in the legal services market(s). The LSB encourages the relevant organisations to resolve these issues.
- 5.17. We also were disappointed that few regulators included activities in relation to first tier complaints handling in their action plan. Our recent thematic work on this topic has highlighted the need for each regulator to complete work on this important aspect of regulation. We will expect regulators to complete the actions wrote to them about in July 2012.⁸

Outcomes focused regulation

- 5.18. The quality of the self-assessments in this are varied. Most (CLC, CLSB, IPReg and IPS) have made efforts to develop simple and short regulatory arrangements that focus on outcomes (very often described as principles).

⁷ Oxera (2011), *A framework to monitor the legal services sector*, LSB.

<http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/a_framework_to_monitor_the_legal_services_sector.pdf>

⁸ All the relevant letters on first tier complaints handling can be found here: http://www.legalservicesboard.org.uk/Projects/pdf/sra_ftch_letter.pdf

While this is encouraging, it is clear that these arrangements were often drawn up with little reference to evidence about the outcomes consumers' desire or the characteristics of those consumers. The approach to the protection of the wider regulatory objectives, similarly, tended to be reliant on codes drawn up without detailed consumer evidence or consumer engagement.

- 5.19. A number of regulators recognised this paucity of evidence and have made efforts to plug these gaps or have plans to do so in the near future. This is welcomed. The use of evidence and a focus on outcomes will be expected to justify any future applications to alter regulatory arrangements and/or any alteration of the scope of regulatory powers.

Risk identification frameworks

- 5.20. This section and the next section on supervision were the weakest of the regulatory standard areas considered. Only one regulator (the CLC) was able to demonstrate coherent systems to analyse and assess the risks posed by those they regulate. However, a number did detail some specific actions they have planned to build these systems and processes. As the LSB noted at the start of this section, the regulators considered in this report have the smallest pool of resources; rigorous risk identification frameworks would enable them to focus these scarce resources in the areas that need attention.

Proportionate supervision

- 5.21. As for the risk section, few of the self-assessments demonstrated that the regulators had coherent supervisory policies that would meet the upper end of the scale of indicators identified by the LSB. This largely stems from a lack of evidence and/or not having appropriate risk assessment methodologies. If the regulators in question do begin to gather more information about the markets they regulate and develop more sophisticated risk frameworks, they should then be able to devise supervision policies that are satisfactory or good.

Appropriate enforcement

- 5.22. This section is largely divided between those who have experience of enforcement and those that do not. For those that have experience (IPS, the CLC and the Faculty Office) in enforcing their regulatory arrangements, their policies, procedures and approaches appeared in line with the upper end of the LSB indicators. For those without experience or only limited experience, it was difficult for the LSB to reach a conclusion on their effectiveness, although many of the regulators appear to have appropriate processes in place. With the exception of IPS, the difficulty of accessing relevant documents on websites and the lack of sanction guidelines and / or policies written in plain language are significant omissions.

Capacity and capability

- 5.23. It is difficult to summarise the issue of capacity and capability across so many different organisations. Many of the regulators have significant gaps in consumer engagement and focus. Those with a board structure have made specific attempts to appoint members with consumer expertise. However, in our judgement these efforts, although welcome, will not be sufficient on their own.

- 5.24. A number of regulators suggested that their budgets are limited by what those they regulate are willing to pay. The LSB accepts that this is an important consideration. However, the LSB expects budgets and priorities to be set with reference to the activities necessary to reduce unacceptable risks to consumers and deliver the wider regulatory objectives in the markets they regulate.
- 5.25. The LSB remains concerned about the ability of the smallest of regulators to continue effective regulation in the event of the loss of key staff or board members. The LSB encourages all organisations to have appropriate contingency and succession plans in place for such eventualities. The LSB also notes the absence of sufficient individuals with experience in regulation at either executive or board level in a number of the regulators.

The individual regulators' regulatory standards assessments

6. The Association of Costs Lawyers / The Costs Lawyer Standards Board

Overall

- 6.1. The Costs Lawyer Standards Board (CLSB) was established by the Association of Law Costs Draftsmen (ALCD) (now trading as the Association of Costs Lawyers (ACL)) on 1 January 2011, and became effective as the regulator on 31 October 2011 under delegated authority as set out in the CLSB's articles of association. The CLSB is the smallest legal services regulator in England and Wales; it currently has 565 registered costs lawyers. The ACL remains the approved regulator.
- 6.2. To 31 December 2012, the ACL/CLSB has a modest combined budget of £237,000 and currently charges costs lawyers an annual practising fee of £450, of which £250 is for regulatory expenditure. CLSB research in 2012 found that 11 costs lawyers work in-house, 215 work for a costs lawyer practice, 149 work in solicitor practices, 180 are sole practitioners and 10 work in split areas of employment.
- 6.3. Under the Act, the ACL is able to regulate the exercise of a right of audience, the conduct of litigation and the administration of oaths, but it is estimated by the CLSB that only 10%⁹ of costs lawyers exercise any of those rights. Drawing up bills is not a reserved activity, so if a practitioner does not wish to exercise the reserved rights, then he or she may do so as a costs draftsman outside the CLSB's control.
- 6.4. Costs lawyers can also practise in mixed partnerships, which means that some already operate in licensable bodies and so are in effect, alternative business structure (**ABS**) firms. Despite this, the CLSB has made no indication that it wishes to apply to be designated as a licensing authority. Once the transitional provisions in Schedule 5 to the Act are removed, such firms will need to seek regulation from a licensing authority if they wish to continue to offer reserved legal services from costs lawyers.
- 6.5. Although it is the smallest legal services regulator, in its first year of operation the CLSB has developed a thorough set of policies, processes and guidance for its regulatory community. This body of work was used to good effect to underpin its self-assessment. The CLSB has also planned a set of activities to help it refine and deliver its approach to outcomes focused regulation, including, its current feasibility study into entity regulation.
- 6.6. In 2012, the CLSB began to collect information through its practicing certificate process and diversity analysis. A key next step in its development is to gather a greater level of information during its 2013 practising certificate fee collection process. This information will give the CLSB its first detailed evidence of how those it regulates operate and who their clients are. By analysing and

⁹ Smedley (2011), The smaller approved regulators; an assessment of their capacity and capability to meet the requirements of the Legal Services Act 2007, with analysis and recommendations, Legal Services Board
<http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/20110622_sar_report_final.pdf >

developing a response to those findings, the CLSB should be able to move to the next step of developing its outcomes focused approach and should be able to make evidence-based improvements to its risk management, supervision and enforcement activities.

- 6.7. However, despite citing reasonable grounds as to why the CLSB did not seek independent scrutiny of its self-assessment, the LSB is disappointed that the CLSB did not take this opportunity to qualify the robustness of its submission through a third party. The LSB considers that the challenge of independent scrutiny could have improved the quality of the analysis and provoked a more meaningful response.
- 6.8. Since the CLSB submitted its final self-assessment in July, the regulator has taken a paper to its board to recommend the use of the Oxera framework, which was accepted and will now be developed. The regulator has also started a feasibility study into entity regulation and heard two cases at its conduct committee, which means it now has a basis to judge the effectiveness of its enforcement activities.

Outcomes focused regulation

CLSB Assessment	Undertaking improvement and work is well underway
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- 6.9. Since October 2011, the CLSB’s small team has taken steps to put in place a suite of practice and guidance documents, including a principles-based code of conduct to deliver outcomes focused regulation for costs lawyers. Its next task, one that it recognises, is to develop an understanding of the market that it regulates so it can deliver targeted outcomes that consumers need.
- 6.10. Currently, the CLSB only has anecdotal evidence about the types of consumers who use costs lawyers and a basic level of information about the way in which costs lawyers meet their needs that as gathered from the 2012 practicing certification process. While the LSB accepts that it may be the case that most of a costs lawyer’s work is generated by instructions from professional clients, the CLSB is rightly carrying out an information gathering exercise alongside its 2013 practising certificate application process to build its evidence base to show how both the supply and demand sides of the costs lawyer market operate.
- 6.11. During the self-assessment process, the LSB asked all approved regulators to use its Oxera Framework when considering its market(s), so that a consistent approach to segmentation could be taken across all legal services regulators. By the time that final submissions were due with the LSB, the CLSB failed to confirm that it will be using the Framework as a tool to analyse the data that it will collect from its practising certificate fee survey. However, it has since made a commitment to develop an approach to the framework.
- 6.12. Though mindful that the CLSB has been proactive in its attempts to engage with the Legal Ombudsman, the LSB expects the CLSB to do more to develop its understanding of consumers and their needs by building a closer working

relationship with both the Legal Services Consumer Panel and the Legal Ombudsman.

- 6.13. While much progress has been made over the last year to implement and embed an outcomes focused approach, the CLSB must start to gather evidence to show that its approach is both understood and accepted by the regulatory community and consumers. While anecdotal evidence from costs lawyers points to a growing understanding, more work can be done. In terms of consumers, the practising certificate fee survey should identify who they are. Once they have been identified, the CLSB will be able to further focus its research to see if its approach is delivering the outcomes consumers really need.
- 6.14. For this reason, the LSB does not agree with the CLSB’s self-assessment of “undertaking improvement and work is well underway”. The LSB considers that “needs improvement and work has recently started” would be a more appropriate assessment.

Main LSB observations
CLSB only appears to have anecdotal evidence about what kind of consumers use costs lawyers and basic evidence about the different ways practitioners meet their needs. However, it has started collecting information on consumers and the markets it regulates, which will allow the CLSB to improve its performance in this area.
LSB assessment: Needs improvement and work has recently started

Risk assessment

CLSB Assessment	Undertaking improvement and work is well underway
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- 6.15. Given that the CLSB does not yet have a strong evidence base to show how its regulatory community operates or meets the needs of its consumers, the way it manages regulatory risk is still in the early stages of development.
- 6.16. The CLSB claims that it has both a reactive and proactive approach to risk management; the LSB does not understand how this can be the case given the CLSB’s current lack of solid information on which to make risk through its risk matrix analysis assessments. The LSB accepts that the CLSB can respond reactively to risks once they have crystallised, but as it has very little information to analyse, the LSB does not accept that the regulator could have a proactive approach.
- 6.17. The LSB does not consider that the CLSB’s risk management policy and risk matrix are outcomes focused, as they do not specifically state outcomes for consumers and are very light in detail generally. While the policy says that the CLSB will use “statistical and other relevant information to identify and evaluate risks”, it is just starting to build a picture of risks to consumers. Risk mitigations on the matrix itself are very general, with most marked as

“ongoing” which describe very functional aspects of the regulator’s day to day business activity.

- 6.18. Once information from the practising certificate fee survey has been collected and analysed, the CLSB will be in a better position to assess and manage risk more effectively. However, it is likely still to lack information on the characteristics of consumers who use costs lawyers and, importantly, will still not have supervisory activity in place to monitor practitioners, to be able to develop a complete risk management framework.
- 6.19. Despite a lack of information that the CLSB can use to manage risks, it has recently taken a first step to include “consumer risks” as a new category in its risk matrix. Similarly, steps have been taken to clarify costs lawyers’ handling of client money, which had been identified as a risk. By issuing guidance, the CLSB has made it clear that costs lawyers should not hold clients’ funds except for disbursements and proper professional fees. This clarification is an example of the CLSB acting to reduce risks to consumers where there is evidence of a potential risk.
- 6.20. However, the LSB remains concerned that the CLSB continues to claim that its regulatory community poses low levels of risk to consumers, simply because its clients are “professionals” and because it regulates individuals, rather than entities. Without proper evidence to back up these claims, they can be taken as little more than anecdotal. Until evidence gathered from the 2013 survey (or elsewhere) is analysed to assess whether it supports these assertions, the LSB is unable to accept the CLSB’s statements.
- 6.21. The CLSB also asserts the benefits of individual regulation without recognising that once the transitional provisions of the Act are lifted, costs lawyers offering reserved legal services who are not sole traders will have to be regulated as an entity. If the CLSB does not have arrangements to regulate entities at that point, such individuals will have to either cease offering reserved services or find an alternative entity regulator. The action plan contained little detail of activity to prepare for the end of transitional arrangements, which is likely to occur during 2014. However, as reported above, the CLSB has taken first steps to address this by commissioning a feasibility study into entity regulation.
- 6.22. The LSB considers that the CLSB’s assessment of “undertaking improvement and work is well underway” is overly optimistic for this section. The LSB considers that “needs improvement and work has recently started” would be more appropriate.

Main LSB observations
While the CLSB does have a corporate risk identification approach, it is currently unable to carry out a proactive approach to regulatory risk given the low level of consumer and market information it currently holds. Any developments must focus on risks to consumers and the wider regulatory objectives.
LSB assessment: Needs improvement and work has started recently

Supervision

CLSB Assessment	Undertaking improvement and work is well underway
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- 6.23. The CLSB does not have a supervisory policy or procedure in place. It maintains that the low risk presented by its regulatory community, means that formal supervision of individual members would be a disproportionate approach. Instead, the CSLB relies largely on its general policies and procedures, accreditation of its educational providers, continued professional development (CPD) requirements, its collection of first and second-tier complaints handling data and certificates of professional indemnity insurance, as ways of supervising costs lawyers.
- 6.24. This approach is justified by the CLSB on the grounds that it has no complaints data to analyse yet, because no service or conduct complaints have been made since its inception. By not having this usual source of data to analyse, the CLSB must rely on its supervisory processes outlined in the paragraph above. While the LSB would encourage all regulators to look to other sources of data than complaints, the LSB would disagree that simply monitoring these factors is an adequate replacement for a fit for purpose supervision policy.
- 6.25. While the LSB understands that the CLSB does not want to over burden its members with too high a level of intervention without good cause, the CLSB will certainly need to develop and put in place a robust supervisory system based on the findings of its 2013 survey. The CLSB's current belief that risk to consumers is low is not an adequate basis to decide that a supervisory policy is not needed at all. A targeted policy will need to be put in place based on the evidence from the survey.
- 6.26. Therefore it is overly optimistic for the CLSB to assess itself as "undertaking improvements and work is well underway" in this section. The LSB considers that "recognise this needs to be done but work has not yet started" would be a more appropriate assessment, given the current arrangements.

Main LSB observations
CLSB does not have a proactive supervision approach. Its current approach is largely reactive. It must to gather greater evidence to develop an appropriately considered and targeted supervision policy.
LSB assessment: Recognise this needs to be done but work has not yet started

Enforcement

CLSB Assessment	Undertaking improvement and work is well underway
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- 6.27. At the time the final self-assessment was submitted, the CLSB had not yet found itself in the position where enforcement action had been necessary. Since then, two cases have been brought to the regulator’s conduct committee, though the CSLB has not made public any information about the proceedings or any resulting enforcement activity. This lack of transparency does not provide the LSB with any evidence to agree that its approach to enforcement is proportionate and that it is effective in deterring poor conduct through its sanctions. Despite this, the CLSB has a clear set of policies, procedures and guidance notes around enforcement, which it proactively communicates to its regulatory community.
- 6.28. The CLSB plans to review and improve the enforcement content of its corporate website to make it more accessible to consumers. It is also committed to ensuring that its conduct committee panel members are well trained and supported to deliver its function.
- 6.29. The CLSB also has ongoing plans to review and update its enforcement guidance. Following the results of the 2013 survey, it will also make a decision as to whether or not its CPD audits should be more targeted. The LSB agrees that the CLSB’s assessment of “undertaking improvement and work is well underway” is appropriate for this section.

Main LSB observations
CLSB is largely untested in this area and so assessment is difficult. The current lack of ease of access and readability of its enforcement documentation and its sanctions guidance is an aspect that is in need of attention.
LSB assessment: undertaking improvement and work is well underway

Capacity and capability

CLSB Assessment	Undertaking improvement and work is well underway
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- 6.30. The CLSB has made a commitment to understand more about consumers who use costs lawyers, and plans to develop a feedback loop based on the results of the 2013 survey. The LSB is supportive of this move and would encourage the staff and Board to develop strong consumer engagement and focus, particularly by linking the Oxera framework to the results of the survey. Once more is known about consumers, the CLSB will be able to start to understand if its regulation is delivering what they need. This will also help the CLSB to demonstrate its independence from the ACL to consumers.
- 6.31. The CLSB is the smallest of the approved regulators, and as such it operates within tight resource constraints. For that reason, the chief executive works

closely with the five non-executive directors to make decisions based on cost-benefit analyses and regulatory proportionality. It believes that it can continue to deliver an effective and timely work programme without further resources.

- 6.32. The CLSB has developed a concise suite of governance documents in a relatively short time including its policies, processes and guidance, which are all available on the CLSB’s website. However, the LSB notes that the CLSB is not so transparent about its strategic direction, activities and decision making; it is important for consumers to see how decisions made by regulators affect them. While the CLSB publishes its business plans, board meeting minutes and annual reports online, it could also provide board papers and its own responses to consultations to act with greater transparency. This improvement could easily be made alongside the review of the website’s enforcement content.
- 6.33. One concern that the LSB has with all of the small regulators, is that the departure of a key figure, foreseen or unforeseen, could have a dramatic effect on day to day operations. While this cannot be avoided, the LSB acknowledges that the CLSB has provided evidence that it has developed a well organised operating system and processes that would help to minimise any disruption caused by a sudden departure. The CLSB also plans to devise a disaster recovery plan in the coming year to manage other unforeseen risks. The LSB also notes that while the executive and board have private and public sector governance experience, they have limited regulatory experience, which might present difficulties in dealing with the challenges that will arise from the ending of the transitional arrangements. The LSB wrote to the CLSB and other regulators about its proposal to end transitional arrangements on 14 April 2011, which the CLSB supported.
- 6.34. As the CLSB will continue to develop and grow as it learns more and focuses its activity, the LSB considers that “needs improvement and work has started recently” is a fair and accurate reflection of its current capacity and capability. The CLSB’s assessment of “undertaking improvement and work is well underway” is premature.

Main LSB observations
The CLSB must continue to build the effectiveness of its policies now that they are in place. The importance of their day to day application and what this means for consumers must be a priority.
LSB assessment: Needs improvement and work has started recently

Action plan

- 6.35. The LSB has made a number of comments about the action plan in the relevant sections above and was broadly pleased with the provision of a detailed section by section action plan. However, the LSB is concerned by the omission of any significant actions related to the lifting of the transitional provisions of the Act. Prior to these being lifted the CLSB will have to decide whether it wishes to develop an entity regulation scheme and / or decide whether it wishes to become a licensing authority so it can regulate ABS. The

feasibility study that is currently being carried out is an important activity in that regard, but more activity will be necessary.

- 6.36. At present, the LSB is aware of a number of entities and licensable bodies that employ costs lawyers offering reserved legal services. If the current regulatory approach of the CLSB is maintained, these firms will have to find alternative regulators or cease offering reserved legal services.
- 6.37. These matters are more fundamental to the interests of the CLSB than a number of the activities detailed in the action plan. The CLSB may wish, in the light of this feedback, to reconsider its current priorities. The LSB is particularly concerned at the large number of activities focused on seeking to protect the title “costs lawyer” and to reserve the activity of drafting bills. It is more important for the CLSB to concentrate on the regulation of costs lawyers in the immediate and medium term.

OFR	
By 31 July 2012	Draft a chart showing consumer loop of Costs Lawyer services
By 31 July 2012	Revise risk matrix into risk headings of consumer/business/profession
Immediate & on-going	Management of risks via risk management policy and risk matrices
April 2013	Collection and evaluation of information received on 2013 Practising Certificate application forms.
April 2013	Diversity evaluation survey 2013 will be completed and published in the Costs Lawyer Journal and on the CLSB website
Risk Assessment	
By 31 July 2012	Revise risk matrix to record risks under headings of consumer/business/profession
31 October 2012	Implement mark of regulation so that costs lawyers can promote the fact that they are regulated.
31 December 2012	Feasibility study on entity regulation
April 2013	Collect data about litigants in person/informed consumer under 2013 Practising Applications as well as other data to understand the regulated community and trends
Immediate & on-going	Continue to lobby LSB and others to ensure Law Costs Draftsmen/Costs Draftsman, who CLSB has already identified as the greatest risk within the profession and to the consumer, is addressed sooner rather than later
Immediate & on-going	CLSB will continue to request that ACL seeks to protect the title “Costs Lawyer”
Immediate & on-going	On-going day to day risk management
Supervision	
31 July 2012	Revise guidance notes on CPD as required following outcome of 2011 CPD audit
31 December 2012	Feasibility study on entity regulation
31 December 2012	Continue to expect first-tier complaints procedures and evidence of insurance before a practising certificate is issued
On-going	CLSB will continue to draft guidance notes on a needs be basis, ones on Principle 3.6 of the Code of Conduct, ATE insurance and the right to administer oaths are in process
On-going	CLSB will continue to develop policies and procedures that provide the maximum level of remote supervision on a needs be basis, revising existing policies as required

30 June 2012	Conclude random CPD audit of 2012 record cards
Enforcement	
By 30 June 2012	Conclude CPD audit, review risks as a result and take any required enforcement action
By 31 July 2012	Conclude guidance note on ATE insurance & communicate to profession via Journal & put on website
By 31 July 2012	Conclude guidance note on Right to Administer Oaths & communicate to profession via Journal & put on website
By 31 August 2012	Conclude Guidance Note on Principle 3.6 of the Code of Conduct (Client Money), communicate out to profession via Journal & put on website
By 31 Sept 2012	Review information on CLSB website
31 October 2012	Implement mark of regulation so Costs Lawyer can promote that they are regulated by the CLSB
30 April 2013	Consider, based on information received under 2013 Practising Certificate applications, whether audit of CPD should be more targeted rather than random
Immediate & on-going	Continue to foster good working relationship and communication with LeO
Immediate & on-going	Continue being pro-active in getting the message across to consumers and the professions on the benefits of instructing a regulated costs professional
Immediate & on-going	CLSB will undertake an audit of 2012 practising certificate applications, should any areas of concern arise there under these will be referred through the enforcement process
On-going	Support and information for panel members
Capacity and Capability	
By 31 July 2012	Evaluate % of costs lawyers who are employed 50% and above in Legal aid work
By 31 July 2012	Evaluate % of costs lawyers who are self-employed, employed by Solicitors, in-house etc
By 31 July 2012	Draft a chart showing consumer loop of Costs Lawyer services
By 31 September 2012	Draft Disaster Recovery/Key Man Policy
By 31 October 2012	Revise 2013 Practising Certificate application form to include meaningful information on Costs Lawyer community e.g. litigant in person/informed consumer
Immediate & on-going	Campaign for Law Costs Draftsmen/Costs Draftsman to be qualified and regulated
Immediate & on-going	Continue to foster good working relationships with ACL and others in the legal AR community

7. The Chartered Institute of Legal Executives / ILEX Professional standards

Context and overview

- 7.1. ILEX Professional Standards (IPS) is responsible for regulating 7,907 CILEX fellows. IPS is allowed to authorise fellows to carry out the reserved legal activities of the exercise right of audience and the administration of oaths. The regulator is also a qualifying regulator for immigration advice and runs a specific regulatory scheme for associate prosecutors at the CPS to allow associate prosecutors to conduct litigation.
- 7.2. To 31 December 2012, CILEX and IPS had a shared budget of £2.071 million, of which £657,900 was allocated to IPS regulatory activity. CILEX fellows will be required to pay a practising fee of £290. The vast majority, (98%), of CILEX fellows are reportedly employed in SRA regulated entities. Those that are not tend to work in-house, in industry or in the public sector.¹⁰ IPS has a number of significant ambitions and intends to apply to be designated for more reserved legal activities (probate activities and conveyancing (reserved instrument activities)). IPS wants to extend its litigation rights so that they are available to all fellows who meet required standards, to undertake entity regulation and possibly to become a licensing authority for ABS.
- 7.3. As most CILEX fellows are employed in SRA regulated entities, risk identification activities and supervision activities have historically largely been left to the SRA. So it is not surprising that there was less detail in these sections. More information and supporting evidence was provided in the self-assessment sections on outcomes focused regulation and enforcement, and both sections were comprehensive in content. The current activities that IPS detailed were broadly in line with a number of the positive indicators identified by the LSB for each respective section. For instance, IPS conducts surveys of consumers that complain about CILEX fellows and has a reporting process that is designed to lead to process improvements.
- 7.4. The IPS submission was completed and submitted to the LSB at the end of July 2012. Since then IPS has undertaken work on its draft applications to extend its regulatory scope and has produced a series of actions to assist this process. These activities go up to the end of 2013. The assessment has not considered these activities and is an assessment based on the position of IPS in July 2012 and the evidence provided to support its assessment.
- 7.5. One clear issue is that while IPS has made efforts to understand better the needs and risks faced by consumers who use services provided by CILEX fellows, these efforts have not proved successful. Its approach of getting CILEX fellows who are partners in law firms to distribute surveys to their clients did not produce a sufficient response rate. IPS will have to develop different methods to fill these significant knowledge gaps, particularly considering its ambitions to extend the scope of its regulation significantly.

¹⁰ Smedley (2011), The smaller approved regulators; an assessment of their capacity and capability to meet the requirements of the Legal Services Act 2007, with analysis and recommendations, Legal Services Board
<http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/20110622_sar_report_final.pdf >

- 7.6. IPS identified in its response that significant work is necessary in the areas of risk, supervision, its understanding of consumer needs and the services provided by CILEX fellows. IPS provided the LSB with a series of project plans to constitute its action plan. No dates or milestones within these project plans went beyond February 2013 and the vast majority of milestones included were historical.
- 7.7. The self-assessment did not contain significant evidence of the detailed planning and milestones on the activities that will be necessary if IPS is to successfully pursue all of its stated ambitions. A lack of detailed planning may lead to delay, flaws in delivery, problems in implementation and contested resources. IPS may have completed this more detailed project planning and management but it was not provided to the LSB. The action plan's limited time span is a significant deficiency for its self-assessment. In order to be granted its planned rule change applications, significant project planning evidence and implementation plans will be required.
- 7.8. IPS did not seek independent scrutiny of its submission. The independent board member that reviewed this work explained that IPS was undergoing a development phase and that many of its proposals will be the subject of transparent consultation. She suggested that a more appropriate point for independent scrutiny will be once the development work has concluded and IPS moves to the implementation phase. The LSB recognises that in consulting widely IPS is opening up its arrangements and approach to scrutiny. The LSB also notes that a significant level of supporting documentation was provided. However, the consultations will not cover all aspects of the self-assessment and IPS should not rely on that method alone.
- 7.9. IPS split its self-assessment into two. The first section looked at the regulation of individual authorised persons where it has considerable experience. The second at the developments it is making in entity regulation. The LSB has reviewed and commented on both sections. However, as IPS is predominantly a regulator of individuals our assessment is focused towards the regulation of those individuals.

Outcomes focused regulation

IPS assessment – Individual regulation	Satisfactory
IPS assessment – Entity regulation	Needs improvement and work has started recently

- 7.10. This is one of the more comprehensive sections provided by IPS. The regulator demonstrated in its submission that it has a concise, principles-based code and the Legal Services Consumer Panel recently welcomed the inclusion of the principle to treat everyone equally and fairly within IPS's

regulatory arrangements.¹¹ Additionally, IPS seeks feedback from those that have cause to complain about CILEX fellows (as well as those who are the subject of a complaint). The findings from these questionnaires feed back into IPS's considerations about the outcomes required by the code. This sort of feedback mechanism is a simple activity that can help regulators understand the outcomes consumers want and refine their processes to achieve those outcomes - although by its nature it is limited because it only covers those who have a cause to make a complaint about the conduct of a CILEX fellow and exercise their right to complain about that individual.

- 7.11. IPS provided a consumer engagement action plan for 2012 which reflected some of the efforts IPS has undertaken to get a greater understanding of the needs of consumers who use services provided by CILEX fellows. An action plan for consumer engagement for 2013 was not provided and there was no explanation as to how the regulator determines its consumer engagement priorities. During 2012 IPS reports that it made efforts to find more details about consumers, however this has proved difficult. A survey of consumers who had used firms with CILEX partners yielded a disappointing response rate. No specific details on the work, its scope or sample size were provided to aid our evaluation. Alternative methods may need to be considered in future to gather information on consumers who use legal services from IPS authorised people.
- 7.12. Despite these welcome efforts, IPS did not provide evidence that it currently has reliable data from a range of sources about how all groups of consumers need and use the legal services IPS regulates. The regulator did indicate that it would be using its first tier complaints handling survey, conducting a review of literature and seeking data from the Legal Ombudsman to support its understanding of consumers. These activities appear appropriate. However, a number of these activities are focused only on consumers that have exercised their right to complain. This cohort is a useful source of information, however, it is inevitably skewed away from specific types of consumers (for instance only individual consumers, micro businesses and small charities may complain to the Legal Ombudsman) and it only captures those willing to complain formally (which may exclude the most vulnerable). IPS will have to be innovative in how it approaches activity to capture evidence about all groups of consumers to demonstrate that it has regulatory arrangements that will deliver the outcomes consumers require in the areas it currently regulates and for the areas it wishes to regulate.
- 7.13. Its consultation on CPD proposes an approach to deliver a CPD system that concentrates on output measures, such as how development activities have changed practices, rather than a solely inputs-based approach that focuses on mandating a certain amount of CPD hours. Such a proposal reflects a more outcomes focused approach to regulation and is welcomed, providing it is supported by appropriate monitoring and enforcement.

¹¹ Legal Services Consumer Panel (2012), Consumer Impact Report 2012, Legal Services Consumer Panel. <http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/CIR%20final%20report%20pub%20on%20website%202012%2008%2002.pdf>

Main LSB observations
IPS has a positive story to tell about this regulatory standard. However, it lacks information on consumers and evidence on the services provided by those it regulates. It will need to demonstrate that it has addressed such deficiencies in order to be granted the rights to regulate a wider scope of legal activities.
LSB assessment: Undertaking improvement and work is well underway ¹²

Risk assessment

IPS assessment – Individual regulation	Satisfactory
IPS assessment – Entity regulation	Needs improvement and work has started recently

- 7.14. IPS has recently published a consultation and research document on risk-assessing CILEX fellows. This is welcome, although little detail has been provided on the timelines for implementation of the proposals or the technical details of how the risk assessment process will operate in practice.
- 7.15. At present there is an annual declaration process which IPS claims ensures that members remain fit to be CILEX fellows. However, IPS did not provide details of any activities to check compliance with the declaration requirements. The regulator uses the regular feedback between IPS staff who handle conduct complaints to ensure that IPS is aware of risks in the market. This is supplemented with analysis of first tier complaints handling data and the feedback questionnaires from complainants and those complained about. These activities are welcomed, though they remain largely reactive in nature; IPS is looking at risks that have materialised rather than risks that may emerge. They provide part of the picture since analysis of the characteristics of individuals, firms or the activities that are being complained about may provide indications of broader market issues, but only if careful analysis is conducted. No evidence was provided to suggest that this was the case. This may be appropriate for individuals within entities regulated by another approved regulator, but it is unlikely to be sufficient if IPS were to extend its regulatory remit.
- 7.16. As CILEX fellows largely operate in SRA regulated entities, the LSB would expect that the SRA could be a useful source of information about the risks of the entities in which CILEX fellows work and more general market risks. However, aside from a fairly efficient system of ensuring that complaints about CILEX fellows are transferred to IPS from the SRA, there does not appear to be any other formal information exchange. The firms in which CILEX fellows work may provide important indicators of the potential risk of an individual breaching IPS's regulatory requirements. Risk may be elevated due to the financial and management record of the firm, the culture of the firm, the area of law or the types of consumers served. The sharing of such information

¹² IPS split its self-assessment into two. The first section looked at the regulation of individual authorised persons where it has considerable experience. The second at the developments it is making in entity regulation. The LSB has reviewed and commented on both sections. However, our assessment is focused towards the regulation of those individuals.

between regulators will help IPS understand some of the risk factors to which those they regulate are exposed.

Main LSB observations
IPS has a largely complaints based and reactive approach to risk assessment. This is appropriate for the market it currently regulates. It could make more effort to share information and understand those it regulates and consumers so that they understand the risks in the markets. It will have to undertake such activity if it wishes to extend its scope of regulation.
LSB assessment: Needs improvement and work has started recently ¹³

Supervision

IPS assessment – Individual regulation	Satisfactory
IPS assessment – Entity regulation	Needs improvement and work has started recently

- 7.17. This section contains raises similar issues to the risk section above. IPS largely relies on the SRA to conduct supervision of the entities in which CILEX fellows operate. This is appropriate considering the current market structure. However, we reiterate the point that there would be significant benefits from greater information exchange between the SRA and IPS. As the market changes, the approach of relying on the SRA to carry out supervision may not remain suitable.
- 7.18. IPS did not provide details of any active supervisory activity for CILEX fellows, but considering that its performance was satisfactory. If this was accurate it would mean that IPS has made significant progress embedding the required indicators and using them in day to day practice. But IPS did not use the Oxera framework or any other market analysis tools and this suggests that its supervisory activity is not underpinned by evidence about the different market segments and firms that IPS regulates. This is one of the indicators required by the LSB. The regulator is only now consulting on its risk framework and no existing risk assessment documentation was provided to suggest that formal systems of linking supervisory activity to identified risks are in place.
- 7.19. IPS did state that it assesses its complaints information to determine areas in which its supervision activity may need to be reviewed. The regulator’s response noted that it has only been provided with limited information from the Legal Ombudsman and is seeking additional information. The LSB recognises that more information from the Legal Ombudsman would be helpful, but these statements do not support IPS’s assertion that it has made significant

¹³ IPS split its self-assessment into two. The first section looked at the regulation of individual authorised persons where it has considerable experience. The second at the developments it is making in entity regulation. The LSB has reviewed and commented on both sections. However, our assessment is focused towards the regulation of those individuals.

progress embedding the indicators identified by the LSB, which included the indicator that current supervisory activity is informed by data from the Legal Ombudsman.

- 7.20. The supervisory activity detailed in the regulator’s assessment seems largely concentrated on looking at providers of the qualification and its examination sessions, reviewing applications for entry to the profession and ensuring that each fellow has completed their requisite CPD hours. IPS provided a number of consultations suggesting that this is likely to change and, considering the level of oversight by SRA, the LSB is not overly concerned about risks to consumers from this lack of supervision. However, the assertion that IPS has embedded the activities identified by the LSB to achieve the standard cannot be said to be the case based on the evidence provided.
- 7.21. If IPS wishes to be granted the right to regulate additional reserved legal activities, the LSB would expect to see significant developments in this area alongside developments in its risk policy. The current project plans and consultations do not contain significant information on how the regulator envisages its supervisory policies developing and how they will be resourced.

Main LSB observations
As with the risk section, IPS has a largely complaints based and reactive approach to supervision. This may be appropriate for the market it currently regulates. But is not in line with the LSB’s identified indicators of good practice. It will have to undertake such activity if it wishes to extend its scope of regulation.
LSB assessment: Needs improvement and work has started recently ¹⁴

Enforcement

IPS assessment – Individual regulation	Good
IPS assessment – Entity regulation	Needs improvement and work has started recently

- 7.22. This was a particularly comprehensive section of the self-assessment as it addressed many of the indicators identified. Therefore the LSB has very few concerns regarding IPS’s enforcement approach for CILEX fellows. The LSB welcomes the regulator’s use of surveys of complainants and those complained about. The findings of these surveys are reported on and recommendations made. The sanctions guidance is published and written in plain language. IPS has a number of Key Performance Indicators (KPIs) about timeliness and quality which are reported to the Board. These reports are then published on the IPS website.

¹⁴ IPS split its self-assessment into two. The first section looked at the regulation of individual authorised persons where it has considerable experience. The second at the developments it is making in entity regulation. The LSB has reviewed and commented on both sections. However, our assessment is focused towards the regulation of those individuals.

7.23. Considering its ambitions, it is necessary for IPS to develop an enforcement policy and enforcement processes appropriate for entities as well as any extended practising rights. Such policy and processes must form part of its applications and a consultation is currently underway on a number of proposals. It will be necessary for IPS to set out a clear implementation and action plan for this area once the consultation closes.

Main LSB observations
This is a strong section and the assessment made by IPS is fair. It will have to develop appropriate enforcement processes for entities as well as extended practising rights in line with the LSB's identified standards if it is to fulfil its documented ambitions.
LSB assessment: Good ¹⁵

¹⁵ IPS split its self-assessment into two. The first section looked at the regulation of individual authorised persons where it has considerable experience. The second at the developments it is making in entity regulation. The LSB has reviewed and commented on both sections. However, our assessment is focused towards the regulation of those individuals.

Capacity and capability

IPS assessment – Individual regulation	Good
IPS assessment – Entity regulation	Needs improvement and work has started recently

- 7.24. IPS has appropriate governance procedures and it has been certified by the LSB as complying with the internal governance rules on regulatory independence. The board has a Code of Conduct, appraisal process and has undertaken a skills audit. All this activity is in line with best practice identified by the UK Corporate Governance Code.¹⁶ It has recruited additional staff in order to increase capacity to meet the needs of entity regulation and its other ambitions. It does not have a backlog of complaints and monitors performance of complaints handling against KPIs on timeliness and quality.
- 7.25. The LSB was not provided with the findings of the skills audit and / or the skills sets of the existing and additional staff. This prevented us making a judgement as to whether IPS has appropriate levels of staffing and the required skill sets to deliver the regulatory objectives. However, the LSB will expect to see IPS develop its level of regulatory expertise. The LSB also observes that as a relatively small regulator, IPS will need to consider issues of succession planning and contingency arrangements.
- 7.26. The LSB recognises that IPS has done significant work to try and better engage with consumers. However, it still appears to be the case that IPS does not hold significant information on the consumers who use services provided by CILEX fellows, the services that are provided and the entities in which they operate. It therefore lacks a fully evidence based understanding of the market it regulates.
- 7.27. The LSB is concerned that IPS lacks project planning capacity and the ability to implement such plans. IPS has a significant number of ambitions over the next year and effective project planning and management will be necessary if it is to achieve these ambitions.

Main LSB observations
LSB was not provided with a number of documents that would have assisted our assessment. However, we recognise that IPS is meeting its KPIs on complaints handling and has made efforts to engage consumers. LSB suggests that some attention may be needed in project planning. This is particularly the case considering IPS's extensive ambitions for the future.
LSB assessment: Undertaking improvement and work is well underway ¹⁷

¹⁶ Financial Reporting Council (2010), The UK Corporate Governance Code. <<http://www.frc.org.uk/getattachment/b0832de2-5c94-48c0-b771-ebb249fe1fec/The-UK-Corporate-Governance-Code.aspx>>

¹⁷ IPS split its self-assessment into two. The first section looked at the regulation of individual authorised persons where it has considerable experience. The second at the developments it is making in entity regulation. The LSB has reviewed and commented on both sections. However, our assessment is focused towards the regulation of those individuals.

Action plan

- 7.28. As we have observed above, the documents provided that comprised the action plan did not provide any milestones beyond early 2013.
- 7.29. IPS has significant ambitions. In order to achieve those ambitions it will have to demonstrate that it has the ability to plan and deliver projects effectively. The current submission displays little evidence of this.

Date	Action	Regulatory standard area
May 2011 to March 2012	Work based learning scheme project. Including creation of scheme rules, consultation with provision and approval by the LSB.	OFR, Risk, Supervision,
October 2011 to September 2012	Practice rights applications stages 1 to 4. Includes: Market research, outcomes focused regulation, consumer redress schemes and qualification and competence requirements and ongoing communication	OFR, Risk, Supervision, Enforcement, Capacity and Capability
June 2012 to October 2012	Practice rights applications stage 5: Production of application and submission of application to LSB	OFR, Risk, Supervision, Enforcement, Capacity and Capability
No date provided	Practice rights applications stage 7: Implementation of the rights.	OFR, Risk, Supervision Enforcement, Capacity and Capability
January 2012 to October 2012	Immigration regulation and accreditation project plan. Application will be made to LSB in October 2012.	OFR, Risk, Supervision, Capacity and Capability
February 2012 to February 2013.	CPD working group project. Work includes research, consultation, implementation planning and development of rules. Application to be made to the LSB in February 2013	OFR
January 2012 to December 2012	Consumer action plan 2012: contains series of actions planned by IPS to improve consumer engagement. Major work planned in complaints, information gathering and data sharing. Also timetable is a literature review of consumer expectation and experiences in the legal sector.	Not cited but relevant

8. The Chartered Institute of Patent Attorneys / The Institute of Trade Mark Attorneys / Intellectual Property Regulatory Board

Context and overview

- 8.1. The Intellectual Property Board (IPReg) was established in 2010 by two membership bodies, the Chartered Institute of Patent Attorneys (CIPA) and the Institute of Trade Mark Attorneys (ITMA) to carry out delegated regulatory functions. IPReg currently has 1,745 registered patent attorneys and 639 registered trade mark attorneys as members and regulates 185 entities.
- 8.2. To 31 December 2012, IPReg has a budget of £508,000 and charges practising and non-practising attorneys varying fees up to a maximum of £280 each year depending on their level of business activity. In 2010, around 80% of trade mark attorneys and 70% of patent attorneys worked in private practice, with 13% and 25% respectively working as in-house agents. The remainder worked as sole traders.¹⁸
- 8.3. Since 2010, IPReg has been developing a set of arrangements to regulate both trade mark and patent attorneys, following some initial delays caused by independence issues. While the regulator continues to build its outcomes focused approach to regulate both individuals and entities, it is also planning an application in the near future to become designated as a licensing authority.
- 8.4. As there are currently no restrictions on business ownership and mixed practices for trademark and patent attorneys, many IPReg entities are in fact already ABS. To provide a clear framework for these entities to practise, IPReg is seeking to become a licensing authority. For this reason, IPReg's self-assessment is based around an assumption that it will need to alter its arrangements in order to regulate ABS.
- 8.5. These arrangements will need to show that as a licensing authority, IPReg is competent and has sufficient resources to perform its new functions effectively from the day that it becomes designated. While these arrangements do not need to be in place at the time of this self-assessment, the LSB has reviewed IPReg's forward action plan to ensure that it is sufficiently robust.
- 8.6. IPReg was one of only two regulators covered in this report to have its self-assessment scrutinised by an independent third party, which gives us greater confidence in the submission. We also conclude that IPReg has shown an understanding of the importance of an outcomes focused approach and has outlined an action plan to build on the foundations that have already been laid.
- 8.7. Since IPReg submitted its final self-assessment in July, it has issued a questionnaire to entity registrants on a wide range of issues ranging from business and management models to client profiling and has received the majority of responses for registered entities. This information will be central to IPReg in developing an understanding about the needs of consumers and how its regulated community offers services to those consumers.

¹⁸ Smedley (2011), The smaller approved regulators; an assessment of their capacity and capability to meet the requirements of the Legal Services Act 2007, with analysis and recommendations, Legal Services Board
<http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/20110622_sar_report_final.pdf >

- 8.8. IPReg has also been developing its risk matrix, which will provide the basis its new risk management regime. It will also assist IPReg in developing its formal application to become an ABS licensing authority, which is currently being drafted.

Outcomes focused regulation

IPReg assessment	Satisfactory
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- 8.9. In 2010, IPReg issued the first iteration of its new principles based code of conduct for trade mark and patent attorneys. This code, based on 22 professional principles gives guidance to attorneys on how to deliver outcomes for consumers. The IPReg Board has agreed to keep the code under annual review, though it decided that the first such review timetabled for 2011 would have been premature.
- 8.10. While still called rules, the 22 principles and supporting guidance notes in the code are non-prescriptive. They allow practitioners to exercise professional discretion while interpreting them, allowing them a high level of flexibility to innovate in their business activity.
- 8.11. Since the code's introduction, IPReg has given presentations about its content to firms and has also spoken at CIPA inductions for students training to become patent attorneys. While IPReg's evidence is anecdotal, it maintains that understanding of its new code has increased amongst attorneys, based on the reduction of enquiries received about the code. While this is a positive indicator, the LSB will look for solid evidence of the Code's acceptance at the next review of IPReg's regulatory standards.
- 8.12. IPReg has also taken steps to improve communication with both its regulatory community and consumers, with improvements currently being made to its website. Recognising the current website's particular shortcomings for consumers, IPReg is making changes in particular to better communicate procedures about conduct and service complaints.
- 8.13. One area where IPReg plans to gather more information is on consumers in the trade mark and patent markets. Currently, anecdotal evidence suggests that the majority of transactions come from large scale industry for patent work and creative and artistic companies for trade mark attorneys. However, both have a small set of small private clients that are likely to be less well informed than companies.
- 8.14. To gather hard evidence, IPReg issued its regulatory community with a detailed questionnaire in July, the results of which should provide it with evidence about what kind of consumers use trade mark and patent attorney services and how the regulatory community delivers services to them. While the questionnaire was not specifically developed to reflect the Oxera framework, the data should allow IPReg to better understand how consumers behave in the market and identify where IPReg could focus its activities on areas of risk to consumers.

- 8.15. By implementing its code and by seeking to understand more about consumers, IPReg staff and the Board have shown a willingness to develop an outcomes focused approach. IPReg has also provided an amended Code to demonstrate how changes would be made as part of its upcoming application to become a licensing authority.
- 8.16. However, until IPReg has a clear understanding of who its regulatory community is and who they deliver services to, the LSB is unable to agree with its self assessment that its approach to outcomes focused regulation is “satisfactory”. Having said that, IPReg has introduced a principles based code and is making efforts to communicate its benefit to its community and consumers. For this reason, the LSB considers that an assessment of “undertaking improvement and work is well underway – indicators have been introduced but not embedded” is more realistic.

Main LSB observations
IPReg has delivered a principles based regulatory framework that appears to be accepted by those it regulates. However, it lacks information on consumers and evidence about the services provided by those it regulates which will be vital to fulfilling its outcomes focused regulatory approach; it is taking steps to address these deficiencies.
LSB assessment: Undertaking improvement and work is well underway

Risk assessment

IPReg assessment	Needs improvement and work has started recently
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- 8.17. Currently, IPReg is in the process of developing how it will assess risks to consumers in the trademark and patent markets, with a view to licensing ABS in the future. Information gathered from its questionnaire will be reviewed against a risk matrix and will form the basis of a new risk based assessment framework. This work is currently being carried out by an external contractor with expertise in regulatory risk management and is expected to be finalised in the autumn.
- 8.18. This new risk management framework will dovetail with IPReg’s current risk assessment process that reviews records of its own conduct complaints and service complaint reports from the Legal Ombudsman. Based on complaints data and anecdotal evidence, IPReg maintains that there is a very low risk to consumers by the activities of trade mark and patent attorneys. IPReg partly attributes this to the fact that practitioners do not hold significant amounts of client funds, other than disbursements. IPReg points to its clear principle and guidance on how practitioners should manage their finances professionally as a way to reduce potential risks.
- 8.19. IPReg also maintains that most transactions are for “professional” clients through commercial contracts, which reduces the level of risk. Information regarding claims on professional liability insurance cover supports the IPReg

assessment of a relatively low level of risk. However, even if the results of IPReg’s questionnaire support its belief that its market is mainly based on business to business transactions, a small amount of small businesses and individual consumers are likely to be identified. These consumers are unlikely have the same level of sophistication in dealing with either trademark or patent attorneys as larger firms and they are likely to need greater protection.

- 8.20. Once IPReg has completed an analysis using the Oxera Framework, the LSB will expect it to pay particular attention to assessing the risks associated with these consumers and to develop a mitigating response through its risk matrix.
- 8.21. As IPReg is in the process of collecting data to inform its new risk based assessment framework, the LSB agrees with IPReg’s self-assessment of “needs improvement and work has recently started” for this section.

Main LSB observations
IPReg is taking appropriate steps to build its evidence base on risk. It will have to ensure that such evidence is put to appropriate use and is able to identify those providers that pose a higher risk to consumers.
LSB assessment: Needs improvement and work has recently started

Supervision

IPReg assessment	Undertaking improvement and work is well underway
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- 8.22. Mirroring IPReg’s assessment that there is a low level of risk of the trademark and patent markets not delivering outcomes for consumers, it says that it operates a proportionate, principles based approach for the individuals and entities that it supervises. IPReg notes in its self-assessment that, should it be designated as a licensing authority, it would regulate both ABS and non-ABS entities under the same regulatory arrangements. As IPReg currently has no specific policy or procedure on supervision, the LSB is unsure what this would in fact mean and how IPReg would supervise ABS and non-ABS in practice. Similarly, the LSB is unsure how IPReg will manage and direct its recently appointed Board member to act as a Supervisory Officer with no supervisory policy in place.
- 8.23. Currently, IPReg relies on a range of supporting work-streams including CPD, complaints handling and general enquiries to supervise its regulated community. While IPReg encourages individual practitioners to attend CPD courses, it is clear that practitioners themselves should consider what the value of the course will be in terms of delivering value to their clients.
- 8.24. In terms of complaints against individuals regulated by IPReg, the Legal Ombudsman has accepted eight relating to service since it was set up in October 2010; IPReg has received two complaints relating to conduct. IPReg considers this to be a relatively low number given that there are just over 2,300 registered attorneys.

- 8.25. As with individuals, IPReg has no formal supervisory process for entities. It takes the position that as it regulates a small number of entities it is appropriate to respond to complaint handling queries as and when they arise. To raise awareness of good complaints handling, IPReg has also carried out a campaign over the last two years presenting information to nearly one third of all firms.
- 8.26. The LSB considers that a formal supervisory policy and process is essential for any regulator, even if there is evidence that the risks presented to consumers are low. IPReg must therefore develop a more robust approach to supervision, using evidence from its questionnaire and other sources. This should be a priority given its upcoming application to be designated as a licensing authority.
- 8.27. As IPReg’s current approach to supervision is at best ad hoc and does not respond to factors set out in the self-assessment exercise, its score of “undertaking improvement and work is well underway” is overly optimistic. The LSB considers that an assessment of “recognises this needs to be done but work has not yet started” is more appropriate.

Main LSB observations
IPReg has a significant amount of work to develop a supervisory policy that will fulfil the expectations of the regulatory standards framework. The LSB expects that such a policy will be driven both by the development of IPReg’s new risk management framework and its licensing authority application, and so IPReg should prioritise accordingly.
LSB assessment: Recognises this needs to be done but work has not yet started

Enforcement

IPReg assessment	Needs improvement and work has started recently
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- 8.28. Given that IPReg’s enforcement powers are relatively new and have only been used a few times, it remains difficult for the LSB, and indeed IPReg, to make a full assessment of its effectiveness. Also, the LSB has taken into account that IPReg is proposing revisions to its current policy in preparation for its licensing authority application.
- 8.29. IPReg’s current Disciplinary Procedure Rules allow it to have a “first sift” of complaints to ascertain whether a case warrants being heard by the Disciplinary Panel. If a case does go before the Panel, it has a full range of sanctions from a public reprimand to disqualification as a registered person at its discretion. These appear appropriate as there are number of sanctions of differing severity.
- 8.30. In order to refine how the disciplinary rules are used, IPReg is currently developing an enforcement strategy, which in part will set out a policy for complaints made by one attorney against another. IPReg has decided to set out this policy in response to a disproportionate amount of complaints being

made to it by attorneys about other attorneys. The LSB supports IPReg’s focus on client detriment and gross misconduct. However, any revised policy must recognise the usefulness of industry whistleblowers and be able to distinguish between genuine misconduct complaints and more vexatious complaints.

- 8.31. The LSB also notes that IPReg has more than doubled its budget for disciplinary matters for the 2013 calendar year. The LSB would be interested to understand how IPReg expects this funding to be spent and whether it anticipates an increase in the number of hearings in 2013, or plans to use this funding for other uses, such as education.
- 8.32. Given that changes are currently being made to IPReg’s enforcement powers and processes, the LSB agrees that an assessment of “needs improvement and work has started” is appropriate for this section.

Main LSB observations
IPReg is largely untested in this area and so assessment is difficult. It is learning from those enforcement actions it has taken so far. However, in changing its policy, IPReg must ensure that any changes have due regard to the regulatory objectives and the better regulation principles. The LSB also stresses the importance of having policies and guidance published and in plain language.
LSB assessment: Needs improvement and work has started recently

Capacity and capability

IPReg assessment	Satisfactory
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- 8.33. During its development of outcomes focused regulation, the IPReg Board has kept an adequate level of continuity in its membership to ensure that its principles based approach developed in the Code has been maintained.
- 8.34. The LSB welcomes the appointment of a Board member specifically recruited to address consumer engagement and would urge IPReg to ensure that consumer protection is central to all aspects of its work programme. While a focus on consumers is a priority for IPReg, the LSB will want to understand what level of confidence consumers have in the regulator itself. This will be important for IPReg to consider as it develops its understanding of consumers, based on the results of its questionnaire.
- 8.35. The regulator’s Chief Executive and staff have been in post since it was formed and continue to advance its ambitions under the guidance of its Board. As IPReg will soon be making an application to become a licensing authority, the LSB will be seeking assurances that levels of staffing, roles and the skills sets of its staff remain fit for purpose.
- 8.36. On transparency, the LSB welcomes the publishing of IPReg’s business plans, annual reports, consultation responses and answers, board minutes and budgeting information. However, the LSB would encourage IPReg to give consumers more information on its decision making by publishing its Board

papers on its website. The failure to publish these documents was noted by the most recent Legal Services Consumer Panel Consumer Impact report.¹⁹ This change could be considered as a part of IPReg’s current improvements to its website.

- 8.37. Finally, as with other small regulators, the LSB has a concern that the departure of a key figure within IPReg, foreseen or unforeseen, could have a dramatic effect on its day to day operations. While this cannot be avoided, the LSB would suggest that IPReg should ensure that its internal systems and processes are well documented to assist remaining staff in the event of a departure.
- 8.38. Given the changes that IPReg is currently going through and its future ambitions, the LSB considers that its assessment for this section of “satisfactory” is overly optimistic. The LSB, while recognising what is currently in place, considers that the lack of evidence about consumers and how its regulatory community delivers services, means that an assessment of “undertaking improvement and work is well underway” would be more appropriate.

Main LSB observations
IPReg’s approach of hiring consultants for discrete activities (such as developing their risk management framework) appears appropriate for its size and level of resource. However, it still has a significant number of challenges. These include gathering evidence on consumers who use legal services regulated by IPReg, understanding its authorised persons in greater detail and addressing issues of contingency and succession.
LSB assessment: Undertaking improvement and work is well underway

¹⁹ Legal Services Consumer Panel (2012), Consumer Impact Report 2012, Legal Services Consumer Panel.
<http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/CIR%20final%20report%20pub%20on%20website%202012%2008%2002.pdf>

Action plan

- 8.40. The vast majority of the planned activities which are documented in the self-assessment are being undertaken as part of, or in parallel to, the planned application by IPReg to be designated as a licensing authority. The timetable for that application envisages that IPReg will commence licensing in January 2014.
- 8.41. The LSB expects IPReg's licensing authority application to contain a clear implementation plan and to provide more detail on the activities that are detailed in the action plan provided with the self-assessment.

Date	Action
No date provided	Issue of a revised IPReg Code of Conduct (although subject to LSB approval earlier implementation is proposed)
Autumn 2012	Agreement of a risk matrix for entities and risk profiling of those entities (before submission of the application to the LSB in autumn 2012)
Budget provision published in 2012. Review and Implementation in 2013	Resource review and possible restructuring of the IPReg Office
No date provided	Amendments to the registration (licensing) requirements for entities
No date provided	Revision of the IPReg Disciplinary Rules
End 2012	The new IPReg website is expected to be operational
Implemented and completed in 2013	The consumer project will be implemented and completed

9. The Council for Licensed Conveyancers

Context and overview

- 9.1. The Council for Licensed Conveyancers (CLC) was established by the Administration of Justice Act 1985 to regulate licensed conveyancers (currently 1,071 practitioners) and in 2008 gained the right to regulate probate services (currently 68 practitioners). The CLC was designated as the first licensing authority for alternative business structure (ABS) and is currently accepting applications.
- 9.2. To 31 December 2012, the CLC has a budget of £2.922 million. Over this same annual period, licensed conveyancers were required to pay a fee of £400, and entities to pay a practice fee with a minimum contribution of £1,000, tiered in bands from 1.4% to 1.0% of turnover. An estimated 50% of licensed conveyancers work within a solicitor's firm; 5% of licensed conveyancers also hold probate licences. The CLC regulates 221 entities, 49% of which are sole traders, 32% are limited companies and 17% are partnerships²⁰.
- 9.3. The CLC has responded to the regulatory standards exercise for both its responsibilities as an established approved regulator and as a new licensing authority. While showing what the CLC has achieved since the introduction of its outcomes focused regulation, it has more importantly highlighted what remains to be done and has set out a realistic action plan to improve its performance. The LSB agrees with how the CLC has assessed itself in its submission and appreciates its honest and realistic assessment of its regulatory standards.
- 9.4. Clear leadership has been shown in the production of the CLC's submission, which has benefited from the fresh perspective of its interim Chief Executive and support from directors and staff. The CLC has been able to provide evidence to support its assertions well in most places and where it has recognised that it could improve; it has set realistic actions to develop over the coming years.
- 9.5. The LSB notes that the CLC was one of only two regulators that had its self-assessment independently reviewed. The LSB considers that this has increased the quality and level of reliance we are able to place on the self-assessment.
- 9.6. Since the CLC submitted its final self-assessment in July, it has appointed a permanent Chief Executive, Sheila Kumar, who will take up her post in January 2013. While the CLC still intends to follow the action plan submitted with its final self-assessment, the new Chief Executive may wish to re-prioritise the plan in line with the regulator's three year strategy.
- 9.7. The CLC has also completed a review of its Management Information System and has concluded that the majority of its IT infrastructure should be replaced.

²⁰ Smedley (2011), The smaller approved regulators; an assessment of their capacity and capability to meet the requirements of the Legal Services Act 2007, with analysis and recommendations, Legal Services Board
http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/20110622_sar_report_final.pdf

A new system that is be compatible with the CLC’s fit for purpose finance system will be put in place by the end of January 2013.

Outcomes focused regulation

CLC assessment	Undertaking improvement and work is well underway
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- 9.8. In October 2011, the CLC introduced outcomes focused regulation, which involved re-writing its regulatory arrangements. By moving away from its previous prescriptive approach, the CLC introduced a principles based Code of Conduct that responds to the regulatory objectives and professional principles in the Act. The Code, supported by subsidiary principles and specific requirements, is designed to deliver outcomes for consumers.
- 9.9. Given that the Code is only one year old, the CLC considers that its regulatory community is still familiarising itself with the new approach. While the Code is principles based, the CLC’s Handbook still contains rule based “specific requirements”, which have been left in place to assist practitioners through to a full implementation of outcomes focused regulation and to minimise unacceptable risks. The LSB expects the CLC to continue with its undertaking to remove these rules or replace them with further outcomes focused principles, as the regulatory community increases its understanding of the approach. The CLC has undertaken to monitor the growth of understanding to its new approach through its ongoing risk assessment.
- 9.10. The CLC has been proactive in both its consultation on developing its approach as well as providing training and guidance on outcomes focused regulation since its introduction. Staff play a key role in assessing the regulatory community during the licensing process. Applicants are only licensed (and are permitted to remain licensed) if they act in a way that is compatible with the regulatory objectives. The regulator has set up Legal Practice Inspector (LPI) roles, which are dedicated to specific entities, to help them understand and improve outcomes for consumers.
- 9.11. The CLC has agreed to use the Oxera Framework to better understand how consumers behave in the conveyancing and ABS markets and to identify where the CLC could focus its regulatory activity to minimise consumer detriment. This new intelligence gathering project will complement safeguards that the CLC already has in place for consumers through its Client Charter, complaints mechanisms, practitioner indemnity insurance and the CLC compensation fund.
- 9.12. The LSB accepts the CLC’s self assessment of “undertaking improvement and work is well underway – indicators have been introduced but not embedded”. Although the Code of Conduct is in place, further work must be done to reduce and remove unnecessary rules as outcomes focused regulation becomes embedded. Also, the CLC recognises that it has just begun to gather evidence about consumers and needs to see if its approach is sufficiently targeted.

Main LSB observations
The CLC’s self-assessment of this section appears appropriate. The LSB supports the reduction of detailed rules and the shift to outcomes as and when appropriate. The LSB also notes the relative paucity of information on consumers who use legal services provided by licensed conveyancers and supports projects to fill such gaps. The LSB is also supportive of the role that the LPIs play to engage entities directly in delivering the regulatory objectives.
LSB assessment: Undertaking improvement and work is well underway

Risk assessment

CLC assessment	Needs improvement and work has started recently
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- 9.13. The CLC gathers information from a wide range of sources to respond to risks presented by recognised bodies and licensed ABS. From this information, risk profiles are developed and are then assessed against 18 outcomes to determine the ongoing level of contact between the LPIs and the entities. Entities that present lesser risks are rewarded with less rigorous supervision while those that present greater risks are subject to more rigorous inspections.
- 9.14. While LPIs already gather data from a variety of sources, the CLC is committed to finding new ways to identify consumer detriment. The CLC has agreed to use the Oxera Framework approach to segmentation to increase its understanding of the risks presented in the conveyancing and ABS markets.
- 9.15. When entities are first licensed, the CLC checks the information provided against the data it already possesses to build a picture of an entity’s level of risk. The CLC then seeks to mitigate these risks before the entity is licensed to practise. This ensures that the public and consumers are protected without creating prohibitive barriers to license applicants. Applicants must also demonstrate their ability to comply with the CLC’s Code of Conduct.
- 9.16. The main area of note for the LSB is the CLC’s Management Information System (MIS), which is meant to capture a range of risk information and translate risks into outcomes (good or bad) for consumers. This system is central to the CLC’s strategy to understand risks presented by its regulatory community. The CLC has told us that this system is not performing in an optimal manner, leading to inefficiencies. The inefficiencies relate to its ability to interact with other existing IT systems. This reduces CLC’s ability to make the best risk based decisions. A sub-optimal system potentially means that risks are not identified and appropriate supervisory and enforcement decisions are not made. The CLC has put a contingency risk matrix in place to reduce the likelihood of information not being fully considered when analysing and responding to risk; this seems to be an appropriate interim response. Resolving this problem must be seen as a matter of urgency for the CLC.
- 9.17. However, adequate reporting structures are in place to review risk from the LPI to the Board level. The CLC’s Policy and LPI teams frequently liaise and processes are in place to shift resources to respond to high risks. For these

reasons, the LSB accepts the CLC’s score for this section as “needs improvement and work has recently started”.

Main LSB observations
The CLC has an effective and appropriate risk assessment and management processes. However, the current IT architecture is inefficient and requires attention. It is this aspect that requires focus.
LSB assessment: Needs improvement and work has started recently

Supervision

CLC assessment	Undertaking improvement and work is well underway
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- 9.18. The CLC’s Regulatory Policy sets out its approach to its supervisory activity. Levels of supervision are based on the net risk presented by recognised bodies and licensed ABS, which in turn determines activities in the Supervisory Action Plan. As mentioned above, the inefficiencies of the IT architecture may mean that supervisory decisions might not take into consideration all forms of information and therefore address all risks.
- 9.19. LPs take a flexible, principles based approach to supervisory responses; low levels of risk result in lower levels of supervision while higher levels are met with higher levels of monitoring. This approach focuses on protecting the interest of consumers and allows practitioners to be innovative in the way that they deliver their products, while maintaining a high standard of risk management.
- 9.20. The CLC has committed to increase its understanding about different consumer segments within the conveyancing and ABS markets by using the Oxera Framework to improve its supervisory responses.
- 9.21. To access more complaints data, the CLC has signalled that it will work more closely with the Legal Ombudsman as the regulator believes that it is not currently extracting the right information to add value to its risk matrix, and therefore may not be making the best supervisory decisions. While this has been a common complaint amongst regulators, the LSB considers that while the data that Legal Ombudsman provides does not drill down to case level, it is certainly detailed enough for regulators to develop a greater understanding about consumer detriment.
- 9.22. In terms of resourcing its supervisory activity, CLC management have recently introduced a Regulatory Enforcement Decision Action Report, which details LPI caseloads and performance. This allows the CLC to distribute high risk cases across its team and prevent a large number of high risk entities being managed by one LPI. As a result, each LPI is able to dedicate sufficient resources to each of their entities to ensure that in turn, the entities manage risks and deliver outcomes for consumers.
- 9.23. The LSB agrees with the assessment that it is “undertaking improvement and work is well underway – indicators have been introduced but not embedded”.

Main LSB observations
The CLC’s LPIs undertake a significant number of supervisory visits during a calendar year and undertake these with reference to identified risks. Improvements in its IT architecture will allow it to undertake supervision in a more efficient and less resource intensive manner.
LSB assessment: Undertaking improvement and work is well underway

Enforcement

CLC assessment	Undertaking improvement and work is well underway
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- 9.24. The CLC’s Enforcement Policy sets out three levels of action that can be taken against licensed conveyancers, recognised bodies and licensed ABS bodies if they fail to uphold either the Client Charter or the CLC’s Handbook. These include determinations made by LPIs or Directors, determinations and appeal decisions made by an Adjudication Panel and other determinations and appeals. This approach allows the CLC to respond in a way that is appropriate to the severity of the breach. The LSB supports the CLC’s preference to try to resolve low level breaches informally through the LPIs. Evidence used for enforcement proceedings is explicitly outcomes based and CLC staff have a range of delegated powers to enable less formal enforcement actions to be taken quickly, controlled by a clear authorisation programme.
- 9.25. The CLC uses a range of deterrents, ranging from a reprimand through to a termination of a licence or practising certificate; the CLC also commits to publishing all of its determinations to promote transparency, although it has not yet had the need to. The recently introduced CLC Regulatory Enforcement Decision Action Report, as well as being used to manage case distribution to LPIs, also provides a documented audit trail of actions and catalogues evidence concerning risks to outcomes, actions used under delegated authority, recommendations for disciplinary proceedings and interventions. This report has increased the management’s ability to make clear, transparent, informed decisions.
- 9.26. The LSB notes that the CLC has not only aimed to make its enforcement processes clear and proportionate, it is also trying to show that it offers value for money, by monitoring the cost of enforcement cases. The CLC has assessed itself as “undertaking improvement and work is well underway – indicators have been introduced but not embedded” for enforcement. As with supervision, the LSB considers that this assessment is realistic, but notes that the current MIS system may be reducing the CLC’s level of efficiency in this area.

Main LSB observations
The CLC has a flexible approach to enforcement. Minor issues are picked up through supervision and more significant issues escalated to formal enforcement activity. However the CLC needs to improve the accessibility and transparency of its approach.
LSB assessment: Undertaking improvement and work is well underway

Capacity and capability

CLC assessment	Undertaking improvement and work is well underway
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- 9.27. The CLC, unlike most of the approved regulators, does not have a representative arm, which means that it has the benefit of being entirely independent. Its Board has a lay majority, and many come from a consumer focused background, which demonstrates a commitment to delivering outcomes focused regulation. The regulator operates four committees, which have clear remits and work well with the Board, SMT and staff structure, as recognised in the 2011 Smedley Report.²¹ Staff are involved in business and strategic planning and the CLC benchmarks itself against others, to ensure that its standards are robust and stand up in the wider regulatory community. Currently the CLC has an interim chief executive. Its new permanent Chief Executive takes up her post in January 2013 and will be full time from March
- 9.28. However, the LSB notes that while the CLC may have good corporate governance processes in place, it falls behind others regulators in terms of transparency at a corporate level. The results of the recent Legal Services Consumer Panel research into consumer impact shows that consumers are unable to access information about the CLC's strategic direction and decision making as it does not publish its Board papers, Board minutes or submissions to public consultations online.²² The CLC could easily make these changes to become more transparent.
- 9.29. Given that information management is essential to the effective running of a regulator, the inefficiencies present in its IT architecture need to be addressed. A more efficient system will provide assurance that decisions across the organisation are based on the best possible information. The CLC also faces the challenge of building evidence about consumers and determining what good outcomes look like for them. To do this, the CLC will need to develop an effective approach to using the Oxera Framework alongside of pieces of research.

²¹ Smedley (2011), The smaller approved regulators; an assessment of their capacity and capability to meet the requirements of the Legal Services Act 2007, with analysis and recommendations, Legal Services Board

<http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/20110622_sar_report_final.pdf >

²² Legal Services Consumer Panel (2012), Consumer Impact Report 2012, Legal Services Consumer Panel.

<http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/CIR%20final%20report%20pub%20on%20website%202012%2008%2002.pdf>

- 9.30. Communicating effectively with consumers must also be a priority. Improvements could certainly be made to the CLC’s website to make it more accessible to consumers. As highlighted above, more strategic and decision making information could appear on the CLC’s website. Also, information could be made clearer about how the wider legal services complaints system works, and what consumers with specific service or conduct complaints can do if they are experiencing problems with practitioners.
- 9.31. Given the above concerns, and the others assessments, the LSB accepts the CLC’s assessment of “undertaking improvement and work is well underway – indicators have been introduced but not embedded”, but would highlight that weaknesses in risk assessment, supervision and enforcement are amplified in the capacity and capability section. However, the CLC understands where problems exist and has laid out clear action plans to address them.

Main LSB observations
The CLC should prioritise the development of a more efficient and modern IT architecture. It should also consider what improvements it could make in its understanding of consumers and consumer engagement. The LSB also notes that issues of succession and contingency remain relevant for the CLC as they do for all the regulators in this report.
LSB assessment: Undertaking improvement and work is well underway

Action plan

- 9.32. The action plan provided by the CLC is the most comprehensive and covers a greater period of time than the other regulators considered by this report. The LSB welcomes this, although as one of the largest smaller regulators, this level of detail and project management is expected. Because the CLC has provided a more detailed action plan, the LSB expects to be able to adopt a more hands off approach to oversight of the CLC and will be able to focus on monitoring that it is completing the actions as planned rather than taking a more intensive approach. While this action plan was agreed at the time of publication, the LSB is mindful that the in-coming new Chief Executive may alter the regulator’s priorities moving forward.

Action	Intended Outcome	Timeframe
Outcomes Focused Regulation		
Thematic review of OFR/structural internal review process of assessment of OFR	OFR delivers what it intends, promotes the regulatory objectives & Better Regulation Principles, adopts and develops best regulatory practice and evolves as the market requires	Work identified but not yet begun Watching brief - ongoing Formal review - Q4 2016
Review financial protection arrangements	Confident that arrangements promote the consumer interest	Work identified but not yet begun Q4 2013

Action	Intended Outcome	Timeframe
Apply and expand consumer research programme	Regulatory arrangements and our application of them are informed by consumer experience and perception Regulatory risk approach informed by a wider evidence base	Work identified and work recently started Q4 2013
Repeat stakeholder survey	Regulatory arrangements and our application of them are informed by stakeholder survey	Work identified but not yet begun, although exact scope To be determined
Devise and implement regulatory approach for regulated providers of will-writing services (presuming they become reserved legal activities)	Regulatory arrangements and approach to these activities promotes consumer and public interest	Work identified and work recently started Dictated by timing and finding of LSB redetermination
Revisit proposed regulatory arrangements for litigation and advocacy	Consumer and public interest sustained in all regulated services	Work underway To be determined: re-application for designation dictated by s.69 work
Implement regulatory arrangements for Special Bodies (subject to extension of scope)	Consumer and public interest sustained in all regulated entities	Dictated by timing and finding of LSB determination
Risk assessment		
Gather increased, and targeted, feedback and insight	Regulatory risk, policy and consumer education approach informed by a wider intelligence base	Work recently started Ongoing
Review our approach to risk assessment	High risk entities are identified and targeted at the earliest possible opportunity	Work well underway Q4 2012
Thematic review of ABS specific risks	Regulatory risk approach evolves, informed by developments in the ABS market	Work identified but not yet begun Q3 2013
Procure information from regulated community on consumer types and referral arrangements	Providing a base for applying Oxera Segmentation Model to regulated markets	Work identified but not yet begun Q4 2012
Supervision		
Interrogate Distance Learning and College pass rates	Identify and mitigate differentials in achievement rates	Q3 2013
Review the structure of our regulatory fees	Regulatory fees reflect the risk presented by an entity/activity	Q4 2014
Enforcement		
Simplify the disciplinary, reviews and appeals processes	Increased parity of process	Work identified but not yet begun Q4 2013

Capacity and Capability		
Build capacity and capability in our key development areas	Regulatory arrangements for, and approach, to all activities promotes consumer and public interest	Work underway Ongoing
Review IT/information systems	Systems meet our knowledge management requirements Increased online delivery of regulatory activities	Work recently started but exact detail to be determined
Review key arrangements for management of people (including pay and grading structure, recruiting arrangements and staff development)	Staff, job roles and knowledge base are appropriate	Work recently started Q4 2013
Performance review focus upon behaviours	CLC behaviours are embedded across the organisation	Work underway Q4 2013
Apply Communications and Marketing Strategies	Growth in student and regulated communities and turnover	Work underway Ongoing
Continue to work with major lenders	Establish a consistent and favourable position with regard to panel management	Work well underway Ongoing
Publish/disseminate research findings	We inform public policy and debate in the consumer and public interest	Work identified but not yet begun Ongoing

10. The Faculty Office

Context and overview

- 10.1. The Faculty Office is the second smallest approved regulator with 858 regulated approved persons. It was established by statute and does not have a representative function. The Faculty Office is able to regulate providers of notarial activities, probate activities, reserved instrument activities (conveyancing) and the administration of oaths. It regulates 858 notaries. The Faculty Office has an annual budget of £291,209, it also operates a separate contingency fund for exceptional expenditure on disciplinary matters. Notaries are required to pay an annual practicing fee of £400 and a further contribution of £40 to a contingency fund. Further fees are also charged for admission to the profession.
- 10.2. There are two distinct types of notaries: notaries and scrivener notaries who have language skills and knowledge of foreign jurisdictions. There are many more notaries than scrivener notaries and they are often individuals who are also solicitors; the Faculty Office estimates that 80% of all notaries are also solicitors.²³
- 10.3. Notaries that are also solicitors provide their services, aside from any notarial activities, under the regulatory oversight of the SRA. This includes the regulatory activities of conveyancing and probate. For those notaries that are not solicitors and offer conveyancing and probate activities, these services, along with their notarial activities, are regulated by the Faculty Office.
- 10.4. The LSB recognises that size and resources can be an issue for approved regulators. However our principal concern is that consumers who use or need legal services, and the broader regulatory objectives are protected from unacceptable levels of risk and that providers are subject to the appropriate level of regulation according to their risks. The number of those authorised and the specificity of the services provided can act to reduce risk, however it does not necessarily follow that regulators can do less simply because they regulate fewer authorised people.
- 10.5. The Faculty Office has taken steps to understand the services offered by its regulated community and has introduced specific rules to address risks identified by other parties. However, it did not demonstrate in its self-assessment that it has systematic risk management and identification mechanisms. The response suggested that it only has reactive supervision mechanisms. It does not appear to have a detailed understanding, and does not intend to acquire any, of the consumers who use the services provided by those it regulates.
- 10.6. Despite these issues, the Faculty Office considers itself to have made significant progress embedding the different indicators identified by the LSB and using them in day to day working practice. Specifically in the area of enforcement, the Faculty Office felt that all the indicators were already

²³ Smedley (2011), The smaller approved regulators; an assessment of their capacity and capability to meet the requirements of the Legal Services Act 2007, with analysis and recommendations, Legal Services Board
<http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/20110622_sar_report_final.pdf >

embedded. These ratings were not supported by the evidence provided with the self-assessment and the LSB has little confidence that it is the case that the Faculty Office has made significant progress to embed the indicators.

- 10.7. The supporting evidence provided only consisted of references to the regulator’s existing rules and a copy of its practising certificate fee application form. The action plan consisted of one clear action and an assertion that no further actions were considered necessary at the current time. However, the Faculty Office did note that, in line with the principles of better regulation, its existing regulatory arrangements will be kept under review. This paucity of evidence means the LSB is unable to concur with the Faculty Office’s assessment that it has made significant progress to embed the indicators identified by the LSB for each of the regulatory standards areas.
- 10.8. The Faculty Office is required to act, as far as reasonably practicable, in a manner compatible with all of the regulatory objectives and it has to have regard for the better regulation principles. The LSB will expect the Faculty Office to take its responsibilities seriously and to address current shortfalls.
- 10.9. The LSB remains concerned that the Faculty Office has not engaged with some of the other implications of the Act. For instance, the Faculty Office’s regulatory regime applies only to individuals; it does not regulate entities. However, when the transitional provisions are lifted then entities that provide notarial services, such as scrivener firms, will need to be regulated by an approved regulator that regulates entities. No details of any action to address this issue were detailed. This is a significant omission.
- 10.10. The self-assessment was submitted to the LSB at the end of July 2012 and so necessarily relates to activities already completed and / or planned at that time. Since submission the Faculty Office is actively pursuing the introduction of a risk based inspection regime. It expects that this will be delivered during 2013. The Faculty Office is also developing work to better understand consumers of services from notaries. It hopes that this work will be launched during autumn 2013.

Outcomes focused regulation

Faculty Office assessment	Satisfactory
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- 10.11. In its self-assessment introduction, the Faculty Office states that it would be difficult to research and collect data about consumers who use notarial services because consumers’ need for such services is infrequent and may only occur once in a lifetime. Because of this, the Faculty Office considers that it would be disproportionate for it to undertake research into consumers who use notarial services and that such research would simply result in costs being passed onto the profession and consumers. This is not acceptable; existing regulatory research indicates that infrequent purchasers are at much higher risk of exploitation due to information asymmetries. As the research by Decker

and Yarrow (2010)²⁴ shows, the strongest justification for regulation is these infrequent purchasers of legal services. The Faculty Office's submission did not provide information on any other consumer engagement work or research that has been carried out by, or with the support of, the Faculty Office. This is consistent with the recent findings of the Legal Services Consumer Panel.²⁵

10.12. Considering the apparent lack of evidence about consumers who use notarial services and an unwillingness to collect any, it is difficult to understand how the Faculty Office can claim in the self-assessment that it has embedded the indicators identified by the LSB and uses them in its day to day activities. This would imply that its existing regulatory arrangements deliver the outcomes that consumers need, that there is clear evidence and analysis to justify any detailed rules and that it has high quality, up to date, reliable evidence from a range of sources about how all groups of consumers need and use the legal services the Faculty Office regulates. Very little in the regulator's self-assessment suggests that it possesses such evidence or carries out activities to support such a position. The LSB drew this issue to the Faculty Office's attention during its feedback meeting with the regulator has seen little revision or reconsideration in the final version.

10.13. The Faculty Office asserted in its assessment that its advisory board looked at the issue of outcomes focused regulation in detail. This Board accepted that it remains a predominately rules based system of regulation but also that the number and nature of rules are considered appropriate and proportionate to the nature of the notarial profession. The board considers that the spirit, tenor and intent of the rules were in line with an outcomes focused approach. The Faculty Office therefore determined that it would retain its existing rules and argued that the rewording of the rules would impose an unnecessary and disproportionate burden on its regulatory community. The LSB was not provided with any details on the membership board,²⁶ its terms of reference for this work, any paperwork from its meetings or any documents containing analysis of the Faculty Office's regulatory arrangements to support this conclusion.

10.14. The Faculty Office observed that the Notarial Practice Rules do contain guidance as to best practice for consumer protection and this is welcome. However the most recent Legal Service Consumer Panel Consumer Impact Report observes that the Faculty Office is the only approved regulator with no reference to consumer vulnerability in its code of conduct.²⁷ The Faculty Office has accredited a CPD scheme by the Society of Notaries that includes

²⁴ Decker and Yarrow (2010), Understanding the economic rationale for legal services regulation, Regulatory Policy Institute, <http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/economics_of_legal_services_regulation_discussion_papers_publication_final.pdf>

²⁵ Legal Services Consumer Panel (2012), Consumer Impact Report 2012, Legal Services Consumer Panel. <http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/CIR%20final%20report%20pub%20on%20website%202012%2008%2002.pdf>

²⁶ It is highly probable that the advisory board is constituted in line with the Notaries (advisory board) Rules 2008. This means the board should consist of two practicing notaries, the Secretaries of the Notaries Society, the Secretary of the Scrivener Notaries and two non-notaries (one of whom is chair). See <<http://www.facultyoffice.org.uk/Notaries4.24.html>>

²⁷ Page 46, Legal Services Consumer Panel (2012), Consumer Impact Report 2012, Legal Services Consumer Panel. <http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/CIR%20final%20report%20pub%20on%20website%202012%2008%2002.pdf>

aspects of the BSI standard for consumer vulnerability (BS 18477:2010) and is strongly recommending notaries to undertake this CPD.

- 10.15. The Faculty Office's submission committed to keeping this matter under review and stated that it will review the Notary Practice Rules 2009 with the intention of bringing an application to the LSB for revisions in early to mid-2013. This is the only concrete action detailed in the self-assessment. The LSB have been informed that these revisions will incorporate the principles of better regulation into the code of conduct for notaries.

Main LSB observations
The Faculty Offices did not provide evidence that supports its assessment. It lacks information on consumers who use notarial services. It is only now developing plans to collect information on consumers. The existing arrangements remain heavily rule based and the Legal Services Consumer Panel has concluded that its code does not adequately address the needs of consumers, particularly vulnerable consumers. However, steps are being taken to encourage notaries understand consumer vulnerability.
LSB assessment: Recognise this needs to be done but work has not yet started

Risk assessment

Faculty Office assessment	Satisfactory
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- 10.16. The Faculty Office asserted that the nature of a notary's work, whilst specialist, is considered to be low risk because notarial activity primarily involves ensuring that the individual presenting themselves is who they claim to be and that they understand the purpose and effect of the document they are signing. No supporting evidence was provided to support this assertion. There was no discussion of potential risks that are likely to be present in such activities. This includes ID fraud, other fraud, money laundering or the operation of cross border transactions of significant scale. There is an increasing incidence of ID fraud and so we find such omissions surprising.

- 10.17. The Faculty Office recognises that conveyancing and services related to probate activities are higher risk. To understand the extent of this risk the Faculty Office carried out a survey of notaries to identify those that conduct such activities under the regulatory oversight of the Faculty Office. The regulator has also introduced additional regulatory requirements for those notaries offering such services and holding client money. This includes the completion of additional specific CPD, extended supervision for new notaries and a requirement to produce an accountant's report annually and provide a copy of this to the Faculty Office. Recently the Faculty Office has also compelled notaries to purchase fidelity insurance to ensure that clients are not disadvantaged in the event of fraud or failure to account.

- 10.18. The Faculty Office does not have a written risk assessment and did not provide any supporting evidence to suggest that it has any formal risk management tools or processes. However, it asserts that the lack of such

formal policies does not imply that it does not take seriously its responsibilities to identify potential risks to consumers arising from the activities of those it regulates.

Main LSB observations
The submission demonstrates that the Faculty Office is able to react to elevated risks. However, the apparent lack of any systematic or formal approach to risk identification and mitigation is concerning. The absence of such fundamental tools of risk assessment suggests that the Faculty Office has not made progress embedding the indicators identified by the LSB.
LSB assessment: Recognise this needs to be done but work has not yet started

Supervision

Faculty Office assessment	Satisfactory
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- 10.19. The Faculty Office does not have a systematic approach to the direct supervision of notaries. It provided no evidence to suggest that it knows who the consumers who use notaries are or that it understands the risks present in the market for their services. The regulator has the right to inspect records, but it says that this power should be used infrequently. It did not provide any information as to whether the power has been exercised recently or what would trigger the use of the power.
- 10.20. The Faculty Office does receive accountants' reports from notaries that hold client money. This is a targeted intervention to address an identified risk. However, no information was provided on what is done with the information gathered from these reports. If nothing is done with the reports then it is possible to conclude that the requirement serves little purpose.
- 10.21. The Faculty Office also cites the requirements for newly admitted notaries to undergo supervision of their files by existing notaries as an example of a supervisory activity targeted at identified risks. This is because the Faculty Office considers that those who are newly admitted and are carrying out probate and conveyancing pose the most risk. Notaries already admitted and conducting this work are not subject to any additional supervisory requirements. No evidence was provided to give a rationale as to why such notaries need not be subject to supervision. Evidence gathered by the LSB as part of its will writing work suggests that those who provide such services infrequently are more likely to produce wills that are faulty. The LSB does not see any compelling reason why this logic should not apply equally to notaries who have been qualified for some time and who provide probate services and conveyancing services infrequently.
- 10.22. Since submission of the self-assessment the Faculty Office has agreed in principle to introduce risk-based inspections. They are currently developing more detailed proposals to implement such inspections and expect to introduce a framework during 2013.

11.

Main LSB observations
The Faculty Office provided little information about how complaints data and other sources of data influence risk. Without further details it is difficult not to conclude that the supervision conducted by the Faculty Office is reactive and while some elements are related to identified risks, there does not appear to be a systematic approach to supervisory policy. LSB cannot therefore agree with the Faculty Office's assessment for this section. However, we do welcome the recent developments to introduce inspections based on risk.
LSB assessment: Recognise this needs to be done but work has not yet started

Enforcement

Faculty Office assessment	Good
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- 11.1. The Faculty Office assessed itself as having embedded all the indicators into its day to day practice. Little evidence was provided to support this assessment. The regulator did cite a significant rise in first tier complaints since the introduction of the first tier complaints handling and signposting requirements²⁸ – 24 complaints in the year since the introduction, compared to 34 complaints over the five years prior to introduction. The Faculty Office noted that two of these complaints were related to the conduct of the notary and so were referred to the Faculty Office. No further mention was made of the outcome or progress of these complaints.
- 11.2. The Faculty Office also noted that, on average, one conduct complaint a year resulted in a hearing before the Commissary of the Court of Faculties. Again, no details were provided on historical complaints, the outcomes or how feedback has led to improvements in the enforcement processes. There are no published policies or guidelines to help individuals understand the criteria that the Faculty Office uses in deciding to take action. The only information appears to be the rules; these are legalistic in style and so it is questionable whether these are understandable by individuals wishing to make a complaint.

Main LSB observations
The Faculty Office has no published policies or guidelines and relies solely on existing rules that are not in plain language. Therefore the Faculty Office has not embedded all the requirements of this regulatory standard so LSB cannot support its assessment.
LSB assessment: Recognise this needs to be done but work has not yet started

²⁸ This are the requirements that require all individuals and entities regulated by approved regulators to notify clients in writing their right to make a complaint and how and to whom this can be done. This includes notifying them of their right to complain to the Legal Ombudsman at the conclusion of the complaint process. See <
http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/lfb_first_tier_complaints_handling_requirements_and_guidance_final.pdf>

Capacity and capability

Faculty Office assessment	Satisfactory
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- 11.3. The response detailed the staffing and resourcing arrangements of the Faculty Office. The Faculty Office has staff that have experience in the areas of law that it is responsible for regulating and its linkage with an existing law firm allows for flexibility in staffing and provides administrative support and facilities. The submission did not suggest that the organisation has regulatory experience that can embed best regulatory practice from legal regulation and other industries.
- 11.4. The LSB does not consider that the response addresses the issue of consumer focus and consumer engagement. As has been covered elsewhere, the Faculty Office does not think it proportionate to gather evidence on consumers who use notarial services. The regulator also argued that a notary's responsibility is to the transaction rather than directly to the consumer. The LSB does not consider that this approach is consistent with the regulatory objective requiring approved regulators to protect and promote the interests of consumers. The LSB also found this argument unconvincing. The provision of all legal services involves a number of different responsibilities, for instance when exercising a right of audience the advocate has a duty to the court as well as the individual that he or she is representing. But it is the consumer that is required to pay the costs of the services of a notary, and the consumer that will bear the burden if the notary fails to carry out the agreed instructions, misinterprets a document or conducts themselves improperly.
- 11.5. The recent Legal Services Consumer Panel Consumer Impact report²⁹ observes that the Faculty Office is the only regulator that has no reference to consumer vulnerability in its code of conduct and is one of the least transparent of all the approved regulators.
- 11.6. The Faculty Office has since indicated that it intends to develop proposals for consumer engagement and is encouraging notaries undertake training to make them aware of consumer vulnerability issues.

Main LSB observations
The Faculty Office has appropriate resources and experience in the areas of law it regulates. It lacks wider regulatory experience. It has severe deficiencies in consumer understanding and consumer engagement.
LSB assessment: Recognise this needs to be done but work has not yet started

Action plan

- 11.7. As detailed above, the Faculty Office's action plan contains only one action with a milestone or any specific details. The action plan does not contain any

²⁹ Legal Services Consumer Panel (2012), Consumer Impact Report 2012, Legal Services Consumer Panel. <http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/CIR%20final%20report%20pub%20on%20website%202012%2008%2002.pdf>

detail regarding the impact that the lifting of the transitional provisions may have on the Faculty Office's regulatory framework. It also does not take into account any work that may be required when the LSB completes its work on will writing and estate administration. The failure to provide such information does not give the LSB confidence that the Faculty Office has the necessary capacity and capability to properly fulfil its statutory responsibilities.

- 11.8. The LSB expects the Faculty Office to consider carefully how it responds to this report of consumers who use services provided by notaries and the risks they face.

Date	Action	Regulatory standard area
Ongoing	Faculty Office and Advisory Board to keep the matter under review and to look at ways of introducing an overarching provision which would specifically introduce a requirement that any rules and regulations made by the Master are read and interpreted in line with the principles of better regulation.	Outcomes Focused Regulation
Early to Mid 2013	Review Notary practice rules 2009 with the intention of making an application to the LSB for changes.	Outcomes Focused Regulation
Ongoing	In line with principles of better regulation area will be kept under review.	Risk assessment
Ongoing	In line with principles of better regulation area will be kept under review by the Master and his senior team	Supervision
Ongoing	In line with principles of better regulation area will be kept under review.	Enforcement
Ongoing	In line with principles of better regulation area will be kept under review to ensure that the Faculty Office maintains its capacity and capability to deliver the regulatory objectives	Capacity and capability.

Annex A: The consultation, the LSB's powers and the assessment process

Consultation

1. In May 2011 the LSB published a consultation paper entitled *Developing Regulatory Standards*. The paper discussed how the LSB would assess whether the regulatory standards and performance of the approved regulators were consistent with the regulatory objectives in the Act and whether they act in a way that is compatible with the principles of better regulation and best regulatory practice.
2. To do so, the LSB consulted on what it considered to be the constituent parts of good regulation and the standards and criteria against which it would assess the approved regulators' performance.
3. These four criteria were:
 - an outcomes-driven approach to regulation that gives the correct incentives for ethical behaviour and has effect right across the increasingly diverse market
 - a robust understanding of the risks to consumers associated with legal practice and the ability to profile the regulated community according to the level of risk
 - supervision of the regulated community at entity and individual level according to the risk presented
 - a compliance and enforcement approach that deters and punishes appropriately.
4. It is also important that the regulators have the capability and capacity to deliver the regulatory standards and adhere to other relevant statutory responsibilities.
5. The LSB consulted for a 12 week period which ended on 12 July 2011 and received 10 written consultation responses. The submissions and our decision document have been published on the LSB website.³⁰

The LSB's powers

6. We consider that the LSB must be able to assure itself that the approved regulators are carrying out their functions in ways that are compatible with the statutory requirements in the Act and that they are not allowing, or risking, unacceptable consumer detriment in the markets they regulate. In addition, the requirement on the LSB and the approved regulators to have regard to the principles of better regulation and best regulatory practice (sections 3 and 28 of the Act) provides a firm basis for setting out our view of appropriate regulatory standards for legal services regulation.

³⁰ The discussion paper can be found here:

http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/21110420_developing_reg_std_finalrb_proof_3.pdf

The responses to that discussion paper can be found here:

http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/submissions_received_to_the_consultation_on_developing_regulatory_standards.htm

The LSB's decision document can be found here:

http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/20111214_regulatory_standard_v11.pdf

7. The requirement to have regard to best regulatory practice implies a continuing evolution of how approved regulators regulate; regulating in a way that is more efficient for those regulated but still protects approved regulators consumers from detriment. The regulatory standards draw heavily on the latest thinking to set out a modern approach to the regulation of legal services providers.
8. Sections 3 and 28 of the Act require that all approved regulators and the LSB act in a manner compatible with the regulatory objectives. In order to act in a way that is compatible with the regulatory objectives, the LSB must assure itself that approved regulators are protecting the interests of consumers, ensuring that authorised people adhere to the professional principles³¹ and that the public interest is protected. There can be no doubt that the language of the Act – “protecting”, “promoting”, “improving” in the regulatory objectives - requires the LSB to be proactive on this issue.
9. We consider that the Act places a positive (not a passive or purely responsive) responsibility on the LSB: “*The Board **must** [emphasis added] assist in the maintenance and development of standards in relation to, (a) the regulation by approved regulators of persons authorised*”.³² Therefore, we need to be satisfied that approved regulators are effective regulators that operate in a way that is consistent with the better regulation principles. This assessment fulfils a significant part of the work to assure ourselves that approved regulators are meeting statutory requirements. However it is not the only piece of work and this report does not amount to a final assessment on whether approved regulators are meeting their statutory requirements.

The assessment process

10. In December 2011, the LSB wrote to the regulators, to set out a timetable for the self-assessment process. Prior to receiving the regulators’ draft submissions, the LSB carried out an intelligence gathering exercise to build a picture about each regulator’s regulatory standards. This information was used in the initial challenge against each regulator’s draft self-assessment.
11. By the end of April 2012, the LSB had received the draft self-assessments from all of the regulators considered in this report and we met with each of them to discuss the submissions. These meetings were followed up with a letter from the LSB Chairman drawing attention to the fact that none of the regulators had used the Oxera Framework. In order to promote the value of using the Framework, the LSB held two seminars in July, where the regulators received a detailed explanation of how the Framework operates as well as a practical demonstration of how it could be used.
12. The regulators considered in this part one report submitted their final self-assessments by the deadline of 30 April. These were then reviewed against the initial challenge meeting analysis and further analysis of their final submissions to see if the identified problems had been addressed.

³¹ The professional principles include: that authorised persons; act with independence and integrity; that proper standards of work are maintained; act in the best interests of the client; comply with their duty to the court; and maintain client confidentiality.

³² Section 4, Legal Services Act 2007

13. Only two (the CLC and IPReg) of the five regulators considered in this report chose to have their final submission independently scrutinised by a third party, which was disappointing. The CLC and IPReg self-assessments were notably higher in quality than the others.

Annex B: Self-assessment template

Regulatory standards

The overall approach is for Approved Regulators and Licensing Authorities (AR/LAs) to self-assess their own level for each constituent part of regulation as well as their own capacity and capability.

The self-assessment is on the following scale:

- Good- all indicators embedded appropriately in the organisation and inform day to day working practices
- Satisfactory – significant progress is being made to embed indicators and use them in day to day working practices
- Undertaking improvement and work is well underway– indicators have been introduced but are not yet embedded appropriately in the organisation and do not yet inform day to day working practices
- Needs improvement and work has started recently

Alternatively, the AR/LA has the option to state: recognise this needs to be done but work has not yet started

We consider that all of the constituent parts apply to all ARs and so “not applicable” is not an acceptable response. Below each of the constituent parts are factors that indicate where an organisation might be on the scale. AR/LAs must use these factors to assess initially whether they are towards the top or bottom of the scale and provide that information in the self-assessment. However, AR/LAs are free to add sector-specific factors as well. All additional sector specific factors must be justified with reference to evidence. AR/LAs may also wish to use the indicators in box 3 on page 28 of the regulatory standards decision document as a guide.

In order to provide a consistent framework for understanding the legal services market, AR/LAs must use the Oxera report “A framework to monitor the legal services sector” published by the LSB on 28 September 2011 when considering the extent of their knowledge about consumers, the supply of legal services and the market(s) they regulate. For example, paragraph 2.1.3 of that report explains why there may be limited demand-side substitution because consumers need a specific type of legal advice for their problem; there may also be limited supply side-substitution if it is not possible for lawyers to switch to providing a different type of advice within a reasonable timescale. We would expect an AR/LA with a good understanding of the market(s) it regulates to be able to provide evidence about the types of consumer problems that occur, the extent to which supply-side substitution is possible, the

barriers to supply-side substitution, the risk of consumer detriment that arises and an assessment of whether any regulatory action is required to mitigate that risk.

AR/LAs must provide clear analysis and evidence of how it arrived at the rating together with an Action Plan for development going forward with challenging but realistic targets/timescales.

Lay Board involvement is preferable in completing the self-assessment; additional independent scrutiny may also be appropriate. Board sign off on the final submission is required.

LSB will publish a high level summary of the AR/LA's assessment and Action Plan.

For AR/LAs completing the self-assessment with any questions on the process or would like further details on what is expected please contact Fran Gillon (fran.gillon@legalservicesboard.org.uk) or James Meyrick (james.meyrick@legalservicesboard.org.uk)

Please provide details of a senior contact at the AR/LA who will be responsible for responding to LSB queries on the self-assessment:

Full name:
Job Title:
Contact details (including telephone and email address):

Outcomes focused regulation

To what extent does the AR/LA have regulatory arrangements based on the outcomes that consumers need?

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

- Regulatory arrangements deliver the outcomes that consumers need; there is clear evidence and analysis to justify any detailed rules; those regulated understand and accept approach to regulation;
- All members of staff and Board understand the organisation's approach to focusing regulation on the consumer and public interest;
- High quality, up to date, reliable evidence from a range of sources about how all groups of consumers need and use the legal services the AR/LA regulates; evidence about whether outcomes are being achieved; consumers have confidence in regulation. Regularly reviews and updates its regulatory arrangements based on that evidence.

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

- Predominately rule based regulation; high levels of prescription with no clear evidence base;
- Some resistance to moving to consumer-based outcomes by Board and/or those regulated;
- Little or no up to date evidence about consumers; decisions often based on lawyers' needs/views.

Outcomes focused regulation	To what extent does the AR/LA have regulatory arrangements based on the outcomes that consumers need?	
Scale	Please mark your overall assessment against the scale for this standard	
Good		
Satisfactory		
Undertaking improvement and work is well underway		
Needs improvement and work has started recently		
Recognise this needs to be done but work has not yet started		
Questions for response	Text	
Rationale for assessment:		
Evidence to support assessment:		
References to relevant supporting documentation:		
Details of action plan with timescales and milestones (including work identified but not begun, work recently started and work already underway):		
References to relevant action plan documentation:		

Risk assessment

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

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

- Formal, structured, transparent and evidence-based approach to identification and mitigation of risks across the whole range of entities and individuals that the AR/LA regulates. Risk analysis focuses predominantly on consumer detriment, including those in vulnerable circumstances. Evidence that approach to risk works in practice;
- Approach to evidence gathering for risk assessment enables the identification of future trends as well as current issues;
- Relevant staff and Board understand the reasons for risk assessment, how it informs other aspects of the AR/LA's activities. Staff share best practice and lessons learned in a structured and effective way.

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

- Some understanding of the main areas of risk but little evidence on which to base its approach;
- Relatively static approach, often or predominantly retrospective;
- No clear link between view of risk and other activities.

Risk assessment	To what extent does the AR/LA have formal risk assessment processes at key stages of its regulatory decision making processes?	
Scale	Please mark your overall assessment against the scale for this standard	
Good		
Satisfactory		
Undertaking improvement and work is well underway		
Needs improvement and work has started recently		
Recognise this needs to be done but work has not yet started		
Questions for response	Text	
Rationale for assessment:		
Evidence to support assessment:		
References to relevant supporting documentation:		
Details of action plan with timescales and milestones (including work identified but not begun, work recently started and work already underway):		
References to relevant action plan documentation:		

Supervision

To what extent does the AR/LA have supervisory processes that are consistent with the principles of better regulation?

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

- Supervisory activity:
 - is underpinned by an evidence-based understanding of different market segments and providers that the AR/LA regulates;
 - is determined by reference to identified risks;
 - is informed by data from the Legal Ombudsman;
 - facilitates innovation, change and commercial freedom; and
 - is adequately resourced (including the use of fit for purpose technology) to provide good quality, consistent decisions without backlogs.
- Clear and structured feedback loops between supervisory activity, risk assessment, staff learning and best practice;
- Regular senior management and Board monitoring of effectiveness and value for money of supervisory activity leads to improved processes.

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

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

<i>Supervision</i>	To what extent does the AR/LA have supervisory processes that are consistent with the principles of better regulation?	
Scale	Please mark your overall assessment against the scale for this standard	
Good		
Satisfactory		
Undertaking improvement and work is well underway		
Needs improvement and work has started recently		
Recognise this needs to be done but work has not yet started		
Questions for response	Text	
Rationale for assessment:		
Evidence to support assessment:		
References to relevant supporting documentation:		
Details of action plan with timescales and milestones (including work identified but not begun, work recently started and work already underway):		
References to relevant action plan documentation:		

Enforcement

To what extent does the AR/LA have enforcement processes that are consistent with the principles of better regulation?

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

- Published policies and guidelines are written in plain language that enables others to understand the criteria for deciding to take action; appeal processes follow best practice;
- A wide range of effective, proportionate enforcement tools that can be deployed quickly by staff who have appropriate levels of experience and are well trained; enforcement powers provide appropriate incentives for compliance; enforcement penalties punish as well as deter; regular senior management and Board monitoring of effectiveness and value for money of enforcement activity feeds back to improved processes and reduced costs;
- Decisions to take (and not to take) enforcement action are evidence based and use reliable sources.

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

- Little or no evidence of structured approach to enforcement activity. Lack of appropriate levels of expertise amongst staff;
- Narrow range of enforcement powers; powers tend to be inflexible;
- Appeal processes that are time consuming and expensive with little control over costs.

Enforcement	To what extent does the AR/LA have enforcement processes that are consistent with the principles of better regulation?	
Scale	Please mark your overall assessment against the scale for this standard	
Good		
Satisfactory		
Undertaking improvement and work is well underway		
Needs improvement and work has started recently		
Recognise this needs to be done but work has not yet started		
Questions for response	Text	
Rationale for assessment:		
Evidence to support assessment:		
References to relevant supporting documentation:		
Details of action plan with timescales and milestones (including work identified but not begun, work recently started and work already underway):		
References to relevant action plan documentation:		

Capacity and capability

To what extent does the AR/LA have the necessary Board and staff capacity and capability to deliver the regulatory objectives?

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

- Clear and consistent leadership at Board and senior management level that ensures that the whole organisation has strong consumer engagement and consumer focus. Consumers are confident that regulation is independent;
- Appropriate levels of budget and staffing linked to the nature of the market(s), entities and individuals regulated; required skill sets are defined and linked to the key challenges facing the organisation, to the regulatory objectives and to the AR/LA's regulatory outcomes – which are achieved in practice. Organisation's structure enables effective decision making by appropriate delegation of powers to staff;
- Evidence-based understanding of the market(s) it regulates and the commercial realities of operating in it. High levels of knowledge management and analytical skill at all levels in the organisation drives culture of transparency, continuous improvement and embeds best regulatory practice from legal regulation and other industries.

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

- Consumer interest not yet embedded at all levels across Board or staff, or in regulatory arrangements;
- Budget/staffing levels/structure that inhibit regulatory capacity; Board members heavily involved in many aspects of day to day work; little focus on LSA requirements;
- Little management information about those regulated; little or no analysis or understanding of the market(s) they operate in.

<i>Capacity and capability</i>	To what extent does the AR/LA have the necessary Board and staff capacity and capability to deliver the regulatory objectives?	
Scale	Please mark your overall assessment against the scale for this standard	
Good		
Satisfactory		
Undertaking improvement and work is well underway		
Needs improvement and work has started recently		
Recognise this needs to be done but work has not yet started		
Questions for response	Text	
Rationale for assessment:		
Evidence to support assessment:		
References to relevant supporting documentation:		
Details of action plan with timescales and milestones (including work identified but not begun, work recently started and work already underway):		
References to relevant action plan documentation:		

Self-assessment certification

In order to assure the LSB of the accuracy of the self-assessment we require the following to certify the contents of the self-assessment and any accompanying documents:

- A member of the regulatory board, preferably lay, who has been involved in the completion of the assessment;
- The Chair or equivalent of the regulatory board on behalf of the entire regulatory board;
- The independent scrutiniser (where used) or alternatively the member of the regulatory board, preferably lay, who has been involved in the completion of the assessment must confirm the reasons for not seeking independent scrutiny.

Regulatory Board Member: On behalf of [the AR/LA's] regulatory board, I, member of said regulatory board, certify that I have taken reasonable steps to satisfy myself that the information contained within this self-assessment and accompanying documents are accurate, that the procedures followed to make the assessment provided a reasonable basis to reach a judgement and each ranking represent a fair and reasonable assessment:

<p style="text-align: center;">X _____ Member of regulatory board</p>	<p>Full name and date:</p>
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Regulatory board: On behalf of the [the AR's] regulatory board, I certify that the regulatory board has reviewed this completed self-assessment and has come to a reasonable opinion, after having made due and careful enquiry, that the information and judgements contained within this assessment are made on a reasonable basis:

<p style="text-align: center;">X _____ Chairman/equivalent of regulatory board</p>	<p>Full name and date:</p>
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Independent scrutiny

The LSB requires that each regulator either subjects their completed self-assessment to independent scrutiny or explains why they chose not to do so. The independent scrutiny can be completed by an appropriate professional, expert or consultant. This can include individuals sitting on other legal services regulatory boards. They should not be current or previous members of the regulatory board under consideration. This individual must provide their contact details, any professional accreditation and signature on the submitted self-assessment.

If the self-assessment was independently reviewed: I confirm that I, as an independent scrutiniser of this self-assessment, have taken reasonable steps to satisfy myself that the regulatory board and its executive have followed appropriate procedures which provide a reasonable basis for them to make the judgements contained within this self-assessment and in any other documents submitted alongside this self-assessment:

	<p>X _____ Independent scrutiniser</p>
	Full name:
	Date:
Job title and / or profession:	
Business name and address:	

If the self-assessment was not independently reviewed:

On behalf of the AR/LA's regulatory board, I, member of said regulatory board declare that the regulatory board decided against seeking independent scrutiny of the completed self-assessment for the following reasons:

This self assessment was not independently reviewed for the following reasons:	
<p>X</p> <hr/> <p>Member of regulatory board</p>	<p>Full name and date:</p>

Annex C: Glossary of terms

ABS	Alternative Business Structures. From October 2011 non-legal firms have been able to offer legal services to their customers in a way that is integrated with their existing services. Or law firms will be able to develop their portfolios to compete across wider areas compared with their existing experience.
AR or approved regulator	A body which is designated as an approved regulator by Parts 1 or 2 of schedule 4 to the Legal Services Act 2007, and whose regulatory arrangements are approved for the purposes of the LSA and which may authorise persons to carry on any activity which is a reserved legal activity in respect of which it is a relevant AR
BSB	Bar Standards Board – the independent regulatory arm of the Bar Council
CLC	Council for Licensed Conveyancers – the regulator of Licensed Conveyancers
Consultation	The process of collecting feedback and opinion on a policy proposal
ILEX Professional Standards Board	Institute of Legal Executives – the independent regulatory arm of the Institute of Legal Executives
LA or Licensing Authority	An AR which is designated as a licensing authority to license firms as ABS
LSB or the Board	Legal Services Board – the independent body responsible for overseeing the regulation of lawyers in England and Wales
LSA or the Act	Legal Services Act 2007
Principles of Better Regulation	The five principles of better regulation: proportional, accountable, consistent, transparent and targeted

Regulatory Objectives	<p>There are eight regulatory objectives for the LSB that are set out in the Legal Services Act (2007):</p> <ul style="list-style-type: none"> • protecting and promoting the public interest • supporting the constitutional principle of the rule of law • improving access to justice • protecting and promoting the interests of consumers • promoting competition in the provision of services in the legal sector • encouraging an independent, strong, diverse and effective legal profession • increasing public understanding of citizens legal rights and duties • promoting and maintaining adherence to the professional principles of independence and integrity; proper standards of work; observing the best interests of the client and the duty to the court; and maintaining client confidentiality.
Reserved Legal Activity	Legal services within the scope of regulation by the Approved Regulators
SRA	Solicitors Regulation Authority – independent regulatory Arm of the Law Society

Annex D: The legal regulators in numbers

Approved regulator	Regulatory body	Reserved Activities	Licensing Authority	No. of Authorised Persons	No. of regulated entities	Practising certificate fee	Annual AR budget for representative & regulatory functions, centralised costs, set-up (SU) and running costs (RC)	Number of regulatory staff
Law Society	Solicitors Regulation Authority	The exercise of a right of audience The conduct of litigation Reserved instrument activities Probate activities The administration of oaths	YES	124,968 Aug-12 (SRA web report)	11,115 Aug-12 (SRA web report)	From 01-Nov-12 £344 (Individual PC fee) £10 (extra) Firm fees are based on a percentage of turnover between 0.86% and 0.08% Approved by LSB 01-Aug-12	Total Budget to 31-Dec-12: £98.310m Rep: 13.6% Reg: 34.1% SDT: 2.2% Central: 28.8% LSB SU: 1.3% LSB RC: 3.9% LeO RC: 16.0%	600+ FTEs (11-Sep-12 SRA press release)
General Council of the Bar	Bar Standards Board	The exercise of a right of audience The conduct of litigation Reserved instrument activities Probate activities The administration of oaths	NO	15,204 At 01-Apr-12 (levy figures)	N/A	From 01-Apr-12 <u>Self employed Bar:</u> £1,198 (QC) £811 (13 years +) £414 (8-12 years) £220 (5-7 years) £300 (3-4 years) £300 (1-2 years) Excl pension levy <u>Employed Bar:</u> £890 (QC) £622 (13 years +) £342 (8-12 years) £184 (5-7 years) £80 (3-4 years) £80 (1-2 years) Excl pension levy Approved by LSB 29-Jan-12	Total Budget to 31-Mar-13: £7.411m Rep: 19.9% Reg: 15.3% Central: 51.6% LSB SU: 0.0% LSB RC: 6.5% LeO RC: 6.7%	40FTEs 32 shared FTEs (Bar Council website Sept-12)
Faculty Office		Reserved instrument activities Probate activities The administration of oaths Notarial activities	NO	858 At 01-Apr-12 (levy figures)	N/A	From 01-Nov-12 £400 (annual fee) £40 (contingency fee) Approved by LSB 27-Jul-12	Total Budget to 31-Dec-12: £0.291m Rep: 0.0% Reg: 85.6% LSB SU: 3.2% LSB RC: 9.2% LeO RC: 2.1%	4 FTEs (Faculty Office self assessment)

Representative Bodies	Regulatory Bodies	Reserved Activities	Licensing Authority	No of Authorised Persons	No of regulated entities	Practising certificate fee	Annual AR budget for representative & regulatory functions, centralised costs, set-up (SU) and running costs (RC)	Number of regulatory staff
Chartered Institute of Legal Executives	ILEX Professional Standards	The exercise of a right of audience The administration of oaths The conduct of litigation (for associate prosecutors)	NO	7,907 At 01-Apr-12 (levy figures)	N/A	From 01-Jan-13 £290 (fellow) £150 (associate prosecutor) Approved by LSB on 06-Sep-12	Total Budget to 31-Dec-12: £2.071m Rep: 52.4% Reg: 31.8% LSB SU: 4.0% LSB RC: 11.4 % LeO RC: 0.5%	7.7 FTEs 4.5 shared FTEs (IPS self-assessment)
Council for Licensed Conveyancers		Reserved instrument activities Probate activities The administration of oaths	YES	1,139 29-Mar-12 (CLC self assessment)	221 29-Mar-12 (CLC self assessment)	From 01-Nov-12 £400 licence fee Plus a practice fee based on turnover bands And/or a % of practice turnover fee between 1.0% and 1.3% Approved by LSB on 20-Sep-12	Total Budget to 31-Dec-12: £2.922m Rep: 0.0% Reg: 90.6% LSB SU: 0.4% LSB RC: 1.2 % LeO RC: 7.8%	24 FTEs 31-Dec-11 (Annual Report)
Chartered Institute of Patent Attorneys	Intellectual Property Regulation Board	The exercise of a right of audience The conduct of litigation Reserved instrument activities The administration of oaths	NO	1,745 * At 01-Apr-12 (levy figures)	185	From 01-Jan-12 Individual £140 (non-practicing) £170 (other attorneys) £280 (sole traders) £55 (attorneys working in entities or sole traders) Entities £280 + £55 per register attorney +225 per unregistered professional providing legal services Approved by LSB 27-Oct-12	Total Budget to 31-Dec-12: £0.508m Rep: 0.0% Reg: 69.0% LSB SU: 5.6% LSB RC: 14.3 % LeO RC: 1.9% IPREG contract w ITMA/CIPA to run website until end of 2012: 9.3% of PCF	3 FTEs (IPReg self assessment)
Institute of Trademark Attorneys			NO	639 * At 01-Apr-12 (levy figures)				
Association of Costs Lawyers	Cost Lawyers Standards Board	The exercise of a right of audience The conduct of litigation The administration of oaths	NO	565 At 01-Apr-12 (levy figures)	N/A	From 01-Jan-12 £450 (annual fee) (£250 proposed for 2013 with ACL invoicing fees separately - not yet accepted)	Total Budget to 31-Dec-12: £0.237m Rep: 47.3% Reg: 45.4% LSB SU: 1.2% LSB RC: 5.6% LeO RC: 0.5%	2 FTE incl 1 at ACL (CLSB self-assessment)