

To:	Legal Services Board	Agenda Item No.:	9
Date of Meeting:	23 March 2017	Item:	Paper (17) 15

Title:	The LSB's regulatory approach
Workstream(s):	Performance, Evaluation and Oversight
Author / Introduced by:	Chris Nichols, Regulatory Project Manager chris.nichols@legalservicesboard.org.uk / 020 7271 0083 Kate Webb, Head of Regulatory Reviews and Investigations kate.webb@legalservicesboard.org.uk / 020 7271 0090 Nick Glockling, Legal Director nick.glockling@legalservicesboard.org.uk / 020 7271 0069
Status:	Official Sensitive

Summary:
In November 2016 the Board agreed to set up a sub-group of four members to work with the Executive to develop an articulation of the LSB's regulatory approach. This paper provides an update on progress since November and presents a draft document setting out our regulatory approach.

Recommendation(s):
The Board is invited to: <ul style="list-style-type: none"> (a) Note the LSB's proposed regulatory approach at Annex A and raise any substantive comments on this (b) Agree that we should seek comments from the regulators on this draft document (c) Note that a final version will be presented to the Board, in May, for approval.

Risks and mitigations	
Financial:	N/A
Legal:	This paper provides a high level discussion of the LSB's statutory powers. Specific use of these powers will be subject of legal advice on a case by case basis. (NG)
Reputational:	Setting out our regulatory approach helps to address the risk that oversight of regulators and allied activity becomes inefficient or ineffective.
Resource:	We will factor the resources required to progress this work into the 2017/18 business plan.

Consultation	Yes	No	Who / why?
Board Members:	x		Discussion with sub-group of Terry Babbs, Marina Gibbs, Jeremy Mayhew and Helen Phillips.
Consumer Panel:		x	n/a
Others:			

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Para's 3 and 4	Section 36(2)(b)(ii): information likely to inhibit the exchange of views for the purposes of deliberation	
Annexes A and B	Section 22: information intended for future publication	

LEGAL SERVICES BOARD

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The LSB's regulatory approach

Background

1. In September 2016 the Board began a discussion on its regulatory approach to oversight of the approved regulators. Prompted by discussion on the changes seen in legal services and legal service regulation since 2010 from the perspective of the powers given to the LSB by the Legal Services Act 2007 (the Act), the Board considered that it was now timely to reflect further on this topic.
2. The Board considered a further paper in November 2016 which discussed the key issues we see in legal services regulation and the tools available to us through the Act to address those issues. The Board agreed to set up a sub-group - comprising Terry Babbs, Marina Gibbs, Jeremy Mayhew and Helen Phillips - to work with the Executive to develop a document setting out the LSB's regulatory approach.

3. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

4. [Redacted]

[Redacted]

■ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]
[REDACTED]

5. The sub-group asked for a document to be presented to the March Board meeting where approval should be sought to consult with key stakeholders. It stressed that it was important that approval is received or delegated at this meeting, to avoid delay.
6. Further, the sub-group gave a clear steer that the document should not focus solely on our core activity of regulating approved regulators and should also cover our other functions including oversight of regulated redress, considering changes to the reserved legal activities and assessing the case for establishing voluntary arrangements.
7. Since these meetings we have drafted a document to reflect the points discussed. This is included below at Annex A and has already been seen and commented on by members of the sub-group. The Board is invited to note this document and raise any substantive comments that they have at this stage.

Regulatory approach

8. The document at Annex A sets out five stages that guide our regulatory approach. These are:
 - (i) identifying the key risks
 - (ii) setting out our expectations
 - (iii) seeking assurance through oversight
 - (iv) tackling concerns
 - (v) taking formal action.
9. It explains how the tasks, projects and workstreams that the LSB undertakes fit together and contribute to implementing our vision. We consider that we can explain all of the work that we do by reference to the five stages to our regulatory approach that are set out in the document.
10. In some instances, we will be able to trace a workstream through all five stages. However, in most cases it will not be necessary to progress through all stages. Primary research and data collection for example will usually be focussed on helping to identify problems and risks which may then feed into separate projects that start at the stage of setting out our expectations in the light of these risks, or even start with developing and implementing an approach to seeking assurance through oversight. At Annex B there are four worked examples of how previous work could be explained by reference to the articulation of our regulatory approach.

11. The articulation of our approach makes reference to the centrality of our approach to assessing regulators' performance, which is the primary tool for seeking assurance through oversight. The intention is for the LSB to consult later this year on our new approach to overseeing and assessing regulators' performance. The new regulatory performance process will complement our regulatory approach and strengthen our oversight.
12. It is important that the document articulating our approach remains clear and concise. However, it should also signpost further information on how we exercise our powers. The intention is for links to be provided to other documents that would provide more details on certain aspects. For example, our document explaining how we interpret the regulatory objectives and our enforcement policy would both need to have links included. The full suite of links that will be provided have not been referenced at this stage.

Next steps

13. A key driver for setting out our regulatory approach is to foster transparency, consistency and predictability. This will help to improve our regulatory effectiveness and impact. In the light of this, we consider it is important that we provide key stakeholders with an opportunity to comment and discuss this with us prior to the document being finalised.
14. Subject to the Board's discussion on the content of Annex A, we propose that comments are invited from the regulators over the next month. This would mean that a final version of the document could be presented to the Board for approval in May.
15. It should also be noted that a related workstream has identified the need to update our existing enforcement policy to simplify it, make it more user friendly and remove some of the unnecessary detail. The updated enforcement policy will complement and support the articulation of our regulatory approach, providing the detail on how we exercise our statutory powers when taking formal action.
16. A short paper explaining the updates to the enforcement policy is likely to be presented to the Board in April or May. In line with the statutory procedure in section 50, we will seek representations on the revised policy before it is finalised. This is likely to take place shortly after we have published our final regulatory approach document and will provide a good opportunity to make reference to this, to provide the context for how we will be considering using our enforcement tools.

13.03.17