Faculty Office Regulatory Performance Assessment September 2021

REGULATORY APPROACH					AUTHORISATION					SUPERVISION				ENFORCEMENT						WELL-LED						
1	2	3	4	5	1	2	3	4	5	1	2	3	4	1	2	3	4	5	6	1	2	3	4	5	6	7

Met		Not met – action being taken		Not met – action required	

Assessment following the conclusion of the LSB's review of the Faculty Office's (FO) performance against our Regulatory Performance Framework's Well-led Standard

Based on the evidence gathered during our review, we have determined that the FO does not meet four outcomes under the Well-led standard: WL2, WL3, WL4 and WL6.

Our performance framework enables us to undertake in-depth reviews when our ongoing monitoring identifies an area of concern or that we do not have sufficient assurance about an aspect of a regulator's performance.

In November 2019 we carried out our annual performance assessment of the FO under our regulatory performance framework. We found that the FO did not meet outcomes WL3 and WL4 under the Well-led standard. We set out actions for the FO to complete which would enable it to meet these outcomes and asked it to provide us with information as to how it would do so by 31 January 2020. While the FO provided us with information that showed it had taken some steps towards meeting WL3 and WL4, this did not assure us that it fully met them. In March 2020, we therefore determined that due to:

- our ongoing concerns about the transparency of information published,
- the FO's approach to risk management,
- and how the FO's stakeholder engagement programme informed its regulatory work

that it was necessary to carry out a review of the FO's performance under the wider Well-led standard. We formally began our review in September 2020, by which time we had also noted our concerns about how the FO was managing its finances and resources (relevant to outcome WL2 under the standard) and that we would also specifically examine this during our review.

Following conclusion of our review, the FO has confirmed that it accepts the findings in the review report and must do more to meet the Well-led standard. It has also submitted an Action Plan designed to address the findings and to enable it to demonstrate improved performance. Our assessment refers in several places to actions that the FO has committed to as part of its Action Plan. We also note that some actions in the FO's plan which are shown as addressing one outcome will also contribute to meeting other Well-led outcomes.

We note that the FO currently has two other unmet outcomes under the Regulatory Approach standard of the Performance Framework, RA2 and RA5. These were last assessed in the November 2020 performance assessment and have not been reassessed at this time but are included for completeness and will be reviewed again as part of the LSB's annual performance assessment in November 2021.

Not met – action being taken

<table>
<tr><th colspan="2">Outcome</th><th>WL2: The regulator understands the resources (financial, human and technical) and organisational structure it needs to carry out its regulatory functions (including authorisation, supervision and enforcement) effectively and efficiently and these are implemented.</th></tr>
<tr><td rowspan="2">Sept 2021</td><td>LSB assessment</td><td>Our review found that the FO did not have a complete and comprehensive set of governance arrangements in place that would enable it to ensure it can regulate effectively. We identified the following specific issues:

• FO staff did not have role descriptions defining their respective responsibilities.
• In most cases, the FO did not have documented arrangements setting out how decision-making powers were delegated, both by the Master and by senior staff.
• The FO did not have a policy for managing conflicts of interest, which was particularly important given its relationship with the law firm (LBMW), which provides the FO's staff and carries out its notarial regulation work.
• The FO did not have policies for the recruitment of staff and members of its boards and committees, which meant that its recruitment processes, including those for its Advisory and Qualifications Boards and the Master's Audit Committee were not sufficiently open.
• The presence of notarial society members on the Advisory Board, and the fact that under the Notaries Qualification Rules 2017 the Master consults with the two societies about the appointment of notary members to the Qualifications Board, raise potential concerns of undue influence by the societies in the FO's decision-making processes.</td></tr>
<tr><td>Action needed</td><td>We welcome the commitments and actions set out in the FO's Action Plan that are relevant to demonstrating improved performance in relation to this outcome. These are:

(1) The development and introduction of role descriptions for all FO staff members, which will:
• Define each staff member's role in decision making and in which matters delegated by the Master they can expect to take part
• Bring consistency and clarity to the way key decisions are made

(2) The development of a documented delegation scheme, which will define how decisions at all key levels are made and will specify which decisions are delegated by the Master and to which staff members and committees. This will:</td></tr>
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		• Ensure consistency in delegated decision making • Make clear to stakeholders and interested parties how decisions are made and by whom, and • Ensure consistency in recording of advice that is formally provided to the Master (3) The development of a policy document on staff with both FO and LBMW work responsibilities, which will provide clarity as to staff with dual roles and/or joint responsibilities should manage competing priorities and potential conflicts of interest as well as allocation of the LBMW management fee (4) The development of a policy document covering recruitment of both executive and non-executive staff, board and committee members. This will help to provide confidence that recruitment for all roles is fair, open and is designed to ensure appropriate diversity. It will also clarify the role of the notarial societies in relation to the Advisory and Qualifications Boards and help to address any concerns about potential conflicts of interest. The FO has already added lay members to its Advisory Board to improve its range of experience. It is also seeking to expand the membership of the Master's Audit Committee to ensure it has the right skills and experience to provide rigorous assessment of the FO's work. As well as the above actions, the FO has committed to developing a governance manual which will: • Establish consistent, transparent and coherent practices for delivering and overseeing the FO's governance, and • Ensure that good governance processes are embedded across the FO and consistently applied to a high standard The governance manual will be overarching and will be applied across all the Well-led outcomes. In its Action Plan the FO has committed to delivering all the above actions by the end of March 2022. We will expect to be kept informed of the FO's progress in delivering these actions and will seek evidence of the outcome being met, through Board papers, minutes and other published material.
	Timing	The LSB will review the FO's progress on the above actions and meeting this outcome in April 2022.

Outcome		WL3: The regulator is transparent about its own: decision-making; regulatory approach; the risks it and its regulated community faces and how these are being mitigated; performance; regulated community and related markets; financial costs.
Sept 2021	LSB assessment	Our review found that the FO's decision-making processes were not sufficiently consistent and transparent, and that it was therefore not possible for the LSB or others to be assured that the FO took decisions, particularly in respect policy and the FO's finances and budgets, with sufficient scrutiny and due regard to the regulatory objectives, evidence and risks. While, the FO increased the amount of transparency it provides during the review period, we consider that there are aspects of its decision-making processes, such as the Qualifications Board, where more transparency is required. We also considered that the FO needed to revise its processes to ensure that all decisions taken by the Master that could have a significant impact on the regulated community are consistently and transparently recorded and published. We found that there was a potential conflict of interest arising from the FO's relationship with Lee Bolton Monier Williams (LBMW), the solicitors' firm which provides services to the FO.
	Action needed	We welcome the commitments and actions set out in the FO's Action Plan that are relevant to demonstrating improved performance in relation to this outcome. These are: The FO will continue to develop its recently introduced risk matrix. The Master's Audit Committee will review the matrix at all of its meetings to provide confidence that the FO is keeping known risks under close review and scanning for potential new ones. The FO will develop a transparency policy which will enable stakeholders and interested parties to follow how the FO undertakes and monitors its key activities. Issues and activities covered will include: • The FO's decision-making processes • Its approach to regulation • Its risk and mitigation strategies • Its performance against established KPIs • Its costs The transparency policy will be included in the FO's new governance manual.

		The FO will also introduce complementary procedures to ensure appropriate and consistent transparency of its decision-making processes via minutes and other papers, including those containing information about financial matters of interest to the regulated community, significant decisions affecting the regulatory community and, as appropriate, decisions made by its Qualifications Board. To ensure stakeholders have confidence that the FO's resources are well spent and to address any potential conflict of interest, the FO will also provide increased transparency of its relationship with LBMW by: • Formally contracting with LBMW for its services • Conducting a four-yearly 'value for money' review of LBMW's services, which may result in an open tendering process. The first review is scheduled for the first quarter of 2023. The FO will develop a plan to eliminate its current 'notarial deficit' and grow its reserves to the appropriate level. Progress towards these goals will be monitored by the Master's Audit Committee. This work will provide transparency about the FO's financial position to its regulated community. In its Action Plan the FO has committed to delivering all the above actions by the end of January 2022. We will expect to be kept informed of the FO's progress in delivering these actions and will seek evidence of the outcome being met, through Board papers, minutes and other published material.
	Timing	The LSB will review the FO's progress on the above actions and meeting this outcome in April 2022.

Outcome		WL4: The regulator learns from its own work, stakeholders, the legal sector and other sectors and uses that learning to improve its work.
Sept 2021	LSB assessment	We found that while the FO has well-established methods for obtaining information about notaries, it has a largely reactive approach to gathering information about the issues facing them and the wider market. Up to now the FO has tended to engage with individual notaries about such issues rather than undertaking a proactive approach to horizon scanning and research to better understand them and direct its regulatory activities.
	Action needed	We welcome the commitments and actions set out in the FO's Action Plan that are relevant to demonstrating improved performance in relation to this outcome, which are as follows: The FO will develop a programme for proactive horizon scanning and research, which will also involve the notarial societies, notaries and other regulators. This aims of this programme will be to improve the FO's ability to anticipate developments and engage and learn from the regulated community, stakeholders and others. In its Action Plan the FO has committed to delivering all the above actions by the end of March 2022. We will expect to be kept informed of the FO's progress in delivering these actions and will seek evidence of the outcome being met, through Board papers, minutes and other published material.
	Timing	The LSB will review the FO's progress on the above actions and meeting this outcome in April 2022.

Outcome		**WL6: The regulator communicates with a diverse range of stakeholders, for example its regulated community, the approved regulator, its representative body(ies), students, consumers, government, etc. to: account for its plans, progress and performance; ensure appropriate and accurate information is effectively taken into account in its work.**
July 2021	**LSB assessment**	We found that although the FO has well-established procedures for gathering information about notaries, it needs to improve its engagement with consumers of notarial services in order show it has a sufficient understanding of their needs and concerns as well as those of other stakeholders. We note that the FO has recently recruited two new members to its Advisory Board to increase its diversity and widen its collective experience. We also found that while the FO has a process for undertaking consultations, it does not always apply it consistently as to how widely it consults and how it demonstrates that it has taken account of the responses it receives. .
	Action needed	We welcome the commitments and actions set out in the FO's Action Plan that are relevant to demonstrating improved performance in relation to this outcome, which are as follows: • The FO will develop an expanded strategy for engaging with consumers, which will include working with the Legal Services Consumer Panel and other regulators. This strategy is intended to provide increased opportunities for the FO to engage directly with consumers and learn from them. It should also enable the FO to learn from and share insights with other regulators. • The FO will develop a consultation policy to set out how it will undertake consultations, ensure it is transparent about how it evaluates responses and takes account of them in its decision making. This policy is intended to reassure stakeholders and other parties that their views are considered and that the FO's consultations are consistently undertaken in an effective and transparent manner. In its Action Plan the FO has committed to delivering all the above actions by the end of January 2022. We will expect to be kept informed of the FO's progress in delivering these actions and will seek evidence of the outcome being met, through Board papers, minutes and other published material.
	Timing	The LSB will review the FO's progress on the above actions and meeting this outcome in April 2022.

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<tr><td colspan="2">Outcome</td><td>RA2: Regulatory arrangements and supporting guidance documentation are regularly reviewed and, where necessary, updated based on a robust evidence-base.</td></tr>
<tr><td rowspan="3">November 2020</td><td>LSB assessment</td><td>A key component for meeting this outcome is effective engagement with the LSB’s process for approval of changes to regulatory arrangements. This process provides an opportunity for regulatory bodies to:
• explain clearly and transparently the changes that they are seeking to make and how these will benefit the regulatory objectives
• explain what consultation and engagement they have undertaken to understand the negative impacts or risks that changes might present
• set out how they will monitor and evaluate the impact of the changes, if approved.

In our November 2019 assessment, we assessed this outcome as not met, which reflected issues with the quality of the rule change applications submitted by the FO to introduce new transparency requirements and changes to its supervision and training rules. Our primary concern was with transparency and clarity, as some significant information was not provided by the FO.
Our action for the FO was to review its current procedures and take the necessary steps to ensure that future applications were complete and that all quality issues had been addressed before applications are submitted for approval.

The FO advised the LSB that it had taken account of our comments and it is confident that these will be addressed in future applications.

In order to meet this outcome, FO will need to demonstrate consistently effective engagement with statutory processes, in the main by making clear and complete cases for changes to its regulatory arrangements, that meet the expectations set out in our rules and guidance.

As the FO has not made any full applications for changes to regulatory arrangements during 2020, we have not had evidence of improvement to meaningfully re-assess performance against this outcome. We have therefore retained the pre-existing assessment of not met – action being taken for now. We will keep this under review as further evidence becomes available during 2021</td></tr>
<tr><td>Action needed</td><td>The FO to ensure that future applications for changes to regulatory arrangements are complete and that all quality issues have been addressed before applications are submitted for approval.</td></tr>
<tr><td>Timing</td><td>We will next review the FO’s progress against this outcome as part of our annual performance assessment in November 2021.</td></tr>
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<tr><th colspan="2">Outcome</th><th>RA5: The regulator understands the impact of its regulatory arrangements and guidance on consumers, the regulated community, the market and the regulatory objectives.</th></tr>
<tr><td rowspan="3">November 2020</td><td>LSB assessment</td><td>FO was asked to provide evidence of how it assesses the impact of its work on consumers, the regulated community, the wider market and the regulatory objectives.

This information was requested because the FO had previously advised the LSB of its plans to recruit a consumer champion to the Master’s Advisory Board and to consider working with other regulators to understand the impact of its regulatory arrangements and guidance on consumers.

The FO advised that it is seeking to appoint additional lay members to the Master’s Advisory Board and intends to advertise for independent members. The FO has also begun sharing consultations more widely, had notaries included in the Legal Services Consumer Panel Tracker Survey and completed a spot check of notaries’ compliance with its transparency Rules.

This progress is welcomed, but there is more work for the FO to do to be able to demonstrate that it has a meaningful understanding of the impact of its regulatory arrangements, particularly on consumers.

We appreciate that as a regulator with a smaller regulated community over which to spread its costs, FO may face particular difficulties in developing a capability on identifying and understanding impact, or in conducting research to inform this. It may wish to consider forming collaborations with other regulators, or other bodies, to enable access to evidential capability in a cost-effective way.

This area is of central importance to FO’s ability to effectively promote the regulatory objectives.</td></tr>
<tr><td>Action needed</td><td>To address this performance concern, FO will want to commit to additional work to understand the impact of its work on consumers. In particular, we expect the FO to:

• recruit additional lay members with a consumer background/focus to strengthen consumer engagement, as planned
• provide a plan to the LSB with proposals for how it can meet this outcome. This could include, for example, committing to carrying out consumer research, plans to work with other regulators to evaluate the impacts of legal services regulation on consumers or evaluating the impact of rules (e.g. transparency) on consumers.</td></tr>
<tr><td>Timing</td><td>We will next review the FO’s progress against this outcome as part of our annual performance assessment in November 2021.</td></tr>
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