

Meeting: Legal Services Board

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Item: Paper (19) 43

Title: LSB transparency

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Status: Official

Introduction: Purpose of the paper

1. This paper:

- Sets out a comparative analysis of the LSB's current practice in relation to transparency and the rationale behind it;
- Seeks approval for proposals for improvements in some areas, including (a) reducing significantly the use of redaction in published board papers, and (b) using social media (eg a post-Board "chair's blog") to provide reader-friendly updates on Board decisions; and
- Explores mechanisms for opening up meetings to the public and invites discussion and steer.

Recommendations

2. The Board is invited to:

- **Agree** to proceed with proposals in relation to reducing reliance on redaction in board papers, providing clearer links to performance information and introducing post-Board social media activity; and
- **Note** the analysis of options, risks and opportunities for opening board meetings to the public and provide a **steer** to inform further work.

Background / context

3. The LSB launched the regulatory performance framework in December 2017, which set out the standards that we expect legal services regulatory bodies to meet. One of the standards that most regulatory bodies do not meet is 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.

4. This paper explores what the LSB's approach to transparency should be, particularly in the context of the LSB's own transparency requirements for the legal services regulators – and considers ways in which we might best meet our transparency objectives.
5. By way of background, the Board will wish to note the following:
- The Board made a commitment from the outset that it would be open and transparent in the way it operates, both to comply with the provisions of the LSA 2007, but also as an expression of its organisational culture. The aspiration since the Board's inception has been to 'lead from the front'.
 - In taking the position it has to date, the LSB has been mindful of its obligations under section 3(3)(a) of the LSA 2007 to have regard to principles of transparency, accountability, proportionality and consistency in fulfilling its role, as well as the duties of accountability and openness expected of all public bodies by the seven principles of public life¹.
 - The LSB has aimed to strike a balance between ensuring that as much reliable information as possible is placed in the public domain within a reasonable period of time on the one hand, and giving the Board 'a safe space' within which to debate the sometimes contentious issues before it, on the other.
 - There is a firm commitment to publishing all Board papers, except where redaction or retention for FOIA, DPA or other legal reason is necessary within set timescales. While the presumption is firmly in favour of full disclosure, sometimes extensive information has been withheld, which has resulted in negative external comment.

What should the LSB's approach to transparency be?

6. The Board's views on what our principled position should be in relation to transparency assist with determining the range of ways we could improve transparency, or publish information in new or different ways.

¹ <https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2>

7. Some points for discussion include:
- Bearing in mind that the LSB is not a frontline regulator, to what extent does our ability to make demands of others depend on our own degree of transparency?
 - The frontline regulators have a clear consumer dimension and there is a high public interest in their work. We emphasise on our website that we do not provide services to the public – does this mean we should have a different approach?
 - Does our small size (and resources) influence the balance we should draw between the overheads imposed by transparency and the benefits?
8. The Board is invited to provide an initial steer on these and any other relevant questions, to inform the development of principles to underpin the LSB's approach to transparency.

LSB's transparency requirements for the legal services regulators and the extent to which the LSB meets its own criteria

9. We have assessed seven out of nine regulatory bodies (excluding the ACCA²) against the standards of the regulatory performance framework. Six regulatory bodies (CLC, CLSB, ICAEW, IPReg, MoF and SRA) do not currently meet WL3.
10. In January 2019, these six regulatory bodies were all given actions to take in order to meet WL3. Our assessment of progress from June 2019 shows that all six regulatory bodies have made progress towards delivering their actions and meeting this regulatory standard. However, all six bodies have more to do as set out in **Annex A**. The two key areas where actions are required from these regulatory bodies are: (i) ensuring that the supporting evidence for decisions taken by its board or executive which impact on the regulated community are published as soon as possible after decisions are taken; (ii) reviewing the transparency of its performance information (e.g. KPIs and performance reports, complaints etc) and ensuring that this information is published as soon as possible after board consideration.
11. The regulatory performance team has assessed the LSB against WL3 and the key lines of enquiry as used in our assessment of the regulatory bodies. The full result of this exercise is included in **Annex B** and the key areas of strength and weaknesses are set out below.
12. The LSB generally performs well in ensuring that the supporting evidence for decisions taken by the Board or Executive which impact on the regulated

² ACCA has not yet been included in the regulatory performance framework

community are published as soon as possible after decisions are taken. The LSB publishes the following in a timely manner:

- Board papers and minutes, providing context and evidence for regulatory decision making. These Board papers include monthly finance updates and quarterly performance updates;
- Consultation responses and decision documents setting out our analysis of and response to evidence gathered;
- Annual costs statements setting out key numerical data about the LSB;
- Minutes from Board subcommittees;
- Annual business plans and tri-annual strategy documents setting out work plans; and
- Annual accounts and reports setting out high level performance against work plan, statutory performance targets and budget. The annual report also contains a high level summary of corporate risks in the past year.

13. The LSB could improve its level of transparency in relation to performance information (e.g. KPIs and performance reports, complaints etc.) - this is work in progress. While the LSB has a section of the home page dedicated to information [about us](#), with links through to [corporate publications](#) and information about [the Board](#) through which some performance information can be found it is not necessarily easy to find.

14. The Board is invited to **note** the LSB's transparency requirements for the legal services regulators, and how the LSB performs relative to them.

Approaches to transparency adopted by the regulatory bodies.

15. Set out below is a ranked overview of the approach to transparency among the legal services regulatory bodies. The focus is on what is published as part of the board or committee papers or information which is easy to find on home pages or websites. **Annex C** sets out more information to support this ranking. While the LSB is not a regulator as such, and therefore arguably not directly comparable, for the purposes of this exercise we have assessed our degree of transparency to be broadly comparable to that of the SRA.

Rank	Name	Reason	Unique selling points
1	BSB	Easy-to-navigate website which includes risk information, all board papers (including quarterly and annual performance against targets and identified risks) and full minutes	No redactions or restrictions on publications. The BSB has a section on its webpage which is entitled ' how we do it ', which includes an easy to find risk index and risk outlook.
2	CILEx Regulation	Publishes board papers (subject to certain restrictions) no later than three days before the meeting as well as minutes.	Under CR's Governance transparency policy , board meetings are public but the public may only observe rather than speak at meetings. The public may table questions in relation to the agenda, and the chair has the discretion of whether to cover the question.
3	SRA	Publish some board papers and (redacted) minutes. Redactions include detailed information about performance against KPIs and risk.	Board meetings are held in different locations across England and Wales and there is a range of outreach activity with different stakeholders.
4	IPReg	Publishes board minutes but not board papers.	Publishes its annual performance dataset as a stand-alone report.
5	CLC	Publishes combined board papers and minutes, which are heavily redacted and do not include performance or risk information	
6	CLSB	Publishes board minutes but not papers. No information tracking performance against milestones or risk.	2019 business plan includes a list of tasks by month.
7	MoF	MoF has published some decision notices from its monthly meetings with the master. The faculty office has published 'priorities for 2019'	N/A
8	ICAEW	Does not publish any papers or minutes from probate committee. Probate annual accounts contains no KPI or performance information. Last Annual report from probate committee is from 2015/16.	N/A
9	ACCA	Does not publish information specific to legal services.	N/A

How the LSB compares with other comparable bodies in the public sector

16. Recognising that regulatory bodies outside the legal services sector may have approaches to transparency that the LSB could learn from, information from a select number of such organisations is set out below.

17. There is little specific guidance to which bodies may refer in considering whether or not to hold Board meetings in public. For central government departments, the Code of Good Practice³ covers matters such as members of the department observing all or part of Board meetings, and that a Board's activities should be should be recorded and communicated as appropriate within the department. The provisions of this Code apply also to non-departmental public bodies.
18. Three of the main economic regulators - the Office of Gas and Electricity Markets (Ofgem), the communications regulator (Ofcom) and the water regulator (Ofwat) have all adopted similar approaches – Board meetings are held in private, and although agendas are published in advance, minutes (and not papers) are only released after approval at the following meeting.
19. The Food Standards Agency holds its Board meetings entirely in public, including via live webcast, and publishes agendas, papers and previous decisions about a week before the meeting. It also allows for members of the public attending to ask questions on the day.
20. The organisations included in the table below include some strong performers on corporate transparency – some of the more poorly performing organisations reviewed have been omitted.

Name	Reason	Unique selling point
GDC	Publishes all board papers and minutes un-redacted for the public part of the session. This includes quarterly performance score cards. Separate closed session, for which papers are not published. Efforts are made to keep the closed session to an absolute minimum.	Board meetings are held in public and the public can table questions on the council agenda which will then be answered at council meetings.
PSA	Appears to publish all current board papers and minutes un-redacted. This includes detailed performance information presented to July 2019 board. However, it is not immediately clear how to access papers and minutes from previous meetings.	PSA welcomes members of the public coming to observe meetings and questions are invited at the end. Board agendas and papers are published about one week before the meeting. The Board holds a private session at the end of each meeting.
CQC	The board agenda and meeting papers are published a few days before each meeting. There appears to be some restrictions to what is published such as some performance information.	The board conducts as much of its business as possible in a session that the public are welcome to attend and observe. To protect confidentiality some business is discussed in a private session. The public can watch

³ Corporate governance in central government departments: Code of good practice (2017) HM Treasury: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/609903/PU2077_code_of_practice_2017.pdf

Name	Reason	Unique selling point
		recordings of the meetings on the CQC website
FCA	FCA holds its Board meetings in private, publishes most board minutes about 6 weeks after the meeting, but does not publish board papers.	FCA has a section on its webpage called ' measuring our performance ' which sets out detailed performance information
CMA	CMA publishes board minutes only. Annual report contains a fair amount of performance information	N/A
Ofcom	Ofcom publishes minutes only but not board papers. Some narrative performance information in annual report.	N/A

LSB's practice to date

21. The Board first considered in 2009 whether or not to hold its meetings in public, and the approach it wished to take to the publication of papers. At that time, the Board expressed its desire to be as open and transparent as possible in carrying out its work, but decided that to open its meetings up to the public would "alter the dynamic of those meetings for the worse". It therefore concluded that all Board meetings would be held in private, but agreed that agendas, minutes and papers relating to each meeting would be disclosed in full, subject to any exemptions under the Freedom of Information Act 2000 (FOIA), as soon as practicable after each meeting.
22. The 2009 discussion was revisited in 2014 and then again in 2017. In 2017, other aspects of Board governance were considered such as paper length, length of meetings, Board speakers etc. While these other elements were addressed, the Board position in relation to opening meetings to the public did not change.
23. The current practice in terms of publication of papers is as follows: Board agendas and papers, including minutes of the previous meeting, are published on the LSB website within two weeks of the meeting. While we have not received any negative comment recently in relation to timing, there has been comment in relation to the extent of redactions to our papers and minutes, which is something which we are actively trying to address via paper drafting.
24. The reasons for heavier redactions in the past has related to papers reflecting the executive's thinking at the point of the meeting, rather than the Board's settled policy position. Publishing full papers in advance of the Board's final decision risked giving an unreliable indicator of the direction of travel on any particular policy issue.

Ways in which transparency might be improved

25. Although there are no statutory or other requirements on the LSB to hold its Board meetings in public, dependent on the principles we agree for transparency, we may wish to pursue this. While holding public Board meetings is not necessarily the most effective means of achieving greater transparency in the Board's decision making process, the main advantages of adopting such a practice are:

- Being present when issues are discussed around the Board table gives key stakeholders better insight into the factors that are taken into account in decision making, and could dispel some misconceptions
- Opening Board discussions to public scrutiny could enhance the LSB's profile, and generate more interest in its work. This could in turn lead to greater engagement from the profession and consumers
- Taking such a stance would demonstrate leadership in this area, and could help persuade those approved regulators who also hold their meetings in private to consider a more open approach, thus increasing transparency across the sector.

The potential downsides are as follows:

- The Board must be able to debate issues thoroughly, and all views fully aired. There is a risk that holding some discussions in the public domain could have the effect of reducing the rigour with which proposals are tested, and ultimately compromise the quality of decision-making;
 - There is a cost attached in terms of time – steps need to be put in place to publicise meetings and to manage any attendance;
 - One of the key characteristics of an effective Board is that each member is able to put forward their view in the course of debates, but once a decision is reached, all members take collective responsibility for it. There is a danger, in the event of a contentious decision, that stakeholders who disagree could use the views of dissenting Board members as a means of questioning or criticising the decision – though this risk can be mitigated by effective chairing and a good board.
26. An alternative to holding meetings wholly in public or in private is to divide the meeting into public and private sessions. Private sessions might generally be reserved for matters that ought legitimately to be kept private, rather than those that are controversial, or debate of which could prove embarrassing - stakeholders may grow tired of a public agenda packed with routine items, knowing that matters of real interest are being debated behind closed doors.

27. To increase the visibility of its work, and encourage greater scrutiny, the Board could hold one meeting a year entirely in public. This could be scheduled to coincide either with the publication of the Annual Report and Accounts, or the Business and Strategic Plans. It could also potentially be made to mesh with an “out of London” engagement event: time focused around a public board meeting, with a series of stakeholder discussions, visits etc and a public Q&A, perhaps over the course of two days.
28. The appropriate use of technology and social media would also need to be considered, both to enhance the accessibility of discussions.
29. Depending on the Board’s steer in relation to opening meetings to the public, the executive can work up a costed proposal for consideration at the next or a future Board meeting. The intention would be to trial any approach to test if it meets the LSB’s transparency objectives, and to make adjustments as necessary.
30. There are a number of other steps that the LSB could take – and which the executive recommends are adopted - to follow current best practice on corporate transparency. These include:
- Reviewing our appetite for the deployment of exemptions and drafting papers in such a way that redactions are limited, and exceptional;
 - Providing updates on key decisions made at meetings by way of social media updates or blogs immediately after meetings – this would give the LSB the ability to control the information being released, ahead of publication of the papers;
 - Allowing members of the public to raise questions in advance that could be raised and recorded in the minutes;
 - Publishing agendas (and potentially papers) before board meetings – and providing social media updates on these (eg tweeting that papers have been uploaded to our website);
 - Creating a dedicated section of the LSB webpage containing most recent performance information; and
 - Publishing fuller performance information.
31. The Board is invited
- **Agree** to proceed with proposals in relation to reducing reliance on redaction in board papers, providing clearer links to performance information and introducing post-Board social media activity; and
 - **Note** the analysis of options, risks and opportunities for opening board meetings to the public and provide a **steer** to inform further work.

Annexes**Annex A: Latest performance assessment of legal services regulatory bodies against WL3****Annex B: Assessment of LSB against WL3****Annex C: Approach to transparency - legal services regulatory bodies**

Risks and mitigations	
Financial:	In the event that the Board decides to hold all or at least one of its meetings in public, larger rooms may be required, and additional costs would also be incurred in ensuring that all those wishing to attend are able to do so eg papers produced in different formats
Legal:	If Board meetings are to be held in public, Members and colleagues would need to ensure that no inadvertent breaches of the Data Protection Act (DPA) or the Legal Services Act (LSA) (in respect of information that is required to be kept confidential under the Act) are committed.
Reputational:	There has been historic adverse media comment on the Board's approach to holding meetings entirely in private, and on the time taken for papers to be published.
Resource:	Potential additional secretariat team time required for making public and private packs; servicing open meetings.

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Annex C	Section 36(2)(b)(i): free and frank provision of advice	N/A

Annex A: Latest performance assessment of legal services regulatory bodies against WL3

Regulatory Body	WL3 rating	Actions needed (at June 2019)
BSB	met	No Action
CLC	Not met	<p>CLC to confirm how and when it will ensure that the supporting evidence for decisions taken by its Council or Executive which impact on the regulated community are published as soon as possible after decisions are taken. This should include Council papers which should only be withheld or have content removed in limited circumstances, and if not CLC to ensure that this information is provided through other mechanisms.</p> <p>CLC to provide a timeline for its work to review the transparency of its performance information (e.g. KPIs and performance reports, complaints about the regulator etc.) and to ensure this information is published as soon as possible after Council consideration.</p> <p>CLC to confirm that they will continue to publish the non-confidential responses to their consultations as well their response to the submissions.</p> <p>CLC to submit a progress update to the LSB by 1 November 2019.</p>
CLSB	Not met	<p>CLSB to implement its Transparent Decisions Policy in October 2019 along with more detailed minutes. CLSB to give further consideration to drafting and publishing board papers to not only increase transparency but to improve the governance and evidence upon which board decisions are made.</p> <p>CLSB's new KPI's policy to be further developed and fully implemented.</p> <p>CLSB to submit a progress update to the LSB by 1 November 2019.</p>
CR	met	No Action
ICAEW	Not met	<p>(1) ICAEW to review current publication policy and ensure that the supporting evidence for decisions taken by the Board or Executive which impact on the regulated community are published as soon as possible after decisions are taken. This should include Board papers, which should only be withheld or with content removed in limited circumstances.</p> <p>(2) ICAEW to review the transparency of its performance information (e.g. KPIs and performance reports, complaints about the regulator etc.) and that this information should be published as soon as possible after Board consideration.</p> <p>The ICAEW to set out the measures it intends to take to complete Actions (1) and (2) noted above; and by 1 November 2019 provide the LSB with a detailed plan, with deadlines, for their implementation.</p>

Regulatory Body	WL3 rating	Actions needed (at June 2019)
		The ICAEW should then proceed to complete Actions (1) and (2) as provided for in their plan.
IPReg	Not met	<p>IPReg to implement its proposed programme of change to ensure the transparency of its performance and decision-making information and to publish documentation with as little redaction as possible.</p> <p>IPReg to submit a progress update to the LSB by 1 November 2019.</p>
MoF	Not met	<p>The Faculty Office to ensure it publishes the supporting evidence for regulatory decisions as soon as possible after they are taken. This should include the following: evidence considered by the Master when making regulatory decisions; the advice offered by the Advisory board and the rationale behind it; analysis of information on the notarial profession and market that is gathered through work such as the practising certificate renewal process.</p> <p>The Faculty Office to continue to develop the publication of its performance information. This needs to include information on the timeliness of its regulatory processes and performance against key performance indicators.</p> <p>The Faculty Office to submit a progress update to the LSB by 1 November 2019.</p>
SRA	Not met	<p>SRA to review current publication policy and ensure that supporting evidence for decisions taken by the Board or Executive which impact on the regulated community is published as soon as possible after decisions are taken. This should include Board papers which should only be withheld or have content removed in limited circumstances.</p> <p>SRA to review the transparency of its performance information (e.g. KPIs and performance reports, complaints about the regulator etc.) and that this information should be published as soon as possible after Board consideration.</p> <p>The SRA to set out the measures it intends to take to ensure the transparency of its performance and decision-making information and by 1 November 2019 provide the LSB with a detailed plan, with deadlines, for their implementation. The SRA should then proceed to complete the actions in their plan and submit a progress update to the LSB by 1 November 2019.</p>

Annex B: Assessment of LSB against WL3

Prompts	Examples of where to look	Comments/information gathered
Can the public easily access meaningful and accurate information about the regulator's work and performance?		The LSB webpage has a section called 'about us'. This includes a section called 'who we are' which outlines our statutory responsibilities and the 'tools' that we use. There are also sections for corporate publications and our board but one needs to know what one is looking for to be able find any relevant information.
What information about the regulator's work and performance is publicly available?	The accessibility of the regulators' information is at the heart of this outcome. 1. Regulators' website - Board papers and minutes, Committee papers and minutes, annual reports, business plans, strategy, risk outlooks, cost statements	LSB generally publishes board papers in a timely manner and the level of redactions appear to have reduced. LSB publishes annual costs statements. Papers for board sub committees are not published but redacted minutes are. LSB publishes annual business plans, 3 yearly strategies and annual reports and accounts. Annual report contains a summary of progress against the work plan included in the annual business plan, as well as performance against statutory performance targets and budget.
Is this information easy to find and access for anyone interested, e.g. members of the public or profession?	2. LSB website - PCF applications 3. News clippings 4. Contact us spreadsheet 5. Meeting read-outs	Corporate publications yes, board papers no.
Is this information presented using plain English and in an accessible format?		LSB board papers are written for the informed audience whereas corporate publications are written for an external audience. Format is reasonably accessible.
Is the information regularly updated?		Papers are generally published in a timely manner.
Any other information gathered relevant to this outcome		N/A
Finding WL: GL3	Met	

Annex C: Approach to transparency among the legal services regulatory bodies

[REDACTED]