

Board paper – November 2019

Meeting: Legal Services Board

Date: 26 November 2019

Item: Paper (19) 57

Title: Regulatory performance framework: Next step proposals

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Status: Official/Official sensitive

Introduction

1. This paper provides a review of implementation of the regulatory performance framework since its introduction in January 2018 and presents proposed next steps for 2020 and beyond. A background note on the framework is attached at Annex A.

Recommendation

2. The Board is invited to:
- a. Note the progress since the publication of the transitional review report in January 2019 and the impending publication of the second round of action plan assessments;
 - b. Note the planned next steps which we have announced, as set out in paragraph 12; and
 - c. Consider the three proposed further actions, as set out in paragraphs 14 to 19.

Timing

3. We aim to publish the second set of action plan assessments after the election and as near to 13 December as possible. We will set out our intentions for 2020 to ensure that regulatory bodies are clear on our plan and expectations.

What we have done so far

4. We have maintained regular contact with the Board. At the November 2018 meeting when the draft transitional report was discussed, the Board made the following point:

*If a new approach to assessment were to be adopted in the future, it would be helpful to have a debate ahead of time; one alternative method would be an adequate / good / outstanding framework which would encapsulate a sense of good practice. It was agreed that oversight regulation existed to provide assurance, and sometimes to publicise better performance or examples of excellence. **Action** - executive to compare the way(s) in which other oversight regulators assess performance as part of its scheduled review in late 2019.*

5. When we last presented at the July 2019 Board we received a clear steer that meeting the minimum required standards for the transitional review was acceptable, this should be within the context of seeking a culture of continuous improvement.

6. The review noted was a planned internal review of how well the framework was working in practice. This paper addresses the effectiveness of our framework in delivering the Board's steer. More specifically, we are considering other oversight regulatory practices in the internal review of enforcement.

7. Since January 2018 we have:

- a. Carried out a transitional review of each regulatory body between January and November 2018. In January 2019 we published a [report](#) of the review which included detailed action plans for each regulatory body;
- b. Introduced relationship management as a means of monitoring the regulators' performance on an ongoing basis and to ensure that we develop a mutual understanding of actions and priorities;
- c. Reviewed progress against the action plans up to 31 May 2019 and published [revised assessments](#) in August 2019; and
- d. Written to each CEO to set out our expectations and our ongoing quality and timeliness concerns, specifically noting rule change applications (see Annex B).

Review of our progress

8. Generally, the framework is settling down well and regulatory bodies are building a better understanding of what they need to do to meet the minimum requirements where these are unmet. Relationship management is working effectively and the LSB is gaining a deeper understanding about the regulatory bodies and their key activities.

9. Embedding assessment of how well wider LSB policies are being applied (ie CMA transparency; Diversity) has allowed us to mainstream the policy monitoring on an *as required* basis which allows us to reduce the need for one-off reporting requirements. We are currently maintaining a watching brief on the wider policies at this stage.

10. However, there remains a concern that the regulatory bodies have not embedded the regulatory performance framework fully into their own governance arrangements. An example of where we see evidence of this is the quality and timeliness of correspondence, as set out in the letter at Annex B.

11. The Board is reminded that our initial transitional reviews of regulators' performance were consciously light touch and based on seeking a minimum level of assurance. In future, the main area for improvement is in the robustness of our assessments and how we ensure a culture of continuous improvement.

What we plan to do next: Published plans

12. We will:

- a. Complete the second assessment of progress against the action plans during November and publish the results as near as possible to 13 December, subject to purdah. This will include an updated scoring overview table which we published in the transitional review report. We will also highlight best practice examples where we can.
- b. Draw up a consultation on expansion of the regulatory performance framework to include ensuring regulatory independence through IGR compliance. This was considered to be a substantive change to the scope of the framework and also the expansion to include Approved Regulators, now that we have explicitly set out their regulatory functions as delegation and assurance. A paper on the consultation will be presented at the January 2020 meeting.
- c. Continue our ongoing monitoring of the action plans and performance against the outcomes but consider a more planned approach which continues with our business-as-usual activities but also takes a risk-based approach on areas of concern.

Future options

13. In addition to the above published plans, we also have the following specific proposals.

Embedding the concept of continuous improvement

14. We want to ensure that the framework remains relevant and we would expect to review its effectiveness on a regular basis and at least every three years. To inform a future review we will test the standards and outcomes through our assessment process and embed the Board's expectation that regulatory bodies should be striving to improve their performance year-on-year. This will logically move us away from static assurance of meeting the minimum required standard to a position where regulatory bodies demonstrate that they have adopted a culture of continuous improvement and are challenging themselves to improve their performance.

Proposed action 1: The Board agrees to setting out a strategic plan of how regulatory bodies will be assessed in future and the expectation that regulatory bodies will demonstrate a commitment to ongoing reflection, evaluation and improvement in performance year-on-year. Further explanation of how this will work in practice will be sent to regulatory bodies.

Targeted reviews

15. Whilst we will continue to hold regulatory bodies to account for progress on addressing any unmet outcomes, we expect this to be less of a focus as the number of unmet outcomes across the regulators reduces. We therefore propose to focus on undertaking targeted, risk-based reviews of one or two regulators, where we can assess performance across all outcomes, or specific outcomes, and seek a higher level of evidence and assurance than during the transitional reviews. Given previous

concerns and the high number of unmet outcomes when we last assessed its performance, the CLSB would be a likely candidate for a risk-based targeted review.

Proposed action 2: Undertake one or two risk-based performance reviews of specific regulatory bodies, seeking a higher level of assurance.

Thematic reviews: Transparency of Regulatory decision making

16. By far the most significant impact on overall regulatory performance is how Well-led the regulators are and therefore failure to meet even some of the outcomes under this standard is concerning. Transparency was a strong focus from the CMA market review in 2016 and this is more broadly covered in the WL3 outcome (Regulator is transparent about decision making). In the transitional review six regulatory bodies failed to meet the standard and we do not expect a significant change in the forthcoming review. In the light of this, during 2020 we propose to conduct a thematic review of WL3. This would look in more detail at how regulators are seeking to meet this outcome. It would include a focus on two themes:

- (i) Overall public transparency and accountability
- (ii) Visibility of how the Board is holding the Executive to account.

17. The latter is of specific relevance to the LSB in assessing regulators' performance. Our starting point on this is that it is difficult to see how regulators would be able to provide adequate visibility of how its Board holds the Executive to account without holding public Board meetings. Public board meetings would also provide an opportunity for LSB colleagues to attend. However, the review would provide regulators with an opportunity to demonstrate plans and approaches that would satisfy both aspects of this outcome.

18. There are clear links here to the Board's recent discussions about increasing our own transparency and accountability and plans to hold a public Board meeting during 2020.

19. The transitional review also raised concerns on outcome A5 (Registers to include disciplinary information) where five regulatory bodies failed to meet the standard required. We expect this area to be simpler to implement the changes required and therefore we will deal with any further unmet outcomes, where the explanation for a lack of progress is unconvincing, by downgrading the scoring and introducing a new action and set timetable for implementation.

Proposed action 3: We should plan to resource a thematic review during 2020 and prioritise a review of WL3 (Regulator is transparent about decision making).

Freedom of Information Act 2000 (Fol)	
Fol exemption and summary	Expires
None	N/A / Date

Background on Regulatory framework

The [performance framework](#) consists of:

- a. 5 function-based standards underpinned by a total of 26 outcomes (4-6 per standard)
- b. Performance management dataset which collects a range of information on the administrative efficiencies of the regulators (eg number of authorisations/cases under review, time taken to review, staff turnover, complaints handling)

We follow our published regulatory approach in applying the framework:



The new framework was introduced in December 2017 which moved away from self-assessment to LSB assessment and replaced the regulatory standards approach with the new performance framework. The new framework is more detailed and has carried forward many of the previous standards. The framework is designed to be outcome focused and assesses each regulatory body against meeting *the minimum required standard*. The framework is flexible and allows us to gather evidence from a wide range of sources and to use that in several ways to ensure that at least the minimum standard required of each regulator is met.