

Meeting: Legal Services Board

Date: 22 January 2020

Item: Paper (20) 05

Title: **Regulatory Performance and Proposed regulatory independence monitoring**

Author: Angela Latta, Head of Performance and Oversight

Status: Official

Introduction: Purpose of the paper/ Issue

1. To seek the Board's views on the planned consultation on the future direction of our regulatory performance framework and our plans to expand the regulatory performance framework to incorporate monitoring the delivery of regulatory independence as set out in the Internal Governance Rules (IGR).

Recommendation(s)

2. The Board is invited to note and comment on the draft consultation document attached at Annex A and agree the proposed approach for development of the regulatory performance framework to include:
 - a. the addition of a new IGR outcome to the *Well-led* standard in our regulatory performance framework which will apply to all approved regulators and regulatory bodies; and
 - b. the six approved regulators that also have separate regulatory bodies into our regulatory performance framework but only in relation to monitoring their delegation and assurance of regulatory functions as required under the IGR.

Timing

3. We plan to launch the consultation in early February 2020 with a consultation period of eight weeks. We will publish our decision document and revised framework by 23 July 2020.

Background

4. On 24 July 2019, the new IGR and supporting guidance came into effect and a 12-month transition period began. Approved regulators and regulatory bodies are expected to assess their internal procedures and working practices and put in place arrangements to ensure full compliance with the revised IGR by the end of the transition period. We explain what is required to certify compliance with the revised IGR in our decision document published on 24 July 2019 and in our ongoing communications with approved regulators and regulatory bodies.
5. Monitoring regulatory independence will be incorporated into our regulatory performance framework as explained in the IGR decision document. This will mean extending the performance framework to include approved regulators and creating a new outcome.

Consultation

6. The consultation sets out the future direction of our performance framework and explains the Legal Services Board (LSB) plans to expand the framework to incorporate monitoring regulatory independence.

Expectations and framework review

7. In the regulatory performance paper presented at the November Board meeting the Board approved the proposal that we set out our future expectations for assessing the performance of regulatory bodies. As we and the regulatory bodies build up experience of operating within the performance assessment framework and develop a shared understanding of what good performance looks like, it makes sense to adjust the basis for our assessment above minimum standards. Therefore, our expectation in future is that all regulators will adopt reflective and evaluative practices which ensure that their performance against the regulatory standards improves year-on-year.
8. We also set out in the consultation document a commitment that we intend to formally report on all regulators' performance on an annual basis. This will be informed by ongoing monitoring by relationship managers, evidence and information gathered through risk-based reviews and submissions from regulatory bodies. This was explained in more detail on the *Regulatory performance: Performance assessment November 2019* report, published on 18 December 2019.
9. Additionally, to ensure that the framework remains relevant we expect to review its effectiveness on a regular basis and at least every three years. Between major revisions we may make incremental improvements in specific areas.

New IGR compliance outcome

10. We have developed a new outcome under the *Well-led* standard to monitor regulatory independence. A key element of this standard concerns the corporate governance required to manage an organisation effectively. We consider this a good fit as compliance with the IGR is primarily an integral part of an approved regulator or regulatory body's governance arrangements.

11. The IGR inclusion will also mean that Approved Regulators will be included in the regulatory performance framework. Approved Regulators will only be subject to the regulatory independence outcome and will not be subject to the full performance framework. We will also introduce relationship management meetings, as we do for regulatory bodies, and we expect these to take place approximately 2-3 times each year.

12. We propose the following new outcome:

Well-led Standard	Outcome WL7	Short form descriptor
	<p>The approved regulator/regulatory body meets the outcome to enhance regulatory independence:</p> <ul style="list-style-type: none"> • The approved regulator has the necessary delegation arrangements in place and gains assurance that its regulatory functions are effectively carried out in line with the IGR. • The regulatory body carries out its regulatory functions in line with the IGR and provides assurance to its approved regulator if required by Section 28 of the Legal Services Act 2007. 	<p>Regulatory independence delivered by the IGR</p>
<p>Examples of evidence</p>	<ul style="list-style-type: none"> • Protocols setting out: delegation agreements; separation arrangements and the justification for choosing these arrangements. • Protocols for information exchange between the regulatory body and approved regulator. • Agreements for any shared services between a regulatory body and approved regulator. • Logs of any referrals to the LSB for clarification including the efforts made internally (including between an approved regulator with a residual role and its regulatory body, where relevant) to resolve the issue. • Records of any disputes referred to the LSB and the discussion between the regulatory body and approved regulator prior to the referral. • Logs of non-compliance issues, action taken and result. • Logs of training provided to relevant individuals. 	

Next steps

13. We propose that the consultation is live for eight weeks, closing at the end of March 2020.

This reflects the limited scope of the consultation and the fact that we have already prepared potential respondents for this consultation by explaining our plans in the IGR decision document published on 24 July 2019.

Annexes

Annex A – Draft consultation document

Risks and mitigations	
Financial:	N/A
Legal:	Low. The proposals are uncontroversial.
Reputational:	We do not expect any issues to arise. This is on the basis that no comment was made to our proposed handling of IGR compliance and the inclusion of approved regulators into the regulatory performance framework, when explained in the IGR decision document published on 24 July 2019.
Resource:	Specific additional resource has been allocated for the consultation exercise. Beyond that any further actions will be carried out by the appropriate relationship managers under the Regulatory performance framework.

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Annex A	Exemption under s22 as the consultation is planned for future publication.	February 2020

