

BSB Regulatory performance assessment July 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	Not met – action required						Not met – action required														

We assessed the BSB’s performance against the Well-led standard of the Regulatory Performance Assessment Framework following the conclusion of our review of the BSB under the Well-led standard. Based on the findings in the review, we determined that the BSB did not meet four Well-led outcomes (WL1, 3, 5 and 6).

The performance framework provides for a more in-depth review when our ongoing monitoring identifies that we do not have sufficient assurance about an area of a regulator’s performance or identify an area as one of concern. In March 2020, the LSB determined that a review was necessary due to ongoing concerns that the BSB did not meet WL5 of the performance framework, which we said centred on the leadership and governance within the BSB in making sound decisions and acting in a way that is compatible with the regulatory objectives.

Through the review, we sought assurance that the BSB was a Well-led regulator that has decision-making processes that are effective and informed by appropriate evidence; take account of the likely impact of the decisions on the regulatory objectives and in particular the public interest (including the interests of consumers); and have regard to the Better Regulation Principles to be transparent, accountable, proportionate, consistent and targeted.

The review concluded in July 2021 and our findings are set out in the [review report](#) in detail. The findings include little evidence of meaningful consideration of relevant regulatory objectives when decisions were taken; that the BSB placed disproportionate weight on the impact of its work on the profession and paid insufficient regard to the impact on the public, including consumers and several occasions where the Board was not provided with sufficient information to support key regulatory decisions. This informed our assessment that the BSB does not meet outcomes WL1, 3, 5 and 6 of the Well-led standard.

Following conclusion of our review, the BSB has confirmed that it accepts the findings in the review report and that it must do more to convince the LSB and other stakeholders that its leadership and governance substantiate its commitment to the regulatory objectives and conform to 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 a number of places to actions that the BSB has committed to through this Action Plan.

We note that the BSB currently has one other unmet outcome under the Regulatory Approach standard of the Performance Framework, RA2. This was last assessed in the [November 2020 performance assessment](#) and has not been reassessed at this time but is included for completeness.

Not met – action being taken

Outcome		WL1: The Board/Council holds the executive to account for the regulator’s performance to ensure that it operates effectively and efficiently and in a way which is compatible with the regulatory objectives.
July 2021	LSB assessment	<p>Our review found little evidence of meaningful consideration of relevant regulatory objectives when decisions were taken (finding 1). We said it was difficult to be assured of the BSB Board’s focus on its statutory duty to protect and promote the interests of consumers, or the duties to improve access to justice and increase public understanding of the citizen’s legal rights. As a result, we were concerned that the BSB allowed the interests of the public and consumers to be outweighed unduly by those of the profession when taking key decisions (finding 2). We also found that on several occasions the Board was not provided with sufficient information to support key regulatory decisions (finding 4). Related to this, we found the Executive did not consistently provide the Board with the information it needed to take effective decisions (finding 9).</p> <p>The review report sets out several examples that illustrate these findings, including:</p> <ul style="list-style-type: none"> • When the BSB Board took the decision to withdraw funding from Legal Choices at its March and September 2019 Board meetings, it did so in the absence of papers. We also found no evidence to suggest the Board was otherwise provided with relevant information to support the decision, such as an assessment of the impact on or potential risks to the regulatory objectives or costed proposals for alternative public legal education (PLE) activities. • When the Board decided to narrow significantly the scope of the BSB’s proposed transparency standards in February 2018, there was no identification of any risks to the regulatory objectives flowing from its decision and little evidence of meaningful analysis of affected stakeholders’ views. • In November 2020, the Executive presented a paper on consumer engagement which, in our view, was lacking key information, including sufficient information on costs and risks to support the BSB Board’s decision-making. This was of concern because issues relating to the information provided to the Board were covered by the BSB’s internal audit report into the Legal Choices decision. Recommendations from the auditors about future governance and decision-making processes were accepted by the Board in September 2020.
	Action needed	<p>We welcome the commitments and actions set out in BSB’s Action Plan that are relevant to demonstrating improved performance in relation to this outcome. These include:</p> <ul style="list-style-type: none"> • The BSB has committed that all of its Board papers will set out clearly how the issue under consideration support the regulatory objectives and how proposed actions mitigate risks to the regulatory objectives. Papers will cost the options proposed for mitigating risk, alongside other options available, and provide an analysis of stakeholders’ views. Published policy statements will be transparent in explaining how BSB has addressed its public interest responsibility and better regulation principles and balanced the

		<p>regulatory objectives. Board discussion will continue to be held in public where appropriate. There will be a full audit trail for Board decisions in Board minutes and extraordinary Board meetings will be on the public record.</p> <ul style="list-style-type: none"> • The BSB's Business Plan & Budget 2021/22 and subsequent annual business plans will include an analysis showing how the priorities set by the Board support the regulatory objectives and mitigate risks to those objectives. • The Director General will ensure that the Board is provided with all the information and analysis needed to support effective decision-making, including, where relevant, a costed analysis of options and an analysis of risks. This will identify 'significant' decisions in terms of, for example, novelty, contentiousness, or repercussion, and set out appropriate governance arrangements. The 2020 recommendations of BSB's internal auditors bearing on Board decision-making in the light of the review of 2019 decisions on public legal education will be implemented. These recommendations include provision for the Board, where minded to change strategic direction, to receive a follow-up paper analysing the key risks and stakeholder views. Discussions will take place with the Chair pre-Board meetings to confirm that papers are fit for purpose in all these respects. • The Senior Management Team will, in future, review BSB's performance against the LSB Regulatory Performance Assessment Framework every six months and report to the Board on strengths and areas for development. The Board discussion will be fully recorded. • The Board will formally discuss the LSB's assessment of BSB's performance against its Regulatory Performance Assessment Framework annually at its first meeting after BSB receives the assessment. The discussion will be fully recorded. <p>We were concerned when the BSB informed us that it conducts extraordinary Board meetings, of which there is no public record. We are pleased that the BSB has committed that these will be on the public record in the future. In addition to this action, we will expect the BSB to:</p> <ul style="list-style-type: none"> • Review the extraordinary Board meetings held over the last three years and place appropriate material in the public domain. <p>We will expect to be kept informed of the BSB's progress in delivering these actions and will seek evidence of the outcome being met, through Board papers, minutes and other published material, as well as any applications made to the LSB.</p>
	Timing	The LSB will carry out ongoing monitoring throughout the year. The BSB will be required to provide a formal progress update in October 2021 to inform our annual performance assessment in November 2021.

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.
	LSB assessment	<p>Our review found that the decision-making process for major decisions did not follow the BSB's own procedures (finding 3). We also found that the governance architecture is fragmented and difficult to access, with some out of date components (finding 5).</p> <p>The review report sets out several examples that illustrate these findings, including:</p> <ul style="list-style-type: none"> • When taking decisions relevant to Legal Choices and the transparency standards (see LSB assessment for WL1 above), the BSB did not identify, assess or mitigate risks to the regulatory objectives in accordance with the BSB's risk policies and there was little or no engagement with the key stakeholders identified in the BSB's engagement strategy. • The Governance Manual has been archived since October 2019 and many of the policies in it are duplicated elsewhere. • The Scheme of Delegations is not clear on sub-delegations and who holds responsibility for approvals, which obscures accountability.
July 2021	Action needed	<p>We welcome the commitments and actions set out in BSB's Action Plan that are relevant to demonstrating improved performance in relation to this outcome. These include:</p> <ul style="list-style-type: none"> • As a contribution to the development of BSB's three year strategy for 2022/23 to 2024/25, the BSB regulatory Risk Index will be reviewed and refreshed to ensure that it aligns with the regulatory objectives and captures the key risks to those objectives and the evidence bearing on likelihood and impact of those risks. This work will be taken forward as part of the broader programme of work to develop the next three year strategy. A refresh of the Risk Index will inform the Board off-site in July 2021 and a fully updated Risk Index will be published alongside the three year strategy in March 2022. • A new three year strategy covering the years 2022/23 to 2024/25 will be developed prioritising the effective delivery of BSB's core regulatory work and the most significant risks to the regulatory objectives as analysed in the revised Risk Index. • The current operation of the Internal Governance Rules and, in particular, the effectiveness of the remaining services shared between the BSB and Bar Council, will be reviewed in the first half of 2022/23 in the light of their operation in the preceding 18 months to assess whether they support BSB's independence of decision and operation. • BSB's internal policies will be reviewed over the course of 2021/22 to ensure that the policies comply with statutory objectives and better regulation principles, support BSB's independence as a regulator and are

		<p>understood and implemented by BSB's people. Priority will be given to policies currently shared with the Bar Council.</p> <ul style="list-style-type: none"> • BSB's internal delegations, including the matters reserved to the Board and its Committees, will be reviewed and associated governance documents refreshed to meet the requirements of the UK Corporate Governance Code. <p>In addition to these actions, we will expect the BSB to demonstrate consideration of:</p> <ul style="list-style-type: none"> • Wider review of its governance manual, associated documentation and practices, against best practice from the UK Corporate Governance Code • Training opportunities for Board or Executive to ensure consistent good practice in terms of corporate governance. <p>We will expect to be kept informed of the BSB's progress in delivering these actions and will seek evidence of the outcome being met, through published papers and materials and any changes to its governance documentation.</p>
	Timing	The LSB will carry out ongoing monitoring throughout the year. The BSB will be required to provide a formal progress update in October 2021 to inform our annual performance assessment in November 2021.

Outcome		WL5: The Board considers its own effectiveness in ensuring the regulator is a well-led, independent, transparent and consumer-focused organisation, which acts in a way that is compatible with the regulatory objectives.
July 2021	LSB assessment	<p>In our November 2019 performance assessment, we said that that BSB's decision to withdraw funding from Legal Choices without a clear commitment to investing in alternatives was a diminution in respect of WL5. We said that we expected the BSB to provide detailed information including costed and specific deliverables which explain how the BSB proposes to fulfil its consumer obligations previously delivered through Legal Choices; and to provide records of the Board-level discussions which informed the decision to withdraw from supporting the service. Information provided by the BSB in December 2019 and January 2020 did not provide sufficient assurance that the BSB met WL5. We determined it was necessary to carry out a review of the BSB's performance under the wider Well-led standard and advised the BSB of our intention to carry out the review. Following the review, our assessment is that outcome WL5 remains unmet.</p> <p>Our review raised concerns about the Board's apparent willingness to take key decisions in the absence of supporting material, which raised concerns about the confidence that may be placed in such decisions (finding 6). We also found that the Board did not take responsibility for the organisation's performance within the statutory framework of regulatory objectives and performance obligations within which it operates (finding 8).</p>

		<p>The review report sets out several examples that illustrate these findings, including:</p> <ul style="list-style-type: none"> • In interview, BSB Board members said they felt they had the information necessary to take the decision to withdraw funding from Legal Choices. This was despite us finding that the Board was not provided with relevant information to support that decision and the BSB’s own internal auditors finding shortcomings in the information provided to the Board. We noted that, in interviews, Board members did not reflect on or refer to the internal audit report’s findings or recommendations. • We found no evidence that the Board engaged with the issues raised in previous LSB performance assessments.
	<p>Action needed</p>	<p>We welcome the commitments and actions set out in BSB’s Action Plan that are relevant to demonstrating improved performance in relation to this outcome. These include:</p> <ul style="list-style-type: none"> • An independent review of the Board’s governance will be commissioned in 2021 to inform the Board’s annual self-evaluation. The review will consider how effectively the Board has regard to the regulatory objectives and to consumer interests. Independent reviews will be commissioned on a triennial cycle thereafter. • In the light of independent review of its governance, the Board will discuss what changes to make to the conduct, frequency and timing of its meetings and to the development of Board members to ensure effective focus on the regulatory objectives, opportunities for challenge and the development of a cohesive Board culture. • The Director General will report to the Board at all scheduled meetings on the performance of the Bar Standards Board in delivering its annual business plan, including its performance in achieving the service standards set for its core regulatory work of considering reports, handling applications for authorisations and waivers and taking forward investigations of potential disciplinary matters. <p>We also note the relevance of other actions in the BSB’s Action Plan that are set out above in the action needed for WL1, including the commitment from the Director General to ensure that the Board is provided with all the information and analysis needed to support effective decision-making; and the plans for the Senior Management Team and Board in respect of the BSB’s performance.</p> <p>We will expect to be kept informed of the BSB’s progress against these actions, including the outcomes and follow up action from its independent governance review.</p>
	<p>Timing</p>	<p>The LSB will carry out ongoing monitoring throughout the year. The BSB will be required to provide a formal progress update in October 2021 to inform our annual performance assessment in November 2021.</p>

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	<p>Our review found that the BSB stakeholder engagement strategy has not been effective in building partnerships with its target organisations relevant to its PLE activities and the transparency standards project (finding 10). We also found that the BSB placed a disproportionate weight on the impact of its work on the profession and paid insufficient regard to the impact on the public, including consumers (finding 7).</p> <p>The review report sets out several examples that illustrate these findings, including:</p> <ul style="list-style-type: none"> • No evidence of any meaningful engagement with stakeholders prior to the BSB's initial decision to withdraw funding from Legal Choices in March 2019 and limited engagement with stakeholders prior to confirming that decision in September 2019. We noted this was counter to the BSB's own priority to 'ensure in each case that those most affected by our decisions have their voices heard in the decision-making process'. We also noted the limited progress in discussions with targeted organisations as part of its revised PLE strategy, including Citizens Advice, GOV.UK and Advocate during the period of the review. • The decision-making process in taking the decision to rescope the transparency standards in February 2018 appeared to be heavily influenced by the views of the profession but failed to take sufficient account of the views of solicitors, consumers and other intermediaries. This was despite the BSB recognising the important role of solicitors as intermediaries in the majority referral profession of the Bar.
	Action needed	<p>We welcome the commitments and actions set out in BSB's Action Plan that are relevant to demonstrating improved performance in relation to this outcome. These include:</p> <ul style="list-style-type: none"> • BSB will establish a pool of consumer facing organisations with whom we will engage ad hoc, setting up sub-groups of stakeholders who are the most relevant to the issue under consideration and BSB's advisory Panel of Experts will be strengthened through the recruitment of a number of additional consumer experts. • Board papers will in future set out, where relevant, the arrangements for engaging consumer representatives and record the views of consumer representatives and other relevant stakeholders where decisions are sought from the Board. • The Board will review the effectiveness and impact of its current strategy for promoting public legal education through partnerships with third sector bodies and how, having regard to the recommendations of the Competition & Markets Authority, BSB might contribute to a broader cross-sector strategy, including Legal Choices, as one element of the development of its next three-year strategy 2022/23 to

		<p>2024/25. It will publish its revised strategy. The review will include whether its engagement strategy is comprehensive, realistic and able to provide reliable insights into the views and expectations of consumers.</p> <ul style="list-style-type: none"> • In assessing the performance of our communications and public engagement strategy, the Board and SMT will consider the diversity, as well as the number, of stakeholders responding to consultations. <p>We will expect to be kept informed of the BSB's progress against these actions, including the outcome of the BSB's planned consultation on the revised PLE strategy. We expect to be able to see, from Board papers, minutes and any applications for approval made to the LSB, that the views of the public and consumers are given appropriate weight.</p>
	Timing	The LSB will carry out ongoing monitoring throughout the year. The BSB will be required to provide a formal progress update in October 2021 to inform our annual performance assessment in November 2021.

Outcome		RA2: Regulatory arrangements and supporting guidance documentation are regularly reviewed and, where necessary, updated based on a robust evidence-base.
November 2020	LSB assessment	<p>A key component for meeting this outcome is effective engagement with the LSB's rule approval process. A recent deterioration in the quality of the BSB's rule change applications, means that we cannot currently consider this outcome is met.</p> <p>In November 2019 assessment we assessed this outcome as not met – action being taken, in respect of some recent rule change applications, including those which have proposed to implement significant policy changes, there have been a number of issues which have had an impact on the LSB's ability to assess the applications. These issues ranged from;</p> <ul style="list-style-type: none"> • lack of clarity about the rules in respect of which the BSB is seeking approval • incomplete applications (e.g. consequential amendments are omitted) • errors in the proposed rules submitted for approval (some of which have been discovered by the BSB after the LSB has approved the rules) • poor presentation of applications which makes the impact of the proposed rule changes more difficult to assess.

		<p>The BSB informed us in November 2019 that it had a new Head of Legal Support in place who would review all applications before they are submitted to the LSB. It was also considering developing a template for all rule change applications to ensure quality issues are addressed.</p> <p>The action for the BSB was to review its current procedures and take the necessary steps to ensure that future rule change applications are complete and that all quality issues have been addressed before applications are submitted for approval.</p> <p>The BSB has advised the LSB of steps that they will undertake to ensure quality assurance of future rule change applications. However, the BSB has not submitted a substantive rule change application since 2019, although they have submitted exempt changes, for which we have issued exemption directions. Although these applications had improved significantly, given that that we are yet to receive a full rule change application, we do not consider that we have sufficient evidence to recommend that the rating for this outcome be changed to met. The BSB has advised that they will submit a full rule change application in early 2020.</p>
	Action needed	The BSB to take the necessary steps to ensure that future rule change applications are complete and that all quality issues have been addressed before applications are submitted for approval.
	Timing	Immediate action and prior to submission of any future rule change application. We will review progress against this outcome at each rule change application.