

Meeting: Legal Services Board

Date: 18 October 2022

Item: Paper (22) 52

Title: Regulatory Performance Framework Review

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Status: Official

Introduction: Purpose of the paper

1. For the Board to review and approve the following documents for publication:
 - The response document to our consultation on the revised regulatory performance framework
 - The final version of the framework sourcebook document
 - The final version of the framework process document

Recommendation(s)

2. The Board is invited to **review** and **approve** the consultation response document and framework documents for publication. In paragraph 12, we set out where we are proposing to change the text of the sourcebook and process documents in response to the consultation responses we received.

Timing

3. Following Board approval we intend to publish the documents by the end of October and the new framework will come into effect on 1 January 2023.

Background

4. This work is central to our duty to meet the regulatory objectives, have regard to the better regulation principles and the Legal Services Board's (the "LSB") ambition to reshape legal services to better meet society's needs and provide consumers with fairer outcomes, stronger confidence and better services.
5. The Legal Services Act (the "Act") states that the LSB must assist in the maintenance and development of standards in relation to the regulation by regulators of persons authorised by them to carry on reserved legal activities under section 4 of the Act; and the maintenance and development of standards in relation to the education and training of persons so authorised, under section

4 of the Act¹. To enable the LSB to achieve our functions of overseeing the regulators' performance, we have developed a framework against which we can assess regulators' performance.

6. When we published our current framework, we said we would periodically review it to ensure it remained fit for purpose. Since then, we have determined, from our and regulators' experience of the current framework and of how regulators carry out their functions, that we could improve the framework's effectiveness in assessing the regulators' performance in meeting all the Regulatory Objectives. Areas where we consider the framework could be more effective were set out in our previous paper of 30 November 2021².
7. The Board approved the proposed framework consultation document, including the draft regulatory performance framework sourcebook and process documents, at its meeting on 22 March 2022 (Board paper (22) 13), having previously discussed this work at its meetings on 1 March 2022 (Board paper (22) 07) and 30 November 2021 (Board paper (21) 59).
8. We published the consultation on 7 April 2022, and it closed on 1 July. On 9 June we held a stakeholder consultation event to provide an opportunity for stakeholders to hear about the proposed framework and to ask questions prior to submitting their responses. We published a note of this event on our website.
9. We received 16 responses to our consultation. All of the regulators and approved regulators responded, as did the Legal Services Consumer Panel (LSCP) and the Professional Standards Authority (PSA). We have carefully reviewed their responses to our consultation and our decision document sets out how we have addressed the points respondents have raised.
10. Ten respondents were generally supportive of the proposed framework's aims and its substance. They agreed with the framework's emphasis on regulatory boards' effective leadership and giving regulators increased autonomy and responsibility in carrying out their work. Some respondents welcomed the aim of better aligning the framework with the Regulatory Objectives. Some also considered that the framework provided regulators with greater clarity about the LSB's expectations and how regulators could demonstrate their effectiveness.
11. In the response document we have also addressed general issues and challenges raised by the Law Society, the General Council of the Bar and IPReg. These related to concerns about the framework's compatibility with the Act (particularly sections 3 and 28), the purpose of regulation, and the costs for regulators that the new framework would involve.

Proposal

12. The main changes we propose to make to the sourcebook and process documents are as follows:

¹ [Legal Services Act 2007 \(legislation.gov.uk\)](https://legislation.gov.uk)

² [Regulatory Framework Review - Emerging thinking \(legalservicesboard.org.uk\)](https://legalservicesboard.org.uk)

- a) We have revised the terminology for our rating system. The assurance provided by regulators will now be rated as 'sufficient', 'partial' or 'insufficient' rather than 'adequate', 'partial' or 'inadequate'.
 - b) In the draft consultation response at Annex A, we propose to retain the use of the RAG rating system, as some respondents considered it helpful in providing clarity to consumers, regulators and others. Under our new framework, we will give regulators an overall rating and ratings for their performance against each of the standards. For the overall rating we will *not* use the RAG system, but for the ratings against each standard we will give RAG ratings as follows:
 - 'sufficient' assurance = green
 - 'partial' assurance = amber
 - 'insufficient' assurance = red
 - c) However, we will emphasise that under the new framework we are rating the level of assurance that the regulator has provided to us, rather than its performance, so just because we assess a regulator as providing sufficient assurance in one assessment, it does not mean that we will do so in future assessments.
 - d) Rather than our proposed approach of seeking assurance from all regulators in respect of two standards every year, in 2023 we will focus on the standards most in need of review for each regulatory body in 2023. This will form our practice in future.
 - e) We have revised the wording of the following Characteristics: 4, 14, 15 and 20 and have added further examples of evidence to Characteristics 13 and 14.
13. In our response to consultation, we have confirmed that for this year's assessment, we will adopt the hybrid approach set out in our consultation document. Under this approach, we will assess regulators' performance against the current standards and outcomes but will use narrative assessments and the new rating system. This will enable us to realise some of the new approach's benefits, and for the LSB and regulators to gain experience of part of the revised framework prior to its full introduction in 2023.
14. In our response to our consultation we have addressed a number of general issues and challenges raised by TLS and the BC. For example, TLS and the BC expressed concern that the new framework would mean the LSB taking a less proactive approach to regulation by relying on regulators to provide it with assurance rather than obliging them to provide specific requested information. Our process documents and consultation response document make it clear that while we would seek to gain assurance from the information regulators provide to their Boards where possible, we would still be able to seek further information from them if necessary, and we would also still be able to make use of thematic and targeted reviews if required. We consider that this approach is consistent

with the Better Regulation Principles and our obligations under section 3 of the Act.

15. TLS and the BC also raised concerns that the new framework would increase regulatory costs. TLS said that this would be caused by the move away from prescriptive outcomes, which would generate uncertainty for regulators about how to provide assurance to the LSB. In response, we have noted that the new framework and assessment process should allow for greater efficiencies for well performing regulators and potentially limit the direct impact on regulators' resources. If regulatory boards are fully engaged in assessing their regulators' performance, then the information provided to them by their respective executives should be sufficient to provide the LSB with the assurance it needs about the regulators' performance. Effective regulators should therefore not experience an increase in regulatory costs. Following the framework's implementation, we will continue to monitor and evaluate its impact and performance.

16. We have set out in the draft response to the consultation a full account of the key issues raised by all respondents and how we are addressing them.

Conclusion/Next steps

17. If the Board is content to approve the response to consultation document and the revised sourcebook and process documents, then, subject to any changes requested, we will proceed to finalise and prepare the documents for publication by the end of October. We will consult with the Communications team about the exact timing and other materials, such as the press release, which should accompany the documents' publication.

18. Following publication, we will engage with regulators and any other interested stakeholders to answer any outstanding questions they may have about the new framework and how it will operate.

19. As set out above, we will adopt the new narrative approach to assessment and utilise the new grading system for this year's annual performance assessment process, which will be undertaken against the existing standards and outcomes.

Risks and mitigations	
Financial:	N/A
Legal:	There is an element of legal risk in introducing a revised framework. Colleagues have taken steps to ensure all significant issues raised during the consultation have been addressed in the response document.
Communications and engagement:	Following publication of the consultation response document and the new framework documents, we will engage with stakeholders to answer any questions they may have about how the new framework will work.
Equality and diversity:	We have provided impact assessments in our response document
Resource:	N/A

Annexes

Annex A – Draft response to consultation document

Annex B – Draft revised sourcebook document

Annex C – Draft revised process document

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Annexes A, B and C	S22 – future publication	Following publication of response to consultation document and new framework documents