

Regulatory performance assessment framework

Process

27 October 2022

About the LSB

Our purpose

1. The Legal Services Board (LSB) is the oversight regulator for legal services in England and Wales. We oversee the approved regulators, some of which have delegated their regulatory functions to independent regulatory bodies (regulators).¹ We are independent of both government and the profession.
2. The LSB operates within a statutory framework enacted by Parliament through the Legal Services Act 2007 (the Act), which describes our functions and gives us our powers. The Act sets out eight regulatory objectives that we share with the regulators that we oversee:
 - protecting and promoting the public interest;
 - supporting the constitutional principle of the rule of law;
 - improving access to justice;
 - protecting and promoting the interests of consumers;
 - promoting competition in the provision of services within subsection (2)²;
 - encouraging an independent, strong, diverse and effective legal profession;
 - increasing public understanding of the citizen's legal rights and duties;
 - promoting and maintaining adherence to the professional principles³.

Our regulatory responsibilities

3. Our functions include overseeing the regulators' performance, setting the annual fees that practitioners pay and approving changes to rules and other arrangements. We ensure that regulation of legal services is carried out independently of the organisations that represent providers.
4. In all of our work, we consider how best to meet the regulatory objectives. We must also have regard to the better regulation principles, enshrined within the

¹ LSB [Approved regulators | The Legal Services Board](#).

² The services within this subsection of the Act (<https://www.legislation.gov.uk/ukpga/2007/29/section/1>) are services such as are provided by authorised persons (including services which do not involve the carrying on of activities which are reserved legal activities).

³ The professional principles, set out in section 1(3) of the Act (<https://www.legislation.gov.uk/ukpga/2007/29/section/1>), are: (a) that authorised persons should act with independence and integrity, (b) that authorised persons should maintain proper standards of work, (c) that authorised persons should act in the best interests of their clients, (d) that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice, and (e) that the affairs of clients should be kept confidential.

Act. In all our activities, we are transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed. We note that where we refer to meeting the regulatory objectives and having regard to better regulation principles, we do so within the meaning set out and consistent with the Act at sections 3 and 28.⁴

Our regulatory approach

5. We take account of the need to be proportionate and targeted in our use of our powers to ensure the regulators perform effectively for the benefit of consumers and the wider public. We use evidence to determine which of our regulatory tools will address the regulatory issues that we identify. The range of regulatory levers we have available to us are both informal and formal and include:

- advocacy and communications
- publishing research findings, best practice recommendations and guidance
- making statutory decisions
- assessing regulatory performance
- agreeing action plans and monitoring performance against them
- seeking informal resolution of concerns
- using formal enforcement powers
- exercising other statutory powers, such as recommending legislative changes in some circumstances.

6. Our approach to meeting our responsibilities can be broadly characterised by the diagram below. The five activities are connected and there is feedback between different activities as necessary.



7. Our assessment of the regulators' performance is central to our role as an oversight regulator. How we do this in line with our regulatory approach is demonstrated below:

⁴ Section 3 of the Act: <https://www.legislation.gov.uk/ukpga/2007/29/section/3>; Section 28 of the Act: <https://www.legislation.gov.uk/ukpga/2007/29/section/28>

- **Identifying the key risks** – our regulatory performance standards focus on the key risks to an effective regulator’s performance. We target our resources on addressing areas of performance where we have insufficient assurance.
- **Setting our expectations** – the regulatory performance standards and supporting characteristics set out what is expected of a regulator that is well-led and effective in its approach to, and delivery of, regulation.
- **Seeking assurance through oversight** – our assessments are central to our oversight of regulators’ performance and regulators are expected to provide evidence of how their work programmes meet the regulatory objectives. We will take account of all information that we receive from regulators and from all our contact with them through the year, including applications to alter regulatory arrangements and practising certificate fees.
- **Tackling concerns** – when we do not have sufficient assurance of a regulator’s performance, we will consider what further steps to take. We may ask for further information from the regulator or others and we may also seek assurance ourselves, for example, through a targeted or thematic review. In order for the LSB to be assured, regulators will be expected to identify actions they will take to address performance concerns.
- **Taking formal action** – it will be open to us to take formal action to tackle concerns about a regulator’s performance. We will only take formal enforcement action in response to the most serious or sustained failings and in line with our *Statement of policy for enforcement*.⁵ We will always use our powers proportionately and will use the least intrusive measure that we think will be effective at achieving the required improvement.

The regulatory performance standards and characteristics

8. We assess the regulators’ performance against three standards:

- The **Well-Led** standard requires regulators to have the resources and capability required to work for the public and to meet the regulatory objectives effectively.

⁵[https://legalservicesboard.org.uk/what_we_do/regulation/pdf/New%20folder%20\(3\)/FINAL_Statement_of_Policy_for_Enforcement_v3.pdf](https://legalservicesboard.org.uk/what_we_do/regulation/pdf/New%20folder%20(3)/FINAL_Statement_of_Policy_for_Enforcement_v3.pdf).

- The **Effective approach to regulation** standard requires regulators to act on behalf of the public to apply their knowledge to identify opportunities and address risks to promoting the regulatory objectives.
 - The **Operational delivery** standard requires that regulators' operational activity (e.g. education and training, authorisation, supervision, enforcement) is effective and clearly focused on the public interest.
9. The standards are supported by 20 characteristics which set out the features of effective regulators (e.g. knowledge, processes):

Table of Standards and Characteristics

For the public, with the professions: Framework for effective regulation in the legal services sector.

| Standard 1: Well-led | |
|---|--|
| <i>Regulators are well-led with the resources and capability required to work for the public and to meet the regulatory objectives effectively.</i> | |
| 1 | A clear sense of purpose and strategy focused on regulation in the public interest and ensuring public confidence in the regulator. |
| 2 | Board takes ownership of and accountability for the organisation's performance and for meeting the regulatory objectives; holds its executive to account. |
| 3 | Independent of the regulated professions but understands and collaborates effectively with the profession and representative groups to meet the regulatory objectives. |
| 4 | Understands the needs of consumers and the public interest and assesses the impact of its work in meeting their interests. |
| 5 | Delivers high levels of transparency, including ensuring decisions are clear and accessible to all those with an interest. |
| 6 | Understands, secures and deploys the necessary resources to support meeting the regulatory objectives, including through collaboration where relevant. |
| 7 | Understands the legislative and policy framework within which it operates; works constructively and in collaboration with the LSB, other relevant authorities and relevant stakeholders. |
| 8 | Has fit for purpose governance systems that align to best practice. |

Standard 2: Effective approach to regulation

Regulators act on behalf of the public to apply their knowledge to identify opportunities and address risks to meeting the regulatory objectives.

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| 9 | Has a comprehensive understanding of the market it regulates, including the consumers of services, and proactively identifies risks to the regulatory objectives; has a clear programme of activity to address those risks. |
| 10 | Engages proactively and meaningfully with a diverse range of interested stakeholders, including the public, consumers and regulated community to inform decisions. |
| 11 | Understands the range of formal (e.g. rules) and informal (e.g. influence) regulatory levers at its disposal and how to best make use of them; implements appropriate regulatory interventions and evaluates their impact, changing the approach where necessary to improve outcomes. |
| 12 | Obtains and makes effective use of data, including by making it available to others, to inform how it meets the regulatory objectives. |
| 13 | Actively encourages innovation and innovators in the interests of improving access to services; identifies and mitigates risks appropriately without allowing them to become obstacles. |
| 14 | Committed to improving the diversity of, and reducing inequalities in, the profession at all levels and implements actions to reduce barriers to equality and inclusion. |
| 15 | Committed to improving and reducing inequalities in, access to services for the public and consumers in all their diversity. |

Standard 3: Operational delivery

Regulators' operational activity (e.g. education and training, authorisation, supervision, enforcement) is effective and clearly focused on the public interest.

| | |
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| 16 | Ensures that authorised persons have and maintain the right skills, knowledge, behaviours and professional ethics to practise throughout their careers. |
| 17 | Maintains accessible and accurate registers of authorised persons, including information on disciplinary and enforcement action. |
| 18 | Sets out clear, accessible criteria for taking decisions about the authorisation, supervision of authorised persons and enforcement proceedings against them to protect the public; adheres to the criteria when taking decisions. |

| | |
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| 19 | Takes concerns raised by the public, the profession and other stakeholders seriously; pursues those concerns with appropriate rigour and pace under a transparent process. |
| 20 | Proactively seeks to maintain appropriate standards of conduct and responds to thematic issues arising from operational activity, including ensuring that those they regulate take action, where relevant. |

10. The standards and characteristics require regulators and their boards to take ownership of all the regulatory objectives and provide assurance that they are well-led and effective in their approach to, and delivery of, regulation for the public. They are high-level and it is for regulators to determine how best to demonstrate that they meet the standards.
11. The framework is supported by a sourcebook which contains resources that regulators will need to take account of, such as LSB rules, guidance and statements of policy. It also includes other resources that may be helpful, such as a non-exhaustive list of examples of the types of evidence regulators may provide as assurance, if appropriate. Further, it refers to resources not created by the LSB such as guidance from other oversight regulators and other bodies that regulators may find insightful.
12. The [sourcebook](#) will be updated annually, or when we publish new or revised versions of rules, guidance or policy statements where necessary. We will announce these updates and when they will take effect by notifying the regulators directly and listing any changes that we have made

Evidence gathering

13. Our approach to the assessment of the regulators' performance against the standards and supporting characteristics is evidence-based. We ask for evidence to:
- have assurance that the regulators are meeting the standards
 - identify where we may need to ask for more information to have assurance about a regulator's performance
 - carry out a review of the regulator
 - where appropriate, identify good practice that can be shared.

Assurance from the regulators

14. The standards and characteristics are high level and we do not prescribe how the regulators demonstrate that they meet the standards. We recognise this will vary across the regulators and that performance against some standards may need to

be assessed within the context of a specific regulator. We will ask regulators to provide assurance of their performance and will expect:

- evidence of how their own programmes of activities are designed to meet the regulatory objectives and deliver their own outcomes; and
- evidence which shows that they meet the standards and characteristics of a regulator that is well-led and effective in its approach to, and delivery of, regulation.

15. Central to this approach is that regulators are best placed to demonstrate how they meet the standards. Typically, for well-led regulators, we will require no more information than is already made available to a regulator's own board. This should mean that there is no additional cost or burden on regulators in providing assurance to the LSB, assuming that the information provided to boards is of an appropriate quality, including:

- That there is sufficient and appropriate evidence to inform board decision-making processes
- That the evidence demonstrates that the regulator has taken account of the regulatory objectives and better regulation principles when making decisions
- There is evidence that the regulator has clearly assessed the likely impact of their decisions including relevant risks, costs, and benefits to a range of stakeholders.

16. Where we find that the information does not provide us with sufficient assurance then we will ask for further information. We may also take account of publicly available information such as board papers, performance information and consultation documents, as well as information shared with us in meetings (e.g. relationship management meetings, see ongoing monitoring section) or through our work (e.g. when taking statutory decisions). We will consider requesting further information from the regulators whenever it is necessary for assurance.

17. The LSB's position is that regulators should take an open and transparent approach to accountability. That will mean adopting a default position of placing into the public domain any information on which it invites the LSB to rely for the purposes of assurance. This should drive improved transparency and provide for strengthened public accountability.

18. To support the regulators and to develop a shared understanding of what information could be provided as assurance, we have set out examples of the types of evidence that could be provided in an illustrative, non-exhaustive list in the sourcebook.

Information requests

19. We may make proportionate and targeted information requests to gain assurance of the regulators' performance. The form and frequency of our information requests will vary; however, all requests will take account of the information we have already collected through the assurance provided by the regulators, our ongoing monitoring (see paragraphs 26-27), other aspects of our work (e.g. statutory decisions) and information that is publicly available. We will typically request information from regulators informally. However, if we need more information, we may use our formal information-gathering powers under section 55 of the Act.⁶
20. Information requests will only seek information necessary to provide assurance about performance. If the response to an information request is unable to provide assurance or raises concerns, we will consider whether we should undertake a review of a regulator's performance (see 'decision to undertake a review' at paragraphs (31-34).

Third-party feedback

21. As part of our ongoing monitoring, we may gather stakeholder feedback about a regulator's performance. This feedback will be obtained through different channels, including correspondence we receive about the regulators, and through our meetings with stakeholder organisations. How we receive specific feedback will vary depending on the circumstances, for example, whether we are gathering evidence to determine the scope of a review or whether we are already conducting a review. We will consider the feedback that we receive and take forward any relevant issues with the regulators. Regulators will be given reasonable opportunity to comment on third party feedback. Methods to collect feedback could include:

- targeted invites to provide feedback
- receiving formal feedback through our ongoing relationships with organisations or individuals
- if appropriate, providing an open invitation for stakeholders to provide feedback.

Rating system

22. In our assessment we will rate the assurance provided by the regulator using the scale set out below. The rating will be accompanied by a narrative assessment of the regulator's overall performance and its performance against each standard, including identifying and encouraging good practice where relevant:

⁶ Section 55 of the Act: <https://www.legislation.gov.uk/ukpga/2007/29/section/55>.

- **Sufficient assurance** – the regulator’s performance raises no concerns. We may identify areas where we would expect the regulator to review its policies and approach and consider how it could improve.
- **Partial assurance** – the regulator’s performance raises one or more concerns that should be addressed before the next assessment. This rating would also be used when it has not been possible to gain sufficient assurance from the information available. In this instance, the regulator would need to provide further information.
- **Insufficient assurance** – the regulator’s performance raises serious concerns in at least one area or multiple concerns. The regulator would need to take immediate action to address these concerns, including developing its own action plan.

23. We also use a red/amber/green (RAG) system to rate regulators’ performance against each of the standards. This rating relates to the level of assurance a regulator provides for each standard rather than its performance. For the overall rating we do not use the RAG system, but for the ratings against each standard we give RAG ratings as follows:

- ‘sufficient’ assurance = green
- ‘partial’ assurance = amber
- ‘insufficient’ assurance = red

24. As we are rating the level of assurance that the regulator has provided, 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.

The assessment process

25. The process we use to assess regulatory performance is risk-based. This enables us to tailor the resources we devote to our oversight activities according to the risks presented by each regulator. Our assessment approach typically involves ongoing monitoring of the regulators’ performance and an annual assessment of the regulators.

Ongoing monitoring

26. All regulators are subject to ongoing monitoring of their performance. We monitor regulators’ performance on an ongoing basis using the information that we gather ourselves and that is provided by the regulators, whether by correspondence or

at relationship management meetings. Relationship management is how we and the regulators regularly engage with each other and discuss developments.

27. We use this information to deepen our understanding of how the regulators are meeting the standards and to inform our assessment process. This allows us to promptly identify specific areas of concern, which warrant closer attention or identify areas where we lack assurance. It also allows us to identify any thematic issues which have emerged for some, or all, of the regulators, and which need to be addressed.

Assessment

28. Typically, regulators are subject to an annual assessment of their performance. The process that we follow to carry out assessments includes the following steps:

- we ask regulators to provide evidence of how their programmes of activities meet the regulatory objectives and give the LSB assurance that they meet the standards
- we may, in addition, send a targeted information request to regulators, for example, if there is an area of the regulator's performance that we have previously raised concerns about or which our ongoing monitoring has identified
- we review and analyse information provided by the regulators and other information that we have gathered during the year e.g. through ongoing monitoring and statutory decision-making
- we assess each regulator's performance based on the evidence available
- regulators are provided with our draft assessment and given the opportunity to respond and raise queries about the proposed ratings
- we take account of regulators' feedback when finalising the assessments, prior to publication.

Targeted and thematic reviews

29. Where we have cause for concern that we have been unable to resolve through our ongoing monitoring or annual assessments then we may carry out a review. This could be a targeted review of the performance of a regulator under one or more of the standards⁷. It may also be a thematic review covering the performance of a regulator or regulators against a specific standard or standards. We will give reasonable notice to the regulators in relation to such reviews and more information about the process we follow to undertake reviews is set out at paragraphs 34-37 and in Annex A.

⁷ Reports from previous targeted reviews can be found on our website:
<https://legalservicesboard.org.uk/our-work/regulatory-performance/targeted-reviews>.

Tackling concerns

30. Where a partial or insufficient assurance rating has been awarded, we will expect regulators to identify and take actions to either provide the necessary assurance or address the concerns about their performance. Depending on the response from the regulator, we may take further steps to ensure that our concerns are addressed, following our regulatory approach set out in paragraphs 5-7 and the steps set out below. It will be open to the LSB to take informal and formal action, which will be identified and carried out in line with our *Statement of policy for enforcement*.⁸

Decision to undertake a review

31. Our ongoing monitoring, or an assessment, may identify that we do not have sufficient assurance about an area of a regulator's performance, or may identify an area as one of concern. Where this occurs, we will consider whether a review is necessary.

32. Examples of the factors that may lead us to consider undertaking a review include:

- a decline in performance
- limited information provided to give assurance
- recurrence of a single performance issue or a number of smaller performance issues which indicate a pattern of concern
- a complaint or recurring complaints about an issue or about how complaints are handled, which may indicate the presence of a systemic problem
- follow up activity from a previous regulatory performance assessment
- significant changes in regulatory approach
- change in regulatory scope by the regulator
- a major change in the size of the regulated community
- significant legislative changes which have a direct impact upon the regulated community
- a major failing within the regulated community.

33. In deciding whether to carry out a review, we would also consider prioritisation criteria, which include:

- the likely benefit of action to consumers, the regulated community and the wider public interest
- the impact of the underperformance or risk of underperformance on consumers, the regulated community and the wider public interest

⁸[https://legalservicesboard.org.uk/what_we_do/regulation/pdf/New%20folder%20\(3\)/FINAL_Statement_of_Policy_for_Enforcement_v3.pdf](https://legalservicesboard.org.uk/what_we_do/regulation/pdf/New%20folder%20(3)/FINAL_Statement_of_Policy_for_Enforcement_v3.pdf).

- the impact of changes to regulatory approach that may have consequences to the regulated community, consumers and the wider public
- the nature and extent of the underperformance
- whether it is proportionate to undertake a review.

34. Both the list of factors and prioritisation criteria are non-exhaustive, and it remains at our discretion to consider other factors and criteria as we consider reasonable and proportionate. Once we have made a decision, we will write to the regulator to advise of our decision to undertake a review and why, as well as explain the next steps.

What is a review likely to involve?

35. Reviews are likely to include the steps listed below. This list is non-exhaustive, and we will undertake any tasks considered necessary to assess accurately whether a regulator provides assurance in meeting each standard

- a review of the available evidence and the data the regulator has provided
- an initial meeting between the LSB and the regulator's senior management to discuss the purpose of the review, any particular areas that will be focused on, the proposed timescales and the LSB's expectations of the regulator during the review. Subsequent to this meeting, we will confirm the scope of the review with the regulator
- a targeted information request may be issued under section 55 of the Act⁹, which also provides an opportunity for the regulator to provide additional detail on its performance if it wishes
- a series of interviews with staff and board members of the regulator
- an exercise to gather stakeholder feedback on areas within the scope of the review, including targeted invites to key stakeholders to submit written feedback on the performance of the regulator; a general invitation to provide feedback both on the LSB's and the regulator's websites; and, where considered appropriate, offers of meetings to selected organisations. The regulator will also have an opportunity to comment on any stakeholder views obtained
- a further meeting with the regulator to discuss outstanding questions we may have.

36. The information generated will be collated and analysed and will form the basis of a findings report providing an assessment of performance. The report will set out where we have sufficient assurance of a regulator's performance against the standards and where a regulator has only been able to provide partial or insufficient assurance of its performance against one or more of the standards.

⁹ Section 55 of the Act: <https://www.legislation.gov.uk/ukpga/2007/29/section/55>.

Reports will not necessarily set out in detail all the evidence and data considered in an assessment.

37. Reports are subject to quality assurance and consistency checks through our internal governance mechanisms. We will share the draft performance assessment report with the regulator prior to publication for their comments on the findings to allow the regulator to identify any actions that are necessary to address the findings. We will consider any comments made by the regulator about our draft report and make any changes we consider necessary prior to publication of the final report on our website. In circumstances where regulators disagree with our assessment or findings, we will offer the option of publishing their comments alongside the final report.

38. Further details about the stages of our review process are set out in Annex A below.

Investigations

39. If we have serious concerns about the performance of a regulator, at any stage of our ongoing monitoring or formal review process, we will consider whether it is necessary to carry out an investigation. This will be consistent with our *Statement of policy for enforcement*.¹⁰

Other considerations

Access to information implications

40. We are committed to operating transparently and to meeting all reasonable requests for information about our activities, including the regulatory performance assessments.

41. In accordance with section 167 of the Act¹¹, we will treat all information obtained during the course of the performance assessments as confidential, subject to the disclosure gateways in sections 168 and 169 of the Act.¹²

Continuous improvement of the regulatory performance assessment process.

42. Following our regulatory performance assessments and reviews, we will ask the regulators for their views on the process, to identify any areas for improvement.

¹⁰[https://legalservicesboard.org.uk/what_we_do/regulation/pdf/New%20folder%20\(3\)/FINAL_Statement_of_Policy_for_Enforcement_v3.pdf](https://legalservicesboard.org.uk/what_we_do/regulation/pdf/New%20folder%20(3)/FINAL_Statement_of_Policy_for_Enforcement_v3.pdf).

¹¹ Section 167 of the Act: <https://www.legislation.gov.uk/ukpga/2007/29/section/167>.

¹² Section 168 of the Act: <https://www.legislation.gov.uk/ukpga/2007/29/section/168>; Section 169 of the Act: <https://www.legislation.gov.uk/ukpga/2007/29/section/169>).

We intend to review the regulatory performance assessment framework within five years, to ensure it remains fit for purpose.

Annex A: Review process

1. Our review process contains the following steps:

| Stages | Action |
|---------|--|
| Step 1: | Pre-review discussion (to discuss and agree scope) |
| Step 2: | Terms of engagement |
| Step 3: | Review initiation meeting (to discuss information provision including arranging interviews and stakeholder feedback, contact arrangements and timetable) |
| Step 4: | Request information |
| Step 5: | Provision of information |
| Step 6: | Fact-finding and analysis (including interviews and stakeholder feedback) |
| Step 7: | Interim report (regulator under review has the opportunity to comment on the interim report) |
| Step 8: | Final report and publication (regulator has the opportunity to comment on publication of sensitive material) |

2. The timings for each step are agreed at the review initiation meeting (Step 3). The aim will be to ensure sufficient time is allowed for the regulator(s) and the LSB to meet the expectations at each step.
3. The LSB will ensure that the review is conducted in a fair, transparent, reasonable, efficient and timely way. We will regularly update the regulator(s) about the review's progress.