Board Paper (23) 02

Meeting: **Legal Services Board**

Date: 24 January 2023

Item: Paper (23) 02

Title: **Annual regulatory performance assessment report**

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Status: Official

Introduction: Purpose of the paper/ Issue

1. This item is the opportunity for the Board to discuss the performance of the regulatory bodies from our annual assessment as set out in the [insert link to published report] published in January 2023. There will be a presentation from the Executive to draw out the key themes and our assessment of each regulators' performance.

Recommendation(s)

2. The Board is invited to **note** the report and presentation and to discuss the assessment and conclusions.

Background

3. We hold the legal services regulators to account for their performance. This work is key to delivering public confidence in legal services and is one of our statutory functions. By assessing regulators' performance, we drive improvements in how they regulated and encourage them to be well-led organisations that strive to be more effective and efficient.

4. We carry out an annual assessment of the performance of the regulatory bodies each year. This and previous years' assessments have taken place in Q3. As our new performance framework came into effect on 1 January 2023, our 2022 assessment was the last one under our previous framework.

5. As part of our development of our new framework, we consulted on how we should transition from our previous one. Having considered the consultation responses we received, we decided to proceed with a hybrid approach for our 2022 assessment in order to realise some of benefits of our new assessment approach.

6. Under the hybrid approach we assessed regulators under the previous framework's standards and outcomes, but:

- presented our assessment using the narrative format we intend to use under the new framework,
- assessed whether regulators have provided us with assurance as to how they meet the previous (2018-22) framework's standards, and
- used our new rating system to describe the level of assurance that regulatory bodies have provided to us for each of the current standards. We have not provided ratings against individual outcomes.

7. Using the new grading system, alongside analysing performance across this year, has meant that some regulators that had previously received 'met' ratings have now received 'partial assurance' or 'insufficient assurance' ratings in this assessment.

8. Our 2022 report covers:

- Regulators' progress towards meeting any outcomes currently graded as 'not met'
- General performance in relation to the regulatory performance standards and outcomes and any issues that have arisen since our 2021 annual assessment
- How regulators have taken account of the findings of our targeted review of the Faculty Office's performance against the Well-led standard, which we published in September 2021 (we covered the BSB review in the 2021 assessment)
- How regulators have responded to sanctions and their enforcement and the LSB's statement of policy on consumer empowerment.

9. We decided not to assess approved regulators' performance against the regulatory independence outcome (WL7) this year as:

- we do not intend to cover approved regulators' performance in assessments under our new framework and
- we will carry out an evaluation of the effectiveness of the internal governance rules (IGR) in 2023, and a key part of that exercise will involve seeking information from both approved regulators and regulatory bodies about their experience of the IGR.

10. We therefore considered that it would not be proportionate to request information from approved regulators for this assessment.

Common Themes

11. There were several areas of common concern, where we were not sufficiently assured about more than one regulatory bodies' performance. The main ones were:

- **Transparency** – there is a need for some regulatory bodies to increase transparency, particularly in respect of their decision-making processes. We have found that some regulatory bodies have policies that should enable them to provide sufficient transparency, but they either do not publish enough information in practice or do not do so in a clear enough manner to provide meaningful transparency.

- **Capacity and capability** – we are concerned that some regulatory bodies appear to be making real-terms reductions in their resources when regulatory issues do not appear to be diminishing.

- **Using and deploying evidence** – over the last year we have recognised important progress by some regulators in relation to gathering evidence about their regulated community and consumers and the impact of their regulatory arrangements on these groups. In many cases, the focus has therefore shifted to demonstrating how they deploy and use that evidence in their work, where there remains scope for improvement.

- **Supervision** – there is scope for some regulatory bodies to take a more proactive approach to supervision either in respect of their regulated communities and/or the risks they face. Regulatory bodies also need to ensure they apply lessons from their supervisory activities to their other regulatory work and vice-versa.

- **Enforcement** – some regulatory bodies need to make sure they have sufficient resources, capability and capacity to ensure they can carry out their enforcement work effectively. As noted in our draft business plan, we will continue our in-depth review of regulatory bodies' disciplinary and enforcement processes during 2023.

Next steps

12. Our next assessment process will begin in June 2023 and our next report will be published in November. Our first report under the revised framework will cover the period between October 2022 and May 2023. We will follow up on the themes noted above as well as specific concerns about individual regulatory bodies through our established relationship management process.

13. Prior to our next assessment we will engage with regulators and, where appropriate, other interested parties to obtain feedback about the new assessment process and answer any questions they may have about the new framework and how we will assess regulators' performance under it.

14. We note that novel risks will occasionally arise, and that regulators may not initially be able to provide us with sufficient assurance that they have addressed them. In these cases, when making our assessments, we will seek assurance from regulators that they are (1) taking steps to understand the nature and scale of such risks and (2) considering how they might address them through changes to their regulatory approach and activities.

15. We will use our monitoring and assessments of regulators' performance to complement our proposed market surveillance work, primarily by identifying risks to the sector, but also by identifying new sources of information to inform our policy-making.

16. We will evaluate the new framework's performance in 2026/27.

Risks and mitigations	
Financial:	N/A
Legal:	The Legal team were engaged throughout the assessment process and any risks were addressed and mitigated accordingly.
Communications and engagement:	Embargoed copies of the report were sent to the regulatory bodies on 10 January 2023. Embargoed copies of the press release and report were issued on 10 January 2023, and a press call was held on 11 January 2023. The report was published on 12 January 2023 and shared on social media.
Equality and diversity:	Our regulatory performance assessment advances our strategic objectives on EDI by enabling us hold regulators to account about (1) their understanding of EDI issues relevant to their regulated communities and users of legal services (2) and their work on these issues.
Resource:	No additional resources are required
Environmental:	N/A

Freedom of Information Act 2000 (FoI)		
Para ref	**FoI exemption and summary**	**Expires**
	None	