

# **Regulatory performance: Performance assessment November 2022**

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An assessment of each legal services regulatory body against the LSB regulatory performance standards

**12 January 2023**

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## Executive Summary

1. The Legal Services Board (LSB) is the independent body that oversees the regulation of legal services in England and Wales. The LSB was created by the Legal Services Act 2007 (“the Act”). We oversee the approved regulators, some of which have delegated their regulatory functions to independent regulatory bodies. A key component of our oversight is our regulatory performance framework and each year we assess the performance of each regulatory body against the standards and outcomes in the framework.
2. This report sets out our annual assessment of the regulatory bodies’ performance during 2022. It is the last assessment under our 2018-22 regulatory performance framework (see Annex A), as from 1 January 2023, following public consultation, we introduced a new regulatory performance framework with new standards.
3. This year’s assessment represents a hybrid approach. We have assessed regulators against the standards from the 2018-22 framework but have adopted the assessment approach from the new framework. This means that we have moved from assessing whether regulators have “met” the standards to assessing the level of assurance that we have been able to take in relation to their performance against the standards. We have also used a more narrative approach to articulating our assessments.
4. The table below sets out the November 2022 ratings against the standards, for all of the regulatory bodies:

Regulatory Body	Well-led	Regulatory Approach	Authorisation	Supervision	Enforcement
Bar Standards Board (BSB)	Insufficient	Partial	Partial	Partial	Insufficient
Council of Licensed Conveyancers (CLC)	Partial	Partial	Sufficient	Sufficient	Partial
Costs Lawyers Standards Board (CLSB)	Sufficient	Sufficient	Sufficient	Sufficient	Sufficient
CILEx Regulation Limited (CRL)	Partial	Partial	Sufficient	Sufficient	Sufficient
The Faculty Office (FO)	Partial	Partial	Partial	Sufficient	Sufficient
The Institute of Chartered Accountants in England and Wales (ICAEW)	Partial	Sufficient	Sufficient	Sufficient	Sufficient
Intellectual Property Regulation Board (IPReg)	Partial	Partial	Sufficient	Partial	Sufficient
Solicitors Regulation Authority (SRA)	Sufficient	Sufficient	Sufficient	Sufficient	Partial

5. Overall, we identified a number of areas in which regulators have made positive progress over 2022. This has included some improvements in transparency and a number of regulators improving their evidence base. This report identifies a number of instances of good practice at paragraphs 29-31 and in the detailed narrative assessments for each regulator in Annex B.
6. As demonstrated by the table above, there remain a wide range of areas in which we have not been able to take sufficient assurance in relation to regulatory bodies' performance. This report sets out some of the common themes, which include:
  - **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.
7. Over the coming year we will be implementing our new regulatory performance assessment framework. Our next annual assessment will begin in June 2023. Under this new framework, we will be following up on the themes identified through the 2022 assessment. We will also be following up on identified concerns with individual regulators throughout the year under our established relationship management approach.

## Introduction

8. The LSB was created by the Legal Services Act 2007 ("the Act") to hold regulators for the different branches of the legal services profession to account. A key component of our oversight is our regulatory performance framework and each year we assess the performance of each regulatory body against the standards and outcomes in the framework.

9. We recognise that each regulatory body operates in its own context, with different sized regulated communities doing different things in different ways. It is inevitable that each regulatory body is very different, and this influences our approach to performance assessment. The regulatory bodies do, however, have some important things in common. Each is governed by the same legislation – the Act – with the same regulatory objectives, and each operates on behalf of the public to underpin legal services that are effective and worthy of public trust.
10. This report sets out our latest annual assessment of regulatory bodies. It covers the progress made by the regulatory bodies since publication of our November 2021 assessment report. This assessment will be the final one undertaken under our 2018-2022 regulatory framework, which is set out in Annex A. Our current regulatory framework, published in October 2022, came into effect on 1 January 2023, and future assessments will be carried out under it.
11. When we [consulted](#) on our new framework, we proposed several different options for the transition from our 2018-2022 framework to our new one. Having considered the responses we received, we decided to use a hybrid approach for our 2022 assessment. We confirmed that we would use this approach in [our response to the consultation](#) and in correspondence with the regulatory bodies. This means that for this assessment round, we have assessed regulatory bodies' performance against the 2018-22 framework's standards and outcomes, but we have:
  - 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 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 standards. We have not provided ratings for performance against individual outcomes.
12. Since our November 2021 assessment we have monitored regulatory bodies' performance against the framework through regular contact with chairs, chief executives and equivalent, as well as relationship managers. In addition, we reviewed and reassessed IPReg's performance on outcomes RA3, WL1 and WL3 in March 2022, following on from a commitment in the previous assessment.
13. In line with our usual practice, to inform our November 2022 assessment we sent information requests to all the regulatory bodies in September. Our requests focused on:
  - regulatory bodies' progress towards meeting any outcomes graded as '*not met*'
  - their general performance in relation to the regulatory performance standards and outcomes in our framework, and any issues that have arisen since our 2021 annual assessment
  - how regulatory bodies have taken account of the findings of our targeted review of the Faculty Office's performance against the well-led standard
  - how regulatory bodies have responded to the international sanctions regime and its enforcement, as well as to our statement of policy on consumer empowerment.
14. We also considered information published by the regulatory bodies and obtained from our interactions with them over the past year.

15. We did not include an assessment of the Association of Chartered Certified Accountants (ACCA) as following its application to us to withdraw from legal regulation and have its designation as a regulator of legal services cancelled, it has removed its regulatory arrangements. Regulation of ACCA's regulated community has been transferred to CILEx Regulation Limited (CRL). We recommended to the Lord Chancellor in July 2022 that ACCA's designation be cancelled.

## Approach

16. As noted in paragraph 11 above, in this year's assessment we have:

- assessed whether regulators have provided us with assurance about how they meet the 2018-2022 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 standards. We have not provided ratings for performance against individual outcomes.

17. Our new rating system is as follows:

Rating	
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.

18. We also use a red/amber/green (RAG) system to rate regulators' performance against each of the standards:

- 'sufficient' assurance = green
- 'partial' assurance = amber
- 'insufficient' assurance = red

19. It is important to note that it is possible for our assessment of regulatory bodies' performance to change from one assessment to the next, even where we have previously assessed a regulatory body as meeting an outcome or all of the outcomes under a standard. This can be for a range of reasons including events that occur during the performance period, the coming to light of new information and/or broader changes in the regulatory policy environment that make existing approaches outdated or otherwise insufficient.

20. In this year's assessment, the use of our new rating system to describe the level of assurance that regulatory bodies have provided to us against each of the five standards has contributed

to changes to the ratings that some regulatory bodies have received. Again, just because we have assessed a regulator as providing sufficient assurance in this year's assessment, it does not mean that we will do so in future.

## Summary of November 2022 assessments

21. We present a summary of the key points from our assessments of the regulatory bodies' performance below. Our detailed narrative assessments of each regulatory body's performance are set out in Annex B.

22. In this year's assessment we found that:

- one regulatory body provided sufficient assurance across all of the standards: CLSB
- seven regulatory bodies provided partial assurance for one or more standards: BSB, CLC, CRL, FO, ICEAW, IPReg, SRA
- one regulatory body provided insufficient assurance for one or more of the standards: BSB

23. The table below sets out the November 2022 ratings against the standards for all the regulatory bodies:

Regulatory Body	Well-led	Regulatory Approach	Authorisation	Supervision	Enforcement
BSB	Insufficient	Partial	Partial	Partial	Insufficient
CLC	Partial	Partial	Sufficient	Sufficient	Partial
CLSB	Sufficient	Sufficient	Sufficient	Sufficient	Sufficient
CRL	Partial	Partial	Sufficient	Sufficient	Sufficient
FO	Partial	Partial	Partial	Sufficient	Sufficient
ICAEW	Partial	Sufficient	Sufficient	Sufficient	Sufficient
IPReg	Partial	Partial	Sufficient	Partial	Sufficient
SRA	Sufficient	Sufficient	Sufficient	Sufficient	Partial

24. This year's assessment is not directly comparable to last year's. This is because we have assessed the level of assurance provided by regulatory bodies about their performance against each of the five standards rather than the 27 individual outcomes they encompass. However, it is possible to identify trends for each standard.

25. Taken together, our 2021 assessment and our review of IPReg's performance in March 2022, identified issues with four regulatory bodies' performance against the Well-led standard. Our November 2022 assessment shows that performance against this standard remains a concern with only two of eight regulatory bodies having provided us with sufficient assurance. As in our 2020 and 2021 assessments, several regulatory bodies are continuing to find it challenging to meet this standard.

26. Regulatory Approach also remains a concern. In 2021 we identified issues with four regulatory bodies' performance against this standard. In our November 2022 assessment, only three regulatory bodies provided us with sufficient assurance, and five have provided us with partial assurance. While some regulatory bodies have made specific improvements in gathering evidence from stakeholders and their regulated communities, not enough provided assurance about their evidence gathering and/or how they applied it to their regulatory arrangements.

27. In 2021, we found only a few issues with regulatory bodies' performance against the Authorisation and Enforcement standards and none in respect of the Supervision standard. These operational standards were particularly difficult to assess under the previous "met/not met" grading system, without more in-depth evidence. This year, using the new grading system, we have identified a number of instances in which we have not been able to take sufficient insurance:
- On both Authorisation and Supervision, six regulatory bodies have provided us with sufficient assurance, and two have provided us with partial assurance.
  - On Enforcement, five regulatory bodies have provided us with sufficient assurance, two with partial, and one with insufficient assurance.

## Overall themes

### Recurring issues

28. We have identified the following recurring issues for each standard:

- **Well-led:** There is a need for a number of 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. In particular, for many regulators, it is difficult, from published information, to understand what decisions are being made and what is taken into account in making decisions. Transparency is an important characteristic of a well-led and accountable regulator.

We also identified that some regulatory bodies could do more to provide assurance that they have the right resources, capability and capacity to carry out their functions. In general, 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.

- **Regulatory Approach:** Over the last year we 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. This will include regulatory bodies demonstrating how they are responding to changes in the policy environment, including, for example, showing how they are taking account of our [statement of policy on empowering consumers](#) in both their current and future decision-making.
- **Authorisation:** We have found that some regulatory bodies need to improve their registers to ensure they are clear, accessible and in line with the requirements of our statement of policy on consumer empowerment as well as the Competition and Markets Authority's recommendations on the provision of regulatory information.
- **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. We are also keen to see how regulatory



bodies take account of our [statement of policy on ongoing competence](#) over the coming year.

- **Enforcement:** Some regulatory bodies need to ensure 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.

## Good practice

29. Over the past year regulatory bodies have demonstrated good practice in several areas including:

- **Learning from their own work and research:** The CLSB gained new data and insights into its regulated community via its project, funded by a grant from the Regulator's Pioneer Fund, about how costs lawyers could reduce the costs of legal services. The CLSB considers that this project's outputs provide it with a rich data source it can use to review how it regulates in the future. It also used information from its monitoring and evaluation work to inform a review of its disciplinary rules and procedures. The SRA has set up quality assurance and continuous improvement processes to improve its regulatory work.
- **Stakeholder consultation and engagement:** CLC, IPReg and the SRA have taken steps to ensure that their consultations reach the broadest possible range of stakeholders. These steps include the CLC's use of simplified questionnaires to accompany full consultation and the SRA's use of multi-channel approaches to contact stakeholders. The SRA also uses stakeholder feedback to design its engagement events.
- **Learning from others:** CLSB and the SRA have reviewed other organisations' approaches to Board transparency, and the SRA has engaged independent bodies to assess its Board's performance. IPReg engaged an independent researcher to review research about the sector and to analyse how the findings apply to its regulated community. The SRA has engaged independent bodies to review its Board's effectiveness, the effectiveness of its reforms and the delivery of its work, for example the SQE and its complaints handling processes. CRL demonstrated that it had a clear process for considering findings of LSB reports, such as the Faculty Office well-led review.
- **Sharing learning with regulated community:** Several regulators have used their websites, social media and newsletters to disseminate information to their regulated communities about regulatory issues such as sanctions compliance and anti-money laundering.
- **Accessibility for legal consumers:** ICAEW's website is designed to assist consumers with navigating its complaints processes, including helping them to complain to the most appropriate organisation.

30. Other areas where we have seen good practice or where regulators have improved how they carry out their work are: seeking to increase Board-level transparency (IPReg), ensuring compliance with sanctions and understanding how the sanctions regime may affect its regulated community (CLC), examining links between legal professionals' non-compliance with regulations and their health and well-being (FO), and using technology to improve its ongoing competence monitoring (ICAEW).

31. We have seen good practice and innovation from both large and small regulatory bodies over the past year and encourage all of them to learn from each other and from the wider regulatory community.

## Our focus in 2023

32. Throughout 2023, we will monitor regulatory bodies' performance through relationship management, including following up on issues identified through this assessment. We will begin our first assessment under the new performance framework in June 2023. Before then, we will engage with the regulatory bodies to answer any questions they may have about the new framework and how it will work in practice. In doing so, we will use our experience from the hybrid assessment process that we used this year.
33. Over the year, we will continue to review regulatory bodies' response to our statement of policy on consumer empowerment and will also consider how they have taken account of our statement of policy on ongoing competence.
34. We have begun work on our in-depth review of regulatory bodies' disciplinary and enforcement processes. Once completed, this work will inform our assessment of regulatory bodies' performance, particularly against the new framework's operational delivery standard.
35. Our draft business plan for 2023/24, which we are currently [consulting on](#), includes various proposed workstreams, which would support our approach to regulatory performance. We will continue our work on equality, diversity and inclusion, including developing and consulting on a statement of policy which will set out clear expectations for regulators' progress on these issues. We will also continue our work to develop new statutory guidance for technology that promotes access to legal services.
36. Our proposed new workstreams for 2023/24 include:
- evaluating the operation and effectiveness of the Internal Governance Rules introduced in 2019
  - developing a strategic approach to vulnerability and user design in legal services, which will include seeking consensus with regulatory bodies on principles for best practice
  - improving our surveillance of the legal services market to ensure that our understanding of it is comprehensive and up to date.

## Annex A: Regulatory performance framework

<b>Regulatory Approach</b>	<b>RA1:</b> Regulatory arrangements and supporting guidance documentation are: <ul style="list-style-type: none"> <li>outcomes-focused</li> <li>written in plain English</li> <li>maintain professional principles</li> </ul> with detailed rules limited to where evidence and analysis justifies them.
	<b>RA2:</b> So they are effective and operate as intended, regulatory arrangements and supporting guidance documentation are regularly reviewed and, where necessary, updated based on a robust evidence-base.
	<b>RA3:</b> The regulator has a robust evidence base from a range of sources on: (a) consumers' needs and use of legal services (b) new and emerging policy developments (c) the regulated community and (d) the market(s) regulated by it which informs its regulatory arrangements and approach.
	<b>RA4:</b> Regulatory arrangements and associated guidance documentation are informed by learning gathered from all of the regulators work including its risk assessment and enforcement work.
	<b>RA5:</b> The regulator understands the impact of its regulatory arrangements and guidance on consumers, the regulated community, the market and the regulatory objectives.
<b>Authorisation</b>	<b>A1:</b> Only those who meet the regulator's standards are authorised to provide education and training.
	<b>A2:</b> The regulator's standards of education and training set the competencies required for authorisation for entry to the profession.
	<b>A3:</b> Only those who meet the regulator's standards are authorised to practise.
	<b>A4:</b> The authorisation process, including the management of appeals, is fair, based on the regulator's standards, efficient and transparent.
	<b>A5:</b> The regulator's list of those they regulate is accessible, accurate and provides information on the disciplinary records of those regulated.
<b>Supervision</b>	<b>S1:</b> The regulator has an: outcomes-focused, evidence-based, transparent, risk-based and consumer-focused approach to supervisory activity. Supervisory activity is both proactive and reactive and uses a range of tools.
	<b>S2:</b> Education and training providers are monitored to provide assurance that standards are met. If they are not, steps are taken to remedy this.
	<b>S3:</b> The regulated community are monitored to provide assurance that standards are met. If they are not, steps are taken to remedy this.
	<b>S4:</b> Those under review and the wider regulatory community have the opportunity to benefit from the learning and good practice identified from the supervisory activity.
<b>Enforcement</b>	<b>E1:</b> The regulator has an accessible and clear process so that concerns can be raised about an authorised person which sets out who a person can complain to, the process that will be used and the possible outcomes.

<b>Enforcement</b>	<b>E2:</b> The regulator ensures that all complaints are reviewed on receipt and serious cases are prioritised and, where appropriate, referred to an interim orders panel.
	<b>E3:</b> The enforcement process and any associated appeals process is: consistent; independent; risk-based; evidence-based; documented; transparent; proportionate; focused on consumer protection, maintaining professional principles and protecting the public interest.
	<b>E4:</b> The enforcement and any associated appeals process is timely taking into account the complexity and type of case, and the conduct of both sides.
	<b>E5:</b> During the process, and at each key decision stage, the regulator keeps those involved and any others affected by the case (for example in cases of dual regulation, the regulator, the provider of information and those under investigation) informed of progress, unless it is not appropriate to do so.
	<b>E6:</b> The regulator clearly explains the reasons for its decisions to take or not to take things forward at each stage of the process.
<b>Well-led:</b>	<b>WL1:</b> 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.
	<b>WL2:</b> The regulator understands the resources (financial, human and technical) and organisational structure it needs to carry out its regulatory functions (including authorisation, supervision and enforcement) effectively and efficiently and these are implemented.
	<b>WL3:</b> 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.
	<b>WL4:</b> The regulator learns from its own work, stakeholders, the legal sector and other sectors and uses that learning to improve its work.
	<b>WL5:</b> 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
	<b>WL6:</b> 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 and ensure appropriate and accurate information is effectively taken into account in its work.
	<b>WL7:</b> The Approved Regulator/Regulatory Body meets the outcome to ensure regulatory independence: <ul style="list-style-type: none"> <li>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.</li> <li>The Regulatory Body carries out its regulatory functions in line with the IGR and provides assurance to its Approved Regulator as required by Section 28 of the Legal Services Act 2007:</li> </ul>

# **Annex B: November 2022 narrative assessments of regulatory bodies' performance**

## **Bar Standards Board (BSB)**

### **Overall assessment**

1. In our performance assessment of the BSB, we have identified a number of areas of concern about its performance across all of the standards. The BSB has provided us with insufficient assurance against two of the current five standards: Well-led and Enforcement. It has provided us with partial assurance against the three remaining standards: Regulatory Approach, Authorisation and Supervision.
2. While the BSB can point to some progress in delivering the actions within its Well-led review Action Plan ("Action Plan"), and the recent initiatives to enhance its oversight, governance, and performance, we are concerned that the underlying performance issues are not improving and in some areas are further deteriorating. In addition, the BSB has yet to adequately address the operational challenges in respect of its enforcement activities which are significant, longstanding, and an aspect of a regulator's performance that most directly impacts consumers and the wider public.
3. The BSB must now fully engage with and accept the reasons for its underperformance and seize the opportunity to take ownership of the scale of concerns and the scope of improvement needed. We are hoping to see evidence of a determination to drive the step change in culture, capability and performance required for the BSB to become an effective regulator.

### **Background**

4. In our 2021 annual assessment, we assessed the BSB's performance on outcomes WL1, 2, 3, 5, 6 and RA2, as "Not met action being taken. In June 2022 ("the June assessment"), we re-assessed the BSB's performance against the Well-led outcomes WL1, 2, 3, 5, 6 following a targeted information request to the BSB. We concluded that while the BSB has made significant progress, some actions require more time to embed and materialise given the significance of the reforms required and these outcomes remained as "Not met action being taken".
5. For this year's assessment we sent the BSB a targeted information request which asked:
  - for a progress update in respect of the Well-led outcomes
  - about specific issues that had arisen during the year relating to matters of supervision and enforcement in respect of Absolute Barrister and the Post Office case
  - how it had taken account of our findings from our targeted review of the Faculty Office
  - about its work on implementing our policy statement on consumer empowerment, and
  - its key work under the standards in the last 12 months.
6. In assessing the BSB's performance against the standards, we have reviewed the information provided by the BSB in its response to our targeted information request, including its self-

assessment, as well as information from its website and from our interactions with it over the past year.

## Assessment of BSB's performance

7. Below we set out our assessment of the BSB's performance against the five standards.

### Overall assessment on Well-led – **Insufficient assurance**

8. We consider that the BSB has provided us with **insufficient assurance** that it meets the Well-led standard. As demonstrated in this performance assessment, there are a number of areas in which we have identified concerns about the BSB's performance (some of them longstanding), across all of the standards.
9. The LSB's Well-led review, published in July 2021, made a number of key findings on Governance, the BSB Board and the Executive. In response to the findings of the Well-led review the BSB developed an Action Plan to address improved performance in relation to the Well-led outcomes and provided a formal progress update in October 2021 to inform our annual performance assessment in November 2021 and the June assessment. In the June assessment we noted that while the BSB had made progress in respect of its Action Plan, there remained some outstanding and important deliverables. We also made clear our expectation that the BSB take all necessary steps to mitigate against further under performance and falls in service standards and embrace the significant culture change required to become a well-led regulator.
10. While the BSB can point to some progress in delivering the actions within its Action Plan, such as refreshing its Regulatory Risk Index (which had not been updated since 2019) and the BSB's initiatives to improve its governance and performance, we are concerned that there has been no improvement in the BSB's inherent performance issues and the further deterioration of performance in 2022 against its own performance standards in respect of the time taken to conclude its investigations. We are hopeful that the BSB's most recent published performance figures for Q2 2023, which indicate some improvement, continues on this trajectory in 2023.
11. Our concerns about the BSB's performance have been aggravated by a pattern of piecemeal and reactive responses to specific performance issues raised by the LSB, during the past year; for example in respect of the risk posed by intermediaries such as Absolute Barrister, the risks associated with sanctions non-compliance by the regulated community and the handling of complaints arising from the Post Office scandal.
12. All of this indicates that completing the actions within the Action Plan devised by the BSB is unlikely to be sufficient on its own for the BSB to address the key findings of the Well-led review. This is an issue we made clear to the BSB in that review, when we concluded that while delivering the actions in its plan will be an important indicator of performance improvement, ultimately, we will be looking for evidence that the outcomes in the performance framework are being consistently met. We are concerned that there is an underlying lack of understanding or acceptance by the BSB of the reasons for these findings, which may be hampering its ability to make the substantive changes required.

13. The BSB's regulatory submission and some of its published Board papers, minutes, and other materials, indicate that the BSB has started to try to address its challenges. However, following recent LSB engagement with the BSB Board we remain concerned that the BSB Board has not grasped the magnitude of these challenges, has been unable to provide us with assurance that it has taken ownership of the scale of concerns and the scope of improvement needed nor has the determination to drive the step change in culture, capability and performance required for the BSB to meet the Well-led standard. We acknowledge that the BSB has undertaken lessons learned exercises, from its mishandling of the August 2020 Bar exams, and the mishandling of the Ryan Eve case, which was heavily criticised by the High Court. Time will tell whether the BSB has fully embedded the lessons learned in its work. Further, the BSB has taken a range of steps to improve consumer and other stakeholder engagement in respect of Public Legal Education, although the impact of that effort is not yet clear.
14. The totality of these issues leads us to conclude that the BSB has provided us with insufficient assurance that it has met the Well-led standard.

### **Overall assessment on Regulatory Approach – Partial assurance**

15. We consider that overall the BSB has provided us with **partial assurance** that it meets the Regulatory Approach standard.
16. The BSB has provided evidence that it is developing and implementing regulatory arrangements and supporting guidance that are outcomes focused, based on evidence, address areas of risk (although we note that the Regulatory Risk Index has only just been revised since 2019), address consumers' needs whilst maintaining professional standards and protecting the public interest.
17. While it has a robust framework for ensuring its regulatory arrangements meet the LSB's expectations, the BSB needs to apply this to its actual regulatory approach. We would encourage the BSB to reflect on the issues about deployment of evidence in the BCAT application and through its consultation on this change. As part of our assessment of that application, we noted that the BSB was unable to use the evidence at its disposal in a compelling manner which might have helped to secure the support of some stakeholders for its proposal to withdraw the BCAT. To provide the LSB with sufficient assurance we would like to see the BSB demonstrating the use and deployment of evidence to support its policy development clearly and transparently.
18. We note that the BSB has stated that it has identified its priorities and based its strategy on research and evidence gained from a number of sources. The work emanating from those priorities has informed its policy work in a number of areas including work on access, equality, and standards.
19. The BSB has recently updated its Regulatory Risk Index, which is a key component of informing its regulatory approach. We would expect the BSB to be pro-active where it identifies risks and develop policy to address those risks based on clear evidence. The BSB should utilise the learnings gathered from the handling of Absolute Barrister, Ryan Eve, Sanctions, and the Post Office case to inform its regulatory arrangements and guidance where applicable. We also note the BSB's work to update its guidance in relation to non-professional conduct and social media.



20. The BSB is making progress against the consumer empowerment statement. It has identified several activities and explains how these correspond to the expectations in the policy statement. Although not explicitly set out in the statement, it seems these activities are subject to appropriate scrutiny and governance. Through relationship management we will seek further assurance about success criteria, plans for evaluation, and how they deliver on the outcomes.

## **Overall assessment on Authorisation – Partial assurance**

21. We consider that overall the BSB has provided us with **partial assurance** that it meets the Authorisation standard.

22. The BSB has demonstrated that it has a clear framework which provides the standards required for those who are authorised to provide education and training, and the authorisation of new organisations into the market increases the options available to those wishing to pursue a career as a barrister. We welcome the BSB's thematic review of the differential outcomes from vocational training which will include a review of the admissions arrangements of each authorised provider.

23. The BSB has demonstrated that it has set the standards of competence that authorised persons should meet at the point of authorisation and ensured it is embedded in its education and training framework. Its focus on gathering intelligence and information to focus on ongoing competence throughout a barrister's career to facilitate targeted interventions (as it has already done for improving standards in Youth court advocacy in 2019) and review of CPD is a move in the right direction. The BSB's intention to strengthen its approach by placing an expectation on chambers to take greater responsibility for its members is also a progressive step as is use of information from its regulatory return to inform its further work in this area.

24. The LSB's new statement of policy in respect of ongoing competence is relevant to this outcome. The BSB along with other regulators is due to provide a progress report to the LSB in January 2023, on how it is meeting the outcomes and expectations set out in the new statement.

25. The BSB has demonstrated that it sets detailed standards and requirements for entry to the profession and that it is taking a proactive approach to ensuring they remain current but is currently reviewing them.

26. The BSB maintains a Barristers Register which includes relevant information about all barristers authorised to practice, which is accessible, and provides information on disciplinary records.

27. The Ryan Eve High Court case exposed some weaknesses in the BSB's authorisation process (including the management of appeals) and the robustness, fairness, and transparency in its and the Independent Decision Body's decision-making in respect of authorisation decisions. In response the BSB created an Action Plan which it has almost completed. However, there are some important outstanding deliverables, including the review of the decision-making framework for authorisation decisions, which need to be completed to provide assurance about the BSB's performance on Authorisation.

## Overall assessment on Supervision - **Partial assurance**

28. We consider that the BSB has provided us with **partial assurance** that it meets the Supervision standard.
29. The BSB has a comprehensive supervisory 'infrastructure' and has recently revised its 2019 Regulatory Risk Index, which facilitates the gathering and analysis of intelligence bearing on those risks. This is a welcome development as the BSB's approach to supervision to date has led to some significant risks materialising and BSB action following after the event, and sometimes only after considerable scrutiny from the LSB. This appears to have exposed a weakness in the BSB's approach to pro-actively supervising the risks posed to consumers and the public interest. This is consistent with a pattern that we have seen across the BSB's operations over a number of years, including the collapse of Absolute Barrister and its slow response to its assessment of the level of risk posed by its regulated community in respect of the Russia sanctions to inform its compliance and supervisory activities.
30. The BSB's initial response to challenge from the LSB on regulatory issues such as these, has at times been characterised by an initial defensiveness and apparent reluctance to act, before eventually accepting areas for future improvement after the risks have materialised. Nevertheless, we are encouraged that the BSB has accepted the need to ensure a more joined up approach to its supervisory activities, including the steps the BSB has already taken, which include:
- widening its approach to consider risk posed by entities operating on the periphery of the regulated sector
  - building its capacity and capability in the Supervision team
  - enhancing communication between teams and commencing work to ensure it has a range of tools/sources of evidence at its disposal to inform its supervisory activity, and
  - reviewing and updating its Regulatory Risk Index.
31. On a more positive note, the BSB has demonstrated its evidence and risk-based approach to supervising and monitoring the performance of education providers and has set out the steps it has taken to seek improvements where shortcomings or risks are identified. It has also demonstrated that it monitors its regulated community to ensure that standards and competences expected of practice at the Bar, through setting the standards of competence that authorised persons should meet at the point of authorisation (and ensuring it is embedded through education and training) and by using data collection and intelligence gathering and analysis to facilitate targeted interventions where required. We note that the BSB will be conducting a review of CPD and the role it plays in assuring the competence of barristers. Further, the BSB's intention to strengthen its approach by placing an expectation on chambers to take greater responsibility for its members could also be a progressive step, as is use of information from its regulatory return and other intelligence gathering activities to inform its further work in this area.
32. The BSB has also provided evidence that it ensures that those subject to supervision, and the wider regulatory community have the opportunity to benefit from the learning and good practice identified from its supervisory activity.
33. The BSB must now put its plans for a more joined-up and pro-active approach to supervision into practice. We will want to see evidence of it prioritising the pro-active identification and



monitoring of risks amongst its regulated community, particularly those that pose direct risks to consumers and the public interest, in order for the BSB to provide sufficient assurance in relation to its supervisory activity.

## **Overall assessment on Enforcement – Insufficient assurance**

34. We consider that the BSB has provided us with **insufficient assurance** that it meets the Enforcement standard.
35. It is three years since the BSB modernised its regulatory decision-making processes through the introduction of the Enforcement Decision Regulations. These changes were designed to streamline and improve the way the BSB's handles and assesses reports. However, in practice, the BSB has been experiencing significant operational challenges in this area over an extended period of time. In its submission to the LSB the BSB accepts that its performance against the investigation KPIs has been low over the last year and is an area of significant concern.
36. In last year's PCF application, which the LSB approved, the BSB budgeted to recruit additional posts to address its resource issues and provide greater resilience for the teams handling regulatory operations. Despite this the BSB has experienced difficulty recruiting staff, which the BSB considers is due to salaries on offer for the roles being insufficient to attract appropriately qualified and experienced candidates. The BSB Board has now approved reforms to bring salaries into alignment with the regulatory sector, which it hopes will help to address this issue in the future. However, it is unfortunate that this comes after another year of poor performance and one in which it has not been able to deploy the additional budget that it sought.
37. The scale of the BSB's underperformance has been set out in its recently published December Board paper which reports on its performance in Q2 2022/23:
- It is significantly underperforming against its target of 80% for cases referred for regulatory action within 2 weeks, as it has reported a figure of 21.2%.
  - Against an 80% target for completion of investigations of allegations of breaches of the Handbook within 25 weeks of acceptance, it has reported a figure of 38.7%.
38. Earlier this year we raised concerns with the BSB in relation to its handling of complaints arising out of the Post Office miscarriage of justice. In particular, we are concerned that its decision to pause the investigation of barristers implicated in the Post Office inquiry, appears to have been made without appropriate senior or Board oversight. Given that this is one of the most significant miscarriages of justice in recent times, with a significant potential impact on public trust, we would have expected the BSB to have ensured appropriate oversight of its decision (see Well-led standard) and demonstrated a greater appetite to seek to progress its investigation in the public interest.
39. The BSB has acknowledged that further work needs to be done to prioritise urgent and/or serious cases and has committed to improve its capability. We also note that the BSB intends to conduct an independent review of its entire enforcement process to identify systemic issues contributing to delays as well as a review of the changes. It has also taken steps to augment certain aspects of the process (such as introducing a second independent reviewer) alongside its plans to overcome its operational challenges.

40. The BSB has indicated where the immediate risks within its systems may be, such as keeping those involved and affected by its decision informed of progress at each key stage and has set out the steps it intends to take in the interim. During our assessment, this risk has materialised, with the BSB issuing a public apology on its website to a senior member of the Bar for failing to keep her apprised of its decision-making due to what the BSB has described as a flaw in its process. We consider that the totality of shortcomings of the BSB's enforcement processes points to deeper systemic failures in its procedures and capability.
41. The BSB Board has recently created a "Task and Completion Group" to oversee performance, enhance its oversight and raise the urgency as a key priority for the BSB. Its operational challenges are significant, longstanding, and an aspect of a regulator's performance that most directly impacts consumers and the wider public. To provide assurance on its performance in relation to enforcement, the BSB will need to demonstrate that it has seized the opportunity to address its ongoing challenges with a clear sense of urgency, with appropriate mitigations deployed and a clear end date in mind.
42. As noted in our business plan, the LSB will be undertaking an in-depth review of regulatory bodies' disciplinary and enforcement process during 2023, and we would expect to review the BSB's processes as part of this work.

## **Council for Licensed Conveyancers (CLC)**

### **Overall summary of CLC's performance**

1. CLC has made some positive progress over the last year, such as making some progress on its approach to transparency and consultation, as well as involvement in some forward-looking work on quality indicators. However, across the five standards, we have identified three (Well-led, Regulatory Approach and Enforcement) where we are only able to take partial assurance of the CLC's performance. We were able to take sufficient assurance in relation to the Authorisation and Supervision standards.
2. A common theme across our assessment is that a lack of meaningful transparency in a number of areas makes it hard for us, or other stakeholders, to take sufficient assurance on CLC's performance. This will need to be an important area of focus for CLC over the coming year.
3. We have identified two areas of good practice, relating to the CLC's stakeholder engagement in its consultation processes, and its proactive approach to ensuring that its regulated community is compliant with the sanctions regime.
4. We have set out below some of the areas that we will be focussing on in the coming months through our ongoing monitoring.

### **Background**

5. In our 2021 annual assessment, we assessed the CLC as meeting 25 out of the 27 outcomes. Outcomes RA2 and WL3 were not met and action was required to address these. Under RA2, we noted in 2021 that CLC was unable to demonstrate meaningful consultation and engagement with the regulated community, consumers and stakeholders that contributes to the development of a robust evidence base; and under WL3 we found that the CLC was not achieving sufficient transparency in how it makes decisions or develops its regulatory approach. We also noted that we wished to explore with the CLC how it deploys disciplinary and enforcement actions where firms and practitioners fall below expected standards, and how it reflects these actions on its register.
6. For this year's assessment we sent the CLC a targeted information request which covered our specific requests for information in respect of outcomes WL3 and RA2; specific requests for information under outcomes E3 and A5 following the interim performance review in May 2022; information on how the CLC had taken account of the findings from our targeted review of the Faculty Office; an update on the CLC's work on implementing our policy statement on consumer empowerment; and a self-assessment of the key work the CLC had undertaken in the last 12 months under the standards.

### **Assessment of CLC's performance**

7. We have made our assessment under each standard below based on our review of the information provided by CLC about its performance against the outcomes under the standard, as well as the publicly available information on its website, and through our interactions during the year.

## Overall assessment on Well-led – **Partial assurance**

8. We consider that the CLC has provided us with **partial assurance** that it meets the Well-led standard.
9. Throughout the year, we have been clear about the need for CLC to improve its transparency, particularly around its decision-making and what is taken into account in making decisions. CLC has made some progress in this area, including:
  - the publication of Chair's blogs following Council meetings
  - inclusion of relevant regulatory objectives in its Business Plan and published papers for Council meetings
  - engagement with stakeholders in its consultations through questionnaires and the establishment of its Consumer Reference Group to bring together representatives in consumer affairs to act as a sounding board to inform its consultations and policy development.
10. However, overall it remains very difficult from the material that is published to understand what the CLC is taking into account in making decisions. For example:
  - Whilst Council papers are published, extensive redactions make it difficult in practice to understand Council decision-making. In this regard, we note that CLC's publication scheme policy outlines that it will not publish information supporting the development of policy, including records of discussion of policy development, where its publication would *inhibit the policy development process*. This would appear to set a wide discretion to avoid publication which could allow for very little being published until an issue has reached its conclusion, and risks obscuring transparency about why decisions were reached.
  - The Chair's blogs following Council meetings have traditionally summarised the topics discussed rather than setting out what decisions were made and why. We note that the July Chair's blog appeared to be a step in the right direction in this regard but there remains scope for further improvement. The Chair's blogs should also not be considered as a substitute for a full set of minutes which indicate why decisions were reached.
  - The CLC's Annual Report for 2021 has still not been published, as of 11 January 2023.
11. We are aware that the CLC is continuing to consider further measures that could improve its transparency. It is important that its work in this regard continues.
12. We have also identified concerns under Regulatory Approach (see below) about the extent to which the CLC is demonstrably taking account of the public interest and the interests of consumers in its work. This is also relevant to the Well-led standard.
13. In terms of capacity and capability, we note that the CLC's budget appears to have been falling in real terms for a number of years, whilst its regulated community has been growing. Its PCF application for the coming year included a predicted decrease in staff costs, influenced by the potential for decreased revenues for its regulated community due to the cost of living crisis. Moreover, there is a concern that the economic climate may actually result in an increased call on the CLC's resources, if increasing numbers of practices enter financial difficulties.

14. The CLC has provided assurance that over the last year it has changed the composition of its teams and strengthened areas that need additional capacity. It will be important that it keeps capacity and capability under close review through the year, as while improvements in efficiency and productivity by regulators are to be welcomed, this must be balanced against the impact that a decreasing budget can have on the quality of regulation. We would strongly encourage CLC to consider where this tipping point lies.
15. We will continue to monitor the CLC's performance as a well-led regulator and its progress in this area, particularly in respect of:
- ongoing improvement in transparency
  - evidence that it is demonstrably taking account of the public interest, and the interests of consumers, in its work
  - any specific concerns about capacity and capability.

### **Overall assessment on Regulatory Approach – Partial assurance**

16. We consider that the CLC has provided us with **partial assurance** that it meets the Regulatory Approach standard.
17. The CLC has been able to demonstrate some positive progress on its approach to consultation and engagement. For example, it supplemented its consultation on its practising certificate fees with online surveys, to increase opportunities for the profession to engage with the proposals. There are also examples of it taking positive steps to review and update its regulatory arrangements and supporting guidance and considering the needs of consumers and its regulated community in the process, for example, through its revised Participating Insurers Agreement and Minimum Terms and Conditions for PII.
18. However, its key consultation on Ethical Principles and Strategic Objectives raised concerns about its demonstrable focus on consumers and the public interest in its policy development. In particular, the draft strategic objectives proposed in the consultation paper did not appear to place much focus on the interests of consumers and the public interest. The objectives and the wider consultation paper instead appear to prioritise competitiveness and promoting its regulated community. We will be keen to see whether the final version of their strategy addresses these issues.
19. We have seen the Legal Services Consumer Panel's (LSCP's) response to this consultation, which raised similar points. We understand that other stakeholders have also commented on related notes. We hope that the CLC will be able to demonstrate that it has taken this feedback into account when finalising its strategic objectives post consultation. Whilst it is for the CLC's Council to set its strategic direction, we will be watching closely to ensure that through its work it is demonstrably complying with and promoting the regulatory objectives.
20. CLC is involved in some encouraging initiatives in relation to consumer empowerment, including the Quality Indicators Pilot, working with the LSCP on standardisation of information for consumers and working with the Legal Ombudsman (LeO) to explore new training for firms with high levels of referrals to LeO. However, overall, CLC has provided limited assurance that it is on track to meet the outcomes of the statement of policy on consumer empowerment. For

example, we have not seen a clear enough articulation of actions, deliverables and timeframes that would enable us to be sufficiently assured of its progress.

21. We will continue to monitor the CLC's performance in relation to its regulatory approach, particularly in respect of:

- providing a clear focus on the public interest and interests of consumers, alongside the other regulatory objectives
- setting out actions, deliverables and timeframes to ensure that it meets the expectations of the statement of policy on consumer empowerment.

## **Overall assessment on Authorisation – Sufficient assurance**

22. We consider that the CLC has provided us with **sufficient assurance** that it meets the Authorisation standard.

23. We are content that the register of authorised persons appears to have remained up to date throughout the year. It is encouraging that the CLC is planning to introduce a new timeframe for the independent panel to issue written decisions within five working days of the hearing, which should contribute to more complete and useful information being made available to consumers.

24. The CLC's current online register provides an accessible means of viewing disciplinary records for those that it regulates. The CLC has however acknowledged the scope for improvement here and is nearing completion of a revised presentation of the register. It expects this to be operational from the end of 2022.

25. The CLC has taken part in a review of educational standards leading to licence as an Authorised Person and in the coming months we will be exploring how this review will contribute to maintaining high standards for entry to the profession. We will also be seeking updates and assurance on implementation of the CLC's new database and publication of disciplinary findings.

## **Overall assessment on Supervision – Sufficient assurance**

26. We consider that the CLC has provided us with **sufficient assurance** that it meets the Supervision standard.

27. The CLC has taken a proactive approach to ensuring that its regulated community has been compliant with the sanctions regime. It issued prompt guidance and provided support to practices to achieve compliance with the sanctions regime, including gathering data on ownership of CLC regulated entities to form a risk assessment on how sanctions might directly impact its regulated community.

28. It will shortly launch a Regulatory Return information gathering exercise with each entity to inform a reassessment of their risk profiles, to provide intelligence and insight and inform its supervision and enforcement work in the coming year. This is encouraging evidence of CLC taking a risk-based approach to supervisory activity and actively monitoring its regulated community to provide assurance that standards are being met.

29. We understand that CLC is altering some aspects of its monitoring approach to get broader coverage and increase onsite inspection time.
30. As part of our monitoring of the CLC's performance against this standard over the coming year, we will look forward to receiving updates on:
- its Regulatory Return Information gathering exercise
  - its thematic review of Trust and Company Service providers
  - implementation of change to its monitoring approach
  - progress in ensuring that its regulated community is compliant with the sanctions regime.
31. It will be important to see the evidence gathered from its regulatory return exercise being applied to inform its future work.

### **Overall assessment on Enforcement – Partial assurance**

32. We consider that the CLC has provided us with **partial assurance** that it meets the Enforcement standard.
33. We shared our concerns under this outcome as part of our interim performance assessment in May 2022, where we noted that instances of formal disciplinary and enforcement activity were so low as to generate questions as to whether it was in fact sufficient to support public confidence. We do not consider a high number of enforcement actions to be a measure of a regulator's success, and would commend regulators for only deploying enforcement action as a last resort. However, given the volume of high-value transactions carried out by CLC-regulated firms, and the high number of complaints received by LeO about CLC-regulated firms, the very low current levels of enforcement action are potentially an area of concern. We explained to CLC that we wanted to understand better how it assured itself and the public that its approach is proportionate to the risk.
34. CLC has provided us with further explanation on how it determines what type of enforcement action is proportionate in each case, noting that in addition to the formal disciplinary activity, it is more active in its use of lower-level sanctions such as through Enforcement Determination notices and Warning Letters (although we note that the latter are not routinely published). We note that there is also a "Watchlist and Interventions" paper presented at each Council meeting which monitors the management of serious non-compliance with CLC's regulatory arrangements. This paper is not published either.
35. We have seen some evidence of progress in relation to transparency of its enforcement activity. For example:
- It has committed to publishing a quarterly update on regulatory operations, including disciplinary and enforcement activities, however this appears not to be available at present.
  - Following adoption of its proposed revised rules for its Adjudication Panel, CLC has stated that it will review its approach to publication of lower-level sanctions.
  - It is not clear exactly what criteria are applied to determine what type of enforcement action to progress.



- The CLC describes its use of a watchlist as an important tool in its investigation and enforcement work, however this tool is not formally referenced in any of its material.

36. It is important that CLC is transparent in its disciplinary and enforcement decision-making to stakeholders to whom it is accountable, including the profession and consumers. As a result of the above issues, we are not able to take sufficient assurance in relation to this standard. We understand that the CLC has begun a review of its disciplinary sanctions and we hope that this should provide an opportunity to address the issues we have identified and any others.

37. In our information request for our Regulatory Performance Assessment 2022, we notified CLC that we will engage in more detail on this standard later this year as part of our enforcement and disciplinary review work. We will be in touch with CLC separately on this.

## **Good practice**

38. We consider the CLC has demonstrated the following good practices which other regulators may wish to emulate:

- It has broadened its stakeholder engagement in its consultation processes through introducing simplified questionnaires alongside more standard consultation questions.
- It has taken and maintained a proactive approach ensure that its regulated community is compliant with the sanctions regime by issuing prompt guidance and support to practices to achieve compliance. It has also gathered data on ownership of CLC regulated entities to form a risk assessment on how sanctions might directly impact its regulated community.



## Costs Lawyer Standards Board (CLSB)

### Overall summary of the CLSB's performance

1. The CLSB has provided us with sufficient assurance against all five standards: Well-led, Regulatory Approach, Authorisation, Enforcement and Supervision.
2. We consider that the CLSB is a well-run regulator and it has provided us with good overall assurance about its performance. As a smaller regulator, the CLSB has been able to demonstrate a range of good practices that should be considered by others in the sector.
3. Through its work over the last 12 months the CLSB has also been able to obtain a deeper understanding of its regulated community and the market within which they operate. We expect to see clear examples of the CLSB using that evidence to assure us of its performance over the coming year.

### Background

4. In our 2021 annual assessment, we assessed the CLSB as meeting all 27 outcomes. We noted our expectation for the CLSB to continue its good work in developing its evidence base and to continue improving its performance by demonstrating progress against each of the outcomes with a clear focus on the regulatory objectives.
5. For this year's assessment we sent the CLSB a targeted information request which asked for information on certain outcomes, how it had taken account of the findings from our targeted review of the Faculty Office, its work on implementing our policy statement on consumer empowerment, and its key work under the standards in the last 12 months.
6. In assessing the CLSB's performance against the standards we have reviewed the information provided by the CLSB in its response to our targeted information request, as well as information from its website and from our interactions with it over the past year.

### Assessment of CLSB's performance

7. Below we set out our assessment of the CLSB's performance against the five standards in our framework, our overall assessment of its performance and highlight areas of good practice which other regulators may wish to emulate.

### Overall assessment on Well-led – Sufficient assurance

8. We consider that the CLSB has provided us with **sufficient assurance** that it meets the Well-led standard.
9. The CLSB has provided evidence to demonstrate that its Board is engaged and proactive in holding its executive to account and that it takes account of the regulatory objectives. The Board is also taking steps to ensure its own effectiveness. This has been evidenced through CLSB's governance review that built in its consideration of, and actions resulting from, the LSB's reviews of both the Bar Standards Board and Faculty Office.

10. We are content that the CLSB carries out its regulatory functions in line with the IGR and provides assurance to its Approved Regulator as required by Section 28 of the Legal Services Act 2007.
11. Overall, we consider that the CLSB provides a good level of transparency about its decision-making, risk assessments and costs. This is achieved through a range of publications on its website including board papers, minutes and decision notes, an annual business plan and budget, a cost of regulation page on its website and regular newsletters to its regulated community.
12. The CLSB has demonstrated examples of its learning from its own work and that of others and has made changes to its working practices and those of others as a result.
13. Examples of the CLSB learning and making changes based on its own experience include:
- its review of its Disciplinary Rules & Procedures that has led it to apply to the LSB for some further alterations
  - its creation of a Remuneration Committee following a recommendation from a corporate governance consultancy it worked with
  - how it has begun to deploy the significant evidence it obtained from its project funded by the Regulators' Pioneer Fund.
14. An example of the CLSB learning from others' work is how it took account of the LSB's review of the Faculty's Office's performance against the Well-led standard by:
- ensuring it had policies for managing conflicts of interest, recruitment, delegation of decision-making authority and appointments within its new board manual
  - updating its role descriptions for non-executive directors and publishing them
  - implementing a new consultation process document to ensure it had a written policy covering how the CLSB consults and responds to consultations.
15. We will continue to monitor the CLSB's performance as a well-led regulator and the progress of its work in this area, particularly in respect of:
- its planned improvement to its data collection in relation to diversity
  - its work in delivering its digital workplan including improving the visibility of supervision issues
  - how the CLSB learns from its own work and those of others, including in respect of how it engages with stakeholders.

## **Overall assessment on Regulatory Approach – Sufficient assurance**

16. We consider that overall, the CLSB has provided us with **sufficient assurance** that it meets the Regulatory Approach standard.
17. The CLSB has taken action to ensure that it has a robust evidence base to inform its regulatory approach. This has been achieved through the data gained during the course of its Regulators' Pioneer Fund Project. This has transformed its evidence base, and it has:

- presented findings to stakeholders, fed those findings into a Board strategy day and has used the data to help identify projects for delivery over the next 18 months
- made use of the data to contribute to its ongoing work, for example in its consumer engagement strategy and its approach to risk.

18. The CLSB's work to improve its evidence base is a great example of what can be achieved by smaller regulators who operate with limited resources.

19. The CLSB has also evidenced a priority programme of work to ensure it adequately takes account of our statement of policy on consumer empowerment. This has included:

- setting a priority in its 2023 business plan to promote the outcomes of the policy statement. The priority will be tracked and considered by its Board on a quarterly basis.
- developing a framework for a targeted approach for the small number of costs lawyers who provide services directly to consumers
- communicating to costs lawyers that additional data will be captured through the CLSB's Practising Certificate renewal process.

20. As part of our monitoring of the CLSB's performance against this standard over the coming year, we will look forward to seeing:

- CLSB's consideration of the risks and benefits of some form of entity regulation and whether it considers it is appropriate to pursue
- updates on the framework the CLSB intends to develop for its targeted approach for costs lawyers who provide services directly to consumers.

## Overall assessment on Authorisation – **Sufficient assurance**

21. The CLSB has provided us with **sufficient assurance** about its performance against the Authorisation standard. This has been demonstrated by the operation of its existing framework which has included:

- its annual process for reaccreditation of the ACL Training course as evidenced in its [Board Decision Note](#)
- the operation of its existing practising rules which were approved by the LSB on 13 July 2020 and provided the CLSB with a more transparent and accountable decision-making framework for practising certificates
- the implementation of the CLSB's new CPD rules for its 2021 PCF cycle and the audit of CPD records that it subsequently carried out, along with the sharing of lessons from that audit with its regulated community
- its register of costs lawyers which is searchable and provides details of any conditions on practising.

22. We have also been assured by the CLSB's work in developing its proposals for a new qualification framework with focus on the quality of training and assessment and the ability of costs lawyers at the point of qualification.

23. From next year we will seek assurance on the CLSB's performance on Authorisation as an element of the Operational Delivery standard of our new framework. As well as monitoring its general performance, we will be keen to see the CLSB's progress on the following:

- its formal application to alter its regulatory arrangements and the subsequent implementation of any changes
- evidence that comes from its work with ACL Training to accredit a new course that meets its standards for delivery and competency assurance
- accreditation/reaccreditation of education and training providers in 2023
- the results of its work to deliver the next phase of its digital workplan, including any improvements to its register through the use of revised application forms and the implementation of database functionality.

## Overall assessment on Supervision – Sufficient assurance

24. We consider that the CLSB has provided us with **sufficient assurance** that it meets the Supervision standard.

25. The CLSB undertook a review of its approach to supervision in 2021. As a result, it developed four new supervision frameworks:

- an audit programme for CPD rules
- a structured annual audit of complaint procedures
- more rigorous supervision of compliance at the point of reaccreditation
- it formalised its targeted 'point of complaint' supervision activities.

26. The CLSB has provided us with examples of reports taken to its Board in relation to findings from its supervisory activity. It has explained how these reports have informed Board decision making and how its supervisory activity has enabled it to engage with practitioners in order to improve compliance.

27. The CLSB has also demonstrated that it takes opportunities to share lessons learnt or good practice stemming from its supervisory activity. It provided examples of:

- a 'lessons learned' webpage for its regulated community
- blog content and newsletters that it uses to promote both lessons learned and good practice.

28. From next year we will seek assurance on the CLSB's performance on supervision as an element of the Operational Delivery standard of our new framework. As well as monitoring its general performance, we will be keen to see the CLSB's progress on the following:

- its programme of work to align its approach to ensuring continued competency with the LSB's statement of policy on ongoing competence
- whether its work exploring the risks and benefits of entity regulation provide it with alternative/additional approaches to supervision of costs lawyers.

## Overall assessment on Enforcement – Sufficient assurance

29. We consider that the CLSB has provided us with **sufficient assurance** that it meets the Enforcement standard.
30. The CLSB provided us with evidence of its review of the Disciplinary Rules and Procedures it implemented in 2020. It explained that it considered there was a need to introduce a documented triage system for incoming conduct complaints and a need to adjust its regulatory arrangements in order to clarify the relationship between second-tier complaints made to CLSB and to LeO. We approved the CLSB's application to amend its Disciplinary Rules and Procedures on 25 November 2022.
31. We consider it good practice that the CLSB has completed a scheduled review, identified a need for some improvements to its processes and arrangements and has taken action.
32. The CLSB has a regulated community of less than 700 costs lawyers. A consequence of this is that it does not have a significant volume of enforcement cases. As a result, it needs to take particular care that it applies its regulatory arrangements consistently when enforcement action is taken.
33. Ahead of our next assessment we expect to seek information on any enforcement action undertaken by the CLSB over the course of the next year.
34. As noted in our draft business plan, the LSB will be undertaking an in-depth review of regulatory bodies' disciplinary and enforcement process during 2023, and we would expect to consider the CLSB's processes as part of this work.

## **Good practice**

35. We consider that the CLSB has demonstrated the following good practices which other regulators may wish to emulate:
- It is willing to learn from others, for example, it is reviewing other organisations' approaches to Board transparency
  - It has taken an innovative approach to obtaining new evidence about its part of the legal services market
  - It has demonstrated the ways in which it will be using its evidence base to inform Board decision-making
  - It has made effective use of monitoring and evaluation to undertake a review of its Disciplinary Rules & Procedures to inform further alterations
  - It shares learnings from supervisory activity with its regulated community through its website, social media, and newsletters.

## **CILEx Regulation (CRL)**

### **Overall summary of CILEx Regulation's performance**

1. CILEx Regulation (CRL) has provided us with sufficient assurance against three of the five standards: Authorisation, Supervision and Enforcement. It has provided us with partial assurance against the Well-Led and Regulatory Approach standards.
2. We consider that CRL has provided us with assurance in many areas regarding its operational performance. It appears to have clear and effective authorisation, supervision and enforcement processes in place. We have been able to take less assurance in relation to the transparency of its decision-making and justification of its regulatory approach.
3. We are currently investigating ongoing disputes and disagreements between CRL and CILEX. Our investigation has three key themes but related to each of them is consideration of the apparent breakdown in relationship between CRL and CILEX and consequential breakdown of trust and communication between the organisations.
4. We have not considered those matters under investigation as part of our assessment. When the investigation is concluded, we may consider the investigation findings as part of our ongoing monitoring in accordance with the regulatory performance framework.

### **Background**

5. In our 2021 annual assessment, we assessed CRL as meeting all 27 outcomes.
6. We noted though that we saw scope for CRL to improve its performance against the outcome WL2, in terms of how CRL articulates what work it is doing and why, and how it deploys its resources to deliver against its own deadlines. We requested information from CRL and conducted a further assessment of its performance against WL2 in June-August 2022. We concluded that CRL continued to meet the outcome.
7. For this year's assessment we sent CRL a targeted information request which asked for information about its performance against specific outcomes where we sought assurance, how it had taken account of the findings from our targeted review of the Faculty Office, its work on implementing our statement of policy on consumer empowerment, and its key work under the standards in the last 12 months.
8. In assessing CRL's performance against the standards, we have reviewed the information provided by CRL in response to our information request, as well as information from its website and from our engagement over the last 12 months.

### **Assessment of CRL's performance**

9. Below we set out our assessment of CRL's performance against the five standards, our overall assessment of its performance and highlight areas of good practice which other regulators may wish to emulate.

## Overall assessment on Well-led – **Partial assurance**

10. We consider that CRL has provided us with **partial assurance** that it meets the Well-led standard.
11. CRL has explained to us the processes it has in place to ensure it functions as an effective and well-led regulator, including the annual cycle of Board business, governance processes and details of the Chair's stakeholder engagement. Its use of a balance scorecard alongside other documentation, such as the strategic risk register appear to be valuable tools to support the organisation's leadership, likewise its rolling programme of deep dives on strategic themes for Board discussion.
12. We do not consider that CRL is currently providing adequate transparency around its decision making. Aside from the standing items of the CEO's report and performance data, few of CRL's Board papers on substantive policy or operational issues have been published this year. Alongside this, most of the discussions on these items have been minuted confidentially. We recognise that this year may have presented additional challenges to CRL in relation to transparency, owing to ongoing disagreements with CILEX. We do not consider, however, that this is sufficient to justify the extent of withheld papers or confidential minuting across a wide range of areas. Overall, it remains very difficult from the material that is published to understand what factors CRL is taking into account in making decisions.
13. We note CRL's Governance Transparency Policy, which was updated in 2022 as part of its response to the LSB's review of the Faculty Office, says that CRL aims to publish the fullest possible accounts of its Board meetings, keeping confidential agendas, papers and minutes to a minimum. We note also that CRL continues to publish a Chair's blog following each Board meeting. We look forward to seeing CRL applying this policy in the future to ensure meaningful overall transparency.
14. In August 2022, we considered that CRL continued to meet WL2 because it had demonstrated that it had improved its operations through changes to its organisational structure. CRL has explained that this has allowed for greater oversight of work on authorisation, supervision and enforcement. In particular, CRL has adopted a more flexible approach to staff roles. This has accordingly allowed CRL to process more enforcement decisions efficiently (see below on the Enforcement standard).
15. Previously, in relation to the Well-led standard, we have expressed concerns about how CRL is targeting its resources. For example, CRL has invested significant time and resource in changing regulatory arrangements that will affect a very small number of authorised persons and therefore it has not been clear that the benefits would justify the costs. We consider this further below in relation to regulatory approach.
16. CRL has provided us with assurance that it has taken account of our "Well-led" reviews of other regulators. A clear process was followed, with the executive and Board considering its findings and preparing recommendations for action.
17. Overall, we have seen a lot of evidence about the processes CRL has in place and activities it undertakes. The key area we have identified where there is scope for improvement is on the transparency of CRL's decision-making.



18. We will engage with CRL on this issue next year and will expect it to introduce measures and practices that improve transparency of its Board discussions and conclusions.

## **Overall assessment on Regulatory Approach – Partial assurance**

19. We consider that CRL has provided us with **partial assurance** that it meets the Regulatory Approach standard.

20. CRL has set out in detail the processes by which it reviews its regulatory arrangements and identifies areas of policy development, for example it has both reactive and proactive processes to initiating policymaking. CRL also clearly understands the different types of research that are used to inform its policy development, whether horizon scanning or direct consumer research.

21. We have concerns about CRL's ability to articulate its current approach to regulation, how its chosen arrangements are effective, and how these help consumers and promote the regulatory objectives. We also have concerns about its ability to consistently deploy evidence to support its proposals.

22. A recent example would be CRL's application on holding enforcement hearings remotely. CRL held a wide and useful evidence base on the conduct of its recent hearings, but we only obtained the necessary evidence to make the case for change upon probing and more directly questioning CRL's approach, rather than CRL's initial application (which constituted its public articulation of why it was proposing the change).

23. During 2022 CRL has also not been able to meet its own target of establishing a long-term solution to its compensation scheme arrangements. After establishing interim arrangements for 12 months in September 2021, CRL undertook policy development work and consulted on proposals for new arrangements (i.e. moving to a model of using third-party managed accounts to hold client money). These proposals were not well-received by the regulated community to the extent that CRL did not proceed with the proposals and is retaining its interim arrangements for the coming year, while it considers an alternative permanent approach.

24. This year has seen a significant change among CRL's regulated community, as it has taken on responsibility for regulating several dozen firms and individuals for probate activities, previously regulated by ACCA. We are assured by CRL's regulatory approach to onboarding this new community.

25. On sanctions, we are satisfied with CRL's approach. We are satisfied with CRL's initial response to our statement of policy on consumer empowerment. It has set out to us the processes in place for considering such policy statements, and has committed to a review of its transparency arrangements in 2023.

26. The areas in which the LSB is not able to take adequate assurance in relation to CRL's regulatory approach concern its policy making and its ability to explain, articulate and evidence its regulatory approach. This flows from identified inconsistencies in these areas over the last year.



27. We will monitor CRL's performance in articulating its regulatory approach across its consultations, applications to change regulatory arrangements, publications and other engagement over the next year.

### **Overall assessment on Authorisation – Sufficient assurance**

28. We consider that CRL has provided us with **sufficient assurance** that it meets the Authorisation standard.

29. We are assured by the processes that CRL has in place on authorisation. It appears to deliver the key elements under this standard by having: clear documentation on who is authorised to provide education and training; competencies for entry, a fair authorisation process and an accessible register.

30. CRL undertook a significant task to authorise various firms and individuals transferring from ACCA. We understand that CRL completed this task as efficiently as it could. Where it found issues with authorised persons not compliant with existing regulations, CRL ensured steps were taken so that such persons met CRL's requirements before they were authorised. CRL proactively updated the LSB on relevant issues throughout this process.

31. We will continue to monitor CRL's work here, in particular as it develops its approach to entity regulation and whether this results in more entities authorised in 2023.

### **Overall assessment on Supervision – Sufficient assurance**

32. We consider that CRL has provided us with **sufficient assurance** that it meets the Supervision standard.

33. Overall, we have significant information about the supervisory activities CRL undertakes, including its CPD scheme, its work on sanctions and AML this year, and its work to counter barriers to access. This demonstrates its range of work and regulatory activity to supervise its authorised persons.

34. Among the activities CRL undertakes, it has an outcomes-based CPD scheme in place. It has cited improved engagement with the regulated community on CPD and a drop in non-compliance rates this year. CRL has also demonstrated where it has shared its learnings with others in the sector, for example collaborating on plans in relation to ongoing competence, and on a toolkit for advocates in the coroners' courts. It has processes in place to review its training providers on an annual basis.

35. We have little evidence on the ongoing supervisory programme specifically in place for those firms previously regulated by ACCA, and whether and how this differs from its approach to its other regulated firms.

36. We will be monitoring CRL's supervisory work next year, including how it approaches improved assurance of ongoing competence.

### **Overall assessment on Enforcement – Sufficient assurance**

37. We consider that CRL has provided us with **sufficient assurance** that it meets the Enforcement standard.
38. CRL has provided us with assurance on key elements of this standard: having an accessible and clear process, complaints being reviewed and having an interim orders panel.
39. As noted above, CRL has explained that its organisational restructure has allowed it to invest more resource in processing of enforcement cases, which has allowed for more timely resolutions to more cases and appropriate resource across the year. It has improved its triage procedure for new complaints, resulting in 100% of initial reviews being completed within one month of receipt.
40. The training for all panel members, including on objective decision-making, is an example of good practice. CRL has also gathered a range of useful data about its enforcement practices, for example to understand EDI trends.
41. Overall, CRL has provided us with assurance, through its submission and the information available on its website, that it has appropriate processes in place, and that these have operated effectively in 2022.
42. Next year, we will monitor CRL's ongoing work here, including the implementation of its new arrangements allowing for remote hearings.

### **Good practice**

43. We have identified the following examples of good practice, which other regulators may wish to consider:
- CRL had a clear and thorough process for considering the findings of our review of the Faculty Office, which led to recommendations and actions undertaken by the CRL Board (notwithstanding issues noted above that are yet to be addressed by these actions).
  - Its new flexible approach to resourcing has enabled it to deploy resource where most effective, in particular handling enforcement cases more efficiently.

## The Faculty Office (FO)

### Overall assessment

1. The FO has provided us with sufficient assurance against two of the current five standards: Supervision and Enforcement. However, it has only provided us with partial assurance against the Well-led, Regulatory Approach and Authorisation standards.
2. The FO has made significant progress since our Well-led review, and we are encouraged by the FO's willingness to develop and improve. The FO has taken a number of key steps, including completing most of the actions on its initial Action Plan. It has also undertaken a consumer survey which represents a significant step in the right direction in terms of developing an evidence-based understanding of its market. These developments mean that it is now much better placed to start demonstrating meaningful and sustained improvements across our performance framework.
3. As outlined in this assessment below, there are several areas where we will want to see the FO implement these new practices and procedures in its decision-making processes and its regulatory work during the coming year. In particular, we would expect to see greater transparency in both its decision-making processes, and how it assesses and evaluates the activities and benefits it delivers. We will also expect to see clear links between the activities in the FO's action plans and the actual work it undertakes.

### Background

4. In our 2021 annual assessment, we assessed the FO as meeting the majority of the outcomes in the performance framework but assessed it as not having met six outcomes (RA2, RA5, WL2, WL3, WL4 and WL6). We reassessed the FO in July 2022 and assessed it as continuing to not have met six outcomes.
5. As part of our 2022 annual assessment process, we sent an information request to the FO on 28 September 2022. In this request, we outlined the process and timelines for the LSB's regulatory performance assessment. We requested responses to the following:
  - Specific requests for information in relation to the FO's 'unmet' outcomes (RA2, RA5, WL2, WL3, WL4 and WL6).
  - An update on the actions outlined in the FO's Action Plan, developed in response to the Well-Led Review published in September 2021.
  - An update on the FO's work to implement the LSB's statement of policy on consumer empowerment.
  - A short self-assessment covering key work that the FO has undertaken in the past 12 months under the five standards: Well-led, Regulatory Approach, Authorisation, Supervision and Enforcement.
6. In assessing the FO's performance against the standards, we reviewed the information that the FO provided in its response to our targeted information request. We also used information from the FO's website, and from our interactions with the FO over the past year.

### Assessment of the FO's performance

7. Below we set out our assessment of the FO's performance against the five standards, our overall assessment of its performance and highlight areas of good practice which other regulators may wish to emulate.

## Overall assessment on Well-Led – **Partial assurance**

8. The FO has provided us with **partial assurance** that it meets the Well-led standard.
9. In September 2021, we published our review of the FO's performance against this standard. We found that while the FO followed governance procedures that would be expected of a well-led regulator, it had little documentation supporting its governance arrangements. We also found that the FO's decisions and decision-making processes were not always as transparent as they should be, and that it had limited insight about the issues notaries and consumers of notarial services faced. In response, the FO developed a comprehensive Well-Led Action Plan to address our findings.
10. The FO has made good progress against its Well-Led Action Plan. Its work on its Governance Manual and Scheme of Delegation are good examples of the tangible progress that has been made. We note that FO has now marked most actions on its plan as 'complete', which is very encouraging. There are some actions for which we will seek further assurance over the coming months. For example, how the FO has developed a contract to govern its relationship with Lee Bolton Monier Williams (LBMW), the solicitors' firm which undertakes much of its work. We will also want to see commitments in the FO's ongoing work to ensure that the changes it has made are effective and embedded into an enduring new approach. In this regard, we do not consider that there is currently a clear read across from the FO's Well-Led Action Plan to its new business plan. For example, the Action Plan mentions a value for money review for the first quarter of 2023, which is not referred to in its new Master's Priorities Business Plan. However, the FO has since provided more information on this. It intends to carry out a value for money review of LBMW in the first quarter of 2023 with the final report presented to the Audit Committee and the Master by 31 March 2023.
11. Like all legal services regulators, the FO must ensure that it has the capacity and capability to carry out its regulatory functions and meet the regulatory objectives. Encouragingly, the FO has indicated at which points in the year its resources are stretched and identified a need for further administrative resources to support its work.
12. Regarding transparency, the FO has provided assurance that it has developed processes and procedures for providing further transparency about its decisions to its regulated community and other interested parties. This is encouraging. However, there remains scope for further improvements in its transparency. For example:
- We noted in our assessment of the FO's Practising Certificate Fee application for this year that it had not presented a clear plan for how it will evaluate its Business Plan activities and assess the benefits that it delivers.
  - The FO publishes its KPIs and reviews of progress against them. However, although the FO's website refers to KPIs from 2019 and 2020; there is no reference to its performance against KPIs for 2021.

- We note that the FO committed to publishing minutes from Qualification Board meetings (with appropriate redactions to assure anonymity) to aid transparency on its regulatory activities, however, it is yet to do so. For example, the minutes for the meeting where the Qualification Board discussed and appointed a new education provider have not yet been published.
13. Overall, we commend the progress made by FO over the last year to improve its governance. Ahead of our next assessment, to build on the progress already made, we will hope to see:
- additional assurance about how FO has discharged important actions in its Well-Led Action Plan, such as:
    - its development of a contract to govern its relationship with LBMW
    - commitments in its ongoing work to ensure that the changes it has implemented as part of its Well-Led Action Plan are effective and embedded into an enduring new approach
    - how actions noted in its plan, such as its value for money review, scheduled for the first quarter of 2023, are reflected in its Master's Priorities Business Plan.
    - publication of Master's Council, Advisory Board and Qualification Board agendas, minutes and papers.
  - greater transparency about its current performance against its KPIs and
  - more information about how it will evaluate and assess the benefits of the activities set out in its Business Plan and in its Well-Led Action Plan.

## Overall assessment on Regulatory Approach – **Partial assurance**

14. Overall, we have assessed the FO as providing **partial assurance** in relation to the Regulatory Approach standard.
15. The FO has set out the processes and procedures that it has now developed to ensure that its regulatory arrangements are proportionate, consistent, and targeted. For example, the FO has implemented new processes and procedures, as codified in its Governance Manual, to ensure that there is increased transparency about decision-making. These include setting out the process by which potential changes to regulatory arrangements are considered by its various Committees and Boards. It also made clear how it ensures that there is transparency about any proposed changes, including by engaging in public consultations and ensuring that it publishes consultation response documents.
16. We have not yet seen clear evidence of how the FO evaluates the impact of regulatory changes on its regulated community and on consumers. For example, when assessing the last application that we received from FO to alter its regulatory arrangements, at the end of 2021, we identified issues around the extent of its plans to evaluate the impact of the changes. In future, we will expect the FO to focus on providing clear and proportionate plans for evaluating the impact of its regulatory activities, and how it utilises any findings to improve its activities.
17. Since the last annual performance assessment, the FO has completed a survey of notarial consumers. This is an important step in the FO's commitment on expanding its strategy for engaging with consumers and we welcome the fact that the FO has undertaken initial analysis on the survey results. This is an important starting point for the FO, and we look

forward to seeing evidence of it continuing to build its evidence base, as well as deploying it to inform its work.

18. The FO has published a Business Plan 2022 – 2025 (“Master’s priorities”), which outlines the Master’s priorities for a three-year period. This Plan makes clear how the FO’s planned activities align with the regulatory objectives. In time, we expect the FO to demonstrate how it will utilise the findings from its consumer survey in delivering on its action plan. For example, its consumer survey identified gaps in consumer awareness about the complaints process and as a result, the FO has identified a need to increase consumer awareness of the complaints process. We encourage FO to strive to create clear read across from its growing evidence-base, to its workplans and then to action.
19. While the FO has demonstrated some progress in its consideration of the LSB’s statement of policy on consumer empowerment, there are areas for improvement. For example, the FO should make clear the specific activities that it will carry out, both existing activities and newly planned activities, to meet the expectations laid out in the policy statement.
20. In relation to financial sanctions, the FO has undertaken a comprehensive risk assessment of its regulated community and continues to progress work in this area. We are encouraged by the transparent and consistent approach that the FO has taken in relation to financial sanctions.
21. The FO has taken several steps towards meeting this standard. However, while it has put procedures and process in place to support its regulatory approach, it has yet to demonstrate sufficiently that it is consistently putting these procedures into action. Ahead of our next assessment we will expect the FO to provide evidence of the following:
  - clear and proportionate plans for the evaluation of the impact of the regulatory changes it makes
  - the FO’s further work on developing its evidence base and examples of how it uses this information to inform its work
  - the activities the FO will take to increase consumer awareness of its complaints process and how this is reflected in the Master’s Priorities Action Plan
  - the specific activities it will carry out to meet the expectations set out in our statement of policy on consumer empowerment.

## Overall assessment on Authorisation – **Partial assurance**

22. Overall, we have assessed the FO as providing **partial assurance** in relation the Authorisation standard.
23. The FO has provided assurance that it has systems in place to ensure that its register of authorised notaries is up to date. It is also taking steps to further enhance its Notary PRO system to improve the information it holds about its regulated community and the work notaries carry out and to ensure it covers both the admission process as well as annual practising certificate renewals.
24. During 2022, the FO approved the Law Training Centre Kent (LTC) as a new education and training provider to replace CILEX as a provider of ‘Level 6’ training modules for would-be

notaries who needed to obtain qualifications in specific areas of law in order enter the full two-year Notarial Practice Course offered by UCL. The FO has explained to us that because of the need to quickly find a provider to replace CILEX, the FO did not run a full procurement exercise. As noted above under the Well-led standard, FO has not provided transparency around the decision, which was made by the Master on the advice of the Qualifications Board, or the process it undertook to invite and assess applications.

25. Upon request, FO has provided the LSB with further information on the process it undertook to assure itself about the decision to appoint LTC. However, this is a tangible example of the sort of decision for which a lack of transparency can lead to a lack of public assurance and public confidence.

## Overall assessment on Supervision – **Sufficient assurance**

26. Overall, the FO has provided **sufficient assurance** that it has in place adequate processes in relation to the supervision of its regulated community. The FO has rules in place as regards its supervision policy, which is accessible via its website. The FO takes a risk-based approach to supervision and over the past year has developed a system for targeting its supervisory activity for individual notaries and practices based on the services they provide. It also publishes annual reports of inspections of notarial practices, which highlight notaries' progress against previous recommendations and areas of concern. However, we note that the FO has not published an inspection report since March 2021.

27. In its Master's Priorities Action Plan, the FO indicates its intention to consider the post-qualification environment for notaries who wish to practice in conveyancing and in wills, probate, and administration, with a view to ensuring the right level of supervision is in place. We expect the FO to update the LSB on its progress with this work through Relationship Management meetings. We also expect the FO to take account of any relevant policies and guidance, including the LSB's statement of policy on ongoing competence, in the course of this work.

28. The FO has identified a link between non-compliance and poor health and well-being of notaries, and it plans to undertake work to better promote well-being amongst notaries. We welcome the holistic approach that the FO is taking to this work. We also expect that other regulators would benefit from learning from the FO's approach.

29. The FO provided information about its activities in relation to financial sanctions, including staying up to date with information from OPBAS, HMT and OFSI. As part of this work, the FO has also recruited a new inspector and expanded its inspection activities into 'Group entities' (i.e. where a number of notaries who work under the same umbrella are assessed as part of a single inspection).

30. Over the next year we expect to the FO to:

- provide updates to us about the progress of its work on determining the right level of supervision for notaries undertaking conveyancing and wills, probate, and administration work
- continue to adopt an evidenced-based approach to sanctions



- evaluate how effectively it is raising awareness amongst its regulated community about sanctions regime requirements.

## Overall assessment on Enforcement – **Sufficient assurance**

31. Overall, the FO has provided **sufficient assurance** that it has in place adequate processes and procedures in respect of enforcement action against its regulated community. When it receives complaints about a notary's conduct, it has procedures for appointing a 'nominated notary' to formally investigate them and, where necessary, commence proceedings in the Court of Faculties. The FO also has Rules in place regarding the operation of the Court of Faculties, which exercises disciplinary functions over notaries in England and Wales. These Rules are publicly available on the FO's website. The FO also publishes decisions of the Court of Faculties on its website. The FO's website also has information about the role of the Legal Ombudsman in relation to service complaints.
32. As part of the Action Plan accompanying the Master's Priorities, the FO has indicated that it will review its disciplinary system and plans to issue a call for evidence in Q2 2023. The FO has noted that there may be a shortage of suitably qualified 'nominated notaries' for this system, as most notaries are non-contentious practitioners. As it progresses this work, we expect the FO to make clear how it will mitigate against this risk.
33. Over the next year, we look forward to the FO progressing its review of its disciplinary system and, in doing so, demonstrating how it takes account of evidence provided by its regulated community, consumers of notarial services and other stakeholders, as well as its own experience, in revising its disciplinary processes and procedures.

## Good practice

34. We are pleased to see that the FO will be looking at potential links between non-compliance and notaries' health and well-being. We note that the SRA has looked at similar issues during the past year.



## Overall summary of ICAEW's performance

1. This year ICAEW has provided evidence which gives the LSB sufficient assurance against the standards for Regulatory Approach, Authorisation, Supervision and Enforcement. ICAEW has provided evidence to give the LSB partial assurance on the Well-led standard, where the LSB expects to see further improvements in respect of the transparency of the decision making of the ICAEW Regulatory Board.
2. We consider that the ICAEW has provided us with good overall assurance about its performance this year. We are encouraged by some positive steps in a number of areas, as set out in this assessment. Moreover, ICAEW has identified significant work over the coming year which will be important for it to continue to develop and improve its performance. It has demonstrated a number of examples of good practice which we set out below, including an innovative approach to educational films.
3. Ahead of our next assessment of regulatory bodies' performance, we expect the ICAEW to have implemented changes to its probate register and to have improved the transparency of its decision-making.

## Background

4. In our 2021 annual assessment, we assessed the ICAEW as meeting 26 out of 27 outcomes. The ICAEW was rated as 'Unmet – Action required' for outcome A5. Moreover, we asked the ICAEW for more information about how it met outcome A1.
5. For this year's assessment we sent the ICAEW a targeted information request for outcomes A1, A5 and WL3. We also asked for information about specific issues that had arisen during the year, how it had taken account of the findings from our targeted review of the Faculty Office, its work on implementing our statement of policy on consumer empowerment, and its key work under the standards in the last 12 months.
6. In assessing the ICAEW's performance against the standards we have reviewed the information provided by the ICAEW in its response to our targeted information request, as well as information from its website and from our interactions with it over the past year.

## Assessment of ICAEW's performance

7. Below we set out our assessment of the ICAEW's performance against the five standards, our overall assessment of its performance and highlight areas of good practice which other regulators may wish to emulate.

## Overall assessment on Well-led – **Partial assurance**

8. We consider that the ICAEW has provided us with **partial assurance** that it meets the Well-led standard.

9. Overall, we consider that the ICAEW does not publish sufficient information to provide a good level of transparency about its decision-making, risk assessments and costs.
10. We welcome that the ICAEW is committed to continue the transparency initiatives started in 2021. However, we note that the majority of papers submitted to the ICAEW Regulatory Board have been withheld in 2022 for various reasons including being deemed by the ICAEW as commercially sensitive or about topics which would shortly be published for consultation such as the new arrangements for the ICAEW's disciplinary framework. As a result, it is not possible to understand what factors ICAEW is taking into account in making decisions and what the rationale is for its decisions. ICAEW should consider ways to improve transparency by drafting papers in such a way to only redact limited confidential information within a paper or an annex rather than withhold entire papers. Additionally, Board papers can be published after the publication of, for example a consultation document. As such, LSB expects the ICAEW to find ways to increase the publication rate of Board papers and thereby achieving greater transparency about issues being considered, decisions being taken and reasons for doing so.
11. The ICAEW has demonstrated that its Board is aware of the organisation's resourcing status and has taken action to address resourcing needs. The Board is also taking steps to ensure its own effectiveness including annual appraisals of Board members and, where necessary, performance management and effectiveness review. Moreover, in 2022 the Board carried out an effectiveness review of its regulatory committees.
12. We are content that the ICAEW carries out its regulatory functions in line with the IGR and provides assurance to its Approved Regulator as required by Section 28 of the Legal Services Act 2007.
13. The ICAEW has demonstrated examples of its learning from its own work and that of others. Examples of the ICAEW learning and making changes based on its own experience include:
- The ICAEW is in the process of developing an innovative approach to monitoring continuing professional development (CPD), using artificial intelligence which has the potential to significantly improve how many CPD records it can review.
  - The ICAEW has a programme in place to share learning from supervisory and enforcement activities which are published as regular reports for its regulated community.
14. An example of the ICAEW learning from others' work is that the Board has introduced as a standing agenda item a horizon scanning report which covers initiatives by the other regulatory bodies and oversight bodies both within and outside legal services. This approach shows that ICAEW actively seeks to learn from other regulators and sectors.
15. We will continue to monitor the ICAEW's performance as a well-led regulator and the progress of its work in this area, particularly in respect of the transparency of the decision making of the ICAEW Regulatory Board, where we will expect to see further improvements.

## **Overall assessment on Regulatory Approach – Sufficient assurance**

16. We consider that overall, the ICAEW has provided us with **sufficient assurance** that it meets the Regulatory Approach standard.

17. The ICAEW has demonstrated that it has taken action to ensure that its regulatory arrangements and guidance are:

- Reviewed – as exemplified by the ICAEW's current work to review and update its regulations for CPD.
- Evidence based – for example, the ICAEW's review of the voluntary transparency guidance which showed insufficient compliance, and which led the ICAEW to introduce mandatory rules in February 2022.
- User friendly and outcomes focused – an example of this is the new ICAEW disciplinary framework which is expected to come into force in 2023.
- Informed by learnings from its own work – as demonstrated in its consultations on changes to the new disciplinary framework and the probate fee.

18. It has also demonstrated that it understands its regulatory arrangements' impact on the regulated community, the market and the regulatory objectives through the impact assessments in its statutory applications to the LSB.

19. The ICAEW has demonstrated some progress in terms of seeking the views of consumers to inform its work, including targeting consumer groups for engagement with consultation. It has also identified work that it will pursue during 2023 to assess evidence from its technical helpline as a source of information about the support needs of consumers. To place consumer empowerment at the heart of its policy agenda, it has introduced a requirement for all papers to the Board on new probate initiatives to set out the impact on consumer empowerment.

20. As part of our monitoring of the ICAEW's performance against this standard over the coming year, we will look forward to seeing:

- the ICAEW taking steps to gather more information about the needs of probate consumers, including specific examples of feedback from consumers or consumer organisations
- continued consultation on policy proposals for legal services regulations
- specific information about how in practice the ICAEW is taking the policy statement on consumer empowerment into account, in the design and evaluation of legal services regulatory arrangements.

## Overall assessment on Authorisation – **Sufficient assurance**

21. The ICAEW has provided us with **sufficient assurance** about its performance against the authorisation standard.

22. ICAEW authorises and licenses firms and these firms must then have appropriately qualified individuals working for them delivering probate services. These individuals are designated by ICAEW as Authorised Individuals for probate. ICAEW has robust and clear evidence for its authorisation process for firms available on its website.

23. ICAEW has demonstrated its approach to setting standards by publishing the appropriate standards for individuals seeking to provide regulated probate services. Longer term, subject to putting in place regulatory arrangements, the ICAEW will start to authorise the reserved legal activity of oaths. We are assured that the ICAEW has a plan for how to incorporate training for this legal service into its authorisation arrangements. Furthermore, we note that the ICAEW

expects to introduce a new framework for CPD which sets requirements for authorised persons based on risk.

24. The ICAEW has demonstrated that it has a credible process for assuring itself that only those who meet the regulator's standards are authorised to provide education and training. The ICAEW only has one training provider for probate services – Mercia. The ICAEW has provided evidence that it reviewed the course provided by Mercia in the first quarter of 2022 and found it fit for purpose. Moreover, the ICAEW has committed to undertaking an annual review and the next review will take place in the first quarter of 2023 and be considered by the ICAEW Regulatory Board.
25. Over the last year we have been seeking assurances from ICAEW about making its register of its regulated community more user friendly and accessible. The ICAEW has assured us that it is now working with a third-party supplier to develop a single, accessible interface whereby users can search for ICAEW-accredited probate firms, as well as firms that have ceased their ICAEW probate registration. The new search tool will allow users to search by name, record number or location. The searchable register will include a summary of the firm's regulatory record, if applicable, along with a hyperlink to the firm's entry on the ICAEW's Disciplinary Database. Moreover, until the new register is in place, the ICAEW has provided evidence that it has made arrangements to achieve some of the missing functionality, which has allowed us to take sufficient assurance at this stage.
26. From next year we will seek assurance on the ICAEW's performance on Authorisation particularly in relation to the improvements of the probate register that it has committed to. As well as monitoring its general performance, we will be keen to see the ICAEW's progress on the following:
- Implementation of the new regulatory arrangements for CPD
  - Outcomes of the oversight of its training provider
  - Putting in place regulatory arrangements for the reserved legal service of oaths as well as relevant training standards and processes.

## Overall assessment on Supervision – **Sufficient assurance**

27. We consider that the ICAEW has provided us with **sufficient assurance** that it meets the Supervision standard.
28. In respect of its supervision of the regulated community, the ICAEW has demonstrated that it is undertaking both cyclical and proactive supervisory activities. ICAEW operates an outcomes-focused, evidence and risk-based monitoring approach. The ICAEW has demonstrated that if visits raise concerns, these are referred to a Probate Committee which may require remedial action from the firm or refer the firm to the professional conduct department for further investigation.
29. The ICAEW has demonstrated that feedback is built into every step of the supervisory process with individual firms receiving feedback after a monitoring visit and the ICAEW sharing learning from supervision activities with its regulated community through newsletters. The ICAEW also publishes an annual practice assurance monitoring report. Additionally, the ICAEW produces educational films for its community on areas such as anti-money laundering.

30. As to its monitoring of the performance of its training provider, we note that this is an area where ICAEW has recently reset its approach. As such we expect the ICAEW to start publishing evidence to document its supervision of its training provider during 2023.

31. From next year we will seek assurance on the ICAEW's performance on Supervision particularly in relation to the oversight of its training provider.

## **Overall assessment on Enforcement – Sufficient assurance**

32. We consider that the ICAEW has provided us with **sufficient assurance** that it meets the Enforcement standard.

33. We note that ICAEW has a user friendly and transparent process for handling complaints about authorised persons. In particular:

- the ICAEW's webpage has a helpful guided tour of the complaints process which checks that the first-tier complaints route has been exhausted and which guides the consumer onto the Legal Ombudsman who may then refer the complaint back to ICAEW if it is about misconduct rather than service
- the ICAEW has published a document setting out its process for complaints and investigations
- the ICAEW has an extensive FAQ for complainants which provides detailed information about the process
- the ICAEW publication 'Complaints – what's the process for investigation?' explains its approach to keeping everyone informed during enforcement proceedings and provides a comprehensive, transparent flowchart of the enforcement process.

34. We are aware that ICAEW's new disciplinary framework, which will come into force in 2023, allows the ICAEW Conduct Department to apply for an interim order where it has received a complaint and it considers that there is 'risk of significant harm to the public'.

35. The ICAEW has demonstrated that it has a robust process for ensuring transparency of the outcomes of its enforcement processes which include:

- publishing disciplinary decisions in the ICAEW's disciplinary database
- sharing information on learning from the disciplinary process for regulated community through regular disciplinary updates
- publishing detailed documents setting out its disciplinary orders and regulatory decisions.

36. ICAEW's new disciplinary framework sets time limits on the various stages of the enforcement process to ensure timely progress of enforcement cases. Moreover, the ICAEW has initiated a comprehensive review of the Guidance on Sanctions used in its enforcement process including a comparative study on sanctions applied by other similar regulators and a consultation with the chairs of all of the regulatory and disciplinary committees to understand issues regarding the use of the current guidance.

37. From next year we will seek assurance on the ICAEW's performance on Enforcement particularly in relation to the implementation of the new disciplinary framework and progress on the review of its sanction's guidance.

## Good practice

38. We consider that the ICAEW has demonstrated the following good practices which other regulators may wish to emulate:

- The ICAEW produces award winning educational films for its community on areas such as anti-money laundering.
- The ICAEW is in the process of developing an innovative approach to CPD monitoring, using artificial intelligence which has the potential to significantly improve how many CPD records a regulatory body can review.
- The ICAEW has a programme in place to share learning from supervisory and enforcement activities which are published as regular reports for its regulated community.
- ICAEW's webpage has a helpful guided tour of the complaints process which checks that the first-tier complaints route has been exhausted and which guides the consumer onto the Legal Ombudsman who may then refer the complaint back to ICAEW if it is about misconduct.

# Intellectual Property Regulation Board (IPReg)

## Overall summary of IPReg's performance

1. IPReg has provided us with sufficient assurance against two of the current five standards: Authorisation and Enforcement. However, we have identified three standards where we have taken partial assurance: Well-led, Regulatory Approach and Supervision.
2. Overall, IPReg has made significant progress over the last year, including:
  - progressing the range of work contained in its Governance and Transparency Action Plan
  - continuing to build its evidence base through new measures such as its work with an independent researcher
  - completing its review of its regulatory arrangements and submitting an application to the LSB.
3. This means that IPReg is better placed than last year to be able to start demonstrating sustained performance against the framework. There remains work to do to implement the changes and evidence that these are manifesting in improved overall outcomes. We would also like to see IPReg consistently demonstrating more proactivity in its approach to regulation.
4. In our response to the regulatory performance framework consultation we set out our view that regulators have a central responsibility to take an informed view of the public interest in their part of the sector. To that end we expect IPReg to demonstrate and communicate the public interest of its regulatory role.

## Background

5. In our 2021 annual assessment, we assessed IPReg as meeting 23 of the 27 outcomes. It did not meet outcomes RA2, RA3, E2 or WL3. Given the unmet outcomes we undertook a further assessment in March 2022. At that time, we concluded we could see positive progress against the four unmet outcomes but could not yet say they were met. We also added a new unmet outcome WL1 on the basis we did not consider we had assurance that the IPReg Board was holding the executive to account for its performance. A further assessment was completed in September 2022 which noted further positive progress towards meeting the unmet outcomes we assessed<sup>1</sup>. We noted our expectation that further updates from IPReg would be required to demonstrate its gathering and consistent use of data, as well as evidence of the effective implementation of its Governance Action Plan and the benefits of this being realised.
6. For this year's assessment we sent IPReg a targeted information request which asked for information on certain outcomes, how it had taken account of the findings from our targeted review of the Faculty Office, its work on implementing our statement of policy on consumer empowerment, and its key work under the standards in the last 12 months.

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<sup>1</sup> We did not assess RA2 or E2 on the basis these outcomes were unlikely to change until IPReg's review of its regulatory arrangements was complete.



7. In assessing IPReg's performance against the standards we have reviewed the information provided by IPReg in its response to our targeted information request, as well as information from its website and from our interactions with it over the past year.

## Assessment of IPReg's performance

8. Below we set out our assessment of IPReg's performance against the five standards in our framework, our overall assessment of its performance and highlight areas of good practice which other regulators may wish to emulate.

## Overall assessment on Well-led – **Partial assurance**

9. We consider that IPReg has provided us with **partial assurance** that it meets the Well-led standard.
10. In our assessments of IPReg over the past year we have noted IPReg's progress towards meeting the outcomes under this standard currently rated as not met. The update we assessed in September provided us with evidence of positive progress against the outcomes. Notably, the work completed by IPReg's Governance and Transparency Working Group resulted in a plan that, once implemented, should help to provide us with assurance of the Board's oversight and IPReg's transparency.
11. We are content that IPReg carries out its regulatory functions in line with the IGR and provides assurance to its Approved Regulator as required by Section 28 of the Legal Services Act 2007.
12. Overall, we consider that IPReg is working towards improving its transparency about its decision-making. This is being achieved through a range of new measures including:
- amendments to its Board papers to set out options, increase focus on the regulatory objectives and IPReg's own strategic objectives and support Board decision-making.
  - a changed approach to minuting Board meetings to include detailed reasoning for Board decisions
  - a planned publication policy to support organisational transparency.
13. An example of IPReg learning and making changes based on its own experience is its review of its regulatory arrangements which included significant work engaging with key stakeholders to help inform the proposals it submitted to the LSB on 10 November 2022.
14. An example of IPReg learning from others' work is how it took account of the LSB's review of the Faculty's Office's performance against the Well-led standard by:
- reviewing a range of governance documents that are published on the IPReg website and committing to reviewing them every 2 years
  - amending its Board papers to make clear the main regulatory objectives to which a specific policy issue relates.
15. We will continue to monitor IPReg's performance towards becoming a well-led regulator and the progress of its work in this area, particularly in respect of its ongoing work to implement its Governance and Transparency Action Plan. The increased focus on the regulatory objectives

is welcome, however, we consider IPReg should consider how it can ensure it expresses the nature of the public interest in regulating trademark and patent attorneys. We are encouraged by the actions identified and progress so far and are hopeful that we will continue to see tangible and enduring improvements over the coming months.

## **Overall assessment on Regulatory Approach – Partial assurance**

16. We consider that overall, IPReg has provided us with partial assurance that it meets the Regulatory Approach standard.
17. IPReg has taken a proactive approach to keeping the LSB up to date on its review of its regulatory arrangements. It also ensured that it engaged with a range of stakeholders on its plans to make significant changes. This included:
  - a call for evidence to obtain a range of views as it developed its proposals
  - 17 stakeholder meetings
  - a 12-week consultation that received 36 formal responses
  - meetings during the consultation including a joint webinar with CIPA and CITMA that had 121 attendees.
18. IPReg has also taken steps to improve its evidence base with the aim of ensuring its proposals are well evidenced. This has included:
  - commissioning an external consultant to review the LSB's data set used for the Small Business Legal Needs Survey
  - considering data from the LSCP tracker survey
  - obtaining data directly from firms to understand how much client money is held
  - obtaining data from the IPO in relation to filings (both trade marks and patents)
  - engaging with firms to understand client types.
19. We are currently considering IPReg's substantive application to alter its regulatory arrangements. We cannot comment on the substance of the proposals or the evidence base IPReg has developed while that assessment is ongoing.
20. IPReg has also evidenced its planned work to take account of our statement of policy on consumer empowerment. This includes:
  - updating its analysis of small business data and putting it to its Board for consideration in December 2022
  - reviewing the consumer facing information on its website in 2023
  - a planned client guide for transparency requirements and a transparency leaflet targeted at individual consumers/small businesses
  - plans to review compliance with transparency requirements 18-24 months after they have been implemented.
21. As part of our monitoring of IPReg's performance against this standard over the coming year, we will look forward to seeing:
  - the steps IPReg takes towards implementing its regulatory arrangements (subject to LSB approval) following the LSB's detailed consideration of the proposals

- ongoing evidence of IPReg applying its evidence base in practice alongside continuing work to develop and update the evidence at its disposal to ensure its approach is led by evidence
- updates on IPReg's progress in relation to its consumer facing information including the planned client guide and transparency leaflet.

## Overall assessment on Authorisation – **Sufficient assurance**

22. IPReg has provided us with **sufficient assurance** about its performance against the Authorisation standard. This has been demonstrated by its work in scrutinising the reaccreditation of an education and training provider.
23. IPReg also provided us with confirmation that it has information on its website setting out the requirements to qualify and the cost of courses. It also has searchable registers on its website that are updated for admissions, suspensions and removals. There is also a section that provides visibility on any attorneys seeking to be removed from the register.
24. From next year we will seek assurance on IPReg's performance on Authorisation as an element of the Operational Delivery standard of our new framework. As well as monitoring its general performance, we will be keen to see IPReg's progress on its 2023/24 plans to review its Accreditation Handbook and to scope a review of IPReg's competency framework.

## Overall assessment on Supervision – **Partial assurance**

25. We consider that IPReg has provided us with **partial assurance** that it meets the Supervision standard.
26. Some of the key supervisory actions undertaken by IPReg over the last 12 months have included:
- 14 cases opened dealing with complaints about regulated persons either notified by third parties or as a result of IPReg's internal monitoring
  - supervisory work with an education provider following concerns raised by CIPA and CITMA
  - ongoing monitoring of information provided to IPReg through the annual renewal process
  - action taken to work with those identified as non-compliant. Particularly in relation to PII and CPD requirements.
27. On IPReg's own account it has taken no action in the last year to share learning or good practice identified through supervisory activity. To take sufficient assurance on this standard, we would expect to see it demonstrate these sorts of proactive steps.
28. Concerns about a lack of proactivity have been exacerbated through IPReg's initial approach to implementation of the sanctions regime in the sector. We wrote to IPReg on 28 July 2022 setting out the concerns we had in relation to its approach to sanctions. In particular we expressed our concern that IPReg had not taken steps to meaningfully assess risk in its part of the sector, despite the LSB having set out its expectations in this area. As a result, we notified IPReg that we were engaging our enforcement policy to seek assurance in that area.

29. Since that letter IPReg has made progress to resolve the concerns expressed. Given the progress made, we consider that we have been able to resolve the particular concerns that we expressed in July informally and so do not consider that our enforcement policy remains engaged on this issue. It will remain important for IPReg to continue to keep the LSB up to date on further progress made in relation to its work on the regulatory risks posed by the sanctions regime. We hope that on similar issues in the future, IPReg will demonstrate proactivity without the need for the LSB involvement.
30. From next year we will seek assurance on IPReg's performance on Supervision as an element of the Operational Delivery standard of our new framework. As well as monitoring its general performance, we will be keen to see IPReg's progress on the following:
- its approach to more proactively monitoring compliance with its regulatory arrangements in relation to CPD
  - IPReg taking opportunities to proactively share learnings and good practice with its regulatory community
  - its ongoing work to ensure that any risks associated with the sanction regime are appropriately and proactively managed.

### **Overall assessment on Enforcement – Sufficient assurance**

31. We consider that IPReg has provided us with **sufficient assurance** that it meets the Enforcement standard.
32. IPReg has an existing Complaints Handling and Enforcement Policy and has plans for a new enforcement and disciplinary decision-making policy to sit alongside proposed changes to its regulatory arrangements.
33. IPReg provided us with information on decisions taken in the last 12 months and told us about the use of an independent adjudicator when decisions are challenged.
34. IPReg does not have a significant volume of enforcement cases. It confirmed that it had opened 14 cases across a 12-month period and reported to us on the time taken to investigate the issues raised and close those cases. Only one case led to a formal regulatory decision.
35. IPReg also provided us with confirmation that its application to alter its regulatory arrangements includes new powers to apply for interim orders as part of the disciplinary process. IPReg also explained that its current arrangements allow for the immediate suspension of regulated persons who are not able to demonstrate they hold valid PII. While IPReg does not yet have in place wider interim order powers, we have been sighted on its plans and consider that, subject to LSB approval of those plans, we have enough information to be assured of IPReg's performance against the enforcement standard.
36. Ahead of our next assessment we expect to hear from IPReg on the implementation of wider changes to its enforcement processes (subject to LSB approval). We accept that it is unlikely IPReg will have made significant use of new processes at the time but we will expect an update on implementation and any early use of the new processes.

37. As noted in our draft business plan, we plan to undertake an in-depth review of regulatory bodies' disciplinary and enforcement process during 2023, and we would expect to consider IPReg's processes (which are currently subject to LSB approval) as part of this work.

## **Good practice**

38. We consider that IPReg has demonstrated the following good practices which other regulators may wish to emulate:

- Its approach to engagement in developing proposed changes to regulatory arrangements
- Its engagement of an independent researcher to review research conducted in the sector and to analyse how the findings apply to its regulated community.
- Its changes to its approach to Board papers and minutes to ensure they support Board decision-making and its organisational transparency.

## Solicitors Regulation Authority (SRA)

### Overall summary of SRA's performance

1. The SRA has provided us with sufficient assurance against four of the current five standards: Well-led, Regulatory Approach, Authorisation and Supervision. However, it has only provided us with partial assurance against the Enforcement standard.
2. We consider that the SRA is a well-run regulator with a proactive and effective regulatory approach. Over the past year, it has responded to changes in regulatory policy and the regulatory environment, such as the introduction of the Russian sanctions regime, has learned lessons from its work and sought to improve how it regulates. It has also demonstrated examples of good practice which we set out below. To provide us with assurance over the coming year, it will need to continue its proactive approach and seek ways to improve its performance.
3. While we have identified concerns about aspects of the SRA's enforcement work, which we set out in detail below, we consider that it has the capability and capacity to promptly address these ahead of our next assessment of its performance which will begin in June 2023.
4. Enforcement is also an area that we will be examining closely in 2023 through our in-depth review of regulatory bodies' disciplinary and enforcement process, and we would expect to review the SRA's processes as part of this work.

### Background

5. In our 2021 annual assessment, we assessed the SRA as meeting all 27 outcomes. However, we noted the need for the SRA to take actions in relation to the Authorisation and Enforcement standards to maintain its rating.
6. For this year's assessment we sent the SRA a targeted information request which covered the actions we had set it on the Authorisation and Enforcement standards and asked for information about specific issues that had arisen during the year, how it had taken account of the our findings from our targeted review of the Faculty Office, its work on implementing our statement of policy on consumer empowerment, and its key work under the standards in the last 12 months.
7. In assessing the SRA's performance against the standards, we have reviewed the information provided by the SRA in its response to our targeted information request, as well as information from its website and from our interactions with it over the past year.

### Assessment of the SRA's performance

8. Below we set out the overall summary of our assessment of the SRA's performance and our assessment of its performance against each of the five standards. We also highlight areas of good practice which other regulators may wish to emulate.

### Overall assessment on Well-led – Sufficient assurance

9. We consider that the SRA has provided us with **sufficient assurance** that it meets the Well-led standard.
10. The SRA has demonstrated that its Board is engaged and proactive in holding its executive to account and that it takes account of the regulatory objectives. The SRA Board is aware of the organisation's resourcing status and has taken action to address resourcing needs. The Board is also taking steps to ensure its own effectiveness.
11. We are content that the SRA carries out its regulatory functions in line with the IGR and provides assurance to its Approved Regulator as required by Section 28 of the Legal Services Act 2007.
12. Overall, we consider that the SRA provides a good level of transparency about its decision-making, risk assessments and costs. It has already taken some steps to increase this and is exploring ways to provide still more. However, during the past year some stakeholders have told us that they consider the SRA could be more transparent, particularly as it no longer holds public Board meetings. While this is a matter for the SRA, we will monitor how it responds to these concerns.
13. The SRA has demonstrated examples of its learning from its own work and that of others and has made changes to its working practices and those of others as a result.
14. Examples of the SRA learning and making changes based on its own experience include:
- its changes to the Solicitors Qualifying Examination Assessment Regulations
  - how it has taken account of stakeholder feedback in its approaches to consultations, such as those on the Solicitors Indemnity Fund (SIF) and the Keeping of the Roll exercise, events and other communications
  - its thematic review of workplace culture which resulted in revised guidance for the profession, and its thematic review of sanctions which is expected to result in further guidance in November 2022.
15. An example of the SRA learning from others' work is how it took account of the LSB's review of the Faculty's Office's performance against the Well-led standard by:
- introducing an expert panel to advise and provide challenge on policy issues
  - using focus groups to help it better understand consumers' needs and improve its business planning, and
  - updating its general publication scheme.
16. We will continue to monitor the SRA's performance as a well-led regulator and the progress of its work in this area, particularly in respect of:
- the SRA's changes to its Governance Handbook to ensure its Board can always operate with a lay majority
  - the findings of the SRA Board's effectiveness review and any actions it takes as a result
  - its work on reviewing other bodies' transparency practices and any actions it takes as a result of this work
  - how the SRA responds to transparency issues raised by stakeholders



- how the SRA learns from its own work and those of others, including in respect of how it engages with stakeholders.

## Overall assessment on Regulatory Approach – **Sufficient assurance**

17. We consider that overall the SRA has provided us with **sufficient assurance** that it meets the Regulatory Approach standard.

18. The SRA has taken action to ensure that its regulatory arrangements and guidance are:

- clear – via the independent assessment of its Standards and Regulations
- current – for example, its work on revising its financial penalties and disciplinary publication arrangements and guidance
- based on information from a range of sources – for example, its research on consumer segmentation, the unregulated market and professional indemnity insurance
- informed by learnings from its own work – for example, its consultation on changes to the SIF.

19. It has also demonstrated that it understands its regulatory arrangements' impact on consumers, the regulated community, the market and the regulatory objectives through the impact assessments in its various consultations including on SIF, the Police Station Representatives Accreditation Scheme and the Keeping of the Roll exercise, as well as its reviews of the Standards and Regulations and its Transparency Rules.

20. We welcomed the SRA's prompt response to emerging issues such as the imposition of sanctions following Russia's invasion of Ukraine and to developments such as the LSB's statement of policy on consumer empowerment. We also note the SRA's use of thematic reviews to ensure its rules and guidance remain current.

21. The SRA acquired greater fining powers in 2022, and its use of these will need to be supported by robust supervision and enforcement processes.

22. As part of our monitoring of the SRA's performance against this standard over the coming year, we will look forward to seeing:

- Specific examples of where its risk assessment work, horizon scanning activities and feedback it has received via its regulatory work has informed revisions to its regulatory arrangements and guidance
- Further information about how the SRA has considered and developed its response to the sanctions regime
- How the SRA continues to respond to the statement of policy on consumer empowerment, including how it intends to ensure that it takes account of the statement in future. We would also be grateful for further clarification as to how the various workstreams link to aspects of the statement and more information about the timelines for their completion
- How the SRA uses its enhanced fining powers and ensures that in doing so it adheres to due process and provides sufficient transparency about its decisions.

## Overall assessment on Authorisation – **Sufficient assurance**

23. The SRA has provided us with **sufficient assurance** about its performance against the Authorisation standard as it takes a proactive approach to its authorisation of training providers in setting the standards they need to meet. This is demonstrated by its continuing work on the Common Professional Examination and Legal Practice Course qualifications and its seeking to appoint a single provider for the Higher Rights of Advocacy qualification to ensure its quality and consistency. While the SRA does not authorise Solicitors Qualifying Examination providers, it has committed to begin publishing information about their candidates' pass rates by late 2023.
24. The SRA also proactively sets standards and requirements for entry to the profession and takes steps to ensure they remain current as shown by its work on updating the Solicitors Qualifying Examination's Functioning Legal Knowledge requirements and the Police Station Representatives Assessment Scheme.
25. The SRA has mechanisms for authorising individuals and entities and ensuring their fitness to practise. It publishes information about those it regulates, its processes for assessing them, those it has refused entry to and where it has issued waivers to enable innovation.
26. It has worked to ensure that its authorisation processes are transparent, efficient and fair by carrying out and publishing its own statistical analyses of the results of each Solicitors Qualifying Examination to measure their fairness, validity and reliability. Its Independent Reviewer also publishes its report covering these issues. These analyses have highlighted the attainment gap for candidates from Black, Asian and other ethnic minorities in the Solicitors Qualifying Examination, and the SRA is undertaking research to better understand the factors driving the attainment gap for these groups in professional assessments.
27. The SRA has maintained and has improved its register of regulated individuals and entities to make it more useful for consumers, for example by including information about Legal Ombudsman (LeO) complaints on firms' records and providing a link to LeO's own complaints register. It publishes the vast majority of its disciplinary decisions (97%) and can provide evidence-based reasons for when it decides not to on health or similar grounds. It is currently reviewing its disciplinary publication policy to ensure its effectiveness.
28. From next year we will seek assurance on the SRA's performance on authorisation as an element of the Operational Delivery standard of our new framework. As well as monitoring its general performance, we will be keen to see the SRA's progress on the following:
- Its work on the Police Station Representatives Accreditation Scheme and Higher Rights of Advocacy qualification to ensure that the improvements it plans to make are implemented
  - The transition from the Legal Practice Course to the Solicitors Qualifying Examination
  - Its work on providing Solicitors Qualifying Examination provider pass rate information to candidates, and whether the SRA is considering making any other changes to the information it publishes for candidates
  - The SRA's annual review of the Solicitors Qualifying Exam Functioning Legal Knowledge requirements
  - The completion of its review of its disciplinary decision publication policy and the implementation of the new policy
  - Its publication of decisions on, and improvements to, its register.

## Overall assessment on Supervision – **Sufficient assurance**

29. We consider that the SRA has provided us with **sufficient assurance** that it meets the Supervision standard.
30. The SRA publishes an annual Risk Outlook which sets out the key risks and challenges the SRA considers the profession faces over the coming year.
31. In respect of its supervision of the regulated community, the SRA has demonstrated that it is undertaking proactive supervisory activities on specific issues such as anti-money laundering (AML), its Transparency Rules and sanctions.
32. It has also explained its overall approach to supervision. The SRA gathers intelligence about the individuals and firms it regulates from a range of sources including:
- reports from members of the public and the profession
  - other regulators, government departments, law enforcement agencies and bodies such as the Legal Aid Agency, HM Land Registry and the Legal Ombudsman
  - firms' accountants' reports
  - reports from insurers about firms not meeting professional indemnity insurance requirements
  - regular engagement with the largest City, national and international firms
33. The SRA has systems in place to assess the intelligence it receives and to determine its responses, which can include proactive engagement with firms to further assess concerns, monitoring, investigations and, where necessary, interventions.
34. The SRA also undertakes a rolling programme of thematic reviews which involve visiting and auditing firms to test their compliance with specific aspects of the SRA's regulatory requirements. Thematic reviews will typically include:
- surveys of the profession
  - engagement with interested parties and stakeholders e.g. the Legal Ombudsman, the Office of the Public Guardian and the Office of the Immigration Services Commissioner
  - visits to firms and interviews with senior management
  - assessment of firms' policies and procedures
  - reviews of firms' finances and client ledgers, and
  - inspections of client files.
35. Recent and current thematic reviews have looked at firms' workplace culture, immigration, in-house solicitors and powers of attorney.
36. As to its monitoring of the performance of legal education and training providers, the SRA actively monitors Common Professional Examination, Legal Practice Course, Higher Rights of Advocacy and Police Station Representative Accreditation Scheme providers. It uses external examiners to assess these providers' performance and where issues or concerns are identified the SRA follows them up with providers and, as in the case of Police Station Representative Accreditation Scheme, itself makes changes to improve these assessments. The SRA does not authorise SQE providers, but it has committed to publish information about them, including

pass rates from late 2023. The SRA is taking steps to ensure its approaches to gathering and publishing this data are correct and consistent with those of other regulators.

37. The SRA has demonstrated that it has shared lessons and good practice with its regulated community in areas such as AML, sanctions, transparency and workplace culture and is undertaking a series of further thematic reviews which will enable it to do so on several other issues. It also shares from its general supervisory activity through published guidance, warning notices and other resources such as its regular SRA updates, events such as its Compliance Conference and through its Ethics Guidance team.
38. The SRA also shares learning and good practice amongst legal education and training providers through workshops on issues such as remote teaching and assessment. It is increasingly focusing on workshops for providers of SQE courses.
39. Over the next year we will continue to monitor the SRA's work in this area by looking at:
- specific actions the SRA takes to address risks and issues identified by its supervisory activities, in respect of both its regulated community and training providers
  - how the SRA continues to share lessons and other information learned from its supervisory activity with its regulated community and training providers
  - the progress of its work on providing SQE candidates with information about training providers, including their pass rates.

## **Overall assessment on Enforcement – Partial assurance**

40. We consider that the SRA has provided us with **partial assurance** that it meets the Enforcement standard.
41. The SRA has provided us with sufficient assurance about elements of this standard, particularly in respect of (1) the character of its enforcement processes and how it is further seeking to ensure their fairness and (2) how it keeps those involved in its disciplinary processes informed about progress, its decisions and the reasons supporting them.
42. We consider that it has not provided us with sufficient assurance about the quality of its handling of complaints about solicitors and how it is seeking to improve its performance in handling them. During the year, concerns about the SRA's complaints handling processes have been brought to our attention by members of the public and we are currently engaging with the SRA to determine the extent to which there are systemic problems with its complaints handling approach. As a primary purpose of regulation is consumer protection, we attach particular importance to the SRA's performance in this area.
43. We also need to see further progress from the SRA in reducing its backlog of long-term cases and increasing its capacity and capability in handling them. As noted above, we are already seeking information from the SRA about some of these points. We will require the following further information ahead of our next assessment:
- A clear statement from the SRA about how its Quality Assurance team's work has identified issues in its complaints handling processes, and how it has applied the lessons learned to these processes.

- A full response to our questions about its handling of complaints and, if necessary, a plan from the SRA about how it will address any systemic issues identified.
- How the SRA is increasing, and plans to maintain an increase in, its investigation and enforcement team's capacity and capability to deal with more complex cases and process all cases more efficiently.

44. Also, we suggest that the SRA may wish to consider how to improve the navigability of the material about its enforcement and disciplinary process published on its website.

45. As noted in our draft business plan, we plan to undertake an in-depth review of regulatory bodies' disciplinary and enforcement process during 2023, and we would expect to review the SRA's processes as part of this work.

## **Good practice**

46. We consider that the SRA has demonstrated the following good practices which other regulators may wish to emulate:

- It is willing to learn from others: for example, it is reviewing other organisations' approaches to Board transparency
- It has engaged independent bodies to review its Board's effectiveness, the effectiveness of its reforms and the delivery of its work, for example the SQE and its complaints handling processes.
- It has used a multi-channel approach during its consultation processes to ensure that it engages with and hears from the widest range of stakeholders affected by changes to its regulatory arrangements.
- It has used feedback from stakeholders (for example training providers) to change how it holds events relevant to them.
- It has sought advice from legal profession diversity groups about the Solicitors Qualifying Examination and in designing and carrying out its diversity research on the attainment gap for ethnic minorities in professional assessments and their overrepresentation in its disciplinary processes.
- It has set up quality assurance and continuous improvement processes to find ways to improve its regulatory processes and work.