LSB LEGAL SERVICES BOARD

Meeting: **Legal Services Board**

Date: 6 June 2023

Item: Paper (23) 35

Title: **Regulatory performance assessment - update**

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Status: Official

Introduction: Purpose of the paper/Issue

1. This item provides an update to the Board on:

    - developments since the publication of our annual assessment of the regulators' performance in January 2023; and
    - our preparation for the next annual assessment, which will begin in June 2023, and will be the first one conducted wholly under our new regulatory performance framework.

    A slide pack outlining the revised assessment framework is included at Annex A for reference.

Recommendation(s)

2. The Board is invited to **note** the update and the steps the LSB has taken ahead of our 2023 annual assessment.

Background

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

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

5. Our 2022 assessment covered:

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

6. Our 2022 assessment found several issues with regulators' overall performance against the previous framework's well-led and regulatory approach standards including the following common concerns relating to transparency of decision-making, capacity and capability, use and deployment of evidence, proactiveness in supervisory work and resources, capability and capacity for enforcement. We also noted specific issues about regulators' performance against the authorisation, supervision and enforcement standards.

Since our 2022 assessment

7. We have followed up on our 2022 assessment's findings, the common concerns and specific concerns about individual regulators through our established relationship management process. The BSB and FO have largely completed the actions from the Well-led review action plans, and we have written to them to confirm that we are content for any residual matters to be monitored through ongoing relationship management.

8. Our next assessment process will begin in June 2023 and our report will be published in November. This first report will be wholly under the new framework and will cover performance in the period between October 2022 and May 2023.

9. Ahead of our next assessment we have engaged with regulators as follows:

    - Helen Phillips wrote to all the regulators' Chairs in February 2023 emphasising that one of the framework's aims was to provide regulators with more autonomy about how they carry out their work while providing clarity about our expectations of their performance. To this end, Helen's letter recommended that regulators and their Boards undertake an assurance mapping exercise. This exercise would assist help regulators prepare for the 2023 assessment by identifying in advance the sources of assurance that they would rely on to demonstrate meeting the framework's 20 characteristics and, ultimately, its three standards. We invited regulators to engage with us about how assurance mapping would work.

    - In April we wrote to all regulators to tell them about the scope and timetable for this year's assessment. We also encouraged regulators to carry out assurance mapping exercises, if they had not already, as this would assist them in preparing their responses to our information requests. We also invited regulators to an online question and answer session on 10 May and invited any questions they might have for addressing at that session .

- Throughout this period relationship managers provided opportunities for regulators to ask questions about our 2023 assessment and our assurance mapping process via relationship management meetings.

- We held informal meetings with two regulators ahead of the 10 May session. One regulator confirmed that it had already undertaken an assurance mapping exercise. The other raised several questions about how assurance mapping and the assessment would work. We included our answers to those regulator's questions in the presentation we gave at the 10 May question and answer session.

- Questions at the 10 May session focused on assurance mapping, confidentiality concerns about material to be provided, and the rating system. A note of the session and the presentation have been sent to all regulators. Regulators with any outstanding questions or who were unable to attend the session and would like a meeting to discuss this year's assessment have been invited to contact us.

- We are considering incorporating the yet-to-be published Legal Services Consumer Panel's Report on Consumer-focused Regulation in Legal Services into our Sourcebook as a publication that regulators may wish to consider.

Our 2023 assessment

10. As our 2022 assessment found that regulators continued to have more difficulty in meeting our previous framework's well-led and regulatory approach standards, we have decided to focus our first assessment under our new framework on its equivalent Well-led and Effective approach to regulation standards. We will seek assurance from all regulators about their performance against these standards, in doing so will look at common areas of concern relating to these standards found by our 2022 assessment (see paragraph 6 above). The Legal Services Consumer Panel will also provide input to our information request to ensure that the consumer-facing aspects of these standards are covered.

11. We will also seek assurance from all regulators about their implementation of the ongoing competence and consumer empowerment statements of policy.

12. We will seek assurance from individual regulators on specific areas for improvement we identified in our 2022 assessment relating to the previous framework's authorisation, supervision and enforcement standards, which are covered by our new framework's Operational Delivery standard.

13. We note that novel risks will occasionally arise, and that regulators may not initially be able to provide us with sufficient assurance that they have addressed them. In these cases, when making our assessments, we will seek assurance from regulators that they are (1) taking steps to understand the nature and scale

of such risks and (2) considering how they might address them through changes to their regulatory approach and activities.

Future steps

14. We will use our monitoring and assessments of regulators' performance to complement our proposed market surveillance work, primarily by identifying risks to the sector.

15. We expect to evaluate the new framework's performance in 2026/27.

Risks and mitigations	
Financial:	N/A
Legal:	The Legal team were engaged throughout the assessment process and any risks were addressed and mitigated accordingly.
Communications and engagement:	Informal meetings held with some regulators to address their questions about 2023 assessment. Open Q&A event held on 10 May to allow all regulatory bodies to ask further questions. Slides from and note of that meeting circulated to all regulatory bodies. Will meet on request any regulatory bodies that could not attend the Q&A session.
Equality and diversity:	Our regulatory performance assessment advances our strategic objectives on EDI by enabling us hold regulators to account about (1) their understanding of EDI issues relevant to their regulated communities and users of legal services (2) and their work on these issues.
Resource:	No additional resources are required
Environmental:	N/A

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