

# **Regulatory performance: Performance assessment November 2019**

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A report on progress of each legal services regulatory body against the LSB regulatory performance standards

**December 2019**

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## Executive Summary

- 1 The Legal Services Board (LSB) vision is for legal services that everyone can access and trust. A key component of this is ensuring that consumers can rely on good quality regulation by good quality regulators.
- 2 In January 2018, the LSB introduced the regulatory performance framework to assess the performance of regulatory bodies across a common set of standards and outcomes. Each body regulates a different set of regulated practitioners, has different numbers of practitioners and carry out their responsibilities in different ways. Nevertheless, each body carries out the same role under the Legal Services Act 2007 and that is the focus for the LSB.

### Summary of assessments

- 3 All regulatory bodies have made progress on the actions agreed in the assessments in January and June 2019. A number of actions were more complex and had longer-term timeframes and therefore have not all been completed. The highlights are:
  - One regulatory body has been rated as meeting all the standards required across all outcomes - IPReg.
  - Nine outcomes have been completed and are now rated as *met* - BSB; CLC (2); FO (2); IPReg (3); SRA.
  - 13 outcomes remain unchanged as *not met - action being taken* and four new outcomes have been added to this rating making a total of 17 outcomes where action is required - BSB; CILEx Reg; CLC; CLSB; FO; ICAEW; SRA.
  - Five outcomes have been downgraded to *not met - action required* - FO; ICAEW; SRA.
- 4 The table below sets out the current rating for all regulatory bodies.

REG	REGULATORY APPROACH					AUTHORISATION					SUPERVISION				ENFORCEMENT						WELL-LED					
	1	2	3	4	5	1	2	3	4	5	1	2	3	4	1	2	3	4	5	6	1	2	3	4	5	6
BSB	Met	Not met – action being taken	Met	Met	Met	Met	Met	Met	Not met – action required	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	
CLC	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	
CLSB	Not met – action being taken	Not met – action being taken	Not met – action being taken	Not met – action being taken	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Not met – action being taken	Not met – action being taken	Met	Met	Met	Met	Met	Met	Met	Met	Met	
CILEx Reg	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Not met – action required	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	
FO	Met	Not met – action being taken	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met		
ICAEW	Met	Not met – action being taken	Met	Met	Met	Met	Met	Met	Met	Not met – action required	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Not met – action required	Met	Met	
IPReg	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met		
SRA	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met	Not met – action required	Met	Met	Met	Met	Met	Met	Met	Met	Met	Met		
Met	Met	Not met – action being taken	Not met – action required	Not met – action required	Not met – action required	Not met – action required	Not met – action required	Not met – action required	Not met – action required	Not met – action required	Not met – action required	Not met – action required	Not met – action required	Not met – action required	Not met – action required	Not met – action required	Not met – action required	Not met – action required	Not met – action required	Not met – action required	Not met – action required	Not met – action required	Not met – action required	Not met – action required		

- 5 Overall, we are encouraged by the actions taken by the regulatory bodies, all of which have shown improvements in some areas, although not sufficient in all cases to improve the rating. However, there remains a concern that the regulatory bodies have not embedded the regulatory performance framework fully into their own governance arrangements. We will consider this in our work in 2020.

## Introduction

- 6 The LSB introduced a framework to assess the regulatory performance of legal service regulatory bodies in January 2018. This report covers the progress made since publication of the action plans contained in the transitional assessment published in January 2019. The regulatory performance framework is set out at Annex A.
- 7 Since January 2018 we have:
  - Carried out a transitional review of each regulatory body between January and November 2018. In January 2019 we published a [report](#) of the review which included detailed action plans for each regulatory body;
  - Introduced relationship management as a means of monitoring the regulators' performance on an ongoing basis and to ensure that we develop a mutual understanding of actions and priorities;
  - Reviewed progress against the action plans up to June 2019 and published [revised assessments](#) in August 2019; and
  - [Written to each CEO](#) to set out our expectations and our ongoing quality and timeliness concerns, particularly relating to rule change applications.
- 8 We consider that the framework is now fully operational and all regulatory bodies understand our expectations. Our view and feedback from the regulatory bodies suggests that the relationship management approach is working well and we better understand each other's priorities and activities.

## November assessments

- 9 All regulatory bodies have made progress on the actions agreed in the assessments in January and June 2019. A number of actions were more complex and had longer-term timeframes and therefore we recognised that the number of completed actions this time may not be greatly improved since the review published in August. The numbers used in this summary are the total number of outcomes across all regulatory bodies and, unless noted otherwise, cover the assessment at November 2019.

### Outcomes rating upgraded: *Met*

- 10 There have been nine completed outcomes this year - BSB (June); CLC (2: June and November); FO; IPReg (3); SRA.
  - IPReg has become the first regulatory body to achieve a fully *met* rating on all outcomes with; publication of a more accessible and accurate register including disciplinary information; the board agreement on KPIs; and the introduction of a board-level appraisal system. This is a great achievement for one of the smaller regulators.
  - The BSB has *met* one outcome by providing information to explain its replacement actions on advocacy quality.
  - CLC completed its review of enforcement and has introduced a system to update complainants at regular intervals during the complaints enforcement process. It also completed its action to make disciplinary information on practitioners available and accessible on its register.
  - The Faculty Office has completed the implementation of the renewal portal *NotaryPRO* which includes disciplinary information. It has also increasingly used its

learning to inform regulatory arrangements, in particular on enforcement, transparency and wills and probate.

- The SRA has introduced a new register which contains firms' disciplinary information as well as that of individuals. SRA confirms that integration into the register of disciplinary information for individuals and firms will follow by the 31 December 2019 and we consider that this outcome has been *met*.

#### Outcomes rating unchanged: *Not met - action being taken*

- 11 13 outcomes remain unchanged as *not met – action being taken* -BSB; CILEx Reg; CLSB; FO; SRA. We are generally reassured that the regulatory bodies are taking steps to complete the actions agreed on these outcomes. We expect to see further progress towards a *met* rating in 2020 in line with the timings set for each of the actions required.
- A number of these outcomes are related to the performance of CLSB which is carrying out a considerable reform programme and we are encouraged by the progress so far.
  - The others cover outcomes relating to the replacement of actions on advocacy quality, IGR related issues and how the board holds the executive to account.
  - A further four outcomes have been classified in this assessment as *not met – action being taken* - BSB; CLSB; ICAEW; FO. This reflects the deterioration in the general quality of rule change applications over the last twelve months from these regulatory bodies. Applications are often incomplete, lacking in supporting evidence and rationale and do not highlight all the changes requested clearly.

#### Outcomes rating downgraded: *Not met - action required*

- 12 Disappointingly due to a lack of tangible progress, five outcomes have been downgraded to *not met – action required* - FO (2); ICAEW (2); SRA.
- Three of the five ratings reflect a lack of progress in meeting the Well-led outcome (WL3: Transparency of decision-making and performance). While we intend to take further steps on the Well-led standard as explained in the section **Our focus in 2020**, this will not replace or suspend the actions we expect regulatory bodies to take to meet the standard expected.
  - Of the other two outcomes, one reflects a lack of available information on how decisions are made and the other reflects the fact that one regulatory body has not yet made disciplinary information available or accessible on their register of practitioners.
  - A further *not met – action required* has also been recorded for the BSB which reflects the lack of detailed information provided to the LSB to explain how the BSB proposes to fulfil its consumer obligations previously delivered through Legal Choices.
- 13 Overall, we are encouraged by the actions taken by the regulatory bodies, all of which have shown improvements in some areas, although not sufficient in all cases to improve the rating. However, there remains a concern that the regulatory bodies have not embedded the regulatory performance framework fully into their own governance arrangements. We will consider this in our work in 2020.
- 14 More generally, the transitional review report raised concerns on two outcomes where a number of regulatory bodies did not meet the required standard:

- A5 (Registers to include disciplinary information) where five regulatory bodies failed to meet the standard required in January 2019. We are pleased that only one body has not completed this action and we will deal with this directly and therefore there will be no need for wider LSB action.
- WL3 (Transparency of decision-making and performance). We have set out our plans for further work in paragraph 39.

## Overviews

15 The detail below summarises the LSB assessment of each regulatory body covered by the framework based on the progress report submitted in November 2019, together with information and intelligence gathered through our regular contact with Chairs, Chief Executives and relationship managers throughout the year. Full detailed assessments on each regulatory body can be found [here](#).

Bar Standards Board (BSB)			
<p>16 The BSB has continued to make progress against actions identified in the last progress update. Since the original transitional review in January 2019, one previously <i>not met</i> outcome has been assessed as <i>met</i> - S3 (Regulated community is monitored to ensure standards are met) and one remains under review through the IGR transition procedures - A4 (Authorisation process).</p> <p>17 Two further outcomes appear as no longer <i>met</i> in November 2019; <i>not met – action required</i> on WL5 (Board ensures the regulator is independent, transparent consumer-focused) and the other <i>not met – action being taken</i> on RA2 (Regulatory arrangements updated based on robust evidence).</p> <ul style="list-style-type: none"> <li>• WL5: In our view, the BSB’s decision to withdraw funding from Legal Choices without a clear commitment to investing in alternatives is a diminution of the BSB’s performance in respect of this outcome. The BSB has informed us that it is currently devising a new public legal education strategy. However, we await detailed information on the ways the BSB proposes to address its obligations currently delivered through Legal Choices.</li> <li>• We also have concerns about outcome RA2 which has been added as a new action and reflects issues with the quality of the content of rule change applications.</li> </ul>			

Council for Licensed Conveyancers (CLC)	
<p>18 CLC has made considerable progress on the two outstanding outcomes previously assessed as <i>not met – action being taken</i>: A5 (Register including disciplinary records) and WL3 (Transparency of decision-making and performance) with A5 now considered <i>met</i>.</p> <ul style="list-style-type: none"> <li>• On WL3 the key outstanding action is the publication of performance information about the CLC (e.g. KPIs and performance reports and complaints about the regulator) and firm plans are in place to meet this outcome. We would note that progress on publication of KPIs under WL3 has been slower than expected. We would encourage CLC to consider the pace of implementation of future changes it makes to its practices and procedures.</li> </ul> <p>19 We will maintain our ongoing monitoring of the CLC’s regulatory activities against the outcomes through our regular meetings and discuss any emerging issues.</p>	

### CILEx Regulation

- 20** CILEx Regulation has made progress on the one outstanding outcome previously assessed as *not-met* – *action being taken* on outcome S3 (Regulated community is monitored to ensure standards are met).
- Proposals for alternative plans for monitoring and responding to advocacy quality risks and an implementation plan had been submitted with a rule change application. This was subsequently withdrawn on 10 December 2019 and we await further plans from CILEX Regulation.
- 21** We will maintain our ongoing monitoring of CILEx Regulation regulatory activities against the outcomes through our regular meetings and discuss any emerging issues.

### Costs Lawyer Standards Board (CLSB)

- 22** CLSB has made considerable progress since the transitional review and the LSB has maintained close contact with CLSB throughout the year.
- 23** The work of the new Chief Executive with support from the Board has resulted in very positive progress on each of the unmet outcomes. At this stage in the reform of the CLSB procedures and practices, none of the outcomes have yet been *met*. This is not surprising given the extent of the changes required but the LSB recognises the amount of effort which has contributed to a noticeable difference in the performance of CLSB.
- 24** Notwithstanding the progress, CLSB has continued to be tested on two areas in particular:
- WL2** (Understanding of resources needed to carry out regulatory functions): CLSB has limited fixed resources and the recent departure of its Head of Operations has created additional immediate challenges in this regard. We will maintain close contact with CLSB on their interim resourcing solutions to ensure they are sufficient.
  - RA2** (Regulatory arrangements updated based on robust evidence): This has been added as a new action and reflects issues with the quality of the content of the rule change application to introduce a new Costs Lawyers Competency Assessment (CLCA).

### Faculty Office (FO)

- 25** The Faculty Office has been making progress on its actions and has provided sufficient assurance that the actions against outcome RA4 (Guidance informed by learning) and A5 (Register including disciplinary records) have been taken and these outcomes are now considered to be *met*. However, sufficient progress has not been made against outcomes WL3 (Transparency of decision-making and performance) and WL4 (Using learning to improve its work) and urgent assurance is required on these.
- 26** Our main concerns centre on the pace of the Faculty Office's work to deliver the agreed actions and in particular:
- WL3:** Supporting papers have not been published for the monthly regulatory meetings and advice from the Advisory Board and minutes from Advisory Board meetings are not published. The Faculty Office intends to publish KPIs in relation to the timeliness of applications for admission to the register, the progress of disciplinary cases and its inspection work. The KPIs will be embedded in 2019/20 and reviewed after 12 months of reporting. Publication of KPIs is scheduled to commence in 2021. We do not see this timeframe as appropriate.
  - WL4:** With few decision documents available there is limited evidence of how the Faculty Office is using learning from engagement with the notarial profession to inform its decisions.



#### Faculty Office (FO)

27 We also have concerns about outcome RA2 (Regulatory arrangements updated based on robust evidence) which has been added as a further action and reflects issues with the quality of the rule change applications submitted by the Faculty Office to introduce new transparency measures and changes to its training and supervision rules.

#### The Institute of Chartered Accountants in England and Wales (ICAEW)

28 ICAEW has continued to engage positively with the LSB and we are encouraged by some of the reforms it is carrying out. In particular, progress has been made on WL1 (Board/Council holds executive to account), as part of wider reforms within ICAEW, which should enable compliance with the new internal governance rules. However, two outcomes have been downgraded to *not met – action required*; A5 (Register including disciplinary records) and WL3 (Transparency of decision-making and performance).

29 Specifically, on the ongoing *not met* outcomes:

- A5: The Find a Chartered Accountant (FACA) register does not include probate disciplinary data. Additionally, the register is not fully accessible for all users.
- WL3: The pace of progress on improving transparency of decision making has been slow and the information provided to the LSB does not offer sufficient assurance that work in 'Project Light' is progressing at a rate to meet the requirements of this outcome.

30 We also have concerns about outcome RA2 (Regulatory arrangements updated based on robust evidence) which has been added as a further action and reflects issues with the quality of the content of the Section 51, 2020 Practising Certificate Fee (probate fee) application and also the practice of publishing changes to practitioner rules without LSB approval for those carrying out probate services.

#### Intellectual property Regulation Board (IPReg)

31 IPReg has demonstrated that it has taken action to address all three of the outcomes previously assessed as *not met – action being taken*; A5 (Register including disciplinary records), WL3 (Transparency of decision-making and performance) and WL5 (Board ensures the regulator is independent, transparent consumer-focused) and these have now been *met*.

32 Specifically, on the outcomes now assessed at *met*:

- A5: Implementation of its new CRM system and website has resulted in the publication of a more accessible and accurate register for consumers which includes information on the disciplinary records of the attorneys and firms that it regulates.
- WL3: Confirmation that the performance management dataset has been adopted by the Board as key performance indicators and that the dataset is also published.
- WL5: A new board appraisal system has been introduced and is being implemented.

33 IPReg is the first regulatory body to have achieved a *Met* rating on all the performance outcomes.

#### Solicitors Regulation Authority (SRA)

34 At the start of this assessment the SRA had three outcomes with a rating of *not met - action being taken*; WL3 (Transparency of decision-making and performance), S3 (Regulated community is monitored to ensure standards are met) and A5 (Register including disciplinary records). The SRA has made progress on all three actions and



## Solicitors Regulation Authority (SRA)

one is now assessed as *met*. A summary of our assessment on each outcome is as follows:

- A5: The SRA launched its new register in November 2019. At launch its new register contains all relevant information for individuals and firms except for disciplinary information, which will be provided by links in the new register to the SRA's currently separate disciplinary registers. The SRA has told us that it expects to fully integrate its disciplinary information for individuals and firms into its new register by the end of December 2019. We have upgraded this outcome to *met* on the basis that by 31 December 2019 disciplinary information for both individuals and firms will be integrated into the new register.
- S3: The SRA has provided us with a timetable for possible changes to its standards on advocacy, including the schedule for consultation, analysis and planned date for implementation of potential new standards. Given that a consultation is involved the outcome of this process is uncertain and timings for this work are therefore approximate. The original action for this outcome was for the SRA to implement changes identified in its advocacy review programme to address advocacy quality risks. Therefore, we consider that until the SRA publishes its consultation findings, which should make clear what changes it intends to implement and when, this outcome will remain as *not met – action being taken*.
- WL3: The SRA has made progress towards implementing steps to improve its accountability to stakeholders and provide more transparency of the performance measures its Board considers. However, it has not yet provided detailed plans as to how and when it will fully implement these practices. We understand that its Board will be considering a package of measures to meet this outcome at its December 2019 Board meeting. We therefore cannot consider this outcome to be *met* and have changed its grading to *not met – action required* given the passage of time.

35 The ACCA has not yet been included in the performance framework as it has only recently begun licensing probate activities.

## Our focus in 2020

36 We have now completed the first stage of the performance review process through our assessments based on each regulatory body meeting the minimum required standard. In future we will be focusing on measuring performance improvement where regulatory bodies must demonstrate how they are delivering against the actions and also how each body has used ongoing reflection and evaluation across all the standards to improve its performance year-on-year.

37 We want to ensure that the framework remains relevant and we would expect to review its effectiveness on a regular basis and at least every three years. We have a number of different actions planned for the coming year which will inform our future plans.

## Targeted reviews

38 Whilst we will continue to hold regulatory bodies to account for progress on addressing unmet outcomes, we expect this to be less of a focus as the number of unmet outcomes across the regulators reduces. During 2020 we therefore propose to focus on undertaking targeted, risk-based reviews of one or two regulators, where we can assess performance across all outcomes, or specific outcomes which cause concern. This more in-depth review will allow us to gain a higher level of assurance than we needed

for the transitional review. We will be guided in assessing the risks by the commitment and progress made by each body to address the current outstanding actions from the assessments.

### Thematic reviews: Transparency of Regulatory decision making

- 39** By far the most significant impact on overall regulatory performance is how Well-led the regulators are and therefore failure to meet even some of the outcomes under this standard is concerning. Transparency was a strong focus from the CMA market review in 2016 and this is more broadly covered in the WL3 outcome (Regulator is transparent about decision making). In the January 2019 transitional review six regulatory bodies failed to meet the standard. Three have carried out the actions needed and now meet the standard but three other bodies have failed to fully carry out the agreed changes and therefore urgent action is now required. In the light of this lack of progress, during 2020 we propose to conduct a thematic review of the Well-Led standard. In particular, this would look in more detail at how regulators are seeking to meet the WL3 outcome, and it will focus on two themes:
- a) Overall public transparency and accountability
  - b) How well Boards are holding their respective Executives, or equivalent, to account.
- 40** There are clear links with the LSB Board's recent discussions about increasing our own transparency and accountability. Our starting point on this is that it is difficult to see how a regulator can effectively provide adequate visibility of how its Board holds the Executive to account without holding public Board meetings. The LSB wants to lead by example and we will demonstrate our commitment to transparency by holding a public Board meeting during 2020.

### Forthcoming consultation

- 41** In the Internal governance rules (IGR) review decision document we explained that we intend to expand the regulatory performance framework to include ensuring regulatory independence through IGR compliance. This was considered to be a substantive change to the scope of the framework and also the expansion to include Approved Regulators, now that we have explicitly set out their regulatory functions as delegation and assurance. A consultation will be carried out in Spring 2020.

## 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>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.

