

Sent by email

Dear Howard,

Quality assurance of enforcement work

The LSB Board recently approved enhanced arrangements to support our assessment of the enforcement standard under the regulatory performance framework.¹

I am writing to advise you of our work to date and planned work programme, request information from you about how you quality assure your enforcement and disciplinary arrangements and explain how you can be involved in the development of an LSB audit review process under the enforcement standard.

Background

Effective enforcement processes are vital to protecting and promoting the public interest, as well as ensuring trust and confidence in the sector. In recognition of this, we have been pursuing work aimed at making our oversight in this area more effective.

To date, our work has included identifying and taking forward strategic priorities identified in the 'Enforcement in legal services regulation report (March 2019)² and research and engagement into the best practice oversight approaches adopted by regulators in other sectors and jurisdictions. Based on this work, we are now progressing two areas of focus to enhance our oversight of regulatory bodies' enforcement processes.

1. Arrangements for quality assurance

Under the enforcement standard, we expect that regulatory bodies have in place enforcement and disciplinary systems and processes that are rigorous and working effectively to ensure that consistent, transparent, proportionate, reasonable and evidenced decisions are being taken.

We would also expect that regulators have mechanisms in place to regularly check that their systems and processes are working as intended and remain fit for purpose. These quality assurance mechanisms should be transparent and capable of providing senior decision makers with confidence in the performance of their enforcement and disciplinary functions.

¹ <https://www.legalservicesboard.org.uk/paper-20-14-arrangements-for-disciplinary-oversight-website>

² https://www.legalservicesboard.org.uk/Projects/pdf/2019/Enforcement_report_Final.pdf

Request for information

Through our regulatory performance monitoring we are already aware of some of the quality assurance mechanisms adopted by regulatory bodies, such as processes to identify and address concerns with case handling, independent reviews, opportunities for sharing learning or ongoing training provided to staff. We now want to build a clearer, more comprehensive understanding of these different approaches.

I am therefore writing to you to request information setting out details of any current quality assurance mechanisms that you have in place for your enforcement work. We would also like to hear details of any improvements or new processes that you are planning, including the timescales for these changes.

This information will help us to better understand how you assure yourself of, and have confidence in, the effectiveness of your enforcement and disciplinary systems and processes. **We would be grateful to receive your response by 30 September 2020.** Please do let us know however if you have any concerns about your ability to meet this deadline, particularly noting the impact of Covid-19.

2. Enhancing the LSB's oversight

Analysis of information on quality assurance mechanisms should provide us with greater, ongoing assurance of regulators' performance against the enforcement standard.

In the future, we intend to ask you to provide us periodically with evidence that your quality assurance mechanisms are working effectively. We would expect this information to be substantially the same as the information you rely on internally for such purposes. In addition, we intend to ask you to supply evidence of actions taken as a result of your quality assurance work. This could include, for example, sharing reports, lessons learnt or improvements identified and being pursued.

The frequency of such submissions will be discussed and agreed with you taking into account, for example, the volume of disciplinary and/or enforcement work undertaken and the timing of your own internal reporting so as to make information sharing as straightforward as possible. We will expect all regulators to provide us with information on at least an annual basis.

LSB audit review process

The LSB is also developing a proportionate and targeted audit review process to seek our own assurance that each regulatory body's enforcement and disciplinary arrangements are fit for purpose and working effectively.

The audit review process will be developed within the framework set out in our 'Regulatory performance assessments: The process (2017)'³ document. The process we are considering includes random case sampling, such as is adopted by other oversight regulators including the Professional Standards Authority.⁴ We

³https://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/2017/08122017_Regulatory_Performance_Process_Document.pdf

⁴ <https://www.legalservicesboard.org.uk/19-42-arrangements-for-disciplinary-oversight>

envisage this would involve the LSB asking the relevant regulatory body to provide random samples of their enforcement and disciplinary cases to be reviewed against their systems and processes for handling such cases. To be clear, we would not be seeking to review individual decisions on their merits or otherwise intervene or require a regulatory body to take steps in relation to specific cases.

How you can be involved

We are currently in the early stages of developing our process. We intend to provide further information and plan to discuss our proposals in more detail with all regulatory bodies in a workshop later in the summer. You will be invited to provide your views on our proposals.

In the meantime, please let me know if you have any questions at this stage or would like to discuss or share your views on what a best practice audit review process should entail. Alternatively, you can feed in any views at this stage through your relationship manager.

Yours sincerely,

A handwritten signature in black ink that reads "Chris Nichols." The signature is written in a cursive, slightly informal style.

Chris Nichols

Director, Policy and Regulation