



THE FACULTY OFFICE

Master of the Faculties' response to LSB Proposed Regulatory Performance Framework - Consultation

The Faculty Office (FO), on behalf of the Master of the Faculties (MoF), submits the following response to the Legal Services Board's proposed regulatory performance assessment framework consultation paper:

Introductory comments

We welcome the opportunity to comment on the proposals. Whilst we support the need to keep any framework under review, we note that this will be the second substantive alteration to the regulatory performance framework since its inception resulting in another shift of expectations, notwithstanding there has been no change in the statutory framework under which approved regulators or the LSB operate. As a number of regulators have seemingly now achieved 'met' status in all areas of the current framework, it appears that a driving factor for the change in the way performance is assessed is necessary, at least in part, to avoid any perceived risk of their resting on their laurels.

Whilst we welcome the reduction of duplication inherent in the current assessment framework, we think that this could be achieved through a less radical (in some respects) tweaking of the existing framework given that the duplication has been identified. Conversely, it is also not entirely clear how moving from one set of three possible assessment outcomes to another (with or without the retention of a RAG rating) will allow for the nuanced narrative that the new framework seeks to introduce and does appear to be largely semantics. It is also clear that a clean sweep of 'greens' under the current framework does not always accurately reflect the full picture. This is, perhaps, an area where the reforms do not go far enough.

Q1. Do you agree with the stated aims of our proposed performance framework to place the responsibility on regulators and their boards to meet the standards in order to provide assurance that they are well-led and effective in their approach to, and delivery of, regulation for the public?

We are not wholly clear whether, or how, this represents any real change in practice or emphasis from its two predecessors.

Q2. Do you agree that the proposed standards are clear in their focus and expectations to provide assurance of effective regulators? If not, what changes would you propose and please explain your reasons.

We welcome the rationalisation from five to three and the apparent removal of duplication, although the practical outworking of this revised framework will evidence the extent to which duplication has in fact been removed.

Q3. Do you agree that the proposed characteristics which support the standards are reasonable expectations of the skills and processes that an effective regulator will have? If not, what changes would you propose and please explain your reasons.

Broadly, yes.

Q4. Does the sourcebook provide sufficient information to assist regulators in providing assurance in meeting the standards? If not, how could we better achieve this? Do you have any comments about the examples of evidence and publications noted in the sourcebook?

We think that the sourcebook will be a useful resource for regulators.

Q5. Do you agree with our proposal to maintain the sourcebook as a living document to ensure it remains current, including taking account of new LSB policies, Rules and guidance? If not, what other approach would you propose?

We believe it is vital that it remains a living document if it is to be the useful resource which is intended.

Q6. Do you agree with the proposal that we would primarily rely on information used by each regulator's board and its executive to monitor its own performance to provide assurance? What changes, if any, would you suggest?

Yes, subject to the caveat that, in our case of course, the Master of the Faculties is, by statute, an individual without a board structure in the same way as other regulators.

Q7. Do you have any comments on the proposed introduction of narrative assessments and the revised rating system?

As indicated in our introductory comments, the revised rating system appears to be an exercise in semantics – simply moving from one set of three ratings to another where Met = Adequate assurance (green), Partial assurance = not met action being taken (amber) and Inadequate assurance = not met action required (red). Although we understand that the narrative assessment might provide additional nuances, the casual observer (or those relying solely on an executive summary) would be unlikely to see any substantive difference in approach. We would urge the LSB to look at this again and come up with a less 'nuanced' approach – perhaps introducing two or three sub-ratings within each assurance rating. We would also suggest replacing 'Adequate' with 'Sufficient' and 'Inadequate' with 'Insufficient'

(which we accept is also, itself, playing with words to some extent) which we think better conveys a satisfactory level of assurance.

Q8. Do you agree that the regulatory performance assessment process document is sufficiently clear about our proposed approach to performance assessment and how we will use our assessment tools? If not, how could it be clearer?

Yes.

Q9. Do you have any comments about our proposal to undertake a hybrid approach to our 2022 annual performance assessments of regulators?

For the reasons set out in our answer to Q7, we are not convinced that the proposed hybrid approach makes much sense and a 'clean break' between the two frameworks would be more sensible.

Q10. Do you have any comments about the proposed focus, timing, and process for our assessments under the revised framework from 2023 onwards?

Provided that the proposed timescale would not compromise the LSB's internal resources and ability to review and approve Regulators applications for PCF approvals in August/September in a timely manner such that approval is given in good time for the annual practising certificate renewals in the Autumn, we have no concerns or comments about the proposed timeline and focus of the revised framework.

Q11. Do you have any comments on the proposed framework's impact on equality issues? Are there any wider equality issues and interventions that we should consider?

We agree that enhancing the focus on equality diversity and inclusion within the revised framework is appropriate.

Q12. Do you have any comments on the potential impact of the proposed framework, including the likely costs and anticipated benefits?

We believe it will only be in the operation of the new framework that the costs vs benefits impact will be calculable. Any change of approach will inevitably incur costs in terms of time on the part of regulators and the LSB whilst it 'beds-in' but that is not, of course, a reason in itself for maintaining the status quo if there are perceptible benefits arising as a result of the changes once they are embedded.

Q13. Do you have any other comments about the proposed framework?

None, other than those set out in our introduction.

The Faculty Office

1 July 2022