



Sent by email only to consultations@legalservicesboard.org.uk

22 September 2017

Dear Emma,

Consultation on the Legal Services Board's revised Regulatory Performance Assessment

The Legal Services Consumer Panel (Panel) welcomes the Legal Services Board's (LSB's) consultation on its revised Regulatory Performance Assessment.

The Panel acknowledges that the LSB's central role is to scrutinise and oversee the performance of the approved regulators in the legal services sector. This review is therefore critical to that role, and indeed to our own role of advising and challenging the LSB and the approved regulators.

As noted in the LSB's consultation paper, the Panel has offered considered feedback at the pre-consultation stage. We remain in support of the proposed changes and offer further thoughts to strengthen the LSB's proposals.

The regulatory performance assessment framework

The Panel supports the LSB's revision to its regulatory performance framework. We note that the LSB's previous approach was criticized for adopting a one-size fits all approach, which was not always sufficiently proportionate, risk-based or targeted. Also, this process took a long time to complete, creating a risk that the reports published were out of date, or that they did not provide an accurate picture of the regulators' performance. In addition, there were criticisms around lack of clarity and transparency in the process. Against this backdrop, the Panel welcomes improvements to the revised assessment framework. We support the shift towards outcome-focused standards and assessments. We also welcome the LSB's proposal to use more examples to illustrate the type of evidence that would support successful assessments.

The importance of consumer feedback

The Panel notes that the success of the LSB's outcome-focused approach is very much dependent on its ability to gather independent, reliable evidence, and test what

is presented to it by the approved regulators. This requires the LSB to be able to draw on a range of information and market intelligence in order to establish a broader view of consumer choice and satisfaction across all the services for which the approved regulators have jurisdiction. The Panel would expect the LSB to draw on information from complaints data, consumer and market research, and engage with a wide range of consumers, including hard-to-reach groups. This would help to ensure that regulatory assessment is informed by the voice of the consumer. In our pre-consultation discussion with the LSB we suggested that the evidence considered by the LSB should include consumer-feedback or research. While we are pleased that the LSB has noted that stakeholder feedback will continue to be gathered, we believe that the new approach should make explicit reference to consumer feedback and research.

Grading

The LSB has decided to set a grading scale for its assessment of performance. We support this approach, but would point out the risk of confusion between two of the grades, specifically 'Not Met 1 and Not Met 2'.

When approved regulators meet the minimum standard of regulatory performance the LSB proposes to grade them as 'Met'. This grading is clear and we welcome it.

However, the LSB describes two further categories as 'Not Met 1' and 'Not Met 2'. 'Not met 1' is described as *'the regulator not meeting the minimum standard of regulatory performance, which in agreement with the LSB, the regulator is working to address'*. 'Not met 2' is described as *'the regulator not meeting the minimum standard of regulatory performance for which the LSB would decide on an appropriate course of action'*. 'Not Met 2' appears to be a cause for greater concern because it indicates a need for remedial action not previously acknowledged, but this is not reflected in the naming of the grades. It is important that consumers and consumer representatives can be reassured of the quality of regulation. Therefore, we suggest that a clearer grading would be Met, Needs Improvement, and Not Met.

Should the LSB retain its proposed categories, we hope these can be reviewed at a suitable point. We believe that improved clarity will contribute positively to the drive towards improved transparency in the sector.

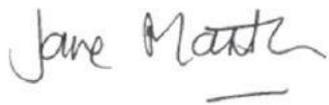
Finally, we note that the LSB no longer proposes to carry out regulatory assessments at set intervals. This chimes with the risk-based and outcome-focused approach. However, there is a clear risk that this might be perceived or inadvertently become light-touch regulation. Public confidence in the regulatory framework is essential and we would urge the LSB to keep this approach under review and carry out benchmarking exercises at realistic and sustainable intervals.

We would be happy to discuss any aspect of this response in further detail. Please contact our Consumer Panel Manager Lola Bello Lola.bello@legalservicesconsumerpanel.

Yours sincerely

Dr Jane Martin

Chair

A handwritten signature in black ink that reads "Jane Martin". The signature is written in a cursive style. Below the name, there is a short horizontal line.