

## Regulatory performance assessment

A public consultation issued by the Legal Services Board (LSB)

Comments from ACCA

September 2017

Ref: TECH-CDR-1628

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Founded in 1904, ACCA has consistently held unique core values: opportunity, diversity, innovation, integrity and accountability. We believe that accountants bring value to economies in all stages of development. We aim to develop capacity in the profession and encourage the adoption of consistent global standards. Our values are aligned to the needs of employers in all sectors and we ensure that, through our qualifications, we prepare accountants for business. We work to open up the profession to people of all backgrounds and remove artificial barriers to entry, ensuring that our qualifications and their delivery meet the diverse needs of trainee professionals and their employers.

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ACCA welcomes the opportunity to comment on the LSB's proposed revised regulatory performance assessment process.

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## GENERAL COMMENTS

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ACCA welcomes the proposals to revise the LSB's regulatory performance assessment process. The assessment of regulators' performance is core to the role of an oversight regulator and it is important that this process is transparent and remains robust. We are therefore supportive of the LSB's aim to drive improvements to the performance assessment process which add value and enhance public confidence in legal services.

We would support a structure in which consistent high standards are demanded by an oversight regulator. However, the need for consistent standards should not be confused with a need for uniform standards. We therefore welcome the adoption of a risk-based and targeted approach to legal services regulation which takes account of the regulatory objectives, the better regulation principles, best regulatory practice and the diversity of approved regulators.

We believe that the proposed framework offers a pragmatic and proportionate solution which recognises the diversity of the legal services sector, both in terms of the range of reserved legal activities and the nature of service providers. The proposed approach aims to minimise regulatory burdens while at the same time ensuring that regulators are seen to regulate independently, effectively and responsibly (rather than according to directions given by the LSB).

Assessment of regulatory performance which is centred on outcomes that identify areas for regulatory attention will help to drive continuous improvement in the effectiveness and efficiency of regulatory arrangements and this safeguards the public interest. We believe the proposed changes will add value to the previous performance assessment framework and help to deliver public confidence in the oversight regulator and the legal services market.

Where appropriate, we have suggested further improvements to the regulatory performance assessment process. In particular, we would encourage the LSB to engage fully with the regulators at all stages of the assessment process in order to build trust, confidence and understanding.

## AREAS FOR SPECIFIC COMMENT

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In this section, we set out our responses to the specific questions set out on page 14 of the consultation document.

### **Question 1: Please could you set out any other minimum standards required of a regulator which are not covered by the proposed regulatory performance standards?**

The five regulatory performance standards reflect the core regulatory functions of a professional accountancy body and approved regulator. The standards focus on the key risks to a regulator's performance and outline the minimum outcomes which regulators are expected to achieve. The

structure is logical, clear and transparent, removing the duplication, ambiguity and inconsistency which existed in the previous approach.

We are pleased to see that the LSB will not be prescriptive about how the outcomes are met and will focus on achievement and quality. In particular, we would encourage a degree of flexibility with regard to the Outcomes RA3 and RA5 that relate to a robust evidence base on consumers and their needs. This information may be difficult to obtain and it would be advisable to use suitable substitutes for this information which can support the achievement of these outcomes. In light of this, we would welcome a high level explanation of what a consumer-focused approach to regulation entails in order to ensure consumer needs are understood and addressed.

**Question 2: Please could you set out any items that should not be included within the regulatory performance standards? Please identify why they should not be included.**

It is unclear whether the previous LSB statements included in the tables in Annex A will remain within the regulatory performance standards or are provided for the purposes of this consultation only, as they appear to restrict the outcomes-based approach.

In Outcome RA2, we believe 'regular review' is an input not an output and this outcome is unnecessarily prescriptive. There are other examples of such wording within the outcomes, which are unhelpful (see Outcome S2).

Transparency in regulation is important however Outcome GL3 may be seen as requiring transparency of information of a sensitive nature, in particular information which is commercially sensitive.

**Question 3: Other than the items already listed in the revised data set, please could you list any other items that we should be collecting? Please identify why we should be collecting them.**

The revised performance management dataset provides clarity and consistency in reporting regulators' performance and the items listed in the dataset appear reasonable. However, we would question the use of 'median' as the average to be reported, rather than the 'mean'. While we appreciate that the 'median' may be a fairer measurement, we believe this term is not widely used within regulatory performance reporting and it may not be practical to adapt existing regulatory systems to report in this way. In our opinion, it would be advantageous to report on the 'mean' as the average and provide additional sources of evidence, for example by reporting performance against defined internal Key Performance Indicators (KPIs) and explaining significant variances in performance against KPIs (as we currently do for other oversight regulators).

We are not aware of any other items which should be collected within the performance management dataset, nor do we believe there are any items currently included in the dataset which should be omitted. However, it would be helpful to provide more guidance around the Governance and leadership information requested as we believe this should be restricted to the regulatory processes and activities which apply to legal services and persons authorised to undertake reserved legal activities.

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**Question 4: Are there any items listed in the revised data set that should not be included in this?**

See response to Question 3.

**Question 5: Is it necessary for the information collected in the revised dataset to be put into the public domain? What is the LSB's role, if any, in encouraging this?**

The primary purpose of the information collected in the revised performance management dataset is to inform the ongoing assessment of the regulators' performance. Nonetheless, we would support some information provided in the dataset being made publically available, for example in the form of an annual overview report published on the LSB's website which profiles the regulated population and includes comparatives and an analysis of trends. This upholds transparency and demonstrates the regulatory principles. It also serves the public interest by providing an insight into the regulators, their regulatory activities, and the scale and composition of the supervised population.

However, care should be taken to ensure data which is provided to the oversight regulator on a confidential regulator-to-regulator basis or which may be commercially sensitive is not placed in the public domain. It would be helpful to clearly distinguish the types of information collected in the performance management dataset and clarify how the data will be used and disclosed, for example data provided for LSB's internal planning purposes only (as with the Financial Reporting Council). Above all, transparency of data to the extent that it is seen as comparing the performance of different approved regulators is contrary to the public interest, as it will be misleading out of context, and will lead to unreasonable, misguided comparisons.

**Question 6: If you believe the collection of this dataset would have a disproportionate cost/time impact on the regulators, what would you estimate this to be?**

We welcome a degree of flexibility over the content of the dataset and the timing and frequency of its submission, as this recognises the individual needs of regulators. Clear timelines communicated well in advance will enable regulators to plan and allocate limited resources, manage regulatory workflows, and ensure quality information is provided to the LSB on a timely basis.

The ability to tailor the information requested on the dataset template (and provide supplementary written commentary where appropriate) will enable regulators to report within their existing reporting frameworks. This minimises the need to create, or amend, regulatory systems and documentation which would add time and cost. Given this flexibility, we believe the collection of this dataset will not have a disproportionate cost/time impact on our staff resources, regulatory processes and IT systems. Regulators are best-placed to identify their data needs, depending on whom they regulate and the regulatory processes they perform. The LSB should engage with each approved regulator to determine the best dataset.

**Question 7: Are there any other evidence-gathering approaches we should be using, or any evidence-gathering approaches listed which we should not use?**

The evidence-gathering streams provide a range of evidence to enable the LSB to gain assurance that the regulators are meeting the standards. We would encourage a broad-based approach to evidence-gathering and suggest that evidence gained from the Legal Services Consumer Panel and focused thematic reviews in certain areas should also be considered. However, we would caution against the use of third-party feedback which is neither meaningful

nor relevant. Third-party feedback should be supported by evidence and balanced with other evidence collected about the regulators' performance.

**Question 8: Will a move to a risk-based process, with the ongoing monitoring proposed, provide sufficient evidence through which we can gain assurance about the regulators' performance?**

We support the move to a risk-based process which is targeted and proportionate, as this reduces regulatory burden and focuses on identifying and monitoring risks to performance against specific standards. Subject to our comments below, we believe the proposed range of assessments and review (both ongoing and periodic) should provide sufficient evidence through which the LSB can gain assurance about the regulators performance and identify proactive interventions.

**Question 9: Do you have any comments on the proposed methods of assessment and review for the regulators?**

The proposed assessment process appears to focus on remote methods of assessment. A review (which we understand will include face-to-face meetings) will only be undertaken where the LSB does not gain sufficient assurance about an area of a regulator's performance, or identifies an area of concern. While this approach minimises the regulatory burden and cost, we would encourage the LSB to engage fully with the regulators at all stages of the assessment process. Continued dialogue and face-to-face onsite visits can help to build trust and confidence and also mitigate the risk of misunderstandings arising from the assessment process.

**Question 10: Please provide your views as to whether the revised grading scale supports accurate measurement of the regulators' performance against the standards?**

The revised grading scale is simple, easy to understand and can be used to score performance against a particular standard or the individual outcomes within a standard. We support the introduction of a more accurate and flexible measurement of the regulators' performance against the standards which recognises the different approaches and ways to demonstrate achievement of the standards and outcomes expected. However, it is important that the grading scale is applied objectively in order to maintain confidence in the performance assessment process and facilitate comparisons.

**Question 11: Please provide your views as to whether the approach to reporting on the regulators' performance enables the reader to understand how a regulator is performing against the minimum standards?**

We broadly support the proposed approach to reporting on the regulators' performance as this upholds transparency and demonstrates the regulatory principles by raising awareness and understanding of how a regulator is performing against the minimum standards. However, we would expect to have the opportunity to comment on the factual accuracy of performance assessment reports and action plans for improvement, and resolve any issues and concerns with the LSB prior to publication. We would also question whether it is in the public interest to publicise a performance assessment report which includes the regulator's comments where there is disagreement between the regulator and the LSB.

**Question 12: Where we identify good practice within a regulator's performance, how do you think we should share this with the other regulators?**

The regulatory performance assessment process focuses on minimum standards of performance. However, we believe that regulators should strive to perform to higher levels by identifying and sharing good practice. This can be achieved through continued engagement and dialogue with the regulators, specific feedback within individual regulator reports, and periodic thematic reviews.

**Question 13: If you consider that the regulatory performance assessment process document does not provide sufficient transparency about our approach to performance assessment, what could we do to make this more transparent?**

The regulatory performance assessment process document explains the review processes in a clear and structured manner. We consider that this document provides sufficient transparency about the LSB's approach to performance assessment and have no further comments to make on this specific area.