

## Lessons from the LSB's reviews of governance at the Bar Standards Board (BSB) and Faculty Office (FO)

### Introduction

The Legal Services Board (LSB) undertook reviews of governance at the Bar Standards Board and Faculty Office. Following their conclusion, the Chief Executive of the LSB wrote to all front-line regulators urging them to consider the lessons arising from those reports. The full reports are available on the LSB's website here:

[Bar Standards Board](#)

[Faculty Office](#)

The CLC has been judged by the LSB in its most recent report on our regulatory performance to meet their requirements in all areas, including the 'well-led' domain that looks at a governance. The lessons arising from the reports that are relevant to the CLC largely relate to the transparency and the recommendations are intended to move us towards best practice in those areas which will be of increasing interest to the oversight regulator.

The table that follows sets out the key findings of the reviews and the considerations for other regulators. It then sets out the current situation at the CLC and the steps agreed by the Council of the CLC at its meeting on 11<sup>th</sup> November, 2021.

### Review of lessons from the reports and steps that will be taken by the CLC

	Key review findings	Considerations for other regulators	CLC Status	Recommendation
A.	Little evidence of meaningful consideration of relevant regulatory objectives when decisions were taken. As a result, we are concerned that the BSB allowed the interests of the public and consumers to be outweighed	<p>In decision-making, how to evidence:</p> <ul style="list-style-type: none"> <li>Consideration of regulatory objectives</li> </ul>	The CLC staff and Board members are well aware of the Regulatory Objectives and they guide the work of the organisation. They are a core consideration in our review and development of strategy and also one vector of assessment for our Principal Risk Register. They are used as a guide in	1. Policy proposals should in future include a statement of how they help the CLC to meet the Regulatory Objectives. This can

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	<p>unduly by those of the profession when taking key decisions.</p> <p>The BSB places a disproportionate weight on the impact of its work on the profession and pays insufficient regard to the impact on the public, including consumers.</p> <p>The FO has well-established processes for gathering information about notaries, but it should engage more with consumers of notarial services to develop and demonstrate a sufficient understanding of the issues facing both notarial consumers and the profession.</p> <p>We expect the FO to develop a strategy and means for engaging directly with consumers and using their views in making policy decisions.</p> <p>We expect the FO to develop a policy or other process to ensure it consistently undertakes consultations in an effective and transparent manner.</p>	<ul style="list-style-type: none"> <li>Consideration of stakeholder (public, consumer, industry bodies, regulated community) views/needs</li> </ul>	<p>policy development as well as day to day work as the CLC faces novel situations that require a response.</p> <p>The recent Addendum to the CLC's PCF application to the LSB included a capture of the CLC's view of how its proposals assist towards meeting the objectives.</p> <p>The CLC's policy development responds to the evolving legal services market, taking account of changing tools, processes, consumer need and expectation and evolving risks to consumers, lawyers and stakeholders such as lenders. Insight is generated not only through formal consultation exercises, but through close and sustained engagement with representative bodies and other regulators for the sector, key stakeholders such as HM Land Registry, HMRC, lenders, UK Finance, tech suppliers to the sector and innovators in the delivery of legal services. The CLC also has an unusually detailed insight into the situation of its regulated community through its Regulatory Supervision Managers and close monitoring approach.</p> <p>Commentary on this insight is generally set out in the body of papers prepared for internal</p>	<p>also be added to the front summary sheet</p> <p>2. The CLC's Principal Risk Register should capture, in respect of each risk, which Regulatory Objectives are relevant to the risk</p> <p>3. SMT to consider whether a more summary approach to recording the consideration of stakeholder views and needs would more easily demonstrate the CLC's assessments. This could take the form of a table to be included in policy development papers and consultation documents that would highlight the key points included in the paper.</p>

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			<p>consideration, for decision by the Council and for public consultation.</p> <p>Engagement with CLC consultations has generally been at a low level in terms of numbers of submitted responses but those responses tend to be careful and detailed, addressing the full range of substantive issues. The most recent consultation, on the PCF application and recovery of OLC costs also saw low numbers of responses despite extensive coverage in the legal and conveyancing press and the usual direct communications with the regulated community and stakeholders, especially the Conveyancing Association and Society of Licensed Conveyancers that are the independent representative bodies for the CLC's regulated community.</p> <p>In order to mitigate the usually low levels of engagement with formal consultations, the CLC established in 2019 an informal Professional Reference Group. This is a small group of licence holders who are invited to comment on policy questions early in the policy development process. This further bolsters our ongoing close engagement with the regulated community. The CLC's openness means that Licensed Conveyancers are comfortable about contacting the CLC when</p>	<p>4. For its next consultation, CLC should trial a simplified consultation questionnaire, based on the full consultation document, to seek wider feedback on key elements of the consultation. This might engage more stakeholders and provide an additional steer to Council's decision-making as well as possibly encouraging more engagement with the full consultation document.</p> <p>5. Each policy paper to Council will include a consideration of the consumer/public interest and set out how that has been informed. This will be summarised on the cover sheet of the Council Paper.</p>

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			they have comments or concerns on any aspect of our work.	6. The CLC will explore the possibility of establishing a Consumer Reference Group made up of organisations representing consumers.
B.	<p>The decision-making process for major decisions did not follow the BSB's own procedures.</p> <p>We found that the FO does not have a complete and comprehensive set of governance arrangements in place to ensure effective regulation.</p> <p>There is insufficient transparency around processes for decision making and of decisions that are taken [at the FO]. As a result, it is not possible for the LSB, or anyone else, to have assurance that decisions are taken with due regard to the regulatory objectives, based on</p>	How to set out and evidence adherence to a decision-making process	<p>The CLC has in place clear processes for internal decision-making in relation to enforcement of compliance and disciplinary processes, which include our risk assessment of entities, the process for escalation of issues to the SMT and the Watchlist for entities and individuals of particular concern. The Watchlist is a practical tool for SMT and provides clear and comprehensive reporting to the Council at each of its formal quarterly meetings of serious compliance issues and the progress of disciplinary issues.</p> <p>The CLC's <a href="#">Corporate Governance Framework</a> includes clearly defined Terms of Reference sets outs clearly the responsibilities of the Chair and Council and the Chief Executive and staff team. There is a scheme of delegations in place that was</p>	7. Recommendations 1 and 2 above could enhance the evidence of adherence to the decision-making process.

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	sound evidence and taking account of risks.		<p>reviewed by the Audit and Risk Committee and Council in 2021.</p> <p>The Council reviews its own and the Chair's performance annually. The Chair's appraisal is conducted independently and includes feedback from stakeholders as well as colleagues. Each member of council also has an annual appraisal by the Chair and their reflections on the operation of the CLC and its governance are fed back to the executive team to improve processes.</p> <p>The CLC's committees also complete their own annual performance reviews.</p> <p>The work of the CLC is subject to an annual programme of independent internal audits. The focus of the programme is governance, risk management and the delivery of the CLC's core work. The 2021 internal audit included a review of the governance of the CLC against the LSB's 'well-led' domain and the 2022 programme will include an audit of our use of KPIs.</p> <p>Decision-making processes for Council are evidenced through the Council papers published in agenda packs or through the publication on the CLC's website of the decisions made or as</p>	

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			consultation documents, summaries of responses to consultations and the CLC's final decisions in the form of applications to the Legal Services Board. Decisions are communicated to the regulated community and stakeholders through newsletters and PR and where appropriate through online or face to face events.	
C.	In future, the FO should proactively undertake horizon scanning and research about notarial market issues.	Consider horizon-scanning	<p>The CLC undertakes ongoing horizon scanning through close engagement with the regulated community, key stakeholders such as HM Land Registry, HMRC, PI insurers, lenders, suppliers to the sector and tech innovators. A now annual round table brings many of those together to update on the <a href="#">Conveyancing 2030</a> discussion paper and develop a clearer understanding of the direction of development in the delivery of legal services. We also constantly monitor developments in the UK economy that will impact the practice of conveyancing and probate as well as trends in the housing sector.</p> <p>Throughout 2020 the CLC surveyed the regulated very frequently to understand the impact of the pandemic on the delivery of legal services and the sustainability of individual practices.</p>	8. No further action at this time.

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			<p>The intelligence and insight gathered is reported in the form of weekly updates to Council, which are shared with staff, on key developments in the economy and housing market (including trends, the development of new technology etc) that could affect the regulated community, the delivery of conveyancing and probate services, consumer behaviour and the risks around the regulated legal services. Summaries are also provided to the Council quarterly in the Property and Law information paper that is provided for each meeting of the Council.</p> <p>In 2021, the CLC launched what is intended to be an annual <a href="#">Risk Agenda</a> that sets out for the regulated community what the CLC regards as the key risks they should be addressing.</p>	
D.	On several occasions the [BSB] Executive did not provide the Board with sufficient information to support key regulatory decisions which were made	How to evidence the information and insight that informs decision-making	The published agenda packs for Council Meetings demonstrate that all decisions made by the Council are supported by full background papers with recommendations from the executive team. The background information is published in line with the CLC's <a href="#">Publication Scheme</a> which was last reviewed in October 2019.	9. A review of the Publication Scheme with recommendations to be submitted to Council for consideration at its meeting in February.

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			In its annual review of its own performance, the Council considers whether it is properly informed to fulfil its responsibilities.	
E.	The governance architecture is fragmented and difficult to access, with some gaps and out-of-date components.	How to ensure fit-for-purpose governance	The CLC's Corporate Governance Framework was reviewed in 2020. The LSB has assessed the CLC as meeting the expectations of the 'well-led' domain	<p>10. That the framework is revised in the light of any significant new best practice</p> <p>11. To consider whether the Framework be reviewed systematically every 5 years</p>
F.	<p>The Board did not take responsibility for the organisation's performance within the statutory framework of regulatory objectives and performance obligations within which it operates.</p> <p>We did not receive sufficient assurance that the FO understands the resources it needs to perform its regulatory duties and that it manages its finances accordingly.</p>	How to evidence board oversight and control of organisational resourcing and performance	<p>The Council of the CLC develops and reviews the strategy of the organisation and approves annual business plans and budgets. The Council reviews progress against the agreed business plan each quarter and considers proposed amendments. This cycle feeds into the annual business plan and budget approval process.</p> <p>The Audit and Risk Committee oversees and reports to Council on a rigorous annual programme of internal audits carried out by an independent auditor.</p>	<p>12. The narrative Annual Report for 2021, to be published in 2022, will include an assessment of how the year's activities have contributed to achieving the regulatory objectives.</p> <p>13. The Business Plan for 2022 will capture how the planned activities contribute to achieving</p>



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			<p>The CLC's Annual Financial Statements are signed off by the Audit and Risk Committee and by the Council. Although not legally required to, the CLC has chosen to meet the high standards of IFRS 102 for its independently audited accounts.</p> <p>The Chair of the Council signs off on the narrative Annual Report.</p>	the regulatory objectives. This will support reporting against the regulatory objectives in the report on 2022 that will be published in 2023.
G.	The BSB stakeholder engagement strategy has not been effective in building partnerships with its target organisations relevant to its PLE activities and the transparency standards project.	How to secure effective partnerships where needed for the delivery of organisational objectives	The CLC fosters constructive working relationships with the other regulators and key sector organisations such as LawTech, the representative bodies, and groups developing legal tech. For example, we have worked closely with HM Land Registry, DLUHC and as a member of the Home Buying and Selling Group to be a driving force for improvement in conveyancing where we are seeing movement after many years of work.	14. No further action at this time.

November 2021