



LSB Performance Assessment for 2022 / focus on ‘well-led’ amber rating

STATUS

1. The report and appendices are open.

EXECUTIVE SUMMARY

2. On 11 January 2023, the PSD Chief Officer received the LSB’s private assessment of ICAEW’s regulatory performance in 2022 and this was shortly followed by the composite public report by the LSB assessing the performance of all legal service regulators. Copies of the private and the composite public report are attached in the **Appendix 1**.
3. The IRB is asked to note the significant improvement in ICAEW’s assessment in 2022 (albeit the number of assessed areas has shrunk to 5) and its performance in comparison with other legal service regulators. In particular, ICAEW’s performance in providing disciplinary information and details of who it regulates to the public has been upgraded.
4. This paper focuses on the only area for improvement – ‘*Well-led*’ - identified by the performance assessment and reviews the IRB’s current approach to transparency in the light of the LSB’s conclusion that more needs to be done to increase the transparency of IRB decision-making. This paper provides alternative options for the IRB to consider that may improve the transparency of its work.

RECOMMENDATIONS

5. The IRB is asked to discuss the assessment made by the LSB of ICAEW’s performance under the Well-led standard, and provide comments on how the transparency of IRB decision-making could be further improved. The published Regulatory Performance Assessment for all Legal Service regulators is attached in **Appendix 2**.
6. The IRB is asked to approve the classification of the paper as open.

BACKGROUND

7. In June 2021, the IRB agreed to adopt a greater level of transparency, including the publication of meeting minutes and papers. However, it was recognised that it would be necessary to withhold or redact papers in some circumstances. Accordingly, material assessed as falling within the following exemption criteria was agreed to be withheld or otherwise redacted:

- Documents that include commercially sensitive information or relate to emerging strategy or policy.
- Papers that include personal data or matters involving an identified individual or business that is protected or where there is a reasonable expectation of confidentiality.
- Any document that includes legal or other information where there is a right or expectation of privilege.
- Where the IRB is considering risk and the publication of any associated paper may cause an increase in the level of risk to ICAEW as a whole, to the Professional Standards department, and ultimately to other stakeholders.

8. Internal guidance was issued in August 2021 advising those preparing papers that the paper would be published unless an exemption applied. A copy of the guidance is attached as **Appendix 2**.

Current Position

9. Approved minutes and agendas of board meetings are published on the ICAEW website. Papers assessed as falling into one of the agreed exemptions from publication are included in a document summarising the content and clarifying the relevant exemption. The number of papers published between June 2021 and December 2022 are detailed in Table 1:

Table 1

	August 21	October 21	December 21	February 22	April 22	June 22	October 22	December 22 ⁱ
Number of Papers	10	6	6	9	9	9	10	11
Published in Full or Redacted	3	3	0	3	1	3	4	5
Withheld	7	3	6	6	8	6	6	6

10. Notably, during this period, the IRB has considered a large number of papers that dealt with emerging policy, including significant changes to the Disciplinary Bye-Laws and the approach to Continuing Professional Development. Other matters have included internal governance arrangements and the relationship with the ICAEW Council, the future of insolvency regulation, ICAEW's response to changes in audit regulation and consideration of legal advice.
11. In October 2022, the IRB reviewed information on the level of publication of papers for the preceding twelve months. It acknowledged the work done and noted the reasons for papers being withheld. No recommendations were made at that time, but it was indicated that there was an expectation of a greater level of publication. For the October and December 2022 meetings, 40% of the papers presented were assessed as suitable for publication in full or redacted.

Role of the IRB Secretariat

ⁱ The December 2022 Board papers will be published once the Board approves the minutes on 26 January 2023.

12. The IRB Secretary prepares the summary of unpublished papers and board papers for publication. However, a complete set of approved papers are not published until the Board has approved the minutes for the associated meeting, including the Board's agreement to the recorded assessment of papers for publication.
13. The Secretariat maintains the IRB templates and associated drafting guidance.

2022 LSB PERFORMANCE ASSESSMENT

14. While ICAEW received a largely positive rating in the 2022 Regulatory Performance Assessment from the LSB, with green ratings for the standards relating to Regulatory Approach, Authorisation, Supervision and Enforcement (and specific praise for certain aspects of our work including the education films and clear information about our complaints process), ICAEW received an amber rating - *partial assurance* - in relation to the Well-led standard. While there was positive feedback, commenting on how ICAEW had demonstrated the IRB's awareness of the organisation's resourcing needs, and how the IRB is taking steps to ensure its own effectiveness, including annual appraisals of board members, the LSB considers that improvements should be made in relation to the transparency of board decision making.
15. The LSB noted, in particular, that the majority of papers submitted to the IRB had been withheld in 2022 for various reasons including being deemed by ICAEW as 'commercially sensitive' or about topics which would shortly be published for consultation. The LSB is concerned that it is not possible to understand, therefore, what factors the IRB is taking into account in making decisions and what the rationale is for the decisions. The LSB's recommendation is that we should consider ways to improve transparency by drafting papers in such a way to only redact limited confidential information within a paper or an annex rather than withhold entire papers. Additionally, the LSB suggests that board papers should be published at a later date after the publication of, for example, a consultation document.
16. The LSB concludes its comments on this topic with an expectation that ICAEW will identify ways to increase the number of board papers which are published, thereby achieving greater transparency about issues being considered, decisions being taken and reasons for doing so.

OPTIONS TO INCREASE TRANSPARENCY

17. We have discussed with the LSB staff at a meeting held since the receipt of the 2022 performance assessment what they will be looking for in terms of transparency of IRB decision making. They have advised that they would like to see papers that explain how a decision was reached, what the policy decisions were, and how the regulatory objectives were considered (these include protecting the public interest, protecting the interests of consumers, promoting competition, encouraging a diverse profession etc).
18. There are a number of options the IRB could consider to increase transparency, for example:
 - The board papers themselves could be drafted with content that is fully disclosable, and any confidential detail could be recorded in appendices which are withheld from publication.

- Refreshed templates for drafting papers and supporting guidance could be provided to encourage drafters not to include personal data or opinion that would not be suitable for putting in the public domain.
- Items such as consultation papers could be published retrospectively even if they are not publishable at the time of the board meeting.
- Meeting agendas could be structured such that there is a section for confidential items where paper authors would know their paper would be treated as confidential; and an open section of the agenda where paper authors would be on notice that their paper needs to be suitable for publication.
- The IRB Chair – perhaps with the assistance of the new IRB Secretary – could create a blog after every meeting, noting the papers which had been considered by the IRB, the key elements of the discussion, what factors had been taken into account and the final decision made. The attraction of this option is that this is something which is currently done by the LSB Chair, Helen Phillips, after all LSB board meetings [Chair's blogs - The Legal Services Board](#).

19. However, consideration will have to be given to practical issues such as the time available to senior management to draft board reports (on top of daily operational tasks) and the additional time which may be required to structure and re-structure content in advance of meetings. It may work better practically for papers to be re-shaped / re-structured after meetings by the board secretary.

20. The IRB may also wish to consider whether it is worth engaging with the regulatory boards of the other legal service regulators who have also been marked down in this area. The PSD Chief Officer has picked up a concern among some legal service regulators' CEOs (apparently shared by their boards) that the LSB is being unrealistic in its expectations and inhibiting good decision-making by reducing the amount or nature of information provided in advance of meetings to board members which reduces the time for full consideration. It may be that, with sufficient support, a case can be made to the LSB to be more realistic about what it is expecting to be published.

21. The IRB is asked to discuss these potential options, and propose alternative options, that could be implemented to improve the transparency of board decision making.

APPENDICES

- 2022 LSB Performance Assessments
- Criteria being applied for publication of board papers

Author	Sophie Wales, Head of Regulatory Affairs and Policy Robert Pragnell, Regulatory Policy
Date of report	17 January 2023