



***The ICAEW Professional
Standards Department
response to the Legal
Service Board's proposed
regulatory performance
assessment framework***

4 JULY 2022



Proposed regulatory performance assessment framework

Issued 4 July 2022

ICAEW Professional Standards welcomes the opportunity to respond to the Legal Services Board's proposed regulatory performance assessment framework issued 7 April 2022, a copy of which is available from this [link](#).

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators, and businesses. It leads, connects, supports, and regulates over 162,000 chartered accountant members in over 160 countries.

This response dated 4 July 2022 reflects the views of ICAEW as an approved regulator for the reserved legal service of probate. ICAEW Professional Standards is the regulatory arm of ICAEW. Over the past 35 years, ICAEW has undertaken responsibilities as a regulator under statute in audit, insolvency, investment business and most recently, legal services. In discharging its regulatory duties, it is subject to oversight by the FRC's Conduct Committee, the Insolvency Service, the Financial Conduct Authority (FCA), the Legal Services Board (LSB) and the Office for Professional Body Anti-Money Laundering (OPBAS).

ICAEW's regulatory and conduct roles

ICAEW's regulatory and conduct roles are separated from ICAEW's other activities through internal governance so that we can monitor, support or take steps to ensure change if standards are not met. These roles are carried out by the Professional Standards Department (PSD) and overseen by the ICAEW Regulatory Board (IRB).

We:

- authorise ICAEW firms, members and affiliates to undertake work regulated by law: audit, local audit, investment business, insolvency and probate;
- support the highest professional standards in general accountancy practice through our Practice Assurance scheme;
- provide robust anti-money laundering supervision and monitoring;
- monitor ICAEW firms and insolvency practitioners to ensure they operate correctly and to the highest standards;
- investigate complaints and hold ICAEW firms and members to account where they fall short of standards;
- respond and comment on proposed changes to the law and regulation; and

- educate through guidance and advice to help stakeholders comply with laws, regulations and professional standards.

ICAEW is*:

- the largest recognised supervisory body (RSB) and recognised qualifying body (RQB) for statutory audit in the UK. There are 2,458 firms and 6,811 responsible individuals registered with us under the Companies Act 2006;
- the largest recognised supervisory body (RSB) for local audit in England. We have 9 firms and 98 key audit partners registered under the Local Audit and Accountability Act 2014;
- the largest insolvency regulator in the UK. We license over 840 insolvency practitioners (out of a total UK population of 1,570) as a recognised professional body (RPB) under the Insolvency Act 1986;
- a designated professional body (DPB) under the Financial Services and Markets Act 2000 (and previously a recognised professional body under the Financial Services Act 1986). We license over 1,860 firms to undertake exempt regulated activities under this Act;
- a supervisory body recognised by HM Treasury for the purposes of the Money Laundering Regulations 2017, dealing with around 11,000 firms; and
- an approved regulator and licensing authority for probate under the Legal Services Act 2007. Over 340 firms are accredited by ICAEW to carry out this reserved legal activity.

and:

- More than 310 firms are accredited to perform ATOL returns work under the ICAEW Licensed Practice scheme for ATOL Reporting Accountant work. This was set up in 2016 after the Civil Aviation Authority (CAA) gave approval for ICAEW to license, register and monitor firms which perform ATOL returns work.
- Our Practice Assurance scheme provides ICAEW members working in practice with a framework of principles-based quality assurance standards. We monitor around 12,000 firms to ensure they comply with the Practice Assurance standards.

* Data is correct as at 31 December 2021.

GENERAL COMMENTS ON THE PROPOSED POLICY

1. We welcome the Legal Services Board's (LSB's) proposals regarding the regulatory assessment framework, which builds on the experience of the framework established in 2018, and the observation of other oversight regimes.
2. We find the proposals easier to follow and the presentation of the standards and their characteristics an improvement.
3. We commend the revisiting of the gradings structure but do not completely agree with the terminology applied, though there appears to be better recognition of good practice. We also would encourage the continued use of RAG as a methodology for reporting the outcomes of the review as they paint a quick and ready reference for boards to act upon.
4. The proposed framework emphasises the need to conform with the better regulation principles, which are enshrined not only in section 28 of the act but also section 21 of Legislative and Regulatory Reform Act of 2006. We endorse this approach.

QUESTION RESPONSES

Question 1: 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?

5. The increased reliance on the regulatory boards to ensure that the regulatory processes are well conducted and the statutory objectives are properly considered is something that we firmly support. Such an approach rightly enables the LSB to stand back more and exercise a supervisory function rather than get engaged in process. We would encourage the LSB to take a similar approach in other areas for example in the approval of statutory arrangements.
6. The approach matches the terms of reference of our own regulatory board but might require a shift of emphasis for other regulatory boards, depending on how their responsibilities are articulated and how the infrastructure supports them.

Question 2: 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?

7. We do. The rationalisation from five standards to three appears well structured and better presented.

Question 3: 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?

8. The characteristics are well laid out and follow logically for the most part the standards they epitomise. There is however one point we would wish to make.

9. Characteristic 16 refers to the maintenance of skills of the practitioner in the context of current competencies but is not sufficiently forward looking to take forward the innovation expectations of characteristic 13. As we are finding in audit regulation, and has been emphasised in the recent government paper, new competencies and skills such as Environmental Social and Governance (ESG) knowledge and cyber-security require development of new skills for the practitioner to remain relevant. We therefore think that forward thinking should be part of the characteristic. The LSB may be exploring this further as part of its separate exercise on ongoing competence but it would be helpful to have some indication here.

Question 4: 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?

10. At first sight the sourcebook appears to be a helpful document in guiding how the individual characteristics can be evidenced. The challenge may come in the reporting when certain approaches turn out to be less practical and other solutions may emerge. We therefore welcome the indication that the document will be dynamic and updated on a regular basis.

Question 5: 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?

11. As noted above we support this approach. It is important that LSB flags changes to the sourcebook so regulators can be sure they have addressed new variations when they prepare for their autumn submissions.

Question 6: 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?

12. As we have stated in response to question 1 above we agree that leveraging the oversight of the boards of the regulatory bodies is an effective and efficient means of supervision, and in accordance with the original spirit of the act. This approach means that the LSB can be more objective in making its assessments. However there are two observations that we would make based on our experience in reporting to other oversight bodies.
13. Firstly no mention is made within the framework of the work performed by other bodies. The inspection reports by other oversight bodies – and for many of the legal service regulators OPBAS is one of these bodies – are a source of additional assurance and should be drawn on by the LSB as part of their assessments. Otherwise there is unnecessary duplication which the Better Regulation Executive encourages us to avoid. This exercise of equivalence is already exercised within the legal regulatory framework by the SRA which draws on the oversight by ICAEW of accountancy firms in making assessments for fit and proper for those accountancy firms they authorise.
14. Secondly, whilst we would welcome any reduction in bureaucracy, we do question the discontinuance of the annual collection of key performance management data. The LSB is required to have an understanding of the market, and we have found with our other

oversight bodies that they collect such data annually from us and use it to comment on market developments. For example, the FRC annually publish a Key Facts and Trends document which provides evidential support for certain of their policy initiatives in the audit and accountancy markets. The LSB itself has asked for ad hoc data to support its diversity dashboard and needs it for the allocation of annual fees. The annual discipline once established is not over-demanding. This would fit with the LSB's comment that they want to make better use of data. We would have thought such a summary of the market by the LSB would assist it as well as the regulators in observing the dynamics and changes.

Question 7: Do you have any comments on the proposed introduction of narrative assessments and the revised rating system?

15. We have no comment on the narrative assessments which are in effect a continuation of the existing process. On the revised ratings system we would make the points below.
16. The terminology used of "adequacy" has a feeling of reluctance about it and suggests there is still room for substantial improvement. We have to ask what audience this information is being relayed to and how they would understand the terms being deployed. We would surmise the main stakeholders paying attention to these ratings are the regulatory bodies themselves, those they regulate, and the public. If a regulator's performance is described as 'adequate' when the same assessment of a company's performance would be described as 'good' or better, there is a risk of even the best regulators being considered by those they regulate, or a lay person, as not performing to a good standard. This could risk undermining confidence in a regulated sector. Terms such as "competent" or "meets" are stronger than "adequate". We believe that the LSB should be encouraging quality and should reconsider its terminology with this in mind.
17. There is a suggestion in the proposals that the use of RAG itself would be done away with as part of the new framework. We think this would be a step back. The colour coded report is easy to understand, quickly directs boards to their areas of weakness and a quick comparison with peers. It is also an approach that is easier to understand by others who might wish to access the assessment. We would suggest that whatever ratings definition are ultimately applied, the reporting of RAG should continue to be an important part of the framework.

Question 8: 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?

18. The approach appears to be fairly clear. An area we think could be improved is the sharing of the overall report (November) in advance of publication as against the individual reports (October) where we have not been entirely comfortable about some of the conclusions drawn there though accepting the points in the individual report.

Question 9: Do you have any comments about our proposal to undertake a hybrid approach to our 2022 annual performance assessments of regulators?

19. We have no issue on the continued use of the existing standards for 2022. However we would hope that the approach on ratings takes account of the points made in the answer to question 7.

Question 10: Do you have any comments about the proposed focus, timing, and process for our assessments under the revised framework from 2023 onwards?

20. No.

Question 11: 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?

21. We have long argued that the diversity objectives set out previously by the LSB should be incorporated in and form part of the overall performance framework. Their inclusion here provides balance against the other 18 regulatory characteristics, and they are well expressed. We particularly welcome characteristic 15 addressing market diversity which has not always been in focus in previous initiatives.

Question 12: Do you have any comments on the potential impact of the proposed framework, including the likely costs and anticipated benefits?

22. We welcome the objectives stated in paragraphs 31 and 74 that the LSB seeks to strike the right balance and have regard to the better regulation principles.

Question 13: Do you have any other comments about the proposed framework?

23. No.

Our role as a world-leading improvement regulator

Our mission is to strengthen trust in ICAEW Chartered Accountants and firms. We do this by enabling, evaluating and enforcing the highest standards in the profession.

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- **educate** through guidance and advice to help stakeholders comply with laws, regulations and professional standards.

Chartered accountants are talented, ethical and committed professionals. There are more than 1.8m chartered accountants and students in the world, and more than 187,800 of them are members and students of ICAEW. All of the top 100 global brands employ chartered accountants*.

Founded in 1880, ICAEW has a long history of serving the public interest and we continue to work with governments, regulators and business leaders globally. And, as a world-leading improvement regulator, we supervise and monitor over 12,000 firms, holding them, and all ICAEW members and students, to the highest standards of professional competency and conduct.

We promote inclusivity, diversity and fairness and we give talented professionals the skills and values they need to build resilient businesses, economies and societies, while ensuring our planet's resources are managed sustainably.

ICAEW is the first major professional body to be carbon neutral, demonstrating our commitment to tackle climate change and supporting UN Sustainable Development Goal 13.

We are proud to be a founding member of Chartered Accountants Worldwide, a network of 750,000 members across 190 countries which promotes the expertise and skills of chartered accountants around the world.

We believe that chartered accountancy can be a force for positive change. By sharing our insight, expertise and understanding we can help to create sustainable economies and a better future for all.

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