



Regulatory Developments

STATUS

1. The report is open, but the appendices are considered confidential and certain sensitive paragraphs are also redacted in yellow.

EXECUTIVE SUMMARY

2. This paper highlights recent news stories and other developments in professional services regulation that may be of interest to the IRB. There is a summary of consultations and consultation feedback in the **Appendix**, however the main body of this report outlines particular items of topical interest.
3. This document discusses the following in more detail:
 - a) Current issues between the Bar Standards Board (BSB) and the Legal Services Board (LSB)
 - b) Other interesting developments at the BSB
 - c) Announcement of the FRC 2023-2025 plan and budget
 - d) LSB launches consultation on draft business plan and budget
 - e) SRA sharpens focus on in-house lawyers for skillset
 - f) Professional exam cheating
 - g) FRC launches audit and assurance sandbox
 - h) Deloitte recruits real estate team from Shoosmiths

RECOMMENDATIONS

4. The IRB is asked to consider whether any of these developments could be of relevance to ICAEW's own regulatory activities and whether it wishes PSD senior management to follow up any of the developments noted here. The appendix is for note, but the board may ask questions of staff where further information is required.
5. The IRB is asked to approve the classification of the paper as open and identify where redaction may be appropriate, as has been highlighted in yellow. Also agree to the non-disclosure of the appendices.

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ONGOING COMPETENCE OF PROFESSIONALS

SRA - Competence of in-house lawyers

[SRA | The role of in-house solicitors | Solicitors Regulation Authority](#)

6. The Solicitors Regulation Authority (SRA) said on 20 December 2022 that it will focus on in-house solicitors as part of a new approach to maintaining professional standards in the profession instigated by the Legal Services Board (LSB).
7. The SRA have commissioned an independent research agency to conduct research into the role of in-house solicitors. They comment that this is needed due to the growing size and influence of this group of solicitors, who are a large and diverse group. The information collected is intended to help the SRA to make its regulation more proportionate to the risks related to specific segments.

ISSUES IN RELATIONSHIP BETWEEN THE BSB AND THE LSB

9. The legal sector press has been dominated by reports of the ongoing conflict between the BSB and the LSB.

[Bar asks government to review LSB in 'over-reach' row | News | Law Gazette](#)

10. The Bar Council has asked the Ministry of Justice to review the LSB in a row over what they claim is LSB 'over-reach'. Bar chair Mark Fenhalls KC has said it was important that the LSB performs the functions it has under the Legal Services Act 2007 and does not attempt to act as a regulator of all legal services, nor of the entire legal services sector, because parliament has not given it that role.

[Bar regulator faces formal LSB action over performance crisis - Legal Futures](#)

11. Legal Futures reports that the BSB may face formal action over their performance crisis, including how it has dealt with the Post Office scandal. The LSB chair Dr Helen Philips is reported to have warned the BSB that it might have to use its enforcement powers if the BSB does not commit to fundamental reform. These powers range from censures and fines to removing a regulator's powers altogether. Another area of concern noted by the LSB is the BSB's unilateral decision in 2019 to withdraw from Legal Choices.

[New bar chief concerned about LSB overreach | News | Law Gazette](#)

12. The concerns of the Bar Council on the LSB's scope as a regulator have been reiterated by the new head of the Bar Council, Nicholas Vineall KC. In his inaugural speech Vineall said that the Legal Services Act struck a careful balance between the continuation of separate self-regulating professions and the need for independence in the performance of certain key regulatory functions. Vineall commented that it is important that bodies who regulate under the act perform only the tasks that parliament intended them to have.

[LSB's assessment demands increased transparency and more robust decision-making by legal regulators - The Legal Services Board](#)

13. The recent publication of the LSB 2022 Regulatory Performance Assessment has ignited tensions further, with the BSB receiving the poorest score of all legal regulators. The LSB report that the BSB has provided insufficient assurance on two of the five standards, specifically the well-led and enforcement standards.

[Bar regulator fails end-of-year inspection - but SRA fares better | News | Law Gazette](#)

[BSB performance in the red as LSB raises SRA enforcement concerns - Legal Futures](#)

14. The legal press issued articles highlighting the poor score received by the BSB and included comment from the LSB that they are “concerned that the underlying performance issues are not improving and in some areas are further deteriorating.”.

OTHER INTERESTING DEVELOPMENTS AT THE BSB

Delays in handling of disciplinary cases

[Barrister Regulator Struggles To Keep Up As Complaints Soar - Law360](#)

15. The Bar Standards Board ('BSB') has said that it has struggled to keep pace with a growing number of investigations into alleged misconduct by barristers, amid a surge in cases involving social media use and incidents in the workplace.
16. The BSB reported that the number of cases it dealt with between April 2021 and March 2022 increased by 54% to just over 2,500 compared to c.1,400 for the previous year. Of these cases, 304 related to conduct by barristers not connected with the provision of legal services, such as bullying and harassing another barrister. Cases of misconduct over social media increased to 89, involving 36 barristers.
17. The increase in complaints about the conduct of barristers in their personal lives follows high profile action taken by the SRA to prosecute cases in this area, and to review and strengthen their Code of Conduct in this regard.

Tweeting barrister sues BSB for belief discrimination

[Tweeting barrister sues BSB for belief discrimination - Legal Futures](#)

18. A barrister who overturned a BSB finding against him for a tweet about Muslims that it said would cause offence, is now suing the BSB for discrimination. The barrister was expelled from his chambers for tweets he made, and the following BSB investigation led to an administrative sanction and £500 fine over a tweet he made that was considered to mean the Muslim community was to blame for curtailing free speech. The decision was overturned on appeal on the basis that the panel set too low a threshold – the Bar Tribunal and Adjudication Service tribunal said that the “mere causing of offence” was not enough to damage public trust in the profession given the importance of freedom of expression; it needed to be more serious.
19. The barrister has issued a claim that he was discriminated against and harassed for his socially conservative views. He says that the BSB and the Bar Council have published numerous documents that address the issue of diversity, as it arises under the Equality Act, but not a

single one that recognises 'philosophical belief' as a protected characteristic. The barrister claimed that the BSB discriminated against him for expressing his conservative beliefs, and became a tool of woke campaigners.

Barristers encouraged to join review pilot

[Barristers encouraged to join review pilot | News | Law Gazette](#)

20. The BSB is encouraging barristers to sign up to a digital pilot that will allow the public to submit ratings and reviews. The digital comparison tool pilot was launched last autumn and will allow potential clients to locate and select service providers using criteria such as location, ratings and reviews.
21. The Law Superstore, a comparison website, is joining Lawyer 365, Legal Utopia, Review Solicitors and Trustpilot as pilot participants. The BSB have previously commented that the pilot builds on a similar pilot by the SRA, CILEx Regulation and the Council for Licensed Conveyancers last year.
22. The BSB's activity in this area is of note given their exit from Legal Choices, who issued the pilot comparison scheme mentioned above, which includes a number of the same comparison sites.

CONSULTATIONS LAUNCHED ON BUSINESS PLANS BY LSB / FRC

Legal Services Board

Consultation on draft business plan and budget

[LSB Draft Business Plan 2023-2024 Consultation Document \(legalservicesboard.org.uk\)](#)

23. The Legal Services Board has published a consultation on the draft business plan and budget for 2023. The business plan outlines the key workstreams for 2023 which include the new areas of focus on people in vulnerable circumstances, evaluation of IGRs, market surveillance and review of LSB enforcement policy. There will be ongoing workstreams looking at equality, diversity and inclusion; and rule of law and professional ethics. There is also reference to the LSB developing a toolkit for regulators to ensure their PII and compensation fund arrangements are fit for purpose.
24. The LSB propose an increase in their budget to £4.679m from the 2022/23 budget of £4.287m, which is a 9.1% increase. The LSB comment that this is a 2% decrease in real terms based on an inflation rate of 11.1%.

Financial Reporting Council

[Consultations | Financial Reporting Council \(frc.org.uk\)](#)

25. The Financial Reporting Council has announced its 2023-2026 draft 3-year plan which sets out its priorities for the next three years and the resources it will need to achieve them. Overall, the budgeted cost of the FRC and the UK Endorsement Board will increase to £67.9m, up from £59.8m last year, with a 9.7% increase in budgeted headcount by March 2024.

26. In light of the delay in legislation to create the Audit, Reporting, and Governance Authority, the FRC have re-prioritised their work to focus on the changes they can make using their existing powers and remit. The plan now assumes that ARGA will be created in April 2024.

PROFESSIONALS CHEATING IN EXAMS

[News | Financial Reporting Council \(frc.org.uk\)](https://www.frc.org.uk/news/financial-reporting-council)

27. The FRC have written to audit firms and professional bodies about their review of the controls and assurances that are in place at the largest audit firms and professional bodies to identify and prevent exam cheating. The FRC have concluded that the information they have seen has not revealed systemic issues related to cheating at firms or RQBs but there are issues that require improvement. Affected firms and RQBs have committed to review and/or update relevant policies and procedures. The FRC's Professional Oversight Team will continue to monitor and report on the performance of RQBs in this area.

FRC ASSISTANCE TO CHALLENGER AUDIT FIRMS

[News | Financial Reporting Council \(frc.org.uk\)](https://www.frc.org.uk/news/financial-reporting-council)

28. The FRC has launched its Audit and Assurance Sandbox, which is a collaborative space for approaching issues facing the audit and assurance industry to support high quality audit and assurance work. The sandbox provides a confidential environment for relevant parties to discuss ideas and technical issues in audit and assurance policy such as the application of the auditing assurance and ethical standards; plus relevant technologies, ESG and competition.

BREADTH OF LEGAL SERVICES OFFERED BY ACCOUNTANCY FIRMS

Deloitte recruits Shoosmiths Real Estate Team

[Deloitte Starts Real Estate Legal Biz With Shoosmiths Attys - Law360](https://www.law360.com/news/2023/09/27/deloitte-starts-real-estate-legal-biz-with-shoosmiths-attys/)

29. Deloitte have announced that they have formed a new real estate legal business with four partners who joined from Shoosmiths LLP. Deloitte have commented that the breadth of their real estate services, which include valuation, planning and development, finance and mergers and acquisitions, often require legal advice and problem solving. The firm has said the hires represent Deloitte's continued commitment to invest in its legal service offerings.

30. This move is of interest given our live review of ICAEW's involvement in Legal Services and the growing regulatory needs of accountancy firms. Deloitte is regulated by the SRA which can regulate it to provide all legal services including 'reserved legal instruments' which includes conveyances.

APPENDICES

	Appendix Name	For consideration or for reference	No of pages
Appendix A	Review of consultations and feedback January	Reference	4
Appendix B	Review of consultations and feedback November and prior	Reference	3

Author	Sophie Wales, Head of Regulatory Affairs and Policy
Date of report	18 January 2023