Institute and Faculty of Actuaries, Regulatory Board

Subject	Regulatory Toolkit	
Meeting date	20 September 2023	
Previous Steer/Approval	September 2022	Discussion
	February 2023	Discussion
International issues considered?	Yes	
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Reviewer	Fiona Goddard, Acting Head of Regulatory Policy	
Purpose	Noting	

A: Executive summary

1. This paper follows a paper discussed at the February Board meeting which set out the tools available to the Board in addressing regulatory risk. The Board indicated a desire to discuss in further detail the measures available, and the circumstances in which they should be deployed.

2. This paper, together with the appended flowchart (Appendix 1), aims to provide an overview of the hierarchy of regulatory tools available, the considerations for the Board in determining which tool to use in any given situation; and invites the Board to discuss how the use of these tools might be explained to Practice Boards and the wider membership.

B: The Five Sets of Regulatory Tools

Using the Flowchart

3. The attached flowchart aims to show what tools are available to the Board, and when it is appropriate to use each type of tool.

4. The chart is divided into Decision Trees at the top, and Toolkits at the bottom. Moving from left to right on the decision trees, the chart invites the Board to consider, in respect of an identified public interest risk, the following questions:

    - In the circumstances, does the Board have enough information to decide whether regulatory action should be considered?
    - Does the IFoA have the locus to regulate, and if not, who does?
    - In applying the principles of good regulation, is mandatory regulation required (considering the public interest risk and the principle of proportionality)?
    - Again, considering the principle of proportionality, is it appropriate to issue guidance to members?

5. The answers from the decision trees then guide the Board to one of five sets of regulatory tools: Research, Refer, Mandate, Guide and Influence.

C: Research and Refer

6. The first two categories of toolkit relate to preliminary or ancillary activities, required because the Board either has insufficient information to make a decision; or where the regulatory activity required is not within the scope of the IFoA.

Research

Where a risk is identified or emerging, but where the Board does not have sufficient information to decide what action to take (if any), the Board will wish to consider further research into the topic. At its most basic, this could be a request from the executive for a more detailed discussion on the issue. It could also be a request for a 'deep dive', a request for the relevant Practice Boad to carry out research; a discussion arranged with relevant practitioners; or the launch of a thematic review.

Once the chosen method of research is complete, the Board will then wish to consider again whether it has enough information to decide on a course of action.

Refer

If the Board has identified a risk, but determines that it is not the competent authority to address that risk, the Board may choose to refer the concern to the appropriate regulator for consideration. The level of the risk will determine whether this referral is in the form of informal executive-led discussion, or the issuing of formal communication from the Chair of the Board.

D: Mandate, Guide or Influence

7. The remaining tools constitute the substantive regulatory tools, and these can be considered in a hierarchy. The tools at the top of the hierarchy are the most burdensome.

8. When a particular tool is invoked, the Board will wish to consider also utilising the tools further down the hierarchy. So, if the Board decides to introduce a mandatory regulation, it will also look to include elements of the Guide and Influence toolkits.

Mandate

Where the Board decides that it has sufficient information to understand the risks involved and the implications for the profession, and where the Board is satisfied that the matter falls within the scope of the Regulatory Board, the Board should consider whether the risk can be mitigated without the introduction of mandatory regulation.

9. The Regulatory Policy Statement provides that:

- *"The IFoA will only regulate where intervention is necessary, having regard to the extent of the public interest risk. We will always consider options other than mandatory requirements, including education, voluntary schemes and non-mandatory guidance."*

10. The Board should adopt a risk-based approach in making all regulatory decisions, and only where the public interest risk justifies mandatory regulation, should this step be considered.

11. The flowchart sets out the available options for mandatory regulation, and attempts to do so in some order of stringency.

12. However, although the three substantive regulatory toolkits (Mandate, Guide and Influence) can readily be seen to form a hierarchy, that hierarchy is less meaningful within each set of tools. If a mandatory measure is identified as being appropriate, the decision as to which measure to take will not simply depend on the level of public interest risk (ie it would not be the case that the highest risk would necessarily result in an amendment of the Actuaries' Code) but rather, it will depend on the whole circumstances of the risk and the existing regulatory framework. The Board will wish to consider factors such as: whether the risk applies to all members, or just those undertaking specific work, or undertaking work in a specific country; whether the issue is already subject to regulation; and whether the risk relates to work which statutorily requires the involvement of an actuary.

13. When the Board decides to introduce a mandatory regulation, it will also wish to invoke the less onerous tools within the toolbox. Some of these measures will be developed alongside the mandatory measure, such as guidance and communication. However, other measures, such as the issuing of a Risk Alert, should be considered as a possible prelude to the development of mandatory measures. By necessity, mandatory regulation requires detailed consideration and usually consultation. As a result, it can take many months to bring into effect a new or amended mandatory tool. By contrast, and because they do not have mandatory effect, measures such as a Risk Alert can be developed and issued over a much shorter timeframe.

Guide

Where the Board determines that mandatory regulation is not justified, it should consider whether non-mandatory guidance is required. Again, because the Board is required to act proportionately, the least onerous regulatory step should be taken. The Board should consider whether non-mandatory guidance is necessary to address the identified risk; or whether it would be more appropriate at this stage to utilise the tools within the Influence toolkit.

Influence

At the bottom of the regulatory hierarchy are the 'Influence' tools. As well as being complementary to the more onerous or formal methods of regulation, these tools can also be utilised independently.

14. Risk alerts fall within this category of regulatory tool because they are non-mandatory and do not constitute guidance. They are designed to raise awareness, and can be particularly effective where an urgent risk is identified, which the Board wishes to highlight to members while more formal regulatory steps are being considered or developed.

E: Impact and effectiveness of Regulatory measures

15. It is the responsibility of the Board to monitor the effectiveness of any regulatory measure, and to consider on an ongoing basis, whether there remains a public interest justification for regulation.

16. This can be fulfilled in the following ways:

- Routine/periodic review of Code and standards. This should ensure that standards are up-to-date and are addressing risk appropriately. A review should include practitioner and stakeholder engagement.
- The programme of thematic reviews aims to consider the effectiveness of existing regulation in topics of key interest or significance.
- Post Implementation Review should be carried out in respect of new regulatory measures. It is important to assess the impact and effectiveness of new standards or processes, after a period of bedding-in. The review should consider whether the public interest risks are being adequately mitigated by the new measure, and whether any additional steps need to be taken to amend the particular measure; or to help members comply with their obligations.
- Ongoing engagement with Practice Boards, and external stakeholders can help measure the effectiveness of regulatory action. Practitioners, industry leaders and co-regulators can all help identify any issues with how a regulatory tool is operating in practice.
- Consideration of disciplinary action and complaints will allow common themes to be considered which may be indicative of a regulatory failure
- Horizon scanning can be effective, not only in identifying new or emerging risks but also in highlighting ineffectiveness of existing or new regulatory measures;

F: Frequency of use of Measures

17. Because the Regulatory Board operates in accordance with the principles of good regulation, the frequency of use of regulatory measures should be inversely proportionate to the weight, or burden, of the measure. Accordingly, the introduction of new APSs, or additional provisions to the Actuaries' Code, which are the most onerous regulatory measures, should be less frequent that the use of the least onerous measures, such as communications and member events.

18. Looking at the past 12-24 months, it can be seen that no new APSs have been introduced, one change to the Code has become effective, and another in process; and three APSs have been updated. This can be compared with 10 Professional Skills videos,10 insta-style mini-videos and 4 storyboards introduced; and numerous conference sessions, blogs, and articles.

G: Publicising the Regulatory Toolkit

19. At its meeting in February, the Board discussed how best to raise awareness with members of the options and measures open to the Board.

20. It is important that Members have some understanding of the way the Board applies its regulatory policy and accordingly, the Board may wish to consider the following steps to explain and promote its use of the regulatory toolkit:

- A presentation or attendance at conference
- The publication of a blog or article
- A new section on the Regulatory Board website discussing the options
- Attendance at Practice Board meetings to discuss the regulatory toolkit

H: Discussion

21. The Board is invited to discuss the regulatory toolkit, the flowchart and the interconnections between the various tools available. The Board is asked to consider whether it would wish to take steps to promote the toolkit, and the Board's exercise of its regulatory policy statement.

I: Appendices

- **Appendix 1:** Regulatory toolkit flowchart