

To:	Legal Services Board	
Date of Meeting:	27 April 2016	Item: Paper (16) 26

Title:	Section 80 recommendation to the Lord Chancellor	
Workstream(s):	Performance, evaluation and oversight	
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Status:	Official	

Summary:
<p>This paper seeks the Board's agreement to the making of a recommendation under section 80 of the Legal Services Act 2007 (the Act) that the Lord Chancellor makes an order establishing the General Regulatory Chamber of the First-tier Tribunal (the FTT) as an appellate body to hear appeals against decisions by the Bar Standards Board (BSB) when acting as a licensing authority (should the Bar Council be designated as such).</p> <p>In accordance with the requirements of section 81 of the Act, the Board consulted on the proposed recommendation and draft order. Only one representation was made, by the Bar Council, which supported the proposals and made no comments on the draft recommendation or the draft order. The Bar Council said the regulatory triage assessment was clear and agreed with the reasons given (namely cost and appropriateness) for choosing to use the FTT for regulatory appeals instead of the High Court.</p>

Recommendation(s):
<p>The Board is invited to:</p> <ol style="list-style-type: none"> 1. To note the content of the response document and approve its publication 2. Approve the making of the recommendation as set out in Annex A of the response document 3. Note the draft statutory instrument which accompanies the recommendations, as set out in Annex A of the response document 4. Note the regulatory triage assessment which will accompany the recommendation and draft order.

Risks and mitigations	
Financial:	N/A
Legal:	A section 80 order must meet the statutory criteria and procedural requirements set out in the Act. The draft order has been drafted by Ministry of Justice lawyers and is subject to the statutory instrument review process.
Reputational:	Although the Board is able to recommend the draft statutory instrument, the timetable for this to come into force (assuming that our recommendation is accepted by the Lord Chancellor) is controlled by the Ministry of Justice and there may be a period of some months before this is completed. Relevant communications will be prepared to explain this point, if needed, to mitigate the risk that the LSB is seen as the cause of the delay.
Resource:	None

Consultation	Yes	No	Who / why?
Board Members:	√		As the Board member allocated to the Bar Standards Board licensing authority application, Marina Gibbs has been kept informed of progress.
Consumer Panel:		√	
Others:	<p>The Bar Standards Board was consulted as the draft recommendation, draft order and regulatory triage assessment were developed.</p> <p>The Ministry of Justice has also been consulted and the draft order had been cleared before consultation commenced.</p> <p>HM Courts and Tribunals Service has been consulted as the order has developed.</p>		

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Annex A	Section 22: information intended for future publication	

LEGAL SERVICES BOARD

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Recommendation to the Lord Chancellor that he makes an order under Section 80 of the Legal Services Act 2007 in relation to a licensing authority.

Background / context

1. The Legal Services Act 2007 (**the Act**) requires that arrangements are in place for a relevant appellate body to hear and determine appeals about decisions made by licensing authorities. Our policy position is that all such appeals should be heard and determined by the General Regulatory Chamber (**GRC**) of the First-tier Tribunal (**FTT**); this policy is set out in our decision document [Alternative business structures: appeal arrangements.](#)¹ The LSB's thematic [assessment of sanctions and appeals processes](#) also confirmed that the LSB will continue to advocate the use of the FTT for all appeals against regulatory decisions.²
2. Section 80 of the Act makes provision for the Lord Chancellor, by order, to establish a body to hear and determine such appeals. Such an order can only be made on the recommendation of the LSB. Section 81 sets out the procedural requirements for such orders and includes a requirement for the LSB to consult on both the proposed recommendation and the proposed order.
3. In March 2016, the Board approved an application from the Bar Standards Board (**BSB**), the regulatory body for the Bar Council, seeking a recommendation to the Lord Chancellor that the Bar Council be designated as a licensing authority. In its application the BSB proposed that appeals be heard and determined by the GRC of the FTT.

Consultation

4. The consultation exercise took place between 21 January and 16 March 2016. In accordance with the requirements of section 81 of the Act, the consultation paper invited representations on the draft recommendation and the draft statutory order. Representations were also invited on the draft regulatory triage assessment.
5. The draft of the proposed order and the regulatory triage assessment (a short form of impact assessment) had been agreed with the Bar Standards Board,

¹ Available at:
http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/20110509_absappeals_decision_doc.pdf

² Available at:
http://www.legalservicesboard.org.uk/Projects/thematic_review/pdf/20140306_LSB_Assessment_Of_Current_Arrangements_For_Sanctions_And_Appeals.pdf

and the Ministry of Justice before consultation commenced. HM Courts and Tribunal Service were also consulted.

6. This was the fifth time that the LSB had consulted on such orders which are technical in nature, being directly linked to the designation orders for licensing authorities. The BSB had also consulted on the policy decision to use the FTT. The consultation was open for eight weeks.

Representations received

7. Only one representation was received. This was from the Bar Council which said that it supported the proposals outlined in the consultation and did not have any comments on the draft recommendation or the draft section 80 Order. The Bar Council said the regulatory triage assessment is clear and agreed with the reasons given in it (namely cost and appropriateness) for choosing to use the FTT for regulatory appeals instead of the High Court.³

Conclusion and recommendation to the Board

8. Taking into account that no comments have been received on the draft order, and no substantive comments have been received on the regulatory triage assessment, our view is that we should proceed with the recommendation to the Lord Chancellor.
9. The draft recommendation and statutory instrument are set out in Annex A of the response document. The regulatory triage assessment is set out in Annex B of the response document.
10. The BSB has confirmed that under the delegations that have been made by the Bar Council, it has the necessary authority to consent to the LSB making the recommendation.
11. The Board is invited:
 - to note the content of the response document and approve its publication
 - approve the making of the recommendation as set out in Annex A of the response document
 - note the draft statutory instrument which accompanies the recommendation, also set out in Annex A of the response document
 - note the regulatory triage assessment which will accompany the recommendation and draft instrument.

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³ The regulatory triage assessment, including a full explanation of the reasons for choosing to use the FTT for regulatory appeals instead of the High Court, is included at annex B of the response document.