

To:	Legal Services Board	Agenda Item:	7
Date of Meeting:	19 July 2017	Item:	Paper (17) 48

Title:	LSB's policy on use of enforcement powers against approved regulators
Workstream(s):	Performance, Evaluation and Oversight
Author / Introduced by:	Kate Webb, Head of Regulatory Reviews and Investigations kate.webb@legalservicesboard.org.uk / 020 7271 0090 Nicola Tysoe, Legal Adviser Nicola.tysoe@legalservicesboard.org.uk / 020 7271 0071
Status:	Official

Summary:

Under s49 of the Legal Services Act 2007 (the Act), the LSB must issue a statement of policy on the exercise of its enforcement powers against the approved regulators and the Solicitors Disciplinary Tribunal (SDT).

The current statement of policy was published in 2010, supplemented by a separate statement on cancelling a licensing authority designation in 2011.

A recent assessment of these statements, in the context of the Board's developing view on its approach to regulation, has identified a number of potential updates and improvements. These updates would increase the clarity and accessibility of the 2010/2011 statements, and reflect the Board's experience of using the policy in recent years. An update would also allow the Board to issue a single statement of policy for all enforcement powers against the approved regulators and the SDT. The draft statement of policy is at Annex A.

Under s50 of the Act, the Board must seek representations before issuing a statement of policy. Subject to the Board's views on the revised draft statement, representations will be sought and a final version of the statement of policy presented for the Board's approval later in the year.

Recommendation(s):

The Board is invited to:

- (1) approve the draft revised statement of policy on enforcement at Annex A
- (2) approve the seeking of representations on the draft statement of policy

Risks and mitigations

Financial: N/A

Legal:	Internal legal advice has been sought throughout the review period. It does not represent a change in the LSB's views or approach. The revisions to the policy add clarity and improve readability of the text. We do not anticipate any additional legal risk to our work arising from these updates.
Reputational:	Undertaking this revision demonstrates good regulatory practice and provides assurance that our policies are up to date and fit for purpose. We are not proposing any substantial changes in policy.
Resource:	A nine-week consultation is planned. Resources to support this should be available in the context of the current business plan.

Consultation	Yes	No	Who / why?
Board Members:	(x)		Informed by discussions about the LSB's approach to regulation
Consumer Panel:		x	
Others:			

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

LEGAL SERVICES BOARD

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Enforcement policy

Recommendations

1. The Board is invited to:
 - approve the draft revised statement of policy on enforcement at Annex A.
 - approve the seeking representations on the draft statement of policy.

Background

2. The Legal Services Act 2007 (the Act) requires the LSB to issue a statement of policy on the exercise of its enforcement powers against the approved regulators and the Solicitors Disciplinary Tribunal:
 - section 31 (performance targets and monitoring)
 - section 32 (directions)
 - section 35 (public censure)
 - section 37 (financial penalties)
 - section 41 (intervention directions)
 - section 45 (cancellation of designation as approved regulator)
 - section 76 (cancellation of designation as a licensing authority by order).
3. The LSB's current enforcement policy was published in 2010. It was supplemented in 2011 with a separate policy on the Board's powers to cancel designation of a licensing authority (section 76). Together these statements run to over 40 pages of text, are duplicative, contain unnecessary procedural information, and can be difficult to navigate.
4. It is good regulatory practice to regularly review policies to provide assurance that they remain up to date and fit for purpose. They include a number of annexes of procedural rules and diagrams. We have recently undertaken a review of the two current statements. This review has identified a number of areas for minor improvement in the interests of clarity and accessibility. Based on this analysis, we have drafted a single, revised statement of policy on enforcement. This is at Annex A.

Proposal

5. There are a small number of changes that reflect our experience of working with the policy. In light of the LSB's acceptance of informal resolution following its investigation of the Bar Council and Bar Standards Board in 2013, the policy has been updated around informal resolution (paragraphs 22-32). These state more clearly that default of informal resolution **may** lead to formal action. Paragraphs 28-29 provide for the opportunity for the LSB to prompt informal resolution.

6. Beyond this the revisions proposed in Annex A are editorial. We have added a table of contents to aid navigation and removed duplicated text. Annexes reprinting related rules and regulations have been deleted and replaced with a list of links. The procedural flowcharts have been removed from the policy itself (although will remain available separately). We have added references to the maximum financial penalty (paragraph 44) and 2015 warrant regulations to support intervention (paragraphs 58 and 66).
7. A copy of the tracked changes version of the revisions against the current statement of policy is available if Board Members want to see it, and a hard copy will be available at the Board meeting.

Next steps

8. Under section 50 of the Act, before issuing a statement of policy under section 49, the Board must publish a draft of the proposed statement. Subject to the Board's decisions, we will issue a notice seeking representations on the draft LSB enforcement policy over the summer alongside the proposed new rules discussed in Board paper 17(XX), for a nine week period. We will return to the Board for a final decision in the light of the representations we receive later in the year.

5 July 2017