

<b>To:</b>	Legal Services Board	
<b>Date of Meeting:</b>	29 January 2014	<b>Item:</b> Paper (14) 04

<b>Title:</b>	Sanctions and Appeals assessment document	
<b>Workstream(s):</b>	Review of regulatory sanctions and appeals processes	
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<b>Status:</b>	Protect	

<b>Summary:</b>
<p>The attached document (Annex A) sets out our evaluation of the current arrangements for sanctions and appeals across legal services regulators. Our conclusion is that substantial differences between regulators' current powers has the potential to work against the regulatory objectives and is inconsistent with best regulatory practice on a number of issues.</p> <p>However, while some issues are within our control to influence (such as the level of transparency), key matters such as ensuring consistency of financial penalty powers and rationalisation of appeal arrangements to provide consistency across the market are dependent on MoJ and in some cases require primary legislation. It does not therefore seem to be a good use of our resources to pursue those issues over which we have no control until we have seen the outcome of the MoJ review.</p> <p>Part of the work on the designation applications for ICAEW and IPReg has included reviews of their existing sanctions and appeals provisions with the policy aims of:</p> <ul style="list-style-type: none"> <li>• a level playing field between ABS and non-ABS firms</li> <li>• all appeals against regulatory decisions being heard by the First Tier Tribunal (FTT).</li> </ul> <p>However, achieving these aims requires a combination of section 80 and section 69 Orders and the process for drafting and finalising them is time-consuming, costly (for the LSB and the applicant) and convoluted. This is despite the fact that MoJ has told us that its policy is that all new appeals against regulatory decisions should be heard by the First Tier Tribunal.</p> <p>It is therefore questionable whether pursuing sector-wide reform is a good use of our resources at the moment. So we propose that the issue should be re-visited when</p>

the outcome of the MoJ review is known. In the meantime, we will pursue through the regulatory effectiveness work those issues more directly under our influence (such as transparency of processes and KPIs).

Our original plan was to issue this document as a discussion document. However, on reflection, we consider it more appropriate to position it as an evaluation of the current arrangements without inviting comment although we may possibly convene a workshop with regulators later in the year depending on the extent to which matters progress.

**Recommendation(s):**

The Board is invited to:

- comment on the draft assessment document (annex A) and proposed approach
- delegate authority to the Chairman and Chief Executive to agree publication of the document following any final amendments.

**Risks and mitigations**

**Financial:** None

**Legal:** None

**Reputational:** We are not producing a discussion document. This was promised by our annual report. We have alerted regulators to the possible change but nonetheless this may have a negative impact on our reputation.

**Resource:** Actively pursuing resolution of all the issues identified in the evaluation document would require considerable resources.

Consultation	Yes	No	Who / why?
Board Members:		X	
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	

## LEGAL SERVICES BOARD

<b>To:</b>	Board		
<b>Date of Meeting:</b>	29 January 2014	<b>Item:</b>	Paper (14) 04

### **Review of Regulatory Sanctions and Appeals Processes – Research report**

#### **Background**

1. Our 2013/14 Business Plan noted that the current systems for taking action against lawyers (and others) who have breached their regulator's code of conduct have been built up over many decades and are often based on historical practices rather than the requirements of the Act. As the market grows and develops, firms will employ different types of authorised person, and there may be new approved regulators and new licensing authorities, the complications and inconsistencies in the current systems will be exacerbated.
2. We said that we would publish a discussion document before the end of 2013/14 setting out:
  - the current systems and whether we think there are issues of consumer protection and interest that arise;
  - our assessment of best practice in sanctions and appeals structures in other sectors and whether there is anything we can learn and apply from this to legal regulation and enforcement;
  - the barriers to achieving best practice; and
  - options for change.
3. Although work on this project has been delayed due to lack of resources, particularly at Project Manager level, we have nevertheless carried out a substantial amount of desk-based research. Amongst other things, this has mapped both the origins of the current arrangements and their statutory (or other) basis. This work helped to inform our response to the MoJ's call for evidence which included the problems raised by wide differences in regulators' sanctions and appeals arrangements.
4. However, the findings of the assessment report relate to many issues that are not within the gift of the LSB to control. Therefore we did not think it appropriate to publish a discussion document and instead will publish an assessment report that will support the submission we made to the Ministry of Justice. We will also highlight the need for greater transparency from approved regulators as part of the regulatory standards work. The draft of this assessment report is at annex A.
5. The report outlines a number of changes to the sanctions and appeal arrangements for ARs and LAs that would help to reduce cost, improve consistency, better protect the public and reduce the risks of regulatory arbitrage.

## **Next steps**

6. We propose sharing the draft assessment report (annex A) with the legal regulators and disciplinary tribunals for their comments on factual accuracy before publishing the report. They have already commented on the summary tables. However we wish to proactively check some aspects as to whether they are correct.
7. Once the report has been reviewed by the regulators we will publish the report. We currently expect to publish the report in the last week February or the first week of March.
8. The LSB will use the regulatory standards programme to ensure that the regulators are delivering the required level of transparency of sanctions and appeals arrangements. This will be completed primarily through the regulatory standards self assessment exercises that will be conducted during 2014/15 (progress update assessment) and 2015/16 (full assessment). If significant issues are identified we may also consider whether it is necessary to conduct thematic work on the issue of transparency generally or the arrangements of a specific regulator.
9. The LSB will continue to advocate the adoption of the recommendations made in our submission to the Ministry of Justice's call for evidence on legal regulation. This submission made the recommendation that the civil standard of proof should be used consistently across legal regulators and the uses of the First Tier Tribunal for all appeals against regulatory decisions.
10. Finally the LSB will explore, with other organisations, the possibility of researching the consistency of penalties imposed by the regulators.
11. The project on sanctions and appeals will then be closed.

## **Recommendations**

12. The Board is invited to:
  - (1) Comment on the draft assessment report (annex A) and proposed approach
  - (2) Delegate authority to the Chairman and Chief Executive to agree publication of the discussion document following any final amendments.