

To:	Legal Services Board	
Date of Meeting:	30 April 2014	Item: Paper (14) 21

Title:	Section 80 recommendations to the Lord Chancellor	
Workstream(s):	Statutory Decisions	
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Status:	Official	

Summary:

This paper seeks the Board's agreement to the making of recommendations under section 80 of the Legal Services Act 2007 (**the Act**) that the Lord Chancellor makes orders that appeals in relation to decisions made by the Institute of Chartered Accountants in England and Wales (**ICAEW**), the Chartered Institute of Patent Attorneys (**CIPA**) and the Institute of Trade Mark Attorneys (**ITMA**), when acting in their capacity as licensing authorities (should they be designated as such), should be heard and determined by the General Regulatory Chamber of the First Tier Tribunal.

In accordance with the requirements of section 81 of the Act, the Board consulted on the proposed recommendation and draft order from 19 March 2014, inviting representations from interested persons by 17 April 2014. Only one representation was made, by ITMA, which supported the proposals and had no comments on the order or impact assessment.

Recommendation(s):

The Board is invited:

- (1) To note the content of the response document and approve its publication.
- (2) Approve the making of the recommendations as set out in Annexes [A] and [B] of the response document.
- (3) Note the draft statutory instruments which accompany the recommendations, as set out in Annexes [A] and [B] of the response document.
- (4) Note the impact assessments which will accompany the recommendations and draft instruments.

Risks and mitigations

Financial: None

Legal: None

Reputational: None
Resource: None

Consultation	Yes	No	Who / why?
Board Members:		√	
Consumer Panel:		√	
Others:	<p>ICAEW, CIPA and ITMA were consulted as the draft recommendations, draft orders and impact assessments were developed.</p> <p>Ministry of Justice has also been consulted and the draft orders had been cleared before consultation commenced.</p> <p>HM Courts and Tribunals Service has been consulted as the orders have 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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Recommendations to the Lord Chancellor that he makes orders under Section 80 of the Legal Services Act 2007 in relation to licensing authorities.

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 arrangements¹](#). The LSB's recent thematic [assessment of sanctions and appeals processes²](#) also confirmed that the LSB will continue to advocate the use of the FTT for all appeals against regulatory decisions.
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 December 2013, the Board approved applications from ICAEW, CIPA and ITMA and made recommendations to the Lord Chancellor that they be designated as licensing authorities. The Lord Chancellor accepted these licensing authority recommendations on 6 March 2014.
4. In the applications ICAEW, CIPA and ITMA proposed that appeals be heard and determined by the GRC of the FTT.

Consultation

5. The consultation exercise took place between 19 March and 17 April 2014. In accordance with the requirements of section 81 of the Act, the consultation paper invited representations on the draft recommendations and the draft

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

statutory orders. Representations were also invited on the draft impact assessments.

6. The draft of the proposed order and the impact assessment had been agreed with the Ministry of Justice before consultation commenced. HM Courts and Tribunal Service were also consulted.
7. This was the third time that LSB had consulted on such orders which are technical in nature, being directly linked to the designation orders for licensing authorities. This, alongside the fact that ICAEW and the Intellectual Property Regulation Board (**IPReg**), the regulatory body for CIPA and ITMA, had consulted on the policy decision to use the FTT, led us to conclude that a four week consultation period was appropriate.

Representations received

8. Only one representation was received. This was a short email from the Chief Executive of ITMA saying that ITMA supported the proposals outlined in the consultation with respect to the appeal arrangements of IPReg, and had no comments on the draft order or impact assessment in that regard.

Conclusion and recommendation to the Board

9. Taking into account that no comments have been received on the draft order or impact assessments, our view is that we should proceed with the recommendations to the Lord Chancellor.
10. The draft recommendations and statutory instruments are set in Annexes A and B of the response document. The impact assessments can be viewed in the [consultation document](#)³ and copies will be available at the Board meeting.
11. In order to make the recommendation we need the consent of ICAEW, CIPA and ITMA. We can confirm that written consent has been received from each of these bodies.
12. The Board is invited:
 - to note the content of the response document and approve its publication;
 - approve the making of the recommendations as set out in Annexes [A] and [B] of the response document;
 - note the draft statutory instruments which accompany the recommendations, also set out in Annexes [A] and [B] of the response document; and

³ Available at:

http://www.legalservicesboard.org.uk/what_we_do/consultations/open/pdf/20140319_S80_Consultation.pdf

- note the impact assessments which will accompany the recommendations and draft instruments.

23 April 2014