



Compliance and Enforcement – Statement of Policy in relation to cancellation of designation as a Licensing Authority

Statement of policy: compliance and enforcement strategy relating to cancellation of designation as a Licensing Authority and rules.

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Executive Summary

1. The LSB was created by the Legal Services Act 2007 (“the Act”) and is responsible for overseeing legal regulators (referred to as the “Approved Regulators” in the Act) in England and Wales. The LSB’s mandate is to ensure that regulation in the legal services sector is carried out in the public interest and that the interests of consumers are placed at the heart of the system.
2. The Act gives the LSB and the Approved Regulators the same regulatory objectives and a requirement to have regard to the Better Regulation Principles. Compliance by the LSB and the Approved Regulators (including Approved Regulators who have been designated as Licensing Authorities¹) with the regulatory objectives, other requirements in the Act and other statutes will help to ensure that this mandate is achieved.
3. On 10 December 2009, the LSB published its Statement of Policy² on the exercise of its functions under: (a) section 31 (performance targets and monitoring); (b) section 32 (directions); (c) section 35 (public censure); section 37 (financial penalties); section 41 (intervention directions); and section 45 (cancellation of designation as Approved Regulator).
4. This document sets out the final part of the LSB’s enforcement strategy the Statement of Policy made in accordance with section 49(1)(g) of the Act about how it will exercise functions under section 76 of the Act (cancellation of designation as Licensing Authority by order).
5. On 10 December 2009 the LSB issued a consultation paper³ that forms the basis for this decision document. A summary of consultation responses and the LSB’s response can be found at Annex 5. This decision document does not differ materially from the consultation document.

¹ A Licensing Authority is an Approved Regulator who has been designated under Part 1 of Schedule 10 to the Act as a body competent to regulate Alternative Business Structures.

² http://www.legalservicesboard.org.uk/can_we_help/lwb_policies_procedures/pdf/enforcement_policy_statement.pdf

³ http://www.legalservicesboard.org.uk/what_we_do/consultations/2009/pdf/final_cp_designation_LA.pdf

Statement of Policy – Cancellation of designation as a Licensing Authority

Introduction

6. The Act obliges the LSB to make a Statement of Policy about the exercise of its enforcement powers of:
 - performance targets and monitoring;
 - directions;
 - public censure;
 - financial penalties;
 - intervention directions;
 - cancellation of designation as an Approved Regulators; and
 - cancellation of designation as a Licensing Authority.
7. This Statement of Policy on the cancellation of designation as a Licensing Authority addresses the last of the enforcement powers listed above.

Cancellation of designation as a Licensing Authority

8. Similar to the processes for cancelling the designation of Approved Regulators⁴, there are three circumstances in which a Licensing Authority's designation can be cancelled:
 - the first is that a Licensing Authority can ask the LSB to make a recommendation to the Lord Chancellor cancelling its designation in relation to one or more reserved legal activities. This document consults on rules (see **Annex 1**) setting out the form and manner in which such an application must be made and the prescribed fee⁵. The LSB does not regard this power as part of its enforcement tools. However, it will try to ensure that appropriate arrangements have been put in place by the Licensing Authority before the LSB makes any recommendation. The Lord Chancellor can decide not to cancel the designation;

⁴ See section 45 of the Act.

⁵ See section 76(3) of the Act.

- the second is in relation to enforcement action. The LSB can make a recommendation to the Lord Chancellor to cancel a Licensing Authority's designation if an act or omission (or a series of them) by a Licensing Authority has had or is likely to have an adverse impact on one or more of the regulatory objectives, and that the act or omission was unreasonable and it is appropriate to recommend cancellation of designation in all the circumstances of the case⁶. The Lord Chancellor may (in accordance with a recommendation by the LSB) cancel a Licensing Authority's designation in relation to some or all of the reserved activities which it regulates. The Lord Chancellor cannot cancel a designation in the absence of a recommendation from the LSB. However, the Lord Chancellor is not obliged to accept the LSB's recommendation. The LSB's power of cancellation of designation can only be used when the LSB is satisfied that the issue cannot be adequately addressed by any of its other powers⁷; and
 - the third is in the event that the Licensing Authority's designation as an Approved Regulator is wholly or partially cancelled in which event an equivalent cancellation will have to be sought by the Licensing Authority or applied to the body's Licensing Authority functions⁸.
9. The Act (at sections 76 to 79 and at schedule 10 Part 2) sets out the procedure that the LSB must follow. This includes giving a warning notice to the Licensing Authority and considering representations from it, obtaining advice from the Lord Chancellor, OFT, Consumer Panel, Lord Chief Justice and other appropriate consultees. An overview of the cancellation process is set out in diagrammatic form at **Annex 2**. Details about the rules that the LSB proposes to make about cancelling a Licensing Authority's designation are set out in paragraphs 14 to 16 of this paper.
10. The LSB proposes to follow the general approach set out in its Statement of Policy on enforcement powers when considering whether to recommend that an Approved Regulator's authorisation as a Licensing Authority is cancelled – this includes its approach to addressing what constitutes unreasonableness.

The LSB's aim in cancelling the designation of a Licensing Authority

11. As with cancellation of designation as an Approved Regulator, the LSB regards a decision to recommend cancellation of a Licensing Authority's designation as an extremely serious matter. It will only to be used in

⁶ See section 76(5) of the Act.

⁷ See section 45(6) of the Act.

⁸ See section 75(2) of Act.

exceptional circumstances when the LSB is satisfied that the matter cannot be adequately addressed by the LSB using other powers that are available to it⁹. In using this power, the LSB's aim will be to try to ensure as smooth a transition as possible to the new body taking over regulation of the former Licensing Authority's licensed bodies. The LSB will also try to ensure appropriate provision of information to the public in order to reassure consumers and individuals regulated by the Licensing Authority.

12. Section 75 of the Act states that if the Lord Chancellor makes an order cancelling a body's designation as an Approved Regulator, the body's designation as a Licensing Authority is also cancelled. The converse of this is not true and the LSB recognises that there may be instances where it may recommend that a body's designation as a Licensing Authority is cancelled but not recommend that its designation as an Approved Regulator is cancelled.

⁹ See section 76(6) of the Act.

Rules relating to cancellation of designation as a Licensing Authority

Rules

13. The Act states that the Lord Chancellor may cancel a body's designation as a Licensing Authority in accordance with a recommendation by the LSB. The LSB can make such a recommendation if:
 - a. the act or omission of a Licensing Authority (or a series of such acts or omissions) has had, or is likely to have, an adverse impact on one or more of the regulatory objectives; and
 - b. it is appropriate to cancel the Licensing Authority's designation in relation to the activity or activities in question in all the circumstances of the case (including, in particular, the impact of cancelling the designation on the other regulatory objectives).

The LSB must also have decided that the act or omission by the Licensing Authority was unreasonable.

14. The LSB must make certain rules in relation to the processes it undertakes in deciding whether to make a recommendation to the Lord Chancellor.
15. The rules that the LSB is required to make are as follows:
 - **Section 76(3)(b)** – The LSB must prescribe rules as to the form and manner of an application by a Licensing Authority to cancel its designation as such. These rules must specify the amount of the fee for such an application (the 'prescribed fee') and must be made with the consent of the Lord Chancellor. Though this is not technically an enforcement tool, the LSB considers it reasonable to propose these rules as part of this consultation paper. Draft Rules are at **Annex 1**. This also contains a proposal on the prescribed fee which follows the approach used by the LSB for fees in relation to the cancellation of designation as an Approved Regulator;
 - **Section 79(9)** - The LSB must make rules as to the persons it may nominate to apply for a warrant to enter and search premises. Draft Rules are at **Annex 3**; and
 - **Paragraphs 18(5) and 25(5) of schedule 10** – The LSB must make rules governing the making of oral and written representations. The LSB proposes to use the same Rules that it has made for oral and written representations in relation to its other enforcement powers. This will

ensure that the rules for any permitted oral and written representations are the same for all forms of enforcement action. A copy of these is at **Annex 4**.

Impact Assessment

Introduction

The overall impact will depend on the extent of compliance by those the LSB regulates (the Approved Regulators designated as Licensing Authorities). The LSB has undertaken an impact assessment on these administrative rules. We consider that the impacts are broadly negligible but potentially positive.

What is the problem under consideration? Why is intervention necessary?

The Act requires the LSB to publish a statement of policy about the enforcement powers given to it under section 76 of the Act. In addition, the Act requires the LSB to make rules about the exercise of certain of its powers under sections 76 to 79. Making the statement of policy and associated rules will enable the LSB to carry out enforcement activities to ensure compliance by the Licensing Authorities that it regulates.

There is limited data available from ARs or other bodies on which to base an analysis of the overall impact of market reforms or of this particular issue. The LSB is therefore taking developing (with others) a research strategy to enable it to monitor the impact of the changes on a wide variety of issues.

What are the policy objectives and the intended effects?

The policy objectives and intended effects are that improved regulatory performance will, in turn, lead to better access and outcomes so that:

- consumers are more confident in accessing the legal services market and can make better informed decisions about purchases;
- cultures and systems of quality assurance are embedded throughout the legal services sector to give consumers confidence in the services they purchase.

What policy options have been considered? Please justify any preferred option

Do nothing - this is not an option – the LSB is required by the Act to publish this Statement of Policy and make these rules.

Statement of Policy and rules as drafted for consultation – the Act gives the LSB its enforcement powers. The LSB considers it reasonable to make a Statement of Policy as to how it will use these powers if it has to.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

In future, we may review our compliance and enforcement strategy in the light of our other developing policies and our experience of applying it. This policy may also be the subject of review as part of the LSB's plans to review the performance of the Approved Regulators. However, this will be subject to further consultation in due course. The LSB intends to publish information about both its informal and formal enforcement action. Over time, this should enable a better assessment of the costs and benefits of the policy.

Annual costs

One-off (transition): £ negligible.

Average annual cost (excluding one-off): £ negligible.

Annual benefits

One-off: £ negligible.

Average annual benefit: £ negligible.

What is the geographic coverage of the policy/option?

England and Wales.

On what date will the policy be implemented?

It is envisaged that the provisions that will enable the designation of Licensing Authorities will go live in 2010 and that Approved Regulators will be able to apply for designation as a Licensing Authority thereafter. It is anticipated that the LSB will receive the first application for designation as a Licensing Authority in August 2010. If the LSB decides that the Approved Regulator would be a competent Licensing Authority then it should be able to make a recommendation to the Lord Chancellor in early 2011.

Which organisation will enforce the policy?

The LSB.

Does enforcement comply with Hampton principles?

Yes.

Will implementation go beyond minimum EU requirements?

Yes. EU requirements do not require the regulatory framework set out in the Act.

What is the value of the proposed offsetting measure per year?

Nil.

What is the value of changes in greenhouse gas emissions?

Nil.

Will the proposal have a significant impact on competition?

No.

Annual cost (£-£) per organisation (excluding one-off)

The costs of this policy are not expected to add to the overall cost of compliance by Licensing Authorities. If a penalty is imposed this may be passed through to those that the Licensing Authority regulates. A Licensing Authority may request to have its designation as such removed in relation to one, or more than one, reserved legal activity and this cost will similarly passed on to its regulated community.

Micro: n/a Small: n/a Medium: n/a Large: n/a

Are any of these organisations exempt?

n/a.

Impact on Admin Burdens Baseline (2005 Prices)

Increase of £: approximately nil.

Decrease of £: approximately nil (although potential for small decrease).

Net Impact £: approximately nil.

Evidence Base

We consider that the cost of these changes is significantly below the generally accepted threshold of £5 million costs, below which an impact assessment is not necessary. However, we believe that in setting out how we have considered the various elements of the impact assessment will help us consult on both our proposals and our assessment of their impact.

Note that the LSB is an oversight regulator. Its enforcement policy is directed at the Approved Regulators and Licensing Authorities that it regulates, not on those (such as solicitors or barristers) that they regulate.

Competition

We expect our enforcement strategy and processes to have a positive effect on competition. Compliant Approved Regulators and Licensing Authorities should lead to a regulatory framework which enables providers of legal services to innovate and develop services that better reflect the needs of consumers.

Small Firms Impact Test

The LSB will take a proportionate approach to regulating smaller Approved Regulators and Licensing Authorities to ensure the cost of compliance is not too burdensome.

Legal Aid

The enforcement policy will support and enhance the delivery of the regulatory objectives and as such will support the legal aid market through effective competition; better focus on consumers and proportionate regulation.

Race/Disability/Gender equalities

Because the LSB is an oversight regulator there is no direct impact on individuals. However, if the LSB achieves its intended outcomes, there will be a general improvement in the standard of regulation and the approach taken to it which we would expect to have a positive impact generally on the provision of legal services to all consumers, and to provide increased opportunities for all groups of those being regulated.

The enforcement policy will help to ensure that regulation is proportionate and targeted. In promoting these changes generally, we have considered the (albeit limited) evidence currently available that the current restrictions that operate in the market have not delivered a diverse legal profession. However it is unlikely that it will be possible to isolate exact drivers for any positive or negative changes in diversity, although we will continue to research and build an evidence base.

Human Rights

There are specific requirements on the LSB to make rules concerning oral and written representations that can be made about proposed enforcement action. The LSB must consider the representations made.

Where a licensed body's licensing authority is enforced against there is a requirement that a plan to transfer the licence is in place.

Rural Proofing

The LSB's enforcement policy is not expected to have a specific impact on rural areas.

Sustainability, carbon emissions, environment and health

There is no impact expected on sustainability, carbon emissions, environment and health.

Annex 1 – Cancellation of designation: rules for application to cancel under section 76(3) of the Act

A. DEFINITIONS

1. Words defined in these Rules have the following meanings:

Act	the Legal Services Act 2007
Affected Licensed Body	a Licensed Body who is regulated by the Applicant in relation to a Reserved Legal Activity which is the subject of an Application
Applicant	a body who submits an Application
Application	an application to cancel a body's designation as a Licensing Authority in relation to one or more Reserved Legal Activity that is submitted to the Board in accordance with these Rules
Board	the Legal Services Board
Cancellation Notice	the notice published by the Applicant in accordance with Section E of these Rules
Licensed Body	has the meaning given in Section 71 of the Act
Licensing Authority	has the meaning given in Section 73 of the Act
Practising Fees	has the meaning given in Section 51 of the Act
Prescribed Fee	the fee that must accompany an Application as described in Section D of these Rules
Reserved Legal Activity	has the meaning given in Section 12 and Schedule 2 of the Act

B. WHO DO THESE RULES APPLY TO?

2. These are the Rules that apply if a body wishes to apply to the Board, under Section 76(3) of the Act, for the Board to make a recommendation to the

Lord Chancellor that an order be made cancelling a body's designation as a Licensing Authority in relation to one or more Reserved Legal Activity.

3. These Rules set out:

- the required content of any Application to the Board (**see Section C**);
- the amount of the Prescribed Fee that must accompany any Application (**see Section D**);
- the Board's requirements in relation to the Applicant's publication of a notice giving details of the Application in accordance with Section 76(3)(c) of the Act (**see Section E**);
- the processes and procedures that the Board will undertake in considering the Application (**see Section F**); and
- whom a body should contact if it has a question in relation to the Application process (see **Section G**).

4. The Board reserves the right to amend these Rules from time to time. If the amendments made to the Rules are, in the opinion of the Board, material the Board will publish a draft of the amended Rules and will invite consultations in accordance with Section 205 of the Act.

C. CONTENTS OF APPLICATION

6. An Applicant must include the following information in their Application:

- the name, address, telephone number and email address of the person whom the Board should contact in relation to the Application;
- details of the Reserved Legal Activity or Activities to which the Application relates;
- details of why the Applicant is making the Application;
- details of any alternative courses of action, besides cancellation of designation, that have been considered or explored by the Applicant;

- details of the Affected Licensed Bodies and whether any communication has been had with such bodies in relation to the Application;
- details of what arrangements the Applicant proposes in relation to:
 - i) the transfer of the regulation of the Affected Licensed Bodies to another relevant Licensing Authority and whether that Licensing Authority has consented to such transfer;
 - ii) the transfer of amounts held by the Applicant which represent amounts paid to it by the Affected Licensed Bodies in respect of being licensed as Licensed Bodies to another relevant Licensing Authority and whether that Licensing Authority has consented to such transfer; and
- if the Applicant is planning to wind up all its activities, details of how it proposes to do so in an orderly manner.

D. PRESCRIBED FEE

10. Any Application must be accompanied by the Prescribed Fee set out in Rule 11 below. The Prescribed Fee must be paid by electronic funds transfer to the bank account specified from time to time by the LSB using the following reference:

Reference: [Insert Applicant name]/Licensing Authority Designation Application

8. The Prescribed Fee that must accompany an Application will depend on the type of Application being made. The different levels of the Prescribed Fee are as follows:
- a) if the Application is in respect of the cancellation of some but not all of the Reserved Legal Activities regulated by the Applicant, the Prescribed Fee is £4,500;
 - b) if the Application is in respect of the cancellation of all of the Reserved Legal Activities regulated by the Applicant, the Prescribed Fee is £6,000.

9. The amounts specified in Rule 8 are each the average costs that the Board anticipates it will incur in considering these different types of Application. In respect of the Prescribed Fee set out in Rule 8(a) this is based on a day rate of £562 over 8 business days. In respect of the Prescribed Fee set out in Rule 8(b) this is based on day rate of £562 over 11 business days.
10. The Board reserves the right to charge an amount in excess of the amounts set out in Rule 8 in the following circumstances:
 - a) if the Board requests further information from the Applicants in accordance with Rule 16, and the Board's costs in processing this information exceeds the relevant specified in Rule 8. In these circumstances, any such additional costs will be charged at the day rate of £562;
 - b) the nature of the Application means that the Board has to seek external advice and the cost of this advice would mean that the Board's cost in processing the Application would exceed the relevant amount specified in Rule 8.

E. NOTICE REQUIREMENTS

11. On submitting an Application to the Board, an Applicant must publish a Cancellation Notice giving the following information:
 - the date on which the Application to the Board was made;
 - details of the Reserved Legal Activity or Activities to which the Application relates;
 - details of why the Application is being made;
 - details of the Affected Licensed Bodies;
 - details of what arrangements the Applicant proposes in relation to the:
 - i. transfer of the regulation of the Affected Licensed Bodies to another relevant Licensing Authority;
 - ii. transfer of amounts held by the Applicant which represent amounts paid to it by way of Practising Fees by the Affected Licensed Bodies to another relevant Licensing Authority.

12. Any Cancellation Notice given in accordance with Rule 11 must be published:
- on the Applicant's website on the same day on which an Application is submitted to the Board; and
 - in any publication that the Board may specify from time to time within 5 working days of the Application being submitted to the Board.

F. PROCESSES AND PROCEDURE

Sending the Application

13. Subject to Rule 14 below, the Applicant must submit their Application (and, proof of transmission of the Prescribed Fee) either by email, post or courier to the relevant address shown below:

- If by email to: contactus@legalservicesboard.org.uk
- If by post or courier to:

Address: Legal Services Board
7th Floor Victoria House
Southampton Row
London WC1B 4AD

For the attention of: Cancellation Administrator

14. The Applicant must, unless otherwise agreed with the Board, submit their Application (and, proof of transmission of the Prescribed Fee) to the Board using the online tool at www.legalservicesboard.org.uk, once this has been developed.
15. On receipt of the Application and the Prescribed Fee, an acknowledgement email will be sent to the Applicant by the Board.
16. The Board will consider the Application and may ask the Applicant for such additional information as the Board may reasonably require.

The Board's Decision

17. After considering the Application (and any additional information received under Rule 16) and after satisfying itself that the requirements of Section E

have been complied with, the Board will recommend to the Lord Chancellor that an order be made to cancel the Applicant's designation as a Licensing Authority in relation to the one or more Reserved Legal Activities set out in the Application.

G. FURTHER INFORMATION

18. If you have any questions about the Application process or the preparation of an Application, you should contact the Board at:

Address: Legal Services Board
 7th Floor Victoria House
 Southampton Row
 London WC1B 4AD

Email: contactus@legalservicesboard.org.uk

Telephone: 020 7271 0050

Annex 2 – Process for cancelling designation as a Licensing Authority

The LSB may only give a recommendation if it is satisfied that the matter cannot be adequately addressed by exercising the LSB's powers to impose performance targets and monitoring, directions, public censure, financial penalties and intervention directions

Licensing Authority ("LA") commits an act or omission that has had, or is likely to have, an adverse impact on one or more of the regulatory objectives and that act or omission was unreasonable and it is appropriate for the LSB to take action in all the circumstances of the case

LSB gives the LA a notice ("**warning notice**") accompanied by a draft of the proposed recommendation. The "warning notice" must specify a period of not less than **28 days** within which the LA can make written representations

LSB must give copies of the "warning notice", any written representations (and any report of oral representations) to:

- Office of Fair Trading ("**OFT**");
- the Consumer Panel;
- the Lord Chief Justice ("**LCJ**"); and
- any such other person as the Board considers it reasonable to consult (a "**Consultee**").

The Board must also give these bodies (other than the LCJ) a notice specifying a period in which they must give their advice

The OFT, Consumer Panel and Consultee (if any) provide advice to LSB

LSB provides advice given by the OFT, Consumer Panel and Consultee (if any) to the LCJ. The Board must also give the LCJ a notice specifying a period in which they must give their advice

The LCJ provides advice to LSB

LSB:

- provides copies of advice to LA; and
- publishes advice and any written representations from the LA (and also the report of oral representations (if any))

LA (and any body representing licensed bodies authorised by the LA) has **28 days** in which to make written representations

LSB must publish any written representations (and also the report of oral representations (if any))

LSB considers advice and written and oral (if any) representations and decides whether to give the recommendation

The Board has the discretion to also allow oral representations. Where oral representations are allowed, the Board must prepare a report of those representations. The AR must have opportunity to comment on a draft of such report

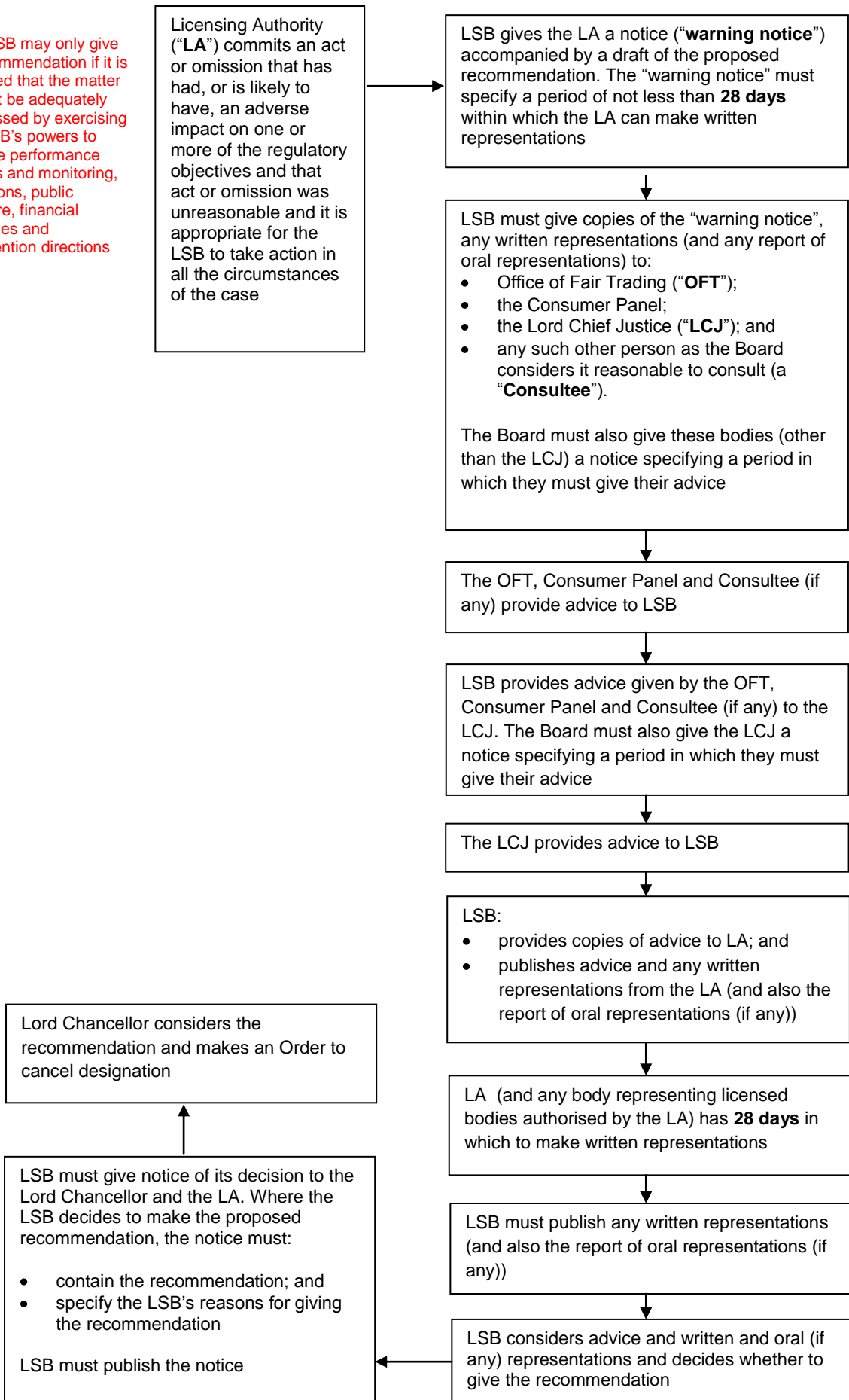
The Board has the discretion to also allow oral representations. Where oral representations are allowed, the Board must prepare a report of those representations. The person who made oral representations must have opportunity to comment on a draft of such report

Lord Chancellor considers the recommendation and makes an Order to cancel designation

LSB must give notice of its decision to the Lord Chancellor and the LA. Where the LSB decides to make the proposed recommendation, the notice must:

- contain the recommendation; and
- specify the LSB's reasons for giving the recommendation

LSB must publish the notice



Annex 3 – Cancellation of designation: Section 79(9) rules on powers of entry

A. DEFINITIONS

1. Words defined in these Rules have the following meanings:

Act	the Legal Services Act 2007
Approved Regulator	has the meaning given in Section 20(2) of the Act
Board	the Legal Services Board
Licensing Authority	has the meaning given in Section 73 of the Act

B. WHO DO THESE RULES APPLY TO?

2. These Rules are the rules that the Board has made in compliance with Section 79(9) of the Act in order to specify the persons that the Board may nominate for the purposes of Section 79(3) of the Act respectively.
3. The Board reserves the right to amend these Rules from time to time. If the amendments made to the Rules are, in the opinion of the Board, material, the Board will publish a draft of the amended Rules and will invite consultations in accordance with Section 205 of the Act.

C. NOMINATIONS FOR THE PURPOSES OF SECTION 79(3)

4. The Board may nominate any person that it considers competent to be able to:
 - a) enter and search the premises of an Approved Regulator or Licensing Authority (as appropriate); and
 - b) take possession of any written or electronic records found on such premises.
5. In considering whether a person is suitable for nomination under Rule 4, the Board will have regard to the extent to which the person has experience of exercising entry and search functions, taking into account the standards and requirements of the LSB in other situations where the Act gives us a power to exercise a warrant.

D. FURTHER INFORMATION

6. If you have any questions about these Rules you should contact the Board at:

Address: Legal Services Board
7th Floor Victoria House
Southampton Row
London WC1B 4AD

Email: contactus@legalservicesboard.org.uk

Telephone: 020 7271 0050

Annex 4 – Cancellation of designation: rules on oral and written representations

A. DEFINITIONS

1. Words defined in these Rules have the following meanings:

Act	the Legal Services Act 2007
Approved Regulator	has the meaning given in Section 20(2) of the Act
Board	the Legal Services Board
Licensing Authority	has the meaning given in Section 73 of the Act
Representing Person	an Approved Regulator, a Licensing Authority or any other person who can make representations to the Board in accordance with Section 38(2) and Schedules 7 to 10 to the Act

B. WHO DO THESE RULES APPLY TO?

2. These Rules are the rules that the Board has made to govern the making of oral and written representations by a Representing Person in accordance with:

- Section 38(2) of the Act (**Financial Penalties**);
- paragraphs 2(5) and 10(3) of Schedule 7 of the Act (**Directions**);
- paragraphs 2(5) and 10(5) of Schedule 8 of the Act (**Intervention Directions**);
- paragraphs 2(5) and 9(5) of Schedule 9 of the Act (**Cancellation of Designation as Approved Regulator**); and
- paragraphs 18(5) and 25(5) of Schedule 10 of the Act (**Cancellation of Designation of Approved Regulators as Licensing Authorities**).

5. The Board reserves the right to amend these Rules from time to time. If the amendments made to the Rules are, in the opinion of the Board, material the

Board will publish a draft of the amended Rules and will invite consultations in accordance with section 205 of the Act.

C. FORM OF REPRESENTATIONS

Written representations

6. Subject to Rules 5 and 7, all representations made to the Board must be in writing and must be submitted to the Board either by email, post or courier to the relevant address shown below:

- if by email to: contactus@legalservicesboard.org.uk
- if by post or courier to:

Address: Legal Services Board
 7th Floor Victoria House
 Southampton Row
 London WC1B 4AD

For the attention of: Enforcement Administrator

7. The Representing Person must, unless otherwise agreed with the Board, submit all written representations to the Board using the online tool at www.legalservicesboard.org.uk, once this has been developed.

8. All representations must be received by the Board within the relevant period set out in the Act. Representations out of this time will not be considered unless, exceptionally and at the sole discretion of the Board, they appear to raise matters of substance relevant to the process in question which are not already under consideration.

Oral representations

9. The Board may, at its sole discretion authorise a Representing Person to make oral representations. The Representing Person must bear its own costs in relation to any such representations. On grounds of cost, efficiency, transparency and consistency of treatment between Representing Persons, the Board will not normally accept oral representations unless the particular circumstances of the Representing Person or the complexity of the issue merit an exception to the normal process in individual cases. If the Board grants such an exception, it will publish its reasons for doing so.

10. Should the Board authorise a Representing Person to make oral representations, the representations will take place at a hearing to be held either by telephone, video conference or in person. The Board will give the Representing Person not less than ten business days notice that there will be a hearing. If the hearing is to be held in person, the notice will specify the place and time at which the hearing will be held. If the hearing is to be held by telephone or video conference, the notice will specify the time of the telephone call or video conference and also the arrangements for facilitating the telephone call or video conference.
11. Hearings conducted in person (rather than by telephone or video conference) will normally be open to the public. However, within the period ending four business days prior to the scheduled date of the hearing, the Representing Person may submit to the Board a request, with reasons, that aspects of the hearing be held in private. The Board will consider the reasons given and will then publish the reasons for any decision that it reaches. Where the hearing is held in private, the Board will only admit persons, other than representatives of the Representing Person and the Board, after obtaining the agreement of the Representing Person.
12. The Representing Person must appear at the hearing, either in person, by telephone or by video conference (as the case may be) and may be represented by any persons whom it may appoint for the purpose. The proceeding of the hearing will be recorded on behalf of the Board and will be transcribed onto paper.
13. Where oral representations are made, the Board will prepare a report of those representations which will be based on the transcription of the hearing made in accordance with Rule 10. Before preparing the report, the Board:
 - must give the Representing Person a reasonable opportunity to comment on a draft of the report; and
 - must have regard to any comments duly made by the Representing Person.
14. Subject to complying with the requirements of the Act, the Board reserves the right to extend processes to take account of the need to transcribe and verify oral submissions and to require the Representing Person to directly pay the transcription provider for the cost of the transcription service.
15. The Board may from time to time adjourn the hearing.

D. FURTHER INFORMATION

16. If you have any questions about the process for making oral or written representations you should contact the Board at:

Address: Legal Services Board
 7th Floor Victoria House
 Southampton Row
 London WC1B 4AD

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Annex 5 – Consideration of responses to consultation

Respondent organisations

- ILEX Professional Standards Limited
- The Bar Standards Board
- The Council for Licensed Conveyancers
- The Law Society
- The Master of the Faculties
- The Solicitors Regulation Authority
- Tunbridge Wells, Tonbridge and District Law Society

Summary and LSB's response

Question 1 - What are your views on the LSB's aims for cancelling the designation of a Licensing Authority? Are there other circumstances when you consider that the exercise of this power might be appropriate?

Summary

Respondents were supportive of the approach outlined in the consultation paper. It was agreed that cancellation was a very serious step that should only be taken as a last resort once all other avenues were exhausted. Some respondents thought there could be additional clarity regarding the process and protocols that would lead to the step of cancellation of designation.

The Master of the Faculties raised a concern that the description of “exceptional circumstances” may constitute an unlawful fetter on the LSB's powers. They also raised a question about our use of the term “unreasonableness” and whether it was being used as a synonym for “appropriate” as in s.76(5)(6) of the LSA.

LSB's response

The LSB recognises that cancellation of designation is a very serious step, but if it is used it will always be one that only occurs at the end of a long series of enforcement actions. Our reference to it being only used in “exceptional circumstances” is a comment of the facts given the process steps and procedural safeguards that are built into the LSA. It is our view that the LSA adequately sets out the steps that would need to be exhausted before we recommended the cancellation of designation of a licensing authority, especially when read as part of our broader enforcement strategy.

The LSA 2007 sets out obligations on the policy statements that the LSB produces at section 49 (which by virtue of s.49(1)(g) includes this policy statement). In particular, s.49(4) sets the requirement that these powers should not be exercised unless by

reason of an act or omission that was unreasonable. This is discussed in more detail in our wider statement of policy on enforcement.

Question 2 – Bearing in mind the Regulatory Objectives and the Better Regulation Principles, do you agree with the Board’s approach to its requirements for the content of Applications?

Summary

There was broad agreement with the LSB’s approach to its requirements for the content of applications. A number of respondents suggested that there could be more descriptive guidance in place particularly in relation to the transfer of licensed bodies from the licensing authority whose designation was being cancelled. There were helpful suggestions as to some of the issues that would need to be considered including communications, insurance requirements, and voluntary transfers. ILEX Professional Standards Ltd questioned whether it was possible to expect that a transfer plan would always be in place.

LSB’s response

It is the LSB’s view, and hope, that cancellation will be a very rare event. In the draft rules it was decided to avoid over prescription given that each event is likely to have a unique set of circumstances and have only been reached either voluntarily or at the end of a set of enforcement actions by the LSB. In any event, we are minded to agree with the SRA’s view that “in practice we would expect that, by the time an LA had reached the point of applying to cancel its designation, the LSB would have already been made aware in some capacity that the LA was potentially intending to take that course of action.”

Question 3 – If you do not agree with the Board’s approach to its requirements for the content of Applications, what alternative approaches would you suggest and why?

Summary

There were no further comments from respondents beyond those discussed in the question above.

Question 4 – What do you think the appropriate level of, and method of calculation of the Prescribed Fee should be?

Summary

Respondents, on the whole, thought the proposed basis for the prescribed fee was the fairest. A number of respondents noted that the prescribed fee should cover the costs involved without cross subsidy from other approved regulators. Some respondents noted that there may be questions as to the ability for LAs to pay the costs in some circumstances and therefore the fee should be secured at the earliest possible instance. The possibility for day rate charging as an alternative was also raised.

LSB's response

It is the LSB's view that providing some clarity on the prescribed fee is the best solution available. The fee should be cost reflective: however, as noted above it is likely that cancellations would be rare and the circumstances are likely to be particular to that LA. We think that, in order to avoid cross subsidy arising from non-payment from an applicant a fixed fee rather than a day rate is most appropriate. We agree that, it would be desirable to be able to refund the prescribed fee if our actual costs are lower than anticipated. However, we have been told by the Ministry of Justice that Treasury Fees and Charges Guidance means that this is not possible; the only approach permitted is to charge a fixed fee with the ability to increase it on a cost per day basis.

Question 5 – Do you agree with the Board's approach for making nominations for the purposes of Sections 48(3) and 79(3)?

Summary

The majority of respondents supported the LSB's position. Those who made additional comments noted that it would be important to ensure that those undertaking the entry and search functions were able to discharge their duties. ILEX Professional Standards Ltd. suggested that this could be best done by making rules on experience requirements while the Master of the Faculties suggested that expertise in relation to the particular form of search was more relevant than just experience of exercising entry and search functions.

LSB's response

The LSB considers that the standards and requirements should be consistent with those that we use in other situations where the Act gives us a power to exercise a

warrant as we have consulted on previously and accepted. The LSB does not intend to develop further rules as to the experience required.

Question 6 – If you do not agree with the Board’s approach, what alternative approach would you suggest?

Summary

There were no further comments from respondents beyond those discussed in the question above.

Question 7 – The rules on oral and written representations are the same as those published in the LSB’s Statement of Policy on Enforcement (with the necessary changes). Is it appropriate to apply the rules to a Representing Person in accordance with a cancellation of designation as a Licensing Authority procedure?

Summary

The majority of respondents supported the LSB’s position given the consistency with the process for enforcement against an approved regulator. However, two respondents; the Bar Standards Board and the Tunbridge Wells, Tonbridge and District Law Society stated that they thought granting of oral representations should not be solely at the discretion of the Legal Services Board. This was due to the very serious nature of cancellation of designation and that oral hearing might help dispel misapprehensions on the nature of the issues.

LSB’s response

The LSB can see value in a consistent approach in its enforcement against both approved regulators and licensing authorities. As cancellation will only be used as the last stage of an enforcement process that includes attempting to resolve issues through informal resolution it is our view that, it is appropriate to consider applications to make oral representations rather grant the ability to make them outright.