



<b>To:</b>	Board		
<b>Date of Meeting:</b>	30 November 2010	<b>Item:</b>	Paper (10) 87

<b>Title:</b>	Maximum Financial Penalty Rules
<b>Workstream(s):</b>	Workstream(s) 5B: Widening access to the legal market
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<b>Status:</b>	Restricted

**Summary:**

In November 2009, LSB consulted on what an appropriate penalty should be for Licensing Authorities (**LA**) to be able to impose on alternative business structures (**ABS**). After considering the responses, the Board decided that the penalty should be unlimited and this decision was published in March 2010.

Recently, Ministry of Justice (**MoJ**) raised concerns that the wording of Legal Services Act 2007 (**'the Act'**) does not give LSB the vires to set an unlimited penalty and that it must be either a set amount or a formula to enable an amount to be calculated. [REDACTED]

[REDACTED] However, because the SI that is required to set the penalty can only be made with the Lord Chancellor's consent, we cannot proceed unless MoJ lawyers are content with the approach.

[REDACTED]

We propose, therefore, to conduct a short consultation (timetable attached at **Annex A**) on an alternative approach of:

- penalties against firms capped at 10 per cent of the firm's worldwide turnover
- penalties against individuals capped at the highest of:
  - £1m; or
  - All income in the previous 12 months received from the firm in which the infringement occurred [s22].

**Risks and mitigations**

<b>Financial:</b>	None.
<b>FoIA:</b>	Pre-meeting assessment of exempted text is highlighted.
<b>Legal:</b>	Low
<b>Reputational:</b>	Medium – disagreement with MoJ over powers will need to be explained in re-consultation document.
<b>Resource:</b>	Medium – we had not planned a further consultation.

Consultation	Yes	No	Who / why?
<b>Board Members:</b>		✓	
<b>Consumer Panel:</b>		✓	
<b>Others:</b>			
<b>Recommendation(s):</b>			
<p>The Board is invited to agree the approach and to delegate authority to approve the re-consultation document to the Chairman and Chief Executive.</p>			

**Timetable for re-consultation  
(NB – subject to comment from MoJ)**

Work with MoJ as we develop our draft consultation paper until 6 December

7/12/10	Send draft condoc (and IA and order) to MoJ
14/12/10	comments back from MoJ
15/12/10	publish consultation (delegated authority)
19/01/11	consultation period finishes (28 days + 7 for holidays)
27/01/11	oral item at Board outlining consultation responses
4/02/11	paper to Board via email
11/02/11	Agreement by email
11/02/11	submit to MoJ
11/03/11	MoJ return with an agreed version ready for signature
14/03/11	LSB Board gateway
28/03/11	LSB Board signs Order
28/03/11	LSB submits signed order to MoJ
15/04/11	laid before parliament
6/05/11	in force