

To:	Board
Date of Meeting:	25 April 2012
Item:	Paper (12) 30

Title:	Solicitors Regulation Authority non-ABS financial penalties
Workstream(s):	Developing regulatory standards
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Status:	Restricted

Summary:

The Legal Services Act 2007 (the LSA) gave the Solicitors Regulation Authority (SRA) the power, for the first time, to impose financial penalties on a solicitor or employee of a solicitor for failure to comply with regulatory arrangements, or on a solicitor for professional misconduct. The maximum penalty that can be imposed is £2,000. Appeals against these penalties are heard by the Solicitors Disciplinary Tribunal (SDT) which has unlimited penalty powers. The LSA provides a mechanism by which the Lord Chancellor can increase the maximum.

Fol s44 and LSA s167 The SRA has proposed to MoJ that the maximum should be increased to give it powers that are commensurate with ABS (where the maximum is £50m for individuals and £250m for entities).

In February, MoJ held a meeting to discuss the SRA's proposal with LSB, SRA, The Law Society (TLS) and the SDT. We agreed to put our respective positions to MoJ formally by the end of April. This paper sets out the LSB's position. The position is consistent with our current policy that wherever possible ABS and non-ABS firms should have a level playing field.

The SRA's request has highlighted a number of much wider issues about whether the legal regulators' enforcement powers are consistent with the requirements of the LSA. These will be taken forward as part of the work we are doing on appeals.

Recommendation(s):

The Board is invited to:

- (1) Comment on the paper;
- (2) Agree that (a) the LSB consider that there should be an equalisation of penalties between ABS and non-ABS for the SRA but that (b) if MoJ will not support equalisation of penalties, at the very least there needs to be an interim substantial increase in the SRA's maximum penalty to a level that represents a credible deterrent for the largest traditional law firms; and
- (3) Agree that we should publish the final response (**Annex A** only) on our website

Risks and mitigations

Financial: None

Legal:	None specifically
Reputational:	Our policy and the underlying analysis are directly at odds with the position of the SDT and differ from that of TLS. It is therefore likely that there will be adverse comment from both those organisations.
Resource:	Sufficient

Consultation	Yes	No	Who / why?
Board Members:	X		Andrew Whittaker, Nicole Smith
Consumer Panel:	X		Steve Brooker
Others:	SRA		

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Cover paper, paragraphs 5-7	Fol s44	
Annex A	Fol s22 (intended for future publication)	None
Annex B	Fol s44 and LSA s167	None
Annex C	Fol s44 and LSA s167	None

LEGAL SERVICES BOARD

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Solicitors Regulation Authority non-ABS financial penalties

Background / context

1. The Macrory review¹ established six principles for penalties – that sanctions should:
 - Aim to change the behaviour of the offender;
 - Aim to eliminate any financial gain or benefit from non-compliance;
 - Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
 - Be proportionate to the nature of the offence and the harm caused;
 - Aim to restore the harm caused by regulatory non-compliance, where appropriate; and
 - Aim to deter future non-compliance
2. For non-ABS law firms, if the SRA considers that a penalty of more than £2,000 is proportionate for the breach that it has established it has to take the case to the SDT. The SDT considers the SRA's case and the individual/entity's case and makes a decision. That decision can be appealed to the High Court. For ABS, the SRA imposes the penalty/sanction which can then be appealed to the SDT.
3. Currently, decisions about suspension or striking off of solicitors in traditional law firms can only be taken by the SDT. The SRA is not currently considering any change to that approach and so this paper does not consider that issue in detail. The SRA, as a licensing authority, can disqualify someone from acting as a Head of Legal Practice, a Head of Finance and Administration, or from being a manager or employee of an ABS. Once disqualified, the person cannot be employed by an ABS.

Summary of other parties' positions [Fol s44 and LSA s167]

4. NB – these are the positions outlined briefly at the meeting, they are not the final views of any party.

5. [REDACTED]

¹ Regulatory Justice: making sanctions effective (November 2006)
<http://webarchive.nationalarchives.gov.uk/+http://www.berr.gov.uk/files/file44593.pdf>

[Redacted]

[Redacted]

6. [Redacted]

[Redacted]

7. [Redacted]

Proposed LSB response

8. Our proposed response is at **Annex A**. The SRA's policy paper is at **Annex B** and the MoJ's discussion document is at **Annex C**.