

## **Annex B - Alternatives to informal resolution**

1. Because we consider that the Bar Council's acts or omissions were unreasonable, we can – if informal resolution is not possible or if you do not consider that it is desirable in this case - consider whether it would be appropriate to use our enforcement powers to achieve the same outcomes. We set out briefly below how these could work in practice. We consider that there are three powers (or a combination of them) that it may be proportionate to use in this case: directions, censure and/or financial penalty. We are not offering the Board analysis or a recommendation on these at this stage, pending the decision on informal resolution.

### **Directions**

2. Our Statement of Policy on compliance and enforcement says that we are likely to use directions when we want to ensure that specific actions are carried out by a regulator in order to rectify an act or omission that has been identified. In order to issue directions the LSA says that we must be satisfied:

*(a) that an act or omission of an approved regulator (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, (b) that an approved regulator has failed to comply with any requirement imposed on it by or under this Act (including this section) or any other enactment, or (c) that an approved regulator (i) has failed to ensure that the exercise of its regulatory functions is not prejudiced by any of its representative functions, or (ii) has failed to ensure that decisions relating to the exercise of its regulatory functions are, so far as reasonably practicable, taken independently from decisions relating to the exercise of its representative functions.*

3. The Board must be satisfied “in all the circumstances of the case” that it is appropriate to direct the regulator. If it is, we can direct the regulator to take steps we consider will counter the adverse impact, mitigate its effect or prevent its occurrence. In the case of a breach of the IGR we can direct the regulator to take steps we consider will remedy the failure, mitigate its effect or prevent its recurrence.

### **Public censure**

4. The LSA states that the LSB can censure a regulator if it is satisfied (a) that an act or omission of an approved regulator (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) that it is appropriate in all the circumstances of the case.
5. Our Statement of Policy on compliance and enforcement says that we are likely to use censure to draw particular attention to the act or omission by the regulator. It says that we would always take into account, both in using censure and in its general provision of information about enforcement proceedings, the possible perceptions that consumers, potential market entrants and those being regulated would be given, recognising that some forms of publicity may damage confidence in regulation and so lead to less satisfactory outcomes. However, the Statement

says that the LSB strongly believes that one of the aims of its compliance powers is to ensure that confidence is maintained in the legal services market and that providing consumers with clear evidence that steps are being taken to address consumer detriment is part of that process. The aim of censure is to change the behaviour of the regulator.

### **Financial penalties**

6. The LSA states that the LSB can impose a financial penalty on a regulator if it has failed to comply with the IGR, a direction or practising fee requirements/rules and that it is appropriate in all the circumstances to impose a penalty. Our Statement of Policy on compliance and enforcement says that we are likely to use this power when, in the LSB's judgement, it is appropriate to impose one to seek to change the unreasonable behaviour of the regulator by penalising the specific act or omission that has been identified. A further aim is to deter future non-compliance by the regulator on which the penalty is imposed and on other regulators. A financial penalty will only be imposed in serious circumstances and the aim will be to set the level such that it is likely to give consumers and those being regulated confidence that issues which cause them detriment will be dealt with by the regulatory regime.