

THE CHARTERED INSTITUTE OF PATENT ATTORNEYS

**LSB CONSULTATION ON A STATEMENT OF POLICY ON
COMPLIANCE AND ENFORCEMENT**

CIPA has few comments to make in response to this consultation, except to repeat the frequently made comment that the LSB must be proportionate in looking at the issues of non-compliance with the Internal Governance Rules and Practising Fees Rules and in assessing which of the enforcement penalties should be applied it must assess the risks to the public which have resulted from any perceived failures on the part of the Approved Regulators to comply with its requirements.

We believe that the various powers available to the Board should be used in such a way as to encourage the Approved Regulators to comply with the requirements and that at each stage the LSB should discuss the issues with the Approved Regulators in order to seek compliance without the need actually to apply the sanctions.

We do, however, have major concerns over the proposals for the level of the maximum financial penalties which can be applied.

We believe that the proposed maximum penalty could never be applied, since it would bankrupt any of the Approved Regulators against which it was applied. We believe that it is totally unrealistic and disproportionate to make provision for the application of a penalty which could not be applied.

Firstly, we note an apparent mis-statement in the consultation paper where it is stated in paragraph 3.34 that *“Penalties are paid to the Treasury, not to the LSB”*. This appears to be at odds with section 37(6) of the Legal Services Act, which states that *“A penalty under this section is payable to the Board”* and section 40(4) which provides that *“... the Board may recover from the approved regulator, as a debt due to the Board, any of the penalty and any interest which has not been paid [by the time it is due to be paid]”*.

Paragraph 3.36 of the consultation document states *“The LSB believes that it is important that those who pay for the Approved Regulator through their practising fees should be able to influence the Approved Regulator’s behaviour, including its approach to compliance. The circumstances in which a penalty can be imposed are serious. It is likely, therefore, that the LSB will consider it reasonable in the circumstances that the members of an Approved Regulator should have to pay (at least in part) for their Approved Regulator’s failure to comply.”*

No indication is given as to how those regulated would be able to influence the behaviour of the Approved Regulator, except by opting out of regulation, which would make it even more difficult to meet the financial penalty which might be imposed.

The consultation paper then goes on in paragraphs 3.37 to 3.45 to assess the maximum amount of a financial penalty. It rejects a figure based on "turnover" or “total income”. It is stated that in other areas the figure is often 10% of total income, which would give a figure of £10 million for the Law Society or around £1.5m for the Bar Council. The consultation paper then goes on to say that because the contribution to GDP of the legal services market is around £23.25bn it would

be appropriate to set the maximum penalty at a much higher level (either as an absolute figure or as a percentage).

The reference to the contribution to GDP is a complete non-sequitur, as it is not related in any way to the income of the Approved Regulator nor to its ability to pay the penalty.

The consultation paper therefore proposes that the maximum financial penalty which could be imposed is the greatest of £250 per registrant; £5,000 per entity which is regulated; or £10 million. For both of CIPA and ITMA it would be the latter £10 million which would be the maximum penalty.

Such a penalty would be 7 or 8 times CIPA's annual income and over 10 times our reserves. It is believed that the proposed maximum figure also exceeds the reserves of all of the approved Regulators other than the Law Society.

Consequently, it is clear that the LSB has given insufficient thought to the proposal, which would bankrupt CIPA or the other Approved Regulators, if even 10% of the maximum figure was imposed. We suggest that a figure of the **lowest of** £250 per registrant or £5,000 per entity regulated by the Approved Regulator would be appropriate. In the case of CIPA, this would amount to approximately £450,000 or 50% of our reserves. Even this figure would be extremely difficult to pay and would thus impose a very substantial incentive on the Approved Regulators to comply with the requirements in the Internal Governance Rules.