

27 October 2009

Mahtab Grant
Legal Services Board
7th Floor, Victoria House
Southampton Row
London WC1B 4AD

Dear Ms Grant

Legal Services Board (LSB): Compliance and Enforcement – Statement of Policy

Thank you for inviting the comments of the Royal Institution of Chartered Surveyors on the compliance and enforcement strategy, draft statutory instrument and rules. Prior to addressing the specific issues raised in the consultation paper it may be useful to share the experiences of RICS Regulation in compliance and enforcement matters.

RICS Regulation

RICS Regulation represents the regulatory arm of RICS, separate from its representational role. The Regulatory Board, which is responsible for oversight of the regulatory process, is chaired by a non-RICS member and has a majority lay representation.

It may be of interest to note that RICS has recently reviewed its own regulatory regime and has departed from a system based on prescriptive rules and instead moved towards a principles based approach. RICS Regulation now ensures resources are directed at those perceived to present a higher risk according to our own risk assessment scoring criteria. We have adopted a better regulation approach, enabling us to focus on our regulatory goals:

- Proportionality
- Accountability
- Consistency
- Targeted
- Transparency

As a regulator of long standing, RICS Regulation has significant experience of setting, monitoring and enforcing rules. It is against this background that we offer our comments on the LSB's Compliance and Enforcement Statement of Policy.

On examining the proposals relating to enforcement set out in the LSB's consultation paper, it is reassuring to note that a better regulation approach, similar to that adopted by RICS, is envisaged.



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Statement of Policy

We note that in preparing its Statement of Policy, the LSB has had regard to the fact that it is an oversight regulator and accordingly its role will involve taking action against Approved Regulators. We support the approach involving enforcing principles rather than specific rules which mirrors RICS' modern, light touch regulatory model.

The LSB's Approach to Compliance and Enforcement Action

We would agree that the matters outlined which the LSB proposes to take into account in determining whether action against an Approved Regulator is appropriate are relevant factors. In terms of determining the reasonableness of an Approved Regulator's actions or omissions, we would view any failure to adhere to the principles of better regulation as a particularly significant trigger for enforcement action. In brief, our further comments are as follows:

- We agree that informal resolution of issues with Approved Regulators is always preferable where possible, underpinned by formal enforcement action;
- We also support the circumstances as outlined in which directions and censure would be invoked;
- We agree the stated rationale for the imposition of penalties; and
- We agree that cancellation of the designation of an Approved Regulator should be a last resort, where all efforts to resolve acts or omissions with the Approved Regulator in question have failed.

Enforcement Rules

We are reassured to note that the Legal Services Act 2007 requires the LSB to consider any written or oral representations that are made by an Approved Regulator prior to the imposition of a penalty. We have no detailed observations on the LSB's draft rules.

Yours sincerely,

Patricia Monahan
Regulation Policy Project Manager
RICS Regulation
T+44 (0)20 7695 1673
F+44 (0)20 7695 1642
pmonahan@rics.org

Royal Institution of
Chartered Surveyors

Surveyor Court
Westwood Way
Coventry
CV4 8JE
United Kingdom

t +44 (0)20 7695 1670
f +44 (0)20 7334 3746
e regulation@rics.org

rics.org/regulation



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