



**A RESPONSE BY ILEX PROFESSIONAL
STANDARDS LIMITED**

**SETTING THE MAXIMUM FINANCIAL PENALTY
FOR ABS LICENSING**

**CONSULTATION BY THE LEGAL SERVICES
BOARD SETTING OUT PROPOSALS UNDER
SECTION 95 OF THE LEGAL SERVICES ACT 2007.**

DATE: 24 JANUARY 2011

ILEX Professional Standards

1. This response represents the views of ILEX Professional Standards (IPS), the regulatory body for Legal Executives. Legal Executives are members of the Institute of Legal Executives (ILEX). ILEX is the professional body representing 22,000 qualified and trainee Legal Executives and is an Approved Regulator under the Legal Services Act 2007 (LSA 07).
2. ILEX and IPS are committed to regulating Legal Executive businesses and businesses in which Legal Executives are partners and managers by 2012. IPS will establish regulatory arrangements that not only comply with the requirements of the LSA 07 and with any regulations made by the Legal Services Board (LSB) under the Act but that also provide public protection.

Executive Summary

3. IPS supports the general approach which the LSB proposes to adopt. The LSB must act within the remit of the LSA 07 and cannot set an unlimited penalty. It proposes that the maximum financial penalty that can be imposed should be set at £150,000,000 for entities and £50,000,000 for individuals.
4. In deciding the proposed financial penalty limit, the LSB considered the SDT's power to set an unlimited penalty. The LSB also considered that the financial penalty should change behaviour and deter future non-compliance of licensed bodies. By its very nature the financial penalty should penalise the licensed body or individual, therefore the LSB wants to ensure that the penalty is high enough that the licensed body or individual does not benefit from their wrong doing.
5. The LSB when looking at the maximum financial penalty that could be applied to individuals looked at the miners' compensation claims. The figure for the maximum financial penalty for individuals was poorly evidenced in the consultation as the only indicator used was an isolated case.
6. The remainder of this response sets out answers to the specific questions within the consultation paper, where IPS is able to offer a view.

Q1. Do you think that the maximum set by the LSB is sufficiently high to ensure that penalties are able to be proportionately applied by LAs?

7. The LSB proposes that a high fixed maximum penalty limit is set. This option is preferred by the LSB to a limit based on the turnover of the licensed body. Turnover is still an important factor and the limit should be

set at a level that ensures that larger firms (firms with a higher turnover) are not given disproportionately low penalties compared to smaller firms (firms with a lower turnover).

8. The power of the SDT to impose unlimited financial penalties influenced the LSB to set a maximum limit of £150,000,000 for entities and £50,000,000 for individuals. It is clear that the high maximum proposed is to help ensure that consumers of ABS firms have the same protection as consumers of non-ABS firms. What is not clear is how the figure of £150,000,000 was derived. In order to ensure that the figure is not disproportionately high it may be valuable to ascertain the largest fines imposed, by other comparator regulators, on an entity. ABS is a new creature, so data collected from comparator regulators, should be assessed with consideration of the potential entrants to the market.
9. The maximum limit for entities appears sufficiently high. Understandably the maximum limit has been set high to give LAs margin when imposing financial penalties. Furthermore the maximum limit may hardly ever be reached and a safeguard is in place whereby financial penalties can be appealed against.
10. On the other hand, the maximum limit for penalties that can be imposed on individuals appears disproportionately high compared to the maximum limit for entities. This issue is discussed in more detail in our answer to question 2.

Q2. What are your views on the fixed amounts proposed for entities and individuals? If you disagree with our proposed approach please give your reasons and, if possible, propose an alternative.

11. The maximum penalty of £50,000,000 that can be imposed on an individual appears excessive. The miners' compensation claims are isolated cases and it is incongruous that the earnings of one partner in those cases should be used to set the maximum for individuals working in an ABS. It would have been beneficial if the consultation had provided more detail of how the figure of £50,000,000 was derived.
12. The LSB should bear in mind that the individual is responsible for payment of the financial penalty. The limit proposed is a substantial amount, a third of the maximum that could be imposed on an entity. The limit should be proportionate to the individual liability compared to the corporate liability of an entity.

Q3. Do you have any comments on the draft statutory instrument?

13. IPS has no comments on the draft statutory instrument.

