



The Law Society

The Law Society's response to the Legal Services Board's (LSB) consultation on setting the maximum financial penalty for ABS licensing.

The Law Society welcomes the opportunity to respond to the LSB consultation on setting the maximum financial penalty for ABS licensing. The Society understands why the LSB shortened the consultation time from the usual three months but ending the consultation period 33 days from the date of publication - when that includes the Christmas period – does not allow adequate time for consideration. We would appreciate it if the LSB took this into consideration when setting future deadlines.

When the LSB consulted on this matter in November 2009 the Society agreed with the proposal that there should be no limit on the penalty that a LA could impose on an ABS. A provision in the Legal Services Act now allows the Solicitors Disciplinary Tribunal (SDT) to impose unlimited fines. Accordingly this proposal would have brought into line the possible sanctions faced by ABS with those applicable to traditional law firms. This is still our preference, thus we are disappointed that the Ministry of Justice do not consider that the wording of the Act permits an unlimited penalty, even though the LSB consulted widely on this point.

We are surprised the LSB has not considered using a section 69 order to amend this anomaly. The Ministry of Justice relied on the ability to make Section 69 orders when declining (primarily for reasons of time and complexity) not to make detailed provision in the Legal Services Act itself to align the Law Society's powers in relation to ABSs and other law firms respectively. This issue falls well within this category. Securing a section 69 order on this matter is the most effective way of achieving a level playing field.

The Society believes that the regulatory and disciplinary system for ABS and other law firms should be even more closely aligned. In the current system SRA has limited fining powers in respect of non ABS firms which they can apply to lower level cases but when a matter is more serious it is referred to the tribunal who have unlimited fining powers. The advantage of this system is that there is a clear separation between investigators and adjudication, although we recognise that the level of SRA's powers may need reconsideration.

In principle, the approach for ABS firms and other law firms should be the same. However, we recognise that the structure of the Act makes that difficult to achieve in this area. Accordingly we do not oppose the provisions on respect of ABS firms, although it would be preferable for the maximum to be described as "unlimited", as LSB originally proposed.

Law Society responses to questions contained in the consultation

1. 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?

We believe that the penalties on ABS for breach of the ordinary requirement applying to law firms should be the same as for other law firms. We believe there should also be substantial penalties on owners for breach of the requirements relating to ownership, sufficient to act as an effective deterrent. It is unlikely that setting the maximum financial penalty that can be imposed at £150 million for entities and £50 million for individuals will restrict LAs from imposing appropriate fines. The proposed amount should provide LAs with the power to have a credible deterrent as it is unlikely that anybody being fined the maximum could have benefited from their wrongdoing.

There is a danger that psychologically the public (and even some regulators) will expect serious breaches to lead automatically to a fine that is close to the maximum. It may not be understood that the LSBs stratospherically high ceiling exists because of a technicality that stops them from granting unlimited fining powers. It should help that LSB guidance to licensing authorities states that the LSB expects LAs' licensing rules to set out the criteria it will apply in deciding whether to impose a penalty and the factors it is likely to take into consideration when deciding the appropriate level of any penalty. By having this criterion set out clearly in advance LAs can manage the expectations of both the public and the ABS.

2. 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.

The Society believes the LSB should propose a section 69 order which will end the need for a fixed amount. In the absence of this happening the Society does not object to having a high fixed amount in this context. The LSB's fixed approach in this aspect does not preclude LAs from using a turn-over related approach if they wish to do so, as long as any fine does not exceed the maximum.

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

We have no comments.