

LSB Notice for representations, Annex A

KEY:
New text is in **red italics**
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Relocated text is in **green**

Draft of proposed statement of policy for enforcement (v3)

Prepared under section 49(1) of the Legal Services Act 2007

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Deleted: : Statement of Policy – Compliance and Enforcement (Version 2: November 2010)

Deleted: Following the consultation on 29 October 2010 on the application of sections 178-79 of the Legal Services Act 2007, the LSB revised the Statement of Policy – Compliance and Enforcement. Changes to the original Statement are in red text.¶

Contents

Contents 2

Introduction..... 3

Background 4

The LSB's approach to enforcement action 6

The enforcement process..... 7

Gathering information and deciding to proceed..... 8

Informal resolution 10

Performance targets and monitoring (section 31 of the Act) 12

Directions (section 32 of the Act)..... 13

Public censure (section 35 of the Act)..... 15

Financial penalties (section 37 of the Act)..... 16

Intervention directions (section 41 of the Act) 18

Cancellation of designation as an approved regulator (section 45 of the Act) and as a licensing authority by order (section 76 of the Act) 20

Annex A: LSB Enforcement and Cancellation Rules and Regulations 22

Introduction

1. This statement of policy sets out the way in which the *Legal Services Board* (LSB) will exercise the enforcement functions given to it by the *Legal Services Act 2007 (the Act)*. It also explains the approach *the LSB is likely to take to enforcement and how it will conduct its investigations, including how the LSB will gather evidence and information in order to inform its decisions.*
2. *The LSB's enforcement functions are:*
 - *section 31 (performance targets and monitoring)*
 - *section 32 (directions)*
 - *section 35 (public censure)*
 - *section 37 (financial penalties)*
 - *section 41 (intervention directions)*
 - *section 45 (cancellation of designation as approved regulator)*
 - *section 76 (cancellation of designation as licensing authority by order).*
3. *As an oversight regulator the LSB may exercise the above enforcement functions against the approved regulators. The LSB may also issue directions under s32 of the Act to the Solicitors Disciplinary Tribunal (the Tribunal).³ For the purpose of s32 of the Act only, the Tribunal is treated in this policy as if it were an approved regulator, and this policy should be read accordingly.*
4. *Other than cancellation of designation as an approved regulator, this statement of policy also applies to the way in which the LSB will exercise its enforcement powers against approved regulators in their capacity as licensing authorities for alternative business structures.*
5. *The Office for Legal Complaints (OLC) is not an approved regulator and therefore this enforcement policy does not apply to the OLC*
6. *The LSB has made certain rules about aspects of its enforcement functions. These are listed at Annex A.*
7. *This is a revised statement of policy, replacing Statement of Policy – Compliance and Enforcement (Version 2: November 2010) and Statement of Policy – Cancellation of designation as a Licensing Authority issued in 2011.*

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As an oversight regulator the LSB's focus will be on the activities of the Approved Regulators.¹² We will be concerned particularly with the outcome that Approved Regulators' activities have on consumers and those who are regulated.

The LSB must make

Deleted: included as Annexes to this Document and are cross-referenced in the relevant Sections. Where the Act allows the making of oral and/or written representations in relation to the LSB's enforcement functions, the rules applying to them are

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This is version 2 (November 2010) of the Statement of Policy. This is a revised version of the Statement of Policy, which was published on 10 December 2009. Although we do not consider that we have material changes to the Statement of Policy, in accordance with section 50(4) of the Legal Services Act 2007, we are publishing the amendments that we have made in track changes.

³ Section 179 applies sections 32-34 and Schedule 7 of the Act to the Tribunal with modifications. Section 179(b) amends section 32(4)(b) to grant power to the LSB to issue a direction to the Tribunal for it to take steps to modify any rules made by the Tribunal under section 46(9)(b) of the Solicitors Act 1974.

Background

8. The Act provides the LSB with a range of enforcement tools that it can use when it identifies that:

- an act or omission by 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*
- an *approved regulator* has *failed to comply* with any requirement *imposed on it by or* under the Act (including a direction by the LSB) or any other enactment
- an *approved regulator* has failed to ensure *that the exercise of* its regulatory functions *is* not prejudiced by *any of* its representative functions
- an *approved regulator* 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
- an *approved regulator* has failed to comply with *requirements imposed on it by section 51 of the Act (control of practising fees charged by approved regulators), or by rules under that section*
- *an approved regulator has failed to comply with the LSB's* internal governance rules
- the Solicitors Disciplinary Tribunal *fails to perform any of its functions to an adequate standard, or at all.*

9. The Act says that the LSB must make a *statement of policy* about the exercise of its enforcement powers.

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10. In preparing this *statement of policy*, the LSB has:

- had regard to the *fact* that its principal role is the oversight regulator of the *approved regulators*
- taken into account the desirability of resolving informally matters which arise between the LSB and an *approved regulator*
- specified how *it* will comply with the requirement to be proportionate, consistent, targeted only at cases where action is needed, etc, and
- had regard to the principle that it should only exercise its enforcement powers if the act or omission of an *approved regulator* was unreasonable.

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performance targets and monitoring;¶
directions;¶
public censure;¶
financial penalties;¶
intervention directions; and¶
cancellation of designation as an Approved Regulator.
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An overview of these enforcement powers in diagrammatic form is set out at Annex 7 the end of this Statement.¶
¶
The LSB has issued a separate The Act also obliges the LSB to make a Statement of Policy about the cancellation of designation of a body as a Licensing Authority. The LSB is consulting separately on this Statement of Policy.¶
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The LSB's approach to enforcement action

- 11. The *LSB will* seek to achieve an appropriate balance between informal and formal action, based on best practice. *The LSB considers* that this will enable *it* to improve regulatory performance by the *approved* regulators.
- 12. In deciding whether it is appropriate to exercise its formal enforcement powers, the LSB must have regard to the principle that it should only use them if the act or omission of the *approved regulator was unreasonable*.
- 13. *The LSB will therefore consider all the circumstances of the case, including all relevant evidence from the approved regulator and/or others in order to reach a conclusion as to whether the act or omission was unreasonable.*
- 14. *The LSB will seek to be transparent and open in the use of its enforcement powers. The LSB anticipates reports of investigations and communications regarding enforcement action will be published, save for exceptional circumstances.*

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Deleted: Approved Regulators and the Tribunal (as appropriate) so that: ¶ consumers are more confident in accessing the legal services market and can make better informed decisions about purchases; and ¶ cultures and systems of quality assurance are embedded throughout the legal services sector to give consumers confidence in the services they purchase. ¶ We want the public, as consumers and citizens, to be confident that their advisors are proportionately regulated by bodies which, as we set out in our Business Plan for 2009-10: ¶ keep constantly modernising and updating registration and education requirements to reflect changing social and consumer needs and promote diversity in, and wider access to, the profession; ¶ maintain and enhance standards of professional conduct in the light of changing circumstances and best practice elsewhere; ¶ ensure that robust and independent systems of quality assurance are in place; ¶ themselves monitor and, where necessary, take appropriate enforcement action to ensure that professional standards are put into action at ground level; and ¶ are accessible and responsive to concerns put to them. ¶ We also want to ensure that those who provide regulated activities (now and in the future) are confident that their

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Deleted: <#>proportionate and consistent in their decision making, monitoring and enforcement activities; ¶ well-governed and cost-effective; and ¶ up to date in their professional thinking and management practice. ¶ ¶ **Considerations of unreasonableness¶** This section of the Policy Statement expands materially on the test for unreasonableness that the LSB will use compared to its consultation document which did not offer an interpretation of the unreasonableness test. ¶ ¶

Deleted: <#>Approved Regulator (or the Tribunal) was unreasonable. In most circumstances it is unlikely that the LSB would consider an act or omission to be unreasonable merely because we would have acted differently or that the act or omission has had or is likely to have an adverse impact on one or more of the Regulatory Objectives. We will, where appropriate, consider the rationale for the act and omission by the Approved Regulator (or the Tribunal) and encourage a review of the situation if we consider, for example, that all options have not been fully explored or the views of consultees were not properly weighed. That, however, is not the same thing as substituting one view for another.

Deleted: <#>¶ However, the LSB does not consider that it has to satisfy the public law test of Wednesbury unreasonableness in order to conclude that an act or omission was unreasonable. ¶ For example, the LSB might consider that an act or omission was unreasonable if it was carried out by an Approved Regulator (or the Tribunal), notwithstanding that the Approved Regulator (or the Tribunal) knew (or could be expected to know) that the act or omission was likely to have an adverse impact on one or more of the Regulatory Objectives. In reaching a conclusion that the act or omission of the Approved Regulator (or Tribunal) was unreasonable, the LSB would consider all the circumstances of the case which would include reasons and evidence from the Approved Regulator (or Tribunal) and/or others. ¶ **The**

The enforcement process

- 15. *The* LSB will, in the first instance, use its judgement to decide if an act or omission (or a series of them) by an *approved regulator* has breached, or is likely to breach one or more of the conditions specified *in the Act (see paragraph 8)*. In doing so, *the LSB* will take account of the evidence available to it which is likely to come from many different sources including *approved regulators*, other stakeholders, *market research and regulatory performance reviews*. As explained *further below (at paragraphs 23-33)* it will then decide whether to seek to resolve the issues informally in the first instance.
- 16. *If* informal resolution fails or is inappropriate in *the* circumstances, the LSB may determine that it is satisfied that *one or more of* the conditions set out in the Act (*see paragraph 8*) have been met for it to exercise its formal enforcement powers. *In addition to its* consideration of whether the act or omission of the *approved regulator* was unreasonable, (*see paragraph 12*), *the LSB* will also consider whether it would be proportionate and consistent to exercise one *or more* of the enforcement powers.

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The subsequent sections describe the process that the LSB will in general follow when dealing with enforcement issues. Where required to do so by the Act, the

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Gathering information and deciding to proceed

17. The LSB expects to gather information about *approved regulators* from a number of different sources *proactively and reactively*, including as part of its day to day work. The LSB will normally consider if data gathered for one purpose (such as practising fee approval or rule change applications) may also be relevant to another purpose (such as assessing compliance with *the regulatory objectives* or *another requirement under the Act*). A non-exhaustive list of examples of the sources include:

- admission of non-compliance by act or omission by the *approved regulator*
- information from *third parties including*:
 - other *approved regulators*
 - *the Office for Legal Complaints*
 - *the Legal Services Consumer Panel*
- outcomes from the performance *reviews* of the *approved regulators*
- issues that arise in discussions with *approved regulators*
- performance of the Tribunal against its *key performance indicators*.

18. The LSB will assess the information available and come to a decision about whether to proceed with informal or formal action. If it needs more information it may use its formal information gathering powers *under section 55 of the Act* to obtain it. Alternatively, if it is appropriate to do so, it will continue to gather information on an informal basis.

Deleted: <#>In some circumstances, the LSB must satisfy itself that its less onerous enforcement powers will not adequately address the matter before it uses its more onerous enforcement powers. In addition financial penalties can only be used in certain circumstances. However the Act places requirements to only use financial penalties in certain circumstances and to ensure that less onerous enforcement powers will not "adequately address" a matter before using more onerous ones but does not otherwise prohibit the LSB from using combinations of enforcement powers. In the event that we decide to take formal enforcement action, we will consider whether a combined approach is the best means of achieving compliance. In order to ensure the rapid mitigation of risks to consumers and citizens, it may well be appropriate to institute a range of measures at an early stage, rather than progress step-by-step. However, our approach will always be proportionate and we will always explain why we have chosen a particular approach. Where we choose to consider the exercise of two or more enforcement powers together then we will ensure that the process that we follow prior to exercise of the power(s) complies with the requirements specified in the Act for all of the enforcement powers that we are considering.¶

Monitoring and

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Deleted: <#>information from the regulated community or other stakeholders;¶ identification of issues through research and analysis;¶ information from the Office of Legal Complaints (the "OLC"); and ¶ concerns raised by the Consumer Panel.; ¶

Deleted: <#>Key Performance Indicators.

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19. The LSB will always take into account relevant information and evidence that it receives during its consideration of whether or not to pursue an issue, and if it does, the type of action that is appropriate.

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20. *In assessing information in the context of compliance and enforcement action* the LSB will *always* take into account the following:

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- this statement of policy
- its position as an oversight regulator and its duties under the Act
- best regulatory practice including the requirement that its activities must be proportionate, consistent, transparent, accountable and targeted only at cases in which action is needed

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21. *The LSB will also take into account some or all of the following as relevant:*

- *the actual or potential adverse impact on one or more of the regulatory objectives (which include the professional principles in s1(3) of the Act)*
- whether it considers that the *approved regulator's* act or omission has been unreasonable *(see paragraph 12)*
- the seriousness of the act or omission and the impact (or likely impact) of it on consumers and those being regulated
- the desired outcome for consumers of taking action and whether that outcome is likely to be significantly beneficial compared to the impact of not taking action
- the likely impact on those being regulated by the *approved regulator* and the likely impact on the wider provision of legal services
- whether the resource requirements needed are proportionate to achieving the desired results
- whether it has previously taken informal or formal action over the same or similar issues, and
- any other matters that *appear* appropriate to take into account.

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a contravention of a requirement in the Act or other statutes (such as competition law) including a failure to act compatibly with Section 28 of the Act or with the Regulatory Objectives;¶
a failure to have regard to the Better Regulation Principles or other best regulatory practice; ¶
an act or omission which has taken place over a long time or which is part of a series of the same or similar actions or which appears to be deliberate or vexatious or which follows a failure to resolve the matter informally in a way that the LSB considers satisfactory;
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22. If the LSB decides that the matter should be pursued it may:

- seek to resolve the matter informally with the *approved regulator* or the Tribunal, or
- pursue one or more of the other enforcement powers.

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Informal resolution

23. The LSB must, in preparing this *statement of policy*, take into account the desirability of resolving informally matters that arise between the LSB and the *approved regulators*. This *section* sets out how *the LSB is* likely to approach that requirement.

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When is informal resolution appropriate?

24. The LSB will always consider whether it is appropriate, in the circumstances of the case, to resolve matters informally, and *this may take place prior to any consideration of* more formal intervention. *The LSB's approach to informal resolution will always be proportionate to the circumstances of the particular case.*

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25. *For the avoidance of doubt, the Act does not require the LSB to:*

- *seek* an informal resolution *before commencing a formal enforcement process, or*
- come to a view on whether an *approved regulator's* act or omission is unreasonable before deciding to pursue informal resolution. That requirement only applies when *the LSB is* considering whether to use one of the formal powers.

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26. *An informal approach may not be appropriate in all cases. This may occur in circumstances where the impact of the issue is immediate, serious and/or widespread, or where the LSB considers that, in certain cases, informal resolution is not compatible with the regulatory objectives.*

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27. *An informal approach is also unlikely to be considered appropriate where an approved regulator's previous failure to fulfil commitments to resolve informally is indicative that formal powers would be more effective in the circumstances.*

Moved down [2]: If the first attempt at informal resolution does not achieve an outcome that, in the LSB's judgement, is appropriate, then the LSB will consider what further action it should take.

Deleted: The LSB does not consider that the Act requires it to seek an informal resolution before commencing a formal enforcement process.

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28. However, if the LSB decides that it is appropriate to take formal enforcement action it will always be open to the approved regulator to propose a way to achieve compliance or to present fresh evidence that could not reasonably have been made available earlier to demonstrate that a breach had not occurred. Making such a proposal does not fetter the LSB's discretion to continue with enforcement action but the approved regulator's actions are likely to be taken into account by the LSB in deciding whether, and if so what, further action is needed.

Agreed steps

29. *As part of the informal resolution process, the LSB may consider inviting the approved regulator to agree to take steps in order to resolve an issue informally. The approved regulator would be given the opportunity to comment on the proposed steps. The agreed steps would be proportionate to the circumstances and would have regard to the resources of the approved regulator as well as those of the LSB.*

Deleted: In taking account of the desirability of resolving informally matters which arise between the LSB, and an Approved Regulator or the Tribunal, the LSB will comply with the requirement to ensure that its actions are transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed. In undertaking

30. *Failure to take to the agreed steps could result in formal action being taken. The LSB is not prevented from taking further formal or informal action by negotiating such steps, should it be appropriate in the circumstances to do so.*

Publication

31. *When proceeding with the informal resolution route, the LSB anticipates that all communications will be made public except in exceptional circumstances. This will assist in ensuring that the LSB is accountable for its actions and that consumers and others understand the reasons for its approach in each particular case.*

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Timescale

32. The timescale for resolving matters informally in general will *be determined by the LSB on a case-by-case basis and notified to the approved regulator in a timely manner. The LSB will accordingly ensure that such timescales are fully transparent*, proportionate to the circumstances in question and, in particular, are sufficient so as to mitigate any detriment persons affected by the issue may suffer.

If informal resolution is unsuccessful?

33. If the first attempt at informal resolution does not achieve an outcome that, in the LSB's judgement, is appropriate, then the LSB will consider what further action it should take. *Default by the approved regulators of the informal resolution may result in formal action being taken. The approach adopted will depend on the circumstances of the individual case.*

Performance targets and monitoring (section 31 of the Act)

34. The LSB is likely to use performance targets and monitoring when an investigation by the LSB has identified the need for action to improve performance and raise standards. They are likely to be used when an *approved regulator* is failing or is likely to fail in a specific area with a clear impact (or likely impact) on the *regulatory objectives and where performance appears to be reasonably readily quantifiable and measurable.*

35. Any performance target will need to be transparent, *which means that its intention is clearly understood. The cost of its measurement and reporting should also be proportionate. The target* will need to be consistent with any other performance targets *the LSB has* imposed to the extent that the cases are comparable.

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36. The LSB will always consider the facts of the case as to whether it is appropriate to combine this form of enforcement with other enforcement powers, *for the purposes of achieving* a more effective route to compliance. *For example, a section 32 direction may be used to underpin and drive delivery of a performance target. The LSB may also decide to proceed* (if appropriate) to more severe forms of enforcement, such as intervention *following a* failure to deliver *a* performance target.

Directions (section 32 of the Act)

37. The LSB is likely to use directions when it wants to ensure that specific actions are carried out by an *approved regulator* in order to rectify an *identified* act or omission (including a failure to comply with the Act or with *the* law generally). *The LSB may also direct the Tribunal to modify its rules where it has failed to perform any of its functions to an adequate standard, or at all.* Directions may be combined with other enforcement tools and may precede other forms of enforcement action. For example, where an *approved regulator* does not deliver the requirements of the direction, it will be open to the LSB to pursue imposing a financial penalty where it is appropriate to do so.

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38. In seeking to direct an *approved regulator* to take a particular set of actions (or when seeking to direct the Tribunal to modify any rules it makes) the LSB will ensure that *it has* acted proportionately. *The LSB* will endeavour to ensure that any direction *it sets* is clearly understood by the *approved regulator* and achieves its aim. In setting a direction *the LSB* will have regard, where it is relevant to do so, to the experiences of setting directions during other enforcement action. *The LSB's* use of directions will be based on evidence of regulatory failure and *the LSB* will *publish its* reasons for *its* actions.

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Public censure (section 35 of the Act)

39. *Public censure* is likely to be used (either on its own *in combination* with other forms of enforcement) to draw *public* attention to the act or omission by the *approved regulator*.

40. The aim of the censure statement is to change the behaviour of the *approved regulator*. In general, organisations value their reputation and the *public* censure will identify failures of performance. The LSB believes that, *when* used appropriately, *public* censure can *be enough to* act as a catalyst for a change in behaviour that leads to improved performance of an *approved regulator*.

Deleted: <#>Section 179 of the Act amends sections 32 to 34 of the Act, which provides for the LSB to make directions addressed to the Tribunal in relation to rules it makes under section 46(9)(b) of the Solicitors Act 1974. If the LSB is satisfied that the Tribunal has failed to perform any of its functions⁷ to an adequate standard (or at all), it may make a direction requiring the Tribunal to modify any part of those rules. Where the LSB proposes to use its power to direct, it must send a copy of its warning notice to The Law Society who may make representations to the LSB. ¶
Censure (Section

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Censure

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Financial penalties (section 37 of the Act)

41. The Act allows the LSB to impose a financial penalty when an *approved regulator* fails to comply with internal governance rules, a direction by the LSB, the requirements under section 51 of the Act (control of practising fees charged by approved regulators) or by rules made under that section.

42. Financial penalties are likely to be used when, in the LSB's judgement, it is appropriate to impose one to seek to change the unreasonable behaviour of the *approved regulator* by penalising the specific act or omission that has been identified. A further aim is to deter future non-compliance by the *approved regulator* on which the penalty is imposed and other *approved 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.

43. The LSB may consider that it is appropriate to impose a financial penalty in combination with other enforcement powers.

Maximum financial penalty

44. The LSB considers that, to act as a credible deterrent, the maximum penalty must be *capable of having* a significant impact on the *approved regulator*. A high maximum level gives a regulator the flexibility to exercise its discretion and judgement in setting a penalty in a way that enables it to take into account the likely wide variation in the outcomes of investigations that it will encounter. Under the *Legal Services Act 2007 (Maximum Penalty for Approved Regulators) Rules 2009*, the maximum financial penalty which may be imposed on an approved regulator is an amount equal to 5 per cent of all income which the regulator derived from its regulatory functions in respect of its most recent accounting period.

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Deleted: <#>This Section does not differ materially in terms of the LSB's approach to using financial penalties. However, the level of the maximum has change significantly from the original proposal and this is explained in detail at paragraphs 4.32 of Section 4. This section does not apply to the Tribunal. ¶

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Deleted: <#>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. Even if this is not currently possible, it may be that, over time as new Approved Regulators are designated, the threat of those it regulates being able to switch to another Approved Regulator starts to influence Approved Regulator behaviour and its approach to compliance. It is likely, therefore, that the LSB will consider it reasonable in the circumstances that the members of an Approved Regulator may have to pay (at least in part) for their Approved Regulator's failure to comply. If there is more than one Approved Regulator for a reserved legal activity and the authorised person can therefore switch to another Approved Regulator, this approach may also provide an incentive to Approved Regulators to improve their compliance. As explained in paragraph 21.18 above, the LSB may consider that it is appropriate to impose a financial penalty at the same time as using its other enforcement powers. ¶

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45. It is not the objective of the LSB to impose penalties which have the effect of making it impossible for an *approved regulator* to fulfil its regulatory functions. *The LSB* would therefore regard any attempt by an *approved regulator* to pay a penalty in a way which had such an impact as, of itself, raising issues in relation to compliance with *LSB's* internal governance rules.

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46. If the LSB is investigating a number of breaches by an *approved regulator* as separate investigations (for example one investigation into a breach of directions concerning internal governance rules and a separate investigation into a breach of rules controlling practising fees), it may be appropriate for each investigation to impose a separate penalty, *and* in each case up to the maximum amount.

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Process for setting a penalty

47. The LSB will be guided by the principles of better regulation *and best regulatory practice* when it uses its reasonable discretion and judgement in setting the level of a financial penalty. However, the LSB does not consider that it is appropriate to set out in advance the exact mechanism by which it will decide on the appropriate level of a penalty. *This* is likely to vary on a case by case basis and *it is unlikely that* a prescriptive approach *can* be applied in all cases.

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48. The LSB will consider whether there are any aggravating factors when it sets the level of the penalty. Aggravating factors it may consider could include (but not be limited to):

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- the seriousness of the failure,
- the extent to which it was deliberate or reckless,
- the impact on consumers and whether the actions have resulted in an actual or potential loss to anyone (for example by preventing them from participating in certain types of business opportunities)
- the duration of the act or omission, and
- whether there was a lack of co-operation by the *approved regulator* with the LSB's investigation.

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49. The LSB will also consider whether any mitigating factors should reduce the level of penalty. These could include (but not be limited to):

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- whether the failure was accidental in nature or the result of a genuine misunderstanding,
- the presence of good controls or procedures,
- the extent of *any* impact on the *regulatory objectives*, the professional principles and consumers,
- co-operation by the *approved regulator* with the investigation,
- whether directions have been issued that require the *approved regulator* to spend money on a particular issue, and

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- whether there were any genuine proposals by the *approved regulator* to resolve the matter during the course of the investigation.

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50. Finally, the LSB will consider whether, in all the circumstances, the amount of the proposed penalty is reasonable, again guided by the principles of better regulation. In doing this, it will take into account the resources of the *approved regulator*. The LSB will also *ensure* that the proposed penalty does not exceed the maximum amount.

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Intervention *directions* (section 41 of the Act)

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51. The LSB regards the use of intervention directions (with the related powers to enter premises under warrant and *take possession of any* documents *under section 42(3) of the Act*) as an extreme measure. It will only be used in serious circumstances relating to the *approved regulator's* regulatory functions, where none of the other enforcement measures are adequate to address the matter.

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52. These circumstances are likely to be where there has been a serious and persistent act or omission by the *approved regulator* that has had or is likely to have an adverse impact on one or more of the regulatory *objectives*. It is also likely that the act or omission would *have* (or be likely to have) a demonstrable harmful impact on consumers and/or those regulated by the *approved regulator*.

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53. *Intervention directions may also be used if, for whatever reason, the approved regulator faces a risk to its organisational viability, which puts in jeopardy the continuing effective discharge of its regulatory functions. It may also be appropriate to use this power if an approved regulator became insolvent.*

54. The aim of using intervention directions would be, *where* necessary, to stop the *approved regulator* from behaving in the harmful manner *that* has been identified. *The LSB will use an intervention direction to enable it, or a person nominated by it, to take over one or more of the regulatory functions of the approved regulator and ensure that the approved regulator complies with any related instructions.*

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55. Before issuing an intervention direction the LSB will have carefully assessed that this is a proportionate response. It will have considered all the circumstances of the case and ensured it had the necessary evidence to demonstrate that issuing an intervention *direction* was a reasonable response. In issuing an intervention direction the LSB will have regard, where it is relevant to do so, to the experiences of using intervention directions during other enforcement action it has taken.

56. An intervention direction can be revoked by the LSB *(whether on the application of the approved regulator or otherwise)*. In considering whether to revoke the intervention direction the LSB will take into account all the relevant information and evidence that it has, including the views of those it must consult.

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57. *See Annex A for links to rules the LSB has made on:*

- intervention directions, *including rules relating to who may be appointed to enter premises under warrant and seize documents under s42(3) of the Act*
- revocation of an intervention direction, *and*
- making *oral and written* representations in relation to *both of the above*.

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58. *Under section 42(3) of the Act, the LSB or a person nominated by it may seek a warrant to enter the premises of an approved regulator and seize documents. However, in accordance with section 41(5) of the Act the warrant will not be issued unless the power of search and entry is deemed necessary or desirable to enable the LSB or a person nominated by it to exercise one or more of the approved regulator's regulatory functions.*

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Cancellation of designation as an *approved regulator (section 45 of the Act)* and as a *licensing authority by order (section 76 of the Act)*

59. An *approved regulator's* designation can be cancelled in relation to one or more of the reserved legal activities that it regulates. The cancellation can be effected either following a request by the *approved regulator*⁹, or as a result of enforcement action by the LSB.¹⁰

60. As with intervention directions, the LSB regards *any decision it takes to use its enforcement powers* to recommend cancellation of an *approved regulator's and/or a licensing authority's* designation as extremely serious. *These powers* will only be used in exceptional circumstances when the LSB is satisfied that none of its other enforcement powers would adequately address the issues. In using *its powers*, the LSB's aim would be to try to ensure as smooth a transition as possible to *a* new body taking over regulation of the former *approved regulator's and/or licensing authority's* members. The LSB would also try to ensure appropriate provision of information to the public in order to reassure consumers about those providing legal advice to them.

61. *See Annex A for rules the LSB has made on:*

- *the process of cancellation following a request by an approved regulator*
- *who may be appointed to enter premises under warrant and seize documents in the event of a cancellation of designation*
- *the making of written and oral representations where cancellation of designation is the result of enforcement action by the LSB.*

62. *Under section 48(3) of the Act the LSB may seek a warrant authorising a person appointed by the Board to enter and search premises and take possession of records (written and electronic) found on the premises. However, in accordance with section 48(5) of the Act the warrant will not be issued unless the power of search and entry is deemed necessary or desirable for the purpose of continuing regulation.*

63. *Similar to the processes for cancelling the designation of approved regulators, a licensing authority's designation can be cancelled in relation to one or more of the reserved legal activities that it regulates. The cancellation can also be effected either following a request by the licensing authority¹¹, or as a result of enforcement action by the LSB.¹²*

⁹ Section 45(3) of the Act

¹⁰ Section 45(5) of the Act

¹¹ Section 76(3) of the Act

¹² Section 76(5) of the Act

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64. Cancellation may also take place where designation of the body as an approved regulator is wholly or partially cancelled, and accordingly gives rise to an equivalent cancellation as a licensing authority.¹³ The converse of this is not true and the LSB recognises that there may be instances where it may recommend that a body's designation as a licensing authority is cancelled but not recommend that its designation as an approved regulator is cancelled.

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65. See Annex A for rules the LSB has made on:

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- the process of cancellation following a request by a licensing authority
- who may be appointed to enter premises under warrant and seize documents under section 79(3) of the Act.
- the making of written and oral representations where cancellation of designation is the result of enforcement action by the LSB.

66. Under section 79(3) of the Act the LSB may seek a warrant authorising a person appointed by the Board to enter and search premises and take possession of records (written and electronic) found on the premises. However, in accordance with section 79(5) of the Act the warrant will not be issued unless the power of search and entry is deemed necessary or desirable for the purpose of continuing regulation.

¹³ Section 75 of the Act

Annex A: LSB Enforcement and Cancellation Rules and Regulations

Enforcement

- **Legal Services Act 2007 (Maximum Penalty for Approved Regulators) Rules 2009 (2009 No 3249)**

These rules set out the method to be used in determining the maximum amount of the penalty which the LSB may impose under section 37(3) of the Act on an approved regulator.

- **Intervention directions: section 41(5) and 42(10) rules**

These rules apply if the Board wishes to nominate a person to exercise the regulatory function of an approved regulator in accordance with an intervention direction. These rules also provide for who may be appointed to enter and search the premises of an approved regulator as a result of an intervention direction.

- **Intervention directions: rules for applications to revoke**

These rules apply if an approved regulator wishes to apply to the LSB to revoke an intervention direction.

Cancellation of designation rules

- **Rules for applications to cancel designation as an approved regulator**

These rules apply if an approved regulator wishes to apply to have its designation as an approved regulator cancelled.

- **Cancellation of designation: rules on powers of entry**

These rules provide for who may be appointed to enter and search the premises of a former approved regulator or licensing authority if their designation is cancelled.

- **Rules for applications to cancel designation as a licensing authority**

These rules apply if a Licensing Authority wishes to apply to have its designation as a Licensing Authority cancelled.

Multi-procedural rules

- **Rules for making oral and written representations and giving oral and written evidence**

These rules apply if a person wishes to make oral or written representations to the LSB in relation to a number of the LSB's powers, and these include the exercise of

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Performance targets

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Financial penalties (Section 37)¶
Intervention directions (Section 41)¶
Cancellation

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directions, intervention directions and their revocation, and cancellation of designation of both approved regulators and licensing authorities.

Regulations

- ***The Legal Services Act 2007 (Warrant) (Approved Regulator) Regulations 2015***

These regulations apply in relation to the issuing of warrants under sections 42(3), and 48(3) of the Act to enter the premises of a former approved regulator and seize documents.

- ***The Legal Services Act 2007 (Warrant) (Licensing Authority) Regulations 2015***

These regulations apply in relation to the issuing of warrants under section 79(3) of the Act to enter the premises of a former licensing authority and seize documents.