

# Enforcement in legal services regulation

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A report on the findings of an end to end review of the Bar Standards Board and Solicitors Regulation Authority's enforcement functions and the Legal Services Board's new strategic priorities on enforcement

**March 2019**

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## Executive summary

1. Effective enforcement functions are vital to consumer and public confidence in regulated services. A key responsibility for regulatory bodies is the operation of their enforcement powers, how they deliver compliance with regulatory arrangements and how they address non-compliance. The LSB's regulatory performance framework sets out the outcomes we expect in relation to this.<sup>1</sup> We expect the legal services regulatory bodies to have:
  - a. accessible and clear enforcement processes which are - consistent, independent, risk and evidence based; and focused on consumer protection, maintaining professional principles and protecting the public interest
  - b. procedures in place to review and prioritise complaints and cases to ensure that processes are both efficient and timely
  - c. enforcement decision making procedures which are transparent and ensure that all of the parties involved, as well as any others affected by the case, are kept up to date on progress and the outcome of investigations.
2. This report sets out the findings from an end to end review of the Bar Standards Board (BSB) and the Solicitors Regulation Authority's (SRA) enforcement functions, which was carried out during 2018. We are grateful to the enforcement teams in both organisations for the assistance they have provided in this review.
3. This review has provided assurance that the BSB and the SRA are meeting all six outcomes that are required under the enforcement standard within our regulatory performance framework. In addition, we have been advised of a number of actions and improvements that they are progressing and we will monitor the implementation and impact of these through our regulatory performance work.
4. The end to end review of the BSB and the SRA fed into our wider transitional assessments of all regulatory bodies against all five regulatory performance standards, the results of which were published in January.<sup>2</sup> We also found the other six regulatory bodies we assessed to have largely met the required minimum level of performance against our enforcement standard and to have enforcement processes which are generally accessible and clear.<sup>3</sup> We

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<sup>1</sup> See the LSB's Regulatory performance framework

[https://www.legalservicesboard.org.uk/Projects/developing\\_regulatory\\_standards/Regulatory\\_Standards\\_Acti\\_on\\_Plans\\_2015\\_16.htm](https://www.legalservicesboard.org.uk/Projects/developing_regulatory_standards/Regulatory_Standards_Acti_on_Plans_2015_16.htm)

<sup>2</sup> See the LSB's Regulatory performance: Transitional assessment review

[https://www.legalservicesboard.org.uk/Projects/developing\\_regulatory\\_standards/pdf/2019/FW\\_Web\\_upda\\_te\\_for\\_12pm\\_on\\_Thursday/Regulatory\\_Performance\\_Review\\_report\\_FINAL\\_\(1\).PDF](https://www.legalservicesboard.org.uk/Projects/developing_regulatory_standards/pdf/2019/FW_Web_upda_te_for_12pm_on_Thursday/Regulatory_Performance_Review_report_FINAL_(1).PDF)

<sup>3</sup> The Association of Chartered Certified Accountants (ACCA) was not included as it has only recently begun regulating legal services. We will undertake an assessment of ACCA against all of our regulatory performance standards in 2019. Following that, the ACCA will be fully included in future performance framework assessments.

identified a small number of outcomes that we assessed as unmet and we set actions for the relevant regulators in order fully meet the outcomes. Through our regulatory performance work we will continue to hold the regulatory bodies to account for their performance against our enforcement standard.

5. Completion of the end to end review and the regulatory performance transitional assessments, has provided an opportunity to assess the ongoing relevance of the enforcement policy positions set out in the LSB's March 2014 document on regulatory sanctions and appeals in the legal sector.<sup>4</sup> These policy positions covered the following four areas: transparency; the consistent use of the civil standard of proof; fair and effective appeal arrangements; and consistency of powers and sanctions.
6. As a result of positive progress made in relation to these four areas coupled with the introduction of our new regulatory performance framework, we have decided to conclude our actions at this time on the policy positions set out in our 2014 report. In their place, we have identified three new areas of strategic focus on enforcement. These are: timeliness of enforcement processes; effective and consistent use of interim sanctions; and assurance of the quality of enforcement decisions by regulatory bodies. We expect these to inform and guide our regulatory performance work on the enforcement standard, over the next three years.
7. Finally, during 2019/20 we plan to engage with more regulatory bodies outside of the legal sector to identify any developments in regulatory enforcement that we can learn from or adopt.

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<sup>4</sup> See the LSB report on regulatory sanctions and appeals processes in the legal sector - March 2014 [https://www.legalservicesboard.org.uk/projects/thematic\\_review/pdf/20140306\\_LSB\\_Assessment\\_Of\\_Current\\_Arrangements\\_For\\_Sanctions\\_And\\_Appeals.pdf](https://www.legalservicesboard.org.uk/projects/thematic_review/pdf/20140306_LSB_Assessment_Of_Current_Arrangements_For_Sanctions_And_Appeals.pdf)

## End to end review

### Introduction

8. In March 2014 the LSB published the document 'Regulatory sanctions and appeals processes: An assessment of current arrangements'.<sup>5</sup> This identified LSB policy positions across four areas: transparency; the consistent use of the civil standard of proof; fair and effective appeal arrangements; and consistency of powers and sanctions.
9. Since then, we have assessed the regulatory bodies' performance on enforcement through our regulatory standards work and more recently our regulatory performance framework. This has included encouraging regulatory bodies to follow the features of best practice identified in our 2014 document. Information on our previous assessments of the regulatory bodies' performance are available on our website.<sup>6</sup>
10. In our previous work we noted that timeliness and transparency of enforcement were two areas where there was scope for improvement by the regulatory bodies. We also identified some issues with the quality of decision making, and the consistency of sanctioning powers and appeals processes. In our 2017/18 Business Plan we included a commitment to complete a review of the larger regulators which would look at their end to end processes (from initial complaint to imposition of sanction). We decided to focus on the BSB and the SRA, who carry out the majority of enforcement activity in the sector.
11. In the end to end review completed during 2018, we sought to increase our understanding of how the enforcement functions of the regulatory bodies operate. We looked at the BSB and the SRA's:
  - Enforcement processes and decision-making procedures
  - Approaches to monitoring the quality, efficiency and consistency of their enforcement work
  - Developments they are making, or intend to make, to the operation of their enforcement functions.
12. While we focused on the BSB and the SRA, we also obtained information on the enforcement processes for the other regulatory bodies and process charts for all of the regulatory bodies' enforcement procedures are now available on our website.<sup>7</sup>
13. The end to end review of the BSB and SRA informed our wider transitional assessments of all regulatory bodies against all five regulatory performance standards, the results of which were published in January 2019. Information on the transitional assessment review is available on our website and the

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<sup>5</sup> ibid

<sup>6</sup> See the LSB's regulatory performance reports page

[https://www.legalservicesboard.org.uk/Projects/developing\\_regulatory\\_standards/index.htm](https://www.legalservicesboard.org.uk/Projects/developing_regulatory_standards/index.htm)

<sup>7</sup> See the legal services regulatory bodies' enforcement processes charts

[https://www.legalservicesboard.org.uk/Projects/Enforcement\\_Review.htm](https://www.legalservicesboard.org.uk/Projects/Enforcement_Review.htm)

regulatory performance standards and required outcomes are included in Annex C.<sup>8</sup>

## Methodology

### *Stage one*

14. The initial stage of the end to end review involved desk research to establish progress made from previous LSB reviews. We looked at information that was currently available on enforcement processes, outcomes and performance across the regulatory bodies and their tribunals. We also looked at best practice across other regulated sectors, such as financial services, health and social care.

### *Stage two*

15. Meetings were held with the BSB and the SRA's enforcement teams where we discussed their processes, organisational structures, governance and resources. This part of the review provided an opportunity to take a more in-depth look at their approach and processes, as well as their performance against our enforcement standard. The specific areas we focused on were:
  - Terminology
  - Process
  - Decision making
  - Monitoring
  - Performance data
  - Implementation of reported actions or changes to processes
16. Key documentation, such as process and decision making guidance, was provided by the BSB and the SRA and where this had not been analysed during our desk research this was reviewed. Information on the resourcing, training and operational systems in place, as well as organisational structures and governance was also provided and reviewed.
17. Any developments that the BSB and the SRA were making, or intended to make, to the operation of their enforcement functions were considered.
18. For the BSB this covered its:
  - Move to the civil standard of proof
  - Modernising Decision Making programme and its plans to introduce a centralised assessment team and Independent Decision-Making Body (IDB) to replace its Professional Conduct Committee (PCC).
19. For the SRA this covered its:
  - Implementation of a digital register

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<sup>8</sup> See the report on the LSB's Regulatory performance: Transitional assessment review [https://www.legalservicesboard.org.uk/Projects/developing\\_regulatory\\_standards/pdf/2019/FW\\_Web\\_update\\_for\\_12pm\\_on\\_Thursday/Regulatory\\_Performance\\_Review\\_report\\_FINAL\\_\(1\).PDF](https://www.legalservicesboard.org.uk/Projects/developing_regulatory_standards/pdf/2019/FW_Web_update_for_12pm_on_Thursday/Regulatory_Performance_Review_report_FINAL_(1).PDF)

- Implementation of enforcement proposals related to its Looking to the Future programme.
- Work to address inconsistencies in its internal fining powers for ABS and non-ABS.

### *Stage three*

20. In this part of the review we obtained data from the BSB and the SRA on the number of enforcement cases in the last four years, their progress through the BSB and the SRA's enforcement processes, and the action taken in relation to them. This data was analysed to identify any trends or areas of concern.

### *Stage four*

21. To complete the end to end review and understand their role in the BSB and the SRA processes, we met with the Bar Tribunal and Adjudication Service (BTAS) and the Solicitors Disciplinary Tribunal (SDT).
22. In this part of the review we looked at the BTAS and the SDT's governance arrangements, performance management systems, processes and procedures. We also considered any planned developments they had made or intended to implement. Key documentation from these bodies was again reviewed, along with data obtained from them on case progression and outcomes.
23. We also discussed with the BSB and the SRA and their respective tribunals, any challenges or concerns either body had with the operation of their enforcement processes and the movement of cases between the regulatory body and the tribunal.

### **Key findings**

24. We have concluded that both the BSB and the SRA have met the standard of performance required in relation to all six required outcomes under our regulatory performance enforcement standard. In addition to gaining assurance on performance, the review has greatly improved our understanding of the volumes, timeliness and planned developments in the BSB and the SRA's enforcement work.
25. An overview of our findings in the main areas that we focussed on through the end to end review is set out below.

## Bar Standards Board

### *Enforcement processes and decision-making procedures*

26. The BSB enforcement regulations are set out in part five of the BSB handbook. The enforcement process is mapped out in the chart at Annex A.
27. The BSB uses a risk assessment to determine what level of action is appropriate in response to information it has received. This assessment informs the investigation of the information and helps determine the level of regulatory response applied once the information has been fully considered.
28. Guidance for Executive and PCC members on procedures to follow during the assessment and investigation process is published on the BSB website, supporting the transparency of processes and decisions. A delegation framework with formal sign-off and decision review processes allows decisions to be made at the lowest appropriate level and increases the efficiency of decision making.
29. Where a complaint has been referred to a disciplinary tribunal, the BSB can refer the matter to an independent panel which can order that the person facing the complaint is not allowed to provide legal services until the disciplinary tribunal has taken place. This is known as an "interim suspension". The BSB will make such a referral if it is in the public interest. The panel can also put conditions on the person's practice instead of ordering an interim suspension. Alternatively, the person facing the complaint can voluntarily provide a written undertaking which has the same severity and effect.
30. Regular communication is undertaken with all parties, for example, the complainant, those under investigation and if appropriate other bodies. Disciplinary findings are published, including information provided on the BSB's barristers' register and appropriate disclosure of disciplinary information is also provided on request. Memorandums of understanding and data sharing protocols with the other legal services regulators and other appropriate bodies are in place.

### *Approaches to monitoring the quality, efficiency and consistency of their enforcement work*

31. Monthly statistics are compiled at individual case level for managerial review and exception reports are considered by the Governance, Risk and Audit Committee. A lessons learned log is maintained and reviewed on a monthly basis by managers. Quarterly performance reports against KPIs/OPIs are reviewed by the Performance, Resources and Planning Committee and an Annual Enforcement Report is considered by the Board and published. A Quality Assurance Sub-Committee also reviews a proportion of decisions delegated to the executive.



32. Information providers have the right to request a review if they disagree with a decision to close a case. Based on reporting information, 'deep dive' reviews are conducted as required by the Governance, Risk and Audit or Planning, Resources and Performance Committees. An external audit is underway across all areas of the BSB's work. The audit of the enforcement function is expected to be completed in 2020/21 following introduction of planned enforcement changes in 2019.

*Developments they are making, or intend to make, to the operation of their enforcement functions*

*(i) Move to the civil standard of proof*

33. On 10 October 2018 the LSB approved the BSB's application to amend the standard of proof applied in all disciplinary proceedings for professional misconduct.<sup>9</sup> To allow time for the Bar to adjust and for relevant training to take place, the change to the civil standard of proof will come into force in April 2019.

*(ii) Modernising Decision Making programme and plans to begin implementation in October 2019 of:*

- *Centralised assessment team*
34. This project started in 2014/15. Its aim is to create a single central team responsible for the assessment of all incoming information to the BSB, including reports of potential misconduct. The BSB expects that this will support more consistent handling and risk assessment of complaints.
- *Independent Decision-Making Body (IDB)*
35. To update the existing governance structure, the BSB will introduce an IDB to replace the current PCC. The case examiner model adopted by other regulators (predominately in healthcare) had been looked at but the BSB considered the IDB more appropriate for its purposes.
36. Over the past few years the PCC has reduced in its number of members with the executive increasingly doing the majority of the work through delegation arrangements. The proposed IDB, which will be a centralised decision making body across all BSB directorates, offers the ability to take multiple actions from a single centralised point. As a result the BSB expects information will be more efficiently transferred to, and used by, supervision, enforcement and authorisation teams.

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<sup>9</sup> See the LSB decision notice on the BSB standard of proof application [https://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/2018/Final\\_Decision\\_Notice\\_0709.pdf](https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2018/Final_Decision_Notice_0709.pdf)

## Solicitors Regulation Authority

### *Enforcement processes and decision-making procedures*

37. The current SRA enforcement process is set out in the disciplinary procedure rules section of the SRA handbook. Their enforcement process is mapped out in the chart at Annex B.
38. A risk matrix is used to assess information and prioritise cases, with high risk or high profile cases handled by a specialist enhanced case management team. Such cases are then subject to greater monitoring.
39. Decision making on complaints is delegated to the executive through a formal scheme of delegation. This sets out sign-off procedures which escalate as the level of decision increases. Formal induction and training programmes for decision-makers are provided.
40. Supporting transparency of its enforcement approach the SRA publishes: guidance documentation on its expectations in areas such as money laundering and cybercrime; information on its investigation and decision making procedures; and topic guides which summarise the main mitigating and aggravating factors taken into account when considering cases.
41. Close relationships are maintained with approximately 100 major law firms and all law firms have access to an SRA helpline where they can obtain advice on compliance with legal services delivery requirements.
42. A 'case' or 'file' covers the whole complaint and is not broken down into individual complaints/breaches. It could therefore concern more than one solicitor/firm, with all complaints/breaches dealt with together. Enforcement team members may work on cases concerning individuals, or firms, or both.
43. Enforcement decisions are published and there are deadlines at each stage of the process which set out when information will be shared with interested parties. Memorandums of understanding and data sharing protocols with the other legal services regulators also exist and regular communication is maintained with government agencies such as the Legal Aid Agency and HM Courts and Tribunals Service. The SRA also has enforcement links with bodies such as the Council of Mortgage Lenders, Insurance Fraud Task Force, Home Office and National Crime Agency.

### *Approaches to monitoring the quality, efficiency and consistency of their enforcement work*

44. Specific KPIs are compiled on case management (timing of case handling, etc.) and there is ongoing monitoring of performance against these indicators. A monthly review of all cases is carried out and regular case conferences are

held where case progress and decision making is discussed. Separate case management and case direction reviews are also undertaken with feedback provided to enforcement teams through regular 1-2-1s and team meetings.

45. High risk or high profile cases are subject to a separate management tracker which is accessible by anyone at a senior level across the SRA. These cases are also subject to enhanced case management which includes allocation of a specific legal advisor who provides overall oversight on the case. All SDT cases are also subject to a final additional review by a senior legal advisor before being sent to the SDT.
46. Bi-monthly reviews of decisions and outcomes are carried out and used to identify common issues or recurring themes. The SRA uses this information to identify any learnings from cases taken to the SDT which it can implement. A regular programme of thematic reviews is also undertaken which look at particular areas of work, for example, immigration, criminal advocacy, professional indemnity, etc. Regular case reviews are conducted on files and this includes a review of decision making, as well as a legal review of the case. Information on the SRA's enforcement activity is also published in its Annual Report.

*Developments they are making, or intend to make, to the operation of their enforcement functions*

*(i) Looking to the Future work programme*

*o Implementation of a digital register*

47. As part of its *Looking to the Future programme*, by the end of 2019 the SRA intends to launch a digital register to provide consumers with more information on who it regulates. This will include information on the areas of law offered by individuals on the register and any enforcement decisions that have been made against them.

*o Implementation of enforcement proposals*

48. The enforcement proposals in this programme cover the SRA's new Enforcement Strategy, Regulatory and Disciplinary Procedure Rules, Sanctions and Controls table, and updated guidance on approach to financial penalties. Guidance is also provided on the main mitigating and aggravating factors the SRA takes account of in common areas, such as, drink driving, criminal convictions, and compliance with SRA transparency rules. Through this suite of new documents the SRA intends to provide greater clarity on the factors that influence whether it will act in a given case, as well as how it assesses the seriousness of misconduct.

49. The SRA published its new enforcement strategy on 7 February 2019. Ahead of the changes coming in, an extensive programme of staff training has been undertaken.

*(ii) Work to address inconsistencies in its internal fining powers for ABS and non-ABS*

50. The SRA's internal fining powers remain inconsistent between non-ABS and ABS. Currently solicitors or non-ABS can be fined £2000, compared to £50m for an individual in an ABS or £250m for an ABS. The SRA is committed to resolving this and in 2014 consulted on increasing its internal fining powers.<sup>10</sup>

51. Statutory orders are needed to change the SRA's internal fining powers and we expect discussions about this to continue between the SRA and the Ministry of Justice.

Enforcement case data

52. The case data analysed as part of the review has not indicated any concerns, together with the performance management datasets that the BSB and the SRA now regularly provide to the LSB, it will be used to monitor any trends.

53. Our analysis of the BSB case data provided sufficient assurance of the level of oversight of long running cases and that these cases are closed or progressed when possible. Sufficient assurance was also obtained that the BSB had acted appropriately on any outliers and cases with delays in progressing that we identified. Timeliness in handling complaints has generally improved with the average time to conclude cases reducing by 60% between 2014-15 and 2016-17.

54. Assurance was provided by the SRA on the progress it has made on timeliness. In the last four years case completion has reduced from an average of 120 to 80 days, and an initial assessment now takes an average of five days as opposed to 14 days four years ago. Confirmation of the actions in place to ensure timely case progression between the SRA and the SDT was also obtained.

55. As noted, we will continue to monitor trends or changes in the timeliness of enforcement case progression through receipt of the bi-annual performance management datasets the BSB and the SRA provide.

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<sup>10</sup> See the SRA consultation on increasing its financial penalty powers for non-ABS firms

<https://www.sra.org.uk/sra/consultations/internal-fining-powers.page>

The LSB's response supporting an increase to a commensurate level is available here

[http://www.legalservicesboard.org.uk/what\\_we\\_do/responses\\_to\\_consultations/pdf/20140206\\_LSB\\_Response\\_To\\_SRA\\_Consultation\\_On\\_Financial\\_Penalty\\_For\\_Non\\_ABS.pdf](http://www.legalservicesboard.org.uk/what_we_do/responses_to_consultations/pdf/20140206_LSB_Response_To_SRA_Consultation_On_Financial_Penalty_For_Non_ABS.pdf)

## Areas of future monitoring

56. As set out above, through this end to end review we have achieved sufficient assurance to enable us to assess both the BSB and the SRA as currently meeting the six required outcomes under the Enforcement standard of our regulatory performance framework.
57. Both the BSB and the SRA have demonstrated a commitment to improving their practices through recently implemented and planned developments. We have been encouraged by this and expect them to ensure that there is a continuous improvement in their enforcement functions as a result. Through our ongoing regulatory performance and relationship management work with the BSB and the SRA, we will monitor their progress in implementing and assessing the impact of their planned improvement work.
58. Below are the main areas we expect to monitor over the next 12 months. These reflect either planned developments or our ongoing monitoring of enforcement activity.

<b>BSB</b>
Implementation of the change to the civil standard of proof (April 2019).  In particular, we will seek assurance on: <ul style="list-style-type: none"><li>○ Implementation preparation, such as training, guidance and communications</li><li>○ Plans for post-implementation review</li></ul>
Implementation of a centralised assessment team and independent decision-making body (expected October 2019).  In particular, we will seek assurance on: <ul style="list-style-type: none"><li>○ Implementation preparation, such as training, guidance and communications</li><li>○ Plans for post-implementation review</li></ul>
Use of interim sanctions to ensure protection of consumers and others should immediate suspension be needed.  As the enforcement changes are implemented, we will seek an update on the BSB's approach of accepting, where appropriate, voluntary written undertakings from barristers not to practise pending the outcome of disciplinary proceedings; and data on immediate suspension use.
Timeliness of case progression to the BTAS.  We will continue to monitor trends or changes in timeliness through bi-annual performance management datasets provided by the BSB.

## SRA

Implementation of new enforcement strategy.

In particular, we will seek assurance on:

- Implementation preparation, such as training, guidance and communications
- Plans for post-implementation review.

The launch of its digital register.

In particular, we will seek assurance on progress on the overall project, including the inclusion of disciplinary information on the register.

Ongoing work being undertaken to address inconsistencies in internal fining powers for ABS and non-ABS.

In particular, we will seek ongoing assurance that the SRA is seeking to progress this with the Ministry of Justice.

Timeliness of case progression to the SDT.

We will continue to monitor trends or changes in timeliness through bi-annual performance management datasets provided by the SRA.

## LSB strategic priorities on enforcement

### Introduction

59. It is over four years since we published our document 'Regulatory sanctions and appeals processes: An assessment of the current arrangements'.<sup>11</sup> The document identified four features of regulatory enforcement best practice and the main issues that required further work within each of these. The four areas were: transparency; the consistent use of the civil standard of proof; fair and effective appeal arrangements; and consistency of powers and sanctions.
60. Our end to end and transitional assessment reviews provided an opportunity to consider the ongoing relevance of these policy positions. We have decided to conclude our actions at this time on these policy positions. This is for three primary reasons:
- a. Positive developments have been identified in relation to a number of the features highlighted
  - b. The introduction of our revised regulatory performance framework has changed how we will hold regulators to account in relation to these features
  - c. The end to end and transitional assessment reviews have highlighted where more specific direction on our expectations may be needed.
61. As a result we consider that the standalone policy positions in the 2014 report are no longer needed in their own right. In their place, we have identified three new areas of strategic focus in our oversight of regulatory bodies' enforcement work. We expect these to inform and guide our regulatory performance work on the enforcement standard, over the next three years.
62. The remainder of this section explains in more detail why we are moving on from the 2014 policy positions before going on to explain the three new areas of strategic focus.

### 2014 policy positions

<b>Feature of regulatory enforcement best practice</b>	<i>Transparency</i>
<b>Main issue</b>	<i>Improved clarity and transparency of sanctions and appeal arrangements and of the decisions taken.</i>

63. Transparency has been incorporated into the regulatory performance framework we published in December 2017 and we will monitor progress through the following required outcomes: E1, E3, E5, E6 and A5. The

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<sup>11</sup> See the LSB report on regulatory sanctions and appeals processes in the legal sector - March 2014 [https://www.legalservicesboard.org.uk/projects/thematic\\_review/pdf/20140306\\_LSB\\_Assessment\\_Of\\_Current\\_Arrangements\\_For\\_Sanctions\\_And\\_Appeals.pdf](https://www.legalservicesboard.org.uk/projects/thematic_review/pdf/20140306_LSB_Assessment_Of_Current_Arrangements_For_Sanctions_And_Appeals.pdf)

regulatory performance standards and required outcomes are included at Annex B.

64. Our transitional assessment review confirmed there has been an improvement in the clarity and transparency of the regulatory bodies' enforcement work since 2014. While all of the regulatory bodies have been assessed as meeting the minimum standard of performance required in relation to outcomes E1 and E5, actions have been identified for two regulators in order for outcomes E3 and E6 to be fully met. A number of regulatory bodies also have actions to complete in relation to the provision of disciplinary information on their registers (outcome A5). We will monitor progress on these actions through our ongoing regulatory performance work.

<b>Feature of regulatory enforcement best practice</b>	<i>The consistent use of the civil standard of proof</i>
<b>Main issue</b>	<i>The SDT and BSB / BTAS to change from criminal to civil standard of proof for all cases.</i>

65. The LSB remains committed to the consistent use of the civil standard of proof. However, the position has moved on significantly since 2014 and a blanket policy position is no longer required.
66. As set out in this report, the BSB will introduce the civil standard for all cases in April 2019. This follows the Master of Faculties adopting the civil standard in 2017 and means that all of the regulatory bodies now use the civil standard. Additionally, in 2018 the SDT consulted on changing its rules to allow the civil standard to be applied. This would bring it in line with the SRA which applies the civil standard to disciplinary and regulatory findings made internally. The SDT's response to its consultation is expected by Easter 2019.

<b>Feature of regulatory enforcement best practice</b>	<i>Fair and effective appeal arrangements</i>
<b>Main issue</b>	<i>All appeals from regulatory decisions (whether taken by regulators or tribunals) to be heard by the First Tier Tribunal – to ensure consistency of sanctions in an increasingly diverse, multi-disciplinary market.</i>

67. While there has been some progress, particularly in relation to licensing authority appeal arrangements, our preference for consistent use of the First Tier Tribunal (FTT) has not been uniformly adopted.
68. In our transitional assessment review we assessed whether the regulatory bodies are meeting outcome E4 under the enforcement standard. This outcome



requires that the appeals process is timely taking into account the complexity and type of case, and the conduct of both sides. We obtained sufficient assurance to assess that all of the regulatory bodies have met the minimum standard of performance required against this outcome.

69. It remains our preference that the FTT is used. However, we believe that rather than maintaining this as a standalone policy position, a more proportionate approach is to focus in our regulatory performance work on regulatory bodies' meeting outcome E4 under the enforcement standard.

<b>Feature of regulatory enforcement best practice</b>	<i>Consistency of powers and sanctions</i>
<b>Main issue</b>	<i>Financial penalty powers for non-ABS firms to be increased to the level of those for ABS</i>

70. In our March 2014 report, we confirmed that the broad sanction options are the same across the regulatory bodies. In our recent transitional assessment review we again found the regulatory bodies to have consistent powers and sanctions. This will continue to be monitored through our regulatory performance work.
71. However, the issue with financial penalty powers for non-ABS firms remains relevant. Although positive progress has been made, the need for Statutory Orders to change the SRA's fining powers for non-ABS firms has so far prevented the SRA from addressing the inconsistency in its fining powers. As this is only an issue for the SRA and it is committed to resolving it, we will close this down as a standalone policy position. Through our regulatory performance work we will continue to monitor the situation and the SRA's focus on resolving it.

### **Future strategic priorities on enforcement**

72. Through this process we have identified three areas of focus for our oversight of regulatory bodies' enforcement approaches. These will guide our regulatory performance work over the next three years. In practice, throughout the rest of 2019 we will focus on implementation of the actions published in our transitional assessments. Therefore the areas outlined below are likely to become a more significant driver of our work from 2020.

*(i) Timeliness of enforcement processes, including transparency of timeliness information*

73. The timely and efficient application of enforcement processes is essential to ensuring their effectiveness in dealing with misconduct promptly and in maintaining confidence in regulated services. Our regulatory performance framework includes a specific outcome on timeliness (outcome E4) and in our end to end review and transitional reviews we identified work carried out by a number of regulatory bodies to improve the timeliness of their enforcement processes.

74. Additionally, in the action plans published following our transitional assessment review, we required those regulatory bodies that do not publish performance information to do so. We will continue to ensure that the regulatory bodies publish performance information on their enforcement functions to provide visibility and accountability.
75. We will continue to monitor progress on timeliness by reviewing the performance management datasets each regulatory body is required to provide at least annually. As the available data and evidence improves and develops, we will identify and respond to trends and significant discrepancies between regulators.

*(ii) Effective and consistent use of interim sanctions*

76. Our regulatory performance framework includes a specific required outcome on interim sanctions (outcome E2). In our end to end and transitional assessment reviews, we identified an inconsistency of approach between the regulatory bodies in their use of interim sanctions. For example, we are aware of two regulators who do not have the power to make interim sanctions and are undertaking work to ensure that, in the absence of interim orders powers, their disciplinary procedures provide protection of consumers should immediate suspension be needed.
77. Over the coming years we will monitor the data on the use of interim sanctions that we gather through the regulatory bodies' performance management datasets. We will also consider whether we need to look in more detail at the use of interim sanctions and if anything more is needed to ensure their consistent and appropriate use to protect consumers.

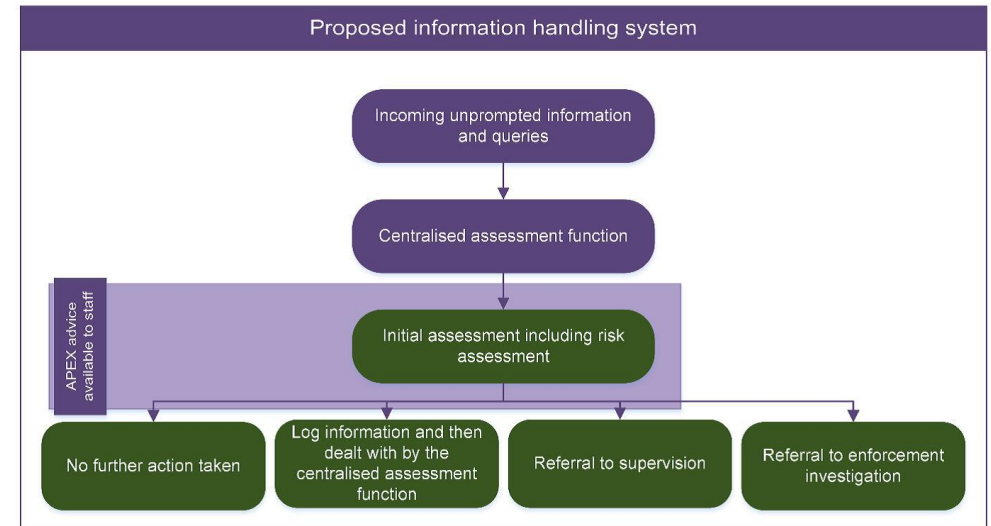
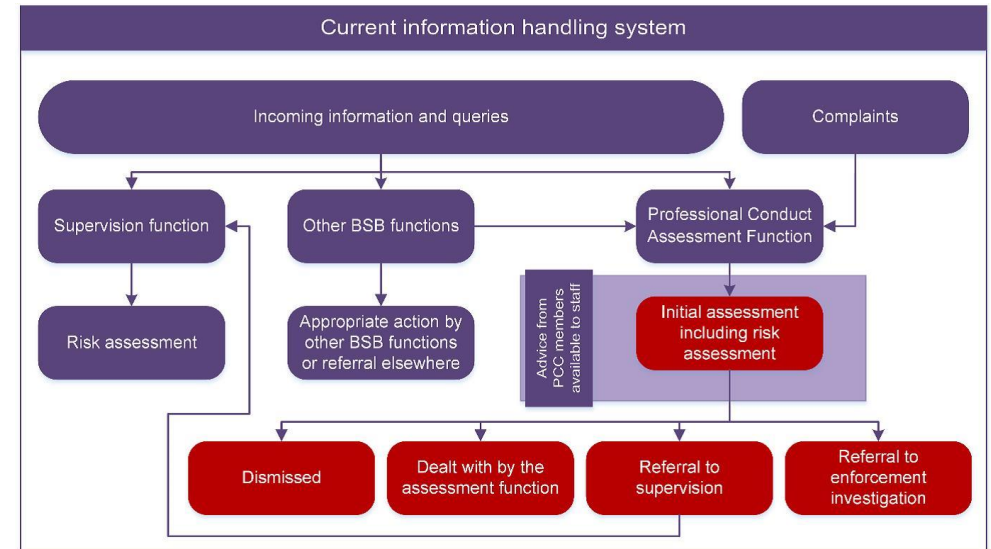
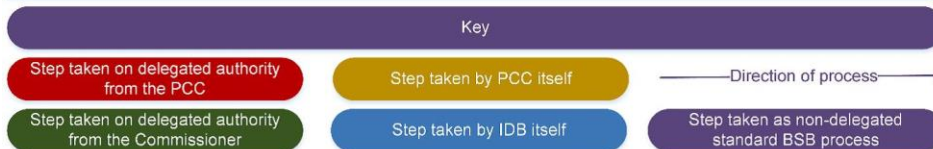
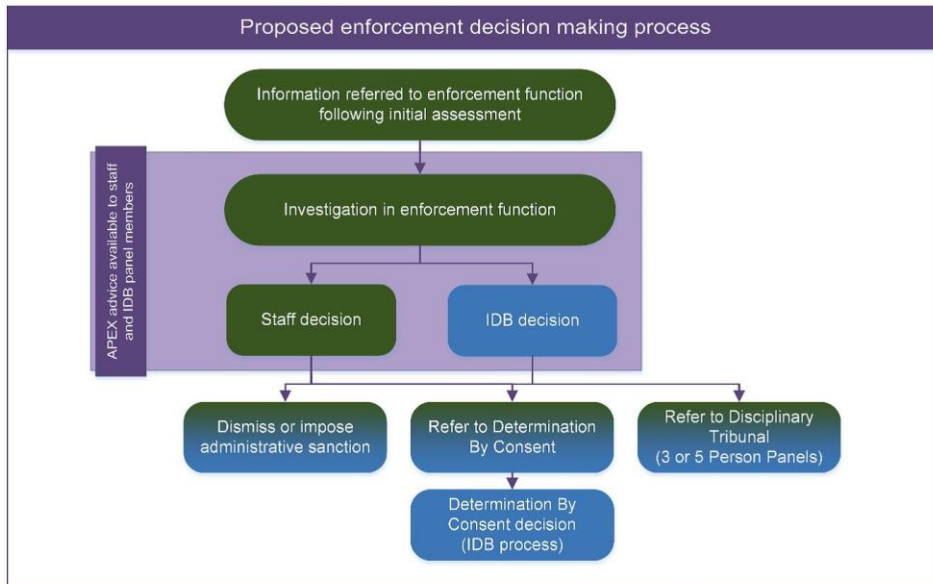
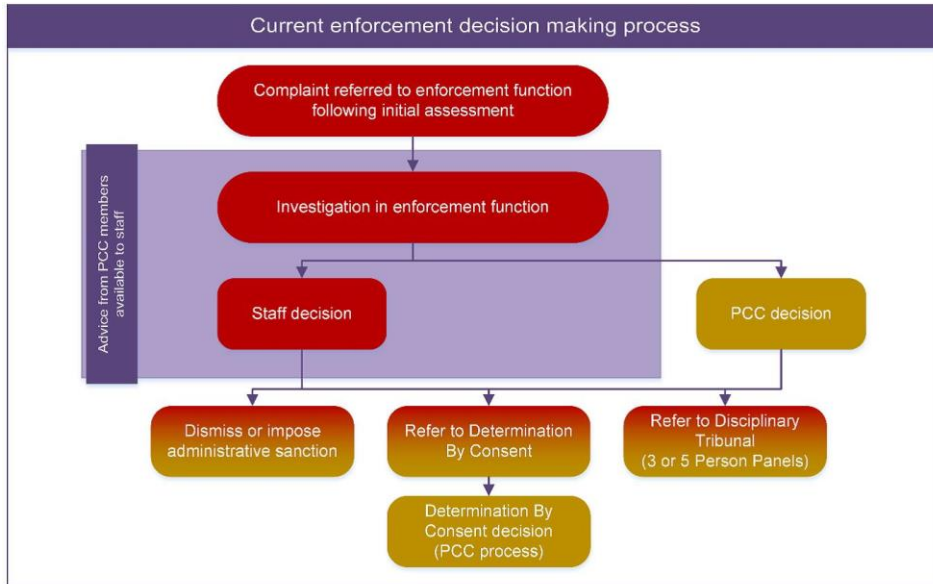
*(iii) Assurance of the quality of enforcement decisions by regulatory bodies*

78. We expect regulatory bodies to have appropriate mechanisms in place to ensure of the quality of their enforcement decisions. This expectation is expressed in a number of the required outcomes under the enforcement standard and specifically outcome E3.
79. In the end to end and transitional assessment reviews, we obtained sufficient assurance on the regulatory bodies' work and their quality assurance procedures. Through our regulatory performance work we will continue to hold all regulatory bodies' to account in relation to the quality of their enforcement processes, including considering whether to look into this area in further detail for the regulators that were not included in the end to end review.
80. Over the next year we will also consider good practice in other professional services sectors. In the health and social care sector, for example, the Professional Standards Authority (PSA) reviews decisions made by the fitness to practise committees of the regulatory bodies it oversees.

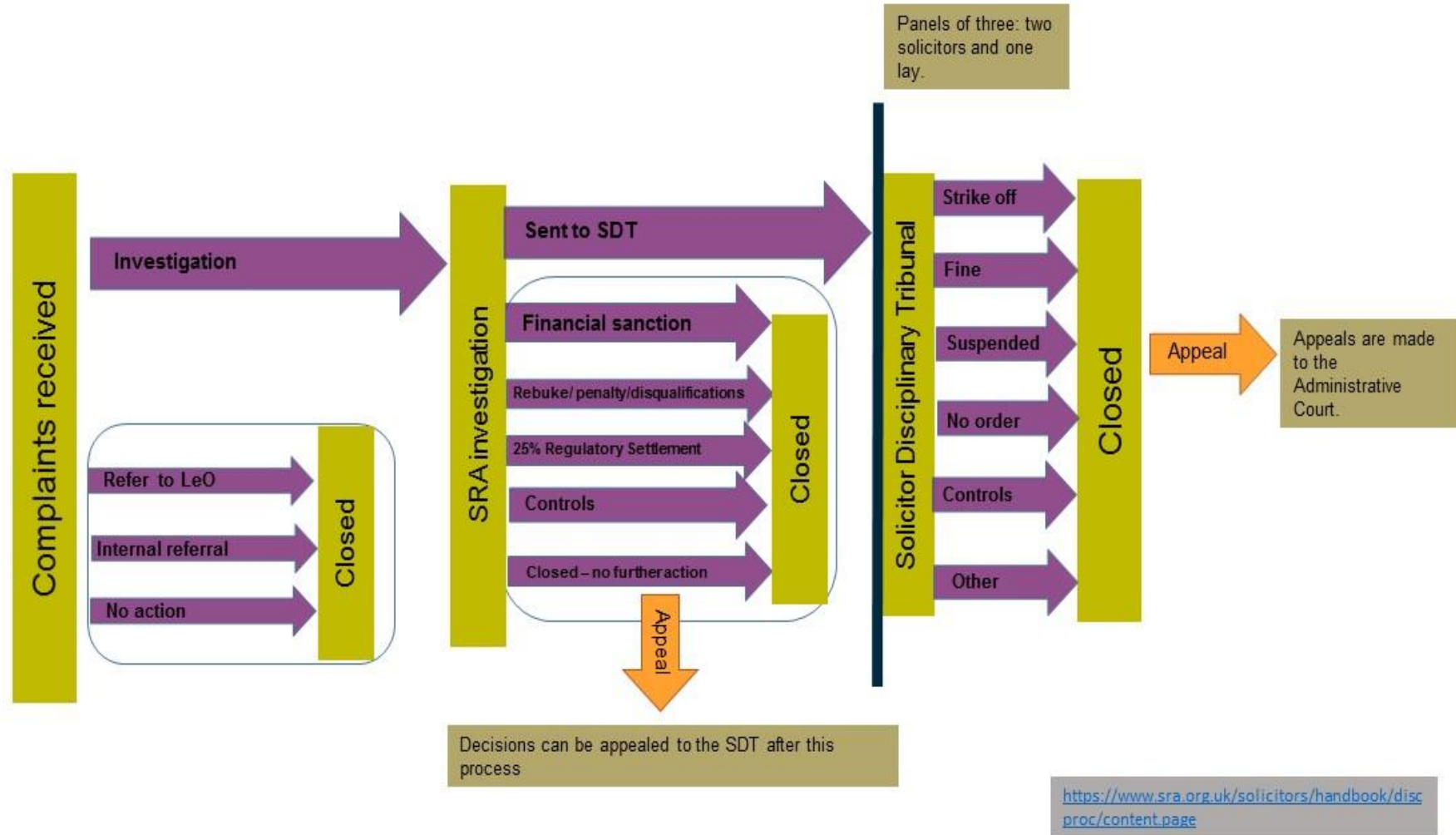
## Next steps

81. We will use our regulatory performance programme to monitor the BSB and the SRA's work in the areas identified on pages 13 and 14. We will also continue to monitor the performance of all of the regulatory bodies against the required outcomes under our enforcement standard. This will include a particular focus on the three areas of strategic focus outlined above. Whilst at this time we do not plan to undertake any thematic reviews on enforcement practice, should future regulatory performance assessments indicate a potential need for such action this will be considered.
82. Over the next year we will engage with regulatory bodies outside of the legal sector, for example the medical and financial services sector, to identify any developments in regulatory enforcement that we can learn from and where appropriate adopt. This will specifically include any work in other sectors on the timeliness of enforcement processes; effective and consistent use of interim sanctions; and assurance of the quality of enforcement decisions by regulatory bodies.
83. Where good practice or benchmarks relevant to the legal sector are identified, we will consider how these can be incorporated into the enforcement standard in our regulatory performance framework. Relevant findings will be shared with the regulatory bodies and if needed we will introduce any additional specific guidance or standalone policy positions that may be required.

# Annex A: Overview of the BSB's enforcement processes



## Annex B: Overview of the SRA's enforcement processes



## Annex C: Regulatory performance assessment standards and outcomes

<b>Regulatory Approach</b>	<p><b>RA1:</b> Regulatory arrangements and supporting guidance documentation are:</p> <ul style="list-style-type: none"> <li>• outcomes-focused</li> <li>• written in plain English</li> <li>• maintain professional principles</li> </ul> <p>with detailed rules limited to where evidence and analysis justifies them.</p>	<b>Enforcement</b>	<p><b>E1:</b> The regulator has an accessible and clear process so that concerns can be raised about an authorised person which sets out who a person can complain to, the process that will be used and the possible outcomes.</p>
	<p><b>RA2:</b> So they are effective and operate as intended, regulatory arrangements and supporting guidance documentation are regularly reviewed and, where necessary, updated based on a robust evidence-base.</p>		<p><b>E2:</b> The regulator ensures that all complaints are reviewed on receipt and serious cases are prioritised and, where appropriate, referred to an interim orders panel.</p>
	<p><b>RA3:</b> The regulator has a robust evidence base from a range of sources on: (a) consumers' needs and use of legal services (b) new and emerging policy developments (c) the regulated community and (d) the market(s) regulated by it which informs its regulatory arrangements and approach.</p>		<p><b>E3:</b> The enforcement process and any associated appeals process is: consistent; independent; risk-based; evidence-based; documented; transparent; proportionate; focused on consumer protection, maintaining professional principles and protecting the public interest.</p>
	<p><b>RA4:</b> Regulatory arrangements and associated guidance documentation are informed by learning gathered from all of the regulators work including its risk assessment and enforcement work.</p>		<p><b>E4:</b> The enforcement and any associated appeals process is timely taking into account the complexity and type of case, and the conduct of both sides.</p>
	<p><b>RA5:</b> The regulator understands the impact of its regulatory arrangements and guidance on consumers, the regulated community, the market and the regulatory objectives.</p>		<p><b>E5:</b> During the process, and at each key decision stage, the regulator keeps those involved and any others affected by the case (for example in cases of dual regulation, the regulator, the provider of information and those under investigation) informed of progress, unless it is not appropriate to do so.</p>
<b>Authorisation</b>	<p><b>A1:</b> Only those who meet the regulator's standards are authorised to provide education and training.</p>	<b>Well-led:</b>	<p><b>WL1:</b> The Board/Council holds the executive to account for the regulator's performance to ensure that it operates effectively and efficiently and in a way which is compatible with the regulatory objectives.</p>
	<p><b>A2:</b> The regulator's standards of education and training set the competencies required for authorisation for entry to the profession.</p>		<p><b>WL2:</b> The regulator understands the resources (financial, human and technical) and organisational structure it needs to carry out its regulatory functions (including authorisation, supervision and enforcement) effectively and efficiently and these are implemented.</p>
	<p><b>A3:</b> Only those who meet the regulator's standards are authorised to practise.</p>		<p><b>WL3:</b> The regulator is transparent about its own: decision-making; regulatory approach; the risks it and its regulated community faces and how these are being mitigated; performance; regulated community and related markets; financial costs.</p>
	<p><b>A4:</b> The authorisation process, including the management of appeals, is fair, based on the regulator's standards, efficient and transparent.</p>		<p><b>WL4:</b> The regulator learns from its own work, stakeholders, the legal sector and other sectors and uses that learning to improve its work.</p>
	<p><b>A5:</b> The regulator's list of those they regulate is accessible, accurate and provides information on the disciplinary records of those regulated.</p>		<p><b>WL5:</b> The Board considers its own effectiveness in ensuring the regulator is a well-led, independent, transparent, and consumer-focused organisation, which acts in a way that is compatible with the regulatory objectives</p>
<b>Supervision</b>	<p><b>S1:</b> The regulator has an: outcomes-focused, evidence-based, transparent, risk-based and consumer-focused approach to supervisory activity. Supervisory activity is both proactive and reactive and uses a range of tools.</p>	<b>Well-led:</b>	<p><b>WL6:</b> The regulator communicates with a diverse range of stakeholders, for example its regulated community, the approved regulator, its representative body(ies), students, consumers, government, etc. to account for its plans, progress and performance and ensure appropriate and accurate information is effectively taken into account in its work.</p>
	<p><b>S2:</b> Education and training providers are monitored to provide assurance that standards are met. If they are not, steps are taken to remedy this.</p>		
	<p><b>S3:</b> The regulated community are monitored to provide assurance that standards are met. If they are not, steps are taken to remedy this.</p>		
	<p><b>S4:</b> Those under review and the wider regulatory community have the opportunity to benefit from the learning and good practice identified from the supervisory activity.</p>		

