

<b>To:</b>	Legal Services Board	
<b>Date of Meeting:</b>	29 November 2018	<b>Item:</b> Paper (18) 61

<b>Title:</b>	Enforcement review and proposed next steps
<b>Workstream(s):</b>	Independent, effective and proportionate regulation
<b>Author / Introduced by:</b>	Chris Nichols, Interim Policy Director Tom Peplow, Policy Manager
<b>Status:</b>	Official Sensitive

<b>Summary:</b>
<p>This paper presents:</p> <ul style="list-style-type: none"> <li>- findings from our review of the regulators' enforcement functions, including an end to end review of the BSB and SRA's enforcement functions</li> <li>- [REDACTED]</li> <li>- [REDACTED]</li> <li>- [REDACTED]</li> </ul>

<b>Annexes</b>
None

<b>Recommendations:</b>
<p>The Board is invited to:</p> <ol style="list-style-type: none"> <li>(1) note the findings in relation to the regulators' enforcement functions and proposal for CEO sign off of the enforcement report due to be published in December</li> <li>(2) [REDACTED]</li> <li>(3) [REDACTED]</li> </ol>

<b>Risks and mitigations</b>	
<b>Financial:</b>	N/A
<b>Legal:</b>	N/A
<b>Reputational:</b>	[REDACTED]
<b>Resource:</b>	No immediate issues.

<b>Consultation</b>	<b>Yes</b>	<b>No</b>	<b>Who / why?</b>
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<b>Board Members:</b>	<b>X</b>		Terry Babbs, allocated Board member
<b>Consumer Panel:</b>		<b>X</b>	
<b>Others:</b>	We have engaged with the BSB and SRA in our end to end review of their enforcement functions. We have also consulted the other regulators to obtain assurance of their enforcement processes and their performance against the enforcement standard in our revised regulatory performance framework.		

<b>Freedom of Information Act 2000 (Fol)</b>		
<b>Para ref</b>	<b>Fol exemption and summary</b>	<b>Expires</b>
Summary: second and third bullet point Recommendations - second and third Risks and mitigations Risks and mitigations: Reputational  Main paper Para 2 Para 4 Para 10 to 12 Para 15 to 20 Para 21-33 Para 34- 35 Para 36 second bullet	Section 36 – free and frank discussion for the purposes of policy development.	On publication of review

## LEGAL SERVICES BOARD

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### Enforcement review and proposed next steps

#### Background

1. Assessments of each regulatory bodies' performance against the enforcement standard in our regulatory performance framework have been completed as part of our transitional reviews to introduce the new regulatory performance framework. We have also completed the end to end review of the enforcement processes of the SRA and BSB that we committed to in our 2018/19 Business Plan, which provided for a more in depth assessment of their performance against this standard.
2. [REDACTED]

#### Regulatory Performance assessments

3. The enforcement standard in our regulatory performance framework, sets out our expectation that each regulatory body has systems in place to take proportionate and prompt action where conduct issues arise. We expect them to have:
  - accessible and clear processes which are: consistent, independent, risk and evidence based; and focused on consumer protection, maintaining professional principles and protecting the public interest
  - procedures to review and prioritise complaints and cases to ensure that processes are both efficient and timely
  - decision making and procedures which are transparent and ensure that all of the parties involved, as well as any others affected by the case (for example, other regulators), are kept up to date on progress and the outcome of investigations.
4. [REDACTED]

**End to end review of SRA and BSB**

5. We carried out the end to end review for the BSB in February and April 2018 and the SRA in June and July 2018. The review included targeted meetings with their enforcement teams, which provided an opportunity to take a more in depth look at their approach, processes and performance against our enforcement standard.
6. At these meetings, we also discussed any developments they are making, or intend to make, to the operation of their enforcement functions. For the BSB this covered its:
  - Move to the civil standard of proof
  - Modernising Decision Making programme and plans to introduce a centralised assessment team and Independent Decision Making Body to replace its Professional Conduct Committee.
7. For the SRA this covered its:
  - 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
  - Plans in response to the potential change in standard of proof at the SDT.
8. We also obtained data on the number of enforcement cases in the last four years, their progress through the BSB and SRA enforcement processes and action taken in relation to them. This has been analysed to identify any trends or areas of concerns.
9. To improve our understanding of their role in the BSB and the SRA's enforcement functions we also met with the Bar Tribunals and Adjudication Service (BTAS) and the Solicitors Disciplinary Tribunal (SDT).

[Redacted]

10. [Redacted]  
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11. [Redacted]  
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[Redacted]

[Redacted]	[Redacted]
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[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
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[REDACTED]	[REDACTED]
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[REDACTED]	[REDACTED]

12. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Current LSB enforcement policy positions**

13. In our March 2014 regulatory sanctions and appeals processes report<sup>1</sup>, we set out four features of regulatory enforcement best practice and the main issues we considered required further work:

<b>Feature of regulatory enforcement best practice</b>	<b>Issue</b>
Transparency	<i>Improved clarity and transparency of sanctions and appeal arrangements and of the decisions taken.</i>
The consistent use of the civil standard of proof	<i>The SDT and BSB / BTAS to change from criminal to civil standard of proof for all cases.</i>
Fair and effective appeal arrangements	<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>
Consistency of powers and sanctions	<i>Financial penalty powers for non-ABS firms to be increased to the level of those for ABS</i>

14. This was our last statement of policy on enforcement prior to the adoption of the new regulatory performance standards on enforcement. However, through the development of our new framework we did not directly address the ongoing relevance of these policy positions and as a result, they remain ongoing LSB policy positions on enforcement. Our evaluation of these positions and a proposed refresh of them is provided below.

<sup>1</sup> Regulatory sanctions and appeals processes - 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)

Transparency - Improved clarity and transparency of sanctions and appeal arrangements and of the decisions taken

15. [Redacted]

[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]

16. [Redacted]

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17. [Redacted]

18. [Redacted]

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19. [Redacted]

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20. [Redacted]

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21. [Redacted]

22. [Redacted]

23. [Redacted]

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24. [Redacted]

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25. [REDACTED]  
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26. [REDACTED]  
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27. [REDACTED]  
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28. [REDACTED]  
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29. [REDACTED]  
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30. [REDACTED]  
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31. [REDACTED]  
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32. [Redacted]

33. [Redacted]

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34. [Redacted]

35. [Redacted]

**Next steps**

36. The next actions with this work are using the publication of our 2018 report to:

a. Report on the findings of our end to end review of the BSB and SRA's enforcement functions, as well as our assessment of each of the regulators' performance against the enforcement standard in our new regulatory performance framework

b. [Redacted]