LEGAL SERVICES BOARD

Meeting: Legal Services Board

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Item: Paper (22) 29

Title: Financial sanctions and legal services

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Purpose of the paper

1. To update the Board on the LSB's continuing work to improve engagement by legal services regulators with the sanctions regime as it applies to legal services[1] and to set out the wider issues which may be indicative of the effectiveness of regulation at driving ethical behaviours across the sector.

Recommendation

2. The Board is invited to note this update and to discuss the wider issues and what role the LSB might have in seeking to address these.

Update on sanctions regime

3. Following the second LSB sanctions roundtable discussion on 1 April, we wrote to all regulators to set out our view of the central expectations of them which was informed by the discussions we had held. This included:

   - clarifying that all legal service regulators have a role in ensuring that the sector does not act as an enabler when it comes to financial crime, sanctions or similar, and that the regulatory objectives set out in the Legal Services Act 2007, together provide clear remit, but it might be helpful to put this beyond doubt.

   - the need for regulators to have a good understanding of the regime by avoiding over-reliance on Anti-Money Laundering ("AML") controls to mitigate sanctions risks, and to fully grasp the breadth of the UK nexus rather than focussing on Russian business addresses.

   - regular risk assessments to reflect the rapidly evolving landscape and which exercises diligence, analysis, and enquiry in forming a view of risk/exposure and working with others to understand themes/typologies.

[1] This is the second update the Board has received, in respect of the sanctions regime following the update at the April Board meeting.

- the need to continue to raise awareness and test its effectiveness (e.g. surveys).

- taking active steps to ensure compliance with the regime as it is likely to impact on the legal services regulatory regime.

4. We received returns from all the regulators and the following key themes emerged:

   - Agreement from almost all regulators that they have a role in ensuring that the sector does not act as an enabler when it comes to financial crime, sanctions or similar. Two regulators provided express support for a new regulatory objective to put this beyond doubt.

   - While all regulators expressed their agreement with our central expectations, few responded by setting out what additional steps they had taken since the last roundtable.

   - Two regulators have taken active steps to improve understanding in the sector of the distinction between the AML and sanctions regime, and the UK nexus for sanctions.

   - Three regulators have further developed their risk assessment, by engaging in activities to refine their understanding of the risk profile of their regulated community in respect of financial sanctions breaches (e.g. spot checks, data collection).

   - Enhanced awareness activities had been conducted by some regulators with varying degrees of intensity, with three regulators testing the effectiveness of their awareness activities.

   - Four regulators have engaged in a range of compliance activities.

   - Responses reiterated the need for measures to facilitate intelligence and information sharing between OFSI, the regulators and other Government agencies.

5. While there has been some meaningful and pro-active engagement with these issues by some of the regulators, the response from others has been less so. We would expect all regulators to be pro-active in making sectoral risk assessments and taking steps to address those risks to ensure effective regulation. Over the coming weeks we intend to work more closely with individual regulators to ensure that they take steps that adequately address our central expectations. We will continue to collaborate with Government and the regulators to secure information sharing and broader powers (such as greater fining powers[2]).

[2] At the request of the MoJ, the LSB has provided a view on the SRA's consultation to increase its fining powers from £2000 to £25 000.

6. We have also been working with the Office for Professional Body Anti-Money Laundering ("OPBAS") which hosted a sanctions roundtable on 10 May, where LSB colleagues attended and presented, and was attended by OFSI, other government agencies and some of the regulators, which reinforced some of our central expectations.

Broader concerns about the sector

7. As Board is aware, in addition to our work to support the sanctions regime, there has been a range of matters which have contributed to a broader concern about whether regulation has adapted to the growth of the legal sector as a leading global jurisdiction for legal services, and pro-actively mitigated the associated risks while promoting the right behaviours. These include but are not limited to, the Post Office scandal, Royal Institute of Chartered Surveyors governance failures, the use of non-disclosure agreements to cover up misconduct in the workplace, the Ministry of Justice's ("MoJ") call for evidence on Strategic Lawsuits against Public Participation, and weaknesses in the AML controls.

8. These matters are indicative of the difficult ethical questions that in-house lawyers, large and mid-tier firms in particular, may face difficult when balancing the tensions between professional obligations and commercial pressures. Although there is an argument that only a minority of lawyers actively breach these boundaries, it is equally fair to say that it is difficult to point to evidence as to the actual scale of the problem. However, taken together the examples referred to above, give rise to very significant concerns about how embedded professional ethics are in practice and risks eroding public trust and confidence in the sector. Overall, this contributes to a concern that certain parts of the sector may not consider themselves to be under the regulatory and supervisory spotlight. This is exacerbated by findings from the ongoing competence project which show that regulators are not in possession of evidence on how frequently ethical competence issues arise.

9. An appropriate vehicle for developing our thinking in this area is our work stream on the role of legal services regulation in supporting the constitutional principle of the rule of law as set out in the LSB Business plan for 2022/23. When we scope this work, which will be soon, we will ensure that it covers these wider concerns about the extent to which ethical considerations are driving legal practice and what role the LSB and regulators could have in addressing this issue.

10. We also note that there are important linkages which will feed into our work on:

- disciplinary and enforcement, to establish and embed clear principles which ensure outcomes that uphold proper standards of conduct (and ethics)

- education and training which is focussed on fostering professionalism, competence and ethical practice which is essential to public confidence and

- ongoing competence, as we will evaluate the references to ethics in the draft policy statement to ensure that expectations in this regard come across sufficiently clearly.

Next steps

11. The next steps for this work include the following:

- We will continue to work with regulators to ensure further progress towards our central expectations, and that regulators remain alert to the rapidly evolving circumstances and adapt their actions to ensure that sanctions compliance breaches are dealt with appropriately.

- We will continue to work with Government and the regulators to pursue information sharing and broader powers to secure compliance with the sanctions regime.

- As set out above, we will ensure that we carefully consider how we can address the issues raised in this paper strategically through our broader work, planned for this business plan year, on the rule of law, enforcement, education and training and ongoing competence.

Risks and mitigations	
Financial:	N/A
Legal:	Issues around alignment of the legal services regulatory framework with the sanctions regime
Communications and engagement:	Engagement with regulators, OFSI, OPBAS, and MoJ.
Equality and diversity:	N/A
Resource:	N/A

Freedom of Information Act 2000 (FoI)		
Para ref	**FoI exemption and summary**	**Expires**
	N/A	