

By email only

The Right Honourable
Dominic Raab MP
Deputy Prime Minister
Lord Chancellor & Secretary of
State for Justice



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Dear Deputy Prime Minister,

RE: Increasing the SRA's fining power

Thank you for your letter of 12 May, seeking the LSB's views on the proposal to increase the SRA's internal fining powers from £2,000 to £25,000.

Your letter notes the context of the Russian invasion of Ukraine, the work that we have been coordinating with the sector to support compliance with the sanctions regime, and the light that this shines on the importance of having a regulatory framework that supports compliance more generally. We strongly agree with these observations.

The need for meaningful internal fining powers

The UK legal sector is a global powerhouse. It has an annual turnover of the order of £40bn and rising. It is a, if not the, go to jurisdiction for commercial transactions. These are all things the country can be rightly proud of.

However, with scale comes risk. If the UK is to maintain and indeed build further its importance as a global jurisdiction of choice, it will need to ensure that its legal sector is leading the world in terms of integrity, confidence and trust.

That in turn will mean equipping regulators with the tools they need to put the UK's high standards beyond question and to take action where those entrusted with the integrity of the legal sector – the often very large businesses who make their living from facilitating transactions – fail to deliver against those standards.

While enforcement action and consequent penalties should in most cases be a last resort, where it is used it needs to have requisite force. Where financial penalties are applied, therefore, they need to be capable of both acting to deter and to remove any gains from non-compliance, wilful or otherwise. For a firm with a multi-million pound turnover, the current maximum fine of £2,000 is clearly risible. Even the SRA's proposed increase to £25,000, while welcome, may simply be seen by some as an acceptable cost of doing business.

We do not believe that the ability to seek larger fines through prosecuting a case through a tribunal, with the associated delays and significant additional resource and financial cost, removes the need for regulators to have these tools themselves. We also agree that it is hard to justify the significant difference between the SRA's internal fining powers for ABSs and for non-ABS firms and individual solicitors.

That is why the LSB would support going considerably further than the SRA's proposals (subject to the points raised in relation to quality of enforcement processes set out later). It is becoming increasingly common for regulators to have access to maximum fines that are measured in relation to turnover of the business. While we would expect a regulator to have to exercise the full scope of its powers rarely, their existence would, we consider, create a clear statement of the importance the UK places on preventing the facilitation of economic crime.

The importance of high quality, transparent and accountable enforcement

Alongside what is said above, it is of paramount importance that our legal services regulators are delivering high quality, transparent and accountable enforcement processes. This becomes even more critical when considering increases in the levels of fines that regulators can impose.

The LSB is currently carrying out a sector-wide review of regulatory enforcement processes. We will identify good practice and build consensus on the principles that should underpin effective enforcement practices that build public confidence. The SRA has expressed an appetite to engage openly and proactively with the LSB's work in this area, and to identify and make changes to its own processes that will further improve transparency and accountability.

Conclusion

As a minimum, we strongly support the proposal to increase the SRA's internal fining powers from £2k to £25k. In the light of commitments from the SRA to work with us to improve the transparency and accountability of its processes, we can also see a compelling case for larger increases in its fining powers.

Any changes to the SRA's internal fining powers will be subject to the overall safeguards that the Legal Services Act 2007 brings. For example, any associated changes that the SRA makes to its regulatory arrangements would still need LSB approval (under the Legal Services Act 2007), such as the guidance that it would need to implement its internal fining powers. It would also be subject to our oversight of its performance on enforcement, against the enhanced expectations that we will be developing during this year. So there will remain strong safeguards in place to ensure high levels of transparency and accountability.

I know that there has been productive engagement between our teams on this and related issues in recent months. I also know that colleagues at the LSB will continue to make themselves available to assist as your work in this area develops.

Yours sincerely



Dr Helen Phillips

Chair

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