

RESPONSE OF THE CITY OF WESTMINSTER & HOLBORN
LAW SOCIETY TO THE SOLICITORS LEGAL SERVICES BOARD (“LSB”) CONSULTATION
“FIRST-TIER COMPLAINT HANDLING:LSB REQUIREMENTS FOR APPROVED REGULATORS”

1. The City of Westminster & Holborn Law Society (CWHS) enjoys, perhaps, the most diverse membership amongst local law societies encompassing, as it does, a membership ranging from larger firms including those which have been loosely referred to as the “Silver Circle” down to small High Street practices and individual in house solicitors, including those working for public bodies and Government. Our membership includes those who practice at all levels of the profession, including those who regularly represent solicitors in SRA investigations, members of the Solicitors Disciplinary Tribunal and those who practice extensively in the field of Solicitors Negligence Professional Indemnity Insurance. Membership is voluntary and CWHS is run by a Committee comprising about 30 solicitors representing a very wide range of specialisms. Its work is carried out by 11 specialist subcommittees, one of which is the Professional Matters Subcommittee, which concentrates on matters such as regulation of solicitors, matters affecting their practice and matters relating to professional indemnity etc.

2. Preliminary comments

This Consultation was issued on 2 March 2016, and closes on 27 April 2016. Given that the Easter holidays occurred in this period, this in practice allowed very little time to respond. CWHS appreciates that the LSB takes the view that it *“only proposes to make minor changes. These proposed updates reflect that first-tier complaints handling and signposting requirements have been in place for over five years, and are intended to make language consistent across the publication.”* Whilst that may seem to justify a short consultation period, it carries the danger that changes will be nodded through without their significance being understood by the LSB or by those affected by them. CWHS draws attention below to an instance of where the LSB does not appear to have appreciated the implications of its proposals.

Having in the past been highly critical of the drafting of LSB consultations, CWHS would like to acknowledge that the drafting of this consultation is a great deal better in terms of comprehensibility and the avoidance of unnecessary management jargon and prolixity.

3. Response to Consultation

This consultation refers to the LSB’s requirement that *“Approved Regulators (ARs) must require all individuals and entities that they regulate (authorised persons) to notify clients in writing of their right:*

- *to make a complaint, including how, to whom and within which timeframes*
- *to complain to the Legal Ombudsman at the conclusion of that complaint process if unsatisfied with the outcome.”*

In general terms CWHS approves of this requirement, and accepts that it will be usually appropriate that this information should be given (as the LSB proposes) *“at the time of engagement”*. However it has two concerns:-

- (i) It is important to define what is meant by “*the time of engagement*” for these purposes. It is usual and sensible to give the information as to complaints with the solicitor’s terms of business. Often these cannot be determined until the solicitor has met the client and understood exactly what the client’s requirements are. Sometimes the solicitor will be asked to see a client as a matter of urgency without the opportunity to prepare such paperwork before the meeting. A solicitor will therefore quite frequently be sensibly meeting a client and giving initial advice before the engagement letter is issued. Provided that the engagement letter (with the complaints information) is issued shortly thereafter, the LSB must be quite clear that its requirements are being met. CWHLS suggests that appropriate wording would be that the complaints information should be given “*at the time of engagement or as soon as practicable thereafter*”.
- (ii) As explained below, in the experience of CWHLS’s members there are occasions where it is inappropriate to insist on this complaint information being given either at “*the time of engagement*”, or sometimes at all.

Currently there is in operation LSB approved guidance that clients must be informed of these rights “*at the time of engagement, or existing clients at the next appropriate opportunity.*” CWHLS views with concern that this Consultation proposes to make it a requirement that all clients (including existing clients) should be informed of these rights “*at the time of engagement*”. This change would give no discretion to the lawyer and takes no account of the fact that there will be occasions where it is simply not practical or appropriate to give this information to a client at the time of engagement. Whilst CWHLS would not object to a rebuttable presumption that a lawyer who failed to give this information to his or her client was in breach of professional duty, the lawyer must be given the opportunity to rebut the presumption in appropriate cases. The circumstances in which the presumption could be successfully rebutted cannot be exhaustively set out, since they will be fact specific. Two examples are given below:-

- (a) In the currently topical radio soap “*The Archers*” Helen Titchener stabbed her abusive husband. Her family retained a solicitor to act for her. When this solicitor went to see her she was still hysterical and in no position to take in matters concerning First Tier and Second Tier complaints (or to give informed consent to his terms of business), and it would have been inappropriate (and not in Helen’s best interests) for her solicitor to raise such issues at that stage. He simply had to try to start a dialogue and gain her trust. Helen of course was the solicitor’s client, not her family.
- (b) A solicitor may be summoned to the death bed of a client to make a will or codicil or to take instructions on other matters. Again it might be inappropriate to raise the LSB’s requirements (and the client would probably not be around to make a complaint). The solicitor would have to consider the urgency and the client’s state of health, and (provided that the client was able to understand what was being discussed) might legitimately conclude that it was in the client’s best interests simply to act as the client wished without fussing with paperwork which might only distress the client and delay what the client wished to be done.

CWHLS trusts that the LSB will amend its proposals to provide for these two concerns.