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Mr Neil Buckley
Chief Executive
Legal Services Board
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21 April 2016

BY EMAIL: consultations@legalservicesboard.org.uk

Dear Neil

Consultation on first-tier complaints handling requirements for regulators

Thank you for your letter of 2nd March inviting responses to the Legal Services Board's consultation inviting representations on proposed updates to the Board's requirements, outcomes and guidance on first-tier complaints handling.

Annexe A: Proposed revisions to requirements and outcomes

We have no comment to make on the proposed amendments. However, at paragraph a.iii. reference to "complaint" in the first line should be to "complain".

Annexe B: Proposed revised guidance

We consider that the definition of complaints set out in the proposed revised guidance is clear and helpful.

The Master of the Faculties has set out clear and concise guidance to authorised persons setting out the signposting requirements to the first-tier complaints handling procedures and thereafter to the Legal Ombudsman.

The first-tier complaints procedures which have received LSB approval are operated by the Notaries Society and the Society of Scrivener Notaries in respect of complaints made against members of those bodies or by the Faculty Office in the case of the few notaries who are members of neither Society. Fortunately, complaints against notaries remain relatively low.

So far as the gathering, analysing and responding to first and second tier complaints data is concerned, we do not currently gather data from the two Societies in relation to first-tier complaints which they have dealt with and received direct from consumers. Where complaints are routed via the Faculty Office, we do request that we are notified of the outcome. As indicated above, complaints against notaries at the first-tier are few in number and we therefore do not anticipate any difficulty in obtaining data in respect of the complaints which are dealt with directly by the Societies.

As regard second-tier complaints dealt with by the Legal Ombudsman, data from LeO indicates that no complaints have been dealt with in each of the preceding two years. However, information in respect of the one or two complaints which LeO have dealt with against notaries since its establishment have, historically, been difficult to come by. The information has not been shared with the Faculty Office by LeO in the past.

So far as the sharing with other Approved Regulators of the findings from thematic reviews and other evidence is concerned, we would be happy to share any information which is of relevance that can be gleaned from the relatively known low number of complaints received against authorised persons regulated by the Master of the Faculties. Similarly, we would welcome receiving such shared information from other Approved Regulators. This is particularly relevant in the case of the SRA as a majority of the notaries are also solicitors and therefore dually regulated. We therefore broadly welcome the revised guidance.

In response to paragraph 30 of the consultation, Rule 8 of the Notaries Practice Rules 2014 contains the duty on notaries to inform a client on acceptance of instructions of the right to complain in accordance with a prescribed form of words provided by the Master. The Rule confirms that the prescribed form of words may be provided electronically (www.facultyoffice.org.uk/wp-content/uploads/2014/09/notaries-practice-rules-2014.pdf). An identical provision was included in the Notaries Practice Rules 2009.

The Notaries Practice Rules 2014 also introduced a specific provision for the inspection of a notary's premises, records and practice, in accordance with Rule 24 and the Notaries (Inspections) Regulations 2014 made pursuant to Rule 24. Inspections commenced in 2014 and, as at the date of this letter, some 50 notarial practices have been inspected. As part of the inspection regime, the inspectors enquire how the notary provides regulatory information to clients, such as details at the outset on how a complaint may be made and how fees will be calculated; this includes whether these are given to the client at a suitable time. This forms part of the standard questionnaire to be completed by the inspector, a copy of which may be seen at www.facultyoffice.org.uk/wp-content/uploads/2016/02/inspections_questionnaire.nov2015.pdf.

The inspectors' report for the practising year 2014/2015 identified that some of those inspected were not delivering the regulatory information required under Rule 8 and the Faculty Office will be taking steps to ensure that this deficiency is remedied. The requirement to provide the information has formed part of the Continuing Professional Education courses provided by a number of independent providers pursuant to the Notaries (Continuing Professional Education) Regulations 2010. It is also likely that we will include a specific question in the application for renewal of notarial practising certificates seeking confirmation from notaries that they do routinely provide the required regulatory information to clients on acceptance of instructions. For several years, the renewal form has requested information on the number of first-tier complaints which a notary has received during the course of the preceding practising certificate year.

In order to take account of the recommendations in the Legal Services Consumer Panel report "Opening up data in legal services from February 2016" we will request the secretaries of the two notarial Societies (who provide the first-tier complaints procedure) to provide the Master of the Faculties with raw data in relation to all complaints which they deal with under the first tier procedure rather than simply those complaints which are referred to them via the Faculty Office. In due course, we propose to make this a regulatory requirement by means of a minor amendment to the Conduct & Discipline Rules. As indicated, complaints against notaries have, historically, been few in number; however the preparation of a report to collate and publish first-tier complaints information on our website will be actively considered.

We already publish data in respect of disciplinary complaints dealt with in the Court of Faculties on our website. Again, disciplinary cases are few (approximately one per year in recent years). We will give consideration to the linkage between basic and conduct information on the website.

Yours sincerely

A handwritten signature in black ink, appearing to read "H J Dellar". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

H J DELLAR
Joint Registrar