

Meeting: Legal Services Board

Date: 18 October 2022

Item: Paper (22) 55

Title: First-tier complaints project update

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Status: Official

Introduction: Purpose of the paper

1. This paper provides an update to the Board on progress to date with the first-tier complaints project. It identifies the key issues and challenges in respect of first-tier complaints in the legal services sector, and seeks the Board's agreement on our proposed course of action.

Recommendation

2. The Board is asked
 - to note the emerging themes arising from the desk research, as set out in paragraph 11;
 - to note the plans to consider how these themes might be pursued through revisions to the LSB First-tier complaints handling: section 112 requirements and section 162 guidance for approved regulators (appended at Annex A) ("the Requirements and Guidance"); and
 - to agree that new draft Requirements and Guidance should be developed for consideration by the Board in early 2023.

Timing

3. Following Board's consideration of this paper it is proposed that new draft Requirements and Guidance will be prepared for Board approval in early 2023, with a view to public consultation commencing shortly afterwards.

Background

4. The LSB Business Plan for 2022/23 set out two activities in relation to consumer redress:
 - to review the LSB First-tier complaints handling: section 112 requirements and section 162 guidance for approved regulators; and

- to work to deliver the best possible redress system for consumers across both the regulated and unregulated sectors.

The first-tier complaints project is concerned with the first of these two activities, and aims to improve first tier complaints handling within legal services.

5. The current Requirements specify that Approved Regulators must require those they authorise to notify their clients in writing of their rights to complain to them and the process for doing so (i.e. the right to make a first-tier complaint), and any rights they may have to complain to the Legal Ombudsman if the first-tier complaint has not been resolved to the client's satisfaction (i.e. the right to make a second-tier complaint). The Guidance includes provision for Approved Regulators to gather and analyse first-tier complaints data; to monitor and assess the effectiveness of authorised persons' complaints handling processes and to use this information to inform regulatory responses to improve complaints handling. The Guidance also outlines ways in which Approved Regulators can support authorised persons to handle first-tier complaints in accordance with best practice and in the interests of consumers.
6. The project has a clear linkage to the Regulatory Objective of protecting and promoting the interests of consumers, and to the challenge in the sector-wide strategy of closing gaps in consumer protection. Other relevant Regulatory Objectives include protecting and promoting the public interest and improving access to justice.
7. To understand whether and what changes to the existing Requirements and Guidance might be required, we have completed desk research to explore current practice in the sector in relation to first-tier complaints, to assess compliance with the LSB's rules, and to ascertain how instances of non-compliance are dealt with. We have also engaged with Regulatory Bodies, the Legal Services Consumer Panel (LSCP), the Legal Ombudsman (LeO) and other ombudsmen including the Financial Ombudsman Service. The desk research report is provided at Annex B, together with a literature review exploring first tier complaints handling and complaints behaviours in other sectors, at Annex C. The key findings are summarised below.

Analysis and proposal

8. The Legal Ombudsman receives a very high number of second-tier complaints, and has reported over the last few years that it has found first-tier complaints handling to be inadequate in around 24% of cases that it has accepted for investigation. Moreover, in 2020/21, 27% of complaints received by LeO were classified as "premature" – that is, submitted to LeO before the complainant had exhausted the first tier process. This suggests that a substantial number of complainants were either unable, or unwilling, to go through the first tier process, which gives rise to questions as to the reasons for this.

9. Research shows that consumers can find it difficult to find information about complaints, and/or are dissuaded from doing so for other reasons. While LSCP Tracker Survey data shows that the proportion of “silent sufferers” has decreased over time, this group still makes up a sizeable number of those surveyed (25% in the most recent Tracker Survey). Research from Refugee Action indicates that silent suffering is particularly prevalent among asylum seekers and indicates that some individuals perceive there to be a power imbalance between themselves and their legal services provider.
10. Our analysis so far suggests a strong case for further work in the area of first-tier complaints handling, and our current thinking is that this should include revising and updating the existing LSB Requirements and Guidance. We are mindful, however, that the issues identified are not necessarily a direct result of issues with the Requirements and Guidance themselves, but result in part from the way in which they are being implemented. While new Requirements and Guidance will not necessarily alone constitute a solution to the issues identified, and would need to be accompanied by wider measures, we hope that these could be a helpful starting point
11. We have identified four themes arising from the desk research, as follows:
 - Theme 1: how, when and where consumers are provided with complaints information.
 - Theme 2: overcoming barriers to complaining.
 - Theme 3: learning lessons from complaints.
 - Theme 4: how the term “complaint” is defined and interpreted.

Theme 1: How, when and where consumers are provided with complaints information

12. The current Requirements state that clients must be notified in writing of their right to make a first-tier complaint, and how and when they can do this. In practice this is often achieved via the “client care” letter. There is, however, a range of evidence which indicates that signposting consumers at the start of the process is insufficient, and that there seems to be a difference between the information that is communicated to clients and what they actually “hear” – for example, if the information about how to complain is hidden within a lengthy client care letter. The existing Requirements and Guidance are largely silent on the question of how, when and where this information is communicated, and this might be an area that we would look to address in the new Requirements and Guidance. There may additionally be scope to introduce some standardisation in complaints signposting¹, although care would need to be taken here to avoid a “one size fits all” approach across the different regulated communities.

¹ The LSCP are shortly due to publish a Panel Paper on standardisation with a specific recommendation that the LSB should explore using standardisation to address the deficiencies found with complaint signposting as part of its review of first-tier complaint guidance.

Theme 2: Overcoming barriers to complaining

13. It is clear that some consumers experience barriers to making first tier complaints. These appear to be more prevalent for some groups than others, with those declaring a disability, or seeking asylum, facing particular challenges. This suggests that there may be more work to be done here to change client perceptions of the complaints process within legal services and, in doing so, be alive to the power imbalance (real or perceived) between legal services providers and clients. It would be useful to explore whether there is scope for the new Rules and Guidance to be more explicit about some of these challenges, and to place clearer requirements on Approved Regulators about steps that should be taken to overcome these.

Theme 3: Learning lessons from complaints

14. The Guidance states that Approved Regulators should use their analysis of complaints data to improve complaints handling, and it may be appropriate to strengthen the existing provisions in the Requirements and Guidance in this area. The Legal Ombudsman also has an important role in supporting and educating legal service providers on good first tier complaint handling, and has a wealth of resources available which could support work in this area. Analysis of other sectors reveals that in at least one field – financial services regulation - firms are required to identify whether the root cause of complaints could have affected consumers who have not complained, and potentially offer redress to these consumers. This may be an avenue to explore with stakeholders during consultation in terms of whether such an approach could be adopted by legal services providers.

Theme 4: how the term “complaint” is defined and interpreted

15. The Requirements and Guidance state that a complaint can be “an oral or written expression of dissatisfaction”, however in practice not all firms categorise verbal expressions of dissatisfaction as complaints. There may be more work to be done here on how the term “complaint” should be defined and interpreted, to support the adoption of a broad definition.

Links to other current LSB work

16. This project is relevant to our [Statement of Policy on Ongoing Competence](#) and [Statement of Policy on Empowering Consumers](#), which both reference the need to make information about complaints available in order to inform assessments of competence and consumers’ ability to make judgements about the quality of legal services. We will ensure this work is complementary to these policy statements and other LSB work.
17. The LSB’s 2022/23 Business Plan also referenced wider consumer redress work and there is a research budget available for work in this area. Some initial discussions have taken place with the Legal Ombudsman, the Ministry of Justice and the LSB Public Panel about potential research to understand consumers’ views of what consumer redress in legal services should look like.

If this research progresses, it may be relevant to the work of this project and associated timescales.

Next steps

18. The Board is asked:

- to note the emerging themes arising from the desk research;
- to note the plans to consider how these themes might be pursued through revisions to the LSB First-tier complaints handling: section 112 requirements and section 162 guidance for approved regulators (appended at Annex A); and
- to agree to new draft Requirements and Guidance being developed for consideration by the Board in early 2023.

Risks and mitigations	
Financial:	N/A
Legal:	Legal advice is that any proposed new requirements and guidance need to be within the scope of the LSB's powers to make them under s112 and s162 of the LSA and any consultation on those proposals needs to be in accordance with public law requirements and consultation principles.
Communications and engagement:	We have had some early engagement with regulatory bodies via relationship management contacts and have sought answers to a few targeted questions arising from the desk research. We have also engaged with colleagues from the LSCP about work to date with the project. We will carry out public consultation on any proposed changes to the rules and guidance.
Equality and diversity:	Theme 2 (overcoming barriers to complaining) has the potential to improve outcomes for those from protected groups, eg: those with a disability.
Resource:	The project is accounted for in the 2022/23 business plan.

Annexes

Annex A – LSB First-tier complaints handling: section 112 requirements and section 162 guidance for approved regulators

Annex B – Desk research report

Annex C – Literature review

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires

N/A	No redactions are needed	N/A
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