First-tier complaints

Desk research report

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1) Background

1.1 In 2016, the LSB updated its Requirements and Guidance for Approved Regulators on first-tier complaints handling. A first-tier complaint is defined in the Requirements as “a complaint made by a client to an authorised person”, as opposed to a second-tier complaint which is a complaint made to the Legal Ombudsman. There are two types of complaint that can be made by legal services users: complaints about the quality of work or service received, or complaints about the behaviour and/or integrity of the authorised person (eg: the solicitor or barrister). It is the responsibility of Regulatory Bodies to consider complaints which may involve breaches of their rules, principles or codes of conduct, and if appropriate take enforcement action as necessary. These types of conduct complaints are not within the scope of this report, which focuses instead on complaints made to law firms or individuals (authorised persons as defined by s1 (4) of the Legal Services Act 2007) about the quality of service provided.

1.2 In its 2022/23 Business Plan, the LSB set out its intention to review the 2016 Requirements and Guidance. This was partly for general currency but also to respond to evidence that the Requirements and Guidance could be more effective in respect of ensuring good complaints handling. This evidence included continued high levels of “silent sufferers” (i.e. consumers who are dissatisfied with the legal services they have received but do not complain); high numbers of complaints proceeding to the Legal Ombudsman; and concerns that work to date to improve first tier complaints handling may not be proving effective. This includes work undertaken in 2016 on “client care letters” (letters sent to clients in the initial stages of engagement which set out key information about the relationship between the client and the legal services provider, including information about complaints processes – see paragraph 4.5 below) and the introduction by Regulatory Bodies of the Transparency Requirements following the 2016 recommendation of the Competition and Markets Authority. In April 2022, the LSB issued a Statement of Policy on Empowering Consumers which sets out the LSB’s expectations for Approved Regulators relating to consumer ability to access complaints information and publication of data about complaints. The intended outcomes of the review of the Requirements and Guidance are complementary to this Statement of Policy.

1.3 The first stage of this project was to carry out a desk review to examine current practice in the sector in relation to first tier complaints, to begin to understand the health of first tier complaints handling, and to explore good practice in other sectors. This report summarises the findings of the desk research and identifies the next steps in relation to reviewing the Requirements and Guidance.

2) Regulatory Body compliance with the current LSB Requirements

2.1 The Requirements currently state that Approved Regulators must require all authorised persons they regulate to notify all clients in writing:

a. at the time of engagement, or the next appropriate opportunity,

i. of their right to make a first-tier complaint

ii. how they can make a first-tier complaint and the details of who that complaint needs to be made to

iii. of any rights to make a second-tier complaint to the Legal Ombudsman if they are not satisfied with the response from the authorised person

iv. the point at which a second-tier complaint can be made to the Legal Ombudsman, and

v. full details of how to contact the Legal Ombudsman.

b. that if after eight weeks following the making of a first-tier complaint, it has not been resolved to the client's satisfaction,

i. that the client may have a right to complain to the Legal Ombudsman

ii. the time limit for doing so , and

iii. the full details of how to contact the Legal Ombudsman.

2.2 The approach of each Regulatory Body to ensuring compliance with these rules is summarised below.

Solicitors' Regulation Authority (SRA)

2.3 The LSB's Requirements are reflected in paragraph 8.2 of the SRA's Code of Conduct for Solicitors (2018). The SRA has also incorporated the requirements of the LSB's Requirements into its own SRA Transparency Rules 2018; these are currently under review and an evaluation report is likely to be published towards the end of 2022. In relation to complaints, the SRA Transparency Rules state that an authorised body must publish on its website details of its complaints handling procedure, including details about how and when a complaint can be made to the Legal Ombudsman and to the SRA. Interestingly however, there is no statement relating to the prominence with which complaints information needs to be displayed, in contrast to the Transparency Rule relating to cost information, which specifically states at section 1.6 that:

> "Cost information published under this rule must be clear and accessible and in a prominent place on your website".

It would seem that consideration could usefully be given to whether Approved regulators are required to ensure that those they regulate make this information more prominent, particularly in light of recent research undertaken by the Legal Ombudsman (see paragraph 3.18 below) which suggests that, in practice, consumers can find this information difficult to locate.

2.4 The SRA has also produced guidance on publishing complaints information which includes some standard suggested text for firms to use about their complaints processes.

2.5 Breaches of the Transparency Rules and the Code of Conduct for Solicitors are potentially subject to enforcement action by the SRA, and in 2019 the SRA conducted a sweep of a sample of firms' website to review compliance with the Transparency Requirements (see paragraph 3.4 below). The next round of enforcement action is due to commence towards the end of 2022.

Bar Standards Board (BSB)

2.6 The Bar Standards Board's Transparency Rules (2019) incorporate the LSB's Requirements in respect of first tier complaints, additionally stating that a link to the decision data on the Legal Ombudsman's website must be provided, and that complaints information must be "sufficiently accessible and prominent on websites, accurate and up to date and…[also] readily available in hard copy format". The Transparency Rules are accompanied by Transparency Standards Guidance which has a separate section on First Tier Complaints Handling which provides more detailed guidance and good practice. The Bar Standards Board's requirements in respect of first tier complaints are set out in the Bar Standards Board Handbook (Code of Conduct, Requirements C99-C109) and incorporate the LSB Requirements, adding that information relating to complaints must be "in a sufficiently accessible and prominent place" (section rC103.2). The handbook also states that the number of complaints received, plus the subject areas and the outcomes, should be reported annually to the Head of Legal Practice and reviewed for trends and training issues.

2.7 The BSB handbook's First Tier Complaints Handling Guidance states that the BSB is required to enforce the LSB requirements and that it will, as part of its supervision processes, monitor chambers to ensure that the requirements are being complied with. In July 2022 the BSB published a report on compliance with the price, service and redress transparency rules. This report notes that 95% of those assessed were either compliant (62%) or partially compliant (32%). This is an improvement from 2020 when 75% were either compliant or partially compliant. Encouragingly, the report found that compliance relating to complaints information comprised only a small proportion of overall non-compliance instances, at 9%. While the requirements relating to compliance for complaints information was, in most cases, available, the report did note that it was not always easy to find this or other mandatory transparency information, and observed that consumers might struggle to locate this. This echoes findings elsewhere in this desk research report about where information about complaints is located (see, for example, paragraphs 3.20 – 3.21 below).

2.8 In July 2022, the BSB published a research report, Transparency Rules Evaluation: Impact on Consumers. In relation to first tier complaints, the research found that, since 2012, there has been an upwards trend in legal service users being aware of how to make a complaint, and that this appears to have seen a more marked increase since 2018[1]. Conversely, the number of complaints about barristers shows

[1] Bar Standards Board Transparency Rules Evaluation: Impact on Consumers July 2022, page 5

a downwards trend over time, with 2021 seeing the lowest level of complaints about barristers for any year where data is available[2]. This suggests that, while consumers might know how to make a complaint, many are choosing not to complain - either because they have nothing to complain about, or because of other barriers that may dissuade them from making a complaint (see section 4 below).

Costs Lawyer Standards Board (CLSB)

2.9 The CLSB has a small regulated community, which only receives a small number of complaints each year, but it produces a Supervision Framework for complaints procedures as well as an extensive Guidance Note on Complaints Procedures which covers all of the LSB's Requirements. The Guidance also includes reference to the research[3] by YouGov and LeO showing that clients often do not recall seeing information about the complaints procedure in the client care letter, and stresses the need for these letters to be concise, easy to understand, and with the complaints procedure clearly identifiable. The Guidance stresses the need to remind clients about the complaints procedure as the matter progresses, and includes a list of key moments at which it would be advisable to do this. It includes a model complaints procedure and a section on good practice in complaints handling, incorporating tips from LeO, and references the importance of treating verbal expressions of dissatisfaction, which often go unrecorded, as complaints.

Council for Licensed Conveyancers (CLC)

2.10 The CLC sets out its requirements in respect of complaints in its Complaints Code and inspections of entities regulated by the CLC include review of complaints handling practices. The Complaints Code incorporates the LSB Requirements and further states that clients must be advised "in a prominent place on your website" of their right to make a complaint. The Code also states that "you accept responsibility where the service you provide is not of the expected standard"; that "handling of complaints takes proper account of clients' individual needs, including those who are vulnerable" and that "complaints are dealt with impartially and comprehensively". There is also a requirement to "identify and address systemic client complaints issues".

Chartered Institute of Legal Executives (CILEx) Regulation

2.11 CILEx Regulation's Transparency Rules covers the LSB's Requirements in respect of first tier complaints at a high level, with more information available in the associated Transparency Guidance and First Tier Complaints Handling Guidance. This includes the LSB's Requirements and also incorporates some of the key aspects of the LSB Guidance, for example the need for complaints procedures to be well publicised, clear and easy to use, especially for those who are vulnerable or have disabilities. Complaints handling procedures and client care documentation are reviewed as part of the authorisation process, and any amendments to these must be notified to CILEx Regulation. Firms are provided with guidance on Legal Ombudsman requirements as part of the development of their procedures, and CILEx Regulation provides guidance to firms on client care information.[4]

[2] Bar Standards Board Transparency Rules Evaluation: Impact on Consumers July 2022, page 6
[3] Research into Client Care Letters, October 2016: Client Care Letters Research Report - FINAL 201016.pdf (legalservicesconsumerpanel.org.uk)
[4] Correspondence with CILEx Regulation, 3 October 2022

Intellectual Property Regulation Board (IPReg)

2.12 IPReg has produced Transparency Guidance (2019) which include the LSB Requirements and which firms are "encouraged" to consider and adopt[5]; it will introduce Rules to this effect later in 2022. Complaints handling is dealt with in section 12 of IPReg's Rules of Conduct. These state that clients must be notified of their right to complain to LeO "at the conclusion of the complaint process", however the Rules later say that this should be provided "at the time of engagement".

Institute for Chartered Accountants in England and Wales (ICAEW)

2.13 ICAEW sets out the requirements of the LSB Requirements in its Probate Regulations (2021) (regulation 7) and further includes a suggested paragraph for inclusion in the client care letter; template letters are also provided. The Regulations also state that firms should bear in mind the importance of learning from complaints and recommend that, at the conclusion of the complaints process, firms reflect on whether procedures and/or systems could be introduced or modified to avoid similar complaints arising in the future.

Faculty Office

2.14 Section 8.1.4 of the Faculty Office's Notaries Practice Requirements (2019) requires complaints information to be communicated to the client using a prescribed form of words. Further information is provided in the "Service and Conduct Complaints" section on the Faculty Office website, which includes information about referral to the Legal Ombudsman.

2.15 *Summary*

Web research suggests that the core aspects of the LSB's Requirements on first tier complaints do seem to be addressed by Regulatory Bodies, either via their Transparency Rules and/or through Codes of Conduct / handbooks for their regulated communities. There is however a range of approaches in terms of the volume and type of information that is provided. Regulatory Bodies also vary in the extent to which they set expectations around how and where first tier complaints information should be made available and emphasise to varying degrees the importance of ensuring that this is displayed prominently on websites. In light of recent research from LeO on consumer experiences of locating information about complaints (see paragraphs 3.20 - 3.21 below) and research from Refugee Action on the difficulties asylum seekers can face in accessing information about complaints processes (paragraphs 4.9 and 4.10 below), this could be an area for development in future.

[5] Transparency Guidance | The Intellectual Property Regulation Board (ipreg.org.uk)

3) First tier complaints data and identifying systemic issues

3.1 The LSB Guidance states the following:

Gathering, analysing and responding to complaints data

21. Approved regulators should gather and analyse first-tier data to monitor and assess the effectiveness of authorised persons' complaints handling processes. Approved regulators should also analyse second-tier data from the Legal Ombudsman, to improve their understanding of the areas where complaints are upheld by the Ombudsman and why premature complaints are made. Premature complaints can be an indicator that an authorised person's complaints handling process is not communicated clearly or there is frustration with the process.

22. Analysis of first and second-tier data will provide approved regulators with an evidence base to develop regulatory responses to improve complaints handling outcomes for consumers. These may include:

    a. supervisory interventions to improve an authorised person's complaints handling process

    b. thematic reviews of recurring issues, which may result in changes to regulatory arrangements for complaints handling, supporting policies and guidance

    c. promoting best practice in first-tier complaints handling.

23. Approved regulators should also encourage authorised persons to analyse their own complaints data to drive improvements in outcomes for consumers, as well as to improve the effectiveness and efficiency of their businesses.

Sharing analysis

24. Approved regulators should share findings from thematic reviews and other evidence with other approved regulators where relevant and appropriate. Improving complaints handling practice across the legal services market will increase general consumer confidence in authorised persons.

25. Approved regulators should also work collaboratively with the Legal Ombudsman to understand second-tier complaints data for their authorised persons to improve complaints handling outcomes for consumers generally.

3.2 As part of the desk research, the information that each Regulatory Body collects, and makes public, about first tier complaints was explored, and is summarised below. It is worth noting here, however, that there is a separate question about how "complaints" are defined by firms, so a lack of complaints does not necessarily equate to a lack of expression of dissatisfaction by consumers. Evidence shows that firms vary in how they record complaints by type or category: while some report that they treat all complaints in the same way, others report that if a complaint seems less serious, or easy to deal with, it will not be recorded as a complaint. In the 2017 SRA and LeO research into the effectiveness of solicitors' handling of first tier complaints, 48% of surveyed firms reported receiving verbal expressions of dissatisfaction but not recording them as complaints; this is despite the definition in the Requirements stipulating that a complaint can be "an oral or written expression of dissatisfaction". Even where firms' complaints policies allowed clients to complain verbally, 39% of these firms reported that they did not record verbal complaints as formal complaints[6]. This was despite an overwhelming majority (93%) of firms reporting that they considered there to be business benefits to complaints handling.[7]

SRA

3.3 The SRA requires firms to report to them annually on the number of complaints they receive, and the number they resolve, when they renew their Practising Certificates. The SRA's First tier complaints report for 2019/20, published in July 2020, summarises the SRA's key findings arising from this exercise (a more recent report is due to be published in October 2022). The key findings of the 2019/20 report include that:

- the number of first tier complaints has increased over time, from around 26,500 in 2012 to over 30,000 in 2019
- the number of complaints resolved has also increased, and although the number of complaints received is now higher, the proportion being resolved is also higher. (up from 72% in 2012 to 80% in 2019)
- large firms were more likely to resolve complaints than small firms
- the most common reasons for complaint have remained constant over the years, and relate to delay, failure to advise and excessive costs.

The SRA's intention is that publishing this analysis will help the profession to understand the most common causes of complaints, so they can take action to address any areas of weakness in their firms. The SRA state that firms can use the report to help improve their standards of service by encouraging an open culture of complaints within their businesses which can improve the way complaints are handled and how individuals learn from complaints. In 2019, the SRA published a report on Maintaining standards of service and reducing complaints which highlights the benefits of high standards and service.

3.4 In 2019, the SRA conducted a sweep of a sample of firms' websites to analyse compliance with the Transparency Rules. This revealed that only 25% were fully complying with the rules, and 17% were not complying at all, with failure to publish the required complaints information being one of the most common areas of non-compliance. In the sample, 52% of firms were not displaying any complaints information. As part of its Transparency Rules Enforcement exercise, the SRA issued over 250 letters of guidance to firms, highlighting areas they needed to improve on their websites to fully comply with the rules. Up to 31 October 2020, enforcement action was taken against 10 firms in respect of Transparency Rules compliance, and from November 2020 to date, 8 firms have been subject to enforcement action. Of these 18 firms, 16 were subject to action relating to complaints information. The next

[6] SRA and LeO research into effectiveness of solicitors' handling of first tier complaints (2017), p vii
[7] SRA and LeO research into effectiveness of solicitors' handling of first tier complaints (2017), p73

Transparency Rules enforcement exercise is currently being scoped by the SRA, but it is likely that it will include a review of the websites of all firms who declared they are fully compliant with the Transparency Rules (around 2300 firms) during the original declaration exercise. This work will be carried out on a rolling basis over the next two years. In 2023, the SRA intend to introduce fixed penalties for failure to publish the required costs or complaints information, or display a clickable logo, in accordance with the Transparency Rules.

3.5 In October 2020, the SRA carried out an evaluation of its Transparency Rules, to assess whether the Rules were helping consumers to access accurate and relevant information about legal services. The key findings in respect of complaints were that the majority of firms with websites (81%) published complaints information here (possibly a consequence of the enforcement action highlighted in paragraph 3.4 above) and many additionally provided it in client care letters. The research identified however that some stakeholders felt that including complaints information "up front" in the client care letter was not the appropriate time or place for this within the customer journey; see paragraph 4.6 below for more information about research into the effectiveness of client care letters. The SRA is currently carrying out another review of the impact of the Transparency Rules, with the results due to be published in late 2022.

Bar Standards Board

3.6 In October 2021, the Bar Standards Board published an evaluation of its Transparency Rules, based on a spot-check of compliance, web sweeps and the 2021 Regulatory Return which collated responses to questions on actions taken in response to the transparency reforms. The evaluation found that there were relatively high levels of non-compliance with the Transparency Rules, however in many cases this was due to failure to comply with the rules relating to pricing transparency, rather than transparency relating to the complaints process. The BSB have since published a report on compliance with the price, service and redress transparency rules which show much improved levels of compliance (see paragraph 2.7). As part of its recent regulatory return exercise, the BSB has captured information from chambers about first tier complaints handling, covering the range and volume of complaints made, how complaints were used to provide feedback to barristers and what use was made to improve performance and the services provided. At time of writing this information is in the process of being analysed but should be complete soon.

3.7 The BSB has also published its Complaints Diversity Analysis of complaint outcomes from 2015 – 2019, which examined the relationships between barristers' characteristics (particularly gender and ethnicity) and the outcomes of complaints. The report provides some interesting findings into how gender and ethnicity are associated with complaints and it is interesting to note the research finding that male barristers subject to a complaint were more likely than their female counterparts to have their case referred for disciplinary action, as were black and minority ethnic barristers in comparison with white barristers. While these analyses are out of scope for this project, a number of workstreams are currently underway in LSB in relation to equality, diversity and inclusion, including work with Regulatory Bodies to examine relationships between protected characteristics and involvement in disciplinary and enforcement processes.

3.8 Barristers' Clients Research published by the BSB in 2021 provides some interesting insights into barriers to complaining, which are explored in more detail in paragraph 4.8 below.

CLSB

3.9 The CLSB's Guidance Note on Complaints Procedures sets out (at paragraph 38) the requirement for Costs Lawyers to file their complaints procedure with the CLSB along with their annual application for a Practising Certificate. The CLSB also collects information about the volume and type of complaints dealt with by Costs Lawyers, identifying patterns of conduct where relevant, but the small size of the datasets (usually around 10 per year) often mean that none arise. CLSB also reviews data sourced from the Legal Ombudsman and data about complaints to the CLSB; again, the numbers here are very small, with no complaints having proceeded to the Legal Ombudsman since 2020. The Guidance Note provides a diagram illustrating how the complaints data loop assists the CLSB in targeting its regulatory interventions. Information from the Legal Ombudsman about good practice in complaint handling is disseminated to CLSB's regulated community via its newsletter.

CILEx Regulation

3.10 The overall number of complaints received by firms regulated by CILEx Regulation is low, and the number proceeding to the Legal Ombudsman is smaller still; this means that the Regulatory Body often approaches firms directly about individual complaints that have proceeded to the Legal Ombudsman[8]. CILEx Regulation's website includes a First Tier Complaints Handling Survey from 2017 which identifies trends in first tier complaint data as well as issues in first tier complaint handling, and puts forward "learning points" for CILEx Regulation's regulated community. CILEx Regulation collect complaints data annually from firms that they regulate, but this data is not combined as the reporting period for each firm is different, depending on when they were first authorised[9].

IPReg

3.11 IPReg's Annual Reports include information on the number individuals or firms receiving one or more complaints (note: this is a slight change to previous years, when the number of complaints received was reported). IPReg state that collecting this information can help them to identify good practice or carry out further investigation in the case of widespread or systemic issues. The 2021 report identified that information about costs, and excessive costs, were the most frequently reported theme, and in response to this IPReg has undertaken to amend the Transparency Guidance to make price and service information requirements mandatory (see 2.12 above). Similar issues were identified in the 2019 and 2020 reports. The regulated community is relatively small, with no complaints having proceeded to the Legal Ombudsman in the last 3 years.

[8] Correspondence with CILEx Regulation, 3 October 2022
[9] Correspondence with CILEx Regulation, 3 October 2022

Faculty Office

3.12 The Registrar's Annual Report for year ending March 2020 (the most recent that is readily available online) indicates that the Faculty Office collected data on the number of complaints received about notaries and how many were resolved. This is a small regulated community, and the number of complaints is very small (on average fewer than 15 per year[10]), so the identification of systematic trends and issues is more difficult.

Other Regulatory Bodies

3.13 The CLC collects information about first tier complaints via mandatory questionnaires in regulatory returns. It also receives a monthly report from the Legal Ombudsman in second tier complaints which feeds into intelligence on regulated entities and influences the risk rating applied to them[11]. ICAEW do not routinely collect data in respect of first tier complaints[12].

Legal Ombudsman

3.14 The Legal Ombudsman collates a range of information on complaints and publishes this in a variety of formats. Each year LeO publishes data about complaints it has investigated at second tier, along with an overview report including themes and best practice. Part of the purpose of this report is to highlight areas for improvement in the legal services sector, both in terms of quality of service in the first instance, but also in terms of how to improve first tier complaints handling, before complaints get to LeO. The 2019/20 overview report sets out common flaws in first tier complaint responses and provides an example of a good first tier complaint response letter. The report notes that, in 2020/21, LeO found first tier complaints handling to be inadequate in 25% of cases they investigated – a consistent trend over the last few years. While this sizeable minority of inadequate first tier complaint investigations is of concern, an even greater concern is that in some cases the complaint was not responded to at all[13]. Also in 2020/21, 27.3% of the complaints received by LeO were deemed to be "premature" (ie: where the complainant had not exhausted the first tier process first), suggesting that either complainants were not aware of the correct process, or that they were unwilling or unable to exhaust the first tier process before approaching LeO.

3.15 LeO data from 2020/21 indicates that only 50% of consumers recall that they were signposted to LeO in relation to complaints processes[14]. In response to this, LeO have provided complaints signposting guidance for legal services providers. This includes information about why, when and how to signpost, emphasising that simply signposting at the start of the process is not sufficient. In addition, the signposting pack provides some suggested text to use on websites around complaining at both first and second tier, as well as suggested text for the engagement (or client care) letter and text for signposting to LeO at the end of the first tier complaints process.

3.16 LeO use their data as the basis for a range of materials to support legal services providers in handling first tier complaints, including a Best practice complaint handling guide which includes advice on key principles and the importance of using

[10] Correspondence with Faculty Office, 23 September 2022
[11] Correspondence with CLC, 10 October 2022
[12] Correspondence with ICAEW, 22 September 2022
[13] Legal Ombudsman Annual Complaints Summary 2019/20, p6
[14] Legal Ombudsman Annual Complaints Summary 2020/21, p21

clear, jargon-free language and a link to an interesting piece of research from 2017 about how language used in complaints processes impacts on consumer behaviour. LeO also offer regular training events on complaints handling, including specific sessions on complaint handling for specific areas of law, and a section of the LeO website includes information on how to prevent complaints from happening which includes thematic reports, case studies and guidance about specific areas and challenges.

3.17 In November 2021, LeO set up the Technical Advice Desk, a service which enables legal services providers to seek advice from LeO if they have a first tier complaint that they are unsure how to handle. Since its launch, the service has received around one enquiry per week, usually from smaller firms, ranging from minor queries about specific cases to more in-depth discussions about how a provider might improve its complaints process. Feedback on the service has been positive, with users praising the prompt and helpful responses[15]. While LeO had not anticipated significant volumes of enquiries, the level of demand is low and the LSB understands that LeO will be reviewing how it promotes and publicises service in the future.

3.18 In addition to the information it makes publicly available on its website, LeO produces monthly "regulator reports" for the SRA, BSB and CLC at their request. These reports are data extracts from LeO's management information, and as such do not include any analysis or commentary. The information provided includes the firms complained about, the numbers of complaints received each month, the number resolved, the reason for the complaint, the area of law the complaint related to and the remedy. The SRA have reported that they find this information useful, particularly for the work of the Research and Analysis and Thematic teams. The BSB have stated that they welcome the access to the information about service complaints, but are in discussions with LeO about how to improve the utility of the data.

3.19 Following the introduction of the new Transparency Rules in 2018, LeO observed that the number of premature complaints it received (ie: complaints where the consumer had not exhausted the provider's complaints process first) had not decreased as it anticipated. This led to LeO carrying out its own internal review of the websites of the 20 firms about whom the highest number of premature complaints were received. The review found that few of these firms provided direct links to their complaints processes from the home page and recommended that further independent research should be undertaken into the application of the Transparency Rules, and on how effectively consumers were being made aware of providers' complaints processes.

3.20 In March 2022, LeO commissioned research into complaints transparency. The research asked 41 recent legal services users to complete a number of tasks and questions online in relation to the process of marking a complaint. The key finding of the research was that there is a mixed picture in relation to transparency of complaints information on legal services providers' websites: while there are some examples of good practice, in some instances this information is not easily accessible, and overall the research participants felt that complaints information could be more prominent on providers' websites. Participants tended to look for complaint information under the "Contact Us" tab, or via a direct link on the main home page. They tended not to look in the web page footer (in the "small print") for

[15] Call with Legal Ombudsman, 18 July 2022

this information, although in some instances this is where it was located. As well as being harder to find, there was a feeling among participants that locating the information here could give the impression of a provider being unreceptive to complaints. Participants also tended to look for instructions as to how to make a complaint, rather than searching for the provider's complaints policy. Once found, however, complaint information tended to be understood. While most participants understood that they should raise their complaint with the service provider before complaining to LeO, some expressed that they would have reservations about doing this if their case was ongoing, for fear of jeopardising the relationship with their provider and their case suffering as a result. This speaks to a power imbalance that some consumers feel is inherent in the process; this is echoed particularly strongly among certain groups as discussed in paragraphs 4.8 - 4.10 below.

3.21 The report culminated in three recommendations for legal services providers: first that they should display a more obvious link to their complaints processes on their websites; second that they should make consumers aware at key stages of the relationship (i.e.: at the outset of the relationship and when the final bill is issued) of the formal complaints process; and third that, where possible, a named contact for dealing with complaints should be identified.

3.21 *Summary*

Perhaps unsurprisingly, the larger regulators (SRA and BSB) appear to do more in terms of collecting and analysing first tier complaints data, with the SRA in particular publishing a range of reports in this area. While the SRA has published information on its web sweeps to assess compliance with the Transparency Rules, and the BSB has identified and is working with non-compliant firms, it is unclear what other Regulatory Bodies have done, although it is evident that the CLSB do undertake work in this area. Overall therefore, the desk research to date indicates a mixed picture in terms of Regulatory Bodies' engagement with the LSB Guidance on first tier complaints handling, however it is acknowledged that the respective sizes of different regulated communities will be a significant factor here.

It is clear that the Legal Ombudsman provides a wealth of resources in relation to first tier complaints handling, including a service tailored to individual queries about how to handle particular complaints. The extent to which this resource is exploited by Regulatory Bodies is unclear but the relatively low number of enquiries to the Technical Advice Service, coupled with the relatively large proportion of first tier complaint responses deemed inadequate by LeO, might suggest that this resource is not being used as extensively as it could be by the sector. A number of Regulatory Bodies have confirmed however that they promote Legal Ombudsman complaints handling courses in their newsletters and updates to their regulated communities.

4 Barriers to complaining

Silent sufferers

4.1 There is a range of evidence which indicates that consumers often face barriers to making a complaint, and that these barriers can be more challenging for certain groups. "Silent sufferers" – consumers who are unhappy with the service they have received but do not make a formal complaint – have been prevalent in the legal services sector for a number of years. Although the number of silent sufferers does appear to have decreased over time from 42% in 2012[16] , the Legal Services Consumer Panel (LSCP) annual Tracker Survey reports from 2020 (p2) and 2021 show that 36% of clients dissatisfied with their legal service were unwilling to make a complaint[17]. The recently-released Tracker Survey report for 2022 [18] shows that the proportion of silent sufferers decreased this year to 24%, however at almost one quarter this is still a sizeable minority. It is too early to tell at this stage whether this drop can be seen as a trend or whether the figure for 2022 was anomalous, however it is possible that increased consumer use of online avenues for redress could have contributed to a reduction in silent suffering. While it is too early to draw any firm conclusions about this at present, data and analysis from future years will give a better indication of the long-term direction of travel and possible reasons behind this. Analysis of the raw Tracker Survey data also revealed that a sizeable proportion (60%) of silent sufferers had an issue relating to conveyancing; perhaps not surprising given that this is one of the most complained about area among legal services users generally. The raw data also indicates that silent sufferers had a higher tendency to say they were unsure how to make a complaint; conversely while silent sufferers said they tended not to shop around, they did not say that this was because they did not know how to (a specific response option in the Tracker Survey).

4.2 In July 2022, the LSB carried out a literature review into silent sufferers in legal services. The review identified a number of factors that predict silent suffering behaviour. The first of these are situational factors: whether consumers felt that the size of the issue and the likely benefit arising from making the complaint would justify the time and effort required. The second is service provider and market factors: consumer perceptions of a provider's professional reputation and the size of the marketplace. Third and fourth are demographic factors (age, socio-economic status, educational background and the impact these may have on consumer confidence) and behavioural factors (loyalty, or lack thereof, to a provider).

4.3 In terms of situational factors, the literature review reported that "consumer friction" - i.e.: the amount of time and effort a consumer believed a complaint was likely to require, balanced against the perceived magnitude of the issue and/or likely benefit - was commonly cited as a reason for choosing not to complain. This can be exacerbated by hurdles within the complaints process itself, such as not easily being able to find the right channel to make a complaint. The review highlights that reducing friction in complaints processes, as well as challenging the view that a "minor" issue is not worthy of complaint, could help to reduce silent suffering. Looking at service provider factors, the review notes that perceptions of providers' openness and responsiveness to complaints may influence consumers in their

[16] LSCP Tracker Survey 2022 – How consumers are using legal services, p25
[17] LSCP Tracker Survey 2021 - How consumers are using legal services, p13
[18] LSCP Tracker Survey 2022 – How consumers are using legal services, p25

decision as to whether to complain. A “complaint-friendly” provider is likely to be more attractive to a prospective silent sufferer than a provider which is perceived as aloof; this also touches on considerations around power imbalances which are discussed in more detail in paragraph 4.8 below. In relation to demographic factors, the review identified a number of characteristics associated with silent suffering, and also highlighted “low legal confidence” as a key indicator associated with silent suffering, noting that a range of complaints channels might assist in overcoming demographic factors and empower consumers to complain. This suggestion is echoed in one of the recommendations of the Refugee Action report on Consumer barriers to complaints – see paragraph 4.10 below. Behavioural factors around consumer loyalty are perhaps more difficult to overcome: the review reported that consumers were more likely to complain if they had a long-term relationship with a firm, although in some cases this can have the reverse effect. Either way, in the legal services field it is likely that many consumers only engage with providers on a one-off basis in response to a particular legal need so considerations of consumer loyalty are perhaps less relevant here.

4.4 In order to encourage consumers to be more forthcoming in making complaints, the review stressed the need for increased awareness of complaints processes among consumers and more accessible routes to redress, as well as a greater understanding of issues that constitute dissatisfaction, and more receptiveness among providers to welcoming complaints. These findings have also emerged from other channels, as outlined below.

Awareness of complaints processes

4.5 Perhaps the first question to ask when considering the issue of silent sufferers in legal services is: to what extent do these consumers know how to go about making a complaint? It is a requirement that legal services providers notify clients in writing of their right to complain and how to do so, and in practice this is often achieved via the “client care” letter which is sent out in the initial stages of engagement. Research shows, however, that this is not always effective. In 2017, the SRA commissioned independent research into the experiences of people making complaints about solicitors’ legal services, culminating in a report into the experiences and effectiveness of solicitors’ first tier complaints handling processes. The key findings included that:

- while 98% of surveyed firms provided information about their complaints procedure at the start of the process, 37% of consumers said they were not told about it;
- 92% of surveyed firms provided information about the Legal Ombudsman at the start of the process, but only 34% did so at the end of the complaint process, and only 4% of consumers recall receiving this information at the end of the complaint process;
- 51% of surveyed firms reported that they did not inform consumers about Alternative Dispute Resolution options, and 72% of surveyed consumers reported that they did not receive this information.

There is evidence of a similar pattern in at least one other regulated community also: a recent consumer survey[19] from the Faculty Office indicates that only 60% of respondents indicated that they were informed how to make a complaint, with a further 18% indicating that they did not know. 22% of respondents said that they would not know how to make a complaint.

[19] Correspondence with Faculty office, 23 September 2022

4.6 The discrepancy between what consumers are told and what they recall being told is interesting, and suggests that including information about the complaints procedure in a letter is not necessarily sufficient to ensure that the consumer is in fact aware of the procedure. This is also evident in 2016 research into Client Care letters .The research found that the letters were often perceived to be overly long, containing too much generic information, meaning that key pieces of information such as that relating to the complaints process were often lost; this was particularly true for consumers in vulnerable circumstances. The research also queried whether the client care letter was the best place to include information about complaints: for many, this information was seen as less relevant at the start of the process, and was even perceived negatively by some, as it seemed to raise the prospect of dissatisfaction before any work had even commenced. The research suggested that there could be value in reminding consumers about information relating to complaints later in the process. The format of the information was also a key factor in the extent to which consumers engaged with the letters. The research suggested that a separate leaflet, accompanying the client care letter, might serve the purpose of ensuring that the complaints process was highlighted from the outset but in a format that consumers could return to later, rather than buried in amongst other information. The research also found that a visual representation of the complaints process, for example a flow diagram, could be a useful additional tool for communicating this information. In summarising its findings, the report identified 8 principles to encourage better engagement with client care letters: showing a clear purpose; keeping it concise; using plain English; prioritising information; personalising information; making it easy to read; highlighting key information; and considering additional opportunities to engage consumers.

Other barriers to complaining

4.7 While the means and timing of conveying information about the complaints process has been identified as a potential barrier to complaints, it is by no means the only barrier. The SRA and LeO research from 2017 found that the main barrier to consumers making complaints about solicitors were that consumers felt their solicitor would not handle their complaint fairly, or even take notice. Having the confidence to make a complaint was also a significant barrier for some consumers. From the firms' perspectives, the research showed that the main barriers to effectively handling complaints were clients' unrealistic expectations (89%) and it being hard to identify a complaint as opposed to a client 'grumbling' (53%)[20] – findings which perhaps could support consumers' fears about their complaint not being taken seriously.

Barriers for particular groups

4.8 The evidence also indicates that consumers in certain groups face greater barriers to complaining than others. The SRA and LeO 2017 research found that consumers with disabilities were more likely to report that they did not understand the complaints procedure or know how to complain - 25%, compared to 4% and 17% of consumers who did not report having a disability[21]. The Bar Standards Board's Barristers' Clients Research found that there was some uncertainty in how to challenge a legal adviser via a complaints process, and that those with "low legal confidence", or who perceived the justices system as inaccessible, were more likely to take no action despite being unsatisfied[22]. An analysis of the 2019/20 survey of Legal Needs of Individuals in England and Wales suggests that silent suffering is more prevalent in

[20] SRA and LeO 2017 research into effectiveness of solicitors' handling of first tier complaints (2017), p52
[21] SRA and LeO 2017 research into effectiveness of solicitors' handling of first tier complaints (2017), p vi
[22] BSB Barristers' Clients' research (2021), pp55-56

some types of issue legal issue than others, with being arrested; being involved in a divorce; immigration; and domestic violence being the most over-represented areas for silent suffering.

4.9 The strong correlation between immigration and silent suffering is also evident in the recent research reports published by Refugee Action: [Consumer barriers to complaints] and [Caseworker barriers to complaints]. The Consumer barriers research showed that, of the 23 interview participants (predominantly asylum seekers) who had had a poor experience of immigration advice, only 3 made a complaint. The report identified 5 key barriers to complaining for this group, chief among which was the lack of knowledge about their right to complain and about the complaints process. Given that the first entry in the LSB Requirements on first tier complaints is that regulators must notify clients of their right to make a complaint, this is of some concern. The second most commonly cited barrier to complaining was a fear of repercussions from either their solicitor or from the Home Office, and a concern that their complaint might impact negatively upon their asylum application. This echoes to an extent the findings of the SRA /LeO 2017 research (see paragraph 4.5 above) and speaks to a lack of trust of the profession among certain groups. Interestingly, the report notes that, of those who said they did not know how to complain, some said that even if they had known, they still would probably not have done so due to fears about their complaint affecting their immigration application or status. What comes through clearly from the report is the sense of a power imbalance between the consumer and the solicitor in these circumstances, with some participants stating that they would prefer to change solicitors than complain. This power imbalance is compounded by a lack of knowledge on the part of the consumer as to how the immigration system works and individuals not necessarily realising that they have received poor advice until much later. In some cases the use of interpreters was also cited as a barrier to complaining, with the power of the interpreter, and in some cases their perceived lack of independence, representing a cause for concern among some participants. The parallel report on Caseworker barriers to complaints largely echoes the findings of the Consumer barriers report, with 80% of caseworkers in the survey stating that the main reason for not pursuing a complaint was the client's reluctance to do so. Many caseworkers considered that this could be attributed to the client's concerns that this would have a negative impact on their application or immigration status.

4.10 The Consumer barriers report makes three recommendations for regulatory bodies. The first of these is that these bodies work to ensure that clear information on the right to complain and the process of complaint is provided. As this is already enshrined in the LSB's Requirements, it would seem that there may be more to be done here in terms of compliance/ enforcement, but also in considering how and when information is communicated (see paragraph 4.6 above on client care letters). The second is that alternative strategies for registering complaints are developed and evaluated: this goes to the heart of the fear and distrust expressed by certain groups in relation to making complaints. The final recommendation is that an alternative method of anonymous review of advisors is created, to allow instances of poor advice to be highlighted. This latter recommendation is outside the scope of the first tier complaints work, as it effectively relates to a method of monitoring and/or enforcement rather than to complaints as such, but is included here for completeness. The report also makes a number of recommendations of areas for further research[23]. This includes ways of better ensuring the communication of information on the right to complain, and suggestions around the use of social media and videos to widen access to complaints channels; there are also recommendations

[23] Consumer Barriers to Complaints, 2022, p9 and p38

for targeted research into barriers to complaints for specific groups such as child migrants and non- asylum seeking migrants. The report also recommends that research is undertaken to investigate the feasibility of providing a centralised point of contact across multiple regulators, although given that the overwhelming majority of cases cited in the research related to solicitors, the rationale for this recommendation is unclear.

4.11 *Summary*

> It appears that there is a range of barriers to making first tier complaints and that these are more prevalent for some groups than others. Despite the existing requirement for legal services providers to make consumers aware of their right to complain and of how to do this, awareness of how to make a complaint still seems to be a hurdle for many silent sufferers, particularly those who have a disability or who are seeking asylum. While there may be an issue here around compliance, there is a broader consideration around how and when this information is communicated, and the evidence suggests that more could be done here to ensure that the information about complaints is "heard" by legal services users. A wider concern among consumers about trust (and, for asylum seekers, fear) also emerges in relation to complaints, suggesting that more may need to be done to change perceptions of the complaints process and, in doing so, address power imbalances (real or perceived) between legal service providers and legal service users.

5 First tier complaints handling in other sectors

5.1 As part of the desk research, Teams calls were arranged with colleagues from regulators in the Finance and Healthcare sectors, to ascertain how they ensure that the systems for first tier complaints in their sector are working effectively and whether they take any steps to ensure that lessons are learned from first tier complaints to improve practice.

Financial Conduct Authority and the Financial Ombudsman Service

5.2 The Financial Conduct Authority (FCA) is the regulator for financial services firms and individuals in the UK. As such, it has a somewhat different role to that of the LSB in that it regulates firms and individuals directly, whereas the LSB is an oversight regulator, but it is nonetheless interesting to compare the approaches in the two sectors. The FCA has quite detailed and prescriptive requirements in the FCA handbook. First tier complaints and are covered in section DISP1 while complaints to the Financial Ombudsman Service are covered in section DISP2. DISP1.2 sets out requirements in respect of making consumers aware of complaints processes and of the existence of the Financial Ombudsman, and includes details of what these communications must cover. DISP 1.3 sets out rules around complaints handling, including for example that if consumers make their complaint via telephone, they must not be charged more than basic (i.e.: connection) rate to do so. This section also states (in DISP 1.3.6) that firms must take steps to identify and remedy any recurring or systematic issues evident in complaints, including whether the root cause of the complaint might have affected other consumers who have not complained, and potentially offer redress to these consumers. This is not a practice which appears to be in evidence within legal services and it may be useful to explore this further in consultation. Section DISP1.6 sets out requirements in respect of time limits and keeping consumers informed as their complaint progresses. The time limit for responding to complaints is 8 weeks although in practice around two thirds are resolved within three business days[24]; longer term there may be a move to shorten the 8 week limit. The handbook also contains requirements around firms recording complaints (normally to be kept on file for 3 years - DISP 1.9) and around reporting rules (DISP 1.10): firms are required to provide the FCA with a report on complaints twice a year although in future this may become more frequent[25]. The FCA handbook (DISP1 Annex 3) includes prescribed wording that firms must use when referring consumers to the Financial Ombudsman. The Financial Ombudsman (FOS) have carried out random sampling of firms' complaint response letter to check compliance with this requirement, and referred any instances of non-compliance onto the FCA which took enforcement action as necessary[26].

5.3 The FCA have recently published a Policy Statement and Guidance on a new Consumer Duty which sets higher and clearer standards of consumer protection. The Consumer Duty stipulates that firms will be required to “consider the needs, characteristics and objectives of their customers – including those with characteristics of vulnerability – and how they behave, at every stage of the customer journey. As well as acting to deliver good customer outcomes, firms will need to understand and evidence whether those outcomes are being met”. Part of the new Consumer Duty is to provide “timely and clear information that people can understand” - a principle which could usefully be made more explicit in complaints processes in legal services.

Professional Standards Authority for Health and Social Care

5.4 The Professional Standards Authority for Health and Social Care (PSA) is the oversight regulator for the health and social care professions, overseeing 10 different regulators in the UK. While it has a similar role in many ways to that of the LSB, it does not set any requirements in respect of first tier complaints. Its regulators deal with complaints about fitness to practise of health and social care professionals, but have no formal requirements around the handling of service complaints. NHS trusts will have their own processes for dealing with service complaints, and there are two ombudsman schemes onto which complaints unresolved at first tier can be referred, but the PSA's involvement in these types of complaints is very limited. The PSA has more of a role in relation to complaints about fitness to practise, carrying out dip samples of decisions made by regulators on these cases and, if it considers the wrong decision was reached, referring the decision to a court to review the decision.

[24] Call with FCA, 11 July 2022
[25] Call with FCA, 11 July 2022
[26] Call with FOS, 17 June 2022

6 Conclusions

6.1 It is clear from the desk research that there is broad compliance from Regulatory Bodies with the LSB's core Requirements around First Tier Complaints. All Regulatory Bodies enshrine these somewhere in their rules for their regulated communities (albeit to varying degrees) and there is evidence that all take enforcement action in instances of non-compliance. In respect of the Guidance, the larger Regulatory Bodies undertake substantial work in relation to data gathering and analysis and many produce helpful and comprehensive best practice guides and/or signpost to relevant LeO resources.

6.2 Nonetheless, it appears that there is scope for more work to be done in a few key areas. First, the question of how, when and where information about complaints is communicated to consumers. Research suggests that the way in which complaints information is communicated has an impact on whether and how consumers "hear" this message: in many cases some do not hear it at all, or in others they may hear it but fear that the provider will not be receptive to their complaint. Second is the important issue of overcoming barriers to complaining. In addition to practical barriers such as not being able to find the relevant information about how to complain, there appears to be a perceived power imbalance inherent in the system – felt more acutely by consumers in vulnerable circumstances – which may serve to exacerbate the barriers to complaining and compound the problem of "silent suffering" among some legal services users. Third is the issue of learning from complaints. While the LSB's Guidance on first tier complaints handling stresses the importance of learning from complaints, and sharing this learning across the sector, the desk research found only a limited amount of evidence that some of the smaller regulatory bodies have undertaken work in this area, however this is likely due to the low number of complaints arising in these smaller regulated communities. It is clear, however, that the Legal Ombudsman provides a wealth of resources on first tier complaints handling, and there may be scope for further promoting and publicising this work. Finally, in light of the range of ways in which "complaint" is understood and acted up on in the sector, there may be value in the Requirements being more robust about the definition of a "complaint".

6.3 The four priority areas to be explored in the consultation around the revised Requirements and Guidance can therefore be identified as follows:

i) how, when and where complaints information is communicated
ii) overcoming barriers to complaining
iii) learning from complaints; and
iv) how the term "complaint" is defined and interpreted.