

Meeting: Legal Services Board

Date: 6 June 2023

Item: Paper (23) 33

Title: Consumer Redress – update and next steps

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Status: Official

Introduction: Purpose of the paper

1. This paper provides an update to Board on the work to date with the consumer redress project, which aims to deliver the best possible redress system for legal services consumers. It sets out the key findings from our recent primary consumer research and how these findings, along with evidence that complaints handling is not working as effectively as it could be, have informed our outline policy proposals for regulators.
2. It seeks Board's agreement to develop a broader package, which, in addition to the revised Requirements and Guidance previously discussed with Board, includes a Policy Statement for public consultation, as well as additional measures to build sector-wide support for a step-change improvement in complaints resolution at the first tier (with associated benefits for the second tier).

Recommendation

3. Board is asked to **note** the key findings arising from the research, and to **agree** to develop the following for consultation (the drafts for which will be presented to Board for approval in July):
 - revised draft **statutory s112¹ Requirements and accompanying draft s162² Guidance** to ensure key principles (based on the evidence we have gathered, which are likely to include such matters as transparency, fairness, accessibility, ease of use, empathy and continuous learning) are embedded in providers' first-tier complaints procedures;

¹ [Section 112](#) of the Legal Services Act 2007 (the Act) - Complaints procedures of authorised persons

² [Section 162](#) of the Act - Guidance

- a new draft **Statement of Policy**³ that makes clear our expectation that regulators should use tools at their disposal to make first tier complaints handling effective, including collecting and analysing data from first and second-tier complaints to identify any issues and addressing these;
- plans for the **LSB to convene a coalition of stakeholders** (including regulators, representative bodies, LeO, LSCP and consumer organisations) with a view to collectively agreeing a public commitment in support of improved complaints resolution that delivers better outcomes for consumers.

Background

4. Our work on consumer redress promotes all of the regulatory objectives, including protecting and promoting the interests of consumers and the public interest, and improving access to justice. It also links to the challenges in the Reshaping Legal Services strategy to close gaps in consumer protection and ensure high quality legal services.
5. When it was originally conceived, the focus of the project was to review the LSB's existing Requirements and Guidance on first tier complaints handling. The Board will recall that, in October 2022, we set out a range of evidence that these were not working as effectively as they could be, including evidence from LeO of inadequate complaint handling at the first-tier and complaints going to LeO prematurely, and evidence from the LSCP of a large proportion of silent sufferers who were dissatisfied with the service they had received but did not complain.⁴
6. We identified four emerging themes that we presented to Board as being the focus of our further work: how, when and where consumers are provided with complaints information; overcoming barriers to complaints handling; learning lessons from complaints and how the term complaint is defined and interpreted.

³ [Section 49\(2\)](#) of the Act- Policy statements

⁴ <https://legalservicesboard.org.uk/wp-content/uploads/2022/10/08.-22-55-First-tier-complaints-update.pdf>

7. To further build our evidence base, we then commissioned primary research with the LSB Public Panel⁵ and key professional stakeholders⁶ to learn from their first-hand experiences of complaints, understand what good redress might look like for consumers and what would help to deliver improved public confidence in complaints handling. This research was completed at the end of March and the report, attached at Annex A, will be published later this month.
8. The research participants identified six key principles that participants considered should underpin good complaints resolution, as well as specific examples of how these principles could be translated into action. The principles identified by participants align with the evidence and themes discussed by Board in October and will inform the development of relevant documents. They include:
 - Empathy – that consumers feel listened to and taken seriously, and that potential power imbalances between providers and consumers are acknowledged.
 - Transparency – that consumers understand the process and are kept informed as to the progress of their complaints.
 - Accessibility – that complaint processes are designed with a range of different consumer needs in mind, and that barriers to making a complaint are minimised as far as possible.
 - Fairness – that complaints are investigated impartially and that consumers know they will not be disadvantaged by making a complaint.
 - Ease of use – that it should be easy for consumers to find out how to make a complaint and easy for them to navigate the process without too much effort on their part; the burden of effort should be on the provider.

⁵ All of those recruited for this research had made a complaint about legal services in the past or had cause to complain but did not (i.e. they were silent sufferers).

⁶ Professional stakeholders included representatives from the Solicitors' Regulation Authority, the Legal Ombudsman, the Legal Services Consumer Panel, the Society for Licensed Conveyancers, complaints practitioners from law firms and regulators in other sectors.

- Continuous learning – the value of being receptive to consumer feedback / complaints, and using this to enhance service and/or complaint handling in future.

Outline policy proposals

9. From our evidence-gathering (which includes evidence gathered by others) and new research, it is clear that complaints resolution in the legal services sector is not meeting consumers' expectations as well as it might. We consider there needs to be a step-change improvement in complaints resolution and that better complaints handling at the first-tier will result in fewer complaints going to LeO at second tier, which in turn will enable a more efficient ombudsman service. Overall, consumers will have better outcomes and higher quality legal services.
10. We note that the connection between the first and second tier is important, because despite significant improvement in recent months, LeO continues to receive a large volume of complaints and is still contending with a substantial (albeit decreasing) backlog. As LeO identifies in its interim strategy⁷, if more complaints could be prevented or resolved by service providers themselves, this would allow LeO to focus on complaints that genuinely require its attention.
11. There may also be the potential for information gathered by LeO at the second tier to further contribute to improving service and complaint handling at first tier. We know that there is a strong appetite in the sector for LeO to do more with its insights on themes and trends in complaints, and that this is a focus of LeO's engagement with stakeholders as it develops its new strategy.
12. In light of this, we reflected whether revisions to our existing Requirements and Guidance would be the best means to achieve these policy aims. Our power to specify Requirements under s112 is targeted to what regulatory arrangements approved regulators must have in place for complaints procedures of authorised persons. This means we need to consider what other regulatory tools and levers we have available to ensure that regulators are taking other steps in their regulatory approach to ensure complaints handling by authorised persons is effective and responding when it is not. There is also scope for exploring how we can use our convening role as the

⁷ [Office for Legal Complaints Strategy 2023-24 and Business Plan and Budget 2023/24](#), page 7

oversight regulator to bring together stakeholders to agree how they can play their part in supporting better redress for consumers.

Requirements and Guidance

13. The existing s112 Requirements state that regulators must require authorised persons to notify clients writing of their right to make a first-tier complaint, how and when they can do this, and of their right to make a second-tier complaint to the Legal Ombudsman. The Requirements do not specify that these regulatory arrangements include detail on making complaints procedures easily accessible, how complaints ought to be considered and when i.e. promptly, effectively and fully.
14. We propose to reflect the principles arising from the primary research (see paragraph 8), with specific examples and suggested good practice articulated in the accompanying s162 Guidance. One example, using the principle of accessibility, might be to require complaints procedures to make provision for a client to be able to make a complaint in a way that is accessible to them, and the guidance would set out practical considerations for this such as different formats of communication. We consider that this will provide a stronger framework around which first tier complaints procedures should be structured and will address some of the specific concerns evident through the research.

Statement of Policy

15. We propose to accompany the draft Requirements and Guidance with a short draft Statement of Policy. This would make clear our expectations that regulators should make use of the tools at their disposal to make first tier complaints handling effective, and to ensure that, where these are not effective, regulators take action to address this. We intend that the proposed Statement of Policy will focus on regulators' collection and analysis of data about first and second tier complaints, and how they use this data to inform interventions where there are issues of concern, or to share good practice.

Coalition of stakeholders

16. We consider that this work will have more impact if we can convene a voluntary group of interested stakeholders to collectively commit to a set of common objectives in aiming to deliver the best possible redress system for consumers. This would include engagement with regulators, representative bodies, LeO, LSCP and consumer organisations. We have already engaged with many of these stakeholders in our work to-date.

17. We envisage that the outcome of this work might include a statement of recognition from stakeholders that complaints resolution needs to work better for consumers and a pledge from stakeholders that they will work together to bring about improvements for consumers in first tier complaints. At present we anticipate this might culminate in a joint statement, similar to our joint statement on tackling counter-inclusive misconduct⁸, but will wait to see how this work develops.

Next steps

18. We propose to submit draft revised Requirements and Guidance and a draft Statement of Policy, to the next meeting of Board in July, with a view to publicly consulting on them soon after subject to the Board's approval.

19. We expect that convening a coalition of interested stakeholders, and the subsequent agreement of a joint statement or similar public commitment, can happen in parallel and may take longer, based on previous experiences of similar work. We have prepared an initial communication to stakeholders which we intend to send following Board's agreement of our approach.

Risks and mitigations	
Financial:	No specific considerations or risks arise.
Legal:	The proposals present an opportunity to align and update statutory requirements and guidance with our recently updated suite of statutory rules and guidance, as well as introducing a supporting statement of policy. The legal team remain engaged throughout the process to provide advice and support as appropriate ensuring the proposals achieve their policy objectives whilst adhering to our remit under the Act.
Communications and engagement:	As described above, we plan to build a coalition of stakeholders to agree common aims. The Community Research report will be published following the Board meeting.
Equality and diversity:	One of the objectives of this project is to ensure that consumers of all backgrounds can easily access quick and fair redress. The proposals in this paper should therefore be beneficial in respect of equality and diversity.

⁸ <https://legalservicesboard.org.uk/wp-content/uploads/2022/06/Tackling-counter-inclusive-misconduct-statement-FINAL.pdf>

Resource:	The expansion of the scope and objectives of this project may have an impact on resourcing, but this will be managed within our resources and usual prioritisation of activities.
Environmental:	No specific considerations or risks arise.

Annexes

Annex A – “Improving service complaints in legal services: findings from a collaborative workshop with the LSB Public Panel and stakeholders” – Community Research report, March 2023

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Annex A	s.22 future publication	N/A