

Meeting: Legal Services Board

Date: 26 March 2024¹

Item: Paper (24) 11

Title: First Tier Complaints: Requirements, Guidance and Statement of Policy

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Status: Official

Introduction

1. Following our public consultation on proposals for revised Requirements, Guidance and a new statement of policy on first tier complaints resolution, the Board is now asked to approve the following documents for publication:
 - LSB's **consultation response document**
 - New Section 112 Requirements for Approved regulators' Regulatory Arrangements for Authorised Person's Complaints Procedures on First Tier Complaints ("**the Requirements**")
 - New Guidance on Section 112 Requirements for Provisions Made by Approved Regulators for First-tier Complaints ("**the Guidance**")
 - New statement of policy – first tier complaints ("**the policy statement**")

Recommendation

2. The Board is invited to **approve** the final Requirements, Guidance, statement of policy and consultation response document for publication, and **delegate** to the Chief Executive approval of final minor changes prior to publication.

Background

3. The LSB has existing statutory requirements and guidance on first tier complaints², published in 2016, which set out what approved regulators must require in their regulatory arrangements for authorised persons' first tier complaints procedures. Our evidence base³ shows, however, that first tier complaints are not working as well as they might for legal service users. Data from the Legal Ombudsman shows that a high proportion of complaints have been handled inadequately at first tier, and/or are escalated to LeO without having exhausted the first tier process; data from the Legal Services Consumer

¹ Circulated 19 March 2024

² A first tier complaint is a complaint made by the legal service user to the legal service provider.

³ As set out in our [first tier complaints consultation document](#)

Panel's Tracker Survey indicates a sizeable proportion of "silent sufferers" who were unhappy with the service they received but did not make a complaint; there is evidence that communicating information about complaints via client care letters is not effective; and new primary evidence we carried out in 2023 identified a number of ways in which the experience of making a complaint could be improved for legal service users.

4. In our public consultation we set out our policy objective for regulators to deliver a step-change improvement in the resolution of first tier complaints, and to foster a culture of learning from complaints. This work links to the challenge identified in our Reshaping Legal Services strategy to ensure high quality legal services and close gaps in consumer protection, and to the regulatory objectives of protecting and promoting the public interest, improving access to justice, protecting and promoting the interests of consumers, increasing public understanding of the citizen's legal rights and duties, and promoting and maintaining adherence to the professional principles.
5. Our consultation set out our proposals to strengthen the 2016 requirements and guidance, alongside a proposal for a new policy statement in which we set out our expectations on regulators around the collection and analysis of intelligence relating to complaints.
6. In the revised Requirements and Guidance, we have addressed concerns around silent suffering and barriers to complaints through specific provisions aimed at bolstering consumer confidence in first tier complaints processes, and ensuring that complaints procedures are accessible in the widest possible sense. We have also included specific provisions on how and when information about making a complaint must be communicated to the client, and on communication with complainants once they have made a complaint. Moreover, if their confidence in complaints procedures is enhanced, legal services users may be more willing to provide feedback to authorised persons outside of a formal complaint.
7. In the Policy Statement we have set expectations for regulators around the collection and analysis of data to encourage a culture of accountability, transparency and learning from complaints, which we consider will ultimately improve services for legal service users and the public more widely.
8. Supporting good practice and using lessons learned to raise standards is clearly a role for regulators, nonetheless this can be further achieved through collaboration. To support our work and in recognition that our objectives will best be delivered collectively, we have convened a "first tier complaints coalition" of key stakeholders, including Approved Regulators, Regulatory Bodies, the Legal Ombudsman, associations for legal professionals and consumer organisations. Through this group we intend to seek consensus across the sector as to how best to foster a culture change in the perception and handling of first tier complaints and we can work together to improve legal services that better meet society's needs.

Consultation and responses

9. The consultation on the proposals for the new Requirements, Guidance and policy statement ran for 12 weeks, from 24 August 2023 to 17 November 2023. We received 17 responses from a range of stakeholders.
10. Overall, respondents were supportive of the broad policy aims of improving first tier complaints resolution and encouraging a culture of learning from complaints. Some respondents expressed concern about the proportionality of the proposals overall, while others commended the benefits that the proposals were likely to bring to legal service users. We are grateful to those who responded to the consultation for their careful consideration of the issues and for their helpful comments.
11. In the consultation response document, we have summarised the key comments we received, our responses to these, and any changes we have made to the Requirements, Guidance and policy statement in light of the feedback received. The consultation response document is attached at Annex A, with the Requirements, Guidance and policy statement attached at Annexes B, C and D respectively.

Key changes

12. The key changes we have made are around proportionality, achieving policy intent and workability/avoiding unintended consequences.

Proportionality:

- a) In the Requirements, we have added new provisions highlighting that approved regulators must have regard to the Better Regulation principles (transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed) and may take into account other relevant factors in satisfying the Requirements.

This was to address concerns raised in the consultation responses around proportionality and applicability of some of the provisions to particular sections of the profession (for example, sole practitioners).

- b) In the Guidance, we have added a new paragraph in the “definitions” section acknowledging that authorised persons may receive vexatious or baseless complaints and that regulators have discretion to determine what is appropriate and proportionate in the circumstances where such complaints arise.

This was in response to consultation feedback and goes towards addressing concerns around proportionality and targeting action where it is needed.

- c) In the Guidance, we have added new text under the “provision of information” section to clarify that, in certain circumstances, it may be sufficient to provide information about how to complain on one occasion only.

This was in response to consultation feedback and relates to comments around proportionality and applicability of the proposals to certain sections of the profession.

Achieving policy intent

- d) In the Requirements, we have added a new provision in the “provision of information” section that, in addition to providing information about how to make a complaint at the time of engagement and at the conclusion of the matter, authorised persons must additionally provide clients with information about how to make a complaint if specifically asked to do so, or where a complaint is made during a matter.

This was suggested in the consultation feedback and will, we believe, be of benefit to legal service users.

- d) In the Requirements, we have added new paragraphs in Section D setting out the relevant factors that approved regulators may take into account in satisfying the Requirements, and stating that approved regulators should have regard to guidance and good practice from relevant organisations such as LeO.

This addresses feedback received during the consultation and is complementary to our policy objectives.

- e) In the policy statement, we have added text reflecting that, in pursuing the outcomes, regulators should take account of relevant guidance and good practice from other organisations such as the Legal Ombudsman.

This was in response to feedback received during the consultation and is complementary to our policy objectives.

Workability and avoiding unintended consequences

- f) In the policy statement, we have re-worded expectation (v) to move away from a requirement to publish information about authorised persons resolving complaints within 8 weeks, replacing this with a broader statement about timely resolution, and the need for any such information to be properly contextualised. We have added a footnote encouraging the use of eight weeks as a reference point for regulators to consider when assessing the promptness with which a complaint has been resolved.

This was in response to consultation feedback. We consider that this change still enables our policy objectives to be achieved but takes into account some of the concerns around proportionality, unintended consequences and practicality that were raised in the consultation period.

- g) In response to consultation feedback, we have also extended the timescale for implementation from 12 months to 18 months.

Implementation

13. The policy statement will take effect from the date it is published, and regulators will have 18 months from this date to meet the expectations in the policy statement. The new Requirements and Guidance will take effect 18 months after publication.

Next steps

14. Following consideration by the Board, we aim to issue the new Requirements, Guidance and policy statement in April 2024, and publish these alongside the consultation response document.

Risks and mitigations	
Financial:	No specific financial risks arise as a result of this work.
Legal:	Legal advisory support has and will continue to be provided throughout this project to ensure that the LSB works within its statutory remit when producing and finalising the Requirements, Guidance and policy statement.
Communications and engagement:	We have engaged with the sector and other stakeholders during the consultation process, and separately as part of the “first tier complaints coalition”. The consultation response document summarises the feedback we received on the proposals for consultation. We will notify regulators of the publication of the new Requirements, Guidance and policy statement via a sourcebook update.
Equality and diversity:	We have completed an Equality Impact Assessment and summarised the key conclusions of this in our consultation response document.
Resource:	This work is accounted for in the 2023/24 business plan.
Environmental:	N/A

Annexes

Annex A – LSB consultation response document

Annex B - Section 112 Requirements for Approved regulators' Regulatory Arrangements for Authorised Person's Complaints Procedures on First Tier Complaints

Annex C – Guidance on Section 112 Requirements for Provisions Made by Approved Regulators for First-tier Complaints

Annex D – statement of policy – first tier complaints

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Annexes A, B, C and D	s.22 – information intended for future publication	Date of publication