

First-tier complaints handling

Requirements under s 112(2) of the Legal Services Act 2007

Guidance on first-tier complaint handling

May 2010

Decision document

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Executive summary

A perception of poor complaints handling by approved regulators and the individuals and entities that they regulate was one of the main drivers behind the regulatory reform agenda. A key objective for the Legal Services Board (the LSB) is therefore that there should be an improved consumer experience with swift and effective redress if things go wrong. The creation of the Legal Ombudsman will address many of the concerns, but there still appear to be a number of areas for improvement within first-tier complaints handling.

As a step in bringing about these improvements, on 30 November 2009 the LSB sent a letter to approved regulators and stakeholders proposing to use the powers given to it under the Legal Services Act (the Act) to ensure that those they regulate make it clear to consumers that they have the right to complain about their legal service provider, how to make a complaint and to whom this can be done. These requirements are referred to in this document as the “signposting requirements”.

The letter attached a draft version of the signposting requirements and draft outcomes that the LSB suggested consumers who use legal services should reasonably be able to expect from effective complaints handling. A copy of the letter can be obtained [here](#). The LSB invited comment on both. This document outlines the main issues raised by the consultation and the LSB’s response including the final signposting requirement.

The LSB has also decided that it will issue guidance to approved regulators in relation to the outcomes consumers should expect from effective complaints handling and effective signposting requirements. Both the signposting requirements, the outcomes for consumers and associated guidance can found in the LSB publication *Guidance on first-tier complaint handling; Requirements under s 112(2) of the Legal Services Act 2007* attached to this document at **Annex A**.

In addition, the LSB has encouraged approved regulators to develop actions plans to ensure that there are effective complaints handling procedures in place by the time the Legal Ombudsman becomes operational in the autumn of 2010. During 2010/11 we will continue to work with the approved regulators, the Legal Ombudsman and consumer representatives to monitor the implementation of those action plans.

Legal Framework

Legal Services Act 2007

Section 112(1) of the Act requires approved regulators to make provision in their regulatory arrangements requiring relevant approved persons to have effective procedures in place for the resolution of first-tier complaints. Approved regulators must also make provision for the enforcement of that requirement.

Section 112(2) of the Act provides that the LSB may specify requirements that the regulatory arrangements of approved regulators must satisfy in relation to the complaints procedures of approved persons.

Section 28 of the Act requires approved regulators, in discharging their regulatory functions, to promote the regulatory objectives having regard to the principles of better regulation and best regulatory practice.

EU Services Directive

The EU Services Directive¹ was brought into UK law by the Provision of Services Regulations 2009², which came into effect on the 28th December 2009. The Services Directive is aimed at those bodies who set rules or requirements which service providers have to comply with, and those who are involved in authorising service providers (i.e., 'competent authorities'). This includes requiring the provision of appropriate information to consumers for the purpose of making complaints.

The LSB signposting requirement is consistent with the Directive's requirements but goes beyond them in that it is more specific regarding consumers' rights of complaint at the first-tier, the timing for when a client must be told about their rights of complaint, rights of complaint to the Legal Ombudsman and the provision of appropriate information for consumers to do so. Given the problems that exist with the way in which complaints about legal services have been dealt with, the LSB considers that these additional requirements are proportionate.

¹ Directive 2006/123/EC of the European Parliament and of the Council

² <http://www.bis.gov.uk/servicesdirective>

Drafting principles

In drafting these rules, the LSB has complied with the obligations imposed on it by the Act by having had regard to:

- the regulatory objectives (s 1 of the Act);
- the principles of better regulation and best regulatory practice (s 3 of the Act);
- its aim to be strategic in its policy development. This means that the LSB will focus principally on key areas of ambiguity, uncertainty, disagreement, non compliance and risk.

In drafting the rules, the LSB has also had regard to the Regulators' Compliance Code – Statutory Code of Practice for Regulators published by the Department for Business, Innovation and Skills.³

Consideration of responses

Signposting requirement

Requirement to notify all clients

Feedback received questioned whether all clients should be given information about the right of complaint to the Legal Ombudsman, even if they fall outside its jurisdiction.

While the LSB recognises that not all consumers will be able to make a complaint to the Legal Ombudsman, we consider that it should be possible to provide sufficient information to all consumers to enable them to either identify whether they do have a right to take their complaint to the Legal Ombudsman or to contact the Legal Ombudsman direct to clarify whether they can. In addition, the procedures of the Legal Ombudsman scheme provide an effective back stop - direct approaches to the Legal Ombudsman that are outside its jurisdiction will be referred to the appropriate body without causing undue delay for consumers.

Timing for informing clients of their rights to complain – 'on engagement'

A query was raised about the need to inform clients 'on engagement' of the contact details and the time limits for referring a complaint to the Legal Ombudsman. It was argued that this may not be proportionate, would make client letters too long and complex and may cause confusion. It was proposed that clients should only be provided with this information when a complaint is made.

³ <http://www.berr.gov.uk/files/file45019.pdf>.

Given the information asymmetries associated with the provision of legal services consumers need to be provided with sufficient information to be able to make them as informed as possible of their rights at the point of purchasing legal services. This necessarily includes knowing that they have a right to have complaints heard by an independent third party.

We have concluded, on balance, given the nature of consumers' interaction with legal services, that it is important that consumers should be made aware of rights of complaint, including information about the right to have complaints considered by the Legal Ombudsman and time limits for making such complaints upon engagement. This should be no different from the way in which consumers are made aware of all the other conditional terms of engagement with a legal service provider.

Overall, the protections and benefits to consumers outweigh these concerns, which can be dealt with through clear communication of the complaint procedures.

To notify existing clients at the next appropriate opportunity

The LSB has considered feedback received about whether it is proportionate to require all existing clients to be told about their rights of complaint to the Legal Ombudsman.

We consider that it is appropriate to let existing clients know of their rights in relation to making a complaint if that client enters into new terms with the legal service provider or if they make a complaint. We agree that it is not proportionate for there to be a requirement to notify clients who have no further contact with the law legal service provider. For the avoidance of doubt, we do expect consumers who are "mid-contract" to be notified of their right to complain.

To notify clients at the conclusion of the first-tier complaints process

A suggestion was received that clients should be notified at the time that the first-tier complaints process has been concluded of their rights in relation to the Legal Ombudsman and how to make a complaint.

We agree that in order for consumers to make an informed choice about whether to pursue their complaint, it is important that they are reminded of their right to complain to the Legal Ombudsman at this critical time in the process; this should also help to ensure the effective operation of the Legal Ombudsman scheme.

Outcomes for consumers from effective complaints handling

The LSB did not receive significant specific feedback on the suggested outcomes for consumers from effective complaints handling proposed in our letter of 30 November 2009. However, one response was that the LSB had started to specify a number of outcomes across different policies and documents and that this was confusing. We have therefore decided to specify two high level outcomes, supplemented by guidance for approved regulators that covers key aspects of effective complaint handling. We consider that this approach provides scope for approved regulators to manage the regulation of first-tier complaints handling themselves. However it also should provide a level of clarity and coherence for the expectations of consumers, approved regulators, the Legal Ombudsman and the LSB regarding what can reasonably be expected from effective complaints handling.

First-tier complaints handling

Requirements under s 112(2) of the Legal Services Act 2007

Guidance on first-tier complaint handling

May 2010

Legal Services Act 2007 s 112(2) requirements

The LSB has specified a requirement that:⁴

Approved regulators must require all individuals and entities they regulate to notify all clients in writing:

- a. at the time of engagement, or existing clients at the next appropriate opportunity, of their right to make a complaint, how and to whom this can be done (including their right to complain to the Legal Ombudsman at the conclusion of the complaint process, the timeframe for doing so and full details of how to contact the Legal Ombudsman); and
- b. at the conclusion of the complaint process of their right to complain to the Legal Ombudsman, the timeframe for doing so and full details of how to contact the Legal Ombudsman.

This guidance may be updated from time to time.

Outcomes from first-tier complaints handling

We expect approved regulators to achieve the following outcomes when regulating first-tier complaints:

Consumers have confidence that:

- complaint handling procedures provide effective safeguards for them; and
- complaints will be dealt with comprehensively and swiftly, with appropriate redress where necessary.

Achieving the complaints handling outcomes

Consideration of complaints

We consider that a complaint means an oral or written expression of dissatisfaction which alleges that the complainant has suffered (or may suffer) financial loss, distress, inconvenience or other detriment.⁵

First-tier complaint handling processes must be convenient and easy to use (in particular for those that are vulnerable or have disabilities). They should make provision for complaints to be made by any reasonable means. The way in which complaints are dealt with must be transparent and clear in relation to process, well publicised and free. The process itself should be prompt and fair, with decisions

⁴ Section 112(2)

⁵ This is consistent with the Legal Ombudsman's definition. If this changes then we would expect ARs' guidance to remain consistent with the change

based on a sufficient investigation of the circumstances. Where appropriate, there should be an offer of a suitable remedy.

The Legal Ombudsman

Most consumers will be able to make a complaint to the Legal Ombudsman about the services they received after they have exhausted first-tier complaints processes. Therefore approved regulators should ensure that those they regulate provide sufficient information to all consumers to enable them to identify whether they do have a right to take their complaint to the Legal Ombudsman and to contact the Legal Ombudsman direct to clarify whether they can.

We consider that it is appropriate to let existing clients know of their rights in relation to complaints if that client enters into new terms with the legal service provider or if they make a complaint. We agree that it is not proportionate for there to be a requirement to notify clients who have no further contact with a legal service provider. For the avoidance of doubt, we do expect consumers who are “mid-contract” to be notified of their right to complain.

We expect approved regulators to work with the Legal Ombudsman to develop information for consumers.

Monitoring and enforcement

Approved regulators should ensure that those they regulate understand their responsibilities in relation to first-tier complaints handling and are appropriately held to account for their performance. This means that approved regulators must be able to effectively and efficiently identify good practice and be able to address systemic and specific issues in first-tier complaints handling. This will require appropriate monitoring and data gathering systems. Where problems are identified, appropriate regulatory action should be swift.

Guidance to barristers

When a self-employed barrister is instructed by a solicitor (or other similar circumstances) consumers must be told how to make a complaint about the barrister (as well as the information they will already have about their solicitor’s complaint process). It is not sufficient that the information is simply available to consumers – there is a positive obligation for barristers to provide it. This will enable the consumer to make the complaint direct to Chambers and will assist with ensuring Chambers and barristers receive complaints and encourage resolution of them. Information about the Legal Ombudsman must be provided in the same way as for other complaints. If one complaint is made that in practice concerns both a solicitor and a barrister we expect them to agree how it should be considered with the aim of minimising inconvenience and delay to the consumer.