

Changes to requirements made under section 112 and guidance made under section 162 of the Legal Services Act 2007

LSB decision document on changes to first-tier complaints handling requirements and guidance for approved regulators

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Introduction

1. On 2 March 2016, the LSB issued a consultation on proposed updates to its statutory requirements and guidance for approved regulators (ARs) on first-tier complaints handling. This paper summarises the representations we received, our response to them, and sets out the LSB's final decision.

Background

2. In May 2010, using powers in the Legal Services Act 2007¹ (the "Act"), the LSB published requirements and guidance for ARs on first-tier complaints handling.^{2,3} The statutory requirements, specified that ARs must require all individuals and entities they regulate (authorised persons) to notify clients in writing of their rights to:
 - make a complaint, including the process and timeframe for doing so
 - complain to the Legal Ombudsman at the conclusion of that complaint process if they were dissatisfied with the outcome.
3. Alongside the requirements, the LSB published guidance for ARs, to support the delivery of two complaints handling outcomes for consumers.
4. The requirements, complaints handling outcomes and guidance are qualitatively different and can have different impacts on the ARs. These differences have informed our analysis of and response to suggestions made to us through the consultation process.
5. Requirements are specified under powers in section 112(2) of the Act and are specific to the regulatory arrangements that ARs make for first-tier complaints handling. ARs must comply with the LSB requirements. Outcomes represent a statement of ambition for the intended impact that authorised persons' complaint handling processes will have on their clients. These outcomes have no statutory basis, but represent the values set out in the LSB and ARs' shared regulatory objectives.⁴ Section 162 of the Act allows the LSB to issue guidance, including advice and information as considered appropriate, and to have regard to how ARs have taken such guidance into account. Guidance therefore has statutory

¹ The LSB uses powers under section 112(2) of the Legal Services Act 2007 (the Act) to specify requirements for ARs. The guidance for ARs is published under the LSB's powers in section 162(4) of the Act.

² Complaints made through an authorised person's in-house process are known as "first-tier complaints". Subsequent complaints made to the Legal Ombudsman are known as "second-tier complaints".

³ Legal Services Board (May 2010), First-tier complaints handling, http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/lsb_first_tier_complaints_handling_requirements_and_guidance_final.pdf

⁴ Legal Services Board, The regulatory objectives, http://www.legalservicesboard.org.uk/news_publications/publications/pdf/regulatory_objectives.pdf

force, and it provides the LSB with a statutory basis to review and assess ARs' performance in this area.

6. A review in 2015/16 suggested that the complaint handling outcomes for consumers were not being widely achieved, though the picture is mixed. While data shows improvements in complaints handling with some ARs, other data shows that the number of "silent sufferers" remains high – those that know how to complain, but are unwilling, due to a lack of confidence that the profession will resolve their complaints. The Board is concerned that outcomes for consumer complaints handling are still not being widely met after being in place for over six years. ARs should consider how they can encourage their regulatory communities to continually improve how they handle complaints by analysing, sharing and responding to complaints data, in order to deliver high quality outcomes for their clients.

The consultation

7. To help drive improvement in complaints handling outcomes for consumers, the LSB invited representations on updates to our requirements and outcomes, and changes to our guidance for ARs. We also invited respondents to submit evidence that demonstrated how the complaints handling outcomes are being delivered for consumers. While there is no statutory requirement for the LSB to consult on these particular changes, as they do not propose a material change in LSB policy, we chose to consult in the interests of transparency.
8. Our consultation ran from 2 March 2016 until 27 April 2016. We received responses from the following organisations:
 - Bar Council (BC)
 - Bar Standards Board (BSB)
 - CILEx Regulation
 - City of Westminster and Holborn Law Society (CWHLS)
 - Council for Licensed Conveyancers (CLC)
 - The Institute of Chartered Accountants in England and Wales (ICAEW)
 - The Legal Services Consumer Panel (LSCP)
 - The Legal Ombudsman
 - The Law Society (TLS)
 - The Master of the Faculties
 - Solicitors Regulation Authority (SRA).
9. We are grateful to all those who took time to respond. Full copies of the responses are available on the LSB website.

10. During the consultation period we met many ARs and the Legal Ombudsman. With the ARs, we discussed how they assure themselves that authorised persons have appropriate complaints handling processes in place, how they gather and analyse data from first and second-tier complaints, and how they develop regulatory responses to improve complaint handling outcomes for consumers. At our meeting with the Legal Ombudsman, we discussed research that it is carrying out on its data, and the information it shares with the ARs. The issues discussed in these meetings have informed our response.

Additional evidence

11. In the consultation paper, we invited respondents to submit evidence that demonstrated how the consumer outcomes were being delivered. In particular, we sought a formal response from those with whom we had held discussions.
12. In its response the LSCP reported data from its Consumer Tracker survey:
- There was increase in the proportion of consumers that have used a legal service and know how to complain, from 44% in 2011 to 50% in 2015.
 - The proportion of respondents who would raise an issue with the authorised person decreased, from 61% in 2012 to 56% in 2015.
 - The percentage of those dissatisfied with their legal service and did nothing about it remained static over this period, at 42%, indicating a group of “silent sufferers”.
13. The LSCP suggested that an unwillingness to complain indicates that consumers are not confident in the ability of the profession to meet the consumer outcomes prescribed by the LSB. This supports continuing LSB interest in this topic.
14. ARs took the opportunity to provide details about how they seek assurance from authorised persons about first-tier complaint handling processes. They also described their analysis of complaints data to assess and mitigate risks in their regulated communities. In addition, they reflected on their experience of working with data from the Legal Ombudsman. Some ARs reported that they have few or no complaints accepted by the Legal Ombudsman. We understand this is due to restrictions in the Ombudsman’s Scheme Rules on the consumers who can make a second-tier complaint.
15. Responses and further information gathered by the LSB during the consultation period indicated improved handling of complaints in the following areas:
- While there was a 5% increase in complaints to SRA authorised persons between 2011/12 and 2014/15, the percentage of complaints resolved at the first-tier increased by 12%. The Legal Ombudsman accepted 10%

fewer complaints from SRA authorised persons, indicating an overall improvement in handling of first-tier complaints.

- In supervision returns, 89% of BSB chambers reported a complaint rate of 0.5% or less.
- 2015 data from the CLC showed that 95% of complaints were resolved at the first tier. Only 5% were referred to the Legal Ombudsman.
- First-tier complaints against those authorised by CILEx Regulation fell by 7% between 2014 and 2015.

16. While providing more details of improved or effective complaints handling, these figures do not necessarily tell us that outcomes set out in the 2010 requirements and guidance are being achieved for consumers.
17. The Legal Ombudsman reported that, “customers do not necessarily take on board the information which is provided to them at the beginning of an instruction”. This suggests that authorised persons may be fulfilling regulatory arrangements for first-tier complaints handling, but the outcomes set out by the LSB are not being achieved because there is a lack of consumer recollection of notification of the complaints handling process.
18. The Legal Ombudsman noted that it is currently in the process of analysing signposting by authorised persons. It is finding evidence of firms that have not included the correct Ombudsman timescale in their final complaint response, or the correct contact details for the Ombudsman. These omissions leave authorised persons open to being charged a case fee by the Legal Ombudsman if the complaint is accepted, irrespective of the merits of the alleged case. This is a clear instance where guidance from ARs could act to improve authorised persons’ performance. We have made minor clarifications to the requirements in support of this (see Annex A, paragraph 13(a)(iv) and 13(b)(ii)).
19. In summary, we consider that the further information provided by respondents supports the findings of our 2015/16 review that suggested that achievement of complaints handling outcomes for consumers is relatively mixed.

Proposed updates to requirements and outcomes

20. In the consultation paper we proposed only minor changes to requirements and complaints handling outcomes for consumers. These included making the language consistent and clarifying the point at which a second-tier complaint can be made, and the time limit for doing so. The minor nature of these changes reflects that first-tier complaints handling and signposting requirements have become established across authorised persons since 2010. There was no material change in policy direction for the requirements or outcomes.
21. While there was broad support from the majority of respondents for our proposed updates, the TLS queried the need to retain the LSB requirements at all. We have considered this. We note the widespread support from regulators, and have decided that, with developments in regulation of the legal service market including designation of new ARs, there remains a need to retain the signposting and notification requirements (see also paragraph 31, below).
22. Two responses (CWHLS, ICAEW) suggested we should retain original text that permitted notification at *the next appropriate opportunity*. In its representation, CWHLS highlighted that authorised persons may be required to see clients as a matter of urgency (in a police cell, or during medical situation), which would not allow them time to draw up the written notification to meet their AR's complaints handling regulatory arrangements. Furthermore, it would be inappropriate for authorised persons to notify clients of their complaints handling rights at this time. ICAEW cautioned in its representation that retaining the *appropriate opportunity* element would be important for authorised persons who have been newly authorised to deliver legal services, who have existing clients. As these authorised persons will already have engaged clients, they will need this element of flexibility to fulfil their signposting requirements. The LSB accepts these points, and as such, has reinstated this text (see July 2016 requirements / guidance paragraph 13(a)).
23. Two responses (TLS, CILEx Regulation) remarked on a risk that consumers may be informed of a route to complain that is not open to them. We have addressed this point by altering the necessary text (see July 2016 requirements / guidance paragraph 13(a)(iii)).
24. ICAEW suggested considering an amendment to the consumer outcome to include reference to *fairness and transparency* in complaints handling processes. We agree with this suggestion and have broadened the first outcome accordingly (see July 2016 requirements / guidance paragraph 4).
25. The LSCP supported the requirements and outcomes, and also suggested further additions. It suggested that a new requirement should be considered that would have the effect of defining minimum standards for complaints handling. We do not consider that requiring the ARs to meet LSB-specified minimum

standards is an appropriate step at the present time. There is no evidence to suggest that the standards set by ARs for authorised persons are insufficient to the extent that the LSB should intervene by setting minimum standards. The ARs are already obliged to act in accordance with regulatory best practice. Therefore, we consider that there is no need for LSB to specify such standards and effectively act in the role of an AR. However, there is room for improvement in achieving complaints handling outcomes for consumers. In response to the LSCP's suggestion, we have strengthened the LSB guidance for ARs on first-tier complaints handling and the ARs' supervision and enforcement of their regulatory arrangements on this topic. We consider it is preferable to maintain an outcomes-focused approach through our guidance, which allows ARs to adapt and adopt their individual regulatory arrangements in line with risks presented in their individual markets.

26. The LSCP also encouraged the LSB to promote the principle of visibility of process by, "introducing a requirement for all firms to have their complaints handling process publically available, for example on their website." As with the previous suggestion, the LSB does not consider that there is evidence or analysis to suggest that adopting this new requirement would improve complaints handling outcomes for consumers. For the LSB to justify the introduction of a new requirement, such evidence and analysis of consumer detriment would need to be clear, for us to be acting in an outcomes focused way. However, we do agree with that LSCP that ARs should set clear guidance for how authorised persons communicate with consumers, and have added guidance to this effect (see July 2016 requirements / guidance paragraph 18). ARs should set guidance for authorised persons that draws on current best practice for complaints handling, including guidance from the British Standards Institute, cited by the LSCP.
27. With regard to the additional requirements suggested by the LSCP, the LSB is clear that if we do not see improvements in the delivery of complaints handling outcomes for consumers in future assessments of regulatory performance, we will reconsider the Panel's suggestions (see paragraph 25 above).
28. In regard to the complaints handling outcomes, the LSCP suggested that there should be, "an additional focus on quality and using intelligence gathered to improve service." In the changed guidance which we consulted on, the LSB clearly set out how ARs should gather, analyse and respond to risk identified in first and second-tier complaints data, and how they should share that analysis with each other and the Legal Ombudsman to improve outcomes for consumers. Given that the LSB can use its statutory powers to review and assess ARs' performance against our guidance (see paragraph 5 above), we consider that it is more effective for us to address the LSCP's suggestion in our guidance, than in changes to the outcomes, which provide us with no statutory basis to respond.

Proposed updates to guidance

29. The consultation paper proposed alterations to the text of the guidance for ARs, but no change to the scope. In part, this meant removing guidance that was no longer necessary or had been superseded. Proposed new text focused on the support that ARs offer authorised persons to demonstrate good practice in first-tier complaints handling, notification and signposting, and reflected the links to wider principles of good consumer communication. The proposals also continued to recognise the value of learning from complaints data to make improvements to regulatory arrangements. Current wording on monitoring and enforcement was incorporated into the new text.
30. Again, the majority of respondents were content with the proposed changes. Two responses (CILEx Regulation and the Legal Ombudsman) suggested a couple of minor alterations to the text in the interests of clarity. These have been incorporated (see July 2016 requirements / guidance paragraph 20).
31. Some responses reflected on the wider context of complaints processes in which authorised persons may be involved, such as alternative dispute resolution or regulatory complaints about misconduct. In response to these observations (from ICAEW, SRA, CLC) we have added an introductory section to the revised document (see July 2016 requirements / guidance paragraphs 1–12). This is intended to set the context for the LSB’s requirements and guidance, and to support ARs in their work to deliver the consumer outcomes. We also consider that this will address the concern expressed in the TLS response that LSB guidance for ARs runs the risk of being seen to duplicate guidance for authorised persons provided by other organisations.
32. We have broadened the references to sources of good practice guidance that ARs may bring to the attention of authorised persons (see July 2016 requirements / guidance paragraph 17). This is in response to concern from the Legal Ombudsman at our proposal to remove guidance to self-employed barristers working with solicitors.
33. Feedback from the LSCP has led us to alter our references to “client care letters” from that proposed in the consultation paper. The guidance now reflects that ARs ought to adopt an outcomes-focused approach when setting their own guidance for authorised persons on notification of rights to complain (see July 2016 requirements / guidance paragraph 18). This approach will allow authorised persons to communicate with their clients in the most appropriate way to meet their needs, which will foster increased levels of client knowledge and legal literacy around complaints handling. Nevertheless, client care letters remain an important way for authorised persons to communicate with their clients. As such, the LSB welcomes joint work being carried out by the ARs to

develop a common approach for their guidance on client care letter best practice, to improve complaint handling outcomes for consumers.

34. In our meetings, ARs described a range of examples of the positive effect of gathering and assessing first and second-tier complaints handling data, both on practice issues and improving handling of complaints. We are encouraged by this and we consider that it helps to demonstrate the value of this approach in supporting the delivery of better legal services for consumers. Many responses outlined the intentions and aspirations of ARs and the Legal Ombudsman to undertake more analysis and collaboration. We invite all ARs and the Ombudsman to reflect on the details of the individual responses (available on our website) and use this to inform their future work together, in order to improve complaints handling outcomes for consumers.

Summary

35. We are grateful for all the responses we received to the proposals we made to update the LSB's requirements and guidance for ARs on first-tier complaints. We have made the following adjustments to the proposals we outlined in the March 2016 consultation paper in light of these responses. The revised requirements and guidance are attached.
36. Notable changes from the consultation version are as follows:
- additional introductory text outlining a preamble, the purpose and context for the requirements and guidance, including the definition of complaint, the consumer outcomes, and a diagram (paragraphs 1–12)
 - amendment to the first outcome to include reference to a fair and transparent process (paragraph 4)
 - amendment to requirements to add clarity around the Legal Ombudsman's time frames and time limits (paragraphs 13(a)(iv) and 13(b)(ii))
 - reinsertion of *or the next appropriate opportunity*, to avoid unnecessary burden (paragraph 13(a))
 - amendment to the guidance to include reference to other sources of good practice guidance for authorised persons (paragraph 17).

The Board's decision

37. Having had regard to these representations received the Board has made some minor changes to the proposed text of the requirements and guidance, and some minor changes to its presentation.
38. The Board considers that the requirements and guidance do not differ materially from the draft published for consultation.
39. The statutory requirements and guidance can be found on the LSB website.
40. Under section 112(4) of the Act the Board must publish any requirements it specifies under section 112(2) of the Act. Under section 162(4) of the Act, the Board may publish its guidance.
41. On 15 July 2016 the Board agreed the updated statutory requirements and guidance, and is now publishing both. The statutory requirements and guidance will come into effect on 22 July 2016.