

First-tier complaints handling: LSB requirements for approved regulators

A consultation issued by the Legal Services Board inviting representations on proposed updates to its requirements, outcomes and guidance

Representations are invited to be made by 17:00 on Wednesday, 27 April 2016.

Contents

Introduction	3
The current requirements, outcomes and guidance	4
Reviewing the 2010 publication	6
Proposed changes	7
Representations	9
Next steps	9
How to respond	9
Annex A: Proposed revisions to requirements and outcomes	10
Annex B: Proposed revisions to guidance	11

Introduction

1. In May 2010, the Legal Services Board (LSB) published requirements for approved regulators: *First-tier complaints handling*¹ (the publication). In particular, this sets out that Approved Regulators (ARs) must require all individuals and entities that they regulate (authorised persons) to notify clients in writing of their right:
 - to make a complaint, including how, to whom and within which timeframes
 - to complain to the Legal Ombudsman at the conclusion of that complaint process if unsatisfied with the outcome.
2. Complaints made through an authorised person's in-house complaints handling procedure are known as a **first-tier complaints**. Subsequent complaints made to the Legal Ombudsman are known as **second-tier complaints**.
3. The LSB uses its powers under **section 112(2)** of the Legal Services Act 2007² (the Act) to specify these requirements for ARs. ARs must satisfy the LSB that those they regulate notify their clients of the rights stated above.
4. As well as the requirements, the 2010 publication features outcomes for complaints handling, which the LSB expects ARs to achieve. It also contains guidance for ARs to support their delivery of those outcomes.
5. Following a recent review, the LSB is concerned that data collected since 2010 suggests that these outcomes for clients have not been fully achieved.
6. This paper invites representations on proposed updates to the 2010 publication to improve how ARs ensure that outcomes are achieved for consumers. These are:
 - proposed updates to LSB requirements and outcomes for ARs
 - proposed changes to guidance for achieving outcomes.
7. Any representations on the proposals should be made by 17:00 on Wednesday, 27 April 2016. The proposed updates to the requirements and outcomes can be found at Annex A of this consultation document. Proposed changes to the guidance can be found at Annex B.

¹ Legal Services Board. May 2010. *First-tier complaints handling*. Available at: http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/lbs_first_tier_complaints_handling_requirements_and_guidance_final.pdf

² The Legal Services Act 2007. Available at: <http://www.legislation.gov.uk/ukpga/2007/29/contents>

The current requirements, outcomes and guidance

8. The LSB's current publication sets out requirements, outcomes and guidance for the ARs.

Requirements

9. As described above, the LSB uses its powers under section 112(2) of the Act to set first-tier complaint handling requirements for ARs:

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

- *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 complaint 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*
- *at the conclusion of the complaint process of their right to complain to the Legal Ombudsman, the timeframe for doing so and the full details of how to contact the Legal Ombudsman.*

Outcomes

10. While there is no direct statutory requirement for ARs to achieve the outcomes set out in the publication, the LSB expects them to be delivered in light of the ARs' regulatory objective to protect and promote the interests of consumers. The outcomes are:

Consumers have confidence that:

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

Guidance

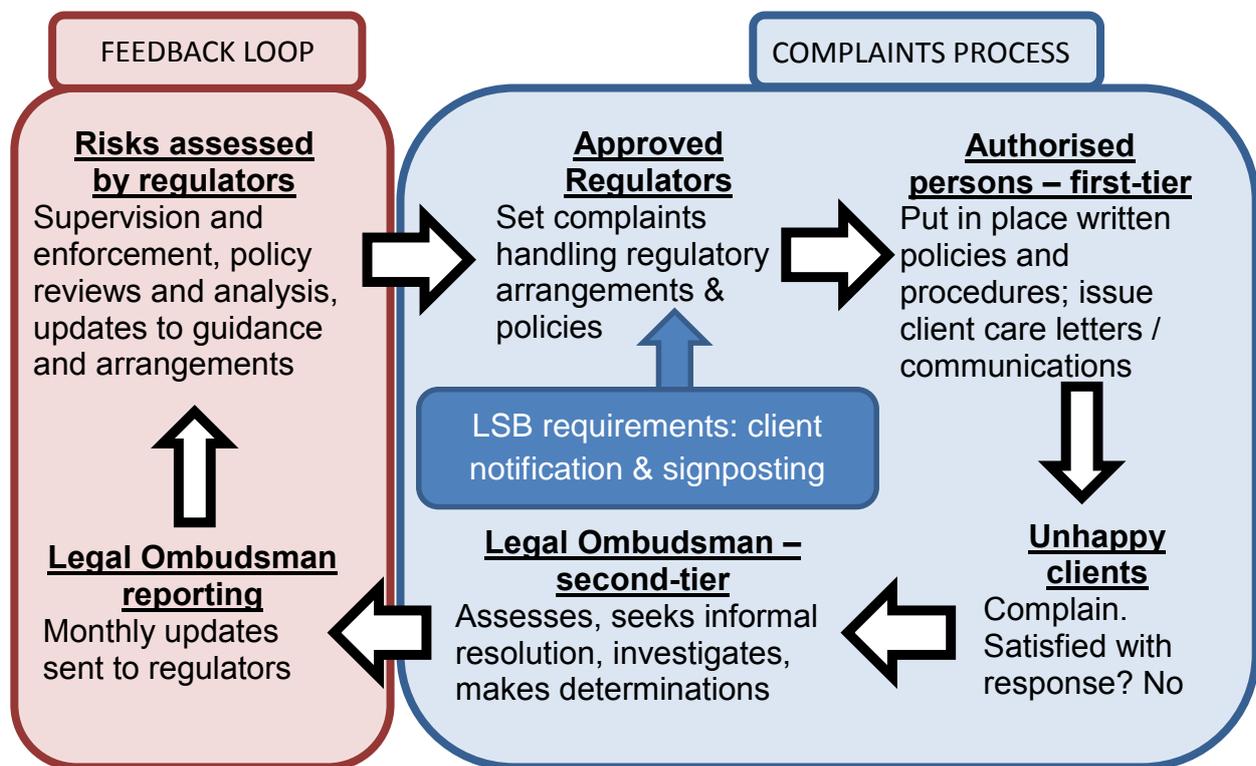
11. The publication also contains guidance for ARs on how to ensure complaints procedures are efficient and effective. Current topics in the LSB publication include:

- consideration of complaints
- the Legal Ombudsman
- monitoring and enforcement
- guidance to barristers.

Complaints handling and feedback loops

12. Figure 1, below, shows how the LSB's section 112 notification and signposting requirements support a complaints process to inform clients of how and to whom they can complain if things go wrong. ARs are required to have regulatory arrangements in place that mean authorised persons inform clients in writing of their right to complain to them – and if they are not satisfied with that response – to the Legal Ombudsman.
13. Alongside the complaints process is a feedback loop. To achieve improvements in outcomes, ARs can learn from the kind of complaints that are made by clients at both the first- and second-tier. Analysis of these complaints provides ARs with evidence which they can use to update their regulatory arrangements and related policies and guidance, as well as their approach to supervising authorised persons.

Figure 1



Reviewing the 2010 publication

14. The LSB's 2015/16 business plan³ set out that it would carry out a review to understand if the 2010 publication is currently delivering the outcomes that consumers need for complaints handling. This consultation is part of that review.
15. Since the LSB's 2010 publication, all ARs have put regulatory arrangements in place to fulfil the LSB's section 112(2) requirements. They also require authorised persons to submit complaints handling policies and procedures as part of the authorisation process.
16. Discussions with the Solicitors Regulation Authority, the Bar Standards Board, the Law Society and Bar Council in the early stages of this review suggested that, while the LSB requirements initially caused some difficulties for solicitors and barristers, they are now considered to be less contentious.
17. While the requirements may be met and authorised persons have complaints handling policies and procedures in place, the LSB has gathered evidence that suggests that the outcomes in the 2010 publication (see paragraph 10) are not yet widely achieved for clients in practice. For example:
 - In 2011, research⁴ found that 62% of clients who were dissatisfied with their lawyer had to ask for information on first-tier complaints handling procedures, with only 8% being told about the Legal Ombudsman at the time.
 - The 2012 Legal Services Benchmarking Survey⁵ showed that 26% or less of clients were told by their lawyer (at the point of instruction or at the first meeting) about first and second-tier complaints handling procedures.
 - Successive Legal Ombudsman Customer Satisfaction Surveys⁶ have shown an improving trend in the percentage of those that hear about the Legal

³ Legal Services Board. *Business Plan 2015/16*. Available at: http://www.legalservicesboard.org.uk/news_publications/LSB_news/PDF/2015/LSB_Business_Plan_2015_16.pdf

⁴ YouGov. 2011. *First-tier Complaints Handling*. Available at: <https://research.legalservicesboard.org.uk/wp-content/media/2011-First-tier-complaints-handling-report.pdf>

⁵ Legal Services Board. 2012. *Market impacts of the Legal Services Act 2007 - Baseline Report (Final) 2012*. See Figures 21 & 22. Available at: <https://research.legalservicesboard.org.uk/wp-content/media/Impacts-of-the-LSA-2012-Final-baseline-report.pdf>

⁶ Legal Ombudsman Customer Satisfaction Research, 2011/12 (BMG) pg 14 figure 4, http://www.legalombudsman.org.uk/downloads/documents/publications/CSS_results_2011-12.pdf 2012/13 (BMG) pg 28 figure 20, <http://www.legalombudsman.org.uk/?portfolio=customer-satisfaction-survey-results-2012-2013> 2013/14 (ICM Unlimited) pg 12 figure 4.1.1 (not published – supplied by Legal Ombudsman)

Ombudsman through their lawyer (17% in 2011/12, 19% in 2012/13 and 23% in 2013/14), though the figures remain low.

18. Our initial assessment of the progress that ARs have made in delivering the 2010 publication's outcomes in the five years since requirements were put in place reveals that:
 - outcomes set in the publication still appear to be relevant and uncontentious, but are some way from being achieved
 - low consumer recall of the Legal Ombudsman scheme could indicate that complaints handling requirements do not reflect consumers' needs and / or poor practitioner compliance
 - updating LSB requirements / guidance could potentially address these issues.
19. In particular, we consider that updating the guidance element of the 2010 publication will help ARs to support authorised persons meet their regulatory requirements in practice.
20. We encourage ARs and others that have further evidence about the delivery of the outcomes on complaints handling to submit details as a part of their response to this consultation.

Proposed changes

Requirements and outcomes

21. Based on the review, the LSB considers that the requirements contained in the current publication remain fit for purpose. Similarly, the current outcomes reflect the regulatory objective at section 1(d) of the Act, to protect and promote the interests of consumers. ARs must act in a way which is compatible with the regulatory objectives.⁷
22. As a result, the LSB only proposes to make minor changes. These proposed updates reflect that first-tier complaints handling and signposting requirements have been in place for over five years, and are intended to make language consistent across the publication. They can be seen at Annex A.

⁷ Section 28(2)(a) Legal Services Act 2007

Guidance for achieving outcomes

23. To address the LSB's concern that outcomes for clients are not being achieved in practice, the LSB considers that more substantial revisions should be made to the guidance element of the publication. The proposed revisions reflect the complaints process and feedback loop shown in Figure 1 and can be found at Annex B.
24. The LSB proposes to continue to use the Legal Ombudsman's definition of a complaint: "an oral or written expression of dissatisfaction which alleges that the complainant has suffered (or may suffer) financial loss, distress, inconvenience or other detriment, and is covered by the Ombudsman's scheme rules on who can complaint about what."⁸
25. Revised guidance will focus on the support that ARs offer authorised persons to demonstrate prevailing good practice in first-tier complaints handling, notification and signposting, and reflect the links to wider client communications such as client care letters. The proposed changes also recognise and emphasise the value of learning from complaints data to make improvements to regulatory arrangements. Current guidance on monitoring and enforcement has been worked into the new proposals.
26. The LSB proposes to remove the current text on the Legal Ombudsman to reflect that first-tier complaints handling and signposting requirements have been in place for over five years as this transitional guidance is no longer relevant.
27. The LSB also proposes to remove current guidance to self-employed barristers who are instructed by solicitors. The SRA and the BSB have worked to develop guidance so that solicitors and barristers are aware of their obligations when it comes to informing clients about complaints handling. Therefore, LSB guidance is no longer necessary.
28. These changes are proposed with the aim of improving the delivery of the consumer outcomes. We welcome respondents' views and evidence in support of other topics that may help ARs and authorised persons meet the notification and signposting requirements for first-tier complaints handling made by the LSB.

⁸ Legal Ombudsman.2015. *Scheme Rules*. Available at: <http://www.legalombudsman.org.uk/downloads/documents/publications/Scheme-Rules.pdf>

Representations

29. The LSB invites respondents to make representations on:
- proposed updates to LSB requirements and outcomes for ARs (Annex A)
 - proposed changes to guidance for achieving outcomes (Annex B).
30. The LSB also invites respondents to submit evidence demonstrating how the complaints handling outcomes (paragraph 10) are being delivered for consumers.

Next steps

31. Once the LSB has considered representations on the updated requirements, outcomes and guidance, we will publish an updated version of the publication as required by section 112(4) of the Act on the LSB website. If the requirements differ from the draft in a material way, we will outline details of the differences.

How to respond

32. Any representations should be made to the LSB by 17:00 on Wednesday, 27 April 2016.
33. We would prefer to receive responses electronically (in MS Word or PDF format), but hard copy responses by post will be accepted.
34. Responses should be send to:
- Email: consultations@legalservicesboard.org.uk
 - Post: Legal Services Board, One Kemble Street, London, WC2B 4AN.
35. We intend to publish all responses on our website unless a respondent explicitly requests that a response (or part of it) should be kept confidential. We will record the identity of the respondent and the fact that he/she has submitted a confidential response in our summary of responses.
36. Any complaints or queries about the process should be directed to the Consultation Co-ordinator, Jenny Hart, by one of the following means:
- Email: consultations@legalservicesboard.org.uk
 - Post: Jenny Hart, Consultation Co-ordinator, Legal Services Board, One Kemble Street, London, WC2B 4AN.

Annex A: Proposed revisions to requirements and outcomes

(New text is in italics, proposed deletions are struck through)

Legal Services Act 2007 section 112(2) requirements

The LSB has specified a requirement that¹:

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,~~
 - i. *of their right to make a complaint,*
 - ii. *how and to whom this can be done (including*
 - iii. *of their right to complain to the Legal Ombudsman at the conclusion of the complaint process,*
 - iv. *the timeframe for ~~doing so and~~ complaining to the Legal Ombudsman*
 - v. *full details of how to contact the Legal Ombudsman); and.*
- b. at the conclusion of the complaint process
 - i. *of their right to complain to the Legal Ombudsman,*
 - ii. *the timeframe for doing so and*
 - iii. *the full details of how to contact the Legal Ombudsman.*

~~This guidance~~ *These requirements* may be updated from time to time.

Outcomes from first-tier complaints handling

~~We~~The LSB expects approved regulators to achieve the following outcomes when *delivering the Legal Services Board's section 112(2) requirements for first-tier complaints handling and signposting* ~~regulating first-tier complaints~~:

Consumers have confidence that:

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

¹ Section 112(2)

Annex B: Proposed revised guidance

Achieving the complaints handling outcomes

In order for approved regulators to achieve the outcomes set out in this publication, the LSB has prepared the following guidance.

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

Guidance for authorised persons ²

Approved regulators should set clear, concise guidance for authorised persons to accompany their regulatory arrangements for first-tier complaints handling and signposting to the Legal Ombudsman. This should reflect current best practice for communicating with clients, including client care letters. Approved regulators should satisfy themselves that authorised persons understand and are effectively delivering those arrangements.

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

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.

Gathering, analysing and responding first and second-tier data

Approved regulators should gather and analyse data from both first and second-tier complaints handling processes to improve outcomes for clients.

By gathering and analysing first-tier data, approved regulators can monitor and assess the effectiveness of approved persons' complaints handling procedures. By analysing second-tier data from the Legal Ombudsman, approved regulators can improve their understanding of the areas where complaints are upheld by the Ombudsman and why premature complaints are made. Premature complaints are those made by complainants who contact the Legal Ombudsman before they have exhausted authorised persons' first-tier complaints handling processes.

This analysis can provide approved regulators with an evidence base to develop regulatory responses to improve outcomes for clients. These may include:

- *supervisory interventions for authorised persons to improve complaints handling procedures*
- *thematic reviews of recurring issues, which may result in changes to approved regulators' regulatory arrangements for complaints handling, supporting policies and guidance*
- *promoting best-practice observed during data analysis.*

Sharing analysis

Approved regulators should share findings from thematic reviews and other evidence with other approved regulators where relevant and appropriate. Improving practice and reducing poor practice across the legal services market will create general consumer confidence in authorised persons, as well as with already engaged clients.

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

² *This guidance is issued under section 162 of the Legal Services Act*