

To:	Legal Services Board	
Date of Meeting:	21 January 2016	Item: Paper (16) 06

Title:	Approved regulators' complaints procedures – a thematic review of the LSB's requirements, outcomes and guidance for approved regulators
Workstream(s):	Unmet legal need
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Status:	Official

Summary:

Complaints handling requirements for approved regulators

In its 2015/16 business plan, the Legal Services Board (the "LSB") set out that it would complete a thematic review of the effectiveness of its complaints handling requirements for approved regulators.

Section 112 of the Legal Services Act (the "Act") allows the LSB to publish requirements for approved regulators to put regulatory arrangements in place for practitioners' complaints handling procedures.

For the avoidance of doubt, section 112 is neither a review of the OLC's effectiveness nor a mechanism for the LSB to make requirements for the OLC. This thematic review is solely focused on how better outcomes can be achieved for consumers through the approved regulators' arrangements. Issues relating to the OLC are being dealt with by other work undertaken by the LSB.

The thematic review identified that requirements for the approved regulators to have complaints handling arrangements remain largely fit for purpose. However, the LSB's supplementary guidance could be updated to improve outcomes for consumers.

This paper explains the initial findings of our thematic review and our proposed approach to making changes, including a consultation, which can be found at **Annex A**.

Recommendation(s):

The Board is invited to:

- review the context and initial findings of the thematic review;
- approve the proposed approach; and
- delegate sign-off of the section 112 consultation paper (attached at Annex A) to the Chief Executive.

Risks and mitigations

Financial: N/A

Legal: The LSB has chosen to consult on proposed changes to its section 112 requirements, outcomes and guidance, although it is not required to do so. The reasons for this are set out at paragraph 31.

Reputational: Some of the approved regulators may express concern about the LSB's statements about whether they are meeting the section 112 outcomes. We consider the evidence we have collected supports strongly the views set out in our consultation.

Resource: This thematic review was planned for in the 2015/16 business plan.

Consultation	Yes	No	Who / why?
Board Members:		x	
Consumer Panel:	x		The Legal Services Consumer Panel (the "Panel") has been briefed on the review's progress, which links to its current open data commission to consider what regulators should and could publish, including, first tier complaints data.
Others:	As a part of this review, the LSB sought views from the SRA, BSB, Law Society, Bar Council and the Legal Ombudsman.		

Freedom of Information Act 2000 (Fol)

Para ref	Fol exemption and summary	Expires
Annex A	Section 22: information intended for future publication	

LEGAL SERVICES BOARD

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Approved regulators' complaints procedures – a thematic review of the LSB's requirements, outcomes and guidance for approved regulators

INTRODUCTION

1. In May 2010, the LSB used its powers under section 112(4) to specify requirements for approved regulators by publishing *First-tier complaints handling*¹ (the “publication”). This publication sets out that approved regulators must have arrangements to ensure that legal services providers' have complaints procedures in place. The LSB has reviewed the publication to ensure that it is delivering the outcomes that clients need.

RECOMMENDATION

2. The LSB's thematic review on the effectiveness of its section 112 complaints handling requirements for approved regulators found that:
 - current requirements and outcomes remain fit for purpose
 - guidance to achieve the outcomes could be improved.
3. The Board is invited to:
 - review the context and initial findings of the thematic review;
 - approve the proposed approach; and
 - delegate sign-off of the section 112 consultation paper (attached at Annex A) to the Chief Executive.

¹ LSB May 2010

http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/lsb_first_tier_complaints_handling_requirements_and_guidance_final.pdf

CONTEXT

The LSB's section 112 publication

4. Section 112(2) of the Act sets out that the approved regulators must satisfy the Board that they have regulatory arrangements in place for complaint handling procedures for authorised persons.
5. Current requirements in the LSB's publication are as follows.

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.*
6. Section 112 is not a mechanism for the LSB to make requirements for the Legal Ombudsman. This thematic review solely focused on how better outcomes can be achieved for legal services clients through the approved regulators' arrangements. It is not about the work of the Legal Ombudsman or the LSB's relationship with the Office of Legal Complaints. These issues are being dealt with by other work undertaken by the LSB.
 7. In addition to the requirements, the LSB's publication also contains outcomes, which the LSB, "expects approved regulators to achieve". These outcomes reflect the regulatory objective to, "protect and promote the interests of consumers". Approved regulators must act in a way that is compatible with the regulatory objectives under section 28(2)(a) of the Act. The outcomes are that:

Consumers have confidence that:

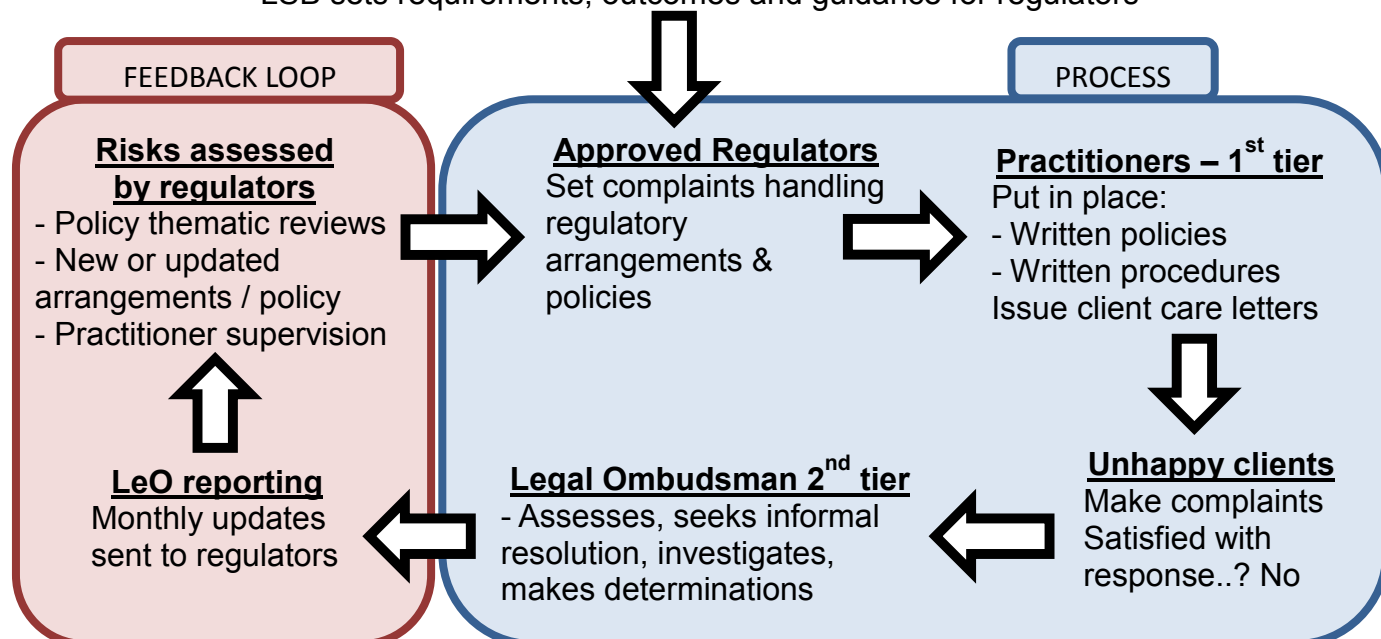
- *complaints handling procedures provide effective safeguards for them; and*
- *complaints will be dealt with comprehensively and swiftly, with appropriate redress where necessary.*

8. The publication also contains guidance to assist approved regulators to achieve the outcomes. Current subjects that are addressed in the LSB guidance include:
 - consideration of complaints
 - the Legal Ombudsman
 - monitoring and enforcement
 - guidance to barristers.
9. Under section 162(f) of the Act, the Board, “may have regard to the extent to which an approved regulator has complied with guidance”, though ultimately, approved regulators can choose whether they will or will not have regard to LSB guidance.

The section 112 publication requirements and outcomes

10. The diagram below shows how the LSB’s section 112 requirements create a sign-posting process so that clients are aware of how and to whom they can complain if things go wrong. Approved regulators are required to have regulatory arrangements in place. Practitioners are required to inform clients in writing of their right to complain to them (a first-tier complaint) – and if they are not satisfied with that response – to the Legal Ombudsman (a second-tier complaint).
11. The requirements also create a feedback loop where analysis of complaints data by the approved regulators can be used to update their complaints handling arrangements and / or to alter policy to reduce risks and improve outcomes for clients.

Legislation – Legal Services Act, section 112 – complaint handling
 LSB sets requirements, outcomes and guidance for regulators



Reviewing the 2010 publication

12. The LSB's 2015/16 business plan set out that it would carry out a thematic review to understand if the publication is currently delivering the outcomes that consumers need for complaint handling.
13. In March 2015, the LSB carried out an early assessment of the progress that the approved regulators had made in delivering the publication's outcomes in the five years since requirements were put in place. Key findings included that:
 - outcomes set in the publication still appeared to be relevant and uncontentious, but were some way from being achieved
 - low consumer recall of the 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 failings / misunderstandings by some approved regulators of the LSB's expectations.
14. At that time, the LSB was also mindful of the potential for overlap in sign-posting requirements with the new alternative dispute resolution (ADR) regulations that were to come into force in October 2015. The LSB considered if there was any merit in merging the two sets of obligations (section 112 and ADR) should the OLC successfully apply to become an ADR entity. As the OLC has recently decided not to apply to become an approved ADR entity (at this time), the implication of the ADR regulations are now not as relevant to this thematic review.
15. Practitioners have dual requirements. These are to comply with their regulator's section 112 arrangements for sign-posting to the Legal Ombudsman and to comply with statutory regulations to sign-post clients to an ADR entity.
16. A commission for the Panel to review what information approved regulators could and should collect and publish from its regulated community will also impact on the section 112 thematic review. Advice from this work is expected to be published in mid-January. It is likely to recommend that anonymised first-tier complaints data should be published by approved regulators. Transparency in this area could stimulate approved regulators and others to drive improvements in outcomes for clients with complaints handling.

INITIAL FINDINGS

17. All of the approved regulators have first-tier complaints handling and sign-posting regulatory arrangements in place, which means they are compliant with the LSB's section 112 requirements. Approved regulators use first-tier complaints data to varying degrees, leading to different outcomes for consumers across the market. For example, most, but not all approved regulators follow the

LSB's guidance to collect complaints data from practitioners. As a result of this and other differences, we consider that outcomes for clients can be improved.

Consumer research

18. Since approved regulators' arrangements have come into force, the LSB has gathered evidence that suggests that while practitioners have first-tier complaints handling and sign-posting procedures in place, they are some way from delivering the outcomes set out in the LSB's publication.
19. In 2011, research² found that 62% of clients who were dissatisfied with their lawyer had to ask for information on first-tier complaints procedures, with only 8% being told about the Legal Ombudsman at the time. The 2012 Legal Services Benchmarking Survey³ showed a relatively low proportion of lawyers informing clients about their complaints procedures – both at the first-tier and for sign-posting to the Legal Ombudsman. Successive Legal Ombudsman Customer Satisfaction Surveys⁴ have shown an improving trend in the percentage of those that hear about the Legal Ombudsman through their lawyer (17% in 2011/12, 19% in 2012/13 and 23% in 2013/14), though the figures remain low.
20. The LSB considers that more can be done to improve outcomes for clients, and so is proposing changes to the guidance element of the 2010 publication, subject to Board comments and responses to the consultation document (attached at Annex A). Guidance in the publication is provided to assist approved regulators to achieve the outcomes.

Internal review

21. In August 2015, colleagues considered whether the LSB's current publication still reflects the needs of consumers for complaint handling. This meeting raised a series of questions and concerns that were categorised into five main areas. These were:
 - Roles and responsibilities – There is a lack of clarity amongst clients, practitioners, regulators and the Legal Ombudsman about respective roles and responsibilities (including timeframes) for complaints handling.
 - Architecture of the complaint process – Clients and practitioners can be confused about how first-tier and second-tier complaints handling (both Legal Ombudsman and approved regulators) processes, and now ADR processes sit and work together.

² First-tier Complaints Handling, YouGov 2011, <https://research.legalservicesboard.org.uk/wp-content/media/2011-First-tier-complaints-handling-report.pdf>

³ See Figure 21, <https://research.legalservicesboard.org.uk/wp-content/media/Impacts-of-the-LSA-2012-Final-baseline-report.pdf>

⁴ Legal Ombudsman Customer Satisfaction Research, 2011/12 (BMG) pg 14 figure 4, 2012/13 (BMG) pg 28 figure 20, 2013/14 (ICM Unlimited) pg 12 figure 4.1.1

- Approved regulators' arrangements – Confusion can be created by each approved regulator having different regulatory arrangements for complaints handling. Particularly when two practitioners are engaged by one client, as in the case of solicitors and barristers.
- Use of first-tier complaints data – Approved regulators could do more to effectively and consistently use complaints handling data to update their arrangements and to alter policy to reduce risks and improve outcomes for clients.
- Communication between approved regulators and the Legal Ombudsman – Approved regulators could do more to share risk analysis and best practice about how to use data. They could also work more closely with the Legal Ombudsman to understand reasons for premature complaints.

Discussions with stakeholders

22. The five main areas identified in our internal review were used as a basis for discussion with stakeholders. We initially met with the Legal Ombudsman to discuss its shared research with the Panel into complaints handling. We also met with the SRA, the BSB, the Law Society and Bar Council. We choose, at this early stage to focus on the two largest regulated communities, aware that they had faced procedural issues with the introduction of section 112 requirements. Each of the stakeholder meetings provided us with evidence and findings about the effectiveness of the SRA and BSB's regulatory arrangements and the delivery of outcomes for clients.
23. Section 112 requirements, which initially caused problems between solicitors and barristers are now considered to be non-contentious by the SRA and the BSB. After discussions between the regulators, in 2014, the SRA developed guidance that set an expectation for solicitors to assist barristers to be in a position to advise shared clients of their right to complain about their service. Barristers had earlier complained that they were not being provided with adequate information from solicitors for them to fulfil their regulatory obligations.
24. Discussions with the Bar Council revealed a recognition that as the BSB moves further towards an outcomes-focused regulation model, it will increasingly need to provide guidance to its membership. The Bar Council is currently developing a supervision toolkit to respond to the findings of the BSB's high impact chamber report, including issues surrounding first-tier complaints handling.
25. At the time we met with the Legal Ombudsman, it had planned to carry out a review of the use of tone, language and best practice in other sectors, to consider how first-tier complaints handling might be improved for legal services. This review was put on hold shortly afterwards. More recently, the Ombudsman has confirmed that it does not measure figures for premature complaints, which had previously been unclear. Premature complaints are those from complainants

who contact the Legal Ombudsman that have not exhausted practitioners' first-tier complaints processes; an indicator that practitioner complaints processes may not have not been communicated clearly, or even frustration with those processes.

PROPOSED APPROACH

Requirements and outcomes: minor changes

26. Approved regulators all currently have regulatory arrangements in place for first-tier complaints handling and second-tier sign-posting to meet the LSB's requirements.
27. Based on the review's initial findings and discussions with stakeholders, the LSB considers that the overall requirements and outcomes contained in the 2010 publication remain fit for purpose. As a result, we are proposing to only make minor changes to them, to reflect that section 112 complaints handling has been in place for over five years and to make language consistent across the publication. We are however proposing to make changes to the guidance, as set out below.
28. The proposed changes to requirements and outcomes are outlined in Appendix I of Annex A.

Guidance for achieving outcomes: comprehensive changes

29. The review suggests that a comprehensive change to the guidance element of the publication could help the approved regulators achieve outcomes for clients. Elements of the current guidance are also out of date, or no longer needed. As a result, we propose to re-write and re-design the guidance element of the current publication.
30. Improvements can be based on the five main areas identified in paragraph 21. Of these, "roles and responsibilities" is a central theme that runs through each of the four other areas. To make the approved regulators' roles and responsibilities as clear as possible, we propose to develop a set of new headings and related content. This content will focus on how approved regulators can achieve outcomes for clients by setting out:
 - a clear overview of the first-tier complaints handling process
 - a clear overview of how the first-tier complaints handling process sits alongside second-tier complaints handling processes
 - how approved regulators should ensure that practitioners are best placed to achieve outcomes clients need

- how approved regulators should monitor the first-tier data that they collect to update their complaints handling arrangements and to alter policy
 - how approved regulators should work together to share relevant risk analysis and best practice for achieving outcomes
 - how approved regulators should work with the Legal Ombudsman to understand why premature complaints are being made.
31. LSB is not required to consult on its proposed changes to the section 112 publication. Section 162(4) sets out that the Board, “may issue guidance”, with no obligation to consult. This is relevant to the guidance element of the 2010 section 112 publication. However, the LSB prefers to follow best practice and, subject to the Board’s agreement, we will consult on the changes to the guidance. In terms of the 112(2) requirements, material changes to a statement of policy require a full consultation under section 49(3). As there is no proposal for a material change to the LSB’s section 112 policy, we consider that an 8 week consultation is appropriate.

Conclusion / ‘next steps’

32. Subject to comments from the Board, we propose to finalise the annexed consultation document and seek representations for an 8 consultation. We will also take account of the recommendations of the Panel on what approved regulators could and should publish.
33. Findings of the consultation and a proposed new publication will be presented to the Board at its 26 May meeting for consideration.
34. The LSB will also need to consider how it can assess the ongoing, general performance of the approved regulators in regard to complaints handling. Alongside section 112 requirements, the approved regulators must deliver outcomes for consumers through the regulatory standards and diversity work programmes. The LSB will consider how to develop a strategic approach to assessing the performance of the regulators in these areas in 2016/17.

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