

<b>To:</b>	Legal Services Board	
<b>Date of Meeting:</b>	26 May 2016	<b>Item:</b> Paper (16) 35

<b>Title:</b>	Summary of representations to the first-tier complaints handling consultation, and updated publication	
<b>Workstream(s):</b>	Unmet legal need	
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<b>Status:</b>	Official	

### Summary:

This paper updates the Board on the responses we received to the recent consultation on the Legal Services Board's (the "LSB") requirements for approved regulators (ARs) for first-tier complaints handling, and seeks the Board's approval to publish the revised LSB statutory requirements and guidance.

The LSB consulted on proposed updates to the requirements and guidance in March/April 2016. Representations were received from 11 organisations. This feedback was supplemented by meetings with the Legal Ombudsman and the majority of the ARs. There was widespread, but not unanimous support for the revisions. One response questioned the need to retain the requirements, and a further response encouraged a greater intervention by the LSB.

All the ARs who responded supported the updates. The outcomes-focused nature of the statutory guidance was also welcomed for its flexibility. The responses also indicated a willingness by ARs and the Legal Ombudsman to work more closely together. The responses have informed the development of revised statutory requirements and guidance. This is available at Annex A.

In summary the LSB proposes to make the following major changes to the statutory requirements and guidance:

- additional introductory text outlining 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 2)
- 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 16).

**Recommendation(s):**

The Board is invited to:

- (1) Note the summary report of responses received and the LSB’s response (Annex A, pages 1-8)
- (2) Agree the wording of the requirements specified under section 112 and the guidance made under section 162 of the Act, and approve their publication (Annex A, pages 9-14)

**Risks and mitigations**

**Financial:** N/A

**Legal:**

We have opted to consult on these minor revisions to the LSB’s statutory requirements and guidance as it is good practice to do. The Act does not require the LSB to consult on changes to requirements specified under Section 112 or guidance published under Section 162. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Reputational:**

Based upon our analysis of the responses and our understanding of the issues the revised publication represents a useful update and a clearer set of requirements and guidance. There may be a risk that the minority of responses who have expressed concern with the LSB’s action on this topic express concern publically when the revisions are published. We will address this through key messages and communications with ARs and other respondents.

**Resource:** N/A

<b>Consultation</b>	<b>Yes</b>	<b>No</b>	<b>Who / why?</b>
<b>Board Members:</b>	<b>X</b>		Dr Helen Phillips, for her experience with complaints handling in the utilities sector, during the development of decision document
<b>Consumer Panel:</b>	<b>X</b>		The Consumer Panel responded to the consultation
<b>Others:</b>			The LSB asked for responses to the proposed changes to its section 112 publication. Representations were made by all legal services regulators with the exception of the CLSB and IPReg. The LSB met separately with IPReg to seek feedback. The Law Society, the Bar Council, the Legal Ombudsman and the City of Westminster and Holborn Law Society also provided representations.

<b>Freedom of Information Act 2000 (Fol)</b>		
<b>Para ref</b>	<b>Fol exemption and summary</b>	<b>Expires</b>
Annex A	Section 22: information intended for future publication	
Risks and mitigations: Legal, final sentence	Section 42: information subject to legal professional privilege	

## LEGAL SERVICES BOARD

<b>To:</b>	Legal Services Board	
<b>Date of Meeting:</b>	26 May 2016	<b>Item:</b> Paper (16) 35

### **Summary of representations to the first-tier complaints handling consultation, and updated publication**

#### **INTRODUCTION**

1. Improving complaints handling for consumers was one of the LSB's three main priorities at its inception. In 2010, the LSB published statutory requirements and guidance for approved regulators on first-tier complaints handling. Section 112 of the Act allows the Board to specify requirements for the ARs, and section 162 of the Act allows the Board to publish guidance to support these requirements. The 2010 publication required ARs to put regulatory arrangements in place for authorised persons to notify clients of their right to complain and to signpost clients to the Legal Ombudsman. These were published to support the delivery of high-level outcomes for consumers about their confidence in complaints handling by authorised persons.
2. A review of the LSB's 2010 requirements and guidance in 2015/16 indicated that while the consumer outcomes remain relevant and uncontentious, they have yet to be fully achieved. The review found that minor updates to the requirements and guidance may be necessary, without broadening the LSB's approach to this issue. Following this review, the LSB issued a consultation on 2 March 2016, inviting representations on proposed updates. The deadline for representations was 27 April 2016.
3. Annex A provides a summary of the representations that were made, the LSB's response to them, and the revised statutory requirements and guidance for the Board's approval. This paper asks the Board to approve updates to its section 112 requirements for ARs and supporting section 162 guidance.

## **RECOMMENDATION**

4. The Board is invited to:

- (1) note the summary report of responses received and the LSB's response (Annex A, pages 1–8)
- (2) agree the wording of the requirements specified under section 112 and the guidance made under section 162 of the Act, and approve their publication (Annex A, pages 9–14).

## **CONTEXT**

5. At its January 2016 meeting, the Board considered a paper that outlined the findings of the LSB's thematic review into its statutory requirements and guidance for ARs on first-tier complaints handling. The review suggested that changes to the guidance element of the publication could help the ARs to deliver outcomes more fully for consumers. The paper proposed consulting on minor updates to the LSB's 2010 publication. Based on the findings of the review and discussions with stakeholders, the LSB considered that the requirements and outcomes contained in the publication remained largely fit for purpose. As a result, only minor changes were proposed in the consultation.

## **RESPONSES TO THE CONSULTATION**

6. We received 11 responses to our consultation. Annex A provides a summary of the responses and our consideration of them. The majority were supportive of the updates we proposed and welcomed the emphasis on using data to improve regulatory practice and service quality. A few responses offered minor redrafting suggestions and these have been incorporated in most cases.
7. Alongside textual alterations to the requirements, outcomes and guidance, we also propose making structural changes to the revised publication. We have introduced "purpose" and "context" elements, to bring it in line with similar rules and policy documents published by the LSB. We have also set the LSB's requirements and guidance in the context of the outcomes for consumers and other complaints-related obligations that authorised persons may be subject to. We hope that this will make it easy to understand the purpose and intention of the revised publication.
8. The Legal Services Consumer Panel's (LSCP) response provided useful additional data on consumers' experience that noted the unwillingness of consumers to complain about poor service. The LSCP encouraged the LSB to go further in its refresh of the requirements and introduce minimum standards for

ARs and to introduce a requirement for the publication of complaints. We consider that the guidance for ARs that the LSB publishes under s162 of the Act addresses the first recommendation. The Board will recall that the second recommendation was made in the LSCP report to the LSB in March 2016, *Opening up data in legal services*, and the LSB has already responded to that recommendation.

9. The Law Society's response questioned the continued need for the LSB's requirements. We consider the evidence demonstrates an ongoing need for continued LSB attention through statutory requirements and supplementary guidance. Both aspects will continue to be subject to review. The Law Society also questioned the impact and cost of data gathering and analysis by ARs. The changes that we have consulted on are relatively minor. In particular, we note that there is no change in the LSB's approach to this issue and no additional compliance demands being placed on ARs. We would anticipate that there would be little to no additional cost for ARs, or for authorised persons, as data is already collected and analysed. The Law Society also questioned the cost of the LSB review. The Board's decision to undertake this work reflects the aim of ensuring the LSB's statutory requirements and guidance remain relevant and up to date.

## **PROPOSED CHANGES**

10. Having had regard to the received representations, the LSB proposes to make the following major changes to the statutory requirements and guidance:
  - additional introductory text outlining 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 2)
  - 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 16).

## EVIDENCE FROM THE APPROVED REGULATORS

11. In its January discussion, the Board noted the limited amount of evidence available to draw a conclusion as to whether complaints handling outcomes are being delivered for consumers. The Board agreed that letters should be sent to the approved regulators at the beginning of the consultation, asking that they submit any evidence they have to show how they:
  - assure themselves that authorised persons have appropriate first-tier complaints handling processes in place
  - gather, analyse and respond to data they gather from both first and second-tier complaints
  - develop regulatory responses based on this analysis to improve consumer outcomes.
  
12. During the consultation period, the LSB met with the ARs and the Legal Ombudsman. We gained a clearer understanding of the ARs' activity regarding first-tier complaints handling from these meetings and the consultation responses submitted. ARs seek assurance in a variety of ways and they use the evidence gathered to assess and mitigate risks in their regulated communities. For example:
  - In 2015, the BSB issued supervision returns to assess its high and medium impact chambers for complaints handling, which risk-assessed authorised persons in a number of areas, including complaints handling. Since then, it has visited 350 high-impact chambers to review first-tier complaints handling processes and other areas of risk. These visits have resulted in supervision responses where required. The BSB is reviewing client feedback mechanisms to develop best practice for complaints handling.
  - CILEx Regulation is in the fourth year of its annual, online first-tier complaints handling survey. It uses gathered data to develop learning for its e-journal to improve practices, as well as for its strategic risk committee to develop supervision responses. CILEx Regulation also publishes an annual client satisfaction survey.
  - Licensed conveyancers that wish to join lender and referral panels are assessed on both their customer satisfaction as well as first-tier complaints data, before they can be accepted. In addition, the CLC has an inspection regime for its entire regulated community, which focuses on higher risk authorised persons. Through this regime, the CLC assesses a range of risks, including complaints handling. To complement these inspections, the CLC carries out an online annual return of first-tier complaints handling data. Both processes allow the CLC to develop and respond to thematic risks and to focus supervision activity and inspections.

- The Faculty Office is currently carrying out its second inspection regime, which considers first-tier complaints handling processes, amongst other areas of risk. Appropriate supervision responses and education courses are developed by the Notaries Society and the Society of Scrivener Notaries to address thematic risks. It also plans to add questions to its practising certificate application so that it can be assured that notaries that are not members of the two notary societies have effective processes in place.
  - The ICAEW carries out periodic visits of authorised persons within 24 months of authorisation. It is currently developing an online annual return with questions targeting first-tier complaints handling and an operating protocol with LeO to generate data in the future. These measures will inform the ICAEW's regulatory responses.
  - Since 2010, the SRA has carried out an annual recognition process renewal, which collects first and second tier-data for authorised persons. This data helps to create risk profiles and drive supervision activity. The SRA also uses the data to create guidance to help solicitors understand best practice and to improve the delivery of first-tier complaints handling.
13. The response from the Legal Ombudsman highlighted some useful data, including the opportunity to improve the quality of signposting by authorised persons. The Legal Ombudsman also indicated its desire to work more closely with the ARs to get a more comprehensive picture of complaints handling. We look forward to greater cooperation and collaboration between ARs and the Legal Ombudsman in the future.

## **CONCLUSION / 'NEXT STEPS'**

14. Subject to decisions by the Board, we propose to finalise the updated version of the LSB's publication on first-tier complaints handling. This will be published on the LSB's website and communicated to all approved regulators and respondents to the consultation.
15. Following this, the LSB will then consider how it can assess the ongoing performance of the approved regulators in this area. This will be carried out over the course of 2016/17 as part of work to deliver the LSB's performance, evaluation and oversight strategic work programme, in particular holding regulators to account for their performance.

26 May 2016