

To:	Legal Services Board	
Date of Meeting:	27 November 2013	Item: Paper (13) 84

Title:	First Tier Complaint Handling
Workstream(s):	
Author / Introduced by:	Fran Gillon, Director of Regulatory Practice fran.gillon@legalservicesboard.org.uk / 020 7271 0087 Bryony Sheldon
Status:	Unclassified

Summary:
<p>This paper reviews the progress that has been made by the approved regulators (ARs) over the last three years on first tier complaint handling (FTCH).</p> <p>It also provides views on developments across the sector and more widely. For the most part, limited progress has been made by the ARs in improving the way that complaints are dealt with. Although there is technical compliance with aspects of the signposting obligations that we introduced in October 2010, it is not supported by regulatory focus. Generally speaking, the approach of ARs remains inward looking, rather than being based on the needs and experiences of consumers.</p> <p>In contrast, there is possible evidence from research of improvements in complaint handling by firms and practitioners, primarily driven by market forces. Although it is worth remembering that any improvement is starting from a low base, this suggests that it may be more effective for the Board to focus more on liberalisation initiatives in general, rather than focussing on any new FTCH initiatives in particular</p> <p>Against this background, the paper sets out various options for work going forwards and assesses the likelihood of their effectiveness and the likely call on LSB and AR resources.</p>
Recommendations:
<p>It is recommended that the Board:</p> <ol style="list-style-type: none"> a. agrees that we will continue to work closely with the Legal Ombudsman to ensure that its initiatives are recognised by ARs; b. agrees that no new substantial work will be carried out on FTCH during 2014/15 pending the outcome of the Legal Services Consumer Panel Tracker Survey and Impact Report and the Government's decision on the implementation of the EU ADR Directive;

c. agrees that the issue will be reconsidered in full for the LSB's 2015/16 business plan;			
d. notes that we will publish the ARs' responses to our July 2012 letters.			
Risks and mitigations			
Financial:		None	
Legal:		None	
Reputational:		We have repeatedly highlighted the need for FTCH to be satisfactorily addressed. Public and stakeholder awareness of progress to date could result in pressure to allocate further resources to this area and/or disagreement with ARs over achievements to date and priorities.	
Resource:		None	
Consultation	Yes	No	Who / why?
Board Members:	x		Barbara Saunders and Steve Green
Consumer Panel:	x		Steve Brooker has been consulted, particularly on applicable research findings
Others:	None		
Freedom of Information Act 2000 (Fol)			
Para ref	Fol exemption and summary		Expires
N/A			

LEGAL SERVICES BOARD

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Background

1. A perception of poor complaints handling by the ARs and those they regulate was one of the main drivers behind the Legal Services Act 2007 (LSA). Section 112 of the LSA states that an AR's regulatory arrangements must place requirements (including any specified by the LSB) on each Authorised Person (AP) in relation to complaints, and must make provision for their enforcement. Section 145 also states that regulatory arrangements must place requirements on APs to assist the Legal Ombudsman's (LeO) investigation of complaints, and must make provision for their enforcement.
2. The LSB used its powers under s112 to specify signposting requirements and set outcomes that ARs are expected to achieve. These are that consumers will have confidence that:
 - complaint handling procedures provide effective safeguards for them
 - complaints will be dealt with comprehensively and swiftly, with appropriate redress where necessary

These came into effect in October 2010 (full details are at Annex 1). The signposting obligations complemented the establishment of LeO.

3. Although regulatory obligations apply at individual level, LeO considers complaints against firms. It has, though, indicated that it is considering naming individuals if circumstances warrant it and will keep us informed if this is likely to happen.
4. The LSB has also carried out a programme of work over the last few years to facilitate and review the progress of the ARs on first tier complaint handling.

Date	Action	Outcome
July 2010	Data collection workshop	Identified three sets of data that collectively could be used by ARs: <ul style="list-style-type: none"> • first tier complaints data (collected by ARs from Approved Persons (APs)) • second tier complaints data (collected by the Legal Ombudsman) • consumer and client data (to be collected by ARs via research)
March 2011	Procedural review	Results of AR progress against: <ul style="list-style-type: none"> • first tier data collection methodology • consumer focus in AR information gathering • a more structured approach to using sources of information to inform regulatory activities

June 2011	LSB/YouGov research	Report into consumer experience with first tier complaint handling in legal services. Copies of the report were sent to the ARs.
October 2011	Procedural review	ARs were asked to assess their performance against seven generic points related to the YouGov report by Nov 2011
July 2012	Procedural review results & Qualitative review	Letter to each AR setting out our view on their response (or failure to respond in two cases) to the October 2011 review, along with tailored actions.

5. Six out of eight of the ARs responded to the October 2011 review. ILEX Professional Standards (IPS) and the Faculty Office did not respond. All those who responded had made some progress, although in every case this was slower than we might have wished. We concluded that there was a significant way to go before we would begin to see a noticeable improvement for consumers.
6. This view was reflected in letters sent to each AR in July 2012. A more targeted review framework was set with the intention of keeping them focussed on FTCH. This drew on (among other things) information from the regulatory standards work draft self assessments and forthcoming consumer research.

AR responses to the July 2012 review

7. Varying amounts of time were given to the ARs to respond to the LSB in the July 2012 letters. The BSB was given four months (but took just under nine), the SRA had six months (and replied over a month late), and the others had a year. After being prompted, the CLSB and IPS replied a month late, and the CLC, IPReg and Faculty Office replied in October 2013. An evaluation of each response is set out in Annex 2. We consider that the responses should be published in full (although this was not done for the responses to the October 2011 review).
8. Generally speaking, progress has been profoundly disappointing. Despite the clear background of failure over many years, the value of complaints as a source of regulatory intelligence to drive supervision and the clear messages about prioritisation given by the Board (together with flexibility about how the outcomes can be met), few regulators seem to have done more than to move into technical compliance with the requirements of section 112 in terms of regulatory arrangements placing requirements on APs etc.).
9. The failure of the SRA and BSB to seek to collaborate without LSB facilitation in tackling problems for barristers in meeting their requirements because of reported obstruction by solicitors' firms is particularly disappointing. As Board members may recall, despite the LSB providing examples of good practice in how barristers can implement the signposting requirements, the BSB has reported extensive difficulties in barristers getting information about their clients from solicitors. At the BSB's request, we facilitated a meeting in June between it and the SRA to discuss this issue and more recently asked them both to give an update on progress since then (by 20 November).
10. So far the BSB has replied, indicating that the SRA's offer in June to take action against uncooperative solicitor firms is workable because of the numbers involved. Somewhat incongruously it believes a cooperation requirement is

needed for solicitors (presumably with enforcement action for non compliance). Having tried unsuccessfully, it asks the LSB to arrange a further meeting, but in the meantime views current requirements as ineffective. We will consider this in the light of the SRA's response, once received.

11. Separately, it has become apparent recently that IPReg is not complying with the requirements of section 145 of the LSA, in that its regulatory arrangements do not currently place an obligation on APs to cooperate with LeO. Following discussion with it in relation to its application to become a licensing authority IPReg has agreed to amend its regulatory arrangements to address this (this is also discussed in Board paper 13 (81)).
12. There are some limited examples of good practice in the AR responses including the provision of facilities for and use of consumer feedback. In comparison areas of weakness include understanding the distinction between intermediaries (e.g. solicitors and other APs) and consumers; why the absence of complaints does not necessarily equate to absence of a problem; and risks associated with reliance of self-reporting by APs. Most of all it seems that there is real benefit to be gained from ARs liaising on FTCH and other issues. The Regulators' Forum (a meeting for all ARs facilitated by the Consumer Panel) was identified as an opportunity to do this. However, this has only met once so far in May 2013, the LSB is not present and so its effectiveness for addressing issues is unclear.
13. Overall, therefore, it is probably not too much of a caricature to say that the progress noted in the paragraphs which follow has happened despite, rather than because of, regulator activity in this specific area.

The wider picture

14. Since the LSB started its work there has been considerable activity in the area of complaints handling. This largely falls into categories of research and other initiatives, which are reviewed below.

Research

15. A wealth of research has been conducted in the last few years, both directly related to the legal services market and complaints handling more generally. Some key points are noted below, a number of which are relevant to comments by ARs in their responses. As project scopes have overlapped, differing results have arisen, but the variance has not typically been significant. The main findings are
 - Low levels of trust remain an important underlying issue;
 - Awareness of how to complain remains lower than ideal;
 - Significant numbers of dissatisfied consumers opt not to complain;
 - Consumer perception of legal complaints handling is, broadly, more positive than in many other sectors.

16. Perhaps the single most suggestive finding is that (using SRA entity data) between 2011/12 and 2012/13 the self-reported number of complaints received by solicitors firms fell by 2%, with 15% less referred to LeO (4,653 to 3,975). However, some caution should be applied given the self-reported nature of the data and the fact that LeO data shows a 2% increase. ABS and LDPs may be better at managing complaints. For example, ABS resolve 11 complaints for every one referred to LeO (93%) (compared to 5 (88%) for LDPs and 4 for other solicitor firms (83%))¹. In terms of overall data, collectively 4% more of complaints received were resolved in 2012/13 than 2011/12 (72% to 68%), which was pretty much all driven by new business structures. This suggests a rate of progress in this area, related to liberalisation and innovation rather than FTCH initiatives.

Trust

- poor service (many consumers have high initial expectations) correlates to lower levels of trust of the legal profession², which has consistently been at around 42%³
- increased awareness/visibility of regulatory and complaints bodies would promote trust⁴
- the overall demand for (regulated) legal services shrinks as people go elsewhere/ avoid the untrustworthy⁵
- consumer behaviours in choosing legal services providers (e.g. by recommendation, with over 60% going back to a previously used provider) often result in poor quality experiences⁶

First-tier complaints

- awareness of the right to complain and the process for doing so increases the likelihood of a complaint being made⁷
- over half of consumers would not know where to complain⁸
- consumer recall of being informed of the in-house complaint procedure and LeO at first instruction was 21% and 22% respectively⁹ (up from 13% and 8% in different research in 2011)¹⁰
- roughly half of consumers found in-house complaints procedures easy to understand and the instructions in them clear¹¹

¹ LSB – Evaluation: Changes in competition in different legal markets 2013

² LSB: Understanding consumers who don't use, don't choose or don't trust legal services providers 2013

³ Consumer Panel Tracker Report 2012

⁴ LSB: Understanding consumers who don't use, don't choose or don't trust legal services providers 2013

⁵ LSB: Market impacts of the Legal Services Act 2007 – Baseline Report (Final) 2012

⁶ LSB: Understanding consumers who don't use, don't choose or don't trust legal services providers 2013

⁷ Institute of Customer Service <http://www.instituteofcustomerservice.com/>

⁸ LSB: Understanding consumers who don't use, don't choose or don't trust legal services providers 2013,

Consumer Panel and LeO: Consumer experiences of complaint handling in the legal services market 2012,

⁹ LSB: Market impacts of the Legal Services Act 2007 – Baseline Report (Final) 2012

¹⁰ LSB (YouGov) 2011

¹¹ LSB (YouGov) 2011

- consumer confidence in making a successful complaint was at 44% in 2013, this is declining year-on-year (but at a rate comparable with other sectors), and is a cause of premature complaints to LeO¹²
- 37% of complainants raised concerns with the legal services provider, but did not make a formal complaint¹³
- around 42% of those with a complaint didn't make one in 2013 (up from 35% in 2011¹⁴). Of those, 82% did not remember being told about an in-house complaints procedure¹⁵
- around 40% of complainants are unhappy with the outcome at first-tier (compared to 30% in the energy sector¹⁶), and a similar amount are not given information about LeO
- compared to postal, financial, telecoms and utilities, legal services performed better on complaint handling (although quicker resolution is needed). Average satisfaction at 65% was 16% higher than the closest sector and 35% more than the worst. However, dropping complaints after initial contact was highest, as was failure to resolve by the company, but reference to the ombudsman was highest¹⁷

LeO

- access to an Ombudsman scheme is a fairly consistent factor (41% in 2013) over time in choosing a service provider¹⁸
- 27% awareness of LeO through the legal services provider is broadly comparable with other ombudsman schemes¹⁹ (even where signposting compliance is higher)
- 70% of those dissatisfied with the outcome at first-tier fail to go to LeO²⁰
- around 25% of complainants go to LeO without having first contacted their service provider²¹ (half of which had looked at LeO's website first). LeO has indicated that barristers are over represented in these figures
- ombudsman schemes are generally perceived as providing better service than first tier providers²²
- LeO was perceived by complainants as performing more strongly than

¹² Consumer Panel Tracker Report 2013, Consumer Panel and LeO: Consumer experiences of complaint handling in the legal services market 2012

¹³ Consumer Panel and LeO: Consumer experiences of complaint handling in the legal services market 2012

¹⁴ LSB (YouGov) 2011

¹⁵ CP Tracker Report 2013

¹⁶ Ofgem (Harris) March 2012

¹⁷ Consumer Futures – Dealing with dissatisfaction 2012

¹⁸ CP Tracker Report 2013

¹⁹ Consumer Panel: Forthcoming Ombudsman benchmarking exercise 2013

²⁰ LSB (YouGov) 2011

²¹ Consumer Panel and LeO: Consumer experiences of complaint handling in the legal services market 2012

²² Consumer Futures – Dealing with dissatisfaction 2012

ombudsman schemes for postal, financial, telecoms and utilities sectors²³

Other sectors

- overall satisfaction in the UK is improving (although there was around 50% dissatisfied in the energy sector in 2012²⁴) and numbers of customers with problems has fallen, although the propensity for people to complain is increasing²⁵
- clear and understandable procedures are extremely important, but so is a culture (at every level) that is accepting of complaints and feedback²⁶
- customer and complaints experience often affects satisfaction²⁷ and loyalty (around 15% - 17% higher inclination to repeat custom and recommend)²⁸
- nearly all customers will recommend an organisation that resolves a complaint efficiently, four out of five will spread the word if it is handled badly. Most are prepared to pay more for excellent service²⁹

Initiatives

LeO

17. LeO has taken a number of positive steps to assist lawyers in dealing with service complaints. In particular, it has developed:

- a section on the LeO website specifically for lawyers³⁰
- a poster for display in offices providing information to clients about LeO³¹
- a signposting pack containing advice and guidance about what lawyers should tell customers (development assisted by the SRA)³²
- a leaflet providing information about LeO (copies are available on request)³³
- a guide to good complaint handling³⁴
- guidance on fees that LeO may charge lawyers for reviewing a complaint³⁵

²³ Consumer Futures – Dealing with dissatisfaction 2012

²⁴ Ofgem (Harris) research March 2012

²⁵ Institute of Customer Service: UK Customer Satisfaction Index, reporting to the Public Administration Select Committee 2013

²⁶ Institute of Customer Service: UK Customer Satisfaction Index, reporting to the Public Administration Select Committee 2013, Ofgem (Harris) 2012

²⁷ Institute of Customer Service: UK Customer Satisfaction Index, reporting to the Public Administration Select Committee 2013

²⁸ Temkin Group 2010 (available on the Institute of Customer Service website)

²⁹ Institute of Customer Service 2010 fact sheet

³⁰ <http://www.legalombudsman.org.uk/lawyers/>

³¹ <http://www.legalombudsman.org.uk/downloads/documents/publications/signposting-poster.pdf>

³² <http://www.legalombudsman.org.uk/downloads/documents/publications/LeO-signposting-info.pdf>

³³ <http://www.legalombudsman.org.uk/downloads/documents/publications/Here-to-help.pdf>

³⁴ <http://www.legalombudsman.org.uk/downloads/documents/publications/Guide-Good-Complaints-Handling-BW.pdf>

³⁵ <http://www.legalombudsman.org.uk/lawyers/case-fee-guidance.html>

- it has indicated that it aims to use case fees as an incentive for FTCH. Missing or incorrect client care letters will be considered as an indicator for conduct referral to the relevant AR
- it is also considering running additional complaint handling CPD courses at weekends to facilitate attendance by barristers.

Forthcoming research

LSB – Public legal education

18. The LSB is in the process of commissioning research to understand the most effective options for regulators to support consumers in recognising where they have problems that might have a legal solution.

Consumer Panel – Tracker Surveys/Impact Reports

19. The Panel intends to continue commissioning yearly Tracker Surveys (publishing raw data and highlights) to measure ongoing changes in legal services. Impact Reports drawing on these and other sources to assess progress towards high-level outcomes will be published biannually, with the next one in 2014.

LeO – The business case for complaints handling

20. LeO is due to receive a draft report on this shortly. This could potentially provide additional material for lawyers quantifying the value of good complaints handling, i.e. identifying the “what’s in it for me”. While this is obviously positive, it is unclear how receptive and responsive the legal sector would be to it at present.

Forthcoming initiatives

EU – Alternative Dispute Resolution (ADR) Directive

21. The European Commission’s ADR Directive and accompanying Online Dispute Regulation will require EU member states to ensure that ADR mechanisms (including ombudsman schemes) are available for contractual disputes in all sectors, if traders choose to use them. The Directive must be transposed into law in member states by July 2015. ADR schemes will have to publish annual reports providing specific information, which LeO is already likely to meet.
22. The government’s response on how this will be applied in the UK is likely to be consulted on in January 2014 (with a decision in the summer). This may give further impetus to establishing, but does not guarantee, LeO voluntary jurisdiction. It is also possible that it may mean the LSB’s sign-posting rules need to be widened, e.g. to require providers to include information on their websites and in contracts.

Government – Consumer rights bill

23. The government published a draft bill earlier this year that is intended to make consumers better informed and protected. This may not have immediate impact on legal services, but may indicate a wider intent by the government (see below).

Public services review

24. The Prime Minister's policy chief Oliver Letwin recently appointed himself "complainers' champion". He will conduct two reviews next year, following up on outcomes of the Public Administration Select Committee. The first will look at making it easier for people to complain about public services, and whether current ombudsmen should be scrapped in favour of a single service with one website. The second will look at how public sector organisations treat complains.
25. Although this work is focussed on public services, language used about the "maze" of ombudsmen, the government's agenda for reducing the cost of regulation, possible consequences of the EU ADR Directive, plus LeO's current costs per case raise the potential for wider comment and/or recommendations.

Current position and options

26. It is clear that progress is still required to ensure that the outcomes are met. In practice, cultural change is needed within ARs and APs to recognise the value of complaints in improving services. This was reflected in the OFT's response to the MoJ call for evidence on regulatory simplification, which, reflecting earlier work by Europe Economics, focussed on complaint handling. However, we understand that LeO plans to carry out a significant amount of work on trying to improve complaint handling. In addition, it may be that competitive pressures help to drive improvements. It is therefore debateable whether an intensive focus on this issue by the LSB is a good use of its resources in 2014/15, compared to a sharper focus on liberalisation and innovation in general terms, as this appears to have driven the progress made to date.
27. We have therefore considered what actions we could take, the potential effectiveness of them and the likely impact on LSB resources.

The sign-posting requirements

28. The current sign-posting requirements are set out at Annex 1. Available evidence might support review of their content in 12-18 months time once we have more information about their effectiveness and the implementation of the EU ADR Directive to ensure that obligations placed on the ARs remain consistent with the outcomes, the regulatory objectives, and the principles of better regulation.
29. Evidence about whether consumers recall receiving information from their lawyer at the point of engagement (one of the sign-posting requirements) suggests a mix of non-compliance and may suggest that provision at this time may not necessarily reflect customer needs. However, it is essential that customers are aware of complaint procedures at the point that things go wrong. Because lawyers may not recognise that a complaint is being made, we consider that it would be too risky to rely on them providing information about how to complain later in their relationship with a consumer.
30. It may be appropriate for a change to the sign-posting requirements so that information on the complaint procedure, or the procedure itself, must be included on media used by an AP to interact with consumers. Based on data we have from 2012, it appears that just over half of solicitors' firms have a website (albeit of varying quality). A brief, random review of websites from various types of law firm

and barristers' chambers suggested widely varying practices, with some having no information at all about how to complain. Given that this may be introduced as a requirement by the EU ADR Directive it seems sensible to wait until the detail of this is known before reviewing our sector-specific requirements.

31. An additional option might be to require the inclusion of LeO information on all AP media and consumer correspondence (i.e. in addition to specific complaint procedures). Both these measures have the potential to increase consumer trust in legal services, as well as facilitate identification of non-compliance. Finally, in terms of client information on complaints, and complaints procedures themselves, it would be reasonable to specify that these must be clear (i.e. use plain English) and simple (e.g. clients should not be required to raise issues informally before raising a complaint). In terms of reporting, however, we consider it important that all issues, whether dealt with informally or formally, should be included in data about complaints and it may be necessary to include this as a specific requirement in any future review.
32. Such changes, however, would involve a relatively heavy call on LSB resources, with publication of a consultation (with associated analysis of responses) and decision document to introduce any changes. In the absence of a change of approach by the ARs (e.g. in terms of enforcement), it is also questionable whether the potential benefits of such changes would be realised.
33. In terms of compliance, all the ARs have the current section 112 requirements in their regulatory arrangements and licensing rules, but their responses to our July 2012 letter raise concerns about their regulation of them. We could respond individually to each AR setting out our views and expectations and/or publish a review of progress but both these options require the allocation of resources for further work to pursue progress by the ARs. On its own this course of action seems unlikely to deliver better results than the last few years.
34. As discussed at paragraph 9 we will, however, continue to bang the SRA and BSB's heads together to seek progress in solicitor firms assisting barristers to meet their obligations.

The outcomes

35. The outcomes are set out at Annex 1. Nothing in the work discussed above suggests that these need amending. However, it does indicate that they are not close to being achieved at first tier level.
36. There is currently little evidence of meaningful insight (or intent to obtain it) by ARs into consumers, including their needs and experience of complaint processes. Although the SRA has referred to development of the Legal Choices website to do this, its launch and subsequent use (in terms of the topics or projects the ARs involved decide to run on it) to consider complaint handling is uncertain. In comparison, most frontline regulators in other sectors are more consumer focussed (as noted by the Deputy Chief Executive of Consumer Focus in 2011, who stated that the legal profession was going to look out of touch unless it changes its stance).

37. In any event, there is a wealth of research, as well as examples of good practice, available to the ARs and those they regulate. We could devote significant resources to encouraging ARs to make use of this, as well as maintain pressure on them to develop their approach on the basis of greater information. We have already agreed with LeO that a joint letter will be sent to the ARs commending the resources for lawyers on its website and this seems a proportionate response.
38. The data collection workshop in July 2010 identified three sets of data that ARs should look to in regulating FTCH. These remain relevant, even if progress on some of them is limited. It might also be worth in the long-term evaluating the possibility of developing sector wide performance measures and benchmarking that draw on this information/research. This could lead to better targeting of regulation. A possible vehicle for us to work with the ARs on this and other issues might be the Regulators' Forum (which would be comparable with other UK Regulator Forums, such as the Joint Regulators' Group, where good practice and developments are discussed). Again, this would be likely to be resource intensive, e.g. in coordinating and advocating participation and progress, for benefits that might be difficult to quantify. That said, the use of data in this way, and encouraging cooperation among ARs has merit more generally.

Definition of a complaint

39. Definitions used across regulators are roughly similar. However, it is interesting that the FCA includes the words "whether justified or not". This might address an issue noted by some ARs – that under reporting of complaints may reflect the fact that they are perceived as unjustified. In addition the British Standards Institute is clear that a complaint may relate to the handling of a complaint as well as actual provision of services. It is unclear if this is currently consistently taken into account in legal services. One final point noted through this review is possible need to clarify that informally handled complaints have the same status as formal ones. Again, this may address possible under-reporting and drawn out processes that deter complainants.
40. In reality, these points could be addressed by ARs taking action such as improving communications to those they regulate, plus targeted compliance and enforcement work. Changes are therefore not recommended at this stage.

Conclusions

41. The outcomes in Annex 1 that were put in place for first tier complaint handling remain appropriate, in that it is right that focus should be on consumer confidence. The material discussed in this paper indicates that there is some distance to go before these are met.
42. It seems sensible though at this point for the Board to consider where FTCH sits relative to other priorities in the business plan. It appears unlikely that further focus on ARs at the present time would yield the desired results, even with application of additional resources by the LSB. Instead, it seems more likely that the required cultural change – away from defensive attitudes to recognition of the benefits of complaints – will come from market forces. There may be some

indication that this is already happening. LeO does not currently know why the number of complaints being received has dropped, but is considering whether to carry out research on it.

43. We suggest that specific work in this area is deferred until 2015/16, and instead incorporated into business as usual in our regulatory standards and performance management work. We will then revisit it, making use of the Consumer Panel Tracker and Impact Reports and other relevant data to determine what, if any, further action might be appropriate in 2015/16.

44. We will continue working with LeO in the meantime to understand the initiatives it is taking (such as the business case for good complaint handling discussed at paragraph 14) and ensure that ARs are made aware of them, as well as maintaining broad oversight of relevant developments in other sectors and the wider economy and reacting as necessary to any ad hoc developments.

Recommendations

It is recommended that the Board :

- a. agrees that we will continue to work closely with the Legal Ombudsman to ensure that its initiatives are recognised by ARs;
- b. agrees that no new substantial work will be carried out on FTCH during 2014/15 pending the outcome of the Legal Services Consumer Panel Tracker Survey and Impact Report and the Government's decision on the implementation of the EU ADR Directive;
- c. agrees that the issue will be reconsidered in full for the LSB's 2015/16 business plan;
- d. notes that we will publish the ARs' responses to our July 2012 letters.

Annex 1: Current requirements

LSA section 112 Complaints procedures of authorised persons

- (1) The regulatory arrangements of an approved regulator must make provision requiring each relevant authorised person –
 - (a) to establish and maintain procedures for the resolution of relevant complaints, or
 - (b) to participate in, or make arrangements to be subject to, such procedures established and maintained by another person,
and provision for the enforcement of that requirement.
- (2) The provision made for the purposes of subsection (1) must satisfy such requirements as the Board may, from time to time, specify for the purposes of that subsection

The LSB signposting requirements

ARs 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)
- 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.

The outcomes

ARs are expected to achieve the following outcomes: Consumers will have confidence that:

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

Definition of a complaint

At the same time we clarified (consistent with that used by the Legal Ombudsman (LeO)) the 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

Annex 2: AR responses to the 2012 review

The BSB

2011 position	
We concluded that it remained to be seen if the BSB would be effective in ensuring FTCH is done properly and complaints treated fairly. This reflected reliance on its delayed chambers monitoring programme to get FTCH information (results were due to be considered in January 2013) and lack of consumer facing research.	
The current response	
<p>The response was a general commentary, rather than an attempt to address each of our points in turn. At just over two pages it did not provide in depth analysis. Generally speaking, progress remains slow, with focus on developing other aspects of regulation. It indicated progress is tied up with its Regulatory Improvement Plan, which involves “<i>embedding greater focus on collecting and using evidence</i>”. It referred to the results of evidence gathering on administration of chambers being available in the Autumn. It also noted that it is seeking to develop risk based supervision (launching in January 2014), building on successful aspects of chambers monitoring, although it did not specify what it considers these to be.</p> <p>While the BSB has generated some insight, this remains professionally rather than consumer focussed. Moreover, it had not taken meaningful steps to address known issues. At a meeting in June 2013, it indicated that it is not currently supervising barrister compliance, as it considers FTCH obligations unworkable (due to lack of cooperation by solicitors).</p> <p>One development, however, is its forthcoming new Handbook (January 2014). This contains outcomes to be achieved, consistent with the signposting obligations, which represent a clear improvement on the current arrangements. These are followed by more detailed rules (for example, that chambers must have internal arrangements in place to review complaints annually for trends and learning points) and guidance, which refers to the material produced by the Legal Ombudsman (LeO) to assist APs (discussed below). The current obligation for complaints procedures to appear on chambers websites is retained.</p>	
Jul 2012 questions	Summary of response
1. How the role of chambers is being considered with respect to the regulatory responsibilities of barristers themselves (including consideration of the impact of different chambers models)	This is being considered through the development of the new BSB Handbook, in which the expectation is on all members of chambers to take reasonable steps to ensure that their chambers is compliant. A new requirement is also included to appoint a chambers liaison with the BSB. Beyond that, no discussion was included on the impact of different chambers models
2. Where information from LeO is being used to inform systemic risk recognition	The BSB has been in discussions recently with LeO in order to ensure that good quality information is received which can contribute to its new supervision regime. In particular, it has asked if LeO would be able to assess the quality of FTCH when investigating complaints and report concerns. No other information was provided, so it is reasonable to assume that this is not happening at present
3. How service, conduct and negligence complaints are being handled in light of the revised guidance to chambers and whether this needs to be framed as outcomes rather than rules	This was not specifically addressed, although the evidence gathering project on the administration of chambers (in development for reporting in the autumn) discussed below may have relevance to this point, as does the development of the new Handbook (which is a mix of outcomes and rules) mentioned above. It is therefore unclear if the BSB currently has any insight on this issue
4. Its view of current levels of non-compliance by barristers, including how this was determined, analysis of why	This was not specifically addressed, although some of the observations on point 7 have some relevance

<p>non-compliance might be occurring and what steps are being taken to ensure higher rates of compliance</p>	
<p>5. Discussion of risks posed (and BSB's response to) changes arising from increasing direct access to barristers</p>	<p>LSB application (Public Access 2013) set proposals for monitoring and mitigating risks. In practice it does not believe that the 2010 relaxation led to significantly increased level of regulatory risk (although LeO data did not then differentiate on access basis).</p>
<p>6. The timetable for reporting on the analysis from the chambers monitoring programme</p>	<p>This has been published. Some key findings were:</p> <ul style="list-style-type: none"> • 89 of 624 were non compliant in relation to at least one of the relevant rules • there was a total of 2,582 complaints (reported) received across the chambers with 11,189 barristers • sole practitioners are more likely to receive complaints • chambers without written complaints procedures were less likely to receive complaints <p>The response indicated that information will be factored into development of the supervision risk assessment framework, which is currently under consultation, but without setting out how. It also referred to current development of an evidence gathering project on the administration of chambers, which is expected to assist the BSB identify risk factors. The results of this should be available in the autumn. This will include a focus on complaints handling and assessment of levels of understanding of revised guidance concerning handling of service, conduct and negligence complaints.</p>
<p>7. How it proposes to engage with the SRA to address the issues raised by practitioners about solicitor cooperation in the process</p>	<p>The response referred to a meeting that it had asked the LSB to arrange. It doesn't appear to have sought to arrange a meeting itself (or taken any other action). It indicated that it had carried out case studies in late 2012 on chambers' attempts to transmit information to lay clients, which demonstrated that in the vast majority of cases they were reliant on the cooperation of instructing solicitors that was rarely forthcoming. The case studies, scope and execution were not provided/detailed</p>
<p>8. Steps to be taken with LeO to ensure good quality information is being shared</p>	<p>As at point 2</p>

The CLC

2011 position	
We determined that the CLC understanding the effectiveness of FTCH rules would be key, and that it should look to understand consumers and ensure that the complaints system is working for them. This included ensuring that it has accurate and effective feedback loops from regulated firms and consumers.	
The current response	
Although submitted very late, the CLC response is encouraging in that it appears to indicate willingness to address FTCH, including engaging with consumers who make complaints, and for complaints data to inform risk profiling of firms. That said, for the most part, limited detail has been given and evaluation identifies possible issues with the approach the CLC has taken. For example, its approach to obtaining and using data from regulated firms appears to adopt simplifications that could impact on quality of feedback. The results and intended action of a recent thematic review are due to be published in shortly.	
The CLC clearly needs to continue to evolve and refine its approach. Positive points of note, though, are the approach taken to ensuring feedback loops from complainants are in place; that a clear message will have been communicated to APs that the CLC takes an interest in complaints handling; and the willingness of the CLC to engage with stakeholders on consumer and FTCH issues.	
Jul 2012 questions	Summary of response
1. Analysis from information received from firms about complaints and how this relates to risk	Provides an explanation of how information is used, in terms incorporation into firm risk ratings. However, little analysis was provided at this stage. Instead reference was made to the results of a recent thematic review being published in coming months. The response also refers to some assumptions applied during these processes, which suggest that the CLC's approach may contain weaknesses and might benefit from research and data analysis expertise and/or will need to continue to develop
2. Whether any inspectors have contacted those who complained. If they have then provide an analysis of whether the complaints rules were working well, and whether such investigation is useful in informing complaint handling policy	The CLC indicates that it recently published a revised Consumer Feedback survey on the CLC website, which is also used in the inspection process. This is distributed to 10 clients (files under review) at each inspection with a limited timeframe provided for comment to inform reports. Random samples of respondents will be contacted if information is considered to require additional interrogation. Inspectors also contact individuals listed in complaints logs as having received redress. However, the response does not provide analysis, as requested, of whether the complaints rules are working well. Although it implies that this process is useful more widely, no discussion of its value to complaints handling policy is included.
3. What research it plans to undertake to better understand consumers' experience of complaints handling	Reference is made to contact via inspections (as discussed above), participation in the Regulators Forum, potential involvement in the LSB research programme and working with the Legal Services Consumer Panel on consumer principles and how these can be used to inform policy making. Of these, only the first directly considers complaints handling, but no reference is made to broader analysis of data. Allusion to the others overstates what is happening in practice.
4. Estimated levels of compliance with complaints handling requirements	The information provided is unclear. Reference is made to content of the CLC risk matrix, which captures data on 3 complaints handling outcomes and identifies that firms are either fully or substantially compliant. Percentage scores are given against each outcome under the headings of "probability", "impact" and "aggregate", and should overall compliance levels fall significantly below this the CLC will take appropriate thematic action. However, how % scores are applied in practice is unclear.
5. Discussion of how information from LeO can (or does) enable CLC to assess regulatory risk and develop interventions	Indicates that quality of data received from LeO has improved and that this impacts on entity risk profiles. Complaint types and numbers are considered in relation to entity size and other information held, and it is also able to identify broad trends that inform regulatory approach without having to inspect individual files, although no details of these themes are provided

The CLSB

2011 position	
We said that there seemed to be clear and credible plans by the CLSB to regulate FTCH, but encouraged it to act on consumer insight. This included working with APs to identify consumers and to understand the experience of complainants (including those who didn't complain). Other actions were set around understanding the effectiveness and impact of complaints procedures.	
The current response	
This reviewed actions prior to (repeating its previous response to us) and after the CLSB becoming an AR in October 2011. It referred to two related risks being entered on its risk register: procedure not in place - 0 rating; and procedure not being communicated to clients, 2 rating, on the basis of no reported complaints or incidents	
Its response raises issues on a number of levels, including its understanding of and/or approach to regulation more generally. It has concluded that the absence of evidence of complaints denotes the absence of problems, with an inference that no action is needed until one is received. Until then the CLSB considers it is unable to evaluate consumer experience. This is on the basis that first-tier complaints are a private matter between APs and consumers and it would be inappropriate to seek contact details for them (with the inference that this would be the only way to carry out such evaluation).	
Actions taken have been directed exclusively toward APs, with the CLSB concluding that information it has collected from them is adequate (i.e. self-reporting via the annual practising application process on numbers of complaints) and indicates that risks have either been eliminated (complaint procedure not in place) or are minimal (that these procedures will not be communicated). Moreover, it has concluded that the vast majority of consumers are "informed" e.g. solicitors, and that this places adequate incentives on APs to respond to complaints appropriately	
Jul 2012 questions	Summary of response
1. How the CLSB is gaining a better understanding of consumers	The CLSB has and will request information on a needs basis via annual practising certificate applications. Based on 2013 compliant applications (treatment of non-compliance was not explained) it carried out an evaluation in 2012. This concluded that 90.7% were informed consumers, e.g. legal professionals, and more vulnerable lay consumers form less than 10% of the main source of instruction. 30% of APs work for SRA regulated firms
2. Levels of compliance with complaints handling procedures	Eliminated risk of complaints procedures not being in place by requiring them to be filed with applications for annual practising certificates. No consumer escalations to LeO since October 2011 indicates that complaints are being resolved at first-tier level
3. What effect the communication activity undertaken has had on individual's behaviours	Communication campaign in 2011 worked well as all APs with a practising certificate have a procedure in place and no complaints or allegations a procedure have not been provided have been escalated to LeO or CLSB since October 2011
4. Analysis based on the information collected from individuals on complaints received and whether additional information should be collected	Can only draw on complaints referred to it. Until then it is between the AP and consumer and it is not privy to consumer contact details. The point of the 1st and 2 nd tier system is to allow practitioners reasonable opportunity to resolve matters without reference before or after with the regulator. They must be allowed the opportunity, without fear or oppression, to deal with disputes in the 1 st instance. As it has not received 2 nd tier referrals, it is unable to evaluate consumer experience at 1 st tier
5. Steps to be taken with LeO to ensure good quality information is being shared	Cooperates fully with LeO and has an open relationship on information sharing

IPS

2011 position	
It did not respond to our October 2011 letter. As well as indicating disappointment, we set five action points in July 2012. These related to identification of consumers, information required by IPS on complaints and also received by it, plus current levels of compliance with IPS rules.	
The current response	
IPS made an interim response in December 2012, which referred to initiatives it intended to carry out. A client survey has been added to its website, but otherwise progress appears limited. Its approach appears focussed on the results of self-reporting by APs, from which it has identified common areas of complaint. It does not, however, refer to having measures in place to verify this information or address identified areas of non compliance. This may reflect the view that FTCH is not within the control of its members (on the basis that they are employed within organisations regulated by other ARs, which ignores the potential for coordination with other relevant ARs).	
Jul 2012 questions	Summary of response
1. What progress had been made to identify consumers who may complain about legal executives	Refers to the development (using the Oxera framework) of the anonymous Client Survey on the IPS website, which fellows have been encouraged to refer clients to. This indicated good levels of satisfaction, but also failures that can be matched against information from other sources. IPS also said it was doing a literature review of consumer experiences and expectations, to develop an integrated action plan in January 2013, however this was not mentioned in its second response. In essence its assessment is limited to areas of law and complaint.
2. What information IPS requires about complaints from entities it regulates	Members/fellows must declare conduct issues (including complaints about work and/or conduct) at initial/annual registration and within year. Declarations are followed up with a survey. The third year of this process closed in July 2013 (data is not directly comparable with LeO's). Self-employed members must confirm that they are complying with IPS Guidance on complaints handling, and IPS reviews their procedures.
3. What information it receives from other ARs about complaints made about CILEX members and whether that is sufficient	Set out a number of initiatives, which do not appear to have come to fruition. No formal processes exist for sharing information, but exchanges take place on a case by case basis (no details were provided on frequency or content). It referred to starting discussions in early 2013 with other ARs about setting common objectives for consumer feedback and sharing information about complaints, but no follow up information was provided. It also noted that the Regulators' Form is an opportunity to share information (the first – and only – meeting was in May 2013). It has MoUs in place with OISC, LeO and the CPS on exchange of information about complaints and has indicated that it will look at developing individual arrangements with key ARs.
4. What the rates of compliance are with IPS's rules	Assessed annually. Client survey results suggest lower compliance than FTCH (self-reported) survey results. An issue from the attached report, but not discussed, is response rates to the FTCH survey (73% in 2013). Action doesn't appear to be taken against those failing to respond. The report may also under-record total number of complaints. IPS notes a "possible" concern around provision of information on LeO at engagement. It will encourage members to address this, but notes it is not typically in their control.
5. How it has responded to information received from the survey of those making conduct complaints and whether wider conclusions can be drawn for other types of complaints	The response focuses mostly on the results. Information is reviewed as part of the annual report to identify areas for development (none were identified in the response) and compared against complaints and disciplinary KPIs. The small numbers involved do not usually enable wider conclusions to be drawn, but enables to test members' views on the process.

IPReg

2011 position	
We were previously encouraged by IPReg's proposals for research on consumers and their experience, as progress was needed in this area. We also indicated that analysis from an information gathering exercise it was undertaking would be vital to understand risks posed by different firms and whether complaint handling is working in practice.	
The current response	
It provided a brief response that was somewhat dismissive of the need for work on FTCH beyond the collection and review of data. Its position appears to be, to an extent, based on self-reported results from its APs. The research it discussed in 2011 has not been taken forward, and so it will be important that the action in its proposed engagement strategy to obtain and publish consumer feedback is. It has, however, put information on its website for potential clients.	
Jul 2012 questions	Summary of response
1. What progress has been made in identifying consumers	It undertook a questionnaire of firms, which sought information on clients. IPReg stated that this is confidential, but referred to documents that it has informed (e.g. its response to Consumer Panel Impact Reports and its Consumer Engagement Strategy). No further information was provided. The CP response stated that consumers are in business (not the man in the street). The engagement strategy contains one relevant long-term action: " <i>obtain and publish regular consumer feedback re. services received</i> " (no timetable or actions were detailed).
2. What effect the communication activity undertaken has had on firms' behaviours	It found nothing in the questionnaire nor when preparing its response (above) or strategy that indicated it needed to seek a change in behaviour of attorneys or firms, although it has adjusted guidance in its Code in relation to more vulnerable clients (the Code's reference to private individuals in this context is somewhat inconsistent with comments at 1).
3. Analysis based on the information collected from firms on complaints received and whether additional information should be collected	Referred to its annual report for statistics (self-reported by entities) – 239 complaints in 2012 reported against issue type. It has concluded that around 12 complaints per year to LeO and only 2 disciplinary cases since 2010 shows complaints are being resolved effectively at first tier (no other analysis provided, e.g. what type of clients complained). It has, though, put information on its website for potential clients, and indicated it will continue to collect and review data and publish any necessary guidelines.
4. Where information from LeO is being used to inform systemic risk recognition	Numbers involved mean that systematic risk recognition is not feasible. There are no recurring issues or firms with significant number of references. However, questionnaire information has been developed into a risk matrix which is an integral part of its Assurance Strategy
5. Steps to be taken with LeO to ensure good quality data is being shared	This is not a concern to IPReg given that the amount of information is limited and readily accessible and it has a good working relationship with IPReg

Master of the Faculties

2011 position	
The Faculty Office didn't respond in 2011. Apart from conveying disappointment, four actions were set in 2012 relating to complaints analysis and its feedback to APs, plus how accessibility of the complaints system would be ensured.	
The current response	
Complaints processes for Faculty Office APs (which were agreed by the LSB) retain the potential to cause confusion and thereby deter complaints, as they are either dealt with by one of two societies on an AP's behalf, or (for non-members) by the AP. It is taking some steps to address this through changes to its website. Otherwise, it appears to have determined that low numbers of complaints, and that these were not referred to the Legal Ombudsman (LeO), indicates there is not an issue requiring action. The results and impact of its proposed inspection regime will be of interest going forward.	
Jul 2012 questions	Summary of response
1. How information about complaints is fed back to individuals and the profession systematically	Feedback to individuals (and complainant) is built into the approved procedures. There is no formal procedure for the profession (on the basis of the small numbers of complaints involved), but reminders are given at annual conferences (covering those that are members and attend) on SP requirements
2. What areas/types of work present higher numbers of complaints and why	Complaints are few. The Societies jointly had 11 in 2012, only 2 of which went on to be formally decided on investigation. FO also received 3 direct contacts (1 conduct). There were no LeO complaints.
3. How the Faculty Office will ensure that the complaints system is accessible	Proposed inspection regime (intended to be in place from early 2014) will check, as far as possible, that notaries are meeting the SP requirements. Supervising notaries of those under supervision are also required to check this. The new FO website will address complaints more clearly (including appropriate redirection) and a web form facility which will be referred on
4. Analysis of complaints, any underlying trends and how it proposes to react	It is difficult to discern patterns or reason for complaint, or area. It assumes that no complaints to LeO mean complainants were satisfied.

The SRA

2011 position	
In 2011 we were concerned that the SRA response did not provide analysis under the headings we set out or cover subjects in a way that shed much light on the issues in them. We concluded that it needed to look at the results of the complaints process from the consumer's view, not just include them as part of its supervision approach.	
The current response	
The SRA was asked twelve wide ranging questions. Its response once again primarily focussed on its approach to supervision, which complaints help to inform. For the most part, FTCH has not been, and appears unlikely to be, taken forward as an issue in its own right, including gaining understanding of the consumer experience. A number of our points were either rejected, not addressed, or, as previously, were not addressed in any satisfactory detail.	
A positive point discussed at a meeting earlier this year is that the SRA has had discussions with LeO on data requirements and actions that could serve as an incentive to improve the handling of complaints at first tier. It also indicated that it is prepared to take action to enforce solicitor cooperation in barristers meeting their FTCH obligations.	
Jul 2012 questions	Summary of response
1. Where information from LeO is being used to inform systemic risk recognition	It has published its Regulatory Risk Framework, which underpins its delivery of OFR. Engagement with LeO is central to its approach as the primary portal for communication to if of consumer problems. Information is risk assessed and scored alongside other insight. Its Risk Index sets out risks it believes are posed to the ROs at any point in time (FTCH is not currently one of these), driving supervision and enforcement.
2. What steps will be taken to assess and improve compliance with FTCH requirements	FTCH may (but no specifics were provided) form part of supervision etc., but the response was unclear on likelihood and how
3. What the results of the thematic research are and whether wider lessons can be learnt on both FTCH and approaches to monitoring	Annex 2 of the response references limited findings. There was no specific reference to wider findings
4. How risk ratings take into account measures of complaint handling and other inputs from the complaints system	Assurance is provided that they do, although no specifics are provided – only that supervisors are not only increasingly familiar with identifying and taking action on FTCH and tackling the attitudes that cause the SRA concern
5. Research (with timings) to be undertaken to better understand consumers' experience of complaints procedures	Joint consumer engagement with other ARs on a consumer facing website (Legal Voices) – conducting surveys and polls with legal services consumers. It will be suggesting FTCH as one area to the other ARs
6. The publication and dissemination of the December 2011 report and findings of the further supervision visits	The report has not been published and this point was not addressed. Thematic work reported on previously formed part of its supervision pilot. Results of this pilot were published in September 2012 and used to create supervision processes. Findings included that APs were not recording/reporting complaints to avoid insurance and reputational issues but also through perceiving them unjustified. Around 5% considered charging for complaint handling reasonable. Steps have included communications to APs – newsletters – and incorporation into risk profiles, with progress made in appointing compliance officers for each entity.

7. Medium term training goals that neither undermine nor are dependent on the outcome of the LETR	None were provided: the SRA indicated that it needed to be mindful of second-guessing the outcomes of the LETR conclusions and recommendations. It will monitor via supervision work the extent to which the outcomes required by its Code of Conduct are being achieved, meaning that it is able to take targeted action to raise standards where it is required and proportionate to do so. Information received during the annual renewals exercise enables assessment of each firm and engagement in response to risks and training gaps identified
8. How the SRA Board has been regularly reviewing progress and issues	The response describes arrangements in place that would apply, but doesn't detail anything specific that has/will happen: Regulatory Risk Committee advises the Board on thematic risks being investigated and activities taken across the organisation in the delivery of OFR. This ensures that any work taken forward on FTCH can be scrutinised and reviewed by the Board.
9. Information about attitudes to charging for complaints handling and what further evidence has been found to understand the extent of the issue	This was not addressed in the response. Information in the table/chart in the results of the supervision pilot gives high level information on views – 5% believed it could be justified to charge, 17% were neutral.
10. How supervision pilot results are being used in practice and whether a detailed action plan has been developed to address any issues identified	Aside from points above (learning has been rolled into supervision), this was not specifically covered. No evidence of detailed plan or discussion of whether one was needed
11. How it is working with the BSB to address concerns raised about solicitors helping barristers meet their obligations	It has liaison with the BSB and will continue to update the LSB about highlights from this process. In practice, it is not apparent that it has done anything on FTCH without our intervention
12. Steps to be taken with LeO to ensure good quality information is being shared	The response discusses how information received is treated – it is risk assessed and scored alongside other information to determine the appropriate response. The SRA continues to talk to LeO about their operational protocol