



To:	Board		
Date of Meeting:	27 April 2010	Item:	Paper (10) 31

Title:	First-tier complaints handling
Workstream:	2C Improving service by resolving complaints effectively
Presented by:	Fran Gillon, Director of Regulatory Practice fran.gillon@legalservicesboard.org.uk / 020 7271 0087
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Status:	Protect

Summary:
<ol style="list-style-type: none">1. Seek approval from the Board for:<ol style="list-style-type: none">a. the final wording for the LSB consumers' rights of complaint "signposting requirement"; andb. guidance to Approved Regulators (AR) on the outcomes that consumers should be able to expect from effective complaints handling.2. Update the Board about the LSB's engagement with ARs about first-tier complaints handling.

Risks and mitigations

Financial:	N/A.
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FoIA:	Exempt – s36.
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Legal:	<p>We need to be able to enforce against the outcomes we seek for consumers for first-tier complaints handling. By publishing guidance (under s162 of Legal Services Act 2007 ('the Act')), we provide a "hook" for enforcement action since we are required to have regard to the extent to which an AR has complied with guidance.</p> <p>There is a low risk of an argument that we have not formally consulted on the introduction of the guidance. This is mitigated by the fact that we have consulted on it in all but name – the guidance uses the text of the proposed outcomes to explain how complaints should be considered.</p>
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Reputational:	<p>There is a slight risk that consumer groups voice discontent that the LSB is not doing enough around complaints handling by not prescribing a detailed and common set of complaints rules or principles across the market. This concern has also been voiced by the Legal Ombudsman (LeO). This risk can be mitigated by referring to the rationale we have used for proceeding, which is, in the main, that it is sensible to let the dust settle on the changes to the structure of the regulatory framework for complaints handling required by the Act (introduction of LeO and reg/rep separation)</p>
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	and principles of better regulation (see paragraph 10 for more detail).
Resource	Director, Project Manager and Regulatory Associate.

Consultation	Yes	No	Who / why?
Board Members:		✓	Project outputs agreed by the Board.
Consumer Panel:	✓		Steve Brooker, Alanna Linn – strong Consumer Panel interest.
Others:	N/A.		

Recommendations:
<p>The Board is invited:</p> <ol style="list-style-type: none"> 1. to approve the attached document (Annex C), which includes: <ol style="list-style-type: none"> a. the consumers’ right of complaint “signposting requirement” made under s112(2) of the Act; and b. guidance under s162 of the Act, including the first-tier complaints outcomes; 2. to delegate authority to approve the publication (post-‘purdah’) of the guidance and a short decision document that will explain how LSB has considered the responses to its letter dated 30 November to ARs and stakeholders to the Chairman and the Chief Executive; and 3. to note the update and next steps.

LEGAL SERVICES BOARD

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Executive summary

1. This paper will update the Board about the LSB's first-tier complaints handling programme initiated by the LSB letter to ARs and stakeholders of 30 November 2009 (**LSB letter**) (**Annex A**).
2. The LSB has now assessed and responded to the submissions from the ARs that responded to the letter. Having regard to that assessment, we seek the Board's approval for the next steps, which include introducing a signposting requirement and publishing guidance under the Act.

Background

3. The key points in the LSB letter were:
 - to remind ARs of the rationale for effective first-tier complaints handling and the requirements of the regulatory framework;
 - to request ARs to provide a self-assessment of their current first-tier complaints handling procedures and monitoring processes and provide a draft action plan by 26 February 2010;
 - to notify ARs of the LSB's intention to introduce a consumers' rights of complaint requirement (**signposting requirement**) under s112(2) of the Act; and
 - to request ARs to comment on the signposting requirement and the LSB draft first-tier complaints handling outcomes also attached in the LSB letter.
4. In December 2009 and January 2010, the LSB met with the ARs on a one-to-one basis to discuss the LSB's first-tier complaints handling programme and any particular issues that they had.
5. On 5 February 2010, the LSB held a roundtable event for ARs and stakeholders to discuss general topics that emerged from the one-to-one discussions. The LSB also invited and has had ongoing communications with ARs.
6. At the end of February 2010, ARs provided their submission responses to the LSB letter.
7. On 1 April 2010, the LSB sent its responses to the ARs. The LSB responses addressed some common issues raised by the submissions and through our engagement generally, and other issues particular to each AR.
8. Overall we are relatively pleased that there has been acceptance by the ARs that the Act has brought about a significant change in the regulatory framework for complaints handling and a willingness to implement those changes insofar as they relate to them. There are some issues outstanding, mostly with smaller ARs, which we are likely to be able to address through some further engagement as their understanding develops of the requirements of the Act – in particular, the

implications of the requirement to have regard to the principles of better regulation.

9. Only one consumer representative body¹, the LSB Consumer Panel, provided a written response, which strongly supported the rationale and the wording of the signposting requirement and the LSB draft first-tier complaints handling outcomes. A representative of Consumer Focus attended the first-tier complaints roundtable and made some comments about the programme generally.

10. [REDACTED]

11. The Board will recall that the LSB previously determined that it was not appropriate at the moment for it to use s112(2) to introduce a common set of requirements. The reasons include the differences that exist between legal services sectors and the need to let the dust settle on the structural changes to complaints handling brought about by the introduction of the Act, in particular the introduction of LeO, the separation of regulatory and representative functions and the principles of better regulation (in particular being proportionate, accountable and targeted only at cases where action is needed). More fundamentally, it seems to neither fit the regulatory principle of proportionality or our own role as an oversight regulator to insist on a single approach, rather than allowing each body to determine its own arrangements. We maintain the view that these reasons are relevant for proceeding as planned and not introducing a common set of requirements at this time. We will re-visit this issue if the changes that are introduced do not achieve the desired outcomes for consumers.

12. LeO has also provided feedback on the proposed wording of the signposting requirement and the LSB draft first-tier complaints handling outcomes. This feedback has been considered and incorporated in the final wording.

Summary of ARs' responses

13. [REDACTED]

14. [REDACTED]

¹ The LSB letter was sent to a number of stakeholders (including four consumer representative bodies) and was posted on the LSB website.

² [REDACTED]

[REDACTED]

Summary of LSB's strategic approach

15. In responding to the particular issues of each AR, the LSB response has taken into account the likely detriment to consumers in deciding from which ARs we expect more immediate and comprehensive change. That is, for ARs that are expected to represent a larger share of market risk, the LSB has stated it expects more immediate and comprehensive change. We have expressed a strong view to all ARs that we will not tolerate clear non-compliance with the requirements of the Act and that it will be for ARs to demonstrate substantive achievement of the regulatory objectives.
16. For a more detailed summary, see **Annex B**. We will update the Board as needed.
17. The LSB does not propose to seek further responses from all ARs on the particular issues identified. Rather, we want them now to start to implement the changes. We have said we will review ARs' progress on the issues identified in October / November. However, if we have more serious concerns, or the AR has specifically asked for our advice, we will continue our discussions with them.

Signposting requirement

Background

18. Section 112(2) of the Act confers discretion on the LSB to specify requirements that ARs must include in their regulatory arrangements in relation to the complaints procedures of Authorised Persons (**AP**).
19. In the LSB letter we informed ARs that we considered it appropriate to introduce a specific signposting requirement using s112(2) of the Act to ensure that APs make it clear to consumers that they have a right to complain, how, to whom and when. We also proposed some wording for the signposting requirement in the LSB letter and invited comment from ARs and other stakeholders.

Feedback from Approved Regulators

20. Most ARs have responded positively to the rationale of the LSB for specifying the signposting requirement. There was some pushback from ARs about the requirement to notify consumers at the time of engagement of time limits for referring a complaint to the Legal Ombudsman. It was argued that it would cause confusion to clients about who they could complain to and that it was not consistent with outcomes-focussed regulation. It was also argued that signposting to the Legal Ombudsman should not be made a "requirement" given that a failure to comply would result in a permanent record for an offending AP because it would amount to a breach of a regulatory arrangement and would be a conduct issue.
21. We considered these arguments carefully and have reasoned that the benefits and protections that are likely to accrue to consumers from specifying the signposting requirement should outweigh these concerns. Issues of confusion can be dealt with by clear communication by APs and, in any event, the Legal Ombudsman has a mechanism built into its rules not to consider complaints that have not first been through first-tier procedures. We consider that the associated

issues of consumer protection carry sufficient weight for it to be reasonable for the LSB to specify that the signposting requirement forms part of an AR's regulatory arrangements. A mandatory requirement is also important to the operation of the Legal Ombudsman scheme.

22. The issue was also raised that APs should not be required to notify all clients given that some would fall outside the jurisdiction of the Legal Ombudsman scheme. We have responded that it should be possible for ARs to give consumers sufficient information to determine for themselves whether they have a right to complain or how to find out whether they do.
23. We have agreed with feedback from ARs that it may not be proportionate for APs to notify all "clients", which may include clients who no longer have contact with the firm. However, we consider it is appropriate that consumers should be made aware of their complaints rights in accordance with the requirement when they enter into new terms with a firm or make a complaint. In addition, clients who are mid-contract must also be made aware of their rights to complain.

EU Services Directive

24. In 2010, the EU Services Directive came into force, which includes imposing 'signposting' obligations on service providers³. The LSB signposting requirement is consistent with and goes a little further than the EU Services Directive. Building on the requirements of the EU Services Directive, the signposting requirement is more specific regarding consumers' rights of complaint at the first-tier, the timing for when an AP must notify clients about their rights of complaint and the right of complaint to the Legal Ombudsman.

Request for the Board to specify the signposting requirement

25. The Board is invited to agree that the following words constitute the specification of a requirement of the LSB in accordance with its powers to do so under section 112(2) of the Act:

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

- a. *at the time of engagement, or existing clients at the next appropriate opportunity, 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); and*
- 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.*

Request for the Board to approve guidance: Outcomes for consumers from effective complaints handling regulation

26. ARs have now had an opportunity to comment on the outcomes attached to the LSB letter. Some of the feedback received through our engagement includes

³ <http://www.bis.gov.uk/servicesdirective>

that the LSB, generally, has too many “outcomes”, including from other workstreams. We accept that this may be a fair call and we have made some adjustments without compromising the integrity of the original proposals.

27. We also consider that for the outcomes to have “bite” they will need to have a legislative basis. We request therefore that the Board approves that the draft guidance proposed at **Annex C** be properly constituted as guidance under s162 of the Act.

Decision document and delegation to publish

28. We will draft a document that summarises why and how we have responded to the issues that were raised by ARs and stakeholders through our engagement in relation to the signposting requirement and the outcomes for effective complaints processes.
29. We request that the Board delegates authority to approve the publication of this document to the Chairman and the Chief Executive.

Next Steps

30. We will write to ARs informing them of the finalised signposting requirement, the finalised outcomes constituted as guidance under the Act and the effect of each.
31. The letter will also re-affirm our expectations for the implementation of the requirement to be timed as close as is reasonably possible to when the LeO is operational. We understand that there will be an announcement about this from the LeO shortly.
32. This letter will also include some suggested categories for data collection to assist ARs to develop an appropriate evidence base to support regulatory effectiveness and decision making in first-tier complaints handling, and an invitation for ARs to comment on those.
33. We will publish the signposting requirement and guidance document in the form provided at **Annex C** and reasons document shortly (post-‘purdah’).
34. The LSB will continue to engage with ARs where we have identified issues that may require more immediate attention. However, the responsibility for addressing particular issues is with each AR. Their success with this work as well as their progress with addressing common issues will be reviewed in October/November as part of a thematic regulatory review. ARs now have identifiable expectations from the LSB in relation to first-tier complaints handling and we will continue to move this work forward in order to ensure these are met.

16.04.10