

To:	Board		
Date of Meeting:	30 November 2010	Item:	Paper (10) 92

Title:	First-tier complaints handling – procedural review update
Workstream:	2C Improving service by resolving complaints effectively
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Status:	Protect

Summary:

The LSB said in its Business Plan that it would carry out its duty to assist in the maintenance of standards in regulation by approved regulators (**AR**) and that we would do this by conducting thematic regulatory reviews.

This has been followed up throughout the development of the LSB first-tier complaints handling (**FTCH**) programme, where we have consistently expressed an intention to review the progress of ARs with implementation close to the time the Legal Ombudsman (**LeO**) commenced operation.¹ On 18 August 2010 we commenced the review by requesting ARs to respond to a series of questions by 29 October 2010.

This report sets out the initial assessment of the review of the FTCH submissions from the ARs. This includes an assessment of each AR's procedural compliance with the relevant sections of Legal Services Act 2007 ('**the Act**') and an initial assessment of whether ARs are likely to be capable of ensuring compliance with their regulatory arrangements by relevant Approved Persons (**AP**).

The report proposes next actions for concluding assessments where insufficient information has been provided, progressing towards compliance where there is inadequate evidence or justification for a failure to comply and safeguarding the delivery of progress towards consumer protection where structures do not appear to be explicitly non-compliant on the face of it but still raise concerns.

High-level summary: [s22 & 36]

Approved regulator	Signposting requirements	Complaints handling regulatory arrangements	Compliance ability & capacity
Solicitors Regulation Authority	[Redacted]	[Redacted]	[Redacted]
Bar Standards Board			
Council for Licensed Conveyancers			
ILEX Professional Standards			
Intellectual Property Regulation Board			
The Master of the Faculties			
Costs Lawyer Standards Board ²			

¹ See correspondence to ARs of 30 November 2009, 01 April 2010 and May 14 2010 – available upon request.

² Association of Law Costs Draftsmen regulatory body.

Risks and mitigations	
Financial:	N/A.
FoIA:	Pre-meeting assessment of exempted text is highlighted.
Legal	Low – s112 of the Act sets out the clear statutory remit for the LSB to ensure that ARs effectively regulate complaints handling, including any requirements that the Board may specify under s112(2), such as the LSB signposting requirements.
Reputational:	High profile area. Key driver for regulatory reform and LSB Business Plan and work stream priority.
Resource	N/A

Consultation	Yes	No	Who / why?
Board Members:	✓		David Wolfe – barrister issues with 'signposting' requirements. Project outputs agreed by the Board.
Consumer Panel:	✓		Steve Brooker – strong Consumer Panel interest.
Others:	N/A.		

Recommendations:
The Board is invited to note our update and assessment of ARs' responses to our regulatory implementation review letter of 18 August 2010 and agree our ongoing strategy to secure compliance.

LEGAL SERVICES BOARD

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Date of Meeting:	30 November 2010	Item: Paper (10) 92

First-tier complaints handling – procedural review update

Recommendation and Executive Summary

1. This paper includes the LSB's assessment of ARs' compliance with:
 - i. Section 112(1) of the Act, which, in effect, requires ARs to ensure that their APs have effective FTCH procedures in place and to make provision for the enforcement of that requirement; and
 - ii. The requirements, specified by the LSB under s112(2) of the Act, for ARs to ensure relevant APs 'signpost' clients to their rights of complaint, including in particular, their right to complain to the LeO at the outset and at the conclusion of the complaint process (**Annex A**).

The assessment framework is at **Annex B**.

2. Three clear themes emerge from this review requiring follow up action:

I. [REDACTED]

II. [REDACTED]

- III. Planning for the qualitative and procedural review of FTCH mid-2011, working with the LeO to determine what second-tier data it can provide and designing consumer satisfaction research for the first half of 2011

[REDACTED]

3. We will draft a summary of the key issues with each AR from this review and publish it.
4. The Board is invited to note this update and assessment of ARs' responses to the FTCH regulatory implementation review outlined in our letter of 18 August 2010 and to agree our ongoing strategy to secure compliance.

Detail


Assessment framework

5. On 18 August, the LSB sent a letter to ARs that included notification of the review of FTCH. The letter requested a response, in two parts, to a series of questions. We asked ARs to identify how they have achieved procedural compliance with the requirements of s112 of the Act and to identify how they have put in place effective monitoring and enforcement. We also sought details of how they would ensure that they had the capacity to secure specific and industry-wide compliance and identify and address systemic issues. The assessment framework and the results and proposed actions in relation to individual ARs are at **Annex B**.

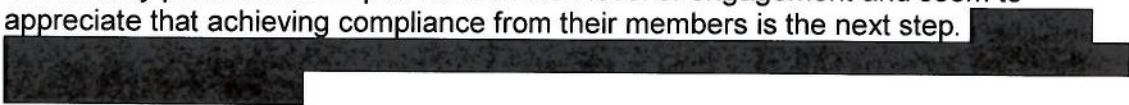
Overall assessment

6. The majority of ARs (whose members represent the largest proportion of market risk) have FTCH regulatory arrangements and 'signposting' requirements in place that we are content are procedurally compliant with the Act. However, we intend to keep a close watch on consumer experience through information we obtain from the LeO, future reviews, market intelligence and consumer experience research the LSB and others undertake to ensure qualitative outcomes are met.

SRA

7. We are content that SRA's FTCH regulatory arrangements are satisfactorily procedurally compliant at this time. 
8. We propose to secure agreement with SRA in relation to its interim mechanism for monitoring a representative proportion of its APs to assess whether there are appropriate levels of compliance. We will require further information to assess whether we are content with what SRA has proposed and will report back to the Board as necessary. More generally, we are engaging closely with the SRA in relation to the building of its risk assessment and supervision architecture for outcomes-focused regulation.

Other ARs

9. We are satisfied BSB and Council for Licensed Conveyancers (CLC) have achieved satisfactory procedural compliance with their level of engagement and seem to appreciate that achieving compliance from their members is the next step. 

10. 

[REDACTED]

11. [REDACTED]

12. [REDACTED]

Publication

13. We will write to the ARs (CEO to CEO) summarising our view and next steps and ask for their comments or feedback. We will take into account additional information or clarification before publishing a summary of the key issues from this review.

Future Plans

Measuring effectiveness of AR regulatory arrangements

14. Though the regulatory arrangements of these ARs now include outcomes for consumers that APs must achieve through effective FTCH [REDACTED]

15. While helpfully moving the profession away from focussing on detail to the spirit of effective resolution, this does mean that a full assessment of the effectiveness of ARs' arrangements can only be done when the LSB and ARs evaluate whether the outcomes have been met. [REDACTED]

16. We have planned to require ARs to provide evidence of effectiveness in July 2011 by undertaking a qualitative (which will combine a procedural) assessment of APs' effectiveness at FTCH. Developing the methodology for this will be a significant part of FTCH work for the LSB in the coming months.

Short and Medium term

SRA – monitoring

17. We will secure agreement with SRA on its proposed process for monitoring compliance and report back to the Board as necessary. We are engaging closely with the SRA in relation to the building of its risk assessment and supervision architecture for outcomes-focussed regulation.

BSB – 'signposting'

18. We are working closely with BSB to ensure it maintains clear scrutiny over compliance with the 'signposting' requirements and follows through with appropriate regulatory activity.

MoF and CLSB – compliance

19. [REDACTED]

20. [REDACTED]

CLC, IPS and IPReg - Effectiveness

21. We will be working closely with CLC, IPS and IPReg to build a robust assessment framework to test whether they are delivering the outcomes that their regulatory frameworks promise – in particular IPS, given that it has applied for the right to grant new rights to its members. This will allow IPS members to establish practises that are not regulated by other ARs and as such require IPS to apply the full suite of regulatory activity to those individuals and entities.

Summary of FTCH requirements (including the ‘signposting’ requirements)

ARs must:

- a. ensure relevant APs have effective complaints handling procedures (s112(1)); and
- b. ‘signposting’ requirements (s112(2))

and have provisions for the enforcement those requirements.

Section 112(1)	The regulatory arrangements of an AR must make provision requiring each relevant AP –	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,	
Signposting requirements - section 112(2)	The regulatory arrangements of an AR must make provision requirement each relevant AP –	<p>to notify all clients in writing:</p> <ul style="list-style-type: none"> 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. 	and provision for the enforcement of that requirement.

Assessment framework and individual AR results

General Framework

	Contravention	Rationale	Action
1	<p>Failure to comply with a statutory requirement.</p> <p>Sections 112(1) or (2)</p>	<p>Failure to comply caused by the AR:</p> <p>a. Failing to make provision in its regulatory arrangements:</p> <p>i. requiring relevant APs to have complaints handling procedures and has not made progress towards compliance by 06 October; or</p> <p>ii. for the LSB Signposting requirements; or</p> <p>iii. for the enforcement of the requirements of s112 or there is no evidence or evidence of an attempt at putting in place appropriate mechanisms to secure compliance;</p> <p>b. The FTCH regulatory arrangements of the AR are unlikely to meet the outcomes in the LSB Guidance and/or would fail any 'reasonableness' or 'effectiveness' test having regard to the principles of better regulation or best regulatory practice; or</p> <p>c. The AR has refused to comply.</p>	<p>Begin statutory enforcement process through the commencement of informal resolution procedure (pre – action before considering statutory enforcement mechanism).</p> <p>Require AR to provide reasons for failure based on proportionality and require an action plan to compliance.</p> <p>Failure to resolve the issue informally, or agree a resolution plan, informally may result in the Executive asking the Board at its December meeting to progress to next enforcement stage.</p>
2	<p>Failure to comply with a statutory requirement.</p> <p>(established reasonableness / proportionality & acceptable action plan)</p>	<p>Full compliance unless in exceptional circumstances it could be demonstrated, using qualitative and quantitative data, that it would be disproportionate to do so. This would be considered in the context of:</p> <ul style="list-style-type: none"> • The cost of any remedial action and in particular the opportunity cost of focusing resources of such remedial action rather than on other priorities; • The size of the regulated community of the AR, and hence the likely impact on consumers across the sector; • The extent to which APs are required to be regulated in order to practise (and so the risk that additional regulatory costs will result in practitioners opting out of regulation). • Provision of a credible route map for reaching compliance. 	<p>Do not begin statutory enforcement process. Noting the concern we would attempt to resolve informally on the basis we received an action plan for compliance including a timetable (failure to meet the action plan may later result in commencement of informal resolution as part of the statutory enforcement action process).</p>

3	Unable to assess compliance (insufficient information or explanation)	Set out identified areas and require further information required to establish the position.	Do not begin statutory enforcement process. In line with the LSB's compliance and enforcement statement we will attempt to gather all the information practically needed. If cooperation is not forthcoming exercise statutory request for information under section 55.	
4	No procedural failure to comply (but concerns about delivery in practice)	AR responses reveal concerns about capacity to regulate, such as, a failure to allocate a budget or staff hours to regulation of complaints handling.	Do not begin statutory enforcement process. Set out concerns and an intention to keep under review and discuss with AR what action may be required or what plans the AR has to address the issue, noting that evidence will be required to establish the outcome has been achieved in July 2010.	
5	Compliant	Reviewed and considered compliant by LSB.	None required.	

Compliance for each AR and proposed actions

- The table below sets out LSB's assessment of compliance against the statutory framework (including LSB initiatives such as the 'signposting' requirements, LSB Guidance and response dates set by the LSB) at **Annex B**. This has been used as the basis of categorising each AR (with RAG rating produced). The table sets out for each AR the primary action recommended and a list of key issues identified with actions recommended for each.

Approved regulator RAG rating [s22 & 36]

AR	Received	Key Concerns	Action
[REDACTED]			