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| <b>To:</b>              | Board         |
| <b>Date of Meeting:</b> | 25 April 2012 |
| <b>Item:</b>            | Paper (12) 29 |

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|--------------------------------|---|
| <b>Title:</b>                  | First tier complaint handling – progress report   |
| <b>Workstream(s):</b>          | Ensuring effective redress for consumers (see <a href="#">Business Plan 2011/12</a> )   |
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| <b>Status:</b>                 | Unclassified  |

**Summary:**

In June 2011 the LSB published market research by YouGov<sup>1</sup> about consumers who were dissatisfied with their experience of legal services. The survey provides important insight into experience of complaints about legal services, in particular the differences between dissatisfied consumers who made complaints and those who did not. When we published the report we encouraged regulators to build on the study, both with their own consumer research to monitor changes over time and, even more importantly, through appropriate communication, supervision and, where necessary, enforcement action in their own parts of the legal sector.

In October 2011 the LSB wrote to all the Chief Executives of the regulators asking them to “make the best possible assessment of your progress in meeting the challenges raised in the report” under a number of different headings. Following analysis of the responses, the report at **Annex A** updates the Board on what the regulators have done and next steps.

Overall, although some progress has been made, we are disappointed that progress in understanding how complaints are being dealt with by law firms and what regulators need to do to ensure that consumers’ experience of complaint handling improves has been slower than we had hoped.

**Recommendation(s):**

The Board is invited to note and comment on the progress report attached at **Annex A** including the proposed next steps to:

- develop a much more targeted review framework using, amongst other things, information from the regulatory standards work draft self assessments and the forthcoming consumer research;
- present that framework to the Board’s July meeting with a view to implementing it in September/October (and deciding then whether it should be applied to all the regulators or only to some of them); and

<sup>1</sup> [http://www.legalservicesboard.org.uk/what\\_we\\_do/Research/Publications/pdf/final\\_report\\_for\\_lsb\\_ftch09\\_06\\_11.pdf](http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/final_report_for_lsb_ftch09_06_11.pdf)

- in the meantime, respond individually to each regulator to provide feedback on their responses.

**Risks and mitigations**

**Financial:** None

**Legal:** None

**Reputational:** Improving first tier complaint handling is a major part of the Legal Services Act 2007 reforms. Failure to make significant progress will have an adverse impact on the LSB's reputation.

**Resource:** Sufficient

| Consultation           | Yes  | No | Who / why?                    |
|------------------------|------|----|-------------------------------|
| <b>Board Members:</b>  | X    |    | Barbara Saunders, Steve Green |
| <b>Consumer Panel:</b> | X    |    | Steve Brooker                 |
| <b>Others:</b>         | None |    |                               |

**Freedom of Information Act 2000 (Fol)**

| Para ref             | Fol exemption and summary | Expires |
|----------------------|---------------------------|---------|
| Annex A paragraph 30 | Fol s44 and LSA s167      | None    |

## Annex A

### Report on progress in first tier complaints handling

#### Background

- 1) On 17 October 2011 Chris Kenny wrote to all the Chief Executives of the regulators to set out the next step in improving how lawyers consider complaints. That letter built on the YouGov report that the LSB commissioned on first tier complaints handling (FTCH) and sought to establish what, if any, progress individual regulators were making to take the findings of the report and apply them to those they regulate. (A summary of the key findings of the YouGov report is at **Annex B.**)
- 2) There is undoubtedly an issue of proportionality that needs to be considered at the outset. The YouGov report, as a consumer facing survey, identified many consumers who used solicitors but very few for some of the other regulators. This means that the evidence base for the different regulators will vary. However, we encouraged all the regulators to consider what they might be able to infer from the results of the YouGov survey for their particular markets.
- 3) In the letter of 17 October we took the approach of asking broad based open ended questions. In it the regulators were asked to “make the best possible assessment of your progress in meeting the challenges raised in the report” under the following headings:
- 4) An outline of what you consider the main challenges for you that were identified in the report and any other challenges you have identified
  - A discussion of what you have put into place to explore of meet those challenges
  - Examples of what you have done differently and evidence of how this has made a difference to the way those you regulate behave and the consumers they serve
  - How any feedback from the Legal Ombudsman, whether direct to the regulator or via broader communication, has influenced your approach
  - Information or research that identifies what more needs to be done
  - Your plan to further develop these areas
- 5) These questions were designed to provoke a range of responses and allowed the regulators to describe what progress had been made. The open ended questions were deliberately light on prescription; the purpose of this was threefold. First we wanted regulators to take the opportunity to provide answers that were proportionate to their size and the types of risk they considered they were managing. Second, we wanted to assess to what extent we received well considered responses to these questions to gauge the significance that the

regulator attached to improving complaint handling. We were aware that some regulators were less convinced that they needed to modify their approach given the YouGov report and we did not want to lead their thinking on what they considered the issues were. And thirdly, we were interested in understanding whether open ended questions like these would be able to give the information we required from regulators on this topic.

6) We received responses from the following regulators:

- The Costs Lawyer Standards Board (CLSB),
- The Intellectual Property Regulation Board (IPReg),
- The Solicitors Regulation Authority (SRA),
- The Council for Licensed Conveyancers (CLC),
- The Bar Standards Board (BSB)

We did not receive a reply from ILEX Professional Standards or from the Master of the Faculties.

### **The Costs Lawyer Standards Board (CLSB)**

7) The CLSB's response explained that much of its action on FTCH had been about communicating the importance of complaints handling among Costs Lawyers. As evidence of its work on FTCH, CLSB included details of all communication activity including the CLSB website, articles in the Costs Lawyers Journal (January, February, March, March and July), and at the annual conference.

8) For the renewal of practising certificates for 2012 the CLSB will require all Cost Lawyers to attach a copy of their FTCH procedure and provide statistical information on complaints handling. The Legal Ombudsman had not received any second tier complaints about Cost Lawyers at the time of CLSB's response.

#### *LSB view*

9) As it is still the first year of operation the CLSB considers that it is too early for the YouGov report to change its approach and we understand that position. However, there appears to be clear evidence that there are credible plans to regulate FTCH and require suitable information about complaint handling. Future years will allow better understanding of how complaints procedures work in practice.

10) One area of weakness for the CLSB's FTCH plans is in the area of gaining insight from the consumer's point of view. Given the small number of Costs Lawyers and the limited evidence of second tier complaints this is not surprising. However, it is proposed that the LSB work with CLSB to try to identify areas

where they might be able to better understand the consumer's experience of the FTCH system in practice.

### **The Intellectual Property Regulation Board (IPReg)**

- 11) IPReg's response notes that the YouGov report, in itself, had not been a significant driver of its FTCH work. This was in part because the report had not included any information about regulated trade mark or patent attorneys. IPREG did, however, note that further information was provided to it from the YouGov report by the LSB which included a small number of responses about trade mark or patent organisations which included both regulated and non-regulated lawyers.
- 12) IPReg has been active in communications about FTCH, amongst other things undertaking a number of presentations to firms. The communication activity covered 28% of firms and over 50% of attorneys in private practice. IPReg implemented rules for reporting on complaints as part of the entity renewal process and expects to publish the data in April 2012. By October 2011 the Legal Ombudsman had accepted 8 complaints and IPReg considered one conduct complaint, which was rejected after review.
- 13) IPReg cited challenges it had identified itself rather than anything from the YouGov report. These challenges included consumer confusion around the difference between titles for regulated and non-regulated individuals and investigating moves towards regulating by activity. IPReg is also considering commissioning research to identify the "consumer" of intellectual property services.

#### *LSB view*

- 14) IPReg has clearly made some progress in communicating the FTCH requirements. However, there seems to be little movement towards a better understanding of the consumer's perspective of the complaints process. No doubt that this is hampered because there is not a comprehensive understanding of who the consumers are across the range of intellectual property services. IPReg is conducting a survey of the firms it regulates which will include questions about the handling of complaints. It is hoped that this will provide better information for IPReg to evaluate whether the FTCH processes are working in practice.

### **The Council for Licensed Conveyancers (CLC)**

- 15) The CLC response covered the headings suggested by the LSB's letter. It noted that nearly a fifth of the dissatisfied respondents in the YouGov report had used conveyancing services. However, the CLC also noted that only 3% of those surveyed had reported receiving a service from a CLC regulated provider.

- 16)The CLC identified three areas that specifically relate to those it regulates. These were delays, mistakes made in the process, and quality/lack of knowledge. A number of complainants in the YouGov report stated that they had been charged for the handling of their complaint. The CLC noted that “such practice is a direct contravention of our arrangements and a direct threat to the consumer interest”. However, the CLC inspectors have not identified any examples of a consumer being charged to make a complaint and the Legal Ombudsman has not referred any back to the CLC for investigation.
- 17)The CLC took the YouGov report as giving it evidence that some of the firms were not meeting the regulatory requirements but it notes that it remains a challenge to gather statistically significant data about FTCH.
- 18)The CLC has “implemented a systematic programme of awareness raising”. This has included mail-shots in July and November 2011 and articles in the Chronicle including signposting to the complaints code and guidance. The CLC has not assessed whether there has been a change in firms’ behaviour.
- 19)The CLC received information from the Legal Ombudsman about the 118 complaints received in the year to October 2011. Thirty-one of these complaints were about firms that the CLC had intervened in and were no longer trading. For the firms that were still trading, the main areas of complaint were failure to advise, delay and failure to follow instructions. The CLC did not consider these descriptions to be narrow enough to derive “points of learning for the profession”. The CLC would like the ability to drill into the Legal Ombudsman complaints data to check whether it is evidence of a systemic issue or a failure in regulatory control.
- 20)Monitoring information returns have now become part of the new annual return. This will include dedicated information gathering about complaints. Inspectors may also contact a sample of past complainants to determine how well their complaint was handled. The CLC plans a survey on consumer feedback on the service received from licensed conveyancers.

*LSB view*

- 21)The CLC has made good progress. We recognise that obtaining statistically significant data is a challenge but the CLC is taking forward work to address this.

## **The Bar Standards Board (BSB)**

- 22)The BSB's response focused on the role that chambers have in complaints handling. The BSB's stated focus where non-compliance was identified is to work with chambers to achieve compliance with complaint procedures.
- 23)The YouGov report was considered by the BSB to have limited specific data that relates to the Bar as much of it was focused on solicitors. However, it did note there were general themes for all legal professionals.
- 24)The BSB did, however, identify five areas that it considered required further consideration:
- How should information about consumer satisfaction be gathered? By the BSB or by chambers
  - How could the BSB gather information about how chambers use complaints information
  - How to make the signposting requirements work in a chambers environment
  - How to monitor compliance with signposting requirements
  - How to monitor whether complaints were being used to assess effectiveness rather than just looking at whether the chambers were meeting their regulatory requirements
- 25)The BSB relied heavily on the chambers monitoring programme for gathering information on FTCH. The BSB is reviewing this programme generally and how it fits into supervision, enforcement and risk assessment. The BSB has decided to delay the next monitoring programme until May 2012.
- 26)The BSB's response talks about the practical difficulties in implementing the "signposting requirements" to inform consumers about their right to complain to the Ombudsman in the chambers model. The BSB, with the LSB's agreement, has introduced a chambers specific guidance. The BSB plans to assess the effectiveness and compliance with the new requirements in May 2012 as part of the chambers monitoring programme.
- 27)The BSB cited difficulties in accessing consumer feedback about barristers, although it did note that some of the larger chambers routinely send out client satisfaction reports. The BSB's view is that there is no consistency of approach to seeking feedback on performance or complaints handling. The BSB will use information from the chambers monitoring programme to inform its approach. The BSB is not proposing to do any consumer FTCH research until after the results of the chambers monitoring programme have been considered.

*LSB view*

28) The BSB puts a significant amount of weight on the chambers monitoring programme. However, on the timeline that is included the monitoring report this will not be considered by its Board until January 2013, although non-compliant chambers should be identified by October 2012. It is clear that FTCH will be part of this monitoring, but it remains to be seen whether these steps will be effective in ensuring that FTCH is properly done and whether consumers' complaints are properly treated in practice. We are concerned about the lack of consumer facing research, especially given that the BSB acknowledges that other feedback mechanisms are flawed. We are also concerned about the length of time the BSB is taking to obtain evidence from chambers about complaints.

**The Solicitors Regulation Authority (SRA)**

29) The SRA implemented a thematic pilot on first tier complaints as part of its supervision function. It carried out baseline visits to a stratified random sample of 240 firms to assess whether they complied with the complaint handling requirements in the SRA's Code. It also conducted thematic supervision visits to a random sample of 100 firms to conduct in depth interviews on attitudes and behaviour around first tier complaints.

30) [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

31) The SRA also found that there was an apparent lack of consistency about definition of complaints, a perception that some complaints were unjustified



leading to a defensive stance among providers and a need for training about consumer expectations.

32)The SRA has taken some steps to improve compliance including issuing a reminder about the FTCH requirements, building its findings into the Legal Education and Training Review and using the results to influence CPD work in order to drive up complaint handling standards. It is also developing a SRA-branded poster for firms to make available locally setting out the commitment by their firm to handle complaints fairly and transparently. It says that the responses to charging clients who make a complaint give the SRA “cause for concern”. As a result of the supervision pilot it is also proposing to develop some more actions. Although these have not yet been disclosed to the LSB the report does say that the SRA will:

- publish trend information from the complaints data collected from firms as part of the practising certificate renewals process and provide suggestions on how firms can improve;
- take a proportionate approach to enforcement and support around complaints handling;
- publish best practice guidance on the SRA website including case studies; and
- work collaboratively with the Legal Ombudsman to get a fuller picture and identify areas for improvement.

33)The SRA has redesigned the consumer information pages on its website to make information on the complaints process more visible and is available in a range of languages and through a video clip. Since this was done there has been a 75% increase in visitors to that part of the website.

#### *LSB view*

34)The SRA’s report provides good examples of firms’ attitudes towards dealing with complaints and has helped the SRA to decide its next steps on improving complaint handling. The collection and publication of trend data in future should help to improve the way in which complaints are dealt with and help the SRA to target its supervision more accurately.

35)However while it is undoubtedly beneficial to include complaints as part of the supervision approach, there remains a need to look at the results of the complaints process from the consumer’s view, not just from asking the providers. In particular it is possible that conducting the research during a supervision visit may have affected the responses. Nevertheless the supervision questionnaire did identify areas of non-compliance and the LSB would expect that this would be explored further and considered as part of the SRA’s risk analysis. Although the

SRA research is a helpful starting point we were concerned that its response did not provide analysis under the headings we set out or cover subjects in the way that shed much light on the issues in them.

### **Summary and next steps**

36) Overall, some progress has been made across all the regulators that responded. However, there appears to be a significant way to go before we begin to see a noticeable improvement for consumers. All regulators have taken some action although in every case the progress is perhaps slower than we might have wished.

37) The open ended questions and approach used in this project has been a partial success. While it has allowed regulators to interpret the questions in a proportionate way to their circumstances it has also meant that some have not really engaged with the questions.

38) There is a clear need to maintain monitoring of each AR's work on FTCH to ensure that suitable emphasis is maintained. There is a clear link to the regulatory standards work that is being undertaken both in terms of data collection and the approach to compliance/enforcement on FTCH.

39) However, we do not consider that this work alone will necessarily keep regulators focused on FTCH. We therefore propose to develop a much more targeted review framework using, amongst other things, information from the regulatory standards work draft self assessments and the forthcoming consumer research. That will include consideration of a targeted framework for each regulator that takes into account the progress that each has made to date in the context of their overall impact on consumers. We will present that framework(s) to the Board's July meeting with a view to implementing it in September/October. In the meantime we will respond individually to each regulator to provide feedback on their responses. For the SRA, this will include encouragement to publish their report and to clarify what further actions it intends to take.

40) We will also continue to work with the Legal Ombudsman to make best use of the data it collects. In addition, the Consumer Panel will jointly commission research with the Legal Ombudsman on consumer expectations and experiences of first-tier complaints. The project will explore the challenges, barriers and enablers faced by consumers as they progress through the complaints process. That research will be published in quarter 3 and will help to inform our work and that of the regulators.

## **Annex B**

### **Summary of YouGov report**

- The report was commissioned in order to investigate the complaints handling process within the legal services domain and to understand causes for dissatisfaction and treatment of consumers. The report looks at the behaviour of users of legal services who were dissatisfied with the service they received. It analyses, amongst other things, in house complaints procedures, the causes of dissatisfaction and responses to it, how complaints were handled, the outcomes and key findings across types of consumers.
- The report also looked at whether consumers were told that they had a right to complain to the Legal Ombudsman if they were dissatisfied with the way the law firm had dealt with their complaint. (A regulatory requirement on all law firms.)
- The research suggests that consumers struggle to identify how to go about making a complaint when the service they received was unsatisfactory. Notably, results show that, throughout engagement, over half of respondents (57%) were never told about their provider's complaints procedure. Of those who did receive such information, less than half (47%) found the procedure easy to understand.
- The figures give a sense of the proportion of consumers who never enter the complaints-handling system - whilst 33% did make a complaint, around two-thirds (64%) did not make a formal complaint to their service provider. The results demonstrate strongly the link between knowledge of procedure and likelihood of making a complaint. Out of the respondents who did not complain, 82% were not told about the in-house complaints procedure at engagement, compared to just 24% of those who did make a complaint.
- Even amongst those consumers who do make a complaint, results show that the vast majority of those who remain dissatisfied fail to enforce their right to challenge the results of the in-house stage – dropping out of the system following that initial result – 70% of consumers did not progress to the second tier.
- The LSB was particularly concerned about the number of clients who reported that they had been charged for making complaints and made clear that it expects approved regulators to take firm action in all cases where charging is proven.