

To:	Legal Services Board	
Date of Meeting:	11 July 2012	Item: Paper (12) 49

Title:	First tier complaint handling – progress report
Workstream(s):	Ensuring effective redress for consumers (see Business Plan 2011/12)
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Status:	Unclassified

Summary:
<p>In April 2012 the Board considered a paper on the approved regulators' progress on first tier complaints handling. At that meeting the Board asked for a framework to be developed that would be targeted by the regulator.</p> <p>This paper sets out that framework. It is intended to be proportionate to each regulator and address issues that have been identified. Some of the regulators are given longer to respond to the action points.</p> <p>If the Board is content with the approach and the content of the assessment we will write to each regulator setting out our thinking and the action points that we think should apply to them.</p>

Recommendation(s):
The Board is invited to note and comment on the analysis and agenda for each approved regulator at Annex A

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 may have an adverse impact on the LSB's reputation.
Resource:	Sufficient

Consultation	Yes	No	Who / why?
Board Members:		X	
Consumer Panel:		X	
Others:	None		

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires

LEGAL SERVICES BOARD

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Progressing First Tier Complaints Handling Executive Summary

Recommendations

The Board is invited:

- to comment on the analysis and agenda for each approved regulator at **Annex A**

Background

1. At its inception in 2009, the Legal Services Board (LSB) set out three priorities: separation of representative and regulatory functions, the introduction of alternative business structures (ABS) and improving complaints handling. Three years on, separation of functions has largely occurred across the regulators and the ABS regime is up and running. However, complaints handling has shown less progress, aside from the establishment of the Legal Ombudsman.
2. Ensuring that consumers are able to complain about the services that they receive and that the complaints are handled appropriately is fundamental to ensuring that the regulatory system is achieving its purpose. The YouGov research¹ that the LSB commissioned showed that there was evidence that consumers were not universally well treated by providers through the complaints process. We consider that each of the approved regulators (ARs) can do better.
3. In April 2012 the Board was presented with a summary of responses to a letter we sent to the ARs in November 2011. That letter asked open questions to encourage ARs to tell the LSB what progress had been made and where the challenges lay. Two of the ARs did not respond to that letter at all. There is a range of progress made by the other ARs.
4. Where a consumer has a complaint against a provider the first step is to complain to the provider, this is a “first tier complaint”. If the consumer is still not satisfied with the response a further, or “second tier” complaint can be made to the Legal Ombudsman. The way that first tier complaints are dealt with is a regulatory matter and each regulator has rules about how complaints must be handled and how consumers are to be informed about their rights to complain to

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http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/final_report_for_lsb_ftc_h09_06_11.pdf

the Legal Ombudsman. The LSB has an interest in ensuring that the rules that the ARs have in place are working well and achieving the intended aims.

Analysis

5. The correspondence in November to the ARs put the burden on the ARs to consider how they were taking forward the agenda on first tier complaints handling (FTCH). This paper takes a different route. Instead of asking the ARs, it draws on the responses from the November process and what we have learnt from them since and sets a forward agenda for each of the ARs.
6. Some ARs have made good progress in identifying next steps that will help complaint handling, others are still understanding the needs of their regulated community and the consumers that they serve. All will require maintaining focus in the coming months.
7. This document is intended to provide analysis of each AR's current reported position on FTCH. It also sets out a number of action points tailored both in content and timescale to each regulator for the AR to respond to. It is intended that the action points will provide the evidence to show that the ARs are taking active steps on improving complaints handling.
8. The proposals are different in approach from the last communications with the ARs which sought to ask open questions to allow them to demonstrate what progress has been made; this paper sets out more prescriptive action points. This may be considered to be micro-managing the ARs, but the proposals are designed to be proportionate to the needs and abilities of each AR without losing sight of the need to improve performance across the board. When the Board last discussed the issue at its April meeting, members explicitly agreed that this more prescriptive approach was necessary in the light of the comparatively disappointing progress made.
9. The action point approach is different to previous approaches taken by the LSB on complaints handling. On the whole, ARs have not made the progress that the LSB had hoped for. The YouGov research appeared to show both a clear case for action among the ARs and also act as a guide of how research could be used to gain insight into FTCH. However, ARs have not taken steps to continue to pursue this type of evidence led approach. Complaints remain an important priority for us and despite the significant amount of other work that the ARs have to do, the LSB needs to insist that focus is kept on these issues.
10. The proposals also are intended to consider the types of consumers who use the legal services provided. The risks and remedies for ordinary private consumers are different to those of sophisticated commercial clients. Micro and

small businesses have different needs again. Some ARs are changing the exposure that consumers have to who they regulate, for instance the Bar widening direct access. This changes the risk profile for complaints and increases the requirements of regulators to respond.

11. Board members should note that the meeting with Practice Managers to discuss their concerns about the BSB's signposting rules mentioned at the last Board meeting will take place on 9 July. We will update the Board orally on whether anything in that discussion causes the need to revise the feedback to the BSB.

Next steps

12. The purpose of this document is to set an agenda for action with each of the approved regulators that will, in taking into account the particular circumstances of the AR, set a route map towards better FTCH among those that they regulate.
13. Once the individualised frameworks are finalised, letters will be sent to each of the ARs setting out what the LSB considers to be the next steps required and the action points that follow. The LSB team will also offer to meet with the ARs to discuss. This should be considered as part of normal regulatory activity by the LSB. It is proposed that the letters to the ARs are published by the LSB as a package when they are sent during the course of July.

Annex A

The Solicitors Regulation Authority (SRA)

Background

1. The SRA regulates by far the largest number of individuals and the most firms providing legal services. Covering a wide range of activities most of the services provided are consumer facing. Additionally, other lawyers such as notaries and legal executives work through SRA regulated firms or are employed by SRA regulated firms. Therefore ensuring that the complaints system works well for those regulated by the SRA is of great importance.

Progress so far

2. The SRA carried out a thematic review of first tier complaints handling (FTCH) in the firms it regulates. This was conducted through supervision visits and interviews on attitudes and behaviours. The results were drawn into a report that was due to be completed in December 2011. To date the report has not been published, although the SRA shared a confidential draft of that report with the LSB in February 2012.
3. The SRA is planning on using the legal education and training review and professional development to attempt to influence complaints handling in the longer term. The SRA is developing more actions to support FTCH using findings from the supervision work. The SRA has also re-designed the consumer information on its website.

The next steps

4. The SRA must be proactive in ensuring that complaints are handled well by the firms it regulates. This involves ensuring that the consumers are listened to by providers and regulators and that providers understand and adhere to the rules put in place.
5. From what the SRA has shared with the LSB, it appears that there is a small but material rate of non-compliance with the complaints handling requirements. This also appears to be compounded by some evidence of poor attitude among providers about complaints received from consumers. The SRA appears to have a good opportunity to try and identify where this is occurring and develop interventions to ensure that complaints are treated properly.
6. Given the size and diversity of the firms regulated by the SRA it is likely that this will need to be targeted on those who present the most risk. Given the SRA's progress in developing risk based regulation this appears to be a good area for the SRA to use the new approach.

7. The SRA should also do more to develop an understanding of the consumer's experience of the complaints handling process. For the purposes of analysis, the SRA should be able to draw the strongest conclusions from the YouGov survey as the majority of respondents had received services from a solicitor. This should provide the SRA with a useful baseline to develop its own research from. This should also help the SRA better understand whether the interventions it has in place and its risk model are correctly identifying the areas where more intensive supervision is justified.
8. Given the numbers of complaints that the Legal Ombudsman receives about solicitor services this should also give the SRA the ability to analyse not only the specific firms but also other factors that might be correlated with poor FTCH.

Action points

9. We expect the SRA over the next four months to develop and share with the LSB a response that covers:
 - Where information from the Legal Ombudsman is being used to inform systemic risk recognition
 - What steps will be taken to assess and improve compliance with FTCH requirements
 - What the results of the thematic research are and whether wider lessons can be learnt on both FTCH and approaches to monitoring
 - How risk ratings take into account measures of complaints handling and other inputs from the complaints system
 - What research (with timings) will be undertaken to better understand consumers' experience of complaints procedures
 - The publication of the December 2011 report and findings of the further supervision visits
 - Medium term training goals that neither undermine nor are dependent on the outcome of the Legal Education and Training Review
 - How the SRA Board has been regularly reviewing progress and issues
 - Information about attitudes to charging for complaint handling and what further evidence has been found to understand the extent of the issue
 - How the results from the supervision pilot are being used in practice and whether a detailed action plan has been developed to address any issues identified.
 - Steps to be taken with the Legal Ombudsman to ensure that good quality information is being shared

The Bar Standards Board (BSB)

Background

10. The BSB regulates barristers who traditionally have been a “referral profession”. This means that the interaction with individual clients is often moderated through a solicitor. The BSB refers to the “lay client” in much of its discussion to make this distinction. In recent years the access to services of barristers has been widened with the introduction of direct access.
11. The BSB has consulted on widening direct access to clients who are likely to qualify for legal aid and allowing barristers of less than three years’ experience to do public access work if they have done the relevant training. This will mean that many more consumers will be able to receive services directly from barristers which will make the complaints handling processes of barristers even more important.
12. Another part of the BSB’s regulated community is the role of chambers. Chambers provide administrative and clerking support to barrister tenants. The role of the clerks has grown to include responsibilities for complaints handling.

Progress so far

13. The BSB’s approach is focused on complaint handling by chambers and not by individual barristers. The BSB’s stated focus has been to help chambers reach compliance with the complaints handling process. The BSB will have a better understanding of chambers’ success in handling complaints once it finishes its chambers monitoring programme. The chambers monitoring programme is part of the BSB’s supervision model and will systematically collect information from chambers about compliance with the BSB’s regulatory arrangements. The BSB is not proposing to undertake any consumer research on FTCH until the chambers monitoring programme is completed. The information collecting part of the chambers monitoring programme is due to be completed at the end of August 2012 with analysis taking place after that.
14. The BSB’s introduction of the signposting requirements (which are designed to ensure that consumers are told about their right to complain to the Legal Ombudsman) has caused some friction. The relationship between barristers, chambers, instructing solicitors and the consumer can be complicated. Further dialogue is taking place to ensure that the issues are properly understood.

The next steps

15. The structure of the barristers' profession means that the BSB's approach of having detailed rules makes it more complicated and more difficult to assess the effectiveness of the complaints handling rules. Some consumers instruct barristers only through solicitors and may not have direct contact with the barrister, others will instruct barristers directly. Barristers also delegate many of the client handling functions to their chambers. In order to regulate effectively the BSB needs to be able to understand the requirements it is placing on those it regulates, how the regulations are implemented and the efficacy of its interventions.
16. The regulatory weight that the BSB places on chambers needs to be considered. The relationship between barrister tenants and chambers is not straightforward as barristers' relationship to their chambers varies between chambers. In general, barristers are provided services by the chambers including complaint handling services, but only the barrister is regulated. However, although the barrister has delegated the delivery of the functions they cannot delegate the responsibility for compliance with regulation. The BSB should ensure that each barrister has appropriate arrangements in place to ensure that the regulatory requirements placed on them (by BSB rules and Section 112 of the LSA) are properly discharged through the chambers. By focusing on the detailed rules that apply to chambers rather than the barrister the BSB risks further confusing the situation.
17. In order to ensure that the complaints system is working properly, the BSB should be looking to encourage strong feedback loops from the consumer to the provider, from the provider to the regulator and from the consumer to the regulator. It is unclear, given the chambers structure and the role of solicitors as conduits for consumers in many transactions, whether barristers get good quality feedback on performance and satisfaction of the consumer, let alone when things go wrong and the consumer wishes to make a complaint.
18. In order to ensure that consumers are able to complain when things go wrong and that barristers are able to learn about how consumers experience service, the BSB should consider developing a deeper understanding of how consumers interact with barristers and chambers in practice and the complaints process in particular.
19. The extension of direct access will change the risks that barristers' complaints systems will need to be able to deal with. This will particularly relate to elements of service which, under the traditional model, solicitors have managed, for example drafting correspondence. The BSB will need to ensure that those barristers who provide services directly to the public understand and abide by

the requirements for complaints handling and signposting. This will require the BSB to regulate in a different way focusing on the risks to consumers and the outcomes that need to be achieved.

20. The issues around signposting have not been conducive to encouraging a constructive debate about complaints handling. Consumers need to be informed of their rights to complain to the Legal Ombudsman. The BSB should consider how this is best achieved. If it is not best achieved with the current approach then the BSB should work to develop a new approach that does achieve the outcome of good complaints handling. This approach may need to be less prescriptive and more focused on achieving broad outcomes as trying to specify detailed rules may lead to perverse incentives and unintended consequences.
21. There has been some correspondence between the LSB and the BSB over the issue of conduct and negligence complaints that might form part of a service complaint. Some chambers were concerned that considering a service complaint may imply liability for negligence or misconduct. This resulted in the BSB revising its guidance to clarify that service complaint still needed to be dealt with even if the complaint may also relate to issues of negligence. Thinking about how complaints information can be used by individual barristers, chambers, the regulator and consumers should help lift performance.

Action points

22. We expect the BSB over the next four months to develop and share with the LSB a response that covers:
 - 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)
 - Where information from the Legal Ombudsman is being used to inform systemic risk recognition
 - 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
 - Its view of the current levels of non-compliance by barristers. This should include how this was determined, analysis of why non-compliance might be occurring and what steps are being taken to ensure higher rates of compliance
 - A discussion of the different risks posed (and BSB's response to) the changes that arise from increasing direct access to barristers
 - The timetable for reporting on the analysis from the chambers monitoring programme
 - Steps to be taken with the Legal Ombudsman to ensure that good quality information is being shared

The Costs Lawyer Standards Board (CLSB)

Background

23. The CLSB is a small regulator; it is still in its first year of operation although costs lawyers have been regulated prior to this.

Progress so far

24. The CLSB has undertaken various communication activities to ensure that those it regulates understand the importance of good FTCH. This information has been focused on ensuring that the providers understand the requirements placed upon them by the FTCH rules. The Legal Ombudsman has received very few second tier complaints about costs lawyers. This is likely to be due to the number of cost lawyers (fewer than 600) and the types of consumers who use the services (primarily solicitors and some from individual consumers who act as self-represented litigants).

The next steps

25. In order to assess the efficacy of the FTCH interventions made by the CLSB more information needs to be found. A better understanding of the consumers who use costs lawyers and the experience that they have would be useful. In the YouGov research it was difficult to draw conclusions about the relevant consumers because the sample size of those who had used costs lawyers was too small.

26. It appears that the best approach for the CLSB would be to work with the regulated firms to identify consumers of services and then seek to draw an understanding of the experience of the consumer when making a complaint. This could include those consumers who did not complain to assess whether the processes employed by the cost lawyers were working to communicate the complaints procedures.

27. CLSB should also seek to assess how the communication effort in raising the profile of complaints handling within the regulated firms is working in practice. Following up from the previous communication activity would be useful to see if it has changed firms' behaviours.

28. It would also be useful for the CLSB to consider whether the information it collects from firms is sufficient to understand if the complaints procedures are in place, if they are working, what type of reception they have among consumers (including signposting requirements) and whether firms are using complaints information to improve operational performance.

Action points

29. We expect the CLSB over the next twelve months to develop and share with the LSB a response that covers:

- How the CLSB is gaining a better understanding of consumers
- Levels of compliance with complaints handling procedures
- What effect the communication activity undertaken has had on firms' behaviours
- Analysis based on the information collected from firms on complaints received and whether additional information should be collected
- Steps to be taken with the Legal Ombudsman to ensure that good quality information is being shared

The Intellectual Property Regulation Board (IPReg)

Background

30. IPReg performs the regulatory functions for the Chartered Institute of Patent Attorneys and the Institute of Trade Mark Attorneys.

Progress so far

31. IPReg has been active in communicating with regulated firms about FTCH. This has raised the profile of complaints handling among firms. IPReg implemented rules that require entities to report to IPReg information about the complaints received. However, results of this work have not yet been published. In the YouGov report IPReg found it difficult to identify issues as there was not sufficient clarity on whether the consumers in question used a trademark or patent service from an IPReg authorised firm or from a non-authorised firm as many of the services provided are able to be provided by non-authorised individuals. There have been a small number of second tier complaints considered by the Legal Ombudsman. In addition IPReg continues to receive a small number of conduct complaints.

The next steps

32. IPReg told us in November that it was considering commissioning research to identify the "consumer" of intellectual property services. This appears to be useful for a number of reasons. Understanding consumers' needs and the service that consumers receive is vital to ensure regulatory standards are being met. Similarly, understanding the consumer's experience of the complaints process will help to ensure that it is understandable, simple and effective.

33. Analysis from the information gathering exercise that IPReg is undertaking will be vital to understand risks that different firms may pose and whether complaint handling is working in practice. Monitoring the numbers and resolution of complaints at the first tier should provide IPReg with useful information about the way that firms treat their consumers. Some care may need to be taken in assessing the flow from the first tier to the Ombudsman's jurisdiction especially given the small numbers of complaints that make their way to the Ombudsman.

Action points

34. We expect IPReg over the next twelve months to develop and share with the LSB a response that covers:

- What progress has been made in identifying consumers
- What effect the communication activity undertaken has had on firms' behaviours
- Analysis based on the information collected from firms on complaints received and whether additional information should be collected
- Where information from the Legal Ombudsman is being used to inform systemic risk recognition
- Steps to be taken with the Legal Ombudsman to ensure that good quality information is being shared

The Council for Licensed Conveyancers (CLC)

Background

36. The CLC regulates individuals and firms who undertake conveyancing and a small number who provide probate services. Conveyancing is one of the most used consumer legal services and as such the firms that the CLC regulates have a wide exposure to individual consumers.

Progress so far

37. The CLC drew some conclusions from the YouGov report but noted that only three percent of those surveyed had used a CLC regulated provider. The CLC has committed to obtaining a wider range of information on complaints-handling, both from those they regulate, via the annual return which each practice is required to submit, and feedback from their clients, through its inspection process. CLC inspectors have not found any evidence of charging for complaints.

38. The CLC has undertaken communication activities to raise the awareness of first tier complaints handling, but has not assessed the effectiveness of this

intervention. CLC has not drawn any lessons from the complaints that have been handled by the Legal Ombudsman.

The next steps

39. Understanding the effectiveness of the FTCH rules will be key for the CLC. While the CLC regulated firms represent a small number of the total providers in the market, all the providers are fundamentally consumer facing. The CLC should be looking to develop a way of understanding these consumers and ensuring that the complaints system is working for them.
40. Recent communication between the CLC and the Legal Ombudsman shows that there are still gaps in the process for receiving actionable information about first tier complaints. The CLC will need to ensure that it has effective feedback loops from both the regulated firms and from consumers if it is to assess whether the complaints system is designed suitably and working well in practice.
41. Increased information about complaints in the annual monitoring is a good step. However, the CLC will need to ensure that the information collected and reported is an accurate record of the complaints received. The definition of a complaint is wide and in other industries there has been a tendency to under-report complaints. CLC should work with firms to see complaints as an important part of the firm's management information not just a regulatory reporting requirement.
42. The CLC, in the response to our letter, indicated that inspectors may contact past complainants to understand how well firms had treated complaints. This seems to be a good initiative and we would be interested in understand how successful this has been.
43. The evidence that the YouGov research provided was limited by the number of individuals who used services from firms regulated by the CLC. We would encourage the CLC to undertake further research that focused on those individuals.

Action points

44. We expect the CLC over the next twelve months to develop and share with the LSB a response that covers:
 - Analysis from information received from firms about complaints and how this relates to risk
 - 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

- What research it plans to undertake to better understand consumers' experience of complaints handling
- Estimated levels of compliance with complaints handling requirements
- A discussion of how information from the Legal Ombudsman can (or does) enable CLC to assess regulatory risk and develop interventions.

The Master of the Faculties (the Faculty Office)

Background

45. The Faculty Office regulates 878 notaries. Unlike other regulatory regimes the representative body of the notaries (the Society of Notaries) handles the first tier complaints for all notaries. This allows all FTCH information to be collected centrally, however, this may remove the complaints information from the providers.

Progress so far

46. The Faculty Office did not respond to our letter in November 2011 that asked it to set out the progress it had made to date. Using other sources (from LSB's internal resources) some progress can be seen. The Faculty Office revised its Conduct and Discipline rules in 2011 that replaced a 2009 version. The new rules set out the complaints handling requirements on the notary. Since signposting requirements have been brought in, the number of complaints has risen. This suggests that the previous system was not capturing all the complaints.

The next steps

47. In order to understand the reasons for the increase in complaints under the new rules, further analysis should be taken by the Faculty Office. If consumers have previously been put off from complaining by the system then it is imperative for all to ensure that the new system does not also discourage complainants.

48. The structure of the complaints handling process also needs to be kept under review. Outsourcing complaints handling to the representative body will only make sense if good quality information is fed back to notaries so that they are able to improve complaint handling. It would not be appropriate for the system to stop such positive feedback loops.

Action points

49. We expect the Faculty Office over the next twelve months to develop and share with the LSB a response that covers:

- How information about complaints is fed back to individuals and the profession systematically
- What areas/types of work present higher numbers of complaints and why
- How the Faculty Office will ensure that the complaints system is accessible
- Analysis of complaints and any underlying trends and how it proposes to react

ILEX Professional Standards (IPS)

Background

50. IPS is the regulatory arm of the Chartered Institute of Legal Executives (CILEX). The majority of legal executives work in firms that are regulated by other approved regulators (notably the SRA). However, there are number of legal executive who provide legal services on their own.

Progress so far

51. IPS also did not respond to our letter of November 2011. IPS does do some research with complainants, however this is limited to sending a survey to those who made conduct complaints to IPS. IPS has provided little detail on what research it is planning to undertake on FTCH, although in the LSB work with the regulators to improve regulatory performance it has referred to doing some work in this area such as signing a new memorandum of understanding with the Legal Ombudsman.

The next steps

52. The next step for IPS is for it to share with us its future plans for increasing information on FTCH.

Action points

53. We expect the IPS over the next twelve months to develop and share with the LSB a response that covers:

- What progress has been made to identify consumers who may complain about legal executives
- What information IPS requires about complaints from entities it regulates
- What information it receives from other ARs about complaints made about CILEX members and whether that is sufficient
- What the rates of compliance are with IPS's rules
- How IPS has responded to information received from the survey of those who make conduct complaints and whether any wider conclusions can be drawn for other types of complaints.