

# Complaints: Data collection workshop

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Report of workshop held at the LSB on 29 July 2010

## **REPORT OF THE LSB DATA COLLECTION WORKSHOP**

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On 29 July 2010 the Legal Services Board (LSB) facilitated a workshop aimed to emphasise the role of complaints and data collection in regulation and continue a dialogue between stakeholders to identify and coordinate some of the key data sources available to Approved Regulators (ARs). The overall objective was to assist ARs in developing a rigorous and robust evidence base to inform their regulatory activities, such as policy development, enforcement, education and standard setting.

### **Summary of Chair's welcome: Barbara Saunders OBE, LSB board member**

A perception of poor complaints handling was one of the main drivers behind the regulatory reform agenda and the Legal Services Act (Act) that emerged from it. The way in which complaints are handled by the profession and the use of the information by regulators is pivotal to responsible regulation, good governance, consumers experience and public confidence in legal services.

The establishment of an independent Legal Ombudsman will provide a one stop shop for consumers to complain about their legal services provider. The Legal Ombudsman will do away with the 'regulatory maze' of complaints handling.

The role of the LSB in oversight is reflected in its role in ensuring that regulators are effectively regulating the way in which complaints are handled at the first-tier or 'in-house'.

In consultation with stakeholders, the LSB has developed a set of common outcomes that consumers should reasonably be able to expect from effective first-tier complaints handling. In addition the LSB has specified a requirement that legal advisors must be required to notify all clients of their rights of complaint, including the rights of complaint to the Legal Ombudsman.

ARs should now be in the process of implementing any changes required to their complaints handling arrangements to meet the signposting requirement and to reflect the effective complaints handling outcomes.

The LSB is committed to review regulators' progress with implementing these initiatives in the lead up to the commencement of the Ombudsman.

In 2011 the LSB will also review the qualitative progress that ARs have made to improving first-tier complaints handling, in particular whether the outcomes for consumers from effective complaints are being achieved and whether the signposting requirements have opened access to complaints handling processes from the consumer's perspective.

Regulators share a responsibility to be accountable and base regulatory decisions and activity on a robust evidence base. But it is important to keep the cost to a minimum without compromising integrity.

The development of the infrastructure for the new regulatory framework presents an opportunity for ARs to coordinate their data needs at the ground level and build this into their regulatory processes.

The theme of this event is to assist ARs to link into that infrastructure and to facilitate dialogue between regulators, consumer representatives, the Legal Ombudsman and the LSB that should assist understanding and enable vital sources of regulatory information to be harnessed.

## **CEO's introduction: Summary of Chris Kenny's presentation**

Today's workshop reflects a unique opportunity for regulators – to *think together* about coordinating some of the key data sources available for developing a robust and well rounded evidence base for decision making.

The evidentiary requirements of responsible regulation are well accepted. It is implicit in their role that regulators must account for our decisions and actions. However without a robust evidence base this simply cannot be achieved. Complaint data is a key source for that evidence – but that data itself must be collected in the most effective way.

Regulators need to be able to use that data to inform their judgements in a number of areas:

- First, how well are first tier complaints system working at the level of the individual entity or practitioner – are any failing so badly that some form of intervention is needed?
- Second, how is the overall framework for first tier complaints functioning in practice – are there systemic failings to be addressed or best practice to develop further and share? What's the right balance between principles and rules in this area for your regulations?
- Third, what does the content of complaints tell us about the consumer/client experience generally – are there patterns of failure which call for regulatory rule-making in relation to specific activities and/or subject matter? Or is existing regulation getting in the way of effective service?

There are three rich sources of objective evidence immediately available which are likely to present the least burdensome for collection:

1. First tier complaints data
2. Second tier complaints data from the Legal Ombudsman
3. Consumer and client research

Each of these will have its limitations and therefore each should not be used in isolation. However used together they present a powerful (and available) resource. If the data from these sources can

be 'triangulated', there is every chance that the limitations can be overcome and a robust evidentiary base for regulatory decision making, activity and reporting developed. This is likely to place regulators in a far stronger position for discharging their obligations to swiftly identify and address systemic issues, whilst also meeting the principles of better regulation.

I want to emphasise a few points about the LSB's approach.

- We want to give you flexibility. The route for each AR to meet the regulatory objectives is rightly flexible and the responsibility of each AR to determine – those you oversee work in different ways in different parts of the markets with different consumers. We don't want to impose a one-size fits all solution on you which turns into a disproportionate burden on them.
- However, that doesn't mean that "do nothing" is in the acceptable set of solutions. Let me be clear – it is not. The requirement to develop a robust evidentiary base is not a new burden, recently imposed – if evidence from complaints has not been robustly collected, analysed and deployed in the past, that's a shortcoming that needs to be addressed.
- So it follows from that argument, that the LSB will aim to be facilitative to help you achieve this, but we will want to understand your plans and will not hesitate to challenge – if necessarily robustly – if we feel that individual ARs are ignoring either the letter or the spirit of what the Act planning intended.

This workshop presents an opportunity for ARs to help set the agenda and participate in the development of the new regulatory infrastructure. It's your chance to begin to clearly identify and articulate the information requirements that will most help you and so have direct input into Legal Ombudsman collection activity and LSB assessments. There's lots of mutual learning to be done – but it's got to be applied learning leading to early action, not an abstract discussion.

## **Guest speaker: Summary of Deborah Evans' presentation, Chief Executive Officer, Legal Complaints Service**

*PowerPoint presentation available here*

- Data collection by the regulator allows both trends and best practice to be easily identified. Feeding back trends and best practice is important for improving quality across the professions.
- Self assessment has also been important for LCS to determine whether it is on target and meeting its objectives, and as such LCS has collected and analysed significant data about its own performance and impact.

- LCS was able to obtain early information about multiple complaints that indicate systemic issues through a system of data collection that captures both helpline calls and complaints. LCS also employs a pro-active two way information exchange with the Solicitors Regulation Authority in order to see the 'big picture' with regard to individual firms and the entire profession
- Information should not be used in isolation. For example it is important to consider whether the profile of users of LCS matches the profile of users of law firms and try and understand what the implications are. Eg are certain groups more likely to receive a poor service?
- Immigration complaints accounted for a disproportionately high number of conduct complaints – revealing a possible role for regulatory intervention. However, the amount of complaints is driven to some extent by the need for the customer to delay legal proceedings, eg deportation.
- If LCS had their time again they would like to collect:
  - More contextual information about the firm, in particular the number of non-qualified fee earners in the firm, the amount of business done in each area etc so that their complaints record can be seen in context.
  - More information about first-tier complaints handling – how many complaints each firm receives in a year, and their success rate in resolving them.
  - Profiles of users of law firms, in order to match this data to the profiles of our customers.

## **Guest speaker: Summary of speech by Adam Sampson, Chief Ombudsman, Legal Ombudsman**

The Legal Ombudsman has not yet determined the complaint categorisation it will use. There is presently an opportunity for ARs to be involved in this.

Adam asked what information the profession wants to know about its own performance.

- How should it be divided up and presented?
- What help and guidance do you want from the Legal Ombudsman?

At present, given the fragmentation of complaint characterisation amongst ARs, the Legal Ombudsman is unable to aggregate complaints to come to an accurate figure of how many complaints are currently handled by ARs.

On its best estimates Legal Ombudsman is expecting:

- 100,000 enquiries per year (not necessarily complaints)
- 80,000 complaints
- 15,000 – 20,000 cases per year

The Legal Ombudsman will be keeping track of individuals that are the subject of complaints as they move from firm to firm or between regulatory nets (eg, a notary acting as a solicitor)

All complaints will be stored electronically, including calls. The Legal Ombudsman will be using fairly sophisticated second generation search engines

There will be a consultation soon regarding the information the Legal Ombudsman will publish about complaints.

## **Workshop –group exercise**

*Attendees were divided into two groups. Both groups responded to the first prompt question while each answered a separate second question.*

### **What are the appropriate approaches to data collection?**

There was a mixture of responses to the question of who currently collects first tier data and how that is done. SRA said it had been collecting information through its risk assessment process, LCS and through site visits. It also said that it was developing plans to collect more data through annual reporting. Some of the smaller ARs present said that they currently proactively collected very little or no first-tier data given that their members worked in SRA regulated firms and/or there were such a small number of complaints against them. The small number of referrals received by these smaller regulators from the SRA often then went through a two stage process– through a review by the regulator for consideration before it went to a tribunal. Smaller ARs and the SRA said that they published guidance on complaints handling. The CLC said it did collect complaints handling data through its inspections, which informs its risk register and the individual or body's regulatory risk score.

Group one considered that there was a need for ARs whose members work in solicitor firms to link up with what the SRA collects so they may obtain information about their regulated community. However, if information was to be channelled through other regulators there is likely to be a significant time lag between obtaining information and using it.

The group thought that all of the ARs should be more involved in the work with the Legal Ombudsman. In particular, the work that Adam Sampson identified the Legal Ombudsman would be doing with SRA to understand what considerations the Legal Ombudsman would take into account when assessing whether a first-tier complaints process was effective.

The group mentioned the value of 'high level data'. That is the raw number of first-tier complaints received compared against the number which go to second-tier, in order to obtain an indication of the number of complainants who are satisfied or dissatisfied with the first-tier complaints handling complaints outcomes.

The group also mentioned that through their engagement with their members they had found that the profession was not as aware of the Legal Ombudsman as they should be. There was some discussion about whose role it was to make approved persons aware of the Ombudsman given that Ombudsmen don't generally have a high profile. One suggestion was that it was actually the role of the ARs.

When thinking about small operators the group identified a tension between ensuring complaints handling processes are robust yet proportionate. There was also a key challenge identified for regulators regarding how to assess whether approved persons are actually following processes. Some discussion followed this about how self assessment by approved persons could provide a solution.

The role that corporate culture plays in complaints handling was discussed. One member of the group made the point that the focus should not solely be on compliance but on improving consumer experience for the opportunity it brings. Some members of the group pointed out that it doesn't matter how much messaging you do, many approved persons will only see whatever regulatory requirements are put in place as a burden that they must simply 'tick off' or fail to comply with – in other words they will never see the opportunities that lie in using information from complaints to improve performance. While it is accepted that this may currently be the case for some, future changes to the legal services market will make the benefits of providing better service, and improving provider reputation, far more obvious to all legal providers. In addition there is still merit in having regulations for those who will only ever see them as a burden on the basis that those people will still have an incentive to comply if only to keep the regulators at a distance which should still result in increased consumer protection. The responsibility to explain the opportunities remains valid and that responsibility falls to ARs.

A participant pointed out that often complaints end up not being actually based on what the complainant initially complained about. For example a costs complaint could be the result of a lack of communication or miscommunication resulting in unrealistic expectations. On that basis there needs to be a way of sorting through complaints that do not actually result in a recorded complaint about that subject matter at the end of the process.

A core question was identified to be addressed by ARs: namely how they are identifying and addressing systemic issues without data? There seemed to be a big difference here between those ARs who carried out risk assessments and visits and those who take a more hands off approach to regulation.

**What categories of data informing FTCH processes are most likely to provide evidence of the effectiveness of APs in meeting the LSB outcomes for consumers from complaints handling and signposting requirements?**

*Group 1*

*The questions linked here were suggested by the LSB to ARs, in a letter dated 14 May 2010, to help identify whether the complaints handling outcomes are being achieved.*

It was generally agreed that these categories were fit for purpose as questions to steer ARs to assist with the assessment of whether the signposting requirements and the LSB's outcomes for consumers from complaints handling guidance were being achieved. It was noted that the questions did not all seem to be of the same nature and may need to be tweaked to achieve the desired result – but as a guide they were generally okay.

The group thought a key question was why the complainant went on to the second-tier. They believed that the Legal Ombudsman could help them answer this question. A question was asked whether ARs have a risk matrix which could be used to coordinate their information requests with the Legal Ombudsman. There was a discussion about whether this was something that could represent good practice for approved persons.



There was some discussion about whether the LSB could provide more guidance on the types of data that would be expected from ARs.

**How can *service issue data* (type: bad advice, delay etc and category: conveyancing, personal injury, criminal) best be used to inform progress towards the regulatory objectives and regulatory decision making?**

*Group 2*

The group was provided with some sample service categories from the LCS 2009 report, *Understanding our customers* linked here.

In addition participants thought that personal information about complaints was important data to collect but questioned how it could be collected. A suggestion included end of case surveys. The group thought that standardisation of terminology is important. ILEX identified the risk of double counting complaints given that firms hold the data not the member. ALCD said that they mainly saw complaints about delay given their members do not hold client money.

An issue was raised in relation to how to regulate by firm in the ABS future. The SRA already did this to an extent. A challenge was, if part of the firm is regulated, to what extent the whole firm would be regulated.

SRA are undertaking a cost benefit analysis of types of data collection available. A group member said that it needs the detail to be able to learn from complaints. ILEX considered that the benefits to asking for the information can outweigh the burden.

Group two developed some key points out of the session:

- The conversation about standardising complaints definitions should continue
- It should be kept simple
- Whatever is done must help to improve service and organisational performance
- There needs to be further work on linking up first and second-tier data collection

**Next steps**

Pull together notes and circulate.

Take forward the conversation by adding to the agenda of one of our working groups, potentially the MDP working group.

Ensure consumer representation is maintained in the discussion.