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BOARD

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Approved Regulator

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Dear Colleague,

First-tier Complaints Handling: the next steps

I am writing to outline how the Legal Services Board (LSB) proposes to take forward its work on complaints handling at the first-tier and to invite you to work with us to improve the way in which complaints are dealt with across the legal sector.

As you know, the establishment of the Office for Legal Complaints (OLC) will bring about a fundamental change to the structure of complaints handling. The OLC is currently consulting on its draft scheme rules. This consultation was preceded by the LSB/OLC informal consultation document *Towards establishing the Office for Legal Complaints* in July 2009. That publication included a discussion draft on in-house complaints handling principles and invited comment.

A perception of poor complaints handling at the level of both Approved Regulators (ARs) and Authorised Persons (APs) and entities was one of the main drivers behind the regulatory reform agenda. A key objective for the LSB in its Business Plan therefore is that there should be an improved customer experience with swift and effective redress if things go wrong. The creation of the OLC will address many of the concerns, but, from the responses to the consultation and our own recent research, there still appear to be a number of areas for improvement within first-tier complaints handling.

The crucial responsibility for tackling these issues rightly rests with ARs: regulatory arms have the key role in defining requirements, monitoring implementation and ensuring that the policy framework remains relevant in changing market conditions, but professional representative arms also have an important opportunity in helping to identify, communicate and encourage best practice.

The LSB does not detect any lack of will to tackle these issues. However, we are aware of a lack of consistency across ARs in terms both of their requirements for first-tier complaint handling and in how those requirements are monitored.

On the first, we believe that the obligation in section 112 of the Legal Services Act 2007 (the Act) is best understood as a simple high level requirement on APs to have effective and transparent procedures for the reasonable and prompt handing of complaints. ARs will need to consider the appropriate balance between outcomes, rules and guidance to ensure that this is best achieved within their sector of the market. We believe that, at the level of the individual AR, that there will

need to be a balance between specifying requirements in terms of outcomes and mandating a degree of prescription, both to give certainty to individual APs and firms and also to help the OLC assess to what extent “all reasonable steps” have been taken to resolve any complaint put before them.

We believe that the second is also an area for regulatory attention as enforcement is a specific requirement under section 112(1) and where there may be scope to pool experience across ARs and from other sectors.

Our view is that the best approach initially to progress these issues is to work with ARs and others to reach agreement on effective complaints handling outcomes without using our statutory powers to impose requirements at this stage (except as set out later in this letter). We will therefore seek to develop a set of outcomes, common across the market, against which individual ARs’ frameworks can be evaluated. To do this, the LSB will be holding workshops with ARs, consumer bodies and other stakeholders to benchmark best practice from within the legal profession and elsewhere.

We will be in touch over the next two weeks regarding these events. In the meantime attached to this letter at Annex A are some draft outcomes, which we would like to form the basis for discussion. These have been developed from the OLC consultation and take account of responses to that document and subsequent discussion with the OLC.

We do, however, consider that it is appropriate for the LSB to introduce one specific requirement using its powers under section 112 (2) of the Act, to ensure that the requirements which ARs place on APs and entities make it clear to consumers that they have a right to complain and to whom. We propose the following draft wording and welcome comments and suggestions by **26 February 2010**:

ARs must require all individuals and entities they regulate to notify all new clients at the time of engagement or existing clients at the next opportunity, in writing:

- *of their right to make a complaint and how and to whom this can be exercised;*
- *of their right to complain to the Office for Legal Complaints and the timeframe for doing so if the regulated person or entity does not resolve the complaint to their satisfaction; and*
- *of full details of how to access the Office for Legal Complaints.*

Timetable

We propose that the set of common outcomes we develop together need to be reflected in complaints handling procedures of APs as soon as is reasonably possible. It will benefit all if the effect of this work feeds through to the consumer interface well before the time the OLC becomes operational, even though the specific rule will not need to take effect until that time.

We are therefore proposing that the outcomes be agreed to by the end of February 2010 and the rule is confirmed by the end of March 2010 to come into effect when the OLC commences live operation. However, we would like to hear your views regarding this timescale and would not want to delay development work in ARs on this issue pending finalisation of the wording.

To maximise the possible benefits from this process we think it is important that all ARs conduct an informal assessment of:

- their current first-tier complaints handling requirements to identify the changes needed in the light of section 112(1) of the Act;
- the effectiveness of first-tier complaints handling by those they regulate; and

- the effectiveness of their current regulation, with particular regard to monitoring (including data collection, reporting and review) and enforcement.

We propose discussing the framework for this assessment at the first workshop, together with the following proposed timescales.

We also consider that it is fundamental that ARs monitor the effectiveness of complaint handling procedures to ensure that enforcement is targeted at issues of consumer detriment and that review processes are able to identify and address systemic issues.

The LSB considers that ARs should be able to provide the outcomes of this assessment and develop a draft action plan by **26 February 2010**. We will then work with ARs over the following month to reach agreement on the action plans by **31 March 2010**. These will include specific objectives and milestones for ARs to ensure that there are effective complaints handling procedures in place by the time the OLC becomes operational in late 2010.

To measure the success of this programme, first-tier complaints handling is likely to be the subject of an early regulatory review by the LSB. We will discuss the precise methodology and timing of that review, (which we anticipate to take place towards the end of 2010), with stakeholders through the engagement process.

In conclusion, we hope that the collaborative process outlined in this letter will enable considerable progress to be made on both the robustness of complaints systems and, as importantly, the culture with which complaints are tackled within the legal services industry. We believe that this provides a more flexible and embedded approach than seeking to prescribe detailed requirements under section 112(2). However, those powers do remain available, at the level of individual ARs or ARs as a class, and the LSB will be prepared to use these if necessary if it proves to be the most effective way of securing the public interest.

As you are aware it is our policy to make LSB correspondence containing decisions such as this publicly available so that practitioners and other stakeholders are aware of our activities. So a copy of this letter is being placed on our website with a general invitation to other stakeholders to comment on it.

Yours sincerely

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Chief Executive

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Proposed outcomes from effective complaints handling

Consumers consider that complaint handling processes:

- are convenient and easy to use (in particular for those that are vulnerable or have disabilities);
- make provision for complaints to be made by any reasonable means;
- are transparent and clear in relation to process, well publicised and free;
- are prompt and fair;
- are responsive to the individual needs of consumers, including those who are particularly vulnerable; and
- provide appropriate redress options.

Consumers will feel confident that ARs can:

- ensure that there are consistent minimum standards of complaints handling by those they regulate;
- take appropriate action (including enforcement) against individuals and/or entities that fail to competently implement and operate effective complaints handling reflecting the above objectives; and
- ensure that systemic issues with complaints handling causing consumer detriment are identified and addressed.

Those regulated by ARs will:

- be able to resolve complaints effectively, promptly, transparently and to a high quality;
- be less likely to have complaints escalated to the OLC;
- have mechanisms and resources from ARs (both regulatory and professional/representative arms) to assist them to:
 - i. make decisions based on robust investigation processes; and
 - ii. identify and address complaints handling issues to avoid recurrence;
- have support from ARs for improving complaints handling;
- understand their responsibilities in relation to first-tier complaints handling; and
- be appropriately held to account through the regulatory system for their performance in this area.