

First-tier complaints handling: section 112 requirements and section 162 guidance for approved regulators

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A: PREAMBLE

1. These requirements are made by the Board under section 112 of the Legal Services Act 2007 (the “Act”) to specify what regulatory arrangements approved regulators must have in place for complaints procedures for authorised persons.
2. These requirements are supported by guidance, which is made under section 162 of the Act. Section 162 allows the Board to give guidance:
 - about the operation of the Act and any order made under it
 - about the operation of any rules made by the Board under the Act
 - about any matter relating to the functions of the LSB
 - for the purpose of meeting the regulatory objectives
 - about the content of licensing rules
 - about any other matters about which it appears to the LSB to be desirable to give guidance.
3. Guidance under section 162 may consist of such information and advice as the Board considers is appropriate. When exercising its functions, the Board may have regard to the extent to which an approved regulator has complied with any guidance which is applicable to the approved regulator.
4. The Board has issued requirements and guidance with the aim of supporting the delivery of two complaints handling outcomes for consumers.

Complaint handling outcomes

Consumers have confidence that:

- complaints handling procedures are fair, transparent and provide effective safeguards for them, and
- complaints will be dealt with comprehensively and swiftly, with appropriate redress where necessary.

5. These requirements and guidance replace those published by the Board in May 2010, and may be updated from time to time.
6. The statutory requirements are specified in paragraph 13. The statutory guidance is listed in paragraphs 14 – 25.

B: DEFINITIONS

7. Unless otherwise defined, terms used in the requirements and guidance will have the same meanings as those set out in the Act.
8. Terms that appear in these requirements and guidance that are not defined in the Act, have the following meanings:

Complaint	An oral or written expression of dissatisfaction, which alleges that the complainant has suffered (or may suffer) financial loss, distress, inconvenience or other detriment ¹
First-tier complaint	A complaint made by a client to an authorised person
Second-tier complaint	A complaint made to the Legal Ombudsman under the scheme rules of the Office of Legal Complaints.

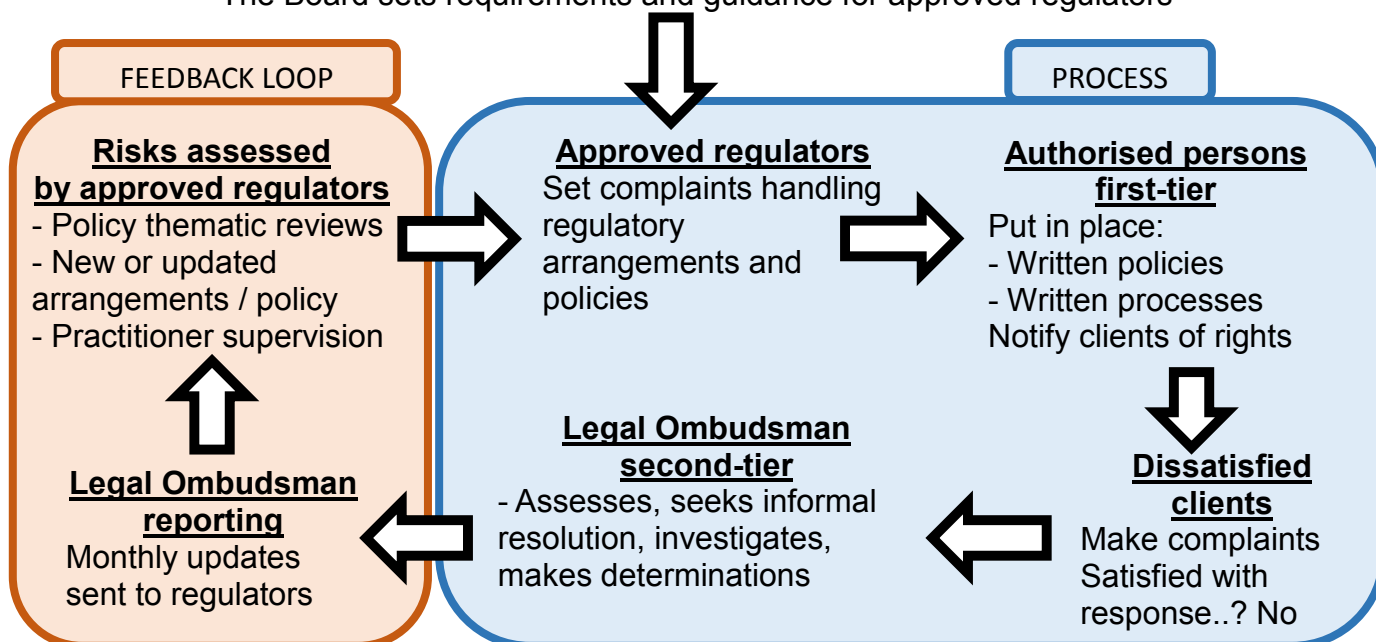
C: PURPOSE AND CONTEXT

9. The Board’s requirements specify that approved regulators must require those they authorise to notify their clients of their rights to complain to them and the process for doing so, as well as any rights the consumer may have to complain to the Legal Ombudsman.
10. The Board’s guidance for approved regulators reflects the expectation that approved regulators will ensure that authorised persons have effective first-tier complaints handling processes in place.
11. The Board acknowledges that approved regulators and authorised persons may use the term, “complaint”, in a variety of circumstances. Authorised persons may also have additional signposting duties to fulfil, such as those for alternative dispute resolution. These duties are not covered in these requirements or guidance.

¹ This definition is the same as the definition used by the Legal Ombudsman

12. The guidance sets out how approved regulators should use complaints data from authorised persons, as well as complaints data from the Legal Ombudsman, to understand and address risks to the complaints handling outcomes. Approved regulators should encourage authorised persons to analyse their own complaints data to drive improvements in outcomes for consumers, as well as to improve the effectiveness and efficiency in their businesses. This cycle of improving complaints handling outcomes for consumers is set out below in Figure 1.

Figure 1: Improving complaints handling outcomes for consumers
The Board sets requirements and guidance for approved regulators



E: REQUIREMENTS FOR APPROVED REGULATORS

13. In accordance with its powers under s112(2) of the Act, the Board has specified requirements that approved regulators must require all authorised persons they regulate to notify all clients in writing:
- a. at the time of engagement, or the next appropriate opportunity,
 - i. of their right to make a first-tier complaint
 - ii. how they can make a first-tier complaint and the details of who that complaint needs to be made to
 - iii. of any rights to make a second-tier complaint to the Legal Ombudsman if they are not satisfied with the response from the authorised person
 - iv. the point at which a second-tier complaint can be made to the Legal Ombudsman, and
 - v. full details of how to contact the Legal Ombudsman.
 - b. that if after eight weeks following the making of a first-tier complaint, it has not been resolved to the client's satisfaction,
 - i. that the client may have a right to complain to the Legal Ombudsman
 - ii. the time limit for doing so², and
 - iii. the full details of how to contact the Legal Ombudsman.

² ² Legal Ombudsman (January 2015), Scheme rules, paragraph 4.5, <http://www.legalombudsman.org.uk/downloads/documents/publications/Scheme-Rules.pdf>

F: GUIDANCE FOR APPROVED REGULATORS

14. Approved regulators must, in seeking to comply with the requirements (set out at paragraph 13), have regard to the following guidance.
15. For the avoidance of doubt, this guidance does not constitute any part of the requirements.

First-tier complaints handling

16. Approved regulators should ensure that those they regulate understand their responsibilities in relation to first-tier complaints handling and are appropriately held to account for their performance.
17. Approved regulators should assure themselves that there is clear and concise guidance available for authorised persons to support compliance with regulatory arrangements for first-tier complaints handling and signposting to the Legal Ombudsman. This should reflect current best practice and may, for example, include guidance produced by other approved regulators, professional bodies, the Legal Ombudsman, the British Standards Institute etc.
18. In addition to notifying clients of their complaints handling rights in writing, approved regulators may set guidance on how authorised persons can communicate with consumers in other ways, including, for example, through website content. Approved regulators should satisfy themselves that authorised persons understand and are effectively delivering their regulatory arrangements.
19. First-tier complaint handling processes must be convenient and easy to use for consumers, in particular for those that are vulnerable or have disabilities. The processes should allow complaints to be made by any reasonable means. The way in which complaints are dealt with must be transparent and clear in relation to process, well publicised and free. The process itself should be prompt and fair, with decisions based on a sufficient investigation of the circumstances. Where appropriate, there should be an offer of a suitable remedy.
20. If their initial complaint has not been resolved by the authorised person to their satisfaction within eight weeks, most consumers will be able to make a second-tier complaint to the Legal Ombudsman. Approved regulators should ensure that those they regulate provide consumers with sufficient information to allow them to understand when they have a right to take their complaint to the Legal Ombudsman and to contact the Legal Ombudsman directly to clarify whether they can.³ Approved regulators should also ensure that authorised persons provide eligible consumers with accurate details of the point at which a second-tier complaint can be made, and the time limit for doing so.

³ Legal Ombudsman (January 2015), Scheme rules, paragraph 2.1, <http://www.legalombudsman.org.uk/downloads/documents/publications/Scheme-Rules.pdf>

Gathering, analysing and responding to complaints data

21. Approved regulators should gather and analyse first-tier data to monitor and assess the effectiveness of authorised persons' complaints handling processes. Approved regulators should also analyse second-tier data from the Legal Ombudsman, to improve their understanding of the areas where complaints are upheld by the Ombudsman and why premature complaints are made.⁴ Premature complaints can be an indicator that an authorised person's complaints handling process is not communicated clearly or there is frustration with the process.
22. Analysis of first and second-tier data will provide approved regulators with an evidence base to develop regulatory responses to improve complaints handling outcomes for consumers. These may include:
 - a. supervisory interventions to improve an authorised person's complaints handling process
 - b. thematic reviews of recurring issues, which may result in changes to regulatory arrangements for complaints handling, supporting policies and guidance
 - c. promoting best practice in first-tier complaints handling.
23. Approved regulators should also encourage authorised persons to analyse their own complaints data to drive improvements in outcomes for consumers, as well as to improve the effectiveness and efficiency of their businesses.

Sharing analysis

24. Approved regulators should share findings from thematic reviews and other evidence with other approved regulators where relevant and appropriate. Improving complaints handling practice across the legal services market will increase general consumer confidence in authorised persons.
25. Approved regulators should also work collaboratively with the Legal Ombudsman to understand second-tier complaints data for their authorised persons to improve complaints handling outcomes for consumers generally.

⁴ Premature complaints are those made by complainants who contact the Legal Ombudsman before the eight week period that the authorised person has to resolve the complaint has ended (as set out in the Legal Ombudsman's scheme rules).

Legal Ombudsman (January 2015), Scheme rules, paragraph 4.2,
<http://www.legalombudsman.org.uk/downloads/documents/publications/Scheme-Rules.pdf>