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The logo for the Legal Services Consumer Panel is located in the top right corner. It consists of a large blue circle on the left and a blue rectangular area on the right. Inside the rectangle, the words "LEGAL SERVICES CONSUMER PANEL" are written in white, uppercase, sans-serif font, stacked vertically.

LEGAL
SERVICES
CONSUMER
PANEL

April 2016

Dear Sir/Madam

First-tier complaints handling: LSB requirements for approved regulators

The Legal Services Consumer Panel (the Panel) welcomes the opportunity to respond to the Legal Services Board's (LSB's) consultation on first tier complaints handling.

The Panel has supported the LSB's work to establish clear guidance and tangible outcomes for first tier complaints handling since 2010. We fed into the development of the original guidance and outcomes, and we now agree that sufficient time has elapsed to merit a review.

Access to effective redress is a fundamental consumer principle. Without access, consumers cannot enforce their rights. The effectiveness of access to redress is however dependant on good oversight mechanisms and intelligence gathering. Without these, there is likely to be little incentive for providers to follow the rules. If providers don't follow the rules, consumers may lack the confidence to participate in the market, thereby undermining competition. Moreover, unscrupulous or careless providers can gain an unfair advantage.

Evidence from our annual tracker survey consistently shows high levels of 'silent sufferers': those who have a complaint about the service they procured, but do not make a complaint. In our 2015 survey, this figure stood at 42%. This unwillingness to complain indicates that consumers are not confident in the ability of the profession to meet the consumer outcomes¹ prescribed by the LSB: to deal comprehensively and swiftly with complaints, and have procedures that safeguard consumers' interests. Therefore, it is all the more concerning that the LSB has now confirmed that in practice its outcomes are not widely achieved for clients.

For all of the above reasons, the Panel supports the review and the information gathered to inform it. We are also keen to support the next phase: ensuring that the

¹ The LSB expects approved regulators to achieve the following outcomes when regulating first-tier complaints:

Consumers have confidence that:

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

deficiencies identified are addressed robustly in order to ensure that the first tier complaints process delivers good outcomes for consumers. Our comments and suggestions are therefore offered to strengthen the LSB's proposals.

It is the Panel's view that solutions proposed to address the problems identified will benefit from the insight and input of the Legal Ombudsman. LeO has documented its intentions to produce guidance in this area. It also has the requisite knowledge and insight to warrant a collaboration. We would like to see more engagement between both organisations on this issue.

The LSB's findings present an opportunity for the oversight regulator to tackle the problems highlighted through multiple channels: working with the Approved Regulators, the Legal Ombudsman, and indeed reflecting on the Panel's recent advice on Open Data and first-tier complaints handling. It is our view that more needs to be done than updating the guidance – our suggestions for improvements are offered below.

Requirements

The LSB is proposing minor amendments to the requirements in order to ensure consistency of language. However, this is a clear opportunity for the LSB to build on its agenda of encouraging open data, transparency, and ensuring that the requirements are robust enough to deliver good outcomes for consumers. For instance, the Panel recently called for the publication of first-tier complaints data in its report '*Opening up Data in Legal Services*'.

It is also the Panel's strong view that the LSB should consider defining minimum standards for first tier complaints handling and placing requirements on Approved Regulators to adopt them. There is a wealth of information, research and best practice in this area not least from LeO, but from other dispute resolution schemes and standards setting bodies. For example, the British Standards Institution best practice on complaints handling (BS ISO 10002)².

The BSI advocates that visibility of the process is the first and foremost principle in its international standard. The Panel suggests that the LSB encourages achievement of this important principle by introducing a requirement for all firms to have their complaints process publicly available, for example on their website, in line with the BSI standard.

Outcomes

The outcomes as set out in the consultation paper also remain largely unchanged from the original version. The Panel still supports these outcomes, but would suggest that there is an additional focus on quality and using intelligence gathered to improve service. This would aid a culture of viewing complaints as constructive feedback or developmental tools, rather than criticisms, and would contribute to an overall improvement of service standards. Further, it has repeatedly been demonstrated that there is an economic benefit to handling complaints well³, a message which could be used to support the shift in attitudes.

² <http://www.bsigroup.com/LocalFiles/en-GB/consumer-guides/resources/BSI-Consumer-Brochure-Complaints-UK-EN.pdf>

³ <http://www.legalombudsman.org.uk/downloads/documents/research/Business-Case-for-Good-Complaints-Handling-Final-for-publication-20-11-13.pdf>

Guidance

At present, the LSB's guidance encourages complaints procedures to be given to the client upon engagement, with or within the client care letter. However, there is little evidence to suggest that the client care letter is the most appropriate place for this information. The guidance should be based on evidence of what works and on best practice. There is plenty of learning available from the Legal Ombudsman Service, which runs training days, as well as other alternative dispute resolution schemes, regulators and service standard setters such as the British Standards Institution.

Approved Regulators

There is a general need for all Approved Regulators to keep abreast of the quality and standards of first tier complaint handling. In the SRA's 2008 public survey of attitudes towards solicitors, they found that one in four who had a complaint would take it to their solicitor. Unfortunately this is the most recent piece of consumer research on the matter from the SRA, and serves to reinforce the point that the Approved Regulators need to continuously monitor the effectiveness of complaints process and outcomes by first tier complaints handlers.

How Approved Regulators can best monitor the quality of first tier complaints handling is another question for consideration by the LSB. Satisfaction surveys fail to capture important elements of consumers' expectations, experiences and views, and can conflate satisfaction with processes and outcome⁴. For example, in relation to service satisfaction the Panel's Tracker Survey has consistently shown discrepancies between satisfaction with process and outcome in transactional areas of law, such as conveyancing. Guidance should encourage Approved Regulators to monitor quality and outcomes effectively.

In our original 2010 response to the LSB's creation of this guidance, the Panel stated: "*The consumer's experience of making a complaint is also a visible symbol of regulatory effectiveness*". This remains our view. The LSB has fulfilled one part of its obligation by identifying a regulatory weakness in the requirement it set. We look forward to working with the LSB to address the deficiencies.

If you have any queries or would like to discuss this further, please contact the Panel Associate, Stephanie Chapman.

Yours sincerely,



Elisabeth Davies
Chair

⁴ https://www2.le.ac.uk/departments/law/research/cces/documents/Complainthandling-PrinciplesandBestPractice-April2007_000.pdf