



Consultation Co-ordinator
Legal Services Board
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London WC1A 1DE

Sent by email only to consultations@legalservicesboard.org.uk

20 November 2023

Dear LSB Consultation Co-ordinator,

Re: Consultation on First Tier Complaints

The Legal Services Consumer Panel (Panel) welcomes the opportunity to comment on the Legal Services Board's (LSB's) draft Requirements, Guidance and Policy Statement on first tier complaints. We consider ensuring effective complaints handling an important aspect of consumer focused regulation and are pleased that the LSB has emphasised that complaints can be viewed positively as a way to promote a culture of learning and improvement that can benefit both consumers and providers.

Below, we have set out answers to each consultation question. We also want to highlight a few issues in particular:

- The circumstances in which third parties (who are not clients) can make a complaint must be made clear throughout the entire complaints process;
- Complainants must be assured that there will not be retribution for making a complaint;
- Standardised language is helpful in communicating effectively with consumers; the Panel has pointed out additional areas where it may be used;
- Signposting consumers to external sources of help with making complaints should be considered carefully.

Draft Requirements and draft Guidance

Question 1: do you have any comments on draft Paragraphs 1-6 and the associated draft Guidance?

The Panel agrees with the purpose of the draft Requirements and Guidance that regulators must ensure that complaints procedures deliver effective, efficient and fair resolution of first-tier complaints. Moreover, the Panel is pleased that prospective and former clients, as well as beneficiaries or executors of an estate, are explicitly included as possible complainants. The LSB must ensure that the Legal Ombudsman's approach is aligned so that third party

complaints handling is aligned throughout first-tier and second-tier complaints processes. Accordingly, all of the groups eligible to make a complaint may be better reflected by referring to consumers instead of clients in paragraph 12 of the draft Guidance.

Question 2: do you have any comments on draft Paragraph 7 and the associated draft Guidance? (Accessibility)

Paragraph 7 on the accessibility of a complaints procedure and the associated Guidance is a positive development, especially where complaints procedures must “be communicated to clients in a format tailored to the client’s needs”. When requiring providers to ensure complaints procedures are “prominent and accessible to all their clients”, it may be helpful to specifically state in the Requirements or Guidance that these procedures must be prominently displayed even before services are engaged (in a manner connected to how the services are delivered, i.e. in an office, on the phone or on a website) so that prospective and former clients are also made aware. Similarly, appropriate methods for ensuring beneficiaries or trustees of an estate are aware should also be specified.

Along with the recent LSB research into complaints, Refugee Action’s research on barriers to making complaints amongst asylum seekers found that potential complainants worried that complaining about their lawyer could affect the outcome of their case.¹ For someone who is overwhelmed by the legal process and may not fully understand how a lawyer’s duties differ from a decision-maker’s, these are important concerns. Accordingly, it may be prudent to include a clear requirement or guidance to communicate that making a complaint will not negatively affect the outcome of the consumer’s case or the quality of their provider’s handling of it (and that any delays will be mitigated).²

Question 3: do you have any comments on draft Paragraphs 8, 9 and 10 and the associated draft Guidance? (Provision of Information)

In addition to providing consumers with information on complaints at the start and conclusion of a matter, the Panel agrees it should be available at various times during the course of engagement, as appropriate.³

We find it odd that there is no reference to the right to complain to the regulator (for misconduct). Even if this portion of the complaints system is not addressed in this Guidance, consumers should be made aware of this avenue of complaints alongside first-tier and second-tier complaints because information should be openly shared in the interests of educating and empowering consumers at their point of need. Having said that, care should be taken to try to simplify things and not confuse people. Consequently, information about complaints to a service provider’s regulator and to the Legal Ombudsman may indeed be opportunities to standardise communications.

Paragraph 20 of the draft Guidance suggests signposting consumers to independent third-party organisations such as Citizens’ Advice or Resolver, which might be able to assist them with making a complaint about their provider. Such information being available from a third-party organisation may be helpful, especially to minority ethnic legal services consumers who are much less likely to complain to their service provider but prefer to go to a third-party

¹ See LSB, *Improving Service Complaints in Legal Services* (2023) at p. 12 and Refugee Action, *Consumer Barriers to Complaints* (2022) at p. 22.

² While providers involved in the LSB research workshop were not comfortable making a blanket reassurance that a complaint would not affect the handling of a consumer’s case, even a lawyer withdrawing their services would not affect the claim’s outcome but may introduce delay.

³ LSB Consultation paper at para. 44.

organisation.⁴ The Panel's 2022 qualitative research on the experiences of minority ethnic legal services consumers⁵ found that these consumers lack trust in their legal service providers, and therefore may also not trust them to resolve a complaint. However, such signposting should not detract from a provider's responsibility to make their complaints procedures accessible, non-daunting and easy to use.

Furthermore, regulators should do more themselves. The Legal Choices website has a page addressing how to make a complaint which includes a link to a template letter the Legal Ombudsman has produced to help consumers complain to their legal services providers. Undoubtedly, the Legal Choices website could be improved and the research cited in this consultation may be useful in making a start. Again, such information may be communicated with user-tested standardised language. Finally, within the current context where demand for free advice and legal services far outweighs its availability, regulators may not want to play a part in increasing demand for these underfunded services or direct consumers somewhere they may find it very difficult to obtain assistance. In order not to inadvertently introduce new barriers to making complaints, even online resources should be user-tested before being recommended.

Question 4: do you have any comments on draft Paragraphs 11, 12 and 13 and the associated draft Guidance? (Communication)

Question 5: do you have any comments on draft Paragraphs 14 and 15 and the associated draft Guidance? (Consumer confidence)

The power imbalance at play when a consumer complains can be due to lack of understanding of the legal system and/or being intimidated by or not fully trusting their lawyer to act in their best interest; this must be addressed. Appropriate standardised language should be adopted to ensure that complaints procedures communicate that lawyers are not decision-makers in their client's matter and their applicable code of conduct requires them to uphold their professional standards at all times (or be disciplined by their regulator). Consumers should also be informed of how to change lawyers should they feel that is necessary.⁶ Assessing whether consumers can easily switch lawyers when they are told how to is a further consideration as to whether appropriate remedies are readily available.

Empowering consumers with information on how to switch lawyers is vital to enabling their confidence to make a complaint and their belief that the complaints process is fair. Ensuring that their complaints will not instigate retribution is key to consumers making meaningful use of their legal representation in dealing with a legal matter. This latter commitment should not be seen as optional as in paragraph 26 of the proposed Guidance. If consumers cannot switch providers easily without undue delay so as to secure legal representation they trust, then their ability to access justice in their legal claim may be undermined.

Question 6: do you have any comments on draft Paragraphs 16 and 17 and the associated draft Guidance? (Learning and improvement)

Complaints (and other forms of consumer feedback) offer important learning and general performance improvement opportunities in all aspects of a provider's operations, including complaints handling. The primary focus though should be improving overall service quality.

⁴ See LSCP Tracker Survey Data (2023).

⁵ LSCP, Understanding Ethnic Minority Experiences of Using Legal Services (2022).

⁶ See LSB, Improving Service Complaints in Legal Services (2023) at p. 19.

Therefore, the Panel feels that subparagraph 16(b)(i) of the Requirements should emphasise this.

The Guidance on these points is helpful in explaining the usefulness of complaints in identifying a provider's strengths and weaknesses of service and the helpfulness of encouraging feedback. Paragraph 17 of the Requirements, however, is not as clear and should refer to the authorised person considering, if proportionate, whether to adjust processes, undertake appropriate training or provide other support to their staff to address issues identified by analysing complaints received.

Question 7: do you have any comments on draft Paragraph 18 and the associated draft Guidance? (Enforcement)

The Panel believes there should be a prompt for regulators to consider the most effective way to gather intelligence on complaints handling and whether supervision (beyond the time limits) should be highlighted alongside enforcement of complaints handling. It is understood that many of the Requirements had previously been contained in the LSB's 2016 version and complaints handling remains an issue today. Additionally, the number of complaints to the Legal Ombudsman is still expected to rise more rapidly than its ability to process them. Therefore it would be prudent for regulators to ensure they have timely and accurate information to promote a healthy first-tier complaints ecosystem. Regulators should consider proactively acquiring their own intelligence through supervision and other initiatives on complaints handling so they do not have to fully rely on others to bring issues with complaints handling to their attention.

Draft statement of policy

Question 8: Do you have any comments on the proposed draft outcomes?

Question 9 - 14: do you have any comments on draft expectations (i), (ii), (iii), (iv), (v), (vi), (vii) and (viii)?

The Panel is in agreement with the draft outcomes, the draft expectations and the policy's emphasis on learning from complaints. It is important though to recognise the limits of complaints alone in providing information on problem areas or problem providers. Again, a reference to consider the best way to collect information and intelligence may be warranted.

The Panel's engagement with law centres and charities has revealed that their clients do not pursue complaints even when they have very serious issues with their lawyers because their legal matters are so urgent and complaining about their lawyer (via any avenue) will not resolve their legal problem. Where applicable, regulators should engage with the free advice and representation sector to gain insight into the issues the users of these services face, especially as they may be harder to reach with traditional consumer engagement. The free advice and representation sector may also be a good source of information on firms who are not providing an adequate level of service.

Paragraph 12 of the draft Policy states that a learning culture in legal services would reduce complaints to the Legal Ombudsman, resulting in a more efficient, effective and fair ombudsman service, which "will promote an overall increase in public confidence in access to justice and redress in legal services". It is important not to overstate improvements to access to justice given the grave situation that exists where the UK is 45th out of 46 countries in our wealth group in relation to people being able to access and afford civil

justice.⁷ While consumers need to be able to resolve issues they have with their lawyer to enable their full participation in dispute resolution, resolving these issues does not equate to the meaningful exercise of one's legal rights in society. Access to redress in legal services, though important, is a very small part of access to justice. Recognising how redress in legal services can contribute to access to justice helps ensure that the necessary steps are taken to enable a person to fully exercise their legal rights in society. Drawing a false equivalency, however, can excuse regulators from trying to further access to justice in other ways.

Implementation and impact assessments

Question 15: do you have any comments on the proposed timescale for implementation?

The Panel is pleased that a 12 months deadline for implementation has been incorporated into the new Requirements, Guidance and Policy.

Question 16: do you have any comments regarding equality impact and issues which, in your view, may arise from our proposed Requirements, Guidance and statement of policy? Are there any wider equality issues that you want to make us aware of?

In trying to make it easier for consumers to make complaints, information and any factsheets or leaflets about the complaints ecosystem in legal services should be made available in additional languages. Many asylum seekers or other users of legal services may not be able to speak or read English and information provision for these consumers should be made. Basic standardised language may make this an easier task to accomplish.

In addition, the LSB may want to have regard to the Panel's research on the experiences of minority ethnic consumers, especially as they are more likely to be dissatisfied, less likely to trust their providers and less likely to complain directly to their providers.⁸

Question 17: Do you have any comments on the potential impact of the draft section 112 Requirements, draft Guidance and draft Statement of Policy, including the likely costs and anticipated benefits?

The Panel feels that there will be considerable benefits for legal services consumers that will accrue from the draft Requirements, Guidance and Statement of Policy. Recent research from the SRA, LSB and LSCP all point to the importance of soft skills in delivering legal services. The SRA's segmentation research in particular explains how a lawyer's approachability is a priority for all consumers.⁹ Because the LSB's approach to first-tier complaints encourages developing these soft complaint handling skills and encourages a simpler way to address issues in the lawyer-client relationship, the draft Requirements, Guidance and Policy Statement will have a very significant positive impact on how consumers experience legal services.

⁷ See [World Justice Project, Rule of Law Index \(2023\)](https://worldjusticeproject.org/rule-of-law-index/factors/2023/Civil%20Justice/) at <https://worldjusticeproject.org/rule-of-law-index/factors/2023/Civil%20Justice/>.

⁸ See LSCP, Understanding Ethnic Minority Experiences of Using Legal Services (2022) and LSCP Tracker Survey Data (2023).

⁹ See SRA, Final Report: Consumer Segmentation of the Legal Services Market in England and Wales (2023) at <<https://www.sra.org.uk/globalassets/documents/sra/research/consumer-segmentation-of-the-legal-services-market-in-england-and-wales---final-report.pdf?version=4a5d31>>.

Question 18: do you have any comments in respect of whether there should be different expectations on legal service providers depending on the basis on which they are providing their service?

As you know the Panel prioritises the needs of individual legal services consumers who are vulnerable in its work. We not only believe that all legal services consumers deserve the same level of service no matter the amount or method of paying for those services, but we advocate for additional care to be taken with vulnerable consumers who are often unable to navigate a legal problem on their own or even advocate for their own interests.

In fact, the LSB may be in danger of breaching its Public Sector Equality Duty if it does not stipulate that all legal services consumers are entitled to the same level of services because those using free services are more likely to have a protected characteristic such as having a disability or be from a minority ethnic group. If the LSB's policies indirectly discriminate against persons with a protected characteristic, they would fail to fulfil the Public Sector Equality Duty.

Rather than exempting free service providers from the expectations set out in the draft Requirements, Guidance or Statement of Policy, regulators should actively engage with them as they may offer good practice on dealing with vulnerable clients. In addition, most free legal services organisations already collect and analyse their user data extensively because they constantly have to prioritise the most impactful work and show results to funders.

Ideally, the Panel would like to see even unregulated legal services subject to or at least encouraged to abide by the LSB's proposed expectations on complaints.

Question 19: Do you have any other comments about the draft section 112 Requirements, draft Guidance and draft Statement of Policy?

The Panel appreciates the LSB pointing regulators to its work on standardisation and contextualisation. We would like to see regulators consider using these tools to further improve the provision of information for legal services consumers.

Finally, the LSB's Policy Statement on Empowering Consumers requires that complaints records are made available to help consumers make informed decisions about which provider to choose. To give the full effect to this aspect of the Statement on Empowering Consumers, a fully functioning multi-tiered complaints system must be in place. These documents are a solid step in the right direction.

We hope you find this feedback helpful and remain open to further discussions about the proposed first-tier complaints draft Requirements, Guidance and Statement of Policy. I also intend to participate in the roundtable planned for February 2024. Should you have any questions pertaining to this consultation response, please contact Heidi Evelyn, Consumer Panel Associate at Heidi.Evelyn@legalservicesconsumerpanel.org.uk, with any enquiries.

Yours sincerely,



Sarah Chambers
Chair
Legal Services Consumer Panel