

# First-tier complaints

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A consultation on draft section 112 Requirements, Guidance and policy statement for approved regulators under the Legal Services Act

This consultation will close on **Friday 17 November 2023**.

## **This Consultation Paper will be of interest to:**

Approved Regulators

Regulatory Bodies

Providers of Legal Services

Legal Representative Bodies

Legal Advisory Organisations

Other Third Sector Organisations

Consumer groups

The Legal Ombudsman

Ombudsmen in other sectors

Complaints bodies and disciplinary tribunals

Members of the legal profession

## Contents

Executive Summary.....	4
Introduction.....	8
Proposals.....	11
Implementation.....	27
Equality Impact Assessment.....	28
Impact Assessment.....	29
Next Steps.....	31
Responding to the consultation.....	31
Complaints.....	33
Annex A: draft section 112 Requirements .....	34
Annex B: draft section 162 Guidance .....	39
Annex C: draft statement of policy.....	47

## Executive Summary

1. The Legal Services Board (“LSB”) is the oversight regulator for legal services in England and Wales. We oversee the approved regulators, some of which have delegated their regulatory functions to independent regulatory bodies (“regulators”). We are independent of both government and the profession. In all of our work, we have a duty to promote the regulatory objectives in the Legal Services Act 2007 (“the Act”)<sup>1</sup>.
2. In this paper, we are consulting on:
  - (i) draft new Section 112 Requirements for Approved Regulators’ Regulatory Arrangements for Authorised Persons’ Complaints Procedures on First-tier Complaints (“draft section 112 Requirements”) and accompanying draft Guidance under section 162 of the Act (“draft Guidance”), to replace the First-tier complaints handling: section 112 requirements and section 162 guidance for approved regulators (Version 2: July 2016) (current Requirements and current Guidance)<sup>2</sup>, and
  - (ii) a draft statement of policy on first-tier complaints, setting outcomes for regulators to pursue in respect of the collection and analysis of intelligence on complaints.
3. A first-tier complaint is a complaint made to an authorised person about the legal services they have provided. This is distinct from a second-tier complaint which is a complaint made to the Legal Ombudsman under the scheme rules of the Office for Legal Complaints. First-tier complaints in this context are concerned with complaints about the legal service provided, rather than complaints about the conduct of legal services professionals<sup>3</sup>.
4. The proposals in this paper aim to advance all of the regulatory objectives, in particular protecting and promoting the public interest, improving access to justice, protecting and promoting the interests of consumers, increasing public understanding of the citizen's legal rights and duties and promoting and maintaining adherence to the professional principles. They aim to address the challenges in our Reshaping Legal Services strategy to ensure high quality legal services and close gaps in consumer protection<sup>4</sup>.

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/2007/29/section/3>

<sup>2</sup> [First-tier complaints handling: section 112 requirements and section 162 guidance for approved regulators \(Version 2: July 2016\)](#)

<sup>3</sup> Complaints about the conduct of legal service professionals relate to regulators’ professional codes of conduct, are dealt with through regulators’ disciplinary processes, and as such are outside the scope of this consultation.

<sup>4</sup> [Reshaping Legal Services – A sector-wide strategy](#), p9

5. Through the proposals, our objective is for regulators to deliver a step-change improvement in the resolution of first-tier complaints, by ensuring that authorised persons' complaints procedures are effective, efficient and fair. An effective redress system is an important part of access to justice, and is in the public interest, consistent with the regulatory objectives.
6. We also intend for our proposals to support regulators to foster a culture where legal professionals are receptive to, and learn from, complaints and feedback on their services. Our aim is to ensure that all legal service users (including "silent sufferers") feel empowered to raise concerns if they are dissatisfied, knowing that these will be taken seriously and used to deliver better services. Our proposals are designed to raise standards in the sector, by ensuring that legal professionals are continuously improving the services they provide. This should lead to enhanced public trust and confidence in the profession. We also anticipate that improved first-tier complaints handling will bring business benefits for authorised persons<sup>5</sup>.
7. A step-change improvement in first-tier complaints resolution is necessary because we consider that this is not currently meeting consumers' expectations as well as it should. A sizeable proportion of legal service users are dissatisfied with the service they have received but do not raise this with their legal service provider<sup>6</sup> (so-called "silent sufferers"). Recent research<sup>7</sup> shows that legal service users can lack confidence that their complaints will be taken seriously and consider that making a complaint will be an arduous process; there is also evidence that information about how to make a complaint can be hard to find<sup>8</sup>. The problems experienced by the wider community of legal service users in relation to complaints are amplified for consumers in vulnerable circumstances, who appear to be at a particular disadvantage in being able to raise concerns and access redress, notably immigration and asylum clients<sup>9</sup>.
8. Further, our analysis of Legal Ombudsman (LeO) data suggests that a substantial number of complainants are either unable, or unwilling, to see the first-tier process through to completion. This raises further questions about whether complainants are confident that the process will be conducted properly and fairly by their legal service provider. A high number of complaints are escalated to the second tier (to LeO), many prematurely,<sup>10</sup> many having

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<sup>5</sup> In research conducted by the SRA and LeO, 93% of firms reported that there are business benefits from effective complaints handling. See [SRA and LeO research into effectiveness of first tier complaints handling \(2017\)](#)

<sup>6</sup> [LSCP Tracker Survey 2022](#), p25

<sup>7</sup> Community Research, "[Improving service complaints in legal services](#)", March 2023

<sup>8</sup> [Community Research, "Complaints transparency"](#), March 2022

<sup>9</sup> [Refugee Action, "Consumer barriers to complaints"](#), January 2022

<sup>10</sup> Complaints received by LeO are deemed as "premature" where the complainant has not exhausted the first-tier process. See [Office for Legal Complaints Annual Report and Accounts 2022/23](#), p35

been handled inadequately at first-tier<sup>11</sup>. The volume of complaints received by LeO in recent years has led to a backlog of complaints and consequently long delays for consumers in having their cases resolved.

9. It is also clear that there is more scope for regulators to use information gathered from complaints to improve the legal services that are provided to the public. For example, the extent to which authorised persons are expected to learn from complaints is inconsistent across the sector, and there is a corresponding inconsistency in the extent to which analysis of complaints data is used to identify trends and issues and share good practice within regulated communities.
10. Further, while some authorised persons proactively seek and respond to feedback from legal service users, this is not widely adopted practice in the sector, which means there are missed opportunities to use positive and negative feedback (as distinct from a formal complaint) to deliver better services and prevent complaints arising in the first instance.
11. While some of the content in the proposals reflect parts of the current Requirements and Guidance<sup>12</sup>, our objective is to strengthen and provide greater clarity around expectations on regulators. This is particularly in relation to key principles such as accessibility, fairness, promptness and ease of use, which our research suggests may be the most desirable characteristics of effective first-tier complaints processes<sup>13, 14</sup>.
12. The draft statement of policy therefore sets out outcomes that regulators must pursue in identifying and addressing issues and good practice that arise from both first- and second-tier complaints, and clarifies that regulators must take action when first-tier complaints are not effective. These proposals aim to encourage a culture of learning from complaints and thereby ultimately improve services for legal service users and the public more widely.
13. In developing our proposals, we have drawn on a range of evidence<sup>15</sup> including research commissioned by regulators and LeO, as well as new primary research we commissioned earlier this year<sup>16</sup>. We have had regard to the better regulation principles in developing the draft section 112 Requirements, draft Guidance and draft statement of policy and consider that our proposals provide assurance that regulators are effectively and efficiently

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<sup>11</sup> LeO's "[Overview of annual complaints data 2020/21](#)" reports that, in 2020/21 LeO found first tier complaint handling to be inadequate in 24% of cases and that this represented a consistent trend over time (p21)

<sup>12</sup> [20160708\\_s112\\_Requirements\\_Guidance\\_FINAL \(legalservicesboard.org.uk\)](#)

<sup>13</sup> See, for example, [Improving service complaints in legal services](#), March 2023 and [First tier complaints desk research report](#), LSB Board papers October 2022, paper (22) 55 - Annex B

<sup>14</sup> These are also reflected in best practice for complaints handling – see for example [Principles of good complaint handling | Ombudsman Association](#)

<sup>15</sup> [First tier complaints desk research report](#), LSB Board papers October 2022, paper (22) 55 - Annex B

<sup>16</sup> [Improving service complaints in legal services](#), March 2023

regulating in the public interest. We have included an initial equality impact assessment and regulatory impact assessment at paragraphs 90-100 of this paper.

14. To support our objectives, and recognising the importance of collaboration, in parallel with this consultation we are building a coalition of stakeholders who share our aims of delivering the best possible redress system for legal service users and raising standards in the sector. We intend to work with the coalition to reach agreement on shared commitments for the sector to meet these aims. We have invited a range of different stakeholders<sup>17</sup> to join the coalition.
15. We welcome responses to this consultation, including comments on how we can improve our approach to better meet our objectives. The consultation begins on **24 August 2023** and runs until **17 November 2023**. Information on how to respond can be found at paragraphs 104-106 of this paper.

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<sup>17</sup> Including regulatory bodies, approved regulators, LeO, representative bodies in the sector, consumer organisations and special interest groups.

## Introduction

### *About the Legal Services Board*

16. The LSB was established under the Act and oversees the regulation of legal services in England and Wales. The Act provides that, in discharging its functions, the LSB and the nine approved regulators that it oversees must promote the eight regulatory objectives in the Act.

### *Statutory basis*

17. Section 112 of the Act gives the LSB power to specify requirements that regulators must make provision for in their regulatory arrangements requiring each authorised person to establish and maintain complaints procedures. Section 162 of the Act provides that the LSB may give guidance about any matter relating to its functions, or any other matters which it considers is desirable to give guidance.
18. Section 49 of the Act provides for the LSB to prepare and issue a statement of policy on any matter, and in preparing it, have regard to the principle that its principal role is the oversight of the approved regulators. The LSB must have regard to any relevant statement of policy in exercising or deciding whether to exercise any of its statutory functions. The LSB must give notice inviting representations on a draft of the statement of policy under section 50 of the Act, and this consultation paper constitutes such notice.

### *Policy objective*

19. Our overarching policy objective in this work is to foster a step-change improvement in the resolution of first-tier complaints, to encourage a culture of learning from complaints and thereby ultimately improve legal services for legal service users and the public.
20. In our sector-wide Reshaping Legal Services strategy<sup>18</sup>, we identified that if the public are to have confidence in legal services, they must have confidence that they are able to access effective redress if things go wrong. We also identified that public confidence in legal services is affected in part by how complaints about legal services are dealt with. In 2022/23, we committed to carrying out a review of the current Requirements and current Guidance. Having been implemented in 2016, a review of the current Requirements and Guidance was timely, but we were also aware of a range of specific evidence which indicated that more could be done to make these more effective in

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<sup>18</sup> [Reshaping Legal Services strategy](#)



protecting and promoting the interests of consumers, the public interest and improving access to justice.

21. In developing our proposals, we considered whether revising and updating the current Requirements and current Guidance would achieve these policy objectives. Requirements under section 112 of the Act are limited in that they apply only to the provisions that regulators make in their regulatory arrangements for authorised persons' complaints procedures. We have therefore additionally developed a draft statement of policy, focused on the steps that regulators should take in respect of collection and analysis of first- and second-tier complaints data.

### *The case for change*

22. At the outset of this work, we carried out desk research to analyse regulators' current practice in respect of first-tier complaints and to examine existing research in this area. We also approached regulators with some specific questions about their practice, including what data they collect and analyse to be assured that authorised persons are resolving first-tier complaints effectively. In addition, we had discussions with LeO about the work, in particular around what data LeO collects and provides to regulators. We also engaged with regulators from other sectors<sup>19</sup> to understand how they approached first-tier complaints, and liaised with the Legal Services Consumer Panel (LSCP) in developing the proposals. The paragraphs below summarise the key themes arising from the evidence which we consider make a strong case for strengthening our current Requirements and current Guidance on first-tier complaints and for developing a draft statement of policy focusing on how intelligence from first-tier complaints could be used to improve services provided by authorised persons to the public.

### *Premature complaints and inadequate handling at first-tier*

23. LeO reported in the last two years that it found first-tier complaints handling to be inadequate in around a quarter of cases that it has accepted for investigation<sup>20</sup>. Findings of inadequacy commonly resulted from legal service providers either not responding to the complaint at all, not responding within the time limit of eight weeks, or not addressing all of the issues raised in the complaint. Moreover, in 2020/21, around 30% of complaints received by LeO were classified as "premature" – that is, submitted to LeO before the complainant had exhausted the first-tier process<sup>21</sup>. This suggests that a substantial number of complainants were either unable, or unwilling, to see the first-tier process through to completion. It raises questions about whether

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<sup>19</sup> The Financial Ombudsman Service and the Professional Standards Authority

<sup>20</sup> [Annual complaints summary 2020-21 \(legalombudsman.org.uk\)](#) page 21 and [Annual complaints summary 2019-20 \(legalombudsman.org.uk\)](#) page 6

<sup>21</sup> [Office for Legal Complaints Annual Report and Accounts 2022/23](#), p35

complainants are confident that the process will be conducted properly and fairly by their legal service provider, whether they understand the process or whether they are aware that it exists. The latter point is pertinent to the consideration of “silent sufferers”.

### *Silent sufferers*

24. In the LSCP’s most recent Tracker Survey<sup>22</sup>, 26% of respondents who said they were unhappy with the service they had received from their legal service provider said they did nothing about it (in the 2022 survey this figure was 24%<sup>23</sup>). While the proportion of these “silent sufferers” has decreased from 36% since 2021, it is still a substantial minority, and suggests that more could be done to protect and promote their interests.

### *Provision of information*

25. The evidence indicates that how, when and where legal service users are provided with information about first-tier complaints has an impact on the extent to which they understand this and feel empowered to complain if they are dissatisfied. The 2023 Tracker Survey indicates that just over half (52%) of respondents said they would know how to go about making a complaint, representing a slight decrease from 2022 (54%) and 2021 (56%)<sup>24</sup>. This is of concern, given that regulators are already required to stipulate that authorised persons must notify complainants in writing of how to make a first-tier complaint<sup>25</sup>, and suggests either that authorised persons are not adhering to such regulatory arrangements or that the information is not being communicated to clients in the most effective way.
26. The LSCP’s research into client care letters<sup>26</sup> concluded that the incorporation of information about first-tier complaints into the client care letter was not always effective. More recently, research from LeO on complaints transparency<sup>27</sup> found that not all complaints information on legal service providers’ websites was as easy to find as it could be. Research with Public Panel participants in 2023<sup>28</sup> echoed many of the findings from previous research conducted by LeO, LSCP and the regulators. This research, which brought together consumers and professional stakeholders<sup>29</sup>, indicated that

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<sup>22</sup> [How-consumers-are-using-legal-services-report.pdf \(legalservicesconsumerpanel.org.uk\)](https://legalservicesconsumerpanel.org.uk/22.07.19-How-consumers-are-using-legal-services-report-FINAL.pdf)

<sup>23</sup> [22.07.19-How-consumers-are-using-legal-services-report-FINAL.pdf \(legalservicesconsumerpanel.org.uk\)](https://legalservicesconsumerpanel.org.uk/22.07.19-How-consumers-are-using-legal-services-report-FINAL.pdf) p26

<sup>24</sup> [How-consumers-are-using-legal-services-report.pdf \(legalservicesconsumerpanel.org.uk\)](https://legalservicesconsumerpanel.org.uk/22.07.19-How-consumers-are-using-legal-services-report-FINAL.pdf)

<sup>25</sup> [LSB First-tier complaints handling: section 112 requirements and section 162 guidance for approved regulators](#) paragraphs 13.a.i and 13.a.ii

<sup>26</sup> Client care letters are usually the first written communication that a consumer receives after appointing a legal services provider. See [Client Care Letters Research Report - FINAL 201016.pdf \(legalservicesconsumerpanel.org.uk\)](#)

<sup>27</sup> [Complaints transparency – research with users of legal services](#) (2022)

<sup>28</sup> [Improving service complaints in legal services](#), March 2023

<sup>29</sup> Including legal services practitioners, representative bodies, regulatory bodies and regulators from other sectors

transparency and accessibility of information about complaints processes was key to ensuring that legal service users understood how to make complaints and have confidence that their concerns would be taken seriously. The research further identified that principles of empathy, fairness and ease of use should underpin complaints resolution.

### *Continuous learning*

27. Another key finding arising from the Public Panel research<sup>30</sup> was that continuous learning should be a principle that underpins complaints resolution. From the research we carried out into other sectors, we understand that, in financial services, firms are required to take steps to identify and remedy any recurring or systematic issues evident in complaints. There is variable practice among legal service regulators in respect of collection and analysis of data about first- and second-tier complaints however,<sup>31</sup> and the desk research found only a limited amount of evidence that some of the smaller regulatory bodies regularly undertake work in this area.

## **Proposals**

28. This consultation is in two parts:
- Part 1: draft new section 112 Requirements for approved regulators' regulatory arrangements for authorised persons' complaints procedures and draft section 162 Guidance on section 112 Requirements for provisions made by approved regulators for first-tier complaints
  - Part 2: draft statement of policy on first-tier complaints.
29. We consider that the proposals will enhance transparency and accountability in how regulators regulate authorised persons' complaints procedures, thereby further protecting and promoting access to justice, the interests of consumers and the public interest. The changes proposed are targeted at removing barriers to good complaints handling, and are proportionate to those regulatory objectives. We recognise that many of the proposals are consistent with good practice in complaints resolution and thus may already be established practice for some regulators and authorised persons; our evidence base suggests, however that this is not always the case.

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<sup>30</sup> [Improving service complaints in legal services](#), March 2023

<sup>31</sup> [First tier complaints desk research report](#), LSB Board papers October 2022, paper (22) 55 - Annex B

## **Part 1: draft section 112 Requirements and draft section 162 Guidance**

30. This section is on the draft section 112 Requirements and accompanying draft Guidance which we are proposing will replace the current Requirements and current Guidance.

### **Draft Paragraph 1 – Definitions**

31. This provision defines key terms used in the draft section 112 Requirements. Where words used are defined under the Act, and the Legal Ombudsman Scheme Rules, they have the same meaning in the draft section 112 Requirements. Under Part 6 of the Act, first-tier complaints are the gateway to making a second-tier complaints under the ombudsman scheme. As such, a complaint under the draft section 112 Requirements means one which relates to the acts or omissions of an authorised person and may be made under the Scheme Rules<sup>32</sup>. Once a complaint is made, the person making the complaint is referred to as the complainant under the draft section 112 Requirements. A person making a complaint may be a client of the authorised person, a prospective client,<sup>33</sup> former client or the beneficiary of a trust or estate in certain circumstances, consistent with the relevant statutory provisions<sup>34</sup>.

### **Draft Paragraphs 2, 3 and 4 - Application and Guidance**

32. Draft Paragraph 2 states that a regulator must satisfy the section 112 Requirements in their regulatory arrangements that make provision requiring each authorised person to establish and maintain complaints procedures, and for the enforcement of that provision. Draft Paragraphs 3 and 4 reflect the current Requirements. Draft Paragraph 3 states that the section 112 Requirements are separate to any other obligations authorised persons may have in relation to complaints, including alternative dispute resolution. Draft Paragraph 4 provides that regulators must have regard to any Guidance issued by the Board under section 162 in seeking to comply with the section 112 Requirements. As part of this consultation we are consulting on proposals on draft Guidance to replace the current Guidance.

### **Draft Paragraph 5 – Purpose**

33. This provision reflects a key aim of the proposals being consulted on - for regulators to ensure that their regulatory arrangements make provision for the effective, efficient and fair resolution by authorised persons of first-tier complaints.

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<sup>32</sup> See section 112(3) of the Act.

<sup>33</sup> The Legal Services Act 2007 (Legal Complaints) (Parties) Order 2012, SI 2012/3092.

<sup>34</sup> Section 128(4)(c) of the Act.

### **Draft Paragraph 6 - Specifications for approved regulators' regulatory arrangements for authorised persons**

34. This provision specifies that regulators must make provision in their regulatory arrangements on authorised persons' complaints procedures to address accessibility, provision of information, communication, consumer confidence, learning and improvement, and enforcement – in the manner specified in the provisions that follow.

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

### **Draft Paragraph 7 - Accessibility**

35. We consider accessibility to be a crucial principle which should underpin all complaints processes. To this end, draft Paragraph 7 states that regulators should ensure that authorised persons' complaints procedures must:
- a) be free of charge;
  - b) be prominent and accessible to all their clients;
  - c) explain how a complaint will be handled and the possible outcomes;
  - d) be communicated to clients in a format tailored to the client's needs;
  - e) make provision for people to be able to make a complaint in a way that is accessible to them;
  - f) be set out in a written document and available internally to all relevant staff;
  - g) be endorsed by the authorised person's senior management who are responsible for its implementation; and
  - h) be maintained and implemented consistently.

It is proposed that information on the authorised person's complaints procedures must also be provided to a complainant when a complaint is first notified (draft Paragraph 11), in a way that is clear, using plain and appropriate language (draft Paragraph 13).

#### *Free of charge (draft Paragraph 7(a))*

36. We consider that making a complaint free of charge is an important over-riding principle to any good complaints procedure, and should be given priority

and prominence in the draft section 112 Requirements. We are proposing to codify this requirement, which is currently only in the Guidance.

37. We understand that it is common practice in the legal services sector and elsewhere for complaints to be free of charge, however there is some evidence<sup>35</sup> that legal service users would appreciate reassurance of this. Draft Guidance (at Paragraph 14 (i)) therefore stresses the need for complainants to be made aware of this.

*Prominent, accessible and tailored to the client's needs (draft Paragraph 7 (b), (d) and (e))*

38. Draft Paragraph 7(b), (d) and (e) require that regulators must ensure that authorised persons' complaints procedures are prominent, accessible, and communicated in a way that is tailored to a client's needs. When a complaint is first notified, draft Paragraphs 11 and 13 require information to be provided using plain and appropriate language.
39. The current Requirements contain no provisions relating to how prominently complaints procedures should be published, nor any provisions relating to accessibility. The current Guidance makes a brief reference to first-tier complaints processes being well-publicised and easy to use for those who are vulnerable or have disabilities, but there is evidence that this is not working as effectively as it might, particularly for legal service users with disabilities<sup>36</sup> and immigration complainants<sup>37</sup>. There is also evidence that information about how to make a first-tier complaint is not always easily accessible<sup>38</sup>. Research shows<sup>39</sup> that there is a need for complaints procedures to be designed with a range of different people and their needs in mind, and for barriers to complaining to be minimised as far as possible.

*How a complaint will be handled and the possible outcomes (draft Paragraph 7(c))*

40. We propose in draft Paragraph 7(c) that regulators must ensure that authorised persons' complaints procedures clearly set out how a complaint will be handled, the steps involved in resolving a complaint and the possible outcomes. Providing this information proactively informs people of what to expect if a complaint is made and is aimed at reducing the likelihood of a person becoming a "silent sufferer".

*Internal management of complaints procedures (draft Paragraph 7(f), (g), and (h))*

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<sup>35</sup> [Improving service complaints in legal services](#), March 2023

<sup>36</sup> [SRA and LeO research into effectiveness of first tier complaints handling \(2017\)](#) p vi

<sup>37</sup> Refugee Action, [Consumer Barriers to Complaints](#) (2022)

<sup>38</sup> [Complaints transparency – research with users of legal services](#) (2022)

<sup>39</sup> [Improving service complaints in legal services](#), March 2023

41. We are proposing that regulators must ensure that authorised persons share their complaints procedure internally, and that management take ownership of the procedure and how it is implemented and maintained (draft Paragraph 7(f) to (h)). These provisions are intended to ensure that good liaison with people who have made a complaint is embedded in the authorised person's work, with management taking responsibility for ensuring that happens. This should provide reassurance to users that complaints are taken seriously and that providers are open and responsive to reports of dissatisfaction, which was considered to be influential in decisions to raise a complaint.<sup>40</sup>

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

### **Draft Paragraphs 8, 9 and 10 - provision of information**

42. There is strong evidence from a range of sources which indicates that when and how people are provided with information about how to make a complaint is key to their ability and willingness to do so. If people are not aware of their right to complain, do not know how to do this, or if it is difficult to find out this information, there is a risk that they may take their complaints to LeO prematurely, or become "silent sufferers". The provisions in draft Paragraphs 8, 9 and 10 are intended to mitigate these risks and to bolster complainants' confidence in the complaints system.
43. Draft Paragraphs 8, 9 and 10 set out what, when and how regulators ensure authorised persons inform people about their right to make a first tier and second tier complaint and what that entails. The current Requirements state that regulators must require authorised persons to provide clients with key information about first-tier complaints in writing at the time of instruction (emphasis added). In practice, this is often achieved via the client care letter. However, there is a range of evidence which indicates that providing this information only in this way and only at this stage can be ineffective<sup>41</sup>, as clients are unlikely to be thinking about making a complaint at this stage and complaints information can become "buried" within these letters.
44. The research indicates that there can be a mismatch between what clients are told about first-tier complaints and what they actually understand, and it appears that the timing of communication may have an impact on this<sup>42</sup>. Thus,

<sup>40</sup> LSB literature review, "[Silent sufferers: Identifying predictors of non-complaining behaviour in legal services](#) (July 2022)

<sup>41</sup> See, for example, [Client care letters research \(2016\)](#), [SRA and LeO research into effectiveness of first tier complaints handling \(2017\)](#) and [Improving service complaints in legal services](#) (2023)

<sup>42</sup> [Client care letters research \(2016\)](#),



while there is merit in providing complaints information at the time of first engagement<sup>43</sup>, we consider it would be more effective in the interests of consumers if this information could be repeated at later intervals in the course of the engagement. Draft Paragraph 8 states that information about complaints procedures (as specified in draft Paragraphs 9 and 10) must be provided at the time of engagement and at the conclusion of the client's matter. This was one of the recommendations from LeO's 2022 research into transparency<sup>44</sup>.

45. Draft Paragraphs 9 to 10 recognise that the method of communication is also key to public understanding of complaints processes. The draft Guidance suggests that alternative formats such as leaflets or fact sheets may be useful to aid their understanding of the process and to increase their confidence about making a complaint<sup>45</sup>. This relates to recent work that the Legal Services Consumer Panel (LSCP) has carried out in relation to standardisation of information for consumers<sup>46</sup>. The LSCP work also emphasised that the use of standardised text on first-tier complaints may be beneficial to legal service users.
46. There is evidence that service users can perceive there to be a power imbalance between themselves and provider, which may act as a barrier to making a complaint<sup>47</sup>. This could be mitigated by signposting people to third party organisations that might be able to assist those wishing to make a complaint<sup>48</sup>. The draft Guidance now provides for the inclusion of information about third party organisations who may be able to assist in this way.

**Question 3: do you have any comments on draft Paragraphs 8, 9 and 10 and the associated draft Guidance?**

### **Draft Paragraphs 11, 12 and 13 – Communication**

47. We consider that communication around complaints is key to ensuring public confidence in complaints processes. Draft Paragraphs 11, 12 and 13 specify the matters that regulators must satisfy in their regulatory arrangements for authorised persons' complaints procedures in respect of:

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<sup>43</sup> Public Panel first tier complaints workshop, February 2023

<sup>44</sup> [Complaints transparency – research with users of legal services](#) (2022)

<sup>45</sup> See, for example, [Client care letters research \(2016\)](#) and [Improving service complaints in legal services](#), March 2023

<sup>46</sup> [Standardisation of Consumer Information in Legal Services](#)

<sup>47</sup> [Improving service complaints in legal services](#) (2023) and [Silent Sufferers: Identifying predictors of non-complaining behaviour in legal services – a literature review](#) (2022)

<sup>48</sup> Suggested examples in the Public Panel workshop included the Citizens' Advice Bureau, Resolver and MoneySavingExpert.



- information to be provided when a complaint is first notified
- communicating with complainants
- keeping them informed as to the progress of their complaints.

48. These proposals aim to ensure that authorised persons are proactive in communicating with people about their complaints, and to clarify that it is the responsibility of providers to ensure timely progression of the complaint<sup>49</sup>. This is reflected in draft Requirements 11, 12 and 13 which outline a number of actions that regulators must ensure that authorised persons take when a complaint is first made.

*Draft Paragraph 11(a) - acknowledgement*

49. Draft Paragraph 11(a) specifies that regulators should ensure that authorised persons' complaints procedures must include provision for the prompt acknowledgement of complaints. The draft Guidance provides that this should normally be made within five working days and may be automated. There is evidence that consumers consider that having their complaints acknowledged is an important first step in the complaints process, however the evidence suggests that this does not always happen in practice<sup>50</sup> and there is no reference to acknowledging complaints in either the current Requirements or Guidance. Given that acknowledgements are now commonplace in a number of sectors, we consider that it is proportionate to include this in the draft section 112 Requirements (Paragraph 11(a)).

*Draft Paragraph 11(b) – how the complaint will be handled*

50. Draft Paragraph 11(b) provides that regulators must ensure that authorised persons' complaints procedures include provision for complainants to be provided with information about how the complaint will be handled, including that the key information in draft Paragraphs 9 and 10 are re-stated accurately on receipt of a complaint. The associated draft Guidance reflects some examples of good practice, chiefly that it can be helpful to both parties if the authorised person takes steps to liaise with the person making the complaint at the outset, to determine what the complaint is about and what outcome they are hoping for (recognising, of course, that this outcome may not be achievable)<sup>51</sup>.

51. From the point of view of someone making a complaint this can offer evidence that the provider is taking them seriously (cited as a concern in a number of

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<sup>49</sup> [Improving service complaints in legal services](#) (2023)

<sup>50</sup> See examples of good practice identified in [Improving service complaints in legal services](#) (2023) [Improving service complaints in legal services report \(legalservicesboard.org.uk\)](#) (2023)

sources<sup>52</sup>) and is prepared to listen to them to understand what they are unhappy about. From the provider's perspective it can serve to clarify anything that is unclear in the original complaint and establish what is most important to the person making the complaint.

#### *Draft Paragraph 11(c) - contact*

52. Draft Paragraph 11(c) states that regulators must ensure that authorised persons' complaints procedures include provision for the person making the complaint to be provided with a contact with whom they can liaise on their complaint; ideally this is a named contact but as noted in the associated draft Guidance this may not always be possible. There is evidence that the provision of a named contact for complaints handling is important for consumers<sup>53</sup>. As well as having the practical advantage of making it clear who complaints should be sent to, it can help to reassure people that communication with the provider will be straightforward. The provision of a named contact also supports the concept of the provider "project managing" the complaint (see paragraph 48 of this paper).

#### *Draft Paragraph 11(d) – timeline for resolution*

53. While under draft Paragraphs 9 and 10 complainants will already have been notified about the eight week timescale for providers to respond to complaints before they can be escalated to LeO, under draft Paragraph 11, regulators must ensure that authorised persons' complaints procedures provide that this is re-stated at the point at which someone makes a complaint. As well as providing transparency to people about the process, this may assist in managing expectations.

#### *Draft Paragraph 12 – updates*

54. Draft Paragraph 12 stipulates that regulators must ensure that authorised persons provide complainants with regular updates on the progress of their complaints. There is evidence that legal services users find regular updates to be an important source of reassurance that their complaints are being dealt with, and demonstrate proactivity on the part of providers.

#### *Draft Paragraph 13 – language and tone*

55. Draft Paragraph 13 specifies that regulators must ensure that authorised persons communicate with complainants clearly, using plain and appropriate language. One purpose of this is to address the perceived power imbalance

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<sup>52</sup> See, for example, Refugee Action, [Consumer Barriers to Complaints](#) (2022) and [Improving service complaints in legal services](#) (2023)

<sup>53</sup> [Improving service complaints in legal services](#) (2023)

that may arise between a complainant and authorised person. The associated draft Guidance sets out steps that providers can take to mitigate this perception.

56. The current Requirements and current Guidance are silent in respect of the language and tone that providers should use in their communications around first-tier complaints, but research shows that this is an important feature in consumers' experiences of first-tier complaints<sup>54</sup>. Language and tone have also been observed by LeO as a potential weak spot in first-tier complaints handling<sup>55</sup> and legal service users' perception of power imbalance can be exacerbated where overly complex language and/or legal jargon is used by the provider<sup>56</sup>.
57. Research suggests that legal service users also want communications around first-tier complaints to be empathetic: anecdotal evidence included providers' language being "cold" or "dismissive", which for some complainants exacerbated what was already a stressful process<sup>57</sup>.

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

### **Draft Paragraphs 14 and 15 - consumer confidence**

58. These provisions aim to ensure that regulators make provision requiring authorised persons to handle complaints in a way that gives complainants confidence in their complaints procedure, and overall public confidence in legal services. It should be uncontroversial that a complaints process must be fair and impartial. Similarly, we consider it reflective of accepted good practice that complaints should be resolved at the earliest possible opportunity, and the fact that people can raise a second-tier complaint after eight weeks makes clear there is a time by which it is expected a first-tier complaint should be resolved.
59. Draft Paragraph 14 makes provision for how a complaint should be assessed ("competently, diligently and impartially"), responded to ("fairly, consistently and promptly") and resolved ("at the earliest possible opportunity"). The

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<sup>54</sup> See, for example [Silent Sufferers: Identifying predictors of non-complaining behaviour in legal services – a literature review](#) (2022) and [Improving service complaints in legal services](#) (2023)

<sup>55</sup> LeO training course, "The language of complaints", September 2022

<sup>56</sup> Refugee Action, [Consumer Barriers to Complaints](#) (2022)

<sup>57</sup> Public Panel Collaborative workshop, February 2023

current Guidance explains that “the process...should be prompt and fair, with decisions based on a sufficient investigation of the circumstances”.

60. The current Guidance states that, “where appropriate, there should be an offer of a suitable remedy”. Remedial action is an important part of complaints resolution and we therefore propose to codify this requirement in draft Paragraph 15 which stipulates that authorised persons must communicate the outcome of complaints promptly to the person who has raised them, and comply promptly with any remedies.
61. The draft Guidance associated with draft Paragraphs 14 and 15 states that it can be helpful to the complainant to receive explicit reassurance from the provider that their complaint will be taken seriously and investigated impartially. The purpose of this is to emphasise not only the importance of impartiality in practice but the need to make complainants aware of this impartiality. There is evidence that some people are not confident that their complaints will be investigated fairly<sup>58</sup> and this scepticism may dissuade some people from making a complaint at all.

**Question 5: do you have any comments on draft Paragraphs 14 and 15 and the associated draft Guidance?**

### **Draft Paragraphs 16 and 17 – learning and improvement**

62. We consider that complaints provide an important opportunity for regulators to understand where things are not working for legal service users, and to use this intelligence to improve services. We know from our ongoing competence work that learning from feedback is an important part of legal professionals maintaining their skills and knowledge over time, and that there was support for this from regulators responding to our consultation on our statement of policy on ongoing competence<sup>59</sup>.
63. The current Requirements are silent in respect of steps that regulators or authorised persons should take to learn from complaints and thereby improve their service, but there are provisions around this in the current Guidance.
64. Draft Paragraph 16 specifies that regulators should require authorised persons to keep records in respect of first-tier complaints and analyse these to identify and address any risks and issues arising. In the new suite of draft

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<sup>58</sup> See, for example, SRA and LeO [Research into the experiences and effectiveness of solicitors' first tier complaints handling processes \(sra.org.uk\)](#) (2017), Refugee Action, [Consumer Barriers to Complaints](#) (2022) and [Silent Sufferers: Identifying predictors of non-complaining behaviour in legal services – a literature review](#) (2022)

<sup>59</sup> <https://legalservicesboard.org.uk/our-work/consultations-2/closed-consultations-1/closed-consultations-april-2021-2022>

documents, expectations on regulators in respect of learning and improvement are now set out in the draft statement of policy, which forms Part 2 of this consultation document.

65. The current Guidance does not refer to training or support for complaints handlers, however research suggests that “soft skills” and empathy can be of particular importance in dealing with complaints. There is anecdotal evidence that, if early expressions of dissatisfaction are appropriately handled by the provider, these need not always escalate into formal complaints<sup>60</sup>. The provision of soft skills training for all client-facing staff thus may have the potential to benefit both the service user and the provider.
66. Draft Paragraph 17 now provides that regulators must ensure that authorised persons need to consider and, if proportionate, undertake training and provide appropriate support for staff in order to address any risks and issues arising from complaints.

**Question 6: do you have any comments on draft Paragraphs 16 and 17 and the associated draft Guidance?**

### **Draft Paragraph 18 – enforcement**

67. We consider it is crucial that regulators take steps to enforce compliance with their regulatory arrangements to ensure effective, efficient and fair complaints resolution by authorised persons. Draft Paragraph 18 sets out that regulators’ regulatory arrangements must specify the action regulators may take, if proportionate, where there is non-compliance with the regulatory arrangements, and where it is in the public interest to do so. This addresses a gap in the current Requirements which do not refer to enforcement.

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

## **Part 2: statement of policy**

### **Function of the statement of policy**

68. We are proposing a new draft statement of policy which sets out outcomes and expectations for regulators in discharging their regulatory functions

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<sup>60</sup> Public Panel Collaborative workshop, February 2023

relating to first-tier complaints resolution by authorised persons. This is separate to the draft section 112 Requirements about the specifications regulators make for authorised persons in their regulatory arrangements.

69. The draft statement of policy builds upon the provisions in the current Guidance - now proposed to be included in the draft section 112 Requirements - around regulators gathering, analysing and responding to complaints data to monitor and assess the effectiveness of authorised persons' complaints handling processes. This applies to data relating to first-tier complaints as well as to second-tier complaints, with LeO making a range of data available to regulators on the latter.
70. We recognise that some regulators already carry out work in this area, and note the recent reports from the SRA<sup>61</sup> and the BSB<sup>62</sup>. However, this work is not mandatory and practice across regulators is variable<sup>63</sup>. This is attributable, in part, to variations in the respective sizes of regulated communities, given it can be harder to identify trends when the number of complaints received is low.
71. In light of the persistent problems that remain in respect of first-tier complaints, we consider that there is scope for regulators to sharpen their focus on how issues arising from complaints can be used to improve services for the public. There are also opportunities for regulators to identify good practice and share this widely, to promote continuous learning and improvement.
72. Subject to the outcome of this consultation, we propose to take the draft statement of policy into account in discharging our regulatory functions. This would include regulatory performance assessments on regulators, decisions on applications from regulators for changes to their regulatory arrangements, and decisions on enforcement.

### **Structure of the draft statement of policy**

73. The structure of the draft statement of policy is broadly consistent with our other statements of policy on consumer empowerment and ongoing competence. It is framed as two general, high-level outcomes for regulators to pursue, seven specific expectations around the collection and analysis of data relating to first and second-tier complaints, and an eighth expectation on ensuring authorised persons' compliance with the regulatory arrangements specified in the section 112 Requirements. The draft outcomes and expectations are expressed in general terms, with the intention of providing

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<sup>61</sup> [SRA | First tier complaints report 2021-2022 | Solicitors Regulation Authority](#)

<sup>62</sup> [IRN Research Reports \(barstandardsboard.org.uk\)](#)

<sup>63</sup> [First tier complaints desk research report](#), LSB Board papers October 2022, paper (22) 55 - Annex B

flexibility for regulators to interpret these in a way that is proportionate, targeted and appropriate for their regulated community.

### Draft outcomes

74. We consider that framing complaints as opportunities to learn lessons and improve service is a positive principle that should underpin the approach to regulating complaints resolution in legal services. The draft statement of policy states that regulators must pursue the following outcomes:
- (i) deliver the best possible complaints resolution system for legal service users by using information and intelligence gathered from first-tier complaints and second-tier complaints;
  - (ii) a culture of continuous improvement and learning from complaints and feedback to improve legal services.
75. Draft outcome (i) reflects in essence the current Guidance. However, given the variable approaches of regulators in using data for learning from complaints, coupled with the evidence that the number of premature complaints and the number of complaints inadequately handled at first tier has remained high, we believe there is scope for regulators to be more effective here.
76. Draft outcome (ii), a culture of continuous improvement and learning from complaints, is also referenced in the current Guidance. It reflects one of the themes arising from the research around the value of continuous learning and being receptive to consumer feedback<sup>64</sup> and is consistent with the draft strategy being developed by LeO<sup>65</sup>. We understand that there is strong appetite in the sector for greater insight into themes and trends in complaints<sup>66</sup>. The commitment to continuous learning also reflects good practice in complaint handling in other sectors<sup>67</sup>.

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

### Draft expectations

77. **Draft Expectations (i) and (ii)** state that regulators should use information and intelligence gathered from first- and second-tier complaints to:

<sup>64</sup> [Improving service complaints in legal services](#) (2023)

<sup>65</sup> <https://www.legalombudsman.org.uk/media/znqdlq1/127-3-23-olc-strategy-2024-27.pdf>

<sup>66</sup> Office for Legal Complaints [Interim strategy for 2023/24, p25](#)

<sup>67</sup> Complaint Handling in the Public Sector digital conference, 27 April 2023



- (i) identify any thematic areas of weakness in authorised persons' handling of first-tier complaints, and take action to address these;
- (ii) identify any authorised persons with disproportionately and consistently high numbers of first tier complaints, or any authorised persons with disproportionately and consistently high numbers of premature complaints being made to LeO and take appropriate and effective action to address these;

These provisions are separated to differentiate between the identification of broad themes and trends across authorised persons generally (expectation (i)) and the identification of specific instances of concern with specific authorised persons (expectation (ii)). These two expectations reflect in essence paragraph 21 of the current Guidance, but we propose to articulate these as separate expectations to provide better clarity and reinforce their importance.

**Question 9: do you have any comments on draft expectations (i) and (ii)?**

78. **Draft expectations (iii) and (iv)** state that regulators should use information and intelligence gathered from first and second-tier complaints to

- (iii) identify recurring issues and trends in first-tier complaints from which lessons can be learned;
- (iv) identify and share areas of good practice, including good practice from other sectors.

Again, this is covered in essence in the current Guidance, but we consider that these expectations better articulate what regulators should do. We have also included an explicit reference in expectation (iv) to regulators identifying and sharing good practice and case studies from other sectors as appropriate (for example healthcare or financial services).

**Question 10: do you have any comments on draft expectations (iii) and (iv)?**

79. **Draft expectation (v)** states that regulators should use information and intelligence gathered from first and second-tier complaints to



(v) collect and publish data about the performance of authorised persons in resolving first-tier complaints within eight weeks, in order to ensure increased transparency about performance levels.

Under the section 112 Requirements, a complainant has the right to take their complaint to LeO if, after eight weeks following the making of a first-tier complaint, it has not been resolved to their satisfaction. There is evidence that not all authorised persons respond to complaints within the eight-week time limit, and that in some cases, they do not respond at all<sup>68</sup>.

80. We consider that adherence to this time limit is critical in ensuring the timely resolution of complaints and, in turn, in ensuring public confidence in the complaints process. We also consider that it is important for a wider understanding of the health of first-tier complaints that sector-wide information is available on how many complaints are responded to within eight weeks, and we note that transparency around this type of information is common in other sectors. For example, the Financial Conduct Authority (FCA) publishes firm-specific complaints data<sup>69</sup> which includes data on the percentage of complaints that each firm closed within eight weeks. The FCA uses this data to help assess how well firms are responding to their customers' concerns and how their performance changes over time<sup>70</sup>.
81. We recognise that there will be instances where it will not be possible to resolve complaints within eight weeks for reasons outside the authorised person's control. We would expect regulators to take this into account and target their focus accordingly in terms of the information they consider it appropriate to publish. This is also where publishing appropriately contextualised information will be important, which is an area on which the LSCP has provided advice<sup>71</sup>.
82. We note that regulators already collect data on an annual basis from their regulated community, and would anticipate that it would be possible to integrate the collection of data on the resolution of complaints within eight weeks into existing structures for data collection.

**Question 11: do you have any comments on draft expectation (v)?**

<sup>68</sup> [Legal Ombudsman Annual Complaints Summary 2019/20](#), p6

<sup>69</sup> See [Firm specific complaints data | FCA](#)

<sup>70</sup> [About our complaints data | FCA](#)

<sup>71</sup> <https://www.legalservicesconsumerpanel.org.uk/wp-content/uploads/2022/11/22.11.24-LSCP-Contextualisation-Advice.pdf>

83. **Draft expectation (vi)** states that regulators should use intelligence gathered from first and second-tier complaints to
- (v) give particular consideration to the experiences of legal service users with protected characteristics and/or those in vulnerable circumstances.

Our research into consumer vulnerability identified that many consumers face situational vulnerability in needing legal support and market-specific vulnerability from having limited knowledge of the law and legal services; some also have additional risk factors<sup>72</sup>. We also know from other research<sup>73</sup> that certain groups of legal service users face greater challenges in making first-tier complaints. We propose that regulators should pay particular attention to these groups in their approach to data collection and analysis, to ensure that the additional barriers these users may experience first-tier are reduced as far as possible.

**Question 12: do you have any comments on draft expectation (vi)?**

84. **Draft expectation (vii)** states that regulators should use intelligence gathered from first and second-tier complaints to
- (vii) consider how authorised persons collect and analyse their own first-tier complaints data, in line with the Requirements specified by the LSB under section 112(2) of the Act and how they use this to improve the service they provide.

This further develops the statement in paragraph 23 of the current Guidance and makes reference to Paragraph 16 in the draft Requirements.

**Question 13: do you have any comments on draft expectation (vii)?**

85. **Draft expectation (viii)** states that regulators should use intelligence gathered from first- and second-tier complaints to
- (viii) put in place measures to facilitate compliance by authorised persons with the approved regulator's regulatory arrangements as specified

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<sup>72</sup> [Vulnerabilities consumers face when using legal services - The Legal Services Board](#)

<sup>73</sup> See, for example, [SRA and LeO research into effectiveness of first tier complaints handling \(2017\)](#), the Bar Standards Board's [Barristers' Complainants Research](#) (2021) and Refugee Action: [Consumer barriers to complaints \(2022\)](#)

in the s112 Requirements. In considering measures to adopt, regulators may wish to consider:

- a) supervisory interventions,
- b) remedial actions, such as requiring training in complaints handling;
- c) thematic or targeted reviews of recurring issues or trends, and implementing measures to mitigate concerns identified;
- d) identifying opportunities for ongoing training and development as part of their approach to ongoing competence; and
- e) promoting best practice in first-tier complaints handling, for example, by developing and giving Guidance and case studies to authorised persons and/or other regulators as appropriate.

This expectation is concerned with how regulators take steps to assure themselves that authorised persons' complaints resolution is effective, efficient and fair.

- 86. The proposals in paragraph 15(iii)(a), (c) and (e) of the draft statement of policy have been developed from statements in the current Guidance.
- 87. The proposals in paragraph 15(iii)(b) and (d) of the draft statement of policy reflect the importance of continuous learning<sup>74</sup> and relate to draft Requirement 17 in the draft Requirements around training to address risks and issues identified through analysis of complaints data.
- 88. The proposals in paragraph 15(viii)(b) and (d) of the draft statement of policy are intended to ensure that regulators carry out their own analysis of whether the data suggests that authorised persons may benefit from training in complaints handling as a result of specific problems identified, or in the interests of ongoing competence more generally.

**Question 14: do you have any comments on draft expectation (viii)?**

## Implementation

- 89. It is proposed that the draft Requirements and draft Guidance replace the current Requirements and current Guidance. We propose that regulators make the necessary changes to their regulatory arrangements within 12 months of publication following this consultation of the final section 112 Requirements, Guidance and statement of policy.

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<sup>74</sup> [Improving service complaints in legal services](#) (2023)

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

## **Equality Impact Assessment**

90. The LSB has given due consideration to its obligations under the Equality Act 2010, including consideration of the public sector equality duty<sup>75</sup>.
91. We consider that our proposals will have a positive impact on legal service users who have protected characteristics and/or are in vulnerable circumstances. For example, many of the proposals in the draft section 112 Requirements are designed to improve accessibility, with particular attention on communication of information clearly and in a range of formats, with specific reference to legal service users with dyslexia or other disabilities, those who may not be able to access information online and/or those who may not be proficient in English.
92. Consumers in vulnerable circumstances or with protected characteristics may be particularly affected by an imbalance of power (real or perceived) between themselves and their legal service provider. The draft Guidance specifically acknowledges the potential for this power imbalance and asks regulators to take steps to mitigate this in their regulatory arrangements for authorised persons. The draft statement of policy includes specific references to regulators paying particular attention to consumers with protected characteristics and/or those in vulnerable circumstances groups in their collection and analysis of data. We do not consider that there is anything in the draft Requirements, draft Guidance or draft statement of policy that will negatively impact these groups.
93. We recognise, however, that there might be certain areas of law or certain types of practice where the impact of these proposals may be greater than in others. We note the recent findings of the literature review into overrepresentation of black and minority ethnic (BAME) solicitors in complaints about potential misconduct made to the SRA<sup>76</sup>. While these findings relate to complaints about conduct, rather than about service, we would welcome comments on whether there is evidence of this being relevant for service complaints, and what the impact of this might be on relevant individuals and groups.

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<sup>75</sup> [Public sector equality duty - GOV.UK \(www.gov.uk\)](https://www.gov.uk/public-sector-equality-duty)

<sup>76</sup> [SRA | Overrepresentation of Black, Asian and minority ethnic solicitors in reports to the SRA: literature review | Solicitors Regulation Authority](#)

94. We would also welcome comments on whether there are any other equality impact issues that we have not considered, or any other evidence that may not be aware of that is relevant to our consideration of equality issues.

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

## Impact Assessment

95. The LSB has considered the likely impact of the proposed draft statement of policy on the regulators, their regulated communities and legal service users.
96. We recognise that the draft section 112 Requirements, Guidance and statement of policy may result in an increased burden on regulators and on authorised persons. We also note, however, that Requirements and Guidance on first-tier complaints already exist, and that much of the draft Requirements reflect those current Requirements and current Guidance. Some of the provisions in the draft section 112 Requirements codify content in the current Guidance and, subject to the outcome of this consultation, will carry greater regulatory weight if implemented. However, in light of the evidence that the current first-tier complaints system is not working as well as it should, we consider that our proposals to give these matters prominence in the draft Requirements are proportionate, targeted and necessary in the public interest and interests of consumers.
97. We also consider that our proposal to present three separate documents (Requirements, Guidance and statement of policy) more clearly articulates for regulators which elements are required and which are advisory, and that the re-articulation of aspects of the current Guidance into a statement of policy strikes an appropriate balance between ensuring that regulators pursue certain high-level outcomes whilst having flexibility, through the expectations, around how they do this.
98. We recognise that the draft Guidance includes a number of specific examples of the ways in which first-tier complaints processes could incorporate some of the key principles around fairness, accessibility and ease of use, which are not present in the current Guidance. We would stress, however, that these are intended to be illustrative rather than prescriptive, and regulators should determine what is appropriate for their own regulated communities.

99. Having carefully considered the likely impact on regulators, their regulated communities and consumers, we consider that the potential increased burden of our proposals will be outweighed by the benefits to consumers, as well as improved public confidence in legal services more generally. We also anticipate that improved first-tier complaints handling, including, where possible, early resolution, will bring business benefits for authorised persons. This is consistent with research conducted by the SRA and LeO, in which 93% of firms reported that there are business benefits from effective complaints handling<sup>77</sup>.
100. We welcome comments on the potential impact of the draft section 112 Requirements, draft Guidance and draft statement of policy, as well as any quantification of the likely costs and anticipated benefits, to further inform our assessment of the regulatory impact of our proposals.

**Question 17: Do you have any comments on the potential impact of the draft Requirements, draft Guidance and draft statement of policy, including the likely costs and anticipated benefits?**

101. We recognise that there is a range of circumstances in which people use legal services, which might present different types and contexts for complaints. For example, some complaints will be made by people exercising a discretionary choice to purchase a legal service, like conveyancing for example. Others might be receiving services through the publicly-funded or third sector parts of the justice system, for example, legal aid users<sup>78</sup> or those using law clinics and other free advice services. There are also legal professionals who offer services free of charge, on a pro bono basis. Our view is that regardless of the type of user, or whether the legal professional is providing the service free of charge, legal service users should be able to expect to receive good quality legal services, and have recourse to make complaints when they are dissatisfied with the service they received. We welcome views on this issue.

**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?**

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<sup>77</sup> [SRA and LeO research into effectiveness of first tier complaints handling \(2017\)](#)

<sup>78</sup> Complaints about legal aid services can be made to the Legal Aid Agency, and escalated to the Parliamentary and Health Service Ombudsman.

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

## **Next Steps**

102. This consultation will close on **Friday 17 November 2023**. Once the consultation has closed, we will consider all feedback received and make any changes as appropriate to the draft Requirements, draft Guidance and draft statement of policy.
103. We will publish our response to the consultation when we issue the final Requirements, Guidance and statement of policy in early 2024.

## **Responding to the consultation**

104. The questions posed in this consultation are listed below for reference:

### **Draft Requirements and draft Guidance:**

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

**Question 2: do you have any comments on draft Paragraphs 7 and the associated draft Guidance?**

**Question 3: do you have any comments on draft Paragraphs 8, 9 and 10 and the associated draft Guidance?**

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

**Question 5: do you have any comments on draft Paragraphs 14 and 15 and the associated draft Guidance?**

**Question 6: do you have any comments on draft Paragraphs 16 and 17 and the associated draft Guidance?**

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

### **Draft statement of policy:**

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

**Question 9: do you have any comments on draft expectations (i) and (ii)?**

**Question 10: do you have any comments on draft expectations (iii) and (iv)?**

**Question 11: do you have any comments on draft expectation (v)?**

**Question 12: do you have any comments on draft expectation (vi)?**

**Question 13: do you have any comments on draft expectation (vii)?**

**Question 14: do you have any comments on draft expectation (viii)?**

**Implementation and impact assessments:**

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

**Question 16: do you have any comments on 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?**

**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?**

**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?**

**Question 19: Do you have any other comments about the draft section 112 Requirements, draft and draft statement of policy?**

105. Any representations should be made to the LSB by 5pm on **Friday 17 November 2023**. Please ensure that responses reach us by the closing date as we cannot guarantee that responses received after this date will be considered. We would prefer to receive responses electronically but hard copy responses by post are also welcome.
106. Responses should be sent to:
- **Email:** [consultations@legalservicesboard.org.uk](mailto:consultations@legalservicesboard.org.uk)



- **Post:** Legal Services Board, 3<sup>rd</sup> Floor, The Rookery, 2 Dyott Street, London, WC1A 1DE

107. We intend to publish all responses to this consultation, with people's names, address and contact details redacted, on our website unless a respondent explicitly requests that a specific part of the response, or its entirety, should be kept confidential. We will process your personal data in accordance with all applicable data protection laws, as explained in our privacy policy. We may be asked to disclose information provided in response to this consultation, including confidential information under the Freedom of Information Act 2000.
108. If you wish to discuss any aspect of this paper or need advice on how to respond to the consultation, please contact the LSB by one of the methods described above.

## Complaints

109. Complaints or queries about the LSB's consultation process should be directed to the Consultation Co-ordinator, at the following address:

Consultation Co-ordinator  
Legal Services Board  
3<sup>rd</sup> Floor, The Rookery  
2 Dyott Street  
London  
WC1A 1DE

or by e-mail to: [consultations@legalservicesboard.org.uk](mailto:consultations@legalservicesboard.org.uk)

## Annex A: Draft section 112 Requirements

### DRAFT

#### Section 112 Requirements for Approved Regulators' Regulatory Arrangements for Authorised Persons' Complaints Procedures on First-tier Complaints

[date] 2023

The Legal Services Board has on [date], specified the following Requirements pursuant to section 112(4) of the Legal Services Act 2007 (c.29).

These Requirements may be cited as the Section 112 Requirements for Approved Regulators' Regulatory Arrangements for Authorised Persons' Complaints Procedures on First-tier Complaints.

The First-tier complaints handling: section 112 requirements for approved regulators published by the Board on 22 July 2016 (Version 2) are hereby revoked.

These Requirements come into effect on [date].

#### A. Definitions

1. The terms in these Requirements have the following meanings: –

**Act** – the Legal Services Act 2007.

**approved regulator** – has the meaning given by section 20(2) of the Act.

**authorised person** – has the meaning given by section 18 of the Act.

**Board** – the Legal Services Board.

**client** – person for whom the authorised person acts, including prospective and former clients. Once a client makes a complaint, they are referred to in these Requirements as the complainant.

**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.

**complainant** – has the meaning given by section 128(3) of the Act, and as prescribed under the scheme rules made by the Office for Legal Complaints under Part 6 of the Act.

**first-tier complaint** – a relevant complaint made by a complainant to an authorised person about the services provided by that authorised person.

**guidance** – the guidance referred to in paragraph 4 of these Requirements, given by the Board under section 162 of the Act in relation to these Requirements, published at the same time as these Requirements, and updated from time to time.

**Legal Ombudsman** – the Chief Ombudsman and assistant ombudsmen appointed under section 122 of the Act.

**Office for Legal Complaints** – a body established under section 114 of the Act to administer the ombudsman scheme.

**ombudsman scheme** – the scheme for the resolution of relevant complaints provided for by Part 6 of the Act.

**regulatory arrangements** – has the meaning given by section 21 of the Act.

**relevant complaint** – a complaint that falls within the meaning given by section 112(3) of the Act.

**Requirements** – these Requirements specified by the Board under section 112(4) of the Act.

**second-tier complaint** – a complaint made to the Legal Ombudsman under the

scheme rules made by the Office for Legal Complaints.

## **B. Application and Guidance**

2. An approved regulator must satisfy these Requirements in their regulatory arrangements making provision pursuant to section 112(1) of the Act: –
  - a) to require each authorised person they authorise to establish and maintain procedures for the resolution of relevant complaints, or
  - b) to require each authorised person they authorise to participate in, or make arrangements to be subject to, such procedures established and maintained by another person, and
  - c) for the enforcement by the approved regulator of paragraph 2(a) and (b).
3. These Requirements are separate to any other obligations an authorised person may have in relation to complaints including for alternative dispute

resolution.

4. In seeking to comply with these Requirements, an approved regulator must have regard to any guidance given by the Board under section 162 of the Act.

### **C. Purpose**

5. An approved regulator must, so far as is reasonably practicable, ensure that their regulatory arrangements making provision for the complaints procedures of authorised persons provide for the effective, efficient, and fair resolution of first-tier complaints.

### **D. Specifications for regulatory arrangements for authorised persons**

6. An approved regulator's regulatory arrangements in paragraph (5) must satisfy the Requirements specified in paragraphs (7) to (18).

#### **Accessibility**

7. An authorised person's complaints procedure for first-tier complaints: –
  - a) enables clients to make a complaint free of charge.
  - b) is prominent and accessible to all their clients.
  - c) explains –
    - (i) how a complaint will be handled by the authorised person,
    - (ii) the steps that will be taken in resolving a complaint, and
    - (iii) the possible outcomes to a complaint, including any options if a complaint is not resolved.
  - d) is effectively communicated to each client in a format or formats tailored to that client's needs.
  - e) makes provision for a client to be able to make a complaint in a way that is reasonable and accessible to the client.
  - f) is sent out in a written document and available internally to all relevant staff.
  - g) is endorsed by the authorised person's senior management who are responsible for its implementation.
  - h) is reviewed and implemented consistently.

#### **Provision of information**

8. An authorised person must inform each client of the matters in paragraphs (9) and (10): –

- a) at the time of engagement on a new matter or the next earliest appropriate opportunity, and
- b) at the conclusion of the matter.

*Right to make a first-tier complaint*

9. A client must be informed: –
- a) about the authorised person's complaints procedure,
  - b) of the client's right to make a complaint to the authorised person about their services (right to make a first-tier complaint),
  - c) of how the client may make a first-tier complaint, and
  - d) that after eight weeks following the making of a first-tier complaint, if the complaint has not been resolved by the authorised person to the complainant's satisfaction, the complainant may have a right to complain to the Legal Ombudsman.

*Right to make a second-tier complaint*

10. A complainant must be informed about the options available if the complainant is dissatisfied with the outcome of their first-tier complaint, including: –
- a) of any rights the complainant may have to make a complaint to the Legal Ombudsman (right to make a second-tier complaint),
  - b) how to make a second-tier complaint,
  - c) the time limit for making a second-tier complaint, and
  - d) full details of how to contact the Legal Ombudsman and information about second-tier complaints that are available on the Ombudsman's website.

**Communication**

11. When a complaint is first notified, an authorised person must provide the complainant :–
- a) with a prompt acknowledgement of receipt of the complaint,
  - b) with clear and comprehensive information about the authorised person's complaints procedure that will apply to their complaint and how it will be handled, including the information specified in paragraphs 9 and 10,
  - c) with a contact that the complainant may contact about their complaint, and
  - d) with a timeline for the resolution of the complaint.
12. An authorised person must give the complainant regular updates on the progress of their complaint, as appropriate and proportionate.

13. An authorised person must communicate with the complainant clearly, using plain and appropriate language.

### **Consumer confidence**

14. An authorised person's complaints procedure for first-tier complaints must provide for a complaint: –
- a) to be assessed competently, diligently, and impartially,
  - b) to be responded to fairly, consistently, and promptly, and
  - c) to be resolved at the earliest possible opportunity.
15. An authorised person must: –
- a) communicate promptly the outcome of the complaint to the complainant, and
  - b) if the outcome includes any offer of a suitable remedy, comply promptly with the remedy if accepted by the complainant.

### **Learning and improvement**

16. An authorised person must: –
- a) keep records of first-tier complaints it has received and measures taken for the resolution of those complaints, and
  - b) analyse the records in sub-paragraph (a) to –
    - (i) identify any risks or issues including systemic issues in how it has assessed and sought to resolve complaints and or in its services, and
    - (ii) address those risks and issues, as proportionate and appropriate.
17. The authorised person must consider and if proportionate, undertake appropriate training and provide appropriate support to address the risks and issues identified in paragraph 16(b).

### **Enforcement**

18. An approved regulator's regulatory arrangements must specify what proportionate and targeted action, if any the approved regulator may take where: –
- a) the approved regulator has reason to believe that there has been non-compliance with their regulatory arrangements making provision for these Requirements, and
  - b) it is in the public interest to take such action.

## **Annex B: Draft section 162 Guidance**

# **DRAFT**

### **Guidance on Section 112 Requirements for Provisions Made by Approved Regulators for First-tier Complaints**

#### **Introduction**

- 1 The Legal Services Board (“LSB”) has specified under section 112 of the Legal Services Act 2007 (“Act”) requirements for provisions made by approved regulators in their regulatory arrangements for the complaints procedures of authorised persons for first-tier complaints (“section 112 Requirements”). First-tier complaints are those made to authorised persons about the legal services they provide.
- 2 This Guidance on the section 112 Requirements (“Guidance”) is given by the LSB under section 162 of the Act. Approved regulators must have regard to this Guidance in seeking to comply with the section 112 Requirements.

#### **Purpose**

- 3 The section 112 Requirements are intended to provide for the effective, efficient and fair resolution of first-tier complaints. They specify that approved regulators must make provision in their regulatory arrangements for each authorised person’s complaints procedure to be accessible, informative, easy to use and fair, provide for learning and improvement and give consumers confidence by putting them at the heart of the resolution of complaints. Approved regulators must also specify in their regulatory arrangements what happens when there is non-compliance with the complaints provisions.

#### **Structure of Guidance**

- 4 The Guidance is divided into four sections (A to D), mirroring each part of the section 112 Requirements. Each section sets out its purpose, and gives guidance on specific provisions where this is needed. The sections are:
  - Section A: Definitions
  - Section B: Application and Guidance
  - Section C: Purpose
  - Section D: Specifications for regulatory arrangements for authorised persons

## **Transitional period**

- 5 The section 112 Requirements come into effect on [date]. Approved regulators will have 12 months from this date to put in place any necessary alterations to their regulatory arrangements to comply with the section 112 Requirements.

## **Section A: Definitions (Paragraph 1)**

- 6 Words defined in paragraph 1 of the section 112 Requirements are referred to in the relevant sections below where applicable. Where words used are defined under the Act, they have the same meaning in the section 112 Requirements.
- 7 The section 112 Requirements apply to “relevant complaints” as defined in section 112(3) of the Act. A relevant complaint means a complaint which relates to an act or omission of an authorised person, and may be made under the Scheme Rules for the Legal Ombudsman, made by the Office for Legal Complaints. For the purposes of this Guidance complaint means “relevant complaint”.
- 8 In this Guidance “client” and the “complainant” have the same meaning as in the section 112 Requirements. A “client” is the person for whom the authorised person acts, and includes prospective<sup>79</sup> and former clients. This encompasses those who can be “complainants”. Once a client makes a complaint, they are referred to in the Section 112 Requirements as the “complainant”. A complainant includes: a client, and a beneficiary of an estate or trust where an authorised person provided services in their capacity as a personal representative or trustee, or provided services to either.<sup>80</sup>
- 9 A first-tier complaint is one that may be made by a complainant to the authorised person about their services. A second-tier complaint is one that may be made by a complainant to the Legal Ombudsman. A complainant may make a second-tier complaint if they are dissatisfied with the outcome of their first-tier complaint, or the authorised person fails to resolve it to the complainant’s satisfaction eight weeks after a complaint is made.

## **Section B: Application and Guidance (Paragraphs 2 to 4)**

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<sup>79</sup> The Legal Services Act 2007 (Legal Complaints) (Parties) Order 2012, SI 2012/3092.

<sup>80</sup> Certain persons who may be clients do not fall within the meaning of complainant including trustees of trusts with asset value of over £1 million and public authorities – see the Scheme Rules and section 128 of the Act.



## **Purpose**

- 10 This section provides that approved regulators must satisfy the section 112 Requirements in their regulatory arrangements making provision for the complaints procedures of authorised persons under section 112(1) of the Act. Approved regulators include the regulatory bodies to whom some approved regulators have delegated their regulatory functions.
- 11 These section 112 Requirements on first-tier complaints are separate to any other obligations an authorised person may have in relation to alternative dispute resolution (Paragraph 3 of the section 112 Requirements). Approved regulators must have regard to this Guidance in seeking to comply with the section 112 Requirements (Paragraph 4).

## **Section C: Purpose (Paragraph 5)**

### **Purpose**

- 12 This section sets out the purpose of the section 112 Requirements, which is to put clients at the heart of first-tier complaints resolution and give them confidence that, if they are dissatisfied with the service they have received, they can easily access effective, efficient and fair resolution from their legal services provider.

## **Section D: Specifications for regulatory arrangements for authorised persons (Paragraphs 6 to 18)**

### **Purpose**

- 13 Section D specifies the Requirements that regulators must make provision for in their regulatory arrangements on authorised persons' complaints procedures covering the following: accessibility, provision of information, communication, consumer confidence, learning and improvement, and enforcement. The regulatory arrangements must require authorised persons to establish and maintain procedures for the resolution of relevant complaints, or to participate in or make arrangements to be subject to procedures established and maintained by another person (section 112(1) of the Act).

### **Accessibility**

- 14 **Paragraph 7 of the section 112 Requirements sets out steps that approved regulators must satisfy in their regulatory arrangements for authorised persons' complaints procedures in respect of accessibility, and how information on the complaints procedure needs to be provided**

**to a client. Paragraph 7 states that an approved regulator's regulatory arrangements must provide that authorised persons' complaints procedures:**

- (i) enable complaints to be made free of charge. It should be made clear that there is no fee for making a complaint, and that the authorised person is not able to charge a fee to investigate and seek to resolve a complaint (Paragraph 7(a));
- (ii) are prominent and accessible to all of their clients (Paragraph 7(b)).  
Complaints' processes should be designed in such a way that they are accessible to all who may need to access them, recognising that clients have different needs and some may be in vulnerable circumstances. This may include (but is not limited to) consideration of persons with dyslexia or other disabilities, those who do not have access to the internet, or who are not proficient in English;
- (iii) set out the steps that will be taken by an authorised person when a complaint is made to them about their services (Paragraph 7(c)). This includes the options for the possible outcomes in resolving a complaint, including what happens when a complaint is not resolved;
- (iv) are effectively communicated to each client in a format tailored to their needs (see also 13 (ii) above and 13 (v) below) (Paragraph 7(d)). This might include ensuring that information about how to make a complaint is made available in a variety of formats as well as in writing, for example via diagrams, short video clips or animations, and via a range of media (e.g., electronically and in hard copy). As a minimum, the LSB expects approved regulators to make provision for complaints information to be available on authorised persons' websites or an equivalent suitable alternative, for example being made readily available at the authorised person's office. Where information about how to make a complaint is displayed on a website, this should be in a prominent location and should not require multiple clicks to access;
- (v) make provision for a client to be able to make a complaint in a way that is reasonable and accessible to them (Paragraph 7(e)). This might include providing for complaints to be made in a range of ways, for example in writing, by telephone or video call. If an audio or video complaint is made, it is advisable that this is recorded in writing. While the final complaint outcome is likely to be in writing, where reasonable and proportionate the option of a telephone or video call should be offered, to communicate the outcome and provide clarification as required.

- 15 Paragraph 7(f) to (h) of the section 112 Requirements make provision for authorised persons to take responsibility for the efficient and effective maintenance and implementation of their complaints procedure, with senior management having overall responsibility, and staff being aware of the procedure.

### **Provision of information - Paragraphs 8 to 10**

- 16 **Paragraphs 8 and 9 of the section 112 Requirements set out what approved regulators must include in their regulatory arrangements for authorised persons' complaints procedures in respect of the information that must be provided about making complaints, how, and when this must be done. Paragraph 10 outlines the information that needs to be provided once a complaint is made.** These provisions are intended ensure that 1) when clients engage with an authorised person, they know how and when to make a complaint, and it is easy for them to do so and 2) once a complaint is made, complainants are informed of the any options available if they are dissatisfied with the outcome.
- 17 Paragraph 8 states that clients must be made aware of the authorised person's complaints procedure more than once, and not just at the initial engagement stage, at which time they may be absorbing a range of other information. A client might only consider making a complaint at a later stage in their engagement with the authorised person, and it is at those later stages that information about the complaints procedure may be more readily received.
- 18 Paragraph 9 states that clients must be informed of their right to make a first-tier complaint. In order to bridge the gap that may arise between the information communicated to a client and what the client actually understands, it may be useful to consider additional vehicles for communicating the information, for example a separate leaflet or fact sheet, and to use standardised text to ensure consistency across the regulated community.
- 19 Requirement 10 applies once a complaint is made. It states that complainants must be informed of the available options should they be dissatisfied with the outcome of their complaint, including any right to make a complaint to the Legal Ombudsman.
- 20 When informing clients and complainants about their right to make a first-tier complaint and a second-tier complaint, it can be helpful to signpost them to independent third-party organisations, such as the Citizens' Advice Bureau or Resolver, which might be able to assist them in making complaints.

### **Communication with complainants – Paragraphs 11 to 13**

- 21     **Paragraphs 11 to 13 of the section 112 Requirements set out the matters that approved regulators must satisfy in their regulatory arrangements for authorised persons' complaints procedures in respect of information that must be provided to complainants and how this is communicated. Paragraph 11 specifies that an approved regulator's regulatory arrangements must provide that authorised persons' complaints procedures:**
- provide the complainant with a prompt acknowledgement of receipt of the complaint (Paragraph 11(a)). This is important as it informs the complainant that their complaint has been received and is being dealt with. The acknowledgement, which can be automated, should normally be made within 5 working days;
  - provide the complainant with clear and comprehensive information about the procedure that will apply to their complaint and how it will be handled (Paragraph 11(b)). It can be helpful for the authorised person to liaise with the complainant at the outset of the complaint to establish what the complaint is about, what resolution the complainant is hoping for and the timescale for investigating the complaint. Establishing these parameters can help the complainant and the authorised person to come to a shared understanding of the nature of the complaint, and whether in principle the resolution sought is within the power of the authorised person to grant. This approach can reduce the risk of misunderstandings between the parties and can help to manage the complainant's expectations as to what is possible in terms of outcomes from their complaint, and when they are likely to be informed of the outcome;
  - provide the complainant with a contact in relation to their complaint (Paragraph 11(c)). Ideally this is a named contact, as this is important for consumer confidence in the procedure, but this may not be possible for certain firms;
  - provide the complainant with a timeline for the resolution of the complaint (Paragraph 11(d)). This is to ensure that the complainant is proactively provided with information about what to expect and when. The timeline should accord with the eight-week timescale for resolution specified in Paragraph 9(d).
- 22     Paragraph 12 provides that the complainant must be provided with regular updates on the progress of their complaint as appropriate and proportionate. Authorised persons should be proactive in communicating with a complainant

during the investigation of their complaint and update the complainant if there is delay or if more information is required before further progress can be made.

- 23 Paragraph 13 provides that communication with the complainant must be in plain and appropriate language. The tone used by authorised persons in correspondence with complainants should be empathetic, and offer an apology if appropriate. Authorised persons have specialist legal knowledge, and are in charge of the complaints process at first-tier, which can create a perception on the part of the complainant that there is an imbalance of power. This perception may be mitigated by using language that is clear, appropriate, and written in plain English.

### **Consumer confidence – Paragraphs 14 and 15**

- 24 **Paragraphs 14 and 15 set out the requirements that approved regulators must satisfy in their regulatory arrangements for authorised persons' complaints procedures in respect of how an authorised person should assess, respond to, and resolve a complaint.**
- 25 These provisions in particular aim to ensure legal services users and the public have confidence in the complaints procedure for legal services. Complaints should be assessed competently, diligently and impartially; and responded to fairly, consistently and promptly. Complaints should be resolved at the earliest opportunity (Paragraph 14), with the outcome communicated promptly to the complainant, and any remedies accepted by the complainant swiftly complied with (Paragraph 15).
- 26 In demonstrating to a complainant that their complaint will be dealt with appropriately and promptly, in accordance with Paragraph 14, an authorised person may choose to give explicit reassurance to the complainant that their complaint will be taken seriously, and that the person investigating the complaint has no prior involvement in the complainant's case, where reasonable and proportionate. Authorised persons may also inform the complainant that they will not be disadvantaged as a result of making a complaint.

### **Learning and improvement – Paragraphs 16 and 17**

- 27 **Paragraphs 16 and 17 set out the requirements that approved regulators must satisfy in their regulatory arrangements for authorised persons' complaints procedures in respect of the records that authorised persons must keep of complaints, the measures they have taken to resolve these, and of the analysis they should undertake to identify and address any risks and issues arising.**

- 28 These provisions recognise that first-tier complaints have the potential to be a valuable source of information for authorised persons. The aim is for authorised persons to harness data that is beneficial to improving complaints handling and, more widely, benefit their business. Complaints can reveal areas of strength and weakness in an authorised person's service, and may additionally reveal recurring trends or systemic issues which the authorised person should take steps to address, as practicable and proportionate. If authorised persons make it clear to clients that they welcome feedback, this may instil greater confidence among legal services users that feedback and complaints will be taken seriously. Retention of complaints records is subject to the applicable approved regulator's record-keeping requirements.
- 29 It may be appropriate for authorised persons to provide and undertake training in response to issues identified through the analysis of information arising from first tier complaints.

#### **Enforcement – Paragraph 18**

- 30 **Paragraph 18 provides that approved regulators' regulatory arrangements must specify proportionate and targeted action an approved regulator may take for non-compliance with their regulatory arrangements.**
- 31 An authorised person who fails to comply with the regulatory arrangements making provision for complaints procedures may, at the approved regulator's discretion, and in accordance with their relevant regulatory arrangements, be subject to enforcement action if the approved regulator considers it to be targeted, proportionate and in the public interest.

## **Annex C: Draft statement of policy**

### **DRAFT statement of policy – first tier complaints**

Issued under section 49 of the Legal Services Act 2007

[DATE]

#### **Purpose of this document**

1. This statement of policy is issued under section 49(2) of the Legal Services Act 2007 (Act) and in preparing it the Legal Services Board (LSB) has had regard to the principle that its principal role is the oversight of approved regulators under section 49(3) of the Act.
2. The purpose of this statement of policy is to set outcomes and expectations in the public interest and interests of consumers for the approved regulators and the regulatory bodies to whom some have delegated their regulatory functions (“regulators”).
3. In discharging their regulatory functions, regulators must take proportionate and targeted measures to, so far as reasonably practicable, ensure the ongoing effective, efficient and fair resolution of first-tier complaints by authorised persons. The outcomes and expectations in this statement of policy are in addition to regulators’ obligation to satisfy the Requirements for regulators’ regulatory arrangements for authorised persons’ complaints procedures, specified by the LSB under section 112 of the Act (section 112 Requirements) (and accompanying Guidance).
4. The LSB will have regard to regulators’ compliance with this statement of policy in discharging its oversight functions, including in its assessment of regulators under the regulatory performance assessment framework.
5. In discharging its functions, the LSB and regulators must, so far as is reasonably practicable, each act in a way which is compatible with the regulatory objectives and which each consider most appropriate for meeting those objectives. This statement of policy is relevant to all the regulatory objectives in section 1 of the Act, and in particular the following:
  - protecting and promoting the public interest
  - protecting and promoting the interests of consumers
  - improving access to justice
  - increasing public understanding of the citizen's legal rights and duties
  - promoting and maintaining adherence to the professional principles.
6. In developing this statement of policy, the LSB has had regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent, and targeted only at cases in which

action is needed, under section 3(3)(a) of the Act. In pursuing the outcomes and expectations, regulators should have regard to these same principles.

7. The provisions of the Act, and any rules and requirements made under the Act, will prevail over this statement of policy.
8. The LSB may review this statement of policy and issue a revised version if its policy changes.
9. The LSB recognises that regulators regulate different professions, reserved legal activities and authorised persons (including both individuals and entities), and, as a consequence, may adopt different approaches to pursue the outcomes and expectations.

### **LSB statement of policy – first tier complaints**

10. Legal services users, and the public more broadly, should have confidence that they can access good quality legal services, with effective avenues to raise concerns and have them resolved and if not, have access to the next second-tier complaint stage for resolution.
11. Regulators have a responsibility to ensure that authorised persons have procedures for the effective, efficient and fair investigation and resolution of complaints in the public interest and in the interests of consumers. Beyond compliance with the section 112 Requirements and accompanying Guidance, which focus on authorised persons' complaints procedures, regulators should take steps to identify and address issues and good practice arising from complaints and feedback from users of legal services. This learning should be used to embed a culture of continuous improvement, where a focus on the root cause of issues and the dissemination of good practice raises standards in legal services.
12. This will have benefits for the wider complaint resolution system, including fewer second-tier complaints being made to the Legal Ombudsman (LeO) and therein will support a more efficient, effective and fair ombudsman service. This will promote an overall increase in public confidence in access to justice and redress in legal services.
13. The LSB will have regard to the outcomes and expectations set out below in discharging its functions set out in paragraph 4.

### **Outcomes**

14. Regulators must pursue the following outcomes:



- (i) deliver the best possible complaints resolution system for legal services users by using information and intelligence gathered from first-tier complaints and second-tier complaints;
- (ii) a culture of continuous improvement and learning from complaints and feedback to improve legal services.

## **Expectations**

15. In pursuing these outcomes, regulators should use intelligence gathered from first and second tier complaints to:

- (i) identify any thematic areas of weakness in authorised persons' handling of first tier complaints, and take action to address these;
- (ii) identify any authorised persons with disproportionately and consistently high numbers of first tier complaints, or any authorised persons with disproportionately and consistently high numbers of premature complaints being made to LeO<sup>81</sup> and take appropriate and effective action to address these;
- (iii) identify any recurring issues or trends arising in first tier complaints from which authorised persons, other regulators and others in the legal services sector can learn lessons;
- (iv) identify any areas of good practice and collaborate in sharing these within the authorised persons, other regulators and others in the legal services sector. This might include examples of good practice from other sectors;
- (v) collect and publish data about the performance of authorised persons in resolving first tier complaints within eight weeks, in order to ensure increased transparency about performance levels;
- (vi) give particular consideration to the experiences of legal services users with protected characteristics and/or who are in vulnerable circumstances;

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<sup>81</sup> A premature complaint is a complaint that is made to the Legal Ombudsman (LeO) before the first-tier process has been exhausted.

- (vii) consider how authorised persons collect and analyse their own first tier complaints data, in line with the Requirements specified by the LSB under section 112(2) of the Act and how they use this to improve the service they provide;
- (viii) put in place proportionate and targeted measures to facilitate compliance by authorised persons with the regulator's regulatory arrangements on complaints procedures that are specified in the section 112 Requirements. In considering measures to adopt, regulators may wish to consider:
  - a) supervisory interventions,
  - b) remedial actions, such as requiring training in complaints handling;
  - c) thematic or targeted reviews of recurring issues or trends, and implementing measures to mitigate concerns identified;
  - d) identifying opportunities for ongoing training and development as part of their approach to ongoing competence; and
  - e) promoting best practice in first tier complaints handling, for example, by developing and giving guidance and case studies to authorised persons and/or other regulators as appropriate.

16. In pursuing the outcomes, regulators should take account of the better regulation principles of being proportionate, consistent, accountable, transparent and targeted.