

## BY EMAIL

Legal Services Board

[consultations@legalservicesboard.org.uk](mailto:consultations@legalservicesboard.org.uk)

**Date:** 15 November 2023

## **BAR STANDARDS BOARD RESPONSE: LEGAL SERVICES BOARD CONSULTATION ON FIRST-TIER COMPLAINTS**

### **Overview**

1. The Bar Standards Board (BSB) welcomes the opportunity to comment on the Legal Services Board's (LSB) proposals on complaints handling.<sup>1</sup> We appreciate the focus the LSB has given to fostering changes in first-tier complaints processes for consumers of legal services, to ensure that they are empowered in bringing forward and resolving their complaints.

2. BSB commissioned research found that the Bar is performing well in terms of consumer satisfaction, with consumers' experience of using a barrister largely positive.<sup>2</sup> However, where things do go wrong, consumers should know how to complain and fully understand their rights, particularly relating to issues around service quality as opposed to dissatisfaction with case outcomes.

3. We would like to point out that a distinction needs to be made between the role of chambers and barristers in relation to complaints. Chambers have an important role to play in the monitoring of complaints. However, in the context of the Bar specifically, it may also be useful to note that customer satisfaction and complaints levels regarding individual self-employed barristers should be distinguishable from other self-employed barristers, or the chambers they work at.

### **Draft section 112 Requirements and section 162 Guidance**

4. It is important that legal service providers recognise and remove any barriers to their clients from voicing their concerns and dissatisfaction. More broadly, consumers should feel that their voice is heard, and their complaints and feedback handled fairly, seriously, efficiently and at the appropriate stages.

---

<sup>1</sup> LSB, '[Consultation on first-tier complaints](#)', 24 August 2023

<sup>2</sup> IRN Research, '[Barristers' Client Research – Expectation and Understanding](#)', 2021.

5. The BSB is committed to improving outcomes for consumers of legal services – our transparency rules already go some way to ensuring that information about how to complain is both prominent and accessible. We therefore welcome the LSB’s proposals to improve the information and communication available to consumers on their rights to complain, and accessibility of that information.
6. The codification of several principles and previous guidance into the proposed section 112 requirements is particularly beneficial. This includes benefits for our regulatory efforts, and in ensuring that consumers fully recognise their complaint rights.

#### Draft Statement of Policy

7. The BSB also broadly agrees with the aim and ambitions of the draft statement of policy. The BSB already carries out several activities through monitoring, supervision, and enforcement.
8. We welcome the high-level nature of the statement. It is important that regulators have flexibility and discretion in pursuing the outcomes, particularly around data collection and publication. This will ensure that regulators are able respond to the unique needs of consumers and legal service providers in their sector in a fair and proportionate way.
9. Furthermore, as the LSB has stated, these are step-changes which will require time for implementation and familiarisation in the way regulators and legal services sectors operate in relation to complaints. We therefore think a 12-month implementation period will be challenging. To allow regulators sufficient time to develop their regulatory responses in a tailored approach that works best for consumers and providers in their respective sectors, we ask that the LSB considers a flexible implementation period.

#### **BSB Response to Individual Consultation Questions**

10. We have also provided responses to relevant individual consultation questions below.

##### **A. Draft Requirements and draft Guidance**

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

11. The BSB broadly welcomes the draft requirements and guidance as set out in paragraphs 1 - 6. Any complaints process should seek to improve outcome for consumers. As such it is welcome that the draft section 112 requirements clarify the overall purpose that clients should be put at the heart of first-tier complaints resolution, and that they have confidence in the process.

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

12. The BSB welcomes these provisions – it is important and crucial that prominence and accessibility should underpin all complaints processes.

13. We agree that it is helpful to clarify that consumers can make a complaint free of charge, as set out in the proposed paragraph 7(a) of the draft Requirements. Whilst the BSB guidance on first-tier complaints does note that barristers should not charge, it is helpful to codify this requirement, providing consumers the reassurance they need and removing this as a barrier to progressing complaints.

14. We also agree that requirements to ensure that complaints processes are prominent, accessible, and tailored to the client’s needs are beneficial. Such information should be available to consumers when making an enquiry, and not just at the point of instruction. In recognition of this, the BSB’s existing transparency rules require authorised persons and entities to provide the required complaints information on their websites, which is accessible, prominent, and available in alternative formats.

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

15. In relation to the draft paragraph 8 provisions, we agree that it would be effective to give consumers information about their right to complain at later intervals, in addition to the existing requirement that this information is provided at instruction or at the next appropriate stage.

16. During the initial stages of their matter, consumers will already be digesting large amounts of material and may not pay particular attention to information on complaints. We agree a further prompt at the conclusion of their matter will be beneficial and increase awareness.

17. Whilst we welcome the guidance in relation to signposting – we would suggest that the LSB consider the resource implications for independent third-party organisations before formalising the proposed text at paragraph 20 of the draft section 162 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?***

18. The BSB welcomes the draft requirements at paragraphs 11 - 15 and the associated guidance. These provisions are helpful in ensuring that consumers have the confidence to complain, and that their complaint will be taken seriously and fairly.

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

19. The BSB welcomes these new provisions – whilst they largely reflect our existing rules and guidance, we particularly welcome the new proposals that providers also factor in risk when analysing complaints data.

20. Furthermore, as part of the BSB’s Assuring Competence Programme, we plan to encourage barristers and chambers to reflect on and learn from feedback.

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

21. As these provisions reflect our existing practice and commitment to take enforcement action for non-compliance of complaints rules, we do not have further comments at this stage.

**B. 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)?***

22. The BSB is supportive of the principles and rationale behind the draft policy statement and its proposed outcomes.

23. Consumers of legal services should be aware of their rights to raise complaints, have the confidence that their feedback and grievances will be handled diligently and competently, and feel that their points have been considered seriously. We particularly welcome the expectation that data collection and analysis also looks at the experience of vulnerable consumers.

24. There is much value in developing a wider feedback mechanism and a culture of continuous improvement and learning through data and intelligence to achieve the draft policy statement outcomes. We welcome the high-level and flexible approach of the draft policy statement. We ask to see this position retained in any final version, and that the statement has a high degree of flexibility for regulators in pursuing the expectations.

25. This is to ensure that the respective regulatory responses and implementation of the outcomes and expectations are best tailored for the needs of consumers, and authorised

persons and entities within their remit. Regulatory responses will also need to be proportionate, with the benefits outweighing any potential costs.

26. At the BSB, we will need to consider the best approach to collecting data and gathering intelligence to meet the policy statement’s outcomes. The size of the Bar, and that fact that it is largely a referral profession, means that the level of complaints will naturally be low, compared to other larger legal sectors. Analysis of data from the BSB’s 2020/21 Regulatory Return showed that whilst most respondents were compliant with complaints and transparency rules, the number of complaints received was low.

27. There are also relatively low complaints levels at the second tier. Legal Ombudsman data showed that they had accepted 174 cases in 2021/2022 for entities and individuals regulated by the BSB, compared with 4,670 cases relating to organisations/individuals regulated by the SRA.<sup>3</sup> Out of the circa 17,000 practising barristers, this represents roughly a 1% second-tier complaints level, compared with around 3% of circa 165,000 practising solicitors.<sup>4</sup>

28. As such, we will need to tailor our approach, including the frequency and way we collect data to yield meaningful information for analysis of trends and risks. For instance, the BSB would likely not always seek to review the recurring issues or trends found in first-tier complaints in isolation but consider them within the broader context of its data and intelligence. This would allow a more detailed analysis and, consequently, develop regulatory responses that are more likely to address the root causes of trends found in the first-tier complaints data.

29. In relation to the collection and publication of first tier complaints data regarding authorised persons specifically (expectation v), the BSB will likely need to give some thought to whether – and how – we might distinguish between complaints made on the one hand, and complaints upheld on the other. The BSB is in favour increased transparency; for instance, the BSB’s online Barristers’ Register already publishes upheld disciplinary findings regarding individual barristers.

30. Overall, we welcome the policy statement, as most of it already reflects the work of the BSB in monitoring and supervising the sector and taking necessary action to address shortcomings.

---

<sup>3</sup> [Legal Ombudsman](#), Retrieved 11 October 2023.

<sup>44</sup> These are very high-level calculations intended to show basic comparison. Figures taken from the SRA: [https://www.sra.org.uk/sra/research-publications/regulated-community-statistics/data/population\\_solicitors/](https://www.sra.org.uk/sra/research-publications/regulated-community-statistics/data/population_solicitors/), and from the BSB: <https://www.barstandardsboard.org.uk/news-publications/research-and-statistics/statistics-about-the-bar/practising-barristers.html>.

### C. Implementation and impact assessments

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

31. As the LSB notes, the proposals to strengthen the first-tier complaints process for consumers is a step-change, with new expectations on legal service regulators and providers. The draft policy statement, whilst welcome, potentially brings in several significant changes which need implementation by the Bar and the BSB. Chambers will also need time and resources to organise themselves to collect data in new formats, and to make that data available to the BSB.

32. A 12-month implementation period would therefore cause potential challenges, particularly around the expectations to collect and publish data as set out in the policy statement.

33. The BSB will need time to carefully consider the data that should be collected to best deliver the outcomes set out in the draft policy statement. Time will be needed to design and develop the relevant IT systems and issue potential training and guidance for BSB staff and for the profession.

34. The BSB will also need to potentially consult on the draft new LSB requirements and guidance on complaints and make the necessary BSB Handbook changes. A 12-months implementation period would also be challenging to implement these changes.

35. We would therefore ask that the LSB gives regulators flexibility in implementing these changes. Each legal services regulator will likely take a tailored approach to meeting the objectives and outcomes of the policy statements.

***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?***

36. We would suggest that the LSB considers the wider impacts of the new rules, guidance, and policy statement on barristers with protected characteristics and those from ethnic minority backgrounds.

37. The BSB's latest [consultation on the regulation of chambers](#) provides a useful breakdown of the barrister population's equality data by specialism and location. This is likely to help the LSB with any further analysis.

***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?***

38. We are of the view that the largest impact in terms of costs is likely to stem from the draft policy statement. The requirement for legal service providers to provide complaints information to regulators may incur new setup costs. However, the BSB cannot quantify the full costs at this stage, as we will need to consider the best approach to collecting and analysing data, which will influence the cost levels that are yet to be determined.

39. To help regulators and the providers minimise costs, it may be helpful for the LSB to issue high-level guidance on the formats and types of complaints data that regulators should collect to achieve the outcomes of the policy statement. We ask that any such guidance provide flexibility and discretion to regulators.

***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?***

40. In terms of expectations, we think that there should be a degree of uniformity on legal service providers, with some flexibility and variance. A completely prescriptive approach could throw up unexpected barriers to consumers.

41. A baseline approach to complaints processes can help foster familiarity for consumers. Additionally, regulators and providers should have a degree of discretion and flexibility to tailor their processes to best meet their needs of clients in their sectors. For instance, in the Bar, the clients of direct access barristers will have different information needs compared to referral clients – who may need better signposting and clearer information, as they will not have a solicitor to provide initial information.

42. The BSB may also want to consider the role of chambers in the complaints process and whether they should have additional obligations in relation to, for instance, seeking feedback. However, we would not want the performance and customer satisfaction levels of a barrister being reflected at a chambers level. Flexibility and discretion would allow such considerations.

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

43. We do not have any further comments.