



First-tier complaints

A response to the LSB's consultation from the Council for Licensed Conveyancers

Introduction

The CLC welcomes the opportunity to comment on the LSB's proposals in relation to the framework for the front-line regulators' oversight of first-tier complaints.

The CLC's Complaints Code and associated Guidance is already closely aligned with the proposals set out by the Legal Services Board for consultation including, very importantly, the requirement to be open and clear about complaints procedures to ensure that clients know how to access them.

The existence of a compliant policy for handling first tier complaints and its effective operation are reviewed by the CLC during face-to-face inspections of firms, which reach a significant proportion of CLC-regulated firms each year. Any non-compliance that is found must be remedied within a short, agreed timeframe and maintenance is monitored.

Securing compliance

In 2022, the CLC's Independent Adjudication Panel made a disciplinary finding against an entity and its principals relating to failings in relation to the Complaints Code. Disciplinary action is one tool the CLC uses to improve compliance in this area alongside guidance and training.

In addition, two years ago, the CLC introduced a 'polluter-pays' element to the collection of funds from the regulated community to meet the costs of the Office for Legal Complaints (OLC). All regulated entities pay an availability fee, based on their turnover. Entities that generate a disproportionate number of complaints to the CLC in relation to their size pay an additional usage fee. The CLC introduced this as an incentive to focus on improving complaints handling practice at first tier for those firms whose complaints handling practice does not meet the expectations of their clients, as evidenced by the high numbers of referrals to the OLC.

The evidence on CLC-regulated entities complaints handling

The consultation document notes that in around one-quarter of cases of all cases investigated by the Legal Ombudsman (LeO) are viewed as not having been handled adequately at first tier. This might indicate that LeO could winnow out more of the 75% that are found to have been handled

adequately at first tier. We would expect a high number of referrals to LeO to result in a finding that the original complaint was not correctly handled if referrals to it and/or cases accepted for investigation were skewed towards meritorious cases, as you would hope to be the tendency.

Looking at the data for CLC-regulated practices, in the last two full years of 21/22 and 22/23, the number of complaints received went up considerably compared to previous years, as did the number of enquiries closed before being accepted. At the same time, there has been very significant growth in the numbers of complaints dismissed because an Ombudsman determined that a reasonable offer had been declined. These now make up 77% of Ombudsman decisions on CLC cases. As mentioned above, this may indicate that the LeO system is taking in too many complaints that require very little consideration – because the time elapsed on most of them is recorded as 0 (or even negative) days. We are seeking clarification on the meaning of those figures.

The number of Ombudsman Final Decisions has decreased marginally, and the number of practices being charged a case fee is decreasing. At the same time, the number of cases with agreed outcomes seems to be trending downwards.

Alongside that, the number of remedies requiring zero additional payment to complainants is decreasing.

Taken together, this seems to indicate improving complaints handling practice at first tier despite increasing numbers of cases being accepted by LeO.

We note the LSCP's finding of 'silent sufferers', who do not bring forward complaints because they are not aware of how to complain. The CLC will consider what more can be done to ensure that they are informed of their right to complain and how to go about it at key points in the delivery of different legal services.

(We also know that, not specifically in relation to CLC practices, LeO is being approached by growing numbers of consumers who have not been through the first tier process. This may be because they are seeking faster outcomes to their transaction or could be driven by frustration at delays in registering title at HM Land Registry. It may also be that they are not properly aware of the first tier process. This range of explanations points to a need for more and more granular data from LeO to drive better insight.)

The current profile of second tier complaints in relation to transactions running into the hundreds of thousands each year indicates that more could be done to ensure that clients are satisfied at first tier, but does not seem to indicate that there are systemic failings in first tier complaints handling across the regulated community, although there are pockets of poor practice within particular regulated entities.

In 2020, the OLC ran a workshop, at the CLC's request, for a small group of entities with disproportionately high second tier referrals. It was notable that, in each case, it seemed that the individual in the organisation who was leading on complaints handling found it difficult to approach the task dispassionately and inclined to try to defend their firm's actions rather than review the case objectively. This is an issue that we will be taking into account as we review the CLC's rules and guidance in detail against the LSB's proposals.

The LSB's proposed approach

Given the narrow gap between the CLC's current arrangements and these proposals, we question whether creating a more rigid framework of rules to govern how the different regulators approach the oversight of complaints handling is a proportionate step at this time.

We consider that the introduction of rules restricts the leeway available to different regulators to take approaches that are correct and proportionate in the interests of the clients of those they regulate. Diversity of approach is a significant benefit of the Legal Services Act 2007 Framework and can provide useful insights from which all regulators can learn as well as ensuring a tailoring of front-line regulation to risk and to consumers arising from particular legal services.

The CLC has no comments on the details of the proposed rules and guidance. As noted above, the CLC's current arrangements are already closely aligned with them and will be reviewed in detail for compliance with the LSB's final approach.