

Research Specification: understanding consumer experience of first tier complaints

Purpose

To gain an understanding of consumers' experience of first-tier complaints handling by approved persons. This includes:

- a. The degree to which approved persons are providing clients with the requisite information about their rights of complaint at the appropriate intervals (the outcomes that the LSB Signposting requirements seeks to achieve)¹ and
- b. How closely consumers' experience of first-tier complaints handling (FTCH) reflects the outcomes that consumers should reasonably be able to expect from FTCH (see LSB Guidance on first-tier complaints handling)²

Background

A key objective of regulatory reform is to modernise the legal services market in the interests of consumers, enhancing quality, ensuring value for money and improving access to justice across England and Wales. The LSB will achieve this pursuing its regulatory objectives and providing regulatory oversight for the ten approved regulators³.

The LSB was established by the Legal Services Act 2007 (the Act), following concerns that existing regulatory structures failed to adequately represent consumer interests. Complaints were a specific area of concern.

Concerns were raised before the introduction of the Act both about the treatment of clients making an initial complaint to a lawyer and the handling of the complaint by the professional bodies should this first-tier complaint handling be considered unsatisfactory by the client. It is particularly important to our regulatory oversight of complaints handling that where approved persons are handling complaints about themselves or their firm, consumers' interests are protected and the process itself is effective.

Section 112 of the Act provides the LSB with a specific role in ensuring that approved regulators are effectively regulating first-tier complaints handling by approved persons. Section 112(1) of the Act specifies that the regulatory arrangements of an approved regulator must make provision requiring each relevant authorised person to establish and maintain procedures for the resolution of

¹http://www.legalservicesboard.org.uk/Projects/pdf/10_05_24_lsb_signposting_requirement_and_guidance_Decision_document.pdf

² Ibid

³ The Law Society, General Council of the Bar, Council for Licensed Conveyancers, The Institute of Legal Executives, The Chartered Institute of Patent Attorneys, The Institute of Trade Mark Attorneys, Association of Law Costs Draftsmen, Master of the Faculties, Association of Chartered and Certified Accountants, Institute of Chartered Accountants in Scotland.

complaints. We have published guidance (May 2010) that specifies the outcomes for consumers we expect when regulating first-tier complaints⁴.

Section 112(2) of the Act also confers discretion on the LSB to specify requirements that approved regulators must include in their regulatory arrangements in relation to the complaints procedures of Authorised Persons. Authorised persons are required to make it clear to consumers that they have a right to complain, how to, to whom and when, including the right to complain to the Legal Ombudsman. This signposting requirement was established by the LSB in May 2010 and implemented by approved regulators in October 2010.

The Act also required the establishment of an Ombudsman scheme to be the single complaint-handling body for legal services. This scheme is called the Legal Ombudsman scheme, administered by the Office for Legal Complaints. The Legal Ombudsman will act as a single-point-of-entry for legal services consumers who remain dissatisfied after complaining to their provider. The Legal Ombudsman will handle all second-tier service complaints and refer any conduct complaints to approved regulators. Before a complaint can be considered by the Legal Ombudsman, the Scheme Rules require that a dissatisfied consumer must have already complained to their legal service provider, typically the firm or chamber, and been through their in-house complaints procedures. If consumers remain dissatisfied, or the provider has not responded within the eight week requirement set by the Legal Ombudsman, then they are able to progress to the second-tier complaints handling system; the Legal Ombudsman.

Currently, no single piece of research data provides a comprehensive benchmark of consumer attitudes to and experiences of first-tier complaints handling. The Ministry of Justice's (2010)⁵ omnibus survey gives an estimate of the proportion of private users of legal services who are dissatisfied with their legal service. Around 10% of users whose matters had ended experienced a problem or issue with their legal service that they were unhappy about. Only around 4% of users whose matters had ended felt like making a complaint and 2% of users whose matters had ended did complain. This shows that around 80% of users dissatisfied with their legal service did not complain. Similar levels of dissatisfaction and inaction were found in the SRA's consumer research; 83% of the general public who have used a solicitor in the past five years are satisfied with their performance. However, of those who were dissatisfied, 37% of the general public took no action to address their discontent⁶. The high proportion of users dissatisfied with their service failing to complain may simply reflect the fact that many do not know how to go about making a complaint⁷.

The LSB is interested to understand more about consumers' experience of first-tier complaint handling so it can identify what, if anything, still needs to be done by approved regulators.

⁴ Refer to footnote 1

⁵ Ministry of Justice (2010) Baseline survey to assess the impact of legal services reform

⁶ ComRes (2009) Consumer research study 2008: A survey of public attitudes towards solicitors conducted on behalf of the Solicitors Regulation Authority

⁷ Legal Services Board (2009) Consumer research to understand the needs and attitudes of consumers of legal services. You Gov

http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/consumer_research.htm

Aims and Objectives

An important objective of this research is to benchmark the effectiveness of the first-tier complaints-handling processes currently in place. ‘Effectiveness’ may refer to timeliness, quality and consumer satisfaction, supported by the LSB’s expectations of approved regulators when regulating first-tier complaints⁸. This benchmark will enable the LSB to measure the impact the reform of the legal market has on complaints handling, including the impact of the Signposting requirements introduced by the LSB and whether the outcomes that consumers should reasonably be able to expect from effective complaints handling, set out in the LSB Guidance, are being met.

We have identified six types of consumers, according to their use of legal services within the last two or three years, a number of which we are interested in:

- Type 1: Non-users of legal services
- Type 2: Users of legal services and satisfied with service
- Type 3: Users of legal services, dissatisfied with service but did not, or are not planning on, progressing to first-tier complaints
- Type 4: Users of legal services, dissatisfied with service, progress to first-tier complaints and are satisfied with outcome
- Type 5: Users of legal services, dissatisfied with service, progress to first tier complaints, remain dissatisfied but did not, and are not planning on, progressing to second tier complaints
- Type 6: Users of legal services, dissatisfied with service, progress to first tier complaints, remain dissatisfied and progressed to second tier complaints

The LSB is interested in types 3, 4, 5 and 6 consumers. We would like to know the following:

- Type 3 – the reason for their inaction. The LSB is interested in whether this was due to lack of awareness of the complaints procedure, the belief that it would not make a difference, was not worth complaining about, the complaints process would be too onerous or consumer anxiety about the complaints procedure, or other reasons.
- Type 4 – the outcome of their complaints procedure, their experience of the complaints-handling process (according to the requirements set out in the LSB Guidance), their awareness of the complaints procedure prior to complaining, i.e. did they seek information on the complaints handling process or were they supplied this when they purchased their service, the average response time for their complaint.
- Type 5 – the outcome of their complaints procedure, their experience of the complaints-handling process, their awareness of the complaints process prior to complaining, the average response time for their complaint (including whether this was within the eight week response requirement), their awareness of the Legal Ombudsman, their reasons for not proceeding to second-tier complaints (e.g. if they believed it would be too time consuming) or whether they intend to make a second-tier complaint in the near future
- Type 6 – the outcome of their complaints procedure, their experience of the complaints-handling process, their awareness of the complaints process prior to complaining, the average response time for their complaint (including whether this was within the eight week

⁸ Refer to footnote 1

response requirement), how they were made aware of the Legal Ombudsman, the outcome of their complaint.

We are interested in gathering further, qualitative, information on type 5 and type 6 consumers. The LSB would like to explore the causes of their remaining dissatisfaction and their experiences of the complaints-handling process. Such findings will allow the LSB to improve consumer experience of legal services, by identifying factors preventing effective redress when things go wrong. The researcher should consider the appropriate method to collate this qualitative data, including overcoming the challenges created by the geographical spread of types 5 and 6 consumers and identifying a reliable participating sample from the small target sample.

To gain an understanding of consumers' experience of and attitudes to complaints, the research should also explore the following of all consumers:

- The reason for their dissatisfaction with their service, the cause of their complaint and the person this was about, if relevant, e.g. a barrister or solicitor, or whether the issue was caused by a qualified person working on the file or the unqualified assistants, though consumers may not know this.
- The type of legal service originally provided

The above two questions will enable the LSB to understand the cause of complaints and look for trends, for example if more complaints are happening in a certain area of law.

Issues and scope

The research should split consumers by age, gender, ethnicity, income and whether they have a disability, to assess what type of individuals are making, and not making, complaints and what the outcome is according to demographic profile. This will enable us to assess whether there are particular areas of service that cause a problem and different satisfaction levels for different diverse groups. The researcher may also be able to assess the difference between urban and rural consumers, and Welsh and English consumers, if the sample allows them to.

The research should also consider how the legal service was funded; 78% of users of legal services have been found to pay for their matter themselves or with the help of family and friends, 6% have their service paid through legal aid, 5% through insurance, 5% through a free service and 4% through "no win, no fee" arrangements (MoJ, 2010). We would like to investigate whether there are any correlations between those who pay for the legal service themselves and complain/do not complain and those who receive funding and complain/do not complain and what might lie behind any difference.

The research should also consider the size of the legal service provider, the range of services provided by the supplier, where they are located and how the customer received the legal service e.g. face to face, telephone, online etc. We would also be interested to understand how the consumer selected the legal service provider e.g. family recommendation, referral, Yellow Pages etc.

The research should distinguish between type of provider. Solicitors are the most commonly used provider of legal services (94% of users). Barristers are used much less frequently, for just 3% of matters. Less than 1% of users have been found to use independent notaries or licensed conveyancers (MoJ, 2010).

The research should consider whether the legal service was sought for a civil or criminal matter, professional or personal matter, including incidence among small business and large business consumers, and whether a solicitor is complaining about a barrister or vice versa.

Due to the recent implementation of the signposting requirement, the research should distinguish between users pre and post this requirement. This will enable the researcher to make a comparison of consumer knowledge of the complaints procedure according to the existence of the requirement, enabling the LSB to measure the relative impact and estimate the future impact. We would not expect this distinction to produce robust data at this stage but it would help us understand the results when commissioning future studies.

The researcher is likely to come across the following barriers when identifying the research method and undertaking the research:

- Approved regulators collect little first-tier complaints data, meaning that the researcher cannot rely on them to provide data.
- Firms may neither collect, nor disseminate, data on complaints, meaning that the researcher cannot rely on them to provide data
- Difficulty in identifying consumers who are dissatisfied with their service, including those who do not progress to first tier complaints, the MoJ estimated this to be around 10% of users. Considering that around 36% of individuals experience a justiciable problem, and around half of these obtain advice⁹, and the estimate that only 10% of users are unhappy, and only 2% progresses to first-tier complaints (MoJ, 2010); this results in our target samples being very small, possibly leading the researcher to carry out a number of targeting exercises to get representative samples.

Tender Evaluation Criteria

All projects commissioned by the LSB are subject to our standard terms of contract. Tenders will be evaluated on best value for money and will be assessed on the basis of:

1. Overall cost. Please include appropriate breakdowns
2. The extent to which tenders are clearly written and meet the specified objectives, present a sound methodology, identifying any potential problems, and proposing suitable solutions
3. Address outputs and ensure these are in line with requirements and the required timing of the project
4. Proposed team composition, expertise and management and the organisation's diversity policy

⁹ Legal Services Commission (2007) Civil Justice in England and Wales: Report of the 2007 England and Welsh Civil and Social Justice Survey

If the researcher proposes to use focus groups the tender should include costing for viewing at least one of the groups.

Deliverables

Output

We would like the research to produce a report with executive summary

The LSB will retain ownership of the report and any data, but has a policy of publishing all research reports.

Project plan

Tenders should include a project plan and time schedule for the work that identifies the main task and key milestones that will be used to monitor progress. The plan should be accompanied by a resource profile, giving a breakdown of the resources in person days allocated to each task.

Duration

The research should commence in January 2011. Tenders should set out dates for completing key milestones such as information gathering, analysis, synthesis and report writing. A draft final report should be delivered to the LSB by end March 2011. A final agreed report should be completed by end April 2011.

Legal Services Board Contact Details

Tenders with any queries about the research specification should contact:

Policy team: Paul Greening 020 7271 0075

Research: Rosaline Sullivan 020 7271 0067

Tenders must be submitted by 5pm on Friday 21 January 2011