



Bar Council response to the Legal Services Board’s consultation on First-tier complaints – draft section 112 Requirements, Guidance and policy statement for approved regulators under the Legal Services Act 2007

1. This is the response on behalf of the General Council of the Bar of England and Wales (“the Bar Council”) to the Legal Services Board’s Consultation on First-tier complaints – draft section 112 Requirements, Guidance and policy statement for approved regulators under the Legal Services Act 2007 (“the Consultation”).

2. The Bar Council represents approximately 17,000 barristers in England and Wales. It promotes the Bar’s high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.

3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society.

4. The Bar makes a vital contribution to the efficient operation of criminal and civil courts and tribunals. It provides a pool of talented women and men from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board.

Question 1: Do you have any comments on draft Paragraphs 1-6 and the associated draft Guidance?

No.

Question 2: Do you have any comments on draft Paragraphs 7 and the associated draft Guidance?

The Bar Council does not have any comments on the majority of draft Paragraph 7. However, self-employed barristers, both those practising in chambers and as sole

practitioners, will likely not be able to comply with draft Paragraph 7(g) which requires an authorised person's first-tier complaints procedure to be endorsed and implemented by their senior management. While some barristers' chambers may have a senior management committee, they may not manage complaints relating to individual members of chambers and may not be responsible for implementing a chambers' complaints procedure.

The guidance to draft Paragraph 7(g) should clarify that, where appropriate, those responsible for endorsing and implementing the guidance should be more widely interpreted than senior management.

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

The Bar Council does not have any comments on draft Paragraphs 9 and 10. However, the additional requirement in draft Paragraph 8(b) for information on the right to make a complaint to be shared with a client at the conclusion of a matter may be challenging for self-employed barristers to comply with.

The first reason for this is that a barrister's instructions do not always have a clear point at which they are concluded. For instance, barristers may repeatedly be instructed and/or reinstructed for self-contained pieces of work in an ongoing matter that may not have a fixed or consistent timescale. For example, whilst a barrister may well expect to have continuing or further instructions on a matter (for example, after pleading a Particulars of Claim they may expect to have further instructions to plead, say, any Reply to Defence or Defence to Counterclaim) they could be unaware of either a total failure by the other side to enter a Defence, or a decision to not instruct them further. Alternatively, barristers are often instructed to advise on an ad hoc, ongoing basis in relation to a case. Strictly speaking, each instruction is a discrete set of instructions. Would the barrister have to send notice of rights of complaint after every 10 minute telephone call for advice? It would clearly be absurd for the barrister to have to repeat the client's rights to complain after every single action taken by the barrister 'just in case', but equally impossible for the barrister in many situations to know when they had an obligation to re-inform their client of their rights.

The second reason is that there are times where it may be practically difficult for barristers to comply with this requirement. The Bar Council is particularly concerned about the situation where barristers assist individuals through Pro Bono or voluntary schemes, such as the Chancery Bar Litigant in Person Support Scheme (CLIPS). Through this scheme, for example, barristers provide litigants in person with "on the day" advice and representation. The nature of this scheme makes it difficult for details of complaints procedures to be provided at the conclusion of the matter as required under Paragraph 8(b) as presently drafted. In many such cases the advice is given very

quickly outside court, and once the representation is completed there is little time for more than a short 'de-brief' for the lay client before the barrister is called back into court for the next client's hearing. Thereafter there will usually be no further contact between the barrister and the client, thereby rendering provision of such notices physically difficult if not impossible. Furthermore, the Bar Council believes that in the case of such limited services the right to complain about service provision is likely to be of very little value.

In general, however, and outside the remits of such 'on the day' advice and representation as set out above, the Bar Council does consider that pro bono legal advisers should generally be under the same duties to provide notice of the right to complain as in paid cases. Once a barrister is providing legal services they are and should be subject to all the same duties and obligations irrespective of whether they are being paid.

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

No.

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

No.

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

The Bar Council does not have any comments on draft Paragraphs 16(a) and the need to keep records of first-tier complaints received and measures taken. While we understand the intent underpinning draft Paragraph 16(b), we consider that, for the self-employed Bar, this may create an unnecessary administrative burden with relatively limited benefits for lessons to be learned. Unlike in larger law firms, complaints against individual barristers who operate either as sole practitioners or in chambers are less likely to reveal any systemic issues with the services offered.

In addition, the Legal Ombudsman's latest Complaints Information report shows that it is less likely for there to be evidence of poor service by Bar Standards Board regulated individuals when compared to the legal sector as a whole.¹ The limited number of complaints which are upheld by the Legal Ombudsman further diminishes the level of analysis which can be achieved by self-employed barristers.

¹ <https://www.legalombudsman.org.uk/information-centre/data-centre/complaints-data/>

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

No.

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

No.

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

No.

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

No.

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

No.

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

No.

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

No.

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

No.

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

No.

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?

No.

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?

No.

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?

The Bar Council understands the concern raised by the Legal Service Board, and the desire to ensure that complaints procedures are fair, efficient and effective for service users. We also understand the benefits to legal professionals of continuous improvement and feedback. However, we do not think there should be different expectations on legal service providers depending on the basis on which they provide their service, nor do we think there is evidence that different expectations exist now. The expectation to provide a competent level of service are already addressed through barristers' ethical obligations as set out in the Bar Standards Board Handbook. The Handbook requires barristers to act in the best interests of each client (Core Duty 2 and rC15.1 and rC15.2).²

As set out in our detailed responses to questions 2, 3 and 6, self-employed barristers are likely to struggle to comply with some of the draft section 112 Requirements. The Bar Council thinks that the draft section 162 Guidance should allow regulators to take into account the particular way in which their regulated populations operate and

² <https://www.barstandardsboard.org.uk/the-bsb-handbook.html?part=E3FF76D3-9538-4B97-94C02111664E5709&audience=&csrfToken=&q=>

rC15:

"Your duty to act in the best interests of each *client* (CD2), to provide a competent standard of work and service to each *client* (CD7) and to keep the affairs of each *client* confidential (CD6) includes the following obligations:

- .1 you must promote fearlessly and by all proper and lawful means the *client's* best interests;
- .2 you must do so without regard to your own interests or to any consequences to you (which may include, for the avoidance of doubt, you being required to take reasonable steps to mitigate the effects of any breach of this *Handbook*);"

allow regulators to reflect this in their regulatory arrangements to comply with the section 112 Requirements.

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

No.

The Bar Council
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