



## **Legal Services Board**

### **First-tier complaints: A consultation on draft section 112 Requirements, Guidance and policy statement for approved regulators under the Legal Services Act**

A response by  
CILEx Regulation

17 November 2023

## **INTRODUCTION**

This response is on behalf of CILEx Regulation Limited (CRL) to the Legal Services Board's (LSB) consultation on First-tier complaints – draft section 112 Requirements, Guidance, and policy statement for approved regulators under the Legal Services Act 2007.

CRL is the regulatory body for Chartered Legal Executives, CILEX Practitioners and legal entities. Chartered Legal Executives (Fellows) are members of the Chartered Institute of Legal Executives (CILEX). CILEX Practitioners are authorised by CRL to provide reserved legal activities. Fellows and CILEX Practitioners are authorised persons under the LSA.

CILEX is the professional body representing around 17,500 members and is an Approved Regulator under the Legal Services Act 2007 (LSA). CRL regulates all grades of CILEX members.

## **RESPONSE TO CONSULTATION QUESTIONS**

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

#### **Question 1: do you have any comments on draft Paragraphs 1-6 and the associated draft Guidance?**

We support the aims of the LSB in taking steps to increase consumer awareness of how to raise complaints and having the confidence to do so. CRL's view and approach has always been to encourage firms to welcome complaints and feedback and to learn from this information, using it to improve services for consumers.

It continues to be CRL's view that the monitoring of complaint handling should have the primary outcome of improving the quality and standard of legal services provided to consumers and, in those circumstances where a firm does not comply, then to take appropriate action.

CRL believes with this review it would be helpful for the LSB to now be clear whether the requirements and the policy statement are aimed at **authorised firms** or **individual authorised people** and accordingly the expectations of regulators. CRL has always assumed that the requirements apply only to authorised firms.

In s18 Legal Services Act 2007, authorised person relates to a person we authorise to carry out a specific authorised activity. So, this could be an individual or a firm.

CRL is particularly interested to understand the scope of the requirements because we regulate Chartered Legal Executives that have the one practice right as commissioner for oaths. They may work in one of our authorised firms, in firms authorised and regulated by other regulators or work in-house. They may also provide unreserved legal work outside of regulated firms.

CRL also authorises CILEX Practitioners to carry out a specific reserved legal activity and authorises firms for a specific legal activity.

The LSB will be aware of the relevant sections of the Legal Services Act 2007, s20 and s112 and the definitions adopted, which are referred to within the requirements, so we will not set these out. However, the definitions could mean that to whom the requirements apply is open to interpretation.

CRL's concern is that if it was interpreted as referring to individuals then the impact on CRL and other regulators, who have individuals working in other regulated firms or in-house, would be significant, requiring them to collect significantly more information.

CRL does not believe that this is the intention of the way that the requirements were originally drafted, nor would it help to achieve the outcomes which the LSB seek. In fact, CRL believes it would have a negative effect as there is a risk that the focus would be on the process of data collection (for CRL because of the number of Chartered Legal Executives) rather than the outcomes sought. In addition, in many instances the information requested from the Chartered Legal Executive would be outside of their control or influence (for example a Chartered Legal Executive as a junior employee in an SRA firm would have little influence on the complaints handling procedures). Effectively any data collected would also be 'double counted' – 1 complaint would be counted at firm level and at individual level. So, the potential actions could be disproportionate and have significant resource implications.

To summarise, CRL's question is if we authorise a person for ANY reserved legal activity, does this bring the person under the LSB's requirements and policy statement wherever they work?

The answer to this will have implications for the following questions within the consultation but at this stage we have responded to them assuming authorised person refers to a firm. CRL welcomed the opportunity to discuss the above matter with LSB staff and their understanding of the issue and implications that CRL sought clarity on. Both parties were reassured that they were seeking similar proportionate outcomes.

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

CRL has no comments to make on paragraph 7 and the associated draft guidance except in respect of 7 h), where the exact outcome desired might benefit from further clarification or redrafting. As currently drafted it may be read that 'consistently' relates to both 'reviewed' and 'implemented'.

CRL suggests that it could read as:

h) is reviewed *regularly* and implemented consistently.

That should provide clarification to the firm of the requirement that the policy is to be reviewed regularly.

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

For paragraph 8, CRL would suggest that the LSB review whether the wording in the guidance actually reflects the requirements. The requirements state that if the complaints

procedure is advised at the outset and conclusion of a matter then the requirements have been met.

The guidance seems to be implying that complaints procedures should be provided not only at the outset of a matter, but also during a matter (not just at the initial stage), and then presumably at the conclusion.

CRL would support the requirement that a complaints procedure is provided clearly at the outset and conclusion of a matter. Requiring it further would seem to be disproportionate, unless circumstances prompted a firm that it was appropriate.

CRL has no comments to make on paragraphs 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?**

CRL is broadly content with paragraphs 11,12 and 13, with one comment.

With regard to the requirement to provide regular updates 'as appropriate and proportionate', CRL believes that firms would appreciate additional clarification on this point, so they are comfortable on their stance with to unreasonable behaviours and expectations from a complainant.

It maybe that the guidance could clarify that 'appropriate and proportionate updates' translates into reporting points agreed with the client/set out in a firm's procedure, or if there is a reason for a delay (with revised timetable) or something arises that needs to be reported to the client.

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

CRL would wish to raise the point that for sole practitioners the requirement for a complaint to be assessed 'impartially' makes it difficult for them to personally deal with a complaint, when that might actually be the best way to resolve a complaint. CRL is sure the expectation was not that all complaints should be independently assessed without exception, but where possible, that should be the appropriate action.

CRL appreciates that the guidance does state 'where reasonable and proportionate', but perhaps there could be some clarification for those sole practitioners and smaller firms around expectations generally (for example, there will be times when a complaint requires actioning during leave and sickness periods). That way they would avoid being in conflict with the requirements.

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

CRL has no comment on these paragraphs.

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

CRL has no comment on this paragraph.

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

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

CRL welcomes the way that the outcomes have been drafted particularly referencing the differences between the regulators and the professions that they regulate, and therefore giving the opportunity to take proportionate and targeted measures to achieve the desired results. This is in line with the approach that it has adopted to first-tier complaint handling.

The LSB will understand that the answer to Question 1 is particularly relevant to the policy statement which refers to authorised persons throughout, so that clarity would be beneficial to stakeholders.

CRL was reassured in its discussions with LSB staff during the consultation process.

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

As set out previously, CRL would like clarification from the LSB as to whether the expectations in Questions 9 – 14 apply at firm or individual level.

That would determine the impact of the expectations on the regulators and/or the authorised persons. The principles behind the expectations and the outcomes that we believe the LSB are seeking to achieve are acceptable.

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

CRL has additional no comment to make on the draft expectations.

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

CRL has no additional comment to make on the draft expectation.

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

CRL has no additional comment to make on the draft expectation.

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

CRL has no additional comment to make on the draft expectation.

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

CRL has no additional comment to make on the draft expectation.

## **Implementation and impact assessments:**

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

CRL believes that the transitional period is acceptable as its transparency rules evaluation work plan aims to bring proposals for changes to the transparency rules to the CRL Board in Q2 2024. The intention of this work is to address any identified gaps in CRL's requirements in line with the LSB's consumer policy.

Ideally CRL would wish to consult on all the changes, including the adoption of the new rules at the same time.

**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?**

CRL has no comment to make on equality impact.

**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?**

Whilst there will be costs in time for firms to initially review and update their complaints procedures and information, train staff, update websites and produce materials to deliver complaints information, CRL believes that this is not disproportionate to the benefit to the consumer and the firms themselves. It is best practice that firms should review all such information at least annually to ensure it remains up to date and meets consumers expectations.

As indicated CRL would wish to implement this change alongside any other that maybe necessary following its evaluation of the transparency rules. This should make the implementation of any changes in a proportionate and clear way for the firms.

**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?**

CRL is approaching the policy statement and requirements as relating to CRL's authorised firms. CRL does not believe that there should be differing expectations as this would not be in the consumer interest.

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

CRL has no further comments to make.

Any questions relating to this consultation response can be directed to David Pope, Director of Operations ([david.pope@cilexregulation.org.uk](mailto:david.pope@cilexregulation.org.uk)).