

Going overboard

When it comes to complaints, the Legal Services Board should remember there is such a thing as too much information, says **Susanna Heley**

First-tier complaints, resolved by solicitors' firms internally, have traditionally been internal matters. Some complaints may have led to internal investigations and self reporting to the SRA, but, for the most part, minor costs complaints and service issues will have been handled in house.

Central complaints records may have been shared with insurers, visitors from the Practice Standards Unit, or perhaps Lexcel, and they would have been of interest to SRA investigators. The SRA would not routinely have expected to receive such data unsolicited.

That is all about to change. The Legal Services Board (LSB) is keen to ensure that first-tier complaints data is made available to frontline regulators. This will mean that a solicitors firm will have to disclose complaints details to the SRA as a matter of course. Not only that, but where a firm, regulated by the SRA, employs people who are individually regulated by another frontline regulator, those regulators should expect to receive complaints data where it directly affects regulated individuals. So, according to the LSB, a complaint about a legal executive working in an SRA-regulated firm should be reported to the SRA and to ILEX Professional Standards.

The 'consumer experience'

This is all part of the new emphasis on the 'consumer experience' which lies, apparently, at the heart of outcomes focused regulation which will be with us from October – assuming that all goes according to the SRA's plan.

Gathering first-tier complaints data from firms and second-tier complaints data from the Legal Ombudsman (LeO) will, says the LSB, assist regulators to identify and manage risk. Such data will also enable the LSB and frontline regulators to assess whether consumer-focused objectives are being met.

Regulators already have arrangements in place with LeO to share second-tier complaints data. For solicitors, this is nothing new. The Legal Complaints Service regularly

made relevant reports to the SRA. Solicitors may, however, be justified in harbouring concerns about information sharing at this stage because of LeO's relative inexperience in the legal services field.

LeO is not and is never intended to be an expert tribunal in any particular branch of the



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profession. It has experts it can call upon as necessary but it is intended to reflect the lay point of view.

LeO has been around for almost six months and is slowly making its mark. Reports indicate that LeO received a flurry of complaints on its first day and made its first formal decision in December. In February, it threatened to use its formal powers against a non-cooperative solicitor. It has consulted on whether or not it should publish its own decisions and has responded to third-party consultations on, for example, client financial protection.

It seems then that LeO is working hard to deal with the two aspects of its brief – to provide accessible redress for consumers and to use its experience to educate and promote good practice within the professions.

Similarly, regulators are requiring members of the professions to engage in

'signposting' – telling the client at every relevant opportunity how to complain and to whom they should complain. Despite some skirmishes between various regulators and the LSB, the message is clear: change is on its way. From the profession's point of view, the potential regulatory implications of complaints are more significant than ever. Although the SRA is working towards a new relationship with the profession within the framework of outcomes focused regulation, it remains responsible for prosecuting misconduct.

From October, it will have more sources of intelligence than ever before. Compliance officers will have to make detailed self reports – details of complaints will be required by one or more regulators. Much of this intelligence may be relatively innocuous and, to my mind, such disclosure may be something of a double-edged sword. There is such a thing as too much information.

Act now

It is evident that firms need to be taking steps now to deal with the changes which will be coming into force later this year. Firms should be looking to appoint their new compliance officers, many of which are likely to be internal appointments.

Conduct a review of existing complaints records and an analysis of complaints handling procedures. Are your complaints resolved quickly and simply? Do many complaints progress to the LeO (or, historically, to the Legal Complaints Service)? Perhaps more importantly, is there any pattern to the complaints? Is a particular fee earner or department failing to manage clients well?

If you are able to identify patterns from any complaints that you receive, or the progression of those complaints, these may point to systemic failures either in client and risk management or in complaints handling. Take action now to identify and resolve such problems and you may save money in the longer term.

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