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Dear Matthew

LSB Consultation – First Tier Complaints

IPReg welcomes the opportunity to respond to the LSB's consultation on first tier complaints. We share the LSB's view that effective complaints handling offers clear benefits to consumers. Dealing with complaints effectively supports in particular the regulatory objectives of protecting and promoting the interests of consumers, improving access to justice, promoting and maintaining adherence to the professional principles and protecting and promoting the public interest.

We agree that it is important that regulatory arrangements for resolving first tier complaints have regard to the better regulation principles and, in particular, are proportionate and targeted only at cases in which action is needed.[1] We are mindful that what would be a proportionate and targeted complaint handling process for a large firm is unlikely to be appropriate for a sole trader. There could also be differences depending on the legal services provided and client type.

We are therefore concerned about some of the very specific requirements that the LSB is proposing:

Draft s112 requirements

- These state that regulatory arrangements "must specify what proportionate and targeted action, if any" may be taken in the event of non-compliance with their first tier complaint requirements. IPReg's regulatory arrangements set out the broad range of enforcement powers and sanctions that can be imposed in the event of non-compliance. However, any action must be decided on a case by case basis depending on the facts of each investigation. It is not clear from the current drafting of the LSB's draft requirements whether it considers that we must be more specific in terms of likely regulatory action for a breach of first tier complaints rules or whether our current approach is appropriate;

[1] LSA s28(3)(a).

Draft Statement of Policy

- The draft states that regulators must "deliver the *best possible* complaints resolution system for legal services users" (emphasis added). This appears to imply that all firms and sole traders must adopt one type of system across the board (i.e. the best possible system). This is a very high requirement, it may be challenging to establish what "best" looks like and is likely to incur significant costs for regulated firms (which will be passed on to consumers). We suggest that a more proportionate and targeted requirement would be for regulators to ensure that those they regulate have *effective* complaint resolution systems, based on the type of firm and the nature of the firm's client base. Regulators' monitoring of the effectiveness of those complaint resolution systems would be based on factors such as firm size and client base. In addition, enforcement action would be targeted only at cases in which action is needed[2] (i.e. where the complaint resolution system is clearly ineffective) rather than at all firms that do not have the "best possible" system in place;

- The draft states that regulators must "collect and publish data about the performance of authorised persons in resolving first tier complaints within eight weeks, in order to ensure increased transparency about performance levels". The consultation document refers to publication by the FCA of firm-specific complaints data and it also recognises that there will be instances where it is not possible to resolve a complaint within 8 weeks. However, we are concerned that this might lead inadvertently to a requirement for mandatory publication of "quality indicators" about firms' performance. In the regulated IP sector there are very few first tier complaints (an average of 176 per year over the last 3 years). Our approach is to consolidate the first tier complaints data that we receive, publish it in our Annual Report and draw out any examples of best practice; as a result we have recently introduced mandatory transparency rules for certain information about costs. Our view is that – because of the difficulty of drawing any meaningful conclusions from first-tier complaints in the IP sector about a firm's performance - the publication of the information might end up being counterproductive. We therefore suggest that the Statement of Policy should leave it to regulators to decide what information drawn from first-tier complaints would be useful to consumers to publish.

- The draft states that regulators must "give particular consideration to the experiences of legal service users with protected characteristics and/or those in vulnerable circumstances". It is of course an essential feature of an effective complaints process that vulnerable consumers, those with protected characteristics and/or without online access should be able to access and engage with it. However, the implication of the way this requirement is drafted is that firms might be expected to collect and process special category data when dealing with a complaint (and, by implication, for regulators to do the same when considering the information they receive from firms). This is likely to impose a significant burden on firms because of the additional safeguards that are required to process special category data. The ICO website makes clear that in order to lawfully process special category data, an organisation must identify both a lawful basis under Article 6 of the UK GDPR and a separate condition for processing under

[2] LSA s28(3)

Article 9. There are 10 conditions in Article 9 for processing special category data. Five of these require additional conditions and safeguards to be met. The condition for processing special category data must be determined before processing begins and must be documented. In many cases an 'appropriate policy document' must be in place. Although it would be for each firm and regulator to determine whether it does in fact have a lawful basis to process special category data about first tier complainants, it would be helpful if the LSB could provide significantly more detail about how its proposed requirements are consistent with UK GDPR.

In terms of the transitional arrangements, the LSB is proposing that regulators will have 12 months to "put in place any necessary alterations to their regulatory arrangements to comply with the s112 requirements". It would be helpful if the LSB is able to indicate whether any necessary changes to regulatory arrangements can be made under an exemption direction (because the changes will be being made to comply with its statutory rules). If that is not possible and the LSB is expecting regulators to consult on changes and make a full rule change application then it may be that the proposed 12 month period is too short, and may also impose significant burdens on the LSB itself.

We are happy to discuss this response with you.

Yours sincerely

Fran Gillon

Chief Executive