Response to Bar Standards Board consultation by the South Eastern Circuit

1. This is a response on behalf of the South Eastern Circuit ("SEC") to the Bar Standard Board's Consultation on New Arrangements and Rules for First-Tier Complaints Handling published May 2025.

Executive Summary

2. The SEC is the largest of the six geographical Circuits that make up the Bar of England and Wales and represents over 2,000 employed and self-employed members of the Bar with experience in all areas of practice.

3. The SEC stretches from Canterbury and Lewes in the South to Norwich in the North and from Ipswich in the East to Reading and Oxford in the West. It is a representative, educational and social organisation.

4. This consultation response therefore reflects the experience and concerns of barristers who practice in publicly funded work and privately funded work. Most members of the SEC practice from a "chambers" set up. A significant number of chambers – particularly at the Criminal Bar – are run by members of the profession alongside their practice (rather than by staff). They employ the minimum number of staff required to run their business effectively. They are not profit-making enterprises.

The responsibility for (among many other things) reporting obligations, lies therefore with individual barristers, not salaried staff or individuals.

Approach to the consultation

5. The SEC considers that it is important to consider the existing provisions and obligations in the BSB handbook relating to "complaints" before turning to the consultation questions about expanding upon those obligations. Our overriding approach is that further obligations should only be placed upon barristers where it is necessary, in a manner which is proportionate, and that it is important to have in mind the pressures currently faced, particularly by the publicly funded bar who are likely to be disproportionately impacted by the changes proposed.

6. Whilst the consultation document refers to "consumer experience", and is particularly concerned with "vulnerable consumers", we at the SEC consider that it is important to have in mind how the bar practises. Our "clients" are overwhelmingly solicitors, and our "lay clients" are those we represent. Whilst direct access is permitted, there is of course specific BSB Guidance on circumstances in which the client is "vulnerable".

7. Before turning to the consultation questions, we have had in mind the following provisions of the BSB Handbook:

Definition of Complaint

Complaint means, for the purposes of Part 2, a complaint by a *client* about the standard of service received that is addressed either to the *Legal Ombudsman* or the *chambers* or the *BSB authorised person*

Outcomes

oC19

Clients understand how to bring a complaint and complaints are dealt with promptly, fairly, openly and effectively.

Guidance to Rules C22-24 (Defining terms or basis upon which instructions are accepted)

gC78

When accepting instructions, you must also ensure that you comply with the complaints handling rules set out in Section 2.D.

gC81

Disputes about costs are one of the most frequent *complaints*. The provision of clear information before work starts is the best way of avoiding such *complaints*. The *Legal Ombudsman* has produced a useful guide "An Ombudsman's view of good costs service" which can be found on its website.

Co-operation with Legal Ombudsman

rC71

You must give the *Legal Ombudsman* all reasonable assistance requested of you, in connection with the investigation, consideration, and determination, of *complaints* made under the Ombudsman scheme.

Administration of Chambers

rC89

Taking into account the provisions of Rule rC90, you must take reasonable steps to ensure that:

.6 all non-authorised persons working in your *chambers* (irrespective of the identity of their *employer*):

.a are competent to carry out their duties;

.b carry out their duties in a correct and efficient manner;

.c are made clearly aware of such provisions of this *Handbook* as may affect or be relevant to the performance of their duties;

.d do nothing which causes or substantially contributes to a breach of this *Handbook* by any *BSB authorised individual* or *authorised (non-BSB) individual* within *chambers*,

and all *complaints* against them are dealt with in accordance with the complaints rules;

Self-employed barristers, chambers and BSB entities

oC26

Clients are provided with appropriate information about redress, know that they can make a *complaint* if dissatisfied, and know how to do so.

oC27

Complaints are dealt with promptly and the *client* is kept informed about the process.

Complaint rules

Provision of information

rC99

You must notify *clients* in writing when you are *instructed*, or, if that is if not practicable, at the next appropriate opportunity:

.1 of their right to make a *complaint*, including their right to complain to the *Legal Ombudsman* (if they have such a right), how, and to whom, they can complain, and of any time limits for making a *complaint*;

.2 if you are doing referral work, that the lay *client* may complain directly to *chambers* or the *BSB entity* without going through *solicitors*

Response to complaints

rC104

All *complaints* must be acknowledged promptly. When you acknowledge a *complaint*, you must give the complainant:

.1 the name of the person who will deal with the *complaint* and a description of that person's role in *chambers* or in the *BSB entity* (as appropriate);

.2 a copy of the *chambers'* complaints procedure or the *BSB entity's* Complaints Procedure (as appropriate);

.3 the date by which the complainant will next hear from *chambers* or the *BSB entity* (as appropriate).

rC105

When *chambers* or a *BSB entity* (as appropriate) has dealt with the *complaint*, complainants must be told in writing of their right to complain to the *Legal Ombudsman* (where applicable), of the time limit for doing so, and how to contact them.

Documents and record keeping

rC106

All communications and documents relating to complaints must be kept confidential. They must be disclosed only so far as is necessary for:

.1 the investigation and resolution of the *complaint*;

.2 internal review in order to improve *chambers'* or the *BSB entity's* (as appropriate) handling of complaints;

.3 complying with requests from the *Bar Standards Board* in the exercise of its monitoring and/or auditing functions.

rC107

The disclosure to the *Bar Standards Board* of internal documents relating to the handling of the *complaint* (such as the minutes of any meeting held to discuss a particular *complaint*) for the further resolution or investigation of the *complaint* is not required.

rC108

A record must be kept of each *complaint*, of all steps taken in response to it, and of the outcome of the *complaint*. Copies of all correspondence, including electronic mail, and all other documents generated in response to the *complaint* must also be kept. The records and copies should be kept for 6 years from resolution of the *complaint*.

rC109

The person responsible for the administration of the procedure must report at least annually to either:

.1 the *HOLP*; or

.2 the appropriate member/committee of *chambers*,

on the number of *complaints* received, on the subject areas of the *complaints* and on the outcomes. The *complaints* should be reviewed for trends and possible training issues.

Definition-

HOLP

In relation to a *BSB authorised body*: has the meaning set out in the Legal Services Act 2007 (General Council of the Bar) (Modification of Functions) Order 2016

In relation to a *BSB licensed body*: means an individual who meets the requirements set out in paragraph 11 of Schedule 11 to the LSA and has been approved as a Head of Legal Practice by the BSB in accordance with section E of Part 3

8. Bearing in mind the above, the SEC note that the approach to complaints differs between chambers. Within our experience are chambers in which it is a constitutional requirement that members report every professional complaint made about them to the Chief Executive or Heads of Chambers, whereas in others this is not the case. Some Chambers (particularly larger ones) have a member of staff who is responsible for managing all formal service complaints investigated under their complaints procedure by members of their Quality Assurance and Complaints Committee. It is also not uncommon for larger sets to maintain a 'grumbles' log, which is those matters which are not formally categorised as a 'complaint', but which could develop into one. Again however, less well resourced chambers do not have such dedicated resources and it will be entirely for members to consider and respond to complaints alongside their practice. The administrative pressure on such sets should not be underestimated or masked by the fact that larger sets will not face the same level of challenges in further compilation and submission of additional data sets.

Responses to questions

Question 1. Should our updated first-tier complaints guidance cover any additional topics beyond those identified above (accessibility requirements and supporting vulnerable consumers)?

9. Guidance should include what constitutes "service" and there could be appropriate signposting to the Legal Ombudsman ("LeO"). It is important that this includes guidance about who can make the complaint -i.e. professional or lay clients who would have an escalation route to the LeO.

10. We do not consider that there is at present sufficient clarity about what is to be encompassed by the reference to "accessibility requirements". Is this about physical accessibility of buildings – the ability to have conferences in chambers / virtually? Or at court?

11. In relation to the "support of vulnerable consumers", there is already guidance on "identifying and representing vulnerable clients" under public access guidance for barristers.

12. We do not consider that protected characteristic data of complainants should be collected: but if this is insisted upon, guidance on how to collect / store / process such data would be essential

Question 2. Do you agree with our proposal to insert a new requirement to rC108 (rC108.2) to mandate the submission of first-tier complaints data to the Bar Standards Board?

13. The SEC recognises the need for transparency, and the desirability of learning from complaints so as to improve our practices. However, we oppose the addition of a new requirement to provide data to the Bar Standards Board as it is difficult to see how it is justified.

14. The SEC understands that rC109 already places an obligation on the person responsible for the administration of the complaints procedure, for this to be reported upon annually. There is an obligation further for complaints to be reviewed for trends and possible training issues. Further submission to the BSB is therefore unnecessary.

    However, if there is an additional obligation to make further submissions to the BSB, it should be permitted to be in the same manner as they are currently reported internally so as not to increase the administrative burden of those who compile reports at present.

Question 3. Do you agree with our proposal to insert a new requirement to rC108 (rC108.3) that barristers inform their chambers/Bar Standards Board entity of any complaints they receive that relate to their work for that organisation?

15. We do not understand why further requirements are necessary. rC108 already requires records of complaints to be made and retained for six years. Given the requirement under c106-8 for the review of internal complaints processes, it is not clear what further requirements would add or why they are necessary.

16. If any new requirement be imposed, there must be clarity as to *when* notification must be made, and that this relates solely to *service complaints*. Practitioners on the SEC note that, particularly when clients are dissatisfied with court outcomes where stakes are high (for example loss of liberty, imprisonment, loss of child/contact to

name obvious examples), there may be oral "complaints" (or indeed "claims" about perceptions of the quality of legal advice) when emotions are running high at court. These are rarely formalised into service complaints, and there should not be any reporting obligation in this regard.

Question 4. Which of the following options for collecting first-tier complaints data would you prefer?

- **Option 1: Submission via the Authorisation Practise process?**
- **Option 2: Submission through a new MyBar form?**
- **Option 3: Submission by chambers or Bar Standards Board entities on behalf of barristers/members?**

Question 4b. If you prefer option 2 or 3, please also indicate whether you prefer data to submitted incrementally throughout the year on complaint closure, or periodically (e.g. annually)?

17. Options 1 and 2 are onerous. The renewal process for the Authorisation to Practise is already strictly timebound and it is a significant burden for Chambers to get every member renewed by the deadline. As part of that process, the Bar Council/BSB already ask a large number of questions and it is unlikely that at that time of the year barristers will have the time (or ability or inclination) effectively to engage with the issue of complaints too.

18. Option 2 is unlikely to encourage compliance. Those who are scrupulous with their administration will submit, others will not, and the burden will then fall on the BSB to pursue barristers or their Chambers or entities for the data.

19. Option 3 seems the most reasonable suggestion. The larger sets likely already meet regulatory requirements and already compile and report on this information and, if not, systems can relatively quickly be put in place. This is not so for smaller sets. We would suggest that data is submitted annually and only for service complaints which have been considered under Chambers' formal complaints procedures, and concluded during the reference period.

Question 5. If we proceed with periodic data requests, how often should complaints data be submitted to the Bar Standards Board - every 12 months or 24 months? Are there any other timeframes we should consider?

20. Annually for complaints concluded in the relevant 12 month period.

Question 6: Do you have any comments on the first-tier complaints data fields we proposed to collect from the Bar? Are there any fields you think we should / should not collect (please specify)?

21. We have particular concern with the suggestion that the protected characteristics of complainants should be collected. At the point of a service complaint, where the client is a direct access lay client, for example, requiring them to complete questionnaires about protected characteristics could cause further frustration or difficulty at a time when the professional relationship may be under tension. Where the complaint is from a firm of solicitors, this would seem not to be relevant, and where the complaint is from the lay client, via the solicitors, this would place an administrative burden on them both. The benefit of collecting this detail is likely to be low and its anonymous nature means that realistically the scope for improvement of the client experience is limited.

Question 7: When submitting data (excluding complaints data) to the Bar Standards Board, do you have any preferences for when to do so, e.g., at certain Bar Standards Board- mandated times, annually, or another frequency (please specify)?

22. Given that preamble to this question is such that we do not know what data the BSB has in mind seeking to collect, it is difficult to answer the question. Data should only be sought from barristers if it is necessary and should be done in a proportionate manner.

23. See above replies as to complaints data being collected annually on complaint closure. We consider that in determining when the annual returns are to be made, consideration should be given to avoiding Feb/March given the requirements in relation to Authorisation to Practice and insurance renewals at this time.

Question 8: In general, how would you prefer to submit data to the Bar Standards Board, e.g., via Authorisation to Practise, MyBar forms, or some other way?

24. For the same reasons as above, the Authorisations to Practice process should be avoided. My Bar or some other form would be generally acceptable, if the intention is that chambers or entities provide the data.

Question 9: Using any previous experiences of submitting data, what has worked well for you and what has not? How could we improve our data collection requirements?

25. Again, without knowing what data is being considered, it is difficult to answer the question, but the principles of necessity and proportionality are essential.

Question 10: We propose to give barristers four months from publishing the updated BSB Handbook to make any changes necessary to their first-tier complaints arrangements. Do you agree with these proposed implementation timelines?

26. No. The period of just four months from publishing an updated Handbook – including sample guidance on dealing with complaints – to implementing changes, is inadequate.

Question 11: Do you anticipate these reforms will have any impacts (positive, negative, neutral etc.) on you and/or your organisation?

27. The SEC asks that it be taken into consideration that such additional reporting is likely to reduce the ability, freedom and incentive of some members of the independent bar (in particular those in smaller sets and /or those dependent on legal aid work) to provide legal services generally and consequently may reduce access to justice. At this point, it appears to be disproportionate to impose additional regulatory obligations on the independent bar without corresponding support.

28. As acknowledged in the consultation, it is very likely that those in legal aid practices such as crime and family, are likely to be disproportionately impacted – not only because of their likelihood to be less well resourced than other sets, but also because these are areas of work which, by their very nature, attract more complaints than in any other areas. Importantly, these are also areas where there is the most diversity in terms of women, ethnic minorities, those with caring responsibilities and those with neurodiversity. Furthermore, it is understood that these are also areas where barristers are more likely to come from disadvantaged backgrounds. The stress and anxiety that comes with any complaint, whether it is first-level or otherwise, must not be underestimated. In a profession that is striving for greater well-being and recognition of the stresses with the types of work undertaken, often

with very traumatic detail, the requirement to report data on a regular basis adds to the stresses a barrister and chambers may experience during the process. This is so particularly given the obligations to report complaints regardless of whether they were upheld or not.

29. The length of time taken to resolve complaints which are referred to the LeO causes particular stress to those who are subject to complaints.

Question 12: Do you have any other comments in relation to our proposals set out in this consultation?

30. In our members' experience, there is little independent guidance available to support the self-employed bar and members of smaller chambers, especially virtual chambers when dealing with complaints arising from direct public access matters. It appears to be disproportionate (before producing independent guidance to members of the bar as to how to deal with complaints) that a new reporting obligation is imposed and that at the same time guidance is introduced. The SEC considers that it would be more proportionate to first produce guidance to enable the existing rules to be complied with and save the bar the time taken from practice to research how a "complaint" by a lay client should be most effectively dealt with. Once that guidance has time to "bed in", further consultation might be undertaken to assess whether the existing complaints procedure is operating.

31. Despite the emphasis in the Legal Services Act on the role of chambers and regulated bodies, in practice and in the Rules of the Legal Services Ombudsman, the practical impact of a complaint frequently falls on the member of the independent bar themselves.

32. The suggestion that on receipt of a complaint the protected characteristics of the complainant should be sought is entirely out of place (beyond asking if any reasonable adjustments are necessary). Complainants would invariably view such requests with suspicion, and may well encourage further complaints. It is not known how such data can be collected "anonymously" by chambers and how this data is to be processed.

33. Finally, given the acknowledgement in the consultation of the likely disparate impact these changes will have on women and ethnic minority members of the bar, it is not understood why there appears to be no desire to collect data about those complained about - which is much more readily available - nor the proportion of complaints which are made and then upheld. The other area in which data might be of some use is the funding of the instruction.

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