



The Law Society

**The Legal Ombudsman's Consultation on Publishing
Our Decisions – an evidence-based approach**

The Law Society response

27 June 2011

supporting
solicitors

1. Introduction

This response has been prepared by the Law Society, the representative body for over 140,000 solicitors qualified in England and Wales, working at home and around the world. The Law Society negotiates on behalf of the profession and lobbies regulators, government and others.

The Law Society is committed to helping solicitors pursue excellence in client service including complaints handling. We would welcome the opportunity to work with the Legal Ombudsman to build on the Law Society initiatives in this area.

We believe that publication of information such as anonymised case studies by the Legal Ombudsman (LeO) could be used to drive up standards of complaints handling across the sector and strikes the right balance in providing information which is informative while not overloading users with too much information. We therefore welcome the proposals in this area. We do not believe that publishing firms' complaints records will improve complaints handling or provide clients with useful information which will allow them to make an informed choice about which legal service provider to use.

We have set out our views in more detail below.

2. Comments on publication of anonymous data

We are pleased that the LeO will begin publishing anonymous cases studies immediately as these examples will help solicitors understand LeO's approach to resolving complaints. We believe that it is important that examples of complaints that are resolved informally and formally are included, as most cases will be resolved informally and therefore these will be of more relevance to most practitioners.

We welcome the implementation of a search function, to allow both the public and the profession to find cases relevant to their situation. A keyword search, similar to Google, is likely to be the preferred option for most users. However, it would also be helpful to have an advanced search function that allows search by date, type of complaint, type of lawyer, formal or informal resolution and type of award. This would allow users to narrow down their field of search, especially as the amount of data increases. Allowing Boolean operators in the keyword search may also be useful.

We believe that case studies should reflect the common areas of complaint. It would be useful to highlight areas where LeO is seeing an increase in complaints, to give practitioners early warning about areas that are causing issues. We have also received numerous queries about the amount of compensation a solicitor should offer, particularly in relation to distress and inconvenience. Case studies involving this type of compensation and the reasoning behind the sum offered or ordered would be very helpful.

3. Comments on specific questions

Q1. Do you have any comments or suggestions about stage three of our approach?

Overall approach

We agree that before LeO can answer the question regarding whether it should publish it needs to have a clearer idea of the data it will gain on firms (or individuals where appropriate) and thus we welcome its proposals to examine the data it collects more carefully before coming to any conclusion. However we do not believe that the proposed means of examining the data will provide any meaningful results. We believe that the proposals in this paper are premature given LeO has yet to be fully operational for a year.

We are unclear how LeO will use its criteria set out in the consultation document. For instance, it is not clear how staff decide where there has been exceptionally bad or good service. Nor is it clear how LeO will know if a firm has an exceptionally high level of complaints, given the limited data on the size and nature of firms available to LeO.

We are also unclear how LeO will assess the data it has captured. There needs to be greater deliberation regarding this, both in terms of the effects it will look at and how it will weigh up these effects. Otherwise LeO will risk finding itself in a position where it has collected data which is not fit for purpose.

If LeO decides to publish, then it will only do so where it is in the public interest to do so – with reference to whether there was exceptionally good or poor service and whether a firm has an exceptionally high level of complaints. We believe that many firms would be unhappy that providing exceptionally good service had led to them appearing on LeO's website. We are also unclear how LeO plans to judge exceptionally good or poor service.

The criteria

We understand that consumers wish to know when a firm has an exceptionally high level of complaints made against it and thus the imperative for LeO to publish such information. However, we are concerned that LeO currently has limited data on which to make this assessment. We understand that LeO currently has limited information on the size of firms, turnover and type of work carried out by firms. This will make contextualising the data difficult and may lead to some firms who appear to be outliers being branded as high complaints generators when they merely undertake a large number of transactions. We do not believe that LeO should even consider publishing such data until it can assure itself that it can accurately identify those who have an exceptionally high level of complaints made against them.

We are unclear as to why LeO has included criteria in relation to firms having three or more complaints. If LeO plans to publish the names of firms where they have more than an arbitrary number of complaints made against them we would be very concerned. It is clear that larger firms and firms carrying out certain types of legal work are likely to attract more complaints. It is plainly unfair to publish on this basis and will also be misleading to consumers who may assume a large firm is very poor at handling complaints, when per transaction it may have fewer complaints than other, smaller, unnamed firms. LeO should not use arbitrary limits as a criteria for publication. We believe such a move would be out of character for a body who is building a reputation for its fairness.

Q2. What data do you think it would be most useful for us to track?

It is difficult to answer this question when it is not clear how LeO will use the data. We understand that LeO wishes to consider the implication of publication for firms and access to justice issues but is not clear how it will do so.

We are also unclear as to the intention behind the publication of data and thus what data might be useful. For instance, is the data being published to alert clients to firms with very poor complaints handling records? If so, LeO will need to carry out detailed research on the factors that influence the number of complaints a firm has. Factors might include type of work, nature of client, nature of funding, size of firm and number of transactions undertaken. This would allow LeO to begin to assess criteria that identify a firm as having an exceptionally high complaint rate.

Q3. Have we proposed to track the right criteria? Do you have any other suggestions for criteria that could be used to trigger publication?

The Law Society does not believe that the names of firms, and in some cases individuals, should be published for the reasons highlighted in our previous response.

We do not believe that a subjective view as to whether service has been exceptionally poor should be used as a trigger for publication under any circumstances. Defining this will be fraught with difficulty and LeO is likely to be challenged on its decisions. As noted above, we also do not believe that an arbitrary number of complaints should be used to trigger publication. Such a system is likely to unfairly disadvantage larger firms and firms who work in areas which attract higher levels of complaints.

We do not believe that all complaints that are formally resolved should be published. In cases where the solicitor made a reasonable offer, which a client refused and this leads to a formal settlement, it would seem unfair to penalise the firm by publishing their name.

Q4. Once we have tracked our data, what do you think should be the basis of our eventual decision about whether we adopt a policy of identifying individual law firms?

As noted above, we believe that greater thought needs to be given to the purpose of publishing this information. Only once this is clear can LeO make the decision about whether it has data that is appropriate for the purpose and whether it should publish such data.

The Law Society highlighted the potential impact on access to justice and we do believe that it is important to analyse whether publication will adversely affect particular types of firms and if so, whether publication is likely to lead to firms changing the services they offer. Whether publication would adversely affect particular types of firms can be measured using data from LeO and the approved regulators. However, the impact will be much more difficult to measure. It may be possible to carry out qualitative studies to understand what solicitors think the effect might be. It may also be possible to research the effect publication by the SRA has

had on solicitors. Anecdotally, we are aware that, not only are clients discouraged from using firms, but also lenders may refuse to deal with solicitors whose names have been published on the SRA's website. Thus the impact on the firm can be significant.

In our previous consultation we highlighted the potential adverse impact that publication may have on BME firms. We believe that this need to be considered in much greater detail and any proposals should be subject to a robust equality impact assessment.

We have also previously highlighted that we believe that complaints data has the potential to be misleading to consumers. If the intent behind publication is to provide consumers with information, much greater consideration needs to be given to how the data can be useful without being misleading.

Q5. Do you have any comments about the timetable we have suggested?

The timetable should allow for any proposals to be subject to a full cost benefit analysis and a robust equality impact assessment.

We are extremely concerned that LeO states that once it has made a decision to publish it will not reverse the decision. We believe that LeO should be able to change its publication policy, following a consultation, if it finds that it is inappropriate to publish information.