

BAR STANDARDS BOARD

REGULATING BARRISTERS

Response to the second stage consultation by the Legal Ombudsman:

“Publishing our decisions - An evidence based approach”

Introduction

1. The Bar Standards Board welcomes the opportunity to comment on the second stage of the Legal Ombudsman’s consultation on publishing decisions.
2. The BSB fully supports the evidence based and incremental approach the Legal Ombudsman (LeO) is taking to this difficult issue and believes that gathering supporting data to inform the final decision on the criteria to use for publishing decisions, will assist in ensuring a robust and fair outcome. At this stage we have little to add to the comments we made in response to the first consultation as we consider the outcomes of the tracking exercise at Stage Three will be crucial evidence that may affect our views on what the final publication scheme should look like. We therefore look forward to further consultation in early 2012 once the data is available.
3. In response to the specific questions posed in the paper, we would comment as follows:

Question 1

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

We would reiterate our support for the evidenced based approach LeO is taking and consider that the proposal to introduce any publication scheme in increments seems sensible. At this stage, the proposal to start by identifying firms/lawyers where it is in the public interest to do so also seems reasonable. However, the precise criteria to be used when deciding what is in the public interest will clearly be informed by the outcome of the tracking exercise.

Question 2

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

The criteria listed on pages 8 and 9, to a large extent dictate the information that should be tracked in order to establish their impact. It would, however, be useful to track the area of law to which the complaints relate given that it is accepted that some areas produce higher numbers of complaints than others.

Question 3

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

The criteria seem reasonable as a basis for tracking data to inform the final decision on the criteria to use. A balance will need to be struck between on the one hand producing oversimplified criteria which provide little qualitative information that could be of benefit either to the public or the profession, and on the other hand creating a complex set of criteria that leads to uncertainty and discretionary decisions vulnerable to challenge.

As stated in our response to the first consultation, the criteria for publication should be applied consistently across all legal professionals. Therefore, consideration will need to be given to whether the criteria can be applied across the board: e.g. criteria based on size of "firm" (e.g. criterion 3) would be problematic in relation to self-employed barristers.

At this stage without the benefit of the tracked data is difficult to comment on the practical application of the criteria listed but in general the BSB would not favour solely quantitative criteria but would wish to see some level of discretion based on some form of qualitative criteria centred on ensuring that any publication is in the public interest.

Question 4

7. **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 stated in our response to the first consultation, the BSB considers the approach should be to ensure that a balance is struck between the need for openness and transparency, the need to assist and protect consumers and the need to treat members of the profession fairly and proportionately.

Question 5

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

The timetable appears to be achievable based on the outline in the paper and the BSB is satisfied that a nine month period of tracking the relevant data should provide sufficient evidence on which to assess the impact of the individual criterion