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FAO: Janet Edwards (Consultations)
Legal Ombudsman
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Publishing our decisions: An evidence based approach

Dear Sirs,

We write further to your second stage consultation paper and workshop and thank you for the extension of time to respond based on the close proximity of workshop (29 June) and consultation closure date (30 June).

The report refers to lawyers and law firms, for the purposes of our response we have taken this to include Costs Lawyers and Costs Lawyer firms.

The consultation questions surround the thorny issue of identifying firms yet when we attended the workshop it became apparent a decision had not yet been made to name individuals. We raise this as whilst we appreciate the principle of vicarious liability to name the individual rather than the firm is perhaps a fairer approach.

Whilst we appreciate some strong views have been expressed against naming either individuals or firms, our view is that if you practice in a regulated environment (legal, medical, financial) then that risk follows in the event service or conduct fails to meet professional standards. We live in a changing world where the consumer expects to be able to make informed decisions before deciding to contract. Having regard to the financial exposure a consumer faces when contacting to use legal services this expectation is not unreasonable.

Question 1: Do you have any comments or suggestions about stage 3 of our approach?

A further review in 9 months' time with a stakeholder workshop seems sensible but we feel you should take the opportunity to consider individual / firm naming at the same time.

A due diligence model along the following lines may be appropriate:

1. LeO board forms a sub-committee either of the board or made up of stakeholder representation with a lay majority to meet to consider cases where LeO deems there to have been a “severe degree of service failure”.
2. The sub committee meets to consider and vote (majority vote) on whether the individual or firm should be named having due regard to :
 - The facts
 - Outcome of the complaint
 - Consumer impact
 - Board approved consideration criteria (to deal with many of the issues raised such as type of work).

In our view “severe service failure” should be the trigger for referral up. It would be wrong to use formal resolution as a trigger as this would provide a false representation for the following reasons:

- A significant impact complaint resolved informally would fall through the net.
- It would encourage firms to settle informally even if there were no grounds to avoid their firms name being published.
- This would create a claims culture.

Further, we feel it would be wrong to use complaint numbers as a trigger as the lack of proportionality renders this an unfair approach (see answer to question 2 below).

Question 2: What data do you think it would be most useful for us to track?

Track positive outcomes as well as negatives, criteria 2 for example is a positive finding of good practice, separate them accordingly.

Also, there has to be some proportionality. For example criteria 5 & 7 apply to firms with more than 3 complaints in 12 months. If a firm employs 10 Costs Lawyers then this indicates a more serious issue within that firm than in a firm that employs say 500.

Question 3: Have we proposed to track the right criteria?

Criteria 2 & 4 should go under a positive outcome heading.

Criteria 1, 3 & 6 seem sensible under a negative outcome heading.

Criteria 5 & & lack proportionality and therefore cause concern.

Question 4: 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?

Please see our suggested model in answer to question 1.

Question 5: Do you have any comments about the timetable we have suggested?

No.

We hope the above assists in your consultation process.

Yours faithfully,

Lynn Plumbley
Chief Executive