

## **A response to The Legal Ombudsman's consultation and discussion paper: "Publishing Our Decisions"**

I am not a legal professional. I am submitting my opinions to this consultation as a member of the public who is currently experiencing problems with a solicitor. Although I had heard initially about the issues around what and whether to publish via a Radio 4 programme, I was reminded of this when I visited the Legal Ombudsman (LO) to enquire about my rights in my current dispute.

My initial 'raw' reaction to the question of publishing data, specifically the names of those legal professionals against whom complaints had been upheld by the LO, was "Yes. Get the bas\*\*\*\*s"! However, this emotional reaction isn't particularly helpful, so I have tried to think the issues through. The responses offered below are, I hope, more measured and objective.

On reflection, I would be reluctant to push for an automatic publication of the names of legal professionals who transgress in the judgement of the LO. My key reasons for this are as follows:

1. It is, I assume, possible for complaints to be upheld by the LO on grounds of technicalities. For example, that information given to a client was not sufficiently clear, or that a required paragraph in the Client Care Letter was missing. Whilst these are important matters and the public has a right to expect a professional service, they are not, to my mind, as serious as those regarding probity, integrity, impartiality etc.

Despite my recent experiences, I do believe that lawyers are human too, and so not beyond the odd mistake. To publish the name of a lawyer who has transgressed in a less serious 'technical' way would not, I think, be helpful to the general public. The Applicant to the complaint should, of course, still receive redress, but publication may be a step too far. One would hope that an LO judgement / reprimand would be enough to encourage the lawyer to address the issues of concern going forward.

This speaks to this consultation's specific questions about "the types of cases published" and "the levels of decision published", of which more below.

2. Automatic publication of the name of a transgressor may well have a detrimental affect on the reputations of others in the firm. My concern here is primarily for the assistants, trainees and newly-qualified practitioners whose careers could be affected. Senior partners may well be in a position to exert positive influence on individual transgressors within a firm; junior associates would invariably not be in this position.

As a professional in my own field, I would, and do, defend against the dangers of 'guilt by association'. This should be extended to honourable members of the legal profession.

Keeping the above points in mind, I do, on balance, support the publication of some form of list of legal professionals who have had complaints upheld against them. Lawyers, solicitors, barristers, etc. do an important job, but they are not necessarily beloved of the general public. From casual, unscientific conversations with friends and colleagues (for this consultation), I would summarise a general description of legal practitioners as "overpaid" and "unaccountable". Whilst remuneration may be beyond the scope of the LO, accountability can certainly be improved by the publication of a list of 'guilty' parties.

This does, of course, require caveats. The Consolation Paper helpfully suggests five, which I will respond to directly:

Whether any information is published at all

Yes. I think that the transparency that this offers would make an important contribution towards maintaining public confidence in the LO – and in the legal profession in general. Some kind of publication is essential.

The types of cases published

Serious cases. I am not really qualified to judge what these may be. However the public has a right to expect honesty, integrity and professionalism from lawyers; those who stray from this should be named.

The levels of decisions published

I am not entirely sure what this means, as distinct from the last question. If this means offering further information on outcomes, penalties and sanctions, then yes, publish these. If all upheld complaints were to be published, it might be helpful to the public if some indication is given as to the severity of the transgression. A list of ‘technical misdemeanours’, might then begin with a paragraph explaining to the public that, whilst not acceptable, these should not materially affect the lawyer’s ability to act effectively and in the client’s best interests.

Identifying lawyers and legal firms by name

Individuals, yes, absolutely. Members of the public should be able to look up the name of the person dealing with their case, in much the same way as they may currently obtain information regarding Orders & Findings against a given individual from the SRA.

Law firm names should perhaps only be published if a given firm comprises more than one individual on the list. This would require the list to be kept up to date, but I should imagine that firms whose transgressing members had departed would keep the LO appraised of the situation – and have their name removed from the list.

The form of publication

A searchable database; not an open list. An open list has the potential to invite public campaigns, random reprisals and an unwelcome ‘scattergun’ approach to solicitor victimisation. Members of the public should be required look for information held about a given lawyer/firm. This would constitute an affective addition to research that many of us do when seeking to instruct a lawyer.

**In Summary: Suggestions**

On balance, I would welcome a system whereby a searchable database was published of practising professionals with complaints upheld against them, but give the following conditions:

1. Serious transgressions (as laid out by the LO in consultation with the profession and a board of public individuals) by individuals to be published automatically.
2. Less serious transgressions by individuals recorded but not published. Then names of individuals with three or more complaints (of any severity) upheld against them to be published automatically.

3. A Law firm named if two or more of its members, partners, associates, employees, etc. are listed under point 1 and/or 2 above.

I hope that these comments will be of some use to the consultation. I would welcome the opportunity to discuss this important matter further, and would happily serve on a panel or board as an objective 'layperson'.

Yours faithfully,

Dean Conrad