



**A response by the Institute of Legal
Executives**

**“Publishing our decisions: an evidence
based approach”**

6 July 2011

Extension agreed



Publishing our decisions: an evidence based approach

The Institute of Legal Executives

The Institute of Legal Executives (ILEX) is the professional body representing Legal Executive lawyers and has membership of around 22,000 students and practitioners. ILEX is also an awarding organisation regulated by the Office of Qualifications and Examinations Regulation offering learners the opportunity of completing legal qualification at Level 3 and Level 6 on the Qualifications and Credit Framework (QCF).

Alongside Barristers and Solicitors, Legal Executive lawyers are recognised under the Legal Services Act 2007 as qualified lawyers. Recent developments also mean that Legal Executive lawyers are eligible for prescribed judicial appointments, including eligibility as District Judges and first tier judges of tribunals, with the first Legal Executive Judge being appointed in August 2010.

Moreover, Government legislation has recognised the significance of Legal Executive lawyers within the legal system, and has given them the right to run their own business in partnership with other lawyers and in the future with other commercial legal services providers.

Legal Executive lawyers are able to undertake many of the legal activities that Solicitors do. They will have their own caseload and can represent clients in court where necessary.

Legal Executive lawyers must adhere to a code of conduct and, like solicitors, are required to complete Continuing Professional Development annually in order to keep themselves abreast of the latest developments in the law.

Consultation Response

1. ILEX welcomes the opportunity to respond to this consultation put forward by the Legal Ombudsman ('LeO') on the publication of its decisions, and hopes that the observations advanced are of value.

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

2. ILEX remains firm that any decision to publish the details of firms or individuals (in the case of sole practitioners or barristers) should only be taken once a reasonable and objective impact assessment has been carried out. Such an assessment should consider the positive and negative impact(s) of identification. For example, whilst a positive impact may be that a firm improves its complaints handling process, this must be considered against any negative impact such as the reputation of the firm. Impact assessments should also consider the consumers and the interest of the greater public.
3. In relation to criteria one, ILEX seeks clarification of 'exceptionally severe degree of service failure'. A definition or threshold must be clear if LeO intends to use such data to undertake a meaningful and balanced assessment.

4. In relation to criteria two, ILEX is pleased that data will also be collected in relation to firms who have demonstrated good practice. This evidences a balanced assessment.
5. ILEX believes criterion three requires development to demonstrate how LeO will decide whether a firm has 'exceptionally high level of complaints' given its size and nature of business. Clarification is sought in relation to 'high' for a particular size of firm, or for a particular area of practice, and what information LeO will use to establish the size of a firm. For example, will it look at the number of lawyers within the firm, the turnover, or some other information? Furthermore, it is not clear whether LeO is referring to complaints generally, or complaints that have been proven formally by its ombudsmen. ILEX believes complaints which are not proven, would not necessarily be equivalent to poor service, however, the situation may be different if it were proven complaints. It cannot be an assumption of such.
6. ILEX believes that criterion four needs further qualification. Consideration needs to be given as to the circumstances which have led to the complaint being resolved formally. ILEX envisages a possible situation where a consumer simply refuses to accept an informal resolution with a firm, and is determined to proceed to the Ombudsman.
7. Criterion six is imprecise, and LeO must clarify whether the 'remedy awarded' refers to an informal or formal award by LeO, or whether both will be taken into account.
8. With regard to criterion seven, it is not clear from the consultation whether the 12 month period will be based on a calendar year, or if it will be calculated on a rolling basis.
9. In relation to stage three in general, ILEX notes that at the end of the collection of data, LeO intends to share anonymous data with the

Approved Regulator (in this case, ILEX). However, ILEX is unsure from the consultation exactly what type of information LeO will seek, and how an Approved Regulator could assist. ILEX Professional Standards (IPS) is the regulatory body for Legal Executives and other members of ILEX, and regulates individuals, and not their employers firm/business. Accordingly, ILEX will not have access to certain information required by LeO, as it will likely be held by the Solicitors Regulation Authority (SRA).

10. ILEX notes LeO's intention to be in a position to make an informed decision regarding its approach to identification by March 2012. In order to do so it will rely on evidence gathered in the nine months preceding that date, and following a review of the data with a selection of stakeholders. ILEX would be interested to learn how these stakeholders will be selected.

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

11. Subject to the points raised above, ILEX believes that LeO has correctly identified the data it intends to track.

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

12. Subject to the comments above, ILEX believes that the criteria listed in the consultation are sufficient for tracking. However, ILEX believes this should not mean that they are the criteria for automatic publication.

13. ILEX expressed reservations and in its response to LeO's previous consultation on publication, and particularly expresses reservations in relation to criterion six. This criterion is for firms which have been involved in '...complaints where a remedy is awarded...' Whilst ILEX recognises this is a suitable criterion to assess data, it does not believe

it should be an automatic trigger for publication. A more appropriate trigger would be formal decisions made against lawyers. An advantage to only publishing cases where a remedy has been awarded by the Ombudsman is that it provides information to lawyers as to what is acceptable or otherwise.

14. ILEX believes it would not be appropriate for any of the criteria listed to be an automatic trigger to publication considered in isolation. The consideration given to publication must take into account all of the relevant data and, as paragraph four above, be balanced.

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?

15. ILEX reiterates that LeO's eventual decision must be based on the assessment of the tracked data, and considered against the criteria. As stated, there should be no single automatic trigger to publication. All matters should be considered on a case by case basis, taking into account the individual circumstances, assessment of the tracked data, and in order that a balanced approach is achieved, the potential impact on firms, the likely consumer benefit and more general public interest must also be fully considered.

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

16. The timetable is reasonable, and we would not object if the time for stage three is extended to 12 months.

17. Details of lawyers and/or firms should not be published as a result of informal decisions. ILEX welcomes the first stage with anonymous

case studies being published, where it is clear whether they have been resolved formally or informally, and whether remedies were awarded.

18. Stage two of LeO's publication approach is not too dissimilar to that taken by our regulatory body, IPS, which publishes summaries of cases which have been formally resolved by the Professional Conduct Panel and Disciplinary Tribunal.