



**A RESPONSE BY ILEX PROFESSIONAL
STANDARDS LIMITED**

**PUBLISHING OUR DECISIONS:
AN EVIDENCE BASED APPROACH**

CONSULTATION BY THE LEGAL OMBUDSMAN

DATE: 23 JUNE 2011

ILEX Professional Standards

This response represents the views of ILEX Professional Standards Limited (IPS), the regulatory body for Legal Executives and other members of ILEX. Legal Executives are members of the Institute of Legal Executives (ILEX). ILEX is the professional body representing 22,000 qualified and trainee Legal Executives and is an Approved Regulator under the Legal Services Act 2007 (the Act).

IPS welcomes the opportunity to comment on proposals put forward by the Legal Ombudsman (LeO) on publication of its complaints decisions. IPS hopes the general observations below may be of value. Answers are set out below, to the questions in the consultation.

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

IPS recognises that LeO has proposed a three staged approach due to the overall differing views amongst stakeholders on whether LeO should identify lawyers or firms in its publication. It is noted that stage three should provide more substantial data and test the numbers and types of firms that would be affected by a policy of identification, with the aim that in 2012 LeO will be able to make a more informed decision about its approach to identification, based on clear evidence.

LeO has outlined criteria which it proposes to use to identify firms in order to track and assess the potential impact of publication. It is important that a balanced assessment is conducted, assessing both the positive and negative impact of publication. For example, the negative impact on a firm's reputation would need to be weighed against the positive impact whereby firms are persuaded to improve their complaints handling procedures. It is also important that LeO assesses the potential negative and positive impact on consumers, if firms were identified individually.

IPS has specific comments to make on the criteria LeO proposes to use at stage three, to identify firms. It may be necessary to outline what would be considered to be an 'exceptionally severe degree of service failure' referred to in criterion one. For a qualitative assessment of the data that falls within criterion one, a threshold distinguishing exceptionally severe service failure from any other service failure is required.

Criterion three requires further clarification. Further criteria may need to be established to outline how LeO will decide if a firm has an 'exceptionally high level' of complaints. There needs to be an indication of the number of complaints that would be considered exceptionally high for certain size firms or in certain areas of law. Furthermore, it would need to be recognised that a high level of

complaints does not necessarily equate to poor service, whereas a high level of 'proven' complaints might. Similarly, criterion seven should only relate to complaints that are 'proven'.

In relation to criterion four, there should be consideration of the reasons the complaint was resolved formally. Criterion four would not be a good trigger if the complaint involved a difficult consumer that wouldn't accept an informal resolution. Furthermore, criterion six is ambiguous; as it is unclear whether the remedy is awarded as a result of a formal or informal decision made by LeO.

LeO proposes to share the anonymous data with approved regulators, who they hope will be able to tell them more about the firms that would be affected. It is unclear from the consultation what type of information LeO will seek from approved regulators and how approved regulators will be able to provide further details about firms on the basis of anonymous information.

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

IPS believes LeO has identified the necessary data it should track.

3. 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 listed in the consultation are adequate for tracking, but are not necessarily triggers for publication. For the reasons expressed in IPS' response to LeO's previous consultation on the subject, criteria five and seven 'firms with more than three complaints in the year' should not be a trigger for publication. Naming firms only if they have received three or more complaints could be detrimental to public protection and regulation.

The firm could have engaged in serious poor service which should be known to the public whether or not they had previously had a complaint upheld against them. For firms to start a clean slate each year is also quite dangerous. Firms could habitually provide poor service and have up to two cases decided against them by the Ombudsman each year. If these criteria were used as triggers, the system would be open to abuse by firms and lawyers. In addition, it is not clear from the consultation whether the years would be calculated on a rolling basis or by calendar year.

Criterion six refers to 'firms involved in complaints where a remedy is awarded'. This is a suitable criterion to assess data against, but should not be a trigger for publication. There is an advantage to publishing only cases where a remedy has been provided, as the cases published would inform lawyers of the standards which are unacceptable and warrant some form of sanction. However, there

could be a case in which LeO decides against the lawyer but does not award a remedy. Therefore a more suitable trigger would be formal decisions made against lawyers.

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?

LeO's eventual decision should be based on the results of the assessment of tracked data. The data itself should be assessed against the criteria which will be the trigger for publication. However, it may be the case that initially the trigger for publication is unknown. The trigger for publication could be a combination of criteria listed in section five of the consultation. Alternatively, the trigger for publication could be determined by the results of the assessment of tracked data. The assessment should involve considering the data, taking into account the impact on firms, the public interest and consumer benefit.

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

The timetable appears reasonable to build up to the final stage.

As a general comment, IPS is of the view that the names of lawyers/firms should not be published for informal decisions. Therefore, IPS welcomes stage one whereby LeO produces anonymous case studies on cases resolved formally and informally, where remedies were awarded and where they were not.

IPS also agrees with publication of summaries of all cases that are resolved formally by an Ombudsman decision. Stage two resembles the approach taken by IPS in which it publishes summaries of cases resolved formally by the Professional Conduct Panel and Disciplinary Tribunal. However, IPS names the member the decision is made against and in addition, has in place a policy stipulating the length of time a decision is published for.

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