

LSC response to the Legal Ombudsman’s Discussion paper “Publishing Our Decisions: An Evidence Based Approach.”

Thank you for providing the Legal Services Commission (LSC) with the opportunity to respond to this consultation. The LSC is currently a non–departmental public body sponsored by the Ministry of Justice (MoJ)¹. The LSC is the biggest single purchaser of legal services in England and Wales with an annual spend of £2.2 billion; we are responsible for the delivery of civil and criminal legal aid and the development of community legal services.

The LSC is pleased to be given the opportunity to respond to your consultation paper entitled: “Publishing Our Decisions: An Evidence Based Approach”. We support the need for a well designed system of publication of complaints data as a valuable tool that would enable the LSC to evaluate risk and decide where to target our investigative resource.

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

The LSC welcomes the development of the Office for Legal Complaints (OLC) criteria to track complaints data.

As a public body responsible for procuring legal services on behalf of clients, who are often the most vulnerable in society, we believe that we should have access to information that can be used to support and inform our decisions on managing contracts and procuring legal services on behalf of these clients. We believe it will provide an important additional safeguard to help ensure legal aid clients receive good customer services, as well as a quality legal advice.

The OLC might wish to consider producing guidance to help the users of published information to interpret it correctly instead of holding information back. This approach might help to ease concerns about releasing certain information.

We believe that a robust, published complaints process would help to provide support for wider adoption of existing quality improvement and assurance initiatives and the development of new ones.

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

Historical data held on complaints should be considered by the LEO upon deciding what impact the information has on a particular group of lawyers.

The LSC believes that statistical data should be released on the volume of complaints and on types of outcomes as a proportion of overall complaints. We believe that there is less

¹ The MoJ intends to transfer the LSC’s functions to an Executive Agency in future, subject to Parliamentary approval.

public interest justification to publish full information about complaints that have been resolved at an early stage than for those which are required to be resolved by the OLC/Ombudsman. Overall statistics will be more informative for users of the service than a large number of case reports.

The OLC might also want to consider the type and severity of the complaint and its impact on the diversity of the group i.e. age, ethnicity, gender etc.

The LSC continues to support the need for the LeO/OLC to publish full details on complaints that result in a decision to the ombudsman/OLC in the complainants favour. We feel that there is a significant public interest justification for the LSC to have access to both statistical and detailed information on complaints volumes and decisions relevant to publicly funded work.

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

The LSC agree that the criteria outlined in stage three are a good start in deciding the type and level of complaint information to trigger publication. The LSC feel that the identification of the firm involved in the complaint is important, especially where the decision is made in favour of the complainant. As stated in response to question 1, the OLC should look to mitigate any unintended impact by providing clear information to help users to correctly interpret the published information. This guidance should include information on how the criteria was established i.e. how the severity of the case is measured and how the size of an organisation is calculated.

The LSC believes that the OLC should be guided by the principles of freedom of information when deciding the criteria to use for publishing complaints information, i.e. information should be published unless it is withheld under the rules of Freedom of Information.

Unlike regulators, the LSC does not have a statutory route to obtain complaints information and therefore consider that making an FOI request to the OLC would be our only other option to ensure that we receive the complaints data that we require.

The LSC supports the publication of Frequently Answered Questions (FAQs) and detailed case studies where the complaint has been resolved in the lawyer's favour. We feel that this information will help to inform lawyers and clients about issues that are not likely to lead to a successful complaint, although there may not be enough public interest to merit full disclosure of the identity of the lawyer/ firm involved. We also agree that information on complaints where an informal resolution has been agreed should be made available for publication.

Consideration should also be given by the OLC as to the publication of statistical analysis on complaints in relation to the area of law, type of complaint, type of resolution and diversity factors of both the complainant and lawyer. This information is relevant when trying to establish any trends in the complaints received over a period of time allow a review of the impact of publicising the decisions.

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?

The LSC views publication of complaints information as important in promoting public confidence in the quality of legal services and the ability of the complaints process to resolve problems fairly. We also believe that the vulnerability of clients we fund and the difficulty they face in selecting lawyers, are two key reasons why it is so important that the LSC has access to complaints information, so that we can help ensure that any publicly funded lawyer they may choose is providing effective customer service and resolving complaints locally wherever possible.

Complaints information would enable the LSC to obtain a fuller picture of the performance of a provider, and is a valuable tool that would enable us to evaluate risks and decide where best to target investigative resource. Additionally the Specialist Quality Mark (SQM) standard requires providers to have an effective complaints system in place. The LSC would benefit from receiving this type of information as we could use it to inform contract management, or possibly future tender processes.

Therefore the OLC's decision on whether or not to adopt a policy of identifying individual law firms should start with the broadest justifiable approach to publication, and then consider whether or not there are any specific exclusions required in response to issues that are identified. This approach will help to ensure that information is not withheld from the public unnecessarily, and is more likely to lead to openness and transparency rather than limiting publication of information from the outset.

As stated above the LSC believe that the OLC's decision should be guided by the principles of freedom of information, therefore information should only be withheld if it falls under the rules of FOI. We believe that a transparent approach to publishing this type of information will also save administrative costs for the OLC by reducing the volume of information requests received by the OLC that require an individual tailored response.

The LSC recognises the difficulty the OLC faces in balancing the need to provide all relevant detail and the facts of a case with overwhelming the public with high levels of information. We believe that the OLC should take a consistent approach when deciding to publish complaints information.

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

The LSC does not have any comments on the timescales proposed for stage three.

Further information

If you have any queries about this response, please do not hesitate to contact [Emma Boniface](mailto:emma.boniface@legalservices.qsi.gov.uk) in the LSC's Service Development team on emma.boniface@legalservices.qsi.gov.uk.

Yours sincerely

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