

THE NATIONAL CONSUMER FEDERATION

RESPONSE TO THE LEGAL OMBUDSMAN'S CONSULTATION PAPER: "PUBLISHING OUR DECISIONS - NEXT STEPS"

The National Consumer Federation welcomes this further opportunity to participate in the Legal Ombudsman's consultation on the important issue of publishing Ombudsman decisions. This response to the 'next steps' paper follows our submission in January this year on the first discussion paper in this consultation process.

The question of whether or not to publish the names of firms or individual lawyers and if so in which circumstances, is a key question for the Legal Ombudsman, and the opposing viewpoints on the question of consumers on the one hand and of High Street solicitors on the other as revealed in the two research papers confirms the need to adopt the open and gradualist approach adopted by the Office

We have looked on-line at the implementation of Stage One - the publication of several anonymous case studies based on real complaints. For consumers with internet access this initial introduction to the work of the LeO, together with the leaflets also available, provide a useful first-stage guide for clients of legal services seeking some clarification of the role of the Ombudsman and an indication of service standards expected. In the instances we have seen the story format with brief outline information is well judged and useful to some extent but the benefit for most consumers unhappy with the service they have received from their lawyers is limited.

The publication of anonymous summaries of all cases that are resolved formally by an Ombudsman decision, as proposed for Stage Two due to start shortly, is a necessary next step. However, consumers need to know what standard of service they should expect from a firm by having access to both complaints upheld and complaints not upheld, with reasons stated, as with the sample Stage One stories currently on-line. In this respect the Financial Ombudsman Service model of publishing case summaries should be helpful. Similarly of course, firms need to know the standard of service which will be judged unacceptable if they are to improve. If feasible we would like to see the current Stage One on-line information summarising both complaints upheld and those not upheld expanded at Stage Two to include summaries of all cases.

We agree the gradualist approach that is being adopted and are confident that the Ombudsman is conscious that the process must not be allowed to drag on beyond deadlines so that Stage Three - the Board's decision on the final publication policy - will be taken by April 2012. (Q 1 & Q 5).

We welcome the recent publication on-line of statistics useful to consumers, their advisers and service providers. In particular we welcome the statistics on areas of law and complaint categories. We recognise that it is too early to detect trends and issues with the Ombudsman's service that need to be addressed but we would like further information on reasons for not accepting cases - other than those already identified in the statistical report. It would be useful to know if any complaints should have been addressed to another ombudsman service such as the FSO. Many of the statistics we hoped to see are now being published but we have a few further suggestions for consideration in the future (Q 2):

- ▲ Number of complaints withdrawn by the complainant during informal negotiations and reasons for withdrawal.

- ⤴ Data on number and type of remedies agreed (i) informally and (ii) formally.
- ⤴ The value of financial remedies agreed (i) informally (ii) formally.
- ⤴ By whom the complaints are referred to LeO (by individuals, a third party on behalf of individuals, clubs, charities, SMEs etc)
- ⤴ Number of rejections of the Ombudsman decisions (if any) with reasons,
- ⤴ Data on cases (if any) that are referred to judicial review.

The link function used in Stage One could possibly be expanded in the anonymous reports in Stage Two to allow cross-referencing to similar complaints on service quality, or complaints arising from the same sector of the law.

The Board will be tracking specific criteria to help in their decision on whether to publish information that names law firms or lawyers. It is still early days and more information is required to inform that key decision, but based on the data currently available we do have some comments at this stage on some of the seven criteria cited by the Office.

Criterion 3: It may prove too time-consuming and challenging to evaluate the significance of a firm's (or lawyer's) caseload and nature of business in deciding whether or not to name the firm or individual. Such evaluations may give rise to objections, for example on the grounds of unfairness and inadequate objectivity, and may not be of sufficient benefit to consumers to merit the work involved.

Our preference would be to look at the complaint in terms of outcomes for the client: the degree of detriment suffered with stress given equal weighting with any financial loss. **(Q3)**

Criterion 5 : It is not clear to us at this stage why the threshold number of cases that could trigger naming should be as high as four ("more than three"). Indeed, it could be argued that as the complaint will have been through both in-house conciliation and informal LeO procedures, where any *single* complaint is upheld after formal investigation and where a remedy is awarded it is in the public interest as well as the interests of consumers that the firm or individual lawyer be named.

However, until more information is available we would suggest that the LeO track firms or individual lawyers with *three or more cases* where a remedy is awarded in any twelve month period in order to see how many firms would fall into that group. If it is found that most large firms would score on this basis, then maybe some size of firm indicator will be needed. One possibility would be the number of complaints per fee earner.

We have commented above on your proposed approach **(Q.1)** and the suggested timetable **(Q 5)** which we see as sound and measured and we have suggested further data which we believe should benefit consumers, their advisors and service providers **(Q2)**. We have proposed a client outcome approach to tracking. **(Q.3)**

We maintain that it is within the spirit of the Act and in the public interest that in certain circumstances firms that have failed their clients should be named. And that your eventual decision on publishing your decisions **(Q 4)** should be based on the public and consumer benefit from a transparent, well regulated, competitive legal services market. The Legal Services Act 2007 was passed in order to redress the substantial imbalance of power between consumer and provider in this market. As things stand at present the market is too opaque and assessment of quality too challenging for consumers to play their necessary role to correct that imbalance. They will not be

able to do so effectively without access to crucial information about the performance of lawyers whose services they may wish to engage. Obviously complaints information will need to be set alongside other information about competences.

The National Consumer Federation is a registered charity and the UK's grassroots voluntary consumer organisation, representing local consumer groups and individual members nationally and campaigning to improve consumer rights for everybody.

Our aim is to help consumers at the grassroots help themselves and to educate and inform them to the wider public benefit, with reference to our key guiding principles of choice, information, representation, access to goods and services, quality, fairness, safety and redress.

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