

Consultation response

Publishing our decisions
Next Steps (April 2011)
Legal Ombudsman
PO Box 15871
Birmingham B30 9ED

DATE: 30 June 2011

TO: Janet Edwards

RESPONSE BY: Mark McLaren, Principal Advocate

Which? is an independent, not-for-profit consumer organisation with over 700,000 members and is the largest consumer organisation in Europe. Which? is independent of Government and industry, and is funded through the sale of Which? consumer magazines, online services and books.

We welcome the opportunity to submit this further response to the Legal Ombudsman's 'Publishing Our Decisions' continuing consultation: the next steps paper (April 2011). This response should be read in conjunction with Which?'s original response submitted to LeO on 20 December 2010.

Summary

As outlined in our December 2010 'Publishing our Decisions' consultation response, Which? believes the Legal Ombudsman (LeO) should seek to be wholly transparent. This means it should publish as much information as possible and this should include, in some circumstances, publication of the name of legal firms and individual lawyers.

We agree with LeO's conclusion that the concerns expressed about publishing complaints data are overstated.



We note that in April 2011 the Government published a paper on consumer empowerment setting out their expectation that complaints and performance data should normally be published.

We endorse LeO's approach to track data, though suggest this could be done for 6 months rather than 9 months.

We believe that a more comprehensive publication policy could be implemented earlier than at some point in 2012 and suggest April 2012 as a clear target date for implementation of LeO's publication policy.

We agree that Stages 1 and 2 should be launched immediately.

Response

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

As we have noted before, the direction of travel is for all organisations to be more open. Given the concerns expressed by some, while it is disappointing that LeO does not feel able to begin publication of full data yet, we accept the need to track data to acquire more intelligence on the impact of fuller publication. We suggest however that tracking data for 6 months may be sufficient with the aim to have a completed publication policy in place by April 2012 at the very latest.

It would be helpful for LeO to state clearly from what date full publication could begin; the timeline indicates a LeO Board decision by March 2012 so Which? hopes any decision to go ahead could be from April 2012 even if data is tracked for 9 months to Spring 2012.

We support the immediate launch of Stages 1 and 2.

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

Which? broadly agrees with the list set out in the consultation paper but we seek clarity on how LeO will define terms such as 'exceptionally severe' or 'very



exceptionally'. We certainly hope this will not be defined so as to unreasonably limit the agreed publication policy.

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

Which? broadly agrees with the criteria set out. Factors which are relevant to publication also include:

- a) the nature of the work undertaken;
- b) whether the complaint was resolved informally after reference to LeO;
- c) the number of active clients the firm has to give a ratio of complaints to number of clients; and
- d) the firms where LeO investigates the complaint and a finding is made for the firm or the complaint is dismissed and the firm exonerated.
- e) the size of the firm in terms of number of partners and turnover.

In addition, the search functionality for the published data should be easy to use and results presented in such a way as to ensure that there is no risk of the data being misinterpreted. The search functionality should be intuitive and the search options should be expressed in plain English. It should also be free to access.

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?

Which? believes the basis of the decision is the inherent public and consumer interest in the open and transparent publication of complaints and performance data in an area of very significant importance to the public. As Which? outlined in its initial response (December 2010), open and transparent publication is one factor that is important to empower consumers to make better choices about a crucial area of service provision.



On 13th April 2011, the Cabinet Office and Department of Business, Innovation and Skills published a paper titled '*Better Choices: Better Deals. Consumers Powering Growth*'. Among other recommendations, it concluded that there should be an '*expectation that regulators, government departments, regulated businesses and public service providers will release the complaints and performance data they own unless they have good reason not to do so*'.ⁱ

This expectation means that LeO will have to adopt a policy of identifying individual law firms in the circumstances set out in their publication policy. Which? agrees with and endorses this approach as the default position.

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

Yes. We would have preferred it to be quicker as noted above.

ⁱ Better Choices: Better Deals (BIS/Cabinet Office: April 2011, URN11/749)