

Legal Ombudsman

Discussion paper: October 2019

Transparency and reporting impact

A response by

CILEx Regulation

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## **Introduction**

The Chartered Institute of Legal Executives (CILEx) is the professional association for Chartered Legal Executive lawyers, other legal practitioners and paralegals, representing approximately 20,000 members. Chartered Legal Executives (Fellows) and CILEx Practitioners are authorised persons under the LSA. CILEx Regulation regulates all grades of CILEx members.

As the Approved Regulator under the Legal Services Act 2007, CILEx has delegated these regulatory powers to the independent regulator CILEx Regulation.

This response represents the views of CILEx Regulation.

CILEx Regulation is also a regulator of entities through which legal services are provided. It authorises entities based upon the reserved and regulated activities. CILEx was designated as a licensing authority on 1 April 2019.

CILEx Regulation and CILEx provide an alternative route to legal qualification and practice rights allowing members and practitioners, who do not come from the traditional legal route to qualify as lawyers and own their own legal practice.

## **Response to the Legal Ombudsman Discussion paper: Transparency and reporting impact**

1. The Legal Ombudsman (LeO) is looking for ways in which their data and information could play a role in directing choice and differentiation for consumers who visit their website. Given this aim we believe the best way for LeO to achieve this is to be consumer-led and seek consumer insight and testing. This will provide:
  - understanding of what information consumers want and would use,
  - the format to present it in,
  - the language and terminology consumers use and understand,
  - how consumers navigate the LeO website and
  - how to contextualise information.
2. This will enable LeO to arrive at the best information, displayed in the most accessible and useful way.
3. For the proposed revision of the website, we would therefore suggest that how the consumer is able to navigate around the site is key. When consumers come to the current site, we believe they would naturally look at the “Helping the public section”. At present they would not be able to find the data and information there, so this should be addressed.
4. We also believe that LeO should consider at what point in a legal services transaction a consumer would normally access the LeO website and why that might happen. We believe that consumers would usually visit the LeO website having used a legal services provider to address an issue, rather than at the time of making a choice.

5. So, consideration needs to be given to not only the content of information provided but also to how consumers can be made aware that LeO provides choice making information, at the point they need it. We would suggest research is carried out on the value of the information proposed and how it can be integrated into the decision-making process by a consumer.
6. We understand the aim of increased transparency is to provide information for different specific audiences. LeO may wish to consider if and how information should be presented for different audiences.

***Q1. Would adding extra filtering options for our decision data help consumers to make informed decisions when selecting a service provider? Are there other filters we do not currently offer that we should consider including?***

7. We are answering this question in relation to the existing data table. We believe that the present two separate ways of filtering might be confusing to consumers. Additional filters such as those listed in the bullets at the top of page 5 of the discussion paper, postcode, town/city and the ability to apply multiple filters might benefit consumers. However, it is important to understand from consumers what filters and what data they would find most useful, and what presentation would be most helpful.
8. We believe that the current positioning of the click through boxes to both the data table and data file could be confusing for consumers. We think the data file isn't aimed at consumers and this could be made clear in the page content, or the data file located on a different section of the website.
9. To ensure the data is valuable to consumers, information could be provided through consumer-focused guidance offering contextualisation and tips on how to search/use the data. We would suggest that gathering consumer insight would be helpful so the data can be contextualised and made as useful to consumers as possible.
10. We think the following points would need consideration to explore if and how they can add value to a consumer in making a decision on the choice of legal services provider:
  - the number of complaints per firm is small, which makes meaningful comparison between firms difficult,
  - will this really enable consumers to differentiate between firms,
  - different areas of law attract higher volumes of complaints or different types of complaints,
  - the relevance of ratio of complaints to fee earners or transactions,
  - what is the difference for a consumer between first and second tier complaints,
  - provision of an explanation of LeO remedies, so consumers can understand them.

***Q2. Would sending annual reviews to service providers (without publishing the information) be helpful in raising standards? If so, what should the selection criteria/methodology be?***

11. We assume a firm will have been in communication with LeO while a complaint(s) is investigated and gained insight during that process. However, if valuable additional information can be provided to firms, particularly focusing on how to improve for consumers, best practise and avoid pitfalls in the future, this could help to raise standards. Legal service providers who want to improve will take onboard learning points and act.
12. However, by not publishing reviews, it may not be as impactful in driving up standards because there may not be the same incentive on firms to improve service. We appreciate that complaint information is currently published and therefore LeO may be able to best judge the impact that publishing a review may have.
13. We believe the selection criteria of firms with the highest complaint volumes could be problematical because there is largely a small number of complaints per firm per year.
14. We believe that smaller, high street firms are those used most frequently by individual consumers. If these types of firms do not have the highest complaint volumes, they may not reach the threshold for a review. These firms may have smaller resources and may benefit more from a review offering learning points. As we are unable to assess the volume of firms that would have a review, we are not able to comment whether the impact of annual reviews may be as successful as they might be in driving up standards for consumers. We would suggest that before implementation LeO carries out a sample of a variety of criteria to see which firms are 'selected', reviews the types and size of firms, and then considers how an annual review may impact on the services of those firms, to see if the outcome desired by LeO is achieved.
15. We believe that there is merit in considering alternative approaches which might include:
  - provision of reviews to firms with complaint numbers above a certain threshold,
  - firms carrying out work in areas of law most used by consumers,
  - areas of law which across the sector attract the most complaints, or
  - to focus on particular types of complaints or areas of law used where there is the most consumer vulnerability.

***Q3. Would edited annual review letters be useful to consumers? Are there any risks we should take account of when considering this proposal?***

16. Consumer insight would indicate whether consumers would find such information useful, and how it should be presented. Again, alongside publication it will be essential to have information to support understanding of what is provided, limitations, interpretation, and how to compare providers.
17. We would suggest that consideration is given to when a consumer would access this information in practice. How and who will be directing them to it? This will be particularly important if not all providers have reports published about them, because complaints may still have been received about a provider where there isn't a report.
18. We believe it will be important to understand if and how this type of information will be useful to stakeholders such as third-party providers.

19. Consideration will need to be given regarding how much information is provided and how different types of information will be understood and used by consumers, that is, if there is a data table and reviews. Will producing this information be proportionate and will the information be used. Insight may be gained from other ombudsman schemes already producing a raft of similar information.
20. Again, as with our response to question 1, there would need to be contextualisation.
21. Encouraging feedback from clients, including complaints, is usually a positive approach from firms that genuinely want to learn from their clients and provide the best service they can. Consideration needs to be given as to whether review letters, or any publication to increase transparency, could have an adverse effect, if for example, incentivising suppression of complaints.

***Q4. How might publishing full decisions help consumers to assess quality of service?***

22. Other ombudsman schemes might be able to share feedback about how useful consumers find the full decisions they publish and any negatives for either consumers or legal service provider.
23. Full decisions should allow consumers to fully understand the complaint and have a better understanding of the impact of using a legal service provider. A consumer might be deterred from using a firm with a complaint but reading a report in full might help understanding and mean that a consumer would still instruct that firm. However, insight from consumers will determine if they would take the time to read a full case report.
24. At the time of searching for a legal service provider, consumers are often making a distress purchase, time is limited, and they are frequently in an emotional state of mind. Will full decisions be useful to third parties and therefore ultimately useful to consumers? Will producing this information be proportionate and will the information be used.
25. Again, consumer insight and testing will inform understanding of what consumers need in terms of information and presentation.

***Q5. In what ways could publishing full decisions have benefits for firms and the wider sector?***

26. Publishing full decisions could facilitate learning from mistakes, increase knowledge of the approach LeO takes to resolving cases and increase understanding of what good practice looks like. This should lead to improved service at firm and subsequently sector level. However, sharing of learning points, common pitfalls and good practice in guides for legal service provider could achieve this and possibly in a more time accessible way for busy firms.
27. This may enable firms to differentiate themselves around service with third party "evidence" they take complaints and service seriously.
28. Publication of full decisions would enable interested stakeholders to better understand how decisions are made which could drive up expectations and standards.

29. We would again suggest the need for information for consumers about first and second tier complaints and contextualising of information.
30. We believe that consideration of any approach adopted needs to ensure that good behaviours in how firms deal with complaints are promoted. For example:
- encouraging firm openness and/or success in signposting to LeO,
  - ensuring signposting to LeO throughout a transaction,
  - fostering firm culture that welcomes feedback leading to actions which improve service and increase client satisfaction,
  - ensuring increased publication doesn't lead to firms, or individuals in firms, suppressing complaints so that firms' learning from complaints isn't compromised,
  - acknowledging that there could be "positive" reasons why firms may have more complaints,
  - recognising that numbers of complaints in isolation is not an indicator of lack of quality. It focuses on what a firm has not got right and not what a firm does well.
31. If only data and information is published about complaints that have been dealt with by final decision and not informal resolution, this will need to be made clear in a consumer friendly and accessible way.

***Q6. What reasons should we consider for not publishing full decisions? Please provide evidence with your answer.***

32. In the discussion paper, LeO states that publishing full decisions is common practice within the ombudsman sector and is widely acknowledged as best practice and useful for consumers. We therefore believe that this would be sensible.

***Q7a. Would it be useful and appropriate to be able to provide contextual information alongside our decision data? Do you foresee any potential difficulties with this, other than those already identified?***

33. Consumer led contextualisation is essential so consumers can make sense of and use data and information provided. We refer to the points we have made earlier. The size of a firm in relation to numbers of complaints is likely to be one factor in contextualisation and this could be an issue in terms of commercial sensitivities. Consideration might be given to banding of say turnover, with such information being collected from the firm on engagement with LeO or use of a source of information which is already published.

***Q7b. (if you are responding from a regulatory body) What are some of the barriers preventing sharing of contextual data, or lessons we can learn from other sectors? Are there ways of overcoming these?***

34. We refer to the points we have already made in response to earlier questions.
35. Commercial sensitivities for firms need to be considered. There is the potential for a commercial impact on firms with increased costs if contextualisation requires

collection and reporting of additional data and information. There is the additional potential for increased regulatory costs for similar reasons.

36. We would need to see more specific proposals for contextualisation, and whether additional data would need to be collected, to consider any barriers and or ways of overcoming these. We would need information on such factors as the number of complaints received about firms in relative terms, how long information would be published for, frequency of updating information, if the change in size/turnover/ composition of a firm during a reporting period will be addressed and how this will be dealt with.

***Q8. Does publishing a greater range of data provide consumers with better information on which to make decisions about choosing a provider? And Q9. Would it be useful for LeO to publish a greater range of data for other reasons?***

37. We would suggest that publishing a greater range of data in itself will not necessarily provide consumers with better information with which to make decisions. We again refer to the points we have made in response to earlier questions.

38. We believe that it is vital for LeO to gain consumer insight on proposals to ensure that:

- provision of more information aids consumers and doesn't confuse them,
- there is understanding of what consumers want and will use,
- information is presented in a consumer-friendly way so that it is easily accessible,
- terminology and context are understandable,
- presentation, location on the website and navigation means it will be used by consumers and is useful in their decision making.

39. Consideration needs to be given to when in a legal transaction consumer currently comes to the LeO website and how to direct them to the website at the legal service provider choice making stage.

40. There is the need to gain consumer insight into ensuring that number of complaints doesn't become a default indicator of quality. Complaint data only looks at what went wrong and doesn't provide information on what a legal service provider (legal service provider) does well. Consumers need an understanding that complaint information is only one of many choice factors when deciding on a legal service provider.

***Q10. Would allocation of resource to changing the Legal Services Act 2007 be appropriate? Who would it be most appropriate for us to work with on this project? And***

***Q11. Would you support greater investment of budget and resources into improving our data collection and analysis for the purpose of transparency?***

41. We're not able to comment on these.

***Q12. Have we considered all the potential advantages and disadvantages of these four proposals? Please provide evidence to support your answer where possible.***

42. We have nothing further to add.

***Q13. Are there other ways we could improve our transparency?***

43. We have in the past requested that LeO collect and provided to us information both for authorised and non-authorised individuals which we regulate. We continue of the view that such increased transparency will feed into our understanding of risk amongst our regulated community and benefit consumers.

44. Transparency could be improved by LeO collecting and reporting intelligence received from consumers on un-regulated providers in the sector. The reporting of such information to regulators, the LSB and other stakeholders such as the Ministry of Justice and CMA would increase understanding of risk in the sector and support the work of the legal regulators and other stakeholders for the benefit and protection of consumers.