

Response and future plans: September 2020

Transparency and Reporting Impact

LEGAL
OMBUDSMAN

Executive summary

In October 2019 the Legal Ombudsman published a discussion paper which looked at a range of options for increasing the amount and range of information that is shared about the complaints that we investigate. The aim of the paper was to begin a conversation with the legal sector in order to understand how our data and information can best contribute to the ongoing transparency work in the sector.

The Legal Ombudsman remains completely committed to increasing the transparency of our data and decisions, and we believe that this work will encourage consumer confidence and choice in the legal sector.

We recognise the significant importance of this work. Our plans for the current business year have been affected by a standstill budget and the impact of the pandemic on our complaints work. In addition we are mindful of the need to focus the majority of resources on the timeliness of investigations, as was echoed in a number of responses to the discussion paper.

Nonetheless this is an important area of work and we have set out below those aspects that we plan to start in this business year, with the majority of progress in the following business year (April 21 – May 22).

- Continue to improve the presentation and available fields of the data we are already able to publish. (*current business year*);
- Undertake a pilot project in order to assess the viability of approaches such as annual reviews for firms in providing direct feedback to providers. (*pilot project in 21/22*);
- Develop a business case for publishing full decisions. (*current business year, subject to resources*);
- Continue to work with regulators and the LSB to explore the extent to which data can be contextualised. (*continue in current business year*), and
- Consider options for research in order to better understand the information which will be useful to the public (*current business year*).

Background

The Legal Ombudsman recognises the need to be open and transparent, which is identified by the Ombudsman Association as forming one of the key principles of good complaint handling. This is fundamental to accountability, and enables a scheme to demonstrate fairness of approach, which in turn increases public confidence.

In December 2016, the Competition and Markets Authority (CMA) published the final report of its legal services market study. This report made a number of recommendations for

improvement in the way the legal sector operates, and focused in large part on the degree of transparency offered by firms and regulatory bodies alike. This centred on pricing structures and service provision, but also made reference to complaint procedures and signposting

The Legal Ombudsman responded to the original CMA market study, providing evidence at the initial, interim and final stages. Responses were also submitted to all of the individual regulators' own transparency consultations.

In keeping with its commitment to transparency, the Legal Ombudsman currently publishes a data table which provides a simple and transparent record of decisions made by ombudsman at the final stage of the process. The data appears on the website, and a new website platform is currently under development to improve the accessibility of information for stakeholders. The Legal Ombudsman has also published a number of illustrative case studies to help service providers to understand the organisation's approach to applying the Scheme Rules and the limits of the scheme's jurisdiction. These are short, anonymised summaries of real cases that have been brought to LeO and are shared to make processes clearer.

Following the final report of the Better Information research, the Legal Ombudsman decided to amend the information published within its decision data, to make clear whether the complaints handling was reasonable or not, regardless as to whether a remedy was directed. The necessary changes have been made within CMS, and the improved data should pull through from the end of September onwards.

In addition, conversations have taken place with other ombudsmen schemes to understand their experience of publishing decisions, and the various challenges and processes they have gone through in moving towards wider publication of data.

Finally, in October 2019, we published a discussion paper which set out our thinking about the need for greater transparency in the legal sector and how the Legal Ombudsman should contribute to this. This paper set out a wide range of options as to how our data could be used and sought stakeholder opinions on the various proposals put forward.

Developments across the legal services sector over the period that our paper was open for comment include:

- Regulatory bodies continue to take steps to create new rules and guidance designed to encourage legal professionals to share more information with the public prior to taking instructions.
- Legal Choices is still being developed as a platform for greater consumer education about how to instruct a lawyer and what to expect from them.
- The Legal Services Board has shown further interest in this topic; it is currently considering how its own Board meetings might be made more transparent and

accessible, and holding the bodies it oversees to more defined standards of transparency.

- Finally, the Competition and Markets Authority have recently confirmed that a review of the implementation of their 2016 recommendations will be undertaken in late 2020.

In the context of these developments it is vital that we identify how the valuable data and insight from our work can be shared with a wider audience.

In all responses we received to this paper, it was especially helpful and encouraging to see people fully engaging in the discussion about where our information will be most useful and best understood. We are pleased to see that many service providers value the insights we provide and recognise the need for wider sharing of these. However, we are also very much aware of the apprehension towards making this data more available, and will look to work with firms, chambers, individual service providers and representative bodies as we progress, to mitigate concerns and address challenges.

Our proposals

We presented a total of five options in our discussion paper for how we could share more of our data and insights, dividing them into those that are within our current powers and those that would require longer-term development. We identified several challenges/barriers we would face in pursuing some of these, including a restricted budget, legislative constraints and access to contextualising data.

The options we presented in the paper were as follows:

OPTION 1: Create more filters to sort our decision data

OPTION 2: Write annual reviews of service providers

OPTION 3: Publish all ombudsman decisions in full

OPTION 4: Contextualise our decisions with firm-based data

OPTION 5: Publish a greater range of data about the complaints we see

Our stated aims in increasing our own transparency were to:

- Give consumers information about quality of service in order to help them make decisions about who to instruct
- Offer detail of complaints to regulators and the profession to help them identify areas for improvement in service provision
- Raise the profile of the work we do and encourage stakeholders (such as media outlets and academics) to use our data and decisions as an information source
- Enhance the transparency of our decision-making to help our customers understand better what we do

We asked for detailed comment on these options, including whether they would meet the aims we had set out above, and requested any supporting evidence that could be provided. The discussion paper was intended to set the course for work towards our second strategic objective for 2020-23, *increasing the transparency and impact of our casework to support greater access to justice*.

General responses to the paper

We received a total of 17 responses to this consultation, over a period of four months (1 October – 31 January). These were split fairly evenly between practising service providers, representative bodies and associations, and regulatory bodies. The majority of the responses were from organisations representing the legal sector, with just two focusing directly on consumers. We also received short responses from one national newspaper and a complaints handling scheme in another legal jurisdiction. A full list of respondents and copies of their submissions are available on [this page](#) of our website.

Some of the general themes in the responses include:

Usefulness of information to the public. Many respondents to this paper questioned whether any of these measures would provide useful information for people looking to choose a service provider. Responses questioned whether the public would access our website as part of the decision-making process, and whether they would understand the information and read it in the correct context. There were also concerns about whether the information would lead to unfair disadvantage to certain providers, especially if contextual information is unavailable. We agree that it is important to clarify and check what information will be useful to people, and how they will access this information, therefore we will continue to explore the information we provide and how we can work with others, whether third party websites or regulators to ensure the information we publish is both useful and fair.

Fairness to all parties. A number of responses raised questions about ensuring fairness to all parties, for example whether there is merit in sharing information based on number of overall complaints rather than number of determinations and which some feel can present a distorted picture to the public. In all of the options we are considering, our aim will be to find transparency measures that balance the needs of both providers and the public as well as raising standards and confidence. Nevertheless, as an ombudsman scheme, we must acknowledge power asymmetries in the sector and therefore where we find information asymmetries in legal services, we will make it our priority to ensure these are addressed.

Many service providers expressed concern that any decision made about a firm would be perceived negatively, regardless of whether the ombudsman decided in the firm's favour or not. We acknowledge that people without a reasonable understanding of our process or the operation of an ombudsman scheme may have this reaction, and so the robustness of the narrative provided with the data will be a high priority for us going forward.

Research to inform decision-making. Several organisations indicated that they would like to see us conduct more consumer insight research to understand what people are looking for and what they find helpful. We agree that this is important and have used our Better Information research where relevant to inform our thinking. We will consider options for further research and working in partnership with others to do so.

Responses to each option

OPTION 1: Create more filters to sort our decision data

Overall, responses to this option were supportive as the impact from this change will be minimal and some thought that it would aid with overall comprehension of the data. Suggestions included adding the date a complaint was made, the location of the service provider and being able to filter information by regulator or type of authorised person. A number also identified that the existing data and complementary information could be better presented.

As already indicated above, a number of responses questioned whether the public would naturally use the Legal Ombudsman website when choosing their provider. In recent months a pop-up survey on our website has gathered responses from those visiting the decision data pages and the feedback supports this view as just 14% were looking at the data to compare providers.¹ However while the public may not use the Legal Ombudsman site themselves the data is available as a CSV file for other platforms to use such as comparison sites.

We agree that the Legal Ombudsman website is unlikely to be the primary place that the public look for information when they are purchasing legal services. However we do think it is important that the information is available so it can be used by platforms such as comparison sites.

Proposed next steps:

- Rethink how data is displayed on our website, including the narrative accompanying it, presentation of the data table, fields in the table, and how the search function operates. This will take place alongside the development of a new website.*
- Find out if and how we could include geographical region data for service providers.*
- Make contact with legal comparison sites to see what would be useful for them to display, and discuss how they could signpost to us for more details.*

¹ Survey gathered responses from 62 website users with the aim of understanding their purpose for visiting the decision data pages. While the majority of respondents were members of the public (62.5%) just 14% of respondents planned to use the information before using a service provider. 34% wanted to understand our usual complaints and remedies and 20% had a concern about their service provider and wanted to check their record.

OPTION 2: Annual reviews of service providers

This option considered sending annual reviews directly to service providers and making an edited version available to the public.

Views on this option were divided between stakeholders. Those who were supportive agreed that reviews could be a useful learning tool for providers, with some agreeing they could be useful for the public too. Overall the sense was that these would be most useful in encouraging higher standards of customer service and complaints handling, rather than being a transparency tool for the public. However there was a concern about the extent to which reviews would lead to a change in practice if the information is not shared with regulators and there is no requirement for an improvement in performance.

Other questions and concerns focused around how providers would be selected for the annual reviews. Some firms are likely to generate higher levels of complaints simply due to the level of transactions rather than an underlying concern with their customer service or complaints handling. It was also pointed out that basing reports on number of complaints rather than number of determinations may not be the best approach. This would need to be carefully considered in order to produce something that was beneficial and a worthwhile use of resources.

While there was some sense that annual reviews would generally provide the public with more information about service providers and complaints handling, it was also noted that further testing would be helpful to understand what information consumers really want as part of their decision-making process. Those who were not in favour of this option felt that a report could be seen as evidence that a firm should not be instructed.

A key aim of this discussion paper was to identify ways in which our information can help to raise standards in the profession as well as providing consumer choice. While general information about the sector as a whole can support this, direct feedback to firms is vital in improving customer service and complaints handling. While there are clearly questions and concerns about using this type of approach, we consider that it is important to look at this in greater detail.

Proposed next steps:

- A number of the responses suggested that a pilot project for option 2 could be useful. We agree with this as a way forward. This would allow us to test this option, as well as considering other methods for direct feedback and which would be most useful to service providers. A pilot will allow consider the cost/benefit of this type of work.*
- A pilot project will be built into the business planning for next year.*

OPTION 3: Publish all ombudsman decisions in full

As expected, we received a range of responses to this option.

Those who supported this option noted the importance of adopting what is best practice in many sectors. Publishing decisions allows for scrutiny of work and for both service providers and the public to gain a clearer understanding of how we work and the standards we expect in the sector. And in a sector where the power imbalance and information asymmetry between the public and professionals is often recognised, providing this information can begin to redress this balance. Publishing a wider range of information would allow others to analyse and highlight trends in the sector.

Concerns about this option tended to focus on whether publishing full decisions provides a fair representation of the service of a firm. Responses highlighted that for many providers complaints can be a rare occurrence or could be representative of a single person rather than the overall provider. There was also concern that it could disproportionately affect BAME firms (who are more likely to be smaller firms without a core compliance function) and barristers. There were also suggestions that this option may drive perverse behaviour by service providers that would either create more work for LeO or cause complaints to be suppressed by 'commercial offers'. In relation to barristers it was noted that there is a range of quality information already available such as details on their specialisations and it was considered that complaints information would add little to this.

There was also a concern about whether introducing publishing decisions would have a negative effect on the Legal Ombudsman's core function, and if the benefits of the option outweighed the costs. Responses, even when supportive, noted a number of challenges such as explaining to consumers how the decision data should be interpreted and ensuring the anonymity of decisions.

We are very mindful of both the concerns and challenges that have been raised about this option, and it is important to consider whether publishing full decisions will strike the right balance between increasing transparency and concerns about any impact on the profession.

From a policy view publishing our decisions shows that we are being open and transparent, and open to our decisions being scrutinised by the sector. A greater level of scrutiny from individual providers, the sector, and other bodies will contribute to a greater understanding of our decision-making processes as well as the standards that we expect from service providers and trends in complaints.

This information could of course be made anonymous, however this would be a halfway option, and would not give the public an opportunity to fully research their provider.

A number of the concerns focused on whether a member of the public, reading a decision, would understand how a single or small number of complaints forms part of the wider picture of a provider. We consider the option of contextualisation next which could form part of the answer to these concerns. However, even without the contextualisation data we consider that it is possible to provide sufficient guidance on the website which encourages people to think about issues such as the size of the firm and first-tier complaint handling.

We are mindful of the practical implications of implementing a project at this time, and again a number of responses highlighted the need for us to focus on our core function. We have outlined our next steps below, and if additional resources are available we will begin to progress them this year, otherwise they will be built into the business plan for 21/22.

- *Design a full project with timescales, costs and implications for resources, and which addresses the concerns and challenges set out in the responses to date.*
- *Consult fully with the sector before taking this project plan forward.*

Options 4 and 5 looked at areas which were outside of our control at the moment and would therefore require support from others or secondary legislation.

OPTION 4: Contextualise our decisions with firm-based data

Most responses agreed that contextualisation of our data is important. In a number of the responses to options such as annual reviews and publishing full decisions the importance of contextualised data was also raised. Where concerns were expressed about option four, this was in relation to the perceived extra burden on service providers of making further information available, as well as about commercially sensitive data.

Contextualising our data relies on consistency between the data collected by the regulators.

While we recognise that this is not always straightforward to do, a number of the concerns raised, such as the public's understanding of how complaints fit within the overall picture of a providers service, could be overcome through access to contextualised data.

We would not look to require more contextual data to be gathered from service providers, but rather encourage Approved Regulators to offer more of what they already collect that could assist understanding of our decision data. We will therefore do the following:

- Consider how we to embed contextual data from the Solicitors Register, and consider how Land Registry data might be used for conveyancing complaints.*
- Work with the LSB to determine how they could help with coordinating further data-sharing efforts across the sector.*

OPTION 5: Publish a greater range of data about the complaints we see

Publishing the full range of our data, which includes information about complaints which are resolved by agreed outcome, received a mixed response.

Responses highlighted that there needs to be careful consideration given to the balance between information overload and having information that the public can use to make judgements about the quality of a service provider. There were also concerns that this data could impact on early resolution of complaints. It is of note, however, that several service providers did support this option, on the basis that it would better contextualise first tier data.

We cannot move forward with this at present, as there are major challenges to overcome (including legislative barriers). However, we will still do the following:

- Consider options for research in order to base any future proposals on a clearer understanding of the information that would be helpful to the public.*

Summary

The discussion paper was intended to be a first step in ensuring we move towards greater transparency with the data and information that we publish. In assessing which of the options to pursue from here, we also took the opportunity to reflect on our aims in increasing transparency – as listed above.

We agree that the public may not naturally use the Legal Ombudsman website as part of their decision-making process when selecting a service provider. However we do consider that complaints data should be part of the quality indicators that are available, and therefore making this available through our website so that others can make use of the data is important. We also consider that it is equally as important that our data is used more generally to raise standards in the profession. We will use both of these aims to shape future work in this area.

As we have noted in the paper the resources to undertake this work are limited for the current business year. We will progress the areas that are possible, and if resources and performance allow begin to focus on more substantial pieces of work such as the annual reviews and publishing of full decisions, with a view to being ready to progress at the beginning of the next business year.

Questions

If you have any questions concerning this publication or how to engage with us on the topic of transparency, please email support@legalombudsman.org.uk.