



**The Legal Ombudsman's Discussion Paper on
Transparency and Reporting Impact**

Law Society Response

January 2020



Transparency and Reporting Impact

A response from the Law Society of England and Wales

1. The Law Society is the independent professional body for solicitors in England and Wales. The Law Society represents the interests of over 185,000 registered legal practitioners. Solicitors play an essential role helping people throughout their lives. Whether clients are buying a house or writing a will, recovering compensation for an injury or defending an allegation of wrongdoing, solicitors offer support, guidance, and expert advice.
2. We encourage our members to provide the best service and advice they can to their clients. We also encourage the public to use a solicitor to help them deal with their legal needs. It is clearly in the public interest that there is broad access to solicitors, and that clients receive good quality legal advice and services.

Introduction

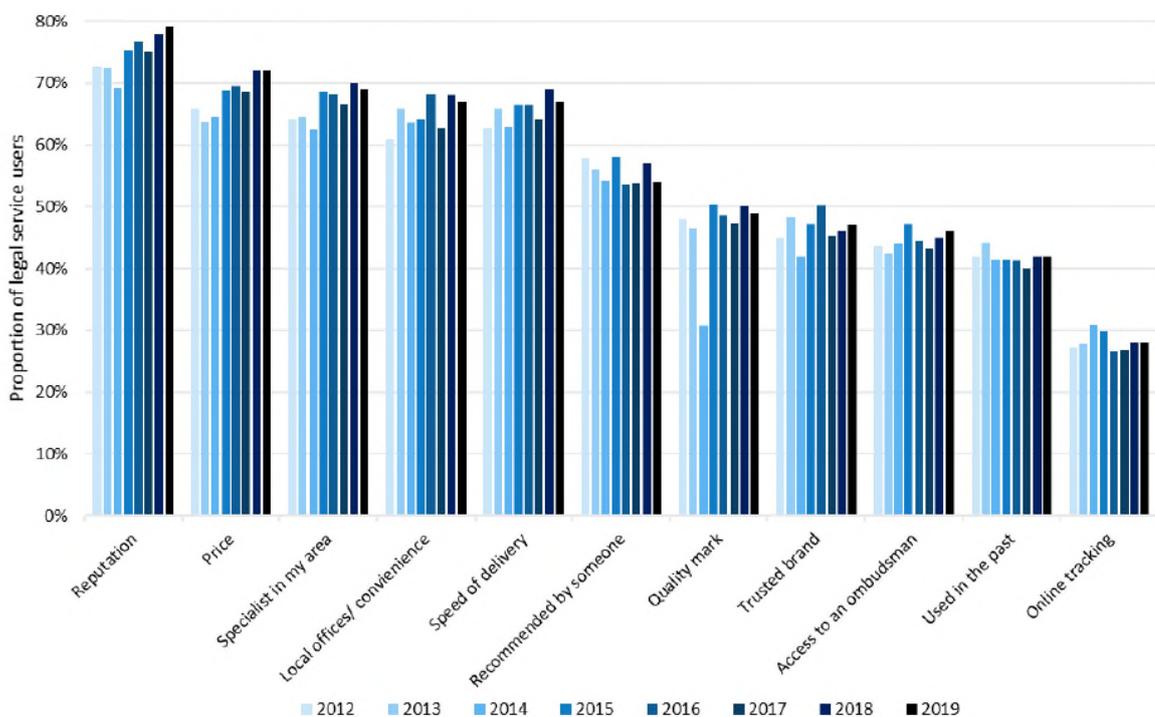
3. *The Legal Ombudsman's (LeO) Transparency and Reporting Impact* paper ('the Paper'), commences a discussion about how it could improve transparency and extend its current reporting of decisions to make more information available to service users, legal service providers and others, in the hope that it will:
 - I. provide service users with information about quality of service in order to help them with their decisions about which legal service providers to instruct
 - II. offer details of complaints to regulators and the profession, with information about areas of improvement
 - III. raise the profile of LeO with stakeholders as well as others, and
 - IV. enhance the transparency of LeO's decision-making to help its customers understand what it does.
4. We are pleased to participate in this dialogue with LeO. We support greater transparency; however, any proposed changes should be supported by evidence of the potential for improvement.

A Summary of our views

Options	Description	Summary of Views
Section A		
Option 1	Create more filters to sort our decision data	We have no objections to the addition of more filters to the current decision data as long as they are helpful and within LeO's remit under the LSA 2007 and Scheme Rules.
Option 2	Write annual reviews of service providers	We accept that writing annual reviews may have the potential to raise service standards, however this option presents several difficulties. There are better and more efficient ways of raising standards.
Option 3	Publish all ombudsman decisions in full	We are not convinced that publishing full ombudsman decisions will help service users to make decisions about the quality of service.
Section B		
Option 4	Contextualise our decisions with firm-based data	The importance of contextualising data is crucial if the data is to be useful, however there are inherent difficulties with this option, and we cannot support it.
Option 5	Publish a greater range of data about the complaints we see	LeO does not have the powers to publish information acquired from investigations or agreed outcomes. We would strongly oppose any change to the LSA 2007 to enable such publication. We disagree with LeO's contention that there is no significant distinction between complaints that are resolved informally and those that are concluded by an ombudsman's final decision.

- The Paper cites the Legal Services Consumer Panel (LSCP) 30 July Tracker 2019¹ *How consumers are choosing legal services report* ('the First Tracker Report') to support its contention that consumers find it hard to choose a service provider based on quality. A figure of 14% of consumers reporting that information about the quality of service was the 'most difficult to find' is quoted in the report. We would contend that this means that relatively few people experienced serious difficulty in finding this information.
- What the First Tracker Report clearly demonstrates is that most people will choose a service provider based on a range of issues – such as reputation, price, proximity, personal recommendation, etc. – and 'quality of service', as such, does not feature in the top 11 factors recorded in the LSCP's research (although reputation, personal recommendations, and quality marks may all be assumed to indicate some measure of quality). Please see the graph below.

Figure 3: Consumers choice factors



Base: All legal service users (2012=1435, 2013=1484, 2014=1060, 2015=1067, 2016=1523, 2017=1625, 2018=3535, 2019=3589)

- Indeed, the high importance of recommendations is corroborated by LeO's own publication entitled *Listen, inform, respond: A guide to good complaints handling*², which states, 'a recent survey into the use of legal services found that 82% of consumers would choose a lawyer based on personal experience or recommendations from friends and relatives and work colleagues.'

¹ Legal Services Consumer Panel Tracker 2019 [First Tracker Report](#)

² LeO Publication [Listen, inform, respond: A guide to good complaints handling](#)

8. It is worth noting that another survey by the LSCP also dated 30 July 2019 and entitled *How consumers are using legal services*³ (the Second Tracker Report) provides evidence affirming that satisfaction levels of consumers of legal services are historically high, but have, in fact, risen further from 79% in 2012 to 84% in 2019. This is an extremely important point, as it demonstrates that a substantial majority of service users are highly satisfied with the legal services they have received, regardless of the method by which they chose their provider. Another figure contained in the same report highlights that an overwhelming majority of service users (87%) *'are satisfied with the outcome of their legal matter'*. When almost nine-in-ten people using legal services are happy with the results, it does call into question whether the costs of implementing the proposals could be justified given the potential marginal benefits that might accrue to a relatively small proportion of service users.

Section A: proposals within our current powers

OPTION 1: Create more filters to sort our decision data

9. LeO already has a number of existing filters on its website, namely:
 - Name of service provider
 - Total number of decisions made in relation to that service provider
 - Date of the ombudsman decision(s)
 - Area of law
 - Remedy required
 - Complaint type
10. The above information together with the case studies and summaries already available on the LeO website, and the relevant factors that consumers use to choose a service provider mentioned in the LSCP research, are sufficient, in our view, to enable service users to make an informed decision about their proposed legal service provider. Additional material could lead to information overload.
11. The Paper indicates that a new field entitled *'First-tier complaints handling reasonable (Y/N)'* will be made available soon. We believe publishing this information is beyond the scope of the Legal Services Act 2007 (LSA) and LeO's Scheme Rules. Section 150(1) LSA provides that *'The OLC may, if it considers it appropriate to do so, in any particular case, publish a report of the investigation, consideration and determination of a complaint made under the ombudsman scheme.'* Accordingly, we believe that LeO will be acting outside the ambit of the legislation and its own Rules if it proceeds.
12. Bearing in mind the above, and the following point LeO made in its publication response entitled *'Regulator Transparency Measures'*⁴ that *'In order for this (publication of first-tier complaints data) to be a reliable indicator of quality there would need to be some standardisation of what constitutes a complaint as well as consistent reporting of how early in the process a matter had been settled. Such reporting might also fail to reflect any improvements in firm's service or complaint-handling and might not take account of*

³ Legal Services Consumer Panel Tracker 2019 [Second Tracker Report](#)

⁴ LeO response to [Regulator Transparency Measures](#)

volumes of work in specific areas of law, we suggest that such a change is not appropriate anyway. LeO further acknowledged that *'Appropriate contextualisation is therefore crucial'*.

13. One possible filter that could be added to the LeO database without too much extra resource or costs is the location of the service provider. This will enable service users to identify local firms appearing on its data base. The First Tracker Report indicates that proximity is an important factor for service users when choosing a lawyer.

OPTION 2: Write annual reviews of service providers

14. Writing annual reviews for service providers may have the potential to raise service standards. However, this option presents several difficulties and there are better and more efficient ways of achieving this objective.
15. The first difficulty is identified within the Paper itself - the problem for LeO in selecting the service providers. Secondly, it is difficult to contextualise data as the legal profession is so diverse in terms of firm size and the type of work carried out. Thirdly, it would be difficult to ascertain how many case files different firms hold (being commercially sensitive information), the complexity of each case, the vulnerable characteristics of a client and the type of matters on which they seek help as these may all have an impact on the level of complaints.
16. With great respect to LeO and its staff, it does not appear to have sufficient data on all law firms to give this necessary context. For these reasons, legal service providers may lack confidence in this process and be placed under an unjustifiable burden to provide more data and context. This may create barriers to firms working with LeO effectively.
17. We would also question the fairness of LeO's focus on publishing remedies involving higher awards because this tends to occur more frequently in certain practice areas such as conveyancing. Given that such awards may represent settlement of a low value negligence claim, and as such would be relative to the value of the claim not relative to the level of wrong-doing, such publication is likely to be of little assistance to potential clients.
18. We are concerned that annual reviews may result in an inappropriate shift in focus and resources away from complaints. Writing annual reviews is both time and labour intensive. If this option were to be taken forward, it could lead to even greater delays in dealing with complaints or require considerable additional resource not yet evaluated. It risks focusing legal service providers on influencing the annual review rather than effectively handling complaints. The cost could be prohibitive compared to the potential for benefit added.
19. A more cost-effective solution for achieving the desired aim of raising standards would be for LeO to provide feedback directly to service providers at the conclusion of a case, particularly where it had identified a trend with a provider, e.g. where three similar issues had occurred, an advisory note could be sent to the Compliance Officer for Legal Practice ('the COLP') of a firm. The COLP could then take any necessary actions such as providing additional training for fee earners to improve service standards.

20. We note that LeO is basing this option on other ombudsman's schemes, such as the Financial Ombudsman's Service or Local Government and Social Care Ombudsman. However, these are not realistic comparators as the industries and numbers of entities regulated together with the resources available to the named regulators do not make good comparisons.

OPTION 3: Publish all ombudsman decisions in full

21. The Paper states that by publishing full decisions LeO will provide service users with richer data to assist when making judgements about quality and choosing a service provider. We do not understand how this would assist service users or how LeO will assess the quality of the work overall in a firm as opposed to the quality of the complaints handling. It would be helpful if LeO could explain and provide evidence to support this.

22. The principle of transparency is supported by The Law Society, however publishing ombudsman's decisions in full will not help service users to properly assess the quality of a service provider. For example, a complaint about one specific fee earner will not be reflective of a business overall which, say, employs 50 fee earners. It would be unfair, as well as unreasonable, to suggest to service users that they can use the published decisions 'as a tool to assess the quality of service' of a firm based on one specific service complaint. The lack of context can mean that the information could actually give a misleading picture (possibly the very opposite of LeO's aim of providing real or meaningful transparency). LeO would need to ensure that sufficient contextualisation is built into the publication scheme to prevent or at least, substantially mitigate this type of situation. Full contextualisation is therefore crucial.

23. The Paper acknowledges that '*Undertaking full publication would have significant resource implications for us, as it would require a tailored IT solution, and several staff posts dedicated to adapting and anonymising decisions to make them suitable for publication.*' We are extremely concerned about the potential cost to the profession compared to any possible benefits.

24. Publication is likely to lead to greater delays and extra costs as preparing sufficiently detailed summaries of decisions is likely to be time intensive. More care would need to be taken to ensure the published decisions stand up to potential public scrutiny and possible criticism which is likely to add a layer of internal review before each decision is published. It could also have a negative impact on LeO performing its core functions and may, for example, lead to an increase in the existing backlog of cases.

25. A further difficulty with this option, which is of some concern, is the possibility that complainants could be identified from the information published, even though the information is anonymised (for example, in a case with particularly unusual facts). There would be a need for clear safeguards to be put in place, bearing in mind that the identification of complainants in a report, without their consent, is prohibited by section 150(2) and section 151(1) of the Legal Services Act 2007. There could also be implications under data protection laws.

26. We are also concerned that there is some risk of reputational damage to firms which would be unfair and disproportionate to the benefits of publication as currently proposed. This is because reputational damage to small firms in particular, could in some circumstances have an impact on their continued viability. There may then be a greater adverse impact in terms of equality and diversity, as there is a higher proportion of BAME owners of smaller firms. Focusing on the need for safeguards, proportionality and context it may be better if neither complainants nor firms are identifiable, even if this option was considered viable.
27. The publication of full determinations may be viewed as case law or guidance. This could lead to a perceived requirement for firms to consider and analyse all ombudsman decisions, resulting in significant compliance costs, especially for smaller businesses.
28. Due to the higher risk of and reputational damage for firms there may be a greater number of challenges to ombudsman decisions, including potentially more judicial reviews, which would be likely to impact on LeO's costs, service levels and backlog.
29. Each complaint is unique with different nuances on facts and the impact on a particular complainant, depending on their specific sensitivities and vulnerabilities. The publication of decisions may unreasonably raise consumer expectations about what may be available by way of compensation as cases that have gone to an ombudsman for decision are likely to be among the more complex complaints.
30. Consumers are now familiar with quality marks used in different industries in relation to a range of goods and services. Many members of the public use The Law Society's Find a Solicitor⁵ website which indicates which firms have a quality mark accreditation in a particular area of law. Quality marks are awarded only to legal practices and individuals that have met The Law Society's highest standards of technical expertise and client service. They therefore provide a useful tool for identifying quality, while demonstrating an organisation's commitment to quality assurance and continuous improvement.
31. The surveys mentioned above (see paragraphs 5 and 7) demonstrate that a significant percentage of service users 'choose a lawyer based on personal experience or recommendations from friends and relatives and work colleagues.' In addition to checking for quality marks as an assurance of quality, service users can already access case studies and summaries as well as check a particular service provider's complaint record on LeO's website. As stated above, more useful filters, one such being the location of a service provider, would be a more beneficial and cost-effective solution than setting up and then constantly updating a separate complaints publication scheme. LeO could also, for example, raise greater awareness of quality marks on its website to assist service users. This will meet its aim of signposting quality.
32. Whilst some organisations collect data on how many visits/clicks have been made on their publishing data page, in LeO's case, this is insufficient to accurately determine how many potential service users or others visited the page or for what purpose.

⁵ Law Society [Find a Solicitor](#)

33. The Paper suggests that publishing full decisions will offer a more comprehensive picture of the work LeO does and allow for better reporting across media platforms. We cannot see the relevance of this to the stated purpose of the proposed publication scheme, which is essentially to assist consumers, nor can we see that LeO owes any duties to academics or the media or that the scheme should be used as part of any justification for what LeO does or does not do. Such proposals could have significant cost implications with no clear benefit to solicitors or their clients.

Section B: proposals for long-term development

OPTION 4: Contextualise our decisions with firm-based data

34. The Paper acknowledges the importance of contextualising data as well as the inherent difficulty of doing this. LeO does not have the necessary information about the number of cases held by each firm in order to assess whether the number of complaints received represents a large or small percentage their work. Such information would also be commercially sensitive and not suitable for publication.
35. LeO suggests that publishing the size of firm (as an approximation for the number of files they deal with annually) alongside its decision data would assist service users in assessing whether the number of complaints received about a provider represents a large or small percentage of the matters that provider deals with. LeO states that ‘This has previously received support from the profession’ and cites GfK NOP, *How High Street solicitors view the publication of complaints information, 2011*⁶ as evidence. This survey sample consisted of only 15 high street solicitors (5 of whom were sole practitioners) from nearly a decade ago, which is not representative of ‘the profession’ with over 185,000 members. The example given in paragraph 22 above would equally apply in this context and could result in providing information which is unfair, unbalanced and misleading, resulting in a consumer drawing the wrong conclusion.
36. Within the same paragraph of the Paper, as referenced above, LeO suggests publishing firm size, it goes on to say that ‘*In practice, this might mean reporting on the annual turnover of firms, or the number of fee earners, to indicate the size of the entity – although it should be noted that the Better Information research found that these two particular figures were considered to be the least useful additional information to help consumers make decisions.*’ This proposal does not deliver on LeO’s aim and is therefore not viable.
37. Surgical data published on lung cancer clinical outcomes, for example, is adjusted to take into account patient characteristics which might affect their chances of a good outcome (for example their age, fitness or the severity of their disease). If a particular characteristic does affect outcome, then the analysis can be adjusted to allow for this fact. This means that a unit which operates on more high-risk patients than others is not disadvantaged when the results are published.⁷ This level of contextualisation provides a greater degree of accuracy, enabling a fairer picture to emerge of the performance of individual surgical units. This is the sort of detailed information that could improve the proposed publication

⁶ GfK NOP [How High Street solicitors view the publication of complaints information, 2011](#)

⁷ Society of Cardiothoracic Surgery [Lung Cancer Clinical Outcomes](#)

scheme. However, as LeO recognises, there is a real challenge in terms of what information is actually available to LeO and the amount of time and other resources that would be needed to interpret and present it in a format that would add real value for service users. Furthermore, contextualising data would be time and resource intensive and likely to impact LeO from performing its core functions, current cases and existing backlog.

38. Firms acting for particularly vulnerable clients, for example those dealing with crime or mental health issues, may have more complaints than other types of legal work purely as a result of the nature of that work and the type of clients it is likely to involve. This is an important part of the context in which the raw data about complaints needs to be considered, if it is to present a fair picture of the complaints records of firms by comparison to that of other firms. At the very least, consideration would need to be given to presenting the information in such a way that firms are compared with other firms undertaking similar work. (Although the location of a practice may make it impossible to undertake such a comparison.) The lack of that sort of context, potentially, might encourage firms to become more risk averse and reduce or cease to undertake instructions in areas which are more likely to generate complaints. It is not inconceivable that this could have an impact on access to justice especially for people from vulnerable groups. Potentially, we could see similar impacts to those which occurred as a result of the legal aid reforms. In this instance, cuts to public funding in various practice areas (such as housing law), resulted in a number of service providers ceasing to offer services where they considered they could no longer afford to do so. This led to the development of legal aid 'deserts' which impacted on access to justice by causing a shortage of expertise in certain areas of work.

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

39. The Paper indicates LeO's desire to publish a greater range of data, which could include cases resolved by agreed outcome and by case decision (both of which are types of 'informal' resolution).
40. Legal advice obtained by LeO confirms that under s150 LSA 2007 it can only publish a report where there has been a 'determination'. Determinations refer to the decisions made by its ombudsmen, and therefore anything that has been closed earlier by way of a more informal route (agreed outcome or case decision by an investigator) cannot be published. This means that LeO cannot lawfully publish first-tier complaints data.
41. We would strenuously oppose any amendments to the legislation to enable LeO to publish first-tier complaints information for the reasons provided in this response. The existing resources need to be better allocated by LeO so that current complaints are dealt with more speedily and efficiently.
42. Firms often take a commercial view to resolve a complaint at first-tier, not necessarily because a complaint is valid. So, LeO publishing first-tier outcomes would not only be unfair and misleading, in our view, but we also have concerns about the lawfulness of LeO doing so.

43. For the reasons given above, we disagree with LeO's contention that there is no significant distinction between complaints that are resolved informally and those that are concluded by an ombudsman's final determination.
44. If such outcomes were published then firms which currently proceed by way of an agreed outcome, based on 'taking a commercial decision', may no longer do so as publication would set a precedent. This may also discourage firms from early settlement and encourage them to take matters to an ombudsman's decision. This will be very likely, in our view, to have an impact on LeO's core performance and lead to greater delays.
45. In 2018, the SRA decided against publishing first-tier complaints data because of the difficulty of contextualising the data and we would repeat our substantive submissions in paragraph 12 above and the significance of contextualisation.
46. While the profession's handling of first-tier complaints has improved over the years, we recognise that LeO is in a position to provide more details on complaints to regulators and the profession. LeO could identify areas for improvement which could be supplied as guidance to both regulatory and representative bodies as a way of improving transparency and highlighting trends as well as educating and improving standards within the profession, which we would support. The Law Society is already collaborating on a number of training projects with LeO and we would be happy to enhance that collaboration. This could be done through various learning and development channels, with the aim of assisting the profession to improve complaints handling and eliminate some of the more common mistakes associated with it.
47. To further enhance the transparency of LeO's decision-making and to help its customers understand what it does, we suggest the following improvements: -
- make LeO's web site more 'user friendly' (for instance, by making it more straightforward to navigate by improving the site layout and easier to use on mobile devices).
 - produce guidance to the profession on how LeO addresses negligence and causation issues
 - produce guidance to the profession, with case study examples, about how LeO works out the amount of compensation to award to a complainant particularly in low value negligence claims, which could promote earlier settlement
 - provide additional training to firms and individual solicitors and trainees to reduce the number of complaints and ensure that when they do arise, they are dealt with to the consumer's satisfaction at the first-tier stage where possible.
48. As outlined above we have concerns about increased resources and costs with most of the options outlined in the Paper and would be unable to support an increase in the budget. We would like to see resources applied to eliminate the backlog and funding to be directed to additional training to enhance the quality of decision making at LeO and training of the profession. We would, however, support measures that enhance transparency for service users without the need for significant additional resources, outlined below, which still address LeO's aims as stated in paragraph 3 above: -

- I. adding more useful filters to the current decision data (within the ambit of the LSA 2007) and LeO raising greater awareness by signposting to service users information about quality marks on its website
- II. sending advisory letters to COLPs where there is a trend identified for a particular service provider and imparting more information and trends to regulators and the profession about areas of improvement and raising standards
- III. dealing with complaints more efficiently and raising standards will raise LeO's profile amongst its stakeholders as well as others, and
- IV. as outlined in paragraph 47 we believe that there are several ways that LeO can enhance the transparency of its decision-making.