

Meeting	OLC Board	Agenda Item No.	12
		Paper No.	91.10
Date of meeting	17/10/18	Time required	10 Minutes

Title	Publishing Decisions
Sponsor	Rebecca Marsh – Chief Ombudsman
Status	OFFICIAL
To be communicated to:	Members and those in attendance

Executive summary
<p>The Legal Ombudsman has been publishing final ombudsman decisions since April 2012, as a way of holding service providers to account for complaints that have been all the way through our process. There have been several reviews of the policy since then, and in line with the commitment made in our policy statement of 2016, we are once again revisiting the matter to see if our approach is still fit for purpose. This also forms part of our response to the transparency agenda arising from the CMA’s report into the legal services market.</p> <p>Following a review of current practice, a small amount of desk research, and conversations with several other ombudsman schemes about their approach, we have formulated some changes to our published decision data that we propose to take forward, including a scoping project for next financial year to explore publishing full ombudsman decisions.</p> <p>We have set out next steps in the final section of this paper to outline how we intend to proceed from here. Appendix 1 explains a little of the background to this issue and more details on our current publication practice to provide context to our proposals.</p>
Recommendation/action required
Board is asked to approve our approach to revising the decision data we publish and our project to scope the potential for publishing full ombudsman decisions.

Review and proposals

1. We have reviewed the ombudsman decision data that we publish on our website in light of the recommendations made in the report by the Competition and Markets Authority (CMA) in 2016, and the findings of the Better Information research we commissioned with the Solicitors Regulation Authority (SRA) in 2018. On the basis of this review we have developed a set of proposals for change.
2. We propose to begin publishing details of upheld complaints for all cases where we have found poor service. We also propose introducing a new category of 'complaint handling reasonable (Y/N)' to acknowledge the cases where firms have handled the complaint appropriately, regardless of the eventual decision we made.
3. Furthermore, we propose that a scoping exercise for publishing full ombudsman decisions be included in the business plan for 2019/20. In the ongoing push for transparency, it seems that this will be the general direction of travel in the future, and we therefore need to consider whether there are steps we should be taking to make our work and processes more transparent. If we decide to proceed after scoping, the full project can be integrated into our strategy for 2020-2023.

Challenges, risks, mitigations and opportunities

4. Through feedback we have received and our own assessment of our current approach to publication, we have identified the following challenges:
 - The case fee driver for publication means that we do not provide consumers with all the details of every poor service finding against a given firm.
 - We are applying two forms of sanction (charging case fee and publication) on firms that have not handled complaints well but have still provided a reasonable legal service.
 - Consumers find the current presentation confusing as it involves 'null' fields and £0 remedy amounts, and they sometimes misinterpret the information.
5. We have considered some of the risks associated with changing what we publish, and mitigations against these.

RISKS	MITIGATIONS
Publishing decision data is already contentious amongst service providers, and we had negative feedback to our original consultation in 2011. Even minor changes could revive disquiet, and we anticipate significant concern from the profession about the	Further context to our decision data is likely to be advantageous to service providers, rather than a greater threat to them. We have a clear policy rationale for publishing full decisions and will communicate this effectively.

publication of full decisions because of the potential impact on business.	
We already receive a number of challenges to publication on an ongoing basis, which creates extra demand on ombudsman resource, and this could increase with any changes.	The suggested changes will arguably be fairer to service providers, in that publication will be driven by poor service, rather than charging of our case fee.
The ongoing response from service providers to the CMA transparency agenda has been fairly negative, and we would be closely associating ourselves with this.	Our decision data performs an important function in holding service providers to account, contributing to the regulatory objectives by providing data which may inform choice of provider and promote competition.
Complainants may more readily challenge our decisions on the basis of our findings on similar complaints.	Consumers in general will have a more understandable and comprehensive picture of the decisions we make and why we make them, which should help to manage expectations.
Publishing full decisions is a significant project and would have resource implications for both operational and technical aspects.	Scoping and appropriate lead-in time will ensure that a good project plan is developed to account for this.

6. There are several opportunities that publishing full ombudsman decisions will provide:

- Service providers will get a better idea of the types of issues commonly raised, our approach to them, and a general illustration of how we handle complaints. We anticipate that learning from these examples will drive up standards in first-tier complaints handling.
- Journalists and other interested external parties can use details to scrutinise service standards and trends in the legal sector, which may invite more coverage and will reduce workload of data requests.

Next steps

7. Following approval by the OLC Board, we will:

- engage informally with relevant stakeholders (including the Legal Services Consumer Panel) about the changes to our data;
- write a new policy statement to be published online by the end of 2018, to inform consumers and the profession of these changes;
- implement the new data format in 2019; and
- include the longer term scoping project for publishing full ombudsman decisions in the draft 2018/19 business plan.

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Background

The Office for Legal Complaints has been empowered to publish ombudsman decisions since the Legal Ombudsman scheme commenced operations in October 2010. This power is derived directly from s150 of the Legal Services Act 2007.

A discussion paper was issued in September 2010. This was then followed by a consultation in 2011 on the approach we might take to publishing the names of firms alongside the number of ombudsman decisions taken about them in that quarter. The resultant policy was implemented in April 2012.

In October 2014, a working group reviewed the impact of published data since implementation and recommended the development of a new policy statement, which was issued in March 2016. The main change to come out of this was the inclusion of a column on our data table to show whether there had been a finding of poor service.

Since then, we have been planning to re-examine our practice in order to make the information we publish more accessible for consumers. This is in line with our commitment in 2016 to review the policy after two years to ensure it is working well.

Current practice

Current practice	New data format	Full decisions
<ul style="list-style-type: none">▪ All ombudsman decisions published¹▪ Case fee charged >> publish full details²▪ Case fee not charged >> null fields except 'poor service Y/N'	<ul style="list-style-type: none">▪ Publish full details of all decisions<ul style="list-style-type: none">- N.B. where no poor service is found, complaint reasons will not be included▪ New 'complaint handling reasonable Y/N' column	<ul style="list-style-type: none">▪ Publish anonymised version of full decision letter sent to both parties for each complaint▪ Data table also available for quick overview

¹ Firm name, number of ombudsman decisions, number where remedy was required.

² Area of law, reference (anonymised number used for external publication), date of decision, remedy (e.g. to apologise, to waive unpaid fees, etc.), remedy amount (ONLY when this is above first-tier offer), complaint reasons (e.g. failure to advise, costs excessive, etc.), poor service (Y/N).

The case fee waiver test states that we will waive a case fee when we agree with the first tier remedy and we consider that the provider's complaints handling was reasonable.

The Financial Ombudsman Service, Pensions Ombudsman and Local Government and Social Care Ombudsman all currently publish full ombudsman decisions on their websites. The Parliamentary and Health Service Ombudsman is at the beginning of a three year implementation project. For all of these schemes, the rationale for publication is both

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consumer transparency/interest and providing a body of evidence to drive standards within the relevant sectors.