



BIRMINGHAM LAW SOCIETY

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**Response to the Legal Ombudsman discussion paper
“Transparency and Reporting Impact”**

December 2019

Introduction

The Birmingham Law Society is a membership organisation for solicitors and barristers practising in the Birmingham area. We have around 5,000 members ranging from small firms to large international firms. Our members act both for individuals and for businesses. The effective and fair operation of the Legal Ombudsman is important to our members and to the local communities that we serve.

In principle, we support the Ombudsman in being transparent to both legal practitioners and the public about how they operate. We appreciate the Ombudsman setting out the five options that it could explore. However, we consider the Ombudsman should prioritise its resources to achieve its key responsibilities. Firstly, it is the Ombudsman's duty to resolve complaints, in accordance with its statutory duty, both "*. . . quickly and with minimum formality. . .*"¹ The Ombudsman is currently falling short of achieving its performance targets² and should focus on the timeliness and quality of its service.

We also suggest the Ombudsman should carefully consider whether the costs of its proposed changes to its publication policy are affordable. The Ombudsman's spending increased by 9.2% on the previous year, to £11.95 million for the year 2018-19. Our members pay for the costs of the Ombudsman through the fees collected by the Solicitors Regulation Authority and many practitioners are unable to afford significant increases in funding.

We have responded to the options presented in the discussion paper below.

Response to the Discussion Paper questions

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?

The Ombudsman currently uses a data table with the following information:

- the name of each firm where a decision has been made
- the total number of decisions made in relation to each firm
- the Ombudsman remedy required
- if poor service has been found, or not
- whether the firm's complaints process was reasonable.

It is possible to filter this data by the area of law, but not possible to filter the data by geographical region. The data can be sorted by the number of decisions and the remedy required by the Ombudsman.

To assist potential clients, it would be helpful to be able to sort the data by geographical region, as often clients will seek to instruct a local solicitor. We would only wish the Ombudsman to make changes where these would not cause depletion of its limited resources which should be targeted to deal with complaints.

Adding filters could unnecessarily complicate the table and could add to the existing confusion (as acknowledged in the discussion paper). We consider that additional filters of "complaint

¹ Section 113, Legal Services Act 2007

² Legal Ombudsman Annual Report 2018-19, page 17 shows 52% of cases were resolved within 180 days against a target of 72%.

type”, or “remedy” would increase confusion, rather than assist members of the public in choosing a service provider.

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?

An annual review may be helpful to the minority of firms that have received a high number of complaints, particularly if they have been upheld, but is likely to be of limited use to most firms who do not have any complaints reaching the Legal Ombudsman. One concern is that the Ombudsman would be spending its limited resources on producing these reports, when it should prioritise its resources to meet its own complaints key performance indicators.

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

A consumer would be likely to interpret an annual review of a particular provider as strong evidence to avoid instructing that firm. The effect of any public document would have a severe commercial impact on firms, which would put struggling firms under even more pressure with the consequence they would be unable to spend resources on improving their service to clients.

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

We do not consider that full Ombudsman reports would help consumers properly assess the service they would receive. There is no background data about the firm to assist the consumer in assessing a firm. Complaints occur often in unforeseen circumstances and for the vast majority of firms are a rare occurrence. Publishing details of a complaint may give the false impression that a firm offers poor service, when consumers will not be aware of a potentially very high number of satisfied clients. Publishing full details of clients would only exacerbate the current problem of consumers being unaware of the context of the complaint against the size of the firm and the number of clients that receive excellent service.

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

A possible consequence could be that firms will use the full decisions as precedents in how the Ombudsman will deal with cases. It could assist practitioners by challenging decisions it perceives as unfair by reference to cases that have already been decided. Some practitioners feel that publishing full decisions will expose the inconsistency in decision making by the Ombudsman.

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

As set out above, the main reason for not publishing a full decision is that it provides a distorted representation of the firm, as there is no data for the consumer to use to balance the negative impression of a published decision.

There are already significant incentives for firms to resolve complaints informally using their own complaints handling procedures; the strict operation of the additional “case fee” levied against firms, the existing publication scheme and significant powers of the Ombudsman. Some practitioners tell us they feel they have no choice but to make ex gratia payments to any client that makes a complaint, even if the firm considers that it has done nothing wrong as

any potential for publication of a complaint would severely affect its commercial viability and reputation in their local community.

Full decisions may be seen as precedents by both consumers and the profession, leading to greater challenges to the Ombudsman's own decision making.

From a data protection perspective, anonymisation does not always equate to confidentiality and there is always a risk that anonymised data can be used to identify a person. The Information Commissioner's Office³ has produced a Code of Practice dealing with these issues that the Ombudsman should consider.

The Ombudsman should also carefully consider legal restrictions, particularly in family cases and those involving children. Details of specific injuries or health considerations should not be included due to the risk of identifying an individual. A client should also have the right to refuse that their decision is published.

We note the Ombudsman's concerns with publishing full details of the decisions, *"Undertaking full publication would have significant resource implications for us . . . a tailored IT solution, and several staff posts dedicated to adapting and anonymising decisions to make them suitable for publication."* As the Ombudsman has identified, additional significant resources would be necessary to publish all decisions. The Ombudsman should use its resources to more effectively manage its own performance. It is obvious from the recent recruitment advertisement for a new Chair that the LeO has some serious operational difficulties. The Legal Services Board Chair Dr Helen Phillips has said within the application pack that: *"The OLC has faced some difficult challenges recently, and modernisation is now the key focus of the work – the aim is to reduce backlogs and improve timeliness of processing complaints"*

Against this background the LeO should be focussing on its core responsibilities and performance. The future of publishing its decisions as set out in the consultation paper is an unwelcome and unnecessary distraction at this time.

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?

As set out above the current position means that consumers are misled when considering the performance of a legal service provider. Contextual information, such as turnover or the number of partners would be helpful. In many cases, some of this information is already available to the public through the Law Society "Find a solicitor" register and for limited companies and LLPs via Companies House. However, the information is limited and is not in an easily accessible place for consumers.

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?

As set out above, the Ombudsman should carefully consider the legal restraints on publishing confidential information. It should also consider that resources issues in providing this information.

³ <https://ico.org.uk/media/1061/anonymisation-code.pdf>

Q8. Does publishing a greater range of data provide consumers with better information on which to make decisions about choosing a provider?

The Ombudsman confirms that the information about the number of agreed outcomes and case decisions, that do not reach formal adjudication, are not published. For many firms the advantage of settling a disputed complaint at this stage is that it means that the reputational risk is removed. If the Ombudsman chose to publish firms' agreed outcomes that would likely result in an increase in the number of formal adjudications.

There is also a serious question as to whether the LeO has the jurisdiction to publish this information. We are not convinced that Section 150 Legal Services Act would cover the publication of data relating to the informal settlement of complaints.

Q9. Would it be useful for LeO to publish a greater range of data for other reasons?

No. We cannot identify any other reasons for publication.

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?

Certainly not. As stated above, the LeO should focus on improving its own operation as opposed to diverting its resource and attentions to political activities. In any event, we do not consider that a case has been made to change the Legal Services Act 2007.

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

We consider that our members would not support an increase in the practising certificate fee (or firm fees) to pay for significant costs of publication, where the Ombudsman was not achieving its performance targets.

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

The discussion paper effectively addresses the potential options available to the Ombudsman, but does not take into account the practical effect of publication on solicitors, the majority of which run small businesses on tight budgets.

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

Currently the Ombudsman publishes the number of complaints received about a firm and the number of cases upheld. The difficulty in presenting a fair and accurate view of the legal provider's performance, is that the data gives no indication of the size of the firm, or how many clients it has acted for. On the Ombudsman's website it states,

*"To fully understand this data in context you will need to find out how many cases the firm or lawyer deals with each year. This information is not held by the Legal Ombudsman."*⁴

The statement does not give any assistance to consumers about how to make an informed choice, or confirm that this data would only be available from the firm itself. Similarly, there is no evidence that publishing more information would benefit the consumer.

⁴ <https://www.legalombudsman.org.uk/ombudsman-decision-data/>

5 December 2019

A handwritten signature in black ink that reads "L. Thomas". The signature is written in a cursive style with a large initial "L" and a period following it.

Linden Thomas
President
Birmingham Law Society