

Exploring the publication of solicitors' complaint records

Consultation Response sheet

Legal Services Commission

1. If we decide to publish, what other factors, if any, should be considered when deciding on how to do so? Please explain below what you think is relevant and why.

The Legal Services Commission fully supports the Legal Complaints Service's proposals to provide greater transparency in respect of complaints against solicitors. The LSC agrees that the LCS should publish adjudication decisions when it is in the public interest to do so. This is a key element of transparency and accountability, and could be an effective way to ensure that clients have access to appropriate information to enable them make informed decisions about their choice of solicitor or firm. However, we would emphasise the need for publication to take place only after the complaint has been addressed, which highlights the importance of dealing with complaints quickly.

We note that the McCrory review of regulatory penalties states that regulators should publish on a regular basis the completed enforcement actions and details of the people against whom such actions have been taken.

We would also urge that there should be express legal gateways to allow for the sharing of relevant information between the LCS and other regulators and the Commission. Details of the outcomes of such complaints would clearly be of interest to the Legal Services Commission to the extent that they might impact on the quality of advice provided to clients assisted under the legal aid scheme. Such complaints could also highlight other risks to clients and/or the legal aid fund. The Commission would therefore welcome an opportunity to discuss with LCS how such information can be shared for the benefit of clients and the stewardship of public funds.

The LCS Website could be used to inform the public of such complaints. In addition we also suggest publication (at least in summary format) in the Gazette, by email to the local Law Society and publication in local newspapers (local to the solicitor's place of business).

The Commission suggests that the period of publication needs to be proportionate to the penalty imposed. The greater the penalty the longer the publication period. The retention rules should be simple, clear and proportionate.

The risk based approach to penalties as suggested by the Hampton Review recommends a sliding scale of penalties that are quicker and easier to apply for most breaches with tougher penalties for 'rogue' persistent offenders. The above approach on publication follows a similar approach whereby details are published for longer periods for more serious or persistent offenders.

In respect of matters involving dishonesty and serious criminal offences it is thought that these should remain available on a permanent basis. This would be in-line with the approach adopted on disclosures of criminal convictions. We understand that professionals such as solicitors must disclose all previous offences irrespective of how long ago they occurred.

2. Do you have any comments on the draft publication policy section about exemptions? Would you add to or change the suggested exemptions from publication? Please explain your reasons.

The LCS will of course need to consider whether any exemptions apply under the Freedom of Information Act 2000 or the Data Protection Act 1998 in each instance.

In addition we would ask LCS to consider publishing (at least in summary form) the details of all complaints made against a particular firm (including settlements). Such summary information is essential to get a full picture of the firm and any relevant trends in how the firm handles complaints.

We note also your intention to publish only the name of the firm and not the name of the individual involved. If this policy is adopted then we would hope that information regarding individuals would be recorded and accessible to third parties on request. Such information would be invaluable to a potential new employer or user of that individual's future services.

We also would urge LCS to consider how they will deal with situations where the originating firm's name has changed or being incorporated into another business entity since the time of the complaint. It is important that adjudications that could affect the quality of service of the new entity are linked through the publication system.

We also support the idea of only publishing complaints resolved after some future date, the 'clean sheet' approach. It is important that the information is published in a consistent and transparent way in order to avoid unnecessary challenges to publication.

3. If you think that complaint records should not be published, please explain why.

4. What are your views about the possible unintended consequences of publication? How real are the risks that the LCS has considered? What level of impact do you think they might have? Please share details of any consultation you have undertaken to inform your reply.

The risks can be mitigated in the way the LCS designs the publication scheme. For example, the right to appeal against publication will go some way to ensuring that customers can maintain confidentiality where it will give them a better outcome.

The Commission does not agree that the risk outlined at paragraph 11.2.4 that the only local firm might close as the result of a complaint is valid, as getting poor advice would be worse than having to travel further for high quality advice.

5. Do you agree or disagree with the view that the benefits of publication will outweigh the disadvantages? Please explain your reasons

The LSC agrees that the benefits of publication will outweigh the costs. It is right to encourage solicitors to be consumer-focused through creating an environment in which standards of service should improve and good firms can prosper.

The Commission would fully support the LCS in demonstrating to the public and other stakeholders in such an important and symbolic way your commitment to transparency and accountability.

6. If you support publication, but do not support the scheme preferred by the Board of the LCS, please outline the scheme you would prefer, indicating your reasons.

About you

Thank you for responding to our consultation questions.

Please identify yourself below.

Surname

Forename(s)

Your Law Society ID number (if applicable)

Name of the firm or organisation where you work

Your email address

Please enter your email address below.

We will use your email address if we need to contact you about your response and to inform you of progress in this consultation.

Confidentiality

We will publish a list of respondents with an overall analysis of responses. Attributed responses will not be published. Please advise us if you do not wish your name or the name of your firm or organisation to appear on the published list of respondents.

Yes / No

I am responding to this consultation...

Please identify the capacity in which you are responding to this consultation by selecting **one option only** from the list below. To select an option, click on the check box next to it.

on behalf of my firm	<input type="checkbox"/>	Please enter its name <input type="text"/>
on behalf of a Law Society board or committee	<input type="checkbox"/>	Please enter its name <input type="text"/>
on behalf of a representative group	<input type="checkbox"/>	Please enter its name <input type="text"/>
on behalf of a local law society	<input type="checkbox"/>	Please enter its name <input type="text"/>
as an academic	<input type="checkbox"/>	Please enter the name of your institution <input type="text"/>
on my own behalf as a solicitor in private practice	<input type="checkbox"/>	
on my own behalf as an employed solicitor	<input type="checkbox"/>	
as another legal professional	<input type="checkbox"/>	Please specify <input type="text"/>
as a trainee solicitor	<input type="checkbox"/>	
as a student studying for a qualifying law degree or legal practice course	<input type="checkbox"/>	
as a member of the public	<input type="checkbox"/>	
In another capacity	<input type="checkbox"/>	Please specify <input type="text"/>

Thank you for responding to our consultation questions and for identifying yourself.

More about you

We want to ensure that responses to our consultations capture the opinions of a wide cross-section of the profession, stakeholders and the public. Please help us by answering several more questions about yourself

A. Questions about you

What gender do you consider yourself to be? Male <input type="checkbox"/> / Female <input type="checkbox"/>	
Please enter your age - in years.	<input type="text"/>
Which of the following best describes your ethnicity? Select one option only from the list below. To select an option, click on the corresponding check box.	
White British	<input type="checkbox"/>
White Irish	<input type="checkbox"/>
White other	<input type="checkbox"/> Specify
Mixed white and black Caribbean	<input type="checkbox"/>
Mixed white and black African	<input type="checkbox"/>
Mixed white and Asian	<input type="checkbox"/>
Other mixed background	<input type="checkbox"/> Specify
Black or black British Caribbean	<input type="checkbox"/>
Black or black British African	<input type="checkbox"/>
Other black or black British background	<input type="checkbox"/> Specify
Asian or Asian British Indian	<input type="checkbox"/>
Asian or Asian British Pakistani	<input type="checkbox"/>
Other Asian or Asian British background	<input type="checkbox"/>
Chinese or other ethnic group, Chinese	<input type="checkbox"/>
Any other ethnic group	<input type="checkbox"/> Specify
Decline to answer	<input type="checkbox"/>
Do you have any disability? Yes <input type="checkbox"/> / No <input type="checkbox"/>	

Thank you for completing the questionnaire.