



THE CITY OF LONDON LAW SOCIETY

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Mr Chris Nichols
Ministry of Justice
Legal Services Regulation
Zone 4.37
102 Petty France
London SW1H 9AJ

By Email (chris.nichols@justice.gsi.gov.uk) and Post

Dear Mr Nichols

Disclosure of Information by the Office for Legal Complaints and the Legal Services Board (Orders under Sections 152(3)(g) and 168(3)(g) of the Legal Services Act 2007)

1. The City of London Law Society (**CLLS**) represents over 13,000 City lawyers, through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues.
2. The CLLS responds to a variety of consultations on issues of importance to its members through its 17 specialist committees. This response has been prepared by the CLLS's Professional Rules and Regulation Committee. The Committee is made up of a number of solicitors from twelve City of London firms who have specialist experience in the area of the regulation of the profession.
3. We have responded to the questions in the manner requested. However we have a general observation regarding disclosure of information by the OLC. That is that we believe that the Orders (or any operating procedures implemented under the

Orders) should require a judgement to be made in each instance that disclosure is appropriate having in mind, inter alia, the rights of the subject of the complaint.

4. Dealing with a regulatory investigation can have a significant impact on the practice of a law firm and/or an individual practitioner. It is costly and time consuming (both in real terms and in terms of foregone business opportunities) to engage with a regulator and there is always an attendant risk that, even if the regulatory breach is not substantiated, the matter may attract the attention of the press or otherwise come into the public domain with negative consequences for the reputation and business of those involved. It may also be the case that a disclosure from the OLC to another regulator is not Freedom of Information Act neutral; that is to say that information which might otherwise have remained confidential may be liable to come into the public domain as a result of a disclosure being made.

5. It is an unfortunate fact that a considerable number of complaints made to the OLC will have no merit. They may be frivolous or vexatious, but it may just be the case that the person making the complaint is unhappy with the outcome of a particular circumstance and feels aggrieved, even if the lawyer is not deficient. Multiplying the costs and stresses associated with such a complaint by involving a second regulator is clearly substantially to the detriment of the subject of the complaint. We feel it is appropriate for the OLC to be required to perform at least some fact finding work and to come to a preliminary judgement regarding the merits of the complaint before any information is handed over.

6. Paragraphs 20 to 22 of the consultation discuss the circumstances in which disclosure might be made by the OLC to the Legal Services Commission. The proposition is that the LSC should receive information on complaints that are upheld about lawyers who receive public funding. The consultation argues that this is a proportionate and reasonable safeguard and we strongly agree. The proposal is not that *any* complaint that refers to a legal aid practitioner should be referred but rather that only those that are upheld ought to be. We think that this is a sensible approach, which balances the interests of all involved.

7. We would argue that similar consideration should be given to the other circumstances in which the OLC will disclose information. Of course, it may be argued that in some circumstances the facts will not substantiate a complaint to the OLC but they would, for example, substantiate one to the FSA as an alternative regulator. We accept that, but that should not absolve the OLC from being required to come to a determination that, for example, the facts as reported are at least *prima facie* accurate, before involving another regulator. Otherwise a natural consequence may be that the firm and practitioners concerned are put to the costly effort of repudiating the same erroneous allegations twice, to the benefit of nobody.

All of our observations below are subject to this first general point.

Question 1.: *Do you agree that the OFT should be included in a section 152(3)(g) order for the purposes of administering the consumer credit licensing scheme and monitoring the fitness of people undertaking estate agency work?*

Answer: Yes.

Question 2: *Do you agree that the FSA should be included in a section 152(3)(g) order for the purpose of regulating the financial services industry?*

Answer: Yes.

Question 3: *Do you agree that the LSC should be included in a section 152(3)(g) order for the purpose of ensuring that lawyers or firms in receipt of legal aid payments are adhering to its standards and contracts?*

Answer: Yes.

Question 4: *Do you agree that the JAC should be included in a section 152(3)(g) order for the purpose of properly considering the suitability of applicants for judicial office?*

Answer: Yes.

Question 5: *Do you agree that the FRC and its operating bodies should be included in a section 152(3)(g) order for the purpose of exercising their functions?*

Answer: Yes.

Question 6: *Do you agree that the CMR should be included in a section 152(3)(g) order for the purpose of regulating the claims management sector?*

Answer: Yes.

Question 7: *Do you agree that the Law Society of Scotland and the Scottish Legal Complaints Commission should be included in a section 152(3)(g) order for the purpose of discharging their regulatory functions?*

Answer: Yes.

Question 8: *Do you agree that the Law Society for Northern Ireland should be included in a section 152(3)(g) order for the purpose of discharging their regulatory functions?*

Answer: Yes

Question 9: *Are there any regulators of legal services in other jurisdictions that you believe should be included in a section 152(3)(g) order? What information would these persons or bodies require and for what purpose?*

Answer: We do not believe that there is a requirement to include regulators of legal services in other jurisdictions within the section 152(3)(g) order because the protection of the interests of clients in other jurisdictions is not within the ambit of the 2007 Act.

However, at a fundamental level, the ethical rules applying to legal professionals in different jurisdictions are similar. For example, most jurisdictions prohibit a legal professional from exploiting his or her fiduciary relationship with a client for personal advantage. It would certainly be in the interests of consumers in the UK for our regulators to be made aware when an allegation of breach of a fundamental rule of practice has been upheld against a dual qualified practitioner (who also practises in the UK). It follows that an appropriate protocol for information exchange between regulators with this goal in mind is desirable and the making of an order for these purposes should be supported. However in this case, because the 2007 Act would

not oblige the OLC to pursue the interests of consumers outside the UK, we believe that the information exchange should only relate to complaints which have been finally upheld and not to investigations or other preliminary matters.

Question 10: *Would there be value in drafting a more general provision which would allow the OLC to disclose information to all overseas regulators of legal services with regulatory responsibilities in relation to a legal professional that the OLC is investigating?*

Answer: See comments above.

Question 11: *Do you agree that the OISC should be included in a section 152(3)(g) order for the purpose of discharging their regulatory functions?*

Answer: Yes.

Question 12: *Do you agree that the **ISC** should be included in a section 152(3)(g) order for the purpose of regulating data controllers?*

Answer: Yes.

Question 13: *Are there any other persons or bodies that you believe should be included in a section 152(3)(g) order? What information would these persons or bodies require and for what purpose? Are you aware of any powers that these persons or bodies have that would allow them to obtain or request the desired information were they not **to** be included in an order?*

Answer: No.

Question 14: *Do you agree that the Insolvency Service should be included in a section 168(3)(g) order for the purpose of regulating Recognised Professional Bodies under the Insolvency Act 1986?*

Answer: Yes.

Question 15: *Do you agree that the Financial Reporting Council should be included in a section 168(3)(g) order for the purpose of providing oversight regulation of the auditing and accountancy professions?*

Answer: Yes.

Question 16: *Are there any other persons or bodies that you believe should be included in a section 168(3)(g) order? What information would these persons or bodies require and for what purpose? Are you aware of any powers that these persons or bodies have that would allow them to obtain or request the desired information were they not to be included in an order?*

Answer: No

Question 17: *Do you know of any persons that might hold information that would be relevant to the exercise of the LSB's functions, who would be restricted from disclosing this information to the LSB if they were not included in an order under section 169(6)? For any persons mentioned, please refer to the legislation or reason for disclosure being restricted in the first instance.*

Answer: No.

Question 18: *Do you agree with the consultation stage impact assessment attached to this consultation? Do you have any evidence of impacts we have not considered?*

Answer: Please see our comments at the start of this response.

Yours sincerely

David McIntosh
Chair
CLLS

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**THE CITY OF LONDON LAW SOCIETY
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