

THE CITY OF LONDON LAW SOCIETY

RESPONSE TO LEGAL COMPLAINTS SERVICE CONSULTATION EXPLORING THE PUBLICATION OF SOLICITORS' COMPLAINT RECORDS

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 multi-national companies and financial institutions to Government departments, often in relation to complex multi-jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 17 specialist committees. This response in respect of the LCS's consultation about the publication of solicitors' complaints records has been prepared by the CLLS Professional Rules and Regulation Committee. This response is set out below using the questions and numbering as they appear in the consultation paper.

- 1. If we decide to publish, what other factors, if any, should be considered when deciding on how to do so? Please explain what you think is relevant and why; please share any supporting evidence that you may have.**

As we said in our response to the survey done by the LCS last year, our view is that if there is to be publication of solicitors' complaints records then it must be done in a way that is fair to solicitors. This means in particular that the information is given in the appropriate context. We are pleased to see that you propose to give both general contextual information (such as the number of complaints received by the LCS annually and the main areas of law concerned) together with contextual information about the firm and the decision. We agree with the other factors that you have identified at paragraph 10, including the need to ensure that people without internet access are not disadvantaged.

We agree that three years will be an appropriate period for the adjudicated complaint to remain on the record. We also agree with the "clean sheet" approach, whereby only adjudications after a specified date in the future will be published. We confirm that we agree that only adjudicated complaints should appear on the published record and not, for example, matters settled by conciliation.

- 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 and share any relevant evidence.**

We agree that the LCS should have a discretion not to publish complaints from time to time. The example given in Appendix 2 is where it would not be possible to summarise the complaint without disclosing personal, confidential information about an individual connected with or referred to in the complaint. To take account of the interests of a commercial client where the confidential information would not be "personal" we would want to see that description extended to cover the disclosure of "personal, or otherwise sensitive, confidential information about a client or an individual connected with...".

- 3. If you think that complaint records should not be published, please explain why and supply any supporting evidence.**

N/A. With the provision of contextual information and other measures for the fair treatment of the firms involved, we support publication of complaint records.

4. **What are your views about the possible unintended consequences of publication?**

Of the potential risks identified in the Consultation Paper our comments are as follows:

- (a) We think it unlikely that there will be a conflict between the needs of individual LCS customers, who may value confidentiality, and the public interest. The proposed discretion not to publish should safeguard the concern of the individual about confidentiality. It is likely that a concern about confidentiality may indeed give the complainant a better result by conciliation, where the firm may be concerned about publication of an adjudication against it.
- (b) The LCS must recognise that there is likely to be more work for it with firms possibly wishing to conciliate in order to avoid publication. The LCS would develop a poor reputation with the profession, and indeed the public, if publication had the indirect result that there were longer delays in resolving individual cases.
- (c) Similarly, the LCS would have to recognise that there would be parties looking for trends in published complaints and commenting on how the LCS operates and treats customers and solicitors. This will be an inevitable consequence of the publication of complaints. Individual complaints will also be monitored by the legal press and will be the subject of comment and further investigation.
- (d) It would indeed be very unfortunate if the proposals resulted in further reduced access to justice in, for example, rural areas. Provided that proper context is given and provided that the complaint only remains on the record for three years, we think it unlikely that the complication would lead to the closure of the only firm in a particular locality. If that firm had had so many complaints that it was forced to close, then it is unlikely that it was providing an appropriate level of service to its clients while it was in operation.

5. **Do you agree or disagree with the view that the benefits of publication outweigh the disadvantages?**

We agree that on balance the advantages will outweigh the disadvantages. We believe that consumers should be able to see if there has been an adjudicated complaint against a firm of solicitors. On the other hand, we think that the description in section 2 of the benefits to which such publication would contribute are overstated and unachievable:

"[Consumers] want to be able to work out who is good or bad, ideally by looking at league tables or ratings similar to those produced by Ofsted.

Such a tool would be fantastic for the consumer. It would really improve competitiveness, be a great marketing opportunity for firms, and would shape the profession in the same way it has shaped and driven demand in schools."

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**

While we support the proposed scheme in principle, we are aware that the LCS will be replaced by the Office for Legal Complaints in 2010. The scheme on which the LCS is consulting is therefore likely to be in place for only a little over a year. Furthermore, the OLC will be responsible for complaints about all providers of legal services, not just solicitors. It will also have a wider statutory protection from, for example, defamation claims.

In those circumstances, it seems to us that unless the OLC is simply going to adopt and continue the LCS arrangements, there is an argument for postponing the introduction of

publication until the OLC is in place. This is particularly true given the very large number of changes that continue to be introduced to the solicitors profession and the profusion of issues on which the profession and public are being consulted.

21 April 2008