



## **Publication of Solicitors' Complaints Record**

The Institute of Legal Executives (ILEX) is the professional and regulatory body for Legal Executives and currently has a membership of 24,000 students and Legal Executives.

Legal Executive are employed within solicitors' firms to conduct specialist legal work. Amongst other things, legal executives undertake the following work:

- Advice and representation to clients accused of serious or petty crime;
- Advice and representation to families with matrimonial problems;
- Handling various legal aspects of a property transfer;
- Assist in the formation of a company;
- Be involved in actions in the High Court and county courts;
- Draft wills;
- Undertake the administration of oaths.

## **Terms of Reference of Consultation Paper**

This consultation by the Legal Complaints Service (LCS) seeks views on the publication of solicitors' complaints records. The LSC is of the opinion that the potential benefits outweigh potential disadvantages.

## **Introduction:**

ILEX supports accountability in the legal profession. This is consistent with some of the regulatory objectives of the Legal Services Act 2007. To this end, ILEX believes that consumers of legal services should be able to expect high standards of client care and that any complaints they make are resolved promptly and professionally.

ILEX deals with complaints made against all its members. This includes complaints against students, Members and Fellows of ILEX. ILEX also deals with complaints made by clients or third parties. ILEX does not differentiate between service and conduct complaints, although the majority of complaints received by ILEX will be about conduct matters. Most members of ILEX work in solicitors firms and clients tend to refer service complaints relating to ILEX members to the LCS, although we do experience clients referring a matter to ILEX if they disagree with a decision of the LCS.

## **Summary**

- In summary, ILEX accepts in principle of the need for limited publication of summaries of *upheld and adjudicated* complaints in the public interest. That said, however, ILEX is also of the view that the publication must be proportionate and in the relevant context of the information (general and firm specific).
- The scheme as proposed does not appear to be proportionate and at times, unrealistic in its scope.
- The ambitious nature of the proposals (to look like league tables) appears to be at odds with the fact that the LCS will be taken over by the Office legal Complaints (OLC). As such, the LSC needs to be aware that any publication policy it develops needs to be recognised as a temporary measure because it may not be adopted by the LSC.
- There is a risk that the public will perceive information about complaints as quality indicators about solicitors practices. Consumers will need to be made aware that the complaints record is only one of many issues they should consider when deciding which firm to instruct.
- ILEX also recognises that presenting the information in any meaningful way to inform the public will be problematic.
- ILEX would like to see clear and 'defined parameters' in the exercise of discretion not to publish having regard to the full circumstances of the case.

- There is a very real risk that every adjudicated decision will be challenged.
- ILEX is of the view that there will be significant ‘unintended consequences’.

## Consultation Questions

### Question 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.**

- 1.1 ILEX agrees in principle to the publication of *upheld and adjudicated* complaints records in the public interest. However, the need to publish complaints in the public interest must be seen to be proportionate and relevant having regard to all the circumstances of a case. Any information beyond that would be disproportionate and not in the public interest.
- 1.2 ILEX is of the view the following factors should determine publication:
  - Individual facts of a case (for example, whether a client has a propensity to complain);
  - Nature of the work (the evidence suggests advocacy services are more susceptible to complaints from clients)
  - Nature of the complaint (was it beyond the control of the solicitor or the firm).
  - Consistency of publication
  - The appropriate medium for publication should be clearly defined
  - The length of time of publication
- 1.3 All of the above circumstances would be pertinent and relevant in determining whether complaints should be published. ILEX is of the view that there has to be ‘defined parameters’ that determine what is in the public interest disregarding lesser issues of no real service nexus relating to the provision of legal services. To this end, the protocols for publication should clearly and expressly defined. However, ILEX recognises that presenting the information in any meaningful way to inform the public will be problematic.

### Question 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.**

- 2.1 ILEX would like to see clear and 'defined parameters' in the exercise of discretion not to publish having regard to the full circumstances of the case; including the factors in question one above. Examples (non-exhaustive) should give an indication as to when the exercise of the discretion should be applicable.
- 2.2 Importantly, the exercise of the discretion should be kept to a minimum and only applied in exceptional circumstances. ILEX does not, however, agree with the proposals to allow parties to comment on the wording of the summary or against publication itself. Otherwise, there is a danger that finality of decision-making is effectively undermined and may result in an increase of ancillary challenges. There is a very real risk that every adjudicated decision will be challenged

### **Question 3**

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

- 3.1 See Above.

### **Question 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 and share any evidence that you may have to support your view.**

- 4.1 ILEX is of the view that notwithstanding the benefits of publication there may be significant 'unintended consequences'. For example:
- A blame culture will begin to develop within firms or a firm being labelled when the real fee earner that caused the complaint had moved to another firm or practice;
  - Client complaints will be seen to a threat to the business. This would undermine initiatives designed to encourage a client led approach;
  - Clients unhappy with a certain outcome may see the opportunity of having their complaint publicised as a means of ensuring non-payment of fees; and
  - Access to justice issues: for example, vulnerable clients may find their choice of solicitor limited as firms move out of complaint prone areas.

## Question 5

**Do you agree or disagree with the view that the benefits of publication will outweigh the disadvantages? Please explain your reasons; please supply details of any evidence that supports your view.**

5.1 See comments above.

## Question 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. Please share any supporting evidence with us.**

6.1 For the reasons given above, ILEX agrees that there is an obvious case for providing more information to the public about the quality of services they consume so as to assist in their purchasing decisions.

6.2 However, the scheme as proposed appears not to be proportionate and, at times, unrealistic in its scope. For example, to suggest that publication of solicitor complaints is a first step in OFSTED style reports does the proposals no favours and wholly disregards the fact that the LCS will soon be replaced by the OLC. Such future developments should be left to the OLC. Moreover, the ambitious nature of the proposals fails to take into account the true impact on the consumer: evidence suggests that the LCS upheld only 441 complaints in a nine-month period to December 2007, out of 9,893<sup>1</sup>. This equates to only 5%. It therefore becomes unrealistic to assume that 5% of publicised adjudicated complaints will really have such impact on consumer choice.

6.3 However, ILEX does not objective in principle to publication as being good for the consumer and good for transparency. In implementing the proposals, there is need for a clear framework for determining publication and a definition of which complaints should be published. Publication for example, should be confined to upheld and adjudicated complaints.

ILE/GG  
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<sup>1</sup> Graham., R. 'Naming, Shaming and Complaining'; Legalweek.com: 14/02/08.