



CONSULTATION

Publication of disciplinary information

A consultation on the level of information which should be published regarding Adjudication Panel hearings and whether other disciplinary or regulatory information should be published in the interests of consumers and stakeholders.

Issue Date: 25th April 2014

Consultation ends: Friday 6th June

Introduction

The Council for Licensed Conveyancers has reviewed its publication policy to support greater openness and transparency in line with best practice. That review recommends changes to the publication of information relating to the disciplinary history of those we regulate.

We are consulting the regulated community and stakeholders on those proposed changes in this document. The Council will then make a final decision on its approach at its July 2014 meeting.

The following pages set out the issues on which we are consulting and the specific questions we are asking you to consider. There is more detailed background at page 8 onwards.

Responding to this consultation

The easiest way to feed in your views is through our online survey [here](#) but you will need to have read this document before you respond.

Alternatively you can complete the form at pages 10-12 and email it to us at consultations@clc-uk.org or by post to CLC, 16 Glebe Road, Chelmsford, Essex, CM1 1QG Or by DX 121925 CHELMSFORD 6

The deadline for submissions is 5.00pm on Friday 6th June 2014.

Current Approach

1. Item 8.3 of the [CLC Handbook's Regulation and Enforcement Policy](#) states:

We will publish details of the final determinations of the Adjudication Panel where there has been found a case to answer and an appeal has not been made within the 28 days or has not been successful.

The respondent will be named where a penalty exceeds £5000 or an individual has been disqualified or our approval of them withdrawn, or a licence has been suspended or revoked.

We will not publish determinations concluding no case to answer, unless the individual/body has asked for it to be published. In exceptional circumstances we may publish details of the progress of an investigation which has given rise to significant public concern.

To date, no disciplinary determinations made by the CLC have met these publication criteria.

2. The Alternative Business Structure (ABS) Register on the CLC website includes licence information such as authorisations, permissions and conditions placed upon that firm, as well as provision for disciplinary determinations meeting the current publication criteria. The development of the new CLC website will ensure that the same information is available for other practices and practitioners regulated by the CLC so transparency provisions are consistent. The new website should go live before the end of this year.

Proposed New Approach

Specific proposals

3. The CLC is proposing to make two specific changes to the policy on publication of formal disciplinary findings made by the Adjudication Panel.

a) Remove the £5,000 publication threshold	It is proposed instead that any level of penalty is published.	The £5,000 threshold is not proportionate. This level penalty for a sole practitioner or other small firm is likely to indicate a more significant regulatory breach than when issued to a large firm and so is an arbitrary threshold.
b) Publish notice of Adjudication Panel hearings	i) To include month, name of respondent and broadly the nature of the allegations	General presumption in favour of publication, unless, to do so, would: prejudice legal proceedings or regulatory or disciplinary investigations; or risk breaching a person's rights under Article 8 of the European Convention on Human Rights or in the opinion of the Panel it would not be just to do so.
	ii) The Adjudication Panel may decide not to publish the name of the respondent or other information	

The central purpose behind these proposals is that we demonstrate increased accountability to both consumers, to help inform their decision-making, but also to CLC firms, and other stakeholders, so they can see that firms/individuals who do not meet their regulatory responsibilities are held accountable for that. To provide notice and details regarding scheduled hearings is in the public interest.

Proposals for general consideration

4. The CLC is considering whether it should also publish:

- | |
|---|
| <ul style="list-style-type: none"> a) Anonymised summaries of monitoring and inspection activities b) Regulatory actions taken by staff under delegated powers e.g. Undertakings, Directions, Informal Advice etc. c) Other decisions it has made and, if so, which. |
|---|

Providing all regulatory data regarding a firm could undermine co-operation with the monitoring process. We therefore propose to provide information on regulatory actions, such as issuing of Undertakings, which the CLC can apply under delegated powers (rather than through the Adjudication Panel), but not to provide inspection findings and monitoring activity information in any form other than anonymised and summarised.

5. A dedicated webpage on the new CLC website will be allocated to publication of summary information and it is intended that the website's development will enable this information to be available within the licence search facility, informing consumers' choice of legal services provider.

Next Steps

6. The consultation will last 6 weeks. A summary of the responses received will be published within 4 weeks of the consultation's end. Consultation responses will help inform the policy approach to be discussed by the CLC Council in the summer.

Responding to this consultation

The easiest way to feed in your views is through our online survey [here](#).

Alternatively you can complete the form below and email it to us at consultations@clc-uk.org or by post to CLC, 16 Glebe Road, Chelmsford, Essex, CM1 1QG Or by DX 121925 CHELMSFORD 6

In each case you are asked to provide reasons for the answer you have given, particularly with regard to the interests of the consumer, public or the profession. You may wish to give specific examples.

Name:

Qualification or role:

Organisation:

Question 1.

Should all formal disciplinary penalties imposed by the CLC be published?

Question 2.

Should a schedule of Adjudication Panel meetings be published?

Question 3.

Do you agree that it is for the Adjudication Panel to determine whether the respondent should be named?

Question 4.

Do you agree with the circumstances in which the Panel will determine that the respondent should not be named?

Question 5.

Do you think the CLC should publish anonymised summaries of monitoring activities and reports?

Question 6.

Should there be any circumstances in which individuals/firms should be named when we are publishing reports of monitoring activities?

Question 7.

Do you think the CLC should publish information about regulatory actions taken by staff under delegated powers?

Question 8.

Is there in your opinion any other information the CLC should publish?

Question 9.

If you work in a conveyancing practice, how many people work in your firm?

- Sole practitioner
- 2 - 10 employees
- 11-25 employees
- 26 or more employees

Question 10.

If you work in a conveyancing practice, how many people work in your firm?

- CLC
- SRA
- Not applicable

Deadline Submission: 5.00pm Friday 6th June 2014

Background

1. By disciplinary determinations we mean enforcement determinations, such as reprimands; financial penalties; suspension, revocation or disqualification; as made by the Adjudication Panel. These are determinations made when a less formal approach (staff investigation and advice) and/or regulatory action (staff delegated powers/undertaking/ direction) is not appropriate to the circumstances, or has not delivered the outcomes anticipated.

CLC transparency commitment

2. We already notify key stakeholders promptly where we have intervened into a practice and publish details of the intervention on the website, as well as amending the online register.

The CLC is committed to making freely available as much information about its work as possible to assist:

- the regulated community
- the oversight regulator
- our partners in regulatory activity and law enforcement
- policy makers
- consumers of legal services.

A corporate commitment to greater openness needs to consider what information should be made more freely available to assist consumers, the regulated community, the oversight regulator and partners in regulated activity and law enforcement. This commitment is made in the public and consumer interest and in line with the principles of good regulation.

Unless otherwise stated, information will be published on the CLC's website. A dedicated webpage on the new CLC website will publish a summary of information as well as having information available on the CLC Licence Register.

The proposals behind this consultation seek to inform consumers, and other stakeholders, of disciplinary determinations which might affect decisions whether to instruct a particular practice and to provide assurance about the underlying robustness of the CLC's regulatory regime.

Regulatory Objectives

3. Such accountability, quality and transparency items need to be considered alongside the other relevant regulatory objectives of:

- Promoting competition in the provision of services;
- Encouraging an independent, strong, diverse and effective legal profession;
- Protecting and promoting the interests of consumers;
- Protecting and promoting the public interest.

Better Regulation Principles

4.

a) Accountability – we would increase our accountability to the public interest by evidencing further our regulatory activity and making firms accountable to the consumer interest

b) Transparency – respondent has an opportunity to make representations to the Adjudication Panel prior to a determination being made and to put forward a case as to why they should not be named

c) Proportionality – wherever possible/appropriate, a non-disciplinary approach is taken. We applied a threshold to indicate that those penalties above the threshold related to a more serious breach of regulatory responsibility. However, we accept that the £5,000 threshold was determined in the absence of consultation with the profession and with other stakeholders. There remains a risk that disclosure of regulatory determinations may impact disproportionately on the named firm or individual.

d) Consistency – enforcement decisions are systematically scrutinised to ensure the criteria are being consistently applied; the civil standard of proof is applied in keeping with other regulators

e) Targeted – information which is both relevant and easily understandable should be provided in the public domain in order that consumers can make an informed choice.

The consumer interest

5. As an Approved Regulator the CLC is required, so far as is reasonably practical, to act in a way which is compatible with the regulatory objective to protect and promote the interests of consumers. The Consumer Panel has issued a Consumer Principles Checklist (below) to help Approved Regulators define what exactly is meant by the consumer interest and assess its policy proposals, projects, or other relevant areas, against an outcomes-focused checklist.

6. The 7 Consumer Principles are Access, Choice, Quality/Safety, Information, Fairness, Representation and Redress. In reviewing the formal determinations publications, the following Principles checklist items appear most relevant:

Access	<ul style="list-style-type: none"> • There is an appropriate balance between competition and regulation.
Choice	<ul style="list-style-type: none"> • Consumers can choose from a range of services and providers. • Consumer can access reliable comparative information about providers in relation to price, quality and other characteristics.
Quality	<ul style="list-style-type: none"> • Quality is being monitored effectively. • Consumers have access to information that will help them identify good quality providers.
Information	<ul style="list-style-type: none"> • Data on the identity and performance of providers is available in suitable formats. • Consumers have the right level and quality of information to make effective decisions at each stage of their matter.
Representation	<ul style="list-style-type: none"> • Regulators work openly and transparently so they can be held accountable for their performance.
Redress	<ul style="list-style-type: none"> • Monitoring and enforcement data is publically available.

All of which appear to suggest that as much information as possible, which is both relevant and easily understandable, should be provided in the public domain in order that consumers can make an informed choice. Such accountability, quality and transparency items need to be considered alongside the other relevant regulatory objectives of:

- **promoting competition in the provision of services; and**
- **encouraging an independent, strong, diverse and effective legal profession**

as well as the CLC’s commitment to greater transparency and openness (as long as there is not disproportionate prejudice to the firm/individual).

The following table provides a draft high-level case for and against regarding these Principles and the increased transparency provisions outlined in this paper.

a) Publish notice of Adjudication Panel hearings:

<i>For Consideration – case for</i>	<i>Consumer Principle & Outcome</i>
a) Providing information on intended hearings and then subsequent information on the verdict reached and its impact upon the respondent helps demonstrate accountability on our performance	<ul style="list-style-type: none"> • <u>Choice</u>: consumers have access to information that will help them identify good quality providers. • <u>Choice</u>: consumers can choose from a range of services and providers. • <u>Quality</u>: is being monitored effectively. • <u>Information</u>: regulatory data on the identity and performance of providers is available in suitable formats.
b) Allocating information about disciplinary proceedings enables consumers to make a comparison between providers	
<i>For Consideration – case against</i>	<i>Consumer Principle & Outcome</i>
a) Providing information on hearings before a verdict has been determined could mean that, should the Panel then make a determination in the firm’s favour, that they have been disadvantaged unnecessarily	<ul style="list-style-type: none"> • <u>Access</u>: there is an appropriate balance between competition and regulation. • <u>Information</u>: consumers have the right level and quality of information to make effective decisions at all stages of their matter.

b) Other regulatory information:-

<i>For Consideration – case for</i>	<i>Consumer Principle & Outcome</i>
a) Would increase our accountability and provide assurance about the underlying robustness of the CLC’s regulatory regime.	<ul style="list-style-type: none"> • <u>Representation</u>: regulators work openly and transparently so they can be held accountable for their performance. • <u>Redress</u>: monitoring and enforcement data is publically available.
b) Would inform would-be consumers, and other stakeholders, of the appropriate disciplinary determinations which might affect decisions whether to instruct a particular practice.	

For Consideration – case against	Consumer Principle & Outcome
a) Providing all regulatory information on individual firms could disproportionately impact upon the competitiveness of the named firm.	<ul style="list-style-type: none"> • <u>Access:</u> there is an appropriate balance between competition and regulation.
b) Providing information on regulatory action taken, and naming the firm in doing so, could mean consumers are given information which they consider informs, but could actually, unnecessarily, confuse, their choice.	<ul style="list-style-type: none"> • <u>Information:</u> consumers have the right level and quality of information to make effective decisions at all stages of their matter.
c) The vast majority of regulated firms are currently very co-operative with the CLC monitoring and inspection process. To publish monitoring information and align it with a named firm risks losing that co-operation with the result that firms are not candid and transparent in their dealings with the CLC.	

The Legal Services Board’s ‘Assessment of Current Arrangements for Sanctions and Appeals’

7. In March 2014, the LSB published its [Assessment of Current Arrangements for Sanctions and Appeals](#) which recommends that “enforcement decisions should, other than in exceptional circumstances, be put into the public domain”. It considers that regulators need to be transparent about:

- the processes by which they reach decisions whether to impose sanctions;
- the reasons for imposing sanctions (or not); and
- revealing how decisions are made and publishing the decisions.

It believes that such transparency should apply to all enforcements actions and sanctions, including less punitive administrative penalties, enforcement and other notices.

It recommends that the following be published also:

- details of cases under initial investigation – it considers that not doing so puts the lawyer’s interest ahead of the client or public interest;
- the approach to determining the level of a financial penalty to impose - an indication of factors to be taken into account rather than a specific calculation methodology, as well as publishing a schedule or scale of administrative penalties.

We consider it proportionate to publish details of cases to be taken to the Adjudication Panel as this will have been investigated and a standard of proof applied to have reached the point of formal determination. We are not currently convinced that identification of a need for possible inspection (whether on-site or desktop, general or specifically themed, random or targeted), or even for further inquiry (e.g. following a complaint raised directly with us by a client), should be published against a firm as it risks that firm’s interest when we are not yet minded as to whether there is indeed a risk to other interests, particularly that of the consumer). We would consider publication of the Adjudication Panel Schedule and regulatory action to be proportionate and though we may ultimately provide information on inspections we are proposing this would be anonymised and themed. This would mean the inspection protocol is not made public, continuing to support the inspection process as a constructive tool.

Our Regulation and Enforcement Policy is clear that we would consider publication of explicit criteria/procedure to be applied in calculating the level of a fine could perversely incentivise firms to

keep just under the water line. The policy confirms that we do not benefit financially from applying penalties, we seek to make the fine fair and proportionate, and provides as much detail as we currently consider appropriate,

“4.7.4a Financial penalties – we are likely to direct the payment of a fine (by the body and/or an individual concerned with it i.e. an employee or owner) exceeding £50,000 only in serious circumstances. This will be used to penalise inappropriate behavior demonstrated by a specific act or omission and to deter future non-compliance (by both the individual/body and others). The level of the penalty will take into account the size/ resources of the body so it is proportionate whilst also at a level likely to give clients and the public confidence that issues which cause them detriment are dealt with appropriately. Should a number of breaches be separately investigated we may determine it appropriate for a separate penalty to be imposed in each case”.

Should consultation responses and our consideration of them indicate that we need to review our position we may do so.

The [LSB Sanctions And Appeals Summary Table](#) provides an overview of the sanctions and appeals processes of individual Approved Regulators.

Other regulatory practices – CLC desktop mapping exercise

8. The [Financial Conduct Authority \(FCA\)](#) has recently revised its approach in light of the transparency benefits it has identified through early notification of enforcement proceedings and to lower the test a person has to satisfy demonstrate ‘unfairness’ (ie. why the notice should not be published). It now publishes warning notices making clear that the notice is not the final decision. It will usually publish warning notices about firms (though not small firms), but not individuals (with the possible exceptions of CEOs). However, the FCA may in some situations publish the warning notice details –in order to make the nature of the concerns public – but not identify the entity to which the notice is subject.

In deciding whether to publish a notice: the FCA assumes that relative harm from publication is likely to be greater for an individual than a firm, unless the firm can provide evidence of how unfairness might arise. It consults with the persons to whom the notice is given and considers any representations as to the prejudice they would suffer as a result of publication (e.g. detrimental impact upon health, likely to result in bankruptcy, loss of livelihood, prejudice to criminal proceedings). NB. The FCA recently issued a pre-briefing of information about a forthcoming insurance review which caused considerable disruption to the relevant market and which prompted George Osborne to express concern at what information had been released and when.

http://www.thetelegraphandargus.co.uk/news/national/news/11116784.Osborne_concern_at_FCA_blunder/

9. The Medical Register of the [General Medical Council \(GMC\)](#) provides details on all restrictions on an individual’s registration. The register includes current status and details of any action that may have been taken by the GMC (since October 2005, when the register went online). These actions might include Fitness to Practise or Interim Order Panel hearings and include information on conditions, undertakings, warnings and suspensions.

The register does not include conditions or undertakings

- (i) solely concerned with the individual’s health,
- (ii) actions taken by other organisations (e.g. employer),

- (iii) suspensions or conditions imposed by an Interim Orders Panel where a case is subsequently closed with no impairment or warning,
- (iv) warnings over 5 years old.

10. The Prudential Regulation Authority (PRA) announces when work has been commenced to establish *whether* a named provider should be subject to a formal enforcement investigation, as well as announcing *whether* a formal investigation is being subsequently launched.