

Lawyer Discipline: The Name of the Game

Causing some upset this week was an article in The Guardian which was entitled "[Why lawyers who fall foul of the legal watchdog should be named](#)", and goes on to talk about the relatively new LEO (Legal Ombudsman Service) and one of its ombudsmen, Adam Sampson who seems to be suffering under the weight of what he perceives to be a moral and practical dilemma in publishing the names of naughty lawyers. Understandably the dissenters commenting below the article are of course lawyers themselves, but in a world where most professionals are held accountable for their mistakes, what we should really be asking ourselves is, why not lawyers?

As individuals who are heavily trained and expected to be the front line protectors and upholders of justice and to observe a duty to serve the court, lawyers should arguably be held to account with the greatest of scrutiny. After all, our legal system is not just another corporate entity; it is a symbol of our democratic society, a bastion of all that is good and one which is meant to thrive on transparency and equality.

But, it doesn't. Post reading the article, I decided to hunt around for stats on lawyer discipline and started my journey at the [LEO](#). I was informed by the LEO, rather surprisingly, that they don't carry statistics of the number of complaints registered (peculiar as The Guardian website quotes some figures direct, presumably sourced by the LEO) and I was told to try my luck with the [Law Society](#).

A quick phone call to the Law Society (who were very helpful if more than a little suspicious of the request) revealed that they also did not have any figures on the number of complaints against lawyers, the type of complaints nor the resolution or other of such complaints. In fact, no information whatsoever on lawyers falling foul of the regulations. Ironically, they then suggested I try the LEO who they assured me, had information of this nature. Once I had informed them that they had sent me on to the Law Society a very sweet researcher then suggested I contacted the [Solicitors Regulation Authority](#).

Off my digits dialled, to the SRA and there I spoke with a gentleman who also seemed to become rather defensive when I made my request for information on lawyers and complaints against them. He did take the time though to guide me to the page on their website where they hold information on [solicitors who have been disciplined](#). This in itself renders the perceived moral dilemma of whether or not the LEO should or shouldn't publish the names of those individuals who have broken the rules, a moot point: *[It is already being done](#)*.

And not just solicitors, [but barristers too](#). So what's all the fuss and what is the LEO really afraid of? In the US, although they too suffer with transparency issues, the American Bar Association publishes a [comprehensive body of data](#), which includes [statistics on the number of complaints received, investigated and determined](#) (not just those leading to conviction or penalty). There is even more detail if you care to scroll down the forty page document. No, what's really concerning the LEO is its political relationship with the legal profession and what their decisions on sensitive policy matters might mean further down the line.

Yet, what of the counter arguments we hear in relation to making the disciplinary process more transparent? The threat (read: blackmail wrap) of lawyers refusing to take on clients if

they feel their clients will be unreasonable or refusing themselves to practice law at all? The concern that the media and other legal professionals (like Mr Sampson) are somehow vilifying the profession and tarring lawyers with the audacious mantra that "they too are human and make mistakes"? The lack of rationality in these examples speak for themselves but more important is the necessary work that needs to be done to address the profession's waning credibility, brought about, not by the media wishing to topple an industry that makes up part of this country's back bone, but by some very shoddy legal practices which are beginning to come to light and which need to be managed, head on.

So why are so many lawyers afraid of the LEO's not-particularly-groundbreaking proposal? Surely those practitioners who fail to work to regulation standards should be named, so that the system can start to shed itself of the cloak of secrecy which has done nothing for it but cause it misery in the form of public disdain and mistrust (and as a result hitting where it hurts most - the firms' profit margins)?

The desire for transparency is not about mounting a witch hunt, it is about making sure that those men and women entrusted with looking after our justice systems and our communities can do so in an environment of trust and confidence. It makes sense to have statistics not unlike those the ABA currently hold for the States, which could go on to include the nature and type of the complaint (i.e. which area of the law including specifics of the complaint) and how long it took for the complaint to be resolved, as just a couple of examples. This data can also help us better understand where our legal services are going wrong and also indicate where they're doing things right. Data collection and analysis can be a two way process, where the legal profession can benefit.

As far as I'm aware (any indication to the contrary would be welcomed) the limited data we have on lawyer discipline is not overtly placed for ease of reference. I had to make several calls before I got to the SRA's website and still have not heard back from the Law Society in relation to an e mail I sent a while ago (and so took to the phone). We already have a system which allows us to read the [latest regulatory decisions](#), which even include very [specific detail](#) in relation to offences committed. And all of this is public information. The spurious argument then that this sort of procedure might make lawyers client-shy is irrelevant and typically irreverent of those resisting change.

For those lawyers who practice ethically and abide by their codes of conduct, there is no issue, even if they find themselves subject to scrutiny, as they will ultimately be proven innocent and remain un-named. Or is there? Perhaps they too are beginning to lose confidence in a system which they fear may no longer be strong enough to uphold justice. And that is by and large of the system's own making.