

# **Initial Equality Impact Assessment: Publication of Regulatory Decisions: Consultation**

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May 2022

## **Equality Impact Assessment – Publication of Regulatory Decisions: Consultation**

1. We are seeking views from stakeholders on the core purpose and principles that underpin our approach to publishing our regulatory decisions. The consultation is being approached openly and we have not reached a view on the likely outcome.
2. We are not making any firm proposals in this consultation. Instead, we are asking for information to understand how people use published information on our regulatory decisions, and what their expectations and general views are on their preferred approach on some issues. Therefore, the benchmark is what we do now.
3. This Equality Impact Assessment provides an initial high-level overview of known, wider equality impact considerations that intersect with our current approach to publication of our regulatory decisions. We intend to build upon this in more detail as we progress from the high-level consultation, which does not contain firm proposals, into the next steps.

### **The rationale for publication**

4. Our current approach to publication is built on the principle that we are transparent and properly accountable to the public and those that we regulate for the decisions we make.
5. Publishing our regulatory decisions wherever possible is an important contribution to ensuring that what we do is transparent. It informs users of legal services and helps others to hold us accountable by helping them to assess if we are acting proportionately and consistently.
6. Our approach was developed through consultation in 2007 where 75 per cent of respondents were in favour of publication, and we think that the demand for regulatory information and transparency has only increased in the intervening years. We are using the consultation to test this assumption, and to test views on principles underpinning our publication policy and our approach in relation to certain aspects of it.

### **Our approach to publishing our regulatory decisions**

7. In upholding our commitment to be transparent and properly accountable to the public and those that we regulate for the decisions we make, we need to make sure that the level of information we publish is proportionate and consistent so both the public and the profession understand what is and is not acceptable conduct from a solicitor and why. It also ensures that we can uphold confidence in the provision of legal services and ensure that the people we regulate know what is expected of them.
8. This means that we strive to maintain transparency even where matters are sensitive or confidential, for example, by seeking to redact or reduce information rather than to withhold or remove decisions from publication entirely – in that way, balancing the public interest with the rights of respondents.
9. We understand the consequences of publishing a decision may have greater impact on those who have health issues, in particular conditions such as depression and anxiety. Following our current approach, we can decide not to publish in cases where the impact on the individual would be disproportionate.

(The consultation paper provides more detail on the exceptional circumstances that would lead us to withhold publishing a decision).

10. In most cases, before publication, the firm or individual concerned will be advised of the intention to publish and given the opportunity to make submissions. This allows them to set out their reasons why we should not publish, so the final publication decision can be made on all available information. This is something we would look to maintain in any new proposals, so our approach is proportionate and the decisions are made on a case-by-case basis.
11. In the past, we have considered whether our publication policy complies with the European Convention of Human Rights, in particular Article 8 (the right to protection of private life and in this context, the right to a professional reputation). The High Court in the Andersons case rejected the claim that the current Publication policy breached Article 8, largely because the policy did not provide for 'carte blanche' publication, it provides for individual decisions made for each case on individual facts. Although the policy itself was found to be compliant, we recognise the need to take account of Article 8 each time a decision is made and to emphasise this we have included a reference to Article 8 in the decision-making criteria.

### **Over-representation of men and Black, Asian and minority ethnic solicitors in our regulatory enforcement processes**

12. We are aware that there is overrepresentation of Black, Asian and minority ethnic solicitors and male solicitors in our regulatory enforcement processes. This can be seen in our annual diversity monitoring reports and has been charted over a number of years.
13. This means there will be over-representation of male and Black, Asian and minority ethnic solicitors in the decisions published.
14. We are satisfied that our current publication policy and processes include measures and controls which promote fair and proportionate decision making, including the following:
  - objective published criteria
  - a requirement to consider each case on its merits
  - the opportunity for individuals or firms to be heard before the decision is made
  - the opportunity to appeal or challenge the decision.
15. We are commissioning research to understand the various factors that drive overrepresentation of Black, Asian and minority ethnic solicitors in reports made to us and to identify areas where we can make a difference. It will also include a review of our decision making at the initial stage of our enforcement process, for the purpose of providing external independent quality assurance.
16. We will take account of any learning gained through this research as we progress to the next stage of the project.

### **Accessibility**

17. Our aim is to make sure that that disciplinary information we publish provides the right amount of information for its audiences to understand the decisions we have made and why. Through the consultation, we want to understand how and why members of the public and the profession access the information we publish.

18. One of our key considerations at present is to ensure that the information we publish is written in plain English so that it can be easily understood by the public. We are also mindful of the way in which we present the information. For example, much of our regulatory information is available online only – as we reflect on our approach, we want to consider different user needs and make sure that we are not inadvertently disadvantaging a specific user group. And while we are working to make sure our website is accessible, there are areas which we are working to improve (as set out in our [accessibility statement](#)).
19. We are exploring ways in which to improve accessibility and usability of the information we publish through several consumer-focused projects, which build upon the Competition Market Authorities' review of the legal services sector. We will consider how we can apply the learning from this work to the publication of our decisions.

### **Summary of the equality issues**

20. In summary, the issues we have identified at this early stage, which we will explore through this consultation are as follows:
  - We recognise we need to make sure the information we publish is accessible to its intended audience and we will consider how to make the information available to users who might not be able to access it digitally. This will help those with a disability, those who speak English as a second language and those less able to use digital communications.
  - We recognise the decision to publish could have a disproportionate impact on some individuals, in particular those with health issues, so will continue to retain the option of not publishing in exceptional circumstances.
  - We will make sure we take into account the fact that there is over-representation of men and solicitors from a Black, Asian and minority ethnic background among those who will be affected by this publications policy.
  - We have limited data on religion, sexual orientation, religion, marriage or civil partnership, pregnancy or maternity and gender assignment, but will seek further evidence through the next phase of the project.