

**City of Westminster & Holborn Law Society ('CWHLS')**  
**Response to Ministry of Justice Consultation: Disclosure of Information by Office for Legal  
Complaints and Legal Services Board**

**About Us**

The City of Westminster and Holborn Law Society ('CWHLS') enjoys perhaps the most diverse membership amongst local Law Societies, encompassing as it does, a membership ranging from larger firms, including those which have been called in recent years "the silver circle" down to small high street practices and individual in-house solicitors, including those working for public bodies and government. Our membership includes those who practise at all levels of the profession, including those who regularly represent solicitors in SRA investigations and members of the Solicitors Disciplinary Tribunal, and those who have practised extensively in the field of solicitors' negligence and professional indemnity insurance.

Membership is voluntary and CWHLS is run by a committee comprising 33 solicitors representing a very wide range of specialisms. Its work is carried out by 11 specialist sub-committees, one of which, the Professional Matters Sub-Committee, concentrates on matters such as regulation of solicitors, matters affecting their practice, etc.

**Response**

CWHLS does not object to any of the bodies listed being included in a s.152(3)(g) Order per se however we have a number of general comments which apply to each of the bodies listed. To avoid repetition, we set out our comments in general terms.

The Office for Legal Complaints is not a regulator. The information it gathers will, in the main, relate exclusively to individual clients and may include the entirety of solicitors' files (and those of other legal professionals). Whilst we note that the Ministry of Justice will require the OLC to have regard to the data protection principles and will seek to ensure that legal professional privilege is respected, we are concerned that the consultation does not give sufficient emphasis to the principles of confidentiality.

As solicitors, we are naturally more aware of our own current regulatory regime. We are aware that the LCS and the SRA have extensive statutory powers to require solicitors to co-operate with investigations and to require delivery of documents. The powers extend to entire files which will, in many cases include confidential or sensitive information belonging to third parties as well as the solicitor and the client. It may be, for example, that a solicitor is acting for a company involved in merger discussions with another company. As part of the due diligence, the solicitor's file may contain commercially sensitive information and financial information. Is it proposed that the OLC will be able to disclose that information (which has been passed to the solicitor under strict obligations of confidentiality) to an external body? Naturally, in these circumstances, it is unlikely that Legal Professional Privilege would apply and there may be technical questions over whether the Data Protection Act would catch such information. If such disclosure is possible, this clearly dilutes the protection afforded by the solicitor/client relationship to an unprecedented degree and represents a real barrier to the free exchange of information between solicitors as it renders any undertaking as to confidentiality hollow and open to attack.

Complaints to the OLC will usually be made by the affected clients. On occasion, complaints may be made by third parties such as other solicitors (particularly with respect to undertakings) and

beneficiaries of a trust or estate. It may be said that a client who complains has waived any confidentiality considerations vis a vis the OLC – although a lay client may not be aware of the consequences of doing so; the same cannot be said for third party complainants. What protection will clients (and third parties) have against the disclosure of their sensitive information? It is, of course, self evident that the more people who have access to the information, the more likely the information is to reach the public domain in one way or another. The obligation on a solicitor to respect and ensure the confidentiality of information passed to him is paramount and we are concerned that the extensive list of persons to whom the OLC may pass information will weaken the protection which clients have when seeking legal advice.

We would advocate a system whereby client and third party information is never passed on without express consent unless the information is already in the public domain. We would also suggest that any information passed to another regulator should only be information which could be obtained by that other regulator by exercising its own powers. This would prevent other regulators taking advantage of the very wide powers currently exercised by the LCS and the SRA.

Finally, we would voice our concern about the proposed transfer of information to overseas regulators mentioned in Questions 9 and 10 of the Consultation Paper. Our experience suggests that there are overseas regulators who have no interest in maintaining the fundamental tenets by which lawyers are regulated in this jurisdiction. CWHLs has, for example, been heavily involved in a project designed to highlight the systematic murder of lawyers by paramilitaries in Colombia where the lawyers' only crime has been to defend human rights. We are likewise aware that lawyers in China have also been subject to arbitrary detention and denied legal representation as a result of demanding respect for human rights.

A few years ago, one of our committee members was also tasked by the British Embassy to advise lawyers practising in Uzbekistan on professional ethics and codes of conduct only to find that regulation of lawyers was carried out on a political basis. Two years later he was tasked by the Open Society Justice Initiative established by Mr George Soros to carry out a similar role in Kyrgyzstan and found a similar system in place there. In the latter country, a lawyer had his "licence" revoked for cross-examining a government minister too robustly. We consider that there is a real danger that information provided by this country could be misused in less democratic jurisdictions.

We would also point out that, even in countries which operate a system which is prima facie similar to our own, there may be corruption and/or a failure to enforce professional rules which would lead to confidential information being put at risk. As members of the Federation of European Bars, we are all too aware of the problems of ineffective or piecemeal enforcement of professional rules.

Against this background, we would urge caution in allowing a blanket distribution of information to overseas regulators. In particular, we would suggest that any regulator which does not have a commitment to protection of human rights and respect for the rule of law should not be given any information whatsoever.

**City of Westminster & Holborn Law Society  
20 April 2010**