SRA BOARD
31 January 2023

CLASSIFICATION – CONFIDENTIAL

Publication of Regulatory Decisions – Consultation Responses Summary

Overview

This report summarises the formal consultation feedback to the consultation. It also includes summaries of the public and profession survey, and key similarities and differences between the attitudes of the public and the profession to our consultation proposals. The report also includes an overview of the two public focus groups held in June 2022 as part of our consultation engagement activities.

Responses to the consultation

We received 31 responses. 26 were from individuals and five were from organisations.

The respondents answered our questions as follows. Respondents recorded as "other" gave discursive responses to closed questions.

Individual solicitor	26
Organisation	5

Consultation Response Summary

A. Principles governing our approach to publication of regulatory decisions:

Consultation position

1. We consulted on introducing principles to govern our approach to publication of regulatory decisions. These were:

   - The presumption of open justice is paramount, and we will publish information relevant to understanding the nature of a regulatory decision and why it was reached, unless there is a good reason not to.

   - We are transparent and accountable to the public and the profession for the decisions that we make and will promptly publish and disclose any information related to regulatory decisions or arising from investigations where it is in the public interest to do so.

- Through transparency of our regulatory decision making, the profession is informed of and encouraged to uphold the highest professional standards.
- To maintain transparency where matters are sensitive or confidential, we will seek to redact or reduce information rather than to remove decisions entirely

What respondents said

2. The consultation responses broadly supported the proposed principles, stating that they provide a good framework for our approach to the publication of regulatory decisions.

3. There were also suggestions for additional principles:

    a. The Law Society suggested additional principles of proportionality, fairness, consistency and accuracy.
    b. The LSCP proposed an additional principle regarding our obligation to provide useful information to consumers of legal services.
    c. A number of different types of respondents raised the lack of a principle around recognising the harm that publication causes to the reputation of the respondent.

B. How much information is published

Consultation position

4. We sought views about the level of detail that we should publish about regulatory decisions. Currently we publish a different amount of information for different decisions, and these are presented in different ways. For example, for some decisions we publish a short statement of facts (eg, when we withdraw authorisation), whereas for others we publish the decision in full (eg, regulatory settlement agreements).

What respondents said

5. There were mixed views. The largest group of respondents were those saying that we should retain the same levels of information for different types of decision as now. However, there were also calls for us to publish both more and less information.

6. There was some strong support for tailoring this information to different audiences. Suggestions included a short summary that can be easily digested with more information accessible if required.

7. Other key themes included greater consistency in the level of detail provided for different types of decision and making it easier to understand the nature of the allegations, case and the factors taken into account in our decision making.

8. There was also a call for us to be proactive in educating the profession around cases resulting in a regulatory decision.

C. Withholding publication in certain circumstances

Consultation position

9. Our default position is the presumption of publishing regulatory decisions in the public interest. However, we recognise that in certain circumstances, ie safeguarding, there may be good reason not to publish information.

10. 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.

11. In certain circumstances, we might be unable to publish certain decisions in full without disclosing someone's confidential or legally privileged information, or information that might prejudice other investigations or legal proceedings. In these circumstances, we would first consider publishing the decision but redacting the relevant information.

12. However, in some exceptional circumstances, we might also withhold publishing a decision, if we conclude that it would have a disproportionate impact on the regulated individual who is the subject of the decision. We consider any representation made by the person subject to the decisions or relevant third parties in making decisions.

13. We consulted on whether our current approach is appropriately balanced; recognising the need to balance transparency in the public interest, with protecting the rights of the individual.

What respondents said

14. Overall, most consultation respondents were comfortable with our current approach – although coming from different angles and with different emphasis. Respondents also agreed that the outlined scenarios where the right of the respondent outweighs the principles were the right ones. No alternative scenarios were suggested.

15. There were some suggestions around practical steps that we could take to manage safeguarding risks such as training staff to identify risk factors and signpost to support agencies. There was also a question about whether we could be clearer in guidance about examples where the criteria for withholding publication is met.

D. Timing of publication

Consultation position

16. We sought views on the need to change our approach to the timing of publication of our regulatory decisions. Our position is to promptly publish and disclose any information related to regulatory decisions or arising from investigations where it is in the public interest to do so. This will normally be when a matter is closed, or a final decision.

17. For example, we may publish other information about our work and key decisions earlier where we consider it is in the public interest, such as the status of our ongoing investigations. For example, we may publish details of interim protections where a) we have issued interim conditions on practice, b) intervened into a firm, ahead of any final decisions, or c) where there is a high risk of incorrect information entering the public domain – this is outlined in our Regulatory and Disciplinary Rules.

18. We also asked for views about whether we should publish decisions to refer to the SDT at the point of referral, rather than only once the SDT has certified that it will hear the case.

What respondents said

19. Consultation responses varied on whether our approach to the timing of when we publish information should change; individual solicitors and TLS felt that we should not routinely publish that a firm or individual is under investigation until the investigation is concluded, a final decision made, and sanctions imposed. Conversely, the LSCP felt that publishing only at the very end of a process can introduce significant delays to when this information is publicly available to help consumers make informed choices.

20. A majority of respondents opposed changing our approach to publishing SDT referrals – mainly because they considered it against the principles of justice and fairness. Conversely, the LSCP argued that this would be proportionate given the significant delays in processing cases at the SDT (sometimes 12 – 16 weeks) and "extraordinarily low rate" of cases not being certified by the SDT.

E. Length of publication

Consultation position

21. We adopted an open consultation position asking for views about whether we should consider extending or shortening the length of publication of our regulatory decisions. And for views about whether it might be beneficial to link the length of publication to the level of severity of the regulatory decision.

22. We set out in Annex 1 of the consultation paper, the current range of regulatory decision types that we publish and the varied lengths of time that we publish these decisions for. For example, over half of the types of decision that we make are published for three years from the date that the decision is published and restrictions on practice are published for at least the duration of the restriction. We invited views on whether this was the right approach, or whether we should change.

What respondents said

23. The majority of respondents to the consultation felt that there would be benefits to looking again at our publication lengths. This was often linked to support for the idea that length of publication could be better linked to the severity of the breach / level of severity of the regulatory sanction. Reasons given included that consumers would want to know about more serious breaches for longer periods of time, that level of sanction is an indicator of risk and to avoid any perception that misconduct is "swept under the carpet". While other respondents suggested that lower-level sanctions

should be published for a shorter period due to the lower level of risk to the public and that the length of publication should not act as a second penalty. Some argued that linking to severity should be done on a case-by-case basis, for example taking into account severity of the misconduct and the usefulness of the information to the public.

24. Mixed views were expressed in the public focus groups. Some felt that given the level of trust placed in solicitors, decisions should be published permanently. However, the majority did not think it fair that all breaches should have a career long impact and felt that length should vary based on seriousness. In contrast, more than 50 per cent responding to the social media poll felt that the two sanctions we sought views on (a £500 fine and a 12-month suspension) should be published indefinitely.

25. There was little comment on the detail of the length of publication for specific regulatory decisions.

Publication of Regulatory Decisions – Consultation questions and answers summary

Respondents' answers to our questions were as follows.

1. Do you agree that publication of regulatory decisions helps to raise awareness in the profession of appropriate conduct and the consequences for failure to comply?

Strongly agree	Agree	Disagree	Strongly disagree	Don't know	Other
12	8	2	4	1	4

2) Do you agree that the publication of regulatory decisions is important to help raise awareness among consumers of what they should be entitled to expect?

Strongly agree	Agree	Disagree	Strongly disagree	Don't know	Other
8	7	5	5	2	4

Responses to our approach

Some respondents had additional comments. The Law Society stated:

> "We generally consider that it is in the public interest for consumers to have appropriate information about final regulatory decisions, which are easily accessible, understandable and located in one place."

The LSCP noted that consumers' understanding of the role of regulators, and their interest in accessing regulatory decisions, may be low. But the LSCP went on to state:

> "That said, regulators could do more to ensure that enforcement decisions are visible to consumers; by amalgamating enforcement information with basic data. If individual consumers do not use this information, it will still be of immense value to consumer groups, representatives or intermediaries who may use data to profile or bolster what they know around risk for example. Consumers have the right to know about the shortcomings of the firms with whom they deal with, so they can protect themselves and be vigilant against unfair behaviour."

Birmingham Law Society stated that they agree in principle that publication of some regulatory decisions may raise consumers' awareness of the standards of legal services, but they went on to say:

> "It is unclear how important publication is in practice as a means of raising awareness among the public. We are aware of no published statistics on this issue, but we do question how often consumers will take the time to engage with those

decisions... There exist other means of raising awareness of acceptable professional conduct, among consumers as much as among the wider profession."

They suggested that we undertake research on this subject. In a similar vein, LawCare stated:

"*Disagree*: In principle, possibly, but we are not aware of data indicating the current position. Has any research been done on the extent to which the public access published decisions and the extent to which it is found helpful?"

3) Do you think that principles outlined provide a good framework for our approach to publication of regulatory decisions? Please explain your answer.

Yes	No	Other
17	10	4

4) Are there any other principles and considerations on publication of our regulatory decisions that we should consider? If Yes, explain.

Yes	No	Other
13	14	4

Suggestions for additional principles and considerations

The LSCP said:

"We feel that an additional principle regarding the SRA's obligations to provide useful information to consumers of legal services is needed. For example, providing information concerning any regulatory action taken ensures consumers are aware of important factors that may affect who they choose to provide their legal services, how they deal with legal professionals and what they do to prevent inappropriate behaviour."

The Law Society also had a suggestion for additional principles.

"In addition to the principles outlined in the consultation paper, the principles of proportionality, fairness, consistency, and accuracy are also important and applicable and should be considered when deciding any amendments to the current policy concerning the publication of regulatory decisions."

Birmingham Law Society stated:

"The principles outlined at paragraph 15 of the Consultation are clearly important. By themselves, however, they do not provide a comprehensive framework to govern the publication of regulatory decisions. In particular, the proposed framework does not

require the SRA, in making a decision to publish under rule 9.1 of the Regulatory and Disciplinary Rules, to take into consideration the serious harm that publication invariably causes to the reputation of both (a) respondent individuals and firms and (b) third parties with whom a respondent may be professionally associated."

LawCare stated:

> "*Yes*, to provide a better balance, the SRA should reiterate in the "Principles to publication" that each decision to publish will be fact-specific and taken on its own merits. This is something the guidance on publication already refers to and warrants repeating."

5) What types of regulatory information do you currently access and for what purpose?

Do access	Don't access	Other
18	9	4

The LSCP stated that they were working with the LSB towards the development of a regulatory information service where regulators make regulatory information accessible to consumers. They went on to say:

> "The type of information needed for this service would be very brief so that it could be included and convey necessary information in very quick search results. However, it would be useful for consumers to have a way to access additional detail if needed. If they are concerned that a solicitor they would like to engage or interact with has a regulatory citation, they may want to satisfy themselves that it is minor…"

The Law Society provided a detailed suggestion of the categories of information that would be useful to employers, organisations and consumers. These include:

> "when considering someone for an employment position or a voluntary role such as membership of a committee: Full name of solicitor, Date of admission, SRA number, Information about whether they have a current practising certificate, Individual's regulatory record, Where the person works.
>
> Regarding authorised bodies the following is likely to be useful before choosing to instruct an SRA authorised body to obtain legal advice: Full name of firm, SRA number, Partners /members of the firm, Date established, Date closed (if applicable), Firm's regulatory record."

Birmingham Law Society said:

> "Our enquiries reveal that law firms will access the SRA website for the purposes of employee screening but otherwise not as a matter of course. Solicitors involved in professional regulation work tend to access the SRA website more frequently for obvious reasons. The SRA should note that current interest in the decisions published on the SRA website is generated by the legal media. It could be said that this constant reporting raises awareness within the profession without the need for any further action by the SRA."

LawCare stated:

> "As an organisation we may look at the record of those applying to work or volunteer with us depending on particular circumstances."

Liverpool Law Society stated:

> "Our members access the SRA website to ascertain the disciplinary history of professionals for a number of reasons including: (i) for recruitment purposes. One of our members explained that it was standard procedure in his firm to investigate an individual's disciplinary history as part of the firm's due diligence; (ii) in the context of a joint venture or when considering an arrangement with another law firm; and (iii) in the delivery of services to clients."

An individual respondent stated:

> "I don't and most members of the public wouldn't know to look up a solicitor on the roll or SRA website. However googling a name will bring up a result and this is detrimental to a person in the personal as well as their professional life."

Other individual responses were:

> "Checking a solicitor's record. Reviewing previous decisions to help to understand how the SRA Standards are applied and what conduct draws what sanction."

> "Employee screening checks on SRA/SDT decisions against prospective members of staff."

6) Do you think we should publish more or less detail on the regulatory decisions we make? Please explain your answer including whether you have different views in relation to different types of decision?

More information	Same information	Less information	Other
7	12	8	4

Respondents' comments on this question varied, with some saying that it depended on the needs of the audience. The Law Society stated:

> "More detailed information would be helpful to the individual solicitor, who is subject to the decision, as well as for legal professionals and personnel working in law firms. However less detailed information would be more helpful to an average consumer who simply wants to know if a particular law firm or individual has been subject to disciplinary action."

LawCare stated:

"The published decision needs to summarise the facts; identify the rules breached; explain whether the individual took independent legal advice; relate the facts to the rules including any relevant case law; and explain the sanction with reference to the factors listed in the enforcement strategy. Where the SDT makes a decision, such as approving an Agreed Outcome, the SRA should explain this rather than saying, for example, “we have prohibited this person from practising as a solicitor” – this is inaccurate, because the sanction is an SDT sanction."

These individual respondents stated that information should vary according to the type of decision:

“The decisions listed on page 22 should be published as this information is important in terms of knowing what bodies/individuals are authorised and those that are not. Also if publishing decisions is designed to inform the public and professionals what is the rationale for short statements for some decisions and longer for others - it may be that some decisions are procedural but even so there is merit in providing detail on those.”

“There is an argument for more sophisticated, principles-based approach here, allowing more or less disclosure where this would better achieve the objectives behind publication. In particular, referrals to the SDT which result in judgements in favour of the subject should be subject to a level of publication chosen by the subject…”

7) How else could we better improve the regulatory information we publish to support the profession?

Response	No response
21	10

There were a variety of suggestions. LawCare said:

"We strongly feel that the SRA ought to take a more proactive approach to educating the profession about its decisions. It could do this by providing case studies in its update emails and these could be done without referring to an individual by name."

The Law Society gave a specific example of how information could be improved, which is set out in their full response. They also stated:

"The regulatory record should provide dates/details of the conduct and when the charges of misconduct were proved, and the sanctions imposed… Where a charge or charges of misconduct have not been proved, those charges and outcomes should not be placed in the public domain. Details of all levels of staff authorised to make decisions about publication need to be clearly defined and readily available on the SRA website."

Liverpool Law Society stated that there should be:

"Access to a comprehensive document that sets out the case for the regulator, the case for the professional or firm and the reason for an SRA internal sanction being imposed should be provided as a link to the published decision."

One individual respondent suggested tailoring publication according to the risk to the public, and another suggested limiting publication to firms not individuals. Other suggestions were:

> "Remind people what the relevant SRA principle at issue is (at least in outline)."
>
> "Consider a sliding scale with more serious matters remaining published for longer periods and minor ones for shorter periods. Provide more detailed / older information to professionals (e.g. firms seeking to employ a new staff member) than to the general public."
>
> "There should be no right to be forgotten for a position of trust."
>
> "Provide more information in each case about the decision making process and information about the mitigating circumstances."

8) How else could we better improve the regulatory information we publish to support the public?

Response	No response
19	12

As with the previous question, there were a variety of suggestions. LawCare said:

> "Both in the notes on the “Check a solicitor’s record page”... and on each record where there is a published outcome, the SRA should link to a diagram/scale of outcomes and 'Glossary of terms'... to promote clarity and aid understanding of the outcomes and where they fall on the scale of seriousness."

The Law Society said:

> "A recent report by the Legal Services Consumer Panel indicates that 47% of people surveyed had used the legal regulator’s website/phoneline3. Accordingly, the search facilities on the SRA’s current website needs to be improved."

The details of specific search improvements suggested by the Law Society are set out in their full response.

The LSCP stated:

> “The Panel believes that full text decisions would be useful to inform some legal services consumers, even though this information may be less accessible or meaningful for other consumers. It is also very important to ensure that this information is conveyed in plain language without reference to legal or regulation jargon.”

An individual respondent also stated:

> "Avoid legal jargon in the decision notices when possible."

One individual respondent suggested:

"Statistical information and trends. Information on the SRA's own performance such as time taken to reach decisions and appeals/reviews."

9) Is our current approach to balancing the public interest and principles of open justice with protecting the respondent's well-being, fair and proportionate?

Strongly agree	Agree	Disagree	Strongly disagree	Don't know	Other
3	6	6	9	3	4

LawCare stated that without more data, they could not give a view on this question. A number of respondents disagreed or strongly disagreed that our current approach is correctly balanced, but did not give additional comments. The other respondents who added comments gave more evenly nuanced views. The Law Society stated:

> "Agree. The SRA could make improvements by having a clearer policy outlining the
>
> criteria for when and how it will publish final regulatory decisions and a clear boundary for the decisions it will publish and those it will not or only publish in a redacted form. The regulator should ensure that there is fair, accurate and contemporaneous reporting of final decisions that are reported in whatever form of media…"

Birmingham Law Society were also broadly supportive, but suggested greater consideration for firms and individual solicitors.

> "We broadly agree with the SRA's current approach, in which, save in exceptional circumstances, publication does not take place until after the imposition of a sanction or after referral to the SDT. Our view, however, is that the SRA should go further by giving even explicit recognition (in any relevant written framework or guidance) to the serious and irreversible damage which publication may do to a respondent firm's or individual's reputation. This is an essential element of fairness and proportionality."

The LSCP stated:

> "The Panel understands that balancing the various interests in these cases is tricky, and very important. It may be useful to define "well-being" in a way that indicates that the main purpose is to deter any risk to health, life or safety. This would help solidify the general approach the SRA appears to be taking in that loss of income, custom or incurring staff layoffs are generally not considered good reasons to refrain from publishing regulatory decisions."

10) Are there any circumstances where you think the principles of open justice outweigh the rights of the respondent? If Yes, please explain.

Yes	No	Other
18	9	4

There were a variety of comments, with some respondents supporting open justice, for example:

> "Whilst privacy is a relevant consideration, the public needs to have confidence in the integrity of individual solicitors, and of the profession as a whole."
>
> "I think that the principles of open justice always outweigh the rights of the respondent. Other members of the profession are entitled to know the sort of people they are dealing with."
>
> "The seriousness of the detriment caused to clients/members of the public might justify publication of some information even where the respondent may face difficult consequences following publication."
>
> "The public and the profession have the right to know the history of a solicitor."

LawCare stated:

> "*Yes*: In principle, the presumption must lean in favour of open justice. Without this, confidence in the profession and the SRA would be eroded over time. There must be an open, transparent and progressive profession and regulator, capable of learning from mistakes."

11) **Are there any circumstances where you think the right of the respondent outweighs the principles of open justice? If Yes, please explain.**

LawCare said:

> "Yes: If there is a serious safeguarding concern such as risk to the life of the respondent as a result of information about them being published, that must have an impact on the information that is published about them. It may still be possible to publish some information relating to an outcome and/or the safeguarding concern may alter over time, also impacting the information published about the individual. This analysis will need to be made on a case-by-case basis, but decision-makers should have a template to follow to guide their decisions, which incorporates lessons learnt from earlier decisions."

The LSCP stated:

> "It is the Panel's view that where there is a serious health or safety risk to someone, this should be considered and balanced against the presumption of publishing."

The Law Society and Birmingham Law Society both listed several circumstances where respondents' rights could outweigh open justice – these are set out in their responses.

12) Do you have any other views on this topic that you would like to share?

Yes	No response
12	19

The Law Society stated:

"It is important to give the regulated person or firm the opportunity to comment in advance on whether the decision should be published and for these views to be taken into account before any decision to publish is made... there should also be a mechanism to review the decision to publish."

LawCare said:

"Where an individual is referred to the SDT, their record must state that any allegations have not been proved and an independent tribunal will decide. If an individual is then exonerated by the SDT, their record must be updated to remove the SRA's decision to refer. This means the decision to refer is not subject to the usual approach of publishing for three years."

There were a variety of comments from individual respondents.

"Trust and integrity are key. The public should be able to freely decide and know about any solicitor. This would enable them to make fully informed decisions about who represents them or not. The fact that certain information is removed after a period of years as not relevant or pertinent is not a transparent strategy."

"It is important that positive decisions following disciplinary action get the same profile as negative ones so that members of the public understand that a respondent has addressed the issues and can continue to practice…"

"The SRA has made consistently incorrect decisions at a huge cost to the profession. It undermines the SRA's credibility and the publication of the decisions is not in the interests of any stakeholder (the public, the SRA and the legal professional)."

His Majesty's Land Registry said:

"For us to have trust in the application information we receive, we will require assurance from solicitors submitting applications as to the truth and correctness of the application. For HMLR to place trust in that assurance statement we need to be confident that the solicitor is still practicing and not subject to any disciplinary action. The only way this information can currently be obtained is by carrying out manual checks on the SRA's web page when an application is submitted.

We are keen to explore whether we could make greater use of the information provided by the SRA in future, through the publication of information in digital formats that can be programmatically consumed or by providing an API equivalent of the 'solicitors register' look up web page, for programmatic consumption. This broadly relates to consultation question

We would also like to consider whether HMLR could be made aware of a decision prior to the 28-day review period and whether those decisions that are not published due to exceptional circumstances could still be shared with HMLR. Whilst we appreciate that decisions in exceptional circumstances are not published, we would like to explore whether these decisions could still be shared with stakeholders such as HMLR for a specific purpose."

13) Do you think that our current approach to timing of publication of our decisions requires change? If Yes, please explain why.

Yes	No	Other

14	**13**	**4**

Respondents' views on this question were closely balanced between those who favoured change and those who did not. Birmingham Law Society said:

> "We consider that the current approach adequately balances the importance of furthering open justice against respondents' reasonable expectation of privacy."

Liverpool Law Society said:

> "We are opposed to the publication of SDT referrals at the point the SDT determines that there is a case to answer. We do not consider that publication at this point and until there has been a determination to sanction by the SDT is fair or that it strikes the correct balance between the interests of the public and that of the individual professional or firm."

Individual respondents gave varied views.

> "Information should be available for a significant longer period."

> "You currently apply a blanket period of publication regardless of the seriousness of the "offence". One size should not necessarily fit all."

> "All decisions should be published in full and without an expiration date. A solicitor's record is a solicitor's record for all time and not just the period which the SRA deems it should be made available to the public. In removing items after a certain time this means that those persons can avoid public scrutiny and those dealing with them or instructing them may never know or be able to find out their past. This is not an acceptable position for a profession which exists on trust to continue to advance."

14) In what circumstances do you think details of regulatory action and/or decisions should be published earlier?

Response	No response
20	**11**

The LSCP stated:

> "Publishing only at the very end of a process can introduce significant delays to when this information is publicly available. Beyond the issue of whether there is an imminent risk to the public, regulators must also do their best to provide relevant and timely information to consumers to help them make the best choice of legal professional in the market. Arguably, this threshold is much lower than imminent risk of harm to the public and we would prefer decisions to be reported as soon as information that would be valuable to prospective consumers is confirmed."

The Law Society took the opposite view, stating:

> “The SRA should not routinely publish that a firm or individual is under investigation until the investigation is concluded and a final decision made, and sanctions imposed.”

Similarly, Birmingham Law Society said:

> “We do not consider that details of regulatory action should be published any earlier than is the current policy. For the SRA to move to earlier publication would represent a retrograde step that would (a) be extremely damaging to respondent individuals and firms, (b) be open to challenge under judicial review and human rights legislation and (c) put the SRA well out of step with most other traditional professions…”

Liverpool Law Society also said that details should not be published any earlier than they are currently. However, some individual respondents thought that they should, in some circumstances.

> "If there are instances whereby the potential action or harm caused is great enough then the SRA should be able to publish them earlier. Additionally, it might well encourage others who have suffered similar behaviours to come forward which may assist in any actions or cases being brought against a solicitor or firm."

> "If there is an immediate risk to the public/clients of a respondent."

15) What are you views about at what point we should publish referrals to the SDT?

Views	No response
22	9

The LSCP stated:

> "We are aware that there are significant delays in processing many cases at the Solicitors Disciplinary Tribunal and that more serious cases would be referred there. Given the extraordinarily low rate of cases that have not been certified by the Tribunal after referral from the SRA (less than 2 in the last 3 years), it does appear proportionate to publish this information at the time of referral as opposed to certification by the Tribunal, especially when considering that this information would be of interest to most prospective consumers."

LawCare stated:

> “Only once the SDT has certified there is a case to answer.”

The Law Society took a similar view.

> "It would be against the principles of justice and fairness to publish referrals to the SDT before certification by the Tribunal. It can be prejudicial to publish that a person is under investigation or has been referred to the Tribunal, prior to certification. This is likely to have a significant career limiting impact and would be unjust. Whilst it could be argued that there could be greater transparency in doing so, this is

outweighed by the fact that it would be unfair and would have a disproportionate impact on potential respondents and their firms, especially where an investigation does not then progress."

Birmingham Law Society also agreed with that view.

"In our view, referrals to the SDT should not be published before the SDT has certified that proceedings issued by the SRA disclose a case for the respondent to answer. We would urge the SRA not to change its approach in this regard."

16) What are you views about at what point we should publish referrals to the SDT?

Yes	No response
12	19

The Law Society stated:

"The current SRA policy regarding timing of publication is satisfactory in that it will not publish such decisions during any period of review/appeal and until any review has been determined or withdrawn. We agree that it is in the public interest to inform clients as soon as possible where the SRA has intervened in a firm and to publish information about the decision…"

An individual respondent said:

"People need to be able to get on with their lives and move forward. An increase to the timing of the publication of regulatory decisions prolongs the mental and emotional distress that the person is going through and does not enable them to move forward with their lives. As much as the public interest needs to be served we have to be mindful of the mental health implications this can have to the individual."

Birmingham Law Society made a comparison with the barristers' profession.

"[The Bar Standards Board (BSB)] does not publish details of the outcome of either a hearing before the Disciplinary Tribunal or a decision made by the BSB under the Determination by Consent procedure if the charge is found not proved. Similarly, where a matter proceeds to a hearing before the Disciplinary Tribunal, no information will be placed in the public domain at any point prior to the listing of a hearing..."

17) Do you think there are benefits to extending or shortening the length of publication of regulatory decisions? Please explain your answer and provide details.

Yes	No	Other	No response

18	**8**	**4**	**1**

The LSCP stated:

> "There are some regulatory decisions that should be publicly available for longer than the standard 3 years to allow prospective consumers to make informed decisions... It seems likely that consumers would want to know about more serious breaches of compliant behaviour for longer periods of time. This would suggest it makes sense to link the severity of the regulatory decision with the length of publication."

Birmingham Law Society said:

> "Yes: in our view, linking the length of publication to the level of sanction imposed should be considered."

LawCare stated:

> "*Yes:* In principle, the duration of publication should be linked to risk which is likely to reflect the severity of the breach and the usefulness of the information to the public. However, this would require assessment on a case-by-case basis…"

18) Do you think it might be beneficial to link the length of publication to the level of severity of the regulatory decision? Please explain your answer.

Yes	No	Other
16	**11**	**4**

Some respondents agreeing with this approach gave comments which are set out under question 17.

The Law Society stated:

> "There are some benefits to linking the length of publication to the level of severity of the regulatory decision… Consideration should… be given on a case-by-case basis as to whether publication is appropriate when a significant period has elapsed between the date of the misconduct and the imposition of a sanction."

The Law Society also made additional suggestions, which are set it in its response.

Liverpool Law Society said:

> "We also consider that there is justification for information about the regulatory action and decision being accessible to the public and to members of the profession for lengthier periods in the case of more serious regulatory breaches."

Individuals' views were varied, with some taking an opposite view.

> "The person will have been sanctioned by the SRA and this should not effect the length of time that this is published for."

> "Treat all the same."

19) Do you have any further views which we should take into account in relation to the length of publication for our decisions?

Yes	No response
14	17

LawCare stated:

> "The guidance ought to say why decisions are generally published for three years, or any other duration, where the publication length differs from three years."

The LSCP stated that long publication periods benefit the public through a deterrent effect:

> "While there may be detrimental effects on solicitors who have been subject to regulatory decisions, it should also be recognised that the negative effects associated with public regulatory censure will further encourage compliance and ethical behaviour in the profession as a whole. This reasoning also holds true for extending the availability of published regulatory decisions."

In contrast, the Law Society stated under their response to question 18 that long publication periods could be "disproportionate to any public benefit" and in response to question 19, they went on to say:

> "The length of any publication should not act as a second penalty against the respondent."

SRA BOARD
31 January 2023

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Publication of our Regulatory Decisions – Social Media Polls

Overview

To support the SRA's consultation to capture views on proposals on the approach to the publication of our regulatory decisions, we ran online social media polls on Twitter in July 2022.

Total polls	2
Total votes	17,828
Total impressions **(How often the post was displayed / unique people who could potentially see the post)**	218,795
Total engagements **(Click through to consultation, retweets, shares, likes, comments, replies)**	19,819

	Votes	**Impressions**	**Engagements**	**Results**	
A solicitor is fined £500 for mistakenly posting misleading information on their website. How long afterwards should	9,075	124, 000	10,286	1 year 3 years Indefinitely	24.9% 24.8% 50.3%

this be on our Solicitors Register?					

	Votes	**Impressions**	**Engagements**	**Results**
A solicitor is suspended from practice for 12 months for not looking after the interests of their client. For how long after the suspension ends should the details be publicly displayed online in our Solicitors Register?	8,753	94,795	9,533	12 months -15.6% 3 years 22.2% Forever 62.3%

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31 January 2023

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Public focus groups

Overview

We ran three focus groups with up to ten members of the public per group. The groups comprised individuals with different demographic profiles from across England and Wales.

Focus Group 1

Scenarios two and three: (publications policy)

- Many noted that specialisms were the first thing they would look for – offer more confidence in the solicitor's skill and provides more accountability
- 100% said they had not heard of the Register or Record before – 100% also said they would now use before seeking legal advice
- Comments were made about how the SRA should raise awareness of these tools
- Recommendations from a friend/relative still a key factor when choosing legal advice
- General consensus that a short statement on the detail of the fine – would be suitable, as long as it gives enough of an idea. People liked the option of to open more detail if needed however
- One thought 10 years was the right time length – a severe punishment, while others thought this was too long. General view that it shouldn't be permanent, and people deserve a second chance
- In terms of transparency – one said information should be available indefinitely, noting how you would want to know that about you solicitor – a lot of trust is placed in them

Focus Group 2

Scenarios two and three: (publications policy)

- Again, 100% said they had not heard of the Register or Record before – 100% also said they would now use before seeking legal advice
- On length of publications policy, there was a general consensus that people have to 'move on' at some point and that it wouldn't be fair to have a life/career long record. One said, however, that this would depend on the seriousness of the offence
- One thought the Record should be ultra-visible like food hygiene ratings and that this would make them more accountable (NB: system operates differently in Wales)
- Someone noted how transparent this information is in Wales and that people use it – also said you spend much on a meal than a solicitor, so sure people would find helpful
- Some suggested this information published could be reviewed annually while another thought should maybe not always be public but there should be available routes to finding out about incidents

Focus Group 3

Publishing information:

- Agreement that good to publish info online around disciplinary decisions. That would be useful.
- Range of views on how long was appropriate for these decisions to be published: answers ranged from a few months, 1, 3 to 10 years.
- Reasoning behind more limited periods was that most respondents had had experience of the criminal justice system and criminal sanction, and so were sympathetic to the argument that people should get a clean slate after not too long a period. Felt fair for them and so fair for solicitors.

Participants were asked general questions about the SRA and the role of financial penalties