

Open season

The Bar Standards Board's 'naming and shaming' initiative will not fulfil the aim of improving quality of service, argues Dr Yuri Rapoport



The recent initiative by the Bar Standards Board (BSB) to foster greater openness about barristers' disciplinary proceedings must be applauded. After all, increased public access to information on legal service providers aligns with the regulatory objectives of the Legal Services Act 2007 to protect and promote the interests of consumers.

However, will the new feature on the BSB's website that names and shames 'bad barristers' actually help to improve the quality of legal services?

One might consider that the prospect of having one's name in a public 'watch-list' would be sufficient incentive for most barristers to adhere to professional standards. However, judging by the results of similar strategies employed by regulatory authorities in jurisdictions outside the UK, public access to such information has done little to raise the quality of legal services.

In Australia, for example, Victoria State legislation has required regulatory authorities to publicly name recalcitrant lawyers since the mid-1990s. However, neither publicly available tribunal rulings, nor regulatory body newsletters shaming guilty practitioners before their peers, have contributed to

reducing the total number of complaints about lawyers' professional standards.

The problem is that shaming errant lawyers effectively amounts to shutting the door after the horse has bolted. The threat of being shamed has, in itself, proved insufficient to reduce the level of misconduct among Australian legal service providers, and is likely to have the same effect in the UK.

The point that regulatory bodies are missing is that legal practitioners, as a rule, do not actually set out with the intention to misbehave. Their culpability typically arises in the course of legal practice. That is, either the practitioner becomes careless or a client's case presents such daunting challenges that the lawyer is compelled towards unacceptable behaviour.

Therefore, the objective of improving legal services is very much a matter of addressing the individual practitioner's levels of diligence, expertise, and propensity for dishonest conduct. While the experience of regulatory bodies in Australia shows that public shaming is ineffective in reducing the level of blunders and dishonesty within the profession, on a smaller scale, mitigating conditions that may lead to misconduct by helping individual practitioners better align their legal skills with the type of work they take on is something that Australia's 'law brokers' (legal referral services)

have been able to achieve.

By ensuring that individual practitioners' track records exactly match the needs of a consumer, law brokers not only minimise the risk of misconduct arising due to professional incompetence, but help to improve the overall level of customer satisfaction.

The BSB's move towards greater openness is a welcome step – barristers who misbehave should be named and shamed. However, one hopes that the objectives for improving legal services will not be limited to the current 'postmortem' approach of publishing disciplinary outcomes. As part of its further website development, the BSB (as well as other legal regulatory bodies) should consider a more proactive stance by introducing public access to records of practitioners' experience in their chosen areas of law.

Measures by regulatory authorities towards matching legal practitioners' skills and experience with the needs of individual clients will constitute a recognition of consumer demand for information about not only the profession's weakest links, but its strongest ones as well.

Dr Yuri Rapoport (SID) founded Prime Law Brokers (Australia), the world's first legal broking service. He plans to launch an online version of a similar service in the UK, Rapoport's Directory, in 2008