

LAW SOCIETY PLAN FOR COMPLAINTS HANDLING FROM 1 APRIL 2008 TO 31 MARCH 2009

Thank you for submitting the Law Society's Plan for complaints handling for the period 1 April 2008 to 31 March 2009. I have considered carefully the contents of this Plan to assess whether in my view, it is adequate to deliver against the targets I have set and bring about improvements such that it secures that complaints are handled effectively and efficiently. In reaching my decision I have taken into account all points that have been made to me by the Law Society. I have been encouraged by the joint working between both our Offices during the development of the targets and this Plan. It is therefore particularly regrettable that I have to notify the Law Society that I consider that its Plan for securing effective and efficient complaints handling is inadequate. I have summarised below the reasons for my decision.

Following my comments on the Law Society's draft LCS and SRA Plans submitted to me on 15 February, I am pleased that the final Plan submitted to me on 5 March has been restructured to provide a single Plan incorporating the responsibilities of the Law Society and its component parts, LCS and SRA, in relation to complaints handling.

Legal Complaints Service

General Assessment

After the close working between our Offices, I was surprised to see that the Plan failed to demonstrate LCS' commitment to achieve many of the targets at the level I had set. In coming to my decision on the LCS elements of the Plan, the areas which I consider to be inadequate prevent sufficient progress being made towards achieving effective and efficient complaints handling.

Overall I am disappointed that LCS in its fourth year of improvement makes no commitment to achieve the targets at the level I have set from 1 April 2008 and only in the last quarter of the Plan year does it actually commit to achieving the suite of targets. This presents a significant risk for those expecting and dependent on seeing improvements in the service offered by LCS. This continued back-ended approach presented by LCS provides no guarantee of improvement in the first three quarters of the Plan year or indeed the targets being met in the last quarter. LCS has been aware of my target proposals for some time – since at least December 2007, this should have allowed it sufficient time to prepare for the delivery of improvements at the level I have set for 2008/09.

The areas in which I consider the Plan to be inadequate are set out below:

Quality Q1- In 90% of closed complaints, LCS to achieve a fair and reasonable outcome with no significant case failings.

I have already expressed my concern about LCS being unable to propose its own quality measure for 2008/09, particularly because since 2004 I have requested each year for LCS to develop this. However, I am pleased that it is now acting on my recommendation to develop a measure in readiness for the 2009/10 plan year. The target I set for 2008/09 was developed from evidence-based findings from the OLSCC audit undertaken in 2007 and provided a fully representative baseline, which was shared with LCS in July 2007. It appears from the Plan that LCS has combined action to meet this recommendation with the quality target rather than aiming to achieve from 1 April 2008 the target I have set. LCS is therefore only committing to properly pursue a target from 1 December 2008 as this is

when it believes it can develop its own fully representative baseline. Its own baseline forms the outcome from the recommendation I made and is not the target I have set for 2008/09.

I view as inadequate the LCS proposal in the Plan as it would only allow the quality target to be measured for the last four months of the plan year, precluding the consideration of any cases more than four months old. The target I have set has already been fully baselined and reasonably allows for minor errors on cases that do not have an adverse impact on the consumer or the investigation. The approach suggested by LCS introduces a high risk of not achieving effective and efficient complaints handling as it will only include the most recent and straight forward complaints that could clearly be dealt with quickly. Using the findings from the OLSCC audit and recent improvements made in delays, LCS expects to currently perform at 83% against this target. This combined with overall improvements in quality in all areas targeted for 2007/08 makes in my view a 7% improvement very reasonable.

Quality Q3 - 78% or more of referrals to the LSO in which the LSO upholds the handling of the case by LCS.

I am concerned that LCS is only committing to achieving this target at 78% over the last quarter of the plan year. It also states that success in this improvement will be conditional on the Legal Services Ombudsman (LSO) agreeing to change how she assesses individual cases referred to her. I am concerned that two years on, LCS is still using this same reason for being unable to achieve a reasonable target. I do not accept that there is any need for conditionality in respect of the achievement of this target.

LCS has during discussion with my Office argued that whilst current performance against the LSO measure is on an upward trend, this is a pattern no different to other years and is therefore not a good indicator that performance is improving. I have to disagree with this. Improvement appears on a sustained upward trend since November 2007.

I am of the view that it is reasonable and realistic for me to set a target of 78%. Looking at other comparators, SRA is currently performing at 81% and the Bar Council at around 80%. With the LCS' upward trend in performance (70% on average since November 2007, achieving 76% in February 2008) my target of 78% is achievable. In addition, LCS has itself confirmed its performance is probably at 83% on Q1, with it having addressed delays. This in itself should reflect in an improved performance against the LSO measure, as similar criteria to those used by the LSO, were used when this target was baselined by my Office.

You may be aware that a recent audit commissioned by LCS and undertaken by an external research company, Smith & Williamson, has found a number of weaknesses in the LCS' use of information and reports provided by the LSO to improve its complaints handling. Whilst I am disappointed that Smith & Williamson on behalf of LCS did not seek to consult myself or the Ombudsman's Office, I note that the audit found some of the very same concerns I myself have been expressing for some time. For example, my long standing suggestion that LCS make better use of, and learn from the feedback and reports made by the LSO. LCS has had a clear direction from these audit findings on where it could improve, as early as November 2007. However, it is choosing to delay unnecessarily until 1 April 2008 the introduction of improvements on the use of LSO feedback. Acting on the findings immediately could improve not only LCS' current performance but also its future performance.

Furthermore, in the Plan, LCS has identified three areas from the audit findings where it believes it can improve performance:

- “Agreeing clearer reports from the LSO to facilitate full use of the feedback
- Identifying which reports actually indicate poor service to the customer
- Encouraging the LSO to allow complainants to go through our [LCS] internal complaints process before considering the cases herself.”

I do not believe that the first two changes are necessary for LCS to achieve the target I have set. The third point would appear to be inconsistent with the statutory role of the Ombudsman.

Timeliness T1- All LCS complaints from the date of receipt to take no longer than 12 months to investigate and conclude, apart from in exceptional circumstances.

This target is intended to be met from 1 April 2008 and was partly based on the LCS’ commitment in the 2007/08 Plan that it would be looking to reduce to zero its rollover of complaints into the older age category. LCS has informed me that it should be on track to meet the 2007/08 target I set to have no cases over 12 months old at 31 March 2008. However, in the Plan it states that it expects to have in the region of 70 cases that are already between 10 and 12 months old at 1 April 2008 and therefore can only commit to achieving this target from 1 July 2008.

I am concerned that LCS has been unable to control sufficiently the number of its older complaints. It is unreasonable to take as long as three months before this target can be met, particularly when appropriate preparation for the new Plan year could have prevented what is now suggested by LCS - a delay in improvement. LCS has been aware of this target since at least September 2007. I consider it to be both reasonable and achievable.

Timeliness T2 - LCS to refer to SRA within 3 months of receipt all matters of misconduct identifiable at that time.

The target measure as described by LCS in the Plan fails to include the requirement I set:

“Those conduct matters only identifiable after 3 months of receipt by LCS must be referred to SRA immediately on the conduct matter becoming apparent”.

There is no explanation as to why this is missing. Irrespective of the age of a complaint, it is important that LCS commits fully to preventing any avoidable delay in referring cases to SRA where a conduct matter has been identified.

Cost per case C1 - LCS to achieve for the plan year 2008/09 a unit cost efficiency saving against its 2007/08 costs of £2,036 achieving a reduction in the average unit cost per complaint to £1,952.

This target has been the subject of numerous discussions between my Office and LCS. On 5 March my Office confirmed to LCS that the measure would remain as set by me but that I would be happy to consider further any evidence from LCS on why it believed it necessary to delay the date from which this target should be achieved. I had set the target to be achieved from 1 April 2008. Whilst LCS agreed to provide by 7 March any evidence it had to support a delay in achieving the target, it has failed to do this.

The target proposed in the Plan by LCS does not meet the level of improvement I expect for 2008/09, and would be inadequate towards achieving efficient complaints handling. I have set a unit cost target of £1,952 (a 6% reduction in budget) and agreed to allow a 2.5% uplift instead of 2% to recognise the period between the base year and target year is 15 months and not 12. I am concerned that LCS in the Plan has offered a cost index model, which represents a reduction in actual costs of 1.8% only, with

very little assurance that even its lower level of reduction in costs could be achieved. I therefore question LCS' determination to reduce its costs for a number of reasons:

- It is still at the stage where it is committing to carry out during the first half of the year various exploratory measures for reducing costs.
- Whilst some of the areas listed as cost reduction items under review may help, there is little evidence that these add up to the savings required or what else could be done to achieve this level, or that there are realistic plans for implementing the savings within timescales to meet the target I set.
- It therefore appears that after the exploratory measures some cost reduction items may not be deliverable or may be delayed preventing LCS from meeting the target.

Miners M1 – 93% of Cases received after 1 February 2008 to be investigated fully and the consumer informed.

In my Miners Special Report published in January 2008, I raised a number of issues (11 in total) to be addressed by LCS. LCS' original response to these issues dated 31 January 2008, failed to address these sufficiently and I informed LCS that I would be considering setting a target to improve the overall handling of miners' complaints. However, I did in February give LCS the opportunity to propose a target for me to consider and I requested that this target be included in the 2008/09 Plan.

I was pleased to note that at a meeting with my Office in March, LCS proposed a target related to the handling of miners' cases at 93%. My Office confirmed at this meeting the complete criteria for measuring this target, which would cover casework issues identified in the Miner's Special Report. For other issues identified in the report, my Office requested that these be addressed in the 2008/09 Plan. Unfortunately, in its Plan LCS has reduced the casework target to 90% as it believes that the requirement to investigate cases fully is a stricter measure and therefore the target should be reduced. Whilst LCS agreed to address the other issues in its Plan it has failed to do this. I view a target of 93% as reasonable for the following reasons:

- The cases are handled within a small discrete team within LCS therefore achieving consistency should be easier than for the other quality target Q1 (set at 90%).
- The requirement to investigate cases fully is not new and something which I raised as an issue back in 2006 after my first audit into this area. This measure is included to prevent LCS closing cases without investigation pending the outcome of an SDT hearing. LCS has already confirmed that it has stopped the practice of non-investigation therefore this requirement should already be practised within LCS and would not result in a reduction in performance.
- Full investigation and informing the consumer are fundamental to effective and efficient complaints handling. A target of 93% is therefore eminently reasonable.

Solicitors Regulation Authority

General Assessment

I am pleased that following an audit undertaken by my Office I was able to agree SRA's own proposal for a quality measure at 90%. I also welcome SRA's commitment to lodging any conduct complaints with the Solicitors Disciplinary Tribunal within 18 months and that we have now been able to agree an appropriate method for how performance against this target will be measured. I view this as a real step forward for achieving improvements for both the consumer and profession.

Timeliness T3 - All SRA complaints from the date of receipt to take no longer than 12 months to investigate and conclude, apart from in exceptional circumstances.

As with LCS above, this target is intended to be met from 1 April 2008 and was partly based on the SRA's commitment in the 2007/08 Plan that it would be looking to reduce to zero its rollover of complaints into the older age category. I have been informed by SRA that it is on track to meet the 2007/08 target I set to have no cases over 12 months old at 31 March 2008. However, SRA states in the Plan that it expects to have in the region of 35 cases that are already between 10 and 12 months old at 1 April 2008 and therefore can only commit to achieving this target from 1 July 2008. I am concerned that SRA has been unable to control sufficiently the number of its older complaints. It is unreasonable to take as long as three months before this target can be met, particularly when proper preparation for the new Plan year could and should have prevented this delay in improvement.

Other Considerations

This is the 4th year of the Law Society submitting a plan for complaints handling to me. I have previously levied a penalty of £250,000 on the Law Society for failing to submit an adequate plan for the period 2006/07. I had expected it to be sustaining effective and efficient complaints handling by now. It is therefore disappointing that moving into the 4th plan year, the Law Society is not yet delivering effective and efficient complaints handling and neither does it have an adequate Plan to achieve this.

There are various matters that cause me to question the ability of the Plan to improve complaints handling to the target levels I have set:

- LCS and SRA have in total 468 staff involved in complaints handling work. Of these, 403 are LCS staff of which 220 are operational caseworking staff with the remaining 183 (45%) involved in support activity. The suggested shift by LCS from non-case working support staff to casework staff equivalent to only 10 full time equivalent workers, I feel could be considerably higher.
- The discrepancies between the actual staff shown by LCS in the Plan and that reported to me (e.g. 2006/7 actual support staff shown as 51 in the Plan against 38.61 reported to me during that period) being misleading in terms of the historical staffing position and the efforts being made to change the profile in favour of more casework capacity.
- The information contained in the Plan about the LCS and SRA budgets for 2008/09 appearing to show a combined budget of £44 million, this increase from £36 million in 2007/08 is concerning, especially at a time when I would expect to see the cost of complaints handling reducing.
- Initiatives being generally weak in terms of the benefits to be realised and many are included on the basis that they are not yet costed or fully scoped (e.g. extension of the Rother Valley Coal Health pilot). The initiative to publish solicitors' complaints records (included in the 2007/08 Plan) is now reduced to a decision being made in July 2008 on whether to proceed or not and 12 months of gathering data before any publication. I remain concerned about the approach LCS will be taking - to publish only upheld adjudicated complaints at this stage. This approach in my view could be of limited value to the consumer as it provides an incomplete picture covering only around 5% of all complaint closures made by LCS. Neither this initiative nor the Rother Valley extension has been costed within the Plan.
- The LCS Chief Executive giving the Rother Valley pilot (awareness raising amongst 3600 former miners) as a reason why resources had been squeezed compromising the LCS' ability to meet targets. Including extension of this pilot to up to 500,000 miners as an initiative in the 2008/09

Plan without showing how this might affect achievement of the 2008/09 targets, represents a considerable risk.

- My recommendation on complaint prevention (A/R1) has not been committed to by LCS as it believes that it may not be cost effective or proportionate to include correctional action on decision letters to solicitors. LCS has stated that it has sample feedback from the profession that indicates my recommendation is not universally required but has failed to provide the detail of this feedback.

Formal Decision on the Law Society's 2008/09 Plan

For the purposes of section 52(3) of the Access to Justice Act 1999, I declare the Law Society's Plan for the period 1 April 2008 to 31 March 2009 to be inadequate for securing that complaints are handled effectively and efficiently.

I also propose to consider whether to impose a penalty and if so in what sum. I will let the Law Society have my decision on this matter by 18 April 2008. I would ask the Law Society to let me know whether it wishes to make any representations and if so whether in writing or orally.