

LAW SOCIETY PLAN FOR COMPLAINTS HANDLING FROM 1 APRIL 2006 TO 31 MARCH 2007

I wrote on 31 March 2006 summarising my reasons for declaring the Law Society Plan for April 2006 to March 2007 inadequate. I have now considered whether to exercise my power to impose a penalty. I have decided it is appropriate to do so and have set the penalty at £250,000. I have summarised below my reasons for coming to this decision.

The key factors to which I have had regard in making my decision and in judging the question of penalty are:

- The Law Society's representations, both written and oral.
- The fact this is the first occasion on which I have considered it necessary to impose a penalty.
- The Law Society's response to my comments on the draft version of the Plan.
- The number of different respects in which I have declared the Plan to be inadequate.
- The importance in my view that should be attached to those respects.
- The extent of the inadequacy in question.
- The maximum amount I would be entitled to impose.

The Law Society's representations

I received written representations on 28 April 2006. The Law Society appeared before me on 5 May 2006 to make oral representations. I have carefully considered these and highlight below the main areas on which representations were made.

Progress and determination

The Law Society referred to its determination to bring about a more effective complaints handling system and Sir Stephen Lander's positive comments. I have in mind the improvements that have been made over time. This started from a very poor base in 1999. There have been some modest but steady improvements since I was appointed Commissioner. In considering this representation however I have also had regard to other comments Sir Stephen has made. For example,

The response to these various proposals has been mixed.....Changing the culture from one that is focused on process and on closures irrespective of outcome to one that is committed to adding value for the scheme's customers is proving difficult....There is undoubtedly some way to go here to make the CCS as consumer aware as it needs to be (pg 7).

I find it depressing (if realistic) that the Society is planning this year for 8% (or nearly 1,500) of its complaints to take more than 12 months continuous investigation to resolve, and 2% more than 18 months. For those individual complainants, the gap between what they might reasonably have expected in terms of time to resolution when they first complained, and the reality, will be very large indeed. I do not believe

that the Society should feel comfortable with that situation. Its very familiarity, perhaps, prevents the staff from seeing how damaging it is.

To deliver a timely consumer-centric service of redress, therefore, I suggest that a further step change in the pace with which complaints are handled will be necessary, and with the aim at least of making sure that no case takes more than a year to resolve. A year is, after all, a lengthy period for what is effectively a summary process. Is such a change achievable? I think it may be (pg28).

What is needed is for the majority of cases to be allocated within the first three weeks of receipt if existing targets for case closures are to be met, yet alone the stiffer ones that would be desirable in the future. There is thus still some way to go to achieve that timetable (pg29)

This reinforces my view that the Law Society needs to do more. It really needs to show its determination, to make the step change necessary. The Plan was its opportunity to do so. I have set 12 month and 15 month targets at levels which I consider are achievable, and which if the Law Society is truly determined it can meet. This concurs with the views held by the Law Society's own Commissioner, Sir Stephen Lander. The fact some progress has been made, which I acknowledge, is one thing. More is required and that too is acknowledged by interested parties. My targets were set to achieve that necessary improvement to move the Law Society towards an effective and efficient complaints handling organisation.

Engagement

I accept that the Law Society has engaged with my Office, mostly in a constructive way. However, I would have expected from it, greater effort to respond to requests for information in a timely manner. I also note the Law Society's view expressed in oral representation that the differences are borne out of principle and that the Law Society is not just being difficult. I believe that if it was really determined to make the push for further change the Law Society could do more and meet my targets and I deal with that further below. There is also a spectrum of potential Law Society response (from reasons which are undeniably legitimate to those which show flagrant disregard to my Office). Overall I accept the reasons are not at the flagrant end of the spectrum and they appear genuinely held. I do not accept however that the reasons given mean the targets cannot be achieved.

Timeliness T1: no more than 20 cases over 15 months at 31 March 2007

The Law Society refers to the philosophical difference between me and it, about cases legitimately taking a long time to conclude. I have had regard to the Law Society point, and have again considered the reasons it gave in December 2005 for cases being justifiably prolonged and the review my Office carried out. This found that in all of the case-studies examined if the level of delay caused by the Law Society had been removed no case would have taken longer than 12 months to conclude.

I have also considered the further representation about CAI and regulatory matters. During oral representations the Law Society emphasised that its

understanding of the philosophy of the Immigration Services Commissioner is that for regulation there is no need for timeliness as a driver, emphasising the importance of quality. It also contended that 20 cases over 15 months carried over at the end of the year seemed unrealistic as a key driver but acknowledged it could not give precise figures of how many it might be.

I remain of the view, for this organisation, a timeliness target covering both CCS and CAI is important. I have already mentioned what Sir Stephen Lander said about closing all cases within 12 months, though I do not go so far right now. Quality is important, but in my judgment, and with regard to the audit my Office undertook, my target should not endanger it. It is for the Law Society to cut out its delay through the process.

Timeliness T2: 94% of cases closed within 12 months

The Law Society makes the point about being able to identify the right cases. In its written representations it said it could apply additional resource but that such resource would be far greater than the additional 4.5 staff my Office estimated. In light of this I asked at the oral representations stage whether the Law Society had undertaken work to establish the cost and resource implications, on its case, to close an additional 400 cases (as would be required to achieve the extra 2% performance), but I was told it had not.

Although empirical distributions can result in no precise cut-off point this does not mean appropriate intervention cannot be made, and of course closure distributions cannot be looked at in isolation of existing delays in the process. Identifying those cases which are most likely to take longer than 12 months to conclude, to ensure they are concluded earlier, can be achieved in my judgment (a system is already in use for outsourced cases). Moreover, in its own letter of 17 October 2005 the Law Society explained its attempts to truncate the top-end tail of work and intervene and stated:

[It would] use this released resource to address the older and often more complex cases. In particular we are focussing caseworkers on the 15-18 month old cases to reduce the number rolling over into the 18+ month group. [and later]

In both CCS and CAI we have regularly identified cases in the 16-18 month range that can be resolved quickly, and classified them as 'Urgent'. Caseworkers and adjudicators are alerted to fast-track these cases to closure. The success of this is seen by the reduction in 'rollover' from 84 in April 05 to 37 last month.

I also know that of the current case holding of c.6,000, around 20% are unallocated of which only 39 are over 6 months old. A large proportion of cases (nearly 5,000) are therefore either on the caseworkers' desks or have been referred for adjudication. The Law Society has said caseworkers now have smaller case holdings and the introduction of the capacity planning tool and case management tool means that both caseworker and line manager are familiar with the case holding. I find it difficult to understand therefore why these cases could not easily be identified or known and action expedited.

On the logical opposition of targets, the Law Society needs to intervene now and close more cases in the earlier 0-11 months periods. I removed the 6 and 9 month target to give the Law Society flexibility in this area.

Quality Q2: substantive response to complaint within 60 days

In my judgment meeting this target would add proportionate value for the consumer. The delays here really need to be improved and now. Sir Stephen Lander too emphasised the need for early allocation. This is again a step change and one the Law Society should be determined to meet. I of course take into account as a positive the Law Society expression that it wholeheartedly agrees to quicker responses and such remarks do make some difference to the attitude I take on assessing penalty, but I need action too.

On the point about differing treatment (treating consumers who made complaints after 1 April 2006 more favourably than those who made complaints before that date), all consumers should expect the same level of service. However, the starting point for improvement has to begin somewhere and improvement is needed on this now. I believe a 1 April 2006 start point to measure against the target is reasonable.

Quality Q3: 30 day contact letters

I am conscious, after initial discussions with me in 2004, that the Law Society (CAI) changed its first view on this, and that is to its credit in my assessment of penalty (although suggested at representation, FSA is not a good comparator). I also again acknowledge the Law Society view that this is a principled objection.

One such principle is confusion that would be caused, that a 30 day update gives an inconsistent message about the CAI Protocol. I do not however accept 30 day contact would make the CAI Protocol unworkable on that basis. The Law Society can still manage the consumers' expectations and understanding. The Law Society's key stage system could leave consumers hearing nothing for months on end. Regular contact by contrast keeps them informed, which is particularly important if no progress is being made.

Quality Q6: the LSO index

This LSO target was previously one set for the Law Society by the Lord Chancellor. I kept it as a target last year and the Law Society included it in its Plan. The Law Society says it still needs clarity from the Ombudsman on procedural issues. Within the context of the Plan timeframe I would have expected the Law Society to have made better progress in resolving this issue. It is disappointing that it waited until 7 March 2006 to write to the Ombudsman on this matter just 3 days before it was due to submit its final plan on 10 March 2006.

Improvement projects

The Law Society says where possible a hard measure and timescale was identified against which success can be tracked. I was and remain concerned however that the projects (which are there to deliver a sizeable part of the improvement) are really not in the state of planning I would expect, to give me the confidence the projects will indeed support delivery to the level the Law Society has suggested they will. Moreover, although some expected improvements are identified (and that is something) many are simply not measurable or of sufficient detail.

The budget

I was disappointed that the final Plan submitted to me on 10 March 2006 did not include, albeit separately, the detailed budget I had requested. I have now on 2 May 2006, received the detailed budget information I sought (though well after my deadline for submission of the final Plan). I note it has been approved in principle but is subject to final ratification as the Plan was inadequate.

A principled approach

The Law Society emphasised to me during the representation process that where it disagreed with me and had modified targets for its Plan it had done so on grounds of principle and with reason. It was not about being difficult and did not represent a contemptuous disregard for the functions of my Office. I have often, above, not agreed the reasons given, but in coming to my decision I have had due regard to this point and the Law Society stance.

A penalty

I have set out the key factors I have taken into account in judging whether to impose a penalty and in what sum. In doing so I have had to assess the weight properly to be attached to the various factors and arguments and come to a view. As set out I have decided it is appropriate to impose a penalty, at £250,000.

In summary, my reasons are these:

(i) The maximum penalty I would be entitled to levy is £1m. I have that in mind as a reference point, not least because I need to judge on a scale how serious the failures in producing an adequate plan are.

(ii) The Law Society contend that a penalty towards the upper end of the maximum should only ever be imposed in cases of a deliberate disregard of the need for improvement, or a deliberate failure to engage constructively with my Office. Those are certainly aggravating factors. Though I do not always think the Law Society matches what it says with what it does, they are not factors present here, and I do not think this is a case approaching the upper end of the maximum.

(iii) This is the first time I have felt I have needed to exercise my power to impose a penalty. I have this in mind, as a mitigating factor.

(iv) There were a number of respects in which I felt I had to declare the Plan inadequate, 8 in total. Whilst it could have been worse, it could have been much better, and I would expect it to have been so.

(v) Some failures are more important than others, and I have given these greater weight.

(vi) I consider the failure to include T1 and T2 important. Timeliness is key to service and impacts on satisfaction. Historically the Law Society has been poor on timeliness. It has improved but really needs to move itself closer towards an effective complaints handling system. My targets help to move it there (I also moved my targets to give it the flexibility to help it move). The modified targets proposed by the Law Society do not go far enough. I remain of the clear view the Law Society can achieve my targets if it commits to them and takes action to identify and reduce delay. The reasons it has given do not persuade me otherwise. I accept however they are principled and this goes to the benefit of the Law Society in my assessment.

(vii) The failure to include my Q2 target is also important in my judgment, though I accept that the staged approach the Law Society proposed to adopt in its Plan moving towards 58 days in 80% of cases by 31 March 2007, is a little closer to my target than the modifications to T1 and T2 and I take that into account. The reasons given for failing to adopt this target however are not in my judgment equivalent to the more principled concerns given for T1 and T2. Overall, therefore (although the modified target is closer to mine) I judge this failure on a par with that for T1 and T2. This target can be achieved. Consumers deserve an initial response quickly. That is crucial.

(viii) I have considered the Law Society reasons for arguing Q3 is inappropriate in CAI. I acknowledge the Law Society's position that it views these as principled and that in its view it is inconsistent with the Informants Protocol policy to give 30 day feedback. That said, I have said I do not agree it makes the Protocol policy unworkable. There is evidence consumers had a preference for 30 day contact. The Law Society can still manage expectations under the Protocol policy and give such contact. Whilst of some weight in the balance I do not give this failure so much weight as I have T1, T2 and Q2.

(ix) I do still give some weight to the Law Society failure to define progressing matters under Q3. In comparison to the other failures this is small. The need for it is clarity, for the consumer, the Law Society and for me. It is also needed to enable my Office to monitor the target. Without it the target could be undermined. It is also something I specifically highlighted in comments on the draft version of the Plan and I do not find the response on that compelling.

(x) On the LSO index, the Ombudsman's Office has provided information requested by the Law Society. As things stand, I have no commitment from the Law Society to the target. The Law Society has referred to variation in performance, but as Commissioner I have shared modelling showing current performance is on an upward trend. The weight I attach to this is not so great as for (vi) to (viii), but it remains of some weight, in particular the fact the Law Society did not action its concern about this much more quickly than it has.

(xi) The initiatives are of concern to me and I give those concerns equal weight to the timeliness and Q2 failures. The initiatives are meant to account for a good part of the delivery of the Plan, but they are lacking. I raised my concerns about them in comments on the draft Plan and have previously given models to show the Law Society what I would need. Many expected improvements are not measurable. I cannot be sure on whether any will be implemented at all and what benefits will be delivered. Without SMART criteria it is difficult to assess the Law Society's performance.

(xii) I am glad the Law Society has now provided more detailed budget information as sought. The failure to do so promptly is disappointing and goes to the question of effort. I have had some, though comparatively small, regard to it in judging penalty. For any future plan I will need the Law Society to provide a budget and to assure me it is adequate to deliver the plan.

(xiii) As a positive, I accept the Law Society has cooperated with me and my Office and dialogue has generally been constructive. I have also taken into account the reasons why it says it has taken a differing approach to me on targets. Whilst I disagree with the Law Society on its reasons and believe it can and should adopt my targets I do not ignore the point it makes that it is not simply trying to be difficult. This means my penalty is lower than it otherwise might have been.

(xiv) The Law Society's responses to my comments on its draft plan dated 9 February is a mixed factor. I was pleased to see it adopted several comments but other key ones it did not, and many of those unfortunately were the bigger points, on targets. I also of course bear in mind it did adopt 6 of my targets unaltered.

(xv) I set my targets on the basis they were achievable and necessary to take forward the improvements I see as important in moving closer to an effective and efficient complaints handling system. My Office and I had long discussions with the Law Society about the targets. I also moved my position on some of the issues: the T1 6 months target was removed entirely; the timeliness targets assume only 25% reduction in the Law Society's own delays (from the original of 75%) and do not incorporate any increase in caseworker productivity or the impact of initiatives. The Law Society produced a Plan I simply could not view as adequate for securing the next step of improvements and I have given my reasons for that. The extent of the inadequacies justifies in my mind the imposition of a penalty.

(xvi) This is not a case at the upper end of the bracket. A plan was produced, some of my targets were included and the Law Society has

engaged with me and my Office mostly in a constructive way, explaining why it feels it had to modify a target.

(xvii) On the other hand, I do not think a nominal penalty is appropriate. There are a number of failures, and some of these, as stated, merit a good deal of weight in the balance. An adequate plan for complaints handling plays a crucially important part in my attempts to ensure the Law Society improves its complaints handling and is thereby of benefit to the consumer. It is of course of great concern to me there is no adequate Plan in place. Taking all factors into account I need to determine an appropriately weighted penalty.

(xviii) I have weighed the positives and negatives and followed the approach as set out above. I have come to the conclusion that a penalty of £250,000 is appropriate and not excessive.

I take the view this is reasonable in the circumstances. I want to see a realistic step change and commitment towards that and believe this can be achieved through the targets set.