

EDITED LETTER FROM ZAHIDA MANZOOR CBE, LEGAL SERVICE COMPLAINTS COMMISSIONER TO ANDREW HOLROYD OBE, PRESIDENT OF THE LAW SOCIETY.

The Legal Services Complaints Commissioner, Zahida Manzoor CBE, sent a letter on September 21st 2007 to the Law Society formally notifying them that their complaints handling arm - the Legal Complaints Service (LCS) and the Solicitors Regulation Authority (SRA) – had not handled complaints in accordance with its 2006/07 Improvement Plan. On November 7th 2007 the Commissioner sent a follow-up letter informing the Law Society that she will not be imposing a financial penalty (as laid out in section 52 of the Access to Justice Act 1999) on the Law Society who remains accountable for their performance.

This letter sent to Andrew Holroyd OBE, President of the Law Society from the Commissioner notifying him of her decision is below:

“I wrote on 21 September to the Chairs of the Legal Complaints Service (LCS) and Solicitors Regulation Authority (SRA) Boards to inform them of my decision that the Law Society had not handled complaints in accordance with its 2006/07 Plan (the Plan). I set out my reasons for this decision in that letter and invited written and oral representation as to whether a penalty should be imposed under s52(3)(b) of the Access to Justice Act 1999. I am grateful for the Law Society’s written and oral representation on this matter, received on 22 October and 25 October respectively. Following my decision in relation to compliance with the Plan I have welcomed the constructive dialogue that has taken place with the Law Society regarding the handling of complaints by LCS and SRA.

I have considered the Law Society’s representations very carefully, including those made in response to my provisional decision on their compliance with the Plan, and all other relevant factors. Whilst I consider it would be open to me to do so, I have decided that I will not require the Law Society to pay a penalty. This was not an easy decision, and was one that I reached after a great deal of consideration. There have been successes and failures this year. I have decided, at this stage in the Law Society’s development, to give more weight to the commitment to improve evidenced by the re-structuring of the organisation and efforts made to meet the targets. However, I remain seriously concerned that quality targets - which I regard as important - have been missed. I will be looking for strong improvement in these areas and sustained improvement in others in the 2007/8 plan year.

I have summarised below my reasons for coming to this decision some of which are incorporated in my letter of 21 September.

Improvements in complaints handling achieved to the target level

As stated in my decision letter of 21 September, I welcomed the improvements made in timeliness against Strategic Priority 1, particularly the 3 month target which was exceeded and the 12 month target which was met. This is good news for the consumer and demonstrates that with the right effort and encouragement, improvements can be achieved and that cases are now being handled much quicker than in previous years.

I was also encouraged by the improvement made in achievement of the target to have no more than 65 cases open over 15 months old. On behalf of the consumer I have been seeking this level of improvement for some time.

The picture overall on the speed with which complaints have been handled is a good one and moving forward it is an area that the Law Society has committed to improve further by delivering against the targets for 2007/08. During the plan year 2007/08 I will be expecting the Law Society to not only improve to the level of the new targets set, but to also sustain the pace of improvement. Sustaining improvement in all areas is something I will be placing great importance on over the coming year, and something I expect an organisation now out of its second improvement plan year to deliver.

I have also recognised that there has been some improvement in quality. Although the Law Society missed 4 out of the 6 quality targets, it managed to exceed the 2 that it did meet, these being the sharing of the Indicative Awards (IAG) and Reasonable Offer Made (ROM) guidance with the complainant and solicitor, and the identification and addressing of all heads of complaints by the caseworker. This is a positive step and as before I am expecting over the coming year that this performance will be improved to the target level set for 2007/08 and sustained.

Improvements in complaints handling short of the target level

I have recognised the narrow margin (78.5% against a target of 80%) by which performance against the Q2 Substantive Response within the 55 days target was missed. I also noted that the Law Society was working to a target of 60 days up until the end of July 2006, but that it itself had proposed the target of 55 days to me. I had therefore considered whether there could have been a failure by the Law Society to effectively communicate the level of this target at 55 days to its staff, and that this contributed to its failure to meet the target. Although I considered this target not to be met I did view as positive that the failure was marginal.

The picture is not as positive in relation to how the Law Society had delivered its initiatives under Strategic Priority 3. I stated in my decision letter of 21 September that for some years this had been a particular area of weakness within the Law Society. A consequence of this is that, during 2005/6 and 2006/7 the target P3, Delivery of Initiatives and the scope of initiatives delivered within it, have been at a much lower level than I would have expected from an effective and efficient organisation. The Law Society should now be concentrating on the benefits to be realised for users of the service rather than process. However, I was encouraged to see the restructuring within the Law Society and the appointment of Boards in January 2006, with the aim of delivering wider improvements during 2007/08. I look forward to the delivery of these improvements and will be monitoring the progress closely.

I also recognised that while the initiatives included in the 2006/07 Plan were more 'business as usual' changes and not necessarily substantive in nature, there still seemed to be little or no project assurance to identify that action on CHIP05 (quality improvements) needed to be taken early in the Plan year when results were poor. This is an example of where the Law Society should have taken action much earlier when it realised - as early as December 2006 - that its actions were not having the desired effect for improving performance on quality. I am pleased to note that the Law Society appears to have learnt from this and is currently planning an earlier intervention in relation to meeting the 2007/8 plan targets.

Although I was of the view that the P3 target was not met, I did view as positive that this failure was marginal.

Failure to improve complaints handling to an acceptable level

As stated in my decision letter of 21 September, my expectations regarding improving quality under Strategic Priority 2 and the Law Society's ability to meet the targets were based on two factors, the first being that the targets related to the LCS and SRA's own customer service standards which were in place well before I was appointed in 2004. The second factor was that due to poor performance in the quality area I set lower targets than planned which aimed to improve adherence by the LCS and SRA to their own standards. I was therefore extremely disappointed that the Law Society's efforts to improve its quality of complaints handling resulted in it failing to meet the majority of the quality targets set and agreed by it for 2006/07. I am pleased that the Law Society accepts there is work to be done in this area, but I reject any argument that it is unrealistic to have expected the Law Society to meet both timeliness and quality targets. I said in setting the targets that there needs to be a balance between the speed with which complaints are handled and the way in which they are handled. The Law Society did not effectively get this balance right. Overall I concluded that 4 out of the 6 quality targets were missed of which 3 were all missed by a significant margin. I attach considerable importance to this. These targets were intended to ensure that consumers received a consistent service and were able to make informed decisions.

The Law Society itself has already accepted that it missed the Q1 Special Payments target by a substantial margin, 48.4% against a target of 80%. I considered the level of improvement achieved in-year to be insufficient. I had previously made recommendations to the LCS and SRA concerning the application of the Special Payments policy as far back as July 2005. In my view more could have been done in-year to achieve this target. The LCS and SRA's own internal audit findings identified recurring errors and we separately made repeated recommendations for improvement. I expected LCS and SRA to have reviewed their own audit recommendations and identified why the expected improvement had not been delivered. My view was that despite LCS and SRA reporting that actions to address my concerns had been implemented, there still seemed little certainty that consumers were receiving the Special Payments to which they may have been entitled.

I was disappointed that performance against the Q3 Consumer/Informant Contact target was not at the level expected, being 61.9% against a target of 80%. I viewed improvement in this area as being key for the consumer as it enhanced the communication received by them and also ensured that cases received some action to progress them at least once a month, or at key stages to reach early resolution. It also provided a good mechanism and opportunity for managing the consumer's expectations. The Law Society's failure to achieve this target was in my view a further setback to achieving improved customer service.

I also attach importance to the achievement of the Q6 target, which measures the number of cases upheld by the Legal Services Ombudsman (LSO). This measure provides an independent scrutiny of the handling of cases by the LCS and SRA. I was disappointed that performance was 68% against a target of 73% and only marginally better by one percentage point than that for 2005/06 when it was 67%. This represented a greater failure as the target during 2006/07 was held at 73% from the previous year and therefore there has been limited improvement for two years.

LCS and SRA have often told me that their focus on closing older cases was resulting in a drop in performance against this target. They believed that those older cases referred to the LSO by the complainant were more likely not to be upheld in favour of the Law Society. My

Office and I have on several occasions asked for more detailed evidence of this, which at this stage they have been unable to provide.

The measure of this target captures those consumers being failed by the complaints handling service provided by the Law Society. This target has been a long-standing one and I have found the slow pace of improvement to be unsatisfactory. I note that LCS has expressed concerns about the consistency of the LSO decisions, but LCS always has the opportunity to comment on the provisional view of the LSO before final determination. I would expect any concerns to have been raised at that point.

I have recognised that some action had been taken against most of the recommendations I had made over the 2006/07 Plan period, but I remained concerned about the time taken or lack of action taken against some of them. I specifically referred to, in my decision letter of 21 September, the recommendation relating to the handling of Coal Health Compensation Scheme cases. I am disappointed at the LCS's repeated refusal to revisit those cases where it did not complete a full investigation into the Inadequate Professional Service issues. I noted the LCS's reasons for not taking action, which included resource requirements, some details of which were only provided to me on 29 June 2007 – nearly a year later. I remain of the strong view that all consumers, particularly vulnerable ones such as the miners, should receive the full level of compensation to which they are entitled. My view in this regard is strengthened by the fact that it was the LCS that failed to handle these cases as well as they should have done, which of course remains the responsibility of the Law Society.

A considerable amount of time has been lost since I first made my recommendations which LCS stated could make communications with the affected miners possibly more difficult. When making my recommendations I did recognise that there would be a resource cost to revisiting these cases and on balance I believed this was the right course of action to take for the benefit of those consumers affected. My view was that had these cases been actioned soon after I made my recommendation, the timing and capacity of the LCS could have enabled it to revisit those cases relating to my recommendation. I do not make recommendations lightly and do so with the aim of benefitting the consumer and the profession. I therefore strongly expect them to be addressed in a timely fashion or good reasons provided for why action is not feasible.

I remain of the view that miners would have been better served if those cases not handled properly by LCS were first corrected before encouraging new complaints – I viewed this as a matter of public confidence. Fair and transparent consideration of a complaint is key to achieving the right outcome for the consumer, particularly those who are vulnerable.

I am now awaiting the outcome of a recent audit by my Office into Coal Health Compensation complaints, before assessing what further action, if any, would be appropriate.

Summary

Overall in relation to achievement of the agreed targets, there were a number of respects in which I felt I had to declare that complaints had not been handled in accordance with the Plan. Five targets in total were not met. However, for the purposes of my decision whether to impose a penalty two of these targets (Q2 Substantive Response and P3 Delivery of Initiatives), have not been taken into consideration.

I set the targets for 2006/07 on the basis that they were achievable and necessary to take forward the improvements I saw as important in moving the Law Society's complaints handling closer to being effective and efficient. The missed targets have not only impacted on in-year performance but also had an effect on the targets set for the following plan year 2007/08 (the third plan year for improvement), resulting in some targets being set at a lower level than I had originally planned.

2006/07 marks for the Law Society the end of the second plan year for improving complaints handling. It is good to see that the speed at which complaints are being handled has improved, I now need to see the same level of commitment towards getting quality right. The Law Society has emphasised to me the effort it had made to meet the targets and where it had not met targets, it felt that the margin of failure in some areas had been small. Whilst I take issue with the latter assertion, the effort demonstrated by the Law Society to meet its targets during 2006/07 has been recognised fully and taken into consideration. As part of this I have given due consideration to the Law Society's restructuring, which for the Plan year in question was only in its first full year. I know the Law Society recognises its overall responsibility in relation to successfully delivering LCS and SRA complaints handling in accordance with the agreed targets and improvement Plan. However, it now needs to build on what it has achieved through restructuring whilst having in place sufficient assurance and accountability mechanisms agreed with LCS and SRA to deliver the expected improvements in complaints handling for next year.

Improvement in quality has got to be tackled and performance delivered to the level required. Such improvement is fundamental for any organisation aiming to become effective and efficient in its operations. There have been failures, of varying degrees. I take the view that they amount to a failure to handle complaints in accordance the Plan. That however is not to detract from the progress the Law Society has made. It has improved and with the right application and direction it can and must continue to do so.

On the facts and representations made available to me this year I have decided not to exercise my power to penalise the Law Society. I believe I would have been justified in imposing a penalty and that in not doing so I am extending considerable latitude to the Law Society. I am hopeful that the Law Society's restructuring and interventions will deliver the required benefits in the current and future plan years. My intention is to incentivise the Law Society to improve further and my expectation will be for it to meet all its targets for 2007/08. The Law Society should be in no doubt that if it fails to do so I am very unlikely to extend the same latitude again.

Looking Forward

I am encouraged by the Law Society's supplemental submission to me, which demonstrates its commitment to successful delivery against the 2007/08 targets and Plan. Whilst it is very disappointing that at this point during the 2007/08 Plan year the Law Society is failing against the majority of its complaint handling targets, the Law Society has stated it is considering funding the costs of a "recovery" plan estimated to be in the region of an additional £500,000 to bring LCS performance back on track. I welcome this approach and look forward to receiving more detail on this matter from the Law Society once actual funding has been agreed and the benefits to be realised from this additional investment are known.

Whilst the Law Society will be disappointed with my decision that it has failed to handle complaints in accordance with its 2006/07 Plan, I hope it accepts that I have listened

carefully to its representations. We share a common objective of moving forward for the benefit of the consumer and profession and building on the improvements that have already been achieved. I think we accept that it would be very disappointing to see a similar performance during 2007/08. I will continue to work closely with the Law Society, LCS, SRA and their Boards to encourage further improvement in performance and successful delivery against the Plan for 2007/08.”