

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

I wrote on 27 March 2008 summarising my reasons for declaring the Law Society Plan for 1 April 2008 to 31 March 2009 inadequate. 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 on the Law Society under s52(3) of the Access to Justice Act 1999. I am grateful for the Law Society's written and oral representation on this matter, received on 15 April and 16 April respectively. As requested by the Law Society, I agreed to postpone my decision on a penalty pending receipt of information as set out in s52(6) of the Act. I received this information and other complaints handling related information on 12 May and 22 May respectively, and met with the Law Society on 28 May to hear further oral representation. I have considered the Law Society's representations and all other relevant factors very carefully.

I have now also 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 £275,000. Whilst this is disappointing, I have welcomed the willingness of the Law Society itself to engage with me in a constructive manner and the number of discussions they have held with me in an attempt to reach an agreed way forward. I have summarised below my reasons for imposing a penalty.

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

- 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 Law Society's response to my comments on the draft version of the Plan.
- The Law Society's representations, both written and oral.
- The fact this is the second occasion in relation to the adequacy of the Law Society plans for improvement on which I have had to consider whether it is necessary to impose a penalty.
- The extent of the inadequacy in question.
- The total number of complaints about members of the Law Society. The total number of members of the Law Society and its assets.
- The maximum amount I would be entitled to impose.

Before detailing my reasons, I want to address some of the more general points raised in the Law Society's representations about my powers and, the target setting and plan process.

Law Society delegated powers

I appreciate the Law Society's operational decision to delegate its complaint handling powers to the Legal Services Complaints (LCS) Board and Solicitors Regulation Authority (SRA)

Board. It is a matter for the Law Society how it operates its governance arrangements and the accountability mechanisms of its respective Boards. However, I must remind the Law Society that my powers under the Access to Justice Act 1999 relate to the Law Society and complaints about its members. Therefore for the purposes of my decision and in accordance with the applicable statutory framework it is the Law Society that is accountable for complaints handling.

Test of adequacy

In its representations the Law Society states that a test to determine the adequacy of a plan should be whether the plan provides for a **'reasonably effective'** service in relation to complaints handling. Section 52 (3) of the Access to Justice Act 1999 states that it is for me as Commissioner to determine whether the plan submitted is adequate for securing that complaints are handled **effectively and efficiently**. My test is therefore not about a reasonable service but an effective and efficient one. The targets I set support this aim and if delivered would move the Law Society's complaints handling closer towards becoming effective and efficient. Unfortunately some elements of the Plan and targets included in the Law Society's Plan are inadequate in relation to achieving this aim and therefore I judged that the Plan was inadequate for securing effective and efficient complaints handling.

Appendix 2 - Plan formulation process

My approach for setting the 2008/09 targets and requiring a Plan was to encourage collaborative working, to this end, my timetable allowed sufficient time for this pro-active joint working. Records at my Office also indicate a greater number of meetings and discussions were held with both LCS and SRA than in previous years to agree a way forward on each of the target areas. I personally welcomed very much this collaborative working between all parties. Whilst the representations do refer to 'less than collaborative' working, LCS in its letter to me of 18 February accompanying the draft Plan did recognise the efforts that had been made by my Office and me:

"We appreciate the collaborative approach to the formulation of this Plan and targets, and look forward to continued close working with your Office to complete this work."

I disagree with the statement that for the 2008/09 Plan I proposed moving away from last year's successful approach by truncating the process, setting targets much later, removing the draft stage and not entering into discussion following submission of the final Plan on 5 March prior to reaching agreement. Let me cover each of these in turn:

Truncating the process and setting targets much later - LCS requested in its letter of 20 August that the Coal Health Compensation audit to be undertaken by my Office should be delayed due to the expected introduction of Visual Files. I explained fully in my letter to you of 3 October and my subsequent letter of 31 October to the Chairs of the Legal Complaints Service and the Solicitors Regulation Authority Boards that as a consequence of this request, the target setting and plan timetable would be delayed. Although, I viewed the timescales and approach outlined in my letter to you of 3 October as allowing the Law Society sufficient time to develop and produce its improvement Plan for 2008/09. When LCS submitted an amended timetable for the process on 16 November my Office agreed to this.

I have shared with LCS and SRA my target proposals at the earliest opportunity. When LCS suggested that a December timetable for my target proposals did not meet its need to have a

firm basis for budget setting in December, my Office confirmed on 18 October to LCS and SRA my intention to propose those targets which were not reliant on my Office's Indicative Targets Audit as soon as possible. Indeed my Office had also shared my preliminary thinking on the target proposals at a meeting with LCS and SRA as early as 24 September.

Removing the draft stage - I took the view, based on the fact that this was the fourth improvement Plan the Law Society would be submitting, that it was not necessary to build in to the timetable a review of a draft version. My expectation was that the Law Society would approach me to consider a draft version of the Plan if it felt this was necessary, I confirmed this in my letter of 31 October. The Law Society did however confirm that this stage was necessary and agreed to let me have its draft plan for review by 15 February. I reviewed the draft plan even though it was submitted to me on 18 February. To speed up the process and allow the Law Society more time, my comments on the draft plan were provided verbally to LCS and SRA on 22 February and followed up in writing on 28 February.

Not entering into discussion following submission of the final Plan - My statutory powers only require me to afford the opportunity for representation should I consider imposing a penalty. I agree that there was no discussion with the Law Society following submission of its Plan on 5 March prior to reaching my decision. I had already reviewed a draft Plan, the purposes of which was to enable the submission of a final Plan that would not require further discussion, and the Plan submitted to me on 5 March was the Law Society's **final** Plan for 2008/09. The circumstances surrounding submission of the Law Society's 2007/08 final Plan and my decision to afford it the opportunity to edit the Plan after submission last year were very different. The 2007/08 Plan included all the targets at the level I had set and in my view affording the opportunity for the inclusion of the LCS and SRA's improvement agenda items, introduced broader improvements. Achievement of the 2007/08 Plan would have secured the level of improvement in complaints handling I expected for that year. For 2008/09 this was not the case; a number of the targets I had set were not included at the level I had set; were starting to be measured from much later in the Plan year; or were dependent on changes to the way they were to be measured. The changes to measures required by LCS are unnecessary, as the measures have been defined appropriately for some considerable time and used. In my view this Plan will not allow for the level of improvement I expected for this year in order to secure the effective and efficient handling of complaints.

Appendix 7 – Effectiveness and Efficiency

My aim is for continuous improvement and as such, from year to year target areas, levels of performance and definitions of measurement do have to be adjusted accordingly. I only set targets in areas where I believe improvements are necessary; I then ensure these are measurable and achievable. I would also expect that as an organisation matures there are different expectations. That is why since my appointment in 2004 and with a collaborative approach changes have been made to the targets I have set, for example:

- At the request of LCS (previously Consumer Complaints Service) from March 2006 the Customer Satisfaction target was removed.
- At the request of LCS and SRA the measure for one timeliness target from March 2007 was changed to measuring the percentage of cases received that are closed within 3 months rather than on the percentage of overall closures.

- Since 2004 I have encouraged both LCS and SRA to develop their own quality measure. For 2008/09 there was a joint desire to reduce the number of quality targets as well as focus on the outcome of the decision. SRA introduced its own measure and in the absence of LCS doing the same I introduced a quality measure for it based on my audit findings from 2007. This move to change the measure is driven by the interests of the consumer and profession and with the aim of achieving a fair and reasonable outcome for all complaints.
- For 2008/09 I took account of improved performance levels and in recognition of Law Society restructuring I have removed or amended certain targets:
 - Removed the 3 month timeliness target for LCS and SRA.
 - Reduced the number of individual quality targets from 7 to 2.
 - Removed the Ombudsman target for SRA.
 - Introduced separate targets for LCS and SRA.
 - At the request of SRA changed the way Redress and Conduct cases are measured and counted.
 - At SRA's request I did not introduce a cost efficiency target and retained the existing productivity measure.
 - Removed the target for effective utilisation of budget and staffing for LCS and SRA.
 - Removed the target for management information reporting.

Appendix 9 – Adequacy

The representations seek a definition of 'adequate' and an explanation of the criteria against which the Plan was declared inadequate. The statutory provisions regarding whether I consider a plan to be adequate do not define the term in line with those provisions however. The targets I set are aimed at achieving the level of improvement necessary to secure that complaints are handled effectively and efficiently. If these targets are included in a Plan and that Plan clearly states how the improvements will be achieved and measured then I would view it as adequate. The circumstances relating to my decision can be different each year therefore, a set criteria would not be appropriate or in my view helpful. Specific and detailed reasons for my decision for declaring the Law Society Plan as inadequate are set out in my letter of 27 March.

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 to be attached properly 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 £275,000.

In summary, my reasons are these:

- (a)** From the accounts provided by the Law Society, 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.
- (b)** The Law Society contend that a penalty is not appropriate based on complaints handling performance now being 'satisfactory' and at a level comparable with other organisations. Whilst I welcome the improvements that have been made, I have made my view clear that the Law Society is not yet at a level where it can be said to handle

complaints effectively and efficiently. Whilst my decision in relation to a Plan clearly takes current levels of performance into account when deciding the target levels that will bring about securing effective and efficient complaints handling. I have noted the LCS' argument, "the remaining differences between us are largely minor ones of timing", and I do not share this view. Delaying the delivery of targets at the level I have set to the back end of the year is potentially no different to achieving a lower level of performance on average across the year. In my view the Plan submitted to me was inadequate towards securing effective and efficient complaints handling as it failed to deliver the level of improvement necessary to achieve this aim.

- (c)** This is the second time I have needed to exercise my power to impose a penalty. I have this in mind as an important factor and it is regrettable that the Law Society has been unable to deliver an adequate Plan – something I believe was within its gift.
- (d)** As set out in my letter of 27 March, there were a number of respects in which I felt I had to declare the Plan inadequate.
- (e)** Some failures are more important than others, and I have given these greater weight.
- (f)** I consider the failure to include the Q1 quality of outcome target at the 90% level set, very important. LCS is offering to meet this target at 85% up to October 2008. Whilst this might be a new quality target, the measurement and baseline for it were shared with LCS back in July 2007 and were unchallenged by LCS. Over the years LCS has had sufficient opportunity to develop its own quality measure but failed to provide a baseline from which a target could be set and improvement measured. An OLSCC baseline and measure for quality already existed to support a target of 90%. The case studies and report available from my 2007 audit clearly set out where improvements could be made and no evidence has been provided to suggest that these findings have been acted on or indeed the target I set was unreasonable. The data provided by my Office, identifies that if only the newer cases (6 months old at closure - the equivalent of April to October) from the 2007 audit are taken into consideration, LCS at that time was achieving 88.5% against the Q1 quality measure. I view my target of 90% as reasonable and achievable from 1 April 2008.
- (g)** The failure to include my Q3 Legal Services Ombudsman quality target at the 78% level set, I view as being of equal importance to the failure to include Q1. Whilst the circumstances influencing my reasoning for Q3 are different to that for Q1 they amount to a similar level of importance. The Q3 target has been a long-standing target and is one I would have expected to be within LCS' control by now. As already set out in my letter of 27 March, I am not convinced by the arguments LCS has for why it felt it was reasonable not to implement until April 2008, recommendations from its external review findings of October 2007. LCS has failed to act in a timely manner to recommendations that could have delivered real improvements. There is also no full commitment from LCS to meeting the Q3 target as it states this is dependent on agreeing changes with the Ombudsman on how it is measured. I view this as a reasonable target to set and indeed SRA has already demonstrated during 2007/08 that performance can be improved (up to a level of 81%) without a reliance on changes to the measure.
- (h)** I do give some weight to both LCS and SRA's failure to include the T1 and T3 timeliness targets at the level set (to have no cases taking longer than 12 months to

conclude) however, I view this as less of a failure than not including the Q1 and Q3 targets. I have given some weight to the fact that both LCS and SRA have known about this target for some time and had committed in its 2007/08 Plan to reduce rollover to zero. Achieving the commitment in the Plan would have enabled LCS and SRA to be better placed to achieve the target at the level I set. As a mitigating factor, I have taken into consideration SRA's revised position that it now expects to only have 6 cases over 12 months old, rolling over each month up to July.

- (i) I also view as important, LCS' failure to include the cost target C1 at the 6% reduction level set. I give this failure more weighting than that for Q1 and Q3 as I view achieving a reduction in the cost of handling complaints as a key factor towards securing the part of complaints handling that should be efficient whilst also contributing towards effectiveness. Complaints handling by LCS is considerably higher than that of most comparable organisations, this is not sustainable or desirable. However, whilst I have yet to see the detail, I have viewed as positive the Law Society's commitment to bring the cost of complaints handling under control.
- (j) I have viewed as positive and treated as a mitigating factor, LCS' agreement to now deliver against the Coal Health M1 target at the 93% level required by me.
- (k) The delivery of measurable benefits from initiatives continues to be of concern to me and has not progressed sufficiently since the failings I took into consideration when I made my decision on the 2006/07 Plan. I view as important an organisations ability to deliver value for money from its initiatives and that this outcome is measurable. Whilst I recognise that LCS and SRA have improved on their ability to meet milestones I have seen very little evidence of measurable benefits gained as a result of this effort. It is concerning that this theme continues to run through their fourth Plan year and I therefore view this failing not as significant as Q1 and Q3 but certainly more important than T1 and T3. I would have by now expected to move to measuring the achievement of benefits realised. I do not see the measurement of milestones as sufficient to secure effective and efficient complaints handling in the long term, particularly when often a change request can be submitted to change the milestone. This would be avoided if tangible benefits were identified and measured.
- (l) I do acknowledge that the Law Society has cooperated with me and my Office and that there has been collaborative working and dialogue with it, LCS and SRA. I am also grateful to the Law Society, and have viewed as positive its efforts to engage with me constructively during the representation process, attempting to secure potential improvements in complaints handling and committing to delivering a programme of complaint prevention. I have reflected this in the level of penalty I have imposed. However, I proposed and set my targets following lengthy discussions with both LCS and SRA and it is therefore a mixed factor that the Plan failed to demonstrate LCS' commitment to achieve many of the targets at the level I had set.
- (m) This is not a case of a penalty at the upper end of the bracket although I have in mind that this is the second occasion I have imposed a penalty. A plan was produced, some of my targets were included and the Law Society has engaged with me and my Office in a constructive way.
- (n) On the other hand there are a number of failures, and some of these, as stated, merit a good deal of weight in the balance. An adequate improvement plan plays a crucially

important part in my attempts to ensure the Law Society moves towards securing effective and efficient 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.

I have weighed the positives and negatives and followed the approach as set out above. It is with some regret that I have had to come to the conclusion that a penalty of £275,000 is appropriate. In light of the circumstances set out, I do not perceive the level of the penalty to be excessive. I take the view this is reasonable in the circumstances. I want to see a commitment towards securing effective and efficient complaints handling – a shared aim, and believe this can be achieved through the targets set.

I would be grateful if the Law Society could confirm by 13 June when it will be in position to make payment of the penalty which is payable to the Ministry of Justice.

ZAHIDA MANZOOR CBE