

ASSESSMENT OF THE LAW SOCIETY'S PERFORMANCE AGAINST THE COMMISSIONER'S 2008-2009 COMPLAINTS HANDLING TARGETS

Over the past four years my Office and I have worked closely with the Law Society's Legal Complaint Service (LCS) and the Solicitors Regulation Authority (SRA) to help bring about improvements in their complaints handling. This constructive relationship has been fundamental in helping to identify key areas for improvement by LCS and SRA and for informing decisions regarding the setting of reasonable and achievable targets.

When setting targets for the Law Society's LCS and SRA for 2008/09 I said that my key priorities for improving complaints handling for the consumer and the profession focused on improving the quality of decisions made by LCS and SRA whilst further improving and sustaining the time it takes to handle complaints, and reducing the overall cost of complaints handling. I also said at the time that the Law Society's LCS would need to commit to improving at a much quicker pace, only then can complaints handling be fit for purpose in readiness for the handover to the Office for Legal Complaints (OLC). The combination of these factors would drive up performance so that both the consumer and legal practitioner can benefit from an effective and efficient complaints handling service.

Throughout the last year I have continued to monitor the Law Society's LCS and SRA's performance against the complaints handling targets I set for 2008/09, and having carefully considered all the information provided to me, I am writing to provide you with my assessment of their performance during the period 1 April 2008 to 31 March 2009.

Summary of LCS performance against the 2008/09 targets

For the 2008/09 Plan year I set 8 targets for LCS:

- 2 were aimed at improving the timeliness with which complaints are handled;
- 2 were aimed at improving the quality of complaints handling;
- 1 was aimed at improving the handling of coal health compensation complaints;
- 1 was aimed at achieving cost efficiency savings, and
- 2 were focused on the Improvement and Equality & Diversity initiatives listed within the LCS plan.

Of the 8 targets I set for LCS, I consider that 7 were met and 1 was missed.

Summary of SRA performance against the 2008/09 targets

For the 2008/09 Plan year I set 6 targets for SRA:

- 2 were aimed at improving the timeliness with which complaints are handled;
- 1 was aimed at improving the quality of complaints handling;
- 1 was aimed at improving caseworker productivity, and
- 2 were focused on the Improvement and Equality & Diversity initiatives listed within the SRA plan.

Of the 6 targets I set for SRA, I consider that 5 were met and 1 was missed.

Below, I have set out those targets I consider to have been met and those which have not been met. In reaching my conclusions I have taken into consideration all information and performance data provided to me by the LCS and the SRA, the findings from my 2008/09 indicative and end of year audits of LCS performance against the quality target, as well as the findings from my 2008/09 quarterly audits of SRA performance against its quality target.

STRATEGIC PRIORITY 1: BUILDING ON AND MAINTAINING THE IMPROVEMENT IN THE TIMELINESS OF HANDLING COMPLAINTS.

Timeliness Target 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 would not be met if in any month, any complaints were open for over 12 months after receipt, except where there were exceptional circumstances. During the year, between 30 and 108 cases remained open for a period in excess of 12 months at the end of each month. However, many of these cases formed part of the LCS insurer's initiative, and are cases which I have already agreed to disregard from the target, providing the cases were appropriately concluded at the point of referral to the insurer's team. Included within these figures there were also a small number of cases reported by LCS as complex service matters, and a number of coal health compensation cases, which remained open due to delays within the adjudication process. Therefore, overall I consider that the complaints which remained open for a period in excess of 12 months were exceptional. Overall I recognise that LCS has made considerable improvements in the time it now takes to handle complaints and I am pleased to see that consumers are now receiving a much improved service. At the end of March 2009, there were only 43 cases open with LCS for a period over 12 months, (41 of which are insurer's cases), and taking all factors into consideration, **I consider that Target T1 has been met.**

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

LCS has reported that during 2008/09 it identified 705 matters of misconduct which it referred to SRA for further action, 497 of which it referred within the agreed 3 month deadline. I have noted that in many of the remaining cases referred to SRA outside of the 3 month time limit LCS report that the misconduct was not identifiable within the time frame. Although there were a small number of cases where the misconduct was identifiable and could have been referred within the timescale, overall, because of the improvements made in this area, **I consider that Target T2 has been met.** Going forward I would, however, encourage LCS to make sure its referral to SRA process is closely monitored by the Law Society to ensure that there are no unnecessary delays in referring misconduct matters as soon as they are identified, so that those solicitors are dealt with appropriately.

Timeliness Target 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.

During the year SRA reported that there were only 6 cases that exceeded the 12 month target. I am pleased to see that by the end of March 2009 SRA had only 19 cases open for a period over 12 months, none of which it reports has avoidable delay. Having

considered SRA's explanation for these cases remaining open, I am content that these cases remained open at the end of each month due to exceptional circumstances. I also recognise that SRA has made considerable improvements in the time it now takes to handle complaints. **I consider that Target T3 has been met**

Timeliness Target T4: All SRA complaints where there is a referral to the Solicitors Disciplinary Tribunal (SDT), from the date of receipt to take no longer than 18 months to investigate and conclude, prepare fully, and lodge with SDT, apart from in exceptional circumstances.

SRA reported that between April 2008 and the end of March 2009 it lodged 26 cases with the SDT. As all of these cases were lodged within the 18 month deadline **I consider that Target T4 has been met.**

STRATEGIC PRIORITY 2: IMPROVING THE OUTCOME OF DECISIONS ON COMPLAINTS.

Outcome of Decisions Target Q1: In 90% of closed complaints, LCS to achieve a fair and reasonable outcome with no significant case failings.

The approach taken for the 2008/09 quality target concentrated on measuring the end-to-end handling of a complaint by LCS, and moved the focus from a measure of how LCS complied with its processes and procedures to a measure of the outcome of the decision. My aim for setting this target was for LCS to achieve a fair outcome for both the consumer and solicitor through improved decision making, including ensuring that the proper procedures and guidance were followed during investigation, so that the outcome was consistent and accurate. Based on the combined findings from my indicative and end of year audits undertaken during 2008/09, I note that LCS achieved 95% against the 90% Outcome of Decision Quality target. It is pleasing to note the improvements made in this area, particularly as this shows LCS has made further improvements since the findings identified from the OLSCC Quality of Outcome baseline audit undertaken in 2007. **I consider that Target Q1 has been met.**

Outcome of Decisions Target Q2: In 90% of closed complaints, SRA to achieve a fair and reasonable outcome with no significant case failings.

Performance against this target is based on a combined measure of quarterly OLSCC audits of case files already reviewed by the SRA, the feedback received from adjudicators, and the index provided by the Legal Services Ombudsman's satisfaction of the handling of the case by SRA. The target I set for SRA during 2008/09 was for it to achieve a fair and reasonable outcome with no significant case failings in 90% of closed complaints. That is not to say each case must be perfect, far from it. There was considerable leniency before a case was deemed to have failed the target measure. However, I am concerned to note that between April 2008 and the end of March 2009, SRA achieved only 81% against the Outcome of decisions target. As this is 9 percentage points below the target of 90%, **I consider that Target Q2 has not been met.**

I am particularly disappointed by the SRA performance measured through its file reviews undertaken during the final quarter (January to March 2009). This shows that SRA met the criteria for file reviews in only 41% of cases examined. This reduced result is due to my OLSCC auditors failing a significant number of additional cases to those identified by SRA, 83% of which were due to delay, including delays in

allocation, delays in providing a substantive response and delays in progressing the case. I have noted with concern, the commentary included within the management information report for March 2009, where SRA suggested that the OLSCC audit results were being measured against a delay criteria that had only recently been developed and introduced. I should remind you that when I agreed to set a target based on the SRA's own quality measure back in February 2008, it was on the basis that all delays over one month, including any delays relating to the allocation of a file, should be identified and considered by SRA in its file reviews. During the SRA quarterly audits my OLSCC auditors noticed, and consistently reported, their concerns about the extent of, and growing increase in, allocation delay. The responsibility to improve this now rests with the SRA Board. This trend has to be reversed and I urge the SRA Board to take action to ensure this happens.

Outcome of Decisions Target Q3: 78% or more of referrals to the Legal Services Ombudsman (LSO) in which the LSO upholds the handling of the case by LCS.

LCS performance shows that it achieved only 64%, which is 14 percentage points below the target I set of 78%. LCS performance against this target area often fluctuated throughout the year ranging from 71% in April 2008 to 52% in February 2009, and I note the target level of 78% was not achieved in any month during 2008/09. Of particular concern is that LCS performance is now lower than its performance during 2007/08, where it achieved 67%. **I consider that Target Q3 has not been met.**

STRATEGIC PRIORITY 3: SUCCESSFUL IMPLEMENTATION BY THE LAW SOCIETY, LCS AND SRA OF THEIR IMPROVEMENT PLAN FOR COMPLAINTS HANDLING.

Plan Implementation Target P1: LCS and SRA priority initiatives to support the delivery of the Law Society's 2008/09 complaints handling Plan are delivered to time and cost in accordance with the Plan, and meet all related milestones and benefits to be realised.

As you will be aware I have always encouraged LCS and SRA to ensure that they have effective Project Management and governance in place to ensure their improvement agendas and initiatives are managed, controlled and delivered successfully. In declaring the 2008/09 Law Society plan inadequate I commented that the strategic objectives within the LCS improvement agenda were generally weak in terms of the benefits to be realised and many were included but were not yet costed or scoped fully. In fact, it wasn't until October 2008 that my Office received the proposed timescales for delivery, key milestones and anticipated benefits to be achieved for each of the 6 LCS improvement programmes; Improving Services; Informing Consumers; Improving Standards; Equality and Diversity; LCS People Strategy; and meeting its obligations under the Legal Services Act 2007.

I have now considered all of the work undertaken by LCS against these 6 improvement programmes shown within its improvement agenda for the period April 2008 to the end of March 2009. LCS has reported to me that it has ensured access to redress for nearly 40,000 miners and their families; highlighted the benefits of good client care to the profession by launching a national Client Care Award event; produced a client care and complaints handling guide for solicitors illustrating best

practise; and complied with a number of changes introduced by the Legal Services Act 2007.

I am pleased to see that the LCS Business Improvement Steering Committee has continually reviewed each of the LCS improvement programmes and progress against the specified outcomes throughout the year to ensure that the work undertaken continued to meet business needs. I also note the LCS decision not to proceed with its proposal to publish solicitors' complaints records. I am supportive of the concept of publishing solicitors' complaints records as I believe that consumers should be able to access a wide range of information on firms and individuals before they appoint a solicitor. However, I am of the view that the publication of upheld adjudicated decisions only would have provided limited value to the consumer, and in isolation, it would be difficult for consumers to use this information in helping them make an informed choice. Based on the information reported to me to date by LCS, I can see that action has been taken on the majority of activities listed within the agreed deadlines, and in light of this action **I consider Target P1 has been met by LCS.** I have also considered the work undertaken by SRA during the period April 2008 to the end of March 2009 against the improvement programmes identified within the 2008/09 plan. I have noted the information reported to me to date by SRA, and can see that in the main, action has been taken wherever possible, on the majority of activities listed. In light of this information **I consider Target P1 has been met by SRA.** I am pleased to see that in terms of the Decision-Making Project, an audit of existing decision making was completed across all business units and actions have now been agreed to ensure greater compliance with the 11 principles of regulatory decision making which the SRA Board approved after public consultation. With regard to the Process Standardisation Project, while noting the challenges faced in securing funding for the introduction of a new IT system, I note that the changes SRA made to its systems, to cope with Entity-Based Regulation, allowed this to go live in January 2009, and I have also noted that the web strategy solution project, to select a new web content management system is now underway.

Plan Implementation Target P2: Within the Plan year 2008/09 to meet their delegated statutory Public Duty, LCS and SRA to comply with the Law Society's Public Duty requirements on Equality and Diversity (E&D) including addressing all recommendations made in the LCS E&D audit report May 2007 and the SRA E&D audit report October 2007.

I am grateful to the LCS for providing me with details of the actions it has taken during 2008/09 to address the recommendations made in the LCS E&D audit report of May 2007. I have noted that LCS has reported to me that it has identified and impact assessed high risk policies and processes, delivered training and analysed on a regular basis the complainant's database. Throughout the year my team has continually assessed LCS progress against this target on a regular basis. I still believe there is more work to be done to embed Equality & Diversity into the practises of LCS, however, on the information provided **I consider that Target P2 has been met.**

I have also considered the work undertaken by SRA during the period April 2008 to the end of March 2009 to address the recommendations made in the SRA E&D audit report dated October 2007, and I have noted the achievements reported to me by SRA. I am pleased to see that it has introduced an SRA E&D Strategy, including implementation of an action plan to deliver against this. I am also pleased that it has

now raised the profile of E&D across the SRA to recognise the diversity that exists within its organisation. I have noted that SRA has implemented the collection of E&D data on both Solicitors and Informants, undertaken impact assessments of a number of processes and policies and has now introduced a Protocol for dealing with complaints of discrimination against the SRA. As with LCS, I also believe there is more work to be done for SRA to be compliant with its E&D responsibilities. However, based on the information provided to me by SRA **I consider that Target P2 has been met.**

STRATEGIC PRIORITY 4: IMPROVING COST EFFICIENCY TO THE HANDLING OF COMPLAINTS.

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

Based on budget information LCS has reported to me its average cost per complaint was £1,839. This is £113 (6%) below the target level cost I set and **I consider that Target C1 has been met.**

Cost Efficiency Target C2: SRA to deliver during the Plan year a 5% efficiency in caseworker productivity and achieve on average 5.64 closures per caseworker.

Between April 2008 and the end of March 2009 SRA reported that it was performing at an average of 6.6 closures per caseworker. This is 0.96 closures per caseworker (17%) above the target I set and **I consider that Target C2 has been met.**

Coal Health Compensation (CHC) Target M1: For cases received after 1 July 2008, LCS to fully investigate and inform the customer in at least 93% of cases; of Adjudication as an option to conciliation; the seriousness category of their complaint and likely size of award at adjudication; the amount of distress and inconvenience likely to be due in addition to any financial loss.

The results show that in cases opened and closed between 1 July 2008 and 31 March 2009 LCS achieved 97% against the target of 93%. **I consider that Target M1 has been met.**

Conclusion and forward look

Overall, I consider 7 of the 8 targets I set for LCS, and 5 of the 6 targets I set for SRA for 2008/09 have been met. I welcome the improvements made in timeliness and the efforts made by the Law Society's LCS and SRA towards achieving these improved performance levels. This is certainly good news for the consumer and the profession.

Looking ahead as the LCS nears closure and prepares for handover to the OLC, my key priorities for improving complaints handling for the consumer and the profession, continue to focus on improving and sustaining timeliness and reducing the work in progress levels. As you are aware I have already set targets for the LCS to reflect these priorities and have made five recommendations for the Law Society, LCS and SRA covering the period 1 April 2009 to 31 December 2009, details of which were set out in my letter to you of 25 February 2009.

It is important that the Law Society and the LCS continue to sustain the improvements already made in relation to the time taken to investigate and conclude a complaint so

that there is no unnecessary build up of its work in progress before the establishment of the OLC. I consider the targets I have set for this final year are reasonable, realistic and achievable. I believe the targets set and recommendations I have made will assist the Law Society's LCS and SRA towards delivering the complaints handling service the consumer and profession expects. I will continue to monitor progress against these targets to help the Law Society ensure they are delivered.

If you wish to discuss with me personally any aspects of this letter, please do not hesitate to contact me.