

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

I wrote to you on 12 June 2007 to set out my provisional view on the Law Society's efforts to implement its 2006/7 plan and to seek any representations it may wish to make. I thank the Law Society for its written and oral representations, dated 22 June and 5 July 2007 respectively, and for the additional written representations received 27 July and further information received on 16 August in relation to the handling of Coal Health Compensation complaints.

Complaints are handled in the Law Society by either the Legal Complaints Service (LCS) or the Solicitors Regulation Authority (SRA). To clarify, throughout this letter, where I refer to the Law Society, it also includes work of the LCS or SRA.

Dealing initially with the handling of Coal Health complaints, I had requested further information on the handling of these complaints due to the lack of clarity available in relation to the counting and handling of these cases and, why a number of investigations had been suspended. This lack of clarity meant that I was unable to be certain that the reported performance against the timeliness targets in the Law Society's improvement Plan had been achieved. I am very disappointed that the Law Society has not complied with the spirit of the counting rules as agreed with me. As set out in my letter of 6 July 2007, one of the agreed counting rules for a complaint is that it should be investigated or adjudicated before closure. In addition, the Law Society confirms in its Plan for 2006/07 (and also for the Plan covering the previous year) that "*In the meantime, until agreement, there will be no change to the counting rules in relation to when a complaint is closed*" (page 19). The counting rules have been in force for some years now and are understood well by both our organisations.

However, the Law Society's breach of these counting rules in the plan year in question does not impact on the age profile of cases to the extent that its performance against the timeliness targets would not be met. Taking this into consideration, I have decided to consider this matter separately and have not included this in my final decision for 2006/07 on whether the Law Society handled complaints in accordance with its Plan. It will therefore not be necessary for the Law Society to provide further oral representation on this issue. The way in which Coal Health complaints were, and are being, handled continues to be of great importance to me and I will be writing to you separately about this matter. I also await the outcome of my teams current audit into these cases, which will form part of my overall consideration into how complaints were handled during 2007/08.

I have taken into account all other representations made to me along with the other factors I referred to in my letter of 12 June 2007 and, although it is regrettable, my decision is that the Law Society has failed to handle complaints in accordance with its 2006/07 Plan. My decision has been reached in consideration of the specific circumstances of this year's performance by the Law Society, against its Plan.

In both its written and oral representations the Law Society emphasised 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. I would like to assure you that the effort demonstrated by the Law Society to meet its targets during 2006/07 has been recognised fully and taken into consideration, and I acknowledge that in parts it is becoming an improved complaints handling organisation. However, 2006/07 marks for the Law Society the end of the second plan year for improving complaints handling. Whilst I recognise and welcome the improvements that have been made, I am disappointed at the pace of progress being made and that performance is not where I would have anticipated it should be at this stage. I have set out below my assessment and views leading to my final decision.

I will begin with those areas where I have seen either the target being met, exceeded or performance sustained.

### **Strategic Priority 1 - improving the speed with which complaints are handled**

As stated in my provisional decision letter, I welcome the improvements made in timeliness, 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 have considered carefully the representations made to me on the achievement of the target to have no more than 65 cases open over 15 months old. While I do not agree with the Law Society's view that the cases identified by my Office on audit as inappropriate closures were closed appropriately, I do appreciate its point on the extrapolation of the information gathered from the sample used for audit and the ability from this to then definitively determine whether the target is met or not. Taking this into consideration and the encouraging improvement made in this area, which on behalf of the consumer I have been seeking for some time, I have decided to treat this target as met.

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 sustain that improvement. Sustaining improvement in all areas is something I will be placing great importance on over the coming year, I expect an organisation now out of its second plan year of recovery to deliver sustained performance and achieve all of its targets.

### **Strategic Priority 2 – improving the quality of complaints handling**

My expectations regarding improving quality and the Law Society's ability to meet the targets were based on two factors, the first being that the targets relate to the Law Society'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 Law Society's to its own standards. I am therefore extremely disappointed that the Law Society's efforts to improve its quality of complaints handling has resulted in it failing to meet the majority of the quality targets set and agreed with it for 2006/07. As I set out in my provisional decision letter, I attach considerable weight to these targets not being met.

However, I have taken into consideration that two of the quality targets were exceeded, 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. I have viewed this achievement as positive and have given due weight in my consideration. As before I am expecting over the coming year that this performance will be improved to the target level set for 2007/8 and sustained.

In concluding my decision on those targets I view as not met, I have considered all representations made by the Law Society and any additional information provided to me has also been carefully reviewed. As already stated the Law Society failed to achieve the majority of its quality targets. These targets were intended to ensure that consumers receive a consistent service and are able to make informed decisions.

Overall I conclude that 4 out of the 6 quality targets were missed and I will go on to explain the weight I have attached to these in making my decision on whether the Law Society has acted in accordance with its Plan.

#### Quality Target Q2 – Substantive Response

I have already acknowledged in my provisional decision the narrow margin (78.5% against a target of 80%) by which performance against the Q2 Substantive Response within 55 days target was missed. I have also considered carefully the Law Society's representations in this area including that it was working to a target of 60 days up until the end of July 2006. I did remind the Law Society in my provisional decision and at the oral representation meeting that the Law Society itself proposed the target of 55 days to me. I therefore consider 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. The Law Society question, in its representation to me, the outcome of audit results from my Office and believes that some of the failed cases in fact should have been passes. My Office has reviewed the information provided by the Law Society and from its own audit information, and has confirmed that performance against the target remains unchanged. As you are already aware, the OLSCC audits are conducted in line with recognised industry standards and the audit methodology is outlined in the technical appendices accompanying all audit reports. I continue to consider this target as not met but having taken all available information and factors into consideration, I have decided not to take it into account in my final decision of whether the Law Society has handled complaints in accordance with its Plan.

The three remaining targets below were all missed by a significant margin. I have therefore given weight to these failures in coming to my final decision.

#### Quality Target Q1 – Special Payments

The Law Society itself accepts that it missed the Q1 Special Payments target by a substantial margin, 48.4% against a target of 80%. I note the Law Society's view that since April 2006 there has been some improvement but the level of improvement achieved in-year is low when compared to what would have been required to meet the target. The Law Society questions the outcome of audit results from my Office and believes that some of the failed cases in fact should have been passes. My Office has reviewed the information provided by the Law Society and from its own audit information, and has confirmed that performance against the target remains unchanged. As mentioned before all OLSCC audits are conducted in line with industry standards. Although the Law Society accept that the target was missed by a substantial margin, it does not view as a significant failure those cases where the error was due to inadequate paperwork, as it believes the outcome could have been right and the customer not disadvantaged. However, in my view this is significant, without the evidence of paperwork, the full extent to which a consumer is disadvantaged is not possible to determine. I wish to remind the Law Society that as part of developing the Plan it agreed the target measure, which included evidence being required on the file.

The Law Society will recall that I made recommendations concerning the application of the Special Payments policy as far back as July 2005. I am of the view that the Law Society could have done more in-year to achieve this target, its own internal audit findings identified recurring errors and made repeated recommendations for improvement. I would have expected the Law Society to have reviewed its own audit recommendations and identified why the expected improvement was not being delivered. Despite the Law Society reporting that actions to address my concerns were implemented, there still

seems little certainty that consumers are receiving the Special Payments to which they may be entitled.

#### Quality Target Q3 – Consumer/Informant Contact

I have considered all the representations made in relation to target Q3 Consumer/Informant Contact and remain disappointed that performance was not at the level expected 61.9% against a target of 80%. The Law Society in its representations questions the outcome of audit results from my Office and believes that some of the failed cases in fact should have been passes. My Office has reviewed the information provided by the Law Society and from its own audit information, and has confirmed that performance against the target remains unchanged. Once again, all OLSCC audits are conducted in line with industry standards. Indeed the Law Society itself accepts that even when taking into account its own assessment of performance, this target would still not have been met. As previously stated, my Office set out the target measurement at the beginning of the Plan year, agreed with the Law Society, and this has been applied consistently when measuring this target. I therefore remain of the view that performance against this target constitutes a significant failure however it is measured.

I view improvement in this area to being key for the consumer as it enhances the communication received by them and also ensures that cases receive some action to progress them at least once a month, or at key stages to reach early resolution. It also provides a good mechanism and opportunity for managing the consumer's expectations. The Law Society's failure to achieve this target is a further setback to achieving improved customer service.

#### Quality Target Q6 – Legal Services Ombudsman (LSO) Index

I attach considerable importance to the achievement of the Q6 target, which measures the number of cases, upheld by the LSO. This measure provides an independent scrutiny of the management of cases by the Law Society. 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 represents 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.

For some time now and in its representations, the Law Society has been telling me that its focus on closing older cases is resulting in a drop in performance against this target. It 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 the Law Society has 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 find the slow pace of improvement unacceptable.

#### **Strategic Priority 3 – implementing the plan for complaints handling**

Overall, the Law Society has performed better in its efforts to implement its Plan than in its efforts to improve quality. I welcome the Law Society's move to restructure its organisation to enable it to better deliver its complaints handling service. It has demonstrated that during 2006/7 it has had improved awareness over its budget expenditure, resource utilisation and its reporting against its Plan. I regard the targets for these three areas as met.

The picture is not as positive in relation to how the Law Society has delivered its initiatives. For some years this has been a particular area of weakness within the Law Society. Because of this, 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. However, I am encouraged to see that restructuring within the Law Society and the appointment of Boards in January 2006 has included wider improvements to be delivered during 2007/8. Recognising that the initiatives included in the 2006/07 Plan were more business as usual changes and not necessarily substantive in nature, there still seems to have been little or no project assurance to identify that action on CHIP05 (quality improvements) needed taking early in the Plan year when results were poor. My view is that the Law Society should have taken action much earlier when it realised that its actions were not having the desired effect for improving performance on quality.

Although I remain of the view that the P3 target was not met, I have taken into consideration the Law Society's representations and I have given due weight to the fact that of the 9 initiatives implemented, only 1 failed to be delivered although it was in part delivered. I have therefore decided not to take this specific failure into account in my final decision of whether the Law Society has handled complaints in accordance with its Plan.

## **Recommendations**

I explained at the beginning of my letter that whilst I was disappointed with the way in which some Coal Health complaints had been handled, I would not be taking this into account in my final decision. However, I am raising a specific aspect of the handling of these cases in relation to the recommendations I made in July 2006 following the audit by my Office, which has always been a factor in my decision. Whilst I recognise that some action has been taken against most of the recommendations I have made over the 2006/07 Plan period, I do remain concerned about the time taken or lack of action taken against some of my recommendations. I specifically referred to, in my provisional decision letter, the recommendation relating to the handling of Coal Health Compensation Scheme cases. The Law Society has repeatedly refused to revisit those cases where it did not complete a full investigation into the Inadequate Professional Service issues. I note the Law Society's reasons for not taking action, which include resource requirements, some details of which were only provided to me on 29 June 2007 – nearly a year later. I am 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. After all, the Law Society failed to handle these cases as well as they should have done.

What I find unacceptable is that so much time has been lost since I first made my recommendations, which the Law Society states 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 believed this was the right course of action to take for the benefit of those consumers affected. Had these cases been actioned soon after I made my recommendation, the timing and capacity of the Law Society could have enabled it to revisit those cases relating to my recommendation.

I am of the view that Miners would have been better served if those cases not handled properly by the Law Society were first corrected before encouraging new complaints – this is 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 and anything less is unacceptable. I have taken this failure to action my recommendation as a consideration in my decision.

## **Other factors**

I have included, as a factor in my final decision that around 1,000 fewer cases were received by the Law Society than forecast by it over the year and this should have provided spare capacity once resources were at planned levels. I have also taken into consideration the Law Society's representations in this area, including that lower receipts does not automatically mean that the fixed resources can be used to achieve approximately the same number of extra closures.

## **Formal Decision on the Law Society's 2006/07 Plan**

Overall I have been disappointed at the slow pace of improvement in key areas such as quality. The achievement of a good quality service is fundamental for any organisation aiming to become effective and efficient in its operations. This failure has also had an impact on the level of the targets I was able to set for 2007/08 and the targets being lower in some areas than I had planned. By the end of 2007/8 (the third plan year for improvement), I expect the Law Society to be meeting all targets at the level set and then sustaining that pace of improvement.

As the regulator, through the targets I set and the requirement of a plan, my aim has always been to see the Law Society become an effective and efficient complaints handling organisation. I believe the encouragement I have provided, together with the effort and commitment demonstrated by the Law Society and its Boards has been a further force for improvement during 2006/07. However, I know we all acknowledge there is still more to do. In my view the pace of improvement should have accelerated by now.

My final decision takes account of both the written and oral representations made by the Law Society, all positive improvements made this year, and any failures. I believe my decision to be fair and balanced based on this information.

For the purposes of Section 52 (3) (b) of the Access to Justice Act 1999, I declare that the Law Society has failed to handle complaints in accordance with its Plan for the period 1 April 2006 to 31 March 2007. I propose now to proceed to consider whether to impose a penalty and if so in what sum. As the responsibility for the payment of any penalty rests with the Law Society as the Professional Body, I will be writing to the President of the Law Society to let him have my decision on this matter and confirm whether it wishes to make written or oral representations.