

LAW SOCIETY PLAN FOR COMPLAINTS HANDLING FROM 1 APRIL 2005 TO 31 MARCH 2006

Over the last twelve months I have been monitoring the Law Society's efforts to implement all aspects of its complaints handling Plan for the period 1 April 2005 to 31 March 2006. In doing this, I have taken account of all of the information provided, including the monthly management information reports which the Law Society produces, feedback at the monthly and quarterly meetings, letters and reports and information supplied during the last few months.

In my letter to the Law Society when I accepted its Plan for 2005/06 as adequate, (16 May 2005), I said that I had listened carefully to representations from the Law Society about what it could achieve given where it was and its capacity. My view was that if the Law Society acted in accordance with its Plan, it would be a small step towards achieving effective and efficient complaints handling.

I let the Law Society know at the beginning of the plan year that, in coming to a decision on whether the Law Society has acted in accordance with its 2005/06 Plan, I would be taking into account all factors and circumstances relevant at the time, including:

- how many targets are missed, how close the Law Society is to achieving them and how it has performed on the other targets;
- the volume and nature of cases that the Law Society has dealt with compared to the numbers expected in the Plan;
- progress made in implementing the improvement initiatives in the Plan and any recommendations made by me;
- whether the resources envisaged in the Plan have actually been deployed;
- whether there is any evidence that the Society is making all reasonable efforts to carry out the Plan in a committed and positive way; and
- any representations made by the Society.

This letter sets out my provisional views on the Law Society's efforts to implement its 2005/06 Plan against these factors. Having carefully considered these factors, I am currently minded to declare that the Law Society has failed to handle complaints in accordance with its Plan for 2005/06. I wish to give the Law Society the opportunity to make any representations before I make my final decision on this.

If I decide the Law Society has not acted in accordance with its Plan, I will then need to consider whether it is appropriate to impose a penalty and if so, in what sum. Before requiring the Law Society to pay any penalty I will give it a further opportunity under section 52 (4) of the Access to Justice Act 1999 to make representations.

- **How many targets are missed, how close the Law Society is to achieving them and how it has performed on the other targets**

The Law Society has missed 4 of its 7 targets for 2005/06. Of the other 3, it met and exceeded them.

- **Strategic Priority 1 – timeliness of resolving cases**

The Law Society has missed 2 of its 5 timeliness targets – by 1% on the percentage of complaints closed within 12 months, and by 3% for cases closed within 18 months. It has met and exceeded its targets for closing cases within 3, 6 and 9 months.

The 18 months target (98%)

The Law Society achieved 95% on this and missed the target.

I have considered the representation set out in the letter of 27 May 2005, and subsequently, about the problem in meeting 98% due to the numbers of cases in the over 18 months category as at that date, (that the target could only be met if the Law Society deliberately chose to avoid closing cases). I will have to consider carefully whether this problem affords an absolute excuse for what is a matter of fact a failure to act in accordance with commitments in the plan. I am minded to find it does not.

I gave notice of the targets I was minded to set in September 2004. I was, and am, disappointed that the Law Society let itself get into the position it did by 27 May 2005. In particular, the Law Society was advised on a number of occasions that it would need to take action early. Indeed, on 5 August 2004 I wrote to the Law Society and emphasised that *“you have another eight months in which to make further inroads before the start of the period that is to be targeted”*.

I do not believe the Law Society made enough effort to reduce its over 18 month old cases, or those rolling into this age band, during that period. The Law Society only reduced its over 18 month old cases by 24 in the seven months between September 2004 and April 2005, (from 587 in September 2004 to 563 at the start of April 2005).

In responding to the Law Society’s concerns about this, (and the assurance it sought that I would not take punitive action), I asked for information about the solutions being proposed to address the older cases. I also made clear that in assessing performance I was interested not only in performance but positive action to improve service and overcome issues. At a subsequent meeting with the Law Society in October 2005 to discuss this issue, the question of available resources was discussed, together with the need to assess which were the right levers to pull to have the maximum impact. Following that meeting, on 7 October 2005, I said I would take the Law Society’s action into account when considering whether or not it had handled complaints in

accordance with the Plan. Soon after I received a letter from the Law Society setting out its approach to tackling its older cases.

In that letter (17 October 2005), the Law Society set itself a goal of 4% of annual closures from the over 18 months old category, and a goal to reduce its monthly rollover into the over 18 month group of less than 30 cases. The Law Society further reported that it had set itself a target to reduce its live cases by March 2006 to 378 cases in the 13–18 month age group and 310 cases in the over 18 month age group.

I note however that the Law Society did not meet its own lower targets, (there were 418 cases in the 13 to 18 month age group and 338 in the over 18 month age group at the year end). Nor did it reduce the number of cases rolling into the over 18 month age group to less than 30 a month, (this roll over averaged at 46 a month during the year and was 57 in March). This also means it did not meet its target for 4% of closures coming from the over 18 month age group.

I accept the Law Society took action, in formulating a strategy. This makes a difference. However, I would have expected the strategy to have been produced earlier, (it was not until October 2005 I was given details of the action being taken). It is also disappointing that the Law Society set itself internal targets but missed them.

In terms of the action which the Law Society said it would implement in its letter of 17 October, there are key areas where I am not clear that implementation actually took place. For example, the Law Society reported that it would introduce additional resource to handle new and more straightforward cases and release other staff to focus on older and more complex cases. However, the Law Society only reached its full staffing complement in September 2005. At no time over the remainder of the plan year did the Law Society have even enough staff to make up for this initial, and significant, shortfall, without then recruiting other additional numbers above this as stated in the letter. The Law Society also reported in this letter that caseworkers would be refocused on those cases likely to roll into the over 18 month category. The monthly management information I receive does not seem to support the fact that this happened. Another area that the Law Society stated it would address in this letter was tightening its control on failures to reply. While I am aware that some emails were sent out encouraging caseworkers to use the failure to reply procedures, I have little information that the Law Society improved these procedures.

That said, I recognise that the Law Society has reduced the number of cases it has which are over 18 months old from 563 in March 2005 to 338 in March 2006. I am pleased that, albeit after a delay, the Law Society started to make progress on its older cases, though still not to the extent required to meet the Plan's, or Law Society internal, targets.

Overall, I am minded to find the failure on this target has contributed to a failure on the part of the Law Society to act in accordance with its Plan.

- **The 12 months target (92%)**

The Law Society missed this target. I believe there is an important link between the Law Society missing this target and its effort to implement parts of its complaints handling Plan, particularly with relation to its resources, and I shall return to this later. Though it missed it by only 1%, I am minded to rely on it as a factor in the decision I will need to make, overall, on whether the Law Society acted in accordance with its Plan. In doing so, I note the fact in the last quarter of the year that the Law Society was exceeding (at 93%) the target.

- **Strategic Priority 2 – customer satisfaction with service (68%)**

The Law Society has missed its target for satisfaction with its service by 7% and its tolerance band by 4%. The tolerance band was included to take account of the Law Society's representation to me on the target levels.

At the beginning of the year I was disappointed that the Law Society started off by reporting its performance to stakeholders in this area against the tolerance band, and not the target. I was concerned that it could be perceived that the Law Society was aiming for the lowest denomination, the tolerance band, and not the target set.

The Law Society has, on a number of occasions, referred to the link between the outcome of a case and a customer's satisfaction with service. There are a range of views about the impact which the outcome of a case may play in a customer's satisfaction with service. However, I believe this is only one factor in the overall picture. Both the Law Society's own research (mentioned below), and comments from the Law Society's Independent Commissioner in his Valedictory Report, October 2005, highlight the additional action which the Law Society can take to influence satisfaction with service. Whilst Sir Stephen Lander recognises the link between service and outcome in his report, he also states that:

“changing the culture from one that is focussed 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 Consumer Complaints Service as consumer aware as it needs to be.”

In a meeting in September 2005 the Law Society reported to me that it did not think it would meet the customer satisfaction target because it believed *“the make-up of CAI cases makes this unlikely, because the majority of cases are closed without further action or because of insufficient evidence”*. At this meeting, my Office asked whether the Law Society had analysed these links and the Law Society confirmed it was doing this, although the findings were not shared with my Office until March 2006, by which time the work could not impact on performance in year. This research, which looked into cases closed by CAI in 2005, found that there were improvements that the Law Society could make which could increase a customer's satisfaction with its service

separate from their perceptions about the outcome of their case. This included keeping the complainant informed, clear communications and managing a customer's expectations.

I would have expected greater effort to meet this target from an organisation so far behind in this area throughout the year. For example, the Law Society noted in the monthly meetings with this Office that the area in which it really needed to improve was CAI, (monthly meeting notes, September 2005). However, I can see little evidence from the Law Society that it made efforts to improve performance in CAI. A striking example, particularly with relation to the outcome of its research as noted above, is that no customer service standards were developed for this part of the Law Society.

In addition, after my initial encouragement about the fact the Law Society had developed and published customer service standards for CCS, I was concerned that it later reported to me that these were only "*aspirational*", despite it sending these to every complainant and putting them on its website. Surely it can only have a negative impact on customer satisfaction if a consumer has their expectations raised, and then not met?

In conclusion, I am yet to be convinced that the Law Society sufficiently considered further options, except for some additional customer service training, as to how it could meet this target and improve its service for consumers. I am not aware that the Law Society has evaluated the impact of this training.

- **Strategic Priority 3 – quality of decisions (70%)**

The Law Society has missed its quality of decisions target by 3%, but is within the tolerance band by 2%. This means that, of the people who are not happy with the service they have received from the Law Society and who go to the Legal Services Ombudsman, (LSO), the LSO was not satisfied with the Law Society's handling of the complaint in over 3 out of 10 cases.

As with satisfaction with service, I was disappointed that the Law Society started to report its performance in this area to stakeholders against the tolerance band, and not the target.

The Law Society has missed this target, but I wish to consider the efforts that it has made to improve its quality of decisions performance. On that, I have not yet seen evidence that the Law Society considered additional ways of meeting this target during the year, for example through use of its under-spend. This is despite a comment from the Law Society's Commissioner in October 2005 that "*I continue to believe that there is more that could be done to improve the consistency and accuracy of work.*"

Although in my present judgment this was a failure to act in accordance with the Plan, as the tolerance band was met I will not levy a penalty for this failure.

- **The volume and nature of cases that the Law Society has dealt with compared to the numbers expected in the Plan**

Over the period 1 April 2005 to 31 March 2006, the Law Society received 18,299 new cases. This was 5.4% above its forecast of 17,357 and within the Law Society's own tolerance level of +/- 10%. I note that the Law Society closed 18,840 cases, 0.5% above its forecast.

The Law Society has reported that this increase in receipts against forecast is because of an increase in Coal Health Compensation Scheme cases and Investment Business cases. Without these cases, (1,792 in total), the Law Society would have received fewer cases than it forecast. I do not believe that the increase in these cases should have had significant adverse effects on the Law Society's performance and I note that the Law Society agreed with this assessment in the monthly meetings. In fact, the nature of the cases, and the number that can be summary closed or outsourced, will have enhanced the Law Society's ability to meet some of its timeliness targets.

- **Progress made in implementing the improvement initiatives in the Plan and any recommendations made by the Commissioner**

The information I have received shows that the Law Society has taken some action on the majority of initiatives outlined in its Plan. This is positive.

However, I am disappointed at the way in which some of these initiatives have been managed and implemented, particularly the Law Society's approach to assessing whether the initiatives have met their objectives. I believe the use of assessment techniques, including post implementation evaluation, is important, and not just to have information for information's sake. Understanding whether an initiative has or has not delivered on its objectives enables an organisation to refocus its efforts to identify where any further improvements are needed. In other words, knowing what doesn't work is as important as knowing what does. For example, the Law Society has said that the report writing pilot has not made any difference to the time it takes for a report to be written. As long as the Law Society uses this information to consider how the pilot can be improved, it concerns me less than where I have been advised that its changes have made improvements, for example in productivity – but where there seems to be no attempt to analyse this.

There is one initiative in particular where it seems that what was delivered was not what was in the Plan. This is the initiative to reduce the response time of solicitors to reply to the Law Society. In its Plan the Law Society proposed to reduce solicitor delay by changing its processes and procedures to better implement solicitor deadlines on the longer dated complaints. The need for this work was outlined both by audits by this Office and by the Law Society's own audits. I also formally recommended to the Law Society in September 2004 that it should *“develop a more systematic approach to setting deadlines and monitoring timescales for replies by solicitors to requests for information.”* However, the Law Society reported later in the plan year that it would not be developing new procedures after all and would instead focus on ensuring staff

were using the old procedures correctly. I am concerned that the Law Society did not sufficiently investigate whether the use of the existing procedures was the most appropriate way forward, particularly as, in a letter of 23 September 2004, the Law Society had reported to me that its staff were already using the existing procedures as effectively as they could and that *“our performance reflects this improvement at the front end of our process.”*

Under this section, the Law Society, in its Plan, committed to ensuring that data is collected, recorded, managed and reported in an accurate and timely manner. As you know, I have previously raised concerns about the mis-reporting identified by my Office, which took place against the customer satisfaction target for 3 months, but as this was later rectified by the Law Society I shall not include this in any decision I come to.

- **Whether the resources envisaged in the Plan have actually been deployed**

The Law Society will already be aware of my concern that it has been, on average, the equivalent of 9.9 full-time staff down each month over the plan year. Over the first 5 months of the plan year this increases to the equivalent of 25 full-time staff a month. If these vacancies were all caseworker vacancies, and on the basis of the Law Society's average productivity, the Law Society could have cleared nearly an additional 900 cases over the course of the year. In my recommendations to the Law Society in September 2004 I recommended that it should *“seek to fill existing vacancies and rigorously maintain staffing levels within those areas that handle complaints or related matters where vacancies can adversely affect performance.”* This does not seem to have happened and the Law Society seems to have delayed taking action to recruit to its full complement, though I note that since September 2005 the Law Society has, apart from in December 2005, met its required staffing levels. Being staffed at the levels that the Law Society outlined in its Plan was an underlying assumption for the Law Society.

I note the Law Society's feedback on recruitment that it looked to set up extra teams in London. However, I am still not clear how the Law Society planned its recruitment, taking account of its staff leavers as well as its existing vacancies. I believe that being under staffed has impacted adversely on the Law Society's ability to meet its targets and implement its Plan, both with relation to the number of cases it could clear and the resource required by any support work aimed at improving customer satisfaction or quality of decisions performance.

The Law Society reported that it would invest an additional £4.7 million in the plan year compared to the previous year to improve its systems and processes. However, it finished the year with an under-spend of over £3 million. This is particularly concerning considering that it has missed targets. I understand the Law Society did spend a small amount of its money on additional activities that were not listed in the Plan, for example on the Mary Guber training, (although I do not believe there has been any evaluation on the impact of this). However, the under-spend includes this spending and I

cannot see any evidence showing that the Law Society has considered what additional actions it could take with this money to meet its targets and why it decided not to do these.

Although the Law Society did increase its use of outsourcers towards the end of the plan year, in January 2006, it is unfortunate it did not happen sooner and that the Law Society did not consider earlier how it could use its underspend to meet its targets. This is a factor I propose to consider. The Law Society also increased its use of Local Conciliation Officers in October 2005, after I recommended it consider this in June 2005.

- **Whether there is any evidence that the Law Society is making all reasonable efforts to carry out the Plan in a committed and positive way**

It will be apparent from some of my comments where I have at times been disappointed that the Law Society has not been more proactive at considering how it can make improvements to its complaints handling service and achieve better performance against its Plan. For example, in considering how it could meet its shortfalls in staffing or in considering other ways of increasing its resource. On the other hand, I have been pleased at the working relationship that has developed between my Office and the Law Society, and the Law Society's increasing willingness to share information it has with my Office. The Law Society has made itself available and provided information to support the monthly and quarterly meetings and the recent information gathering exercise.

- **Any representations made by the Society**

In coming to my final decision on whether the Law Society has acted in accordance with the Plan, I wanted to give the Law Society the opportunity to make any further representations. To that end, I would be grateful to know whether you intend to make any, with a view to receiving representations by 9 June 2006.