

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

Thank you for submitting the Law Society's final Plan for complaints handling for the period 1 April 2006 to 31 March 2007. I have considered carefully the contents of this Plan to assess whether in my view, it is adequate to deliver against the targets I have set and bring about improvements such that it is adequate for securing that complaints are handled effectively and efficiently. In reaching my decision I have taken into consideration representations made by the Law Society. I have been encouraged by the joint working between both our offices during the development of the targets and this Plan. It is for this reason in particular, that I am disappointed to have to notify the Law Society that I have considered that its final Plan for securing effective and efficient complaints handling is inadequate. I have summarised below the reasons for my decision.

Targets Set by the Commissioner

Timeliness T1: no cases over 15 months at 31 March 2007

The Law Society has failed to include in its Plan the target I set and instead has included its own target of no more than 350 cases over 15 months at 31 March 2007. These and other targets were set to bring the Law Society closer to an effective and efficient complaints handling business. They are in my view a necessary part of an adequate plan.

I believe that the target I set was a rational and reasonable one. It was also made clear in the letter dated 24 February 2006 from my office to the Law Society that in the event that particular cases have been open for 15 months or more by the end of March 2007, I may ask my staff to review each case to help me assess what the reasons were for the case not having been closed and whether those reasons are indeed acceptable in the circumstances.

The Law Society, in its response to my proposed targets paper, on 16 December 2005 suggested the setting of a target of no more than 300 cases open. It gave some examples and case studies of situations where cases could legitimately remain open beyond 15 months. Accordingly, my office reviewed these case studies. It found that a major part of the cause was delay on the part of the Law Society itself, not third party organisations. That delay either pushes the decision about whether to close a case too far down the process or alternatively in most cases does not give third parties sufficient time to react to a request. I want the Law Society to manage its casework proactively and believe this is key to meeting the target.

In addition, the OLSCC model used to inform my decision on this target showed statistically that no cases over 15 months was reasonable. I do not believe the model to be unsound and, whilst noting the suggestion of your Boards about modelling for the future and a joint approach, I am aware that you have not suggested that our model is deficient. I think I am entitled to have regard to it.

I have however listened to the Law Society. It has not shown to my satisfaction why its cases will take longer than 15 months to conclude, but I am prepared to accept that by exception a small number genuinely outside of the control of the Law Society or in the interests of the particular consumer might fall outside of 15 months. For this reason I am prepared to reflect

this small exception in the target I have set. The target T1 will therefore now be set at “no more than 20 cases which for legitimate reasons as assessed by the Commissioner, are over 15 months”.

Timeliness T2: 94% of cases closed within 12 months

The Law Society has failed to include in its Plan the target I set, and instead has included its own target of 92% of cases closed within 12 months.

I am of the strong view that the target set by me is reasonable and can be achieved by the Law Society.

As previously explained the 2% difference would be achieved by the Law Society making an early intervention in just 400 additional cases; against case receipts in-year of around 20,000 this seems quite reasonable.

The Law Society has suggested that this would be difficult to achieve but has not provided sufficient evidence to demonstrate this or to show it is unachievable. It is a question of intervention and the Law Society managing its own workforce, to achieve a target within the Law Society's own control. The Law Society has used outsourcing and Local Conciliation Officers to intervene in cases previously, therefore if either is required in the short term to offset recruitment issues (despite the absence of evidence of forward planning by the Law Society on this since the targets were set) that can be done.

The Law Society stated in its letter to me dated 10 March that the 400 case closures required to meet the 94% timeliness target “would require the building of a profile of common characteristics” and that the prioritisation and tracking of these cases was not realistic. First, the Law Society has already been profiling and identifying cases with its outsourcing work. Secondly, it also states in response to my comments on the draft plan v.2.0, that its Casework Management Tool enables staff to proactively track and manage their caseloads, viewable also by the Team Leaders who assist in tackling the targeted files. This is not something new for the Law Society; this sort of prioritising work is at the very heart of what the Law Society should be doing if it wants to improve.

Having listened to the Law Society I have also allowed sufficient flexibility in the targets to enable it to manage its caseload over the year and to focus on improvements for the periods concerned. The Law Society is aware that last year I set targets for 3, 6, 9, 12 and 18 months, whereas for 2006/07 I looked at the timeliness targets from the start to the end of all cases, assessing what was necessary to secure better complaints handling. In doing so, I dropped the target for 9 months and 6 months to give the Law Society the flexibility it requested. Other changes I agreed to at the Law Society's request included changing the approach to modelling the targets to support the way in which the Law Society currently counts complaints. The audit undertaken by my office in September identified substantial delays in complaints handling by the Law Society. Concerned that these delays should be reduced I initially proposed a target that sought to reduce that delay by 75%. The Law Society stated it was unable to achieve this and on representation I reduced the targets so that the level of reduction in delay needed to achieve them was only 25%.

It is also notable that the Law Society hit both the 57% within 3 months and 94% within 12 months targets in January 2006 and therefore has already demonstrated that it can be

achieved. This also demonstrates that none of the timeliness targets set are mutually exclusive. As for in-year case receipts, the Law Society is already working under a 7% increase. Moreover, the two main types of case in issue on the increase will be on endowment mortgages and the coal miners' compensation claims. Both of these types in the way the Law Society presently handles them benefit from quick turnover.

Quality Q2: substantive response within 60 days from 1 April 2006

The Law Society has failed to include in its Plan the target I set and instead has included its own target which is a staged target to achieve 58 days by 31 March 2007.

The Law Society will recall that the audit conducted by my office in September 2005 identified that some consumers were waiting on average, 90 days before receiving a substantive assessment of their complaint. I made it clear at the time that this level of service was unacceptable for the consumer and improvements were necessary from the beginning of the year. The Law Society agreed that an improvement was necessary.

In response to the initial concern expressed by the Law Society in the comments of 16 December 2005, my staff confirmed to the Law Society that the aim of this target is for the Law Society to simply reflect back to consumers the matters raised by them in their complaint, which were presented to the Law Society or known at the time of the substantive response. I therefore believe my target is reasonable, and achievement of it rests on the Law Society accurately responding substantively to the consumer on the issues raised in their complaint in only 80% of cases, a matter entirely within its control.

This target is also reasonable because I am expecting the Law Society to achieve it only on new cases opened on or after 1 April 2006. I would expect the Law Society itself not to want to begin the year by building in an unnecessary delay; this cannot improve complaints handling or be in the interest of the consumer or profession.

The Law Society has instead proposed a staged set of targets back-ending achievement with substantive responses being sent within 58 days in 80% of cases. But, it is only in the final month of the Plan in March 2007 that this would be met. For the first six months it would be 88 days and for the next five, 75 days (jumping in the final month to 58). I believe I am entitled to set the target I have, as explained, and believing as I do that consumers should start to see the benefit from April 2006, rather than have to wait until March 2007. The Law Society has not demonstrated to me why my target cannot be met.

Quality Q3: contact at least every 30 days with the complainant

At present both consumer and conduct and investigation (CAI) complaints are measured to ensure consumers are contacted and updated at least every 30 days. However, CAI has proposed an alternative measure for the 2006/07 target. At a meeting on 20 March when this matter was discussed with CAI, my Office presented to the Law Society findings from its own customer feedback data for complaints handled by CAI that evidenced consumers had a preference to be contacted at least every 30 days and in some cases more often. The Law Society's alternative proposal for CAI would be to reduce significantly that contact. As Commissioner, my role is to ensure that improvements are made to complaints handling with a view to complaints being handled effectively and efficiently and those improvements should

benefit and take into account the needs of the consumer. I understand fully that for the purposes of CAI the consumer is now referred to as an Informant but that in itself, does not change their needs. The Law Society collects customer feedback so that it can improve its services. I would therefore recommend that if the Law Society does wish to move to alternative periods of contact within CAI, it provides each consumer/informant with a choice which then determines the level of contact for that case.

Quality Q3: "Defining progressing matters"

Although requested, the Law Society has failed to include in its Plan the definition I set for the above target "contact that is not regarded as progressing the matter". This is important as it clarifies what sorts of contact are not included as progressing the matter. It is not sufficient for good complaints handling for example simply to leave a phone message and not follow it up. I note the Law Society's comment that the framework document does not define progressing but merely provides examples of activities not regarded as progressing the matter. In fact, that is a definition and it is appropriate for inclusion in the interpretation section of 7.2.3 of the final Plan.

Quality Q6: Legal Services Ombudsman (LSO) index

The Law Society has stated that this target is included in its Plan subject to receipt of confirmation from the Ombudsman of the criteria and basis used for assessing cases referred to the Ombudsman. Confirmation of the criteria and basis used for assessing cases was sent to the Law Society from the Ombudsman's Office on 21 March 2006. I have always viewed the Ombudsman's measure as independent. Indeed, this target was previously one set for the Law Society by the Lord Chancellor and it was also included in the Law Society's Plan for 2005/06. I believe the level I have set of 73% as reasonable, based in part on the Law Society's current performance, which is on an upward trend.

In light of the fact confirmation has been provided, I would be grateful if you could confirm whether or not the Law Society is now committed to my target?

Law Society Budget

The Law Society has stated that the budget for the period January 07 to March 07 is illustrative only. I accept this has not been through all your internal governance processes for sign-off. However, the Law Society has not confirmed that it believes this illustrative budget is adequate to deliver the Plan. My concern is not to get the Law Society to provide the money but I do need this assurance / commitment. This is particularly so when during 2005/06 (on present figures) the Law Society under spent and was not achieving all of its targets.

My Plan Framework Guidance also requested that the Law Society provide in its Plan a monthly budget forecast broken down, which reflects, for example, the timing of projected increases in staff costs from caseworker recruitment, or planned increases in outsourcing activity and the same sort of detailed budget that was provided last year as an unpublished annex to the Plan. Despite several reminders from my office, this has still not arrived and is a necessary part of it.

Law Society Initiatives

The Law Society accepts the initiatives are there to support delivery of the targets and it is right to do so. However, many of the initiatives for 2006/07 are at the feasibility stage and it is therefore difficult for me to see how they will support delivery of the Plan. In addition, even where they are at post feasibility stage the Law Society may decide not to implement them at all. On the one hand, the Law Society says in section 7 of its Plan that projects “will support” the achievement of the targets; on the other hand section 8.2 states that these projects will (only) be undertaken “assuming that an individual analysis of the costs and potential benefits justifies the investment of resources”, in other words some of the projects may not be undertaken in this year at all.

Moreover, a number of the initiatives are not due to deliver until September 2006 or the end of the year; this could well be too late to support delivery of the Plan.

It is also not possible to measure directly many of the benefits to be realised. This makes it difficult to see what contribution or what level of contribution will be made towards delivery of the Plan.

The Law Society indicated at video conference on 6 March 2006 that 80% to 90% of effort to deliver its Plan will come from increasing staff, budget and outsourcing. The remaining 10% to 20% will come from delivery of the initiatives. This is a sizeable reliance on the initiatives for delivery. With the degree of uncertainty outlined, I find it difficult to see what level of contribution the initiatives will make to improving complaints handling and delivering the Plan and therefore to satisfy myself to the necessary degree on this aspect.

Finally, the initiatives presented in the Plan are designed to achieve the Law Society’s targets and not those set by me. This links back to the points I have made on targets, above.

Formal Decision on the Law Society’s 2006/07 Plan

For the purposes of Section 52 (3) (a) of the Access to Justice Act 1999, I declare the Law Society’s Plan for the period 1 April 2006 to 31 March 2007 to be inadequate for securing that complaints are handled effectively and efficiently.

I also propose now to proceed to consider whether to impose a penalty and if so in what sum. I will let the Law Society have my decision on this matter by 5 May 2006. You have the opportunity of appearing before me to make representations on this issue and I now give you the chance to do so. Please let me know whether you wish to make any representations and if so whether you would wish to make them in writing or appear before me. I would be grateful to know how you intend to proceed on this question by 14 April 2006 with a view to receiving representations within 28 days of the date of this letter.