

BETTER ACCESS TO JUSTICE CONFERENCE

13 FEBRUARY 2009 – ISTANBUL BILGI UNIVERSITY

Good afternoon everyone. It is a pleasure to be invited to today's conference a few minutes walk from the astonishingly beautiful, dynamic and cosmopolitan city centre.

I am privileged to be in the company of so many eminent and respected professionals, to hear the speeches and discussions and participate in this European Commission sponsored project.

I hold two separate posts - Legal Services Ombudsman and Legal Services Complaints Commissioner for England and Wales. Each of my roles is distinct but both involve the impartial overview of the quality and conduct of legal services.

As Commissioner I examine the capability of the Law Society of England and Wales to handle complaints made about its members effectively and efficiently. The Law Society is the largest legal professional body in the UK and represents the interests of over 100,000 lawyers.

In my role as Ombudsman I oversee the handling of complaints made by consumers of legal services against all the legal professional bodies of England and Wales. This includes all types of advocates, solicitors and barristers as well as patent agents and legal executives.

The Lord Chancellor and Secretary of State for Justice appoints the Legal Services Ombudsman for England and Wales, who is accountable to Parliament. The Ombudsman's powers are derived from the Courts and Legal Services Act 1990 as amended by the Access to Justice Act 1999. The Ombudsman **cannot be a lawyer** and is completely independent of the legal profession.

Why did the UK Parliament create the role of Ombudsman? It was Parliament's intention to protect the interests of the consumers of legal services. The Office of the Legal Services Ombudsman opened for business in January 1991 and I was appointed as Ombudsman in March 2003.

My key roles and responsibilities as Ombudsman include

- ensuring that when consumers complain about their legal professional, the legal professional body investigates the complaint appropriately, and
- acting as a public watchdog on standards of complaint-handling among the legal professional bodies and raising standards among legal practitioners.

The Office of the Legal Services Ombudsman is an associate office of the Ministry of Justice.

As Ombudsman I investigate complaints about six professional bodies:–

- The Law Society of England and Wales (the Legal Complaints Service and the Solicitors Regulation Authority) for complaints about solicitors
- The General Council of the Bar – the Bar Standards Board for complaints about barristers
- The Institute of Legal Executives
- The Council for Licensed Conveyancers
- The Chartered Institute of Patent Agents, and
- The Institute of Trade Mark Attorneys

To give some perspective in terms of numbers, in 2007/2008 I investigated 1,858 cases, 92% of which concerned complaints made about solicitors. Since I took up post as Ombudsman I have investigated over 20,000 cases.

I aim to ensure that the professional bodies conduct fair, thorough and efficient investigations of complaints about their members. I am impartial, representing neither the legal profession or the consumer. I believe that consumers and the profession should have access to services under a complaints system that follow the seven key principles of good complaint handling. These are:

Clarity of purpose – a clear statement of the system’s role, intent and scope

Accessibility – a service that is free, open and available to all who need it

Flexibility – procedures which are responsive to the needs of individuals

Openness and transparency – public information, which demystifies our service

Proportionality – process and resolution that is appropriate to the complainant

Efficiency – a service that strives to meet challenging standards of good administration

Quality outcomes – complaint resolution leading to positive change.

As Legal Services Complaints Commissioner, I regulate the Law Society's complaint handling arms – the Legal Complaints Service and the Solicitors Regulation Authority. I have had to make some tough decisions which have included imposing financial penalties in order to bring about improvements in performance. It is important that those who regulate others impose high standards on themselves.

The legal profession in England and Wales is the guardian of its own standards and the six professional bodies are responsible for regulating their own members. This is the way it should be, but in order to retain the public's trust, we have to ensure that standards remain high. Poor performance and 'bad apples' have to be rooted

out. I firmly support peer review, which provides a direct, independent assessment of quality and advice of legal work. My understanding of this, is, casting a professional eye, over another's work. Measurement of quality, by looking only at systems and proxies, is **not** enough and peer review is an excellent way of ensuring this happens.

If someone complains about one of the legal professional bodies, the relevant body must first of all investigate the complaint before I can consider it.

There are two types of complaint – those alleging professional misconduct and those about poor service. And, of course, complaints can be about a combination of the two. Where there has been poor service, the professional body may award the complainant compensation or arrange for the legal professional to take remedial action. Where there has been misconduct, the professional body may take disciplinary action against the lawyer.

Following the professional body's investigation the consumer can refer a complaint to my office within 3 months. **There is no charge to the consumer for this service.**

The majority of complaints I see are about such simple things as failure to update consumers regarding their case, failure to keep good records, poor or no cost information given by the lawyer to their client, failure to follow instructions, not advising people appropriately and not acting in the consumer's best interest. Some of these might be perceptions that people have of the legal

profession but from experience I can say that they are also a reality. None of these things would involve any additional work for the lawyer but getting them right would result in a much improved level of service and a reduction in the number of complaints. Not getting them right might, in extreme cases, affect a client's liberty.

When making recommendations against a professional body, I categorise them under one of the following:

Poor decision – cases where I felt the decision reached was unreasonable. For example, complaints may have been rejected unfairly, or evidence may have been overlooked in reaching the decision, or I may have felt that the conclusion reached was inappropriate.

Poor service – where I felt there was poor service or inefficiency during the investigation, although the decision reached may have been reasonable. An example, is where there may have been unnecessary delay during the investigation, or the staff at the professional body may have communicated poorly with the consumer. I would also consider it poor service if the consumer had not been informed about their right to complain to me.

Poor administration – I would consider that maladministration had occurred where correspondence or files had been lost, or if there had been unnecessary delay in my office receiving a file requested from the professional body for review.

Problems with professional body/lawyer – cases where problems have occurred at points within the complaints handling process at the professional body. For example, problems with compliance from the lawyer or the professional body did not do enough to obtain necessary replies or documents from parties involved in the complaint.

If I am not satisfied with the way the complaint has been handled, there are several options available to me within my statutory powers:

1. I can recommend that the professional body **reconsider the complaint**, which means sending it back with a request that it reopens its investigation. An example of this may be where the complainant has raised a number of issues and the professional body has examined some but not all of them.
2. I can recommend that the complainant **be awarded compensation** if I consider that the handling of the complaint has caused the complainant loss, distress or inconvenience. For example, it may have taken months for the professional body to deal with a straightforward enquiry. The highest award made in the current financial year is the equivalent of around 3500 Turkish New Lira or 1600 euros. Typical levels of award are between 450 to 685 Turkish New Lira or between 200 and 300 euros.
3. A third sanction is available to me is to **formally criticise** the professional body for its failings. I usually do this if the investigation has been poor, but does not merit compensation or a

re-investigation. I can be public with my criticism and have even published special reports to highlight patterns in poor complaint handling. Some of these cases have subsequently been dealt with through the disciplinary route.

4. An additional power I have is **to investigate the original complaint myself**. In practice, I do not do this very often, because I am keen for the professional bodies to learn from their mistakes. If I do extend my investigation to the original complaint, I have the power to require information and documents and request that the lawyer concerned can appear before me. These are the same powers as a High Court Judge. At the conclusion of the original investigation I can also recommend that the lawyer and professional body pay compensation to the complainant.

If a consumer is unhappy with my decision, they can challenge this through the courts. This is known as judicial review.

In 2007/2008 there were 8 applications to the courts to challenge my decisions, all of which were unsuccessful. We have never yet lost a Judicial Review.

My staff perform their work to an extremely high standard. We have a government target of completing 90% of our investigations within 6 months of receipt. For the 5th year running we have exceeded this target, with 100% of reports issued within this timeframe in 2007/2008.

The average turnaround time for a case in 2008/09 was 2.9 months. In terms of quality, 98% of all draft reports achieved the standards set down in our internal Quality Assurance Framework.

To summarise, a good ombudsman scheme should be clear, accessible, have flexibility, be open and transparent, be effective and efficient and ensure quality and fair outcomes in all cases. My office encompasses all these things and ensures that we check and review on a regular basis to ensure we continuously improve and provide the highest level of service.

Since my appointment as Ombudsman in 2003, I have expressed concern that the legal professional bodies – because they deal with complaints about their members – act as both judge and jury. As a result, regardless of whether they have carried out their investigations properly, the perception remains that they act in the interests of their members rather than the complainant. After all, their members pay them a membership fee.

There has also been, in my view, a regulatory maze, built up over the years with one regulator sitting above the next. This needed simplifying with a single, independent, overarching regulator for the legal professional bodies, which could set minimum rules and standards and a new, single, independent complaints handling body, which would remove complaints handling from the legal professional bodies.

I was, therefore, pleased when the Government introduced a Bill to bring about these changes. On 30 October 2007 the Legal Services Act 2007 received Royal Assent. This legislation established a new overarching regulator, the Legal Services Board and a new independent complaints handling body, the Office for Legal Complaints, which removes complaints handling from the legal professional bodies, for example the Law Society and the Bar Standards Board. The legislation also abolishes or amends super regulators such as my role as Legal Services Complaints Commissioner and some aspects of the functions currently carried out by the Lord Chief Justice and the Master of the Rolls in England and Wales will be lost. The new organisations will be fully operational in 2010.

However, the role of Legal Services Ombudsman will continue, but will be set within the significantly larger organisation that will be established – the Office for Legal Complaints.

These changes are significant and I am confident that they will bring about greater confidence from the consumer and will also be in the public interest.

I would like to finish by saying thank you for your attention and interest.