



Taking up the challenge

The Office of Legal Services Ombudsman Annual Report 2002 / 2003

—
**LEGAL SERVICES
OMBUDSMAN**
—

REMIT AND POWERS OF THE LEGAL SERVICES OMBUDSMAN



The Legal Services Ombudsman is appointed by the Lord Chancellor in accordance with Section 21 of the Courts and Legal Services Act 1990. The Ombudsman cannot be a qualified lawyer and is completely independent of the legal profession. The Legal Services Ombudsman for England and Wales is Zahida Manzoor CBE.

The Ombudsman oversees the handling of complaints about solicitors, barristers, legal executives, licensed conveyancers and patent agents by the five professional bodies responsible for setting and maintaining standards of conduct and service within the legal profession.

Complainants must first make their complaint to the professional body: the Law Society's Office for the Supervision of Solicitors, the General Council of the Bar, the Institute of Legal Executives, the Council for Licensed Conveyancers or the Chartered Institute of Patent Agents. If complainants are not satisfied with the way the professional body has dealt with their complaint, they may refer the matter to the Legal Services Ombudsman. The Ombudsman's services are free of charge.

The Ombudsman has powers to recommend that the professional body reconsider the complaint. She may also recommend that the professional body and/or the lawyer complained about pay compensation for loss, distress or inconvenience. The Ombudsman has a further power to make binding orders for the payment of compensation, although she uses this power only in exceptional cases.

THE OFFICE OF THE LEGAL SERVICES OMBUDSMAN IS AT:

3rd floor, Sunlight House
Quay Street
Manchester M3 3JZ

Telephone: 0161 839 7262

Fax: 0161 832 5446

DX: 18569 Manchester 7

E-mail: Iso@olso.gsi.gov.uk

Website: www.olso.org

Lo-call number 0845 6010794

(Charged at local rates and available nationally)

CONTENTS



| | |
|----|--|
| 4 | Foreword |
| 7 | Initial Observations |
| 16 | Summary |
| 21 | Developments at OLSO |
| 30 | Review of complaint handling by the professional bodies |
| | <ul style="list-style-type: none">• The Law Society/Office for the Supervision of Solicitors• The General Council of the Bar• The Council for Licensed Conveyancers• The Institute of Legal Executives• The Chartered Institute of Patent Agents |
| 48 | Facts & Figures |
| 57 | Summary Financial Statement |
| 58 | Staffing |



Zahida Manzoor CBE
The Legal Services Ombudsman

FOREWORD

I took up my appointment as the Legal Services Ombudsman in March 2003. This is my first Annual Report reviewing last year. I follow in the footsteps of Ann Abraham who fulfilled the role for five years before moving on to become the Parliamentary Ombudsman in November 2002.

Ann will certainly be a hard act to follow, having been highly regarded by consumers and lawyers alike for the forthright manner in which she expressed her views and the creative way in which she articulated high level arguments for change in the way legal services are regulated. I would like to take this opportunity to acknowledge the important contribution that Ann made in driving forward the role of the Office of the Legal Services Ombudsman.

I would also like to express my personal thanks to Paul Salvidge who served as Acting Legal Services Ombudsman during the period between Ann Abraham's departure and my arrival. Paul did far more than a simple holding job, ensuring that the Office continued to deliver the very highest standards of service.

My task is now to build on the foundations that have been put in place by my predecessors. I am fortunate to have inherited an organisation with a highly skilled and experienced team of investigators and administrative staff.

It is a real testament to the quality of their casework that, through this period of change, they have continued to deliver significant improvements in operational performance. During the past year they completed a total of 2,180 cases, an increase of 22% on the previous year. This is the highest number of cases handled by the Office since its inception in 1991 and represents the fourth consecutive year in which the total number of cases completed has increased. At the same time, the average turnaround time has decreased from 6.7 to 5.6 months, a reduction of 17% on the previous year.

Unfortunately, the most significant lesson that can be drawn from these statistics is not so much the improvement in performance achieved by my Office but, rather, the continuing inability of the professional bodies to deliver demonstrable improvements in the provision of legal services by way of a substantial reduction in the number of complaints that are either referred to them or are subsequently referred to my Office.

The number of complaints made about solicitors is a particular cause of concern as they tend to be the primary interface between consumers and the provision of legal services. During the past year the number of complaints received by the Office for the Supervision of Solicitors (OSS), the complaints-handling arm of the Law Society, increased from 10,585 to 14,880 and accounted for over 95% of the complaints **received** by the five professional bodies monitored by my Office.

While it is not possible to make a direct comparison between these figures because of changes in the criteria used by the Law Society to define complaints, the predictions for future workload which the Law Society has made itself are based on a 5% increase for 2003. It seems therefore that the number of complaints received by the Law Society is likely to rise.

This would not necessarily be negative if, for example, it was the result of more effective access to the complaints-handling system. However, in circumstances in which the Law Society's declared strategy has been to have more complaints resolved locally through solicitors' own internal complaints-handling procedures, any outcome other than the intended **reduction** to their caseload must be seen as a failure in their complaints management strategy. It is rather disappointing to note that there is actually nothing new about these increases in complaints nor the questions that they raise regarding public confidence in lawyers, their professional bodies or the validity of self-regulation. In fact, over the past fifteen years each of my predecessors, first in the form of the Lay Observer and then as the Legal Services Ombudsman, has warned in some shape or form: *'that complaints continue to rise sharply', 'complainants are not satisfied with the service provided by the professional bodies', and that 'unless the professional bodies deliver higher levels of satisfaction, it is unlikely that self-regulation will survive into the 21st century.'*

In response to these warnings the professional bodies have undertaken many well-intentioned initiatives in an attempt to improve their complaints-handling capabilities and, to a lesser extent, the services delivered by lawyers. However, it is self-evident from the performance statistics that these initiatives have largely failed to keep pace with consumer expectations or to reverse the decline in public confidence in lawyers.

In addition, the recent customer research that the General Council of the Bar (Bar Council) commissioned from MORI makes clear how difficult it is to avoid giving the impression that an organisation lacks independence. The report states that 76% of complainants believe that the Bar Council does not consider all of the evidence, and that 72% of complainants perceive that the complaints system does not give equal weight to the complainant as well as the barister. I will be carefully monitoring what action the Bar Council takes to try to improve how their systems are viewed by complainants.

This could become a more important issue if there are increasing referrals as more clients instruct barristers directly. Although direct comparison is not possible, it is also clear that this Office receives a significantly higher percentage of cases closed by the Bar Council than by the OSS. However, those received from the Bar Council result in a significantly lower percentage of adverse findings by the Ombudsman.

Even in the very short period of time that I have been in office, it has become apparent to me that significant action will be needed if the professional bodies are to achieve a step-change in the level of public confidence in the legal system.

It is my intention to build on the high-level debates and discussions that have taken place in the past and to work proactively with the professional bodies and the Department for Constitutional Affairs to help formulate real, practical solutions that will deliver those step-change improvements. I shall be carefully looking at the Law Society's Customer Research in conjunction with our own data to find ways that we can bring about those improvements for the consumer. I fully recognise that there is much to be done to identify such solutions. Many challenges lie ahead, not least the fact that it could take considerable time to agree and implement some of the solutions. Nevertheless, it is clear that we must now embark upon such a course of action if we are to ensure that legal services better meet the needs of consumers and that the associated complaints-handling systems deliver a fair, transparent and impartial service, one that inspires confidence rather than apprehension and distrust among consumers.

Accordingly, during my first year as Legal Services Ombudsman I intend to focus my attention on the following issues:

- **Build on the strong operational foundations that I have inherited** at the Office of the Legal Services Ombudsman, ensuring that the complaints-handling performance of the Office continues to improve, while enhancing our strategic vision.

- Develop a closer and more involved working relationship with the professional bodies with the aim of helping them to identify how they can significantly **improve the performance and effectiveness of the service they provide** to complainants.
- Engage in dialogue with the professional bodies and the Lord Chancellor to ensure **consistency in complaints handling** across the entire legal profession.
- Explore with the professional bodies and the Lord Chancellor options for **improving the quality of legal service** delivered by lawyers and the legal system more generally.
- Review the effectiveness of the **redress available to me**, and identify whether there are any additional or alternative forms of redress to maximise the usefulness of the service provided by my Office.

I look forward to the challenges that each of these issues will inevitably present. I shall continue to monitor the professional bodies' performance robustly. In October/November of this year I will produce an interim report. This will include a review of the progress that the Law Society has made towards the targets that they have been set by the Lord Chancellor. If there are no tangible improvements in the performance of the Law Society, if necessary I will explore with the Lord Chancellor the possibility of releasing the reserve powers available to him in the form of the Legal Services Complaints Commissioner.

In the next section I share with you my initial observations.



Zahida Manzoor CBE
The Legal Services Ombudsman

INITIAL OBSERVATIONS

As a relative newcomer to the field of legal services, I found that some of the performance statistics for the past year made sober reading. The number of complaints received by the Law Society increased significantly, as did the number of complaints referred to my Office. I was dismayed to see that for every ten of the Law Society's cases received by my Office more than three had resulted in a recommendation or criticism by my predecessors. Perhaps even more alarming was the realisation that this actually represented an improvement from the previous year.

In order to put the current situation into context, I took the opportunity to review all the historical information available to me on the past performance of complaints handling by the professional bodies and the observations made by my predecessors – firstly in the guise of the Lay Observer during the late 1980s and then as the Legal Services Ombudsman since 1990.

In reviewing this material, I was particularly struck by how little tangible progress appears to have been made by the professional bodies over the past fifteen years. In addition, on the evidence of the available statistics, I would argue that the quality of service provided by lawyers appears not to have kept pace with consumers' expectations. Furthermore, the issues that lawyers' professional bodies have been grappling with to improve their complaints-handling procedures have barely changed in that time.

This, in particular, has been the case for the OSS, which now accounts for just under 90% of the complaints made to my Office.

I have only seen a relatively small number of cases from the Bar Council and it would be too early for me to draw any general conclusions. However, there are a number of potential issues which have already struck me: the significantly higher percentage of referrals from the Bar Council than from the other professional bodies (albeit that only one in ten produce adverse findings from my Office, compared with three in ten of OSS cases), the generally lengthier turnaround times for Bar Council cases compared with those of the OSS, and the relatively low proportion of cases in which the Bar Council provides the complainant with any form of redress.

I was also very interested in the research that MORI undertook on the Bar Council's behalf. I was pleased to see that working parties had been set up to look at how to address the issues highlighted by that report. I look forward to seeing the recommendations and the timetable for their implementation.

Due to the fact that solicitors, to a very large extent, still represent the primary interface between consumers and the legal world and account for the vast majority of complaints about lawyers, I have focused my initial efforts on attempting to understand the historical background for the poor performance of complaints handling by the OSS. As time permits in the near future, I will turn my attention to the other four professions monitored by my Office.

Learning from the Past

In reviewing the historical information available to me, I was very disappointed to note that, as far back as 1987, the Lay Observer stated that:

'the Solicitors Complaints Bureau (the precursor to the OSS) is having problems, it has difficulty in replacing and training new staff and complaints continue to rise sharply.'

Then, in 1995, the first Legal Services Ombudsman, Michael Barnes, pointed out in his annual report that:

'the Solicitors Complaints Bureau has been subjected to sustained criticism from some quarters and is to be replaced. If the new body [the OSS] is unable to achieve a better level of complainant satisfaction than the Bureau, the writing will be on the wall. It will only be a matter of time before the Law Society loses its complaints-handling function altogether.'

He re-emphasised the message in his next annual report:

'Unless the professional bodies deliver a higher level of satisfaction ... it would be unlikely that self-regulation would survive into the next century.'

Ann Abraham took up the warning in her annual report of 1998:

'Unless solicitors themselves shoulder greater responsibility for effective complaints handling, the OSS runs the risk of being overwhelmed by the sheer volume of cases referred to it.'

In 2001 she stated that:

'The necessary sustained and continuing improvement in the Law Society's complaints-handling activities has not been forthcoming and increased oversight of the work of the OSS by my Office will be necessary in the coming year.'



A History of Failure

This historical perspective provides stark evidence of a consistent pattern of poor performance at the OSS, sustained over a very considerable period of time. It is disturbing to note that fifteen years after the comments by the Lay Observer, the OSS still suffers from poor retention levels, and continues to experience difficulty in recruiting and training new staff. It continues to struggle with the volumes of complaints it receives and many consumers remain dissatisfied with the way in which complaints are handled.

The history of the OSS' performance need not, however, have been one of unremitting failure. There were periods when remedial measures were taken which suggested that the necessary step-change in performance might be achieved. For instance, the OSS' replacement of the failing Solicitors Complaints Bureau in 1996 represented a golden opportunity for a fresh start and a resolution of the endemic problems of the earlier organisation.

Unfortunately, it appears that the OSS spent too much time on policy initiatives and strategic thinking, and too little effort on ensuring that the fundamentals of casework were tackled, resulting in long delays in processing complaints and producing a substantial backlog of cases.

The OSS retained management consultants to address these problems and by 1999 it appeared that the OSS would, at last, be able to close a significantly higher volume of cases than it expected to receive, with positive implications for turnaround times and the general level of service. Alas, this proved to be another false dawn.

Since January 2001, output at the OSS had declined dramatically. At the beginning of 2002 it transpired that previous encouraging caseload information had been produced on the basis of a misleading categorisation of complaints. When these categories had been clarified with the assistance of my Office, it became evident that, once again, output was declining and the backlog of cases was rising. This is clearly manifest in the most recent performance statistics for the OSS.

"The historical perspective provides stark evidence of a consistent pattern of poor performance at the OSS"

More False Dawns?

During the past two years the Law Society has instigated a number of other initiatives in a belated attempt to reverse the poor performance of the OSS:

- It has made a substantial investment in implementing a sophisticated new case management system to help improve the speed, efficiency and accuracy with which the OSS processes complaints.
- It has invested heavily in attempting to create a model office environment by exploring a number of options regarding complaints handling.
- It has experimented with outsourcing the investigation of *'low complexity'* complaints to firms of solicitors, with incentives to complete investigations within an agreed timeframe.
- It has launched a Clients Charter that solicitors can provide to their clients, which explains their right to receive good service, and describes how they can make a complaint.
- It has implemented the Consumer Redress Scheme, launched towards the end of 2001.

However, I am sceptical that the investment in new information and management systems will deliver the improvement in performance that is required to reverse the perception of the OSS as a poorly performing organisation, and I am not convinced that the model office project will be successful in the current climate at the OSS. Indeed, there are already signs that this approach has been abandoned in its current form and that a major aspect of the OSS' complaints-handling has been delegated to management consultants by the Law Society on a short term contract.

I am extremely uneasy about the wisdom of the OSS outsourcing complaints to firms of solicitors. I note that it has been the intention of the OSS to extend its initial pilot exercise and engage a number of firms. I am concerned about complaints being handled by staff who are not 100% dedicated to performing that type of work, particularly when they are then offered incentives to complete the task within agreed time limits.

There are a number of other issues of concern arising from this arrangement: the selection and regulation of provider firms, their training, the consistency and quality of decision-making, the potential for conflicts of interest and, not least, whether the confidence of complainants can be maintained in such circumstances. In this regard, one complainant wrote to me recently stating that she had expected her complaint *'to have been independently assessed, not sent to another solicitor.'*

At this stage, I am not convinced that the OSS can ensure that these problems will be satisfactorily resolved.

As for the Clients Charter, I applaud the thinking behind this move, but I am concerned that adopting the Charter is voluntary for firms, and is merely a statement of good intentions. It also appears to have been launched without providing any additional training or guidance for solicitors on how to adopt a more customer-focused approach to business, or how to improve the quality of service they provide.

Therefore, whilst I welcome the fact that the Law Society and the OSS have made a number of attempts to improve complaints-handling performance, I cannot help but generally share the doubts of my predecessors. At the very least, the reformed system should be able to deliver effective complaints handling – effectiveness being measured in terms of both the quality of decision-making, and the timescale within which cases are concluded. It is far from clear in current circumstances whether the OSS will be able to deliver the fundamental improvement in performance which is now essential. There certainly has been evidence of a high level strategy but, sadly, implementation has not always been followed through. It has been apparent for many years where change is needed. The complaints-handling system needs to be refined, compensation levels should be revisited, and the overlap between inadequate professional service and negligence must be addressed. For example, the distinction between poor service and negligence is jagged and indistinct. There is no clear test which can be applied to the facts of individual cases to determine whether the inadequacies in a solicitor's service amount to inadequate professional service or negligence.

A Different Approach?

It is worth noting that, in an attempt to address some of the concerns regarding self-regulation and poor complaints-handling performance, the Law Society launched what it called its 'Consumer Redress Scheme' at the end of 2001.

One main element of the scheme is the Customer Assistance Unit (CAU). Its aim was to provide a single point of entry for all complaints regarding solicitors, combined with a more informal approach to handling those complaints. The intention was that staff within the CAU were to be trained to filter the more complex cases and immediately assign these for formal investigation. The intention was also that they were trained to mediate between complainants and solicitors on the less complex cases, with the aim of bringing early resolution to such cases. If complainants are dissatisfied with the decisions made by the CAU, they can refer their cases for adjudication within the OSS.

Additionally, the Law Society appointed a Lay Commissioner to oversee the Consumer Redress Scheme, now renamed as the 'Independent' Commissioner. The very name chosen by the Law Society is unfortunate, and indeed misleading, suggesting a correspondence with the Bar Council's Complaints Commissioner, who investigates all complaints to the Bar Council in the first instance. The Law Society's 'Independent' Commissioner essentially provides an internal audit for the Consumer Redress Scheme.

The Consumer Redress Scheme also has elements associated with training solicitors in customer care, encouraging them to achieve quality standards for their customer service, and requiring individual solicitors to contribute towards the cost of processing complaints against them – although I am not clear at this stage what percentage of solicitors are actually required to pay towards those costs.

Whilst I welcome these three elements of the initiative, much of the concepts around the CAU appear to represent a relatively simple restructuring of the OSS and I cannot see that they will deliver the necessary step-change improvement in its operations.

Indeed, there is already evidence emerging to show that Consumer Redress Scheme cases are taking too long to complete, and that elements of the Scheme are not being operated from the customer-focused perspective that was originally intended, but are in fact concerned with solicitors' regulatory and disciplinary issues.

It is my intention to look closely at the Consumer Redress Scheme, and to provide the OSS with detailed input on areas where there is scope for improvement.



Treating Symptoms Not Causes

As a newcomer to this field, and one with a long background in the Health Service, it appears to me that there has been too much focus on the symptoms of poor service - complaints - and not enough on the standard of provision of legal services which is their underlying cause. I appreciate that the professional bodies have always been concerned to address failings in service provision and have undertaken various initiatives in order to do so. However, the sheer volume of complaints, and the generally low regard with which the legal professions are held by the public, suggest that there remains a fundamental lack of confidence in the way in which legal services are provided.

Accordingly, while it is perfectly right and proper to focus considerable emphasis on processing complaints in a timely and accurate manner, there is absolutely no reason why this should be done in isolation or at the expense of improving service at the point of delivery to consumers.

Complaints offer a powerful source of information on where problems lie in the delivery of service. I have noted with interest that my predecessors have used information gleaned from complaints to push for a number of changes in the delivery of legal services, such as ensuring that residuary beneficiaries have the right to request a remuneration certificate, and achieving improvements to the costs information which solicitors are required to provide during the course of acting for their clients.

From my short time as the Legal Services Ombudsman, it is clear to me that much more needs to be done to improve the delivery of legal services. It is the responsibility of the professional bodies to ensure that there is a general culture of integrity, openness, responsiveness, accurate record-keeping and common courtesy amongst legal practitioners. In doing so, they would go a long way towards combating the sentiment, expressed by a complainant to my predecessor, that deficiencies in these basic requisites '*appear to be condoned by the OSS, who regard some of these failings as the very apparatus of the solicitors' trade*'.

Until determined efforts are made to tackle these root causes, I fear that little progress will be achieved in eradicating the poor perception of lawyers by the general public.

Indeed, the findings of the MORI report commissioned by the Bar Council into client satisfaction with their complaints-handling service, which I mentioned earlier, only serves to reinforce this view. Whilst complainants were fairly positive about the Bar Council's customer care, the majority had a perception that the complaints-handling system lacked transparency and was overly legalistic, that it was dominated by lawyers, that complainants were not given sufficient weight in the process, and that the legal profession acted to protect its own members.



Self-Regulation – Can it be Justified?

This, of course, raises the vexed question of self-regulation. Unfortunately, once again, there is nothing new in questions about the credibility of lawyers and the lack of confidence the consumers have in the impartiality of the professional bodies. Increasingly the same questions are being asked:

- Does the legal profession operate in the public interest?
- Does it fairly serve the needs of its consumers?
- Can the public have confidence in the integrity of those who provide legal services and the impartiality of those who regulate those services?

My predecessors have repeatedly laid down the same challenge: unless the legal profession can regulate itself in a manner that inspires public confidence, the way in which it is regulated will have to change. The potential conflict of interest of the professional bodies acting both as champions for the legal professions and, at the same time, regulating those same legal professionals, is the issue that must be addressed.

It is worth noting that the professional bodies have been warned on countless occasions that self-regulation is a privilege, not a right – and that it can be taken away if it is no longer warranted. It is interesting to note in this regard that in many other areas of public life the tendency is to move away from self-regulation. For example, the Police Complaints Authority has recently been replaced with an Independent Police Complaints Commission, in response to the poor public perception of the existing system where police forces investigated complaints about each other.

Actions Not Words

It is my intention to work closely with the professional bodies, the consumer organisations and the Department for Constitutional Affairs to move beyond the debates of the past and to start work on defining, and then implementing, real, tangible solutions to the fundamental problems that are evident in the current provision of legal services.

Indeed, the Lord Chancellor has recently initiated a comprehensive review of the regulatory framework for legal services. I look forward to the findings of this review with great interest.

In the interim, I will explore with the Lord Chancellor the possibility of releasing the reserve powers available to him, in the form of the Legal Services Complaints Commissioner (LSCC), if there are no tangible improvements in performance at the OSS. I will be reviewing performance at the OSS towards the end of the year. The reserve powers would augment those of the Legal Services Ombudsman, enabling the LSCC to undertake independent audits of the complaints-handling processes employed by the relevant professional bodies, and where necessary recommend improvements in the quality of complaints handling, set appropriate targets for processing complaints, and impose fines on the professional body if those targets are missed.

An Interim Solution?

Of course, I recognise that regulatory reform is likely to prove problematic and, if agreed, will take considerable time to implement, especially in view of the many and varied agencies that currently play a role in regulating the work of the legal profession. As such, I agree with a suggestion proposed by Ann Abraham last year, that there may be merit in adopting some form of over-arching regulatory framework similar to that established for the financial services sector. This would allow a continued role for the professional bodies but under the direction of an independent regulator.

It would certainly help to overcome the lack of consistency and coherence in the current system arising from the different priorities and approaches followed by the individual agencies. At the very least, it could be used to ensure that complaints-handling processes, timescales, experiences and remedies are consistent across each of the professional bodies.

It could also help to resolve one of the specific problems currently faced by consumers of legal services who wish to make parallel complaints about different types of legal practitioner – for example, both the solicitor and barrister who acted for them in a particular case. In such situations the consumer currently has to follow two distinct lines of complaint: one to the solicitor and then the OSS, the other through the barrister and the Bar Council – with no co-ordination between these two distinct avenues.

This problem could be overcome by allowing the over-arching independent regulator to act as a single point of entry for all complaints against legal practitioners, and to take responsibility for overseeing the specific processes followed by the professional bodies in resolving those complaints. It is worth noting that, following its review of the legal regulatory system in Scotland, the Justice 1 Committee of the Scottish Parliament has recently recommended that they should have such a ‘single gateway’ for handling complaints.

I look forward with interest to see how this matter unfolds in Scotland and I intend to engage in dialogue with the Lord Chancellor and the professional bodies to establish whether such a framework might be appropriate for England and Wales.

The single point of entry is a subject which bears on the more general issue of access. I am determined to ensure that both my Office, and the professional bodies, can demonstrate that all parts of society are able to access justice effectively, and that the complaints-handling structures and processes present no obstacle to this. To assist in this end my Office now sends a diversity monitoring form to all complainants. We also conduct an internal customer satisfaction survey, which I intend to supplement with a major externally-commissioned survey in the next year or so. In the future this information can be utilised as part of a general comparative study into the degree of accessibility offered by the complaints-handling systems.

Ensuring Effective Redress

Regardless of how complaints handling and legal regulation may change in the future, I feel there is one specific casework area that needs urgent attention. As I have familiarised myself with the role of the Legal Services Ombudsman, I have been struck by the comparatively low levels at which compensation for distress and inconvenience have tended to be made. I appreciate that the precedents underlying compensation levels were set ten or fifteen years ago, when the practice of the courts was less generous. Nowadays, however, it is declared policy to utilise a wide range of dispute resolution mechanisms as an alternative to the courts, the complaints - handling system being one such mechanism. In these conditions, compensation must be adjusted to more realistic levels. How must it appear to a consumer who has suffered from poor service and then been through months or, more likely, years of inconvenience or distress while their complaint was dealt with, then to receive a sum of say £100 or £200 in compensation? And what signal does this send to the lawyer who delivered the poor service in the first place? This is another matter to which I intend to give careful consideration over the coming year.

Conclusions

I have found my journey through the archives of my Office to be extremely informative in understanding the background to the main challenges that face the professional bodies. More importantly, this journey has proved to be invaluable in helping me to formulate my priorities for working with the professional bodies to improve the quality of legal services and the effectiveness of complaints handling in England and Wales.

However, I would like to end with a word of caution.

The resources of my Office are currently stretched to the limit in coping with the operational aspects of investigating complaints. If the number of complaints being closed by the professional bodies increases (as it must if the OSS are to clear their backlog), this will invariably lead to an increase in the number of cases referred to my Office.

This will not only have serious resource implications, but it could also jeopardise our current efforts to improve the speed with which complaints are investigated while maintaining the high quality of our investigations.

The current level of resources available also limits significantly the ability of my Office to undertake many of the strategic and policy issues that I have outlined above and will be exploring in later sections of this report. Without further additional resources, I find it extremely difficult to see how I can complete the progressive transformation to a modern Ombudsman's Office that I believe to be essential.

*“I am determined to ensure that both my Office,
and the professional bodies, can demonstrate that all parts of
society are able to access justice effectively”*

SUMMARY OF THE 12TH ANNUAL REPORT OF THE LEGAL SERVICES OMBUDSMAN

Initial Observations

The history of complaint handling within the legal profession reveals a general lack of progress. In particular, the historical perspective provides stark evidence of a consistent pattern of poor performance at the OSS. Even as the OSS once again take welcome steps to reverse this trend, there are reasons to doubt their likely effectiveness.

The performance statistics for the past year made sober reading. The number of complaints received by the Law Society increased significantly, as did the number of complaints referred to the Ombudsman. She was dismayed to see that for every ten of the Law Society's cases received by my Office more than three had resulted in a recommendation or criticism by my predecessors. Perhaps even more alarming was the realisation that this actually represented an improvement from the previous year.

More work needs to be done in treating the causes of poor service – the way that lawyers behave. Until efforts are really made to tackle these root causes, little progress will be made in improving the quality of service provided by lawyers or the poor perception of lawyers by the general public.

This raises the question of self-regulation: whether the legal professions operate in the public interest; fairly serve the needs of their consumers; and give the public justified cause to have confidence in the integrity of those who provide legal services, and the impartiality of those who regulate them.

The Ombudsman intends to work closely with the Department for Constitutional Affairs and the professional bodies to implement tangible solutions to the fundamental problems that are evident in the current provision of legal services.

In particular, she will provide the OSS with detailed input on areas where there is scope for improvement in the operation of their Consumer Redress Scheme. If the Ombudsman considers it appropriate, she will explore with the Lord Chancellor the possibility of activating the Legal Services Complaints Commissioner's powers: to undertake independent audits of the complaints-handling processes of the professional bodies, recommend where improvements need to be made, set targets for improvements, and impose organisational fines if they are not met. She will also be conducting a mid-year review of the professional bodies' performance, in particular that of the OSS.

However, the resources of OLSO are currently stretched to the limit. If the volume of cases referred to her Office increases, this could jeopardise efforts to improve the speed with which complaints are investigated while maintaining the high quality of investigations. It will also leave the Office without the resources to undertake the necessary work at the strategic level.

Developments at the Office of the Legal Services Ombudsman

Casework performance

The PKF benchmarking exercise suggested a number of incremental measures to improve casework performance. OLSO has accordingly taken action to reduce the backlog of cases, including the recruitment of temporary staff; has produced a considerable increase in the number of investigations completed; and significantly reduced case turnaround times.

- OLSO completed 2,180 cases, a 22% increase on the 2001/2002 figure.
- 1,745 new cases were accepted for investigation, average turnaround times decreased from 6.7 to 5.6 months.
- Cases awaiting investigation reduced by nearly 50% from 886 to 451.
- At the end of the year, the average age of all cases in the Office was less than 3 months and no case was over 12 months old.

Policy themes

Pushing forward a number of policy themes arising from recent casework will be of particular importance to OLSO over the coming year.

Beneficiaries currently have very limited rights to complain about the service provided by solicitors administering an estate. The Ombudsman would like to see the OSS adopt a more flexible approach to **complaints by beneficiaries**. Furthermore, this is part of a wider debate about the circumstances in which compensation should be available to categories of non-clients.

The Ombudsman believes that the OSS/Law Society should review the adequacy of existing arrangements for addressing the concerns of former clients of firms which the Law Society has subjected to **formal interventions**.

The Ombudsman will consider whether greater use should be made of her **power to order** the payment of compensation, and will also seek the appropriate legislative change so that orders of the Ombudsman can be registered at a county court and enforced through the court as judgments.

In addition to reviewing the decisions of the professional bodies, the Ombudsman intends to deal with additional **strategic cases** by exercising more often her power to investigate the original complaint against a lawyer, and to order the payment of compensation where appropriate. This will both raise the profile of OLSO with lawyers and consumers, and contribute to the delivery of good quality legal services.

The Ombudsman will be considering how the professional bodies can, in addition to inadequate professional service, deal with more **negligence complaints**.

The Ombudsman will continue to contribute to the Department for Constitutional Affairs' **work regarding the future of legal services regulation**.

Section 24 Recommendations

The Ombudsman will monitor progress made by the Law Society/OSS in implementing five formal recommendations made in accordance with Section 24 of the Courts and Legal Services Act 1990:

1. That the Law Society/OSS agree a protocol with their approved insurers for the effective referral between them of complaints and negligence claims.
2. That the Law Society issues guidelines to its approved insurers to ensure that they have in place effective arrangements for communicating and negotiating with lay claimants in relation to allegations of negligence.
3. That the Law Society/OSS consider the introduction of an arbitration scheme for the resolution of poor service and minor negligence disputes between clients and solicitors.
4. That an annual report of the Consumer Redress Scheme be published detailing its performance and operation.
5. That the Law Society hold a series of stakeholder meetings on the Consumer Redress Scheme for all the individuals and organisations who responded to its consultation paper, specifically to discuss how the Scheme should be implemented and developed.

The continuing 'progressive transformation' of OLSO

The coming year will be a crucial one in terms of the performance of the OSS, which expects to deal with considerably more cases. This will have a significant knock-on effect on OLSO's caseload. The Ombudsman also intends to expand the strategic role of the Office in order to achieve the necessary transformation in performance of both the professional bodies' complaints handling and lawyers' provision of legal services. As part of this enhanced role, she will: seek to ensure that the Office is adequately resourced; work more closely with the professional bodies and the Department for Constitutional Affairs; produce an interim report on the professional bodies' performance; and survey the views of users of OLSO, and benchmark aspects of the Office's performance.

Business management

Following an independent benchmarking exercise by PKF management consultants, together with internally – generated proposals, a number of incremental improvements have been made to aid the efficiency of the casework process: a monthly newsletter provides staff with statistical and general casework information; additional staff training and guidelines; a new Communication, Research & Policy Unit; a number of initiatives relating to the system of internal business controls; modernising the Office's use of electronic communications; a Memorandum of Understanding with the Office of the Immigration Services Commissioner; and enhanced liaison with the professional bodies in relation to their own training needs.

Review of complaint handling by the professional bodies

- The Ombudsman was satisfied with the way in which the **OSS** handled complaints in 67% of the 1,940 cases the Ombudsman investigated in 2002/2003 – an increase in the overall level of satisfaction from last year. Their turnaround times for cases closed during 2002 also showed an improvement on 2001's figures. The OSS took less than 6 months in 71% of cases closed in 2002, compared to 72% the previous year.
- A common understanding of the definitions, methodology and reporting systems was reached between the Ombudsman's Office and the OSS and clear definitions for what constitutes a complaint and an enquiry were agreed during the year. These formed the foundation for the targets that the OSS agreed with the Lord Chancellor for 2003 and beyond.
- The continuing increase in the OSS' live caseload is a serious cause for concern. During 2002/2003, the OSS reported an increase in live caseload from 5,430 to 8,144 complaints. This continuing rise cannot be sustained. In the first quarter of 2003 turnaround times have worsened. However, 60 staff have been appointed by the OSS to tackle this backlog.
- In January 2002 the Ombudsman made five recommendations to the Law Society, using powers under Section 24(1) of the Courts and Legal Services Act 1990. It is disappointing that only one of these has, as yet, been met in full, although some progress has been made on the others.
- The Ombudsman investigated 224 allegations about the **Bar Council's** handling of complaints in 2002/2003 and found no cause for recommendation in 89% of cases - compared with 93% last year. Turnaround times for Bar Council investigations were slightly worse compared with last year, with 68% of cases closed taking less than 6 months, down from 70% in 2001.

- In 2002/2003 the Ombudsman was satisfied with the handling of eight complaints by the **Council for Licensed Conveyancers** (CLC) out of the 13 matters referred to the Ombudsman's Office.
- The **Institute of Legal Executives** (ILEX) has now put in place revised complaint-handling procedures, following implementation of its new Complaints and Disciplinary Rules. No complaints were referred to the Ombudsman's Office.
- The **Chartered Institute of Patent Agents** (CIPA) received 13 letters of complaint and concluded the investigation of 5 complaints during 2002. One was referred to the Ombudsman's Office in March. The investigation was not completed during the period covered by this report.



FACTS & FIGURES

Complaints and the legal profession

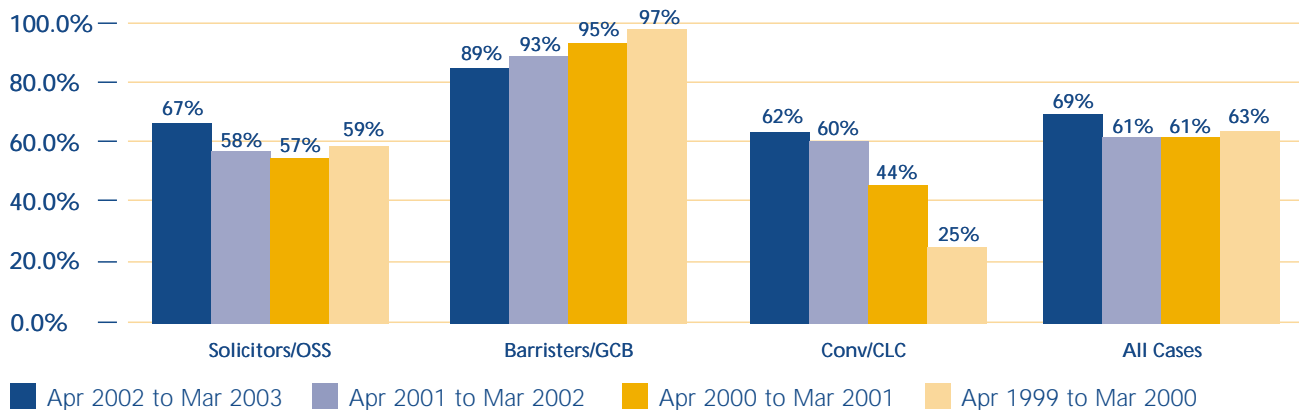
Approximately 7% of complaints and enquiries dealt with by the OSS were subsequently referred to the Ombudsman; whereas 35% of complaints dealt with by the Bar Council were subsequently referred; and 10% of CLC complaints. There was one case from CIPA referred to the Ombudsman but no cases from ILEX.

Turnaround times for LSO investigations improved on 2001/2002. 70% of cases closed took less than 6 months, compared to 58% in the previous year. Investigations were completed within 9 months in 75% of cases and within a year in 83% of cases. Overall, average turnaround times were reduced from 6.7 months to 5.6 months. >>

Complaints about solicitors comprised 89% of the Ombudsman's workload; complaints about barristers 10.3%; and complaints about licensed conveyancers 0.6%. Three cases referred by the Scottish Legal Services Ombudsman under the reciprocal arrangements laid down in the Courts and Legal Services Act 1990 represented the remaining workload.

In 69% of cases the Ombudsman was satisfied with the way the complaint had been handled by the professional body and made no formal recommendation or criticism. The Ombudsman's overall level of satisfaction with the handling of complaints by the professional bodies increased for the second consecutive year.

INVESTIGATIONS WHERE COMPLAINT HANDLING WAS SATISFACTORY



The Ombudsman formally criticised the professional bodies in 11% of cases, the same proportion of cases involving formal criticisms as in 2001/2002.

There was, however, a decrease in the proportion of cases where the Ombudsman made formal recommendations - 20% of cases compared to 28% in 2001/2002.

The total number of recommendations made was 494 (in 440 cases):

- 263 recommendations that the professional body reconsider;
- 230 recommendations for payment of compensation by the professional body.

The lowest compensation award was £50 - for inconvenience. The highest award was £5,150 for loss, distress and inconvenience. The average compensation award was £280 and the total of all awards was £64,282.50.

The Ombudsman also made one binding order against a solicitor.

The Ombudsman's recommendations were complied with in 100% of cases.

Further statistical analysis of complaints investigated and their outcomes is given in the **Facts & figures** section of this Report.



DEVELOPMENTS AT OLSO

CASEWORK PERFORMANCE

Blitzing the backlog

In her last annual report, the previous Ombudsman expressed her disappointment at the fact that the anticipated reduction in the flow of cases from the OSS had not materialised.

During 2002-2003, there was a further 4% increase in referrals to the Ombudsman placing further demands on the resources of this Office.

In May 2002, the Office was presented with the results of the independent benchmarking exercise carried out by PKF management consultants. They found that the Office was operating an efficient casework management system, consistent with current good practice and appropriate to the size of the Office. They made a number of suggestions for incremental improvements to our systems, but acknowledged that the: *'single biggest issue facing OLSO is the size of the backlog of cases. This is seriously hindering OLSO's attempts to deal with new cases within the agreed targets...a radical approach to this issue is demanded and a plan be considered to "blitz" the backlog. This would require additional resources and, given the issues... related to training lead times for new staff...the recovery would take some time. However, OLSO should produce a feasibility plan to be considered in conjunction with LCD.'*

The Department for Constitutional Affairs authorised supplemental resources during the summer of 2002 and, in September, we were able to recruit four temporary staff (on fixed term contracts for a year) to our team of investigators.

Investigations completed

In order to make significant inroads into our live caseload, a revised performance target of 2,100 cases was agreed with the Department for Constitutional Affairs. OLSO completed 2,180 cases in 2002/2003, exceeding the agreed target by 80 cases. This was a 22% increase on last year's total and, for the fourth year running, the highest number of investigations completed since OLSO was established. This was a remarkable achievement given the amount of change that the Office went through and a tribute to the dedication and hard work of all the staff.

OLSO caseload

On 1 April 2002 OLSO had 886 cases awaiting investigation. A total of 1,745 new cases were accepted during 2002/2003. The Office completed 2,180 investigations and ended the year with 451 cases outstanding. Although the number of complaints made to the Bar Council decreased marginally during this period, there was no sign of a reduction of complaints to the OSS. They reported receiving a total of just under 23,000 complaints and enquiries during 2002/2003, some 2,000 more than 2001/2002.

Figure 1 CASELOAD STATISTICS

| | 2002/2003 | 2001/2002 | 2000/2001 | 1999/2000 | Jan 98 Mar 99 |
|--|-----------|-----------|-----------|-----------|---------------|
| Cases awaiting investigation at start of year | 886 | 998 | 544 | 596 | 346 |
| New cases accepted for investigation during year | 1745 | 1677 | 2132 | 1470 | 1908 |
| Number of investigations completed during year | 2180 | 1789 | 1678 | 1522 | 1658 |
| Cases carried forward at end of year | 451 | 886 | 998 | 544 | 596 |

Figure 2 TURNAROUND TIMES

When a case is closed, we measure the time taken from when the professional body's file was received to the date of closure. This year, 70% of all completed investigations took less than 6 months, a significant improvement on last year, but still not enough.

In my view, an acceptable level of service would be to deal with 90% of cases within 6 months. There was also an improvement, from 41% to 46%, of completed cases taking less than 3 months. The average time taken for all cases was 5.6 months, just over a month quicker than the previous year.

| | 2002/2003 | 2001/2002 | 2000/2001 | 1999/2000 | Jan 98 Mar 99 |
|---------------------------------|-----------|-----------|-----------|-----------|---------------|
| % issued within 6 months | 70% | 58% | 76% | 60% | 64% |
| % issued within 7 to 9 months | 5% | 9% | 16% | 38% | 29% |
| % issued within 10 to 12 months | 8% | 15% | 7% | 2% | 6% |
| % issued over 12 months | 17% | 18% | 0.06% | Nil | 1% |
| Average turnaround (months) | 5.6 | 6.7 | 4.5 | 5 | 5 |

Live caseload

The turnaround times above only show part of the picture. Because we closed more cases than we received, not only has the number of live cases reduced, but there has also been a considerable impact on the age of those cases.

At the beginning of April 2002, the 886 live cases included nearly 200 that were already over 9 months old. The position at the start of April 2003 is dramatically different. Only 16 cases fall into this category. Indeed, over 75% of cases are under 3 months old and the average age of all cases held by the Office is less than 2½ months (compared to over 5 months in April 2002).

This puts us in a position to deal with all but the most complicated and involved investigations within 6 months and 100% within one year.

POLICY THEMES

There are a number of policy issues which have arisen out of recent casework, to which I will be paying particular attention over the coming year. These are some of the most important.

Beneficiaries

A number of cases have come to my attention where the OSS take the view that they are unable to provide a poor service remedy to a beneficiary (see, for example, '*A will but no way*' in the 'From the OSS' casebook' section of this report). They take that view because it is the executors and not the beneficiaries of an estate who are the clients of the solicitor administering it. The OSS will investigate complaints by **residuary** beneficiaries, although they can only award compensation to clients (residuary beneficiaries may, however, benefit from any reduction of costs ordered by the OSS, or by the Law Society through the Remuneration Certificate procedure).

I would like to see the OSS adopt a more flexible approach in all cases involving beneficiaries, whether residuary or legatees. I do not believe that it is reasonable merely to refer them to their potential legal remedies, and there are many circumstances when to do so would be wholly inappropriate. It seems to me that in most of these cases there is still scope for the OSS to do something useful for the complainant, such as conciliating between them and the solicitors, or helping to refer the matter to the firm's internal complaints-handling procedure. This is part of a wider debate which I am interested in opening - whether the ambit of compensation should be expanded to include certain categories of non-clients such as beneficiaries, for example, or to those who have suffered detriment as the result of lawyers' misconduct.

Interventions

Another area where the lack of a client relationship causes problems is Law Society interventions into solicitors' firms (referred to in '*The twilight zone*' and '*Will someone please cough up?*' in the 'From the OSS' casebook' section).

A former client of the firm into which the Law Society has intervened does not have any client relationship with the intervention agents unless the firm subsequently accepts instructions to act.

Clearly, however, the former client may have legitimate matters of concern - such as the return of their file, documents or money. I believe that the OSS/Law Society should review the adequacy of the existing arrangements, and I will be monitoring the situation closely.

Enforcement of orders

Section 49 of the Access to Justice Act 1999 gave the Ombudsman the power to **order** the payment of compensation by a lawyer or professional body. This enhanced the existing power conferred by the Courts and Legal Services Act 1990, which was limited to a **recommendation** backed up by the sanction of advertising non-compliance. So far, the power to order payment of compensation has been exercised only in relation to a few complaints about poor service by solicitors. However, I will be considering whether it is appropriate to make greater use of this power, in tandem with extending more of my investigations beyond the allegations about the professional body to include the original complaint.

Unfortunately, the enhancement of the Ombudsman's powers contained in the Access to Justice Act 1999 did not include any mechanism by which an order might be enforced. I would like to see this defect rectified through the necessary primary legislation, so that orders of the Ombudsman can be registered at a county court and enforced through the court as if it were a judgment. The Department for Constitutional Affairs has said that it will take this proposal forward when a suitable legislative opportunity arises.

Strategic cases

For some time, the focus of OLSO's investigative activity has exclusively been on the review of complaint handling by the professional bodies. In cases where a professional body's investigation is found wanting, then my approach is to refer the matter back to them for reconsideration. I anticipate that this stance will continue for most cases. However, I also aim to identify a body of cases where it would be beneficial for me to exercise my powers to investigate the original complaint and, when appropriate, order the payment of compensation by the lawyer concerned.

This approach will serve to raise the profile of OLSO with lawyers and consumers and make a real contribution to the delivery of good quality legal services

Negligence and inadequate professional service

Currently, the professional bodies decline to investigate service complaints which they regard as amounting to negligence by the lawyer. They say that they do not have the jurisdiction or the resources to decide complex or disputed issues of fact and law, and the £5,000 limit on compensation is often cited as an obstacle.

When the complaint concerns a solicitor, complainants are sometimes referred to a member of the Law Society's Negligence Panel for advice on whether it is worth pursuing a negligence claim through the court. However, it appears to me that court action is not an attractive option for the average complainant, not least because of the costs involved and the understandable reluctance of many complainants to immerse themselves once more in the formal system of civil justice which may have given rise to the complaint in the first place. I feel that the current stance runs contrary to the drive towards greater use of Alternative (or Appropriate) Dispute Resolution which was a central plank of the reforms to the civil justice system, and that there are cases where the professional bodies could decide complaints where the lawyer has been negligent. Indeed, the fact that the professional bodies' existing compensation limit is £5,000, and there are proposals that it should be set even higher, would suggest that it is entirely appropriate that they deal with 'minor' negligence cases. Increasing the limit is fine in principle. However, it will only make a real difference if the professional bodies are prepared to reflect this in the compensation awards they make.

My Office is currently investigating the issues raised by the negligence/inadequate professional service interface. In due course, I will be reporting my conclusions and recommendations to the appropriate stakeholders.

Contribution to the LCD review of legal services regulation

Following a report by the Office of Fair Trading (OFT) on 'Competition in the Professions', the Department for Constitutional Affairs issued a consultation paper in July 2002 concerning the regulation of legal services. This dealt with various issues which had been brought up by the OFT, as well as canvassing other matters of current concern. This is an important exercise which may trigger substantial reforms over the long term. Representatives from my Office have already met with the consultants appointed by the Department who are drawing up the terms of reference for the Review. I believe that my Office can offer a unique insight into many aspects of the current regulatory arrangements, and I will be an enthusiastic contributor to this exercise as it unfolds.

Section 24 Recommendations

In January 2002 Ann Abraham made five recommendations in accordance with the powers available to her in Section 24(1) of the Courts and Legal Services Act 1990. I was very disappointed to learn, upon taking up office, that whilst the Law Society/OSS had met one of the recommendations in full, the remaining four have yet to be resolved, albeit that some progress has been made on three of those. Further work by the Law Society is necessary, and I will continue to liaise with them regarding these outstanding issues. This is the current position with respect to each recommendation:

1. That the Law Society/OSS agree a protocol with their approved insurers for the effective referral between them of complaints and negligence claims.

This and the second recommendation arose out of the abolition of the Solicitors Indemnity Fund (SIF) and its replacement by approved insurers. This recommendation aimed to ensure that, when the OSS had decided that they could not deal with a complaint of negligence, they had effective procedures for referring complainants on to the relevant insurer.

The Law Society canvassed the opinion of claims-handling managers by questionnaire, and reported to my predecessor that qualifying insurers are interested in a mutual exchange of information but do not have any clear ideas about the contents of a protocol. The Law Society has referred to its proposals to update the obligations of solicitors to inform claimants and their insurers about possible negligence claims. There has clearly been some progress, but more needs to be done to address the central issue of effective referral between the OSS and approved insurers.

2. That the Law Society issues guidelines to its approved insurers to ensure that they have in place effective arrangements for communicating and negotiating with lay claimants in relation to allegations of negligence.

This recommendation intended to preserve some of the positive elements of what my predecessor regarded as the SIF's more customer-friendly arrangements for dealing with claimants, particularly those unrepresented by their own lawyers.

The Law Society's questionnaire suggested that the number of claims made by unrepresented claimants was low; it also revealed that only one of the insurers had produced specific guidance for unrepresented claimants. The Law Society said that it would think about further advice for unrepresented claimants. I am sure that guidance to unrepresented claimants about what they can expect when they claim against insurers would be of real benefit, and that it should be produced quickly. However, the Law Society has looked at this issue from the perspective only of the Law Society, solicitors and insurers. What is now needed is well-targeted research looking at the experience of unrepresented complainants and claimants, agreed with both the insurers and my Office.

3. That the Law Society/OSS consider the introduction of an arbitration scheme for the resolution of poor service and minor negligence disputes between clients and solicitors.

When the OSS inaugurated its Consumer Redress Scheme, they suggested that they would utilise alternative methods of dispute resolution. My predecessor considered that in the event they had done too little to take this proposal forward, and accordingly made this recommendation.

The Law Society has launched a pilot project to test twenty files over a period of some months, and there may be an additional pilot. My current view is that, while there has been some progress, it has been slow and on a surprisingly small scale.

4. That an annual report of the Consumer Redress Scheme be published detailing its performance and operation.

This recommendation has been dealt with.

5. That the Law Society holds a series of stakeholder meetings on the Consumer Redress Scheme for all the individuals and organisations who responded to its consultation paper, specifically to discuss how the Scheme should be implemented and developed.

The Ombudsman made this recommendation because the Law Society had developed their Consumer Redress Scheme with very little meaningful consultation, which she believed was one cause of its several failings.

The Law Society's response to the recommendation was to emphasise the developments of the Consumer Redress Scheme, including the use of external consultants to look at their internal complaints-handling processes and systems; the recommendation for the creation of a 'model office'; and the work of the Independent Commissioner to achieve a more consumer-focused complaints-handling system.

They suggested that they would hold 'round table meetings' with relevant stakeholders when these developments had been allowed to bed in. I note that there have in fact been no 'round table meetings'. However, there have been some welcome developments addressing the performance of the OSS, in terms of major improvements in planning and targeting, and with the Independent Commissioner's approach to improving complaints handling. There does remain a need for greater consumer focus, and more genuine and responsive consultation with a range of stakeholders.

I will be pushing to see that consultation does in fact arrive in due course.





THE CONTINUING 'PROGRESSIVE TRANSFORMATION' OF OLSO

The year ahead

2003/2004 will be a critical year for my Office.

The OSS have built up a considerable backlog of cases.

In order to meet the targets that they have agreed with the Department for Constitutional Affairs, the OSS will have to reduce this number. They expect to deal with around 26,000 complaints and enquiries in each of the next two years – significantly more cases than in 2002/2003 – largely because the OSS have recruited over 60 new caseworkers.

The inevitable result will be that the number of referrals to me will increase still further. If my Office is to keep pace with those developments, I anticipate that I will need sufficient resources to deal with around 2,200 referrals in 2003/2004.

That is a huge caseload for an Office this size. Dealing with such large numbers of complaints with the relatively small number of staff currently employed at OLSO cannot be sustained over a long period. As demonstrated by the PKF report, this Office operates extremely effective case management systems. All the signs now point to the necessity to retain the four temporary posts on a permanent basis in order to avoid seeing a backlog at this Office build up again, as the additional caseworkers appointed by the OSS begin to have an impact.

However, simply dealing with the cases is not the only role of a modern Ombudsman's Office. I have already referred to a number of areas where I intend to focus my attention.

Since my arrival I have been working on a strategic plan which will set out what I hope the Office will achieve during the next three years. This transformation will not, however, be possible without the appropriate resources being available. Elsewhere in this report, I refer to the need for greater oversight of complaints handling by the legal professional bodies, in particular at the OSS, and of the need to work with them to identify how they can significantly improve their performance. My Office also needs to engage in dialogue with the Lord Chancellor and the legal professional bodies to explore the options for improving the quality of service delivered by legal professionals and to ensure consistency in complaints handling across all the professional bodies. This sort of strategic work cannot be done if staff are overburdened with casework.

*“ I intend to produce an interim report in
October/November this year. This will enable me to
assess how well the professional bodies
have performed ”*

In addition, I intend to produce an interim report in October/November this year. This will enable me to assess how well the professional bodies have performed and, in particular, how the OSS are performing against their targets, and to advise the Lord Chancellor accordingly. I also intend to continue to develop our program of research into the views of our own customers, with particular emphasis on making improvements to the information we provide and the accessibility of that information. This should help inform us how to improve our website and general literature. There is also more work to do in benchmarking certain aspects of our own performance.

In short, I believe that the staff in the Office are working at maximum capacity. With no sign of any decrease in incoming work, I need to retain all the existing resources simply to keep on top of the caseload. Any reduction would result in a build-up of cases, with an inevitable impact on the length of time that it takes to deal with a case. Without further additional resources, I find it extremely difficult to see how I can complete the progressive transformation to a modern Ombudsman's Office that I believe to be essential.



BUSINESS MANAGEMENT

Incremental improvements

The PKF report which was referred to earlier made a number of suggestions for what they described as 'incremental improvements' to the efficiency of the casework process.

The review suggested that there was scope for better dissemination of management and other information to staff. There is now a monthly newsletter, which contains statistical and general casework information. Additional staff training has been given to improve cover for certain key staff. The appointment of additional temporary staff also gave the Office the opportunity to improve staff training and thereby reduce the lead-time needed for new staff to become effective.

In addition, staff were issued with stricter guidelines on how to deal with correspondence received from complainants in response to the Ombudsman's report.

Communication, Research & Policy Unit

As part of the process of enhancing the Ombudsman's role, a Communication, Research & Policy Unit (CoRP) was set up at the beginning of 2002. The Unit's initial task was to undertake a number of projects to improve the internal communications of the Office. This proceeded on the basis of wide-ranging staff consultation on a number of issues, including a casework conference involving all staff.

The monthly caseworkers' newsletter was one initiative which resulted from this process. Another project was a review of information capture and the Office database.

CoRP is also working to improve external communications, developing the Office's literature and website, and providing press releases, articles and speeches. Providing responses to consultation exercises is one part of this, and this Office has been making a significant contribution to the major review of its professional standards which the Law Society is currently undertaking. The Unit has been piloting a number of complainant surveys to assess customers' experience of, and satisfaction with, Office procedures and literature, as well as overall satisfaction ratings, and to monitor access issues. An external customer satisfaction survey will be commissioned within the next year or so.

One area in which the Office is looking for a substantial expansion of activity, utilising the resources of CoRP, is in its research strategy. The Unit is currently engaged in a number of significant projects: the Department for Constitutional Affairs' benchmarking of all of the professional bodies' standards and procedures; an exercise benchmarking the Office's own casework performance; contributing to the Lord Chancellor's review of legal regulation; and six-monthly reviews of the professional bodies' operations. This enhanced research capability will enable this Office to make a much more significant and informed contribution to improving the service provided by both lawyers and their professional bodies.

Staff issues

The achievement of the aims and objectives of OLSO are supported by the maintenance of a system of internal controls. This ensures the efficient and effective management of and proper accounting for the resources delegated to the Office. Independent audits are undertaken regularly by members of the Department for Constitutional Affairs and the National Audit Office. The Lord Chancellor's Internal Assurance Team will be undertaking an audit this year.

We have continued to work towards compliance with ISO 17799 on Information Security Management Systems, and the Freedom of Information Act 2000, due to come into force in January 2005.

At the start of 2002/03 the Office had 26 staff posts (23.4 full time equivalents). At year-end this had increased to 30 staff posts (27.2 full time equivalents) due in the main to the decision to 'blitz' the backlog of cases. In addition, over the year we employed 7 consultant caseworkers.

During the year significant progress was made on staff training and development. The Staff Opinion Survey carried out by ORC International in 2002 on behalf of the Department for Constitutional Affairs confirmed our genuine commitment to providing such opportunities.

We are also fully committed to the principle that all staff will have equal opportunity in employment and advancement on the basis of their ability to do the job.

During the year we continued to support flexible working patterns to help staff in balancing their working and personal lives, thus contributing to a more efficient and effective organisation. Staff sickness remains at a low level.

OLSO will be looking to support the Department for Constitutional Affairs in 2003/4 in their bid for Investors in People re-accreditation.

Electronic communications

We have also been looking at ways of improving the service we deliver to our customers. Applications to this Office may be made on-line through our website. So far this year, about 270 applications have been made in this way. In the coming year we will be piloting the use of electronic signatures to facilitate the issuing of reports electronically.

We will also pilot the use of electronic signatures for all other reports issued via the postal system. I will continue to read and approve every draft report, but the final version will not have to wait for me to sign in person.

The Immigration Services Commissioner

The Immigration and Asylum Act 1999 created the Immigration Services Commissioner and gave him jurisdiction over the complaint-handling activities of the professional bodies and the standard of immigration advice and services provided by their members. I continue to have concurrent jurisdiction, although my powers are wider than those of the Commissioner, particularly with respect to the provision of redress. I report annually to the Lord Chancellor, and the Commissioner reports annually to the Home Secretary.

In light of the very real possibility of regulatory embarrassment or congestion, the two Offices have recently completed a Memorandum of Understanding.

The Memorandum deals with such issues as the overlap of jurisdictions, communications, mutual co-operation and staff training.

Professional body training

I will continue to support the professional bodies in their delivery of training and feedback to their staff.

For example, we now have a regular commitment to contribute to the training of Bar Council Panel Members. Our staff also participate in exchange visits with the OSS and our casework conference last year was attended by Adjudicators from the OSS. These measures are seen as an important contribution to the raising of standards of complaint handling by the professional bodies.



REVIEW OF COMPLAINT HANDLING BY THE PROFESSIONAL BODIES 2002/2003

OVERVIEW

Complaints and the legal profession

- The table below gives the latest available figures for the number of practising lawyers regulated by each of the professional bodies and the numbers of complaints made to those professional bodies in the calendar year 2002.

| | Number Practising | No. of complaints to PB in 2002 |
|--------------------------------------|-------------------|---------------------------------|
| Solicitors/OSS | 89,045 | 22,830* |
| Barristers/GCB | 13,601 | 461 |
| Licensed Conveyancers/CLC | 780 | 126 |
| ILEX | 6,382 | 41 |
| Chartered Institute of Patent Agents | 1,450 | 13 |

*Total of complaints (14,880) and enquiries (7,950) to OSS. The figures for the OSS and GCB include those who are employed.

- According to the Law Society's published figures, the OSS received a total of 14,880 complaints in 2002, compared with the published figure of 10,585 for 2001. During 2002, the Ombudsman and the OSS reached an agreement on how to define complaints and enquiries. These definitions were phased in during the year and implemented in full from 1 January 2003. Because of the changes, the figures for the two years are not directly comparable. However, a comparison between the total number of complaints plus enquiries received by the OSS in 2001 (21,424) and 2002 (22,830) reveals a 1,406 increase in the total number of referrals (6.5%).

- The Bar Council received a total of 743 complaints in 2002 compared with 829 in 2001. However, the reduction reflects the fact that fewer complaints were brought by the Bar Council of their own volition, for example for non-payment of Practising Certificate fees. The figure for complaints from members of the public remained almost unchanged - 461 in 2002, compared to 464 in 2001.
- The Council for Licensed Conveyancers received 126 complaints in 2002; the Institute of Legal Executives received 41; and the Chartered Institute of Patent Agents received 13 complaints.

It should be noted that OLSO can only investigate complaints about members of ILEX and CIPA if they concern authorised advocates. The total with this qualification is less than 50.

OLSO INVESTIGATIONS AND THEIR OUTCOMES

OLSO conducted 2,180 investigations in 2002/2003 compared with 1,789 investigations in 2001/2002. Complaints about solicitors comprised 89% of OLSO's workload compared with 91% in 2001/2002; complaints about barristers 10.3% compared with 8.6% in 2001/2002; and complaints about licensed conveyancers 0.6% compared with 0.3% in 2001/2002.

OLSO also undertook the investigation of 3 cases referred to the Ombudsman by the Scottish Legal Services Ombudsman under the reciprocal arrangements laid down in the Courts and Legal Services Act 1990; that represented the remaining 0.1% of the workload. For my part, I am grateful to the Scottish LSO for undertaking 7 investigations into the way that the OSS dealt with complaints. The results of those investigations are included in the OSS figures.

In 69% of cases OLSO made no formal recommendation or criticism of the professional body or the individual lawyer. Although this represents an improvement there is still some way to go. The Ombudsman's last two annual reports have seen this satisfaction rating unchanged at 61% having fallen from 1997 when the figure was 70%.

OLSO formally criticised the professional bodies in 11% of cases, the same proportion of cases involving formal criticism as in 2001/2002.

There was, however, a decrease in the proportion of cases where OLSO made formal recommendations – 20% of cases compared to 28% in 2001/2002.

The total number of recommendations was 494 (in 440 cases):

263 recommendations that the professional body reconsider the complaint;

230 recommendations for payment of compensation by the professional body and 1 order that a solicitor pay compensation.

The lowest compensation award was £50 - for inconvenience. The highest award was £5,150 - for loss and inconvenience. The average compensation was £280 and the total of all awards was £64,282.50.

My recommendations have been complied with in 100% of cases.

Further statistical analysis of complaints investigated and their outcomes is given in the **Facts & Figures** section of this Report.

THE LAW SOCIETY AND THE OFFICE FOR THE SUPERVISION OF SOLICITORS (OSS)

COMPLAINTS ABOUT SOLICITORS IN 2002/2003

In 2002/2003 I investigated 1,940 allegations about the handling of complaints by the OSS, compared with 1,629 in 2001/2002. That represented just over 89% of my caseload, compared with 91% in 2001/2002 and 90% in 2000/2001. I was satisfied with the way in which the OSS had handled the complaint in 67% of cases, an increase in my overall level of satisfaction from last year's figure of 58%.

I formally criticised the OSS in 11% of cases and made recommendations in the remaining 22%. I made a total of 470 recommendations, in 420 reports. There were 245 recommendations that the OSS should reconsider the complaint and 224 that the OSS should pay compensation. In 48 cases reports contained both recommendations, indicating that not only was the OSS' investigation or decision unsatisfactory, but there had also been administrative failings, such as delay, in their handling of the complaint. The total of compensation awards was £60,632.50.

OSS' PERFORMANCE

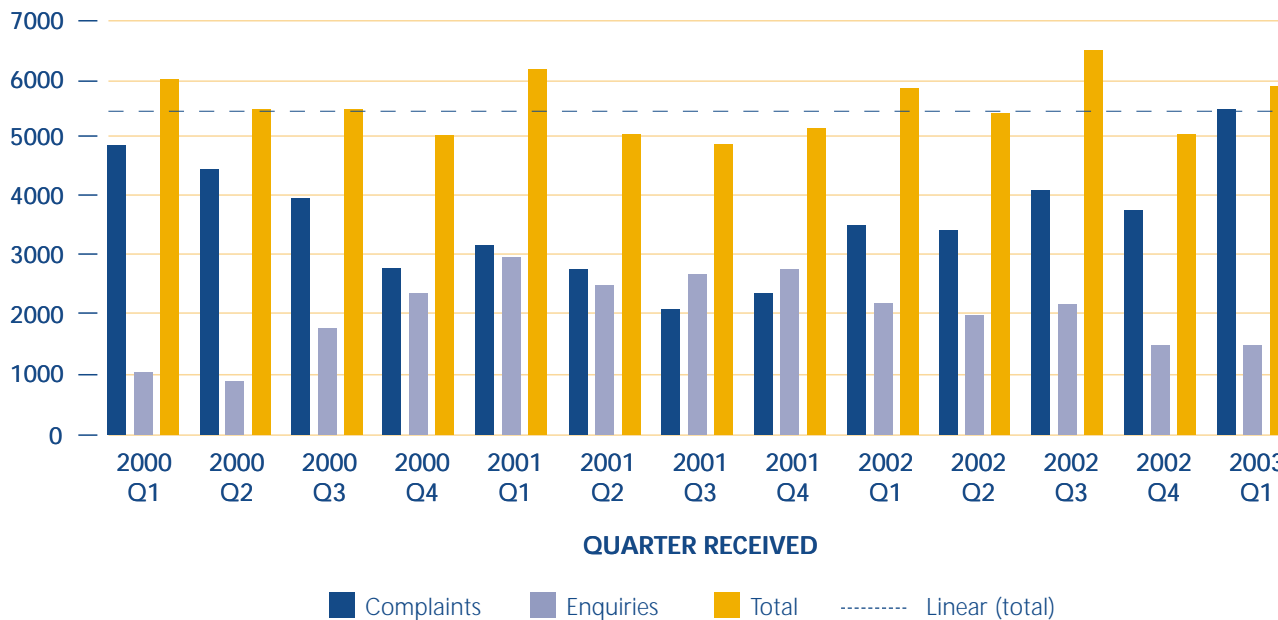
Difficulties in setting targets for 2002

Referrals to the OSS are defined as either complaints or enquiries. It is therefore very important to have clear definitions of these terms. If the OSS agree a target for the percentage of complaints that they intend to close in a given period, any change in the definition of a complaint would be significant when it comes to assessing whether the target was met.

Over the past three years, this issue has caused the Ombudsman considerable concern. The OSS has not applied definitions consistently. As a result, meaningful comparisons between figures for complaints received and closed have been impossible. However, I have been able to compare the total for complaints and enquiries and the results are very interesting.

The proportion of enquiries to complaints has varied considerably during this period. However, although there have been some fluctuations in the total receipts, the evidence shows that the total number of receipts has remained relatively constant since 2000.

CASES RECEIVED BY THE OSS JANUARY 2000 TO MARCH 2003



Whilst my Office continued to monitor OSS performance during 2002, the unresolved confusion about definitions prevented any specific targets being agreed between the OSS and the Department for Constitutional Affairs. However, clear definitions for what constitutes a complaint and an enquiry were agreed during the year. These formed the foundation for the targets that the OSS has agreed with the Lord Chancellor for 2003 and beyond.

OSS' performance 2002/2003

My Office monitors the OSS' performance in three key areas: the quality of OSS' investigations, turnaround times for OSS' investigations, and the age of live cases held by the OSS. The first is a figure based on the number of cases where my Office made no recommendation or criticism of the way that the OSS dealt with a case. My Office prepares these figures. I am pleased to be able to report an increase in this overall performance rating. For the last two years, the Ombudsman's Office was satisfied with between 57% and 58% of the OSS' investigations. This year, the figure increased to 67%. This still fell short of the last agreed target of 75%. Nevertheless, the improvement is welcomed and the OSS have agreed an overall quality target of 75% for 2003 with the Lord Chancellor.

In order to assess turnaround times and the age of outstanding cases, I have to rely on information provided by the OSS. In previous years, doubts have been expressed about the integrity of this data. My Office reviewed the OSS'

This review, in conjunction with the agreement reached on how to define a complaint and how to measure opening and closing dates of files, has satisfied me that the OSS' data is now reliable. I would like to thank the OSS for their openness and co-operation in achieving this result.

The OSS' turnaround times for 2002 showed an improvement on 2001. Over half (56%) of complaints closed during 2002 were concluded within 3 months of receipt and 71% within 6 months.

However, these figures do not tell the whole story. Throughout 2002/2003, the OSS continued to close fewer cases than they received. As a result, the number of live cases continued to increase. On 1 April 2002 there were 5,430 cases on the shelf. This number has risen in all but one month since and, at the end of March 2003, stood at 8,144. The effect of this relentless rise in cases became all too apparent during the first three months of 2003. Turnaround times for cases closed during that 1st quarter of 2003 were 46% within 3 months and 69% within 6 months, against targets of 60% and 75% respectively, despite the fact that the OSS received fewer cases than they had predicted.

Of perhaps even more concern is the age of cases remaining open. The position at the end of March 2003 showed that 58% of all cases were over 3 months old and that over 1,000 cases (13%) were already over a year old.

The OSS' targets for 2003 were agreed on the basis that additional resources had been provided which were to be used to recruit a significant number of new caseworkers. The fact that these staff would need time to become fully effective was also taken into consideration. By the beginning of April 2003, the OSS had, after some initial difficulty, recruited enough new staff to bring them up to full complement. I will be closely monitoring what effect this has on the OSS' performance during the coming year. But, without a speedy and significant improvement in output, staff at the OSS will, once again, find themselves buried under the sheer weight of casework.

The OSS are under no illusions about what is required of them. During the course of discussions with the OSS about these targets, my Office emphasised one particular point. Whilst allowances could be made for training of new staff, there was one area that could not be compromised: quality. A trainee inevitably takes longer to deal with a case. However, if properly supervised, there is absolutely no reason why the quality of the final decision should be adversely affected. If there are delays which result in distress or inconvenience to the complainant, the OSS have systems in place to make an award of compensation for those problems **when they close the file**. However, in some cases, the review of their file is not undertaken until my Office has requested the file. If appropriate, awards of compensation are then made at this late stage.

The OSS now have the resources that **they believe** are necessary to enable them to deal with all complaints in a timely and effective way. They also have additional resources in other areas, such as their Practice Standards Unit, to carry out some of the more proactive work required to help reduce the number of complaints that are referred to them. If the OSS cannot deliver, then it would seem to me impossible for them to argue against the frequently-voiced opinion that the Law Society are incapable of effectively regulating their own members.

Reconsiderations

My primary role in investigating a case brought to me is to review the way in which the professional body has dealt with it. Under the provisions of the Courts and Legal Services Act 1990, I have the power to recommend or direct that compensation be paid. But I also have the power to recommend that the professional bodies reconsider a complaint, if I believe that there is an issue which should be revisited. In such cases, I have to decide whether to make such a recommendation, or whether to investigate the complaint myself.

As a matter of policy, I currently send most of these cases back to the professional body to reconsider. By doing so, the professional body is able to learn from the experience of its own mistakes, and to rectify its own errors. It also reduces what would otherwise be an intolerable burden on the resources of my own Office. However, I can only justifiably send cases back for reconsideration if I have confidence that the professional body will be able to provide the complainant with an adequate investigation at the second attempt.

Unfortunately, I am concerned that the performance of the OSS in respect of such reconsideration cases may not justify my confidence. What is most worrying is that there are problems not only with the process, but also with the outcome. Put briefly, the OSS' reconsiderations are taking too long, and too often their decision is (for the second time in the case) defective.

In relation to turnaround times, of the 216 cases completed, only 43% of reconsiderations were completed by the OSS within 6 months; 23% took longer than one year.

In circumstances in which the complainant has already had their case investigated by both the OSS and my Office, and possibly the solicitor complained about as well, it is simply unacceptable that they should have to wait that long to have the matter dealt with again.

| Approximate time taken by the OSS to complete reconsideration | Total | |
|---|-------------|------------|
| 0-3 Months | 11.6% | 25 |
| 4-6 Months | 31.0% | 67 |
| 7-9 Months | 21.8% | 47 |
| 10-12 Months | 12.5% | 27 |
| 12-15 Months | 7.9% | 17 |
| 15-18 Months | 6.9% | 15 |
| 18-24 Months | 6.0% | 13 |
| Over two years | 2.3% | 5 |
| Total | 100% | 216 |

Inevitably, the result is an increased amount of distress and inconvenience suffered by the complainant. However, the situation becomes even worse when the second factor is taken into account, which is the outcome of these reconsideration cases. The table below provides details of the outcome in Ombudsman reports issued in the year 2002-3, in respect of cases where the complainant has made a further referral to this Office following the conclusion of the OSS' reconsideration, and compares that with the global outcome of **all** OSS cases dealt with by the Ombudsman.

| Outcome of OSS cases referred to LSO | All Investigations | Second investigations |
|--------------------------------------|--------------------|-----------------------|
| No Recommendation | 67.2% | 71.7% |
| Recommendation | 21.6% | 19.5% |
| Criticism | 11.2% | 8.8% |
| Total | 100% | 100% |

As can be readily seen, there is little difference between the two columns - the Ombudsman's satisfaction rating with reconsidered cases is only 71.7%, while the global satisfaction rating is 67.2% for all OSS cases. In other words, when they are given the opportunity to reconsider cases, the OSS' performance is scarcely any better than it was in their first investigation. This is especially unfortunate when it is borne in mind that the Ombudsman's report has already identified the problem with the previous decision and, in many cases, has also suggested what needs to be done to

Of course, comparison of these outcome figures is problematic, because not every second investigation by the OSS results in a second application to my Office. It might be surmised that those who do not apply decide not to do so precisely because they are satisfied with the outcome of the OSS' reconsideration. Unfortunately, we do not have data about the outcome of OSS reconsideration cases which have not been subsequently referred to this Office, although we are liaising with the OSS in order to obtain from them better feedback in regard to the outcome of cases generally. However, there are good reasons to doubt that the satisfaction figures would be much better even if these complainants were included - for instance, some will have decided not to refer the matter back to the Ombudsman simply because they have become exasperated with the whole process. Therefore, while further analysis is needed, I believe that there are good grounds to believe that there is a serious problem with the outcome of the OSS' reconsideration cases.

If that is so, then we have a situation where cases are referred back to the OSS where there has already been a delay, and they have already failed to reach a reasonable decision; and the OSS are producing further delays and defective outcomes. As I have said, I believe that I can only justify giving them the opportunity to reconsider the complaint if their reinvestigation is likely to be quick and well-executed. If that is not likely, I will have to take remedial measures.

To that end, I have decided to adopt a more robust approach to those cases where my second investigation has concluded that the OSS' reconsideration was inadequate. From now on, I will recognise that the level of distress and inconvenience caused to the complainant in such cases is significantly greater than when there has only been one investigation by the OSS, and my awards of compensation will be significantly greater as a consequence.

Furthermore, I will be giving serious consideration to whether I should deal with more of these cases myself, by extending my first investigation to the original complaint rather than recommending that the OSS reconsider. I might add that, if I have to take such action, that may be something which is seen as relevant to the question of whether the profession is still capable of adequately handling complaints about its members.

BACK TO BASICS

A will but no way

Mrs A's two children were left some money in their grandmother's will. On the grandmother's death in 1990, the money was invested in a building society account, administered by solicitor trustees. Unfortunately, Mrs A's personal papers were destroyed by fire and so she was left somewhat in the dark about the fate of the money. When one of the children reached the age of 18, she contacted the solicitors who had invested the money. Unfortunately, she was unable to make any headway and was forced to ask the OSS for help.

During the next couple of years communications from the solicitors and the OSS fizzled out. Then, in May 2002, the OSS finally grasped the nettle and pressed the solicitors for a reply to complaints of delay, failure to account and failure to reply to letters. The firm apologised and sent Mrs A a cheque for £100. The OSS closed their file.

The Ombudsman decided that the OSS' handling of the complaint was unsatisfactory – not least their failure to reply to numerous letters and phone calls over three years. She therefore recommended that the OSS pay Mrs A £400 compensation (in addition to the £100 they had already paid). On the broader point of whether the OSS could have done more to help Mrs A get hold of the account information, the Ombudsman understood that the OSS had to distinguish complaints made by third parties from those of clients. However, she expressed concern that, whilst the beneficiaries were not clients, they were clearly reliant on the solicitors to act in their best interests and should have been entitled to the account information. The Ombudsman went on to say that, where bequests and trusts are relatively small, as in this case, court action is likely to be uneconomic – leaving beneficiaries with no means of pursuing complaints. The Ombudsman urged the OSS to consider whether they could give more assistance in such cases.

The twilight zone

Mr B's solicitors were intervened in by the Law Society. Mr B contacted the Law Society's solicitor/intervention agents several times in order to arrange the transfer of his will and other documents to new solicitors. After several months, Mr B complained to the OSS about the intervention agents. The OSS said that there was no solicitor client relationship between the agents and Mr B, until he confirmed that he wanted the solicitor to act. Therefore, the OSS said, they were unable to consider issues of poor service.

The Ombudsman agreed that, whilst Mr B might not have been the client of the solicitors, their persistent failure – over two years – to transfer the will and other documents to Mr B's new solicitors might amount to misconduct. The Ombudsman recommended therefore that the OSS reconsider the complaint. The Ombudsman also expressed dissatisfaction with arrangements for intervention where a client of the practice intervened in has no client status (and no right of redress) in the 'twilight period' between the act of intervention and the time when the client has to make their mind up about whether to transfer instructions to the Law Society's agents. The Ombudsman therefore informally recommended that the OSS/Law Society review the adequacy of these arrangements.

LACK OF CO-OPERATION CASES

Regulatory runaround

From time to time, the OSS have to deal with solicitors who will do their best – or worst – to avoid their professional and statutory obligations and otherwise try to obstruct and frustrate the OSS' best efforts at complaint handling – in some cases testing the OSS' powers and complainants' patience to the limit. Here are two cases reviewed by the Ombudsman.

A taxing time

Mr H, a solicitor, prepared wills for Mr & Mrs I. The clients later made a substantial loan to Mr H. Mr I passed away and, in mid 1995, his son complained to what was then the Solicitors Complaints Bureau that, when the solicitor repaid the loan, he set off two legal bills against it, and delayed in applying for a remuneration certificate. Three months after the request for a certificate had been made, Mr H assured the Bureau that he would make the necessary application to the Law Society.

The solicitor continued to assure the Bureau/OSS throughout 1996 that matters were in hand.

Unfortunately, no steps were taken to apply for the certificate and so, in early in 1997, the OSS' Compliance & Supervision Committee decided to give Mr H fourteen days to take action, failing which he would be reported to the Solicitors' Disciplinary Tribunal. Once again, the solicitor did nothing and, in due course, he appeared before the Tribunal and was fined £1,000 plus costs.

In January 1998, Mr I's son complained again to the OSS. He said that a provisional remuneration certificate had reduced the solicitor's bills by more than half and that a refund of over £8,000 was due. However, according to Mr H, he was now applying to the court for a detailed assessment of costs. Events then took a familiar turn, with the solicitor assuring the OSS that his application to court was in hand. After several weeks, during which the OSS reminded the solicitor of his promise to the Tribunal that he would never delay in the future, it was clear that the solicitor had done nothing to advance his court application. The OSS decided to refer Mr H once more to the Compliance and Supervision Committee who directed him to refund his fees, together with interest. However, Mr H was still not ready to concede defeat. He refused to pay interest and it was not until the issue went back to the Committee for a third time and a direction was made, that the outstanding payment materialised. Not surprisingly, the OSS referred Mr H to the Solicitors' Disciplinary Tribunal again, where he was fined £3,000 for failure to account to clients, delay and unbecoming conduct.

Mr I's son complained to the Ombudsman that the solicitor had not been punished adequately, that he had not been compensated and that he had needed to make a second complaint to the OSS following Mr H's failure to apply for a detailed assessment of costs. The Ombudsman decided that, overall, in twice referring Mr H to the Tribunal, the OSS had done all it could to deal with the solicitor's delays and failures to comply with directions. However, the Ombudsman was critical of the OSS for failing to keep the complainant informed of progress with the Tribunal proceedings, and for not investigating the issues of overcharging and late delivery of a bill.

Reluctant disclosure

Miss J instructed a solicitor, Mr K, in connection with several litigious matters. She complained to the OSS that the solicitor had not responded to her letters and phone calls and was generally avoiding her. Also, he had not replied to a complaint resolution form and had thwarted the best efforts of the local law society at conciliation. After an initial delay, the OSS wrote to Mr K asking for his comments on Miss J's complaint. The solicitor failed to reply to any of the OSS' letters and things were brought to a head when the OSS warned Mr K that, unless he replied within seven days, disciplinary action would be taken and an order for production of his file under Section 44(b) of the Solicitors Act 1974 would be made. The solicitor failed to respond and an order was made. Five weeks later, Mr K apparently handed over his file to the OSS although, on closer scrutiny, several letters and other documents were missing.

Fortunately, the missing information was available elsewhere and the OSS were able to conclude that the solicitor had provided an inadequate service. They directed that he pay the complainant £350 compensation. True to form, Mr K delayed in paying the compensation and it was only when the OSS threatened him with the Solicitors' Disciplinary Tribunal that he paid up. The Ombudsman reviewed the OSS' handling of Miss J's complaint and concluded that the OSS' decisions had been entirely reasonable. However, she was critical of the delays at the OSS and the fact they had only identified their own shortcomings, and paid Miss J compensation, after the matter had been referred to her Office.

Conclusion

It is clear from these cases, and others seen by the Ombudsman, that some solicitors are only too willing to add to the OSS' problems. The Law Society's declared strategy in its new approach to regulation is to place much greater emphasis on ensuring that solicitors comply with their professional rules. In cases like these, the OSS must be prepared to act swiftly and decisively, using all the enforcement powers at their disposal and, where necessary, putting matters into the hands of the Solicitors' Disciplinary Tribunal.

Emerging issues

Mr C's solicitors merged practices with another firm. As a result, they said that a conflict of interests had been created with another client of the merged practice. They terminated the retainer and Mr C was forced to seek alternative representation. The OSS was called in to investigate the complaint that the solicitors had breached their conduct and service obligations. The OSS concluded that the solicitors had acted reasonably.

The Ombudsman decided that, in the circumstances of the case, the OSS' decision was reasonable. However, she said that, where firms merge and as a result terminate the retainer with their client because a conflict has been created, then the firm should reimburse any wasted costs incurred – for example the cost of the time necessary for new solicitors to familiarise themselves with the file. The Ombudsman said that there should be an obligation on solicitors to pay these costs, because it was unsatisfactory from a client perspective that they should lose out when solicitors decide to alter their practising arrangements for their own business reasons.

A well-travelled road

Mr D instructed solicitors to defend charges against him of affray and drunk driving. Mr D went to court twice, only to find that each time no defence witnesses were there. After a change of solicitors, Mr D was acquitted of the charges but he remained deeply unhappy with the original solicitors' performance.

Following the OSS' investigation first time round, the Ombudsman decided that the OSS had not addressed the complaint about the non-attendance of witnesses. She recommended that they reconsider the complaint. On review number two, the Ombudsman decided that the re-investigation was thorough, but that the OSS' compensation direction of £150 for inconvenience was too low and did not take into account the distress suffered by Mr D. The OSS reconsidered once again and this time they awarded £100 for distress. However, when the Ombudsman reviewed the OSS' decision for a third time she found that they had failed to ask Mr D for evidence of the distress that he had suffered, and had failed to give any reasons for arriving at an award of £100. The Ombudsman recommended that the OSS reconsider the complaint – again.

Following yet another investigation – in the course of which Mr D provided medical evidence of the distress he said he had suffered - the OSS decided that the award of £100 was about right. Once more the Ombudsman travelled down the by now well - worn path of Mr D's complaint. She decided that the OSS' decision was found wanting again for lack of reasons. The Ombudsman decided to bring an end to this whole sorry saga and, instead of recommending that the OSS re-investigate the complaint for a fourth time, she recommended that the OSS pay Mr D compensation of £1,000 for distress and inconvenience.

Will someone please cough up?

Mrs C instructed Mr W to prepare a will. Mr W's firm was subsequently intervened in and the Law Society's agents took possession of all the files previously held by the firm. Sensibly, Mrs C contacted the intervention agents in order to confirm that they were in possession of her will. They informed her that they were unable to locate it.

Mrs C then complained to the OSS who established that the will had been lodged with Mr W. However, despite investigating, the OSS could not establish whether Mrs C's will had been lost by Mr W or by the intervention agents. They told Mrs C that they would be unable to comply with her request that Mr W cover the cost of preparing a new will because they could not establish that it was he who had provided her with the poor service.

In the Ombudsman's view, this was a far from satisfactory conclusion to what should have been a relatively simple matter to sort out. It had already been acknowledged that Mrs C's will had been lost (through no fault of her own) and it was unsatisfactory for the OSS not to have attempted to reach a solution – especially since the sum of money involved was so small. After all, one of the cornerstones of the OSS' Consumer Redress Scheme is the use of alternative methods of dispute resolution and this was an example of a complaint that should have been dealt with in a more imaginative way. She therefore recommended that the OSS reconsider Mrs C's complaint with a view to attempting to conciliate the matter.

What obligation?

Mrs S instructed solicitors to pursue her medical negligence claim and subsequently complained to the OSS about the way that the firm had handled her case. It emerged during the OSS' investigation that Mrs S considered that the solicitors had delayed, had failed to pursue her claim diligently and had not advised her of her right to apply for a remuneration certificate. After several unsatisfactory explanations from the firm an Adjudicator concluded that delays by the firm amounted to an inadequate service. However, the Adjudicator decided that the solicitors had not breached any Rules of Professional Conduct by failing to inform Mrs S about the remuneration certificate procedure. This was because, technically, there was no general obligation on a solicitor to inform a client of their right to a remuneration certificate in the particular circumstances of this case.

Mrs S was obviously satisfied with the OSS' findings that the firm had provided her with an inadequate service, although she was not so happy with the amount of compensation awarded (£700). The Ombudsman dealt with this issue first and decided that, because the OSS had taken into consideration the amount of work that the firm had carried out, compensation was reasonable.

However, turning to the issue regarding the remuneration certificate, the Ombudsman found a less than satisfactory loophole in what was, overall, a reasonable conclusion. Although she considered that the Adjudicator's interpretation of the Solicitors (Non-Contentious) Business Order 1994 (the Order) was a correct reading of the provisions, she was disappointed that the OSS did not advise Mrs S that she could still ask the solicitors to apply for a remuneration certificate, despite the fact that the time limit for doing so had expired, and she formally criticised the OSS for this. The Ombudsman also considered that there was a wider issue which arose from this case and concluded that the Order failed to provide that all solicitors' clients are fully informed about their right to a remuneration certificate. She therefore wrote separately to the Director of Regulation and Operations at the OSS to advise him of this situation and requested that the Law Society undertake a review of the Order. She accepted that this action would not affect Mrs S directly, but thanked Mrs S for bringing this issue to her attention.

THE GENERAL COUNCIL OF THE BAR (BAR COUNCIL)

COMPLAINTS ABOUT BARRISTERS IN 2002/2003

The Bar Council handled 743 complaints in 2002, compared with 829 in 2001. What they describe as 'lay complaints' (that is, excluding those which are made by other lawyers or members of the judiciary, and those brought by the Bar Council of their own volition) decreased marginally to 461 in 2002, compared with 464 in 2001. Of those lay complaints, 163 were subsequently referred to me, compared with 161 for 2001.

In 2002/2003 my Office completed an investigation into 224 allegations about the Bar Council's handling of a complaint, compared with 154 in 2000/2001. Some of these cases were closed by the Bar Council in 2001 and 2003 and are therefore not included in the figures referred to in the previous paragraph.

My satisfaction rating with the Bar Council's overall standard of complaint handling fell from 93% to 89% of cases where I found no cause for recommendation against, or criticism of, either the Bar Council, or the barrister complained about.

I formally criticised the Bar Council in 4.9% of cases and made recommendations in a further 6.3%. I made a total of 15 recommendations, in 14 reports. There were 13 recommendations that the Bar Council should reconsider the complaint and 2 that the Bar Council should pay compensation. In 1 case a report contained both recommendations, indicating not only that the Bar Council's investigation or decision had been unsatisfactory, but also that there had been administrative failings, such as delay, in their handling of the complaint. The total of compensation awards was £3,000.

CONTINUING PROGRESS

Turnaround times

For the second year running, the Complaints Commissioner published, in his Annual Report for 2002, turnaround times for complaints. This showed that, for complaints completed by the Bar Council in 2002, 46% were dealt with in less than 3 months; 68% within 6 months; 80% within 9 months; 87% within a year and 13% took longer than 12 months.

These turnaround times are somewhat slower than the OSS' times during the same period. However, it is clear from the referrals to my Office that complaints about the time taken to complete an investigation can be reduced if the person making the complaint is kept informed during the process. Although some 13.5% of complaints about the OSS related to delay, the corresponding figure for the Bar Council was only 3.5% with no complaints at all about poor communication.

Nevertheless, I see no reason why the Bar Council should not aim for the same target of 90% of cases being completed within 6 months.

Delay of one sort or another was a factor in both of the cases featured in the Casebook section.

Redress for poor service

Building on the practice introduced last year, I was pleased to see that the Bar Council's Complaints Commissioner published information about the use of their powers of redress in cases of inadequate professional service.

The Commissioner reported that, in 2002, the Bar Council's Professional Conduct and Complaints Committee referred 10 complaints of inadequate professional service to Panels for adjudication. Of those, 9 complaints were upheld and 1 dismissed; 6 compensation awards were made, averaging just over £820 each; 6 barristers were directed to apologise to complainants; and 1 barrister was directed to forgo fees. The largest compensation award in a case of inadequate professional service resulted in compensation of £2,500. However, whilst these figures are encouraging, I have yet to see any case where the Bar Council has exercised its compensatory powers to the fullest extent possible - £5,000. As I have already observed elsewhere in my report, I am surprised that no complaint justified an award nearer to the upper end of the scale – or even the maximum. .

Reasons for decisions

As I have already mentioned in the introduction to this section of my Annual Report, one of the main causes of my making a recommendation or criticism against the Bar Council is the failure by some of their Panels to give any, or adequate, reasons for their decisions.

Transparency of the decision-making process is essential, if complainants are to have any confidence that professional self-regulation can deliver an objective and impartial complaints-handling system. I am, however, pleased to see that the Bar Council is addressing this problem by providing appropriate training to members of the Panels.

My Office will continue to provide whatever assistance we can to support the Bar Council in this endeavour.

I am optimistic that the attention that this issue is receiving should ensure that there will be improvements in this aspect of complaints-handling performance.

Direct access and complaint handling in barristers' chambers

The Bar Council have not yet received approval for their proposals allowing direct access to barristers. However, they have assured me that they will be addressing any training issues related to these new arrangements. I will be looking at this area very closely and the Bar Council have confirmed that they will monitor complaints arising from direct access.

Another issue that moves barristers closer to the public concerns arrangements for dealing with complaints within barristers' chambers. In the Bar Council's Complaints Commissioner's recent annual report, he commented on the fact that he was unable to say how effective this relatively new initiative had been. He suggested that research was necessary to look into this issue. I can confirm that I intend to identify any referrals to me where the complaint was initially dealt with in chambers. If the complainant is still unhappy, it will be interesting to see the reasons why.

On a more positive note, I can confirm that the Bar Council's Complaints Commissioner has confirmed that the problem that he had previously encountered with solicitors failing to respond to requests for information is no longer an issue of concern.

Research into user satisfaction

I was pleased to see that the MORI survey into the Bar Council's complaint-handling system was published this year. The report made interesting reading, not just for the Bar Council, but for anyone involved in the business of complaint handling. The MORI findings echoed independent surveys that my Office has commissioned – namely that complainants come to the system for the handling of complaints about lawyers already dissatisfied with the outcome of a legal process which, in some cases, might have had disastrous and life-changing consequences for them.

Therefore, their perceptions of 'the system' are already likely to be negative. A good example of a negative perception is illustrated in the Casebook section (*following page*) where the complainant wrote that the Bar Council 'were closing ranks'.

Given that challenging constituency, it is particularly important that those involved in the complaints-handling system work hard to develop and maintain confidence – building measures in order to mitigate those early negative perceptions. MORI suggested two areas where improvements might be made. First, the process of making a complaint; secondly, the way in which decisions are reached. I welcome the enthusiasm that the Bar Council has shown in addressing these issues promptly. I understand from the Complaints Commissioner that the Bar Council is undertaking a review – with strong lay involvement – of the composition of its various decision-making forums in order to address perceptions of bias; is looking again at written guidance supplied to complainants and at communications generally and is exploring whether there might be ways of assisting complainants to make their complaint. The Bar Council has already issued a supply of leaflets to barristers' chambers entitled 'You and Your Barrister' with the aim of explaining the role of the barrister to the lay client.

I await with interest the outcome of this important work, which may also have wider implications for the other legal professional bodies.

Better late than never?

Mr Q, a barrister, was instructed to act for an appellant in an immigration appeal matter. The appeal was listed for hearing at ten o'clock. The adjudicator complained to the Bar Council that Mr Q had allowed himself to be double-booked on the morning of the hearing, with the result that he had not arrived at court until twelve forty-five. The Complaints Commissioner decided that there should be a referral to the Professional Conduct and Complaints Committee (PCC). The PCC duly met and decided that Mr Q should appear before an Informal Panel (Panel) so that he could explain why he had accepted instructions to appear in the immigration appeal, despite having a commitment to attend the High Court at the same time. The Panel decided that Mr Q was not guilty of professional misconduct.

When the Ombudsman called for their file, the Bar Council noticed that the Panel had not given full reasons for their decision, and contacted the Chair of the Panel to put matters right. About six months after the Panel met, the complainant was given reasons for the dismissal - that, had Mr Q not accepted instructions on the immigration case late in the day, the client would have been unrepresented; and that he had relayed news of a travel delay to the tribunal via chambers. In her review of the Bar Council's decision, the Ombudsman noted the reasons given by the Panel for their decision. She also noted that the solicitors involved had promised to have the immigration case put back to a later time and that the barrister had been the victim of train delays. The Ombudsman decided that the Bar Council's decision was reasonable, but she was critical that the Panel had initially failed to give reasons for its decision and that it had then taken six months to do so.

Falling on deaf ears

Mr R complained to the Bar Council that a barrister who had acted for the opposing party in litigation had lied and misled the court. The Bar Council copied the complaint to the barrister for his comments. The barrister failed to reply to the complaint, despite reminders from the Bar Council. It was decided that the issues should be put to a meeting of the PCC. The PCC felt that the sponsor member (a barrister who had prepared a report on the complaint for the Committee) should be present and that the barrister should be given yet another chance to respond. Mr R was unhappy that the barrister had been given yet another extension of time. He said that the Bar Council were 'closing ranks'. Nine months after the Bar Council started their investigation, the PCC decided that there was no evidence to show that the barrister had deceived the court.

The Ombudsman said that, whilst it was proper and usual practice for a barrister to be allowed to comment on a complaint, she was concerned that the Bar Council had given the barrister in this case nine opportunities to engage in the process – all of which he had refused – over a period of five months. Along the way, they had set deadlines for a response and threatened a referral to the Complaints Commissioner and possibly the PCC. The Ombudsman said that there was little value in repeating the same warnings when it was clear that they were unlikely to get a response. Accordingly, she was critical of the Bar Council for delaying consideration of the complaint by several months.

THE COUNCIL FOR LICENSED CONVEYANCERS (CLC)

COMPLAINTS ABOUT LICENSED CONVEYANCERS IN 2002/2003

The Council for Licensed Conveyancers (CLC) is a comparatively young body, having been established by the Administration of Justice Act 1985. There are currently 780 practising licensed conveyancers.

The CLC received 126 complaints during the year 2002, and completed the investigation of 107 complaints. Of those complaints, 81 involved inadequate professional service, and 26 alleged misconduct. There were also 15 complaints which alleged negligence and were referred to the insurers.

Over half of the 107 investigations were completed within 6 months, and all but 9 within 12 months. The Council awarded a reduction in costs in 8 cases, compensation of up to £1,000 in 5 cases and up to £5,000 in 2 cases, and other forms of redress in a further 6.

During the period covered by this report, I concluded my investigation into 13 cases referred to me by complainants who were dissatisfied with the CLC's handling of their complaint. I was satisfied with the CLC's handling of the complaint in 8 of those cases and criticised the CLC in 1. I also recommended that the CLC reconsider 4 complaints and, in 2 of those cases, added a recommendation that the CLC pay compensation totalling £350.

One complaint – about the way a licensed conveyancer had dealt with a retention of purchase monies – was the cause of a 'reconsider' recommendation on two occasions. The first was when my predecessor was not satisfied that the CLC's Investigating Committee had considered the possibility of compensation or a fee reduction. The second was when the Committee decided that it was not their policy to direct a licensed conveyancer to pay clients compensation for distress or inconvenience.

My predecessor referred the complaint back to the CLC and they decided, after some discussion, that they would direct the conveyancer to refund part of the fees that he had charged. They also decided to review their general policy in this respect. I am pleased to say that, on the broader policy point, the CLC decided to adopt a new policy that recognises that the circumstances of a particular complaint might justify an award of compensation for distress or inconvenience. That stance is consistent with the approach adopted by the other legal professional bodies, and should help to ensure that clients of licensed conveyancers are not disadvantaged in terms of the redress available to them where there has been poor service.

The small number of CLC cases referred to me makes it difficult to draw any general conclusions about the effectiveness of their complaint - handling arrangements. Since I have a general power to make recommendations to the legal professional bodies about their arrangements for investigating complaints, my predecessor agreed with the CLC that a member of my staff should carry out an informal review of their complaint-handling arrangements. The review was carried out at the CLC premises in February 2002, and took the form of an examination of a number of investigation files. The outcome of the review was favourable and the CLC took steps to address the recommendations contained in the review report. The remaining matter - a computerised database package to assist in the recording of complaints – has now gone live and I understand from the CLC that this will assist greatly in the management and tracking of complaints under investigation by the CLC. However, the process of improvement never stands still. During the course of this year my Office will be carrying out a follow – up review of the CLC's complaint - handling arrangements.

THE INSTITUTE OF LEGAL EXECUTIVES

COMPLAINTS ABOUT LEGAL EXECUTIVES IN 2002/2003

The Institute of Legal Executives (ILEX) has now put in place revised complaints - handling procedures, following implementation of its new Complaints and Disciplinary Rules. I was also pleased to hear that the complaints that had accumulated, pending the operation of the new arrangements, were cleared by September 2002, following the appointment of new lay members to the Investigations Committee.

At the beginning of 2002 there were 27 complaints to take forward for investigation. These complaints were pending from 2001 so that they could be subject to the new rules. ILEX received a further 21 complaints during 2002. The new rules were approved by the Master of the Rolls in February 2002 and fully implemented by ILEX in July 2002. ILEX dealt with 41 complaints in 2002. In 6 cases the member was warned, in 1 the member was admonished and in 1 ILEX obtained an undertaking regarding the member's future conduct. In 7 other cases a referral was made to the Disciplinary Tribunal and decisions on those are pending.

Of the cases concluded, 19% were dealt with in less than 6 months, 29% took between 6 and 12 months and 51% took more than 12 months. However, as mentioned above, during 2001 and into 2002, all ILEX complaints were stayed pending the introduction of new complaint rules, resulting in a substantial proportion being subject to more than

If we exclude the delayed cases, then 57% were dealt with in less than 6 months and 43% took 6 to 12 months, with no cases taking more than 12 months.

No complaint investigated by ILEX was referred to me during the period covered by this report. Probably the main reason for that is that my jurisdiction over ILEX is limited to the small proportion of their members who are authorised advocates - currently around 24 in number. At the end of 2002, membership of ILEX stood at 6,382 fellows and they had a total membership of 23,927. The comparatively small number of complaints in relation to the total membership is a reflection of the fact that most legal executives are employed by firms of solicitors. Complaints about them would normally be made to their employing firm and then to the OSS if the firm were unable to resolve the complaint.

The Institute has now implemented virtually all of the recommendations my predecessor made following this Office's review of ILEX's complaint-handling procedures. For example, ILEX not only took on board suggestions for improvement to the way manual complaint files were managed, they went one stage further and incorporated a case monitoring package in a new computerised management information system which was being developed at the time of the review. ILEX is to be congratulated on these achievements. It is now timely for my Office to carry out a follow-up review which will take place during the course of 2003/04.

THE CHARTERED INSTITUTE OF PATENT AGENTS

COMPLAINTS ABOUT PATENT AGENTS IN 2002/2003

At the end of 2002 there were 1,450 patent agents who were members of the Institute. There is a very small number who are not members. During 2002, CIPA received 13 letters of complaint and concluded the investigation of 5 complaints, of which 3 were rejected and in 2 of which the member received a private reprimand. Of these 5 cases, 2 cases took between 6 and 12 months and 3 cases took more than 12 months. However, if we measure the time taken from the date of referral to the Board, as opposed to date of receipt by CIPA then 4 cases were dealt with in 6-12 months and 1 case took more than 12 months. Six complaints referred to the Disciplinary Boards were still under consideration at the end of 2002.

One complaint was referred to my Office, but the investigation had not been completed during the period covered by this report.

CIPA's review of their complaint-handling arrangements, which is being conducted jointly with the Institute of Trademark Agents, is now under way, and the Institute sent draft procedures to this Office for comment last autumn.

Our comments were aimed mainly at ensuring that the procedures provided explicitly for the investigation of complaints of poor service, and not just complaints that raised issues of professional conduct.

The procedures have not yet been finalised, but I do not consider that this need delay a further informal review of CIPA's procedures in the next 12 months or so to see how matters have progressed since the last informal review. I understand that, from CIPA's point of view, the procedures will not be substantially different from those currently in operation.

The secretaries of CIPA and of CIPA's Disciplinary Panel have both produced reports for the Institute's Journal summarising the issues raised by complaints dealt with by the Institute in 2002, both formally and informally, and the lessons to be drawn from these complaints. This is an effective way of providing feedback to practitioners to enable them to improve customer service. I hope that patent agents, and, ultimately their clients, will benefit. One of the striking features of these reports is the extent to which the complaints concern disputes over costs and information about costs. Guidance to patent agents on this subject has been limited, and my predecessor urged CIPA to provide further guidance on the subject. The Institute's Council approved further guidance in April 2003, and it has now been incorporated into the Guidelines Concerning the Observance of the Rules of Professional Conduct.

FACTS & FIGURES

- Figure 1** Complaints and the legal profession
- Figure 2** Enquiries
- Figure 3** Caseload statistics
- Figure 4** Turn around times
- Figure 5** Numbers of investigations by type of lawyer
- Figure 6** Analysis of investigations by type of legal transaction
- Figure 7** Analysis of investigations by reason for complaint
- Figure 8** Analysis of investigations by method of funding
- Figure 9** Investigations where complaint handling was satisfactory
- Figure 10** Outcome of investigations
- Figure 11** Analysis of recommendations
- Figure 12** Compensation awards
- Figure 13** Internal complaint-handling



Figure 1 COMPLAINTS AND THE LEGAL PROFESSION

| | Number Practising | No. of complaints to PB in 2002 |
|--------------------------------------|-------------------|---------------------------------|
| Solicitors/OSS | 89045 | 22830* |
| Barristers/GCB | 13601 | 461 |
| Licensed Conveyancers/CLC | 780 | 126 |
| ILEX | 6382 | 41 |
| Chartered Institute of Patent Agents | 1450 | 13 |

*Total of complaints (14,880) and enquiries (7,950) to OSS.
The figures for the OSS and GCB include those who are employed.

Figure 2 ENQUIRIES TO THE OMBUDSMAN'S OFFICE

| | 2002/2003 | 2001/2002 |
|---|-----------|-----------|
| Total new written referrals to LSO | 3119 | 2894 |
| Accepted and completed | 1041 | 642 |
| Accepted for investigation, but not completed | 407 | 841 |
| Awaiting further info. on decision to investigate | 117 | 178 |

| Of the 1554 enquiries that had not proceeded to investigation by 1 April 2003: | 2002/2003 |
|---|-----------|
| Premature | 459 |
| Awaiting formal application | 355 |
| Enquiry not followed up | 206 |
| Inappropriate | 195 |
| Out of Time | 58 |
| Withdrawn | 18 |
| Outside remit | 18 |
| Professional body still investigating | 231 |
| Discretionary rejections | 14 |

| Where the premature enquiries were referred to: | 2002/2003 | | |
|---|-----------|-----------|-------|
| | Written | Telephone | Total |
| OSS | 312 | 1915 | 2227 |
| Another Ombudsman | 22 | 971 | 993 |
| Law Centre | 38 | 411 | 449 |
| CAB | 17 | 209 | 226 |
| Other complaint - handling organisation | 11 | 190 | 201 |
| LCD | 32 | 112 | 144 |
| Other | 0 | 122 | 122 |
| Other advice agency | 18 | 82 | 100 |
| GCB | 7 | 40 | 47 |
| CLC | 2 | 19 | 21 |
| Lawyer | 0 | 9 | 9 |

Figure 3 CASELOAD STATISTICS

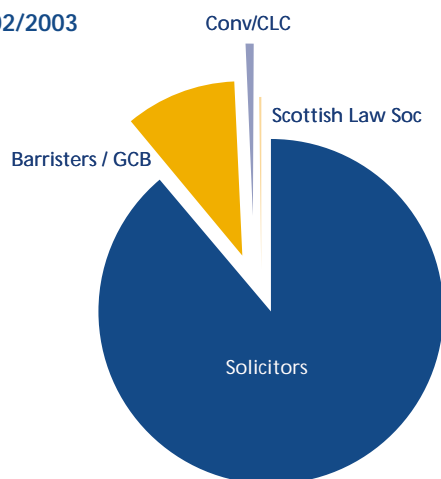
| | Apr 2002 to Mar 2003 | Apr 2001 to Mar 2002 | Apr 00 to Mar 01 | Apr 99 to Mar 00 | Jan 98 to Mar 99 |
|---|----------------------|----------------------|------------------|------------------|------------------|
| Cases awaiting investigation at start of year | 886 | 998 | 544 | 596 | 346 |
| New cases accepted for investigation | 1745 | 1677 | 2132 | 1470 | 1908 |
| Number of reports issued during the year | 2180 | 1789 | 1678 | 1522 | 1658 |
| Cases carried forward at end of year | 451 | 886 | 998 | 544 | 596 |

Figure 4 TURN AROUND TIMES

| Reports Issued | Apr 2002 to Mar 2003 | Apr 2001 to Mar 2002 | Apr 00 to Mar 01 | Apr 99 to Mar 00 | Jan 98 to Mar 99 |
|---------------------------------|----------------------|----------------------|------------------|------------------|------------------|
| Total number of reports | 2180 | 1789 | 1678 | 1522 | 1658 |
| % issued within 6 months | 70% | 58% | 76% | 60% | 64% |
| % issued within 7 to 9 months | 5% | 9% | 16% | 38% | 29% |
| % issued within 10 to 12 months | 8% | 15% | 7% | 2% | 6% |
| % issued over 12 months | 17% | 18% | 0.06% | Nil | 1% |
| Average turnaround | 5.6 | 6.7 | 4.5 | 4.7 | 5 |

Figure 5 NUMBERS OF INVESTIGATIONS BY TYPE OF LAWYER

2002/2003



2002/2003

OSS/Solicitors: 1940
 GCB/Barristers: 224
 CLC/Conveyancers: 13
 Law Society of Scotland: 3

2001/2002

OSS/Solicitors: 1,629
 GCB/Barristers: 154
 CLC/Conveyancers: 5
 Law Society of Scotland: 1

- The Ombudsman conducted 2,180 investigations in 2002/2003. Complaints about solicitors comprised 89% of the workload compared with 91% in 2001/2002; complaints about barristers 10.3% compared with 8.6% in 2001/2002; and complaints about licensed conveyancers 0.1% compared with 0.3% in 2001/2002.
- The Ombudsman also undertook the investigation of 3 cases referred to her by the Scottish Legal Services Ombudsman under the reciprocal arrangements laid down in the Courts and Legal Services Act 1990, in which she registered a formal criticism of the Law Society of Scotland; that case represented the remaining 0.1% of the workload.

Figure 6 ANALYSIS OF INVESTIGATIONS BY REASON FOR COMPLAINT

| Legal Work Type | | 2002/2003 | 2001/2002 |
|------------------------------------|-------|------------------|------------------|
| Civil Issues | | 34% | 40% |
| Contractual dispute | 6.1% | | |
| Debt Recovery | 2.7% | | |
| Immigration | 0.7% | | |
| Landlord/Tenant | 4.2% | | |
| Other | 6.5% | | |
| Personal Injury/Medical Negligence | 10.6% | | |
| Professional Negligence | 2.5% | | |
| Road Traffic Accident | 0.7% | | |
| Conveyancing | | 12.4% | 12.7% |
| Criminal | | 9.3% | 7% |
| Employment Law | | 4.8% | 3% |
| Family Proceedings | | 16.9% | 16% |
| Other | | 7.2% | 8% |
| Boundary Dispute | | 3.2% | 2.3% |
| Succession | | 10.0% | 11% |
| Various | | 2.3% | |

Figure 7 ANALYSIS OF INVESTIGATIONS BY TYPE OF LEGAL TRANSACTION

| Main Complaint | | 2002/2003 |
|--|------|------------------|
| Bad Advice | | 11.5% |
| Communications | | 22.8% |
| Acted without instructions | 1.5% | |
| Gave misleading information | 2.0% | |
| Inadequate reply to letters/tele calls | 1.2% | |
| Instructions not carried out | 9.5% | |
| Not adequately informed | 6.3% | |
| Other | 1.1% | |
| Rude/Overbearing | 1.1% | |
| Costs Problems | | 10.6% |
| Conditional Fee problems | 0.2% | |
| Inadequate information | 4.1% | |
| Legal Aid | 0.7% | |
| Other | 1.6% | |
| Overcharging | 3.9% | |
| Delay | | 8.9% |
| Problems at end of retainer | | 1.7% |
| Misconduct | | 23.3% |
| Breach of confidentiality | 1.4% | |
| Conflict of interests | 4.3% | |
| Dishonesty/Fraud | 9.4% | |
| Not complied with undertaking | 0.7% | |
| Other | 7.1% | |
| Refused to be instructed | 0.5% | |
| Other | | 5.1% |
| Other 'Negligence' problems | | 14.0% |
| Generally negligent | 4.0% | |
| Other | 0.9% | |
| Poor handling/decisions | 5.0% | |
| Poor representation | 4.0% | |
| Pressurised/harassment | | 2.0% |

Figure 8 ANALYSIS OF INVESTIGATIONS BY METHOD OF FUNDING

| Method of Funding | 2002/2003 | 2001/2002 |
|---------------------|------------------|------------------|
| Privately Funded | 44.3% | 43.4% |
| Legal Aid | 20.6% | 23.4% |
| No Fee | 19.7% | 20.5% |
| Conditional | 0.8% | 0.4% |
| Insurance | 1.2% | 2.3% |
| Trade Union | 0.9% | 0.7% |
| Not Known | 12.0% | 9.1% |
| Non legal insurance | 0.4% | |

Figure 9 INVESTIGATIONS WHERE COMPLAINT HANDLING WAS SATISFACTORY

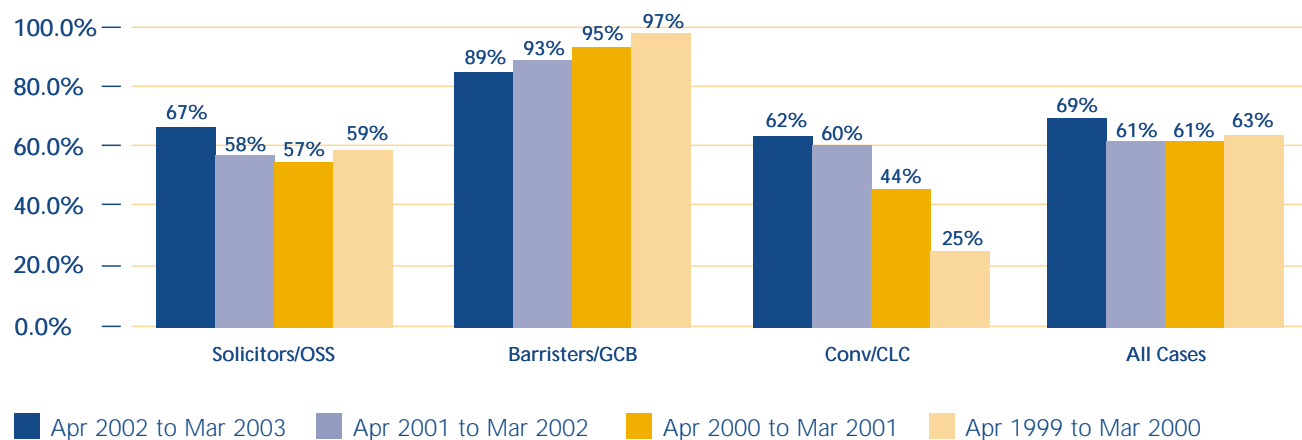


Figure 10 OUTCOME OF INVESTIGATIONS

| Apr 2002 to Mar 2003 | Recommendation | Criticism | Satisfactory | Total |
|----------------------|--------------------|--------------------|----------------------|-------------|
| OSS | 21.6% | 11.2% | 67.2% | 1940 |
| GCB | 6.3% | 4.9% | 88.8% | 224 |
| CLC | 30.8% | 7.7% | 61.5% | 13 |
| Scottish Law Soc | 66.7% | 0.0% | 33.3% | 3 |
| Total | 440 (20.2%) | 229 (10.5%) | 1,511 (69.3%) | 2180 |

| Apr 2001 to Mar 2002 | Recommendation | Criticism | Satisfactory | Total |
|----------------------|------------------|------------------|--------------------|-------------|
| OSS | 31% | 11% | 58% | 1629 |
| GCB | 3% | 4% | 93% | 154 |
| CLC | 40% | 0% | 60% | 5 |
| Scottish Law Soc | 0% | 100% | 0% | 1 |
| Total | 506 (28%) | 194 (11%) | 1,086 (61%) | 1789 |

Figure 11 ANALYSIS OF RECOMMENDATIONS

| Number of recommendations | | | | | |
|---------------------------|-------------------|------------|-------------------|---------------|------------|
| 2002/2003 | Number of Reports | Reconsider | Prof. body to pay | Lawyer to pay | Total |
| OSS/solicitors | 420 | 245 | 224 | 1 | 470 |
| GCB/barristers | 14 | 13 | 2 | 0 | 15 |
| CLC/conveyancers | 4 | 4 | 2 | 0 | 6 |
| Law Society for Scotland | 2 | 1 | 2 | 0 | 3 |
| Total | 440 | 263 | 230 | 1 | 494 |

| Number of recommendations | | | | | |
|---------------------------|-------------------|------------|-------------------|---------------|------------|
| 2001/2002 | Number of Reports | Reconsider | Prof. body to pay | Lawyer to pay | Total |
| OSS/solicitors | 499 | 270 | 284 | 0 | 554 |
| GCB/barristers | 5 | 5 | 0 | 0 | 5 |
| CLC/conveyancers | 2 | 2 | 0 | 0 | 2 |
| Law Society for Scotland | 0 | 0 | 0 | 0 | 0 |
| Total | 506 | 277 | 284 | 0 | 561 |

Figure 12 COMPENSATION AWARDS

COMPLAINTS INVOLVING SOLICITORS

Office for the Supervision of Solicitors

There were 224 recommendations that the OSS pay compensation for loss, distress and/or inconvenience.

Average award: £270.68

Lowest award: £50

Total of all awards: £60,632.50

Highest award: £5,150

Individual Solicitors

There was one award against a solicitor for £300

COMPLAINTS INVOLVING BARRISTERS

General Council of the Bar

There were 2 recommendations that the GCB pay compensation for distress only.

Total of all awards: £3,000

Lowest award: £500

Highest award: £2,500

Individual barristers

There were no awards against individual barristers.

COMPLAINTS INVOLVING LICENSED CONVEYANCERS

Council for Licensed Conveyancers

There were 2 recommendations that the CLC pay compensation for inconvenience only.

Total of all awards: £350

Lowest award: £150

Highest award: £200

Individual licensed conveyancers

There were no awards against individual licensed conveyancers pay compensation.

Figure 13 INTERNAL COMPLAINTS PROCEDURE

OLSO's Business Manager has the responsibility for investigating any allegations about the quality of service provided by the Office, and reporting back to the Ombudsman for a final decision.

- 43 cases have been dealt with under these new procedures during 2002/3.
- 1 complaint involved a minor administrative error. Apologies were offered to the complainant and existing procedures reinforced;
- 17 complaints were not found to have any evidence to support the allegations and were therefore not upheld;
- 25 complaints did not relate to the service of OLSO staff but to the Ombudsman's decision to close the original case and, as such, could not be upheld.
- All cases were dealt with within 2 weeks

Statement of the Ombudsman

This Summary Financial Statement is a summary of information extracted from the full annual accounts and does not contain sufficient information to allow for a full understanding of the financial affairs of the Office of the Legal Services Ombudsman. For further information, the full annual accounts and the auditor's report on those accounts should be consulted. These are available on request from the Officer Manager, Office of the Legal Services Ombudsman, 3rd Floor, Sunlight House, Quay Street, Manchester, M3 3JZ.

The full accounts were signed by the Ombudsman on 10 June 2003 and by the Permanent Secretary of the Department for Constitutional Affairs on 11 June 2003. The Comptroller and Auditor General, who has been appointed by the Lord Chancellor as external auditor, gave an unqualified audit opinion.

Zahida Manzoor CBE

Legal Services Ombudsman
12 June 2003

Statement of the Comptroller and Auditor General to the Houses of Parliament

I have examined the Summary Financial Statement of the Office of the Legal Services Ombudsman for the year ended 31 March 2003 comprising a summary expenditure account and a summary balance sheet.

Respective responsibilities of the Ombudsman and Auditor

The Ombudsman is responsible for preparing the Summary Financial Statement. My responsibility is to report my opinion on its preparation and consistency with the full financial statements and foreword. I also read the other information contained in the Annual Report and consider the implications for my opinion if I become aware of any apparent misstatements or material inconsistencies with the summary financial statement.

Basis of audit opinion

I have conducted my work in accordance with Audit Bulletin 1999/6, 'The auditors' statement on the summary financial statement', issued by the Auditing Practices Board. My certificate on the full accounts of the Office of the Legal Services Ombudsman describes the basis of my audit opinion on those accounts.

Opinion

In my opinion the Summary Financial Statement is consistent with the full financial statements and foreword of the Office of the Legal Services Ombudsman for the year ended 31 March 2003.

John Bourn

Comptroller and Auditor General
13 June 2003

National Audit Office
157 - 197 Buckingham Palace Road
London SW1W 9SP

SUMMARY FINANCIAL STATEMENT FOR THE YEAR ENDED 31 MARCH 2003

EXPENDITURE ACCOUNT YEAR ENDED 31 MARCH 2003

| EXPENDITURE | 2002/2003 | 2001/2002 |
|--|------------------|------------------|
| Staff costs | 969,788 | 806,646 |
| Other direct costs | 218,663 | 220,463 |
| Centrally authorised costs | 197,132 | 265,501 |
| Department for Constitutional Affairs' costs | 371,920 | 366,524 |
| Other non cash costs | 30,947 | 25,402 |
| TOTAL | 1,788,450 | 1,684,536 |

Salary costs for the three persons holding the post of Ombudsman during the year are included in staff costs and were between £80,000 and £85,000.

BALANCE SHEET AS AT 31 MARCH 2003

| FIXED ASSETS | 2002/2003 | 2001/2002 |
|--|---------------|-----------------|
| Net book value of fixed assets | 63,024 | 63,487 |
| CURRENT ASSETS | | |
| Prepayments | 43,150 | 17,088 |
| Cash in hand | 150 | 150 |
| CURRENT LIABILITIES | | |
| Creditors (amounts payable to others) | (10,649) | (33,349) |
| NET CURRENT ASSETS/(LIABILITIES) | 32,651 | (16,111) |
| TOTAL ASSETS LESS CURRENT LIABILITIES | 95,675 | 47,376 |
| TAXPAYERS' EQUITY | | |
| General fund | 95,506 | 47,376 |
| Revaluation Reserve | 169 | 0 |
| Total | 95,675 | 47,376 |

The treatment of agency staff costs has been changed during 2002-03 to include them in staff costs rather than running costs



OLSO STAFFING

LEGAL SERVICES OMBUDSMAN

Zahida Manzoor CBE

DEPUTY OMBUDSMAN/LEGAL ADVISER

David Wilcock

OPERATIONS DIRECTOR

Simon Entwisle

BUSINESS MANAGER

Kath Welton

FINANCE AND BUSINESS UNIT

Ruth Garnett

Angela McDonald

Linda Hough

Corina Haynes

HEAD OF DESIGNATION UNIT

Helena Sims

DESIGNATION AND INVESTIGATION TEAM

Philippa Baker

Prisca Corfield

Barbara FitzGerald

Angela Ginniver

Jo Hibbert

Paula McEwan

Joanne Rice

Michael Swanick

SENIOR INVESTIGATING OFFICERS

Liz Armstrong

Alan Crabtree

Terry Duffy

Alan Ellison

Lucy Greenbury

Kevin Kearns

Bryan Leslie

Deborah Miller

Sarah Morris

Bill Porter

Eric Soden

COMMUNICATION, RESEARCH AND POLICY UNIT

Jon Manners

Eve Ritchie

SUPPORT TEAM LEADER

Linda Griffiths

SUPPORT TEAM

Nia Davies

Sandra Holland

Hannah Jarratt

Matthew Peirce

Lesley Slattery

Rebecca Timperley

Jonathan Wiseman

Published by TSO (The Stationery Office) and available from:

Online

www.tso.co.uk/bookshop

Mail, Telephone, Fax & E-mail

TSO

PO Box 29, Norwich NR3 1GN

Telephone orders/General enquiries 0870 600 5522

Fax orders 0870 600 5533

Order through the Parliamentary Hotline Lo-call 0845 7 023474

E-mail book.orders@tso.co.uk

Textphone 0870 240 3701

TSO Shops

123 Kingsway, London WC2B 6PQ

020 7242 6393 Fax 020 7242 6394

68-69 Bull Street, Birmingham B4 6AD

0121 236 9696 Fax 0121 236 9699

9-21 Princess Street, Manchester M60 8AS

0161 834 7201 Fax 0161 833 0634

16 Arthur Street, Belfast BT1 4GD

028 9023 8451 Fax 028 9023 5401

18-19 High Street, Cardiff CF10 1PT

029 2039 5548 Fax 029 2038 4347

71 Lothian Road, Edinburgh EH3 9AZ

0870 606 5566 Fax 0870 606 5588

The Parliamentary Bookshop

12 Bridge Street, Parliament Square,

London SW1A 2JX

Telephone orders/General enquiries 020 7219 3890

Fax orders 020 7219 3866

TSO Accredited Agents

(see Yellow Pages)

and through good booksellers

THE OFFICE OF THE LEGAL SERVICES OMBUDSMAN IS AT:

3rd floor, Sunlight House

Quay Street

Manchester M3 3JZ

Telephone: 0161 839 7262

Fax: 0161 832 5446

DX: 18569 Manchester 7

E-mail: Iso@olso.gsi.gov.uk

Website: www.olso.org

ISBN 0-10-292158-X

