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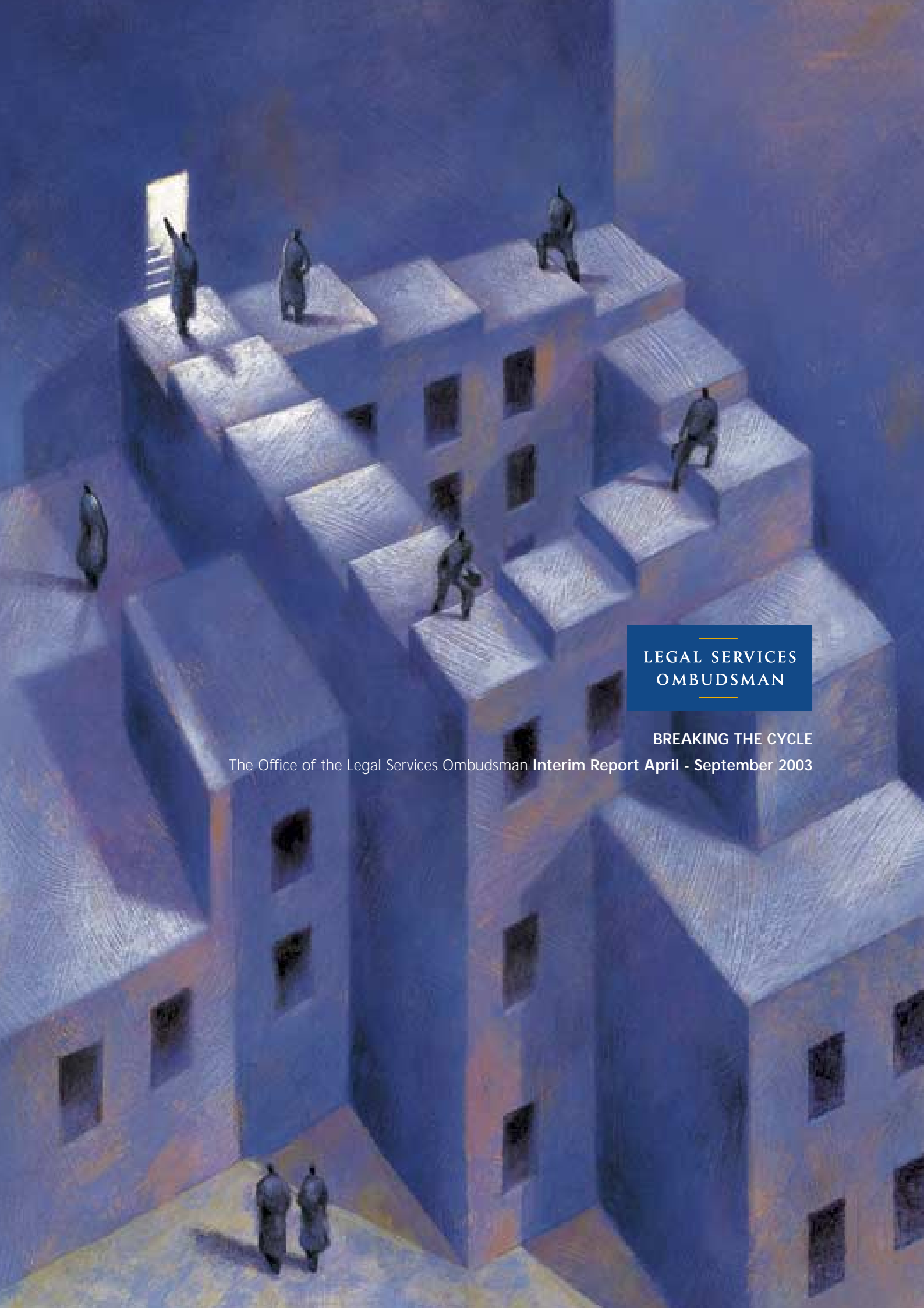
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LEGAL SERVICES  
OMBUDSMAN

BREAKING THE CYCLE

The Office of the Legal Services Ombudsman Interim Report April - September 2003



Breaking the cycle

INTERIM REPORT OF THE LEGAL SERVICES OMBUDSMAN APRIL - SEPTEMBER 2003

# LEGAL SERVICES OMBUDSMAN

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**Zahida Manzoor CBE** The Legal Services Ombudsman ▲  
The Office of the Legal Services Ombudsman Annual Report 2002/2003 ►



## FOREWORD

When, as Legal Services Ombudsman (LSO), I prepared my first Annual Report (which was presented to Parliament in July 2003), it was clear that the Law Society's poor performance in the handling of complaints during the previous year had again been inadequate and the indicators suggested that this performance was likely to deteriorate during the year ahead. These indicators included failures to deliver improvements in its IT and telephony systems, and failures to recruit and retain sufficient numbers of caseworkers and effectively handle the inflow of new complaints. Consequently, I decided that the work of the Office for the Supervision for Solicitors (OSS), the complaints-handling arm of the Law Society, would require detailed ongoing oversight from my Office throughout the year. I also decided that it would be appropriate for me to produce an interim report in November 2003 to appraise all relevant stakeholders, including the general public, the consumers of legal services, the Law Society, the Department for Constitutional Affairs (DCA) and the Government, of any progress or further deterioration in the performance of the OSS.

During the thirteen years since this office was established, the OSS (and its predecessor the Solicitors Complaints Bureau) has been repeatedly warned by my predecessors that its complaints-handling performance was inadequate and that it progressively undermined the Law Society's claim to retain the privilege of self-regulation. I reiterated that warning in my first Annual Report earlier this year and, on the evidence of the performance data available to me at that time, I took the view that it would be inappropriate for me to wait a further twelve months to assess whether or not the tide was finally turning and that the OSS had at last managed to deploy the strategies, the systems, the processes and the level of resource needed to deliver acceptable performance. In my capacity as LSO I feel a very strong sense of responsibility to champion the needs of consumers to receive the highest quality of service from the legal profession. I find it unacceptable that consumers who may have suffered from poor or unacceptable service from a lawyer should then be confronted with further poor service when attempting to gain redress through the professional body that regulates the work of that lawyer. It is interesting to note that the Law Society's own Lay (now called Independent) Commissioner reported earlier this year that their complaints-handling arrangements are overly complex, legalistic, unfriendly and focused on following internal processes rather than delivering the rapid and proportionate resolution of complaints.

It saddens me to report that, as I had feared, the complaints-handling performance of the OSS has continued to deteriorate. Even though they have undertaken a multitude of new initiatives to improve their organisational capabilities over the past two or three years and have made very substantial investments to enhance their IT systems, these have failed to deliver the necessary improvements in performance. In the 21 months from January 2002 to September 2003, the OSS managed to close more complaints than it received in just four of those months. As a consequence, the backlog of unresolved cases grew from 4,434 to 8,545 in that time. Indeed, the backlog has grown by just over 400 cases in the past 6 months alone and is compounded by the fact that the statistics for September 2003 show the OSS is substantially underperforming against all but one of the performance targets set by the Lord Chancellor's Department, now the Department for Constitutional Affairs (DCA). Most notably, they are currently 15% below target for the number of complaints that should be closed within 3 months of receipt and 18% below target for the number of findings that are overturned or questioned by my Office.

This is particularly disturbing in view of the fact that the targets for the current year were reduced to accommodate problems that the OSS was experiencing in delivering enhancements to its IT systems and recruiting new staff.

These performance figures are clearly unacceptable and give serious cause for concern. However, there have been some encouraging signs in recent months with the OSS managing to narrow the gap significantly between complaints received and complaints resolved. Indeed, July and September 2003 were the first months since February 2002 that the OSS managed to close more cases than it received. However, these reductions were modest – equating to a total of less than 3% of the existing backlog. The relative significance of this modest improvement might usefully be understood by noting that if the OSS **only** maintained this level of improvement for the foreseeable future, it would take between five and seven **years** to clear the existing backlog. Clearly, this is unacceptable and further improvements will be required.

I would caution against drawing any long-term conclusions from the modest improvements in performance that have been seen in recent months. Certainly, it would be too early to assume that the OSS has begun to deliver the necessary step-change improvement in its handling of complaints. There have been far too many false dawns at the OSS to assume that this time they have turned the corner and will start to make positive improvements in the quality of service, the speed of turnaround and the reduction of their very substantial backlog of unresolved complaints.

Not only is the performance of the OSS a cause for concern, but also there is, it seems, some doubt about the quality of the data they use as the basis for their performance statistics. It appears that in July 2003 the OSS uncovered some anomalies in the way complaints had been handled in the past and the way complaints statistics had been recorded. To their credit, the Law Society instigated an immediate investigation into these anomalies. That investigation revealed evidence of some unfortunate procedures; procedures which may have overstated the performance of the OSS. The investigation appears to have reassured the Law Society that the use of these methods had ceased some time towards the end of 2001 or the early part of 2002 and that, consequently, they no longer distort their performance figures. I trust that the Law Society will ensure that its stakeholders are provided with sufficient information to give them the same level of assurance through rigorous and transparent information.

These issues surrounding data quality have tended to reinforce the perception that the OSS is currently unable to deliver a satisfactory performance in its complaints-handling operations and continues to raise questions as to whether the current framework of self-regulation serves the public interest. These issues have been crystallised through a sequence of consultations undertaken by the DCA after the Office of Fair Trading published its report 'Competition in Professions' in March 2001, suggesting that the current regulatory framework is anti-competitive and works against the public interest. These consultations have revealed that the existing framework is outdated, inflexible, overly complex, lacking in transparency and insufficiently accountable. Furthermore, they have concluded that nothing short of a fundamental revision of the existing framework could address these issues.

As such, it can have come as no surprise when the new Secretary of State for Constitutional Affairs and Lord Chancellor, Lord Falconer, took the decision in July 2003 to commission a wide-ranging independent review of the way in which legal services are regulated in England and Wales. This review is being undertaken by David Clementi, the Chairman of Prudential and former Deputy Governor of the Bank of England, who has been tasked to deliver his recommendations by the end of December 2004. It is my intention to make a contribution to this review by engaging in discussions with David Clementi. My view is that any new regulatory framework must take a much simpler and more transparent form and should focus on improving access to justice, increasing competition, providing real protection for consumers and delivering prompt and proportionate redress when things go wrong. With respect to increasing competition, I know some people are dismissive of the idea of employed solicitors providing legal services to the public – something colloquially referred to as 'Tesco Law'. However, it is my view that opening up legal services to organisations that are easily accessible, well recognised for being customer friendly, have a reputation for providing high quality service and are likely to be fiercely competitive in terms of price can only be a good thing. It will undoubtedly drive through improvements in access, choice, service quality and price. Of course, this has to be balanced against possible negative consequences, such as potential conflicts of interest, the 'cherry-picking' of lucrative transactions, or the threat to universal access through closures of uncompetitive high-street firms, and any changes to the system must be underpinned by appropriate safeguards for the consumer of legal services. Ultimately, however, I believe that increasing the range of service providers will not only benefit consumers, but should also serve to enhance the reputation of the legal profession.

In conjunction with undertaking this review, on 26 September 2003, the Secretary of State for Constitutional Affairs announced his intention to activate the provisions reserved to him under the Access to Justice Act 1999 to appoint a Legal Services Complaints Commissioner (LSCC); an Office to which it is intended I will be appointed. However, as I am writing this interim report the appointment has not yet been made. These powers will be granted specifically in connection with the Law Society and may provide me with the statutory authority to investigate the complaints-handling activities performed by the OSS; to set targets for their improvement; to request plans showing how those improvements are to be delivered and, under certain circumstances, to impose financial penalties if those improvements are not forthcoming. I intend to use these powers judiciously, working in a constructive and cooperative manner with the OSS to create the conditions that may help to improve their performance. Our collective aim must be to deliver the highest standard of service to consumers seeking redress who may have received poor service from their solicitors.

In contrast to the performance of the OSS, I am pleased to report that my Office continues to deliver improvements in its service levels. Due to a slight fall in the number of complaints referred to my Office, the streamlining of some of our processes, and the continuing hard work of my staff, during the past six months the average turnaround time for dealing with cases has fallen from 5.6 months to 2.9 months. Furthermore, we are now closing just over 80% of cases in 3 months and 93% within six months – compared with 46% and 70% respectively for the previous reporting year. This favourable position may change if the OSS begins to clear its backlog of cases and much greater numbers of cases are referred to my Office.

I am committed to ensuring that my Office and each of the professional bodies that it monitors pursue a programme of continuous improvement of their complaints-handling capabilities. As an initial step I have agreed a programme of benchmarking that will be overseen and co-ordinated by my Office. This programme has been tailored to the individual needs of each professional body, taking into account their size, resources and specific challenges. This is a long-term initiative and I shall be reporting on its initial findings in my next Annual Report.

During the preparatory stages of this benchmarking exercise a meeting was held with representatives from my Office, each of the professional bodies and officials from DCA. Meetings such as these can, in my view, provide an excellent forum for the exchange of ideas and sharing of experiences.

I intend to look into facilitating such meetings in the future, probably as an integral part of the benchmarking programme so that lessons can be learnt and shared between the professional bodies. A number of these bodies have indicated that they would welcome such an initiative.

Although my Office has an oversight and co-ordinating role in this benchmarking exercise, it lacks sufficient resources and skills to be able to undertake this type of strategic work to the required depth, or to develop the work in any sustained or systematic manner for all of the professional bodies.

This type of work is currently treated as a secondary activity. However, much of this work (in relation to the Law Society) will be undertaken by the new Office of the LSCC, which will enable my Office to undertake a more strategic view of the complaints-handling systems of the smaller professional bodies.

I shall be working closely with DCA to ensure that the Office of the LSCC is properly resourced to enable it to perform its work fully and effectively and help drive through significant improvements in the performance of complaint handling at the OSS.

The following section of this Interim Report contains my analysis of the performance of the OSS during the past six months together with my assessment of the activities it has undertaken in an attempt to improve that performance. In developing this analysis I have made every effort to identify, highlight and acknowledge any areas where the OSS has taken constructive actions or made positive progress. However, as in past assessments of the OSS, it is, regrettably, too easy to identify areas which are characterised by what appear to be chronic weaknesses. Where I have identified such failings, I have attempted to provide constructive suggestions on alternative courses of action that the OSS could or should pursue to overcome those failings. My ultimate aim in making such suggestions is to ensure that the OSS takes whatever actions are necessary to ensure that solicitors provide consumers with the highest level of service and, if there is some failure in that service, that the OSS provide consumers with a fast, efficient, friendly and impartial system of redress.

Finally, my Office is, of course, also responsible for monitoring the complaints-handling performance of four additional professional bodies, namely, the Bar Council, the Council for Licensed Conveyancers, the Institute of Legal Executives and the Chartered Institute of Patent Agents.

These professional bodies currently account for a relatively small proportion of the complaints referred to my Office and their respective complaints-handling performance are not causes for concern at this stage.

I have been in regular dialogue with the Bar Council during the past six months regarding their complaints-handling procedures and my Office has undertaken a review of the complaints-handling arrangements at the Council for Licensed Conveyancers. During the coming six months, I intend to undertake a similar review of operations at the Institute of Legal Executives and the Chartered Institute of Patent Agents. I also intend to maintain a close oversight on the performance of all these professional bodies and I shall report my findings in my next Annual Report.

The DCA has indicated that it is considering deregulating the probate market under Sections 54 and 55 of the Courts and Legal Services Act 1990 to create 'authorised probate practitioners' eligible to undertake Grant of Probate work. In doing so, I understand the DCA may extend my powers as LSO to cover complaints against such authorised probate practitioners. Although it is premature to discuss in any detail the potential changes in the probate regime until discussions between myself and DCA have been completed, I have some concerns that this will create a two-tier system of regulation. At the moment, solicitors are regulated in relation to the work that they carry out both in obtaining a Grant of Probate and in subsequent administration; anybody else may conduct the administration work without any regulation whatsoever. If a new category of authorised probate practitioners is introduced, there is an issue as to whether they will be regulated for Grant of Probate work alone, or for the subsequent administration as well. If it is to be only for the Grant of Probate, which typically constitutes just a small proportion of the total cost of the transaction, the new arrangements would open up the possibility of a two-tier system of regulation. Where consumers use a solicitor to handle probate work and have a complaint about any aspect of that work, they will have recourse first to the solicitor's regulator, the Law Society, and then to my Office. However, where they use authorised probate practitioners, they will only have recourse to my Office if they are dissatisfied with the service received during the Grant of Probate work, which would leave consumers with very limited protection. And, of course, there would be a further anomaly in the fact that anybody other than solicitors and authorised probate practitioners would still be entitled to provide administration work without any regulation whatsoever. Although it is too early to reach any conclusions at this moment in time, I await with particular interest to see how this sector will be regulated.



**Zahida Manzoor CBE**

The Legal Services Ombudsman for England and Wales

## REVIEW OF PERFORMANCE

### Commitment To Improve

During the past two or three years the Law Society has undertaken an extensive array of initiatives in an attempt to reverse the prolonged history of poor performance in its complaints-handling operations. Many of these initiatives have been outlined in previous reports; I have listed them here so that they can be considered in the context of my later assessment:

- The creation of the Consumer Redress Scheme to centralise all complaints-handling functions and to place greater emphasis on resolving complaints rather than following fixed procedures.
- The creation of a Customer Assistance Unit within the Consumer Redress Scheme to serve as the single point of entry for all complaints about solicitors, whether of poor service or misconduct. This unit has been tasked to focus on resolving complaints through conciliation wherever possible and it offers a telephone-based help desk.
- The introduction of a Lay Commissioner, (now called Independent Commissioner), to oversee the operation of the Consumer Redress Scheme.
- The piloting of Local Conciliation Officers as a means of providing suitably qualified and trained staff to enter into face-to-face dialogue with complainants and solicitors with the intention of securing early, amicable settlement of complaints.
- A pilot exercise to outsource the handling of over 500 of the more routine complaints to a firm of solicitors with a good track record of undertaking work on behalf of the Law Society and with staff who have strong conciliation skills.
- The piloting of a number of approaches for reaching early and amicable settlement between complainants and solicitors. These include encouraging solicitors to make reasonable offers to redress justified complaints and allowing caseworkers to make provisional assessments of appropriate levels of compensation for such complaints. The aim of these schemes is to reduce or even eliminate the need for formal adjudication and the formal review of complaints.
- The initiation of a major change programme aimed at determining where and how best to deliver improvements to the management capabilities, caseworking skills, complaints-handling processes and IT systems employed within the OSS.
- The establishment of a Model Office environment to test new skills, processes and systems before deciding whether or not they should be deployed more widely.
- The commitment, made in 2001, to a major IT programme costing in excess of £30 million, with the aim of delivering new customer relationship management, knowledge management and web-based information systems that would help support improvements in the efficiency and effectiveness of the services provided by the OSS and other divisions within the Law Society.
- The launch of a Client's Charter to provide consumers with information about the service they should expect to receive from their solicitor and how they can make a complaint if they are dissatisfied with that service.
- A major re-structuring of the operations of the OSS to separate the complaints-handling function from other activities performed by the OSS.
- And, most recently, the announcement of the intention to separate the complaints-handling function into a separate Directorate and to recruit a new Director to lead that Directorate.

This is an impressive array of activities for an organisation of the size of the Law Society to attempt to undertake. Certainly, from the brief descriptions given above, each of these initiatives appears to be eminently sensible, extremely practical and well intentioned.

### Delivering the Desired Impact?

However, no matter how well-intentioned these initiatives were at their inception, to-date they have failed to deliver perceptible improvement in performance, let alone the step-change improvement that is actually required to significantly reverse the strong upward trend in the backlog of unresolved complaints and to improve both the speed and the quality of service with which complaints are resolved.

The following charts (opposite) clearly show that the OSS' complaints-handling capabilities have been seriously failing to keep pace with the volume of new complaints being received from consumers during the past 21 months. During that time, the OSS has managed to close more complaints than it received in only four of those months, and their backlog of unresolved complaints has grown from 4,434 at the end of January 2002 to 8,545 at the end of September 2003.

Figure 1 OSS RECEIPTS AND CLOSURES JAN 2002 - SEPT 2003

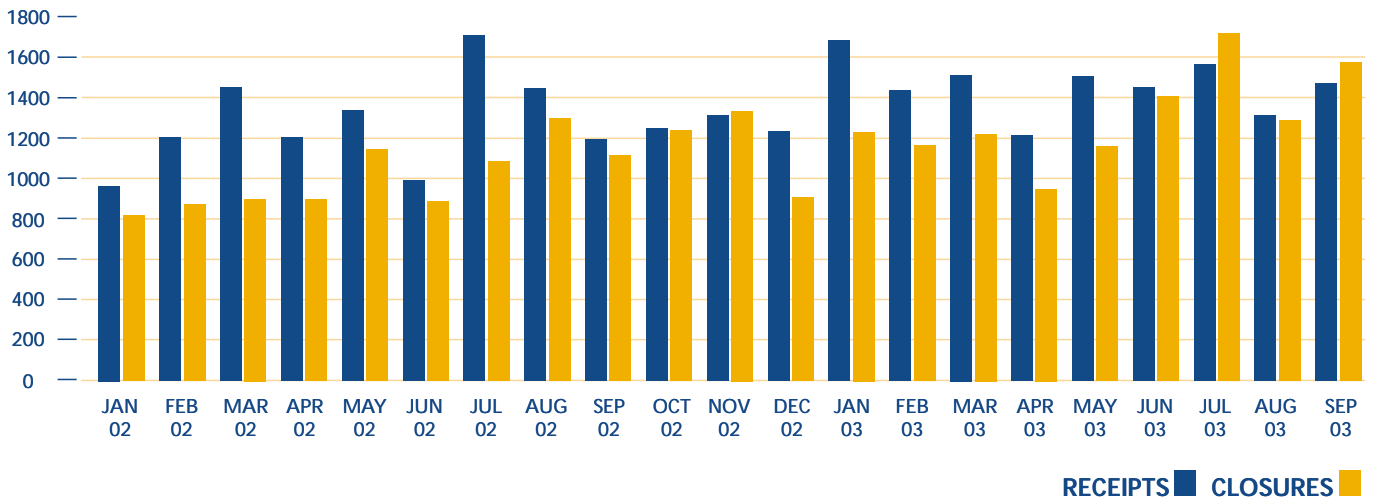
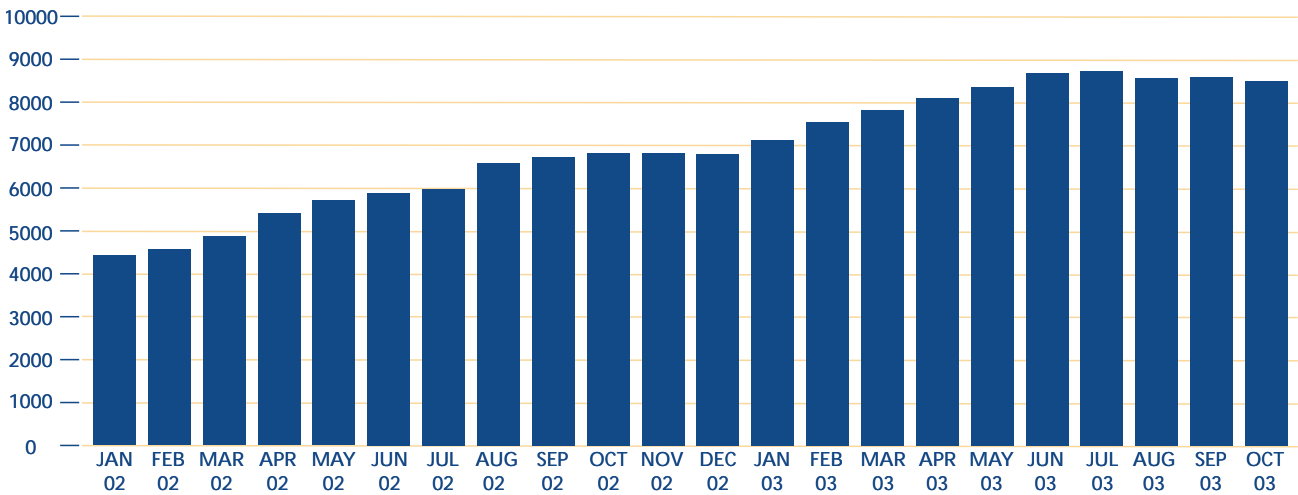


Figure 2 OSS LIVE CASELOAD 1 JAN 2002 - 1 OCT 2003



*“ It is worth noting that if the OSS is able to maintain its current level of performance for the foreseeable future and there is no significant increase in the number of new complaints being received each month, it would probably only close between 100 and 150 cases more than it receives each month. ”*



Looking at the most recent performance, figures show that the backlog of unresolved cases has increased by a total of 401 during the past six months alone. Thus, in spite of all the activities undertaken by the OSS during the past two years, with the threat of the LSCC being appointed hanging over them and, ultimately, the possibility of losing public confidence and self regulation, the OSS has still not managed to raise the effectiveness of their complaints-handling to an acceptable level.

Having said that, there were some encouraging signs during this period, since in two of those months – July and September – the OSS did manage to reduce the backlog, by a total of 188 cases, or around 2% of the total. My analysis of the performance statistics by the OSS suggests that it has been achieved through a combination of the following factors:

- The number of complaints that have been received by the OSS during the past four months appears to have slowed and was substantially lower than had previously been anticipated. The OSS' own forecasts suggest that they have received some 500 fewer complaints during the past four months than they expected to receive based upon past experience.
- The OSS opened a new office in London earlier this year with 40 additional caseworkers to process complaints. This office is now fully operational and conservative estimates would suggest that it has probably added the capacity to process an additional 250 to 350 complaints per month. This is a very positive development.
- The number of cases being resolved by conciliation has increased marginally from under 20% to just over 24%. This equates to an additional 100 or so cases being resolved through conciliation each month, reflecting the growing emphasis within the OSS on resolving complaints through mutual agreement between complainants and solicitors rather than by way of formal adjudication. This must be viewed as a positive development provided complaints are actually being addressed more quickly, complainants are receiving satisfactory and proportionate redress and that potentially serious issues of misconduct by solicitors are not being overlooked.
- Rather disturbingly, the number of complaints that are accepted for investigation by the OSS and then 'temporarily closed' has increased from zero per month at the start of this year to an average of 90 cases per month during the past 6 months, amounting to over 500 cases since April 2003. This development is a matter of some concern and I have asked the OSS to review all these cases that have been closed in this way to ensure correct criteria has been applied.

Another factor that undoubtedly helps to create the impression that the OSS is resolving more cases than it actually does is that the complaints closure figures include cases that are accepted as complaints but are then closed because they are deemed to fall outside the jurisdiction of the OSS or there is insufficient information to justify an investigation. Thus, although there has been a very modest improvement in the performance of the OSS during the past few months, it would seem that the underlying basis for this improvement may be somewhat fragile.

Although it is, of course, a real pleasure to report any improvement in the performance of the OSS, I would nevertheless counsel caution before accepting that this improvement provides compelling evidence that the OSS has finally assembled the resources needed to address fully and effectively all new complaints and, at the same time, begun to make serious inroads into the very substantial existing backlog. A modest increase in the number of new cases being received each month, or a relatively minor adjustment to the number of cases that are being closed through either conciliation or by being classified as 'temporary closures', would immediately return the OSS to a state of closing fewer cases than it receives.

It is worth noting that if the OSS is able to maintain its current level of performance for the foreseeable future and there is no significant increase in the number of new complaints being received each month, it would probably only close between 100 and 150 cases more than it receives each month. With this scenario, it would take the OSS between five and seven years to clear the existing backlog of unresolved cases.

Clearly, this is unacceptable and the OSS will need to continue to give very serious consideration to how it assembles the necessary resources to enable it effectively to handle the volume of new complaints that it receives and, at the same time, successfully reduces the backlog of existing complaints.

With regard to handling new complaints, I would advise the OSS to take immediate action to increase its capacity by a further 10% to 20%. This would give them the capability to process between 1,650 and 1,800 complaints per month and would give all stakeholders much greater confidence that it can comfortably meet the demands of new complainants and, at the same time, eliminate any further growth in the existing backlog. This increase in capacity will probably need to be delivered through a combination of additional staff and improved productivity. On the basis of past experience, it would be prudent to place far greater emphasis on the former rather than the latter in the first instance. In my view, it would certainly be inadvisable to assume that any significant improvements in productivity will be realised in the short term through new or improved IT systems. Again, recent experience at the OSS suggests that it will take some considerable period of time before any of the existing IT initiatives are likely to deliver tangible benefits, let alone permit any new initiatives.

**The Need to Reduce the Backlog**

This, of course, still leaves the thorny issue of reducing the very significant backlog of unresolved complaints, which at the end of September 2003 stands at 8,545 cases. Analysis of the age of this workload, shown in Table 3, highlights some very disturbing issues.

This table shows that the OSS currently has a total of 281 complaints within its caseload that are more than two years old, of which 28 are more than three years old. Whilst these figures are disconcerting in their own right, it is even more disturbing to note that they probably understate the number of such cases due to the fact that the OSS has had a policy of deleting cases in which there has been no communication with the complainant for more than two years. Whatever the actual figures, it is patently unacceptable for complaints to remain unresolved for such an extended period of time. Clearly, urgent action must be taken to bring rapid and satisfactory closure to these cases. As such, I shall be requesting a review of all 281 cases that are more than two years old and, over the coming weeks, I shall engage in detailed discussions with the OSS regarding how they plan to reduce the backlog of cases that are more than two years old. It is unacceptable that consumers who may have suffered from poor service from a solicitor should then be kept waiting for such an extended length of time in order to obtain redress. This is in the interests of neither the consumers of legal services, solicitors or the Law Society.

Year Received	Number Outstanding
Pre 2000	13
2000	15
2001	253
2002	1,838
2003	6,425

Table 3: Age of Outstanding Complaints



## Performance Against Targets

This raises issues over another aspect of the OSS' complaints-handling performance that has been failing consumers, namely, the speed with which they resolve complaints. The following table, Table 4, shows the age profile of complaints that have been closed by the OSS during September 2003 and compares these with the average for the year to-date. It also reveals the satisfaction rating given by my Office for cases referred by complainants who were dissatisfied with the OSS' handling of their complaints.

Age of Cases Closed by OSS	Cases Closed by OSS in September	Cases Closed by OSS Year to Date (Jan 2003-Sept 2003)	Target (Set by Lord Chancellor for ) Jan-Dec 2003	Variance (Year to Date from Target)*
Closed within 3 months	44%	45%	60%	-15%
Closed within 6 months	65%	67%	75%	-8%
Closed within 12 months	88%	89%	85%	+4%
Closed within 18 months	96%	96%	97%	-1%
Closed within 21 months	93%	98%	100%	-2%
<b>Cases Closed by LSO</b>				
LSO Satisfaction Rating	50%	57%	75%	-18%

\* a minus figure means that the target was missed

Table 4: Timeliness & Quality of OSS Complaints Handling Service

These statistics show that the OSS is failing to deliver improvements in the speed with which it closes cases. During September 2003, the numbers of cases closed within 3, 6 and 12 months of receipt was marginally lower than the averages for the year, i.e. although September saw a modest increase in the number of cases being closed by the OSS, this was balanced by a similarly modest deterioration in the time being taken to close cases. It is interesting to note that the small increase in the number of cases that were resolved through conciliation seen during recent months has clearly had little or no positive impact on the speed with which cases are being closed. Moreover, the rating that my Office gives for the quality, accuracy, fairness or timeliness with which the OSS investigated complaints that are subsequently referred to my Office, has fallen during the past 6 months. This suggests that any small increases in the volume of work being completed by the OSS may be being achieved at the expense of the quality of that work. It is important that the quality of decision-making is not impaired by efforts to make faster decisions.

The targets for the speed and quality with which the OSS is expected to complete its work have been established by the Department for Constitutional Affairs and were reduced for the current year to reflect serious problems that the OSS was experiencing in recruiting staff and delivering new IT systems. Even with these reductions, the statistics in Table 4 show that the OSS is currently falling well short of its agreed targets. The number of cases closed within 3 and 6 months is currently 15% and 8% below target, respectively, whilst the current satisfaction rating given by my Office for the OSS' work is 18% below target. There would appear to be no realistic prospect that the OSS will be able to achieve its targets for the current year.

## **Customer Satisfaction?**

In August 2003, the month for which the latest figures are available to me, approximately 60% of complainants indicated that they were very or fairly satisfied with the service they received from the OSS, down from 64% in March 2003, when the figures were first provided to my Office by the OSS. This is a nominal reduction in customer satisfaction with the OSS, and no real conclusions can be drawn without detailed analysis of the figures.

## **The Need for Drastic Action**

Clearly, inaction in the face of so many negative performance indicators is not an acceptable option. It would signal to the general public and the legal profession that the Law Society responsible for regulating solicitors, not only condones the poor service and inappropriate behaviour exhibited by some solicitors, but is also prepared to tolerate very poor performance in the way consumers' complaints are handled.

There can be little doubt that some substantial measures will be needed in order to improve the quality and timeliness of the complaints-handling service provided by the OSS, probably with considerable oversight and close collaboration with the new Office of the Legal Services Complaints Commissioner.

## **Some Good News, Some Valuable Lessons**

One area where the OSS does appear to have delivered a very significant improvement in performance in recent months is its Customer Assistance Unit (CAU). This unit acts as the primary interface through which complaints about solicitors reach the OSS. It offers a help desk that handles all incoming calls from consumers wanting to understand if and how they can make a complaint about the service received from their solicitors. The Unit diagnoses and filters complaints, immediately assigning the more serious cases to other units within the OSS for review or investigation, and seeks to resolve non-complex cases speedily through conciliation.

Early this year, the telephony system being used by this unit was delivering extremely poor performance. As recently as March 2003, there was a very high probability that callers to the CAU would receive an engaged tone, only one in three callers were getting through at the first attempt, and over 20% of calls were abandoned before connecting to a caseworker.

Those callers who did make contact spent an average of 1 minute 40 seconds negotiating the interactive menu system and then a further 2 minutes and 10 seconds waiting on hold before being put through to a caseworker.

In recent months, the performance of this telephony system has improved beyond all recognition. Over 80% of callers now get through to a caseworker within 20 seconds and less than 3% of calls are abandoned before connecting to a caseworker. However, it is far too early to assess systematically the impact of these measures on customer satisfaction. This improvement appears to have been achieved through a small number of very simple measures, each with very modest cost. These measures include increasing both the number of telephone lines connecting to the CAU and the number of caseworkers assigned to undertake call-handling work at peak times. They also include upgrading both the automated call distribution system that directs calls to caseworkers and the computer hardware that supports the main application used by caseworkers.

I am persuaded that there are some valuable lessons for the OSS in the way this improvement has been achieved. It appears that they must have identified that a high priority and high profile part of the complaints-handling function was experiencing very severe performance difficulties. They have analysed the most likely cause of those problems and determined the simplest, quickest and most cost-effective solution to overcome them. There can be little doubt that this is the kind of approach that will enable the OSS to raise its performance to an acceptable level in the shortest possible time and with the greatest possible impact.

### **Law Society's Own Assessment of Performance**

I was somewhat surprised to read in the Law Society's latest annual report that, in their view, 'attention to complaints handling diverts attention from protecting the public and the profession from dishonesty and serious misconduct'.

There can be no doubt that the protection of the public from dishonesty and misconduct is crucial; however complaints of poor service provide valuable insights for the Law Society of where problems lie in the delivery of legal services under their control and give them an excellent opportunity to demonstrate to consumers and solicitors alike that they, the Law Society, will not tolerate poor service of any kind from their members.

Furthermore, in the light of the poor performance described above, I was perplexed to note that the Law Society takes the view that 'the performance of the OSS has now improved and is comparable to that of the Financial Services Authority (Ombudsman)'. At this stage I consider this claim as possibly premature. However, I am hoping that the Law Society can demonstrate significant improvements in their performance, which I shall be happy to acknowledge in my next Annual Report.

### **Quality of Performance Data**

During the eight months that I have held the post of Legal Services Ombudsman, I have seen a very significant reduction in the range and depth of performance data being distributed by the Law Society to various stakeholders, including my Office. In April 2003, I received a performance report that covered an extensive range of indicators, including complaints volumes, outstanding work, outcomes, telephony performance, customer satisfaction, staffing levels and staff productivity. In July 2003, I was notified that there were some concerns over the accuracy and/or validity of these performance indicators and that the OSS was planning to withdraw distribution of most, if not all, of the statistical information it had released.

It was evident that the OSS had uncovered some significant difficulties surrounding integrity of its management information systems. They subsequently commissioned an audit of their case-handling practices and their management information systems going back as far as 1999. This audit revealed a number of inaccuracies in the handling and recording of complaints. These included closing some cases without notifying complainants or solicitors, closing some cases before target dates and then re-opening them, over-stating the degree of progress on some cases and keeping some files out of computer systems to minimise caseload statistics. It seems that some of the practices that gave rise to these difficulties may have emerged around 1999/2000 when the then Lord Chancellor's Department introduced performance targets for the OSS. They appear to have continued through to the end of 2001 or the early part of 2002. However, the auditors have indicated that there is no evidence to suggest that these practices have continued in the last 18 months or so and they are confident that they no longer cause any distortion in the complaints-handling statistics reported by the OSS.

Clearly, such practices are inappropriate for any organisation, let alone one that regulates the provision of legal services. I am delighted that the OSS took immediate and decisive action to investigate these matters as soon as they came to light. I am also extremely encouraged by their decision to recommence distribution of their monthly performance reports. I would urge them to take every possible step to ensure that the statistics contained within these reports accurately reflect the work being done by them in their complaints-handling function. I would also recommend that they include a comprehensive range of measurements that cover the outcome of complaints. This open and extensive sharing of information will help to ensure that external stakeholders can have complete confidence in the activities and operations of the OSS and will also enable meaningful year-on-year comparisons of performance and trends to be made.

## ASSESSMENT OF MAJOR INITIATIVES

### Focus on Swift Redress

During the past two years, the OSS has repeatedly stated that it is attempting to improve the performance of its complaints-handling capability by placing greater emphasis on achieving swift resolution, providing proportionate remedies and keeping procedures simple and informal; in short, by attempting to address as many complaints as possible at an early stage and without recourse to investigation.

Although there is much to commend in this stated approach, it is clearly evident from the performance statistics outlined previously that, to date, the OSS has failed to implement this approach in any effective manner. Consequently, it has yet to realise many of the expected benefits that such an approach should deliver, e.g. faster resolution of complaints, higher customer satisfaction or increased throughput of cases.

### Increasing Capacity

As explained earlier, I believe that the most important issue for the OSS to address is to ensure that it has sufficient capacity, both in terms of caseworkers and the supporting technology systems, to deal with the incoming volume of new complaints. Only by taking this course of action - i.e. by improving productivity and/or, increasing the number of caseworkers and upgrading the existing technology systems to ensure they are fit for purpose - can the OSS have confidence that it can halt the increase in the backlog of unresolved complaints.

If the OSS can achieve this position of confidence, it will have the opportunity to introduce new practices for dealing with complaints without undue apprehension about any negative impact that such practices may initially have on the backlog of complaints.



## Making Early Resolution Work

In parallel with these efforts to increase complaints-handling capacity, the OSS needs to make, concerted and sustained efforts to systematically apply new methods to achieve the speedy resolution of complaints. Many new practices have been discussed, debated or even tested on a pilot basis, but none of these appear to have been translated into standard ways of working within the OSS. There are three new practices that have been under consideration by the OSS in recent months that appear to have considerable merit and deserve to be driven through to implementation, with the proviso that it is made clear to all complainants that they retain the right to refer the OSS' handling of their complaint to my Office. These three practices are:

- **Reasonable Offer Made:** These are cases where the solicitor makes a reasonable offer to settle a complaint, that offer being consistent with the level of compensation which may be awarded to complainants by the OSS after undertaking a full investigation. In these cases, the complainant would be advised to accept this offer and they would be given a clear, reasoned explanation. The complaint would then be closed subject to settlement being made by the solicitor.
- **Provisional Assessment:** In these cases, the caseworker determines that the circumstances of the case clearly indicate that there is a case to answer and proposes a level of compensation that is consistent with past experience. The complainant and the solicitor concerned are advised of the reasons for this recommended settlement and, once again, the case is closed, subject to payment being made by the solicitor.
- **Decisions Without Paper:** In situations where caseworkers find the circumstances of a case are relatively straightforward and the available documentation is self-explanatory, they can forward these cases for formal adjudication without the need to produce detailed reports outlining the principal observations and recommendations. This will significantly reduce the time and resources needed to process such complaints and should lead to much earlier conclusion of those cases.

These proposed new practices have two key factors in common. First, they focus on situations where past experience suggests that complaints could or should have been resolved at an early stage. Secondly, in those situations, past experience suggests that the full and lengthy formal complaints investigation procedure almost invariably endorses the conclusions reached by caseworkers following their initial assessment of the complaint. As such, there are few, if any, benefits of following the full complaints-investigation process in such situations.

If the OSS can implement these three new practices effectively, it should see a significant increase in the number of cases resolved through conciliation, leading to a gradual increase in the number of complaints closed each month and a gradual reduction in the average time taken to resolve those complaints. Furthermore, this faster resolution of complaints should lead to a gradual increase in customer satisfaction – provided the clarity of communications with complainants and the quality of decision-making by caseworkers are not compromised in the drive to achieve a rapid resolution of complaints.

I would urge the OSS to ensure that they introduce these practices in a controlled manner, whilst making every effort to ensure that caseworkers are adequately trained to perform these new tasks. The OSS must show greater determination and resolve, to ensure the successful deployment of these practices.

They must also ensure that the necessary support and quality-assurance structures are established at the outset, to help caseworkers deliver their highest levels of service and to maintain or even improve the accuracy of their decision-making. The OSS will also need to establish quality control arrangements in order to ensure that there is consistency in decision-making between caseworkers and that relevant information is readily available to all stakeholders. However, I must again stress the need for complainants to be informed of their right to refer the OSS' handling of their complaint to me.

## Reducing the Backlog

The size and age of the backlog of unresolved complaints has now reached a stage where urgent action is required. This backlog currently stands at 8,545 complaints and cannot be allowed to remain at this level or indeed increase. The current age profile of this backlog means that, for the foreseeable future, it will be very difficult for the OSS to meet its targets for completing cases within 3, 6, 12, 18 or 21 months. Even if the OSS can improve its complaints-handling capacity, e.g. by recruiting additional staff and introducing new practices to improve productivity, it is highly unlikely that new capacity would be sufficient, in the short term, to make any serious inroads into the backlog of unresolved complaints.

Over the past two years the OSS has experimented with various alternative strategies for increasing complaints-handling capacity without increasing the scale of the central complaints-handling operations. The most notable examples include:

- **Local Law Societies:** It appears that almost half the local Law Societies in England and Wales have provided some form of assistance in facilitating local contact between complainants and solicitors. It seems that a few of these local Law Societies have developed quite sophisticated operations, but the vast majority provide very limited arrangements for dealing with complainants.
- **Local Conciliation Officers:** These are typically solicitors who help resolve complaints through conciliation. They generally undergo training similar to that undertaken by caseworkers and are typically remunerated on a per-case basis. They may assist OSS' caseworkers to resolve complaints by providing local face-to-face contact with the parties concerned. Alternatively, they may be assigned complaints that are considered suitable for resolution by conciliation.
- **Outsourcing:** During September and October 2003, approximately 500 cases suitable for resolution through conciliation were outsourced to a firm of solicitors with a good track record of working with the Law Society and with proven skills in mediation and conciliation.
- **Mediation:** During the past six months, the OSS has been evaluating the idea of using some form of mediation to deal with complaints where there is clearly a case to be answered and compensation is unlikely to exceed £250, and where parties cannot reach agreement on an appropriate level of compensation.

Unfortunately, as with the approach to early complaints resolution, the OSS has debated, discussed and tested various options on a pilot basis to provide additional complaints-handling capacity but, as yet, has failed to drive any of these options through to full operational deployment. Indeed, the OSS on occasions has repeatedly undertaken pilots but has still not reached a point of deciding to commit to a full-scale deployment. This gives the appearance that the OSS draws considerable comfort from being able to notify its stakeholders that it is exploring various options and undertaking pilots, but lacks the confidence to drive those options through to effective operational implementation.

At this stage, it is my view that the idea of using local Law Societies to provide additional complaints-handling capacity is unlikely to deliver any tangible benefits. Most local Law Societies are voluntary bodies and have neither the facilities nor the staff to provide a meaningful or practical complaints-handling system, or to deliver a consistent service. Moreover, they would need considerable financial, technical and administrative support from the OSS in order to make any serious contribution to the overall complaints workload. The resources needed to provide this support would, in the short to medium term, be more effectively directed towards increasing capacity and possibly productivity within the central complaints-handling operations.

In contrast, I support the idea of using trained Local Conciliation Officers (LCOs) to increase complaints-handling capacity and, more importantly, to provide a local interface for dealing with complaints. It is interesting to note the fact that the OSS undertook a seemingly successful pilot of the Local Conciliation Officer scheme some three years ago but, rather than proceeding with a controlled expansion of this scheme, it has instead, since the end of April 2003, been undertaking another pilot scheme.

I also note with interest the fact that although there appear to be over 225 trained LCOs (compared with around 200 caseworkers at the OSS), they appear to have dealt with fewer than 500 cases in the past twelve months; equivalent to around two cases each. It does rather defeat the purpose of recruiting and training these individuals if they are not then given the opportunity to undertake a sensible volume of work.

The LCO Scheme could offer the OSS one means of reducing the current backlog of unresolved complaints, if LCOs were set targets for the number of cases to be completed. However, the OSS could also assess the viability of employing local caseworkers to undertake this area of work, which would also give them greater control and accountability.

The scale of the potential impact that LCOs can make should give the OSS the impetus to proceed rapidly with a strategy to make far more effective use of the LCO resource available to them. To be successful, this strategy will be dependent on the provision of appropriate training for LCOs to ensure that they work in a manner that is entirely consistent with that of the OSS' central caseworkers. It will also be essential that they receive appropriate technical and administrative support from the OSS and that their performance is monitored in terms of the quality of service and the accuracy of their decision making.

Another option being explored by the OSS as a means of reducing the backlog of unresolved complaints is to outsource batches of complaints to be a small group of legal firms. When I originally took up my post of Legal Services Ombudsman earlier this year, I had serious reservations about this approach, partly due to concerns over maintaining the confidence of complainants that they would receive a fair and impartial service from the outsourced firms and partly due to concerns regarding the ability of the selected firms to offer the required levels of service or to make decisions that would be consistent with those made by the OSS.

Whilst I remain extremely uneasy about the wisdom of outsourcing complaints to legal firms, due to the enormous scale and continuing increase in size of the backlog during the past six months, outsourcing, although in my view not ideal, may well present a pragmatic solution for the OSS in the short term.

However, if the OSS feels they need to take this course of action, I would suggest that they take on board all the lessons learned from the pilot last year. Most notably, they did not allow sufficient time to train solicitors in the chosen firm in complaints-handling processes, nor did they put in place adequate mechanisms to support those solicitors or to delineate clear criteria for monitoring the quality of their work. They also imposed an artificial, arbitrary deadline of just six weeks to complete all the allocated cases.

If, as seems likely, the OSS does decide to outsource the handling of further batches of complaints, I would strongly recommend that they plan this work carefully, that they ensure adequate time and appropriate resources are made available for the necessary training, that they establish a dedicated team within the OSS to provide support and to monitor the performance of the outsourced suppliers, and that they allow a more realistic timeframe for completion of the allocated workload. They must also ensure that complainants are consulted about any potential outsourcing of their complaint to an external firm of solicitors.

I understand the OSS has now identified three firms that have the skills and would be prepared to process complaints on an outsourced basis. Assuming that these firms have the capacity, if the OSS were to clear around 3,000 cases, say, over the next twelve months, thereby making very significant inroads into the current backlog, the OSS would need to outsource batches of around 250 complaints every three months to each of these three firms.

As for the use of external mediators to help resolve the more straightforward complaints, I have serious reservations as to whether this strategy has any useful role to play in helping the OSS to deliver an effective and efficient complaints-handling service. This is an option that the OSS has been considering for the past twelve months or so and they are currently well advanced with a small pilot. The initial findings from this pilot suggest that it is far from straightforward to identify cases that would be suitable for mediation or to gain the approval of the parties concerned to have their cases resolved in this manner. More worryingly, where such approval was obtained, some solicitors failed to respond to communications from the external mediators, suggesting that they attached no importance to the role of those mediators or did not feel compelled to resolve complaints about their service through this particular route.

On the basis of these findings, it seems to me that if the OSS continues to pursue this route further they will need to find some means of delegating some degree of authority to allow mediators to demand responses from solicitors and refer them for disciplinary sanction if they fail to comply with those demands. However, as this is likely to be extremely problematic, I believe a more effective course of action would be to use the proposed new mechanism of Provisional Assessments, as outlined earlier in this report, as the most practical means of dealing with the more clear-cut complaints. In this way, the resolution of complaints remains under the direct control of the OSS, which has greater authority to gain the cooperation of solicitors.

## Driving Improvements through Organisational Change?

In common with most medium and large-sized organisations, one of the main areas that the OSS has targeted as a means of improving its performance is through organisational change. In particular, for the past three years they have been engaged on a major programme of work to review their organisational structures, skills, procedures and systems and identify specific areas with scope for improvement.

A major element of this change programme was to set up a so-called Model Office environment that could be used to test and refine new ways of working before deciding whether or not they should be deployed across the organisation. When I took up my post as Legal Services Ombudsman in March 2003, I was advised by the OSS that the Model Office was an integral and crucial component in their strategy to deliver improvements in the performance of their complaints-handling systems. Furthermore, during the past six months, the role and the potential value of the Model Office initiative has been debated by and with various stakeholders, including a Select Committee Meeting held on 15 July 2003. I was therefore disappointed to learn in September 2003, that as far back as March 2003, the OSS took a decision to cease work on the Model Office environment, as it would not be capable of delivering the step-change improvement in performance that was required.

Although generally, communications with the OSS and my Office have been good, there have been occasions when earlier notification regarding changes in policy direction would have been more helpful. There have been a wide range of high-profile initiatives and pilots, the impact of which has been difficult to assess because of limited information both to consumers and stakeholders.

In view of the interest that external stakeholders have in the major initiatives being undertaken by the OSS, it would help alleviate concerns and garner support for the OSS' work if they could provide much earlier notification and more detailed explanation for changes in direction.

On a more positive note, I have been impressed by some of the work which the OSS has been able to do with external management consultants to help identify weaknesses and deliver improvements in their operations in a bottom-up manner, i.e. starting with the frontline delivery of complaints-handling services and working up to the organisational structure and strategic direction of the complaints-handling units.

This work appears to have brought a calm, considered and commonsense approach to diagnosing weaknesses in the operations of the OSS and identifying practical, cost-effective and easy-to-deliver solutions to those weaknesses.

The management at the OSS has not been afraid to acknowledge that the organisation has fundamental problems that it needs to address, including major issues over culture, accountability, productivity and weaknesses in certain key roles. I look forward to the appointment of the new Director of Consumer Redress, who will take forward this very important aspect of the Law Society's work.

I am sure the management consultants' work has played a very significant role in the recent improvements in the performance of the Customer Assistance Unit within the OSS, where telephony response times have been dramatically improved.

I am also happy to report that the OSS have taken on board my concerns that, in some cases, there has been an inadequate level of contact with complainants. I am pleased to note that the OSS are in the process of establishing a new policy for the OSS to make regular contact, at least once per month, with complainants – whether or not their complaint has been allocated for investigation. This must be viewed as a welcome development and should have a positive impact on complainants' perceptions of the service provided by the OSS. However, I hope the OSS has factored the increased resource requirements, which may be necessary, for this seemingly simple activity into their planning.

In recent months, it appears that the bottom-up approach being followed by the OSS and its management consultants has started to impact at the highest levels within the organisation. In May 2003, the OSS announced a major re-structuring of its operations in order to separate peripheral or supporting functions (albeit very important functions) from their core complaints-handling activities. In September 2003, this re-structuring was followed by an announcement that they proposed to move the core complaints-handling activities into a new Directorate, under the leadership of a new Director.

I am normally cautious about so-called strategic re-organisations, as they often appear to have echoes of re-arranging the deckchairs on a sinking ship. However, in this instance, I can see some potential benefits that could accrue from this re-organisation, especially in terms of increased focus on the efficient and effective resolution of complaints. Nevertheless, I hope this re-organisation and the associated recruitment of a new Director will not distract the OSS from its real focus, namely, continuing to implement improvements in the delivery of its frontline services.

## Systems Improvements

Another major element in the Law Society's efforts to improve its performance has been its flagship Project Engineer initiative, which aimed to deliver an extensive range of new or vastly improved IT systems that would, in turn, deliver significant improvements in terms of staff productivity and service quality. This initiative was originally given approval to commence in 2001, at which stage estimates indicated that it would cost in excess of £30 million and take three to four years to complete.

In my Annual Report earlier this year, I wondered why an organisation with an annual income of less than £90 million and with limited internal IT resources, committed itself to a project of this scale and complexity – a project costing in excess of one-third of its annual income. It was my view that this work was probably taking a 'big bang' approach to improving the Law Society's IT systems, i.e. it was attempting to deliver a very large number of improvements to a myriad and complex array of existing systems, in one huge 'co-ordinated' initiative. It is worth noting that there is a very significant body of evidence in the IT industry to show that such 'big bang' initiatives are often difficult to implement.

Sadly, it seems that the Law Society's experiences on Project Engineer have only added to that body of evidence. During the past twelve months, this project has consistently failed to deliver the expected functionality or to meet any of the original deadlines. There appear to have been some shortcomings in the quality of development work and these have been compounded by a shortage of relevant skills within the Law Society's own internal IT function. The shortcomings have resulted in considerable delays to development and repeated reductions in the scope of those developments. A number of new internal and external web sites that were originally intended to be operational by the end of 2002 will not now be available for general use before the summer of 2004 at the earliest. This essentially means that a project intended to take less than twelve months will now exceed its original delivery deadline by more than eighteen months. More disturbingly, the centrepiece of the Project Engineer programme, a unified new customer and management information system, has had to be repeatedly reduced in scope after encountering serious problems during testing. Although this system was originally intended to be in production at the end of 2002, it appears that a very much-reduced version of this system may now be delivered towards the end of December 2003.



Due to the nature and scale of these problems, the Main Board of the Law Society has taken the decision to suspend work on all future phases of Project Engineer and has indicated that such work will only be approved provided there is a clear and compelling business case. Furthermore, during May and June 2003, the Law Society engaged the services of its external auditors to perform both a technical assessment and a quality review of the work performed to date on Project Engineer. All the findings of this work have not been disclosed to my Office, due to commercial confidentialities. However, it appears that this work may have raised some issues regarding the overall management, development and performance of the project. The Law Society is in the process of addressing these issues internally and with their suppliers.

However, the Law Society's recent decision to retain the services of its external auditors to provide oversight of the existing development work on Project Engineer is a cause for some concern. I hope that due consideration has been given to the probity of such a course of action and to any conflicts of interest that may arise from appointing external auditors to perform operational work.

However the Law Society decides to proceed with managing and implementing improvements to its IT systems, it may take a number of years before they deliver any tangible benefits. Instead, it would be far better advised to focus on identifying key areas of weakness that impair its ability to deliver an efficient and effective complaints-handling service – and finding ways to implement rapidly specific solutions to those weaknesses. Only in this way can the Law Society realistically expect to deliver meaningful improvements in its performance in the shortest possible timeframe.

## Improving Service at the Point of Delivery

As I indicated in my Annual Report earlier this year, in order for the Law Society to demonstrate that self-regulation is justified and in the public interest, it has to do more than simply attempt to improve the performance of its central complaints handling at the OSS. Most notably, it must make a concerted effort to improve the quality of service provided by solicitors at the point of contact with consumers and it must put in place the mechanisms to take swift and decisive action against those solicitors who fail to provide the required levels of service.

A starting point for the OSS might be to ensure that all solicitors comply with Practice Rule 15, which requires solicitors to maintain an effective in-house complaints procedure, including a written description of that procedure and a log recording the details of all complaints. Under Rule 15, the lack of such a procedure can be treated as misconduct and can result in disciplinary action against a solicitor.

However, three years after the introduction of this rule, a survey conducted in the summer of 2002 found that 65% of solicitors did not have a satisfactory complaints procedure and 36% of solicitors had no written procedure whatsoever.

A more recent survey, initiated earlier this year by the Law Society's own Independent Commissioner for the Consumer Redress Scheme, found that compliance with Rule 15 appeared to have improved; however, 6% of solicitors' firms still had no written complaints procedure, only 18% maintained a written register of complaints, and 15% provided no reference to their complaints procedure in the initial correspondence with new clients.

As these figures are based upon unaudited and uncorroborated survey returns from solicitors, it is possible that they overstate the level of compliance with Rule 15. Yet Rule 15 is a mandatory requirement for solicitors under the Law Society's code of conduct. It is essential that the Law Society ensures that all solicitors provide this basic and essential element of service.

I would urge the Law Society to take greater responsibility for ensuring that solicitors comply with the requirements of Rule 15. This could be achieved through a form of annual audit of all registered firms. If the Law Society is unable to provide the resources needed to perform such an extensive audit, it could, in the first instance, target those firms that account for the largest number of complaints.

The Law Society's independent Commissioner's survey shows that around 2% of firms account for 10% of the complaints received by the OSS and some 5% of firms account for 20% of the complaints. It would make perfect sense for the OSS, in the first instance, to target its resource on auditing this small subset of firms.

Another very significant element of the Law Society's efforts to improve the service offered by solicitors and to provide consumers with more information about their complaints-handling procedures is the Clients' Charter, launched with very high expectations in March 2003. In my Annual Report, I expressed reservations about the likely impact of this initiative as it does not require solicitors to offer the Charter to clients, nor does it include any mandatory training for solicitors to help them improve their client care. In these circumstances, this could render the Charter as little more than window-dressing.

I understand that the Law Society has begun to explore the idea of introducing compulsory training in client care and complaints handling for solicitors. I suggest they take appropriate steps to introduce this training. It will send a clear and emphatic signal to its members, the general public and external stakeholders that the Law Society is determined to drive through improvements in the quality of service offered by its members. It is interesting to note that in the Health Service, doctors will need to be accredited every five years to continue practising. Perhaps the Law Society could explore a similar initiative for solicitors, to augment the existing Continuing Professional Development requirements?

Another factor that would undoubtedly encourage solicitors to ensure that they maintain the highest standards in the services they provide and that they take much greater responsibility for resolving complaints themselves, is the concept of charging solicitors for each complaint referred to the OSS. Within the current legislative framework, the OSS can charge solicitors only when a formal 'statutory' finding has been made against them. However, if a complaint is closed by a caseworker or an Adjudicator, then no charges can be made against the solicitor involved. I am aware that the Law Society has engaged in a dialogue with the Department of Constitutional Affairs to explore alternative charging models that would reflect the fact that complaints referred to the OSS inconvenience the client, prolong the time needed to resolve complaints and cause the OSS to incur considerable costs.

It may be more equitable to have a charging model in which those solicitors that give rise to complaints have to carry a greater proportion of the cost associated with resolving them (although it may also be argued that solicitors should not have to pay when they have made a genuine and reasonable, but ultimately unsuccessful, attempt to conciliate). As such, it may be reasonable to consider adopting a similar model to that employed by the Financial Ombudsman Service (FOS). With the FOS model, one half of the costs of the complaints-handling operation is covered by a charge on all members and the other half is covered by a fixed fee payable by the practitioner for each individual complaint. My understanding is that the fixed fee becomes payable when the complaint is received by the FOS and applies regardless of the method of resolution or the final decision. This model could be modified slightly to encourage solicitors to be more amenable to resolving complaints through conciliation – this would be accomplished by refunding the fixed fee if the complaint can be resolved without formal investigation. Such a charging model may encourage some solicitors to offer a better in-house complaints-handling service and would motivate them to improve their services to reduce the incidence of complaints.

However, it is important to note that any change to the charging model adopted by the Law Society may require legislation

### **The Need to Protect Consumers**

One of the primary functions that the Law Society must fulfil if it is to be regarded as a credible regulator is to protect consumers from suffering losses due to the dishonest or fraudulent actions of its members. Although only a very small and gradually declining minority of solicitors engage in such discreditable and unscrupulous behaviour, there are clear indicators to suggest that the scale of losses being incurred by consumers as a consequence of such behaviour appears to be rising. It is interesting to note that the scale of grants being made from the Law Society's Compensation Fund, to provide redress for financial losses suffered by consumers due to the dishonest or fraudulent actions of some solicitors, appears to be decreasing. This Fund stood at over £50 million in 1999 but had declined to just under £14.5 million by April 2003, notwithstanding very substantial contributions made each year to the Fund by all practising solicitors. It is not clear to me why the Fund has declined to such a degree.

There can be little doubt that the Law Society must take swift and proportionate action to identify and take action against the perpetrators of any type of fraud, giving a clear message to the profession that dishonest practices will not be tolerated.

When I took up my appointment as Legal Services Ombudsman, I was extremely encouraged to note that the Law Society had initiated a major new programme of work to perform spot checks on all its members as a proactive measure to identify and eradicate unacceptable practices. The original intention of this initiative was that investigators from the Law Society would visit every firm once every three to four years. Unfortunately, during the past six months, the Law Society appears to have repeatedly downgraded the scale of this operation. I understand that the Law Society has had difficulty in recruiting suitably skilled individuals to perform this work and they will now see less than one-third of the number of firms that they had originally intended to visit this year. Furthermore, unless they can remedy this shortfall in recruitment, it is my opinion that they will struggle to visit more than one-sixth of the 2,000 firms they had planned to visit next year.

Although there may well be valid organisational reasons for the Law Society's failure to implement this programme of work fully and effectively, to the external observer it gives the impression that the Law Society lacks the commitment to take proportionate action to eradicate the unacceptable behaviour exhibited by a small minority of its members.

## **Legal Services Complaints Commissioner (LSCC)**

On 26 September 2003, due to continuing poor performance at the OSS, the Secretary of State for Constitutional Affairs announced his decision to appoint the Legal Services Complaints Commissioner (LSCC), using powers reserved under Section 51 of the Access to Justice Act 1999. The role will be limited to the work of the Law Society and will not affect the other four professional bodies, which come under my remit. As with the Ombudsman this is a statutory appointment, but unlike the Law Society or Bar Council Commissioners (who have different internal remits in their respective organisations), the LSCC will be independent of the legal professions and accountable to Parliament through the Secretary of State and Lord Chancellor. The LSCC will have a more 'strategic' role than that of the Ombudsman.

At the time of writing this Interim Report, the Secretary of State has not issued directions with regard to the full remit of the LSCC. Any direction issued by the Secretary of State and Lord Chancellor may contain one or more provisions, of which the following are the most important:

- To investigate the handling of complaints about members of the Law Society.
- To require the Law Society to provide information or make reports to the LSCC regarding the handling of complaints about its members.
- To require the Law Society to submit to the LSCC a plan for the handling of complaints about its members.
- To set targets for improvements in the performance of the Law Society's complaints-handling operations.
- Where the Law Society fails to submit an adequate plan, or submits an adequate plan but fails to handle complaints in accordance with it, the LSCC may require the payment of a penalty by the Law Society.

It is my intention to use the additional responsibilities of the LSCC to work constructively with the Law Society to help identify sensible, practical and cost-effective solutions to overcome weaknesses in the OSS' complaints-handling capabilities. I will place particular emphasis on helping to improve the speed and accuracy with which complaints are resolved, in order to deliver significant and rapid reductions in the size of the existing backlog of unresolved complaints. I also intend to liaise with the Law Society to explore the options for driving through improvements in the quality of service and the effectiveness of complaints handling provided by solicitors at the point of contact with consumers.

Over the next few months, I shall engage in detailed dialogue with both the Department for Constitutional Affairs and the Law Society to put in place a framework to allow me to undertake this work in a constructive and effective manner.

As I move forward with the role of the LSCC, the Law Society will need to give very careful consideration to the title and some aspects of the role of its own internal Commissioner, now called the Independent Commissioner. This is a role about which my predecessor as Ombudsman, Ann Abraham, had grave concerns. As I indicated in my Annual Report, I too have serious reservations about some aspects of this role and the way in which it is presented; this could be both misleading and confusing for consumers and other stakeholders.

With respect to the title, it is worth noting that the role was advertised by the Law Society towards the end of 2001 as the Lay Commissioner, not the Independent Commissioner. However, some months following the appointment, the Law Society amended the title to Independent Commissioner.

I also note the Independent Commissioner's response to a question posed by members of the Law Society asking why there is such a disparity between his (relatively positive) views of the performance of the OSS and those (more negative views) expressed by myself in my first Annual Report covering the period from April 2002 to March 2003. The Commissioner remarked that his findings were based upon the full range of complaints handled by the OSS and not just the small subset referred to my Office.

Whilst I cannot disagree with the Independent Commissioner's observation that my Office has sight of a much smaller number of complaints than the OSS, the performance statistics presented in this Interim Report and to all previous Annual Reports published in recent years by my Office, without exception, incorporate considerable information regarding the quantity and quality of work performed by the OSS - encompassing the full range of complaints handled by the OSS, not just the subset that reaches my Office. Those statistics are readily available within the Law Society and give a valuable and objective insight into the performance complaints handling of the OSS.

The Independent Commissioner has produced three reports during his first twelve months in office. I have carefully reviewed each of these reports and I have been disappointed to find that he has been obliged largely to reiterate the ideas and concepts that had been under general consideration within the OSS during the twelve to eighteen months prior to his appointment, and which they had not adequately progressed. However, he has been able to explore three new areas:

- 1.** The findings from the survey of solicitors commissioned earlier this year, provide a valuable insight into how solicitors view and treat complaints and the degree to which solicitors currently comply with the requirements of Rule 15 (which makes it mandatory for solicitors to have effective written complaints-handling procedures in place).
- 2.** The Independent Commissioner's recommendation for the OSS to take the necessary action to enable it to consider handling complaints where the level of compensation may exceed the current limit of £5,000, has much to commend it. The Independent Commissioner argues that this limit is not in the public interest as complainants are left with no alternative but to seek redress through the courts – where the costs may be disproportionate to the level of compensation sought.

I endorse this recommendation although it will require secondary legislation before the OSS can raise the compensation limit. However, before proceeding with any such legislation I suggest that the OSS give careful consideration to the new compensation limit of £15,000. I have seen no sound rational explanation to justify this unusual amount and I am tempted to ask why it should not be even higher or lower? It appears that the Independent Commissioner is suggesting an essentially arbitrary level of redress, after which the OSS will identify what cases it might allow them to investigate. Instead, it would be prudent for the OSS to undertake some research, in order to identify those cases of greater complexity and value which they would be willing and able to investigate, and to then determine the maximum level of compensation required to provide an appropriate level of redress in these cases. In the interim, I would urge the OSS to ensure that it continues its current efforts to define precisely the criteria for cases that it would accept under any such increased compensation regime. More importantly, before this regime comes into force, the OSS must begin to prepare to receive a relatively larger volume of more complex cases and to ensure that it puts in place appropriate new processes and sufficient staff with the necessary skills to be able to diagnose and handle these cases.

**3.** The Independent Commissioner also suggested that public protection would be better served if wider publicity were given to disciplinary findings, and therefore recommended that: conditions on practising certificates should be made matters of public record, being entered on the 'Solicitors Online' database, and disclosed to the public on request; solicitors who had already been sanctioned should be referred to the Solicitors Disciplinary Tribunal for public sanction if they repeated an offence. He also suggested that the findings of disciplinary proceedings should be disclosed in a systematic manner, possibly through the Solicitors Disciplinary Tribunal's web site. I believe such a course of action would not only serve the public interest and protect consumers from poorly performing solicitors, it would encourage solicitors to take due care to maintain the highest standards in their work. I look forward to hearing the Law Society's response to these proposals.

## SUMMARY OF PERFORMANCE AT THE LAW SOCIETY AND THE OFFICE FOR THE SUPERVISION OF SOLICITORS (OSS)

### Complaints About Solicitors

These figures relate to the reports that my Office issued between 1 April 2003 and 30 September 2003.

Between 1 April 2003 and 30 September 2003, I investigated 845 allegations about the handling of complaints by the OSS. This is exactly the same as the number that my predecessor investigated during the same period in 2002. It represented just over 87% of my caseload (89% in 2002).

I was satisfied with the way in which the OSS had handled the complaint in 51% of cases, a decrease in the overall level of satisfaction from last year's figure of 64%.

I formally criticised the OSS in 9% of cases and made recommendations in 40%. I made a total of 417 recommendations, in 345 reports. There were 122 recommendations that the OSS should reconsider the complaint and 285 that the OSS should pay compensation. In 62 cases reports contained both recommendations, indicating that not only was the OSS' investigation or decision unsatisfactory, but that there had also been administrative failings, such as delay, in their handling of the complaint. The total of compensation awards was £113,300 (compared with £19,786.25 between 1 April 2002 and 30 September 2002).

### OSS' Performance Against Targets

In my annual report, I made it clear that I had concerns about the performance of the OSS. I explained that they were working towards a basket of targets that were agreed with the then Lord Chancellor at the beginning of the year. These targets were part of a three year recovery plan and took into consideration the two main difficulties that the OSS indicated that they faced at the time:

- It would take time to complete the recruitment of new staff following the allocation of additional financial resources.
- The OSS anticipated incoming work to increase.

This led to targets that reflected the fact that the OSS would need to recruit a number of new staff and then train them before they could improve their overall performance in terms of the time taken to deal with complaints.

Whilst the targets therefore made allowances in this area, it was agreed that there was no reason why the quality of investigations should be compromised. The OSS had improved in this area during 2002 and the Lord Chancellor sought further improvements in 2003.

The table below sets out the OSS' performance against turnaround targets for all cases sent out **between 1 January 2003 and 30 September 2003**.

	<b>All OSS' investigations completed between 1 January 2003 and 30 September 2003</b>	<b>Target (Set by Lord Chancellor for Jan-Dec 2003)</b>	<b>Year to date variance from target (a minus figure means that the target was missed)</b>
<b>Age profile of cases closed</b>			
Complaints closed within 3 months	45%	60%	-15%
Complaints closed within 6 months	67%	75%	-8%
Complaints closed within 12 months	89%	85%	4%
Complaints closed within 18 months	96%	97%	-1%
Complaints closed within 21 months	98%	100%	-2%
<b>Cases closed by OLSO</b>			
LSO satisfaction rating	57%	75%	-18%

The turnaround times in this table are based on the date that the OSS' file was opened and the date that they notified the person making the complaint of their final decision. My Office has agreed with the OSS clear definitions of these dates. These definitions were implemented in full at the beginning of 2003.

It is clear from these figures that the OSS is currently falling well short of the agreed targets for turnaround times.

The other target in the table relates to the quality of the OSS' complaint handling. This figure is based on the number of cases where my Office completed an investigation into the OSS' handling of a complaint and made no recommendation or criticism. The OSS achieved a satisfaction rating of 67% during 2002, a significant improvement on 2001. It was agreed that it was vital that the OSS continue to make progress in this area, and a target figure of 75% was agreed.

Since January 2003 my Office has investigated 1,475 allegations about the handling of complaints by the OSS. Some 57% of cases were handled satisfactorily by the OSS.

Formal criticism of the OSS was made in 8.3% of cases and recommendations were made in 34.3% of cases. A total of 596 recommendations were made in 506 reports. There were 209 recommendations that the OSS should reconsider the complaint and 387 that the OSS should pay compensation. In 90 cases reports contained both recommendations, indicating that not only was the OSS' investigation or decision unsatisfactory, but that there had also been administrative failings, such as delay, in their handling of the complaint. The total of compensation awards was £147,161.

There can be little doubt that these failings heavily influenced the Secretary of State's decision to appoint the Legal Services Complaints Commissioner (LSCC). In my view, the Secretary of State's decision was both timely and appropriate.

The final figures for September have confirmed that it is now virtually impossible for the OSS to meet the targets that they agreed at the beginning of the year.

As well as having concerns about the OSS' failure to meet these targets, I also referred in my annual report to the number and age of the cases that were currently being held by the OSS. I pointed out that, in order to get a true overview of the situation, it was necessary to look at the age profile of these cases. Only by comparing these figures with the age of cases that had been closed was it possible to get a realistic impression of both current and future performance.

The table below presents these figures in categories.

Date the file was opened	Number of cases	% of total	Cumulative total
Over 12 months old	1,153	13%	13%
9-12 months old	966	11%	25%
6-9 months old	1,532	18%	43%
3-6 months old	1,732	20%	63%
Less than 3 months old	3,161	37%	100%

The challenge for the OSS is to close these older cases whilst continuing to deal with the majority of new cases within three months. Given that the older cases tend to be more complex, this will be no mean feat.



## Section 24 Recommendations

In January 2002, the then LSO, Ann Abraham, made a number of recommendations in accordance with the powers available to the Ombudsman in Section 24(1) of the Courts and Legal Services Act 1990. Progress to date has been disappointingly slow. This is the current position in relation to each of those recommendations.

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

Current position: I am not aware of any progress in this matter further to that identified in my Annual Report.

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

Current position: The Law Society's Indemnity Insurance Committee has undertaken some research with qualifying insurers about how they deal with unrepresented claimants.

The question of a protocol and guidelines was put to the insurers but their responses were inconclusive. It is now suggested by the Law Society that they issue a guidance leaflet to complainants who need to make a negligence claim. That idea might go some way in explaining to the lay consumer how to claim compensation for negligence, but I have concerns that it will not achieve my vision of a consistent and seamless system of redress for consumers who have lost out as a result of poor service by a solicitor and for whom the distinction between inadequate professional service (handled by the OSS) and negligence (handled by the solicitors' insurers) is an artificial one.

I also remain to be convinced that the OSS is doing everything it can within its current compensatory jurisdiction of £5,000 and that it is all too easy to label a complaint as one of negligence and outside their remit, rather than to take a broader view of the problem. This unimaginative approach will have to be addressed if the Law Society is to have its compensatory jurisdiction extended to £15,000, or beyond.

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.

Current position: A pilot scheme, involving a limited number of complaints, is currently in operation. An interim assessment of its findings has revealed that it has been difficult to get the consent of both the solicitor and the client – which has resulted in delays in establishing this scheme. However, I was concerned to hear that many solicitors, who initially agreed to participate, subsequently failed to reply to letters from the mediator. This negative reaction is extremely disappointing and calls into question the seriousness with which some solicitors take the business of complaint resolution.

4. That the Law Society's Lay Commissioner publishes an annual report on the performance and operation of the Consumer Redress Scheme.

Current position: The Law Society's Commissioner has now published his first Annual Report. The statistical information is provided by the OSS.

5. That the Law Society invite all the individuals and organisations who responded to their consultation paper on the Consumer Redress Scheme to a series of meetings in the course of the next twelve months, specifically to discuss how the Scheme should be implemented and developed.

Current position: One of my predecessors noted that whilst there had been an improvement in the quality and frequency of communications by the Law Society with my Office and the Department for Constitutional Affairs, there was still a need for much improved consumer focus and more genuine and responsive consultation with a range of stakeholders. So far, there has been no substantive progress on this recommendation. However, a working party has recently been formed to put together proposals for the creation of a Consumer Panel. I look forward to receiving some firm proposals as to how the Law Society intends to take this matter forward.

## REVIEW OF COMPLAINTS HANDLING BY THE GENERAL COUNCIL OF THE BAR

### Complaints about Barristers between 1 April 2003 and 30 September 2003

These figures relate to the reports that my Office sent out between 1 April 2003 and 30 September 2003.

Between 1 April 2003 and 30 September 2003 I investigated 115 allegations about the handling of complaints by the Bar Council. This is an increase from the 102 allegations that my predecessor investigated in the same period in 2002. This represented just over 11.9% of my caseload (10.7% in the same period in 2002). I was satisfied with the way in which the Bar Council had handled the complaint in 90.4% of cases, an increase on my predecessor's overall level of satisfaction from last year's figure of 88.2%.

I formally criticised the Bar Council in 0.9% of cases and made recommendations in 8.7%. I made a total of 12 recommendations, in 10 reports. There were 9 recommendations that the Bar Council should reconsider the complaint and 3 that the Bar Council should pay compensation. In 2 cases reports contained both recommendations, indicating that not only was the Bar Council's investigation or decision unsatisfactory, but that there had also been administrative failings, such as delay, in their handling of the complaint. The total of compensation awards was £2,050 (compared with £500 between 1 April 2002 and 30 September 2002).

### Turnaround Times

In my annual report, I referred to the length of time that it took the Bar Council to deal with cases. I explained that my Office receives very few complaints about delay by the Bar Council, but that I was nevertheless concerned to make sure that they have appropriate systems in place to deal with complaints as quickly as possible. During the past six months, my Office has been liaising with the Bar Council on this issue, and I have been heartened by the very constructive response I have received from them.

Although the Secretary of State has not set any specific targets for the Bar Council, I see no reason why they should not be aiming to meet similar targets to those set for the Law Society. It became clear, soon after publication, that the figures available at the time I wrote my Annual Report were not directly comparable to the data from the Law Society. I therefore asked the Bar Council to prepare a definitions and methodology paper along the same lines as the one that has been agreed with the Law Society. I am happy to report that this has been done. The purpose of this document is to agree clear definitions for the dates that cases are considered opened and closed and, therefore, to ensure consistent reporting to my Office and to be able to compare figures between the two professional bodies.

There were two particular areas where the Bar Council's figures differed from those of the OSS. First, the Bar Council included cases that had been referred to their Disciplinary Tribunal, whereas the OSS' figures did not include referrals to the Solicitors' Disciplinary Tribunal. I am, of course, unable to consider the way that either of these Tribunals deal with cases. Secondly, the Bar Council's figures did not reflect the fact that some cases were temporarily closed, for example whilst a court case was completed. Both these figures tend to exaggerate turnaround times for the Bar Council.

As well as preparing this draft document, the Bar Council have liaised closely with my Office and have taken the opportunity to adapt their database to enable the appropriate new information to be extracted. Work on this project was undertaken during the summer and there is some encouraging provisional information and statistics.

Further discussions with the Bar Council are still required to agree formally the methodology and to establish and to agree how and when the Bar Council should pass the information to my Office. However, I am pleased with progress, and will comment more formally on this area in my Annual Report.

### **Developments from the MORI Survey**

During 2002 a MORI survey was undertaken of complainants to the Bar Council, which revealed a level of dissatisfaction amongst complainants. MORI suggested that the Bar Council's complaints-handling system could be improved in terms of both the process of making complaints, and concerning the way in which decisions are reached.

A Working Group was set up to look at whether increased lay representation on Bar Council Committees would assist in altering public perception of bias. A consultation paper was issued in August, and the Lay Representation Working Group will be making recommendations to the Bar Council in November. I have contributed to this consultation exercise.

The Bar Council is also looking at its communications generally, and whether there might be ways of assisting complainants to make their complaints. This is a very encouraging development and one which I shall be closely monitoring along with other developments in these areas. I shall comment on progress in my next Annual Report.

### **Direct Access**

Since my Annual Report, the Bar Council have informed me that they are proposing a day's training course in relation to complaints handling for all barristers who wish to take on direct access work. I welcome this development.

### **Chambers' Complaints Handling**

Since the beginning of 2002 it has become compulsory, under the Code of Conduct, for barristers' chambers to have a complaints-handling procedure. Barristers are now required to respond promptly and adequately to complaints. My Office is continuing to monitor how well chambers deal with complaints handling. My recommendation to the Bar Council would be to audit periodically barristers' chambers' complaints-handling procedures, and to make this information available to stakeholders.

During next year I shall be working closely with the Bar Council to review the complaints-handling performance and procedures at the Bar Council.



## COMPLAINTS HANDLING BY THE OTHER PROFESSIONAL BODIES

### Complaints Performance

Apart from the OSS and the Bar Council, I also oversee the Council for Licensed Conveyancers (CLC), the Institute of Legal Executives (ILEX), and the Chartered Institute of Patent Agents (CIPA). These are comparatively small professional bodies and I receive only a handful of cases from them over the course of a year. Nevertheless, I consider that it is important to ensure that their performance and procedures reach the same standards as those of the larger professional bodies. Happily, it has not been necessary to report any significant problems in relation to them.

Nevertheless, complacency should be avoided, particularly in the light of the current rapidly changing environment in the legal services sector. Accordingly, as I stated in my Annual Report, I have reviewed the complaint-handling performance and procedures at the CLC and will, over the coming year, do the same at ILEX and CIPA. I will report my findings in my next Annual Report.

## DEVELOPMENTS AT THE OFFICE OF THE LEGAL SERVICES OMBUDSMAN (OLSO)

### Casework Performance

OLSO completed 967 cases between 1 April 2003 and 30 September 2003.

754 new cases were accepted for investigation, 103 less than the same period in 2002.

Average turnaround times decreased from 5.6 to 2.9 months.

At the beginning of April, the average age of all cases in the Office was 2.3 months. At the end of September, the average age of was less than 1.2 months.

### Turnaround Times

It is difficult to be critical of others for taking too long to deal with cases unless the performance of my own Office is exemplary.

Between April 2002 and the end of March 2003, my Office completed some 2,180 investigations. In my annual report I explained that, since this figure significantly exceeded the number of new cases that had been referred to the Office during that period, turnaround times had improved.

However, although turnaround times were steadily improving as the year progressed, they still fell short of what I saw as an acceptable level.

Having taken over at a time when the foundations had been laid for significant improvements in this area, I was determined to make sure that none of this impetus was lost. I am pleased to report that, in the first half of the year, we have been able to achieve our best ever turnaround times.



In my annual report, I said that an acceptable level of service would be to deal with 90% of cases in 6 months. In fact, we have exceeded that target. Between April 2003 and the end of September 2003, we completed 93% of our investigations within six months of receiving the file from the relevant professional body.

Perhaps even more impressively, we completed 80% of our investigations in three months. The full figures are as follows:

Period	1 Apr 03-30 Sep 03	1 Apr 02-31 Mar 03	1 Apr 01-31 Mar 02
0-3 Months	80.4%	46%	41%
4-6 Months	12.6%	24%	17%
7-9 Months	4.2%	5%	9%
10-12 Months	2.3%	8%	15%
12-15 Months	0.5%	17%	18%
Average	2.9 months	5.6 months	6.7 months

As at 1 October 2003, there were only two cases in my Office over three months old. In both, I have decided to extend my investigation to the merits of the original complaint.

**Speedy Feedback**

As well as ensuring that those referring complaints to this Office have their concerns addressed quickly, improved turnaround times enable me to give the professional bodies timely feedback on any new initiatives that they introduce. Of the cases closed since 1 April 2003, 74% were completed within six months of the professional body closing their file.

These figures are all the more impressive when it is recalled that complainants have only three months to refer their complaint to me and that I then have to obtain the file from the professional body, something which takes, on average, around three weeks.

Given the numerous new initiatives that are underway at the various professional bodies, timely feedback is vital. In the past, the Law Society has been able to suggest that this feedback was too late in arriving. They suggested that problems identified in reports had already been addressed by the time this Office's investigation was concluded.

The speed that my Office is now able to complete investigations will provide a solid basis for constructive feedback on how any changes to procedures have worked and are working in practice. I see this approach as an excellent basis for reviewing and helping to improve the performance of the professional bodies. This virtuous circle of improvements in processes and refinements in procedures, when implemented, is at the heart of any system aimed at ensuring that consumers received the best possible service. I look forward to seeing it work in practice.

## SUMMARY OF CONCLUSIONS



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

- **In spite of substantial new initiatives, the complaints-handling performance of the OSS has continued to deteriorate:**

- the OSS' backlog has increased from 4,434 in January 2002, to 8,545 in September 2003;
- the OSS currently has a total of 281 complaints within its caseload that are more than two years old, of which 28 are more than three years old;
- the OSS is substantially underperforming in all but one of the performance targets set by the DCA for turnaround times, and has missed its satisfaction rating target by 18%.

- **Other areas of concern are:**

- although solicitors' compliance with Rule 15 is improving, it is still not universal;
- the Law Society's attempt to improve consumers' information through the Clients' Charter, launched in March 2003, may prove to be little more than window-dressing unless its distribution to consumers becomes mandatory;
- I have reservations about the Law Society's portrayal of their Independent Commissioner, and about some aspects of his role;
- there has been a very significant reduction in the range and depth of performance data being distributed by the Law Society to various stakeholders, including my Office;

- an audit of the OSS' case-handling practices and management information systems has uncovered some highly inappropriate practices in the handling and recording of complaints between 1999 and 2001/2;
- the OSS' 'Model Office' pilot has failed to deliver the necessary improvements and work on it has now ceased;
- the flagship 'Project Engineer' initiative to improve the OSS' IT systems has consistently failed to deliver the expected functionality or meet deadlines, and further work has now been suspended;
- I have concerns about the potential conflict of interest in the Law Society's recent decision to give its external auditors oversight of the existing development work on 'Project Engineer';
- in light of the decline in the Compensation Fund, the Law Society may need to assess the reasons for this;
- I am concerned that the Law Society's intention to conduct regular spot checks on all firms has fallen well below target.

- **The OSS has shown some limited improvements:**

- the OSS has worked impressively well with its external management consultants in identifying weaknesses and delivering improvements in operations in a bottom-up manner;
- in May 2003 the OSS began a major re-structuring of its operations, and in September 2003 announced that core complaints-handling activities would be moved to a new Directorate;
- there have been significant improvements in the telephony system of the OSS' Customer Assistance Unit, which diagnoses and filters complaints;
- the OSS have developed a new policy of providing regular updates to complainants;
- the Law Society is exploring the idea of compulsory training in client care and complaints handling for solicitors, which I would suggest they implement immediately, possibly backed up by an accreditation scheme;
- the Independent Commissioner has provided useful information and recommendations to the OSS in relation to raising the compensation level, publication of disciplinary findings, and problems with the operation by solicitors of the Rule 15 complaints-handling requirements;
- the OSS has opened a new office in London earlier this year with 40 additional caseworkers to process complaints, and conservative estimates would suggest that it has probably added the capacity to process an additional 250 to 350 complaints per month;
- the number of cases being resolved by conciliation has increased marginally from under 20% to just over 24%, or an additional 100 or so cases each month;
- three new complaints-handling procedures under consideration by the OSS ('Reasonable offer made', 'Provisional assessment', and 'Decisions without paper') appear to have considerable merit and deserve to be driven through to implementation;
- in the months of July and September 2003 the OSS closed more cases than they received, for the first time since February 2002.

- **However, there are also considerable fragilities underlying the very modest improvement in the performance of the OSS during the past few months:**

- the number of complaints received by the OSS during the last four months appears to have slowed and is substantially lower than previously anticipated, with the OSS' own forecasts suggesting they have received 500 fewer complaints during the past 4 months than expected;

- the number of complaints accepted for investigation by the OSS and then 'temporarily closed' has increased from none to an average of 90 cases per month during the past 6 months, and I have asked the OSS to provide a detailed review of these cases;
- a modest increase in the number of new cases being received each month, or a relatively minor adjustment to the number of cases that are being closed, would immediately return the OSS to a state of closing fewer cases than it receives;
- on current performance, if the OSS only continues closing between 100 and 150 more cases than it receives each month, it would take 5-7 years to clear the existing backlog.

- **I would therefore advise some caution before assuming that this improvement signals that the OSS has finally assembled the resources needed to address new complaints, while making serious inroads into the substantial backlog and improving both the speed and the quality of their complaints handling:**

- with regard to handling new complaints, I advise that the OSS takes appropriate action to increase its capacity through additional staff and/or improved productivity;
- with regard to the existing backlog, I shall be requesting a detailed analysis of all 281 OSS cases that are more than two years old and, over the coming weeks, I shall engage in detailed discussions with the OSS as to how they will reduce this backlog;
- over the last 2 years the OSS has experimented with various strategies for increasing complaints-handling capacity, and at this stage I believe that the Local Conciliation Officer Scheme and outsourcing of complaints handling to selected solicitors' firms are the most viable options for reducing the backlog - whilst I remain uneasy about the wisdom of this latter option, it may provide a temporary solution in the short term.
- I have agreed with the OSS and the other professional bodies a programme of benchmarking, tailored to their individual needs, which will be overseen and co-ordinated by my Office;
- I suggest that the Law Society take greater responsibility for ensuring that solicitors comply with Rule 15, through some form of annual audit of all registered firms;
- I am in favour of the OSS charging solicitors a fixed fee for dealing with complaints which the firm has failed to conciliate in the first instance, and suggest that the equivalent arrangements of the Financial Ombudsman Service may be a suitable model.

## **LEGAL SERVICES COMPLAINTS COMMISSIONER (LSCC)**

- In respect of the Law Society, the Lord Chancellor/ Secretary of State has announced his decision to appoint the LSCC, which may provide me with the statutory authority to investigate generally the complaints-handling activities of the OSS, set targets for their improvement, request plans showing how those improvements will be delivered and, under certain circumstances, impose financial penalties if those improvements are not realised.

## **THE GENERAL COUNCIL OF THE BAR (BAR COUNCIL), THE COUNCIL FOR LICENSED CONVEYANCERS (CLC), THE INSTITUTE OF LEGAL EXECUTIVES (ILEX), AND THE CHARTERED INSTITUTE OF PATENT AGENTS (CIPA)**

- I have no significant problems to report in relation to these professional bodies.
- In relation to the Bar Council:
  - between April and September 2003 I was satisfied with the way in which the Bar Council had handled the complaint in 90.4% of cases, representing an increase in my overall level of satisfaction from last year's figure of 88.2%;
  - I have agreed with the Bar Council a definitions and methodology paper to enable comparisons to be made between their performance and that of the OSS;
  - there have been other developments relating to improving customer satisfaction, direct access work, and chambers' complaints-handling procedures.
- I have reviewed the performance and procedures at the CLC and will be doing the same for ILEX and CIPA over the coming year.

## **REGULATORY REVIEW**

- The poor performance of the OSS continues to raise questions about the current framework of self-regulation.
- My view is that any new regulatory framework must take a much simpler and more transparent form and should focus on improving access to justice, increasing competition, providing real protection for consumers and delivering prompt and proportionate redress when things go wrong.
- With respect to increasing competition, I believe that allowing employed solicitors to provide legal services to the public ('Tesco Law') may drive through improvements in access, choice, service quality and price, thereby benefiting consumers and enhancing the reputation of the legal profession.
- The DCA has proposed deregulating the probate market by creating 'authorised probate practitioners' eligible to undertake Grant of Probate work. I believe that this will require careful planning to avoid creating a two-tier system of regulation.

## **OFFICE OF THE LEGAL SERVICES OMBUDSMAN (OLSO)**

- My Office continues to deliver improvements in its service levels. In the past six months the average turnaround time for dealing with cases has fallen from 5.6 months to 2.9 months. We are now closing just over 80% of cases in 3 months and 93% within six months, compared with 46% and 70% respectively for the previous reporting year. This favourable position may change if the OSS begins to clear its backlog of cases and much greater numbers of cases are referred to my Office.