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COMPLAINTS – WHAT CLIENTS AND LAWYERS WANT

Two reports were published last month arising out of work carried out at the Institute on the Office for the Supervision of Solicitors (OSS). The 'Willing Blindness' report dealt with issues of complaints and conduct handling at the OSS up until March 1999. A second report on compensation for Inadequate Professional Services was also published, recommending raising the compensation limit to £5,000 (which has now been raised to that amount by the Lord Chancellor). (See details below left)

Coinciding with the publications, a seminar on Wednesday 5 April considered issues relating to discipline and complaints. Ann Abraham, the Legal Services Ombudsman, presented an important, regulator's viewpoint with an accent on the consumer's view. Richard Moorhead developed some of the theoretical approaches emerging from the compensation report. Linda Mulcahy provided a fascinating view of complaints in the health sector and Alan Paterson brought the day together with a consideration of what it all meant inside the theory of professions and professionalism.

It was not possible to come to a conclusion on one major issue: should systems for handling discipline be separated from systems for handling complaints? In this personal view I would like to argue for a differentiation between the two. Clients want a quick, easy settlement of any complaint that they have made against their lawyer. If the complaint goes as far as the OSS, it will be likely to have already gone through some form of process in the solicitor's office itself. Clients will already be annoyed, frustrated and sometimes out of pocket. They need the sort of immediate response that a large retail organisation's consumer relations department, if beneficially trained and organised, might give to any complaining customer. They probably want some form of apology (if appropriate) and they might want a positive return of some money or reduction in a bill. They do not want or expect a long, drawn out, legalistic process which does not trust their information without corroboration.

On the other hand, lawyers facing disciplinary procedures for misconduct need a totally different approach. They do need to be able to consider a carefully worded allegation, have time to investigate, construct and write a defence; and feel confident that a fair, judicial authority makes appropriate and careful decisions about their professional reputation and future.

The two sets of procedures do not lie easily together. An award of compensation, or a reduction of fee to a complainant is a very different thing from a finding of misconduct and a slap on the wrist, fine or striking off for a solicitor. To say this is not to minimise the importance of the client's complaint. In some circumstances, the conduct complained of might have had as devastating an affect on the life of a client as striking off would be for a solicitor. But, in general, they need a different process. Despite the difficulties of double jeopardy, dual systems should be carefully considered. A careful review of the underlying objectives of each is long overdue.

Willing Blindness? OSS Complaints Handling Procedures, R Moorhead, S Rogers and Prof A Sherr, (2000), London, Law Society RPPU Research Study No. 37. (Available from the Law Society's Business Centre, 113 Chancery Lane, London WC2A; tel: 0207 320 5643. Price £10.00 + £1.00 carriage).

Compensation for Inadequate Professional Services, R Moorhead, Prof A Sherr, S Rogers, (2000) IALS, (available from the IALS, tel: 020 7862 5849, price £5.00).

Professor Avrom Sherr