

Courts and Legal Services Act 1990

First Annual Report of the Legal Services Ombudsman 1991

*Laid before Parliament by the Lord High Chancellor
pursuant to paragraph 5(1) of Schedule 3 to the Courts and
Legal Services Act 1990*

*Ordered by The House of Commons to be printed
9th June 1992*

LONDON : HMSO

Courts and Legal Services Act 1990

First Annual Report of the Legal Services Ombudsman 1991

*Laid before Parliament by the Lord High Chancellor
pursuant to paragraph 5(1) of Schedule 3 to the Courts and
Legal Services Act 1990*

*Ordered by The House of Commons to be printed
9th June 1992*

LONDON : HMSO

The Legal Services Ombudsman for England and Wales is Michael Barnes. His office is at:

22 Oxford Court
Oxford Street
Manchester
M2 3WQ
Telephone: 061 236 9532

The Legal Services Ombudsman is appointed to oversee the handling of complaints against solicitors, barristers and licensed conveyancers. His appointment is made in accordance with Section 21 of the Courts and Legal Services Act 1990.

Contents

	<i>Page</i>
1. Introduction	1
2. Summary of Statistics and Recommendations	3
3. Setting up the Office	4
4. The Ombudsman's Role	6
5. The Professional Bodies	8
<i>The Law Society and the Solicitors Complaints Bureau</i>	8
<i>The General Council of the Bar</i>	12
<i>The Council for Licensed Conveyancers</i>	14
6. Contacts with Other Organisations	15
7. Review of Allegations and Complaints	16
<i>Solicitors</i>	16
<i>Barristers</i>	19
<i>Licensed Conveyancers</i>	20
8. Looking to the Future	21
Appendix A Case Histories	23
Appendix B Statistics	30
Appendix C Courts and Legal Services Act 1990 (Sections 21–26)	33
Lord Chancellor's General Directions	37
Appendix D Staff List	38

First Annual Report of the Legal Services Ombudsman 1991

1. Introduction

To: The Right Honourable The Lord Mackay of Clashfern, Lord High Chancellor of Great Britain.

I have the honour to make my First Annual Report covering the year to 31 December 1991.

1.1 My appointment was announced in September 1990, to take effect from the coming into force of the relevant sections of the Courts and Legal Services Act 1990 on 1 January 1991.

1.2 From 1 October 1990 I was able to take part in the preparations for setting up my office. I also met the former Lay Observer, Mr Lionel Lightman, who ceased to operate on 31 December 1990, in order to discuss the transitional arrangements for handling those cases on which he was unable to report before the expiry of his appointment.

1.3 In the event, there turned out to be over 600 such cases, the vast majority of which I have sought to deal with exercising the functions of Lay Observer in accordance with paragraph 8(2) of Schedule 19 to the Courts and Legal Services Act 1990. However, in a small number of cases I have judged the circumstances to be sufficiently exceptional to justify my treating them as allegations duly made under the Act of 1990, as I have the discretion so to do. I would like to thank the team of experienced individuals, who were recruited on a temporary basis to deal with this backlog of cases inherited from the Lay Observer, for the efficient way in which they carried out these investigations.

1.4 My role is wider than that of Lay Observer in that I may investigate allegations relating to the handling by the professional body of complaints, not only about solicitors, but also about barristers and licensed conveyancers. Furthermore, in reporting my conclusions I am specifically empowered to make recommendations, not simply that the professional body should reconsider a complaint or consider exercising its powers in relation to the person complained about, but also that compensation should be paid to the complainant either by the person complained about or the professional body. In considering allegations about the way that a complaint has been handled, I may also investigate the matter to which that complaint relates.

1.5 Before officially taking up my appointment, I and the Secretary to my Office were able to meet other Ombudsmen, both in the public and the private sector. I would like to say how grateful I and my staff are to them for their willingness to allow us to learn from their experience in dealing with the different categories of complaints that fall within their responsibility. In October 1991 there took place the first conference of UK Ombudsmen. This was a particularly useful event to be able to attend, not only because of the content of the formal sessions, but also because of the individual contacts that it was possible to make.

1.6 I would like to record my thanks to the Scottish Legal Services Ombudsman, Mr David W J Morrell, for his willingness to investigate allegations relating to 38 cases (originally referred to the Lay Observer) which I decided it was not appropriate for me to deal with on account of my consideration of them during the period, prior to my appointment, when I was nominated by the Master of the Rolls to serve as a lay member of the Investigation Committee of the Solicitors Complaints Bureau. In the same context I would also like to thank the former Lay Observer for Scotland, Mrs Joan Macintosh CBE, for the assistance that she gave to the Scottish Legal Services Ombudsman in dealing with those cases.

1.7 In the sections of this Annual Report that follow, I first of all summarise the main caseload statistics, and give details of the nature and extent of the recommendations that I have made. I then go on to describe the steps that were taken to set up the organisation needed to deal with the work, the general approach that I have adopted, my work in relation to the professional bodies, and contacts with other organisations. There then follows what I regard as the most important section of the report, a review of the matters complained about and the allegations made by complainants about the way their complaints were handled by the professional bodies. Finally, in the last section of the report I look to the future and attempt to draw some general conclusions.

2. Summary of Statistics and Recommendations

2.1 During 1991 the Legal Services Ombudsman received 1,248 initial approaches from complainants who were not satisfied with the way in which their complaints had been dealt with by the professional bodies (Appendix B, Table 3).

2.2 By 31 December 1991, 870 completed application forms had been received from complainants, of which 815 related to complaints about solicitors, 50 to complaints about barristers and five to complaints about licensed conveyancers (Appendix B, Table 5).

2.3 During 1991, 601 formal investigations were completed, of which 436 were cases inherited from the Lay Observer and 165 were new cases referred to the Legal Services Ombudsman (Appendix B, Table 1).

2.4 In approximately one-third of the cases dealt with under the Ombudsman's powers the conclusion was favourable to the complainant, in the sense that *either* a recommendation was made (that compensation be paid or the complaint be reconsidered) *or* criticism was expressed of the professional body's handling of the complaint (para 7.3 and Appendix B, Table 4(a)).

2.5 Of the 31 recommendations made under Section 23 of the Act, 16 related to compensation (the amounts varying from £250 to £1,500) and 15 were that the professional body should reconsider the complaint (paras 7.3, 7.10, Case History 8 and Appendix B, Table 4(a)).

2.6 A recommendation was made to the General Council of the Bar under Section 24 of the Act concerning their arrangements for investigating complaints; in particular, it was recommended that complainants should be informed of the barrister's response to their complaint (paras 5.23–5.25).

2.7 Complainants who complain to the Bar Council about the late return of briefs should include in their complaint the barrister who returned the brief (paras 5.26–5.27).

2.8 Most complaints referred to the Ombudsman about solicitors related to poor service in one form or another; particularly to poor communication, delay and disregarding instructions (para 7.9).

2.9 The 15 cases in which the Ombudsman recommended that solicitors should pay compensation related almost without exception to inconvenience or distress caused by lack of communication or delay (para 7.10).

2.10 Many complaints about costs are in fact complaints about lack of information on costs. Solicitors should make sure that they comply with the Law Society's written professional standards (1991) which require them to give clients the best information possible on likely costs when they take instructions, and to inform clients at least every six months of the amount of costs to date (paras 7.11–7.12).

2.11 The Solicitors' Remuneration Order 1972 should be amended at an early date in order to enable the beneficiaries of estates, who are not themselves executors, to require solicitors administering estates to obtain remuneration certificates from the Law Society (para 7.15).

3. Setting up the Office

3.1 The Lord Chancellor's Department (LCD) took the decision to locate the Office of the Legal Services Ombudsman outside London, prior to my appointment. Among the reasons which led to this decision was the fact that staff and accommodation costs would be lower, and that it was likely to be easier to recruit and retain staff of the required calibre.

3.2 Mr Kevin Fox was appointed Secretary to my Office and it fell to him to find suitable office accommodation and to recruit the locally-based staff who would be needed to ensure that the Office was operational from 1 January 1991. Premises were obtained in a new office development called Oxford Court, adjacent to Oxford Street in the centre of Manchester. The building is self-contained and provides an ideal working environment for the office staff of 14, with some room for expansion if needed.

3.3 It could be argued that the Ombudsman needs to be in London because of the contact that is necessary with the professional bodies and other organisations at national level. In fact, my experience has been that the need for those contacts does not arise so frequently that it is a disadvantage to be located in Manchester; indeed, the degree of separateness that goes with that has positive benefits of its own in that it enables the Ombudsman to maintain a certain distance (metaphorically as well as physically) from the regulatory bodies whose work he is overseeing and thus to avoid being drawn into too close a relationship with them.

3.4 The initial staff complement, which had been decided upon by LCD, consisted of the Secretary to the Office and the Legal Adviser (both Grade 7 in Civil Service terms), an investigating team of five (one Senior Executive Officer and four Higher Executive Officers) and five support staff. At this stage the only post to be advertised was that of Legal Adviser. Advertisements were placed in national newspapers and, after shortlisting and interview, Mr Nick O'Brien, a solicitor on the staff of a firm of solicitors in Manchester, was appointed to the post.

3.5 Internal working procedures were designed, the format of reports was settled and a computerised case-management system was installed, to which the team of investigating officers were linked through a local area network, each work station having its own word processing facility for the production of draft reports. Training was provided in-house with the help of an outside consultant and the hope was that the Office would become fully effective after only a few months, with target dates and deadlines for the completion of investigations being met in the vast majority of cases.

3.6 Investigating how complaints about lawyers have been dealt with by the professional bodies is a complex task. In most cases the investigating officer will be working from the professional body's own file, which may contain any number of separate items of correspondence. There are many cases in which it is not at all an easy task to assimilate this material and assess whether the professional body dealt with the complaint satisfactorily. It soon became clear that investigations were taking longer to complete than had been anticipated, and that it was therefore necessary to strengthen the team of investigating officers.

3.7 Discussions took place with LCD officials in July 1991, in which it was made clear that any additional expenditure on staff could only be agreed to as a result of a staff audit. I am most grateful to the Department for the speed with which they were able to arrange for the staff audit to take place in September, and to the auditors for the helpful way in which they carried out their task. The

outcome was that it was decided that the investigating team should be strengthened to consist of four staff at SEO level and two at HEO level, instead of one SEO and four HEOs.

3.8 It was decided to advertise the three new SEO level posts simultaneously within the civil service and outside. An advertisement was placed in the national press in October 1991, which resulted in over 400 initial enquiries and over 200 completed applications. Short-listed candidates were interviewed at the beginning of December, and the three successful applicants took up their posts in January 1992. I am confident that this strengthening of the team of investigating officers will enable my Office to complete a significantly higher number of full investigations during 1992 than was possible during 1991.

4. The Ombudsman's Role

4.1 Since this is my first Annual Report, I think that it is right that I should say something about how I see my role as Legal Services Ombudsman and the approach that I and my staff adopt in dealing with the cases that are referred to me.

4.2 In recent years the number of ombudsmen in the United Kingdom has increased significantly. In addition to the Parliamentary Commissioner for Administration, Health Service Commissioner, and Commissioners for Local Administration, there are now private sector ombudsmen covering banking, building societies, corporate estate agents, insurance, legal services, and securities and investments. There is a Pensions Ombudsman and it is possible that there may soon be a Probate Ombudsman. The public sector ombudsmen are, of course, statutory ombudsmen. In the private sector there is a mixture of statutory ombudsmen such as myself, ombudsman schemes for which there is statutory provision but which operate through an independent council, and ombudsman schemes that are set up entirely on the initiative of particular industries.

4.3 It is not easy to compare the work and experience of the various private sector ombudsmen because their roles and powers vary, as does the position that they occupy in relation to the users and providers of the services for which they have responsibility. In my case, complaints that are referred to me must first of all have been dealt with by the investigative bodies which the three professions have set up to handle complaints—the Solicitors Complaints Bureau of the Law Society, the Professional Conduct Committee of the Bar Council and the Investigating Committee of the Council for Licensed Conveyancers.

4.4 The Courts and Legal Services Act 1990 empowers me to investigate allegations about the manner in which complaints have been dealt with by the professional bodies (Section 22(1)); if I investigate an allegation, I may also investigate the matter to which the complaint relates (Section 22(2)). I therefore have a dual function: I am both a “guardian of the guardians” and a “second port of call” for the complainant. There is, however, an inevitable overlap in the exercise of this dual function: it is in most cases impossible to form a view of the professional body's handling of a complaint without also forming a view of the complaint itself. I am therefore alert both to what complainants tell me about the professional bodies and to what they have told the professional bodies about their lawyers. In some cases it may be necessary to send for lawyers' files in order to be able to know exactly what passed between them and their clients. In most cases, however, the key facts surrounding complaints will be available to me from the professional bodies' files, which are likely to contain detailed submissions both from the complainant and the lawyer complained about. These files are automatically requested by my staff in all cases where we carry out formal investigations.

4.5 It is important that complainants should be clear about what it is that I am actually doing when I investigate their “allegations”. What I am not trying to do is to arrive at a definitive judgment on the rights and wrongs of the case as a court does, for example. Nor am I attempting to compile a report which is a complete dossier on a complaint and how it was handled, dealing with every aspect of it. Such a task would be beyond the resources available to me.

4.6 Essentially, what I am trying to do is to take a view, as an independent and I hope fair-minded person, of the key facts surrounding a complaint and the way it was handled. That view will then lead me to a conclusion which may or may not include a recommendation. I do not claim that my view is the definitive view, or the only possible view. It is nevertheless my considered view based on what I

take to be the essential facts and on what I believe to be fair in all the circumstances.

4.7 Although there is a sense in which my starting point, like that of any ombudsman, is that I am there to “act for” the complainant, I am much aware of the need to deal even-handedly, and be seen so to do, as between the complainant, the lawyer and the professional body. In cases where my preliminary view may lead to the payment of compensation by the lawyer or the professional body to the complainant, I have concluded that the rules of natural justice demand that I give them the opportunity to make representations to me about the recommendation that I am minded to make. The complainant will have had the opportunity to provide a direct input to my Office at the point of initial referral, but the lawyer complained about will have had no such opportunity in cases where I have arrived at my preliminary view simply on the basis of the facts as set out in the professional body’s file.

4.8 During the year I have received a number of requests from complainants (and sometimes from their Members of Parliament) that I should re-open my investigation and look again at some aspect of their complaint, which they feel has not been adequately taken into account in my report. The view that I have taken is that I would only be prepared to do that, if there was evidence of a fundamental error or omission in my report, sufficient to cast doubt on the conclusion that I had reached. It also has to be borne in mind that, when my report is issued, it is sent to all the parties involved. Re-opening the investigation is therefore, in my view, something that should only properly be done in truly exceptional circumstances such as I have described.

5. The Professional Bodies

5.1 The three professional bodies, whose handling of complaints comes within my jurisdiction, are the Law Society which regulates and represents the 60,000 solicitors in England and Wales; secondly, the General Council of the Bar which is an elected body representing the 6,000 independent and specialist barristers in England and Wales; and, thirdly, the Council for Licensed Conveyancers which is the body responsible for the professional conduct of licensed conveyancers, a new profession that dates from 1986 and is approximately 800 strong at the present time.

5.2 In 1986 the Law Society established the Solicitors Complaints Bureau to investigate complaints made against solicitors. The Bureau operates separately from the Law Society, which has delegated to it the powers and responsibilities that the Society has to ensure that solicitors observe proper standards of conduct and service. Not surprisingly in view of their numbers, the vast majority of "allegations" made to me about a professional body's handling of a complaint relate to the Solicitors Complaints Bureau and complaints about solicitors. During 1991, out of close on 900 application forms returned to me by complainants following their initial enquiry, 815 concerned complaints about solicitors, 50 complaints about barristers and only five complaints about licensed conveyancers.

5.3 In this Section, I give details of the contacts that I and my staff have had with the professional bodies and the recommendations that I have made which have been specifically directed at them. I also make some general observations on their work and the different codes and complaints handling systems which they operate.

The Law Society and the Solicitors Complaints Bureau

5.4 I am grateful to the President and Secretary General of the Law Society, and their colleagues, for their willingness to brief me on the latest developments within their organisation, and for the invitations that they have extended to me to attend various functions and seminars which they have organised. The fact that my Office is located in Manchester has meant that I have also been able to establish similar links with several local law societies in the North West, notably those in Manchester, Liverpool and Oldham. The extent to which I am able to make contact with local law societies in other parts of the country is obviously limited, but I was glad to have the opportunity to meet members of Holborn Law Society and Aldershot & District Solicitors Association, and to take part in a seminar organised by Newcastle upon Tyne Law Society.

5.5 An initial briefing meeting with the Director of the Bureau and her senior colleagues led to a decision to hold routine progress meetings on a regular basis. These have taken place roughly at quarterly intervals and have proved to be useful opportunities to review current policies and procedures. I would particularly like to thank the Bureau for arranging briefing meetings in their office for my staff, and for new staff subsequently joining my Office. If I am going to be able to comment sensibly on the Bureau's handling of complaints, and make relevant and effective recommendations, it is important that I and my staff should have a clear understanding of how the Bureau's internal systems operate.

5.6 Some significant changes took place in the Bureau's arrangements for investigating complaints with effect from 1 April 1991. The most important of these, in my view, was the decision to allow complainants to see and comment on the case notes prepared by Bureau staff prior to a "first instance" decision, and also on appeal. These "first instance" decisions can be divided into two types:

first, those where the Bureau is considering further action following investigation of a complaint, either by disciplining the solicitor involved or by imposing a financial penalty; and, secondly, those where it is proposed to terminate the Bureau's investigation and dismiss the complaint.

5.7 Previously what had happened was that, if the Bureau were proposing to order solicitors to reduce a bill on grounds of inadequate professional service, the solicitors were given the opportunity to comment on the report prepared by the Bureau's professional services officer, but the complainant was not. This meant that the solicitor was given the last word before the relevant Committee reached its decision, sometimes with the result that the Committee decided not to take the action proposed in the Bureau's report. It was a practice that had been widely criticised by complainants and consumer organisations on the grounds that the solicitor was able to put forward additional arguments in his or her defence at a late stage in the Bureau's procedures, which the complainant remained unaware of, but might have been able to counter, had they had knowledge of it. In cases where the Bureau was planning to terminate the investigation, complainants had been under a similar disadvantage, though possibly not quite so serious. They would have known from correspondence the broad reasons why Bureau staff were not proposing to take the investigation any further, but they did not see the actual agenda note, on the basis of which authorisation for the decision was sought from the relevant committee. Indeed, complainants often assumed that their complaint was going before the Investigation Committee (as it then was) for further investigation rather than for formal termination. The fact that case notes are now disclosed to complainants is undoubtedly a major improvement in the Bureau's procedures, and one which I warmly welcome.

5.8 Another significant change that took place in the Bureau's procedures from 1 April 1991 concerned the way in which they were able to deal with complaints about negligence. Prior to that date, if someone complained to the Bureau that they had suffered a quantifiable financial loss for which they held their solicitor responsible, the Bureau's reply would be that they had no power to deal with negligence and the complainant should obtain independent legal advice, the implication being that a negligence claim could only be pursued by taking legal action. Many complainants found this advice distinctly unhelpful. They found it hard to understand why an organisation called the Solicitors Complaints Bureau could not deal with complaints about negligence on the part of solicitors, and having been through an unsatisfactory experience with one solicitor they did not wish to instruct another, especially if it was going to mean taking legal action through the courts.

5.9 I raised this question with the Bureau myself in March 1991, and was reassured to be told that the new powers that the Bureau would have from 1 April 1991 to order a solicitor to pay compensation up to a maximum of £1,000 would mean that complaints of negligence involving financial loss up to that level could now be dealt with by the Bureau. Where it was clear that the loss amounted to more than £1,000, the Bureau would explain to complainants that they could either seek independent legal advice or, if they preferred, the Bureau would refer the complaint to the Solicitors Indemnity Fund, who would then investigate the complaint and deal with it. In my view this is an extremely welcome development, because it should mean that, when people complain to the Bureau about negligence, they get a much more positive and helpful response.

5.10 An important aim of the Law Society is to reduce the number of complaints coming into the Solicitors Complaints Bureau and to get the problems sorted out "at source". To this end, Practice Rule 15 was introduced with effect from 1 May 1991, requiring all solicitors to have an in-house complaints handling procedure and to make sure that clients know whom to approach within the firm in the event of any problem with the service provided. Major organisational changes also took place within the Bureau during 1991. A diagnostic unit was set up to speed up the initial processing of incoming

complaints, greater emphasis was placed on conciliation as a first stage in the Bureau's procedures and the Bureau's Director and Assistant Directors were given delegated powers to take more "first instance" decisions. I welcome these developments and it is already clear that they have increased significantly the efficiency of the Bureau in dealing with complaints.

5.11 The Law Society clearly hope that one of the benefits that will result from these changes will be a reduction in the number of complaints that require full investigation by the Bureau. It is certainly true that there are many complainants who have run into some temporary problem with their solicitor which they just want sorted out as quickly as possible, so that progress can be made with their case. It is those cases that are best dealt with by solicitors' own in-house complaints procedures or by conciliation. But there are other complainants who consider that they have a legitimate complaint against their solicitor which they want the professional body formally to take up and investigate. If conciliation fails to resolve the problem, as it may well do in the case of these complainants, it is essential in my view that meaningful investigation should then take place. I have come across some cases where this does not appear to have happened and the Bureau has decided to take no further action on the basis of information obtained from the failed attempt at conciliation, rather than from any process of investigation. In such cases my recommendation is likely to be that the Bureau should reconsider the complaint, by which I mean investigate it.

5.12 Another category of complaints, where allegations are also sometimes made to me that the Bureau has not investigated the complaint, are complaints about the other side's solicitors. This is a difficult area because the solicitors acting for the other side ordinarily owe the complainant no duty of care and their client's best interests will often conflict with the complainant's. However, the absence of a duty of care towards a third party does not, in my view, preclude a solicitor from having a general professional obligation towards non-clients. As Chapter 15 of the Law Society's Guide to the Professional Conduct of Solicitors makes clear, there are a number of principles which govern a solicitor's relations with third parties. In particular, there is a broad obligation not to act towards anyone in a way which is fraudulent, deceitful or otherwise contrary to the solicitor's position as a solicitor, nor must solicitors use their position as solicitors to take unfair advantage either for themselves or for another person. There is therefore no reason, in principle, why a person other than a solicitor's own client should not have a legitimate complaint against that solicitor.

5.13 My understanding of the position of the Solicitors Complaints Bureau is that they are very reluctant to entertain third party complaints. Their reluctance, I assume, is based on the fear that in an adversarial litigation system, a flood of complaints may result from the quite legitimate efforts of opposing solicitors to protect their own clients' interests. For this reason the Bureau is inclined to say that it will only investigate third party complaints if they are supported by the complainant's own solicitor. In this way the complainant's own solicitors are being used as a filter. In cases where the complainant has no solicitor acting for them, it used to be the Bureau's practice to say that they would investigate the matter if the complainant could show some evidence of possible illegal or improper conduct. That statement has now disappeared from the Bureau's current leaflets and standard letters, and has been replaced by a reference to evidence of serious professional misconduct.

5.14 The Bureau's position, therefore, is that it will investigate complaints of serious professional misconduct against someone else's solicitor provided there is sufficient evidence to support them. These complaints should be channelled through complainants' own solicitors if they have one, or made direct to the Bureau with supporting evidence if they do not have a solicitor. Because of the difficulties that arise with complaints about someone else's solicitor, I am monitoring the allegations that are made to me about the way they are being dealt with by the Bureau, and I am investigating them in all cases, even though

many of my reports merely conclude that an investigation by the Bureau would not have been appropriate.

5.15 In many cases the “allegations” that complainants make to me about the Bureau’s handling of their complaints are simply that they do not accept the Bureau’s decision or that the Bureau failed to give due weight to their complaint. In other cases the “allegations” are more specific. They may relate to unacceptable delay at various stages of the Bureau’s investigation or to the fact that their complaint was transferred from one case officer to another several times during the course of the investigation. In such cases it is open to me to use my power under Section 23(2)(d) of the Act to recommend that the Solicitors Complaints Bureau, as an agency of the Law Society, pay compensation to the complainant for the unsatisfactory way that the complaint was handled.

5.16 During 1991 I used that power in one such case which concerned a man in prison who had complained about three different firms of solicitors. The solicitors had been instructed by the complainant at various stages in his case and there was therefore a degree of overlap between the complaints. At one point in the Bureau’s investigation the complaints were being handled by three different case officers, who only gradually became aware of the existence of the other complaints and the overlap between them. Delay and confusion resulted, which undoubtedly caused the complainant considerable distress and inconvenience, not least because of the difficulties he faced in communicating from inside prison. In his case I recommended that the Bureau should pay him £350 compensation for the distress and inconvenience caused, which I am glad to say they agreed to do.

5.17 In fairness to the Bureau, I should say that this particular investigation was carried out during 1988 when the Bureau were having serious problems in recruiting and retaining staff. More recently I have dealt similarly with another case of serious delay on the part of the Bureau, as a result of a backlog of cases waiting to be considered by their Investigation Committee. The view that I take of such cases is that, even though there may be explanations for any delay or inefficiency that has occurred during an investigation, I can only concern myself with whether the complainants’ “allegations” were justified and whether they suffered any significant loss, inconvenience or distress as a result. In fact, both the cases that I have referred to were ones that were originally referred to the Lay Observer. I am assured by the Bureau that measures have now been taken to prevent similar occurrences.

5.18 As far as current cases are concerned where complainants may be experiencing delay on the part of the Bureau (or indeed any of the professional bodies), it is, of course, open to them to ask me to exercise my power under Section 22(6) of the Act to intervene, even though the professional body may not have completed its investigation of the complaint. In his general directions given under the Act, the Lord Chancellor has indicated that for the purposes of subsection (6) it would be reasonable for me to intervene, if the professional body had not started an investigation within six weeks of receipt of the complaint, or if an investigation had taken longer than four months.

5.19 A particular cause of extended delay in the Bureau’s investigations has, in the past, been pending litigation associated with the complaint. In some cases, the Bureau has declined to investigate because the complainant has either commenced or has been intending to commence civil proceedings against the solicitor complained about; in others, because the complaints related to the conduct by the solicitor of litigation which had not been concluded. Whilst I appreciate the need for the Bureau to avoid “muddying the waters of justice”, I am also alert to the danger that investigation of complaints can be unnecessarily postponed if the precise relationship between the matter complained about and pending litigation is not carefully considered in each case. I therefore welcome what I understand to be the Bureau’s new policy, wherever possible, to investigate complaints straight away provided the matters complained of can be

separated from the issues actually before the court. I trust that the proper exercise of this new policy will reduce the number of occasions on which I am likely to be asked to intervene under Section 22(6) of the Act.

The General Council of the Bar

5.20 Before officially taking up my appointment on 1 January 1991, I was able to meet the Chairman and Vice Chairman of the Bar and also the Chairmen of the Bar's Professional Standards and Professional Conduct Committees. Meetings were also held with Senior Executives of the Bar Council and arrangements were made for me to attend, as an observer, a meeting of the Professional Conduct Committee and a Summary Tribunal. Subsequently, I and two of my senior staff were able to sit in on a further meeting of the Professional Conduct Committee. I am most grateful to the Bar Council for providing me and my colleagues with these opportunities to brief ourselves on their procedures. I would also particularly like to thank the Leader of the Northern Circuit for arranging for me and the Secretary to my Office to visit chambers in Manchester and Liverpool.

5.21 It is important to understand that the Bar Council is a much smaller organisation than the Law Society with far fewer resources at its disposal. This means that the secretariat in the Professional Standards Department is a comparatively small one and much of the burden of operating the complaints-handling system inevitably falls on committee members themselves. I have been most impressed by the seriousness with which they approach that task.

5.22 Another difference between the Bar Council's complaints system and that of the Law Society is that the Bar Council's procedures are essentially those of a purely personal, face-to-face, disciplinary system. Procedures which have evolved to discipline members of a small homogeneous profession often leave complainants feeling that they have become minor players rather than leading protagonists in pursuit of their own complaints. For example, the Professional Conduct Committee (PCC), which is the level at which most complaints are dealt with, offers complainants no possibility of compensation or redress other than the satisfaction of knowing that the barrister has been disciplined, in cases where that happens. It is only if the PCC directs that a complaint should form the subject matter of a charge before a Tribunal that the possibility of a barrister repaying or foregoing fees arises. In my view, this means that the power that I have under Section 23(2)(c) of the Courts and Legal Services Act 1990 to recommend that a lawyer pays compensation to a complainant is particularly relevant where complaints against barristers are concerned.

5.23 Although the number of allegations referred to me about the Bar Council's handling of complaints has been relatively small, a recurrent cause of dissatisfaction has been the failure to notify the complainant of the barrister's response to the complaint, to explain the reasons for the dismissal of a complaint and, in those cases where further action has been taken by the Bar Council, to notify the complainant of the final outcome. At the end of October 1991 I therefore made a recommendation on this subject to the Bar Council under Section 24 of the Courts and Legal Services Act 1990. This is the Section that enables me to make recommendations to the professional bodies about their arrangements for investigating complaints. The Act places a duty on them to have regard to any recommendations made under this Section. The recommendation was in three parts. The first, and most important part, concerned the fact that it was not the practice of the PCC to inform complainants of the barrister's response to their complaint.

5.24 Under the PCC's procedures the Secretary of the PCC would normally write to the barrister complained about and invite him or her to comment on the complaint. The complaint and the barrister's response would then be put to a member of the PCC, who would act as "Sponsoring Member" for that complaint and prepare a case note for the Committee, which would in most cases contain a

recommendation. The papers would then be circulated as part of the agenda for a meeting of the Committee. I took the view that the fact that the complainant was not informed of the barrister's response was a serious weakness in the Committee's procedures because it meant that a barrister might state that something or other was the case, which the complainant might be in a position to refute, if he or she knew that that was what the barrister had said. I therefore recommended that, before the Sponsoring Member prepares the case note for the Committee, the barrister's written response, or a summary of the material points that it contains if the response is not in a form that would be suitable to send to the complainant, should be sent to the complainant for comment. On receipt of the complainant's comments, any outstanding points on which further clarification is required should be put to the parties involved.

5.25 The other two parts to the recommendation concerned the need for Sponsoring Members to be present at Committee meetings when their case notes were discussed and the application of two paragraphs in the PCC Rules dealing with the informal treatment meted out to a barrister when the complaint disclosed no *prima facie* case of professional misconduct, and the more formal treatment where it was disclosed. The Bar Council indicated that they envisaged certain problems in adopting the first part of my recommendation which they wished to discuss with me; but having done so, I am glad to say that they agreed to accept the recommendation in principle. I was also encouraged to be informed by the Chairman of the Bar that, as a general policy, the PCC had agreed to provide complainants with more information.

5.26 A matter which causes considerable inconvenience both to professional and lay clients is the late return of briefs by barristers who find, often at the last moment, that they are unable to accept them. A complaint about this was referred to me towards the end of 1991 by a woman who at three successive court appearances found that she was not to be represented by the barrister whom she expected. On the first occasion there appeared to have been a failure in the chambers' booking system, and on the second occasion the chosen barrister was unavailable. On the third occasion the same chosen barrister discussed the case with the complainant's solicitor on the telephone during the afternoon of the day before the case came up in court. At 5.10 pm on the same afternoon, the solicitor then received a telephone call from the barrister's clerk to say that she had suddenly become unavailable to appear in the case the next day. The solicitor was unable to contact the complainant, who turned up at court the next day only to find that she was to be represented by the barrister who was substituted on the previous occasion, whom she had expressly indicated she did not want to represent her.

5.27 The lay client had directed her original complaint at the substitute barrister, but when the PCC considered the matter it extended the complaint to cover the Head of Chambers. The PCC decided that no *prima facie* case of professional misconduct was disclosed but that both the substitute barrister and the Head of Chambers should attend on the Leader of their Circuit to discuss the issues raised by the complaint. When the lay client referred the matter to me, I decided that she had suffered considerable distress and inconvenience, and recommended that the Head of Chambers should pay her £500 compensation, since there appeared to have been an administrative failure within his chambers. I should say that, although my investigation of this complaint took place towards the end of 1991, my report was not issued until January 1992, and strictly speaking is therefore outside the scope of this Annual Report. However, since the issue of the late return of briefs has been touched upon by the Divisional Court (Queen's Bench) in the recent case of *R v Sutton Justices ex p.DPP* [1992] NLJ Rep. 239, I consider that it is relevant that I should refer to the matter in this Annual Report. In that case, Brooke J drew attention to paragraphs 505 and 506 of the Bar Council's Code and emphasised that the Code imposes personal responsibility on counsel who accepts a brief, and requires him or her not to return a brief without the knowledge and consent of his or her professional client. Complainants who complain to the Bar Council about the late return of

briefs would do well, therefore, to include in their complaint the barrister who returned the brief, rather than simply complain about the barrister who may have been substituted at the last moment.

The Council for Licensed Conveyancers

5.28 Before taking up my appointment I had the opportunity to meet members of the Council for Licensed Conveyancers, and those engaged in training students currently studying to obtain their licences. The Secretary to my Office and I also visited the Council's office in London's Docklands to learn about the work of the Council. As I indicated in paragraph 5.2, by the end of 1991 I had only received five completed applications requesting me to investigate "allegations" about the Council's handling of complaints. In one of these cases I made a recommendation that the Council should reconsider the complaint, which centred on the failure of the licensed conveyancer to make clear that the client was liable for costs incurred in acting for the mortgagee. The Council subsequently issued a Practice Note clarifying the information on costs which licensed conveyancers must provide to their clients. The small number of complaints that have been referred to me is presumably to some extent a reflection of the current state of the housing market. It is unlikely, therefore, that the number will increase significantly until the market revives.

5.29 In August 1991 a meeting was held with the Secretary of the Authorised Conveyancing Practitioners Board, and a member of the Board, to discuss the Conveyancing Ombudsman Scheme which the Board was in the process of setting up, and to clarify possible areas of overlap between that scheme and my own terms of reference in respect of licensed conveyancers.

6. Contacts with Other Organisations

6.1 Having been involved in one way or another with the consumer movement for many years before my appointment, I was well aware of the valuable input that consumer organisations could make to the work of my Office. I have therefore tried to remain as receptive as possible to their views and to keep in touch with them on a regular basis. During 1991 I took part in a number of conferences, seminars and meetings with, amongst others, Consumers' Association, the National Consumer Council, the Legal Action Group and the Office of Fair Trading. My Office publishes a twice yearly newsletter about our work which is distributed to consumer organisations, Members of Parliament, and via networks such as the Advice Services Alliance and the National Association of Citizens Advice Bureaux.

6.2 I have been invited to speak about my work at the annual general meetings of a number of Citizens Advice Bureaux and Law Centres, mainly in the North West. In Manchester itself I was invited to speak at the annual general meetings of the North Western Legal Services Committee and Manchester CAB, and in September 1991 I led a discussion at the Annual Conference of the Law Centres Federation which took place at Manchester University. I have found all these contacts extremely valuable and I am grateful to the organisations concerned for the invitations I received. Ideally, I would like to be able to attend similar meetings in other parts of the country, but the pressure of the day-to-day caseload in my Office unfortunately means that this is only occasionally possible.

7. Review of Allegations and Complaints

7.1 It is important to remember that, so far as substantive complaints against lawyers are concerned, I am the second port of call and therefore only a small proportion (between five per cent and 10 per cent) of the complaints originally made to the professional bodies are referred on to me. It should not therefore be thought that the substantive complaints that are brought to my attention necessarily reflect the full range of complaints made to the professional bodies. There may be categories of complaint which are handled by the professional bodies to the satisfaction of complainants and so which never cross my threshold. Nevertheless, I think it more likely that the range of complaints I have seen is fairly representative, and that my observations on the main areas of dissatisfaction may therefore be of general application.

Solicitors

7.2 Complaints about solicitors, which have been dealt with by the Solicitors Complaints Bureau and are then referred on to me by complainants who remain dissatisfied, broadly fall into two categories. A small proportion of them (about 15 per cent of those that come to me) are cases where the Bureau has found some substance in the complaint, but the action taken in the complainant's view has been inadequate. The vast majority, however, are complaints that the Bureau has effectively dismissed; some without investigation and others after varying degrees of investigation. Most complainants, quite naturally, have strong feelings about the validity of their complaints. The matter which they have complained about is often very close to home. It may be to do with a divorce, the administration of a close relative's will, a house purchase or sale that has gone wrong or a dispute with a neighbour. In many such cases, complainants are determined to pursue their complaints as far as they possibly can, even though their complaints may be difficult to substantiate. This means that the reality which I am often faced with is that, in many cases where complaints have been dismissed by the Bureau and then referred on to me, the evidence is such that I have no alternative but to agree with the Bureau's decision.

7.3 In some cases, I may not disagree with the Bureau's decision, but I find myself critical of the way the complaint was handled. This was so in 14 per cent of the cases investigated. In 19 per cent of the cases investigated, however, I decided that further action was needed and either recommended that the solicitors should pay compensation to the complainant (and in one case that the Bureau should pay) or that the Bureau should reconsider the complaint. It can be said, therefore, that in approximately one-third of the cases which I investigated my findings were either wholly or partly in favour of complainants, in the sense that either I made a recommendation that was favourable to the complainant or I was critical of the Bureau's handling of the complaint, thus justifying at least part of the allegation that the complainant had made to me. It is interesting to note that two-thirds of the recommendations that I made related to complaints which the Bureau had effectively dismissed.

7.4 Many allegations about the Bureau's handling of complaints are not specific. Complainants express general dissatisfaction with the way their complaints have been dealt with and with the final decision. Often this general dissatisfaction reflects the inevitable inability of any complaints procedure to meet all of a complainant's expectations. Sometimes, however, the causes of dissatisfaction reveal more particular concerns. There is, for example, a persistent tendency for complainants to claim to detect bias towards solicitors in the Bureau's handling of a complaint. This tendency is rooted in the belief that

the Bureau is not independent of the profession. A particular cause of that belief is what some complainants see as the Bureau's apparent readiness to accept the solicitor's version of events rather than their own version.

7.5 The case of Ms C provides an unfortunate example of what the Bureau should not do. On receiving a five-page letter of explanation from the solicitors about whom Ms C had complained, the Bureau wrote to the solicitors, saying that they had "obviously made the most strenuous efforts to obtain the files and answer this complaint in detail and you have provided a most comprehensive statement of the position". The Bureau's letter goes on to state that it appears that "you have done all that could possibly have been done on behalf of Ms C and there is no misconduct or inadequate professional service on your firm's part". The Bureau then say that copies of the solicitors' letters have been sent to Ms C and "subject to any comment which she has of substance, the matter may be regarded as closed".

7.6 On the same day the Bureau also wrote to Ms C enclosing copies of the letters that they had received from the solicitors. The Bureau's letter to Ms C stated that the five-page letter from the solicitors was "a satisfactory explanation of what has happened and there is no misconduct on their part". The Bureau's letter did not invite any further comments from Ms C and concluded by saying "there appears to be nothing more which the Bureau could do to help". Thus, the Bureau had clearly made up their mind that there was no misconduct or inadequate professional service on the part of the solicitors, and they tell them so, before they have seen whether Ms C had any comments to make on the solicitors' five-page letter of explanation. I appreciate that this may have been an isolated lapse on the part of a single case officer, but it nonetheless serves as a salutary warning of the sort of practice that any complaints handling body, and especially a self-regulatory one, should at all costs avoid.

7.7 Then there are cases where the Bureau simply says that it cannot resolve disputes of fact. The resolution of disputes of fact is, of course, no easy matter. In persuading the Bureau to accept their version of events, complainants already encounter formidable obstacles. When faced with those obstacles, complainants are understandably aggrieved to learn that a flat denial from a solicitor can lead to the conclusion that the adjudication of the complaint lies beyond the Bureau's remit. In other cases complainants may be similarly aggrieved to learn that a breach of one of the Law Society's conduct principles or practice rules is merely "technical". Lay complainants understandably consider that the existing principles of professional practice represent the minimum acceptable protection afforded to them in their dealings with professional lawyers.

7.8 In dealing with some of these complaints, the Bureau is no doubt justified in deciding that the complainant has failed to substantiate the complaint. But in other cases my investigation has led me to prefer the complainant's version of events, or to take the view that a breach of a practice rule cannot simply be regarded as "technical". Examples of such cases are Cases 1, 2 and 3 in Appendix A.

7.9 As far as the original complaints made to the Bureau about solicitors are concerned, most of those that I see involve poor service in one form or another, by which I mean such things as poor communication, delay and disregarding instructions. Clients complain, for example, about lack of information regarding the progress of litigation or a property transaction, or the full consequences of particular terms of settlement especially when agreements have been reached at the door of the court, or about the fact that they may not have been informed of the status or identity of the person handling their case. Delay becomes the subject of complaint when litigation is allowed to become unnecessarily stale, when property transactions lose momentum, or when estates are wound up without any sense of urgency. In other cases, however, the likely fault of the solicitor lies in not having moderated unrealistic expectations or in not having explained the reasons for delay, rather than in the delay itself.

7.10 It is perhaps salutary to note that the recommendations I have so far made for the payment of compensation by solicitors relate almost without exception to instances in which I have detected culpable delay or lack of communication on the part of the solicitor which has, in my view, resulted in loss, inconvenience or distress being suffered by the complainant. The amounts of compensation recommended during 1991 have been in the range of £250 to £1,500. For examples, see Cases 4, 5 and 6 in Appendix A.

7.11 Many complaints about solicitors relate, in one form or another, to money. When clients are dissatisfied with the service they have received, their initial reaction will frequently be to argue that they have been overcharged. To formulate a complaint in this way is not always the best policy for a complainant. While significant overcharging, if demonstrated, is likely to be regarded as misconduct by the Bureau, the burden of demonstrating that they have been overcharged rests with complainants and is likely to require an application for a remuneration certificate from the Law Society or for the taxation of the solicitors' bill by the courts. Only when such independent assessment of the charges has been concluded will the Bureau address the question of whether or not the complainant has been overcharged to such an extent that there is evidence of misconduct on the part of the solicitor.

7.12 In many cases, however, a challenge to a final bill is not in the first place motivated by dissatisfaction with the service provided but by the fact that the level of charges exceeds all expectations. In such cases, it is the lack of adequate initial information about likely costs, and subsequently about escalating costs, which lies at the heart of the complaint, not the quality of service nor, for that matter, the size of the bill itself. Complaints about costs being too high are very often, it seems, complaints about communication being too limited. The set of written professional standards which the Law Society have issued concerning communications with clients are particularly relevant in this context. They state, *inter alia*, that on taking instructions solicitors should give clients the best information possible on likely costs and that clients should be told at least every six months the approximate amount of costs to date. There would be fewer complaints about costs, if more solicitors complied with these professional standards.

7.13 Further difficulties follow from the fact that, when a dispute about money arises, the solicitor is in a strong position. He can, for instance, exercise a lien over papers and money belonging to the client or he can sue for the recovery of the alleged debt. Many complainants regard it as deeply ironic that either of these measures should be used against them by the person they had originally expected to protect their interests. A sense of irony turns to a sense of injustice when they discover that, even if payment is being withheld because of dissatisfaction with the quality of service provided, they face the prospect of having, in some circumstances, to resist proceedings for the recovery of the alleged debt or, in others, pay the disputed bill in order to retrieve the papers which might enable them to substantiate the complaint.

7.14 Difficulties about money are not limited to those cases in which clients are paying privately; legally-aided clients also have arguments with their solicitors about money, especially when they allege that they have not received adequate information about the operation of the Legal Aid Board's statutory charge. Case 2 in Appendix A is an example of this. In other cases, complainants say that they have not been advised about the availability of legal aid to begin with or that, if legal aid was mentioned at all, it was only to be dismissed as unobtainable in the particular circumstances or as an unnecessary obstacle to the swift prosecution of an action. Solicitors may consider that it is not necessary to discuss legal aid in cases where they think it is clear that a client's contribution to the Legal Aid Fund would equal or exceed the costs likely to be incurred. The reaction of complainants suggests that this point of view is not shared by all clients.

7.15 One group of complainants who face a particular obstacle in disputes

about money are the beneficiaries of an estate. Since beneficiaries are not themselves clients of the solicitors instructed to administer an estate, they are at present denied the right to require the solicitors to obtain from the Law Society a remuneration certificate, which may often be the cheapest and quickest method of challenging a bill payable from the estate proceeds, for which the executors are liable. This difficulty is particularly acute when, as is often the case, the solicitors are themselves the executors and so are able to charge the estate for their services without recourse to the beneficiaries of that estate or to independent executors. The Lay Observer was alert to this apparent injustice and I too have attempted to monitor the situation. I understand that exchanges took place between the Lord Chancellor's Department and the Law Society with a view to amending the Solicitors' Remuneration Order 1972 and thereby protecting the interests of beneficiaries in such circumstances. However, more recently it appears that a Committee of the Law Society has decided against any extension of remuneration certificates to third parties. I hope the Law Society will give some further consideration to this question, because in my view it is a matter of some urgency that beneficiaries of estates should be provided with an effective means of challenging solicitors' administration costs. It is clear from a number of complaints referred to me that beneficiaries often feel that they are the least important people involved in the winding up of an estate, instead of the very people whom the deceased wished to benefit the most. Case 7 in Appendix A is a striking example of this unsatisfactory situation.

7.16 Finally, as far as solicitors are concerned, I would like to refer to a particular difficulty that can arise when I take the view that the Bureau has failed to investigate an issue adequately or has unnecessarily refused to exercise its powers. While I am unwilling to refer back to the Bureau a complaint which I consider my Office itself is able to investigate, I have reluctantly concluded that some cases are of such complexity that they cannot be fairly investigated by my relatively small staff. I may decide, therefore, that the appropriate course of action is for me to recommend that the Bureau reconsider the complaint, in the hope that such reconsideration would lead to a full investigation. However, if the Bureau's reconsideration does not in fact lead to further investigation, and its decision remains the same, the complainant's cause will not have been furthered. I have had to conclude, therefore, that this outcome is an unavoidable consequence of the limited resources which are at my disposal and of the fact that my powers are not mandatory.

Barristers

7.17 The Bar is a comparatively small profession, whose exposure to the lay client's scrutiny is, for the most part, fleeting. A barrister's professional client, his instructing solicitor, is often in a far better position to form a sustained view of the services provided by counsel. Indeed, it is sometimes argued that solicitors' daily assessment of the Bar acts as a spontaneous form of quality control. Nevertheless, of the allegations made to me about the Bar Council's handling of a complaint, none have so far been initiated by solicitors.

7.18 The 50 or so complaints about barristers that have been drawn to my attention in fact represent a higher proportion of the complaints investigated by the professional body, than is the case with solicitors. However, the number of investigations that I was actually able to carry out was much smaller. The chief reason for this is the constraint placed on me by the Courts and Legal Services Act 1990. The Act expressly precludes me from investigating any allegation relating to a complaint which concerns an aspect of a lawyer's conduct in relation to which he or she has immunity from any action in negligence or contract. Since this immunity extends to the exercise of the barrister's primary role of advocate, this constraint is a significant one, especially since the lay client's observation of counsel is often almost entirely confined to the court room. The rationale behind this constraint is, I take it, that which, in part, lies behind the immunity itself: that to determine whether or not a lay client's position has been prejudiced by the performance of counsel in court would in effect require a rehearsal of the case

itself. Since a number of the allegations referred to me have related to the handling of complaints based precisely on the belief that a barrister's advocacy has so prejudiced a complainant, I have been prevented from conducting investigations in rather more cases than I would have wished.

7.19 If, however, the performance of barristers in court is beyond my remit, their services out of court do fall for my consideration. Often the complainant's cause of concern has been the way in which the barrister has conducted himself, quite literally at the door of the court: excessive zeal in procuring a last-minute settlement, apparent insensitivity and inattentiveness to the lay client's concerns, lack of confidentiality in negotiation with an opponent. While complaints of this sort no doubt in part reflect the hazards of litigation, the strain of attendance at court and the lay client's fleeting contact with counsel, it is apparent that, as in the case of solicitors, complainants are sometimes left with the belief that their interests have not been kept firmly at the centre of things. This belief can extend to the further belief that earlier advice, written or oral, upon which a complainant may have depended for the future conduct of a case or the receipt of legal aid, has not been as supportive as it should have been. While the responsibility for explaining the nature of such advice to the lay client may, in the normal course of events, rest primarily with the solicitor, it seems clear that, if client satisfaction is to be at the forefront of the Bar's concerns, no opportunity should be lost for sharing that responsibility. Two examples of the handling of complaints against barristers are given in Cases 8 and 9 in Appendix A.

Licensed Conveyancers

7.20 In view of the very small number of cases involving complaints about licensed conveyancers that have been referred to me, I have nothing further to add to my comments in paragraph 5.28. The case referred to there is Case 10 in Appendix A.

8. Looking to the Future

8.1 The setting-up of this Office was attended by high expectations. The exposure of the Bar Council's complaints handling procedures to lay scrutiny represented a new departure, and in respect of the Law Society there was to be a significant extension of the role previously allocated to the Lay Observer. Self-regulation by the professional bodies was to be reinforced by a statutory second stage with powers to make a range of recommendations, covering not only the payment of compensation but also the professional bodies' arrangements for investigating complaints and the exercise of their powers in relation to the lawyers about whom complaints were made. The expectation was that the Legal Services Ombudsman would be able to identify the general issues reflected in complaints and thereby help to chart a path for the maintenance and improvement of professional standards.

8.2 In looking to the future at the end of my first year, I am therefore mindful of those high hopes and anxious that this Office should work effectively towards their realisation. A key element in achieving that is the willingness of the professional bodies both to engage in self-criticism themselves and to respond imaginatively to the recommendations that I make. In the past 12 months the Solicitors Complaints Bureau has undergone a major reorganisation and has itself gained new compensatory powers under the Courts and Legal Services Act 1990. This extension of the Bureau's remedies and the reorganisation of its procedures to facilitate the early conciliation of disputes should address some of the main causes of dissatisfaction which have emerged from the complaints referred to me.

8.3 The willingness of the Bar Council to agree in principle to accept the recommendations that I made to them under Section 24 of the Courts and Legal Services Act 1990 also raises the expectation that their procedures will become more open as a result. Although Section 24 is an important way of putting recommendations to the professional bodies, because it requires them to "have regard" to the recommendations, it is not the only way. Equally important are the variety of meetings and other contacts that I have with the professional bodies from time to time, and I have been most encouraged by their readiness to take up suggestions made on those occasions. My hope is that the professional bodies will increasingly see client satisfaction as much their responsibility as the operation of a disciplinary system, and that they will therefore be prepared to support the promotion of appropriate change.

8.4 Lawyers themselves will, no doubt, consider that they are already being exposed to quite sufficient change, not least by the more general operation of the Courts and Legal Services Act 1990. For solicitors, the introduction of Practice Rule 15 and the revision of the Law Society's Written Standards already emphasise that a feature of such change is the re-orientation of the profession towards client satisfaction. For barristers, the Bar Council's support for a Charter for the Courts demonstrates their commitment to the consumer rights of those who use their services. My expectation, therefore, is that lawyers will respond positively to the demands for better communication with clients, for frankness about the level of their costs and the reasons for delay, and for improved standards of service. It will, however, be the response of complainants themselves which will tell me whether or not that expectation is being satisfactorily met.

8.5 For this Office, my hope is that it will seek to achieve a fair balance between its respective functions as "guardian of the guardians" and "second port of call" for complainants. In addition to the exercise of that dual function I look forward, in particular, to being able to draw upon an increasing reservoir of experience, which will enable me to contribute more significantly to the work of the Lord Chancellor's Advisory Committee on Legal Education and Conduct than was

possible during this first year. In this way, I would hope that the work of my Office will become increasingly relevant to the more general and evolving relationship between those who provide, and those who use, legal services.

MICHAEL BARNES
March 1992

Appendix A

Case 1

Ms S instructed Messrs R in the sale of one flat and the purchase of another. She also instructed her bank to make available to Messrs R the sum of £11,000 by way of deposit on the purchase. Prior to exchange of contracts, the proposed purchasers withdrew from the transaction and Ms S's purchase fell through as a result. In the meantime, the bank had prematurely transferred the £11,000 deposit to Messrs R's client account. Messrs R deducted their costs and the same day wrote to Ms S with their bill and to the bank with the balance. Ms S complained, *inter alia*, that the solicitors had deducted their costs in this way without authority and that it was improper for them to have done so. Messrs R argued that before they returned the balance to the bank they had prepared a bill, deducted their costs, informed Ms S by telephone on the same day that this was what they were doing and that she had not objected. Ms S argued that payment had been taken by the solicitors without her knowledge and before the bill, received by her four days later, had been submitted. The Bureau concluded that, although there had been a technical breach of the strict letter of the rules of conduct, there was insufficient evidence of impropriety to warrant any further action.

The Ombudsman, however, took a different view. He was, in particular, mindful of the fact that, before drawing from client account money properly required for payment of their costs, solicitors are obliged to have delivered to their client a bill of costs or other intimation of the amount of the costs incurred, and to have made clear in writing that money held for the client is being or will be applied in satisfaction of such costs. The Ombudsman took the view that in this case Messrs R had failed to meet that obligation, whether or not the alleged telephone conversation about costs had taken place. Moreover, the Ombudsman did not share the Bureau's view that this failure amounted to a mere technical breach. He considered rather, that, in losing the opportunity to consider the proposed level of costs prior to their deduction, Ms S had been deprived of the protection properly afforded to her as a client when her solicitors were in the privileged position of already holding money on her behalf. The Ombudsman therefore concluded that Ms S was entitled to feel aggrieved at Messrs R's apparent opportunism in this respect and that it was incumbent upon the Bureau, when there had been a clear contravention of the profession's rules, to take whatever steps were necessary to demonstrate the importance of compliance. The Ombudsman therefore recommended that the Bureau reconsider Ms S's complaint.

On reconsideration the Bureau referred the matter to the Conduct Sub-Committee of the Adjudication and Appeals Committee with the result that the solicitor concerned was rebuked.

Case 2

Mr H instructed Messrs L to institute county court proceedings against his insurers for the full value of a stolen vehicle. Mr H received legal aid, with nil contribution. The case was subsequently settled on the basis that the insurers would pay to Mr H the sum of £500, but not his costs. As a result of the operation of the Law Society's statutory charge over the money recovered, Mr H received only £159.50. He subsequently complained to the Bureau that he had not been informed, either at the outset of proceedings or at the time of settlement, about the operation of the statutory charge. The Bureau, however, accepted in full a letter of explanation from Messrs L who argued that they had properly advised about the statutory charge and who produced an attendance note which recorded a discussion with Mr H after the terms of settlement had been implemented. Mr

H referred the matter to the Ombudsman in the belief that the Bureau had too readily accepted the explanation offered, without supporting evidence, by Messrs L.

On investigation, the Ombudsman shared Mr H's view. In particular, the Ombudsman did not consider that a solicitor should as a matter of course be given the benefit of the doubt in the absence of documentary evidence capable of resolving a dispute of fact. The Ombudsman took the view that in cases where the solicitors had a particular duty (in this case to advise about the operation of the statutory charge) it was reasonable to place upon solicitors the burden of demonstrating that they had discharged that duty; in this instance, that burden had not been discharged, with the result that Mr H experienced understandable alarm and dismay when he discovered that the damages recovered had been significantly reduced by the operation of the statutory charge. The Ombudsman therefore recommended that Messrs L pay to Mr H the sum of £300 by way of compensation for the distress which had resulted from their omission. Messrs L subsequently confirmed that they had reluctantly accepted the Ombudsman's recommendation and had paid the £300 to Mr H.

Case 3

Mr K instructed Messrs S to pursue a personal injury claim on his behalf against his former employers. Mr K complained to the Bureau, *inter alia*, that Messrs S had failed to obtain the legal aid to which he was entitled, and had been guilty of significant delay over a 14-month period in pursuing his claim. Messrs S informed the Bureau by letter that they had not applied for legal aid because there had been insufficient evidence to support Mr K's claim and that Mr K had himself failed to keep appointments and to supply a proper detailed chronology to enable them to prepare a proof of evidence. Mr K argued, however, that he had supplied all the information which had been requested by Messrs S and had subsequently received legal aid to instruct another firm of solicitors in respect of the same claim. The Bureau accepted Messrs S's version of events without further investigation. Mr K referred the matter to the Ombudsman on the basis that the Bureau had reached their decision on insufficient evidence and had been misled by Messrs S's representations.

On investigation, the Ombudsman considered that, in view of the disparity between the parties' versions of events and of the lack of supporting evidence, the Bureau's decision appeared to be premature. Mr K had now instructed different solicitors and they had obtained Messrs S's file. In the circumstances, it appeared that the file could have done much to demonstrate what had in fact transpired. It therefore appeared to the Ombudsman that the Bureau had based its decision on inadequate evidence in a case in which further evidence was readily to hand. The Ombudsman therefore recommended that the Bureau reconsider Mr K's complaint. Upon reconsideration, the Bureau informed the Ombudsman that it would re-open its investigation and would be calling for Messrs S's file.

Case 4

Mr F instructed Messrs W to act on his behalf in the purchase of a house. The house had been advertised for sale as a freehold property. Mr F complained to the Bureau that, although Messrs W had been aware for two months prior to exchange of contracts that the property was in fact leasehold, they did not notify him until the day contracts were due to be exchanged and three days before the day scheduled for completion. Mr F argued that it would now cost a considerable sum of money to acquire the freehold, which he had originally believed to be included in the purchase price. The Bureau conducted an investigation which, once Mr F had confirmed that he did not intend to pursue a civil claim for negligence, included an examination of Messrs W's files. The Professional Services Officer who assessed the file reported that the professional services provided by Messrs W had not been of the quality that could reasonably have

been expected of them as solicitors, because they failed to notify their clients at the earliest opportunity that the property was in fact leasehold and not freehold. The Bureau's Adjudication Committee adopted that conclusion and, in the absence of any power to award compensation, determined that Messrs W should not be entitled to any costs in respect of the inadequate services. Mr F referred the matter to the Ombudsman: although he was pleased with the decision that he should not have to pay any costs, he was nevertheless dissatisfied that he had not been compensated for the additional expense he would incur in purchasing the freehold of his property.

On investigation, the Ombudsman shared the Bureau's view that Messrs W had been at fault. Messrs W argued that it was their normal practice to arrange a meeting with their clients on receipt of the contract papers to discuss any issues arising from them; in this case that meeting had not taken place because the solicitor dealing with the matter had been involved in a serious road accident. It was, however, only when Mr F returned to the offices of Messrs W to sign the contract that it was expressly pointed out to him that the description of the property in the estate agent's particulars had been inaccurate and that the property was in fact leasehold, not freehold. The Ombudsman therefore took the view that, although the original mistake was the estate agent's and although the solicitor's road accident may have interfered with Messrs W's normal conveyancing procedures, responsibility nevertheless lay with Messrs W for the fact that Mr F had not been notified at the earliest opportunity that his purchase was leasehold and not freehold.

Further, the Ombudsman did not consider that Messrs W could seek refuge in the argument that notification was effected before contracts were exchanged: in the Ombudsman's view, to have delayed exchange of completion would, in the particular circumstances of this transaction, have caused maximum inconvenience not only to Mr F but to all of the parties in the conveyancing chain; Mr F had therefore been left with little choice but to proceed. Having established that the cost of purchasing the freehold would now be £1,461.50, the Ombudsman therefore recommended that Messrs W pay to Mr F that sum for the loss their omission had caused to him. Messrs W subsequently informed the Ombudsman that they had complied with his recommendation.

Case 5

Mrs M instructed Messrs D in respect of divorce and ancillary proceedings. One of the terms of settlement was that her husband would pay to her a lump sum of £9,000. This he did on 14 June 1989. Mrs M had notified Messrs D of her wish to use some of the money to purchase an interest in the property she presently occupied, but did not own; on completion of the property transaction, a balance of £2,000 was to be forwarded to her for her own use. Mrs M complained to the Bureau that Messrs D had not completed the property transaction until January 1990 and that as a result of that delay she had been deprived of the use of the anticipated £2,000 balance during the intervening period. The Bureau's Adjudication Committee decided that the professional services provided by Messrs D had been inadequate, but not so inadequate as to warrant the imposition of a penalty. Mrs M was dissatisfied with that decision and referred the matter to the Ombudsman.

On investigation, the Ombudsman agreed that Messrs D had been at fault. Indeed, Messrs D had admitted that there had been a considerable delay, although they had tried to excuse this by reference to pressure of work and a degree of uncertainty about the terms to be included in the transfer. The Ombudsman was also satisfied that Mrs M had been caused inconvenience and distress by Messrs D's culpable delay. While she was waiting for the release of the balance she had been dependent upon income support and had been unable to fulfil plans for a summer holiday for herself and a twenty-first birthday party for her daughter. The Ombudsman therefore recommended that Messrs D pay

compensation of £250 for the inconvenience and distress caused. Messrs D subsequently complied with that recommendation.

Case 6

Mr D instructed Messrs M in connection with a conveyancing transaction. His initial contact was with their branch office in P. He subsequently learnt, as a result of his own enquiries, that his file had been transferred to another solicitor at Messrs M's branch office in C. Sometime later he wrote to Messrs M's office in C only to discover that that office had been closed down and that his file had been transferred back to the office in P. Mr D complained to the Bureau, *inter alia*, that he had not been informed about these changes in the arrangements for handling his conveyancing and that it was only as a result of his own efforts that he had discovered what was happening. Following correspondence with Messrs M, the Bureau's Investigation Officer recommended to the Adjudication Committee that Messrs M's costs should be limited to £92 plus VAT (a reduction of £23) as a penalty for the inadequate service which they had provided. The Adjudication Committee, however, was not satisfied that Mr D's complaints had been substantiated and so did not accept the Investigation Officer's recommendation.

On investigation, the Ombudsman, however, shared the Investigation Officer's view that the services provided by Messrs M were inadequate. Messrs M argued that in respect of the first change of office they had written to Mr D on notepaper headed with the new address and that this constituted adequate notice; in respect of the second change, that they had arranged for post and telephone calls to be diverted because the office in C had closed, albeit those arrangements had proved unsuccessful on this occasion. The Ombudsman rejected Messrs M's argument that they had done enough to keep Mr D informed of the changes in arrangements for handling his conveyancing on two occasions. Instead, he took the view that there had been two breaches of acceptable standards of communication and recommended that Messrs M should pay to Mr D compensation in the sum of £250 for the inconvenience thereby caused to Mr D. Messrs M subsequently complied with the recommendation, whilst noting their disagreement with the Ombudsman's report. Mr D, by contrast, wrote that he regarded the Ombudsman's decision as proof to him that if "the man in the street" tells the truth and furnishes full details he can eventually get justice done.

Case 7

Mr S and Mr H were among the beneficiaries of the estate of Mr K who had died in 1977. The executors of the estate were solicitors and partners in the firm of Messrs F. Mr S and Mr H complained that it had taken Messrs F nine-and-a-half years to administer the estate; that the late settlement of capital transfer tax had resulted in interest penalties of £105,000 being paid to the Inland Revenue from the estate; that the solicitors' and accountants' charges of £192,494 and £180,345 respectively had been excessive; and that on completion of the administration the beneficiaries had received only £45,000 from an estate which the final accounts revealed to be worth nearly £1,000,000. On consideration of the complaints, the Bureau's Adjudication Committee were not satisfied that it would be appropriate to exercise any of their powers in respect of alleged inadequate professional services pursuant to section 44A(1) Solicitors Act 1974, because in their opinion the complaints in the main involved *prima facie* issues of negligence, in respect of which it would be reasonable to have expected the complainant to have commenced civil proceedings, and because the other complaints involved the extent of the fees charged by the solicitors and their disbursements which were matters outside the remit of section 44A(1) Solicitors Act 1974 and which could have been dealt with by way of taxation. Mr S and Mr H were dissatisfied with the Bureau's treatment of their complaints and, in the course of detailed criticism of the Bureau's investigation, argued that the Bureau's view that the complainants should seek redress through the courts had been taken without regard to the enormous costs involved.

On review of the Bureau's investigation, the Ombudsman accepted the view of Mr S and Mr H, that it had not been reasonable for the Bureau to expect them to commence civil proceedings. It appeared that the costs involved, and the time which had elapsed, were indeed prohibitive and that the only realistic and reasonable course available to the complainants had been to pursue the matter with the Bureau. The Ombudsman also considered that the Bureau had taken an unduly modest view of its capacity to meet Mr S and Mr H's demands, since in a case in which the fees incurred amounted to £193,494, the exercise of the Bureau's power to limit the solicitors' fees, albeit as a punitive rather than a compensatory measure, could have been of considerable benefit to them. Further, the Ombudsman did not consider that, merely because a finding of professional misconduct would not have produced any benefit to Mr S and Mr H, the Bureau was justified in not investigating the matters disclosed by the complaint. The Ombudsman therefore concluded, *inter alia*, that the Bureau had not been justified in declining to investigate potential issues of misconduct and inadequate professional services, nor had the Adjudication Committee been justified in deciding that they should not exercise their powers pursuant to section 44A(1) Solicitors Act 1974. The Ombudsman also noted that the Solicitors' Remuneration Order 1972 appeared to operate unfairly against beneficiaries of an estate, since they were unable to require a solicitor executor to apply for a remuneration certificate because they were not that solicitor's clients. The Ombudsman recommended that the Bureau reconsider Mr S and Mr H's complaints.

On reconsidering, the Conduct Casework Committee of the Adjudication Appeals Committee concluded that it would be wrong to interpret the powers granted by section 44A Solicitors Act 1974 as making the Bureau a court of last resort simply because, for whatever reasons, legal proceedings had not been taken, especially where the issues revealed by complaints were complex and involved large amounts of money. The Committee took the view that the Bureau's machinery was not suitable to deal with issues of such complexity which could only properly be determined by a court (on taxation or otherwise) after full consideration of the evidence. On the basis that the issue of proceedings was just one factor to which they might have regard in considering whether to exercise their powers under section 44A Solicitors Act 1974, the Committee maintained their original view that the Bureau was not the appropriate tribunal to deal with Mr S and Mr H's complaints and therefore decided to take no further action.

Case 8

Ms O was advised in conference by Mr M QC in respect of a professional negligence claim which she was pursuing against her former solicitors. Ms O had the benefit of legal aid. She complained to the Bar Council, *inter alia*, that Mr M had refused to provide a written advice at the request of instructing solicitors, following conference. Mr M argued that he had seen no point in committing his opinion to writing: he had taken care to ensure that his unfavourable advice was understood by his instructing solicitors and by the lay client, and that the further work entailed in providing a written advice would have been an unnecessary expense against the legal aid fund. The Professional Conduct Committee of the Bar Council concluded that, although there was little merit in most of Ms O's complaints, the failure to provide a written advice, whilst not necessitating procedures which might lead to formal findings of professional misconduct or a breach of professional standards, nevertheless gave cause for concern and was such to require "informal treatment" under paragraph 3(e)(v) of the Professional Conduct Committee's Rules. Mr M was subsequently advised in writing by the PCC that there was no justification for his refusal to provide a written advice setting out the opinion he had expressed at the conference and that, if asked to provide the advice, he should have done so. Ms O referred the matter to the Ombudsman: she was in agreement with the PCC for upholding part of her complaint but considered that the "mild reprimand" imposed was not an adequate sanction and that, since she had been put to the trouble of obtaining a

written advice from another barrister at further cost, compensation would have been an appropriate remedy. Ms O also considered it unacceptable that the PCC had not given written reasons for rejecting much of her complaint and that she had not been allowed to see Mr M's reply to her criticisms.

The Ombudsman shared the PCC's view that Mr M should have provided the written advice when requested to do so by his instructing solicitor. As a result of his refusal to do so, Ms O's solicitors had legitimately sought a written opinion from other counsel, with attendant delay and increase in the total legal costs. The Ombudsman therefore recommended that Mr M should pay £350 in compensation for the significant distress and inconvenience which he had caused by the further delay in the conduct and eventual settlement of Ms O's professional negligence action. The Ombudsman also shared Ms O's dissatisfaction that she had not been informed of the PCC's reasons for rejection of part of her complaint nor been given an opportunity to see Mr M's submission to the PCC. Mr M subsequently confirmed that he had complied with the recommendation.

Case 9

Mr M was advised by counsel, Mr C, during the course of ancillary matrimonial proceedings. Mr M complained to the Bar Council that, despite receipt of all the relevant papers relating to financial aspects of his divorce, Mr C had provided a written advice which failed to cite the leading relevant authority on the point at issue. Mr M considered that by virtue of such an omission Mr C's advice was grossly negligent and had led to him taking a course of action in ignorance of the relevant law. Mr M claimed that Mr C had thereby caused him wholly avoidable and substantial financial loss in that his legal costs were far higher than they would have been if he had been correctly advised of the relevant case law. The PCC of the Bar Council sought comments from Mr C and his instructing solicitors. On reaching its conclusion, the PCC also had before it two reports on the case: one from a QC and one from counsel with expertise in family law. The PCC subsequently concluded that the complaint should be dismissed and advised Mr M accordingly. Mr M referred the matter to the Ombudsman. Mr M was particularly concerned that the PCC had not given reasons for its decisions.

The Ombudsman concluded that the PCC's decision to dismiss the complaint had been reasonable and had taken account of the various submissions to it. The Ombudsman did, however, express considerable reservation about the lack of information given to Mr M and regarded it as perfectly understandable that he, and other complainants, should feel a sense of dissatisfaction at the lack of information provided about the response to their complaints both of the PCC and the barrister complained about. Nevertheless, the Ombudsman took the view that in this case that lack of information had not detracted from the PCC's consideration of the merits of the complaint nor undermined the reasonableness of its decision that no further disciplinary action was justified.

Case 10

Mrs R instructed Mr L, a licensed conveyancer, in connection with the sale and purchase of residential property. She complained to the Council of Licensed Conveyancers, *inter alia*, that in giving a quotation for his costs Mr L failed to disclose that the figure quoted did not include his fees for acting for the mortgagee and that he would be charging those fees directly to Mrs R in addition to the figure quoted. The Council examined Mr L's file during the course of its investigation and concluded that Mr L should have committed to writing the terms upon which he was accepting instructions and that the charge of £500 imposed was difficult to justify. The Council therefore recommended that Mr L's bill should be reduced to £425. Mrs R referred the matter to the Ombudsman on the basis that the reduction of the bill was not sufficient and that the Council had not taken into account the costs charged by Mr L for the work he had done for the building society.

The Ombudsman took the view that the Council had not dealt adequately with the complaint about the building society's costs being payable by Mrs R. In particular it appeared that, taking into account the additional building society costs of £100, the total charge imposed on Mrs R was £600 not the £500 against which the £75 reduction had been recommended by the Council. The Ombudsman therefore recommended that the Council should reconsider Mrs R's complaint. On reconsidering, the Council confirmed that the sum of £100 payable in respect of the mortgagee's costs had indeed been fully taken into account when the compromised figure had been arrived at originally. It was conceded by the Council, however, that the question of mortgagees' costs frequently gave rise to conflict between licensed conveyancers and their clients and that the Investigating Committee was recommending to the Council that a Practice Note should be issued giving guidance to licensed conveyancers on the question of mortgagees' costs. The Council subsequently confirmed that a Practice Note had been prepared in response to the Ombudsman's report regarding this complaint.

Appendix B

Table 1

Summary of cases accepted for formal investigation as at 31 December 1991

	<i>Ombudsman cases</i>	<i>Lay Observer "backlog" cases</i>	<i>Total</i>
Completed investigations	165	436	601
Investigations pending or awaiting final report	241	124	365
Total number of cases accepted for formal investigation during 1991	406	560	966

Table 2

Analysis of cases taken over from the Lay Observer on 1 January 1991

Cases taken over from the Lay Observer on 1 January 1991	672
Cases failing to meet criteria for investigation	112
Cases awaiting final report on 31 December 1991	124
Formal investigations completed	436

Table 3

Analysis of new complaints notified to the Legal Services Ombudsman during 1991

Total number of new complaints notified during 1991	1,248
Cases awaiting processing on 31 December 1991	31
Cases awaiting further information from applicant or not pursued by applicant	327
Cases awaiting receipt of Professional Body's file	160
Cases failing to meet criteria for investigation	324
Formal investigations pending	241
Formal investigations completed	165

Table 4

Completed investigations: summary of recommendations made or formal criticisms of the professional body

(a) Ombudsman cases

<i>Complaints against solicitors</i>	158 ¹	
Solicitor to pay compensation		14
SCB ³ to pay compensation		1
SCB to reconsider		14
No recommendation, but formal criticism of SCB		19
No recommendation or formal criticism		110
<i>Complaints against barristers</i>	11	
Barrister to pay compensation		1
No recommendation, but criticism of GCB ⁴		4
No recommendation or formal criticism		6
<i>Complaints against licensed conveyancers</i>	1	
CLC ⁵ to reconsider		1
Total	170	
Total recommendations	31	(18%)
Total formal criticisms of professional body	23	(14%)
No recommendation or formal criticism	116	(68%)

(b) Lay Observer “backlog” cases (solicitor cases only)

Investigations completed	431 ²	
Recommendation made	52	(12%)
No recommendation, but criticism of SCB	46	(11%)
No recommendation or formal criticism	333	(77%)

Notes:

¹ Includes five Lay Observer cases dealt with using new Ombudsman powers.

² Excludes the above five cases.

³ Solicitors Complaints Bureau.

⁴ General Council of the Bar.

⁵ Council for Licensed Conveyancers.

Table 5

Ombudsman cases: analysis of complaints, by Professional Body to which the original complaint was made

Number of complaint forms returned to Ombudsman	870	
Allegations against the Solicitors Complaints Bureau		815
Allegations against the General Council of the Bar		50
Allegations against the Council for Licensed Conveyancers		5
Cases awaiting further information from applicant or not pursued by applicant	327	
Cases rejected at initial enquiry stage	51	
Total number of new complaints notified during 1991	1,248	

Table 6

Ombudsman cases: analysis of cases accepted for formal investigation by type of legal transaction

Divorce proceedings	63
House sale/purchase	52
Property disputes	45
Administration of wills, etc	33
Personal injury	24
Professional negligence claims	24
Landlord/tenant	23
Criminal proceedings	20
Contractual disputes	16
Other	106
Total	406

Table 7

Ombudsman cases: analysis of cases accepted for formal investigation by reason for complaint (Complainants usually give several reasons for their complaint)

<i>Service provided</i>		1,048 (65%)
Poor service	234 (15%)	
Delay or inaction	194 (12%)	
Disregarding instructions	186 (12%)	
Failure to keep client informed	165 (10%)	
Documents withheld or lost	137 (8%)	
No reply to letters/phone calls	132 (8%)	
<i>Financial loss</i>		203 (13%)
<i>Overcharging</i>		91 (6%)
<i>Unprofessional conduct</i>		256 (16%)

Table 8

Ombudsman cases: analysis of cases accepted for formal investigation by size of practice (solicitor cases only)

<i>Number of Partners</i>	<i>Number of Cases</i>
1	45 (12%)
2-4	151 (39%)
5-10	83 (22%)
11-20	39 (10%)
21-30	10 (3%)
Over 30	8 (2%)
Not known/not in private practice	47 (12%)
Total	383

Appendix C

Courts and Legal Services Act 1990

Part II

The Legal Services Ombudsman

The Legal Services Ombudsman.

21.—(1) The Lord Chancellor shall appoint a person for the purpose of conducting investigations under this Act.

(2) The person appointed shall be known as “the Legal Services Ombudsman”.

(3) The Legal Services Ombudsman—

(a) shall be appointed for a period of not more than three years; and

(b) shall hold and vacate office in accordance with the terms of his appointment.

(4) At the end of his term of appointment the Legal Services Ombudsman shall be eligible for re-appointment.

(5) The Legal Services Ombudsman shall not be an authorised advocate, authorised litigator, licensed conveyancer, authorised practitioner or notary.

(6) Schedule 3 shall have effect with respect to the Legal Services Ombudsman.

Ombudsman’s functions.

22.—(1) Subject to the provisions of this Act, the Legal Services Ombudsman may investigate any allegation which is properly made to him and which relates to the manner in which a complaint made to a professional body with respect to—

(a) a person who is or was an authorised advocate, authorised litigator, licensed conveyancer, registered foreign lawyer, recognised body or duly certificated notary public and a member of that professional body; or

(b) any employee of such a person, has been dealt with by that professional body.

(2) If the Ombudsman investigates an allegation he may investigate the matter to which the complaint relates.

(3) If the Ombudsman begins to investigate an allegation he may at any time discontinue his investigation.

(4) If the Ombudsman decides not to investigate an allegation which he would be entitled to investigate, or discontinues an investigation which he has begun, he shall notify the following of the reason for his decision—

(a) the person making the allegation;

(b) any person with respect to whom the complaint was made; and

(c) the professional body concerned.

(5) The Ombudsman shall not investigate an allegation while—

(a) the complaint is being investigated by the professional body concerned;

(b) an appeal is pending against the determination of the complaint by that body; or

(c) the time within which such an appeal may be brought by any person has not expired.

(6) Subsection (5) does not apply if—

(a) the allegation is that the professional body—

(i) has acted unreasonably in failing to start an investigation into the complaint; or

- (ii) having started such an investigation, has failed to complete it within a reasonable time; or
 - (b) the Ombudsman is satisfied that, even though the complaint is being investigated by the professional body concerned, an investigation by him is justified.
- (7) The Ombudsman shall not investigate—
- (a) any issue which is being or has been determined by—
 - (i) a court;
 - (ii) the Solicitors Disciplinary Tribunal;
 - (iii) the Disciplinary Tribunal of the Council of the Inns of Court; or
 - (iv) any tribunal specified in an order made by the Lord Chancellor for the purposes of this subsection; or
 - (b) any allegations relating to a complaint against any person which concerns an aspect of his conduct in relation to which he has immunity from any action in negligence or contract.
- (8) The Ombudsman may—
- (a) if so requested by the Scottish ombudsman, investigate an allegation relating to a complaint made to a professional body in Scotland; and
 - (b) arrange for the Scottish ombudsman to investigate an allegation relating to a complaint made to a professional body in England and Wales.
- (9) For the purposes of this section, an allegation is properly made if it is made—
- (a) in writing; and
 - (b) by any person affected by what is alleged in relation to the complaint concerned or, where that person has died or is unable to act for himself, by his personal representative or by any relative or other representative of his.
- (10) The Ombudsman may investigate an allegation even though—
- (a) the complaint relates to a matter which arose before the passing of this Act; or
 - (b) the person making the complaint may be entitled to bring proceedings in any court with respect to the matter complained of.
- (11) In this section—
- “professional body” means any body which, or the holder of any office who—
- (a) has disciplinary powers in relation to any person mentioned in subsection (1)(a); and
 - (b) is specified in an order made by the Lord Chancellor for the purposes of this subsection;
- 1985 c.61. “recognised body” means any body recognised under section 9 of the Administration of Justice Act 1985 (incorporated practices) or under section 32 of that Act (incorporated bodies carrying on business of provision of conveyancing services); and
- “the Scottish ombudsman” means any person appointed to carry out functions in relation to the provision of legal services in Scotland which are similar to those of the Ombudsman.

Recommendations.

- 23.—(1) Where the Legal Services Ombudsman has completed an investigation under this Act he shall send a written report of his conclusions to—
- (a) the person making the allegation;
 - (b) the person with respect to whom the complaint was made;
 - (c) any other person with respect to whom the Ombudsman makes a recommendation under subsection (2); and
 - (d) the professional body concerned.

- (2) In reporting his conclusions, the Ombudsman may recommend—
- (a) that the complaint be reconsidered by the professional body concerned;
 - (b) that the professional body concerned or any other relevant disciplinary body consider exercising its powers in relation to—
 - (i) the person with respect to whom the complaint was made; or
 - (ii) any person who, at the material time, was connected with him;
 - (c) that—
 - (i) the person with respect to whom the complaint was made; or
 - (ii) any person who, at the material time, was connected with him, pay compensation of an amount specified by the Ombudsman to the complainant for loss suffered by him, or inconvenience or distress caused to him, as a result of the matter complained of;
 - (d) that the professional body concerned pay compensation of an amount specified by the Ombudsman to the person making the complaint for loss suffered by him, or inconvenience or distress caused to him, as a result of the way in which the complaint was handled by that body;
 - (e) that the person or professional body to which a recommendation under paragraph (c) or (d) applies make a separate payment to the person making the allegation of an amount specified by the Ombudsman by way of reimbursement of the cost, or part of the cost, of making the allegation.
- (3) More than one such recommendation may be included in a report under this section.
- (4) Where the Ombudsman includes any recommendation in a report under this section, the report shall give his reasons for making the recommendation.
- (5) For the purposes of the law of defamation the publication of any report of the Ombudsman under this section and any publicity given under subsection (9) shall be absolutely privileged.
- (6) It shall be the duty of any person to whom a report is sent by the Ombudsman under subsection (1)(b) or (c) to have regard to the conclusions and recommendations set out in the report, so far as they concern that person.
- (7) Where—
- (a) a report is sent to any person under this section; and
 - (b) the report includes a recommendation directed at him,
- he shall, before the end of the period of three months beginning with the date on which the report was sent, notify the Ombudsman of the action which he has taken, or proposes to take, to comply with the recommendation.
- (8) Any person who fails to comply (whether wholly or in part) with a recommendation under subsection (2) shall publicise that failure, and the reasons for it, in such manner as the Ombudsman may specify.
- (9) Where a person is required by subsection (8) to publicise any failure, the Ombudsman may take such steps as he considers reasonable to publicise that failure if—
- (a) the period mentioned in subsection (7) has expired and that person has not complied with subsection (8); or
 - (b) the Ombudsman has reasonable cause for believing that that person will not comply with subsection (8) before the end of that period.
- (10) Any reasonable expenses incurred by the Ombudsman under subsection (9) may be recovered by him (as a civil debt) from the person whose failure he has publicised.
- (11) For the purposes of this section, the person with respect to whom a complaint is made (“the first person”) and another person (“the second person”) are connected if—
- (a) the second person—
 - (i) employs the first person; and

- (ii) is an authorised advocate, authorised litigator, duly certificated notary public, licensed conveyancer or partnership;
- (b) they are both partners in the same partnership; or
- (c) the second person is a recognised body which employs the first person or of which the first person is an officer.

Advisory functions. 24.—(1) The Legal Services Ombudsman may make recommendations to any professional body about the arrangements which that body has in force for the investigation of complaints made with respect to persons who are subject to that body's control.

(2) It shall be the duty of any professional body to whom a recommendation is made under this section to have regard to it.

(3) The Ombudsman may refer to the Advisory Committee any matters which come to his notice in the exercise of his functions and which appear to him to be relevant to the Committee's functions.

Procedure and offences. 25.—(1) Where the Legal Services Ombudsman is conducting an investigation under this Act he may require any person to furnish such information or produce such documents as he considers relevant to the investigation.

(2) For the purposes of any such investigation, the Ombudsman shall have the same powers as the High Court in respect of the attendance and examination of witnesses (including the administration of oaths or affirmations and the examination of witnesses abroad) and in respect of the production of documents.

(3) No person shall be compelled, by virtue of subsection (2), to give evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the High Court.

(4) If any person is in contempt of the Ombudsman in relation to any investigation conducted under section 22, the Ombudsman may certify that contempt to the High Court.

(5) For the purposes of this section a person is in contempt of the Ombudsman if he acts, or fails to act, in any way which would constitute contempt if the investigation being conducted by the Ombudsman were civil proceedings in the High Court.

(6) Where a person's contempt is certified under subsection (4), the High Court may enquire into the matter.

(7) Where the High Court conducts an inquiry under subsection (6) it may, after—

- (a) hearing any witness produced against, or on behalf of, the person concerned; and
- (b) considering any statement offered in his defence,

deal with him in any manner that would be available to it had he been in contempt of the High Court.

Extension of Ombudsman's remit. 26.—(1) The Lord Chancellor may by regulation extend the jurisdiction of the Legal Services Ombudsman by providing for the provisions of sections 21 to 25 to have effect, with such modifications (if any) as he thinks fit, in relation to the investigation by the Ombudsman of allegations—

- (a) which relate to complaints of a prescribed kind concerned with the provision of probate services; and
- (b) which he would not otherwise be entitled to investigate.

(2) Without prejudice to the generality of the power given to the Lord Chancellor by subsection (1), the regulations may make provision for the investigation only of allegations relating to complaints—

- (a) made to prescribed bodies; or
- (b) with respect to prescribed categories of person.

General Directions of the Lord Chancellor

In exercise of the power conferred on him by paragraph 1 of Schedule 3 to the Courts and Legal Services Act 1990, the Lord Chancellor has given the following general directions concerning the discharge of the functions of the Legal Services Ombudsman:

1. In these directions, expressions have the same meaning as they have in sections 21 to 26, and in Schedule 3 to the Courts and Legal Services Act 1990.

2. Subject to the provisions of the Courts and Legal Services Act 1990, and to paragraph 3 below, every allegation which:

- (a) concerns the treatment of a complaint by the Law Society, the General Council of the Bar, or the Council for Licensed Conveyancers; and
- (b) is made within three months of the date on which the Law Society, the General Council of the Bar, or the Council for Licensed Conveyancers has notified the complainant of its decision on the complaint;

shall be examined by the Legal Services Ombudsman, and no other allegations shall be so examined.

3. In relation to complaints dealt with by the General Council of the Bar and the Council for Licensed Conveyancers, paragraph 2 shall apply only where the complainant was notified of the decision of the relevant body after 31 December 1990.

4. Section 22(6) of the Courts and Legal Services Act 1990 provides for the Ombudsman to investigate a case where a professional body has unreasonably failed to begin an investigation; to investigate a case which has not been completed in a reasonable time; and confers a general discretion to investigate a complaint even though it is under investigation by a professional body and would otherwise be excluded from his jurisdiction under section 22(5)(a) of the Act.

For the purposes of that subsection, a professional body may reasonably start an investigation within six weeks of receipt of a complaint, or complete within four months the investigation of an issue which does not fall to be determined by a tribunal listed in subsection (7) of section 22 or in an order made for the purposes of subsection (7).

5. These directions came into force on 1 January 1991.

Appendix D

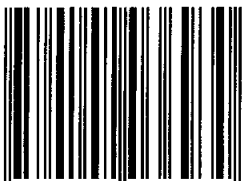
Staff List as at 31 March 1992

Michael Barnes	Legal Services Ombudsman
Kevin Fox	Secretary to the Office of the Legal Services Ombudsman
Nick O'Brien	Legal Adviser
Simon Entwisle	Senior Investigating Officer
Louise Bennett	Senior Investigating Officer (from 13.1.92)
Jon Manners	Senior Investigating Officer (from 13.1.92)
Steve Murray	Senior Investigating Officer (from 13.1.92)
Barbara FitzGerald	Investigating Officer
Ruth Garnett	Investigating Officer
Allan Beard	Investigating Officer (until 28.2.92)
Lynn Hunt	Investigating Officer (until 1.11.91)
Terry Duffy	Support Team Leader
Angela McDonald	Support Team
Beryl Shearn	Support Team
Corina Tynan	Personal Secretary
Belinda Crangle	Typist

In addition to the full-time staff of the Office a team of former senior members of the Lord Chancellor's Department were specially recruited to work at home to deal with the cases taken over from the Lay Observer. They were:

Norman Craig
John Ellis
Beverley Handcock
Ron Houlton
Ken MacDonald
Dennis Riley
David Wiseman

ISBN 0-10-203693-4



9 780102 036930

HMSO publications are available from:

HMSO Publications Centre

(Mail, fax and telephone orders only)

PO Box 276, London SW8 5DT

Telephone orders 071-873 9090

General enquiries 071-873 0011

(queuing system in operation for both numbers)

Fax orders 071-873 8200

HMSO Bookshops

49 High Holborn, London, WC1V 6HB

071-873 0011 Fax 071-873 8200 (Counter service only)

258 Broad Street, Birmingham, B1 2HE

021-643 3740 Fax 021-643 6510

Southey House, 33 Wine Street, Bristol, BS1 2BQ

(0272) 264306 Fax 0272 294515

9-21 Princess Street, Manchester, M60 8AS

061-834 7201 Fax 061-833 0634

16 Arthur Street, Belfast, BT1 4GD

(0232) 238451 Fax 0232 235401

71 Lothian Road, Edinburgh, EH3 9AZ

031-228 4181 Fax 031-229 2734

HMSO's Accredited Agents

(see Yellow Pages)

and through good booksellers