Courts and Legal Services Act 1990

Fourth Annual Report of the Legal Services Ombudsman 1994

Laid before Parliament by the Lord High Chancellor pursuant to paragraph 5(4) of Schedule 3 to the Courts and Legal Services Act 1990

Ordered by The House of Commons *to be printed*
13th June 1995

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

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Oxford Street
Manchester
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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.

Complainants must first make their complaint to the relevant professional body (the Solicitors Complaints Bureau of the Law Society, the General Council of the Bar or the Council for Licensed Conveyancers). If they are not satisfied with the way the professional body has dealt with their complaint, they may refer the matter to the Legal Services Ombudsman. The Ombudsman initially investigates the professional body's handling of the complaint, but may also investigate the matter to which the complaint relates.

The Ombudsman may recommend that compensation for loss, inconvenience or distress is paid to the complainant either by the lawyer complained about or by the professional body. He may also recommend that the professional body reconsiders the complaint or that it exercises its powers in relation to the lawyer complained about.

Failure to comply with a recommendation of the Ombudsman, and the reasons for that failure, must be publicised in accordance with procedures set out in Section 23 of the Act.

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1. Introduction

To: The Right Honourable The Lord Mackay of Clashfern, Lord High Chancellor of Great Britain.
I have the honour to make my Fourth Annual Report covering the year to 31 December 1994.

1.1 The main feature of the year to 31 December 1994 was an increase of 28% in the number of new complaints referred to my Office. During each of the previous three years the number of complaints referred had remained steady at around 1250, but during 1994 new referrals totalled 1598. This increase took the form of a sudden 'step change' at the beginning of the year which was maintained during each successive month.

1.2 In my Second Annual Report 1992 I drew attention in paragraph 3.6 to the fact that it had been the experience of other Ombudsmen in comparable fields such as banking and insurance that quite sharp increases in the workload took place after two or three years operation. That has now happened to this Office's workload and the upward trend shows every sign of continuing during 1995. I had hoped that it might be possible to plan for this eventuality in advance. In the event, the provision of an additional post for 1994/95 was held in abeyance pending a staff audit by officials in your Department which took place in September. I am currently engaged in discussions with your Department about the staff audit report.

1.3 An encouraging feature of the year was that, unlike 1993, there were no staff changes in the Office, and both the Investigating Team and the Support Team were able to take advantage of a period of consolidation which enabled us to achieve a significant increase in productivity. The total number of investigations completed and reports issued during 1994 was 839 compared with 580 in 1993 and 761 in 1992. This increase was the result not only of staff within the Office becoming more expert and efficient at their jobs, but also as a result of 'streaming' complaints so that the more straightforward ones could be dealt with quickly at an early date.

1.4 Notwithstanding this increase in productivity, we have had difficulty in meeting our corporate plan 'through-put' target for the number of cases to be dealt with within 6 months of receiving the professional body's file on the complaint. During the first half of 1994 we completed investigations within 6 months in 66% of the cases investigated which was very satisfactory, but this fell back to 56% for the second half of the year compared with the 65% target which had been set. The reason for this was that by the middle of the year the 28% increase in caseload was beginning to make itself felt and cases were having to wait longer before they could be investigated.

1.5 In a small office the steps which can be taken to increase productivity are strictly limited. A continuing rise in caseload is likely to face us with the unpalatable choice of either curtailing the extent of the investigations which we carry out or accepting that 'through-put' times will continue to lengthen. However, I am hopeful that the discussions with your officials about the staff audit, which I have referred to above, will enable us to resolve this problem satisfactorily.

1.6 In April 1994 my Office received a four day visit from researchers at Sheffield University and Sheffield Hallam University whose purpose was "to examine and evaluate the effectiveness of the Legal Services Ombudsman (LSO)". We gave them a free run of the Office (with the proviso that they were not allowed to take away or copy any material from case files) and made our staff available to them to answer questions and provide information on office proce-

dures. Their findings were published in the March 1995 issue of Modern Law Review (The Legal Services Ombudsman - Form versus Function? by Rhoda James and Mary Seneviratne). It was pleasing to note that their broad conclusion was that we had made an impressive job of bringing into being an effective and efficient operation within the powers available under the Act. However, they went on to say that, despite clear information in our literature, complainants probably expected us to deal with their original complaint in every case whereas in most cases our investigations are confined to the way in which the professional body has dealt with the complaint. They also questioned whether Parliament had given the Ombudsman adequate powers to supervise the professional bodies and suggested that the Legal Services Ombudsman should have enforcement powers in relation to the way the professional bodies operate.

1.7 In December, I and my Legal Adviser and the Secretary to my Office met your Advisory Committee on Legal Education and Conduct to discuss the standards of service and honesty of sole practitioner solicitors, and standards of service and conduct generally. This was the first occasion on which I had appeared before the full Committee and I greatly appreciated the opportunity to do so. My colleagues and I were able to inform the Committee that sole practitioners were under-represented compared to other firms in cases where I made recommendations designed to provide complainants with a remedy. There had, nevertheless, been a sharp increase in the number of such cases involving sole practitioners during 1994. However, I pointed out to the Committee that it was important to note that complaints where there was evidence of fraud and dishonesty only occasionally came my way, because they were normally intercepted at an earlier stage by the Law Society's emergency procedures or by the police.

1.8 Also in December I received a visit from my counterpart in Scotland, the Scottish Legal Services Ombudsman (SLSO) who had taken up his appointment earlier in the year. It was most useful to be able to compare notes and for my staff to meet the SLSO. It was agreed that arrangements would be made for his Administrator to visit us at a later date.

2. Summary

2.1 The total number of new complaints referred to my Office during 1994 was 1598, an increase of 28% compared with the 1235 complaints referred during 1993 (Appendix B, table 2). The 1994 figure represents about 8% of the total number of complaints made to the three professional bodies.

2.2 The number of reports on investigations issued during 1994 was 839 with a further 454 investigations pending or awaiting final report. Of these 1293 investigations, 1177 concerned complaints against solicitors, 112 complaints against barristers and 4 complaints against licensed conveyancers (Appendix B, tables 1 & 4).

2.3 The number of recommendations made under Section 23(2) of the Courts and Legal Services Act 1990 was 177, of which 60 were that the lawyer complained about should pay compensation, 49 that the professional body should pay compensation and 68 that the professional body should reconsider the complaint (Appendix B, table 3).

2.4 The 49 recommendations that the professional body should pay compensation were for amounts ranging between £50 and £500. Of the 60 recommendations that the lawyer should pay compensation, 35 were for amounts under £500, 15 were between £500 and £1,000, 5 between £1,000 and £2,000, 3 between £2,000 and £3,000 and 2 between £3,000 and £4,000. In one further case the amount of compensation recommended was £59,809 (paras 4.15 and 4.16).

2.5 In 95 cases, although no recommendation was made, a criticism was recorded of the way the professional body dealt with the case (Appendix B, table 3).

2.6 In 8 cases there was a failure by solicitors and a barrister to comply with a recommendation. Those concerned are duly named and listed in Appendix A. The professional bodies complied with all the recommendations that they pay compensation or reconsider a complaint.

2.7 During 1994 there was a noticeable improvement in the way in which the Solicitors Complaints Bureau's Primary Investigation Unit dealt with complaints (para 3.2).

2.8 Three aspects of solicitors' work give rise to particular concern: delay in the administration of estates, a failure on the part of some solicitors to discuss with clients whether the likely outcome of the matter in hand justifies the costs and risks involved, and a tendency in certain situations for solicitors to act where there is a serious risk of a conflict of interest (para 3.3 et seq).

2.9 The Solicitors (Non-Contentious Business) Remuneration Order 1994, which for the first time gives beneficiaries of estates the right to obtain a remuneration certificate where the only executors are solicitors, is to be welcomed as far as it goes (para 3.5).

2.10 The Law Society should introduce a conduct rule to the effect that solicitors must not act for a client in matrimonial matters if they are, or become, involved in a sexual relationship with the client (paras 3.14 to 3.16).

2.11 A report published by the National Consumer Council in December 1994 ("The Solicitors Complaints Bureau: a consumer view") recommended the replacement of the Bureau by an independent Legal Services Complaints Council. Although the report merits serious discussion, it would be premature to

consider abandoning self-regulation at the present time (paras 3.18 to 3.20 and 6.1 to 6.3).

2.12 The amount of compensation for poor service which the Solicitors Complaints Bureau can award should be increased, certainly to £2,000 and possibly to £5,000 (para 3.22).

2.13 The Solicitors Complaints Bureau needs stronger powers to deal with issues of professional misconduct. It should be able to impose fines on solicitors in cases where the misconduct in question is not serious enough to justify proceedings before the Solicitors Disciplinary Tribunal (paras 3.23 and 3.24).

2.14 The proposal by the Bar Council's Standards Review Body that a Barristers Complaints Bureau should be set up, with the power to reduce or waive barristers' fees and award compensation of up to £2,000, is to be warmly welcomed (paras 3.27 and 3.28).

2.15 Lack of sufficient "client care" remains a feature of a significant number of complaints about barristers referred to the Ombudsman during 1994. In particular, where distress or inconvenience was caused to lay clients by an avoidable last minute return of a brief or a double-booking, the Ombudsman has recommended that barristers pay compensation (paras 3.29 to 3.32, 4.3, 4.4 and Cases 1 and 2).

2.16 In December, the Ombudsman made a recommendation under Section 24 of the Act to the Council for Licensed Conveyancers about its arrangements for investigating complaints, in particular its use of its power to award compensation of up to £1,000 (paras 3.36 to 3.38).

2.17 The continuing increase in the number of complaints referred to the Ombudsman has serious implications for the work of the Office (paragraph 6.4).

3. The Professional Bodies

The Law Society and the Solicitors Complaints Bureau

3.1 In each of my last two Annual Reports I expressed certain criticisms of the way in which the Solicitors Complaints Bureau (SCB) carried out its initial screening of complaints. Up to the beginning of 1994 this was done by the Bureau's Diagnostic Unit which was then reorganised to become the Primary Investigation Unit (PIU). What had concerned me was the frustration which a number of complainants had had to endure when their letters to the Bureau were met with a series of standard responses, each accompanied by a 'Helpform' which they might already have completed and returned to the Bureau, or when they found that the Bureau were arranging local conciliation or referring the complaint back to their solicitors when what they really wanted was a formal investigation and disciplinary action.

3.2 I am glad to be able to report that during 1994 there was a noticeable improvement in the way in which the PIU has dealt with complaints. In saying that, I have to remember that I am only seeing a small proportion (under 10%) of the Bureau's caseload. Nevertheless, with approximately 19,500 complaints a year being made to the Bureau, that is a large enough sample to be able to see what is going on. Complaints are now being dealt with by the PIU within a shorter period of time and I understand that the Bureau have recently introduced a 3 months deadline for the PIU to deal with a complaint or else pass it on for further investigation within the Bureau. There also appears to be less frustration on the part of complainants arising from complaints being wrongly diagnosed or mis-routed. The number of cases investigated by my Office where poor service is given as a reason for the complaint declined slightly from 49% in 1993 to 45% in 1994. It would be tempting to interpret this as a sign that solicitors' standards of service are improving, and that may to some extent be the case, but it is probably also the result of the Bureau dealing more effectively with such complaints and therefore fewer of them being referred on to me.

3.3 There are, however, certain aspects of solicitors' work which continue to cause me concern and on which I consider that the Bureau ought to be able to take more effective action. I would like to highlight three areas of complaint in particular: complaints by beneficiaries that their legitimate interests have been neglected by solicitors administering estates; complaints by those involved in litigation that they have not been properly advised about the costs and risks involved in relation to the likely outcome; and complaints about the personal conduct of solicitors in situations giving rise to a conflict of interest.

3.4 The difficulties encountered by beneficiaries, who seek to complain about solicitors administering estates, arise principally from the fact that they do not have status as clients of those solicitors (assuming, that is, that they are not also executors) and therefore the solicitors are in the first instance accountable to the executors who may not share the beneficiaries' sense of urgency. But that should not mean that solicitors are free of any obligation towards them, and in each of my Annual Reports since 1991 I have urged the Law Society and the Bureau to find ways of taking more robust action against that 'hardcore' minority of solicitors whose attitude towards beneficiaries varies between total disregard and outright hostility.

3.5 A minor breakthrough was achieved in November 1994 with the coming into effect of the Solicitors (Non-Contentious Business) Remuneration Order 1994 which replaced the 1972 Order and for the first time gave beneficiaries the right to obtain a remuneration certificate where the only executors were solicitors. I would like to have seen that right extended to all beneficiaries, indeed to paying third parties in all situations, but at least the new Order will provide a safeguard against overcharging for the administration of estates in cases where it is most likely to go unchecked.

3.6 The main problem faced by beneficiaries, however, is delay and lack of information about how the administration of the estate is progressing. Once the estate has been wound up the Bureau can send for the solicitors' files and investigate possible inadequate professional service, but the Bureau appears to be virtually powerless to take effective action during the administration of an estate apart from trying to chivvy or cajole the solicitors into speeding things up. It is true that as a last resort the Law Society can use its intervention powers under paragraph 3(a) of Schedule 1 to the Solicitors Act 1974 to obtain possession of the solicitors' files and appoint other solicitors to complete the administration, but that is something of a sledgehammer to crack a nut and likely to lead to even further delay.

3.7 In one case where the administration of an estate had been going on for five years, a beneficiary had cause to refer the Bureau's handling of her complaints to my Office on two separate occasions. After failing to obtain copies of various documents from the solicitors, the Bureau wrote threatening to refer the matter to their Conduct Unit if the solicitors did not reply. They subsequently wrote asking the solicitors to submit their files. The solicitors replied that they were prepared to forward their files to the Bureau but "would like a little time for them to be gift-wrapped." They then sent some of the documents but stated that they were not able to let the Bureau have draft final accounts since the figures would not be known until costs had been agreed and they were in a position to cash the outstanding assets. Fifteen months previously the selfsame solicitors had said that the final accounts would be available by Christmas. They did not say which Christmas.

3.8 As a layman, I must say that I find it surprising that solicitors administering estates do not have a greater obligation towards beneficiaries than they appear to have. Beneficiaries are, after all, the heirs and successors in many cases of testators whose wills were drawn up by the same firms that were subsequently instructed to administer the estate. The fact that the solicitors in the case I have described felt able to make the facetious comment to the Bureau about having the files "gift-wrapped", when the Bureau was threatening them with referral to the Conduct Unit, illustrates only too starkly the weakness of the Bureau's position. The Bureau clearly needs stronger powers to deal with situations of this sort and I shall have more to say about that later.

3.9 The second area which I referred to in paragraph 3.3 concerns complaints by those involved in litigation that they have not been properly advised about the costs and risks involved in relation to the likely outcome. I find that such complaints usually arise in the context of disputed debts. In one case an electrician was attempting to recover an unpaid bill of £1,500. He was told by his solicitors that his costs might be similar to the amount he was trying to recover, but the electrician considered that the case was worth that even if he failed to recover his costs, and he instructed the solicitors to proceed. Three years later the solicitors advised him to withdraw from the case because the defendants were unlikely to be in a position to pay damages. He was then told that the costs which he had incurred amounted to nearly £4,000. He complained to the Bureau that he had never been informed that his costs had risen to that level and that he had made it clear that £1,500 was the maximum he was prepared to spend. The Bureau reduced the total amount which the electrician had to pay to approximately £2,000, but I considered that this was not sufficient remedy and recommended further compensation to bring the total down to the £1,500 which the electrician had been prepared to risk.

3.10 In another case a builder was attempting to recover unpaid charges of £9,800. He instructed solicitors to issue proceedings and subsequently complained to the Bureau about the level of the solicitors' fees and the fact that they had commissioned an expert opinion at a cost of over £5,000 without consulting him. The Bureau were unable to investigate while the litigation was proceeding. Two years later the builder contacted the Bureau again complaining that he had lost his case and had had to pay the defendant's costs of £10,000 in addition to

his own solicitors' costs and disbursements of £16,000. Another complaint concerned litigation against a firm of cleaners who were alleged to have damaged furniture. When costs of approximately £300 had been incurred an attendance note recorded that the solicitors were "certainly not to spend a lot more money at this stage". Six months later costs had doubled to over £600. A further attendance note records "agreed to continue proceedings - costs incurred to date substantial, costs of continuing not so much," but despite that assurance the solicitors' costs doubled again, and the final bill was over £1,400.

3.11 In both the cases described in the previous paragraph the Bureau decided to take no action on the grounds that adequate information had been given about costs. I took a different view and recommended compensation in both cases. It seemed to me that in neither case had the letter - and certainly not the spirit - of the Law Society's written professional standards been complied with. These standards, which relate to the information to be given to clients about costs, were first drawn up in 1986 and revised in 1991. They are not mandatory, but are rather a statement of good practice in relation to the information on costs and risks which should be given to clients. In 1993 the Law Society decided to apply the standards more rigorously in the sense that a failure to comply would be regarded as a prima facie case of inadequate professional service, thus opening the door to a reduction in the bill or compensation. However, in any given case, there is still scope for an element of subjective judgement as to whether the standards have been complied with. It is in making that judgement that I sometimes find myself taking a different view from the Bureau.

3.12 The most important provisions of the written professional standards are that, on taking instructions, solicitors should give clients the best information possible about likely costs; that privately paying clients should be informed every six months of the approximate amount of costs to date; and that in all matters solicitors should consider with clients whether the likely outcome will justify the expense or risk involved. The fact that most solicitors charge on an hourly rate basis (an open-ended system lacking any in-built incentive to deal with work expeditiously) means that clients can all too easily run up far more costs than they realise. Full compliance by solicitors with the written professional standards is therefore an absolutely essential safeguard for clients, and very much in the interests of solicitors themselves if they are to avoid complaints about costs.

3.13 At a conference organised by Manchester University in May 1994, a speaker from the Law Society said that the Ombudsman needed to realise how many hundreds of transactions solicitors had to handle at any one time in order to make any kind of living in the High Street. That may be so, but then it is all the more reason for me to be on the lookout for lack of candour in discussing costs and risks.

3.14 The last of the three areas of complaint to which I want to draw attention is conflict of interest, particularly when it involves a close business or personal relationship with the client. The number of complaints of this type which are referred to me is comparatively small, but when they arise they raise important issues in relation to the professional conduct of solicitors. The cases which tend to attract the most attention are those where a personal relationship has developed between solicitor and client, usually in the context of matrimonial cases.

3.15 Principle 15.05 of the Law Society's Guide to the Professional Conduct of Solicitors states, "A solicitor must not act where his or her own interests conflict with the interests of a client or potential client". In the commentary to the 1993 edition of the Guide a reference to sexual relationships between solicitors and clients is introduced for the first time. Paragraph 7 of the commentary on Principle 15.05 states, " ... a solicitor who becomes involved in a sexual relationship with a client should consider whether this might place his or her interests in conflict with those of the client or otherwise impair the solicitor's ability to act in the best interests of the client". In my view the Law Society should take a stronger line on this issue, certainly as far as matrimonial cases are concerned,

and not merely leave it to a solicitor in such a situation "to consider" whether he or she should continue to act.

3.16 In matrimonial cases the client may already be in a state of some emotional turmoil, and is likely to become further confused as to his or her real feelings and long term interests, if a personal relationship develops with the solicitor. The new relationship may also prevent a reconciliation which might otherwise have taken place. The solicitor is likely to experience a conflict of interest if he or she hopes that the personal relationship with the client will prove to be a lasting one, or if the solicitor is likely to benefit from any division of the matrimonial assets. In my view there needs to be a clear statement of principle from the Law Society that solicitors must not act for a client in matrimonial cases if they are, or become, involved in a sexual relationship with that client. The position of the firm in such cases is less clear-cut. In a large firm the matter can be "distanced" from the individual concerned by being transferred to another member of the firm. It may still, however, give rise to difficulties which place colleagues in an uncomfortable position from a professional point of view. This, however, could be covered by general guidance from the Law Society to the effect that careful consideration should be given by the firm as to whether it is appropriate for the firm to continue to act, should the client request that. I have put my views on this issue to the Law Society, who have indicated that they are willing to issue further guidance of a general nature. Although that is welcome as far as it goes, it falls short of the mandatory rule which I believe is needed in respect of matrimonial cases, in order to prohibit solicitors from acting for a client with whom they have become involved in a sexual relationship.

3.17 A not dissimilar conflict of interest can arise in the business field when a company solicitor is retained by certain of the directors to look after their personal interest in the company, while continuing to act as company solicitor. One such case which was referred to me resulted in two High Court actions between rival directors on the board of the company. The Bureau decided that the solicitor had not acted improperly because he had not been in possession of "relevant information" which would have given rise to a conflict of interest. Although that may have been correct, I took the view that it was highly unsatisfactory that at an earlier stage, when agreements between the directors were being drawn up, unbeknown to the directors who subsequently complained, the company solicitor had also been retained to look after the personal interests of the directors who became their opponents in litigation. Conflicts of interest can arise in a variety of other contexts as well: conveyancing, for example. When clients become aware that their solicitor may have conflicting interests it is extremely unsettling for them. In my view, the Law Society ought to enforce the relevant rules of professional conduct more rigorously than they appear to have done in a number of cases referred to me.

3.18 In December the National Consumer Council (NCC) published a report entitled "The Solicitors Complaints Bureau: a consumer view". The report proposed that the Bureau should be abolished and that the Law Society's complaints-handling function should be transferred to an independent legal services complaints council which would employ an ombudsman. In effect, the NCC was advocating a switch to a complaints-handling system similar to those which exist for insurance companies and banks. Individual solicitors' firms would keep their in-house complaints-handling procedures, but complainants could then go straight to an ombudsman who would be accountable to the new council.

3.19 The NCC based its proposal on claims that its research showed that the Bureau was not seen as independent and favoured solicitors. In fact, the research on which the report was based was somewhat limited in scope consisting of two questions on a national opinion survey, an analysis of 96 questionnaires and case papers sent in by complainants who responded to a letter from the NCC in local newspapers, and a detailed analysis of the Bureau's files on only 15 cases. My Office investigates the Bureau's handling of hundreds of complaints every year and it is certainly not my view that the Bureau favours solicitors in the sense that

it is biased towards their side of the argument. The Bureau genuinely sets out to investigate complaints impartially.

3.20 It is, however, an inevitable consequence of self-regulation that some complainants are going to feel that the Bureau is paying more attention to what solicitors say than to what they say. It is precisely because of that that my Office exists. Only about 10% of the complaints made to the Bureau are referred on to me, and in my view we need much more information about how well the system is operating before deciding to abandon self-regulation by the profession. Nevertheless, the NCC's proposal is an important one, if somewhat premature, and certainly merits serious discussion.

3.21 A more comprehensive complainant satisfaction research survey was due to be carried out by the Research and Policy Planning Unit of the Law Society early in 1995. I understand that this survey covers over 2000 cases (a complete month's caseload) and includes 500 complainants who had been referred by the Bureau back to their solicitors under the Practice Rule 15 procedure and 1,500 complainants whose complaints had been dealt with by the Bureau itself. This should provide a firmer basis on which to assess the extent to which those who complain to the Bureau are satisfied with the way their complaints are handled. In interpreting the results, however, it will be important to remember that no complaints system can deliver 100% satisfaction. Many complainants, perhaps even a majority, are likely to remain to some extent dissatisfied.

3.22 The NCC suggested in their report that the new complaints council, which they were proposing should be set up, should be able to award compensation of up to £5,000. The Bureau's present limit is set in paragraph 3(1) of Schedule 15 to the Courts & Legal Services Act 1990 at £1,000. There is a strong case in my view for increasing the amount of compensation which the Bureau may award, certainly to £2,000 and possibly to £5,000. As well as directing solicitors to pay compensation, the Bureau can also order solicitors to reduce or waive their fees. Both of these remedies, however, are only available to the Bureau in the context of inadequate professional service. In my opinion, the sanctions available to the Bureau in relation to professional misconduct also need strengthening.

3.23 When serious breaches of the principles and rules of professional conduct occur, the Bureau can of course initiate disciplinary proceedings before the Solicitors Disciplinary Tribunal. The Tribunal can strike-off or suspend the solicitor and impose fines of up to £5,000. But if the breach of the professional conduct rules does not warrant proceedings before the Tribunal, the Bureau is then left with a range of very low level sanctions indeed. Solicitors' conduct can be "deprecated" or they can receive a rebuke, a severe rebuke, or a Chairman's rebuke. The last of these necessitates solicitors presenting themselves in person in front of the Chairman of the Adjudication and Appeals Committee, which can be something of an expense and inconvenience if the solicitor has to travel a long way. The other rebukes really amount to very little except perhaps injured professional pride.

3.24 I would like to propose that the Bureau should have the power to fine solicitors for professional misconduct up to, say, £2,500. These fines would be intended to penalise the solicitor rather than compensate the complainant and the proceeds would therefore go into Law Society funds. The imposition of fines may be something for which the Law Society already has the necessary powers under its Royal Charter but, if not, it should seek to acquire them. I make this proposal now because I believe it to be an entirely logical development and because it is needed to fill a gap in the range of disciplinary powers available to the Bureau.

3.25 Finally, in relation to the Bureau, I would like to say something about my use of the power to recommend that they reconsider a complaint under Section 23(2)(a) of the Act. I use this power when I consider that an investigation by the Bureau has been incomplete and can more appropriately be completed by the

Bureau rather than by me using my power under Section 22(2) to investigate the matter myself. I also recommend reconsideration when I consider that there is a case for imposing a disciplinary sanction on a solicitor, because I do not myself have any disciplinary powers.

3.26 During the four years since my Office was first established I have recommended that the Bureau reconsider 225 complaints. By the end of 1994 we had the results of their reconsideration in 155 of those cases, 59 of which were favourable to the complainant in one way or another, with 31 taking the form of monetary benefit either in terms of compensation or a reduction in fees. I am grateful to the Bureau for the care with which they reconsider complaints when I recommend that they do so. As the figures show, the process of reconsideration often results in a worthwhile benefit for complainants.

The General Council of the Bar

3.27 In my Third Annual Report 1993 I referred to the fact that I had given evidence to the Standards Review Body which the Bar Council set up at the end of 1993. My principal concern has been that the Bar Council should extend its complaints system, so that it would be possible for their Professional Conduct Committee (PCC) to award complainants compensation for poor service as well as taking disciplinary action in cases where there had been professional misconduct. Only a small proportion of the complaints made to the Bar Council about barristers are found to have involved professional misconduct, but in a significant number of complaints something may have gone wrong which, while not amounting to professional misconduct, nevertheless is a cause for concern. Hitherto, the PCC have had no remedy available to them which would have benefited the complainant in such cases and have merely had to content themselves with advising the barrister about his or her future conduct.

3.28 I was very glad, therefore, when the Review Body published their report in September, to see that they were recommending that a Barristers Complaints Bureau should be established to which all complaints would be directed in the first instance. The new Bureau would have the power to award compensation for poor service of up to £2,000 and also to direct that fees be reduced, foregone or repaid. Cases raising issues of misconduct would be referred by the Bureau to be dealt with through the existing disciplinary procedures, and the bodies operating those procedures would have the same powers to award compensation as the Bureau, both in respect of misconduct and poor service falling short of misconduct. I hope that the Bar Council will agree to adopt the Review Body's proposals for an enhanced complaints system and I understand that, if they do, the new arrangements could well be in place early in 1996.

3.29 In the meantime, I am not of course precluded from recommending compensation for poor service myself in cases where I consider that it has led to loss, inconvenience or distress on the part of the complainant. In my 1993 Annual Report I drew attention to the responsibilities which barristers have to their lay clients in terms of "client care", and I remarked that complaints about lack of care often involved young and comparatively inexperienced barristers. The same sort of complaints continued to be referred to me during 1994 and, where I considered that lack of care had caused distress or inconvenience to the lay client, I had no hesitation in recommending that compensation should be paid.

3.30 In one case a young barrister delayed in preparing for a case to be heard on a Monday until the weekend immediately before. On arrival at court the lay client was somewhat shocked to be told by the barrister that certain calculations on which he had been relying were incorrect, that he was unlikely to win the case and that the judge who would hear the case was unsympathetic towards female barristers. The barrister subsequently signed a consent order without showing it to her client. The PCC decided that her actions did not amount to professional misconduct, but that she should be advised as to her future conduct in the light of the issues raised by the complaint. When the complaint was referred to me, I

decided that the client had suffered distress as a result of the barrister's lack of care and that she should pay him £300 compensation.

3.31 The last minute return of briefs continue to be a source of inconvenience and distress to lay clients. I was glad to see that the Standards Review Body recommended that written explanations for the return of a brief should be given if requested by the lay or professional client, and that barristers should be obliged to make themselves available to those taking on the brief in order to provide information and the benefits of any research that they may have undertaken. I accept that in many cases it is the court system which is to blame, but in cases where it seems to me to be clear that barristers have accepted briefs where there was an obvious risk that they would be unable to fulfil their commitments, I will recommend that compensation be paid if the result is that the lay client suffers inconvenience or distress.

3.32 This was the case in relation to a complaint about a brief returned at 3pm on the day before a civil litigation matter came to trial. The lay clients had been advised favourably by the barrister who returned the brief. They were therefore somewhat distressed to find that on the day of the trial the substituted barrister required time to read through the papers before seeing them, notwithstanding the fact that he claimed to have spent three hours preparing the case the evening before. The reason given for returning the brief was that the first barrister was "part-heard in a serious criminal trial" which had commenced the previous day and was to continue on the day the barrister was due to appear for the complainants. I took the view that in such circumstances there must have been a clear risk that the barrister would be unable to honour his second commitment. The barrister himself appeared to be aware of that risk because he explained that he had "not retained the papers (for the civil case) at home but had left them in chambers in case I went part-heard". He claimed that the fact that he had to return the brief was an "inevitable and necessary consequence of the structure of the legal profession." I was not prepared to accept that, because it seemed clear to me that it was also an obvious case of over-booking. I therefore recommended that the barrister pay compensation of £250 for the distress and inconvenience caused to the lay clients. This case is also discussed in the Casework Review section (Case 1).

3.33 The extent to which I should have regard to the "inevitable and necessary consequences of the structure of the legal profession" is an important question for a lay Ombudsman like myself. Are there certain things about the Bar and the way the courts operate which really are immutable and therefore must be regarded as reasonable explanations for what in another professional context would clearly amount to poor service? Paradoxically, the Bar is both changing and not changing. On one level major changes are taking place: some, like extended rights of audience, the Bar has had to accept; others, like the enhanced complaints system it is willingly embracing. The need for more direct access for certain categories of clients is being debated, as is the possibility of barristers forming partnerships. But, curiously, despite what must now be a very significant number of barristers who did not come to the Bar from the traditional training grounds of public school and Oxbridge, and the growing number of able young women at the Bar, the outsider is struck by the extent to which the ethos of the Bar remains largely what it always was.

3.34 It is, of course, a tradition that has great strengths, which has contributed not only to the development of the British legal system, but to Parliament and government, and indeed the well being of the nation itself. But it has its downside: for example, the sometimes unguarded feeling of belonging to an elite which can manifest itself in lack of client care; and the discrimination apparently encountered by 70% of the women interviewed in a recent survey of members of the Junior Bar. (Starting Practice: Work and Training at the Junior Bar - Shapland & Sharsby, Institute for the Study of the Legal Profession, University of Sheffield).

3.35 Those who lead the Bar clearly understand the need for it to change if it is to survive as a distinct branch of the legal profession. My only legitimate concern is how the Bar Council deals with complaints. As I have indicated, I warmly welcome and applaud the willingness of the Bar to bring into being a modern, user-friendly complaints system. I merely refer to the wider context because it is impossible to be dealing regularly with complaints about barristers, without being aware of the nature of the environment in which those complaints arise.

The Council for Licensed Conveyancers

3.36 As in the previous three years, the number of complaints referred to me during 1994 about licensed conveyancers was very small indeed. Only two formal investigations were carried out, one of which resulted in a recommendation that both the conveyancer and the Council should pay compensation to the complainant (see case 12). I did, however, have the opportunity during the year to consider the Council's procedures in more detail. As a result of this consideration, I decided in December to make a formal recommendation to the Council, under section 24 of the Act, about its arrangements for investigating complaints.

3.37 My recommendation covered three subjects: information given to complainants about the licensed conveyancer's response to the complaint; information given to the complainants about any report on the complaint which may have been prepared by the Director in the course of the investigation; and directions by the Council that a licensed conveyancer should pay compensation. My concern about information given to complainants was very similar to that which I expressed in my First Annual Report 1991 in connection with the Bar Council. I considered that complainants must be given the opportunity to comment on the explanation given by the conveyancer in case they are in a position to rebut or contradict something that the conveyancer has said. Similarly, natural justice demands that the complainant should have the opportunity to comment on or challenge anything in the Director's report on the complaint before it goes to the Committee for adjudication. On the first point I was glad to be assured by the Council that it was already their practice to obtain the complainant's comments on the conveyancer's response. On the second point, regarding the Director's report, the Council have agreed to follow my recommendation, and I welcome that.

3.38 On the question of compensation, which was my third point, I had become concerned that the Council was referring complaints involving negligence to their insurers, even though the loss might be less than the £1000 limit up to which the Council can award compensation for inadequate professional service. The distinction between negligence and inadequate professional service is inevitably somewhat subjective where low levels of loss are involved, and I have been at pains to persuade the professional bodies to deal with minor negligence and inadequate professional service without attempting to make any distinction between them. However, in the case of licensed conveyancers the position appears to be complicated by the fact that, unlike the Law Society, the Council does not have its own insurance scheme comparable to the Solicitors Indemnity Fund. It appears that the Council's insurers consider that a licensed conveyancer's insurance position might be prejudiced by any prior finding by the Council of inadequate professional service leading to an award of compensation. If, on the other hand, a negligence claim is rejected by the insurers, then they are content that the matter can be referred back to the Council for a possible finding of inadequate professional service. In my view, this arrangement could work against the interests of the complainants because of the longer time needed to settle negligence claims. A meeting is therefore being arranged between my Office, the Council and its insurers to discuss the matter in more detail.

Case 1

Mr & Mrs L were involved in a claim worth about £9,000 against a firm of builders arising from fire damage repair work which had not been completed to their satisfaction. Mr S, a barrister, who had advised in conference, was instructed to represent them at trial. When they arrived at court on the morning of the trial, Mr & Mrs L discovered that they were in fact to be represented by Mr H, who had received the brief the night before. Mr H proceeded to negotiate a settlement on the basis that each side would withdraw their respective claim and counterclaim, with no order for costs. The Professional Conduct Committee (PCC) of the Bar Council treated Mr & Mrs L's complaints as being duly made against both Mr S and Mr H. On conclusion of their investigation, they decided that the complaints against both barristers should be dismissed: Mr H had acted at all times in accordance with the rules and procedures of the courts, and Mr S had acted throughout in the best interests of Mr & Mrs L and in accordance with the standards expected of a member of the Bar.

The Ombudsman disagreed with the PCC's decision in respect of Mr S. It emerged that Mr S had been booked for a criminal trial the day before, which had continued part-heard the next day (ie the day of Mr & Mrs L's trial). Although the late return of the brief had not been in breach of the Bar's Code and so to that extent Mr S had not been guilty of professional misconduct, the Ombudsman considered that Mr & Mrs L were left with the reasonable belief that the conduct of their case had been prejudiced, especially when a claim which had been supported by Mr S was settled on unsatisfactory terms at court by Mr H, who had only been introduced to the proceedings the night before. The Ombudsman concluded that Mr S had to accept responsibility for this sequence of events which had, in his view, caused Mr & Mrs L to suffer distress and inconvenience as a result of their reasonable belief that the late transfer had prejudiced their claims. He therefore recommended that Mr S pay them £250 compensation.

Case 2

Ms S complained to the Bar Council about the way her barrister, Miss G, had represented her at a contact hearing in respect of her son. Ms S was particularly aggrieved that Miss G had allowed herself to be booked to do another hearing in the same court building that morning and gave the impression that she was too rushed to give her full attention to Ms S's case and in particular to an affidavit which had been served by her husband only the night before. The Professional Conduct Committee (PCC) of the Bar Council did not consider that Miss G had been at fault in her handling of the case. There had, they thought, been time to consider whether an adjournment was necessary because of the late service of the affidavit and there was no reason to believe that Ms S had been disadvantaged in any way.

The Ombudsman accepted that the outcome of Ms S's case had probably not been adversely affected. He was, however, more concerned than the PCC with Ms S's perception of what had happened. Ms S was very clearly left with the impression that because Miss G had allowed herself to be double-booked she was, despite her best endeavours, too hard-pressed to take specific instructions on a late affidavit. The Ombudsman accepted that such an omission may well have been immaterial, in the sense that it may not have directly affected the outcome of the hearing. He considered, however, that it was perfectly understandable that a client would in such circumstances, especially in the context of emotionally charged proceedings, be left with a feeling of disquiet. The Ombudsman therefore concluded that if a barrister submitted, however reluctantly, to double booking by her clerk, she would have to accept personal responsibility for the consequences arising from her inability to devote to one or other of her clients that level of attention which they quite legitimately expected. In this case, the Ombudsman was satisfied that the distress that Ms S was already suffering by virtue of the nature of the proceedings themselves had been compounded by Miss G's conduct. He therefore recommended that Miss G pay Ms S £150 compensation.

4. Casework Review: Complaints and Remedies

4.1 This section should be read alongside the case studies on the facing pages. The cases chosen here are not, for the most part, typical of the majority. As in previous years, most complaints are likely to be concerned with delay and poor communication. They will probably arise from probate, conveyancing or matrimonial work. They may not lead to a recommendation, but, if they do, the recommendation will probably be that the lawyer concerned or the professional body pay compensation of less than £500. Since this pattern is now well established and has been described in previous Annual Reports, it does not require further exploration here. The cases chosen here constitute more deliberate attempts to check bad practice and encourage good.

Late returns and double-booking: setting the standards

4.2 I will start with the Bar. As I have already mentioned, the most significant development in 1994 was the report of the Bar Standards Review Body. Apart from the commitment to create a comprehensive complaints handling system, the most welcome sign was the willingness to address the problem of late returns. The late return of a brief is commonly regarded as an inevitable by-product of the way our court system operates and one, at least in criminal cases, which could become more, rather than less, prevalent with the introduction of compulsory plea and directions hearings. If that is so, the approach I have taken to late returns and double-booking deserves attention.

4.3 The cases of Mr & Mrs L (Case 1) and Ms S (Case 2) are examples. In both, the barristers denied fault, thought that no disadvantage had been caused to their clients, and believed that their conduct was in accordance with normal practice at the Bar. In both, the Bar Council agreed that there had been no breach of the Bar's Code. In the case of late returns, the Code requires [paragraph 506(d)] that a barrister must not return a brief in such circumstances that the client may be unable to find other legal assistance in time to prevent prejudice being suffered by the client. In the first case, the barrister returning the brief convinced the Bar Council that no such prejudice had been suffered: his replacement, Mr H, still had sufficient time to prepare for a hearing of this sort and, whatever misgivings Mr & Mrs L may have had, they were simply mistaken in their belief that the late return had contributed to what they regarded as an unsatisfactory outcome. On double-booking, the Code provides [paragraph 501(b)] that barristers must not accept a brief if, having regard to their other professional commitments, they will be unable to do, or will not have adequate time and opportunity to prepare, that which they are required to do. In the second case, the barrister, Miss G, was quite clear that her preparation and conduct of Ms S's case had not been adversely affected by her other commitment on the morning of the hearing. Again, the Bar Council concluded that she had not been at fault.

4.4 My approach was different. I looked beyond the strict letter of the Code to what I regard as the standards of service which must, in my view, go hand in hand with daily practice at the Bar. Such standards must take account of the legitimate expectations of lay clients: that the barrister who is instructed at the outset and has advised in conference will conduct the relevant hearing, and that the barrister who conducts the hearing will be able to give his or her undivided attention to that particular case. If those standards are not met, a client is often left with the quite reasonable belief that the outcome of the case has been adversely affected. In neither of these cases did I regard it as proven that material disadvantage had in fact been caused. Nevertheless, I could well understand why the complainant had held such a belief, in my view, not unreasonably. Furthermore, I had no doubt that that reasonable belief had been a source of dis-

Case 3

Mr P, the landlord of bedsit accommodation on the south coast, instructed Messrs B to commence possession proceedings against one of his tenants who, in the event, defended the proceedings and brought a counterclaim against Mr P. Mr P heard nothing further from Messrs B until they eventually informed him that they had settled the claim at court by agreeing that Mr P would pay the tenant £250 damages plus costs. Mr P was subsequently informed by the court that those costs were in the sum of £2,042, which he duly paid in order to avoid further enforcement proceedings. Mr P complained that he had had no prior knowledge of the hearing and had not authorised settlement on the terms agreed. Although the Bureau had on their file various papers supplied by Mr P, they considered that in the absence of the solicitors' full file of papers, which had allegedly been lost, they could not investigate Mr P's complaints.

The Ombudsman considered that the Bureau had been far too reticent. From the papers available to them it was possible to piece together a clear picture of what had happened, and a quite damning picture at that. Judgement had, in fact, been entered on the counterclaim because of Messrs B's repeated failure to comply with an order for further and better particulars. Mr P's claim was as a result struck out, leaving him to pay by agreement the defendant's damages of £250 and his costs of £2,042. Mr P had not been informed of this sequence of events, nor was he later told by Messrs B that, although they had used a sum of £250 paid to them on account of costs to discharge Mr P's liability for damages, the defendant had served proceedings on them and obtained judgement against Mr P for the outstanding costs which remained unpaid. It was only when he received an order requiring him to attend court for oral examination in respect of the judgement debt that Mr P began to understand the predicament which he faced. The Ombudsman therefore concluded that Messrs B should pay Mr P compensation of £1,000 for the significant distress and inconvenience which they had caused him, in addition to a further sum of £2,292 representing the loss to him in damages and costs incurred by the solicitors' inertia (total compensation £3,292).

Case 4

Mrs H, a sole practitioner working from home, acted for Mr & Mrs K in a domestic conveyancing transaction. Mr & Mrs K's costs were to be paid by their employers. Those costs came to £2,760 for the sale, and £2,340 for the purchase. The employer refused to pay, on the basis that the costs were not reasonable. Mr & Mrs K encountered opposition from Mrs H when they requested a remuneration certificate, and initially complained to the Bureau about that. The Bureau's investigation, which took over two years, focussed on the issue of whether Mrs H had been guilty of misconduct in failing to obtain a remuneration certificate. The Bureau's Conduct Committee eventually decided that she had not because Mr & Mrs K had apparently agreed amended bills and had accepted without adverse comment a cheque in repayment of the balance refundable. Mr & Mrs K did not accept that they had accepted the refund in final settlement and were still badly out of pocket for fees which had been deducted from the completion monies without agreement.

The Ombudsman considered that the real point at issue in this case was whether Mrs H had taken advantage of the fact that Mr & Mrs K's domestic conveyancing was to be paid for by their employer and had imposed charges which would not have been made against clients funding their own conveyancing. It seemed therefore that the Bureau's investigation had been too narrowly focussed. Mrs H had written to Mr & Mrs K at one stage saying that she had been told that the going rate for "commercial payers" was 2 percent. It seemed clear therefore that she regarded the employer's involvement as justification for a large bill. Since the employer had quite understandably refused to pay and since the costs had been deducted directly from the completion monies, Mr & Mrs K were significantly out of pocket. Once allowance had been made for a partial reduction in charges by Mrs H and part payment by the employer, the Ombudsman calculated that Mr & Mrs K had still lost £2,185. He therefore recommended that Mrs H pay compensation in that sum for the loss incurred, together with a further £350 for the inconvenience which had been caused. He also recommended that the Bureau reconsider the complaint with a view to deciding whether Mrs H had been guilty of misconduct in the way in which she had handled the conveyancing costs in this case.

tress. In the first case, I took the view that the barrister should have been aware of the fact that there was a serious risk that he would not be able to appear in the civil case and should not have left the return of the brief until the last minute. Similarly, in the second case the barrister should have realised that it was extremely important to the lay client that there was time to discuss her husband's affidavit before going into court. It was on that basis that I recommended compensation. In doing so, I was imposing a standard of service and of liability for a breach of that standard which goes beyond the present requirements of the Bar's purely disciplinary Code. Within the context of this Ombudsman scheme, individual barristers must on occasion pay the price of working within a creaking system.

Missing the point: form or substance?

4.5 I will now turn to three examples of complaints about solicitors. They are the cases of Mr P (Case 3), Mr & Mrs K (Case 4), and Mr H (Case 5). Each discloses what I regard as unnecessary scrupulousness on the part of the Solicitors Complaints Bureau in regard to form rather than substance.

4.6 The case of Mr P is an example of the Bureau's concern with formal propriety (the availability of a solicitor's original file in its entirety) denying the complainant a remedy, or for that matter a proper investigation at all. It must have sounded to the Bureau at the outset as though something had gone wrong. Mr P had instructed his solicitors to evict a tenant from one of his bed-sits in a south coast resort. Twelve months later Mr P found himself, without prior notice, on the receiving end of a court order requiring him to pay damages to the tenant of £250, and in addition over £2,000 of the tenant's costs. Mr P supported his complaint with various items of correspondence, including attendance notes from the solicitors' file: embarrassing and conclusive evidence of fault, or so it seemed. It was difficult to see how Mr P's complaint that he had been let down by his solicitors could fail to succeed. The solicitors' complete file was however missing, lost by Mr P (said the solicitors) or by the solicitors (said Mr P). In its absence, the Bureau took the view that the picture painted by Mr P and the copy extracts from the file which he had retained could not be verified - a sound objection in an ideal world, but the world of complaints handling is far from ideal. The evidence against the solicitors was about as convincing as it ever gets. "We have evidently made a pig's breakfast of this whole matter", conceded one of the available file notes. That was putting it mildly from Mr P's point of view. True, the Bureau could not have awarded compensation of over £1,000 in any event. But that was not the reason given for their reticence on this occasion. The preoccupation with form over substance had apparently won the day. The solicitors, duly paid the £3,292 compensation which I had recommended for their pig's breakfast.

4.7 In the case of Mr & Mrs K, the Bureau's scrupulous attention to the very letter of the complaint, as stated, led to them missing what struck me as the main underlying issue. Mrs H was a sole practitioner working from home in rural Essex. When Mr & Mrs K explained to the Bureau that their costs for a house sale and purchase came to over £5,000 the Bureau focussed on the fact that Mrs H had allegedly refused to apply for a remuneration certificate. The Bureau concluded that there had been no irregularity. When I investigated, I concluded that the main point was that Mr & Mrs K thought they had been taken advantage of. They wanted their money back. This should have been no-cost conveyancing for them. Mr K's employer had agreed to pay, but baulked at the £5,000 charged. Mrs H had informed Mr & Mrs K that she had been told that the going rate for "commercial payers" was two percent, but later argued that she had not meant to give the impression that she was charging them for their domestic conveyancing as if they were "commercial payers", just because their employer was going to pay. She thought I was being very unfair in not seeing all this as nothing more than a dispute about remuneration certificate eligibility. That interpretation continued to elude me. I recommended that Mrs H should pay back the £2,185 for which Mr & Mrs K were still waiting, and a further £350 for inconvenience. I

Case 5

Mr H wanted to sue his former solicitors. He instructed Messrs M to do so. It was decided that Mr H should apply for legal aid. His application was refused on grounds relating to the merits of his claim. Mr H decided to appeal. The appeal was unsuccessful. Undeterred, Mr H suggested to Messrs M that he would be willing to pay for the evidence, in the shape of some form of further professional opinion, to support a fresh application for legal aid. Messrs M suggested that in return for payment of £1,000, they would look through his file in detail, prepare instructions to counsel and obtain counsel's written opinion. Mr H paid the £1,000. In the meantime, the partner dealing with his case was taken ill and did not return to work. Another partner took over, and at the last minute before the limitation period on Mr H's claim expired, advised Mr H that a review of his file had confirmed that there was no merit in pursuing his claim. Instead, Messrs M suggested that if he paid a further £500 they would issue a protective writ and prepare a statement of claim. The implication was that he could not have his £1,000 back in any event. The Bureau took four months to decide not to intervene, apparently taking the view that Mr H needed legal advice.

The Ombudsman disagreed. In his view, the evidence available to the Bureau made it clear that the whole point of the option for which Mr H paid £1,000 was to get counsel's opinion. It was not a case of his paying for Messrs M to review his file and then instruct counsel, if they still thought it a good idea. In any event Messrs M had made things worse by taking three months to review the file; by pressing Mr H for further funds as the limitation period approached expiry; by suggesting that the review of the file had cost nearly £1,000 when the original agreement had been to review the file, instruct counsel and pay counsel from the £1,000; by inadvertently seeking to charge privately for initial work which had been done under the green form scheme; and by transferring funds paid for a specific purpose from client account without giving advance notice of their intention to do so or procuring agreement to such a transfer. The Ombudsman therefore recommended that Messrs M pay £1,000 compensation for the costs which had in effect been thrown away, together with an additional £500 for inconvenience and distress. He also recommended that the Bureau pay £300 compensation for the inconvenience and distress attendant upon their four month delay in providing what turned out to be a misdiagnosis of Mr H's complaint.

Case 6

Mr A was a Nigerian national who had been studying in the UK since 1983. He instructed Messrs B in 1989 to make an application for further leave to remain. His original application was refused by the Home Office on the grounds that it was out of time and/or incorrectly completed. Messrs B apparently prepared an appeal form but there was no trace of its receipt at the Home Office. Mr A was, however, subsequently granted a further right of appeal under Section 14(1) Immigration Act 1971. Messrs B again prepared the form of appeal, but again it was not received by the Home Office, this time because Messrs B's agent failed to deliver it. Mr A complained that as a result he lost his right of appeal under Section 14(1) and a deportation order had been made against him. Following investigation of Mr A's complaint, the Bureau found that Messrs B had indeed failed to lodge Mr A's appeal as instructed with the result that he had lost his right of appeal. The Bureau ordered the solicitors to waive their costs of just over £100 in their entirety and to pay Mr A compensation of £500 for the distress, inconvenience and further legal costs which he had incurred in trying to reinstate his appeal. Mr A referred his complaint to the Ombudsman because he did not consider that the Bureau had provided adequate redress.

The Ombudsman agreed with Mr A. Although hindered by the impossibility of assessing Mr A's chances of success on appeal, the Ombudsman considered that the correct approach in a case like this was to treat the loss of the right of appeal as a separate head of loss in its own right. Great importance had to be attached to any right which might have had any bearing on Mr A's permission to remain in the UK, whatever the chances of a successful appeal might have been had that right been properly exercised. The Ombudsman was satisfied that the Bureau's decision had effectively compensated Mr A for the additional costs and distress directly attributable to the loss of his right of appeal. In an attempt to reflect fairly what he took to be the monetary value of the loss of a right of appeal itself to a man in Mr A's position, the Ombudsman recommended that Messrs B should pay Mr A a further £1,500 by way of compensation.

also recommended that the Bureau consider whether Mrs H had been guilty of misconduct. Mrs H failed to comply with my recommendation and her name is among those listed in Appendix A.

4.8 In the case of Mr H, it seemed to me that the Bureau had been too modest about their ability to determine the issue in dispute. Instead, after some delay, they advised Mr H that he needed legal advice. Since he was trying to complain about a solicitor who had failed to help him with a negligence claim against another solicitor, the last thing Mr H wanted was to have to consult yet a third solicitor. In fact, Mr H had provided extensive documentation to support his complaint. The solicitors had responded in detail. It all hinged on the interpretation of a single letter - what, if anything, had been agreed. I thought it incumbent upon me to decide that issue. Of course, Mr H could have sued. He could have got legal advice. But that was not what he was after. He wanted a decision, one way or the other, relatively quickly and with no financial risk. That is what I tried to give him. As a result the solicitor paid him the £1,000 for loss and £500 for distress and inconvenience which I had recommended. The Bureau's available remedies of compensation of up to £1,000 and unlimited costs reduction could have achieved that result much earlier.

Identifying poor service: providing redress

4.9 I want to move on to three cases in which, although the Bureau identified deficiencies in the solicitors' service, the complainants were unable to get the remedy they were looking for. They are the cases of Mr A (Case 6), Mr S (Case 7) and the Rev D (Case 8).

4.10 There was little dispute about the facts in the case of Mr A, a Nigerian student. The Bureau had no difficulty in concluding that the solicitors had been at fault in failing to lodge Mr A's appeal against the refusal of his application to remain in this country. The Bureau ordered a waiver of the solicitors' fee of £100 plus VAT, and further compensation of £500 for the distress which the entire episode had caused Mr A. Mr A was happy with that decision, so far as it went. He referred his complaint to me because he did not think it had gone far enough. I agreed with him. It seemed to me that the loss of a right of appeal in an immigration matter called for greater compensation. Of course Mr A had suffered distress, and the Bureau were right to compensate him for that. But beyond that distress there was the loss of the right itself to bring the appeal. The value of that right was, in my view, quite independent of the chances of success if the right had been properly exercised. I decided that £1,500 was the correct figure to attach to the monetary value of that right. It was suggested that I had gone too far and should not have dipped my toe in the eddying waters of what could be construed as legal adjudication. I do not see it that way. I have power to recommend compensation for loss and am not aware of any reason why that provision should not extend to the monetary value of the loss of a right or of an opportunity; nor, for that matter, why the Bureau should not exercise its compensatory powers to provide adequate financial redress in such a case.

4.11 Mr S was another complainant, who although substantiating his complaint to the Bureau's satisfaction, came away dissatisfied. As a beneficiary of his father's estate he had complained about delay in the administration. To the Bureau's credit they did investigate this "third party" complaint (a couple of years ago they might not have done). To their further credit they reduced the fees charged to the estate by £1,295, on top of a voluntary reduction by the solicitors of £7,000. The estate (and indirectly, Mr S) had done quite well. Mr S, however, had been after compensation for himself. He had gone to the trouble of making the complaint in the first place and of pursuing it with the Bureau over a period of nearly four years. In so doing, he had been instrumental in achieving eventual progress. His personal benefit from the Bureau's award did not reflect his investment of time, money and energy. No doubt the Bureau were particularly mindful of the solicitors' position: they were foregoing a substantial sum in costs. My primary concern, however, was with the complainant. If achieving a

Case 7

Mr S complained to the Bureau about the delay in the administration of his father's estate. Mr S was a beneficiary and his father had died nineteen years earlier. It was the delay of three years since the death of the life tenant which was the particular cause of Mr S's grievance. It took a further three and a half years for the Bureau to reach its final decision. Their findings of inadequacy were wide-ranging: there had been a failure to deal promptly and systematically with the estate; estate accounts had not been drawn annually; income to the life tenant had been paid piecemeal; there had been considerable delay in replying to correspondence; and it had taken over five years to achieve final distribution following the death of the life tenant. The Bureau decided to reduce Messrs R's costs by £1,295 and order them to account to the estate for interest due. In evaluating the costs reduction, the Bureau had taken into account the fact that the difficulties appeared to have arisen as a result of the illness of the individual partner who had had conduct and that Messrs R had themselves made a voluntary reduction of over £7,000 in their costs before submitting their bill. As a result, the Bureau expressly discounted, both at first instance and on appeal, Mr S's claim for additional compensation.

The Ombudsman was anxious to consider Mr S's personal position. Although the estate had benefited from Messrs R's voluntary costs reduction and the Bureau's order, Mr S was only one of several beneficiaries and so any advantage to him was accordingly reduced. Mr S had not only been instrumental in procuring the eventual completion of the administration by complaining to the Bureau, but had quite understandably instructed solicitors himself to assist in achieving some measure of progress. In order to provide compensation for Mr S's personal loss, distress and inconvenience, the Ombudsman recommended that Messrs R should, in addition to the voluntary and imposed costs reductions, pay compensation to Mr S of £500.

Case 8

The Rev. D, the president of a religious fellowship, instructed Mr J to prepare a trust deed and apply for charitable status on behalf of the fellowship. He paid Mr J £1400 on account of costs. Three years later, and in the absence of any apparent progress, the Rev. D complained to the Bureau. By that time Mr J had moved firm. The Bureau obtained an assurance that the work would now be completed. Two and a half years later there had still been no action. The Rev. D reverted to the Bureau, who in turn reverted to Mr J, now at yet another firm. Six months later Mr J informed the Bureau that he would not be able to complete the work from his present firm but that he would pay another firm of the Rev. D's choice to do it for him. Mr J still held the £1400. By this time part of the work (that relating to the preparation of the trust deed) had apparently been completed by Mr J, and the Bureau were therefore reluctant to order a refund of the £1400. Although the Bureau concluded that Mr J's service had been inadequate in that he had failed to complete his retainer and had left the matter to drift into abeyance, they nevertheless decided that the inadequacy did not merit any reduction in Mr J's costs.

The Ombudsman had no doubt that this was a case in which the Rev. D should have received some form of redress. It had taken Mr J about five years and two changes of firm to inform the Rev. D that he would not be able to complete the work which he had been instructed to carry out. It transpired that counsel had been instructed and that his fees had come to £750 plus VAT. It was not possible to say how much of the £537.50 outstanding from the £1400 paid on account of costs legitimately related to Mr J's charges for drafting the trust deed. It was nevertheless clear to the Ombudsman that Mr J's protracted inertia and eventual abandonment of the Rev. D's instructions had caused significant distress and inconvenience. He therefore recommended that Mr J pay £1000 to the Rev. D by way of compensation.

fair outcome for the complainant entailed an even heavier financial burden for the solicitors, then so be it. I recommended that the solicitors pay £500 compensation to Mr S for the personal loss, inconvenience and distress which he had suffered.

4.12 The Rev D is another complainant who suffered at the hands of an inefficient solicitor, Mr J. The Bureau did not seek to defend Mr J's protracted inertia; nor for that matter did Mr J. He was nevertheless allowed to hang on to the £1,400 which had been paid to him on account of costs. Some work had been done, but not enough to achieve the object of the Rev D's instructions of five years earlier, charitable status for his religious fellowship. If reluctant to reduce the solicitor's costs, the Bureau could nevertheless have awarded compensation up to £1,000. I could not accept their conclusion that the deficiencies identified did not merit compensation. Factors which apparently weighed heavily with them were the loss of the solicitor's file, the complainant's apparent failure actively to pursue his complaint for a ten month period (albeit in the context of Bureau involvement of over four years), and the solicitor's offer to pay someone else to finish the work (an offer no longer attractive to the Rev D so long after his initial instructions). None of these purported mitigating factors detracted in my view from the complainant's legitimate claim for compensation. My recommendation was, as it happened, at the limit of the Bureau's £1,000 compensatory power. It would have saved the Rev D time and trouble if they had used that power themselves.

Compensation limits: the metaphysics of ombudsmanry

4.13 Although not an obstacle in the case of the Rev D, the Bureau's compensation limit of £1,000, imposed by the Courts and Legal Services Act 1990, at times looks too modest. The same Act created my Office, yet left me with unlimited compensatory powers. A case like that of Ms B (Case 9) is the result of that anomaly. Ms B was quite clear, that if her complaint were substantiated, it should lead to compensation of at least £2,727, since that was the loss she had incurred through additional legal fees and indemnity of the purchaser for her enforced breach of contract. The Bureau knew from the outset that they could not provide that compensation: Ms B would be well advised to come on to me at the earliest opportunity. That is in effect what she did. In the end, I recommended total compensation of £3,727.

4.14 The lack of a compensatory limit in my own case can itself present a conundrum. I have from time to time to decide whether or not to investigate a complaint about a lawyer when the complainant alleges that he has suffered loss running to perhaps five or even six figures. In such cases, I am in effect being asked to act as a free alternative dispute resolution mechanism for professional negligence claims against lawyers. The line I take is that I will only investigate such a complaint if it is clear at the outset that I will not be prevented by any complexity of law or fact from conducting a fair investigation and reaching a fair and authoritative decision. Although there is no direct correlation between size and complexity of claim, more often than not a very valuable claim, especially one which has not justified the risks of court proceedings, will turn out to involve some such complexity. The case of Mrs V (which I will now go on to describe) is an exception.

4.15 Mrs V complained that in March 1977 her father and step-mother had attended the offices of Messrs W to execute two mutual wills prepared on their behalf. Each will provided that, on the death of the testator, the estate would pass to the surviving spouse and if the spouse died first to Mrs V. Both wills were dated 25 March 1977. The will of Mrs V's father was witnessed by a partner in the firm of Messrs W and his clerk. The will of Mrs V's step-mother was witnessed by the partner only. As a result, although the will of the father presented no difficulty on his death in 1988, the step-mother's will was found to be invalid on her death in 1993. Mrs V's entitlement was therefore void, the estate passing elsewhere under the Intestacy Rules. In the event, the lucky beneficiary agreed

Case 9

Ms B instructed Messrs L in connection with the sale of the matrimonial home by herself and her estranged husband, Mr X. Messrs L signed the contract of sale on behalf of Mr X. Unfortunately, Mr X subsequently refused to execute the transfer of title to complete the sale. Ms B complained that Messrs L had failed to obtain Mr X's express authorisation to sign the contract and that as a result the sale had been delayed, with attendant expense being incurred by her. Since Ms B was claiming more than the Bureau's £1,000 compensation limit, she took their advice to refer the case to the Ombudsman.

The Ombudsman considered that, since Ms B and Mr X were estranged, it should have been apparent to Messrs L that there was a risk that Mr X would prove to be obstructive and that all scope for lack of co-operation on his part should therefore have been minimised. To have signed the contract on his behalf without express written authority was reckless. As a result, Ms B found herself unable to complete the sale on the contractual terms. It was only after she had instructed other solicitors to negotiate with Mr X's solicitors and the purchasers that completion eventually took place. In so doing, she incurred additional legal costs of £977 and had to pay compensation of £1,750 to the purchasers for the delay. The Ombudsman therefore recommended that Messrs L pay compensation of £2,727 to Ms B by way of indemnity for that loss, together with a further £1,000 for the distress and inconvenience which she had suffered.

Case 10

Mrs R was involved in a dispute with her neighbours. She commenced proceedings against them and when the case came to trial her neighbours were represented by Mr M. Mrs R complained that Mr M had acted unprofessionally at the trial by aggressively cross-examining her on matters which she did not consider pertinent to the trial. The Professional Conduct Committee (PCC) of the Bar Council investigated the complaint in accordance with their standard procedures and found that Mrs R's complaint against Mr M had not been substantiated. Mrs R referred the Bar Council's handling of the complaint to the Ombudsman, alleging, amongst other things, excessive delay on their part.

The Ombudsman found that Mrs R's allegation of excessive delay was substantiated. It was clear from the PCC's file that, although Mrs R's complaint had been forwarded within a month to a member of the Committee for assessment, the report on the complaint was not received back by the PCC until nearly ten months later. It was true that one of the PCC's administrative officers had chased the Committee member for the report on numerous occasions. The Ombudsman nevertheless considered that the PCC should have pursued this matter with even more vigour and, when they realised that the report would not be forthcoming within a reasonable time, should have asked another Committee member to intervene. The Ombudsman concluded that the excessive delay was a source of inconvenience to Mrs R. He therefore recommended that the Bar Council pay her £250 by way of compensation for that inconvenience.

to waive half of her entitlement. Although Mrs V accepted that offer (without prejudice to any cause of action she might have against Messrs W) she had lost £57,480. Not surprisingly, she blamed Messrs W. When she tried to sue them, they, supported by the Solicitors Indemnity Fund, denied liability: the Limitation Act 1980 provides at section 14B a 15 year long-stop for the commencement of non-personal injury actions; that limit, construed as running from the date the will was executed, had already expired by the time of the step-mother's death. Mrs V was therefore without remedy, unless she was willing to finance an uncertain, and no doubt strongly resisted, cause of action, based on the argument that the limitation period should be instead construed as running from the date of death of the testator. When Mrs V complained to the Bureau, they declined to investigate, taking the view that the point at issue was one of negligence and so beyond their ability to determine, and that any civil claim would fall foul of the time limit prescribed by the Limitation Act 1980. With nowhere else to turn, Mrs V referred her complaint to me.

4.16 I applied my "complexity of fact or law" test. The facts spoke for themselves. There was no serious argument about what had happened. The partner in the firm of Messrs W had simply failed to get his clerk to witness the step-mother's will. As for the law, the Court of Appeal had recently affirmed the view that a solicitor who drafts a will would be liable to a potential beneficiary, even though not a client, for negligent omissions (a position now upheld by the House of Lords). Although the Limitation Act 1980 clearly did not apply to recommendations by me, I did not wish to investigate if it was likely that the passage of time would obstruct a fair inquiry. Since the factual and evidential basis of the complaint was not in dispute, I concluded that there was no impediment to investigation. I was supported in these conclusions by advice from leading counsel. Indeed it was apparent that the chance of Mrs V escaping the Limitation Act provisions was so slim that a refusal to investigate would have left her without any possible avenue of redress. Having investigated, I had little hesitation in concluding that Messrs W had been at fault, and that their omission had caused Mrs V loss of half of the net estate in the sum of £57,480, additional legal fees of £329, and distress which I valued at £2,000. I recommended that Messrs W pay total compensation of £59,809. The three month period for notification of compliance expired after the end of 1994 and the final outcome will be reported in my next Annual Report.

4.17 The case of Mrs V is instructive. It provides an example of a case where the lack of an available legal remedy works injustice and, until the application of the Limitation Act to claims by beneficiaries has been settled judicially, it seems unlikely that a claimant such as Mrs V will be in a strong enough position to secure an acceptable settlement from the Solicitors Indemnity Fund. It shows that I can investigate a complaint which, although leading to five figure compensation, does not raise insurmountable complexities of law or fact. Yet the fact that this is the only such example to emerge in four years suggests that such cases will be very rare. Furthermore, the not entirely surprising failure, so far, of the solicitors to pay the recommended compensation places a question mark against the efficacy of mere recommendations against firms of solicitors when such large sums of money are involved. There must be a threshold beyond which it simply does not make sense for a High Street firm even to contemplate paying non-mandatory compensation. Better by far to publicise and be damned. Even relatively small recommendations may not guarantee compliance. Of the eight instances of non-compliance by lawyers in 1994, only three related to sums of over £500. The list is contained in Appendix A.

4.18 My role as Ombudsman was recently described as hybrid, a statutory Ombudsman overseeing a private sector profession. I also have to juggle a review function with a primary investigative role. I am not equally strong with both hands, however. To review the handling of complaints by the professional bodies is relatively straightforward. If I spot an unacceptable delay, as in the case of Mr R (Case 10), an isolated example of Bar Council inefficiency, I can recommend compensation for the inconvenience caused. If the Bureau compounds

Case 11

In 1985 Mrs A instructed Messrs W in connection with divorce and ancillary proceedings. Two years later she complained to the Bureau about delay. There was, however, a hearing pending, and so the Bureau declined to investigate until proceedings had been fully concluded. Over the course of the next four years, Mrs A continued to complain to the Bureau from time to time. At each stage the Bureau declined to investigate, repeatedly finding apparently legitimate reasons for not intervening. In the end, the Bureau simply advised Mrs A that her complaints were a matter between her and her solicitors.

Although the Ombudsman accepted that there had been good reason for the Bureau's initial hesitation, he considered that by the time Mrs A had been in correspondence with them for over four years it was not open to the Bureau simply to decline to seek an explanation from Messrs W for their apparently continuing delay. It did not help matters that by then the Bureau had lost their file of papers relating to Mrs A's complaint. The Ombudsman accordingly recommended that the Bureau pay Mrs A compensation of £500 for the inconvenience and distress which they had caused to her by their failure to engage with the substance of her complaint over a prolonged period. Since her substantive grievance of delay against Messrs W remained uninvestigated, he also recommended that the Bureau now reconsider her complaint.

Case 12

Mrs T complained to the Council for Licensed Conveyancers (CLC) about Mr G, the conveyancer whom she had instructed to convey her former matrimonial home into her sole name from the joint names of her and her husband. Two years after giving these simple instructions, Mrs T was still awaiting completion. It turned out that Mr G had lost the title deeds, but had not bothered to tell her. After an initial five month delay, the CLC concluded that Mr G had been guilty of misconduct. They therefore sent him a letter of reprimand and resolved to undertake further investigation, which eventually led to them intervening in Mr G's practice. By that time, Mrs T had instructed a firm of solicitors to help her reconstitute the title to her home in the absence of the lost title deeds so that she could get on with trying to achieve a sale. Three and a half years after her original instructions to Mr G, her title was finally completed and registered.

The Ombudsman was very critical of both Mr G and the CLC. Mr G's initial inertia, compounded by the loss of the title deeds, clearly put Mrs T to considerable inconvenience, as well as causing her distress. The CLC, although having the power to award compensation to the value of £1,000, chose simply to reprimand Mr G. The Ombudsman recommended that Mr G should pay Mrs T £1,000 compensation for the distress and inconvenience caused to her. It was also unsatisfactory that, having complained of a delay on the part of Mr G, Mrs T should be subjected to several months unnecessary delay on the part of the CLC in their investigation. Ironically, the CLC's file relating to the complaint was also lost, so that the Ombudsman's investigation had to be based on a reconstitution of the file from papers in Mrs T's possession. The Ombudsman recommended that the CLC pay Mrs T £500 for the distress and inconvenience which they had caused to her.

protracted delay on the part of a solicitor (Case 11) with its own inertia, I can recommend compensation and reconsideration. If the Council for Licensed Conveyancers delays and avoids the issue of compensation altogether (Case 12), I can remedy that omission by recommending that the conveyancer and the CLC both pay compensation. I am willing to go further. If the Bureau is too reticent about investigating a particular issue and I am confident that I can fill the gap, I do so (for example, in the cases of Mr P, Mr H and Mr & Mrs K). In other cases, although agreeing with the Bureau that the solicitor was at fault, I will provide an additional remedy (for example, in the cases of Rev D, Mr S, Mr A). I might also find fault with a lawyer where the professional body finds none, and in effect set myself up as the arbiter of good practice (Mr & Mrs L and Ms S). When I am called upon to exercise a primary investigative role, the task facing me and my staff can be formidable. The accumulation and interpretation of evidence, and compliance with the rules of natural justice, transform a relatively straightforward review function into a more involved and time-consuming process. Even when the absence of complexities of law and fact permit investigation, the decision-making process is necessarily more delicate. In many such cases, however, effective (albeit sometimes quite modest) remedies are delivered to complainants.

4.19 It was probably not Parliament's intention that this Ombudsman scheme should provide an effective alternative dispute resolution mechanism for professional negligence claims against lawyers, regardless of the amount of compensation claimed. In practice, such an intention would be likely to be defeated, for the most part, by the material constraints of resources and workload imposed on the daily operation of this Office. What I have tried to illustrate in this section is some of the ways in which, although operating mainly below that upper threshold, I am still able to exercise the various powers at my disposal to the advantage of individual complainants, and, I hope, to the common benefit of all users of legal services in England and Wales.

5. Contacts with other organisations and the media

5.1 As in previous years I have endeavoured to keep in touch with relevant organisations, both inside and outside the legal profession, by attending various seminars, conferences and other functions, and accepting speaking engagements whenever possible.

5.2 Contacts with the legal profession included attendance at functions organised by Birmingham and Manchester Law Societies, and the barristers of the Northern Circuit. I met the Solicitors Indemnity Fund in January 1994 and had a useful discussion with senior officials, and in April the Chairman of the Solicitors Complaints Bureau's Policy Advisory Committee visited my Office. Regular liaison meetings continued to be held with the Bureau at roughly quarterly intervals and I gave a paper at one of the 'workshop' sessions at the Law Society Research Conference in July. I also spoke at or attended various seminars and conferences organised by law faculties of universities. These included Manchester University in May 1994, Sheffield University in September and the University of Central Lancashire in December. In June my Office received a visit by an official from the Romanian Ministry of Justice.

5.3 I firmly believe that it is essential for Ombudsmen to keep in close contact with the consumer movement and advice agencies. In 1994 I attended meetings organised by Consumers' Association (including a particularly useful meeting about the problems faced by beneficiaries of wills), the Advice Services Alliance, the Law Centres Federation and the Manchester Citizens Advice Bureaux Service. During 1994 the UK Ombudsman Association became the British and Irish Ombudsman Association, thereby including three Ombudsman schemes in the Republic of Ireland among its membership which now extends to over twenty Ombudsman schemes. The Association fulfils a vital role in enabling Ombudsmen and their staff to keep in touch with each other's activities. At the Annual General Meeting of the Association in May 1994 I was elected to the Committee of the Association, and I am also a member of the Advisory Panel of the Housing Association Tenants' Ombudsman Service.

5.4 Media coverage of most Ombudsman schemes tends to focus on the publication of their Annual Reports. A press conference for the launch of my 1993 Annual Report was held at the Institute of Advanced Legal Studies on 15 June 1994. The report received good coverage in the broadsheet newspapers and legal journals, and also in various radio interviews. I was interviewed by the Channel 4 Television programme "The Brief" in May and the ITV consumer programme "Serve You Right" in October. In December I was interviewed by the BBC Radio programmes "Law in Action" and "You and Yours" in connection with the National Consumer Council's report on the Solicitors Complaints Bureau, and the Law Society Gazette published an article by me in the issue of 16 December, in which I was able to set out my views on the NCC report in detail.

6. Conclusion

6.1 Both the two main professional bodies, the Law Society and the Bar Council, are about to enter a period of radical change as far as their complaints-handling functions are concerned. At the end of 1994 the Solicitors Complaints Bureau found itself having to fend off criticism both from the National Consumer Council and from within the solicitors' profession itself. As a result, the Bureau's Policy and Advisory Committee and the Law Society's Adjudication and Appeals Committee are currently carrying out a review of the Bureau's operation. Consultation with the profession about possible options for change is due to take place in May and June 1995 and it is likely that recommendations will be put to the Council of the Law Society in October.

6.2 It remains to be seen what proposals for change will emerge. One option being discussed is that the Law Society should stand back more from the Bureau and allow it to operate under the control of an independent supervisory board with a lay chairperson and a lay majority among its members. I believe that that option has a great deal to commend it and should certainly be tried. As I have indicated in paragraph 3.20 of this report, it is premature to talk of abandoning self-regulation at the present time. A great deal of experience and money has been invested by the Law Society on behalf of solicitors and the public in the Solicitors Complaints Bureau. It would be foolish to throw it all out and go over to a completely different system without a good deal more information about complainant satisfaction levels, and without first seeking to strengthen the Bureau's operation by giving it a greater degree of independence. It is important to remember that it is a feature of most complaints-handling systems that many complainants, in some cases even a majority, are likely to end up still dissatisfied for one reason or another. Many Ombudsmen even find that they receive more brickbats than bouquets for their pains, so it is not entirely surprising that criticism should have focussed on the Bureau in the way that it has. The important thing is to draw the right lessons from it.

6.3 It is ironic that, just at a time when the Solicitors Complaints Bureau should be coming under fire from both sides, the Bar Council is poised to set up a new complaints system with very similar powers to the SCB. In fact, the National Consumer Council's report on the Solicitors Complaints Bureau envisaged that the new Legal Services Complaints Council which it was proposing would only deal with complaints about solicitors. It pointed to the fact that the much smaller size of the Bar and the Licensed Conveyancers' profession led to far fewer complaints. Although the National Consumer Council referred to the cost benefits of one body dealing with all complaints, the implication of the report seemed to be that the handling of complaints about barristers and licensed conveyancers should be left with the professional bodies. I am sure that is right and that the present debate about the way forward for complaints-handling in the solicitors' profession is no reason why the Bar Council should be deflected from its plans to set up a new complaints system. As I have indicated in paragraphs 3.27 and 3.28, I firmly believe that that proposal is very much in the interests of barristers' lay clients and indeed of the Bar itself.

6.4 Finally, in relation to my own Office, I would like to end by again drawing attention to the need for staffing levels to keep pace with the rising caseload with which we are having to deal. The compound effect of a 28% increase in caseload during 1994, followed by a further 30% increase during the first quarter of 1995, means that we are now having to deal with an intake of complaints which is 70% higher than two years ago. Productivity has increased and we are continuing to consider ways in which further improvements can be made, but there comes a point when an inexorably rising caseload feeds straight through into a steadily lengthening backlog of cases waiting to be dealt with. As I indicated in paragraph 1.2, it is little consolation for there to be increased budget allocations for salaries, if the posts provided for cannot be filled when they are needed because of the operation of Departmental financial controls.

MICHAEL BARNES
March 1995

Appendix A

		amount of compensation recommended £
1.	Solicitors who failed to comply with a recommendation that they pay compensation and who duly publicised that failure and the reasons for it, in accordance with Section 23(8) of the Act:	
	Rosenberg & Co, Bull Street, Birmingham	300
2.	Solicitors who failed to comply with a recommendation and also the requirement to publicise that failure and the reasons for it, whose failure the Ombudsman therefore publicised in accordance with Section 23(9) of the Act:	
	M A Hampshire, Wickham Bishops, Essex	2,535
	Haynes & Co, Balham High Road, London SW12	200
	Bryan Lewis & Co, Sydenham, London SE26	400
	Kenneth Rees, Clifftown Road, Southend-on-Sea	200
	Mrs P Thornton, formerly of John Gridley & Co, Hoddesdon, Hertfordshire	990
	Williams & Riley, High Street, Guildford, Surrey	342
3.	Barrister who similarly failed to comply and publicise, and whose failure the Ombudsman therefore publicised in accordance with Section 23(9) of the Act:	
	Mr K Metzger, Somersett Chambers, Bedford Row, London WC1	1,000

Appendix B

Table 1

Summary of all formal investigations undertaken during 1994 (figures for 1993 in brackets)

Completed investigations	839	(580)
Investigations pending or awaiting final report	454	(323)
Total number of formal investigations	1293	(903)

Table 2

Analysis of complaints considered during 1994 (figures for 1993 in brackets)

Total number of new complaints notified during 1994	1598	(1235)	
Complaints carried forward from 1993	638		
Cases awaiting processing on 31 December 1994		17	(18)
Cases awaiting further information from applicant or not pursued by applicant		406	(443)
Cases awaiting receipt of Professional Body's file		116	(72)
Cases failing to meet criteria for investigation		378	(355)
Investigations discontinued		26	(11)
Formal investigations pending		454	(323)
Formal investigations completed		839	(580)
Total number of complaints considered during 1994	2236		

Table 3

Investigations completed during 1994: summary of reports making recommendations or formal criticisms of the professional body

Complaints against solicitors	757	
Solicitor to pay compensation[1]		54
SCB[2] to pay compensation		47
SCB to reconsider		67
No recommendation, but criticism of SCB recorded		92
No recommendation or criticism recorded		508
Complaints against barristers	80	
Barrister to pay compensation		5
GCB[3] to pay compensation		1
GCB to reconsider		1
No recommendation, but criticism of GCB recorded		3
No recommendation or criticism recorded		70
Complaints against licensed conveyancers	2	
CLC[4] to pay compensation		1
Licensed conveyancer to pay compensation		1
No recommendation or criticism recorded		1
TOTAL	839	
Total recommendations		177[5]
Total criticisms of professional body recorded		95
No recommendation or criticism recorded		579

Notes:
[1] In 25 of these cases, the Ombudsman recommended compensation in addition to the costs reduction or compensation which the Bureau had ordered
[2] Solicitors Complaints Bureau
[3] General Council of the Bar
[4] Council for Licensed Conveyancers
[5] Some reports contain more than one recommendation

Table 4

Analysis of formal investigations during 1994, by professional body to which the original complaints were made

Solicitors Complaints Bureau	1177
General Council of the Bar	112
Council for Licensed Conveyancers	4
Total number of formal investigations	1293

Table 5

Analysis of formal investigations during 1994 by type of legal transaction

Divorce/family proceedings	205
House sale/purchase	166
Administration of wills etc	119
Personal injury	76
Criminal proceedings	66
Landlord/tenant	61
Employment/contractual disputes	56
Property disputes	52
Professional negligence claims	47
Other	445
TOTAL	1293

Table 6

Analysis of formal investigations during 1994 by reason for complaint (Complainants usually give several reasons for their complaint)

Service provided		1290	(45%)
Delay or inaction	427		
Disregarding instructions	371		
Failure to keep client informed	288		
No reply to letters/phone calls	204		
Documents withheld or lost		211	(7%)
Failure to inform on costs		400	(14%)
Wrong advice given		435	(15%)
Unprofessional conduct		557	(19%)

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 allegation 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;

"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 (incorporating bodies carrying on business of provision of conveyancing services); and

1985 c.61.

"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 the 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 at 31 March 1995

Michael Barnes	Legal Services Ombudsman
Stephen Murray	Secretary
Nick O'Brien	Legal Adviser
Simon Entwisle	Senior Investigating Officer
Jon Manners	Senior Investigating Officer
Sarah Morris	Senior Investigating Officer
Lucy Pickmere	Senior Investigating Officer
Barbara FitzGerald	Investigating Officer
Ruth Garnett	Investigating Officer
Terry Duffy	Support Team Leader
Angela McDonald	Support Team
Beryl Shearn	Support Team
Corina Tynan	Personal Secretary
Alyson Green	Typist
Jean Bradley	Temporary Typist

In addition to the full-time staff of the Office the following Senior Investigating Officers work part-time from home:-

Beverley Handcock

David Wiseman

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