# Solicitors Act 1974

# Eighth Annual Report of the Lay Observer 1982

LONDON
HER MAJESTY'S STATIONERY OFFICE

SOLICITORS ACT 1974

# EIGHTH ANNUAL REPORT OF THE LAY OBSERVER 1982

*Laid before Parliament by the Lord High Chancellor pursuant to section* 45(11) *of the Solicitors Act* 1974

*Ordered by* The House of Commons *to be printed* 28*th April* 1983

*LONDON*
HER MAJESTY'S STATIONERY OFFICE

The Lay Observer is Major General J. G. R. Allen, C.B., and his office is at the Royal Courts of Justice, Strand, London WC2A 2LL. He was appointed by the Lord Chancellor under Section 45 of the Solicitors Act 1974 to examine allegations made by or on behalf of a member of the public concerning the Law Society's treatment of a complaint about a solicitor's conduct.

The Lay Observer is required to report annually, but may not identify any individual or firm in his report.

# EIGHTH ANNUAL REPORT OF THE LAY OBSERVER UNDER SECTION 45 OF THE SOLICITORS ACT 1974

*To the Right Honourable the Lord Hailsham of St. Marylebone, C.H., Lord High Chancellor of Great Britain.*

I have the honour to submit my Annual Report for 1982.

## REVIEW OF WORK DURING THE YEAR

2. During the year, 339 new correspondents complained to me about some aspect of their legal affairs, of whom 187 made allegations about the Law Society's treatment of their complaints which were within my remit to examine.[1] In 17 cases I have criticised some aspects of the Society's treatment of a complaint, while not disagreeing with its decision; and in one further case I recommended that the Society should reconsider its decision but, on considering its further representations, I was content with the original decision. The very great majority of my criticisms concerned delay by the Society in dealing with the complaint; a much lesser number were due to inadequate explanation of its decisions. During the year I interviewed 36 complainants or inquirers, two of them were more than once.

3. The total number of new correspondents was 10 less than in 1981, after the considerable increases which occurred both in that year and in 1980. By contrast, the number of new correspondents raising matters specifically within my terms of reference was 16 more than in 1981. The proportion of new correspondents raising matters outside my terms of reference thus shows a further slight but welcome reduction compared with the three previous years. I have nevertheless, continued to try and help these people, as best I could, usually by encouraging them to seek the help of a solicitor where I thought this was needed, or by seeking to restore or improve communications between client and solicitor where this appeared partly to have broken down.

4. Even though there was a slight increase in the number of new correspondents referring to me allegations concerning the Law Society's treatment of their complaints, I do not think that this indicates any growth in public dissatisfaction with solicitors or with the way the Society deals with complaints about them. Rather, I suspect that it is partly a result of the Society's practice of drawing the attention of all complainants, who appear to be dissatisfied with the Society's treatment of their complaint, to the existence and function of my office; and partly due to a growing public awareness of this. In any event, I understand that the total number of such complaints referred to me represents barely 3 per cent of the total number of complaints received in 1982 by the Society from members of

[1] Appendix I, p.

the public: I think that that percentage reflects well on the Society's handling of complaints, although I do not think that it should, or will, give cause for complacency.

5. Among the complaints, the Law Society's treatment of which I have examined, there has been a noticeable increase in the number which were directed against a solicitor who was not acting for the complainant: I understand that the Society's own statistics reflect a similar increase. The Society can very seldom investigate such "third party" complaints because the action complained of may well have been taken precisely on the instructions of the solicitor's client, and the solicitor would be obliged to carry them out unless they were clearly improper; and it would be improper for the Law Society to attempt to come between the solicitor and his client at the instance of a third party by making inquiries as to the nature of the client's instructions. Some of the complaints concerned the manner in which the solicitor was conducting litigation on his client's behalf against the complainant and were clearly matters for the court and the complainant's own solicitor, rather than the Law Society. In my view, the majority of these "third party" complaints would not have arisen had the complainants been better informed of the basic principles governing our legal system and, especially, its adversarial basis and the privileged nature of communications between solicitor and client.

## THE TREATMENT OF COMPLAINTS

6. In my judgment, the overall standard of treatment of complaints by the Society has continued to improve: in particular, the clarity and helpfulness of its correspondence with complainants has improved markedly in recent years, in response to the recommendation of the Royal Commission on Legal Services[2] to this effect, although I think that some further improvement is sometimes still possible and desirable. This is not at all an easy task, particularly when writing to complainants of very limited education and scarcely any knowledge of our legal system. This generally encouraging picture of the Society's work has been slightly marred by just two cases where complaints were, I felt, seriously mishandled by the Society's staff, papers were mislaid and it took far too long to bring the matters to an appropriate conclusion. In my experience these errors were wholly unrepresentative of the normal standard of complaint-handling by the Society. They were caused by pressure of work on the department concerned and certainly not due to any want of a genuine desire to deal with and, where appropriate, investigate all complaints both fairly and efficiently. Clear and comprehensive explanation to the complainant is very important and my experience of that aspect is the same as that of the Parliamentary Commissioner for Administration:

> "...unless the citizen with a grievance receives a meticulous account of every aspect of his complaint, his anxieties and suspicion are not relieved and may even be multiplied..."[3]

---

[2] Final Report of the Royal Commission on Legal Services (Cmnd. 7648), para. 25–38 and Recommendation R25.8.

[3] Parliamentary Commissioner's Annual Report for 1981 (Second Report for Session 1981–82). H.C. (1982) 258.

I would only add that this requires much care and patience, which can be very time-consuming, and therefore expensive, to whichever organisation is handling the complaint.

7. I understand that the Law Society's analysis of the complaints it received in 1982 again shows that those alleging incompetence or negligence by solicitors represent, after those alleging delay or merely seeking advice (the latter not really being complaints at all), the third most numerous of the 16 categories into which complaints received by the Society are divided. In appropriate cases such complainants continue to be offered by the Society the help and advice of a member of the Society's Negligence Panel: indeed, as the great value of this scheme has become clearly apparent, referrals to panel solicitors are now, quite rightly, being much more readily made than when the scheme was first established. These panel solicitors have been specially selected for their skill, experience and personal qualities, to advise, at the Society's request, potential clients who think that they may have a claim against their previous solicitors for negligence. The normal arrangement is that the first interview of up to one hour is free and, thereafter, if it is agreed that further work is necessary, it is under the usual solicitor/client relationship and under legal aid if the client is eligible. As I have previously noted, the reports from panel members which I have seen indicate that a high proportion of complainants referred to them had received sound and proper advice from their original solicitor of whom they had complained, but had found it unpalatable. Nevertheless, in other cases, panel members have successfully negotiated settlements of their clients' claims or, where this has not proved possible, they are themselves pursuing claims through the courts on their clients' behalf.

8. As I have also previously reported, I have continued to be enormously impressed by the high quality of the advice and help which Negligence Panel Solicitors have provided, at considerable trouble and expense to themselves and often well beyond their obligations under the Scheme. Some of those referred to them have been referred specifically on my recommendation: indeed the Society has readily met every such recommendation which I have made. I have no doubt at all that, when a client comes to feel that his solicitor may have been negligent, it is vitally important that he should quickly receive clear and entirely unbiased advice from another solicitor who has the necessary skills and experience to handle this difficult type of case, if he considers that the client has grounds for pursuing it. That is precisely what the Scheme seeks to, and largely does, achieve. Since June 1982 all Citizens Advice Bureaux have had details of the Scheme, and I am now confident that the great majority of people needing this type of independent advice and help will be able to obtain it. I only hope that the panel solicitors themselves fully realise the value to their profession and to the public of this very important work.

9. The Law Society investigates, as it has done for many years, all complaints alleging unbefitting professional conduct by solicitors; broadly, that is to say, unethical conduct, serious overcharging supported by a taxation or a remuneration certificate, breaches of the Solicitor's Accounts or Practice Rules or causing unreasonable or persistent delay. Where it appears that serious misconduct may be established, the Society instructs solicitors at its own expense to bring

proceedings against the solicitor complained of before the Solicitors Disciplinary Tribunal: indeed, the vast majority of all cases which go to the Tribunal are brought by the Law Society. For complaints of overcharging in non-contentious business, the client has a remedy in requiring his solicitor to obtain a Remuneration Certificate from the Law Society, certifying whether, in the certifying committee's view, the fees charged were fair and reasonable and, if not, what a reasonable charge would be. In both contentious and non-contentious business, the client may seek an order for taxation by the court. For complaints alleging negligence by solicitors, the Society is now able to offer the very real help of its Negligence Panel Scheme, to which I have referred above, so that, where there clearly has been negligence, the aggrieved client can seek redress through the courts.

10. There remains another type of complaint to which the Royal Commission on Legal Services referred in its Report as "bad professional work", with which, in my view, the Law Society is not at present able to deal effectively and where no remedy at present exists, save what the solicitor complained of may offer voluntarily. These complaints are that the solicitor has acted incompetently in dealing with his client's affairs but where the latter has suffered no quantifiable loss and, for this or other reasons, there is no negligence in law. Nevertheless, the client may have suffered acute anxiety or delay to his business, quite unnecessarily. I think it very important that the Society should be able to deal effectively with the more serious complaints of this type, to offer the complainant the opportunity of some form of redress and, by a form of "peer review", to act as an important part (but only a part) of the process of seeking to raise the standards of performance of the very small proportion of solicitors whose competence gives cause for concern. However, the Society at present has not the necessary authority to undertake this task because its own and the Disciplinary Tribunal's formal powers are limited to dealing with issues of Professional conduct and because the Society has no power to impose appropriate sanctions.

11. The appropriate sanctions would, in my view and as I have suggested previously[4], be for the Council of the Society to have statutory power to order a solicitor to remit or refund all or part of his fees, up to a limit (perhaps to be set by Rules), where a solicitor has been guilty of serious dereliction of duty to his client in the context of skill, professional competence or proper management of his practice and where there has been no actionable negligence. In addition I believe that the Council of the Law Society should have statutory power to order a solicitor to correct his admitted mistakes at his own expense, where no conflict of interest arises. I am confident that the great majoirty of solicitors who find themselves in this position do so now, voluntarily: nevertheless, I believe the Society should have the power to order this in the very small proportion of cases where the solicitor fails to meet his proper obligations in this respect. I also believe that the Law Society should have the power to order a solicitor to produce to the Society his file of papers or to answer the Society's questions, on a matter where the Council are satisfied that this is necessary to enable the Society properly to

[4] Seventh Annual Report of the Lay Observer H.C. 347 (1982), para. 12.

investigate a complaint. As I have previously reported[5] I feel that the absence of this last power might very occasionally have inhibited the Society's investigations where a solicitor might have been on the verge of wrong- doing, although I have seen no such case in 1982.

12. In previous reports[6] I suggested that it would be much in the interests of the profession and the public if a scheme could be devised whereby the Society could itself arbitrate on small claims for negligence brought by individual clients against their previous solicitors, perhaps with the prior consent of the parties. The Society has given very careful consideration to this suggestion and it is now clear to me that any such scheme would pose difficult problems of organisation and administrative cost. More importantly, however, there are serious doubts, which I appreciate, that any such scheme run by the Society would enjoy a sufficient degree of public confidence and trust to justify the cost of running it. I think it only fair to add that, in 1982 I saw only one further case where "defendant" solicitors had failed to settle small claims brought against them by Negligence Panel solicitors on behalf of individual clients. Nevertheless, in the absence of such an arbitration scheme, it does seem to me that the Society would be able to offer to some justly aggrieved clients a form of effective redress if it were to have the statutory powers to order a solicitor to remit or refund all or part of his fees for "bad professional work", as I have suggested above. In addition, there is, of course, available the small claims arbitration procedure in the County Courts: but I have doubts as to the suitability of that procedure in some cases of this type, in the light of the complex and difficult issues of fact and of law to which they can give rise. Even where the procedure is suitable, the complainant-plaintiff may still need professional representation for the effective presentation of his case against the solicitor-defendant and he will normally be unable to recover the cost of that representation, even if he wins the case.

13. There is one further area in which I believe that the Society's statutory powers should be strengthened; this concerns the power in Section 43 of the Solicitors Act 1974, to apply to the Solicitors Disciplinary Tribunal for an order that no solicitor shall employ, without the permission of the Society, a person who is or was a solicitor's clerk and who has been shown to have acted dishonestly or improperly. One case of this type I saw in the past year only just came within the provisions of that Section, although the individual employee had clearly been shown to have acted improperly. As I understand the law as it stands at present, no order prohibiting a solicitor from employing a clerk or former clerk can be made where that person can be proved to have stolen money belonging to his solicitor-employer's practice (as opposed to client's money), unless the employee has actually been convicted of a criminal offence disclosing dishonesty. Although the solicitor will probably dismiss the culprit, he may decide not to bring a prosecution because the resultant publicity would damage the reputation of his practice. In that event, the former employee could seek work elsewhere with other solicitors having no knowledge of his "record", with consequent risk to the new employing solicitor and his clients. It seems to me that this and similar risks would be overcome if the substitution test contained in section 43(1)(b) of the Act were to be replaced by a provision allowing the Society

[5] Sixth Annual Report of the Lay Observer H.C. 291 (1981), para. 14.
[6] H.C. 291 (1981), para. 10 and H.C. 347 (1982), para. 11.

to make application to the Tribunal in respect of a clerk or former clerk who has, in the opinion of the Society, occasioned or been a party to an act or default in relation to his employing solicitors' practice which discloses such dishonesty that, in the opinion of the Society, it would be undesirable for him to be employed by a solicitor without the Society's consent.

14. I have previously reported[7] that, in my view, the work of the Society in attempting to deal with complaints of "bad professional work" could be much assisted if it were found possible to introduce a number of "Professional Standards" of the sort recommended by the Royal Commission on Legal Services[8]. I understand that the matter remains under active consideration by the Society: it seems that the drafting of mandatory standards for the legal profession poses much greater problems than for some other professions, by reason of the almost infinite variety of circumstances surrounding legal work: that may well be so. There may, indeed, be other ways by which the Society could achieve the same end—that of improving the standards of the less able solicitors whose performance on occasions falls short of what their clients ought reasonably to be entitled to expect. The Society's publication "A Guide to the Professional Conduct of Solicitors", which was last published in 1974 and which covers, albeit in a rather different and not necessarily mandatory form, a number of the matters which the Royal Commission recommended should be the subject of Professional Standards, is now undergoing a full revision: I understand that it is hoped to publish the first section in 1983, including a chapter on competence. I also understand that a wide variety of other measures designed to improve the standards of competence of the less efficient or less able solicitors are being developed or considered by the Society, and that a special study on "Practice Management" has been set up by the Society specifically with that aim. In these circumstances, I feel bound to suspend further judgment on the issue of Professional Standards until the measures which the Society decides to adopt have been announced and, perhaps, there has been some experience of their practical effect.

## PRINCIPAL AREAS OF CLIENTS' DISSATISFACTION

15. I have already discussed the problems which the Society faces in dealing with complaints alleging incompetence or negligence by solicitors; and that many complaints in that category turn out to be no more than expressions of dissatisfaction with perfectly proper and sound, but unpalatable, advice which the complainant has received from his solicitors. I discuss below the other principal areas of client dissatisfaction disclosed by the complaints referred to me.

### Delays and lack of Information

16. Delays and lack of information continue to be a frequent and often, in my view, well justified cause of complaint. Some of the delays are certainly not, or not all, the fault of solicitors but, nevertheless, I have been dismayed at the overall time taken to bring some matters to a conclusion. In 1982 one of my correspondents received the final payment due to him by way of damages and costs for personal injuries suffered in an accident in 1969 and for which he

[7] H.C. 291 (1981), para. 12 and H.C. 347 (1982), para. 15.
[8] Cmnd. 7648, para. 22.58 and Recommendation R.22.17.

received the first payment in 1978: 9 years from accident to first payment and a further 4 years from then until final settlement. Another case, in which a house suffered major structural damage from the bursting of water mains in a public road, is still not concluded over 12 years after the event. I dread to think what the plaintiff and his family must have suffered over this period, by reason of this extraordinary delay. Delays of the extent shown in these examples, while extremely disturbing, are, of course, quite exceptional. The great majority seem to me to be due either to inefficient procedures in the solicitors' offices or, much less frequently, to solicitors taking on more work, or some particularly specialised work, without adequate resources to deal with all the matters properly.

17. A far more frequent underlying cause of complaint is simply the solicitor's failure to keep his client adequately informed of the progress of his business: as my predecessor and I have both said in previous reports, if this is not done, the client naturally assumes that nothing is happening and blames his solicitors accordingly. It seems to me that it will normally be essential when taking on a new matter for a client, for the solicitor to outline to him the main steps which will need to be taken and, where possible, give some indication of the time scale for each step; and subsequently to update this information when changes occur, as some almost inevitably will. Different clients need different kinds and amounts of information and a proper balance needs to be struck to avoid undue expense; but it costs very little to send a client a copy of an important letter addressed, for example, to the opposing party's solicitors and that may well be all that a reasonably knowledgeable and intelligent client needs at that time. The real problem which the solicitor faces is how to keep the client of very limited understanding, or one under great emotional stress, reasonably informed witout incurring unreasonable costs.

**Administration of Estates**

18. My statistics show that administration of estates has again given rise to more of the complaints referred to me than any other single category. Many of these complaints are of delay by solicitors in completing the administration, or in paying income (and in delivering the associated tax deduction certificate) to life tenants, or in paying legacies. Other complaints allege failure to provide sufficient information to beneficiaries on their likely entitlement from the estate or failure to provide accounts. Many of these complaints come from beneficiaries who are not themselves the clients of the solicitors concerned and therefore cannot instruct them to take the action requested in their own interests. Nevertheless, I am pleased to be able to report that the Law Society is now much more ready to make at least initial inquiries into allegations by beneficiaries of serious delay or failure by the solicitors acting in the administration to provide reasonable information, even when the solicitors are acting for lay personal representatives, to whom their primary duty of care is owed. It was interesting, but sad, to note that in some cases of alleged serious delay inquiries by the Law Society clearly showed that the delays were due, largely or entirely, to bitter disputes between the beneficiaries themselves (including the complainant), as a result of which the administration could not proceed. In other cases, it was quite clear that the delays were not the fault of the solicitor but due to genuine diffi-

culties, such as obtaining the agreement of the Inland Revenue to the valuation of certain estate assets.

19. As I have previously reported[9], I submitted evidence in 1979 and 1981 to your Lordship's Law Reform Committee's Sub-Committee on the Powers and Duties of Trustees, suggesting that the duty of personal representatives to account to beneficiaries might be more specifically defined by statute. I note that, in its twenty-third Report[10], the Committee has not felt able to recommend any such change in the law. Nevertheless I am pleased and grateful that in its analysis of this problem in its Report, the Committee has drawn attention to the remedies available to beneficiaries in section 22(4) of the Trustee Act 1925 (power to audit)[11], in section 1(1) of the Judicial Trustee Act 1896 (appointment of a judicial trustee) and by complaining to the Law Society where a solicitor is acting in the administration[12]. But I confess to some remaining doubt as to whether there is not a need for some further and inexpensive remedy against a dilatory personal representative, to require him to make more haste, short of the rather drastic action of seeking his replacement by a judicial trustee. I very much hope that my doubt will prove unfounded. I was also pleased to note the Committee's recommendation that a beneficiary under a trust or under an intestacy should be able to obtain a remuneration certificate from the Law Society to establish that the charges made by a solicitor-trustee or a solicitor- administrator are reasonable[13]: at present, only a solicitor's client can do so.

**Estimates and Costs**

20. I have previously drawn attention to the worry caused to many clients by the absence of adequate estimates of their legal costs[14]. I was therefore pleased to see that the Law Society has now issued revised guidance to practitioners on the provision of estimates for domestic conveyancing work, together with a suggested printed form on which the estimate can be given to the client. This seems to me to be particularly desirable now that increasing numbers of potential clients are "shopping around" before giving their conveyancing instructions: I understand that this is intended to be a first step in improving the guidance to the profession in the giving of estimates of costs. The Society has also given much encouragement recently to practitioners to establish proper systems of time costing where this is still lacking; and the Society has, in the past year brought up to date and re-issued its publication "The Expense of Time" which gives guidance to the profession on this subject. Nevertheless, in my view, it is still necessary, despite the undoubted difficulties, to improve the costs information available to many litigants. As I have said before, it really is necessary that they should know, before embarking upon the next stage in litigation, the total costs incurred to date and the likely maximum costs at risk to them in proceeding to the next stage. Too many solicitors still are not able to provide

[9] Fifth Annual Report of the Lay Observer H.C. 507 (1980), para. 14 and CH. 347 (1982), para. 18.
[10] Law Reform Committee Twenty-third Report (Cmnd. 8733).
[11] Ibid, para. 4.48.
[12] Ibid, paras. 7.13–7.17.
[13] Ibid, paras. 3.50 and 3.55.
[14] H.C. 347 (1982), para. 21.

even the first of those figures in time for an informed decision to be made and I think that is quite wrong.

21. The profession and the public continues, I believe, to be burdened with an unnecessarily complex and time-consuming system for the compiling and assessment of legal costs: the system seems to me to be wasteful of the profession's time and resources and therefore to add unnecessarily to the expense to clients. In addition to the complexities of the system, much of the terminology (for example, the phrase "general care and conduct" and its associated mark-up) is meaningless or misleading to most lay people and much time, and therefore money, is wasted in explanation: a surprising number of clients even appear not to know the meaning of the term "on account of costs". Further confusion and unnecessary complexity and expense are caused by the Rules governing these matters in the County Court being different from those applicable in the High Court. I know that great efforts are being made by those concerned to simplify the system: for example through the Working Party for the Simplification of Costs in the High Court and through the discussions aimed at abolishing most of the scale items set out in Appendix 2 to Order 62 of the Rules of the Supreme Court; but, even so, the problem of costs in the County Court will remain to be tackled. I very much hope that all these efforts will lead to a fair but less wasteful and more easily understood system.

**Confusion over Unadmitted Staff**

22. I have continued to receive a few complaints when a client discovers that the legal executive or clerk who has been advising him or doing work on his behalf is not an admitted solicitor. This usually arises when the client has called at a solicitor's office and has asked to see "a solicitor". In the event, he has seen a legal executive or clerk without being told that the latter is not a solicitor. Of course this information is given as a matter of routine in the very great majority of solicitors' firms: but where it is not, quite unnecessary resentment can arise. I still believe that all clients dealing directly with unadmitted staff should be told at the outset that the person concerned is not himself a solicitor but works under the supervision of one, who is fully responsible for his work: if the staff member concerned is a legal executive, he can, of course, point to his qualification as such. I understand that the Law Society received only three complaints of this nature in 1982: nevertheless, they should in my view have been unnecessary. In September 1982, in answer to a query from the Institute of Legal Executives, I made reference to what I had said on this subject in my earlier reports. I understand that there have since been discussions between the Society and the Institute and that a Joint Working Party is now investigating the matter. I very much hope that this relatively minor but irritating problem can be disposed of soon, perhaps by directive or guidance from the Society to all practitioners.

**Guardianship of Minors Act 1971**

23. During the year, I saw one particularly sad case arising out of the provisions of the Guardianship of Minors Act 1971. A lady of very modest means had looked after her young grandchild for $5\frac{1}{2}$ years, the child's parents having been separated or divorced. The grandmother had been granted care and control of the child by order of the Magistrates Court but, some 2 years later, the child's

mother (the grandmother's daughter) brought proceedings in the magistrates court, seeking custody of her child. This application was opposed by the child's grandmother (and by other relatives as well) and the hearing in the magistrates court lasted three full days, when custody was granted to the child's mother. The grandmother's solicitor had applied for legal aid on her behalf but this was refused, apparently quite correctly under the Regulations, on the ground that she was not a party to the proceedings. The solicitor had then sought a declaration from the magistrates that the grandmother was a party to the proceedings but, in a reserved judgment, this application was refused, although the court allowed her to be represented privately. In consequence, the grandmother faces a bill from her solicitors of nearly £600, which she cannot afford, for the three day hearing and preparation. I am bound to say that I find it extraordinary that the grandmother could not be considered to be a party to the proceedings in these circumstances, when she had care and control of the child under an earlier court order: it seems to me that it was essential for the court to hear the grandmother's case, as it apparently did, before it could reach a final decision in the best interests of the child. I very much hope that the legal status in guardianship proceedings of persons having care and control of a child can be reviewed as soon as possible, to see whether this apparent anomaly in the law can be removed.

## CONCLUSIONS

24. As in previous years, I have seen a number of other very sad cases during 1982. Many of them have arisen because clients have been unable to accept the perfectly proper advice of their solicitors (and often counsel as well) and have sought obsessively to pursue their cases when there was really no hope of success or redress. Some of these people seem unable to contemplate the possibility that their view of the facts or of the law might be mistaken. Other very sad cases have arisen from matrimonial proceedings and I continue to be astonished at the bitterness which some of these have aroused. They were also the source of the majority of the "third party" complaints referred to in paragraph 5 above, the usual suggestion being that the spouse would never have alleged such dreadful things about the complainant's conduct had his or her solicitor not suggested it. I have seen no evidence whatsoever to substantiate such allegations, largely because they cannot normally be investigated without breaching the confidential relationship between solicitor and client. Nevertheless, it is at least possible that a very few solicitors do promote sharply adversarial attitudes in such proceedings and, if so, I very much hope that means can be found to discourage such conduct.

25. As I have previously pointed out, complaints against solicitors attract a very great deal of attention in the media and the impression may sometimes be given that solicitors receive more public criticism than do other professions. In that context, I was interested to read your Lordship's address to the Law Society's National Conference in October 1982, when you reminded your audience that, ever since Wat Tyler, lawyers have had a bad press: they are often the purveyors of unpalatable advice (I have referred to this above) and, as advocates or as solicitors engaged in contentious business, they are involved in the process of litigation in which at least one party must lose, and in which it is by no means certain that even the winner will carry off more than a Pyrrhic victory.[15] As I

[15] Reported in The Law Society Gazette (1982), p. 1354.

have also said previously[16], few lay clients who embark upon litigation realise that they have only a 50 per cent chance of success: if other professions faced the same odds they might well receive more complaints than they do.

26. I must again stress that I am very conscious of the fact that I see but a tiny and most unrepresentative sample of solicitors' work; and that the solicitors whose work I do see represent a very small and usually quite unrepresentative sample of the profession as a whole. I must also emphasise that, in examining the cases which come to me, I invariably have all the benefits of hindsight: I try very hard to reflect this fairly in the reports I write to complainants, to the solicitor complained of and to the Law Society. I continue to be very grateful to the many solicitors of whom I have made enquiries for the very patient and helpful way in which they have answered my questions and thus given me a clearer understanding of their clients' problems. I am also grateful for the opportunities which the Law Society, a number of local law societies and the British Legal Association have given me to meet and talk with gatherings of their members which were much more truly representative of their profession than are most of the solicitors whose work I see in the course of my day-to-day duties. These meetings have greatly helped me to understand the sort of problems which solicitors face and how they are seeking to improve their standards of service to their clients.

27. I must finally conclude by again recording my gratitude to the Council of the Law Society and to members of its staff for the co-operation and helpfulness which they have invariably extended to me and for the skill and patience with which they have dealt with my enquiries. I have continued to criticise the action of inaction of the Society when I have thought this just but my statistics show that such criticism has been confined to only a very small proportion of the cases I have seen. The overall standard of the Society in dealing with complaints has continued to improve and I have found no cause whatever to doubt the fairness and objectivity with which the Society and its staff have sought to approach their investigations, despite a very small number of quite unfounded suggestions to the contrary.

(*Signed*) JOHN ALLEN
Lay Observer.

24*th February* 1983

[16] H.C. 347 (1982), para. 29.

## APPENDIX I

**Statistics**
(1.1.1982 to 31.12.1982)

*The Lay Observer's Work*

| | | *Number* |
|---|---|---|
| 1. | Number of new correspondents | 339 |
| 2. | Allegations accepted for formal examination | 187 |
| 3. | Allegations disposed of | 174 |
| 4. | Cases where the Lay Observer has been critical of the Society's treatment of the complaint but not disagreed with the decision | 17 |
| 5. | Cases where the Lay Observer has recommended the Society reconsider its decision | 1 |

**The Nature of the Complaints, whose treatment by the Law Society was examined by the Lay Observer**

| | | *Number* |
|---|---|---|
| 1. | Undue delay or inaction | 3 |
| 2. | Withholding or loss of documents, exercise of lien | 6 |
| 3. | Presentation of bills and accounts, lack of information on accounts, fees charged | 17 |
| 4. | Disclosing confidential information | — |
| 5. | Dissatisfaction with advice given | 64 |
| 6. | Acting contrary to clients' instructions | 2 |
| 7. | Ethics or behaviour—including complaints about solicitors not acting for the complainant | 66 |
| 8. | Solicitors action caused loss | 1 |
| 9. | Legal aid | 8 |
| 10. | Miscellaneous | 21 |

**The Circumstances of Complaints the Treatment of which by the Law Society was examined by the Lay Observer**

| | | *Number* |
|---|---|---|
| 1. | Criminal proceedings | 9 |
| 2. | Matrimonial proceedings | 31 |
| 3. | Administration of estates | 33 |
| 4. | Landlord and tenant | 7 |
| 5. | Conveyancing | 26 |
| 6. | Property disputes | 26 |
| 7. | Contractual disputes | 3 |
| 8. | Personal injury | 4 |
| 9. | Employment | 2 |
| 10. | Professional negligence | 2 |
| 11. | Miscellaneous | 44 |

Printed in the UK for Her Majesty's Stationery Office
PS 3350006 Dd.302323 C10 4/83 CCP

HER MAJESTY'S STATIONERY OFFICE

*Government Bookshops*

49 High Holborn, London WC1V 6HB
13a Castle Street, Edinburgh EH2 3AR
Brazennose Street, Manchester M60 8AS
Southey House, Wine Street, Bristol BS1 2BQ
258 Broad Street, Birmingham B1 2HE
80 Chichester Street, Belfast BT1 4JY

*Government publications are also available through booksellers*

ISBN 0 10 232383 6