



The Law Society

# Adjudication in a matter raised by Nigel West

Law Society Freedom of Information Code

February 2008

## Contents

1	The issues .....	2
2	The background.....	2
3	Chronology of this adjudication.....	3
4	Submission by Mr West .....	3
5	Submission by the Law Society .....	4
6	Issues for adjudication.....	6
7	Adjudication .....	8

## 1 The issues

Whether the Society acted appropriately and in accordance with its Freedom of Information Code (“the Code”) in declining to release to Mr Nigel West much of the information it holds in connection with the preparation of a report called “Miners Compensation Claims Administration or Success Fees” written in January 2004. Also whether the Society acted appropriately in refusing, on grounds that it was “personal to the correspondents”, to release its copy of a letter written by the then Lord Chancellor, Lord Falconer, to Lord Sawyer about deductions made by some solicitors from miners’ compensation awards.

## 2 The background

During 2003 questions were raised in Parliament concerning the fact that some solicitors had made deductions from compensation awards made to former miners on account of work-related illnesses even though the Department of Trade and Industry (“DTI”) had put in place a scheme intended to meet all the legal costs of successful claimants. The Law Society’s Director of Regulation Policy, Alison Crawley, wrote a report (“the Crawley Report”) dated 8 January 2004 for the Society’s Compliance Board setting out the background to the issue and inviting the Board to determine whether it was legitimate for solicitors to deduct a success fee in addition to the fixed costs received from government and, if so, what principles should govern the practice. Subsequently the Society changed its policy such that some solicitors had to repay fees they had charged their clients.

On 28 June 2007 Mr Nigel West of the law firm RadcliffeLeBrasseur wrote to the Society’s Information Compliance Manager, Joshua McKim, seeking information to assist in an application to the Solicitors Disciplinary Tribunal. Mr West asked for a range of documents associated with the Crawley Report and with the decision to prepare it. On the same day he wrote separately to Mr McKim enclosing a copy of a letter written in 2006 by Lord Sawyer to the then Chief Executive of the Law Society, Janet Paraskeva, in which Lord Sawyer referred to a letter he had written about the deductions issue to the then Lord Chancellor, Lord Falconer. Lord Sawyer told Ms Paraskeva that he was enclosing a copy of Lord Falconer’s reply. Mr West asked the Society to let him have a copy of it.

Through June, July and August the correspondence between Mr McKim and Mr West in relation to his two requests ran in parallel. Mr McKim acknowledged their receipt on 28 and 29 June, promising to write again by 26 and 27 July. On 26 July he wrote to Mr West again about each request, regretting that there was a delay and promising further responses by 9 and 10 August.

On 9 August Mr McKim wrote two further letters. In one of them, in relation to material concerning the Crawley Report, Mr McKim said that some of it was likely to be exempted from release under s.14.7 of the Code but that he was awaiting a final review before confirming that decision and he would write again before 24 August.

In his other letter on 9 August Mr McKim refused to release the Society’s copy of Lord Falconer’s letter of 17 April 2006 on the grounds that it was “personal to the correspondents” and that the Society was therefore applying s.16 of the Code, which prevents publication of details of a personal nature (in accordance with the Data Protection Act). Mr West appears not to have received this letter from Mr McKim

until, after prompting him for his reply on 21 September and 2 October, he was sent a further copy of it on 4 October.

On 22 August Mr McKim wrote again to say that he was still awaiting confirmation that the Society wanted to apply s.14.7 of the Code to some items of information concerning the Crawley Report and he would write again on (sic) 7 September. Again Mr West appears not to have received this letter because he prompted Mr McKim for a reply on both 21 September and 2 October.

Mr McKim finally gave the Society's substantive response on 5 October, enclosing some of the information Mr West had requested but refusing the remainder on the grounds that it was variously exempted under s.14.5, s.14.7, and s.16 of the Code.

### **3 Chronology of this adjudication**

November 2:	Mr West asked for adjudication
November 15:	Law Society and Mr West invited to make submissions
November 24:	Second invitation to Mr West to make a submission
December 7:	Law Society submission received
December 10:	Request on behalf of Mr West for further time
January 14:	Mr West's submission received

17 January 2008, having considered the submissions, I asked the Society to let me see copies of all the documents which they had withheld from Mr West. These eighteen items of information were received on 19 January.

### **4 Submission by Mr West**

Mr West said he did not accept that the information he had requested fell within s.14.5 of the Code which refers to "specific investigations, disciplinary cases or applications". He believed that the word "specific" referred to specific solicitors whereas Ms Crawley's file related to a general matter (the handling of miners' compensation claims).

In respect of the use of s.14.7 Mr West said the Society had given no explanation as to why the disclosure of these documents would, in the words of the Code, "hamper the free and frank exchange of views or harm the effective conduct of public affairs".

As regards the Society's reliance upon s.16 (reflecting the Data Protection Act 1998) Mr West found it difficult to understand how the documents in question could fall within its scope. He believed they were unlikely to contain personal data, and if they did it was unlikely to have been processed.

Mr West enclosed a copy of an internal memo about miners' compensation claims, dated 11 December 2003, written by the Society's Director of Strategic Policy and copied to, among others, Ms Crawley. This memo was one of those which the Society had declined to disclose to him. Mr West said he could not see how either this memo, or any other subsequent ones on this subject, could possibly fall within the exceptions to publication covered by s.14.5, s.14.7 or s.16 of the Code.

Mr West pointed out that, even if some of the information he requested was indeed covered by s.14.5 or s.14.7, the decision to withhold them was subject to a test of public interest. This was clear from the Act, which section 3 of the Code stated that the Society aimed to follow. Section 18 of the Code also required the Adjudicator to apply a public interest test to the release of regulatory information.

Mr West cited the Information Commissioner's guidance that the test should be whether "*it serves the interests of the public better to withhold or to disclose information*". He believed that several factors militated in favour of disclosure: the principle of openness, furthering understanding of why the Society had changed its original policy, promoting accountability for decisions the Society takes, and understanding how the Society had responded to questions on this subject from MPs. Mr West pointed out that the lives and professional reputations of some solicitors had been affected by the Society's change of policy in 2003/04: some of them faced allegations of misconduct or complaints of inadequate professional service as a result, and they needed information on the reasons for the change to respond to or challenge those allegations. He said that, since the Society had brought proceedings against some solicitors for breach of its January 2004 policy statement, the disclosure of information relating to that change in policy was necessary if they were to be afforded proper access to justice

In reference specifically to his wish to receive a copy of Lord Falconer's letter, Mr West said it was unlikely that it fell within the provisions of the Data Protection Act. He thought it was unlikely to constitute personal data or to have been processed or kept as part of an accessible record within a manual filing system. He cited the Information Commissioner's guidance which draws a clear distinction between the private and public life of the data subject: "*information which is about someone acting in an official or work capacity should normally be provided on request...*". He thought the letter was about work carried out by a firm of solicitors, as opposed to personal information about the solicitors. He further argued that, even if it contained personal data, the letter fell within an exemption to the Data Protection Act because it pertained to a matter of acknowledged public interest and importance and was written by a government Minister and disclosed to the Society in connection with matters raised in Parliament.

## **5 Submission by the Law Society**

### **5.1 Information concerning the Crawley Report**

A substantial part of the Society's submission concerned its delay in providing a final response to Mr West – by its own calculation some 69 days from the date of its original receipt rather than the 20-day target expressed in the Code. The Society offered a number of reasons to explain this delay and said measures had had since been taken to avoid the same thing happening again. It also apologised unreservedly to Mr West.

One of the reasons the Society gave for the delay in deciding what information to release about the Crawley Report was because "information relating to this discussion of policy information is sensitive and any release of the type of information requested by Mr West required careful consideration". The Society said that a lot of time had been spent considering whether exemptions (in the Code) applied to the information sought by Mr West and "whether the public interest would uphold those exemptions".

The Society provided the Adjudicator with a list of eighteen items of information which it had withheld from Mr West. The Society said that thirteen of them were covered wholly or partly by s.14.7 of the Code, which allows information to be withheld “*if it is about the work we are doing or have done to develop our policies, where we think that giving the information would hamper the free and frank exchange of views or harm the effective conduct of public affairs*”. The Society said that six items were covered by s.14.5, which allows information to be withheld “*if it is about specific investigations, disciplinary cases or applications arising from our regulatory role*”. It said that six were also covered by s.16, which enshrines the Society’s legal duties under the Data Protection Act.

The Society’s submission addressed only briefly its rationale for applying s.14.5, pointing instead to previous submissions it has made in several recently adjudicated cases (*Gomez* – September 2006; *Gomez* – May 2007; *Nenadich* – April 2007; *Briggs* – August 2007). In essence, in those cases the Society argued that to release details of investigations into the conduct of individual solicitors would undermine the necessary confidentiality which both complainants and respondents had to be able to rely upon when making submissions in what was intended as a disputes resolution process. The Society added that in this case “although Ms Crawley did not hold the information for the purpose of investigating a specific regulatory matter this information was subject to investigation by others at the Society”.

In respect of its decision to cite s.16 as its reason for withholding some of the information the Society said simply that it had done so because the information was “about specific individuals and their complaints about solicitors”.

The Society said that in each case where it had relied upon s.14.7 the information had “constituted the stated opinions of staff members and exchanges of views between them relating to formulation of this policy”. The Society said that the issues surrounding the development of this policy were very sensitive at the time and were “still a matter of discussion and opinion within the Law Society now almost four years since [the Crawley Report]”.

The Society said it recognised that there was a significant amount of public interest in this matter and that it has endeavoured to make a large amount of information available. But it considered that “it would not be in the public interest to release the opinions and interpretations of staff members when considering the formation of report (sic) and the issues for debate”. It believed that to do so would hamper a free and frank exchange and that “without this exchange the issues presented for debate about the policy would not necessarily arise”. The Society therefore believed that releasing the information would harm the effective conduct of public affairs.

## **5.2 Lord Falconer’s letter**

In respect of its decision not to release a copy of Lord Falconer’s letter, the Society said that it was exempt from publication under s.16 of the Code which prohibits the release of “details of a personal nature about someone else”. The Society said that Lord Sawyer had enclosed a copy of this letter when he wrote to Ms Paraskeva because it was Lord Falconer who, in one paragraph, had encouraged him to contact her. The Society argued that the majority of the letter related to a matter in discussion between Lord Sawyer and Lord Falconer and concerned “legislative priorities, the application of government policy and personal opinions”.

### **5.3 Additional information**

On 25 January, having considered all the documents and the submissions from both parties I wrote to ask the Society for clarification of certain aspects of its submission. I said that it seemed to me that four items of information which the Society sought to withhold under s.14.5, namely items 5, 11, 12 and 16, were held by the Society not as part of an investigation but as part of its discussion of policy options relating to the Miners' Compensation issue. I stressed that I was not inviting the Society to make a new submission but I wanted it to clarify whether I had misunderstood or misinterpreted the provenance of the documents in question or the purposes for which the Society held them.

On 4 February the Society explained that some of the documents which it had apparently received as part of the policy discussions about the Miners' Compensation issue had already been received in another context. Specifically, in item 11, a letter from a client to the Advertising Standards Authority complaining that his solicitors had advertised a "free" claims service while actually levying a substantial charge, had originally been copied to the Society by the complainant and had therefore been "treated as an instigator of a regulatory matter".

In relation to the information contained in item 16, the Society appeared to concede that it might be possible to make redactions so that release of this information might be possible under s.14.5. However, it then argued that "it is apparent that this information would be useful to the Law Society as a specific regulatory matter from the view that [a named firm of solicitors] has agreed to refund some funds to its clients and would have relevance to any future complaints by these clients". This appeared to be offered as justification for continuing to apply the exemption in s.14.5. The Society also offered a new argument: "As this information does speak as well to generalities and agreements about legal fees and would have been useful in considering policy, the Law Society considers it appropriate to request that the exemption in s.14.7 be also considered applicable to this information". Similarly, the Society requested the application of s.14.7 to the information contained in item 12.

## **6 Issues for adjudication**

The Society has cited, in various combinations, three different exemptions from publication specified in the Code. It might be helpful to make some general observations about each of the three categories of exemption relied upon in this case.

### **6.1 Section 16 – Data protection**

Unlike the other (voluntary) provisions of the Code, s.16 merely expresses in lay terms the Society's legal obligation to observe the Data Protection Act 1998 when considering the release of personal information. The Adjudicator cannot usurp the role of the Society as a data controller when determining its compliance with the Act. The Society's original (2001) FoI Code explicitly excluded from the Adjudicator's remit decisions made by the Society in order to comply with the Data Protection Act. Although the current Code does not make that clear (and it probably should) I must deny myself jurisdiction in respect of s.16 exemptions. I understand that Mr West can, however, appeal to the Information Commissioner in the event that he feels the Society applies the Act with undue rigour.

## **6.2 Section 14.5 – information about specific investigations**

The Society's submission in support of its reliance upon s.14.5 referred to its more detailed submissions in four previous cases. In those cases clients who had complained about their solicitors had asked to see some or all of the information held in the relevant complaints file. The Society's central argument in those cases was that neither complainants nor respondents would have the confidence to deal frankly with the Society's investigations and disputes resolution processes if they thought that the contents of their exchanges might be made public. My previous adjudications have supported the general principle that wholesale disclosure of specific investigatory information might damage the Society's ability to resolve complaints. However, I have made clear that a public interest test is necessary in respect of each item of information sought, and that there may be many circumstances in which the public interest will be in favour of disclosure of certain items of information.

The Society accepts that in the current case Ms Crawley did not hold the information for the purpose of investigating a specific complaint, but it says that the information "was subject to investigation by others at the Society".

The Information Commissioner's guidance on s.30 of the Act (upon which this part of the Code is based) makes clear that the exemption to disclosure is more likely to relate to current investigations than to ones which have been concluded, and even with current investigations the public interest in disclosure might prevail: "*Public authorities should not assume that they should not release all information relating to ongoing investigations. Much will depend on the effect of disclosure. There will be a stronger case for maintaining the exemption where the confidentiality of the information is critical to the success of the investigation.*"

## **6.3 Section 14.7 – Disclosure which would hamper free and frank exchange of views or harm effective conduct of public affairs**

This part of the code is modelled on s.36.2 of the Act. The Information Commissioner's guidance on the application of these exemptions is substantial. He says that this section of the Act "*acknowledges that the prospect of disclosure of information which reveals internal thinking processes may be detrimental to the ultimate quality of either policy making ... or to other decision making within a public authority, and that this will lead to less candid and robust discussions, insufficient records being created, hard choices being avoided and ultimately the quality of government being undermined*". However, on the question of the damage disclosure might cause to the free and frank exchange of views, he says: "*There must be some clear, specific and credible evidence that the substance or quality of deliberations or advice would be materially altered for the worse, by the threat of disclosure.*"

On the test of whether disclosure would be likely to harm the effective conduct of public affairs the Information Commissioner considers that this exemption would be available to public bodies only "*in cases where the disclosure would prejudice the public authority's ability to offer an effective public service, or to meet its wider objectives or purpose (rather than simply to function) due to the disruption caused by the disclosure and the diversion of resources in managing the impact of disclosure*".

## 7 Adjudication

### 7.1 General conclusions

- 7.1.1 In providing me on 4 February with further information (see 5.3 above) the Society sought to apply the additional exemption of s.14.7 to items 12 and 16. For the avoidance of doubt, I would not regard it as good practice for the Adjudicator to entertain grounds for non-disclosure which had not been cited by the Society to the requestor at the time the information was first withheld. However, in this case the Society cited 14.7 as one of the general grounds for non-disclosure when it wrote to Mr West on 5 October 2007, and Mr West therefore had an opportunity to address the general issues around s.14.7 when he made his submission. I therefore see no unfairness to him in entertaining the Society's late request to apply s.14.7 to items 12 and 16.
- 7.1.2 The Commissioner's test for harm to the effective conduct of public affairs sets a high hurdle if the Society is to rely upon that part of s.14.7 and I do not believe that that test is passed in relation to any of the information in contention here.

I have considered whether each of the eighteen items of information in dispute is nonetheless caught by s.14.7 because its release would hamper the free and frank exchange of views or by s.14.5 and, if so, whether the public interest in disclosure outweighs the public interest in withholding the information.

- 7.1.3 Where an exemption applies and an overriding public interest in withholding information could be addressed by simple redaction, I have recommended that course of action. The Information Commissioner confirms that that is good practice.
- 7.1.4 Below I list each item on the Society's schedule of withheld information; the Code section indicating in brackets the Society's reasons for having withheld it; and my determination of the appeal against that decision:

#### **Item 1 – Internal memo dated 21/11/03 (s.14.7)**

I do not accept that disclosure of this memo from a senior executive to Ms Crawley could pose a serious threat to the substance or quality of future deliberations or advice within the Society. I therefore find for Mr West and ask the Society to release the information.

#### **Item 2 – E-mail from DCA to the Law Society dated 27/11/03 (s.14.7)**

I do not accept that disclosure of this memo from a DCA civil servant to a senior executive at the Law Society could pose a serious threat to the substance or quality of future deliberations or advice within the Society. I therefore find for Mr West and ask the Society to release the information.

#### **Item 3 – Exchange of internal memos dated 03/11/03 (s.14.7)**

This exchange reveals internal thinking about processes for handling the challenges posed by the Miners' Compensation issue and I am satisfied that its disclosure might threaten the quality of future provision of advice. I judge the public interest to be in favour of its being withheld. I therefore find for the Society.

**Item 4 – Internal memo dated 3/11/03 (s.14.7)**

This memo from a senior executive outlines work which he believes the Society must undertake to inform its policy response to the Miners' Compensation fees issue. I do not accept that its disclosure would pose a serious threat to the substance or quality of future deliberations or advice within the Society. I therefore find for Mr West and ask the Society to release the information.

**Item 5 – Internal memo dated 4/12/03 (s.14.5, s.16)**

This memo names a firm of solicitors against whom there is a complaint regarding the handling of a Miners' Compensation claim and also names the complainant. For reasons given in detail below in connection with Item 11 (which contains details of the complaint and correspondence between the firm and the complainant) it is my view that the Society cannot rely upon s.14.5 in this case. I therefore find for Mr West and ask the Society to release the information.

**Item 6 – Internal e-mail dated 8/12/03 (s.14.5, s.14.7, s.16)**

This e-mail responds to some of the questions posed in Item 4. I do not accept that its disclosure would pose a serious threat to the substance or quality of future deliberations or advice within the Society. I do accept that one section of it (bullet point 3) makes detailed reference to information held by the Society about a specific regulatory investigation it has carried out. I ask the Society to release the document with that bullet point redacted, subject only to any further redactions which are necessary to comply with the Data Protection Act.

**Item 7 – Internal e-mail dated 8/12/03 (s.14.5, s.16)**

This e-mail is a further response to some of the questions raised in Item 4. It covers similar territory to that covered in Item 6 but the Society does not argue to apply s.14.7 in this case. This e-mail contains details about the same specific investigation that was referred to in bullet point 3 of Item 6. I am satisfied that any potential damage to the effective operation of the complaints investigation system could be averted by the redaction of the second substantial paragraph of the e-mail (beginning "Earlier today..."). I ask the Society to release the document with that redaction, subject only to any further redactions which are necessary to comply with the Data Protection Act.

**Item 8 – Exchange of internal e-mails dated 11/12/03 (s.14.7)**

I do not accept that disclosure of these memos between Ms Crawley and a press and public relations officer could possibly be said to pose a serious threat to the substance or quality of future deliberations or advice within the Society. I find for Mr West and ask the Society to release this document subject (if it judges it necessary) to the redaction of the telephone number quoted in the second sentence.

**Item 9 – Internal e-mail dated 11/12/03 (s.14.7)**

This e-mail reveals internal thinking processes the disclosure of which might reasonably be thought to alter the quality of future provision of deliberations or advice within the Society. I judge the public interest to be in favour of its being withheld and I therefore find for the Society.

**Item 10 – Internal memo dated 11/12/03 (s.14.7)**

This is a lengthy memo from a senior executive to the then Chief Executive of the Society. Some of it is a purely factual briefing on the progress of policy development but it contains many frank expressions of judgement, opinion and advice and I am satisfied that its disclosure might reasonably be expected adversely to affect the quality of future provision of advice. I judge the public interest to be in favour of its being withheld and I therefore find for the Society.

**Item 11 – Internal e-mail dated 16/12/03 (s.14.6, s.16)**

This is a one-sentence e-mail from a firm of solicitors acting on behalf of the DTI. It encloses various documents including: a copy of a letter from a member of the public to the Advertising Standards Authority (“ASA”); letters between him and the firm of solicitors about whose advertising he had complained; that firm’s invoices to him and their standard Contingency Fee Agreement.

I am not convinced by the Society’s argument that this information was “about specific investigations ... arising from (its) regulatory role”. Much of it appears to have been provided to the Society as important background information to the controversy surrounding the operation of the Miners’ Compensation scheme. The Society’s assertion that, though the information was not held by Ms Crawley for reasons of investigation, it was nonetheless “subject to investigation by others at the Society” does not carry much weight. The correspondence appears to relate to investigations conducted by others, the ASA and the DTI, not by the Society.

Moreover, the Society’s principal argument in seeking to apply s.14.5 is that complainants and respondents must have confidence in confidentiality when they supply information to the Society in relation to a complaint. But only one document in Item 11 was knowingly provided to the Society by either of the parties to this complaint. That was the client’s letter addressed to the ASA, and I note that he copied it equally to the Law Society, the Sheffield Star and the Nottingham Evening Post, so it is hard to see how his expectations of confidentiality could be argued in favour of withholding the letter.

Finally, I note the Information Commissioner’s guidance about the public interest test in relation to investigatory information, and I do not accept that in this case the public interest would be against disclosure. I therefore find for Mr West and ask the Society to release the information.

**Item 12 – Internal memo dated 16/12/03 (s.14.5, s.14.7, s.16)**

This memo from a senior executive to Ms Crawley is an observation about the matters covered in detail in Item 11 and it apparently contained an attachment consisting of the Item 11 documents. The Society argues that this memo is information about a specific investigation or complaint. As I have already said in relation to Item 11, I do not believe the Society can rely upon s.14.5 in this case and even if it could do so I do not see that the public interest is best served by non-disclosure.

However, the memo in Item 12 appears to be an observation about the matters covered in Item 11, intended to assist Ms Crawley in reaching conclusions which would inform the writing of her policy proposals about the Miners’ Compensation issue. I am narrowly persuaded that its disclosure might reasonably be expected adversely to affect the quality of future provision of

advice and that the public interest is in favour of its being withheld. I therefore find for the Society.

**Item 13 – Internal memo dated 16/12/03 (s 14.7)**

This short memo is a briefing from a senior executive to the then Chief Executive of the Society. I am satisfied that its disclosure might reasonably be expected adversely to affect the quality of future provision of advice and that the public interest is in favour of its being withheld. I therefore find for the Society.

**Item 14 – Internal e-mail dated 17/12/03 (s.14.7)**

This is a one-line e-mail enclosing a draft letter from a senior executive to the Claimant Solicitors Group seeking its views and advice on a number of issues which might inform the Society's consideration of policy options. I do not accept that disclosure of the letter could pose a serious threat to the substance or quality of future deliberations or advice within the Society. I therefore find for Mr West and ask the Society to release the information.

**Item 15 – Internal e-mail dated 17/12/03 (s.14.7)**

This e-mail from a press and public relations officer to a senior executive proposes a number of courses of action the Society might take and I am satisfied that its disclosure might reasonably be expected adversely to affect the quality of future provision of advice within the Society and that the public interest is in favour of its being withheld. I therefore find for the Society.

**Item 16 – Internal e-mail dated 22/12/03 (s.14.5, s.14.7, s.16)**

This e-mail encloses a copy of a letter from the firm of solicitors referred to in Item 11, together with a reply to them from solicitors representing the DTI. For reasons explained already in relation to that item I do not believe that the Society can rely upon s.14.5 in this case. I note that the letters concerned were not addressed to the Society, so even if s.14.5 were to be applied I do not believe that the Society could argue that their release would undermine the necessary confidentiality which complainants or respondents must feel when supplying it with information. I am not persuaded by the Society's additional argument that the information should be withheld partly on the grounds that it would have relevance to any future (as yet unmade) complaints. That would seem to be a recipe for retaining almost any information in confidence in perpetuity.

The Society belatedly seeks also to apply s.14.7 to this information, because "this information does speak as well to generalities and agreements about legal fees and would have been useful in considering policy". This argument seems to miss the point of s.14.7. The fact that information might be useful in policy considerations is hardly a reason for withholding it. On the contrary, it is a reason why there might be a legitimate expectation of its being released. The Society has offered no reason why disclosure of the letter could pose a serious threat to the substance or quality of future deliberations or advice within the Society. I therefore find for Mr West and ask the Society to release the information.

### **Item 17 – Exchange of internal e-mails dated 31/12/03 (s.14.7)**

This exchange of e-mails concerns an early draft of Ms Crawley's report and the draft is attached to it. I am satisfied that its disclosure might reasonably be expected adversely to affect the quality of future provision of advice within the Society. I judge the public interest to be in favour of its being withheld. I therefore find for the Society.

### **Item 18 – Internal e-mail dated 7/12/03 (s.14.7)**

This memo from a press and public relations officer offers advice about reputational risks arising from the Miners' Compensation issue. I am satisfied that its disclosure might reasonably be expected adversely to affect the quality of future provision of advice within the Society. I judge the public interest to be in favour of its being withheld. I therefore find for the Society.

## **7.2 The letter from Lord Falconer to Lord Sawyer**

As stated in 5.1 above I must decline jurisdiction in matters concerning the application of the Data Protection Act.

However, that Act offers a route of appeal direct to the Information Commissioner and Mr West can take that route if he feels that the Data Protection Act has been applied with undue rigour in this case.

For what it is worth, having read the letter from Lord Falconer, it is my opinion that it merely expresses the then Government's view about a number of policy areas; that any opinions expressed in it are the opinions of the then Lord Chancellor acting in his role as Secretary of State and do not qualify as personal data; and that, even if the letter was judged to constitute personal data, s.35 of the Data Protection Act and s.5(a) of Schedule 2 to the Act might both be argued in favour of its publication.

**Richard Ayre**

**Freedom of Information Adjudicator**

*February 2008*