



The Law Society

Adjudication in a matter raised by Mr Angus Crawford Law Society

Law Society Freedom of Information Code

August 2008

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Notice by the Law Society concerning Adjudication published below - September 2008

Following the adjudication given below, the Law Society has complied with the Freedom of Information request which was the subject of the adjudication. In fact no complaints to the Law Society against X & Co have been made within the categories specified in the request. In publishing the adjudication, the Law Society has, with the agreement of the adjudicator, edited the text so as to anonymise X & Co's identity. As well as describing the firm as X & Co, this has also required that the category of clients concerned be described generically.

1 The issue

Whether the Society acted appropriately and in accordance with its Freedom of Information Code ('the Code') in declining to release to Mr Angus Crawford information concerning complaints made about a firm of solicitors, known here as X & Co.

2 The background

This adjudication arises from a request made to the Society on 17 June by Mr Angus Crawford, a reporter working for BBC News, for information about any complaints the Society had received against X & Co. Mr Crawford's request concerned clients of the firm working in a particular occupation who had been injured at work. Mr Crawford said that he had been led to believe that people working in this occupation had concerns about both the way the firm marketed its services to injured people, sometimes even at the bedside, and about the quality of service they provided. He asked a series of questions: how many complaints had been made about the firm by people working in the occupation or their families in each of the last five years; how many of those complaints related to claims for injuries sustained by people working in the occupation; how many had been upheld; and, if any complaints had been upheld, what sanctions had been applied to X & Co. Mr Crawford said he was making his request under the Freedom of Information Act ('the Act').

The following day the Society's Information Compliance Manager, Mr Bob Stanley, replied to say that although the Society was not covered by the Act it operated its own Code which sought to reflect the Act's provisions. On 14 July Mr Stanley gave Mr Crawford a substantive response to his request. He said that the information Mr Crawford had asked for fell within one of the exceptions to publication specified in section 14.5 of the Code. This allows the Society to withhold information 'if it is about specific investigations, disciplinary cases or applications arising from our regulatory role'.

Mr Stanley said that in relying on s.14.5 the Society evaluated whether the public interest favoured disclosing the information requested. In this case the Society believed that the public interest in disclosure was outweighed by the public interest in withholding the information. He said that in arriving at this decision the Society had taken into account the damage that could be caused to solicitors' reputations by

placing statistics on the number of complaints made against them into the public domain.

Specifically in relation to Mr Crawford's request to be told how many complaints against X & Co had been upheld, Mr Stanley said that the Society's 'current position' was that only Findings and Orders of the Solicitors Disciplinary Tribunal were made publicly available.

In response to Mr Crawford's final question about any sanctions that might have been applied to X & Co, Mr Stanley said there had been no Tribunal proceedings against any partners in the firm. Mr Stanley said that 'any internal sanctions that may have been imposed would have been against individuals and not against the firm'. He added that any such internal sanctions would not be made publicly available because they were covered by s.14.5 of the Code. Mr Stanley informed Mr Crawford of his right to seek adjudication.

On 22 July Mr Crawford asked that the matter be referred for adjudication.

3 Declaration of Interest by the Adjudicator

On 24 July, after reading the exchanges between Mr Crawford and Mr Stanley, I wrote to the Society to declare a potential conflict of interest. As deputy chief executive of BBC News I was editorially responsible from 1996 to 2000 for the programmes for which Mr Crawford now works. I also declared that after leaving the BBC I undertook a number of editorial or managerial consultancy projects for the Corporation, though none for at least the past four years.

The Society confirmed that it was content for me to adjudicate in this matter.

4 Submission by the Law Society

The Law Society's submission, received on 12 August, said that, as all four elements of Mr Crawford's request were about the complaints record of X & Co, the Society considered them all to fall within the exception at s. 14.5 of the Code. As required by the Code, the Society had therefore gone on to apply the public interest test to each element.

In relation to the question about how many complaints had been made against X & Co by people working in the occupation or their families in each of the last five years it was the Society's view that the public interest in disclosing the information requested was outweighed by the public interest in not disclosing it. In arriving at this decision the Society said it had taken into consideration the damage that could be caused to X & Co's reputation by publishing the number of such complaints made against them. The Society's view was that publishing the number of complaints against a firm in this way could lead to the public being presented with a misleading picture, because many complaints prove to be without substance.

The Society said it took the same view in relation to the question of how many such complaints might have related to claims for injuries sustained by people working in the occupation. The Society believed it would not be in the public interest to publish the numbers of complaints made in relation to the specific area of claims for injuries sustained by people working in the occupation. The Society said that many complaints were unsubstantiated, and publishing the numbers could have an unwarranted and detrimental effect on the reputation of the firm.

In relation to the question about how many such complaints might have been upheld against X & Co the Society said that its current position was that only the Findings and Orders of the Solicitors Disciplinary Tribunal were made available to the public. Complaints could be upheld or partly upheld by the Legal Complaints Service without the case being brought before the Solicitors Disciplinary Tribunal. The Society's position was that the public interest was not served by the presentation of a potentially misleading picture of complaints against a firm which were not deemed serious enough to be referred to the Solicitors Disciplinary Tribunal.

Finally, in relation to Mr Crawford's question as to what sanctions might have been applied to X & Co, the Society repeated that it had told him there had been no Solicitors Disciplinary Tribunal proceedings against any partners in the firm in relation to these matters. It said it had also pointed out that any internal sanctions that might have been imposed would have been against individuals and not against the firm.

The Society then explained its reason for having stated that its 'current position' was to make public only Findings and Orders of the Solicitors Disciplinary Tribunal. It said that the Legal Complaints Service had recently consulted on 'Exploring the publication of solicitors' complaint records', and that this consultation, which finished on 25 July, had attracted responses from stakeholders, the public and solicitors.

The Society said that in June the LCS Board had expressed support for the principle of publishing details of upheld complaints. The Board had agreed that a number of options were worth further examination and discussion. The Society said that the LCS was investigating these issues thoroughly and what it called a response document would be published by 10 October on the Legal Complaints Service website.

The Society's submission argued that it would be unfair to publish complaints records in advance of the publication of the response document. The Society said it did recognise that there was potentially some tension between its current position in response to requests for complaints records and the possible outcome of the consultation response document when it is published in October. It said that the resolution may be that past complaints records will not be published, but there might be a cut off date after which firms will know that their complaints records may be made public.

The Society concluded by saying that it remained its view that it would not be in the public interest to disclose the complaints information requested by Mr Crawford for the reasons set out in this submission.

5 Submission by Angus Crawford

Mr Crawford said that this was an important matter of public interest. He said he had been told that people working in the occupation who had been injured in the course of the duties of their work were being approached, sometimes at the bedside, to sign up for the services of X & Co. He believed they were approached by this firm because many of them had signed up to insurance schemes which routinely recommended X & Co as legal advisers.

Mr Crawford said he had been told that people working in the occupation complain of poor service, opportunism and insensitivity. He said that people in such a situation were vulnerable. He believed they were not being told that there was a choice of legal cover and were signing up for this firm by default. That affected the service the clients received and acted as a disincentive for the firm to improve.

Mr Crawford concluded that it was clearly in the public interest that injured people working in the occupation concerned were able to make fully informed decisions. He believed that they would be able to do so only if the complaints record of this firm was reported.

6 Adjudication

The information requested by Mr Crawford is not general in nature and I am satisfied that it is covered by s.14.5 of the Code because it is about 'specific investigations, disciplinary cases or applications arising from (the Society's) regulatory role'.

Section 14.5 is a qualified exemption and it is subject to a public interest test. The release of information under FoI constitutes general publication, and information is either freely available, to anyone who asks for it, or it is not: it would be unsustainable to release material to one person under FoI whilst denying it to another in identical circumstances. On the other hand, the Information Commissioner is clear that the public interest test must be applied on a case-by-case basis. Therefore, even if it were to be generally accepted that the balance of public interest was against routinely publishing the complaints record of solicitors, it would be right to consider whether there are particular factors that might shift the balance of public interest in this particular case.

It is important to note the terms in which the Society first rejected Mr Crawford's request. Mr Stanley's email to him on 14 July said: '... in this case the public interest in disclosing the information requested is outweighed by the public interest in not disclosing it. In arriving at this decision the Society has taken into consideration the damage that could be caused to solicitors' reputations by placing statistics on the amount of complaints made against them into the public domain.'

The Society has not explained why damage to solicitors' reputations is directly relevant to a public interest test. That test should ask (in the words of the Information Commissioner) 'whether in any particular case it serves the interests of the public better to withhold or to disclose information'.

Whereas it might have been argued that there is a public interest in preventing wholesale collapse of confidence in the legal profession, it is hard to see why there is a public interest in the public being denied knowledge of the fact that a particular solicitor has or has not been the subject of many complaints. Indeed, the public interest might be well served by the knowledge that no such complaints had been lodged or that, of those lodged, few or none had been found to be of substance; and it might be extremely well served by knowing that a particular solicitor had attracted a large number of complaints, many of which had been upheld.

In its submission the Society argues that to release X & Co's complaints record risks the public being 'presented with a misleading picture, because many complaints prove to be without substance'. As I said in an earlier adjudication (Gomez – Sept 06), information should not be withheld simply because a regulatory authority thinks it is too complicated or incomplete for an applicant to understand. The Society is free to provide additional context if it believes it would help Mr Crawford or members of the public better evaluate the significance of the information he has asked it to release.

There may be good reasons why the public interest favours withholding the information Mr Crawford has asked for in this case, but if so the Society has not advanced them, either to Mr Crawford or in its submission, appearing instead to have considered the interests of the profession. In doing so it seems to me to have failed properly to apply the public interest test.

In any case, the Code requires me to apply that test afresh in making a determination. Here we have a case in which Mr Crawford claims to have prime facie evidence of inappropriate behaviour by X & Co in relation to vulnerable members of the public (people working in the occupation who had been injured in the course of their work). He believes that there have been many complaints about the way the firm goes about its business. Given his role as a journalist it seems likely that Mr Crawford will publish these allegations if he can be satisfied they are true.

The Society may know that there have been no such complaints, or very few. Releasing that information would surely have a public benefit, discouraging Mr Crawford from publishing ill-founded allegations, sparing the public needless anxiety about X & Co and, incidentally, protecting X & Co's reputation.

Then again, the Society may know that there have been a high number of such complaints, none of which, after investigation, has necessitated referral to or action by the Solicitors Disciplinary Tribunal. It seems to me that the balance of public interest would still favour disclosure: both because it might serve as a warning that,

for whatever reason, X & Co had left a number of its clients dissatisfied, but also offering public reassurance that the service the firm provided did not fall significantly short of the professional standards the Society expects.

If it were to be the case that a high number of complaints had been made against X & Co without any of them resulting in a referral to or action by the Solicitors Disciplinary Tribunal, that might also raise legitimate questions not just about X & Co but also about the efficacy of the Society's complaints procedures. It is clearly important that the Society does not withhold information which might open its own regulatory performance to proper scrutiny.

Finally, if the Society knows that X & Co have been the subject of a normal or predictable number of complaints, of which only a typical proportion have been upheld, it is hard to see how the release of that information, properly put in context by the Society and fairly reported by Mr Crawford, could be damaging to the public interest, or even to X & Co.

In many previous cases submitted to the adjudicator the Society has argued successfully for relying on s.14.5 on the grounds that to reveal details of a complaints file would compromise the necessary trust informants must have in their evidence remaining confidential. Mr Crawford does not seek such detail: in essence he is asking for statistical information, the publication of which could not compromise the integrity of the investigatory process. If those statistics were subsequently used by Mr Crawford wrongly or unfairly in a way that damaged X & Co's reputation, the firm would have a clear remedy in law.

7 Conclusion

For all the reasons stated, it seems to me that the public interest would be best served by the Society releasing the information Mr Crawford has requested, and I therefore ask it to do so.

For the avoidance of doubt, this should not be taken as setting a precedent for the release of all statistical information regarding the complaints records of all solicitors (though there may be a strong argument of principle for such an approach). This adjudication is a judgement of where the balance of public interest lies in the particular circumstances of this case.

I note the internal debate taking place within the profession in response to the LCS consultation exercise, and I welcome the indication by the Society in its submission that its forthcoming statement on 10 October may initiate a new policy in relation to statistical information about complaints.

Richard Ayre

Freedom of Information Adjudicator

15 August 2008