



The Law Society

# **Adjudication in a matter raised by Beachcroft LLP**

Law Society Freedom of Information Code

September 2008

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# 1 The issue

Whether the Society acted appropriately and in accordance with its Freedom of Information Code ('the Code') in declining to provide information to a firm of solicitors, Beachcroft LLP, on the grounds that the cost of doing so would have been excessive.

## 2 The background

On 28 May 2008 Beachcroft wrote to the Law Society asking it to release, under the terms of the Code, a number of items of information. Their request [in slightly abbreviated form] is summarised below:

### *Competition Law Issues*

All documents (including correspondence, emails, internal memoranda, reports, advice, policy papers and minutes and resolutions of any group, board or committee or of the Council) relating to dealings between the Law Society and the Office of Fair Trading in respect of the Solicitors Introduction Code 1990.

All documents (including correspondence, emails, internal memoranda, reports, advice, policy papers and minutes and resolutions of any group, board or committee or of the Council) relating to any debate or discussion within the Society as to the relevance of competition law to the Referral Code or to Rule 9.

### *The DTI Review of Coal Health Compensation Schemes in 2005*

All documents (including correspondence, emails, internal memoranda, reports, advice, policy papers and minutes and resolutions of any group, board or committee or of the Council) relating to dealings between the Society and the Department for Trade & Industry in respect of its review of the coal health compensation schemes in 2005 ('the DTI Review').

### *Documents arising from memo written by Russell Wallman dated 17.09.02*

- i) Notes or Minutes of the meeting between Yvette Cooper and the President of the Law Society on or about 17.09.02
- ii) Any further communications in documentary form and any notes of any further oral discussions between any of the Senior Management Team and Mr Wallman
- iii) Any memos or committee papers prepared by any of the above on deductions from miners' compensation
- iv) Any further communications in documentary form and any notes of any further oral discussions between the Law Society and the Lord Chancellor's Department/DCA/MoJ on deductions from miners' compensation
- v) Any further communications in documentary form and any notes of any further oral discussions between Mr Wallman and the President of the Law Society relating to the meeting with Yvette Cooper or deductions from miners' compensation

*Report of Geoffrey Negus dated 21.11.03*

We understand (this) report summarises the response of Law Society caseworkers to a request to report any recollection of cases involving miners' compensation. We request disclosure of any reports not so summarised.

*Meeting Law Society/DCA/DTI on or about 11.12.03*

Disclosure is sought of any communications in documentary form and any notes of any oral discussions between the Law Society and any of the DTI, Nabarro Nathanson (as solicitors for the DTI) and the DCA relating to deductions in miners' compensation cases in 2003 or thereafter.

*Advertisements for Complaints*

Please provide:

All documents (including correspondence, emails, internal memoranda, reports, advice, policy papers and minutes and resolutions of any group, board or committee or of the Council) relating to the decision to place advertisements inviting miners and/or their families to submit complaints to the Society

All documents (including correspondence, emails, internal memoranda, reports, advice, policy papers and minutes and resolutions of any group, board or committee or of the Council) relating to the responses to such advertisements.

*Regulation of solicitors in relation to Miners' Compensation*

Please provide all documents (including correspondence, emails, internal memoranda, reports, advice, policy papers and minutes and resolutions of any group, board or committee or of the Council) relating to the Society's policies in dealing with complaints about, investigating and adjudicating upon, issues specifically affecting solicitors who have acted for miners under the terms of the Claims Handling Agreements

*Compliance Board Policy Statement 15.1.04*

Please provide:

All documents (including correspondence, emails, internal memoranda, reports, advice, policy papers and minutes and resolutions of any group, board or committee or of the Council) relating to the Compliance Board Policy Statement in relation to firms which had made additional charges in miners' compensation claims, including any communications between Alison Crawley and others and all documents used by her in connection with the preparation of her report to the Board.

All documents (including correspondence, emails, internal memoranda, reports, advice, policy papers and minutes and resolutions of any group, board or committee or of the Council) relating to the decision to extend, as a minimum, parts of the Policy Statement to

firms which had made no additional charges but had made deductions which had been passed on to trade unions.

#### *The LSCC/LSO*

Please provide:

All documents (including correspondence, emails, internal memoranda, reports, advice, policy papers and minutes and resolutions of any group, board or committee or of the Council) relating to dealings between the Society and the Legal Services Ombudsman or the Legal Services Complaints Commissioner in relation to miners' compensation cases (other than in relation to individual cases) and in relation to her special reports on miners' compensation cases.

All minutes, correspondence, e-mails, attendance notes, preparatory briefings, internal memoranda or other documents relating to meetings between the Law Society and the 'stakeholders' referred to in paragraph 46 of the Society's response dated 24.5.06 to the LSO's special report on miners' cases

#### *Lord Lofthouse*

Please provide the response to the letter from Lord Lofthouse to Peter Williamson dated 12.6.06 and all documents relied on in preparation of that response.

#### *Treatment of other Solicitors*

Please provide:

Files relating to the investigation of any solicitor or solicitors' firms who or which had an arrangement with either Industrial Diseases Compensation Limited or PR Associates (Advisory Services) Ltd or both or with a trade union to whom sums were payable in the event of success, where the investigation has been concluded without any solicitor being referred to this Tribunal

All documents (including correspondence, emails, internal memoranda, reports, advice, policy papers and minutes and resolutions of any group, board or committee or of the Council) relating to the Compliance Board decision reported in the Gazette dated 18.7.03 not to undertake a general investigation of firms who had paid unlawful referral fees.

#### *DTI/BERR*

Please provide all documents (including correspondence, emails, internal memoranda, reports, advice, policy papers and minutes and resolutions of any group, board or committee or of the Council) relating to dealings between the Law Society and DTI/BERR over the appropriateness or otherwise of union deductions in miners' compensation cases.

On 25 June, Mr Bob Stanley, the Society's Information Compliance Manager, replied saying that after careful consideration the Society had decided that the cost of meeting Beachcroft's request would exceed the appropriate limit set out in the Government's Fees Regulations. He pointed out that Section 9 of the Code states: *'We will not normally charge for giving you the information you ask for. In exceptional cases, if we think we need to charge you a fee we will tell you why and what the charge will be, so*

*that you can decide if you want us to go ahead. If we do make a charge it will be within the limits set by Government regulations.'*

Mr Stanley said that the information Beachcroft had requested was 'so wide-ranging that the cost of providing it would be far in excess of the appropriate limit set out in section 3(3) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations')'. He also drew Beachcroft's attention to sections 4 and 5 of those Regulations.

Mr Stanley concluded by saying that the Society would consider any revised request where the cost would be within the appropriate limit.

On 14 July Beachcroft wrote again to ask the Society to reconsider its position. They asked that if, on reflection, the Society decided that the information could be provided but that a fee would be necessary, they should be given details (presumably of the proposed fee).

On 24 July Mr Stanley responded, saying that the Society had reconsidered the request but remained of the same opinion. He repeated the Society's willingness to entertain a revised request where the cost would be within the limit.

On 29 July Beachcroft wrote to the Society to say that their understanding of s. 3(3) of the Regulations was that the Law Society's 'appropriate limit' was £450. They asked for an explanation of how, in the case of each of their requests, the costs of providing it could exceed that sum. They said that under s.5(1) of the Regulations, where two or more requests were made by one person the estimated costs of complying with any of the requests was to be taken to be the total costs which may be taken into account by the Law Society of complying with all of them. Beachcroft argued that s. 5(2) 'only applies where the information requested relates, to any extent, to the same or similar information and they are received within sixty consecutive working days'. Beachcroft said that the information they had asked for was so wide-ranging that s.5(1) did not apply. They said that the effect of s. 5(2) was that the Society could not argue that it would not respond to any of the individual requests simply because the aggregate costs of complying with all of them might exceed the 'appropriate limit'. They therefore asked the Society to address each of their requests individually and on a disaggregated basis.

Beachcroft noted that the Code said charges were made only in 'exceptional circumstances' and since they did not believe that any of their requests was especially onerous or excessive they did not agree that the circumstances were exceptional.

Beachcroft also noted that the Code committed the Society to confirming, within seven days of receipt of a request for information, whether the information was held, and they asked the Society to deal with this request as a priority. Finally, Beachcroft advised that they would seek adjudication if these issues were not resolved satisfactorily.

On 5 August Mr Stanley replied, saying that Beachcroft had made a total of 18 requests, each of which was for information relating to issues around miners' compensation cases, and that the Society believed they were all for 'similar information' and they therefore fell within section 5(2) of the Regulations. He said he could not therefore agree to Beachcroft's request to address each individually and on a disaggregated basis.

Mr Stanley said the Society estimated that it would take 360 hours to: determine whether it held the information; locate it or a document that might contain it; retrieve the information or a document which might contain the information; and extract the information from any document containing it. He said that, applying the £25 per person per hour calculation set out in s.4 of the Regulations the cost of meeting the requests would be £9000, and that was clearly far in excess of the appropriate limit.

Mr Stanley said that the volume of information requested and the time it would take to satisfy the requests did, in the Society's view, amount to exceptional circumstances. He also provided Beachcroft with contact details for the Adjudicator.

On 13 August Beachcroft asked Mr Stanley to refer the matter for adjudication and on 14 August he did so. On 15 August, having read the exchanges between the two parties, I invited them to make written submissions.

### 3 Submission by the Law Society

In cases referred for adjudication it is for the Society to show that it had acted appropriately and in accordance with the Code: it is not for the applicant to show why the information should be released. Beachcroft were invited to make a submission to the Adjudicator only if they wished to do so, and they did not.

In its submission on 29 August the Society said that Beachcroft's requests were for a large number of documents in relation to miners' compensation cases.

The Society's understanding of s. 5(1) of the Regulations was that where two or more requests for information of a similar nature were received the cost of meeting them could be aggregated to determine whether the total cost would exceed the appropriate limit. The Society said that s. 5(2) went on to say that this regulation applies where the requests relate, to any extent, to the same or similar information and those requests are received within any period of sixty consecutive working days. The Society said it believed that, contrary to the argument put forward by Beachcroft, the requests were for information of a similar nature. All were requests for information relating to miners' compensation cases. The Society believed it was entirely appropriate to aggregate the costs of meeting them.

Reiterating its calculation of the time that would be necessary to service Beachcroft's request, the Society said that the figure of 360 hours was obviously an estimate as it would be impossible to determine the exact number of person-hours required without the work actually being done. Some of the requests would be more time consuming to service than others, but the Society said that from the conversations the Information Compliance Manager had had with the relevant managers it became clear that each element of the request would take an average of 20 hours to service, and there were eighteen elements. This, the Society said, was a conservative estimate.

The Society said it believed that s.9 of the Code allowed for charging in exceptional circumstances but that if the Society did make a charge it would be within the limits set by the regulations. The Society argued that the charge in this case would far exceed the appropriate limit set out in the Regulations, and that to service the request would have had an unacceptable impact on the deployment of staff, who would have been taken away from their usual duties for unacceptable periods of time. The Society's position was that the volume of information requested by Beachcroft, and the time it would take to satisfy the requests for this information, did indeed amount to exceptional circumstances.

## 4 Adjudication

Although the Society is not yet subject to the Freedom of Information Act ('the Act'), it promises to abide by the Code and aims to treat requests for information as though the Act itself applied. Section 9 of the Code says that 'in exceptional cases' any charge levied by the Society will be 'within the limits set by Government regulations'.

Section 12 of the Act relieves a public authority of any obligation to disclose information if the authority estimates that the cost of complying with the request would exceed the appropriate limit. Section 3 of the Regulations prescribes that limit as £450.

Whether or not the Society's detailed estimate of likely costs is accurate, it is clear that the true cost of providing all the requested information would be far in excess of £450.

What is at issue here is whether the Society is justified in aggregating the separate costs of responding to each of the requests from Beachcroft, thus taking the total costs above the appropriate limit and relieving the Society of its obligation to comply. Also at issue is the meaning of the Code's reference to 'exceptional cases' and whether there is sufficient about Beachcroft's requests to justify the Society regarding them as exceptional, and therefore invoking the charging criteria.

On the first of those issues, s. 5(1) of the Regulations says that where two or more requests are made by a person for information 'the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account ..... of complying with all of them.' However, s. 5(2) makes clear that this applies only 'where the two or more requests ..... relate, to any extent, to the same or similar information'. The Society argues that the information requested by Beachcroft all relates to miners' compensation cases and is therefore 'similar'. Beachcroft argue that the information is 'so wide-ranging' that it is not appropriate for the Society to aggregate the costs of providing it.

Without asking the Society to provide me with all of the information Beachcroft themselves requested (which would itself be disproportionate) I cannot be sure that every item relates, as the Society claims, to miners' compensation cases, but it is clear that much of it, and probably most of it, does. I note the wording of s. 5(2) of the Regulations which refers to 'where the two or more requests....relate, *to any extent*, to the same or similar information' (my emphasis). It seems to me that the very wording of Beachcroft's requests suggests a similarity between many of the items of information they are seeking. I cannot see any way in which s. 5(2) does not apply to these requests, and I am satisfied that the Society is within its rights to aggregate the estimated costs of complying with them all.

As to whether Beachcroft's requests are to be considered 'exceptional cases' under s. 9 of the Code, the Code gives no indication of the criteria to be applied in determining whether a request is or is not an exception. This is perhaps a consequence of the Code having been written for the general user rather than drafted to reflect the precision of the Act. But it seems to me that the general user would read s. 9 as meaning that the Society will not usually levy a fee to provide information, but that if it is going to be exceptionally expensive for them to do so they will tell the applicant in advance so that he or she may decide whether to continue with the request. 'Exceptional' requests are therefore to be considered as requests which are exceptionally costly for the Society to comply with. Section 9 of the Code may, however, lead the general user to believe that, whatever the cost to the Society of providing the information, the most the applicant may be asked to contribute will be the limit set out in the Regulations. That is clearly not the meaning of the Act since the effect of the Regulations is to set the cost limit beyond which a public authority is relieved of its obligation to provide the information at all, and I am satisfied that it is not the intended meaning of the Code. The unclarity of s. 9 is something the Society needs to address in its next iteration of the Code, but I am satisfied it has appropriately applied the Code's intentions, and the intentions of the Regulations, in this case.

I therefore find for the Society in its decision not to release the substantive information requested, and I note its expressed willingness to entertain a revised request the cost of complying with which would be within the limit.

In reference to Beachcroft's request of 29 July to be told whether the Society held the information that had been requested, I note that s. 12(2) of the Act makes clear that a public authority is not relieved of its obligation to tell an applicant whether it holds the



information requested unless the estimated cost of doing so alone would exceed the appropriate limit. The Law Society does not appear specifically to have addressed this matter in its correspondence with Beachcroft and I therefore invite it to do so.

**Richard Ayre**

Freedom of Information Adjudicator

*10 September 2008*