



The Law Society

Adjudication in a matter raised by Ronald Olden

Law Society Freedom of Information Code

October 2010

1 The Issue	2
2 The Background.....	2
3 Submission by Ronald Olden.....	3
4 Submission by the Law Society	3
5 Further enquiries.....	4
6 Adjudication	4

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1 The Issue

Whether the Law Society acted appropriately in accordance with its Freedom of Information Code when it refused Mr Ronald Olden information about advice which he had been told the Professional Ethics Unit of the Solicitors Regulation Authority (SRA) had given to a solicitor whose subsequent conduct is the subject of a complaint by Mr Olden.

2 The Background

Mr Olden believes that a solicitor acted wrongly in disclosing information about him to a mortgage company. He lodged a complaint which was investigated by the SRA before they closed the case. In a letter on 2 July 2010 Mr Jonathan Hattersley of the SRA's Conduct Investigations Unit told Mr Olden that the solicitor had said he had acted only after receiving advice from the SRA's Professional Ethics Unit. Mr Olden says he doubts whether that advice really existed but if it did he wants to know what it said, because he believes that it might indicate that the SRA shares responsibility for what he believes was wrongful disclosure of his personal information.

In the course of a long letter to Mr Hattersley on 12 July, contesting the outcome of the investigation, Mr Olden asked to see a letter confirming that the Unit had given such advice and what it had consisted of. His request was acknowledged on 19 July by the Law Society's Information Compliance Manager, Mr Bob Stanley, who told him that his request would be considered under the Society's Freedom of Information Code ("the Code"). Mr Olden replied, saying that he had not thought of it as a Freedom of Information (Fol) request but that he was happy for it to be considered in those terms.

On 3 August Mr Stanley wrote to Mr Olden again, saying that the Law Society had decided to withhold the information and citing section 14.10 of the Code. That allows information not to be disclosed if it "was given to us in confidence and giving you the information would put us at risk of legal action either for breaking a confidence or for breaking a contract". Mr Stanley said that the advice given to solicitors by the SRA's Professional Ethics Unit was given in confidence. He added that the fact that a solicitor had contacted the Professional Ethics Unit was itself confidential and solicitors were given this assurance when they contacted the Unit. Mr Stanley said that neither the fact that advice was given by the Unit, nor the advice itself, was disclosed, even to other parts of the SRA. For this reason he was unable to tell Mr Olden if the solicitor had been advised by the Professional Ethics Unit or to provide him with any information on any advice that might have been given. Mr Stanley advised Mr Olden of his right under the Code to ask for adjudication of the decision.

On 9 August Mr Olden asked for adjudication, though again stressing that he had not made his original request under Fol principles. Mr Olden told Mr Stanley that there was no question of the Law Society being at risk of breaching confidence, because Mr Hattersley had already told him that the Unit had given advice.

3 Submission by Ronald Olden

On 11 August, in response to an invitation to make a submission, Mr Olden emphasised that he was not at all sure if his request raised an FoI issue. He said that Mr Hattersley at the SRA had been investigating the fact that Mr Olden's solicitor had given a third party access to Mr Olden's personal files without his permission, the third party being a mortgage company. Mr Olden said he did not dispute that they were entitled to see the conveyancing files because the solicitor was acting for them as well as for Mr Olden himself, but they were most certainly not entitled to see his own correspondence files or any files relating to other mortgage lenders.

Mr Olden said that Mr Hattersley had decided that there was no conduct matter arising from the fact that confidential files had been disclosed and had dismissed the complaint.

However, in a letter dated 2 July Mr Hattersley had told him that the solicitor had said that he had made the files available only after advice had been obtained from the Professional Ethics Unit of the SRA. Mr Olden attached a copy of part of the letter.

Mr Olden said that he would accept that, if the Unit had in fact given such advice, his solicitor might not have been solely liable for what Mr Olden thought was the breach of his confidence, but he simply did not believe that the account Mr Hattersley had given him was true, which was why he had written to Mr Hattersley to ask for a copy of the Unit's advice. Mr Olden said that Mr Hattersley's letter had been carefully worded and had not confirmed that he had actually seen the Unit's advice. Mr Olden suspected that this was a device to enable the SRA to dismiss his complaint about his solicitor without properly investigating it.

Mr Olden pointed out that when he asked Mr Hattersley for sight of the advice he did not do so under Freedom of Information. Mr Hattersley having nonetheless referred it to Mr Stanley as an FoI request, Mr Olden was astonished to be told that it could not be released through this route and nor could Mr Stanley even confirm that such advice had ever been given.

Mr Olden said he thought it quite possible that no advice had been given and that his solicitor had simply made up the account, with Mr Hattersley going along with it without having seen any evidence.

Mr Olden concluded by repeating that he was not sure whether the material fell within the provisions of a FoI request. He said there would be other means by which he would be able to obtain disclosure of the data, but he believed that one of the purposes of FoI was to avoid the expense of such processes.

4 Submission by the Law Society

On 27 August the Law Society made its submission to the adjudicator. It said that it had withheld the information requested under s14.10 of the Code because the advice given to solicitors by the SRA's Professional Ethics Unit was given in confidence. The Society asserted that the very fact that a solicitor had contacted the Professional Ethics Unit was itself confidential and solicitors were given this assurance when they contacted the Unit. The fact that advice had been given by Professional Ethics, as well as the advice itself, was not even disclosed to other parts of the SRA. For this reason, the Society said, it had decided that it was unable to tell Mr Olden whether his solicitor had been advised by Professional Ethics or to provide him with any

information on any advice that may have been provided. It believed that to have done so would have put the Law Society at risk of legal action for breaking a confidence with the solicitor.

The Law Society added that the only time that advice given by Professional Ethics would be disclosed was where there was serious financial irregularity with immediate threat to a client.

5 Further enquiries

On 1 September I asked the Law Society for evidence of why there would be an expectation on behalf of solicitors contacting the Professional Ethics unit that their request for advice, and any advice given, was a matter of confidence.

On 14 September the Law Society replied, saying that the advice given by the SRA's Professional Ethics Unit was invariably treated as a matter of confidence. It said that the "Ethics helpline" was always described as a "confidential helpline" in all literature, including references to it in the Law Society Gazette. The Society said that the SRA had been unable to locate the precise minute but that the then "Ethics and Guidance" Committee of the Law Society had set out in approximately 1986 that the helpline was to be confidential. The Society asserted that there was a clear expectation on behalf of solicitors contacting the helpline that both the advice given and the fact that advice had been sought would be treated as matters of confidence.

6 Adjudication

The only questions for me to answer in this case are whether the advice offered to a solicitor by the Professional Ethics Unit, and whether the fact that such advice has even been requested, are matters of confidence.

The Unit appears to operate through a telephone helpline for solicitors. The Law Society asserts that it is "always described as a 'confidential helpline' in all literature". However, in a brief search for "Professional Ethics" on the Society's website I found many references to the Helpline and no obvious references to its confidential nature. Similarly, a brief search of the SRA website produced a description of the helpline but no clear reference to its confidential nature.

On telephoning the helpline callers hear a pre-recorded message which makes no reference to confidentiality. It is true to say that, once I was put through to an adviser and I asked explicitly whether my call and the fact that I was making it would both remain confidential, I was assured that "at present" that was the policy. I am, of course, unable to say whether Mr Olden's solicitor either asked for or was given such an assurance when, and if, he contacted the helpline.

I have therefore considered whether, in the absence of asking for or being given an assurance of confidentiality, the nature of the helpline itself might reasonably lead solicitors to believe that contacting it would be treated as a matter of confidence. I have concluded that to be the case. It seems to me that, in both professional and personal matters, helplines exist to assist people who are uncertain about their rights or their responsibilities, or who feel the need for advice or reassurance, and that in general people using them have a reasonable expectation that in doing so their identities, the fact they have called, and any advice they are given will remain

confidential unless there are strong public interest arguments to the contrary. I see no such arguments in this case, and there is a strong public interest in users of the helpline having confidence in its confidential nature.

I do not accept that any obligation of confidentiality owed by the SRA has been nullified by what Mr Hattersley said in his letter of 2 July to Mr Olden.

I have concluded that the matters requested by Mr Olden do fall within section 14.10 of the Code and that the Society was acting within its rights to withhold the information. I therefore find for the Law Society.

Richard Ayre

Freedom of Information Adjudicator

16 September 2010