



The Law Society

## **Adjudication in a matter raised by Ms Ann Mallaby**

### **Law Society Freedom of Information Code**

December 2010

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## 1 The Issue

Whether the Law Society acted appropriately in accordance with its Freedom of Information Code when it refused to give Ms Ann Mallaby a copy of the legal professional indemnity policy covering the Society itself, the Solicitors Regulation Authority, and the Legal Complaints Service.

## 2 The Background

On 26 October Ms Mallaby sent a series of emails to the Solicitors Regulation Authority (SRA), the Legal Complaints Service (LCS) and the Law Society asking whether they had professional indemnity insurance and, if so, who their brokers were. She also asked if the current certificates of insurance could be displayed.

On 28 October, the Society's Information Compliance Officer, Mr Joao Curro, replied saying that, though they acted independently in their regulatory and complaints-handling functions, the SRA and LCS were part of the Society, and so Ms Mallaby's requests would be considered together. On 3 November the Information Compliance Manager, Mr Bob Stanley, emailed Ms Mallaby, confirming that indemnity policies were in place and naming the broker used, but adding that it was "not our policy, nor a legal requirement, to display a certificate".

Ms Mallaby replied on 4 November, asking a series of questions about the relationship between the Society, the SRA and the LCS. She asked whether members of the Law Society appointed, supervised and disciplined the officers of the SRA and the LCS. She asked how many current officers of the SRA and LCS were or had been members of the Law Society, and in what way the SRA and LCS acted independently of the Law Society. She also asked how the SRA, LCS, Law Society and its members could act independently when they were covered by the same insurance policy.

The next day Mr Stanley informed her that she could find information on the governance of the Society on its website, and he sent her a link to it. On 9 November Ms Mallaby replied, saying simply that that had not answered her questions. On 14 November she emailed Mr Curro to ask if she could see a copy of the policy. The following day Mr Curro asked her to specify which policy she was referring to, to which Ms Mallaby sent a two-word reply: "Professional Indemnity".

On 19 November Mr Stanley emailed Ms Mallaby to say that the Law Society was unable to provide her with a copy of its Professional Indemnity Policy. He said the information was being withheld under section 14.9 of the Law Society's Freedom of Information Code of Practice ("the Code"), and he sent her a link to it. Section 14.9 allows the Society to withhold information if disclosing it could harm the Society's commercial interests or those of anyone it might have a commercial relationship with. He also informed her that, under the Code, she had a right to have the decision referred to the adjudicator.

On 23 November Ms Mallaby indicated that she would like the matter referred for adjudication. She also asked a series of questions about the post of Adjudicator (which are matters for the Society to answer).

Later on 23 November Mr Stanley referred the matter to me for adjudication and supplied copies of the correspondence detailed above. I emailed the Society to ask it to make a written submission in defence of its decision, and I invited Ms Mallaby to make a written submission if she wanted to do so. Ms Mallaby made no submission.

### 3 Submission by the Law Society

On 8 December the Law Society made a submission. It said that the SRA, the LCS and the Society itself were one legal entity and were insured jointly under one professional indemnity policy. The policy had been withheld under section 14.9 of the Code because it contained commercially sensitive information which, if made public, could harm the Society's commercial interests.

The Society said that the policy did not contain regulatory information that (under the Code) would require the Society to apply a public interest test before deciding whether or not to disclose it. It contained details of the sum insured, the premium payable and other information relating to the policy. The Society believed that if it became a public document this could have a detrimental effect on the Society's negotiation of future policies. The Society said it had already informed Ms Mallaby that the LCS, the SRA & the Society itself were insured under the same policy and had told her the name of the broker. It believed that to reveal any further information about the policy itself could be harmful to the Society's commercial interests.

### 4 Submission by Ann Mallaby

In a brief submission on 11 December Ms Mallaby said that, notwithstanding the fact that the Law Society was 'a corporate monopoly', it, its agents and its members should display a current professional indemnity insurance certificate on their premises and make the policy available on request. She believed that clients had a right to see evidence of insurance and exactly what it did, and did not, cover. Ms Mallaby said that the public interest should override the commercial interest.

Asked to clarify what she meant by 'clients' of the Law Society, Ms Mallaby said she was referring to lawyers' clients with whom the LCS or SRA had been engaged. She said that, if the LCS or SRA had been negligent, clients would need to verify whether they (the LCS or the SRA) or the Law Society had adequate insurance cover and there were no conflicts of interest between insurers.

### 5 Adjudication

Release of information under Freedom of Information (Fol) makes it publicly available. It is not appropriate to release information to one person under Fol while denying it to someone else.

Even if it were necessary to apply a public interest test in this case (which is required under section 18 of the Code in respect of regulatory information) I find it hard to see a strong public interest in publication of the sums for which the Law Society (including the SRA and the LCS) is assured, nor of the premiums paid, nor even of the detailed risks covered. I recognise there may be a strong interest for members of the Society being able to satisfy themselves on these matters, but not a strong *public* interest. Clients of individual solicitors may wish to know if their own solicitor has appropriate insurance, but it remains unclear to me why the insurance arrangements for the Law Society, in either its regulatory or its representative functions, should be a matter of public interest. In the event that a "client" wishes to take action against the Society, the extent to which its risks are insured is a matter for the Society rather than for a litigant.

Be that as it may, the Law Society argues that no public interest test is necessary in this case, because the information Ms Mallaby is seeking is not regulatory information and therefore section 18 of the Code does not apply. I agree with that.

The only matter left for me to determine is whether the policy falls within section 14.9 because disclosing it could harm the Society's commercial interests or those of anyone it may have a commercial relationship with (such as, in this case, its broker or its insurer). It seems to me indisputable that publication of the commercial terms under which the Law Society has secured its insurance policies would risk prejudicing the Society's own interests when it comes to negotiating terms with an alternative insurer or an alternative broker. It could also potentially prejudice the commercial interests of the current insurer and broker in their dealings with other clients.

**I therefore find for the Society.**

**Richard Ayre**

Freedom of Information Adjudicator

*15 December 2010*