



The Law Society

Adjudication in a matter raised by Cobbetts LLP
Law Society Freedom of Information Code
May 2012



1. The issue

Whether the Law Society acted appropriately in accordance with its Freedom of Information Code in withholding details of its fee arrangements with a firm of solicitors contracted by the Society to handle claims under the Compensation Fund.

2. The background

On 29 March a firm of solicitor, Cobbetts LLP, asked the Solicitors Regulation Authority (SRA) for a copy of the Service Level Agreement under which another firm of solicitors, Gordons LLP, had been contracted by the Law Society to handle claims under the Compensation Fund. Cobbetts said the conduct of cases had been unsatisfactory.

The Society's Information Compliance Manager, Mr Bob Stanley, replied that there was "no formal Service Level Agreement as such" and asked Cobbetts to be more specific about what information was wanted.

On 17 April Cobbetts asked for a number of items of information: the Invitation to Tender which had resulted in Gordons being appointed; the Letter of Appointment; any documentation in relation to the functions/services which Gordons were to provide in place of SRA Compensation Fund caseworkers; and the fee arrangement in relation to this service.

On 26 April Mr Stanley provided Cobbetts with a copy of a different Invitation to Tender which had been used in 2009 for appointment to the Panel of Intervention Agents to conduct interventions on behalf of the SRA. Mr Stanley said that there had been no tender for the Compensation Fund work but that Gordons had already been working for the SRA and had substantial experience of investigating conduct matters, so they had been offered the work. Mr Stanley also provided what he called "the Agreement regarding the Compensation Fund work", from which email addresses, numbers of files and the identities of the applicants had been redacted.

Mr Stanley said that he was withholding details of the fee arrangements under section 14.9 of the Society's Freedom of Information Code ("the Code") which allowed the Society not to release information if disclosure could harm its commercial interests or those of anyone the Society had a commercial relationship with. In arriving at this decision, Mr Stanley said, the Society had taken into account the fact that any information released under the Code was deemed to be placed in the public domain and not merely disclosed to the person or organisation making the request. He told Cobbetts that, under the Code, they had a right to ask for independent adjudication.

In reply later that day Cobbetts said that the Society's fee arrangements with Gordons were of concern to Cobbett's clients who wanted to know if there was any form of pecuniary incentive paid to Gordons for the closure of files. Cobbetts asked again for the information but said that, if the Society continued to withhold it, they would like adjudication of its decision. Mr Stanley replied immediately, reiterating that the fee arrangements with Gordons were commercially sensitive information and would be withheld. Later that day he referred the matter for adjudication, supplying me with the email exchanges between the Society and Cobbetts.

On 27 April I asked Cobbetts to confirm that they were seeking adjudication only upon the request for the fee arrangements [and not on the redactions the Society had made to material it had already supplied] and I invited them to make a written submission, if they

wished, as to why they believed that withholding the fee arrangement had not been appropriate in accordance with the Code.

3. Submission by Cobbetts LLP

On 1 May Cobbetts explained that their clients were concerned about the practices which had been adopted by Gordons in the treatment of claims to the Compensation Fund. Gordons had been appointed to undertake the administrative function formerly discharged by the caseworkers of the SRA Compensation Fund but had not adopted the caseworkers' practices. Instead, said Cobbetts, they were taking every opportunity to close files, and Cobbetts' clients believed this was being done for financial reward. As such, the fee arrangement between the SRA and Gordons, especially in the absence of any form of tender for this work as had been admitted by the Law Society, should be disclosed.

4. Submission by the Law Society

On 15 May the Law Society made its submission and provided me with an email exchange from March 2012 between the SRA and Gordons and in which the SRA had proposed, and Gordons accepted, a formula upon which the fees payable would be charged.

The Society said that its view was that this was commercially sensitive information which, if published, would be likely to have a harmful effect on the commercial interests of both the SRA and the contracted firm.

Referring to Cobbetts' wish to know if there was any form of pecuniary incentive to be paid to the contracted firm for the closure of files, the Society stated that there was no such incentive to close the claims. On the contrary, said the Society, the firm was in fact paid on the basis of time spent on the claims.

5. Further enquiries

In response to the society's submission I asked for confirmation that the signed contract between the SRA and Gordons included no additional financial or other provision beyond those referred to in the email exchange which might be argued to place an incentive on the firm to conclude cases rapidly. The Society duly gave that assurance.

6. Adjudication

It is clear from the email exchange between the SRA and Gordons that the formula used to calculate fees in relation to Gordons' handling of the compensation claims was based solely upon the number of hours worked on each file. In my judgement, if it could be said that there was a financial incentive which might impact upon the handling of those claims it would tend to prolong work on them rather than to encourage rapid closure of the files. I am satisfied that the Society is right in arguing that the precise terms of its contract with Gordons is commercially sensitive information. Releasing it could prejudice the Society's ability to negotiate future contracts. **The Society was therefore entitled to withhold the information under section 14.9 of the Code and accordingly I find for the Society.**

Richard Ayre
Freedom of Information Adjudicator
17 May 2012