

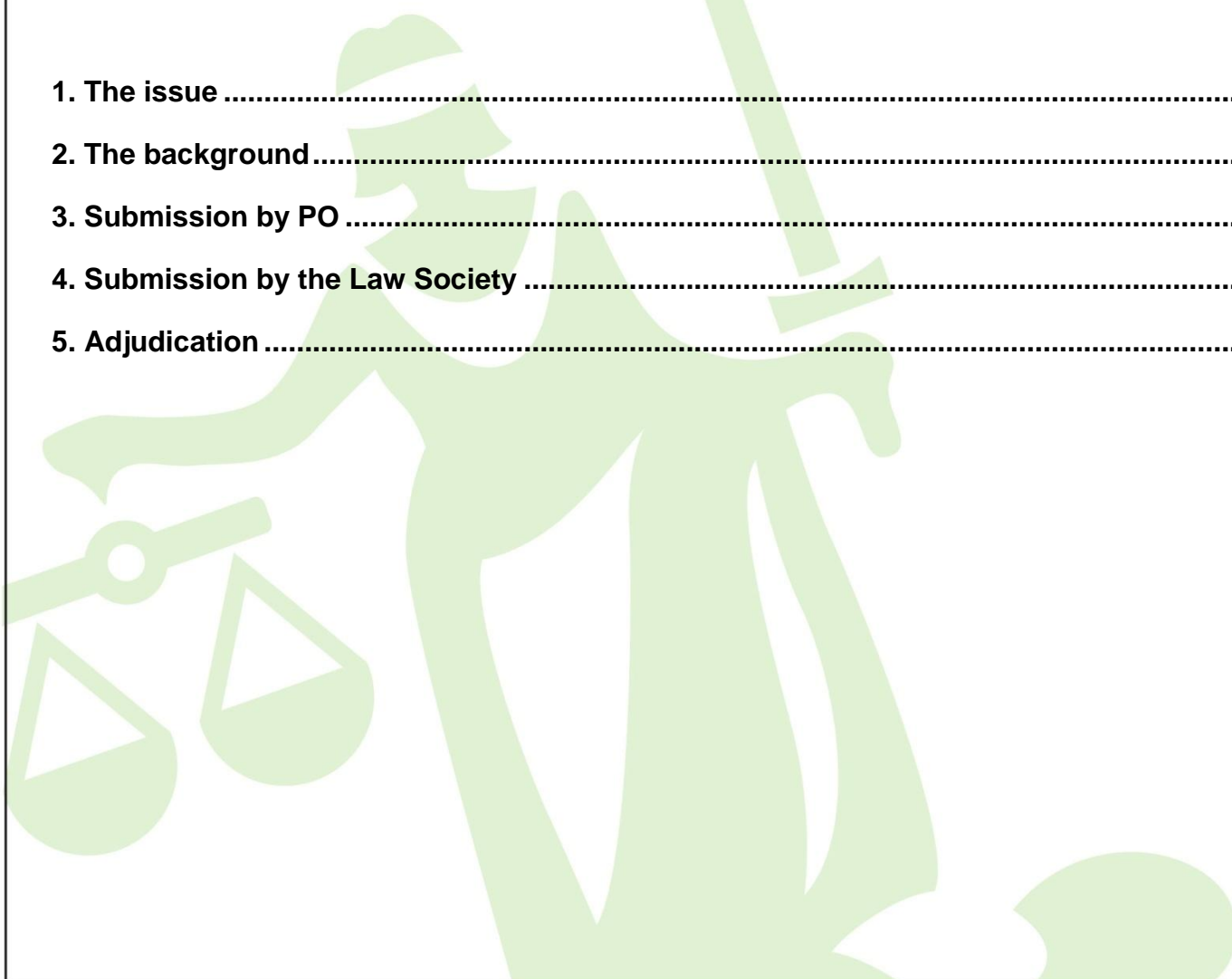


The Law Society

Adjudication in a matter raised by PO

Law Society Freedom of Information Code
April 2012

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1. The issue

Whether the Law Society acted appropriately in accordance with its Freedom of Information Code when it declined to answer a number of questions asked by PO about an unspecified case in which it was claimed that an unidentified solicitor had failed in his duty to an unnamed client.

2. The background

On 22 March 2012 PO emailed the Solicitors Regulation Authority (SRA) with a number of questions which might broadly be summarised as being about the ability of the SRA to investigate or regulate the activity of a solicitor in various circumstances. PO specifically said that names and places had been omitted from the request, but they related to a particular case which was allegedly causing an individual a lot of stress. There was a list of ten, sometimes lengthy, questions, three of which are cited here as typical examples:

If a solicitor whether past or present suggests to a client they did not do things in order to make their complaint properly to the point they carry on making the client feel accused, is this something the SRA are able to investigate?

What happens if the solicitor feels the blame lies with the client making a complaint late in the day when the client had been asking for their files for some time, even years previous? Are the secretaries who work at the solicitor's firm meant to log these calls in writing and if so, how long are they meant to be kept for? The client has only just learnt it took 2 years to complete the billing by they believe legal aid and it would not have affected their appeal regards the legal aid continuing on for them which they are informed would have needed to be done in 28 days. What are the SRA able to do if anything?

The client has evidence of the solicitor been misleading factually in writing. Are the SRA able to investigate?

On 4 April the Law Society's Information Compliance Manager, Mr Bob Stanley, replied, saying that the Law Society did not hold the information that had been requested. He said that the SRA could not answer such hypothetical questions because each case would depend on its own particular facts, so it would not be appropriate to attempt to answer the questions. He said that any information provided by the Society risked being inaccurate, depending on the precise facts of a matter.

Mr Stanley added that if PO had concerns that there might have been misconduct on the part of solicitors it might be appropriate to send a report, together with any available evidence, to the SRA at an email address Mr Stanley provided. He said that the SRA would then carefully assess the information and if necessary take the matter further.

Mr Stanley also pointed out that general information was available on the consumer section of the SRA's website, and he provided a link to it. He also added that, under

the Society's Freedom of Information Code ("the Code") any requester had the right to ask for independent adjudication when the Society declined to provide information.

On 7 April PO, saying that the client concerned in this case had already sent reports on the complaint to the SRA, asked for adjudication.

On 8 April I wrote to PO and to the Law Society inviting them to make written submissions to assist in the adjudication.

3. Submission by PO

On 9 April PO provided further details, without identifying any individual, of what he believed constituted inappropriate behaviour or poor service by a specific solicitor in respect of a client. None of these details was relevant to whether the Society had or had not acted appropriately under its Code in the way it had responded to his email to the SRA on 22 March. I explained this to PO and again outlined my role. I also suggested that it might be appropriate to provide any evidence direct to the Legal Ombudsman.

4. Submission by the Law Society

On 16 April the Law Society presented its submission. Addressing a question I had specifically asked of the Society – why the original email had been treated as a freedom of information request rather than simply being regarded as a query which the SRA could have answered by providing guidance as to how PO could go about lodging a complaint - the Society pointed out that the email's subject line had been "Freedom of Information request - When To Inform The SRA?". So, the Society said, although the questions had been phrased in a hypothetical way, and it was apparent from the outset that there would be no information to disclose, it was clear that the requestor had wanted the request to be dealt with as an FOI request. The Society said that the request had been made via the "What Do They know" website, which was used by people wishing to make FOI requests.

The Society pointed out that, in his response to PO, Mr Stanley had included a link to the consumer section of the SRA website which contains information on how to make a complaint about a solicitor.

The Society also observed that, in an email to Mr Stanley on 7 April. M.M. Simmons had said "I would like to confirm the client has gone through 'contact us' and sent 'reports' to the SRA by email", and that in the same email PO had asked for the matter to be referred to the FOI Adjudicator. This suggested awareness of the SRA complaints procedure but a wish by PO to make an FOI request as a separate matter.

The Law Society said that the questions asked by PO had been a series of hypothetical scenarios, the answers to which would depend on the particular facts in each case. If the Society had attempted to answer the questions without knowledge of the precise details and context of each scenario it might have provided inaccurate or misleading information. In terms of the Code, the Society believed that there was no information held in relation to the request.

5. Adjudication

This is an unusual case because what PO requested does not readily fall into any of the categories of information which the Code recognises as capable of being withheld by the Society. The Society simply says that it does not hold the information, and in my opinion that is because what PO is looking for is not information but rather advice or opinion. That being the case, the Code simply does not apply.

Even if the Law Society were governed by the Freedom of Information Act I cannot see that the Act compels a public authority to offer advice or opinion. Information consists of data that may be “held”, but advice is the result of judgement and it is not “held” until it is formulated. I agree with the Society’s view that it could not reliably be formulated, let alone responsibly offered, on a hypothetical basis.

It seems to me that the Society must be right in declining to offer specific advice on the rights and wrongs of the allegations made by PO, not least because the details he provided have been deliberately generalised and made anonymous. The right course must be for PO to make a detailed complaint, supported by evidence, to the SRA, as the Society has suggested.

If it is the case, as PO’s request for adjudication suggests, that these matters have already been brought to the SRA’s attention and if (though this is not clearly stated) there has been no satisfactory response, then the best course of action would appear to be for PO to refer the matter direct to the Legal Ombudsman.

However, **in respect of its observance of the Code, I find for the Law Society.**

Richard Ayre
Freedom of Information Adjudicator
17 April 2012