

ENGLAND AND WALES

The Law Society of England and Wales

Introduction

The Law Society undertook a series of steps to adapt to the new regulatory and economic landscape in 2009, including:

1. **The Economic Downturn:** The Society continued its work to help the profession to navigate the downturn and to succeed in its aftermath;
2. **Regulation and new business structures:** The Law Society built on the conclusions of two independent reviews commissioned by the Society on the future regulation of the profession and laid the groundwork for the creation of new business structures; and
3. **Legal Aid:** The Society campaigned strenuously for the reversal of Government policies designed to significantly reduce the budget for the provision of access to justice.

1. The Economic Downturn

Law Society's Position

The Society is committed to providing solicitors with the assistance and guidance that they require to overcome the challenges presented by the current economic downturn and to succeed beyond its conclusion. Extensive work has been undertaken with the profession to develop a range of services to offer appropriate advice on changes within the legal services market and to assist practitioners to manage their relationship with other sectors and services, particularly banks.

Current issues

- Work with the financial services sector to develop new approaches to lenders' panel arrangements;
- Liaise with the profession, the insurance industry and the Solicitors Regulation Authority (SRA) to develop a new approach to Professional Indemnity Insurance and to ease the burden on small firms and conveyancing practitioners;
- The provision of pastoral care services;
- The creation and operation of a national high-visibility consumer and media campaign to advertise the benefits of hiring the services of a solicitor.

What is the Law Society doing to help the profession?

The economic downturn continues to cause many firms difficulties. The Law Society has built on the support services it developed for solicitors to help them through the recession over the last twelve months. This includes the ongoing provision of detailed, current and comprehensive practice advice, pastoral and professional help services and frequent communication with banks, insurers and tax authorities to encourage a two-way exchange on problems facing solicitors.

The representative Law Society has frozen its share of the Practising Certificate Fee paid by all practitioners for the year 2009/10 in order to keep costs down as far as possible. The Society also launched a new service allowing members to spread the cost of their annual renewal fees, including practising certificate (PC) and other associated regulatory fees.

The Society has held several meetings with a number of lenders regarding their conveyancing panel arrangements. In March 2009, Abbey (a British bank owned by Santander) removed 6,050 solicitors' firms or branch offices of firms from the panel of solicitors able to act for the company and its subsidiaries in mortgage transactions. A subsequent meeting established that this was due to an attempted realignment of the bank's panel arrangements with those of Alliance & Leicester, a bank which Santander had also recently purchased. The Society's intervention resulted in the bulk of these firms being reinstated to the firm's panel while new arrangements were sought. In August, the Cooperative Bank issued 3,600 letters to sole practitioners on the firm's panel, giving notice of their removal. This decision was apparently taken because insurers had refused to provide cover against losses which might be incurred due to mortgage fraud and which were not covered by either Professional Indemnity Insurance or the Society's Compensation Fund. The Society believes this risk to be greatly exaggerated. Despite repeated meetings, the dismissed firms have not been reinstated. The Society continues to work with lenders to try to ensure that effective panel arrangements are maintained and that no type of practice is treated prejudicially.

The Society did a great deal of work in advance of the 2009/10 Professional Indemnity Insurance (PII) renewal period to prepare the profession for a selectively hardening insurance market for the second consecutive year. Reflecting the difficulties suffered by a minority of firms in securing PII coverage at a reasonable price, the Society is engaged in developing a strategy to assist those who have suffered difficulty without fault. This will involve further meetings with qualifying insurers and their representative body. The Society is considering all options to alleviate recent difficulties in future years. In the meantime, the Society will reprise the series of instructive seminars and advice services available to members on PII. In January, it published the first issue of a PII 'market-monitor' bulletin, to be published three times a year. This has been posted to every firm in England and Wales with the intention of levelling the disparity in the type and volume of information on the insurance market available to the smallest and the largest legal businesses.

The Society's Pastoral Care helpline continues to build on the success of its first year, providing solicitors with invaluable advice on employment and personal matters. In reaction to the number of calls received in 2008 by members with concerns over PII, the Society provided a dedicated helpline for solicitors experiencing difficulties with PII in 2009. Over the course of the 2009 renewal period, the PII Helpline received over 1600 enquiries by telephone and 120 by e-mail. The PII Helpline will operate again throughout the 2010 renewal period.

To help solicitors attract new business and retain existing clients during the downturn, the Society repeated last year's successful national advertising and PR campaign promoting the strong solicitor brand to the general public. The 2009 advertising and PR campaign promoted the solicitor brand by focusing on the reassurance to be gained by seeking advice from a properly qualified professional. The advertisements identified situations in which people need legal help with the Beatles-inspired headline: "Help, I need somebody". The campaign will run in the national press and appeared in more than 200 railway stations across England and Wales. It generated over 100 million opportunities for the general public to see the Society's message and to encourage them to use a solicitor.

2. REGULATION & NEW BUSINESS STRUCTURES

Law Society's Position

The Law Society is committed to building a system of regulation which serves all members of the solicitors' profession and protects clients. The Society is also

committed to the creation of new business structures while protecting the public right to access to justice and a level playing field for all firms.

Current position:

- To build on the reports of Hunt and Smedley and to assist the implementation of a new regulatory structure suitable for a 21st Century profession;
- To continue to work closely with the Legal Services Board (LSB) to create an effective and proportionate regulatory system for the benefit of practitioners and consumers;
- To facilitate the smooth creation of Alternative Business Structures (ABS) and to secure a licensing system which guarantees independence and protects access to justice.

What is the Law Society doing to assist the profession?

In October 2008, the Society commissioned Lord Hunt of Wirral to undertake an independent review into the regulation of the solicitors' profession in England and Wales. It also asked Nicholas Smedley, a former senior civil servant, to review the regulatory arrangements for large corporate firms, to feed into Lord Hunt's review. Mr Smedley delivered his report to Lord Hunt in March 2009. Lord Hunt delivered his final report and recommendations on the regulation of the profession in September 2009.

Since that time, the Society has engaged broadly with all levels of the profession to gauge reaction to the proposals of both Smedley and Hunt. In particular it has sought views on the main recommendation of the Hunt report - the proposed implementation of a system of Authorised Internal Regulation (AIR). Reaction from the profession, the Government and the regulatory bodies has been broadly favourable. The Society has established a reference group, the membership of which includes representatives of all parts of the solicitors' profession, legal regulators, other professional regulators and an independent academic expert on regulation. The group will assist the Solicitors Regulation Authority (SRA) to implement Lord Hunt's recommendations.

The profession remains subject to extensive change as the remaining terms of the Legal Services Act 2007 approach full implementation. The provisions of the Act permitting Legal Disciplinary Practices came into effect on 31 March. This enables firms to appoint non-solicitor lawyers and non-lawyer managers as partners. The next big change facing the profession as a consequence of the Act is the creation of Alternative Business Structures. The Society continues to hold discussions with the Legal Services Board (LSB) in an attempt to secure licensing arrangements which pay appropriate heed to the need to guarantee access to justice and to secure a level-playing field for all firms. The LSB has set mid-2011 as the target date for the creation of the first ABS. The Society continues to urge caution on the LSB in its preparations for ABS to ensure that essential arrangements are not rushed in order to meet this target.

3. LEGAL AID

Law Society's Position

The Society is committed to maintaining an effective, sustainable properly funded legal aid system. In the face of major budgetary constraints, the Society has stressed the Government's obligation to ensure access to justice for all. This has to begin with the realisation that decisions on funding of legal aid need to flow from an assessment of need rather than from an arbitrary budget allocation.

Current Issues

- A need to secure long-term sustainability for legal aid in England and Wales;
- Completion of review of Access to Justice provision in England and Wales;
- Securing a consistent and stable structure for legal aid tendering and provision to allow practitioners to plan for the long-term.

What is the Law Society doing to assist the profession?

The long-term sustainability of legal aid provision remains an issue of major concern in England and Wales. In the past twelve months the legal aid system has been subject to a series of proposals designed to reduce the legal aid budget, which the Society has fought vigorously on behalf of solicitors and the broader public who rely on the legal aid system. The Society enjoyed a significant success in December when the Government agreed to abandon proposals for criminal legal aid contracts to be subject to a system of best value tendering (BVT). The Society calculated that BVT could have ruinous consequences for legal aid provision in some regions of the country and organised a large-scale campaign against the Government's plans, which Ministers heeded at the end of the year.

In spite of this, there remain many challenges facing the profession with regard to legal aid. The Society expects a comprehensive review of competitive tendering for legal aid in the near future. This will coincide with a wide-ranging consultation on the funding of very high cost cases. The Society will maintain a robust stance to defend the interests of the profession and the general public.

As part of its drive to secure an effective, sustainable system of legal aid, the Society is undertaking a comprehensive review of access to justice provision in England and Wales. The review will look at all aspects of the service and seek to maintain solicitors' roles as crucial providers of legal advice and representation for those who need it. A preliminary report, to be published early in 2010, will investigate the principles of access to justice, and the funding, procurement and delivery of legal services. A public consultation will follow with a final report being delivered before the end of the year.