

LAW

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THE TIMES

TUESDAY

August 1, 2006 ■ "Laboriously preparing my impromptu remarks" — Lord Morley, 1838-1923, before a Lords' debate

Solicitors face tough drive over competence

Under Peter Williamson, erring lawyers will face criticism in public, writes Frances Gibb

HUNDREDS of secret disciplinary hearings held each year against solicitors are expected to go public, in a drive to rid the profession of poor standards and dishonesty. At the same time, solicitors could face regular "MoT" tests in the shape of competence checks — to ensure, in the vogue words of the Home Secretary, that they are "fit for purpose".

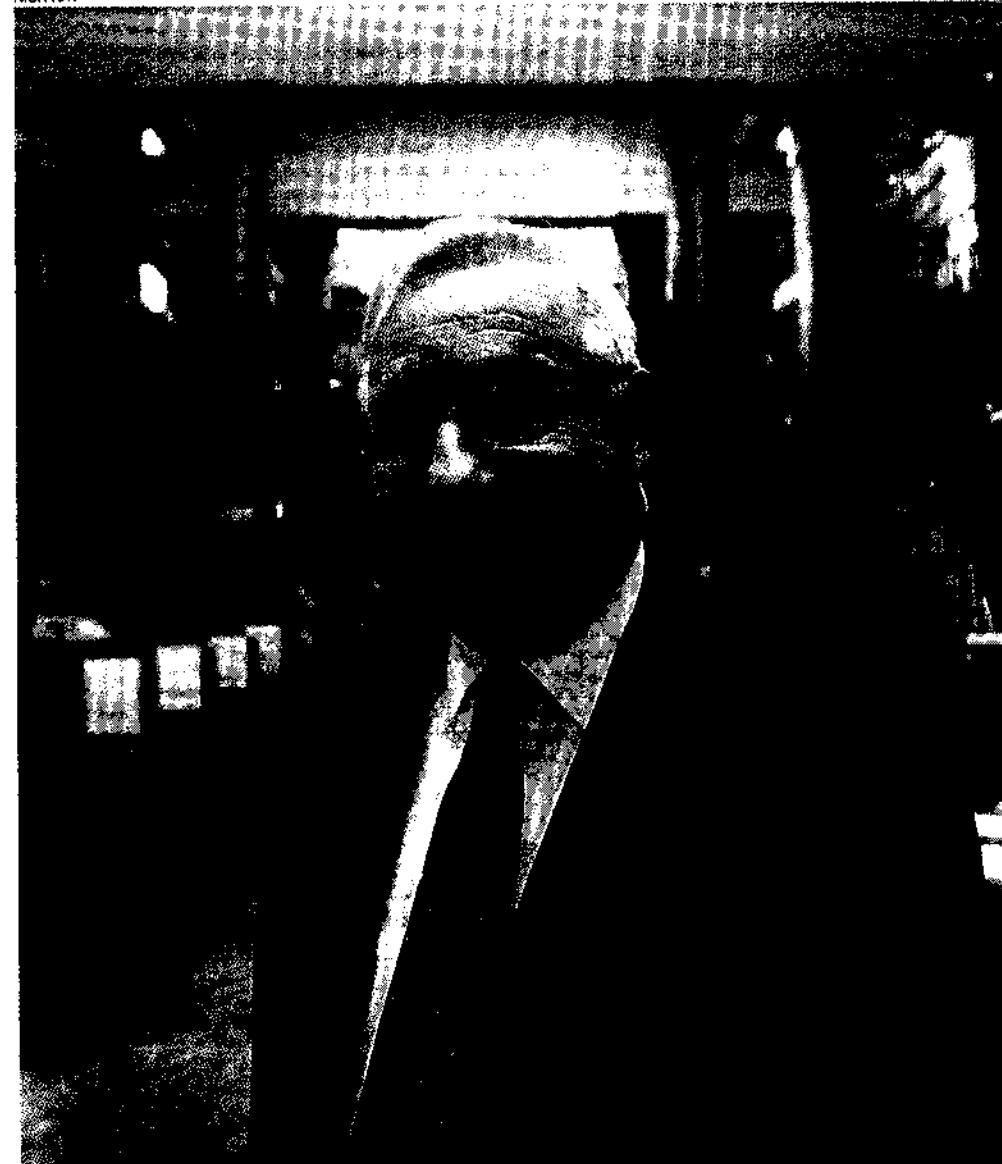
The man behind the moves is Peter Williamson, who was recently appointed to chair the Law Society's independent and arm's-length Regulation Board with its budget of £55 million a year.

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"We need new powers to make us a modern regulator along the lines of a body such as the Financial Services Authority [FSA]. Our powers date back to the Solicitors' Act 1974 and when I was an articled clerk. The Legal Services Bill provides a golden opportunity for new powers that we need and we are hopeful that we will get them."

At present the most serious allegations go before the Solicitors Disciplinary Tribunal where hearings are public. But there are hundreds of lesser cases where, in effect, secret adjudications are made. These can involve breaches of the solicitors' professional rules such as overcharging; breach of an undertaking, such as not contacting a building society on a conveyancing matter; acting

NICK RAY



Peter Williamson wants the Law Society to have tougher sanctions to keep solicitors in line

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can intervene and take over a firm — as it did with 60 practices last year — but that effectively closes it down, affecting clients' cases and destroying any worth in the business.

Meanwhile, there will be more targeting of firms falling by the wayside with an early warning system to help them before they fall foul of the rules. All lawyers now have to notch up continuing education points. But the idea is that there should be a scheme to monitor what they have learnt or ensure that their competence is up to scratch.

"Prevention is better than cure. We need to spend our money where it is most effective and we are carrying out an audit of all our activities to that end. One thing I would like to

expected to go public, in a drive to rid the profession of poor standards and dishonesty. At the same time, solicitors could face regular "MoT" tests in the shape of competence checks — to ensure, in the vogue words of the Home Secretary, that they are "fit for purpose".

The man behind the moves is Peter Williamson, who was recently appointed to chair the Law Society's independent and arm's-length Regulation Board with its budget of £55 million a year.

With Antony Townsend, the profession's first executive for regulation, Williamson plans a series of measures to raise standards in the 100,000-strong solicitors' profession and head off overweening regulatory intervention from the proposed legal services board that ministers want to set up over the profession as a whole.

First, Williamson, a former Law Society president, would like the decisions in 600 cases a year that can lead to solicitors being severely reprimanded to be available to the public. He is also seeking powers to give the society tougher sanctions to keep solicitors in line and introduce "early warning" systems to spot lawyers going off the rails.

along the way. The body is the Financial Services Authority [FSA]. Our powers date back to the Solicitors' Act 1974 and when I was an articled clerk. The Legal Services Bill provides a golden opportunity for new powers that we need and we are hopeful that we will get them."

At present the most serious allegations go before the Solicitors Disciplinary Tribunal where hearings are public. But there are hundreds of lesser cases where, in effect, secret adjudications are made. These can involve breaches of the solicitors' professional rules such as overcharging; breach of an undertaking, such as not contacting a building society on a conveyancing matter; acting where there is a conflict of interest; or failing to supervise staff not admitted as solicitors.

Last year, of 594 adjudications held after a complaint about a solicitor, the society made 222 decisions to reprimand or severely reprimand 139 solicitors. The more serious cases, where conditions are attached to a solicitor's practising certificate, are already made public to people who inquire.

Williamson says: "I feel that the findings of the adjudications that result in reprimands should be made public, where it



Peter Williamson wants the Law Society to have tougher sanctions to keep solicitors in line

would be in the public interest to do so. What we might do is run an agreed statement, between the solicitor and adjudicator, acknowledging a misdemeanour and the agreed action to be taken. What happens is that clients come to our complaints service and are looking

HUNDREDS OF COMPLAINTS ARE, IN EFFECT, DECIDED ON IN SECRET

for redress. Often, in the investigation of that, there may be a breach of the rules such as serial delay ... and that may then go to an adjudicator."

His proposals — which must be approved by the full Regulation Board and society council — are part of a package of measures, including plans for new criminal records checks on would-be solicitors before they are admitted to the roll, that come into force next month. They will be coupled with new guidelines for applicants on suitability to be a solicitor. At

the same time, Williamson is seeking more training on professional conduct and ethics for entrants when doing their two-year training with law firms.

The society is also expected to win new powers, enjoyed by other regulators, to require law firms to review files and take appropriate action, as the FSA can do — such as with pensions mis-selling. A second power would be to appoint a receiver-manager to a firm where there has been dishonesty or misuse of clients' money or maladministration. At present the society

times last year — but that effectively closes it down, affecting clients' cases and destroying any worth in the business.

Meanwhile, there will be more targeting of firms falling by the wayside with an early warning system to help them before they fall foul of the rules. All lawyers now have to notch up continuing education points. But the idea is that there should be a scheme to monitor what they have learnt or ensure that their competence is up to scratch.

"Prevention is better than cure. We need to spend our money where it is most effective and we are carrying out an audit of all our activities to that end. One thing I would like to see is a more targeted and proportionate regulation: more visits to firms, more information on when firms are late with applications, for example, for practising certificates — an audit trail on firms.

"Many firms are doing very good work. But it's the small number who adversely affect the reputation of the profession. We want to target those."

□ Damages in Giles Harding's case (*Lawyer of the Week*, July 25), estimated in the region of £5 million, are yet to be assessed.

Pensioner's smallholding to be sold from under her

Tanya Oetzmann was badly advised and made bankrupt — but she is the only one paying the price. Frances Gibb reports

TANYA OETZMANN should be enjoying retirement. But at 72 she gets up before dawn to tend her smallholding of cows and pigs — and not just for the love of it; it is her livelihood. Not, though, for much longer. Oetzmann will soon be forced to sell her seven acres in settlement of a legal dispute that saw her end up bankrupt through no fault of her own.

Her case was first highlighted in *Law* (November 25,

2003): in summary, her thatched farmhouse near Thetford, Norfolk, caught fire with the loss of the roof and five bedrooms. Her architect failed to complete the job within the insurance budget and his designs, she says, were defective.

She lodged a county court claim but a solicitor wrongly advised her that she had to drop it and go to arbitration. That meant the loss of her legal aid: lack of funds forced

her to abandon the arbitration and she found herself with a costs order of £54,000 for bills unpaid because of the defects in the work. She was then pursued to bankruptcy.

The final chapter, three years on, is no better. The bankruptcy meant that she no longer had the right to pursue a negligence claim against the lawyers who wrongly advised her; that right was now vested in the trustee in bankruptcy

whose duty was to pursue it in settlement of her debts.

Oetzmann could still claim for distress suffered, and that was pursued pro bono by a City law firm, who secured her £7,000. Meanwhile, the bankruptcy trustee settled her negligence claim — but with an £80,000 shortfall in costs still owed. The upshot is that she will have to sell her land — and her house remains in disrepair. Oetzmann, who has

taken up her case with MPs and ministers, says: "It is so unjust I will end up with nothing — and entirely through other people's negligence."

Lawyers agree. One said: "There is a case for a change in the law so that where someone is made bankrupt through the negligence of third parties, there should be strict liability — so that the bankrupt's expenses are automatically borne by the negligent advisers. Mrs

Oetzmann should be put back in the position she'd be in if she'd not been made bankrupt — anything else is fundamentally unjust. Instead, her house is falling down; she'll have to sell her land and she'll lose her chief source of income."

The full edition of *Law* will return on September 5.

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