



Legal Services  
Complaints  
Commissioner

## Special Report

Investigation into the handling of Coal  
Health Compensation Scheme complaints  
by The Legal Complaints Service and  
The Solicitors Regulation Authority

January 2008



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# 1 Introduction by the Legal Services Complaints Commissioner



**Zahida Manzoor CBE**  
Legal Services  
Complaints  
Commissioner

In light of the significant public interest in the handling of Coal Health Compensation complaints I decided to conduct a second investigation within an 18-month period into the Law Society’s handling of these complaints. As a regulator, the decision to go back to investigate any matter for a second time, is one which is not taken lightly.

Miners and their dependents that have complained to the Law Society’s complaints handling arm are some of the most vulnerable consumers to use the Law Society’s Legal Complaints Service (LCS) and Solicitors Regulation Authority (SRA). As such, they are owed a duty of care by these organisations.

The findings contained in this Special Report bear out some of the concerns I held at the time of commissioning the investigation. However, a commitment by the LCS Board and Management Team to consider carefully the detailed findings and act quickly to address the issues identified, could result in a turnaround in the handling of these cases before the end of this current Improvement Plan year.

Simply put, some vulnerable miners who have been let down by their solicitor, are continuing to be let down by the way LCS is handling their complaint. Some significant mistakes have been made and these point to

systemic practices, poor decision-making, and inconsistent handling. By contrast, my audit team also found some examples of good practice, but these need to be more widely adopted by all LCS caseworkers.

The findings contained in this Special Report show that different outcomes are being achieved for miners depending on a bewildering array of variables including (but not limited to): whether an MP is involved, the LCS caseworker handling the complaint and the cooperation of the solicitor’s firm being complained about. As a small dedicated team has been created within LCS specifically to handle these complaints, such inconsistencies should not be this evident and this widespread.

Neither are these purely past failings – my findings include those for all new complaints opened and completed by LCS in 2007. In his Report published in April 2007<sup>1</sup>, Lord Lofthouse of Pontefract predicted that his findings would be written off as “history, little more than water under the bridge”. However, he added: “I am content to have my criticisms of the Solicitors Regulation Authority and the Legal Complaints Service tested by reference to their actions and performance in 2006 and 2007”. This Special Report gives Lord Lofthouse and others, an up to date picture of how these complaints are being handled.

<sup>1</sup> Report by the Lord Lofthouse of Pontefract published 25 April 2007 “Arising from his investigation into the performance and conduct of solicitors and their regulator, the Solicitors Regulation Authority and the Legal Complaints Service (the Law Society) in the British Coal Respiratory Disease Litigation, British Coal Vibration White Finger Litigation and British Coal Industrial Deafness Litigation”

On average, in the cases we audited that closed in 2007, each miner has been £207 better off by having his complaint formally adjudicated rather than conciliated by LCS. In 2007 up to £16,400 may have been lost from miners' appropriate awards at the date of the audit.

I highlight the case of six individual miners who, in 2007, have shown real persistence in their complaints. Despite being strongly encouraged to conciliate by LCS, they refused and insisted that their complaints should be investigated and a decision made by a LCS adjudicator. Through their persistence and courage, each of these has, on average, received an additional £1,700 compensation.

I am particularly concerned that the path to adjudication is not more straightforward and that only the most persistent miners can push to achieve what is often the right outcome for their circumstances. It should not just be the most persistent who get the appropriate outcome; LCS should consistently use its knowledge of adjudicated decisions to inform how it conciliates complaints. It must develop systems that simplify adjudication where this is necessary to make it more open for miners to receive the appropriate level of award for the problems they have endured.

LCS has pointed to the customer satisfaction expressed by miners to show how well it is

doing. But this is one indicator, which fails to recognise that miners may be expressing satisfaction with what they are told they can expect to achieve, not what they should be told. The case examples used throughout this report show how LCS is misleading some miners into believing that what is being offered through conciliation is the best they can expect.

I also note with some concern the position of the Law Society's Legal Affairs and Policy Board<sup>2</sup>, who question whether awards for the distress and inconvenience suffered by miners would be appropriate in the pilot run by LCS in the Rother Valley and also all future pilots. It intends to represent to LCS that it should impose a cut-off date for claims. I would encourage the Law Society to reflect on the many previous public criticisms of its actions in this sorry affair and instead come out in support of all miners achieving a fair and appropriate outcome for their suffering.

Let us not forget that for some of these miners, time is running out. Some have succumbed to their illness before their complaint could be fully resolved. This is a desperate shame and means that the LCS and SRA must act with more urgency to put right their flaws and make the handling of these complaints fair, transparent and consistent. Having previously sidestepped the implementation of some of my recommendations following

<sup>2</sup> Report of the Legal Affairs and Policy Board, the Law Society Council meeting 3 October 2007, item 20a

my audit in 2006<sup>3</sup>, the LCS and SRA now need to consider the impact those decisions have had.

If the issues raised by this Special Report are addressed, it will support LCS and SRA to continuously improve the way they handle miners' complaints from now on. In particular the Board of LCS should see this as an opportunity to help direct their Management Team's efforts towards raising standards and changing cultures in LCS.

I urge you to read the findings in this Special Report.



**Zahida Manzoor CBE**  
**Legal Services Complaints Commissioner**

## 2 Summary of findings

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There are four key findings within this report, none of which is insurmountable and all could be resolved relatively quickly by LCS and SRA:

**1. When LCS adjudicators investigate complaints, miners on average receive higher awards than those where LCS caseworkers conciliate between the miner and his solicitor. For the most recent cases, the gap between conciliation and adjudication awards is increasing.**

- In the cases we audited that closed in 2007; miners who conciliated to reach agreement would have been on average £207 better off if they had their complaint adjudicated.
- In 2007, the six miners that insisted on adjudication, between them were awarded over £10,000 of additional compensation by adjudicators in comparison to what LCS caseworkers were encouraging them to accept through conciliation.

**2. LCS caseworkers are not using the findings from adjudicated decisions sufficiently when conciliating.**

- In conciliated complaints that opened and closed in 2007, 56% of miners only managed to obtain the refund of the

deduction made by the solicitor, with no additional award for the distress and inconvenience caused.

- Similar adjudicated decisions have awarded an average of £330 compensation for the distress and inconvenience miners suffered.

**3. LCS caseworkers are inconsistent with and are sometimes misleading miners in the handling of their complaints.**

- LCS caseworkers, in 11% of complaints closed in 2007, did not explain the option of adjudication with miners.
- In the case of two firms using a 'standard tariff' to settle complaints against them, of the 62 complaints we audited, 30 miners (48%) received less than the deductions taken by their solicitor from their original compensation award.
- Awards as low as £19 have been wrongly described by LCS caseworkers as 'significant' compensation when encouraging miners to accept an offer. LCS guidelines state that 'significant' awards are between £200 and £500.

**4. Systems within LCS are not identifying and subsequently not correcting flaws in the way miners' complaints are handled.**

## “...many of the same issues of poor handling identified by the 2006 audit of miners’ complaints still exist.”

- LCS does not appear to have an effective file review system that identifies systematic failings.
- Our investigation found that LCS lost or was not able to account for almost 5% of complaints received from miners.
- LCS suspended 135 complaints relating to one particular firm without good cause. Some have been suspended for more than 15 months. Up to £58,000 of compensation for its own poor service may need to be paid to miners.

Whilst there has been some improvement in the handling of Coal Health Compensation complaints since the Office of the Legal Services Complaints Commissioner’s (OLSCC) last audit in 2006<sup>4</sup>, the findings in 2007 show that there are still too many complaints not being handled properly and many of the same issues of poor handling identified by the 2006 audit of miners’ complaints, still exist. The aim of undertaking a further investigation into the handling of these complaints has always been to engender within LCS and SRA a culture of continuous improvement, to raise standards and to bring about an appropriate outcome for both the complainant and the profession.

What can be said is that some positive examples and good practice do exist within LCS itself and that these can, and must, be exploited. Some LCS caseworkers are providing a good service to miners. Investigating the complaint thoroughly, explaining fully the options open to the miner to settle the complaint and negotiating with the solicitor to achieve an outcome equivalent to that awarded when complaints are decided by LCS adjudicators. Unfortunately LCS managers continue to miss practices by their caseworkers, which result in a complaint that is closed quickly even if the best result for the miner is not achieved.

The detailed findings and issues to be addressed that follow in this Report are intended to mainly act as a tool for continuous improvement and support for the LCS Board and Management’s efforts towards raising standards within the small team that handles these complaints. Whilst it is disappointing that poor handling is still evident within such a small team in LCS, overcoming this in its current Improvement Plan year ending 31 March 2008 is achievable. This effort is necessary to improve the outcome of complaints for more miners and solicitors alike, particularly when LCS has a desire to further promote its services to mining communities in the future<sup>5</sup>.

<sup>4</sup> OLSCC Coal Health Compensation Scheme Audit July 2006

<sup>5</sup> As reported in the Law Society Gazette, May 2007

## 3 Summary of issues that must be addressed by LCS and SRA

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### **Issue 1**

All conciliated complaints, must be investigated fully by LCS to identify all the specific circumstances of the miner's complaint. Where potential misconduct is suspected, an appropriate referral should be made to SRA.

LCS should ensure that all its caseworkers remain impartial, provide consistent decisions and explain to the miner and/or their representative, in an unbiased way, all options open for complaint resolution, including adjudication.

Existing LCS adjudicated decisions should be used as the starting point to put to solicitors and miners for complaints settled through the conciliation route. Where complaints are conciliated, unless the miner expressly agrees otherwise, the outcome for him should be no less favourable than had the same evidence been considered through adjudication.

For those complaints that cannot be conciliated, LCS and SRA should develop a quicker and simplified adjudication process. It should incorporate the many generic issues (e.g. specific firms having standard deductions) that have been identified on previous adjudicated complaints, so that new complaints can be fast-tracked and previous decisions can be used when determining cases featuring the same

generic issues. This approach must recognise that each complaint will also have its own specific and unique issues.

### **Issue 2**

Awards must be made consistent for miners who have similar complaints. To ensure its caseworkers achieve this, LCS management must put in place audit or monitoring systems that identify inconsistencies as they arise.

LCS management should review any cases that conciliate for an amount that is less than similar adjudicated awards. These cases should all be approved by an appropriate individual (e.g. Coach, Team Manager) who should ensure that full justification is provided on the file as to why a lesser amount than adjudication is reasonable.

### **Issue 3**

LCS caseworkers should correctly explain to miners and/or their representatives the difference between a deduction of fees from their Coal Health Compensation award and an award for the poor service of the solicitor. The caseworker should use LCS guidelines accurately to explain whether the level offered by the solicitor is appropriate to the miner's circumstances. It should be clearly evident on the file that these discussions have taken place and are appropriate.

#### **Issue 4**

LCS caseworkers must investigate and take responsibility to ensure that all the complaints handling routes are impartial, fair, and achieve the right outcome for the miners and the solicitor. LCS management must put in place policies and procedures that ensure this happens.

#### **Issue 5**

LCS management must provide OLSCC with a detailed plan to show the benefits to be realised for miners from its pilot of solicitors dealing directly with miners in order to conciliate their complaints. LCS management must also inform OLSCC how it will monitor and assess the impact of this pilot.

#### **Issue 6**

LCS should investigate why it is not able to account for all the miners' complaints it has received. It should develop a control system to ensure that all complaints to it are appropriately recorded when received and monitored throughout their progress. LCS should prepare a report for OLSCC outlining its findings from its investigation and its proposals for future complaints.

#### **Issue 7**

For pilot areas (such as Rother Valley), LCS should ensure that all complaints are separately recorded as pilot complaints. Mechanisms should be in place to enable tracking and monitoring of ongoing progress to inform the end of pilot evaluation.

#### **Issue 8**

LCS management should ensure that it plans effectively and, has in place the required capacity and capability to deal with the anticipated number of complaints following any future awareness-raising sessions.

LCS should take account of the number of complaints generated in the first pilot to inform required resource levels for future pilots.

#### **Issue 9**

The LCS Board should ensure that any future publicity to miners of its services includes clarity in relation to the LCS criteria for handling complaints about solicitors in Coal Health Compensation awards. The LCS Board should set LCS a target, against which it can be measured, to reduce the 8%<sup>6</sup> of complaints (seen in the Rother Valley pilot) that it rejected as being out of scope.

<sup>6</sup> The 8 % is 21 complaints out of the 258 allocated complaints when the audit was conducted.

### **Issue 10**

The LCS Board should now review both the 2004 policy of the Law Society<sup>7</sup> and its overarching policy of allowing complaints in 'exceptional circumstances', and produce a more pragmatic policy to accept all legitimate complaints from miners.

### **Issue 11**

LCS management should put in place processes that ensure that all miners' complaints are investigated fully. The practice of suspending LCS caseworker investigations to await a Solicitors Disciplinary Tribunal (SDT) ruling in these circumstances should cease immediately.

Where LCS management has previously suspended cases without a full investigation, a review of all relevant files should be undertaken to assess whether LCS should be making an award under its Special Payment Policy to recognise its own failings and delays.

### **Issue 12**

SRA must review its handling of miners cases referred to SDT to identify avoidable delays and speed up the time taken to prepare cases referred to SDT.

The Commissioner has also set the following target for LCS:

### **Target**

By 31 March 2008, LCS must write to each miner, advisor or relative whose complaint it has conciliated. LCS must set out in that letter (to be agreed with the Commissioner) that:

1. LCS will re-open their complaint in circumstances where the miner did not receive a refund in full of any deductions made by their solicitor from their original compensation, or where they suffered distress or inconvenience and did not receive an award for this when they complained to LCS
2. The miner can, in the circumstances set out above, ask the LCS to re-open their complaint, or can ask for the Legal Services Ombudsman to investigate their complaint further.

On receipt of further complaints as a result of writing to miners, LCS must:

1. Record all complaints
2. Re-open the complaint
3. Investigate fully the circumstances of the complaint
4. Conciliate or adjudicate the complaint as appropriate
5. Make an award to the miner for any failings by LCS in its original investigation.

<sup>7</sup> Policy introduced by the Compliance Board of the Law Society in January 2004 which recognised the "particular vulnerability" of miners in bringing complaints and waived, in limited circumstances, the usual requirements for the complaint to have been made within 6 months and for it to have first been made to the solicitor's firm.

## 4 Background to the Coal Health Compensation Schemes

Coal Health Compensation Schemes are the biggest personal injury schemes in British legal history. They were negotiated to compensate miners and their families for two mining-related health problems, caused by working underground in British Coal mines. The two conditions are:

- Chronic Obstructive Pulmonary Disease (COPD) - respiratory disease (chronic bronchitis and emphysema) resulting from the dusty conditions; and
- Vibration White Finger (VWF) – a disease caused by using vibrating tools.

British Coal was found guilty of negligence in two group actions in 1997 in relation to VWF and in 1998 in relation to lung diseases.

In January 1998 the Department of Trade and Industry<sup>8</sup> (DTI), took over responsibility for the accumulated personal injury liabilities of the British Coal Corporation.

DTI, in negotiation with the Claimants Solicitors' Groups<sup>9</sup> and subject to the approval of the High Court, introduced two compensation schemes for former miners, one for COPD and one for VWF. Potential claimants could make applications for compensation via their legal representative. The Government met the cost of the claimant's legal representation, where these claims were successful.

The schemes have now been closed to new entrants. As at 7 October 2007, a total of 762,000 claims had been made, 634,000 settled and total compensation of £3.6 billion had been paid to individuals under the schemes<sup>10</sup>. It is expected that by the time they close, the Government will have spent around £7 billion in total on the schemes.

### **Solicitors' involvement in the Coal Health Compensation schemes and deductions from miners' compensation payments**

The Claims Handling Agreements negotiated between the DTI and the Claimant Solicitors' Groups provided very detailed procedures that had to be followed when dealing with claims arising out of these specific industrial injuries. They also set out how much solicitors would be paid for each successful case.

There was widespread publicity for the compensation schemes, particularly in mining areas. Many claimants were referred to solicitors by trade unions, whilst others were referred by claims handling intermediaries. Some claimants approached solicitors directly, often in response to local marketing activity.

Some solicitors made deductions of success fees from miners' compensation awards, in addition to the costs they would receive from the DTI, in order to compensate for

<sup>8</sup> Restructured and renamed in June 2007 the Department for Business, Enterprise and Regulatory Reform (DBERR)

<sup>9</sup> The Claimants Solicitors' Groups are steering groups each led by the same three firms of solicitors, whose role is to represent the interests of claimants.

the fact that they would not be paid in unsuccessful cases. However, this often meant that the solicitor was being paid twice for the same piece of work. The deduction of success fees was commonplace until 1999 when most, though not all, solicitors stopped the practice after the introduction of claims-handling agreements.

Where claims-handling agents or trade unions were involved in referring miners to a solicitor, claimants were often asked to sign agreements authorising the solicitor to deduct a fee out of any compensation received, in the event that their claims were successful.

However, because the compensation schemes were set up to ensure that all costs incurred on behalf of claimants were recoverable from public funds, miners and their families were able to pursue their claims at no cost to themselves. Their solicitor should have advised them on this.

### **Complaints about solicitors**

If a consumer has a complaint about the way their solicitor has handled their case, and is unable to resolve that complaint directly with the solicitor concerned, they can complain to the complaints handling arm of the solicitor's professional body - the Law Society.

In January 2006, the Law Society formally announced its re-organisation into 3 distinct bodies. These are: the Legal Complaints Service (LCS)<sup>11</sup> which deals with complaints by consumers who are complaining about the service received from their solicitor; the Solicitors Regulation Authority (SRA) which regulates solicitors and deals with some consumer complaints where misconduct is alleged; and the Law Society which represents solicitors and promotes their work.

On receipt of a complaint, the LCS caseworker in the first instance will investigate it and attempt to reach an agreement on how it will be resolved between the consumer and the solicitor through an informal process called conciliation. If the LCS caseworker has been unable to resolve the matter informally, they can further investigate and prepare a report for an LCS adjudicator who will investigate and then make a decision.

Amongst other functions, SRA is responsible for regulatory and disciplinary matters; setting and maintaining standards and handling complaints that allege misconduct against solicitors. SRA caseworkers will investigate the complaint about the solicitor's conduct and if misconduct is identified, it can also refer the solicitor to the Solicitors Disciplinary Tribunal (SDT)

<sup>10</sup> Source: Department for Business Enterprise and Regulatory Reform

<sup>11</sup> Formerly the Consumer Complaints Service (CCS)

SRA conduct investigations can result in a range of outcomes. Where no misconduct is found, the file will be closed. For minor or technical breaches a letter of advice can be issued to the solicitor. If the case is referred for adjudication and misconduct is found but the breach is less serious than a finding can be made and a warning issued by SRA.

For more serious breaches, adjudicators can issue a reprimand or severe reprimand.

It has recently been reported that the SRA will be able (from January 2008) to handle serious disciplinary cases and award compensation up to a maximum of £2,000<sup>12</sup>.

The most serious cases can be referred to the SDT. These would include for example cases where there is suspected dishonesty, a serious criminal conviction or a major breach of the accounting rules.

At the SDT a solicitor can be:

- Reprimanded
- Fined
- Suspended from practice
- Struck off the Roll

It is also proposed that from January 2008, the SDT will be able to administer unlimited fines<sup>13</sup> for the most serious cases, when currently fines are limited to £5,000.

If a complaint has both service and conduct elements, the service element will generally be investigated first by LCS and then passed to SRA to investigate conduct issues.

### **LCS responsibilities**

Since 2003, and up to the point of the latest OLSCC investigation<sup>14</sup>, LCS had received 1,792 complaints from miners and their families.

Our audits have found the main reasons for miners to complain to LCS are:

- deductions from compensation awards of miners by solicitors to cover solicitors' fees;
- other deductions made from compensation awards of miners for example union fees or in lieu of union fees; and
- other aspects of poor service on the part of the solicitor such as failure to explain fully the costs of the claim.

There is a small and dedicated team within LCS that deals specifically with individual enquiries and complaints from miners in relation to the Coal Health Compensation schemes. This dedicated unit sits within the LCS Parliamentary Casework Team, which, as of October 2007, comprised a total of 27 staff. Caseworkers are supported and led by a Team Manager and also have access to

<sup>12</sup> As reported in Legal Week 15 November 2007

<sup>13</sup> As reported in Legal Week 15 November 2007

<sup>14</sup> OLSCC Coal Health Audit took place between 12 September 2007 and 12 October 2007

# “The majority of complaints from miners relate to the assertion that solicitors have made a deduction in some form from miners’ compensation awards.”

specialist assistance and advice from Casework Advisers as well as a Coach who has previous casework experience within the team.

The caseworkers’ remit includes investigating whether solicitors have provided an Inadequate Professional Service (IPS) to the miners. In terms of assessing whether the service was inadequate, LCS can consider whether the solicitor correctly advised the miner in relation to any deduction by explaining that the Government was paying for the solicitor’s legal fees or that other solicitors were offering the same service and not making similar deductions from the compensation award. LCS can also consider, where a claims handling agreement was signed by a miner with a trade union or with a referral agency, whether the solicitor adequately advised the miner on the implications of that agreement.

The majority of complaints from miners relate to the assertion that solicitors have made a deduction in some form from miners’ compensation awards. Following

the publication and findings of the Legal Services Ombudsman’s Special Report<sup>15</sup>, LCS adjudicators have determined that the deductions taken from miners’ compensation awards are a direct financial consequence of the poor service provided by the solicitor and are recoverable by the miner. In addition to this, adjudicators have awarded an additional amount in recognition of the distress and inconvenience experienced by the miner in bringing the complaint, if the case is referred to them. The audit identified that 83 cases had been adjudicated out of the total number (1792) of miners complaints received to the point of the audit, this amounts to 4.6%.

Where no deductions have been made, LCS policy still requires caseworkers in eligible cases to discuss and clarify, with the miner or their representative, whether there are any issues of IPS by the solicitor that could result in a payment of compensation for associated distress and inconvenience, and whether the miner wishes to pursue these issues.

<sup>15</sup> This report can be found at [www.olso.org](http://www.olso.org)

## 5 Reasons for the September 2007 OLSCC Investigation

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Early in 2006 the Commissioner had concerns about the increasing volume of complaints from miners, to LCS and SRA, about solicitors and their handling of claims covered by the Coal Health Compensation Scheme. She commissioned her Investigations Team to examine the LCS and SRA policy for miners' complaints and the application of that policy to ensure that LCS and SRA were handling these complaints appropriately. This investigation took place in April 2006.

The Report<sup>16</sup> of that investigation, published in July 2006, was formally critical of the way in which LCS and SRA were dealing with miners' complaints. In a Special Report on the Coal Miners' Compensation Scheme published in April 2006<sup>17</sup>, the Legal Services Ombudsman (the Ombudsman) was also critical about the way in which the LCS and SRA handled complaints from miners.

Since 2003, and up to the point of the OLSCC investigation in September 2007, LCS had received 1,792 complaints from miners and their families.

The Commissioner considered it necessary to conduct a further investigation as:

- Coal Health Compensation complaints still continue to be received in significant volume by LCS. LCS can therefore benefit from independent external analysis of how its processes are working, in order to drive continuous improvement and help to embed good practice.
- The Commissioner made a number of recommendations to LCS and SRA in her audit report in July 2006. LCS and SRA implemented some of these recommendations, others were not implemented – the Commissioner considers it is essential to assess the impact of this action/ inaction on vulnerable miners.
- LCS embarked on a programme of publicising its complaints service directly to mining communities in the summer of 2006. It also began a pilot scheme to raise awareness of its service in the Rother Valley constituency in July 2007. It is necessary and appropriate that the handling of these complaints is independently assessed to understand the benefits of running the pilot. This would then help to inform the LCS' considerations on whether to roll out the pilot to other mining communities.

<sup>16</sup> This report is available at [www.olscc.gov.uk](http://www.olscc.gov.uk)

<sup>17</sup> This report can be found at [www.olso.org](http://www.olso.org)

The Commissioner is of the view that there is a direct risk to vulnerable miners if these complaints are not handled effectively and consistently, and that some miners could miss out on appropriate levels of redress and/or solicitors' poor conduct may go unaddressed. The Commissioner considers this to be a public confidence issue, particularly as LCS is now actively promoting its services to the mining community.

The Investigation conducted by the OLSCC in September 2007 incorporated a review of all 1,792 complaints received by LCS up to that point. 509 complaints were audited fully. All complaints adjudicated and, all conciliated complaints opened and completed in 2007, were audited fully by the Investigation Team, to help determine how LCS is currently handling complaints.

**“The Commissioner is of the view that there is a direct risk to vulnerable miners if these complaints are not handled effectively and consistently...”**

## 6 The Report and the issues

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There are four key findings to this report:

1. When LCS adjudicators investigate complaints, and/or when miners refer their cases to the Legal Services Ombudsman, miners on average receive higher awards than those where LCS caseworkers conciliate between the miner and his solicitor. For the most recent cases, the gap between conciliation and adjudication awards is increasing.
2. LCS caseworkers are not using the findings from adjudicated decisions sufficiently when conciliating.
3. LCS caseworkers are inconsistent with, and are sometimes misleading miners in, the handling of their complaints.
4. Systems within LCS are not identifying and subsequently not correcting flaws in the way miners' complaints are handled.

None of these findings is insurmountable and all could be resolved relatively quickly. The following sections detail the findings of the audit and where the systemic failings are evident.

### 1. Getting the best outcome

When a complaint is made to LCS there are generally two ways of resolving the complaint. The initial stage is for the caseworker to attempt to reach a conciliated outcome where both the miner and solicitor reach a settlement. If it is not possible to conciliate, the caseworker can refer the complaint to an LCS adjudicator to investigate the issues fully and make a decision.

Following either a conciliation or adjudicated decision, if the miner is unhappy with the outcome, they can take their complaint to the Legal Services Ombudsman.

The majority of miners' complaints have been resolved through conciliation. LCS believes that for its business, this approach is right in principle and benefits consumers.

*"The conciliation of complaints is the standard and preferred method of the Legal Complaints Service. This ensures that where a consumer should have financial redress it is provided promptly. We have no doubt that it is right in principle, and benefits consumers" (LCS 2006).*

Both the 2006 and 2007 OLSCC audits into miners' complaints have found that those miners whose complaints are settled through adjudication financially receive a substantially

**“...those miners whose complaints are settled through adjudication financially receive a substantially more favourable outcome.”**

more favourable outcome. That is not to say that if operated more effectively LCS could not achieve a comparable outcome through conciliation.

However, in order to examine the most current practices in LCS we audited all but two miners’ complaints that were opened and closed by it in 2007 and a selection of complaints that carried over into 2007. Of the 97 complaints OLSCC audited (conciliated and adjudicated), we found that conciliation continues to be a considerably poorer option than adjudication for miners. Through adjudication each miner received an additional £207 on average against similar conciliated complaints that OLSCC reviewed on audit. For those 79 miners who conciliated their complaints and were part of our audit sample, LCS caseworkers potentially failed to secure up to an additional £16,400 for them,

when compared to what adjudicators have appropriately awarded in similar complaints.

The difference this can mean to individual miners is shown in Table 1 below. In 2007, of the seven miners who felt strongly enough to refuse conciliation and instead insisted on their case being referred to an LCS adjudicator,<sup>18</sup> one was told by the adjudicator that the conciliated offer was appropriate and no additional amount was awarded. For the other six, LCS adjudicators awarded over £10,000 of additional compensation. This averaged out at almost £1,700 for each miner.

It would be unfair, however, to suggest that conciliation is never appropriate in miners’ complaints. Conducted properly, conciliation can result in a fair, reasonable and prompt outcome. Case example 1 demonstrates how complaints can, and should be conciliated.

<b>Conciliation offer not accepted</b>	<b>Adjudication amount</b>	<b>Difference</b>
<b>£165</b>	<b>£575</b>	<b>£410</b>
<b>£300</b>	<b>£1131</b>	<b>£831</b>
<b>£1000</b>	<b>£2628</b>	<b>£1628</b>
<b>£1500</b>	<b>£3466</b>	<b>£1966</b>
<b>£1500</b>	<b>£3930</b>	<b>£2430</b>
<b>£400</b>	<b>£3222</b>	<b>£2823</b>

18 Cases closed in late 2006 and throughout 2007

“...any investigation into whether a solicitor has provided Inadequate Professional Service should involve the caseworker considering each complaint on its own merits.”

#### Case example 1

The LCS caseworker discussed previous adjudication decisions with the solicitor, saying that a refund of the deducted amount plus an award for distress and inconvenience would be considered appropriate. The solicitor suggested offering £250 distress and inconvenience for all outstanding complaints together with a full refund of the deduction. The caseworker however, said that a blanket offer was unacceptable as there “must be consideration of vulnerability of clients”. The solicitor accepted this.

#### 2. LCS guidelines for handling complaints

LCS guidelines for dealing with miners’ complaints state that on receiving a complaint, caseworkers should investigate whether solicitors provided an adequate professional service to the miners. Accordingly, any investigation into whether a solicitor has provided Inadequate Professional Service (IPS) should involve the caseworker considering each complaint on its own merits.

LCS should consider whether the solicitor offered the miners adequate advice including:

- that the solicitor’s legal fees were being paid for by the Government;
- that other solicitors were offering the same service and not making deductions from compensation;

- that, if applicable, a fee was being deducted from the miner’s compensation and being sent to a claims handling agent or third party; and
- that in those complaints where miners had signed a claims handling agreement with a third party, the solicitor appropriately advised the miners on the implications of that agreement.

Complaints that have been decided by LCS adjudicators have determined that the deduction should be repaid in full to the miner and adjudicators have in addition, made an award of compensation for the distress and inconvenience suffered by the miner because of the IPS provided by the

solicitor. This follows the framework and guidance contained in the Legal Services Ombudsman's Special Report. It was evident from the cases audited by OLSCC that this was not usually the case prior to the Ombudsman's Special Report. It is to the adjudicators' credit that the Ombudsman's guidance is now being followed and referred to in dealing with miners' complaints.

However, we found that in 56% of the complaints conciliated by LCS caseworkers that opened and closed in 2007, a refund of the deduction only was awarded to miners. One complainant, however, did not receive a full refund of the deduction.

For those complaints adjudicated in 2007, miners received this deduction in full plus an average of £330 compensation for the distress and inconvenience they had suffered.

Some miners (or their representatives/dependants) choose (as in case example 2) to accept an award equivalent to their deduction to settle the complaint.

However, examples shown in some of the following sections of this report show that too often the decision by the miner to only accept a refund of the deduction was as a result of the way information concerning the settlement of their complaint was shared with them by the LCS caseworker.

### Case example 2

A solicitor offered a refund in full of almost £1,000 that had been deducted from a miner's compensation award. The LCS caseworker gave a clear and thorough explanation to the miner, initially by phone and subsequently by letter, of all the options available to him. The caseworker also pointed out that, in similar complaints an adjudicator had awarded both a refund of the deduction and compensation for distress and inconvenience. The miner chose to accept the solicitor's offer of a refund of their deduction and did not wish to pursue any additional amount for their distress and inconvenience. It is clear from the file that the miner was able to make an informed choice.

“...adjudication is described to miners by some caseworkers as risky, complicated and/or protracted.”

### 3. Explaining the options for resolution

The approach some LCS caseworkers are taking during conciliation can and does have the effect of discouraging miners from going to adjudication. LCS caseworkers know that adjudication routinely achieves better financial results for miners when compared to conciliation. However, adjudication is described to miners by some caseworkers as risky, complicated and/or protracted.

This practice continues despite a recommendation that it should cease, made in July 2006 following the first OLSCC audit of miners' cases. LCS was asked to ensure that “the miner is provided with

sufficient information to enable them to make an informed choice for the resolution of their complaint.”

The OLSCC 2006 Miners' Audit found that LCS caseworkers unnecessarily delayed the preparation of reports for adjudication by up to 11 months. The OLSCC Annual Case File Audit, of LCS, which covered 516 complaints, in September 2006, also found this. In contrast through an audit of adjudication<sup>19</sup> we found that adjudicators completed their adjudications speedily. That audit recommended that the speed with which reports are prepared by LCS

#### Case example 3

A miner signed an agreement that resulted in over £3,000 being deducted from his compensation award. The solicitors agreed to conciliate with an offer of around half of the deduction. The LCS caseworker contacted the miner, who said they were sure the solicitor knew the implications of him signing the agreement for the deduction to be paid to a 3rd party, and should have explained the implications to him. As a result the miner did not wish to accept the offer. The caseworker explained that the complaint would go to adjudication, but the miner, might not get anywhere near the figure of £1,500 currently on offer. The miner insisted on adjudication and was in 2007 awarded a refund in full of the deduction plus £300 for the distress and inconvenience he suffered.

<sup>19</sup> OLSCC Adjudication Audit March 2007

**“We...found in 11% of complaints that were closed in 2007, that miners did not have the option of adjudication explained to them...”**

#### **Case example 4**

A LCS caseworker informed a miner in writing to accept an offer of £200 to conciliate. The caseworker thought it was reasonable and that, “the adjudication procedure is quite a lengthy process and if you choose to pursue that route it may be months before you receive your compensation, if any at all, and that is why I would advise you to accept the £200 the solicitors are offering now.” The miner’s representative insisted on adjudication and the miner was refunded their deduction in full (£352.50) plus £250 compensation for their distress and inconvenience.

caseworkers for adjudication should be improved. It is therefore disappointing to see some LCS caseworkers continuing to use their own delays in producing reports for an adjudicator as a reason why miners should consider accepting the conciliated offer. Case example 4 above demonstrates how this is put to miners.

LCS managers were keen to inform the OLSCC auditors of the measures in place to ensure consistency between caseworkers and how they had shared knowledge of adjudication decisions between them. OLSCC was told of weekly team meetings where adjudicated decisions are discussed. However, this is not being converted into action by caseworkers who continue to influence miners into thinking that there might be significant risks in following the adjudication route. Significantly managers are not appearing to pick

this up in the file reviews of caseworkers’ work that they currently undertake.

Case example 5 on page 23 shows the strength with which some LCS caseworkers try to persuade the miner to accept the conciliated amount rather than proceed to full investigation by an adjudicator.

We also found in 11% of complaints that were closed in 2007, that miners did not have the option of adjudication explained to them by LCS caseworkers. This behaviour is clearly inappropriate given the body of investigations undertaken by adjudicators (83) and (we are told) discussed weekly within the team, as well as the reports from cases referred back to the LCS from the Legal Services Ombudsman that are available to the LCS caseworkers.

### Case example 5

A LCS caseworker outlined the options to a miner, emphasising that they may get no compensation at all if they go to adjudication. “I told him that he can either accept the offer and receive the money or refuse the offer and ask me to investigate his complaint. I may find that his solicitor has not provided a poor service and consequently I will not ask them to pay him any compensation. This means that he will have lost the offer of £293.75”. The miner accepted the conciliated offer.

#### ISSUE 1

All conciliated complaints, must be investigated fully by LCS to identify all the specific circumstances of the miner’s complaint. Where potential misconduct is suspected, an appropriate referral should be made to SRA.

LCS should ensure that all its caseworkers remain impartial, provide consistent decisions and explain to the miner and/or their representative, in an unbiased way, all options open for complaint resolution, including adjudication.

Existing LCS adjudicated decisions should be used as the starting point to put to solicitors and miners for complaints settled through the conciliation route. Where complaints are conciliated, unless

the miner expressly agrees otherwise, the outcome for him should be no less favourable than had the same evidence been considered through adjudication.

For those complaints that cannot be conciliated, LCS and SRA should develop a quicker and simplified adjudication process. It should incorporate the many generic issues (e.g. specific firms having standard deductions) that have been identified on previous adjudicated complaints, so that new complaints can be fast-tracked and previous decisions can be used when determining cases featuring the same generic issues. This approach must recognise that each complaint will also have its own specific and unique issues.

#### 4. Incomplete investigations

Following the OLSCC miner's audit undertaken in July 2006, the Commissioner recommended that LCS revisit those cases where there had not been a full investigation into the IPS issues and where the miner had not been fully advised of their options around complaint resolution. LCS elected not to address this recommendation citing resource constraints as part of its reason for not doing so. LCS has repeatedly assured the Commissioner that all miners' complaints are now investigated fully and all options to resolve the complaint are explained to the miner. It is of concern therefore that these issues have once again been identified through the audit in October 2007.

At the time at which the Commissioner's original recommendation was made to revisit the conciliated cases at issue, it was estimated that the volume of cases was around 280. However, despite assurances that the previously criticised approach has now been modified, this audit has again identified these issues and, significantly, they have also been found on complaints handled in 2007. The LCS has also embarked on a campaign of targeted awareness raising in mining areas. Therefore the number of affected miners will now have grown substantially.

The Commissioner has, therefore, considered setting as a target that LCS must automatically re-open all miners' cases it has received that have been closed by conciliation and where a full investigation of inadequate service and explanation of all relevant options to the miner did not take place. However, acting proportionally as a regulator, the Commissioner has decided to set a target that compels the LCS to alert all miners that had their complaints conciliated in this way, that they may have been potentially disadvantaged and offer them the choice to have the complaint re-opened.

This undoubtedly requires some effort on the part of LCS, but also places the onus on the miners, their representatives and dependants. The Commissioner fully acknowledges, that for various reasons (including the time that has elapsed since the original complaint, a lack of understanding of the issues and the sheer effort it requires to request the re-opening of their complaint), the take up from miners may be low.

However, in view of the special circumstances that apply, the Commissioner considers that this is the fairest, most pragmatic way forward to offering the right level of redress to those who have potentially been disadvantaged.

This, along with addressing the issues raised in this Report, will allow the LCS to finally draw a line under this poor conciliation practice and move forward on the basis of a more level playing field for miners and the solicitors complained about.

**Target**

By 31 March 2008, LCS must write to each miner, advisor or relative whose complaint it has conciliated. LCS must set out in that letter (to be agreed with the Commissioner) that:

1. LCS will re-open their complaint in circumstances where the miner did not receive a refund in full of any deductions made by their solicitor from their original compensation, or where they suffered distress or inconvenience and did not receive an award for this when they complained to LCS.

2. The miner can, in the circumstances set out above, ask the LCS to re-open their complaint, or can ask for the Legal Services Ombudsman to investigate their complaint further.

On receipt of further complaints as a result of writing to miners LCS must:

1. Record all complaints
2. Re-open the complaint
3. Investigate fully the circumstances of the complaint
4. Conciliate or adjudicate the complaint as appropriate
5. Make an award to the miner for any failings by LCS in its original investigation.

“...solicitors would offer standard amounts depending on the level of deduction. LCS caseworkers put these blanket offers to miners...”

### 5. Blanket approach

Our audit in July 2006<sup>20</sup> found that miners who complained to LCS were often offered a standard payment in line with what solicitors had settled for in similar complaints against their firm. On many occasions this represented only a part of the deductions made by the solicitor from the miner's Coal Health Compensation award.

Through this practice LCS caseworkers would send lists of the names of miners to the solicitors who acted for them. From this solicitors would offer standard amounts depending on the level of deduction. LCS caseworkers put these blanket offers to

miners without investigating the individual circumstances of their complaint. The offers put in these circumstances that were accepted by miners, ranged from being considerably less than the money deducted from the compensation received by the miner, through to, in some instances, a full refund of the deductions plus a payment for the poor service provided by the solicitor.

This 2007 audit found evidence that two firms of solicitors were, in correspondence with LCS caseworkers, using the term 'standard tariff' for this approach; other firms would describe it in a similar way such as a 'goodwill payment'.

#### Case example 6

A firm of solicitors offered to settle all their miners' complaints by offering a set amount directly related to the deduction made. A spreadsheet, provided by the firm, listed the individual miners, the amount of their deduction by the solicitor (from the miner's original compensation) and a sum the firm was prepared to offer to settle the complaint. Where £352.50 was deducted, the firm offered a refund of £250. Where £176.25 was deducted, they offered £150. LCS accepted this approach and contacted miners with this offer. Many miners accepted the offers, apparently unaware of the circumstances in which they had been made.

<sup>20</sup> OLSCC Coal Health Compensation Scheme Audit  
July 2006

### Case example 7

A firm of solicitors wrote to LCS explaining that its previous dealings with the Consumer Complaints Service (now LCS) led it to believe “that there is a standard of up to £200” to compensate for the deductions made by the solicitor. The firm offered to settle their miners’ complaints in this manner and supplied a list detailing miners, whose complaints it said could be conciliated for up to £200. It proposed a standard payment for the deductions. If £117.50 was deducted, £100 was offered and if £176.25 was deducted, £150.00 was offered. LCS accepted this approach to only partly refund the deduction and contacted miners with this offer. Many miners accepted the offers, apparently unaware of the circumstances in which they had been made.

Table 2 below demonstrates how the two firms used the “standard tariff” approach with LCS.

Of the 62 complaints we audited 30 miners (48%) received less than the deduction

made by their solicitor from their original compensation award. Only 3 miners received an award that included a sum for the distress and inconvenience caused by these firms.

Table 2

STANDARD TARIFFS	Firm 1	Firm 2	Firm 1	Firm 2	Firm 1	Firm 2
Year	2005		2006		2007	
Amount accepted less than deduction	8	18	3	1	NIL	NIL
Amount accepted equal to deduction	1	NIL	6	7	4	11
Amount accepted equal to deduction plus distress	NIL	NIL	1	NIL	2	NIL

## “LCS caseworkers should resist attempts by solicitors to settle complaints on a blanket approach.”

The 2007 investigation also noted how the behaviour of the firms has changed since the publication of the Legal Services Ombudsman’s Special Report, which highlighted this “standard tariff” practice in April 2006. It is noted that since the Report more miners receive at least the deduction from their original compensation. Unfortunately it is still not all miners who receive this deduction in full which the Legal Services Ombudsman and adjudicators have said is a financial loss and as such can be repaid to the miner.

Whilst some improvement in solicitor behaviour is good, many miners are still receiving awards less than they would through LCS adjudication or if the miner had taken their complaint to the Legal Services Ombudsman. This type of standard payment practice is unacceptable in its present form and should cease.

LCS caseworkers should resist attempts by solicitors to settle complaints on a blanket approach. The example below demonstrates how a LCS caseworker achieved the right result for a miner.

### Case example 8

When the caseworker contacted the solicitor, the solicitor sent a cheque for the deductions in full directly to the miner. In discussion with the miner the LCS caseworker explained distress and inconvenience as opposed to just recovering the deduction. They also explained LCS adjudication. The miner chose not to accept the cheque and sought additional compensation for distress and inconvenience caused by the solicitor’s poor service. The caseworker contacted the solicitor to discuss this. As a consequence the solicitor offered a refund of the deduction plus £75 compensation. The caseworker contacted the miner and explained that an adjudicator was likely to offer a higher level of compensation, “as the LCS has considered many similar complaints to this in the past”. Given this information, the miner confirmed he wished to pursue the complaint further. The caseworker returned to the solicitor to successfully negotiate and secure compensation of £150 for the miner, in addition to a full refund of the deduction.

## 6. Different levels of compensation

One firm of solicitors offers a standard payment to miners but then increases that offer if that miner subsequently indicates that they are going to

escalate their complaint to the Legal Services Ombudsman. The solicitor offers an additional £250 in these circumstances.

### Case example 9

LCS agreed that all complaints raised by an MP in relation to a firm of solicitors would be conciliated without the need for an investigation. The conciliation level agreed was a full refund of the fee deducted by solicitors from the miner's compensation, with an additional £250 if the miner referred their complaint to the Legal Services Ombudsman.

It is unclear why the agreement reached by LCS did not ensure that all complainants received a refund of the deduction and appropriate compensation for poor service by the solicitor. If such an agreement could not be reached with the solicitor, then the complaint should have been investigated fully by the adjudicator and a decision made.

Inconsistencies in the way LCS caseworkers handle complaints are illustrated in case example 10 opposite.

It is an example of how two miners with similar circumstances and complaining about the same firm of solicitors are left with different results.

### Case example 10

A LCS caseworker was already aware that previous adjudicated decisions, in similar complaints about this firm of solicitors, had resulted in a refund of the deduction in full to the miner and an award of compensation for distress and inconvenience they had experienced. In this new complaint the solicitor offered a refund of the deduction only; this was put to the miner by the LCS caseworker.

When making the offer to the miner, the caseworker did not mention the previous adjudicated decisions and, that compensation could be awarded for distress or inconvenience.

By not providing this the caseworker failed to give the miner the information necessary to help them make a fully informed decision. Unsurprisingly, the miner accepted the solicitor's offer of a refund of the deduction only.

#### ISSUE 2

Awards must be made consistent for miners who have similar complaints. To ensure its caseworkers achieve this, LCS management must put in place audit or monitoring systems that identify inconsistencies as they arise.

LCS management should review any cases that conciliate for an amount that is less than similar adjudicated awards. These cases should all be approved by an appropriate individual (e.g. Coach, Team Manager) who should ensure that full justification is provided on the file as to why a lesser amount than adjudication is reasonable.

“...it is quite clear that a refund of the deduction is distinct and entirely separate to compensation for distress and inconvenience.”

### 7. Calculation of awards

LCS publishes information to help consumers and legal professionals understand the likely awards of compensation that complaints can attract for any distress and inconvenience caused by the inadequate service of the solicitor. The LCS Awards Guidance<sup>21</sup> shows the range of compensation awarded by the LCS is in the following categories:

- Modest – the majority of awards in this category are less than £250
- Significant – awards range from £200 to £500
- Serious – awards range from £500 to £1000
- Extremely serious – complaints in this category usually attract awards in excess of £1000

LCS has the powers to award compensation up to £15,000.

For clarity, this is not to be confused with what the miner is entitled to for the deduction from his compensation award, which is a financial loss. This only relates to the part of the offer from the solicitor that is for the distress and inconvenience suffered by the miner because of the inadequate service provided by his solicitor.

In some of the most recent complaints audited, we found some caseworkers were incorrectly categorising offers, which made it appear that the offer was considerably more than its actual value in comparison to adjudicated awards.

It is unclear why some LCS caseworkers should have begun to operate this practice since it is quite clear that a refund of the deduction is distinct and entirely separate to compensation for distress and inconvenience. The value of the offer for distress and inconvenience should not be overstated. This practice creates confusion, is misleading and is not in the best interests of the miner.

<sup>21</sup> Available on the LCS website

### Case example 11

The miner had £220 deducted from their compensation award by their solicitor. After being contacted by an LCS caseworker, the solicitor made an offer of £300, which the caseworker described to the miner as being “the same as the deduction amount plus a little extra”. The caseworker then said that the amount offered was in what LCS described as the ‘significant’ category of compensation amounts and stated that if the miner went to adjudication he would be likely to get compensation in the ‘modest’ category.

This is misleading, as it suggests the amount being offered is more than the miner might get at adjudication. Not surprisingly, the miner accepted the offer. The £80 offered for distress and inconvenience was actually in the LCS ‘modest’ category of compensation awards.

What the caseworker should have explained was that adjudicators generally refunded the deduction and also awarded an amount of compensation. In the 2007 adjudicated cases we saw, the average amount of compensation was £330, which is in the ‘significant’ category.

### Case example 12

In this complaint the solicitor offered £881 in order to refund the deduction they made. An MP was representing the miner and the MP’s team recognised that only the deduction was being offered. They asked for £100 for distress and inconvenience. The solicitor increased their offer to £900 and the LCS caseworker described this as being in the ‘serious’ category when it was clearly the deduction plus £19. The caseworker said that the new offer “falls in the ‘serious’ category”.

# “LCS caseworkers should be challenging solicitors when this practice occurs...”

The offer is clearly a refund of the deduction plus only £19 for distress and inconvenience. £19 does not fall into the LCS ‘serious’ category of £500-£1000. As in the previous example, the caseworker would have been aware of the £330 on average awarded by adjudicators for distress and inconvenience. The LCS caseworker in this example has provided confusing information to the MP’s team and the end result is that the miner received a much poorer deal than they should have.

This problem was identified by OLSCC during the 2006 Miners Audit<sup>22</sup>. The Commissioner recommended that LCS provide miners with sufficient information to enable them to make

an informed choice for the resolution of their case. It is concerning that the practice by some LCS caseworkers continues and is not being identified by LCS managers.

## ISSUE 3

LCS caseworkers should correctly explain to miners and/or their representatives the difference between a deduction of fees from his Coal Health Compensation award and an award for the poor service of the solicitor. The caseworker should use LCS guidelines accurately to explain whether the level offered by the solicitor is appropriate to the miner’s circumstances. It should be clearly evident on the file that these discussions have taken place and are appropriate.

## 8. Solicitors in control

OLSCC’s 2006 Miners Audit found that often solicitors were driving the process for settling complaints and not the LCS caseworkers. Unfortunately this latest audit found that caseworkers are still not always preventing this. When aware of a complaint to LCS, some solicitors are issuing cheques directly to the miner; contacting them directly to encourage them to accept an offer; or asking their trade union to contact them and to encourage them to accept a settlement or withdraw their complaint.

In 2006, of the complaints we audited where the solicitor had inappropriately contacted the miner, we found that in 83% of these the

caseworker took no action. In all of the 9 examples we saw in 2007, the LCS caseworkers continued to take no action. Where this sort of behaviour remains unchallenged by the LCS caseworker, it is the individual miner who has to make decisions on whether to accept the offer from his solicitor without the benefit of the knowledge the LCS caseworker has about the firm and the adjudicated decisions against it. The miner may inappropriately accept a lower amount than if LCS had managed the complaint. LCS caseworkers should be challenging solicitors when this practice occurs, referring, if necessary, the solicitor’s actions to SRA for investigation of their conduct.

<sup>22</sup> OLSCC Miners Compensation Audit Report, July 2006

### Case example 13

A miner asked a LCS caseworker to establish if their solicitor would pay an amount for distress and inconvenience, so that they could decide whether to accept the refund of the deduction offered, or whether it was best to go to adjudication. On discovering this, the solicitor sent a cheque to cover the deduction directly to the miner who kept it. The caseworker failed to pursue with the solicitor the issue of distress and inconvenience, the matter of the cheque being sent direct to the miner and whether the actions of the solicitor were in breach of solicitors' conduct rules.

#### ISSUE 4

LCS caseworkers must investigate and take responsibility to ensure that all the complaints handling routes are impartial,

fair, and achieve the right outcome for the miner and the solicitor. LSC management must put in place policies and procedures that ensure this happens.

#### 9. Negotiating complaints directly

LCS, on a test basis, is allowing one firm of solicitors to negotiate directly with miners who complain to LCS about them. LCS has said it will maintain a "watching brief" and that if miners feel pressurised or unhappy in the process at any time, then they can speak to a LCS caseworker.

Given that the vulnerability of miners has been recognised by LCS, it is a concern that the LCS should now pilot an approach in which the individual miner deals exclusively with the solicitor. It is unclear why LCS would wish to minimise its own role as an independent intermediary in these complaints, which have been made to it.

Although miners do have the choice about whether to participate, evidence from our audit shows that miners individually are not in a strong position to negotiate an appropriate settlement with their solicitor. The further information requested from

LCS by OLSCC and received after the audit, states that LCS caseworkers provide guidance on the level of award that might be expected on conciliation. This has not been tested by the OLSCC audit.

Given that evidence seen to date suggests that solicitors are likely to offer a lower amount of compensation than LCS adjudicators are awarding, they will have an unfair advantage over the lone miner in the negotiation. Without access to the benefits LCS expects from this new initiative, it is difficult to see how miners will be assisted by this new LCS approach.

#### ISSUE 5

LCS management must provide OLSCC with a detailed plan to show the benefits to be realised for miners from its pilot of solicitors dealing directly with miners in order to conciliate their complaints. LCS management must also inform OLSCC how it will monitor and assess the impact of this pilot.

# “...almost 5% of all miners’ complaints received by LCS could not be accounted for...”

## 10. Managing and controlling complaints

For this audit LCS could not provide the OLSCC with a complete list of miners’ complaints it had received. Despite assurances from LCS that the file lists provided by it were accurate, the information proved to be incomplete and many miner’s complaints were not shown on the lists. Overall, almost 5% of all miners’ complaints received by LCS could not be accounted for by it.

43 complaints had to be re-constituted by LCS from its IT system. Re-constituted files were incomplete and did not contain correspondence submitted by the miners and could not, therefore, be audited fully. By the end of the audit, 34 complaints continue to remain unaccounted for by LCS.

## 11. Getting new complaints right

**“There was no way, as a consumer-focused organisation, we couldn’t reach out to help this vulnerable and distressed group<sup>23</sup>.”**

LCS conducted a pilot scheme for former miners in the Rother Valley Parliamentary Constituency in July 2007. This involved canvassing 3,643 former miners (or beneficiaries) directly by letter, and inviting them to attend an information session. The objective of the pilot was to raise awareness of the LCS services to individuals wishing to make a complaint about their solicitor’s handling of their Coal Health Compensation

This is of particular concern as all miners’ complaints are handled in a small and discrete team within LCS. This brings into question LCS’ ability to accurately account for the remainder of the 18,000 written complaints it receives annually.

### ISSUE 6

LCS should investigate why it is not able to account for all the miners’ complaints it has received. It should develop a control system to ensure that all complaints to it are appropriately recorded when received and monitored throughout their progress. LCS should prepare a report for OLSCC outlining its findings from its investigation and its proposals for future complaints.

claim. This initiative, according to an LCS report in September 2007, resulted in 354 new complaints being received by LCS.

At our audit, LCS provided a file list of 313 complaints that it was able to identify had been submitted through the Rother Valley pilot.

### Managing and controlling pilot complaints received

All complaints received by LCS should be given a unique reference number and logged on its IT system as a means of tracking progress. To enable the full and

<sup>23</sup> LCS Chief Executive speaking about miners in the Law Society Gazette 3 May 2007

# “...we would have expected [LCS] to gear-up its services...”

accurate evaluation of a pilot, OLSCC would have expected this tracking system to be enhanced to capture data specific to complaints received as a result of the pilot. However, LCS confirmed that it would only be able to identify the Rother Valley pilot complaints through recognition of the particular MP's involvement rather than any unique pilot marker. The Rother Valley complaint file list given by LCS to OLSCC included some complaints that were not part of the pilot but that had been brought (in different circumstances) by that particular MP.

This is not just an administrative issue. It casts doubt on whether LCS is able to accurately report pilot activity. As LCS is unsure of the numbers involved it will not be able to accurately evaluate the results of the pilot and to properly apply those results to any future activity it has planned. Given that “LCS plans to contact all miners eventually”<sup>24</sup>, if this problem is left unchecked, it could be compounded later.

## **ISSUE 7**

**For pilot areas, LCS should ensure that all complaints are separately recorded as pilot complaints. Mechanisms should be in place to enable tracking and monitoring of ongoing progress to inform the end of pilot evaluation.**

## **Effective planning is the key to improved complaints handling**

During our audit, 55 complaints (18%) of those said by LCS to be as a result of the Rother Valley pilot, had not yet been allocated to a LCS caseworker for action. These complaints were received, in the main, during July and August 2007 and remained unallocated at the point of the audit that took place in October 2007.

The LCS Chief Executive twice confirmed publicly that any additional complaints received as a result of the pilot, would not unduly put a strain on LCS resources. In May 2007 she was reported as assuring the Law Society Council that the influx of complaints “was insignificant compared with the annual total of 18,000”<sup>25</sup>. Again, in September 2007 with the pilot underway, she said the pilot activity had caused a “spike of 10%” but was reported as adding, “this was in line with LCS estimates and could be handled by existing staff levels”<sup>26</sup>.

Given that LCS promoted its services; we would have expected it to gear-up its services to immediately allocate the resulting complaints to its caseworkers. There seems to be a gap between the public position being portrayed by LCS and the reality for those miners in the pilot area who had responded to LCS publicity, who then have to wait before any action to resolve their complaint takes place.

<sup>24</sup> As reported in the Law Society Gazette in May 2007

<sup>25</sup> Law Gazette 24 May 2007

<sup>26</sup> Law Gazette 13 September 2007

“...some miners were still confused about what LCS could and could not do. As a consequence miners brought complaints that LCS did not accept.”

#### ISSUE 8

LCS management should ensure that it plans effectively and, has in place the required capacity and capability to deal with the anticipated number of complaints following any future awareness-raising sessions. LCS should take account of the number of complaints generated in the first pilot to inform required resource levels for future pilots.

#### Managing expectations in this pilot scheme

The Rother Valley information sessions gave the LCS a face-to-face opportunity to effectively manage miners' expectations as to what complaints it would accept. However, following these some miners were still confused about what LCS could and could not do. As a consequence miners brought complaints that LCS did not accept. Some

miners, from the awareness raising sessions, assumed that any health problems associated with working for British Coal, for example hearing loss, would be included in complaints accepted by LCS.

LCS rejected 21 complaints (8%<sup>27</sup>) that miners had considered were valid, because they did not fit the criteria of complaints it would investigate.

It is unclear why LCS could not have been more pragmatic in the application of its criteria, for example some miners in the pilot area were unclear about whether a deduction had been taken from their compensation award or not.

Whether or not a deduction had been made, OLSCC would have expected to see evidence of caseworkers establishing, with the miner or their representative,

#### Case example 14

Following the Rother Valley information session, a miner wrote to LCS to say that he cannot remember if his solicitor made any deduction. The LCS caseworker did not clarify the matter but instead wrote to say, “From the information I have at present it is not clear as to the nature of your complaint”. The caseworker asked the miner to contact them within 12 days and provide details; otherwise they would be “unable to pursue the complaint”.

<sup>27</sup> the 21 complaints are 8% of the 258 allocated complaints when the audit was conducted.

# “The OLSCC audit saw 101 miners’ complaints that had either been excluded,... ‘not upheld’, or the miner had made the decision to withdraw... because they... did not fit into the Law Society’s narrow criteria...”

whether there were any other relevant issues, which may have amounted to IPS on the part of the solicitor.

## ISSUE 9

The LCS Board should ensure that any future publicity to miners of its services

includes clarity in relation to the LCS criteria for handling complaints about solicitors in Coal Health Compensation awards. The LCS Board should set LCS a target, against which it can be measured, to reduce the 8% of complaints (seen in the Rother Valley pilot) that it rejected as being out of scope.

## 12. Complaints out of scope

Confusion as to the complaints accepted by LCS in the Rother Valley pilot is similarly reflected in other miners’ complaints.

*“The Law Society will not apply the usual time limit to any complaints relating to miners’ compensation claims. Nor will claimants be asked to complain to their solicitors before approaching the Law Society<sup>28</sup>”.*

This 2004 policy statement<sup>29</sup> aimed to make the complaints process easier for miners, by exempting them (their beneficiaries and/or third parties complaining on behalf of a deceased miner), from having to first raise their complaint with the firm of solicitors concerned. It also confirmed that LCS would - in contrast to its usual policy on accepting complaints - investigate a miner’s complaint even if it was made later than 6 months after the miner’s retainer with the solicitor had ended.

However, the policy had strict limitations and only applied if the miner met all the following criteria:

- that they suffered from either, and only, COPD and/or VWF;
- only suffered these health problems as a result of working underground; and
- the complaint was associated solely with deductions made.

The OLSCC audit saw 101 miners’ complaints that had either been excluded, had their complaint ‘not upheld’, or the miner had made the decision to withdraw their complaint, because they were told that they did not fit into the Law Society’s narrow criteria for acceptance. 28 of the excluded complaints OLSCC saw involved miners with compensation claims for hearing loss.

<sup>28</sup> Former Law Society Chief Executive, Janet Paraskeva, January 2004, from the Northern Echo, 3 January 2004.

<sup>29</sup> Policy introduced by the Compliance Board of the Law Society in January 2004 which recognised the “particular vulnerability” of miners in bringing complaints and waived, in limited circumstances the usual requirements for the complaint to have been made within 6 months and for it to have first been made to the solicitor’s firm.

LCS and SRA have a more general policy to consider complaints where there are “exceptional circumstances”. A report by the Legal Services Ombudsman, documented on a recent complaint, observed that LCS appeared to suggest that it has never operated a policy of blanket exclusion in respect of miners’ complaints and that caseworkers look at each complaint to determine whether it would be appropriate

to exercise discretion where a complaint might otherwise be excluded. OLSCC did not see any evidence to support this assertion, but instead saw LCS applying the exclusion criteria strictly.

It was not evident why the LCS Chief Executive should have given such assurances to the Member of the House of Lords, which her caseworkers would not fulfil.

#### Case example 15

A member of the House of Lords referred a miner’s complaint to the LCS Chief Executive. The Lord’s letter referred to a meeting during which an assurance was given by the LCS Chief Executive that “the LCS would deal with complaints such as Mr [X’s] as quickly as possible and keep me [the member of the House of Lords] advised of progress”. Almost 2 months elapsed before a LCS caseworker replied to the Lord’s letter asking him to, “particularise his complaint”. A caseworker then excluded the complaint because, although it concerned a deduction of £400, it was in connection with a hearing loss complaint, which was not eligible within the narrow Law Society policy, to be considered before the complaint was made to the solicitor first.

### Case example 16

LCS rejected the complaint for a second time in approximately 15 months confirming that the complaint was out of the scope of the 2004 policy statement. They asked the miner, through his representative, to provide “exceptional circumstances” to demonstrate why they had not raised a complaint within the 6 month time scale to enable it to be investigated.

The complaint was referred to the Legal Services Ombudsman who did not accept that the LCS had a reasonable basis on which to decline to investigate and directed it, in July 2007, to reconsider its decision. In justifying her decision, the Ombudsman stated, “there are clearly special circumstances, which justify the exercise of the LCS’ discretion to investigate out of time”.

Despite the Ombudsman’s ruling, LCS relied on the technicalities of the policy statement, insisting that the miner’s representative provide it with the evidence of “special circumstances”. As at October 2007 when the audit was being conducted, various correspondence had been exchanged between the miner’s representative and the LCS and the complaint had not been investigated and seemed to have reached an unnecessarily insurmountable impasse.

#### ISSUE 10

The LCS Board should now review both the 2004 policy of the Law Society<sup>30</sup> and its overarching policy of allowing complaints in ‘exceptional

circumstances’, and produce a more pragmatic policy to accept all legitimate complaints from miners.

<sup>30</sup> Policy introduced by the Compliance Board of the Law Society in January 2004 which recognised the “particular vulnerability” of miners in bringing complaints and waived, in limited circumstances, the usual requirements for the complaint to have been made within 6 months and for it to have first been made to the solicitor’s firm.

**“...the delays range from 3 to 15 months. This could result in a cost of potentially £58,000...”**

### **13. Closing complaints**

In early 2006, LCS managers suspended investigation into all complaints from miners about a firm of solicitors to await the outcome of a case being prepared by SRA against the firm for SDT. At the point of suspension by LCS, these complaints were at various stages - already fully investigated, partly investigated or had had no investigation into them. The SDT, when it met, did not set a precedent that could be applied to the other miners' complaints against the firm. The OLSCC audit found that despite this LCS managers made a new decision and continued with the suspension of existing complaints and suspended all new complaints about this firm in anticipation of a future SDT. The case to go before SDT is still in preparation by SRA and the SDT has still not met to determine it.

Some complaints have now been suspended for over 15 months. Many miners were not informed of the position of their complaint throughout this period.

It may have been acceptable to suspend the complaints that had already been fully investigated and were awaiting adjudication, as the decision by the adjudicator on future complaints could possibly have been affected by generic issues following the SDT hearing decision. However, all the other existing complaints should have continued to be investigated

so that sufficient information was gathered to enable decisions to be made on these complaints, as soon as the outcome of the SDT hearing was known.

Out of a total of 157 suspended complaints reviewed by OLSCC; we found that only 22 complaints had been fully investigated at the point of closure. Of the remaining 135 complaint files, 10 had been partially investigated prior to closure and 125 had been suspended before any investigation had begun. LCS should have pursued the investigation of these complaints with the solicitor. Because investigation has been suspended for so long, these complaints have now had periods of inactivity for up to 15 months and, the investigation still needs to be completed.

OLSCC believes that the 135 complaints that were not fully investigated should be reviewed as they may be eligible to receive a special payment from LCS for the delays it has unnecessarily caused. In these complaints the delays range from 3 to 15 months. This could result in a cost of potentially £58,000, which would have to be met by solicitors through their practicing certificate fees.

LCS, on instruction from the Law Society in July 2007, is now re-opening all these complaints in order to investigate them.

**“The small number of referrals made to SDT is a disappointing result given the gravity and extent of the misconduct involved.”**

**ISSUE 11**

LCS management should put in place processes that ensure that all miners' complaints are investigated fully. The practice of suspending LCS caseworker investigations to await an SDT ruling in these circumstances should cease

immediately. Where LCS management has previously suspended cases without a full investigation, a review of all relevant files should be undertaken to assess whether LCS should be making an award under its Special Payment Policy to recognise its own failings and delays.

**14. Conduct investigations**

The audit found complaints where the issues covered both generic conduct matters that had already been identified by SRA and, also potential breaches of the solicitors conduct rules specific to the complaint. OLSCC asked SRA to confirm, by firm, which issues were being addressed and, what stage the investigation had reached. Despite several requests by OLSCC, only limited and incomplete information has been received from SRA, which has primarily concerned those cases already referred to SDT. Overall OLSCC has not been assured which firms are being investigated; for what issues; and what the outcomes have been to date. SRA have indicated that to provide this information for all cases would raise issues of both confidentiality and resources.

Due to the lack of information, OLSCC cannot comment on how well the SRA is fulfilling its role as regulator in relation to the miners' cases. OLSCC will continue to pursue this with SRA and intends to carry out a full audit into this area.

Although not all solicitors handled miners' Coal Health Compensation complaints poorly, in almost eight years only four firms of solicitors<sup>31</sup> out of the 300<sup>32</sup> who handled miners' cases have had decisions found against them by SDT. By the time of the audit, OLSCC was aware that SRA had authorised 60 investigations and had made 17 referrals to SDT.

The small number of referrals made to SDT is a disappointing result given the gravity and extent of the misconduct involved. SRA investigations are taking between 15 and 26 months to be prepared before cases are presented to SDT. This is too long. It is understood by OLSCC that once cases reach the SDT, they are dealt with within 12 months.

**ISSUE 12**

**SRA must review its preparation of miners cases referred to SDT to identify avoidable delays and speed up the time taken to prepare them.**

<sup>31</sup> Law Society Gazette 12 July 2007

<sup>32</sup> National Audit Office Report "Coal Health Compensation Schemes" July 2007

