

# **Office of the Legal Services Complaints Commissioner**

## **Year End Target Audit April 2009**

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## **1. Introduction**

### **1.1 Office of the Legal Services Complaints Commissioner (OLSCC)**

The Office of the Legal Services Complaints Commissioner was established to improve the way the Law Society handles complaints about solicitors in England and Wales. The Legal Services Complaints Commissioner (the Commissioner) is an independent government-appointed regulator. To ensure the public get the standard of service that they should reasonably expect, the Commissioner sets performance targets for the Law Society.

### **1.2 The Law Society**

The Law Society is structured into 3 separate functions:

- the Law Society is responsible for representing solicitors;
- the Solicitors Regulation Authority (SRA) is responsible for regulatory and disciplinary matters; setting and maintaining standards; handling complaints that allege misconduct against solicitors; and
- the Legal Complaints Service (LCS) is responsible for dealing with complaints about the service provided by solicitors to consumers.

### **1.3 Performance Targets**

Each year the Commissioner identifies specific performance targets intended to steer the Law Society towards the delivery of an effective and efficient service. Monitoring the Law Society's performance against these targets enables the Commissioner to independently verify the level of improvement made each year.

In previous years, the Commissioner has needed to focus mainly on the examination of LCS work processes (e.g. how long it takes to provide the consumer with a substantive response) in the context of the Law Society's existing policies as a way of measuring the standard of complaint handling. Consequently the audits to date have predominantly concentrated on individual process based measures.

The Commissioner, however, has always recognised that improving the quality of complaint handling by LCS would significantly enhance the consumer experience. Therefore, following the Quality of Outcome Audit undertaken in June 2007 (a copy of which can be found at [www.olscc.gov.uk](http://www.olscc.gov.uk)) which served to provide baseline information from which progress in performance could be measured, the Commissioner moved the focus of her annual targets from measures of process to a measure of outcome and service.

The quality target set by the Commissioner for the period 1 April 2008 to 31 March 2009, was designed to increase the number of consumers who receive a fair, consistent and reasonable outcome of complaint, and to demonstrate impartiality in the services provided by LCS. In setting a single quality target that considers the end-to-end handling of a complaint the Commissioner's approach has significantly reduced the number of individual quality targets previously set.

#### **1.4 Indicative Target Audit**

The OLSCC conducts independent audits as part of its mandate to assure the Commissioner that performance improvement is being made in the handling of consumer complaints.

In October 2008, the OLSCC Research and Investigations team completed an indicative audit of LCS performance against the quality target set by the Commissioner, for the period 1 April to 30 September 2008. This target required LCS to achieve a reasonable outcome and service, without significant failings, on at least 90% of cases closed.

The results of the Indicative Target Audit (ITA), which were shared with LCS in December 2008, provided the Commissioner and the LCS with an indication of achievement, at the half way stage, for the full 2008-09 performance year. A copy of the audit report can be found at [www.olsc.gov.uk](http://www.olsc.gov.uk).

#### **1.5 Year End Target Audit**

In April 2009, the OLSCC Research and Investigations Team completed a final and definitive assessment of LCS performance against the quality target set by the Commissioner, and the results are presented in this report. The Year End Target Audit (YETA) was conducted in line with the Audit Plan that was shared with the LCS in March 2009.

Information from a total of 228 files, distributed proportionately across all age groups and sample period, together with information from 145 cases that were audited at ITA (these were cases that had been randomly selected for both ITA and YETA and where the outcome had remained unchanged), informed the results which were used to provide the Commissioner with a final assessment of the Law Society's annual performance.

The audit was carried out at Law Society offices in Leamington Spa. The technical appendix at **Appendix 1** provides further detail on the sampling methodology.

## 2. Methodology

The purpose of the audit was to review LCS performance against the target set by the Commissioner. The target is:

### Target Q1

**LCS to achieve a reasonable outcome and service, without significant failings, on at least 90% of cases closed**

The achievement levels against the target have been determined as an absolute measurement by establishing the percentage of files in the sample that achieved a reasonable outcome and service, without significant failings.

Specifically, the audit measured whether:

- The outcome for the consumer was reasonable with no significant failings on the file; **this would be considered a pass**
- The outcome was reasonable for the consumer and although there were some failings on the file, the failings in themselves did not change the outcome or severely impact upon the consumer's experience or the investigation; **this would be considered a pass**
- The outcome was not reasonable for the consumer and / or there are one or more significant failings on the file; **this would be considered a fail**

To determine whether an outcome can be described as reasonable for the consumer and/or whether there are significant failings, each complaint file was examined against a number of high-level criteria that are grouped under three headings:

- Decision-making
- Consumer circumstances (e.g. elderly, vulnerable)
- Administration of the complaint

A fuller description of the criteria against which cases were measured is attached at **Appendix 2** and is the same criteria used to determine the baseline during the Quality of Outcome Audit in June 2007 and to measure LCS performance for the ITA in October 2008.

### 3. Overall Results

The table below shows the overall results for LCS performance against the target set by the Commissioner, for the period 1 April to 31 March 2009.

**Table 1**

<b>Target</b>	<b>Target wording</b>	<b>Achieved %</b>	<b>Target %</b>	<b>Pass / Fail</b>
Q1	LCS to achieve a reasonable outcome and service, without significant failings, on at least 90% of cases closed	94.9%	<b>90%</b>	<b>PASS</b>

These results show that LCS achieved a reasonable outcome for the consumer, without any significant failings, in 94.9% of the cases audited. The remaining cases (5.1%) either had a significant failing or did not have a reasonable outcome.

#### 4. Detailed Audit Findings

The total number of cases required for this sample was 373. Some of the case-files selected for the sample had already been examined during the ITA which looked at cases that had opened and closed between 1 April 2008 and 30 September 2008.

It was agreed that where cases had been randomly selected for both the ITA and the YETA, and where the outcome had remained unchanged, the results from the ITA could be used to inform the final outcome. It was also agreed that that OLSCC would adopt a proportionate approach when using the ITA results. As a result of this approach it was possible to amalgamate the results from 145 ITA cases, comprising 128 cases in the 0-3 month age profile and 17 cases in the 4-6 month age profile, and to therefore reduce the number of files that needed to be reviewed by OLSCC auditors for the YETA to 228.

The YETA looked at cases that had opened and closed between 1 April 2008 and 31 March 2009. Cases selected were divided into three age profiles: 0–3 months, 4-6 months and over 6 months old at date of closure. The auditors examined a total of 161 cases in the 0-3 month category, 51 cases in the 4-6 month category and 16 in the 6 months and over category. The number of cases examined in each of the three separate age profiles was in direct proportion to the number of cases in the age profiles in the total population.

The following table shows a breakdown of the number of passes and fails by age profile as a percentage of the overall sample.

**Table 2**

Age Profile	PASS		FAIL	
	No. of files	%	No. of files	%
0-3 months	276	74.0%	13	3.5%
4-6 months	63	16.9%	5	1.3%
6 months +	15	4.0%	1	0.3%
Total	354	94.9%	19	5.1%

The following table shows how the individual ITA and YETA results contributed to the overall outcome.

**Table 3**

	PASS			FAIL			Total
	0-3 months	4-6 months	6 months & over	0-3 months	4-6 months	6 months & over	
<b>ITA</b>	120	16	N/A	8	1	N/A	145
<b>YETA</b>	156	47	15	5	4	1	228
<b>Total</b>	276	63	15	13	5	1	373

Table 4 shows that of the 94.9% of cases examined that passed the Commissioner's measure, 8.3% had some failings on file. The failings identified were either not significant enough to impact on the eventual outcome for the consumer or had been materially important but had been rectified before the case closed. This means that those consumers experienced a service that was significantly different compared to the rest of the audited population.

**Table 4**

Category	Category Assessment	No. of Files ITA Sample	No. of Files YETA Sample	% of total sample
Cases with reasonable outcome <b>and</b> no significant failings	<b>PASS</b>	121	202	86.6%
Cases with reasonable outcome but some failings	<b>PASS</b>	15	16	8.3%
Cases with an unreasonable outcome or significant failing	<b>FAIL</b>	9	10	5.1%
<b>Total</b>		<b>145</b>	<b>228</b>	<b>100%</b>

Table 5 shows a breakdown of the 19 LCS cases (9 carried forward from ITA and 10 identified during the YETA audit) that failed the Commissioner’s target in relation to each of the high level criteria set out in the audit plan. The findings have been broken down further to show the number of cases that had an unreasonable outcome and the number that had a significant failing, by age profile.

**Table 5**

Criteria	0-3 months		4-6 months		6 months and over	
	No. of cases with an unreasonable outcome	No. of cases with a significant failing	No. of cases with an unreasonable outcome	No. of cases with a significant failing	No. of cases with an unreasonable outcome	No. of cases with a significant failing
Decision-making	3	0	1	0	0	0
Consumer circumstances	0	0	0	0	0	0
Administration of the complaint	0	8	0	4	0	0
Decision-making <i>and</i> administration of complaint	0	2	0	0	0	0
Decision-making <i>and</i> administration of complaint <i>and</i> consumer circumstances	0	0	0	0	0	1
<b>Total</b>	<b>3</b>	<b>10</b>	<b>1</b>	<b>4</b>	<b>0</b>	<b>1</b>

The table overleaf shows the main areas of failing for each of the 19 cases that did not meet the Commissioner’s target. Some case-files had more than one failing.

**Table 6**

<b>Criteria</b>	<b>Area</b>	<b>Issue</b>	<b>Total no. of failings</b>
<b>Decision-making</b>	Understanding and applying LCS policy	Excluded matter	1
	Adequate investigation	Identifying all issues appropriately	3
		Seeking, obtaining and considering relevant supporting information	1
		Conducting all reasonable enquiries	2
		Managing expectations	3
	Closure	Inappropriate closure	1
<b>Administration of complaint</b>	Administrative errors	File designation / renumbering	9
		File closed incorrectly	1
	Regular updates to consumer	Updating the consumer	1
	Delay	Progress delay	5
		Allocation delay	2

#### **4.1 File Designation**

The audit found evidence to suggest that some complaints are not being dealt with appropriately at the designation stage creating delays, duplication and confusion. In one case that failed, a complaint about the alleged misconduct of a solicitors firm, addressed to SRA, is received by LCS. Despite the complainant making it clear on more than one occasion that the issues raised are not service issues, an LCS caseworker continues to process the complaint letter until 5 months later the caseworker finally concedes that “[the] complaint has raised some regulatory issues which may need to be considered further by SRA” and the case is finally referred to SRA.

In another case that failed a letter is received by LCS from a solicitors firm acting on behalf of a number of charities who are the residuary beneficiaries of an estate where the executors of the estate have been intervened in. The solicitors firm has completed an application to SRA for a grant from the compensation fund. Despite a clear reference to a compensation fund application, a file is opened in LCS and an LCS caseworker makes an attempt to pursue a non-existent service complaint. Eventually a closure letter is sent to the solicitor referring to the fact that a file has been opened in error and

apologising for the confusion. It took a total of 6 weeks to make the referral from LCS to SRA.

In one of the other cases that failed, a residential conveyancing case, the file was renumbered despite there being no new issues and no new evidence. In this particular case the LCS caseworker had some difficulty obtaining the file from the subject solicitor and made a referral to SRA to recover the file. When the file was received less than 2 weeks later the caseworker renumbered the file and sent the consumer a further standard allocation letter. The renumbering was not only inappropriate but statistically misleading as the case will be merited with two closures when in fact only one case has been closed.

## **4.2 Delay**

Although the number of cases with progress and allocation delay has reduced, OLSCC notes that there are still some cases with delay contributing to the overall number of fails. In one example a complaint took twice as long as it should have done to resolve because the LCS caseworker did not progress matters when they said they would. The case fell into the 4-6 month age category but could have been cleared within 3 months.

## **4.3 Effective and Efficient Case-working**

The audit found examples of good quality decisions by LCS caseworkers. In one probate case, the caseworker applied LCS policies correctly, handling a confrontational subject solicitor in a robust manner and getting a fair and reasonable outcome for the consumer.

This particular case had been sent to an outsource firm of solicitors, by LCS, for resolution. The outsource firm had subsequently returned the case on the basis that because the consumer was alleging that the subject solicitor had been negligent it would not be possible to conciliate the complaint. The LCS caseworker correctly took the view that any inadequate professional service issues could be considered concurrently to any simultaneous allegations of negligence despite the subject solicitor's continued insistence to the contrary. The caseworker then carried out a full investigation in order to be able to determine what would constitute an appropriate level of compensation, whilst managing the consumer's expectations appropriately and dealing robustly with the solicitor's attempts to prolong the investigation. Both parties finally agreed to a reasonable level of compensation which may not have been possible without this caseworker's intervention.

## **5. Conclusion**

The YETA results show that LCS had, in the period 1 April to 31 March 2009, achieved a reasonable outcome for the consumer, without any significant failings, in 95% of the cases audited, against the Commissioner's target of 90%.

The findings show that 5% of all complaints about solicitors had failings that were considered to have had a negative impact on the outcome for the consumer. The audit also found examples where the caseworkers had made good quality decisions and provided a fair and reasonable outcome for the consumer.

The results represent a significant improvement for the Law Society compared with the baselined results in the Quality of Outcome Audit in 2007. This found that there was a prompt and competent investigation with a reasonable outcome that met the needs of the consumer in only 74% of LCS cases examined.

## 6. Glossary of Terms

Age profile	The age profile of a file is how long the complaint takes from being received by the Law Society to its resolution and closure.
Audit Plan	This is a plan issued by the OLSCC Investigations Team to the LCS. It outlines the purpose of the audit and the areas of work or processes to be audited.
Compensation Fund	The SRA Compensation Fund is a fund for making grants in respect of compensation claims where there has been financial loss through, for example, a solicitor's dishonesty or if a solicitor has closed down but still owes money.
Complaint	This is an expression of dissatisfaction about the service provided by a firm of solicitors where LCS takes action to conciliate and settle or investigate.
Conveyancing	Conveyancing is the legal process by which ownership of a property is transferred from the seller to the buyer.
Delay (allocation)	These are avoidable delays that occur between the receipt of the complaint from a consumer and it being passed to an LCS or SRA caseworker to begin investigating it.
Delay (progress)	These are avoidable delays that occur during the investigation of a complaint.
Designation	All correspondence from a consumer will either be categorised as an enquiry or a complaint. This process is referred to as designation.
Excluded matter	These are certain categories of matters that the Law Society do not normally investigate.

Executor	An executor administers the estate (money and property) of a deceased person provided the deceased person left a valid will. If there is no valid the person who deals with the estate (money and property) is called an administrator.
File Sample	This is a statistically valid selection of files that is representative and of a sufficient size to allow inferences to be drawn about the whole population.
Inadequate Professional Service	Poor service by a solicitor is referred to by the Law Society as inadequate professional service (IPS). Examples of IPS include failing to keep the consumer informed, causing unreasonable delays and failing to give the consumer enough information about what they will be charged.
(The) Law Society	A professional association that represents solicitors in England and Wales.
Legal Complaints Service	The Legal Complaints Service (LCS) handles complaints from consumers about the service they have received from their solicitor. It is part of the Law Society but operates independently.
Negligence	Negligence involves a breach of duty of care or contractual provision, giving rise to a foreseeable loss that is not too remote. Examples include allowing claims to become statute barred, mistakes in preparation of legal documents and failing to advise on matters of significance.
Probate	Probate is the legal authority to administer the estate of a deceased person in order to distribute the estate (money and property) to the beneficiaries.

Reconsiderations (LSO)	These are matters that the Legal Services Ombudsman has considered on behalf of a consumer and referred back to the Law Society for it to reconsider its original decision.
Renumbered	When a file is re-opened it may be renumbered, which results in a new reference number being used for the complaint.
Service File	This is a file that has been created following a consumer complaint about the service provided by a firm of solicitors.
Solicitors Regulation Authority (SRA)	The SRA set the rules of professional conduct for solicitors and investigates complaints about misconduct. Where misconduct is found the SRA can take action such as reprimanding the solicitor.
Subject Solicitor	This is the solicitor about whom a complaint has been made ie the subject of the complaint.

## Sampling for the Year End Target Audit 2009

### Background / Introduction

The Year End Target Audit was undertaken in April 2009. The aim of the audit was to carry out an end of year assessment of LCS performance against the quality target set by the Commissioner for the 2008/2009 plan year. The target is:

### Target Q1

**LCS to achieve a reasonable outcome and service, without significant failings, on at least 90% of cases closed.**

### Sampling Methodology

OLSCC audit reports require reliable forms of evidence from which conclusions may be drawn, but it is neither practicable nor cost effective to examine the entire population of case files that opened and closed within the target period of 1 April 2008 – 31 March 2009. Random sampling therefore was chosen to provide a means of gaining information about the population as a whole, without the need to examine the entire population. Random sampling ensures that every case file has an equal chance of selection.

### Sample Size

The total number of cases that had opened and closed in the period 1 April 2008 to 31 March 2009 was reported to be 11,027 spread over three discrete age categories:

- Cases aged between 0–3 months at date of closure;
- Cases aged between 4–6 months at date of closure; and
- Cases aged over 6 months at date of closure.

An appropriate sample size depends upon a number of key factors to ensure that the sample objectives are met. These factors can include:

- Confidence level
- Margin of error
- Practical limitations
- Population size
- Variability in the population

## **Confidence Level**

The precision with which any inferences can be made from a given sample can be described as using the *confidence level* and the *margin of error*. The confidence level is the likelihood that the results obtained from one sample will be the same as the results obtained from another sample within a specific range of accuracy. But as no results taken from a sample are expected to be exact, any inferences will always have an attached margin of error.

Usually, the larger the sample, the higher the confidence level and the lower the margin of error will be, but resource issues mean that it is not feasible to inspect every case. The consideration here is to strike an effective balance between precision and practicability. However, in this audit it is not our intention to use the results to draw any inferences to the population as a whole. Achievement against target is based, wholly and absolutely on the sample itself.

## **Population Size**

Using the total population size we were able to estimate the number of cases required for the sample using a pre-determined methodology used for all OLSCC audits. The methodology uses a formula to determine the minimum number of files that need to be reviewed in order to provide an estimate of how the population is performing.

Using this methodology, the LCS population size of 11,027 and considering resource implications, we concluded that we needed to audit a total of 373 cases. This number would allow us to make inferences with a 95% confidence interval, and at most a 4% margin of error.

## **Variability in Population**

The cases selected for the audit sample needed to reflect the distribution of cases across the three age profiles identified to ensure that it was representative of the total population. The sample figure of 373 was therefore proportionately distributed across the age profile of cases and then randomly selected from the entire population.

## **Proportionate Approach**

It was agreed that where cases had been randomly selected for both the ITA and the YETA, and where the outcome had remained unchanged, the results from the ITA could be used to inform the final outcome. It was also agreed that that OLSCC would adopt a proportionate approach when using the ITA results.

To be able to do this the OLSCC first needed to determine what percentage proportion of the total results should be generated from the ITA results. The following table shows how many cases had opened and closed between 01/04/08 and 30/09/08, representing the ITA population, and how many cases

opened and closed between 01/10/08 and 31/03/09 representing the YETA sample. It shows that 39.1% of the results needed to be obtained from the ITA and 60.9% of the results needed to be obtained from the YETA.

**Table 1**

<b>Total number of cases</b>	<b>Audit</b>	<b>Period</b>	<b>% of results to come from ITA / YETA</b>	<b>Actual % proportion</b>
<b>11,027</b>	Complete file list	all cases that opened & closed 01/04/08 and 31/03/09 inc	100%	<b>100%</b>
<b>4,279</b>	ITA	all cases that opened and closed between 01/04/08 and 30/09/08	38.8%	<b>39.1%</b>
<b>6,748</b>	YETA	all cases that opened and closed between 01/10/08 and 31/03/09	61.2%	<b>60.9%</b>

The table shows that LCS had opened and closed 11,027 files between 1 April 2008 and 31 March 2009. The auditors needed to audit a representative sample of 373 files which reflected the age profile of the total closures. The following table shows a breakdown of the age profile of the total population.

**Table 2**

<b>Age</b>	<b>No. of days</b>	<b>Total No. of cases</b>	<b>% number of cases</b>
<b>0–3 mths</b>	up to and including 91 days	8,549	<b>77.5%</b>
<b>4–6 mths</b>	92 – 182 days inc	2014	<b>18.3%</b>
<b>Over 6 mths</b>	183 + days	464	<b>4.2%</b>
<b>Total</b>		11,027	<b>100.0%</b>

Using these proportions the auditors were able to determine the age profile of the audit sample. The table below shows the breakdown of the age profile of the audit sample.

**Table 3**

<b>Age</b>	<b>Total No. of cases</b>	<b>% number</b>
0-3 mths	289	<b>77.5%</b>
4–6 mths	68	<b>18.2%</b>
Over 6 mths	16	<b>4.3%</b>
Total	373	<b>100.0%</b>

The next stage was to apportion the ITA results, by age profile, to establish how many cases were required in each age group for the YETA sample and what proportion of cases could be utilised, by age group, from the ITA results.

The following table shows the total number of cases requested and the breakdown of the file sample by age profile as a proportion of the ITA, the YETA and of the total population.

**Table 4**

Age profile	Total closures in this age profile 1/4/08 – 31/3/09 a (TOTAL YEAR)	Total closures in this age profile 1/4/08 – 30/9/08 b (ITA)	Total closures in this age profile 1/10/08 31/3/09 c (YETA)	ITA closures as a % equiv of total closures (b / a X 100)	Total no of cases required in this age group for YETA sample	Total No. of ITA cases req'd from this age group	Total No. YETA cases requested (1/10/08 – 31/3/09 to make up req'd sample – ie to audit in April)
0-3m	8549	3782	4767	44.2%	289	128 (44.3%)	161
4-6m	2014	497	1517	24.7%	68	17 (25%)	51
6m+	464	NIL	464	N/A	16	N/A	16
Sub total	11027	4279	6748		373	145	228
Total sample for YETA							373

### Over-sampling

Finally, the YETA sample had a small over-sample percentage applied (approximately 10%), to ensure the optimum sample size could be achieved. This enabled potential substitution of files that may have been unavailable for audit, because, for example, they were with the LSO, IDU or at an outsource firm.

The sample was made up of service files only.

## CRITERIA FOR YEAR END TARGET AUDIT 2009

### Appropriate and Reasonable Decision-Making

LCS and SRA investigators' understanding and application of their policies in relation to:

- Negligence
- Probate
- Excluded matters
- Adjudication
- Miners' cases
- Other general issues
- Referrals to Third Parties (appropriateness and efficacy)

Adequate Investigation:

- All issues appropriately identified
- Relevant supporting information sought, obtained and considered
- All reasonable enquiries conducted
- Provision of information
- Use of Powers in obtaining solicitor responses
- Managing Expectations

Conciliation/ROM:

- Suitability of case for conciliation/ROM
- Informed agreement from all parties to conciliate/ROM
- Level of compensation

Closure:

- Case closed appropriately
- Reasonability of conclusions
- Referral of conduct issues

### Consumer Circumstances

- Individual consumer circumstances taken account of

### Administration of the Complaint

- Administrative errors
- Regular updates to consumer
- Caseworker failure to respond to consumer, solicitor or third party
- Failures to set deadlines for solicitor
- Changes of caseworker
- Delays