



Chapter 3

The Commissioner's Audit Findings



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Audit Activity

The Commissioner's Research and Investigations team undertakes audits and investigations selected on a number of factors, including:

- concerns raised by consumers and other stakeholders;
- LCS and SRA's management information;
- their performance against the Commissioner's targets; and
- concerns raised from previous audits undertaken or from on-site visits and discussions.

In 2006/07 the Commissioner's Research and Investigations team undertook 8 audits which involved reviewing in excess of 4,300 files.

The audits undertaken were:

- Coal Health Compensation Scheme Audit
- Renumbering of Files Audit
- Annual Case File Audit
- Indicative Target Audit
- Adjudication Audit
- Redress Conduct Audit
- Negligence Audit
- The Law Society Year End Target Audit

Copies of these audit reports including findings and recommendations are available at www.olscc.gov.uk

A forthcoming report summarising all audits undertaken by the Commissioner's Office to date will provide an overview of the purpose of each audit¹⁸. It will identify the key findings and recommendations in auditing action taken by LSC and SRA to address these.

¹⁸ Will be available in summer 2007 at www.olscc.gov.uk



1,060 files were reviewed in October 2006 by the Commissioner's Office in order to provide both LCS and SRA with an indication half way through the year of how well they were performing against the quality targets set by the Commissioner. The results showed that LCS and SRA at that stage of the year were not meeting any of these targets.

A further 1,462 files were reviewed in April 2007 to establish a final and definitive assessment of LCS and SRA's performance against the Commissioner's quality targets. The Year End Target Audit results show that LCS and SRA failed to meet 3 of the 5 quality targets that were measured by this audit. This is concerning as these targets cover LCS and SRA's own published policies. The results show that, over the Improvement Plan year 2006/07 LCS and SRA have not adhered consistently to their own policies and customer standards when dealing with complaints in respect of:

- The handling of special payments to consumers for distress and inconvenience caused by LCS and SRA themselves;
- Providing a substantive response to the consumer within a reasonable timescale that addresses their specific issues and progresses the matter; and
- Ensuring regular contact takes place to update the consumer on progress of their complaint.

The other audits undertaken looked at specific policies, such as the renumbering of complaints, or processes, such as adjudication, to establish appropriateness and consistency in their application by LCS and SRA. These audits tested the understanding of LCS and SRA policies through interviews with their caseworkers and team managers, as well as by reviewing relevant casefiles. As in previous years, the Commissioner's Research

and Investigations team also carried out an Annual Casefile Audit, gathering data across a large number of casefiles to assess progress by LCS and SRA on a range of areas from one year to the next.

These audits concluded that whilst both LCS and SRA have made improvements in timeliness, there are shortfalls in the quality of investigations and adherence to their own policies. There is also inconsistency in caseworkers' understanding of the policies operated by LCS and SRA and some of the explanations their caseworkers provide to consumers, resulted in those consumers not receiving relevant information or the quality of service they should expect.

The audits are used by the Commissioner to enable her to make recommendations for LCS and SRA, aimed at helping them to improve their complaints handling. When she makes recommendations, the Commissioner requires LCS and SRA to identify what action they will take to meet them and consequently, she can monitor the implementation of this action via follow-up audits and management information. Some of these recommendations have resulted in actual or planned improvements for the consumer. For example, following one of the Commissioner's recommendations, LCS and SRA are now planning to publicise the complaint records of solicitors to improve the information a consumer can use to enable them to choose a legal provider. Also, service standards have now been published so that consumers know what service they can expect from LCS and SRA.

Key findings from the audits

Inconsistencies in LCS and SRA's approach to Coal Health Compensation Scheme cases

In her last Annual Report, 'Actions Not Words: Consumers Matter'¹⁹, the Commissioner reported that she wanted to be assured that miners were receiving equal and consistent treatment from LCS and SRA regarding complaints made about solicitors who had represented them in claims covered by the Coal Health Compensation Scheme. This audit was undertaken in April 2006 when 282 cases were audited but the findings were not published until after last year's Annual Report was printed.

The audit found that LCS caseworkers did not always investigate fully complaints about inadequate professional service, despite policy guidelines that stated that they should do so. Whilst this appeared to be largely what the miners wanted at the time, it did not reflect the policy that it should have been operating. LCS caseworkers should have fully informed miners of the options available to them and explained that this included a full investigation of the service provided by the solicitor, which may then result in payment of compensation. There was also evidence that LCS caseworkers failed to take into account the level of distress and inconvenience caused to individual miners. Some miners, therefore, did not receive the appropriate compensation for the failures in the solicitor's service that they should have.

In addition, the audit found evidence that LCS and SRA caseworkers were inconsistent in dealing with complaints and that they were often influenced by the approach employed by firms of solicitors. This meant that the solicitor who was being complained about often determined the way in which the complaint was resolved.

As a result of the audit, the Commissioner included a number of formal recommendations to LCS and SRA. These included:

- Revisit those cases where there has not been a full investigation into the Inadequate Professional Service issues and where the miner has not been fully advised of their options for complaint resolution;
- LCS and SRA should apply their policies consistently to ensure that each miner's complaint is handled individually and that miners receive fair and equal treatment regardless of which caseworker handled their complaint;
- A full investigation is carried out into both service and conduct issues presented by miners; and
- The miner is provided with sufficient information to enable them to make an informed choice for the resolution of their complaint.

¹⁹ Legal Services Complaints Commissioner's Annual Report 2005/06, "Actions Not Words Consumers Matter", was published in July 2006 and is available at www.olscc.gov.uk

Case study

A complaint about residential conveyancing was investigated and closed on the basis that the solicitor agreed to take some specific actions. However, the solicitor failed to comply with this agreement and the consumer approached LCS over 12 months later to enquire about progress. The LCS caseworker made further enquiries with the solicitor and was told that they were still dealing with outstanding action with the Land Registry. This caseworker once again closed the file on the basis that, once the solicitor had resolved the matter, the consumer should raise the complaint again with LCS to consider compensation for the delay. This put the onus back on the consumer. LCS did not take any action against the solicitor for their failure to comply with the initial agreement, raising a concern as to why SRA were not notified of this matter, as the conduct of the solicitor was not acceptable.

The Law Society stated that it had raised awareness in mining communities through a number of advertisement campaigns in the local and national press, although it reports that this had not stimulated a great deal of response. LCS stated it was also considering other ways of raising awareness of this activity within the mining communities, possibly by the use of leaflets in Citizens Advice offices, local libraries and GP surgeries.

The Commissioner is pleased that LCS has taken some steps to promote its services to the mining communities. However, the Commissioner is concerned that those miners who have not received an appropriate service from LCS and SRA have not, as yet, had their cases reconsidered. The Commissioner is currently discussing this issue with the Law Society, and may, if felt necessary, set a target in this area.

Caseworkers closing conciliated complaints without ensuring that the solicitor has complied with the agreement

The Renumbering of Files Audit found that LCS caseworkers usually closed a complaint at the point when a solicitor had agreed to pay compensation to the consumer or to take some action to resolve a matter. However, often the solicitor did not comply with the agreement they had made. This led to further inconvenience for some consumers as they had to chase the solicitor and then contact LCS a second time to explain that the solicitor had not complied.

It is the Commissioner's view that LCS should keep a file open until the consumer has received any redress to which they might be entitled, and she recommended this in September 2006. This would ensure that LCS was providing a more effective complaints handling service for the consumer. LCS responded that it did not want to change the policy at this time. The Commissioner will continue to monitor this area as part of the investigation work carried out by her Office.

A similar issue was identified on the Adjudication Audit where it was found that of those solicitors who were told by an adjudicator to pay compensation, 73% failed to pay this within the deadline they were given. However, for adjudicated cases, LCS caseworkers took responsibility for checking whether the solicitor had completed the action required. If the solicitor still had not, LCS caseworkers used the threat of disciplinary action to ensure compliance. The case study overleaf highlights the benefits for the consumer when LCS and SRA caseworkers use their powers effectively.

The Commissioner made a recommendation after the Renumbering Audit²⁰ that in conciliated cases (where the solicitor and consumer reach an agreement to resolve the complaint), LCS caseworkers should keep the file open until all the agreed action has been completed. LCS did not comply with this recommendation and conciliated cases are still closed at the point of agreement.

²⁰ OLSCC Audit Report August 2006 - Renumbering of files, available at www.olscc.gov.uk

Case study

In one case the LCS caseworker rang to check that the solicitor had complied and was told by the firm that they would call her back, although no-one did. After a further call and a further unfulfilled promise that she would be contacted, this caseworker wrote again to the firm. She copied this letter to all the partners in the firm, explaining that disciplinary action could be taken against all of them if there was a failure to comply. Following this, the firm paid the compensation to the consumer. The consumer was impressed with the approach taken and thanked the caseworker.

As the Adjudication Audit results showed, when caseworkers take responsibility for ensuring solicitors pay compensation this provides a much more effective and customer focused approach. The Commissioner has therefore reiterated her recommendation that caseworkers should ensure compliance with any decisions before a case is closed. The Commissioner may consider setting a target in this area.

Inconsistency in quality of information given to consumers

Audits have identified disparities and inconsistencies in the understanding of LCS and SRA caseworkers of Law Society policies, which then affects the quality of the information they are giving to consumers. For example, the Negligence Audit identified that, despite recent training sessions for all staff, there was inconsistency of LCS caseworkers' understanding of the policy regarding how to deal with complaints of negligence. This resulted in different messages to consumers, some being told LCS could look at negligence and others being told it could not. Confusion amongst caseworkers about their own policies results in an unreliable and inconsistent outcome for the consumer and this is clearly not acceptable.

Insufficient management checks on quality

The evidence from the audits highlights that there are insufficient management interventions taking place either in terms of checking the quality of work, caseworkers' understanding of policies or timeliness of action. The Commissioner has recommended that management interventions should be strengthened and applied consistently across teams in order to improve the quality of work and of information given to consumers. LCS and SRA have reported that they are implementing new

performance management systems throughout their caseworking, along with more intensive auditing of files. The Commissioner will monitor the application of this.

Some reductions in delay but further improvement needed

There has been a reduction of one month in the average delay each consumer might experience in the period measured by audits undertaken in July to August 2005 and July to August 2006. However, there is still on average over 2 months of avoidable delay and that remains unacceptable. In particular, caseworkers are taking too long to write reports for adjudication. LCS currently has a timescale of 8 weeks to produce an adjudicated report but standard reports take on average 15 weeks and in some cases many months more. SRA has no set timescale and its standard reports take on average 16 weeks. The Commissioner has asked LCS and SRA to review the length of time they consider is reasonable for their caseworkers to write a report and in the meantime has set this as a Key Performance Indicator (KPI), which requires LCS and SRA to provide information on the average time being taken to write a report for adjudication. This will enable her Office to monitor progress.

In summary, the audits and investigations undertaken this year identified a number of significant failures and inconsistencies. These issues must be addressed in order for LCS and SRA to become more effective. The Commissioner has therefore made a number of recommendations to LCS and SRA in her forthcoming report on her audits. Her intention is to further develop her targets for the coming year in order to support improvements to the quality of complaints handling where recommendations have not been implemented or where improvements need to take place.