OLSCC AUDIT REPORT

ADJUDICATION

APRIL 2007

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1. Introduction

Office of the Legal Services Complaints Commissioner (OLSCC)

The Office of the Legal Services Complaints Commissioner was established to improve how the Law Society handles complaints about solicitors in England and Wales. The Commissioner, Zahida Manzoor CBE, is an independent government-appointed regulator. The Commissioner's remit includes:

- identifying performance targets that will steer the Law Society to deliver an effective and efficient service
- discussing with the Law Society how to achieve these performance levels
- requesting a plan from the Law Society detailing how it will improve its complaint handling
- undertaking audits of Law Society cases and any other relevant investigations
- making recommendations to improve the Law Society's performance
- monitoring the Law Society's performance to measure the level of improvement made

The Law Society

The Law Society is the representative body for solicitors in England and Wales. It aims to resolve complaints about the service provided by solicitors and to investigate allegations of misconduct through its two separate, but complementary, organisations: the Legal Complaints Service (LCS) and the Solicitors Regulation Authority (SRA).

The Law Society's Consumer Complaints Handling Process

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 Law Society.

In cases concerning service issues, the LCS caseworker in the first instance will attempt to reach an agreement between the consumer and the solicitor through conciliation. In conduct matters, SRA caseworkers will investigate the complaint and if misconduct is identified, they can consider disciplining the solicitor, including referring the case to the Solicitors Disciplinary Tribunal. If a complaint has both service and conduct elements, the service element will be investigated first by LCS and then passed to SRA to investigate conduct issues.

If the LCS caseworker has been unable to resolve the matter informally by, for example, conciliating the matter or obtaining a reasonable offer for settlement from the solicitor, they can further investigate and prepare a report for an LCS adjudicator for a formal decision. Currently, approximately 1200 cases per year (6.5% of all complaints) go to adjudication.

This audit – The Law Society's adjudication process

The OLSCC Research and Investigations Team undertakes regular audits of Law Society cases throughout the year to assess the application and appropriateness of its policies and processes. This is in order to provide feedback to the Law Society and to inform the Commissioner's future recommendations and targets, with a view to improving Law Society performance in it's complaint handling.

The OLSCC Research and Investigations Team undertook an audit of the adjudication of consumers' complaints by the Law Society, as previous audits had identified that this particular aspect of the complaints handling process warranted further investigation.

This report considers whether the Law Society has appropriately and consistently applied procedures with regard to the adjudication of files and to identify whether caseworkers and adjudicators have a clear and reliable understanding of procedures and their application. It covers the work of the Law Society's Caseworkers, Team Managers, Adjudication Team and Adjudication Panel, and both service and conduct cases.

This audit was conducted in line with the Audit Plan that was shared with the Law Society in November 2006. The audit sample was drawn from adjudicated files that were closed between 1 November 2005 and 31 October 2006. A total of 280 files were reviewed and 281 adjudications audited (on one file there were two adjudications). A small number of interviews were also held with Law Society staff involved in the adjudication process. Where references are made to the numbers of days that an action has taken on average, these are calendar days not working days.

These audit findings are intended to support the Law Society in delivering an efficient and effective complaints handling service by identifying good practices and where areas need to be further strengthened.

Complaints adjudication by the Law Society

The different types of Law Society adjudication are shown at Appendix 1, with a flowchart of the process at Appendix 2.

Adjudication on complaints is undertaken by full-time adjudicators. These are solicitors who work full time and whose function is to make decisions in respect of complaints and other matters raised with the Law Society.

The adjudicator will consider the evidence and decide whether they are satisfied that the evidence is strong enough to show, on balance, that the complaint is justified or not.

If the adjudicator finds that the service provided to the consumer is inadequate they can:

- Reduce the solicitor's bill
- Order the solicitor to pay compensation of up to £15,000
- Tell the solicitor to correct a mistake and pay any associated costs

They can only award compensation to the client of the firm being complained about. They have no power to award compensation if the solicitor's bill was delivered to the complainant before 1 April 1991.

If the adjudicator decides that there is evidence of professional misconduct they will decide what action is appropriate to take against the solicitor. Action can include:

- Giving a solicitor a warning (in less serious cases)
- Issuing a reprimand or severe reprimand
- Imposing conditions on solicitors' practising certificates
- Referring solicitors to the Solicitors Disciplinary Tribunal (in persistent or very serious cases)

In service cases there is generally no right for either party to appeal the decision of the adjudicator. In conduct cases where a sanction has been applied the solicitor is able to appeal this decision but, unless the complaint was received before 2/8/04, the consumer cannot. However, the adjudicator does have discretion to give the right of appeal if they consider it is appropriate.

Where a right of appeal is given and an appeal is made against the adjudicator's decision, this is considered by an adjudication panel, consisting of a mixture of solicitors and also lay people who are not employed by the Law Society. The panel considers the same evidence as the adjudicator, as well as their decision, and any new evidence to determine whether they uphold, amend or revoke the Adjudicator's decision.

2. Summary of Findings and recommendations

The key findings and recommendations from the audit are as follows:

Managing quality

Training and Feedback

1. The Law Society is not providing consistent feedback to caseworkers on the quality of their report writing. Caseworkers would benefit from being told whether or not they are meeting the quality standards required. A more structured approach to providing feedback is vital in ensuring that improvements can be made and as part of an effective performance management system. The audit also found that caseworkers often come to different conclusions on the level of redress to those of the adjudicator, which fails to manage consumer expectations.

   Commissioner's Recommendation: To improve the quality of report writing, including any decision making, the Law Society should identify good practice underway in terms of training and the provision of regular individual feedback to caseworkers and apply this consistently across its complaints handling. It should not allow for individual preferences, as this policy is causing inconsistency.

Management checks

2. There are currently no consistent management interventions in place within the part of the adjudication process undertaken by the caseworker, either in terms of checking the quality of work or its timeliness.

   Commissioner's Recommendation: To improve timeliness and quality, the Law Society should consider where management interventions could be strengthened in the part of the adjudication process undertaken by the caseworker, and apply these consistently across teams.

Policy – application and definition

Consistency in information to the consumer

3. In the Law Society's current policy, if the case goes to adjudication the policy requires the caseworker to notify the consumer and the solicitor of what they believe the level of any redress awarded by adjudication might be. The audit found inconsistencies in the contents of the reports issued by the caseworker in terms of whether recommendations are made and whether this includes an amount for compensation.

   Commissioner's Recommendation: The Law Society should ensure caseworkers consistently communicate to consumers and solicitors the likely level of any redress to be awarded by an adjudicator, in line with its policy. This should include an explanation as to how the level of compensation has been determined.

Appeal Rights

4. The Law Society's policy is that there is generally no right for the consumer or solicitor to appeal the adjudicator's decision, although in

conduct cases where a sanction has been applied the solicitor can appeal against this. However, the adjudicator does have discretion to give the right of appeal if they consider it is appropriate. It was found that the right of appeal was sometimes given on a discretionary basis, although it was not clear why it was given to some consumers and not to others.

Commissioner's Recommendation: The Law Society should review its policies on the right of appeal and improve their criteria, application and explanation and ensure it is consistently applied.

Solicitor's compliance with adjudicated decisions

5. The Law Society's processes for ensuring solicitors comply with adjudicated decisions has been found to be more robust and consumer focused than that applied to conciliated cases. Indeed, the use of its processes to ensure compliance in adjudicated cases show that there are a significant number of solicitors who do not comply with Law Society decisions. The Commissioner has previously recommended that where any conciliated agreement is made, Law Society caseworkers should keep the file open until all action required by the agreement has been completed. The Law Society did not comply with this recommendation and conciliated cases are still closed once agreement has been reached.

   Recommendation: To ensure that consumers receive the redress they are entitled to the Law Society should apply the same approach to ensuring solicitors comply with decisions on its conciliated cases as it does to its adjudicated cases. This should include caseworkers ensuring compliance with any decisions before a case is closed and they should ensure referral to the Solicitors Regulation Authority where appropriate.

   The Law Society should also strengthen the wording of the letter it sends out to inform a solicitor of any decision that requires action, to make it clear that non compliance with the decision can result in regulatory action. This should reduce the need for follow up action and improve timely compliance.

Timeliness

Writing of the report for an adjudicator

6. Caseworkers are taking too long to write reports for an adjudicator. The Legal Complaints Service currently has a timescale of 8 weeks to write a report for an adjudicator but reports take on average 15 weeks. The Solicitors Regulation Authority has no timescale and its reports take on average 16 weeks. It is the Commissioner's view that once a caseworker

has all of the required information, it should not take 8 weeks to write a report.

Commissioner's Recommendation: The Law Society should review how long it is reasonable for a caseworker to take to write a report for an adjudicator for both the Legal Complaints Service and the Solicitors Regulation Authority, and update its standards, in consultation with the OLSCC, as appropriate. This should also include a review of the standards for the adjudication team, to reflect current performance. The standard in this area is 6 weeks, but in practice it is taking an average of 19 days.

Forwarding information

7. The audit found there are unnecessary delays in other areas of the Law Society's adjudication process. Where a report for the adjudicator was returned to the caseworker following comments from the consumer or solicitor, it took on average over two weeks for the caseworker to forward the report to the adjudicator. Delays also occurred in issuing the adjudication decision to consumers and solicitors and in referring appeals to the adjudication panel.

   Commissioner's Recommendation: The Law Society should review the adjudication process and take action to reduce delay, particularly in the following areas:
   - **when reports should be forwarded to the adjudication team by the caseworker following their return from the solicitor/consumer;**
   - **when adjudicated decisions are returned from the adjudication team and need to be sent to the consumer/solicitor; and**
   - **when referring appeal cases to the adjudication panel.**

3. Audit Findings

3.1 Quality Approach

3.1.1 Quality of report writing

The evidence showed that in 99% of cases the Law Society caseworker correctly identified the consumer's complaints and accurately included all of these in the reports they produced. In some cases, the caseworker identified during the investigation additional issues that they considered needed to be adjudicated upon. In one example, the caseworker had resolved service issues for the consumer and then took further action against the solicitor regarding conduct matters that had become apparent during the investigation.

As part of the audit we assessed whether the adjudicator agreed with the findings of the caseworker. These findings relate to the outcome of the investigation and are expected to list any deficiencies in service (where found) e.g. a failure to respond to letters from the consumer or failing to follow the consumer's instructions. We found that in 68.4% of cases the adjudicator completely agreed with the findings made by the caseworker and in 7% of cases they completely disagreed. In 24.6% of cases they partly agreed, finding more issues in 26 cases and less issues in 36 cases.

Once the caseworker has determined their findings, they are then expected to make recommendations in service cases regarding a suitable amount of compensation for the consumer for the service failings that have been found. In conduct cases, they recommend the level of disciplinary action to be taken against the solicitor where rule breaches were found. In 71.8% of cases the adjudicator completely agreed with caseworker recommendations and in 9.5% of cases they completely disagreed. In 18.7% of cases they partly agreed, deciding on more action in 16 cases and less action in 31 cases.

Inconsistency was found in recommendations made by caseworkers. For example, where failures in service were identified, some caseworkers made a recommendation of compensation that included a specific amount. Other caseworkers made a recommendation of compensation but did not put any figure on this whilst other caseworkers made no recommendation at all. Team managers and caseworkers interviewed gave differing views on this area, with some saying that caseworkers were expected to provide recommendations in all cases whilst others were not clear on what was expected. In our view the Law Society should take steps to ensure that a consistent approach is applied and that a specific amount of compensation is stated with clear reasons as to why this level has been decided.

It is a concern that in around 30% of cases the adjudicator had a different view to that of the caseworker. This is important, because the draft report issued to the consumer and solicitor by the caseworker has their findings and recommendations included in it. This means that in a significant number of cases consumer and solicitor expectations are not met because the decision

made is different to that indicated to them by the caseworker. The Law Society's own Customer Satisfaction survey undertaken between July and September 2006 identified that only 28.7% of consumers agreed that the compensation award was broadly in line with their expectations, with 58.9% stating that it wasn't.

Adjudicators themselves said that they preferred to have a recommendation for compensation made but not an actual amount specified, as they were concerned that this raised expectations. In our view, it is helpful for the consumer to be given an indication of what compensation they might receive. However, this is only useful if it is accurate. As it was found that in around 30% of cases the adjudicator came to a different view, we consider that giving caseworkers more effective feedback on the quality of their reports would help to provide a more consistent approach in developing findings and recommendations. This, in turn, would enable the expectations of consumers to be more effectively managed and ensure a consistent outcome.

It is expected that all reports submitted to adjudicators should contain all the necessary information for the adjudicator to be able to make a decision. Of the files audited it was found that the adjudicator requested additional information from the caseworker in 8.8% of standard adjudication cases and in 13% of accelerated/short form adjudication cases. On average it took 26 days to obtain the additional information.

It is important that full information is provided to the adjudicator, so that the consumer's financial loss can be suitably assessed. In one case the adjudicator states in November 2005 that on the information they have from the caseworker they were minded to award £400 compensation. However, they said that they wanted some information regarding losses that the consumer suffered related to rent costs. The solicitor and consumer provided further evidence on this in April 2006 and the adjudicator made a decision that directed the solicitor to pay compensation of £400 and also compensation for expenses related to rent of £3,717. Without the additional information being requested by the adjudicator, the consumer would not have been compensated for their significant financial loss.

There were other cases that also raised concerns regarding the quality of investigation that the report was based upon. In one case the adjudicator expressed concern that whilst the inadequate professional service complaint had been proven, no action had been taken regarding the conduct of the solicitor regarding their failure to reply to the Law Society. The adjudicator said "…as responsible regulators we should be chasing up this sort of thing if only to remind some members of the profession that they owe a professional duty and a responsibility to respond properly to their regulator".

In another case a complaint related to service issues was conciliated. The caseworker then produced a report related to conduct matters and in the report the caseworker said "I have been unable to reach a conclusion in relation to this issue….I have considered it appropriate to leave it to the adjudicator to decide the issue". The adjudicator stated in a memo to the

caseworker that they saw no evidence of misconduct and said "… If it is proposed to submit the matter for a formal decision it should be made clear precisely what is being alleged and against whom in terms of professional conduct". Following further discussion with the adjudicator the caseworker closed the complaint and the consumer was told there was no evidence of misconduct.

In another example, the adjudicator apologised to all parties for the delay in a case that had taken over three years to investigate before a decision was made to adjudicate. In their decision the adjudicator stated "…and it is most unfortunate that the situation has not been clarified before. Effectively it means that there is no service complaint for me to consider". In this case it should have been identified much earlier that there was no complaint to answer and the consumers expectations could then have been managed more effectively.

3.1.2 Training of staff

The scope of the audit examined the training received by caseworkers relating to adjudication. It was found that all the staff interviewed knew where to access current policies and guidance. They explained that any changes to these are communicated via e-mail and team meetings. If changes are major, then briefings or training sessions are held and followed up by the team coach. Caseworkers said that they considered the initial training they received, and that on subsequent changes (such as for accelerated adjudication, which applies to less complex or single issue cases), was excellent and very comprehensive.

All adjudicators interviewed had been practising solicitors. They ensured they kept in touch with the legal profession in order to remain up to date on legal developments and had ongoing training through regular team meetings held every 6 weeks. Any good practices identified were considered by the Adjudication Team Manager and then communicated to adjudicators via e-mail or at team meetings. We also established that when new policies were introduced, adjudicators often delivered the appropriate supporting training to caseworkers. In their opinion, this ensured a common understanding and promoted positive working relationships between caseworkers and adjudicators.

However, this contrasts with the findings that in around 30% of cases the adjudicator decisions differed from that of the caseworker. This suggests that the application of the training is not as effective as it should be and that feedback on the quality of report writing is not being used efficiently. We consider that the Law Society should review these areas in order to achieve a more consistent approach.

3.1.3 Feedback to staff

When caseworkers are new to report writing the quality of their work is monitored. Once the caseworker has passed the quality check on a sufficient number of occasions, they can submit the reports directly to the adjudicator.

One of the caseworkers interviewed did still prefer to pass their reports to a consultant caseworker for a technical review, whilst others said that they sent the report to the adjudicator without any checks taking place.
We identified during the audit that adjudicators now give a feedback rating on the quality of all the reports they see. However, most of the caseworkers interviewed said that they did not see this and received very limited feedback. They all welcomed the idea of more consistent and regular feedback and questioned the value of gathering feedback from adjudicators if this is not passed to the caseworker. One caseworker who did get more regular feedback through one-to-one meetings with their team manager said they found this very useful. Another caseworker said “perhaps there needs to be regular active feedback for the benefit of all caseworkers”.

One team manager explained that in their area the feedback on reports was not passed on directly to the caseworker but was to be collated and used as part of an appraisal review. Another team manager said that in their team feedback was provided and good practices were shared.

We consider that feedback is an important learning tool and supports a quality approach. If caseworkers are not meeting the quality required they should be informed of this and supported in improving their skills. Where they are producing good quality reports, this should also be commented upon, so that these standards are maintained. The current approach to giving feedback is inconsistent and is therefore not as effective as it should be. We are of the view that feedback should be shared regularly with caseworkers, in order to help them in their report writing.

3.1.4 Management of quality

From discussions with caseworkers and team managers it was identified that team managers play little part in the management of the adjudication process. Whilst it is accepted that team managers cannot provide the technical input that a caseworker may require (which is obtained from the coach or casework advisor) they should still have a role in ensuring the quality of report-writing and that reports are completed in a timely manner.

In our view team managers should take a more prominent role. A more structured approach that gives caseworkers regular feedback should be applied and team managers should ensure that quality standards are being met. A more proactive management approach also needs to be taken regarding the adjudication process; with regular management interventions to check delays are not occurring.

3.2 Consumer’s Experience Of The Adjudication Process

3.2.1 Information provided to the consumer regarding adjudication.

As part of the audit we did consider whether the consumer and solicitor were appropriately informed about the adjudication process and what it would mean

to them. We also considered whether information issued to the consumer, such as the draft report and the adjudication decision itself, were suitably clear and understandable. It was found that the consumer was appropriately informed in 95.6% of cases about the adjudication process and communications to them were considered suitable in terms of clarity.

In interviews caseworkers were asked how they knew that consumers understood the process, after having been informed of it. They said that they sometimes explained this in a telephone call, followed by a letter. They did comment that they assumed that the consumer and solicitor understood the adjudication process, although they did not check this understanding. We are aware that the Law Society have recently developed a leaflet entitled "Adjudication – What Will Happen" that explains the process to consumers.

Consumers and solicitors had a period of 14 days to comment upon the report prepared by caseworkers for adjudication. It was found that 45.4% of consumers and 62.8% of solicitors commented on the report. Of those who did comment, 64.4% of consumers agreed with the caseworkers findings and 27.8% of solicitors agreed. The main reason either party had for disagreeing was that they did not accept the caseworker's conclusions.

A number of solicitors complained that the 14 days they were being given to comment was insufficient, particularly where reports were lengthy and complex. However, these concerns were only expressed in 8 cases (2.8%). It was found that those consumers that did comment did so on average within 15 days and solicitors within 17.5 days. Law Society caseworkers and team managers were strongly of the view that, as the parties had been involved in the investigation and were aware of the issues, 14 days was a sufficient period of time for them to make comments. We concur that 14 days is appropriate, other than for those cases where there is a legitimate need to extend the period e.g. sickness.

3.2.2 Ensuring compliance by the solicitor following the decision

Once an adjudication decision had been made, the caseworker is responsible for ensuring the solicitor complied with the decision where it directed that they must pay compensation to the consumer. The solicitor is given seven days to pay and provide evidence that they have done so and the caseworker must chase them up if they have no evidence that the solicitor has made the payment. Where solicitors continue to fail to comply with an adjudicated direction to pay compensation, they are referred to the Solicitors Regulation Authority for their conduct to be investigated.

Of 114 (26.3%) solicitors who were directed to pay compensation it was found that 84 (73.7%) failed to pay until chased up by a Law Society caseworker. In 10 of the 84 cases (12%) it was found that the solicitor only complied after the threat of disciplinary action was made.

In one case the caseworker rang to check that the solicitor had complied and was told they would call her back, although no-one did. After a further call and

a further unfulfilled promise that she would be contacted, the caseworker wrote to the firm. She copied this letter to all the partners in the solicitors 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 for their work.

The approach taken in adjudication cases of not closing the file until proof of payment was found to be both a necessary and successful process. In our Renumbering Audit, undertaken in June 2006, we highlighted that some solicitors who had made an agreement to pay compensation in conciliated cases had then failed to comply. In most of those cases we found that the caseworker had closed the file once the conciliated agreement was made. This meant that the consumer had to contact the Law Society again to ask them to chase up payment. Following that audit, we recommended that caseworkers keep the file open until the solicitor had completed their action. The Law Society, whilst accepting the principle, did not make this change as they considered it would impact upon their targets.

The evidence from this audit shows that a significant number of solicitors do not comply with the adjudicator's direction to pay compensation. We believe this adds further weight to our view that the correct approach to take is for caseworkers to be responsible for ensuring compliance by the solicitor before closing the file. We have found that this approach is effectively undertaken in adjudication cases and want to see it applied to all cases where the solicitor is required to pay compensation – whether through adjudication or conciliation. As solicitors who fail to comply with an adjudicated direction to pay compensation are referred to the Solicitors Regulation Authority for their conduct to be investigated, we consider the same approach should also be applied to conciliated cases.

3.3 Timescales For The Adjudication Process

3.3.1 Delays in the writing of the report for adjudication

A number of comments were made by both consumers and solicitors regarding delays to the writing of the report for adjudication as they understandably wanted to see complaints resolved as quickly as possible. The issue of delays in the production of these reports has been highlighted in previous audits undertaken by this team and we have again found delay to be an area of concern on this audit. The period for writing a report has now been set by OLSCC as a Key Performance Indicator within the Law Society's plan for complaints handling in 2007/8.

In one case the report took from May 2005 to July 2006 to be written. During this time the caseworker regularly informed the consumer that they were still in the process of making enquiries and finalising the report but did not progress this quickly enough. In March 2006 the consumer complained about the length of time taken and said "could we now please have some action". In

another case, the consumer wrote to the President of the Law Society to complain that the report had taken seven and a half months to write.

Law Society guidelines state that for complaints regarding inadequate professional service, reports should be produced within eight weeks. The Law Society advised us that there was no firm timescale for preparation of reports related to misconduct due to them varying in complexity.

In order to determine how long it took for the caseworker to write the report we needed to establish the date that it was decided to adjudicate. Of all the 281 adjudications audited there were 40 cases (14.2%) where it was not possible to establish from the evidence on the file when it was decided to have the complaint adjudicated. These cases have been excluded from the data used to establish the average period taken to write the report. There are a number of different types of reports for the adjudication process – these are shown at Appendix A.

We found that the average length of time taken to write the standard report for service cases was 15.1 weeks. The maximum time taken was 57.1 weeks, more than a year. For conduct cases, it was found that the average length of time taken to write the standard report was 16 weeks. The maximum time taken was 60.7 weeks, over a year and 2 months.

The average time being taken to write the standard service and conduct reports is a concern, as this is a delay experienced by the consumer and solicitor who are waiting to see the report. As noted above, the expected timeframe for service reports is eight weeks and there is no firm timescale for conduct reports. The evidence shows that 43.5% of service reports and 44.1% of conduct reports were completed within eight weeks.

Some caseworkers are clearly taking far longer than they should. It was found that in 52 cases (18.5%) it took over six months to write the report – 23 of these were service cases and 29 conduct cases. If this figure is extrapolated against the total number of service and conduct adjudications in the 12 month period we looked at, we can conclude that up to 229 consumers would have waited 6 months or longer to have the report written for the adjudicator.

From August 2006 the Law Society introduced a revised approach to writing the standard report in service cases, by producing the report in a letter format. Team managers and caseworkers interviewed were in favour of this as they considered these to be quicker to prepare and easier to understand. There were insufficient numbers of letter reports seen on the audit to draw any conclusions at this stage regarding whether they are produced more quickly than the previous style of reports.

Accelerated adjudication in service cases and Short Form adjudication in conduct cases are applied to less complex complaints or where less issues have been raised – see Appendix A. The evidence showed that accelerated reports for service cases took on average 5.4 weeks against a target of 8 weeks, with the maximum being 44 weeks. No set timescale is applied to

Short Form reports for conduct cases and these took on average 10.1 weeks, with the maximum being 24.9 weeks.

In interviews most caseworkers said that they felt that both these types of reports were easier for them to undertake, saved time and, as they related to more straightforward cases, were easier for the consumer to understand. We consider that where cases are more straightforward and meet the criteria the Law Society has set, then it is appropriate to apply this process. This approach should not ignore quality and it is a concern that it was found that adjudicators asked for additional information for these types of reports more often (13.3%) than they did for standard reports (8.8%).

Evidence from the audit does show that these reports are on average being completed more quickly than standard reports. However, Short Form reports for conduct cases still took more than 10 weeks on average. As these types of reports have been determined by the Law Society to apply to the more straightforward cases, we consider that they should be produced more quickly than they currently are.

Once the caseworker has written the report it is issued to the consumer and solicitor who are given 14 days to make comments. It was found that from the date of receiving comments, it then took on average 15 days to forward the report with the comments received to the adjudication team. Where no comments were made, it took an average of 13 days to forward the report. It is unclear from evidence on the files why cases are not being referred to the adjudication team more quickly, particularly where comments have not been made and the report can be issued as it stands. This is an area where there is currently no Customer Service Standard and we are of the view that applying a timescale target is something that should be considered in order to speed up the process.

In our view, once the caseworker has all the information they require to write the report, then they should be able to quickly complete the report. Given the delays that have been identified, we consider that a more proactive management approach needs to be taken regarding the adjudication process. Team managers should undertake regular management interventions to check delays are not occurring.

3.3.2 Delivering the adjudication decision

We found that once the papers were with the adjudication team the management of the adjudication decision was a more efficient process than that applied to the preparation of reports. Law Society Customer Service Standards state that, following referral of report papers from the caseworker, the timescale for an adjudication decision being made should be no more than 6 weeks. It was found that 96.3% of adjudication decisions were made within this target and took 19 days on average.

Interviews with adjudicators and the adjudication team manager established that they were of the view that they operated a well-managed process for

delivering the adjudication decisions. The evidence we have gathered validates this. Adjudicators explained that they were very aware of the timescales that applied and to support achieving this had agreed to introduce an internal target of five days to make the decision. The Team Manager was able to access management information to identify adjudicator's productivity and fed this back to individuals. They also had a proactive and dedicated administrative support team that ensured adjudicators gave urgent cases priority and that the typing up of decisions was not delayed. The adjudication team manager looked at every adjudication decision in order to check consistency and adjudicators met on a six weekly basis to consider any trends, share good practice and identify any training needs.

We can conclude that the positive results found regarding meeting the target date reflect that the internal mechanisms operated by the adjudication team appear to be effective.

3.3.3 Issuing the adjudication decision

There is a Law Society Customer Service Standard that requires adjudication decisions to be issued to the consumer and solicitor within 14 days of being made. Although the evidence demonstrated that the average time for this was 14.2 days, it was found that only 56.5% of consumers and solicitors received the decision within 14 days of it being made. It is therefore a concern that in over 43% of cases the Service Standard is not being met.

In service cases the Law Society's policy is that there is generally no right for either party to appeal the decision (although consumers always have the right to appeal to the Legal Services Ombudsman to consider whether the decision was reasonable). In conduct cases the Law Society's policy is that where a sanction has been applied the solicitor can appeal this decision but the consumer cannot (although the consumer can appeal to the Legal Services Ombudsman). Although in 100% of cases consumers and solicitors should be informed whether they have the right of appeal or not, it was found that consumers were informed of their appeal rights in 93.5% of cases and solicitors in 96.4%. Examples were seen where the consumer or solicitor was told the outcome of the adjudication but not then informed of their rights either in the letter from the caseworker or in the decision by the adjudicator.

The right of appeal was sometimes given on a discretionary basis, although it was not clear why it was given to some consumers and not to others. Where they were given the right of appeal, only 10 (16.4%) consumers and 19 (16.1%) solicitors did so.

Where a right of appeal is given and an appeal made, this is considered by an adjudication panel, made up of 3 members - generally 2 lay persons, 1 solicitor for service case; 2 solicitors, 1 lay person for conduct cases. The Panel considers the same evidence as the adjudicator, as well as their decision, and any new evidence to determine whether they uphold, amend or revoke the Adjudicator's decision.

When an appeal is made the caseworker must notify the other party and offer them the chance to comment. We found that on average it took 32 days from the appeal being received from the consumer or solicitor to the Law Society referring it to the adjudication panel. It took on average less than 10 days for comments to be received from the consumer or solicitor and therefore in our view the period taken to refer a case for appeal should be reduced. Following, referral, it took on average a further 35 days for the appeal decision to be made. In 70.4% of cases the appeal panel agreed with the adjudication decision. In 18.5% of cases they partially agreed and in 11.1% they disagreed. Although small numbers (8 cases) it is a concern that the adjudication panel found against the decision of the adjudicator in 30% of cases.

5. Glossary of Terms

Adjudicator	The Law Society have a pool of experienced staff who have powers devolved to them by the Law Society Council to make binding decisions on solicitors
Adjudication	Where the consumer and solicitor cannot reach agreement on the resolution to a complaint it will be referred for adjudication. A formal decision is made by an adjudicator, based on the evidence provided to them by a Law Society caseworker
Audit Plan	This is issued to the Law Society by the OLSCC Investigations Team and outlines audit processes and areas to be investigated during the audit
Compensation	If the Law Society identifies failings in a solicitor's service they can order the solicitor to make a payment to the consumer as a means of redress
Complaint	This is an expression of dissatisfaction about the service provided by a firm of solicitors or about the conduct of an individual solicitor where the Law Society takes action to conciliate and settle or investigate.
Conduct complaint	A complaint that relates to the actions/behaviour of an individual solicitor rather than the service provided by the firm of solicitors as a whole.
Conciliation	This is a process leading to the resolution of the complaint by agreement between the consumer and solicitor without the need for a formal decision by the Law Society
Sanction	This is a penalty imposed on a solicitor where they are found to have breached Solicitor's Practice Rules
Service Complaint	This is a complaint made by the consumer relating to the service they have received from the firm of solicitors.

Appendix 1

Current Law Society adjudication policy and procedures

Adjudication overview

When the Law Society caseworker is unable to resolve a consumer's complaint with a solicitor through a conciliated approach and they consider there is merit to the complaint, they can send the complaint for an adjudication decision.

There are a number of adjudication processes operated by the Law Society and these are detailed below. However, the general principle is that information gathered by a caseworker during an investigation will be submitted to a Law Society adjudicator to make a decision based on the evidence before them. This is called a First Instance Decision and is provided in writing.

The decision may result in a finding of fault with the solicitor's actions and require them to pay compensation in service complaints or apply a sanction in conduct complaints. If the adjudicator decision is that there is no fault by the solicitor, no penalties are applied.

The First Instance Decision is communicated to both the consumer and solicitor (except in conduct cases under the Informants Protocol where the consumer has advised that they do not want to know the decision). At the same time, they are informed whether or not they have a right of appeal. In most service cases, neither party can appeal against the decision. If compensation is ordered, the solicitor is expected to comply with this decision and make payment to the consumer. In conduct cases, where a sanction has been applied, the solicitor can appeal against this decision but the consumer has no right to a review of the level of sanction imposed.

If one of the parties has a right of appeal, they have two weeks from receiving the decision to do this. If they do, then all the evidence that was put to the adjudicator, plus their decision, is provided to an Adjudication Panel. This panel is made up of 3 members (2 lay persons, 1 solicitor for service cases; 2 solicitors, 1 lay person in conduct cases). The Panel considers the evidence and determines whether they uphold, amend or revoke Adjudicator's decision.

Different types of adjudication processes

In the past Law Society caseworkers were expected in all cases to produce a standard written report for the adjudicator against a set template. This report reflected each complaint that had been made by the consumer and included evidence provided during the investigation of the complaints by both the

consumer and solicitor. The report also gave the caseworker's view on whether the complaint was substantiated or not. Where the consumer raised a number of complaints and/or these were complex in nature, the report was often lengthy.

In order to address some of the issues regarding delays in report writing and improve customer service, the Law Society has introduced some revised adjudication processes that apply to less complex cases.

Where matters are regarded as more straightforward, an "accelerated" approach has been taken for some service cases and a "short-form" approach for some conduct cases.

For all the different adjudication processes, it is necessary that the evidence report submitted to the adjudicator must be sufficient to enable them to be able to make an adjudication decision.

The different types of adjudication processes are explained in more detail below:

Service cases:

- Standard adjudication

In these cases the caseworker has a timescale of eight weeks to produce a draft report. This is then issued to the consumer and solicitor under a covering letter that explains that they have two weeks to make comments. Any comments made are copied to the other party and are included within the report or are submitted with it to the adjudicator to make a decision. From August 2006 caseworkers can present the adjudication evidence by way of a Letter Report, which provides a summary of the issues in a letter form to the consumer and solicitor.

- Standard Accelerated adjudication

The standard accelerated approach is generally used where the caseworker considers the case meets the following criteria:

- information should not take adjudicator more than 40 minutes to absorb
- the issues are straightforward, ideally no more than 1 or 2 issues, although this number can be exceeded if they are related
- complaint must have been rec'd before 1 Jan 05 if a ***minor*** conduct issue

(However, the caseworker can choose to pursue the standard adjudication approach regardless of whether case fits the above "accelerated approach" criteria)

The caseworker has a timescale of eight weeks to produce a summary of issues that is issued to the consumer and solicitor under a covering letter that explains that they have two weeks to make comments. Any comments made are copied to the other party and are included within the report or are submitted with it to the adjudicator to make a decision.

- Relaxed Accelerated adjudication

  In these cases there is no formal report. The caseworker produces a short summary of the background and issues for the adjudicator, which is submitted with the entire file. No specific timescale applies to this process. The summary is not disclosed to the consumer or solicitor but they are informed that the case is going to adjudication and they have two weeks to let the caseworker know whether they agree or not with the complaint going trough the relaxed adjudication process. If no comment is received, it is assumed they agree. In Relaxed Accelerated Adjudication cases there is an automatic right of appeal.

Conduct cases:

- Standard report

This process applies to more complex cases. There is no set timescale for the completion of the report as they vary in complexity. These reports will include those issues raised by the consumer as well as any issues of misconduct that the Law Society themselves as a regulator identify as a concern. Under the Informant's Protocol, the report is only copied to the solicitor, not to the consumer (unless the caseworker, at their discretion, believes that additional comments are required). The solicitor then has two weeks to make comments. Any comments made are copied to the other party and are included within the report or are submitted with it to the adjudicator to make a decision.

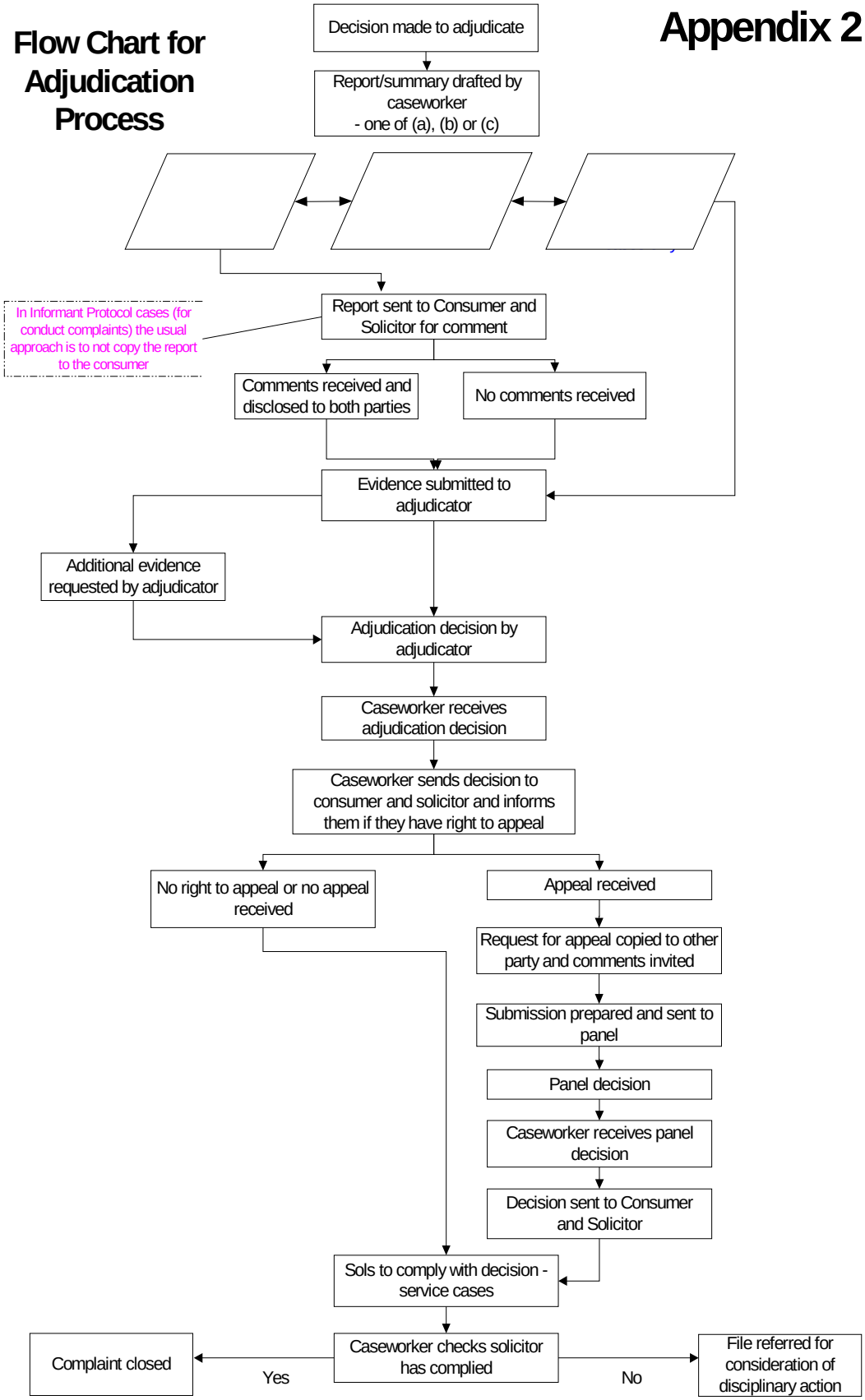
- Short Form report

These are used in less complex cases, for example where facts are not in dispute but there is a difference in interpretation. They are generally expected to require no more than two sides of A4. There is no set timescale for the completion of the report. These reports will include those issues raised by the consumer as well as any issues of misconduct that the Law Society themselves as a regulator identify as a concern. Under the Informant's Protocol, the report is only copied to the solicitor, not to the consumer (unless the caseworker, at their discretion, believes that additional comments are required). The solicitor then has two weeks to make comments. Any comments made are copied to the other party and are included within the report or are submitted with it to the adjudicator to make a decision.

(There are some conduct complaints that fall outside the Informant's Protocol. In these cases, the reports are copied to both the consumer and solicitor, who both have two weeks to make comment)

Appendix 2

Flow Chart for Adjudication Process



Appendix 3

Technical Appendix 1 : Sampling for the Adjudication Audit

Introduction

The purpose of the Adjudication Audit was to evaluate how the Law Society has handled adjudications of consumer complaints over a 12-month period between 1st November 2005 and 31st October 2006.

Information provided by the Law Society showed that there were 1191 complaint files that had been adjudicated within the period stated. However any case whose current status was 'Open' was excluded, as the adjudication process may not have been fully concluded, thus bringing the population size down to 1026.

To achieve a confidence level of 95% with a 5% margin of error on any inferences, a sample size of 281 was required.

The file list was broken down in the following ways to give 12 sampling strata.

- File type either Conduct or Service (RDC cases were classed as Conduct cases.
- Age profile at closure.

The 281 files were distributed across the sampling strata using the proportion from the population to give a representative sample. A random sample within each of the 12 strata was then requested from the Law Society.

Of the cases we requested we were only provided with an average of 64% of the service and conduct cases requested. The remaining 36% were substituted from the rest of the list. The breakdown by type of case and age profile is given below.

	Service		**Conduct**		**Service**		**Conduct**	
	Requested	**Substitute**	**Requested**	**Substitute**	**Requested**	**Substitute**	**Requested**	**Substitute**
0to3mths	2	0	1	0	100%	0%	100%	0%
4to6mths	6	5	5	1	55%	45%	83%	17%
7to9mths	20	13	20	1	61%	39%	95%	5%
10to12mths	22	15	16	5	59%	41%	76%	24%
13to18mths	29	22	14	10	57%	43%	58%	42%
over18mths	32	16	12	15	67%	33%	44%	56%
Total	111	71	68	32	61%	39%	68%	32%

Technical Appendix 2: Details of the Sample Construction

The tables below show how each of the groups is represented in the samples by the quality target:

Table A2.1: Case Type

Case Type	No. of cases in the sample period	Proportion	No. of cases realised in sample	Proportion
Conduct	370	36.1%	99	35.2%
Service	656	63.9%	182	64.8%
Total for sample period	1026		281	

Table A2.2: Age Profile

Age Profile	No. of cases in the sample period	Proportion	No. of cases realised in sample	Proportion
0-3mths	12	1.2%	3	1.1%
4-6mths	62	6.0%	17	6.0%
7-9mths	197	19.2%	54	19.2%
10-12mths	210	20.5%	58	20.6%
13-18mths	275	26.8%	75	26.7%
18+mths	270	26.3%	74	26.3%
Total for sample period	1026		281	

Table A2.3: All sample strata

Case Type	Age Profile	No. of cases in the sample period	Proportion	No. of cases realised in sample	Proportion
Conduct	0-3mths	5	0.5%	1	0.4%
Conduct	4-6mths	23	2.2%	6	2.1%
Conduct	7-9mths	76	7.4%	21	7.4%
Conduct	10-12mths	77	7.5%	21	7.4%
Conduct	13-18mths	89	8.7%	24	8.5%
Conduct	18+mths	100	9.7%	26	9.6%
Service	0-3mths	7	0.7%	2	0.7%
Service	4-6mths	39	3.8%	11	3.9%
Service	7-9mths	121	11.8%	33	11.7%
Service	10-12mths	133	13.0%	37	13.1%
Service	13-18mths	186	18.1%	51	18.1%
Service	18+mths	170	16.6%	48	16.7%
Total for sample period		**1026**		**281**	