

## **Coal Health Compensation Cases Special Report**

Thank you for your letter of 31 January. I am responding to the points you have made, a separate reply to the questions you raise about the target that the Commissioner has set was sent to you yesterday.

Overall the Commissioner is disappointed with the lack of specific response to the issues raised in the Special Report "Investigation into the handling of Coal Health Compensation complaints by the Legal Complaints Service and the Solicitors Regulation Authority" (the Report), particularly as she stated positively in the Report that LCS could use the information as a learning tool. The opportunity to address failings within a discreet, small team within the LCS and to put them right quickly, would give a positive platform to feed that learning out more widely to other teams in LCS thus driving improvement throughout all casework.

In terms of learning from the evidence presented in the Report, I am particularly concerned at your statement that a previous request has been made for reference numbers where quotes have been used within the Report. I can confirm we have not received any previous request for these references and that all the cases quoted are drawn from the information contained within the Factual Findings Report that was shared with you on 19 December 2007 that did detail all relevant reference numbers. I feel that if you had taken the opportunity to learn from the case examples, your letter of the 31 January may have been better informed.

Your response to the Report suggests that everything is operating satisfactorily within the Coal Health team with sufficient controls and assurance in place. This is similar to the response that was sent after our 2006 Coal Health Audit, but as issues were identified again in 2007, it does seem that learning is not being taken on board as a result of the audits or indeed from your quality control systems. This does not seem dissimilar to the findings in the Smith & Williamson Review of the Legal Services Ombudsman reports which suggested that LCS do not effectively use the reports from the Ombudsman as an opportunity to learn and improve.

I would now like to cover the points you raise against each of the relevant issues in the Report.

### **Issue 1 - Getting the best outcome**

The information you have supplied in response to this issue does not specifically address the points raised in the Report. A blanket assurance that the Indicative Awards Guidance is always used does not explain the cases that were highlighted in the Report where information was not being shared appropriately and where complete information on adjudication was not supplied. I would refer

you to case example 5 that highlights a situation where the caseworker emphasises the fact that if they fully investigate the complaint, they may find no poor service and the complainant would not get any compensation. This does not accord with the outcomes regularly being achieved through adjudication that the caseworker would have been aware of.

You describe proposals about how adjudicators may be seconded into LCS, but what you hope to achieve from this is not clear. Can you confirm what it is you are hoping to achieve from this, specifically in relation to the way in which coal health complaints are dealt with? Similarly, you describe a potential 'fast-track complaints system', but do not detail what you expect this to deliver for you in relation to these complaints. Again, could you please supply further information? Subject to the detail of how these will be implemented, they may form the basis of addressing the defects in the present system identified by the Report.

Following receipt of a complaint, in your response you say it takes 13-14 months for it to be prepared by LCS and adjudicated. Our audit of adjudication in April 2007 found no significant delays in the adjudication process, once LCS caseworkers had referred the case. This would suggest that there are significant unnecessary delays in the preparation of complaints by the caseworkers. Which is why case example 4 was shown in the Report. Some LCS caseworkers are using their own delays as a reason to discourage the miner from considering an adjudicated solution. This is why the Report is asking LCS management to speed up the time it takes to prepare cases for adjudication.

Also, your press statement (Gazette 17 January 2008) suggested that complaints were receiving more compensation for adjudicated cases because of the length of time it takes for a case to be prepared for, and then adjudicated. This is misleading as the compensation awarded by the adjudicator relates to the service by the solicitor and not the time it takes LCS to get a case prepared for adjudication.

You note that very few miners seek further payment for distress and inconvenience, but the Report highlights cases where the miner has not been given all the relevant information in an appropriate way to allow them to make an informed choice. We saw a number of cases where adjudication was posed as a more risky option to the consumer, for example the Factual Findings report includes a case closed in September 2006 where there was a deduction of £938, the solicitor offered £950 and the caseworker told the consumer that 'the adjudicator would probably award the £950, as the firm had already offered that, and he would consider another amount for distress and inconvenience; but there was a chance that the adjudicator thought the £950 is too much and he could therefore reduce the amount of the offer and that would be the end of the matter' (File reference). This is after assurance by LCS that this practice had ceased, following our 2006 Miners audit.

With regard to your point on deductions, the Report was not commenting on repayment of the deduction in full, but rather whether conciliation was ensuring a fair opportunity for the consumer to achieve the deduction plus payment for distress and inconvenience at levels being achieved in adjudicated cases. This is an important matter of fact which your letter has failed to address appropriately. The Commissioner supports conciliation as a means to resolve complaints but it must be a fair, unencumbered process and the existing system has defects which again, your letter does not address fully.

The Commissioner is of the firm view that caseworkers giving options for conciliation should be learning further from the outcomes of the adjudication process and ensuring that the best level of compensation is obtained. They should not, as a number of the case examples evidenced, be placing barriers to adjudication before miners in order to achieve a conciliated agreement, which would be less than an equivalent adjudication outcome.

## **Issue 2 – Achieving consistent outcomes**

Your response did not address the examples cited in the Report where consumers did not have information from caseworkers in an appropriate way to ensure that miners were making informed decisions. Please refer to case examples 10, 11, 12 for instances of information lacking and also misleading. We acknowledge that different outcomes will be achieved in similar cases, however where there are disparities between outcomes in similar cases, the cases need to clearly evidence appropriate advice and information to miners from the caseworker on the file.

As discrepancies and inconsistencies in the way cases were handled was identified through the audit, it seems clear that managers need to address these. Your response does not indicate how the identified issues would be prevented in the future or even how current systems are being improved. This is of particular concern as this is a small, discreet team working on specific types of cases where your opportunity to ensure consistency through appropriate management controls is more practicable.

The Report did not suggest as you allude, that LCS staff should override the decision of the consumer. But rather it said that the consumer should be fully and appropriately informed and files evidenced as to the appropriateness of the outcome where this deviates from similar adjudicated cases.

## **Issue 3 – Explaining correctly the different types of awards**

This response does not address the issues raised in the Report and the evidence provided of where the process has fallen down. OLSCC are seeking confirmation of what action LCS propose to take to address the deficiencies that were identified. The case examples quoted in the Report at numbers 10, 11 and

12 identify the issues of not informing or misrepresenting the amount of distress and inconvenience that had been achieved for the complainant through conciliation.

#### **Issue 4 – Reducing the barriers for resolution of the complaint**

This response does not explain or address the issues identified in the Report where the example quoted (13) shows the caseworker not following up compensation for distress and inconvenience with the solicitor despite the complainant requesting this. There is no indication given by LCS of the steps that will be taken to ensure that these issues will be addressed.

#### **Issue 5 – New pilot with firm of solicitors**

LCS is piloting with one firm of solicitors an option for miners to deal with the firm directly despite the miner originally having complained to the LCS. This is a significant departure from the 2004 policy guidelines of the Law Society, when it recognised miners as a 'vulnerable' group. The issue raised by the Commissioner was seeking the additional benefits LCS had expected for miners by piloting this approach.

Your response re-emphasises the concern the Commissioner has to such an approach, in that you describe how the firm of solicitors tried to not give miners initially their compensation awards in full.

The Commissioner is still not convinced LCS has the appropriate controls in place and asks that you now address her issue.

#### **Issue 6 – LCS losing files**

It is not acceptable for any files to be lost, particularly given that files can still be requested after closure, for example on referral to the LSO. OLSCC would therefore like confirmation of the immediate action that has been taken to ensure that further files are not lost and what changes are proposed to the current archive retrieval system and by when.

#### **Issue 7 – Accurately recording the pilot**

A number of complaints said to form part of the Rother Valley pilot (RVP) came via an MP, but were not as a result of the specific awareness raising activity. It is important for tracking, monitoring and analysis purposes, that these complaints can be identified to inform analysis of pilot activity. The success of the RVP often mentioned by LCS is the 10% of miners, who as a result of the awareness raising, subsequently made complaints. However, this figure is inflated by complaints that were not as a result of the awareness raising, but happened to

be made through the MP. Your letter does not address the problems that this can cause for accurately recording the outcome of the pilot.

### **Issue 8 – LCS capacity planning**

The Report is querying the fact that despite forecasting the number of additional complaints LCS received from the RVP, a number of these, some 55 cases, experienced an unnecessary and extended delay in allocation by LCS. This should not have occurred given proper planning of resource to deal with the results of the awareness raising sessions and managers should have had plans in place to handle this.

### **Issue 9 – Raising expectations**

The response suggests that the point raised in the Report has not been clearly understood. The awareness sessions by the LCS were an opportunity to be absolutely clear with miners about which complaints can and cannot be accepted by LCS and therefore allowed for complaints outside scope to be vetted out at this stage. This would have helped to manage expectations appropriately and serve to reduce the workload of LCS. LCS intends to roll out RVP further, the issue suggests that it should aim to reduce the 8% rejection rate setting itself a target; this is appropriate for an organisation that is aiming to continuously improve.

### **Issue 10 – LCS policy on miners**

The OLSCC is pleased to note that a review of the 2004 policy is planned and would welcome further information on when this will be undertaken. However, this particular issue raised the question with LCS about whether it was more appropriate to relax the present restrictions on cases it would accept to eliminate the present confusion for vulnerable miners. For example, in case study 15, the refusal to accept a hearing loss complaint brought through a Lord despite assurances from LCS to the contrary, is highlighted.

The roll out of the RVP seems to have the affect of reversing the relaxation of accepting complaints, which was allowed for by the Law Society's 2004 changes e.g. requiring, in most instances, cases are referred in the first instance to the solicitor under Rule 2. Your comments on why this apparent reversal in policy is necessary would be appreciated.

### **Issue 11 – LCS suspension of complaints**

The Report makes the point that cases should not be closed prior to full investigation and that where this has happened, LCS should review it's own failings in not re-opening cases more promptly. There was no agreement with the Commissioner at the time to close such cases. Given the length of time it

took LCS to reopen the cases after the original SDT hearing, it is LCS's own failing to re-open cases promptly that is the issue here. It should, therefore, investigate fully the need to compensate consumers where this has happened.

There was no suggestion that LCS should compensate for the distress and inconvenience caused by the solicitor, but rather that the review should focus on failings in LCS's own service. Although we cannot comment on the Ombudsman's view, we feel it is likely that a recommendation of an award of compensation would be made should these cases be referred to OLSO.

## **Issue 12 – Relates to SRA**

In terms of the tone of the Report which you have referred to, the tone reflects the concerns that the Commissioner has now and indeed has had since her audit in 2006. As a good regulator the Commissioner cannot shrink from giving difficult messages and wants to see matters improve. The Commissioner has stated that she wishes this Report to be used as a tool for improvement and it does include a number of positive case studies and statements which is summarily reflected in her press release of 15 January 2008. She indicated that these should be used to help improve the consistency of all caseworkers in the team.

In relation to the concerns raised by the profession, as I have mentioned the Report does not suggest that all cases should follow the adjudication route, but rather seeks parity between the outcomes achieved through conciliation compared to those achieved through adjudication. The Commissioner is extremely supportive of conciliation as a speedy and effective tool, but does not wish to see consumers disadvantaged in pursuing their case through conciliation, where there is an opportunity to learn from the outcomes of adjudication, but your caseworkers are not applying to this.

As you mention, the Report does raise concerns about inappropriate contact by solicitors with clients in circumstances where there is opportunity for LCS to ensure that this is managed by LCS rather than driven by solicitors. It does not suggest that contact is always inappropriate or unhelpful, but rather that where consumers approach LCS to deal with their complaint, the expectation would be that LCS manage that process fully and effectively.

I was pleased at our meeting on 20 February, you acknowledged that there was a need to put in place improvements for the handling of future cases. I await your proposals for this. However, at the meeting the Commissioner mentioned that in the absence of appropriate proposals on how to handle the issues she would be minded to set targets for 2008/09, to cover the issues set out in her Report. Early sight of your proposals would be welcomed.

As always, if my team or I can be of further assistance, do not hesitate to contact us.