

# **COAL HEALTH COMPENSATION CASES**

## **AUDIT 2008**

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# **1 Introduction**

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

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.
- Making recommendations to improve the Law Society's performance.
- Requesting a plan from the Law Society detailing how it will improve its complaints handling.
- Monitoring the Law Society's performance to measure the level of improvement made.
- Undertaking audits of the Law Society.

## **1.2 The Law Society**

The Law Society is the professional 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 organisations: the Legal Complaints Service and the Solicitors Regulation Authority respectively.

## **2 Executive Summary**

### **2.1 Background**

This audit is the latest undertaken by the Office of the Legal Services Complaints Commissioner (OLSCC) following those in 2006 and 2007 that have concentrated upon the handling of miners' complaints.

Miners' complaints have been closely examined by the OLSCC due to the nature of the complaints and the particular conduct issues they raise; the Law Society's acknowledgement of the vulnerability of this group of complainants; the high volume received (over 3500 raised by June 2008); and the significant interest by the public, MPs and others in how these complaints have been handled.

The Legal Complaints Service (LCS) handles complaints that are related to the service provided by solicitors and the Solicitors Regulation Authority (SRA) handles complaints related to conduct by solicitors. The focus of this report is on the handling of service complaints by LCS. A separate investigation is considering how conduct matters in miners' complaints have been handled by SRA.

### **2.2 Issues found in 2006 Audit**

An initial audit was undertaken in 2006. A number of recommendations were made to LCS following that audit. These included:

- the need to reduce delay in the allocation and progress of miners' complaints;
- ensuring that a full investigation was carried out into both service and conduct issues presented by the miners;
- providing the miners with sufficient information to enable them to make an informed choice for the resolution of their complaint.

### **2.3 Issues found in the 2007 Audit**

Complaints from miners continued to be received by LCS in significant numbers. In order to assess progress against the recommendations made in the previous audit and consider the handling of miners' complaints at that point, a further audit was carried out in November 2007.

The 2007 audit found that some improvement had been made in the handling of miners' complaints. Delays had generally been addressed and there were a number of examples of LCS caseworkers giving good explanations to miners.

There were still issues regarding the consistency and accuracy of some information being given to miners by LCS caseworkers and also concerns regarding the overall outcome of some complaints. The main concerns identified were that:

- miners who reached a conciliated outcome to their complaint on average received less compensation than cases that went to adjudication.
- LCS caseworkers were not using findings from adjudicated decisions sufficiently when conciliating
- there was inconsistency in some of the explanations given to miners regarding how their complaints could be resolved
- LCS management systems did not identify and correct any flaws in the way miners complaints were being handled

## 2.4 Further improvements required

The issues identified in the 2007 audit were highlighted by the Legal Services Complaints Commissioner in a Special Report: Investigation into the handling of Coal Health Compensation Scheme complaints, which was published in January 2008. The Commissioner emphasised that if these matters were addressed, then this would support LCS in continuously improving the way they handled miners' complaints.

In particular, the Commissioner requested that LCS caseworkers explain to miners all the options available to them for resolving their complaints, including adjudication; use compensation levels in existing adjudicated decisions as a starting point in determining a conciliated resolution; clearly explain the difference between compensation related to the deduction made by the solicitor and that for poor service by the solicitor; and explain whether the level of compensation the solicitor is offering is appropriate to the miner's circumstances.

LCS management teams were asked to ensure consistency in the decisions that caseworkers made and that reasonable outcomes were being achieved.

## 2.5 Scope of the 2008 audit

This latest audit took place in July 2008 in order to specifically measure how LCS was addressing the issues raised in the Special Report.

It was appropriate to only review cases that opened after LCS had received the Special Report, which was issued in January 2008. It was also necessary to review cases that had been closed so that it could be established how LCS had brought the cases to a conclusion.

The audit therefore reviewed cases that had both opened and closed within the period 1 February 2008 and 30 June 2008. This means that the age profile of cases reviewed did not exceed 5 months. Cases that opened before 1 February or were still open at the time of the audit were not reviewed and this report does not therefore comment on those cases. **This report does not, therefore, represent how all miners cases have been, or are being presently, handled by LCS. Nor does this report explore how information**

**obtained by LCS caseworkers is referred to SRA, or the action it takes to explore potential conduct issues.**

## **2.6 Findings of the audit**

In total, 274 cases were audited. The approach was to look for evidence on the file that caseworkers had explained matters fully and the miner fully understood how any offer made compared to other similar complaints.

One of the Commissioner's main concerns was that miners who reached a conciliated agreement on their complaint should get similar offers of compensation to those cases that went to adjudication. There was a body of evidence on compensation levels available to LCS caseworkers from cases that adjudicated in 2006 and 2007 to enable them to gauge an appropriate compensation level and thereby achieve consistency across conciliated and adjudicated cases.

The 2008 audit found that in conciliated cases 92% of miners obtained compensation for both the refund of their deduction and an award for poor service. This compares very favourably against the same period in 2007, when only 27% received payments for both aspects in conciliated complaints.

A concern was identified in this audit regarding the time taken to provide adjudication decisions regarding one particular firm who had refused to conciliate complaints. An adjudication decision should normally take six weeks but it was found that in 159 miners cases it took more than 12 weeks to make the decision and in a further 20 cases it has taken over 20 weeks. LCS has said that the main reason for this was the lack of availability of adjudicators.

LCS has said that it has now taken measures to deal with these cases. This position will be monitored by OLSCC.

Overall, there has been an improvement in the way LCS caseworkers are now handling miners' complaints, with the audit finding that a reasonable outcome where information was appropriately shared; the level of compensation was explained; and a suitable amount of compensation obtained was achieved in 99% of cases.

## **2.7 Conclusion**

The Commissioner has always been aware of the public interest in miners' cases and has used her audits to focus LCS' attention on improving their performance in this area.

The 2006 audit highlighted significant concerns regarding LCS' handling of miners' complaints. A further audit in November 2007 showed some improvements had been made but that there were still areas of concern that needed to be addressed to ensure miners' cases were dealt with appropriately.

The Commissioner raised these further concerns in her Special Report, published in January 2008 and asked LCS to focus on the key findings as a means to further improve the way they handle miners' complaints.

Overall, this audit has found that in the cases audited LCS has addressed the issues raised by the Commissioner which in turn has brought about significant improvements in the LCS' handling of these miner's cases, ensuring that clear and accurate explanations are being given, enabling miners to make informed decisions to resolve their complaints. Appropriate levels of compensation are being made in these cases and where necessary conduct matters are being referred to the SRA.

Throughout the past few years the Commissioner has made a number of recommendations to LCS on it's handling of miners complaints and LCS has made progressive improvement. The Commissioner is pleased to note that the results of this audit show that LCS has handled the vast majority of the miners' complaints audited in a reasonable manner. This is a satisfying outcome and needs to continue to ensure that this vulnerable group of complainants receive the quality of complaints handling they deserve.

## **3 Background**

### **3.1 Complaints to the Law Society regarding solicitors firms who made deductions from miners compensation payments**

An explanation of the Department for Trade and Industry's (DTI)<sup>1</sup> personal injury scheme set up in 1999 to compensate miners (or if they were deceased, their widows and estates) for specific respiratory diseases and hand injuries related to coal mining is given at Appendix A. This appendix also explains that some solicitors firms deducted "success fees" from the miner's compensation and in other cases firms made deductions from compensation awards where the miner had entered into agreements with claim handlers.

If a miner was concerned about deductions made from their award and could not resolve this with their solicitor, they could raise a complaint with the Legal Complaints Service (LCS).

### **3.2 Complaints by Miners to LCS**

By June 2008 the LCS had received over 3500 complaints from miners and their families. These mainly related to deductions made by solicitors from the DTI compensation amounts paid to the miner and to costs information provided by the solicitor's firm.

### **3.3 Handling of miners complaints by LCS**

When investigating a complaint LCS caseworkers' should determine whether the solicitors firm had provided an adequate service. In miners' cases specifically, LCS caseworkers had to consider whether the solicitor correctly advised the miner in relation to any deduction they made by explaining that the Government was paying for the solicitor's legal fees or that other solicitors were offering the same service and not making similar deductions from the compensation award. Where a claims handling agreement was signed by a miner with a trade union or with a referral agency, the LCS caseworker should also consider, whether the solicitor adequately advised the miner on the implications of that agreement.

In most cases, an LCS caseworker will try to resolve complaints through conciliation. This involves negotiating with the miner and their solicitor to find a solution to the complaint, which can include a payment of compensation where poor service by the solicitor is found. LCS caseworkers have guidelines available to them regarding the category of seriousness of the poor service and the related level of compensation for it.

Some complaints from miners could not be resolved through conciliation. These cases were then referred to an LCS adjudicator to consider the evidence gathered from both parties to inform an adjudication decision on the complaint. These decisions for the most part concentrated on the solicitor's

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<sup>1</sup> The DTI are now the Department for Business, Enterprise and Regulatory Reform (DBERR)

advice regarding any fees deducted and on the costs information given to the miner by the solicitors firm.

LCS adjudicators took the view that the deductions taken from miners' compensation awards were a direct financial consequence of the poor service provided by the solicitor and were therefore recoverable by the miner. In addition to this, adjudicators also considered whether to award an additional amount as compensation for poor service. In most cases, adjudicators decided that the deducted amount was to be repaid in full and also awarded a compensation payment.

### **3.4 Effectiveness of the handling of miners complaints by LCS**

An audit by the OLSCC Research and Investigations team in 2006<sup>2</sup> raised concerns about the effectiveness of LCS's handling of miners complaints. The main issues identified in the 2006 audit related to:

- caseworkers not fully investigating complaints;
- delays; and
- failing to advise miners of their options to resolve their complaints and the levels of compensation they might receive.

It was found at that time that in 57% of conciliated cases miners were agreeing to settle on the basis of the solicitor's offer without the LCS caseworker appropriately advising them on the range of options available to resolve their complaint.

These concerns were raised in an audit report issued in July 2006 and a number of recommendations were made. LCS and SRA implemented some but not all of these recommendations.

As miners' complaints continued to be received in significant numbers and in the light of the considerable public interest in the handling of these complaints, the Commissioner considered it necessary to conduct a further audit, which took place in November 2007.

The results of that audit appeared in a Special Report: Investigation into the handling of Coal Health Scheme complaints, by the Legal Complaints Service and The solicitors Regulation Authority<sup>3</sup> which was issued in January 2008. The results showed that some improvement had been made but there were still considerable areas of concern.

That audit found a number of good examples of LCS caseworkers fully explaining the options for resolving complaints to miners and suitably investigating their complaint. However, there were still issues identified regarding the consistency of information given to miners and concerns at the outcome of some complaints. In particular, it was identified that there were

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<sup>2</sup> [http://www.olsc.gov.uk/docs/coal\\_health260706.pdf](http://www.olsc.gov.uk/docs/coal_health260706.pdf)

<sup>3</sup> [http://www.olsc.gov.uk/docs/miners\\_special\\_report.pdf](http://www.olsc.gov.uk/docs/miners_special_report.pdf)

significant differences in the levels of compensation for miners complaints resolved through adjudication and those resolved via conciliation - even though the issues raised were similar.

The main findings of the 2007 audit were that:

- miners who reached a conciliated outcome to their complaint on average received lower awards than cases that went to adjudication.
- LCS caseworkers were not using findings from adjudicated decisions sufficiently when conciliating
- there was inconsistency in the explanations that were given to miners regarding how their complaints could be resolved
- LCS management systems were not identifying and correcting any flaws in the way miners complaints were being handled

The Special Report identified that over 55% of conciliated cases did not obtain a level of award that similar complaints achieved at adjudication and that in over 10% of cases the miner was not made aware that their complaint could be taken to adjudication.

These findings raised concerns because conciliation is LCS's preferred method of resolving complaints. LCS pointed out in a letter to OLSCC on 31 January 2008 that generally around 46% of complaints conciliate, compared to 6% that are adjudicated (with the majority of other complaints closing due to LCS finding that the complaint was not upheld). LCS highlighted that the advantages of conciliated cases are that they generally settle on average 8-9 months more quickly than adjudicated cases. LCS also pointed out that very few miners in conciliated cases requested compensation for poor service.

The Commissioner accepts that conciliation is generally a quicker method of obtaining resolution than through adjudication. However, she was concerned that conciliating should not be at the expense of a fair outcome in relation to similar complaints. The Commissioner therefore wanted to ensure that LCS caseworkers made miners fully aware of all the options for resolving their complaints and of the compensation levels achieved in similar complaints. Miners could then consider whether the offer from the solicitor was broadly in line with the amounts they might get if they chose the route of adjudication. This approach was intended to ensure that consistent and fair outcomes were achieved, whatever the method of resolution chosen.

The Commissioner issued her Special Report in January 2008 and identified a number of specific issues to be addressed by LCS that she hoped would help to improve the way miners' complaints were handled. These issues are listed in Appendix B. In particular, for cases that were conciliated LCS caseworkers were expected to explain to the miner:

- all the options available to them to resolve their complaint
- the difference between a payment of compensation that was related to the deduction from their award and compensation that was offered for distress and inconvenience
- whether the amount of compensation being offered by the solicitor was appropriate to the miner's personal circumstances

Giving this information to the miner would help ensure they understood whether any compensation offer made to them was appropriate to their circumstances and whether it was broadly in line with similar complaints. This would enable them to make an informed decision on whether to accept the conciliation offer.

A subsequent audit was therefore undertaken in mid-2008 to consider whether the issues raised in the Special Report had been addressed and if LCS were now handling miners' complaints in an acceptable way. This report details the findings from that audit.

## 4 Audit approach

The audit took place in July 2008 and was undertaken to establish how LCS was currently handling miners complaints and whether the issues identified in the Special Report had been addressed.

Assessment against most recommendations in the Report could be considered through the auditing of files. The audit approach was therefore to look for evidence on the file that caseworkers had explained matters fully and the miner fully understood how any offer made compared to other similar complaints.

It was appropriate to only review cases that opened after LCS had received the Special Report, which was issued in January 2008. It was also necessary to review cases that had been closed so that it could be established how LCS had brought the cases to a conclusion.

The audit therefore reviewed cases that had both opened and closed within the period 1 February 2008 and 30 June 2008. This means that the age profile of cases reviewed did not exceed 5 months. Cases that opened before 1 February or were still open at the time of the audit were not reviewed and this report does not therefore comment on those cases. **This report does not, therefore, represent how all miners cases have been, or are being presently, handled by LCS.**

The Technical Appendix at Appendix C explains the sample methodology. It was clear that, due to the small numbers of cases involved, a 100% sample would be appropriate. In total, 274 cases opened and closed between 1 February 2008 and 30 June 2008 were audited. All of the required files were provided.

One specific issue raised in the Report concerning suspension of cases related to a single firm. An additional 486 files relating only to this firm and only in regard to this particular issue were also reviewed.

## 5 Audit Findings

### 5.1 Conciliated cases

There were 165 conciliated cases audited. These fell into three main groups – the first being 28 cases that were dealt with through normal conciliation procedures. The other 137 cases related to separate initiatives that LCS agreed with two specific solicitors firms. These initiatives are explained in more detail below.

In reviewing all these conciliated cases the auditors assessed whether the LCS caseworker had resolved the miner's complaint in line with the points made by the Commissioner in her Special Report. These were that

- all complaints should be fully investigated
- all the options available to resolve their complaint must be explained to the miner
- the difference between a payment of compensation that was related to the deduction from their award and compensation that was offered for distress and inconvenience must be explained
- whether the amount of compensation being offered by the solicitor was appropriate to the miner's personal circumstances
- the right outcome was achieved for the miner

The table below reflects the audit findings:

Conciliation type	General files (28 cases)		First initiative* (96 cases)		Second initiative* (41 cases)	
	Number of cases Passed	%	Number of cases Passed	%	Number of cases Passed	%
<b>Complaint fully investigated</b>	<b>27</b>	<b>96.4</b>	<b>96</b>	<b>100</b>	<b>41</b>	<b>100</b>
<b>Miner informed of all resolution options</b>	<b>26</b>	<b>92.8</b>	<b>96</b>	<b>100</b>	<b>41</b>	<b>100</b>
<b>Explanation of difference between compensation related to deduction and compensation related to poor service</b>	<b>27</b>	<b>96.4</b>	<b>96</b>	<b>100</b>	<b>41</b>	<b>100</b>
<b>Appropriateness of amount of compensation explained</b>	<b>27</b>	<b>96.4</b>	<b>96</b>	<b>100</b>	<b>41</b>	<b>100</b>
<b>Number where award is consistent with similar cases</b>	<b>27</b>	<b>96.4</b>	<b>96</b>	<b>100</b>	<b>41</b>	<b>100</b>
<b>Appropriate outcome achieved</b>	<b>27</b>	<b>96.4</b>	<b>96</b>	<b>100</b>	<b>41</b>	<b>100</b>

\* - Details of these initiatives are at sections 5.2 and 5.3 of this report.

One of the Commissioner's main concerns was to ensure that miners who reached a conciliated agreement on their complaint received similar offers of compensation to those cases that went to adjudication. This audit found that 92% of miners obtained compensation for both the refund of their deduction and an award for poor service. This compares very favourably against the same period in 2007, when only 27% received payments for both aspects.

There were only 4 cases found where no compensation was paid for poor service and for each of these the miner said that they only wanted to recover the amount that had been deducted from their award. LCS caseworkers did explain that the miner could receive additional compensation and made it clear how much this was. However, these miners were happy to accept a refund of the deduction only.

These results reflect that LCS caseworkers are now being clearer in their explanation to miners of the types and level of compensation they might achieve. In one example the solicitors firm said they were prepared to offer a refund of the deduction only. The caseworker told the solicitor that they would inform the miner of this and also tell them that they could receive compensation for poor service. The caseworker then explained this clearly to the miner and said that if the miner did not want to accept the offer they would continue to investigate and if necessary refer the case to adjudication. The caseworker also explained how much adjudicators were awarding in similar complaints.

The miner rejected the offer of the deduction only and the caseworker went back to the solicitor, who then offered the deduction plus £250 compensation. The miner was very happy to accept this and complimented the caseworker on the speed of conciliation (as it only took two days between the initial offer and reaching agreement).

Other examples were also seen on this audit of caseworkers explaining to miners that the level of compensation the solicitor was offering for poor service was not sufficient and more could be achieved if the case went to adjudication. In some cases the miner was prepared to accept what was offered anyway but such explanations enabled them to make an informed choice.

For example, in one case the solicitor offered a refund of the deduction of £881 but only offered £19 as an amount of compensation for poor service. The caseworker told the miner that this amount was "significantly less" than the amount they would be likely to get at adjudication, taking into account similar cases. The miner rejected the offer. The firm then increased it by £100. The caseworker told the miner this amount was still less than an adjudicator might award. However, the miner was prepared to accept the figure of £119 as compensation and the complaint was conciliated on that basis.

This case contrasts with a similar one identified in the Special Report, where a miner accepted the £19 figure because the caseworker did not clearly explain that the amount was not consistent with similar levels of compensation.

These examples show that LCS caseworkers have taken on board the issues raised by the Commissioner. There is much more clarity in the explanations given, more consistency in the approach taken by caseworkers and the level of compensation received by miners whose cases are conciliated are now much more in line with cases that are adjudicated. These improvements are welcomed and need to be maintained to ensure that future complaints are managed in the same way.

As the above table shows, there was therefore just one case where it was considered that the LCS caseworker had not provided a suitable explanation to a miner. Overall, there has been a significant improvement in the way LCS caseworkers are now handling miners' complaints, with the audit finding that a reasonable outcome was achieved in 99% of conciliated cases

## **5.2 First initiative for miner to deal directly with solicitor**

LCS has undertaken a small number of initiatives in conjunction with individual firms in which those firms have agreed to provide a process that refunds any deductions the firm made from miners and to also pay them a level of compensation.

In the first initiative reviewed, the relevant firm had handled a large number of compensation claims for miners. In most cases they had made a deduction from the miner's compensation that was then forwarded to a third party. Following negotiations with LCS, the firm agreed to refund any deduction in full and also offered a compensation payment of £150. In all, 96 of the 165 conciliated cases audited were part of this first initiative.

The process followed was that on receipt of a complaint about this firm an LCS caseworker contacted the miner to explain the process. They also explained that the settlement would generally be a reimbursement of the deduction plus an additional compensation amount. A letter was then sent to the miner outlining the initiative and explaining other options such as adjudication. The miner was also told at the outset that the LCS caseworker would maintain an overview role throughout the process.

The miner was made aware of the levels of compensation awarded at adjudication for similar complaints. Where they accepted the offer, the firm sent a cheque to them and informed LCS that payment had been made. The LCS caseworker then contacted the miner to confirm their cheque had been received and that they were happy to close their complaint.

LCS explained to auditors that a benefit of this approach was that miners received their compensation very quickly. The audit found that generally this was the case. On average the process from initial contact with the miner to closure of the file took 33 days.

As noted above, in almost all the complaints under this initiative the firm paid £150 compensation. This amount is less than similar cases were awarded at adjudication. However, miners were made aware that £150 was less than they

might get at adjudication and in all but two cases were happy to accept the figure offered. In those two cases the miners refused the offer and asked LCS to investigate further. These cases were then conciliated for the deduction amount plus compensation for poor service of £200 and £250 respectively.

Whilst it would have been preferable for the offer of compensation to have been more in line with the £200-250 achieved at adjudication, this needs to be balanced with the speed the compensation was made available and the fact that almost all miners were happy to accept the figure offered, even though they knew more might be obtained through adjudication.

It is also worth noting that when the miner was unsure of the amount of the deduction, the firm used their records to confirm the correct amount. In a few cases the miner identified a deduction amount that was actually less than the amount shown in the firm's records. In all of these cases the firm paid the higher amount.

### **5.3 Second initiative to deal with multiple complaints at a firm**

There were also 41 cases that were handled through another initiative with a different firm of solicitors. Similarly, this firm had also handled a large number of compensation claims on behalf of miners. A number of complaints had been received about deductions from this compensation.

The approach in this initiative was different to that taken with the first firm. LCS caseworkers discussed a resolution approach with the firm and then visited them to review the evidence on the complaints raised. The relevant miners had been told a few days in advance that their complaint was going to be discussed at the firm. Once individual details were identified, the LCS caseworkers then rang the miner to discuss their complaint.

They explained that the firm was making an offer to settle their complaint on the basis of a refund of the deduction in full plus £150 additional compensation. They informed the miner of other options available to them and of the compensation amounts achieved in similar complaints. In each case the miner accepted the amount offered.

Again this initiative provided a speedy resolution for the miner and the amount offered was in line with amounts usually awarded in LCS' "modest" compensation category for similar complaints. However, it was less structured than the first initiative described above, with contact and communications with the consumer being more limited.

### **5.4 Overall comment on initiatives**

Both these initiatives provided a speedy result. Generally, auditors preferred the approach taken on the first initiative as, importantly, this offered the miner support through an oversight role that was maintained throughout by the LCS caseworker. This ensured that all the appropriate information was given to the

firm and the caseworker then ensured that all the relevant processes were followed in making payment to the miner.

Another positive element was that the LCS caseworker checked with the miner to confirm that payment had been received and they were happy to have their file closed. In one case the caseworker rang the miner and was told the payment had not been made, although the firm had informed LCS that it had been sent. When the caseworker raised this with the firm they checked the position and it was identified that an administrative error had occurred and the miner's payment had not been sent out. The firm quickly rectified this. This shows the value in having the LCS caseworker oversee the process.

Overall, this appeared to be a pragmatic approach to resolving a large number of complaints against a firm and helped to obtain a swift and appropriate solution for the miner.

It is known that further initiatives are planned, in which the solicitors firm will be responsible for identifying clients who are miners and writing directly to them to discuss compensation related to deductions. We are concerned that this approach takes away the LCS role of overseeing the process and brokering contact between the firm and the miner. We therefore feel that it is essential that LCS adequately monitor the rollout of this process and maintain an appropriate role in overseeing the effectiveness and fairness of the process.

## **5.5 Non-conciliated cases**

There were 109 non-conciliated cases also audited. These included 67 cases where the complaint made was not upheld. In most cases this was because a miner had raised a complaint but they were unsure whether a deduction had been made from their compensation or not. The solicitors firm were then able to provide evidence to the LCS caseworker that no deduction had been made. Other non-conciliated cases included those where the miner was complaining about the level of the award they received from the DTI. This is not an issue LCS is able to consider and these miners were advised of possible alternative action.

## **5.6 Other issues**

### Delay:

Previous audits had highlighted concerns regarding delays in progressing miners complaints and the Commissioner requested that LCS have in place sufficient resources to deal with the number of anticipated miners complaints. This audit identified that 101 cases had to wait over a month before being allocated to a caseworker. However, once allocated, only 2 cases were identified as being delayed by more than 30 days.

### Referrals to the Solicitors Regulation Authority (SRA):

Complaints related to the deductions made by solicitors firms also raise the issue of potential breaches of the solicitors conduct rules, which are investigated by SRA. The Commissioner raised an issue regarding the time taken to refer cases to the Solicitors Disciplinary Tribunal.

The audit identified that SRA referrals are still being made, although there was some inconsistency found in the approaches taken. LCS has confirmed that a new approach is being implemented to improve caseworkers understanding of what is required. The issue of how misconduct matters arising from miners' complaints are being handled has been raised in separate discussions with SRA.

## **5.7 Suspension of files**

A specific issue was raised in the Special Report regarding the handling of complaints against one firm. This firm had made deductions in a large number of cases and by June 2008 over 480 complaints about this firm had been received regarding these deductions

LCS investigations into the early complaints concluded that the firm had provided a poor service. The firm disagreed and refused to conciliate. The complaints were referred to LCS Adjudicators to consider the evidence and make adjudication decisions. In most cases the adjudicator determined that the firm had provided poor service and required them to repay the deduction and to pay an additional amount of compensation.

The firm disputed these decisions and refused to make any payment of compensation at that time. They requested that their case be heard at the Solicitors Disciplinary Tribunal (SDT) and, following a hearing in June 2006, a further hearing is to be held. This has been delayed on a number of occasions and is now set for January 2009.

The Commissioner was concerned that the 2007 audit had found that a number of complaints against this firm were put on hold prior to the June 2006 hearing. These files had remained suspended whilst the date for the further hearing was being determined, some for a period of over 12 months. The Commissioner recommended that LCS stopped this practice and asked for all such cases to be fully investigated and adjudicated upon. This would then enable LCS to action these cases immediately after the awaited SDT hearing.

In January 2008 LCS confirmed that the practise of suspending these complaints had ceased. To verify this and confirm that these cases were being fully investigated this audit reviewed LCS actions on or after 1 February on complaint files against this firm.

The audit reviewed 486 files and found no evidence of complaints against this firm being suspended after February 2008. All the complaints raised were being investigated fully and where poor service was identified the complaint was referred for an adjudication decision.

However, the audit did find that there was significant delay in these adjudication decisions being made. The LCS target is to allow six weeks to make the adjudication decision and then two weeks to notify the outcome to the consumer and the firm. Miners were therefore sent letters from LCS telling them the date their case had been referred for adjudication and that the process would take approximately two months from that date.

The audit found that many cases took much longer than this – see table below:

<b><u>Delay in adjudication decisions</u></b>	<b>Number of files where the adjudication process was found to have taken more than:</b>		
	<b>12 weeks</b>	<b>16 weeks</b>	<b>20 weeks</b>
<b>Adjudication decision made</b>	<b>44</b>	<b>58</b>	<b>14</b>
<b>Adjudication decision not yet made (as at 31/7/08)</b>	<b>24</b>	<b>33</b>	<b>6</b>

From the table it can be seen that it has taken over 12 weeks to make the adjudication decision in a total of 102 cases and in a further 14 cases it has taken over 20 weeks. The decision-making process is therefore clearly taking much longer than it should. By the time the audit was completed there were still 153 cases awaiting a decision, of which 63 had been referred to the adjudicator over 3 months before and had still not had a decision made. It was also a concern that 9 cases were referred back to LCS by the adjudicator because additional details were required in order to make a decision, creating further delay.

It is recognised that there have been a large number of complaints raised against this particular firm. LCS has accepted that there were insufficient adjudicators available to handle the number of cases involved. This has resulted in significant delays for many miners in their adjudication decision being made.

LCS has said that it has now taken measures to deal with these cases. This position will be monitored by OLSCC.

## 6 Conclusions

Miners' complaints have continued to be the subject of much press and political debate, including questions raised in Parliament. The Commissioner has highlighted her concerns about this vulnerable group of consumers and has used her audits to focus LCS' attention on the areas where improvements in their performance needed to be made.

The 2006 audit highlighted serious concerns regarding the need to reduce delay, to fully investigate complaints, and to ensure that miners had sufficient information to make an informed choice in resolving their complaint.

A further audit in November 2007 showed that as a result of the Commissioner's first audit findings some improvements had been made, with some caseworkers giving detailed information to miners on how to resolve their complaints. However, there were considerable inconsistencies. In particular there was a difference in the levels of compensation awarded in cases that conciliated against those that adjudicated, even though the complaints were generally similar.

The Commissioner raised these and other issues in her Special Report, published in January 2008. She asked LCS to address the key findings as a means to further improve the way they handle miners' complaints. In particular, she highlighted the need for improved explanations to be given to miners in conciliated cases, the need to ensure that complaints were fully investigated and that the outcomes achieved were consistent with similar complaints.

The audit took place in July 2008 and was undertaken to establish how LCS was currently handling miners complaints and whether the issues identified in the Special Report had been addressed.

Assessment against most recommendations in the Report could be considered through the auditing of files. The audit approach was therefore to look for evidence on the file that caseworkers had explained matters fully and the miner fully understood how any offer made compared to other similar complaints.

It was appropriate to only review cases that opened after LCS had received the Special Report, which was issued in January 2008. It was also necessary to review cases that had been closed so that it could be established how LCS had brought the cases to a conclusion.

The audit therefore reviewed cases that had both opened and closed within the period 1 February 2008 and 30 June 2008. This means that the age profile of cases reviewed did not exceed 5 months. Cases that opened before 1 February or were still open at the time of the audit were not reviewed and this report does not therefore comment on those cases. **This report does not, therefore, represent how all miners cases have been, or are being presently, handled by LCS.**

The findings of this audit show that LCS have taken on board the issues highlighted by the Commissioner and have addressed these appropriately. Individual miners are now being given clear and accurate explanations regarding their circumstances and so are able to make informed decisions to resolve their complaint.

Overall, there has been an improvement in the way LCS caseworkers are now handling miners' complaints, with the audit finding that information was appropriately shared; the level of compensation was explained; and a suitable amount of compensation obtained was achieved in 99% of cases audited.

There was an issue identified regarding delays in making adjudication decisions. LCS has said that it has now taken measures to deal with these cases. This position will be monitored by OLSCC.

Overall, this audit has found that LCS has addressed the issues raised by the Commissioner which in turn has brought about significant improvements in the LCS' handling of miner's cases, ensuring that appropriate levels of compensation are being made and where necessary conduct matters are referred to the SRA.

Throughout the past few years the Commissioner has made a number of comments on the LCS' handling of miners complaints and LCS has made progressive improvements. The Commissioner is pleased to note that the results of this audit show that LCS has handled the vast majority of the miners' complaints audited in a reasonable manner. This is a satisfying outcome and needs to continue to ensure that this vulnerable group of complainants receive the quality of complaints handling they deserve.

### Coal Health Compensation Scheme

The Department for Trade and Industry (DTI) set up a personal injury scheme in 1999 to compensate miners (or if they were deceased, their widows and estates) for specific respiratory diseases and hand injuries related to coal mining.

Because of the high number of claims expected, Claims Handling Agreements (CHAs) governing the processing of claims were operated. This avoided the need for individual claims to be taken through the court system. Instead, claims were made through a solicitor, or a claims handling agent to the DTI's claims processing contractor. Once all the data relating to a claim has been collected, the compensation due was calculated and an offer based on the calculation was made to the miner or their family. The Government met the cost of the claimant's legal representation, where these claims were successful. The CHAs set out how much solicitors would be paid for each successful case.

However, in some cases charges were still made by solicitors with a deduction of a success fee made from miners' compensation before it was paid to them.

Where claims-handling agents or trade unions were involved in referring miners to a solicitor, claimants were often asked to sign agreements authorising the solicitor to deduct a fee out of any compensation received, in the event that their claims were successful. This amount would then be deducted from the compensation paid to the miner and be sent to the claims handling agent or trade union by the solicitor.

As these compensation schemes were set up to ensure that all costs incurred on behalf of claimants were recoverable from public funds, miners and their families were able to pursue their claims at no cost to themselves. Their solicitor should have advised them about this and also advised on the agreements they had signed to allow deductions from their compensation.

The Law Society has stated that once miners engaged a solicitor to progress their claim for compensation the solicitors firm should have advised them on the implications of any claims handling agreements and also explained that DTI were paying the legal costs of successful claims. If the firm proposed making any deductions from any successful claim, the miner should have also been informed that they could use other firms of solicitors who were not making deductions from compensation.

Issues identified in the Legal Services Complaints Commissioner's Special Report – Investigation into the handling of Coal Health Compensation Scheme complaints by the Legal Complaints Service and The Solicitor's Regulation Authority

Issue 1

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

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

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

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

Issue 2

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

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

Issue 3

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

Issue 4

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

#### Issue 5

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

#### Issue 6

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

#### Issue 7

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

#### Issue 8

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

#### Issue 9

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

#### Issue 10

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

#### Issue 11

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

### Technical Appendix

The scope of this audit was to assess whether LCS have made improvements in the way in which they deal with the Coal Health Compensation Scheme cases since the publication of the OLSCC Special Report in January 2008.

The issues raised in the Special Report meant that 2 separate samples were required. The first sample required all cases that had opened and closed since publication of the report to be provided. This meant that any case that had opened on or after 1<sup>st</sup> February 2008 and also closed on or before 30<sup>th</sup> June 2008 was requested for audit.

The second sample related to a specific issue raised in the Special Report regarding the handling of complaints against one firm. The second sample required all cases relating to this firm that had closed on or after 1<sup>st</sup> February 2008 and before the start of the audit (14<sup>th</sup> July 2008) or were currently open at the time of audit to be provided.

#### **First Sample**

The first sample needed to be broken down into 2 groups (conciliated and non-conciliated) in order to report on the different issues presented in the Special Report. The total number of cases that satisfied the overall criteria was 283, 166 of these were conciliated. A sample of these cases would have required 117 cases to be audited. The non-conciliated group was 117 cases that would result in a sample of 90 cases. As the sample figures only differ from the actual number of cases by a total of 76 cases it was decided that, due to the small numbers of cases involved, a 100% sample would be appropriate.

All 283 cases were delivered for audit. Of the 283 cases there were 9 cases that fell outside the scope of the audit for various reasons (e.g. the complaint was actually received before 1<sup>st</sup> February 2008). The remaining 274 were used to provide the analysis in the main body of this report.

#### **Second Sample**

The second sample looked at the cases relating to a specific firm for one particular issue. Because of the importance of this issue, and the need to assure the Commissioner that these cases were being dealt with appropriately it was decided that all the cases relating to this issue should be reviewed. A 100% sample would provide a definitive assessment of the issues raised in the Special Report.

Overall, there were 486 files identified as being related to this firm. During the audit 249 cases were delivered, 26 of which were outside the scope of the audit. The remaining 237 were reviewed at a later date as they were with the adjudicators when the initial audit was conducted. All of these were within the scope of the audit.