

Office of the Legal Services Complaints Commissioner

Indicative Target Audit November 2008

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**Technical Appendix
Criteria for Indicative Target Audit 2008**

1. Introduction

1.1 Office of the Legal Services Complaints Commissioner (OLSCC)

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

1.2 The Law Society

The Law Society is structured into 3 separate functions:

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

1.3 Performance Targets

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

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

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

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

1.4 Indicative Target Audit

The OLSCC conducts independent audits as part of its mandate to assure the Commissioner that performance improvement is being made in the handling of consumer complaints. In October 2008, the OLSCC Research and Investigations team completed an indicative audit of LCS performance against the quality target set, and the results are presented in this report. The aim of the audit was to review LCS performance against the quality target set by the Commissioner in the 2008/2009 plan year.

The results, however, can only provide an indication of achievement by the LCS against the target set by the Commissioner at this stage of the year, as final target achievement is based on cases from throughout the year. This means that the indicative audit is only measuring cases with a maximum age profile of 6 months whereas the Year End Audit will measure cases with a maximum age profile of 12 months. A final and definitive assessment of LCS performance against the target will be conducted by OLSCC in April 2009.

The Indicative Target Audit (ITA) was conducted in line with the Audit Plan that was shared with the LCS in September 2008.

A file sample of 354 service files, opened and closed between 1 April 2008 and 30 September 2008, was selected at random for audit from a total population of 4,295 files. Cases selected were representative of the age profile of cases for that period. The audit was carried out at Law Society offices in Leamington Spa. The technical appendix at **Appendix 1** provides further detail on the sampling methodology.

2. Methodology

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

Target Q1

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

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

Specifically, the audit measured whether:

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

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

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

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

3. Overall Results

The table below shows the overall results for LCS performance against the target set by the Commissioner, for the period 1 April to 30 September 2008.

Table 1

Target	Target wording	Achieved %	Target %	Pass / Fail
Q1	LCS to achieve a reasonable outcome and service, without significant failings, on at least 90% of cases closed	92.4%	90%	PASS

These results show that LCS achieved a reasonable outcome for the consumer, without any significant failings, in 92.4% of the cases audited. The remaining cases (7.6%) either had a significant failing or did not have a reasonable outcome.

4. Detailed Audit Findings

This audit looked at 354 cases that had both opened and closed between 1 April and 30 September 2008. Cases selected were divided into two age groups: 0–3 months and 4-6 months at date of closure. We examined a total of 307 cases in the 0-3 month category and a total of 47 cases in the 4-6 month category. The number of cases examined in each of the two separate age groups was in direct proportion to the number of cases in the age groups in the total population.

The following table shows a breakdown of the overall number of passes and fails by age category.

Table 2

Age Group	PASS		FAIL	
	No. of files	%	No. of files	%
0-3 months	285	92.8%	22	7.2%
4-6 months	42	89.4%	5	10.6%

Although the Indicative Target Audit results indicate that LCS are, at this stage, in line to meet the Commissioner's target of 90%, this table shows that the overall result was positively affected by the number of passes in the 0-3 month age group of cases. This table also shows that there were proportionately fewer passes in the 4-6 month age group. This is a concern to the Commissioner, as the older a complaint becomes, the greater the opportunity for error. The Year End Target Audit in April will examine cases across several different age profiles, up to a maximum of 12 months. Currently, the general pattern of achievement by age group is downward. If this trend continues it will be difficult for LCS to meet its target in the second half of the performance year, and therefore for the year overall. LCS must now implement improvements, or quality checks, to help ensure it meets its target.

The purpose of our audit was to review LCS performance so far, towards achievement of the target set by the Commissioner. To pass the target LCS has to demonstrate that in at least 90% of closed cases the outcome was a reasonable one for the consumer and that there were no significant failings during the life of the complaint. If the outcome was reasonable for the consumer, and although there were some failings on the file the failings in themselves did not change the outcome or severely impact upon the consumer's experience, then this too would also be considered a pass. Cases that had an unreasonable outcome or a significant failing would be considered a fail.

Table 3 shows that although 92.4% of cases examined passed the Commissioner's measure, over 10% of those cases had some failings on file. Although the failings identified were either not significant enough to impact on the eventual outcome for the consumer or had been materially important but had been rectified before the case closed, this does mean that a total of 36 consumers experienced an inconsistent service compared to the rest of the audited population.

Table 3

Category	Category Assessment	No. of Files	%
Cases with reasonable outcome and no significant failings	PASS	291	82.2%
Cases with reasonable outcome but some failings	PASS	36	10.2%
Cases with an unreasonable outcome or significant failing	FAIL	27	7.6%
Total		354	100.0

Table 4 overleaf, shows a breakdown of the LCS cases that had failings on them in relation to each high level criteria. The findings have been broken down further to show the proportion of cases that had an unreasonable outcome and the proportion that had a significant failing, by age category.

Table 4

Criteria	0-3 months		4-6 months	
	No. of cases with an unreasonable outcome	No. of cases with a significant failing	No. of cases with an unreasonable outcome	No. of cases with a significant failing
Decision-making	6 (100%)	3 (18.7%)	0	1 (20%)
Consumer circumstances	0	0	0	0
Administration of the complaint	0	12 (75%)	0	4 (80%)
Decision-making and administration of complaint	0	1 (6.3%)	0	0
Total	6	16	0	5

The following table presents the findings according to the main areas of failings for each case and shows a summary of the total number of files that failed in a particular area.

Table 5

Criteria	Area	Issue	Total no. of cases
Decision-making	Understanding and applying LCS policy	Excluded matter	1
	Adequate investigation	Identifying all issues appropriately	5
		Conducting all reasonable enquiries	1*
		Provision of information	1
		Managing expectations	2
	Closure	Inappropriate closure	1
Administration of complaint	Administrative errors	File designation	8*
	Delays	Progressing the matter	7
		Allocation delay	2

*1 case was defective in both the 'decision making' and 'administration of complaint' categories.

4.1 Excluded Matter

LCS introduced a new Complaints Acceptance Policy in May 2008 following a review of the 1999 Excluded Matters policy. The aim of the revision was to make the policy, and how it was applied, clearer and more easily understood. The revised policy sets out the circumstances in which LCS may or may not accept a complaint. It expects consumers to bring a complaint to LCS at or around the same time that the issue is occurring but also allows for the use of discretion in respect of complaints that are made outside of LCS time limits. In accordance with this policy, LCS operates a 6 month time window beyond which it will not usually investigate a complaint unless, amongst other reasons, the consumer can show good cause for any delay in making a complaint.

This audit found some good examples where caseworkers evaluated the consumer's specific circumstances and although the complaint was outside the 6 month time frame, continued to investigate the matter. However, there was also evidence that the discretion to investigate complaints was not being applied consistently and fairly.

In one particular case, the consumer contacted LCS eleven months after his last contact with the subject solicitor. He had evidence to show that during that period of time he had engaged another solicitor to rectify the errors created by the original solicitor, to enable him to quantify any losses arising. The new solicitor had advised the consumer to give the subject solicitor a final opportunity to put matters right before raising the complaint with LCS. There was also evidence to show that the subject solicitor had not responded to the consumer during the initial 6 month time limit raising concerns about the subject solicitor's conduct. The caseworker considered this evidence and concluded that there was insufficient reason to be able to exercise any discretion and the case was excluded on the basis that it was out of time. In our opinion, by not investigating some or all aspects of the case, LCS failed to exercise its discretion appropriately. This file failed because there was an unreasonable outcome for the consumer.

4.2 File Designation

The audit found evidence to suggest that some complaints are not being dealt with appropriately at the designation stage creating delays, duplication and confusion. In one case that failed a duplicate file was opened in LCS after a copy of a complaint letter received in SRA was referred to LCS in error. The complaint had already been investigated previously but no checks were made to verify the status of the referral and a second investigation was started. The duplication only came to light when the solicitor's firm pointed out that the complaint had already been dealt with and provided LCS with a copy of the closure letter.

There were also instances of where LCS had incorrectly raised complaint files in response to what were clearly enquiries. All of these cases were

considered to be fails. For example, in one case an enquiry took a month to be passed over to the relevant part of the organisation and caused the solicitor raising the enquiry on behalf of their client some anxiety due to justified concerns that an opposing firm would think a complaint was being raised against them.

In some of the other cases that failed, files were renumbered despite there being no new issues, no new evidence, and in one particular case no further activity. This is not only inappropriate but statistically misleading as each case will be merited with two closures when in fact only one case has been closed. For example, in a residential conveyancing complaint that was received by the Contact Centre in December 2007 the caseworker appears to have difficulty understanding what the heads of complaint are or how they should handle a situation where the solicitor involved has since left the practice. Eventually, almost 5 months later in May 2008, the case was passed to the Complaint Centre where it was renumbered, despite there being no new issues.

4.3 Adequate Investigation

The audit findings suggest that some caseworkers appear to lack a consumer focus when dealing with complaints. There is clear evidence to show that, in some of the cases that failed, caseworkers are not fully investigating consumer complaints because either not all the issues have been appropriately identified by the caseworker at the outset and are therefore omitted from the investigation, or because issues that have been identified by the caseworker at the start of the investigation are subsequently overlooked.

For example, LCS received a complaint about a firm of solicitors who, for 7 months, had been refusing to release a file of papers to their former client. When LCS made contact with the subject firm, the firm immediately complied with the request and the case was closed without any further investigation. However, by failing to release the papers without good cause, the solicitor has caused the consumer unnecessary delay, as well as, potentially been in breach of the solicitors' practice rules. Had the caseworker continued with the investigation it is possible that there may have been a finding of poor service for which the consumer could have been compensated. Fortunately, almost 3 months later, the case was reviewed by a caseworker-adviser and subsequently re-opened.

In another complaint concerning deductions made from a miner's compensation payment, the caseworker correctly identified that deductions had been made from both the miner's Chronic Obstructive Pulmonary Disease (COPD) claim and a Vibration White Finger (VWF) claim, and confirmed this with the consumer. The caseworker explained that LCS were liaising with the solicitors firm involved and that the firm was prepared to refund each of the deducted amounts plus a compensation payment of £150. In the event, the miner only received a refund of his COPD deduction plus the compensatory payment. The caseworker did not investigate why there was a

discrepancy and there was no evidence on file to explain why the VWF claim had not been progressed.

4.4 Delay

Progress and allocation delays still continue to be an issue, contributing to the overall number of fails. In one 0-3 month case a complaint is acknowledged and allocated quickly and the caseworker promises to contact the consumer in 10 days. There is no further contact with the consumer for a period of 44 days at which point the consumer is informed that their complaint is being excluded on the grounds that the complaint relates to the professional judgement of the solicitor in question and is therefore out of LCS jurisdiction.

In another case the consumer was advised to re-raise their complaint once litigation had been concluded. The consumer subsequently requested that his complaint be re-opened but the request was overlooked until 3 months later at which point the consumer received a letter from an LCS manager apologising for the delay and offering compensation. The case was closed within 2 weeks once the investigation re-commenced and shows that it could have been resolved very quickly if it had been dealt with correctly at the outset.

5. Conclusion

The Indicative Target Audit results show that LCS have, in the period 1 April to 30 September 2008, achieved a reasonable outcome, without significant failings, on 92.4% of cases closed. These results, however, can only provide an indication of achievement, at this stage, for the full 2008-09 performance year. Caseworker performance must be maintained at a sufficiently high level throughout the rest of the performance year and effort must be focused on the consistent handling of cases over 3 months of age, in order for LCS to meet its overall target.

The audit findings give rise to a number of concerns including:

- the lack of consistency in the application of the new Complaints Acceptance Policy
- the current file designation process
- the level of investigation carried out by caseworkers, and
- the delay in allocation and progression of files

Focusing effort on improving the failings identified from this audit will put LCS in a much stronger position for the Year End Target Audit and help to align LCS outcomes more closely with the requirements of the Legal Services Ombudsman (LSO). This in turn will help to reduce the number of cases that are referred back by the LSO, to LCS, for further investigation.

Overall it is clear that LCS needs to focus its efforts on maintaining the level of performance achieved in the first six months to ensure it meets the target at the level set for 2008/9, and to ensure that decisions made by caseworkers lead to a fair and reasonable outcome for consumers, with no significant failings on the case.

6. Glossary of Terms

Age profile	The age profile of a file is how long the complaint takes from being received by the Law Society to its resolution and closure.
Audit Plan	This is a plan issued by the OLSCC Investigations Team to the LCS. It outlines the purpose of the audit and the areas of work or processes to be audited.
Casework Advisor	An experienced Law Society caseworker who supports other caseworkers by providing advice on progressing difficult cases or resolving specific issues
Complaint	This is an expression of dissatisfaction about the service provided by a firm of solicitors where LCS takes action to conciliate and settle or investigate.
Complaint Centre	This is a team within the Law Society that considers more complex service complaints
Contact Centre	This is a team within the Law Society that considers less complex service complaints
Delay (allocation)	These are avoidable delays that occur between the receipt of the complaint from a consumer and it being passed to an LCS or SRA caseworker to begin investigating it.
Delay (progress)	These are avoidable delays that occur during the investigation of a complaint.
Designation	All correspondence from a consumer will either be categorised as an enquiry or a complaint. This process is referred to as designation.

Enquiry	Matters where the Law Society provides information, clarification or explanations of jurisdictions
Excluded matter	These are certain categories of matters that the Law Society do not normally investigate.
File Sample	This is a statistically valid selection of files that is representative and of a sufficient size to allow inferences to be drawn about the whole population.
(The) Law Society	A professional association that represents solicitors in England and Wales
Legal Complaints Service	The Legal Complaints Service (LCS) handles complaints from consumers about the service they have received from their solicitor. It is part of the Law Society but operates independently.
Legal Services Ombudsman	The Legal Services Ombudsman is a statutory postholder who is impartial and independent of legal bodies. The Legal Services Ombudsman's role is to ensure that the legal professional bodies conduct fair, thorough and efficient investigations of complaints about their members. When a consumer asks for a review of the way that a legal body has handled their complaint, the Legal Services Ombudsman considers whether the investigation took the relevant facts into account; the conclusions reached were reasonable and properly explained; and the outcome was appropriate. The Legal Services Ombudsman may consider the investigation to have been suitable or may ask the LCS or the SRA to reconsider its original decision.

Litigation	Civil litigation is a process for resolving public and private legal disputes on civil matters through negotiation or through the courts
Miners' Compensation Payment	Awards made to miners and their families to compensate them for specific injuries caused by working underground in British coal mines
Reconsiderations (LSO)	These are matters that the Legal Services Ombudsman has considered on behalf of a consumer and referred back to the Law Society for it to reconsider its original decision.
Renumbered	When a file is re-opened it may be renumbered, which results in a new reference number being used for the complaint.
Service File	This is a file that has been created following a consumer complaint about the service provided by a firm of solicitors
Solicitors Regulation Authority (SRA)	The SRA set the rules of professional conduct for solicitors and investigates complaints about misconduct. Where misconduct is found the SRA can take action such as reprimanding the solicitor.
Subject Solicitor	This is the solicitor about whom a complaint has been made ie the subject of the complaint

Sampling for the Indicative Target Audit 2008

Background / Introduction

The Indicative Target Audit was undertaken in October 2008. The aim of the audit was to carry out a mid year assessment of LCS performance against the quality target set by the Commissioner in the 2008/2009 plan year. The target is:

Target Q1

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

Sampling Methodology

OLSCC audit reports require reliable forms of evidence from which conclusions may be drawn, but it is neither practicable nor cost effective to examine the entire population of case files that opened and closed within the target period of 1 April – 30 September. Random sampling therefore was chosen to provide a means of gaining information about the population as a whole, without the need to examine the entire population. Random sampling ensures that every case file has an equal chance of selection.

Sample Size

The total number of cases that had opened and closed in the period 1 April to 30 September was reported to be 4,299 spread over two discrete age categories:

- Cases aged between 0–3 months at date of closure, and
- Cases aged between 4–6 months at date of closure

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

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

Confidence Level

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

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

Population Size

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

Using this methodology, the LCS population size of 4,299 and considering resource implications, we concluded that we needed to audit a total of 354 cases. This number would allow us to make inferences with a 95% confidence interval, and at most a 4% margin of error.

Variability in Population

The cases selected for the audit sample needed to reflect the distribution of cases across the two age profiles identified to ensure that it was representative of the total population. The sample figure of 354 was therefore proportionately distributed across the age profile of cases and then randomly selected from the entire population.

Over-sampling

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

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

Table 1

Age Profile	No. of cases in the sample period	Proportion	No. of cases realised in sample	Proportion	No. of cases requested (inc approx 10% over-sample)
Service 0-3mths	3733	86.8%	307	86.7%	338
Service 4-6mths	566	13.2%	47	13.3%	52
Total for sample period	4299	100.0%	354	100.0%	390

The sample was made up of service files only (conduct files are being examined separately), and no files were over 6 months old.

CRITERIA FOR INDICATIVE TARGET AUDIT 2008

Appropriate and Reasonable Decision-Making

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

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

Adequate Investigation:

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

Conciliation/ROM:

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

Closure:

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

Consumer Circumstances

- Individual consumer circumstances taken account of

Administration of the Complaint

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