

## **MINERS LOSING OUT ON FINANCIAL COMPENSATION FOR COMPLAINTS - NEW REPORT PUBLISHED**

The Legal Services Complaints Commissioner, Zahida Manzoor CBE, has today published (Tuesday, 15 January 2008) a Special Report critical of the Legal Complaints Service's (LCS) handling of Coal Health Compensation complaints.

The findings contained in this report show that different financial outcomes are being achieved for miners depending on a bewildering array of variables including whether a Member of Parliament is involved, the LCS caseworker handling the complaint and the co-operation of the solicitor's firm being complained about. Administrative failures and ineffective management controls have contributed to the problem of sick miners and their dependants losing out on financial compensation.

The report is the result of a second investigation the Office of the Legal Services Complaints Commissioner's audit team has undertaken within an 18-month period into the LCS's handling of Coal Health Compensation complaints. There are four key findings within the report and issues that must be addressed in the main by the LCS.

The Commissioner stated:

"The LCS side-stepped a recommendation from my first investigation in 2006 to revisit complaints that had not been investigated fully by insisting improvements had already been made. These new findings show that some of the same issues are still to be addressed.

"I hope this Special Report will act as a catalyst for improvements in the handling of current and future complaints from miners by the LCS. The issues

identified are not insurmountable and they are intended to act as a tool for improvement and support for the LCS. This situation can be turned around quickly.

“What I am advocating is good management and administrative checks and balances. The LCS will not need additional funding to raise its standards and change cultures. I have therefore tasked the LCS to respond to me on how they intend to address these issues. I will monitor its actions closely.”

The Commissioner’s optimism that improved management could resolve these issues is validated by positive examples seen by her audit team and set out in the Report, of LCS caseworkers providing a good standard of service to miners. The report urges the LCS managers to ensure that these examples of best practice are adopted by all.

The four key findings of the report focus on the two processes LCS caseworkers can use to resolve complaints – conciliation and adjudication. The report identified that although the majority of miners were more likely to receive greater compensation through adjudication some LCS caseworkers were recommending conciliation at levels of redress that were not appropriate to the circumstances of the miner’s case.

As the Commissioner stressed:

“I highlight the case of six individual miners who, in 2007, have shown real persistence in their complaints. Despite being encouraged to conciliate by the LCS they refused, and insisted that their complaints should be investigated and adjudicated. Through their persistence, each of these miners has, on average, correctly received an additional £1,700 compensation from their solicitors.

“Overall, without taking the corrective action I am proposing, miners’ complaints could become an Achilles Heel for the LCS. These problems mean that it is at risk of damaging its own reputation with the legal profession by

asking them to foot the bill to pay consumers additional compensation for its own poor service.”

The Commissioner focused on new complaints being received by LCS:

“I am pleased that the LCS, together with Kevin Barron MP, has held awareness raising sessions of its services with miners in the Rother Valley. This has resulted in many Rother Valley miners making legitimate claims against their solicitors to the LCS.

“This model of raising awareness should be used to extend this service to all mining communities in England and Wales. This can be done at the same time as the LCS making improvements to ensure it handles the complaints it receives in a fair, transparent and consistent manner. This will help ensure that all miners, with a legitimate complaint against their solicitor, can then receive a refund of any deduction inappropriately made by the solicitor and any compensation for the poor service they received.

“It is also important that if any of these complaints allege misconduct against the solicitor, this must then be referred to the Solicitors Regulation Authority who should bring to account the minority of solicitors who have abused the trust miners placed in them”.

Zahida Manzoor concluded:

“I have no doubt that all these issues can be resolved quickly. I will monitor closely the work of the LCS and SRA Boards and management as they ensure firm and timely action is taken to deal with these matters.” (Ends)

## **Notes to editor**

### **Media Contacts**

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### **Legal Services Complaints Commissioner**

Ms Manzoor CBE was appointed Legal Services Complaints Commissioner (the Commissioner) in February 2004 in addition to her role as Legal Services Ombudsman (LSO). The Commissioner only has powers in relation to the Law Society of England and Wales. Ms Manzoor was reappointed as both Commissioner and LSO for a period of three years in March 2006.

The roles of the LSO and the Commissioner are distinct. The LSO examines the handling of individual complaints by the legal professional bodies on behalf of members of the public. The Commissioner examines the Law Society's capability to handle complaints made about its members efficiently and effectively.

## **Background briefing on Special Report**

### **Conciliation and adjudication**

Conciliation is a process leading to the resolution of the complaint by agreement between the complainant and the solicitor, with the caseworker acting as a go-between and without the need for a decision by LCS. Adjudication is the process used when a formal decision is required, as the caseworker cannot broker an agreement between the solicitor and the complainant.

### **Background to the Coal Health Compensation Schemes**

Coal Health Compensation Schemes are the biggest personal injury schemes in British legal history. They were negotiated to compensate miners and their families for two mining-related health problems, caused by working underground in British Coal mines. The two conditions are:

- Chronic Obstructive Pulmonary Disease (COPD) - respiratory disease (chronic bronchitis and emphysema) resulting from the dusty conditions; and
- Vibration White Finger (VWF) – a disease caused by using vibrating tools.

British Coal was found guilty of negligence in two group actions in 1997 in relation to VWF and in 1998 in relation to lung diseases.

In January 1998 the Department of Trade and Industry<sup>1</sup> (DTI), took over responsibility for the accumulated personal injury liabilities of the British Coal Corporation.

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<sup>1</sup> Restructured and renamed in June 2007 the Department for Business, Enterprise and Regulatory Reform (DBERR)

DTI, in negotiation with the Claimants Solicitors' Groups<sup>2</sup> and subject to the approval of the High Court, introduced two compensation schemes for former miners, one for COPD and one for VWF. Potential claimants could make applications for compensation via their legal representative. The Government met the cost of the claimant's legal representation, where these claims were successful.

The schemes have now been closed to new entrants. As at 7 October 2007, a total of 762,000 claims had been made, 634,000 settled and total compensation of £3.6 billion had been paid to individuals under the schemes<sup>3</sup>. It is expected that by the time they close, the Government will have spent around £7 billion in total on the schemes.

### **Solicitors' Involvement in the Coal Health Compensation schemes and deductions from miners' compensation payments**

The Claims Handling Agreements negotiated between the DTI and the Claimant Solicitors' Group provided very detailed procedures that had to be followed when dealing with claims arising out of these specific industrial injuries. They also set out how much solicitors would be paid for each successful case.

There was widespread publicity for the compensation schemes, particularly in mining areas. Many claimants were referred to solicitors by trade unions, whilst others were referred by claims handling intermediaries. Some claimants approached solicitors directly, often in response to local marketing activity.

Some solicitors made deductions of success fees from miners' compensation awards, in addition to the costs they would receive from the DTI, in order to compensate for the fact that they would not be paid in unsuccessful cases. However, this often meant that the solicitor was being paid twice for the same piece of work. The deduction of success fees was commonplace until 1999 when most, though not all, solicitors stopped the practice after the introduction of claims handling agreements.

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.

However, because the 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 on this.

### **Summary of OLSCC Special Report Findings**

- 1. When LCS adjudicators investigate complaints, miners on average receive higher awards than those where LCS caseworkers conciliate between the miner and his solicitor. For the most recent cases, the gap between conciliation and adjudication awards is increasing.**

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<sup>2</sup> The Claimants Solicitors' Groups are steering groups each led by the same three firms of solicitors, whose role is to represent the interests of claimants.

<sup>3</sup> Source: Department for Business Enterprise and Regulatory Reform

- In the cases we audited that closed in 2007; miners who conciliated to reach agreement would have been on average £207 better off if they had their complaint adjudicated.
- In 2007, the six miners that insisted on adjudication, between them were awarded over £10,000 of additional compensation by adjudicators in comparison to what LCS caseworkers were encouraging them to accept through conciliation.

**2. LCS caseworkers are not using the findings from adjudicated decisions sufficiently when conciliating.**

- In conciliated complaints that opened and closed in 2007, 56% of miners only managed to obtain the refund of the deduction made by the solicitor, with no additional award for the distress and inconvenience caused.
- Similar adjudicated decisions have awarded an average of £330 compensation for the distress and inconvenience miners suffered.

**3. LCS caseworkers are inconsistent with and are sometimes misleading miners in the handling of their complaints.**

- LCS caseworkers, in 11% of complaints closed in 2007, did not explain the option of adjudication with miners.
- In the case of two firms using a 'standard tariff' to settle complaints against them, of the 62 complaints we audited, 30 miners (48%) received less than the deductions taken by their solicitor from their original compensation award.
- Awards as low as £19 have been wrongly described by LCS caseworkers as 'significant' compensation when encouraging miners to accept an offer. LCS guidelines state that 'significant' awards are between £200 and £500.

**4. Systems within LCS are not identifying and subsequently not correcting flaws in the way miners' complaints are handled.**

- LCS does not appear to have an effective file review system that identifies systematic failings.
- Our investigation found that LCS lost or was not able to account for almost 5% of complaints received from miners.
- LCS suspended 135 complaints relating to one particular firm without good cause. Some have been suspended for more than 15 months. Up to £58,000 of compensation for its own poor service may need to be paid to miners.

**Summary of Issues that must be addressed by LCS and SRA**

**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 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 his 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% of complaints<sup>4</sup> (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>5</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.

Where LCS management has previously suspended cases without a full investigation, a review of all relevant files should be undertaken to assess whether LCS should be making an award under its Special Payment Policy to recognise its own failings and delays.

#### **Issue 12**

SRA must review its handling of miners cases referred to SDT to identify avoidable delays and speed up the time taken to prepare cases referred to SDT.

The Commissioner has also set the following target for LCS:

#### **Target**

By 31 March 2008, LCS must write to each miner, advisor or relative whose complaint it has conciliated. LCS must set out in that letter (to be agreed with the Commissioner) that:

1. LCS will re-open their complaint in circumstances where the miner did not receive a refund in full of any deductions made by their solicitor from their original compensation, or where they suffered distress or inconvenience and did not receive an award for this when they complained to LCS

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<sup>4</sup> The 8% is 21 complaints out of the 258 allocated complaints when the audit was conducted.

<sup>5</sup> Policy introduced by the Compliance Board of the Law Society in January 2004 which recognised the "particular vulnerability" of miners in bringing complaints and waived, in limited circumstances, the usual requirements for the complaint to have been made within 6 months and for it to have first been made to the solicitor's firm.

2. The miner can, in the circumstances set out above, ask the LCS to reopen their complaint, or can ask for the Legal Services Ombudsman to investigate their complaint further.

On receipt of further complaints as a result of writing to miners, LCS must:

1. Record all complaints
2. Reopen the complaint
3. Investigate fully the circumstances of the complaint
4. Conciliate or adjudicate the complaint as appropriate
5. Make an award to the miner for any failings by LCS in its original investigation.

The Commissioner has provided LCS with the opportunity to say how these issues will be addressed and how the target will be achieved. Alternatively, LCS could submit its own proposal for the target, which should achieve the same outcome.

### **September 2007 OLSCC Investigation**

The Investigation conducted by the OLSCC in September 2007 incorporated a review of all 1792 complaints received by LCS up to that point. 509 complaints were audited fully. All complaints adjudicated and, all conciliated complaints opened and completed in 2007, were audited fully by the investigation team, to help determine how LCS is currently handling complaints. (Ends)