

From the Chief Executive



The Law Society

Amyas Morse
Comptroller and Auditor General
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5 November 2009

Dear Mr Morse

I am writing to express my grave concern about the serious and what I regard as unfounded allegations that solicitors are overclaiming on legal aid matters in your report qualifying the accounts of the Legal Services Commission.

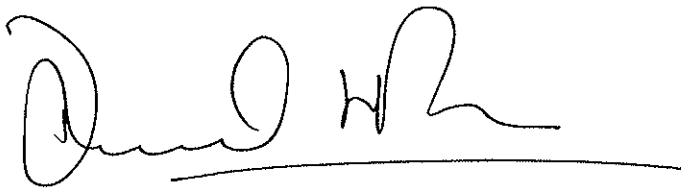
It is unfortunate that no attempt was made during the course of your work to discuss with the Law Society the audit processes you intended to use, or your findings arising from those audits. Having considered your report very carefully, we have serious questions about the accuracy of the audits you undertook, and believe there may be major errors in the report.

1. You indicate at paragraph 16 that you undertook "reperformance" of a sample of LSC file audits. The Society's experience of file audits is that when they are undertaken by people who have not conducted the work, and do not understand the nature of the work, the nature of the clients, or the effects of the rules of the legal aid system (as has sadly been the case too often with LSC auditors) substantial errors arise. These errors are largely a result of underqualified (in the legal context set out above) auditors being unable to recognise what is perhaps more obvious to those who are suitably experienced in the field. In the absence of any indication as to who your auditors were, or what process they followed, we fear that they are likely to have been even further removed from the system than the LSC's auditors, and therefore even less able to understand a legal file and the complexities of the legal aid system. We would be obliged to receive details of who your auditors were and what experience they have of the work of legal aid lawyers and the system in which they operate; and what steps were taken to discuss their findings with the firms concerned in order to ensure that the auditors had properly understood the files they were examining. You might want to consider a review of these files with our staff.
2. At paragraph 25 you state your belief that you have identified overclaiming totalling £2.3 million as a result of solicitors having inadequate evidence of means on file in legal help matters. We would not dispute that in some cases, solicitors may not have on file the evidence that would normally be expected. However, that is at least in part because in some cases, clients do not have such evidence; and the legal aid rules make allowance for such circumstances. We question the claimed extent of overclaiming that you purport to have identified unless you are able to confirm that the exceptions allowed under the rules have been identified and excluded from the sum quoted? Naturally subject thereto we reserve our position on the suggestion that this is due to fault on the part of solicitors.

3. You indicate at paragraph 28 that you believe that solicitors have "made a net overclaim of £2.3 million" for work in the Magistrates Court for ineligible individuals. Since no work can be conducted, and no claim made, unless and until the LSC has calculated eligibility and a legal aid order has been issued, it is wholly inappropriate to describe any claim made by a solicitor for work done under a legal aid order as an overclaim by the solicitor.
4. You refer at paragraph 30 to errors on the part of the LSC in calculating eligibility for certificates for full legal representation, and any contributions that may be due from clients. This assessment is the responsibility of the LSC. We cannot see any reasonable basis to suggest that solicitors bear any of the blame for this.
5. You claim at paragraph 31 that you believe that "the absence of a strict sanctions regime to deter the submission of incorrect claims may also have contributed to the incidence of error". The suggestion that deterrence would be relevant implies that you are alleging deliberate fault on the part of the solicitor. Any solicitor guilty of deliberate misclaiming faces being struck off the roll of solicitors and or criminal proceedings. The idea that this professional sanction is not a very serious deterrent is untenable. Moreover, solicitors are well aware that a single instance of overclaiming, if picked up on audit, could result in that percentage of their entire income from the legal aid fund being recouped. The penalties they face are disproportionate to any benefit from misclaiming and to the degree of culpability of the solicitor, and represent a further strong deterrent to misclaiming.
6. We are extremely troubled by the fact that in a report purporting to examine the Legal Services Commission, you put into the public domain an official document containing serious, and highly contentious allegations against the solicitors' profession without first discussing those allegations with us, as the representative body of the profession. This is exacerbated by the fact that the press release accompanying the report contains the following sentence: "In the NAO's view... the absence of a strict sanctions regime to deter the submission of incorrect claims, creates a risk of solicitors exploiting the payment system." We consider that making such allegations against a profession where dishonesty is punishable by expulsion from the profession is wholly inappropriate; and to do so without having put the allegations to that profession's representative body and giving them a chance to respond is unacceptable.

Please treat this letter as a formal complaint about the substantive points set out above.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Desmond Hudson', written over a horizontal line.

Desmond Hudson
Chief Executive