

INTRODUCTION

I am pleased to present the Annual Report of the Independent Reviewer of complaints about the service provided by the Solicitors Regulation Authority (SRA). This report covers the period 1 November 2019 to 31 October 2020. It is the second report from the Centre for Effective Dispute Resolution (CEDR) since we took over the service in October 2018.

This report covers the two distinct roles of the Independent Reviewer:

- to provide independent oversight of the way that the SRA carry out their complaints handling function; and
- to provide a final independent response for those complaints that the SRA cannot resolve internally.

Independent Review represents the final stage of the SRA's complaints process. In the first instance, complaints about the SRA's service are responded to by the unit where the complaint arose (stage 1) whilst the central Complaints Team reviews complaints which remain unresolved (stage 2). Only complaints which have been through this process and remain unresolved may be referred for Independent Review (stage 3).

The Covid-19 pandemic has had a significant effect on the operations of the SRA, as it has on the legal profession and society as a whole. However, in spite of the disruption of increased home-working, our reviewers have not detected any diminution in the customary high standards of complaint handling at the SRA. The number of complaints referred to us still represents a remarkably small proportion of the SRA's overall caseload, and those complaints which we do see are invariably accompanied by very thorough and considered responses from the SRA Corporate Complaints Team.

It has been a difficult year for all, and I would like to acknowledge the contribution of the Corporate Complaints Team at the SRA, who have been very cooperative in working with us.

Graham Massie - Senior Independent Reviewer

OVERSIGHT

In order to fulfil our remit to provide independent oversight of the way that the SRA carries out their complaints handling function, we supplement our work on individual complaints by undertaking reviews of case files from both stage 1 and stage 2 of the SRA complaints process:

- Stage 1 complaint reviews are undertaken within the unit where the complaint arose.
- Stage 2 complaint reviews are undertaken by the Corporate Complaints Team.

During the course of the year, our audit work has covered individual files drawn from both stage 1 and stage 2 processes and covering a range of units within the SRA, including Authorisation, Client Protection, Intelligence and Investigation, and Legal & Enforcement and Legal Policy. We did not look at the Contact Centre this year because its operations were affected by the lockdown meaning that some telephone call recordings were not available.

The overall finding from the audit is that we have observed a consistently high standard of complaints handling at both stage 1 and stage 2, and across each unit sampled. Individual response letters were generally well written and gave a clear account of the SRA's analysis.

These findings provide the broad context for our work on individual complaints referred for Independent Review during the year.

INDIVIDUAL CASEWORK

Initial enquiries

During the 12-month period from 1 November 2019 to 31 October 2020, we received 112 initial enquiries about our work.

This level of initial enquiry is lower than has been experienced in recent years seemingly because of the disruption of the early months of the pandemic. This does, however, appear to have been a temporary phenomenon and we saw enquiry levels return to their historic level in the later part of 2020 and moving into 2021.

As in previous years, the majority of enquiries were from members of the public, with only a small proportion coming from solicitors:

| | 12 months to 31 October 2020 | 13 months to 31 October 2019 | 11 months to 30 September 2018 | 12 months to 31 October 2017 |
|--------------------------|------------------------------------|------------------------------------|--------------------------------------|------------------------------------|
| Solicitors | 9 | 10 | 7 | 18 |
| Members of the public | 103 | 146 | 132 | 113 |
| Total enquiries | 112 | 156 | 139 | 131 |

| | 12 months to 31 October 2020 | 13 months to 31 October 2019 | 11 months to 30 September 2018 | 12 months to 31 October 2017 |
|------------------------|------------------------------------|------------------------------------|--------------------------------------|------------------------------------|
| Proceeded to review | 73 | 82 | 80 | 99 |
| Closed | 39 | 74 | 59 | 32 |
| Total enquiries | 112 | 156 | 139 | 131 |

When someone first contacts us with an enquiry, we provide them with details of our service and an application form, unless it is immediately apparent to us that they have not yet completed the SRA's internal procedures, in which case, we sign-post them accordingly.

Of the 112 enquiries received during the year, 73 subsequently resulted in the completion of our application form and have proceeded to review.

Of the remaining 39 enquiries received during the year, we identified 5 as being premature, in that the individual had yet to complete the first two stages of the SRA complaints procedure. The remaining 34 enquiries are those where the enquirer has either decided not to proceed with an application or has yet to return a completed application form.

Overall, the number of cases referred for independent review remains very small in the context of the SRA's considerable workload.

Applications

Of the 73 enquiries for which application forms were completed, 67 resulted in the issue of independent review reports during the year, whilst the remainder were still going through the process and have resulted in reports issued since the year end. In addition, reports were finalised and issued in relation to 38 applications where we were first contacted during 2018/19.

Hence, a total of 105 independent review reports were issued in the year. In contrast to the marked reduction in initial enquiries this year, this is a far higher number of reports than in recent years (2019: 57 reports; 2018: 81 reports). This appears largely to be a consequence of the high number of open cases brought forward from last year, although we have also seen a higher proportion of complete applications received this year and faster turnaround times during the lockdown period.

TYPES OF COMPLAINTS

Regulatory decisions

Although consideration of the SRA's regulatory decisions is outside the scope of the independent review process (and the SRA's published complaints policy expressly states that we cannot overturn regulatory decisions), our analysis of the 105 reports issued in the year showed that, in every instance, a complainant's dissatisfaction about a regulatory decision lay at the heart of their complaint and, in the majority of instances, that was all that was being complained about.

These complaints related to the following regulatory decisions:

| | 12 months to 31 October 2020 | 13 months to 31 October 2019 |
|--|---------------------------------------|---------------------------------------|
| SRA decision not to take regulatory action after an allegation of misconduct against complainant's own solicitor | 36 | 20 |
| SRA decision not to take regulatory action after an allegation of misconduct against solicitor acting for complainant's opponent | 55 | 28 |
| SRA decision not to take regulatory action after an allegation of misconduct against another solicitor | 6 | 6 |
| SRA decision in connection with regulatory action against complainant (a) | 8 | 3 |

| | | |
|------------|-----|----|
| solicitor) | | |
| | 105 | 57 |

Typically, complaints against an individual's own solicitor arose from concerns about service quality issues, which are the remit of the Legal Ombudsman and to whom the SRA had already signposted the complainant. Many complainants perceived, however, that, irrespective of the Legal Ombudsman's involvement, their own experience raised issues which they believed required full investigation leading to regulatory action by the SRA, and they were disappointed that the SRA had declined to take matters further.

Complaints relating to the conduct of opposing solicitors generally arose where an individual had raised concerns with the SRA about the conduct of the solicitor acting for their opponent in litigation. Again, the referral to independent review arose from disappointment at the SRA's declining to take regulatory action.

Of the six referrals arising from complaints about other solicitors, five related to their personal behaviour in a professional setting whilst the other one related to their conduct in matters that did not involve the delivery of professional services but were nevertheless argued as being potential breaches of the Code of Conduct.

Of the eight referrals from solicitors complaining about the SRA's conduct in relation to their own situation, two related to the issuing of practicing certificates whilst the remainder were from solicitors who believed that they had received overly robust and unfair treatment in or leading up to Solicitors Disciplinary Tribunal proceedings.

In the majority of the above situations, the origin of the referral for independent review clearly arises from differences of perception between the complainant and the SRA. Unsurprisingly, individuals who perceive that they have been wrongly treated by a solicitor can feel very strongly about the situation and they look to the professional regulatory body to intervene, both to remedy their own situation and, commonly, to commence disciplinary proceedings. However, consistent with the Legal Services Act, the SRA takes a different view of its role. In particular, it adopts a risk-based approach, focussing its resources on dealing with concerns that might call into question whether a solicitor or firm should be practising the law. It does not, therefore, take regulatory action in relation to each and every failing reported to it; nor does it intervene in disputes or undertake investigations on behalf of individual complainants.

The SRA's approach is clearly described in its own published material about complaints against solicitors and is regularly addressed in response letters issued by the Corporate Complaints Team. Our own communications, including the application form, also make it clear that the Independent Review process cannot be used to overturn an SRA regulatory decision, but nevertheless this is commonly what we are asked to do.

It remains a concern that the general public do not appear to fully understand the SRA's regulatory role, and the important distinction between what are actually two quite separate procedures: the handling of complaints about the SRA's service and the investigation of alleged misconduct by solicitors. The Corporate Complaints Team strive to explain the way that risk-based regulation works, with a risk assessment being

undertaken before any allegation is investigated fully. Frequently, however, their message that no public interest risks arise from a particular allegation is mistakenly interpreted by members of the public as being a complete exoneration of the solicitor concerned.

Other aspects of complaints

Moving beyond complaints about regulatory decisions, the following table summarises the other types of issue that we were asked to consider*.

| | 12 months to 31 October 2020 | 13 months to 31 October 2019 | 11 months to 30 September 2018** | 12 months to 31 October 2017 |
|---|------------------------------|------------------------------|----------------------------------|------------------------------|
| Delay / length of investigation / failure to respond to letters | 26 | 23 | n/a | 17 |
| Failure to respond fully / failure to explain | 13 | 11 | n/a | 10 |
| Poor quality of response | 5 | 7 | n/a | 5 |
| Failure to keep complainant informed | 4 | 5 | n/a | 3 |
| Bias / discrimination | 10 | 6 | n/a | 5 |
| SRA policy | 3 | 3 | n/a | 5 |

**There can be several grounds of complaint in any given case*

*** 2017/18 analysis not available from predecessor's report*

Delay

Delay is the most common cause of complaint that we encountered in our review. Generally, these complaints related to the SRA's initial assessment and follow up of information provided about a solicitor rather than about any aspect of the formal complaints process.

Delays in responding to concerns raised by individuals who have gone to the trouble to report their concerns to the SRA are clearly undesirable, but they had clearly taken place in many of the cases that we reviewed. In every instance, however, those delays had already been appropriately acknowledged, explanations given and, in some cases modest ex gratia payments offered by the Corporate Complaints Team.

As in any large organisation, there were inevitable changes of personnel and isolated errors which contributed to some delays, but the two most frequent contributing factors

cited in complaints responses were case complexity and technology issues.

Many of the more serious complaints raised against solicitors require very considerable evidence gathering by the SRA, including receiving responses from the individuals complained about, before determining what action to take. Inevitably, complex investigations of this nature can take some considerable time, but this may not always be understood by an individual complainant, particularly one who is primarily concerned about their own individual situation rather than any broader regulatory concern. Nevertheless, it is important that the SRA provides regular updates so that complainants' expectations are appropriately managed.

On technology issues, a number of the delays identified by the Corporate Complaints Team in their responses were attributed to shortcomings in the SRA's systems which are currently in the course of being upgraded. This is a major long-term project so immediate performance improvements may be minimal. However, from our early review of case files held within the new database, it was encouraging to note that a lot of attention has been paid in the new system design to task tracking and monitoring the age of individual matters. This should help reduce any incidence of inadvertent delays in the future.

Quality of responses

Our review processes included consideration of both the stage 2 response letters issued by the SRA's Corporate Complaints Team and the earlier stage 1 complaints responses from the unit where the complaint arose.

Our review of the stage 2 letters, which represent the last step in the SRA's internal process before any independent review, showed these responses to be of consistently high quality, being well written, appropriately empathetic, and being very clear that in most cases there was nothing more that the SRA could offer a complainant, typically because the matters complained of were not regarded as severe enough for the SRA to take major regulatory action.

There were a number of occasions where the stage 2 response identified the need for a clarification or addition to what had been included within an earlier stage 1 response from the unit concerned. Overall, our assessment of the stage 1 responses was that they were of a consistently good standard, albeit not as strong as those produced by the specialist Corporate Complaints Officers, with the main difference being that occasionally points of detail were omitted in stage 1 letters or the author had not picked up a particular nuance within a complaint. There was only one stage 1 letter, out of the many hundreds of items that we reviewed, where our reviewers regarded the standard of proof-reading as falling below that which the SRA would have expected of itself.

Bias and discrimination

There were ten cases which required us to consider allegations of bias and discrimination by the SRA. All arose from situations in which a complainant had expected the SRA to take a particular course of action and argued that the SRA was discriminating against them by declining to do as they wished.

In one instance, the complainant perceived possible gender discrimination in relation to

the SRA's approach to charging fees for practicing certificates either taken out or returned midway through the year. Three cases involved complaints that the SRA had failed to comply with complainants' requests for reasonable adjustments in the light of their access needs; whilst six arose from arguments that the SRA had chosen to discriminate against complainants - of these six cases, three contained allegations of a racial nature.

From our detailed reviews of these ten cases, as well as our broader casework reviews, we found no evidence of any actual bias or discrimination by the SRA. Accordingly, we did not uphold any of these ten complaints.

Policy issues

The three complaints about SRA policy issues all arose from differences in view as to the nature of the SRA's role. In one case a complainant objected that the SRA had intervened in a firm as that action had impacted upon his own claim against them; whilst the other two complaints arose from the SRA declining to become involved in an individual's dispute with a firm.

OUTCOMES OF OUR REVIEW

Although it is customary for independent reviewers to categorise the findings of their work in terms of the proportions of complaints that were or were not upheld, we do not regard such bare statistics as providing a helpful summary of our work. Rather, we prefer to focus on (a) the extent to which our work identified a shortfall in the service provided to the complainant which required further action to remedy it; and (b) the extent to which our work identified suggestions for improvements in SRA's complaints handling practices.

We can, however, report that within the 105 Independent Review reports issued in the period, we found no failings and had no recommendations to make in 93 (i.e. 89%) of those reports. This is slightly ahead of the 86% figure reported last year.

Within the remaining twelve reports that we issued, we identified a number of minor failings in the complaints handling process, most particularly delay, and in eight of those cases our adjudicators recommended that modest payments averaging £175 be made in recognition of the inconvenience caused.

ABOUT THE INDEPENDENT REVIEWER

Remit

The Independent Reviewer service is available to anyone who has previously made a complaint to the SRA and is dissatisfied with the response.

We can investigate the manner in which the SRA has dealt with a complaint, and we can provide advice and recommendations to improve the SRA's systems and practices for dealing with complaints. These may include methods for addressing failings particular to a complaint or generally to improve complaint handling procedures.

We may decide not to review a complaint in the following circumstances:

- The original complaint was made before our appointment
- The complaint is outside our time limit for referral
- The complaint is not within our remit. For example, we cannot review a complaint about a regulatory decision, although we can review complaints about the way that decisions are reached
- It appears that there has already been a full investigation by the SRA and appropriate redress has been offered
- It appears that there is an opportunity for resolution between the complainant and the SRA. If we think that resolution is possible, we will discuss this with the complainant and the SRA to see whether the outcome the complainant is seeking is reasonable and can be agreed
- It appears that a full review would be unreasonable or disproportionate. For example, if the SRA does not accept there has been poor service because a letter to the complainant was sent a few days later than expected and this has not caused any particular loss or inconvenience to the complainant, it would not be a reasonable or proportionate use of resources for there to be a review.
- Where the case has already been considered by another independent competent authority (such as the Legal Ombudsman), it will not be appropriate for us to consider the matter again.

For those cases that we decide are appropriate for a full review, we will conduct a review of the papers to consider whether:

- the investigation was thorough and fair
- all the relevant facts were taken into account
- the conclusions reached (in respect of complaints about the service provided by the SRA) were reasonable and properly explained; and
- the investigation was handled efficiently, without unnecessary delay.

Powers

Where a complaint has been upheld or partially upheld, we will provide a full acknowledgment and explanation for any poor service and may require the SRA to provide one or more of the following remedies:

- an apology appropriate action to rectify the situation for the complainant, such as an extension of time to respond to a deadline
- appropriate action to improve the SRA's practices or procedures
- an ex gratia payment made in line with the SRA's special payments guidance

The Independent Reviewer's decision is final and represents the end of the SRA complaints handling process.

Provider organisation

The Independent Review service is run by CEDR, the Centre for Effective Dispute Resolution.

CEDR is an independent, non-profit organisation with a mission to cut the cost of conflict and create choice and capability in dispute prevention and resolution. Since its founding in 1990, CEDR has worked with 300,000 parties in commercial disputes and helped resolve over 100,000 consumer complaints across 30 sectors.

It operates a number of mediation and adjudicative processes for local and national government, and for other public sector parties, as well as those in the commercial sectors. It also provides training and consultancy in mediation, conflict management and negotiations skills.

The SRA Independent Review team is:

- Graham Massie - Senior Independent Reviewer
- Claire Andrews
- Laurence Cobb
- Tony Cole
- Eisei Higashi
- Johanna Higgins
- Helen Holmes
- Justine Mensa-Bonsu
- Uju Obi