

## 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 2020 to 31 October 2021. It is the third 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).

This is the second reporting year in which Covid-19 pandemic has been with us, and I am pleased to report that all of the remote working arrangements put in place last year have continued to operate effectively. Undoubtedly the continuing disruption will have had an impact on individual team members, but it is to their credit that, once again, 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. I would like to acknowledge their work and thank them for their cooperation and assistance.

*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, Legal Policy and Supervision.

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 2020 to 31 October 2021, we received 150 initial enquiries about our work.

This level of initial enquiry is consistent with the levels experienced prior to the pandemic and suggests that the downturn we reported last year was a temporary phenomenon.

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 2021	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	4	9	10	7	18
Members of the public	146	103	146	132	113
Total enquiries	150	112	156	139	131

	12 months to 31 October 2021	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	72	73	82	80	99
Closed	78	39	74	59	32
Total enquiries	150	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 150 enquiries received during the year, 72 subsequently resulted in the completion of our application form and have proceeded to review.

Of the remaining 78 enquiries received during the year, we identified 23 as being premature, in that the individual had yet to complete the first two stages of the SRA complaints procedure. The remaining 55 enquiries are those where the enquirer

appeared to be eligible but 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 72 enquiries for which application forms were completed in the year, 66 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 8 applications where we were first contacted during 2019/20.

Hence, a total of 74 independent review reports were issued in the year. This is a significant reduction from the number of reports issued last year (2020: 105 reports) but is consistent with earlier years (2019: 57 reports; 2018: 81 reports). This appears largely to be a consequence of a backlog of open cases brought forward at the beginning of last year and the faster turnaround times achieved 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 74 reports issued in the year showed that, in almost 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 2021	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	19	36	20
SRA decision not to take regulatory action after an allegation of misconduct against solicitor acting for complainant's opponent	40	55	28
SRA decision not to take regulatory action after an allegation of	5	6	6

misconduct against another solicitor			
SRA decision in connection with regulatory action against complainant (a solicitor)	6	8	3
	<b>70</b>	<b>105</b>	<b>57</b>

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 five referrals arising from complaints about other solicitors, two related to their personal behaviour outside a professional setting whilst the other three 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 six referrals from solicitors complaining about the SRA’s conduct in relation to their own situation, one arose from a disagreement with the advice given by the SRA about indemnity insurance requirements; two arose from complaints about the SRA’s publication of the outcome of regulatory investigations; 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, and this year we have noted increased reference to the SRA’s three stage Assessment Threshold Test. Although it is probably too early to assess the impact of this additional clarification on the number of complaints made about the SRA’s handling of concerns, it certainly appears to be a helpful step forward in helping the public understand the SRA’s approach.

A further concern we noted this year was a number of complaints involving family inheritance issues, particularly where concerns were raised about undue influence or insufficient mental capacity of testators. These cases generally arise from highly emotional family disputes, and it can be difficult to resolve complaints about solicitors, particularly if historic evidence is limited. We noted some good practice by the Corporate Complaints Team in showing empathy and providing careful and detailed explanations of the SRA’s regulatory stance but, again, this may be an area where more public education may be helpful.

### ***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 2021	12 months to 31 October 2020	13 months to 31 October 2019
Delay / length of investigation / failure to respond to letters	15	26	23
Failure to respond fully / failure to explain	2	13	11
Poor quality of response	5	5	7
Failure to keep complainant informed	3	4	5
Bias / discrimination	2	10	6
SRA policy	5	3	3

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

### ***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 most frequent contributing factor cited in complaints responses was case complexity. 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.

In previous years, we have seen technology issues cited as an explanation for delays. This year, however, our casework as well as our audit reviews have shown evidence of significant progress with task tracking and monitoring of the age of individual matters. Hence, whilst there will always be inevitable failures, our overall assessment is that the SRA is well on the way to solving the technology problem that were clearly having an impact on timeliness of their work.

### ***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.

As in previous years, 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. However, there were no letters which we would have characterised as "poor."

### ***Bias and discrimination***

There were two cases which required us to consider allegations of bias and discrimination by the SRA. Both of these arose from situations in which a complainant had made allegations of discrimination against individual solicitors and then extended their complaint to the SRA because of dissatisfaction with how their complaint was handled.

Neither of these cases included complaints of any actual discrimination by the SRA and, indeed, from our broader casework reviews, we found no evidence of any actual bias or discrimination by the SRA. Accordingly, we did not uphold any complaints on this topic.

### ***Policy issues***

Of the five complaints about SRA policy issues, three arose from complaints that applications to the Compensation Fund fell outside its scope, whilst another arose from a solicitor's disagreement with the SRA's interpretation of its rules. The remaining complaint related to the SRA's policies concerning the publication of its decisions to issue disciplinary proceedings against solicitors.

## **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 74 Independent Review reports issued in the period, we found no failings and had no recommendations to make in 63 (i.e. 85%) of those reports. This is only slightly below the 89% figure reported last year.

Within the remaining eleven reports that we issued, we identified a number of minor failings in the complaints handling process, most particularly delay or a need for additional clarification of a response, and in two of those cases our adjudicators recommended that modest payments averaging £100 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
- Suzy Ashworth
- Laurence Cobb
- Tony Cole
- Eisei Higashi
- Justine Mensa-Bonsu
- Uju Obi