

SRA BOARD
22 March 2022

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Tackling timeliness issues in our Investigation and Enforcement work

Background

- 1 We, and the Board, have previously highlighted concerns around the increasing number of open investigations that are over 12 and 24 months old and the impact these delays have upon those we regulate, complainants and our reputation more generally.
- 2 The purpose of this annex is to provide an update on the current position and to set out some of the steps we are taking to improve timeliness and reduce the numbers of cases that are over 12 and 24 months old. This follows a workshop discussion we held with the Board in January 2022 where we agreed to make further progress to reduce these numbers over the next 12 months.

The growth of cases over 12 and 24 months old

- 3 While we have seen a generally positive picture in terms of our performance over the last two years, with just over 93% of the complaints we receive concluding within 12 months, the time taken to conclude complaints that go for full investigation, some of which are prosecuted before the Solicitors Disciplinary Tribunal (SDT), has increased. The overall median time to conclude investigations increased from 280 days in 2019/20 to 320 days in 2020/21. The median time to issue a case before the SDT increased from 623 days in 2019/20 to 853 days in 2020/21.
- 4 This in turn has led to an increase in the number of cases that are over 12 and 24 months old which increased to a peak of 742 and 305 cases during 2021.

Reasons for the increase in time taken to investigate matters

- 5 After a careful review of cases over 24 months, we have identified several reasons for investigation times increasing. These fall into three main categories which include the rising levels of complexity of cases, issues identified around the efficiency of our current approach to investigations which include capability and capacity, and then issues presented which are outside of our complete control including the impacts of the pandemic.

Increasing levels of complexity

- 6 We have identified, over the last few years, a growing number of cases involving multiple allegations or parties, and the rise of sensitive and complex cases such as sexual misconduct, concerns around office working environments, anti-money laundering (AML) and investment fraud. These can involve newly evolving regulatory issues where we need specialist legal advice. We have also seen an increased need to commission detailed on-site Forensic Investigations.

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- 7 We have developed our experience in dealing with many of the complex matters that we are now seeing and while cases in this category are likely to continue to be a challenge, we would expect to see the numbers reduce over the next 12 months. Ensuring we maintain high levels of expertise within the team to deal with these cases, which are by nature, some of the most time-consuming cases that we deal with, is key.

Our processes, capability and capacity

- 8 We have identified some issues with the scope of our investigations. In some cases, we could see improvements needed to be made upfront to our analysis of the regulatory issues being presented which determine the scope and shape of our investigation from the start. Linked to this, we could see lost early opportunities to collect key evidence that would narrow the focus of our investigation from the start. Without this rigour upfront, some of our investigations were evolving piecemeal over time rather than in an efficient focussed way.
- 9 The other issue identified was around our processes when we receive lots of new allegations when an investigation is underway. In some cases, the allegations clearly needed to be linked into one investigation and a holistic approach taken, in others, we needed separate investigations into distinct issues so that existing investigations did not get delayed or derailed.
- 10 We have also identified opportunities to develop further and better core guidance materials for our investigators which would both improve our capability but also efficiency in dealing with matters.
- 11 And finally, we identified that delays have clearly been occurring where cases have simply not progressed due to staff turnover, or other capacity/capability issues.

Cases that cannot progress speedily for good reason

- 12 We identified several factors where cases could not progress speedily for good reason. In some cases, investigations are on hold pending the outcome of another process such as a criminal trial, investigation by another regulator/government agency (where they have primacy) or the SDT's determination of a case.
- 13 In some cases, we must pause our investigation due to the ill health of the regulated individual.
- 14 The Covid-19 pandemic had real impacts both on us and upon those we regulate. We needed to be flexible in allowing more time for responses when people did not have access to their offices for example, or their operations had been affected by staff absence and illness.

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- 15 And there are times when we either do not receive the co-operation we need to deal efficiently with matters or legal challenges are made by those we regulate, that require careful consideration and/or legal advice which inevitably slow down our progress with investigations.

What are we doing to address the issues?

Action to reduce the numbers of cases that are over 24 months old

- 16 We have taken forward some immediate actions to reduce the volumes of cases that are over 24 months old – including developing clear plans to prioritise action and set targets on individual cases, using overtime and enhanced monitoring to ensure these are delivered. We have also identified additional resource (through a rationalisation of our operational budgets) to support the plan and are currently recruiting 12 Investigation Officers to start in April 2022.
- 17 This has already resulted in a reduction in the numbers from the peak in 2021 of 305 to 251 by the end of January 2022.
- 18 As discussed with the Board in January, we have set ourselves a target to reduce the numbers to below 100 by November 2022. We believe the target is a realistic one and is in line with the direction of travel that was set by the Board in the January workshop.

Developing a wider strategy to improve timeliness

- 19 While the immediate actions described above will improve the position over the next 12 months, we know that we need to do more to tackle some of the root-causes of delay highlighted above. This will allow us to make further inroads into the numbers of cases that are over 24 months old but also allow us to move towards our wider goal of concluding more of our cases within 12 months.
- 20 To take this forward, and to develop a strategy that we can implement over the next two years, we have established a project (as part of our wider continuous improvement programme) that is being jointly sponsored by Juliet Oliver and Robert Loughlin. This will build on the pilot continuous improvement project that we ran last year (which looked at opportunities to improve and streamline our Triage and Assessment and Early Resolution Team (AERT) processes) and will incorporate feedback that we have received from both internal and external stakeholders, including the Independent Reviewer for our corporate complaints process, feedback from individual complainants and solicitors, and feedback from the legal teams that both present and defend cases at the SDT.
- 21 The project will look at both opportunities to streamline our processes and how we use resources within our processes more generally. Early suggestions/

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areas of focus for the project (following an initial workshop that we held on 17 December 2021) are set out in annex 1 of this annex.

Next Steps

- 22 We will keep the Board updated through the quarterly performance report on the progress of both strands of work that we have discussed in this paper – the immediate actions we are taking to reduce cases over 24 months old and the wider project to develop and implement a strategy that will tackle the root-causes of cases taking longer than 12 months.
- 23 We are reasonably confident, based on the forecasting work that we have done, that we will get close to our target of 100 open cases (that are over 24 months old) by the end of November. There are risks we have identified to achieving some of our targets. For example, risks around our recruitment plans which we are monitoring closely. As mentioned, we are using overtime currently to increase capacity within the team, but this is not something we can sustain in the longer-term.

New end to end KPIs

- 24 As agreed with the Board in December 2021, we will begin to report against a new set of KPIs in the Board's performance update from February. This will provide improved assurance around case progression and will include three new KPIs: 93% of complaints to be concluded within 12 months; 95% of complaints to be concluded within 18 months; and 98% of complaints to be concluded within 24 months.

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Annex 1: Investigation and Enforcement Case Handling Improvement Project

The project will look at both opportunities to streamline our processes and how we use our resources more generally. Early suggestions/areas of focus for the project (following an initial workshop that we held on 17 December 2021) included:

Tackling complexity (further resources and support to enable Investigation Officers to handle complex investigations):

- **Expert advice project** - We are aware that delays can arise where we encounter new regulations or areas of law, in which we are establishing precedent around the standards and thresholds for action. We are looking at the way in which we access specialist expert advice at an earlier stage and have a project underway to streamline our approach to expert advice and to develop a bank of knowledge (with advice and precedent) that the team can easily access.
- **Health issues** – The Board discussed our proposals for improved oversight and management of cases involving health issues at a workshop last July. Cases that involve issues around the health of a Respondent are particularly sensitive and need considered handling. We have an existing project underway, which involves ensuring that these are identified at an early stage in the investigation, handled by specially trained investigation officers, and resolved wherever possible in a proportionate and streamlined way using conditions and Regulatory Settlement Agreements.
- **Streaming cases** – We currently pull together specific complex case types (for example, sexual misconduct) into cohorts and manage these through a team of specially trained Investigation Officers with dedicated legal advice. This model works well and allows us to develop expertise within the team. We are developing this approach to include further specialisation within the case teams – including streaming cases that raise health issues at an early stage, as above, and adding a further stream for cases that look likely to conclude (with some further enquiries) allowing those handling complex cases to give these their full attention.

Tackling widening scope (Improvements that will help ensure that investigations are focused and run in parallel from the start, reducing the risk that cases are investigated in an iterative way causing unnecessary delay and widening of scope):

- **Case Management Plans** – we have identified opportunities to improve the way in which Case Management Plans are prepared and used to direct investigations. This will help to ensure that these provide sufficient focus for investigations and include all relevant steps and key milestones – with deadlines - from the outset.

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- **Notice process** – we plan to review our approach to preparing notices at the end of the Investigation stage, to streamline our approach and support Investigation Officers particularly in complex cases. This will include producing resources and standard wording for legal tests and precedents and taking forward an existing project looking at collating and disclosing documents on our new customer relationship management (CRM) system to ensure that all relevant evidence is clear and accessible.
- **Forensic Investigation Officers** – we plan to develop protocols for closer working between the Forensic Investigation Officer and Investigation Officers progressing the overall case. This will ensure that there is a clear understanding of respective roles and responsibilities, that FI inspections are clearly scoped and targeted, and that the in-depth knowledge held by the Forensic Investigation Officer in relation to a case is utilised in the case going forward. We also find that it is very often during the Forensic Investigation process that new allegations tend to come to light – picking these up as early as possible will help to keep the case on track and reduce delay.

Tackling issues around lack of engagement (Improvements that will help support engagement)

- **Taking a more robust approach to non-compliance** - We propose to introduce a process whereby a limited number of opportunities are provided to respondents to respond to requests for documents or information before alternative options for progressing the matter are considered, and the non-cooperation issue is separately sanctioned (possibly in future using an automatic penalty, following our financial penalties consultation).

General suggestions to improve operational effectiveness

- We will support the work above with a programme of training for all staff across our disciplinary processes. We also consider if there are opportunities to expand the way in which we use the CRM system, which was implemented last year, to support line managers to track and monitor case progression.

Resource model

- Finally, as mentioned, the project will also look at how we use our resources and will review the existing resource models in our Investigation and Enforcement functions to ensure assumptions within them remain appropriate. Ensuring that we have sufficiently trained staff to deliver our targets remains a key priority and we know that a failure to get this right can add to issues around case progression (particularly where we are seeing a changing work profile). As mentioned, we have identified additional resource to support our plan to reduce cases that are over 24 months old during the year and will be reviewing our current resource assumptions more generally as part of the 2022/23 budget setting process.