

The logo for Ombudsman Services features a stylized 'O' composed of four colored segments: blue, green, orange, and purple. To the right of the 'O', the words 'Ombudsman' and 'Services' are stacked in a grey, sans-serif font.

Ombudsman
Services

Good for consumers – Good for business

**SRA
Independent
Reviewer**

Annual Report

November 2016 to October 2017

Introduction

People turn to solicitors for help at important points of their lives. They expect solicitors to be professional, honest and act with integrity. The Solicitors Regulation Authority (SRA) is there to protect the public by ensuring that solicitors meet high standards and by acting when risks are identified.

The SRA is committed to providing a high standard of service, both to those under its jurisdiction and to members of the public and the users of legal services. When an individual or organisation has concerns about the level of service they have received from the SRA, they are entitled to make a complaint. If after following the SRA complaint handling procedure, they remain dissatisfied, they are entitled to ask for their complaint to be reviewed by the Independent Reviewer.

This is the second annual report of the Independent Reviewer published by Ombudsman Services. We took over the role of Independent Reviewer from the Independent Complaints Resolution Service on 26 October 2015.

In this report, we have provided information about the complaints we have received and the decisions we have made between 1 November 2016 and 31 October 2017.

Ombudsman Services

Ombudsman Services is the leading provider of alternative dispute resolution (ADR) for private and regulated sectors throughout the UK. We provide independent redress schemes across a variety of industries, including ombudsman schemes for some high profile regulated sectors such as energy, communications, property sales and ombudsman schemes for professional trade bodies such as the Royal Institution of Chartered Surveyors (RICS).

Team setup

Jonathan Lenton leads the handling of complaints about the SRA at Ombudsman Services. Jonathan is an Ombudsman with over 15 years of experience in handling complex disputes and is an accredited mediator. He has helped consumers and businesses resolve complaints across a number of sectors, including finance, communications, energy and property. Jonathan has lead responsibility for decision-making and decision quality. He heads a small team of investigation officers from various backgrounds with many years of dispute resolution experience.

Executive Summary

We are pleased to introduce our second annual report in our role as the Independent Reviewer of the Solicitors Regulation Authority.

In this report, we provide an overview of the service we have operated and the complaints we have received - including the number of enquires made to us, how many cases we have accepted for investigation and how many investigations have been completed. We have also set out detail about how complaints reach us, the reasons why some complaints fall outside of our remit and the nature of complaints we have investigated.

In our first report, we spoke about the favourable first impressions we had of the service offered by the SRA. We commented upon the small number of complaints that reached our service and the fact that only a small proportion of complaints investigated were upheld. We are pleased to report that our positive first impressions have been confirmed in our second year. We have seen a number of positive indications of improvements in the SRA's procedures – such as the fact that the number of complaints being made to us has reduced in the last year. Our six-monthly audits of the SRA's complaint handling procedure have identified steady improvements in a number of key areas.

The SRA is always interested in the feedback we provide from the complaints we investigate and has shown a real desire to ensure the quality of the service it provides is as high as possible.

A report such as this will naturally focus on areas for improvement – our aim is to help the SRA understand how it can provide an even better service. We have identified areas where we think the SRA should improve and we have set out our views in this report. But our comments should be taken in the context of the fact that very few people the SRA comes into contact with feel the need to complain and, in the majority of the complaints we do investigate, we are satisfied with the approach it has taken.

We are, as ever, grateful to complainants for taking the time to set out their concerns. Such feedback is a vital way by which the SRA can learn how it can improve.

We would also like to express our gratitude to the positive and constructive way in which the SRA's Corporate Complaints Team have worked with us this year.

Jonathan Lenton
Independent Reviewer

Remit

We accept complaints about the service received from the SRA from members of the public, organisations and from those regulated by the SRA.

Allegations of unreasonable delay, unprofessional behaviour, failures to follow published processes and procedures, poor communication and discrimination fall inside our remit.

We are unable to review or overturn regulatory decisions made by the SRA. Examples of regulatory decisions we cannot consider include complaints about whether or not the SRA:

- decided to investigate an allegation made about a regulated individual or firm.
- decided to take enforcement action against a regulated individual or firm.
- authorised a payment from the compensation fund.

We do not investigate complaints about individual solicitors or legal firms.

Before we can become involved in a complaint, the complainant must first contact the SRA and give it an opportunity to address their concerns.

Most complainants receive a Stage 1 response from the unit where the complaint arose and, if they remain dissatisfied, a Stage 2 response from the SRA's Corporate Complaints Team. The Stage 2 response marks the end of the SRA's internal complaints procedure and complainants are advised of their right to ask the Independent Reviewer to consider their complaint at this stage.

Complainants must contact the Independent Reviewer to consider their complaint within 15 working days of the SRA issuing its Stage 2 response. The complainant can ask the SRA to refer their complaint to the Independent Reviewer. Alternatively, the SRA provides complainants with our contact details to allow them to contact us directly.

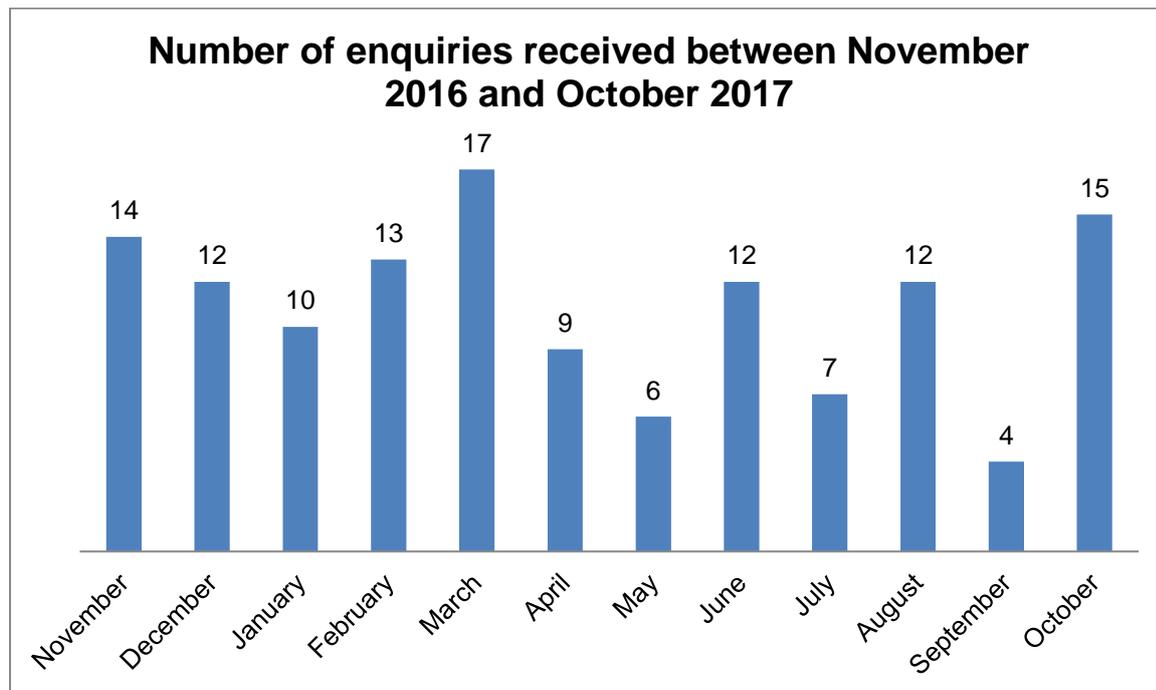
Complaint procedure audit

Every six months we carry out an audit of the SRA's complaint handling procedure by reviewing around 50 of the complaints the organisation has handled. We take a sample of the Stage 1 complaints handled by different SRA units and the Stage 2 complaints handled by the Corporate Complaints Team. We review each complaint against a range of criteria, such as whether the SRA responded to all the issues raised by the complainant, whether its response was clear, whether the tone of letters was appropriate and whether the complainant experienced any delays.

This year we visited the SRA's offices in April and October 2017 to carry out our audits.

Initial Enquiries

The chart below shows the number of people who have contacted us each month to enquire about whether we could offer assistance to them:



We received enquiries from 131 people over the course of the year, an average of approximately 11 contacts per month. This is a slight decrease on last year, when we received 161 enquiries over the initial 13 months of the scheme - an average of 12 contacts per month.

The number of enquiries received per month fluctuates, but it appears there is a general downward trend in people using our service. In the last six months of the reporting period, we received an average of nine enquiries per month.

The four complaint-process audits we have completed in 2016 and 2017 identified a clear improvement in the way the SRA handling complaints and it is possible that the decrease in the number of complaints we received this year is another indication of better complaint handling.

What happened after the initial contact?

Progressed to preliminary review	Closed without a preliminary review	Ongoing at the end of the reporting period
90	32	9

When someone first contacts us with an enquiry, we provide them with information about our service. Sometimes, we find the issue the complainant wishes to raise falls outside of our remit. In other cases, the complainant may not have yet completed the SRA's complaint handling procedure.

Often, we can quickly establish that we will not be able to accept a complaint for investigation, without the need for a formal preliminary review.

When we cannot help, we advise complainants about other routes they can follow to pursue their complaint. For example, if someone wants to raise a complaint about the service they received from a solicitor, we might signpost them to the Legal Ombudsman.

For enquiries that appear to fall within our remit, we issue a complaint form to the complainant, asking for full details of their complaint. Once the complainant has returned their completed form, we will formally decide whether their complaint falls within our remit. We call this our “preliminary review”.

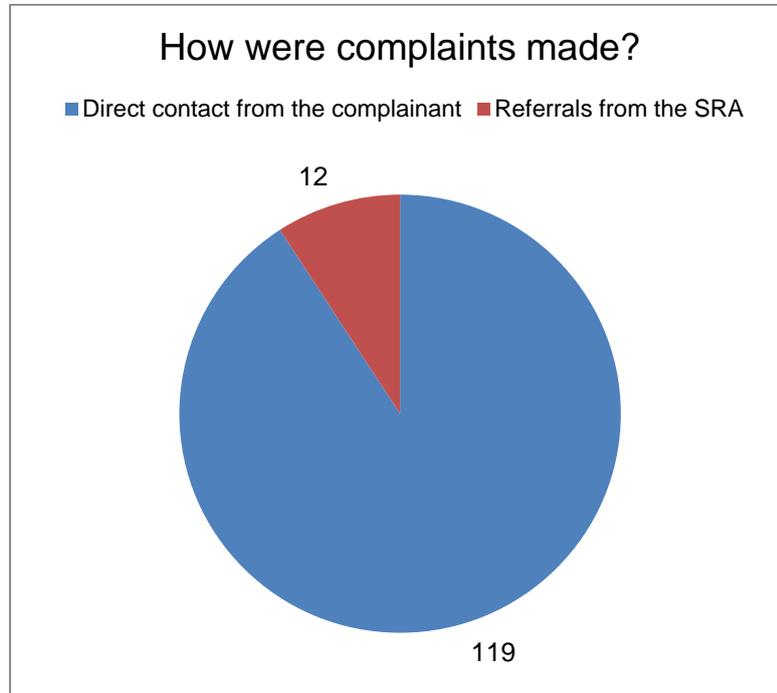
Of the enquiries we received between 1 November 2016 and 31 October 2017, 32 cases were closed without the need for a preliminary review. There are various reasons for this, but typically, it is because we send an application form and a fact sheet to the complainant, and they do not return it. We make efforts to chase these complainants, but sometimes we do not hear further. These cases are then closed. We suspect the information that we provide helps some people to understand that their complaint falls outside of our remit.

90 of the contacts we received proceeded to the preliminary review stage.

Nine cases were still ongoing at the end of the reporting period.

How did complainants contact us?

The chart below shows the number of enquiries received by referral from the SRA and the number of contacts received directly from the complainant between 1 November 2016 and 31 October 2017:



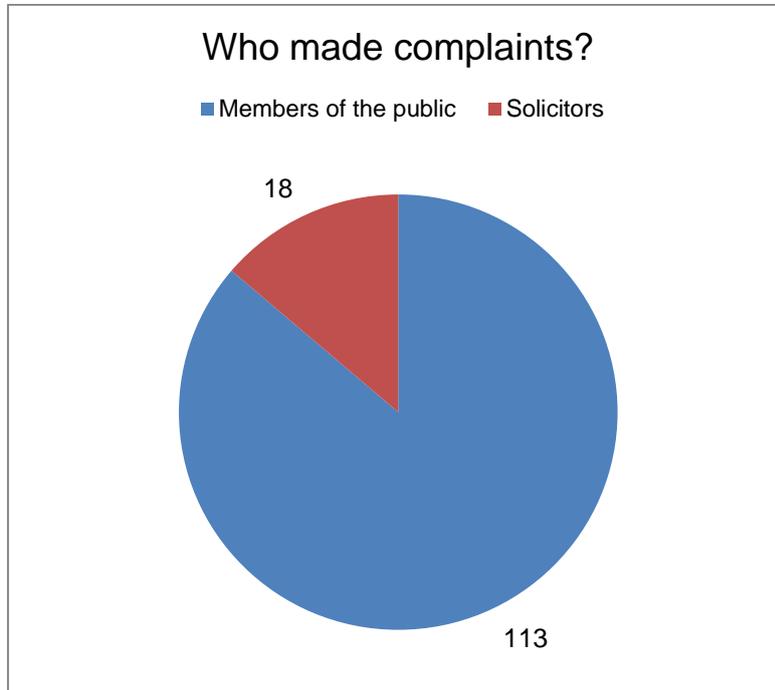
Last year, we reported that the vast majority of complainants preferred to contact us directly rather than relying on the SRA to refer their complaint to us. We did not have any concerns with this as we felt it natural that most complainants would want to contact us to tell us about their complaints.

The proportion of complainants contacting us directly, as opposed to referral from the SRA, has reduced in the last year. In the period October 2015 to October 2016, 17% of cases were referred to us by the SRA. This year, only 9% of cases were referred to us.

It seems clear that most complainants do prefer to contact us directly. We consider, however, that there is still value in the SRA offering to refer complaints directly to us on behalf of complainants and it should continue to offer such a service.

Who complained to us?

As the following chart shows, the vast majority of the enquires received between 1 November 2016 and 31 October 2017 were made by members of the public, as shown by the following chart:



Despite the fact that we received fewer complaints overall this year, we received more complaints from those regulated by the SRA than in our first year. The number of complaints received from regulated persons increased from 12 in the 13-month period October 2015 to October 2016 to 18 in the 12-month period November 2016 to October 2017.

The increase in complaints from regulated persons should be viewed in the context of the very small number of complaints being received from the profession. Nevertheless, any change in complaint volumes should be taken seriously. The SRA may wish to consult its own complaint data to determine whether the increase in complaints from regulated persons we have experienced is echoed in the number of initial complaints it is receiving.

We want to reiterate that in our complaint process audits, we have recorded a steady improvement in the way the SRA handles complaints in the last two years. We have certainly not identified any reasons that might cause more regulated persons to complain.

Despite the increase we have seen in the last year, we continue to be struck by the very low level of complaints being made from members of the profession. It is possible that the SRA is generally providing a satisfactory level of service to those it regulates. Alternatively, of course, solicitors might be less inclined to raise complaints about poor service received from the SRA. With this in mind, the SRA may want to consider alternative ways of obtaining feedback from regulated individuals about the service that it offers.

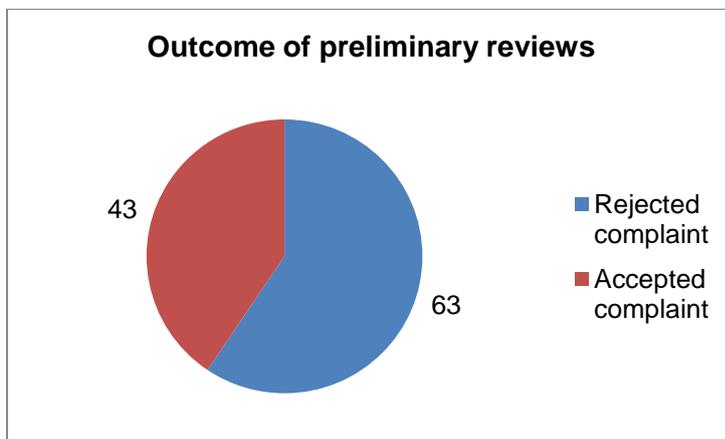
Preliminary Reviews

When a complainant returns a completed complaint form we will complete a preliminary review to determine whether the complaint falls within our remit.

Last year there were 16 cases that were awaiting a preliminary review at the end of the reporting period. In addition, 90 further cases we received between November 2016 and October 2017 progressed to a preliminary review.

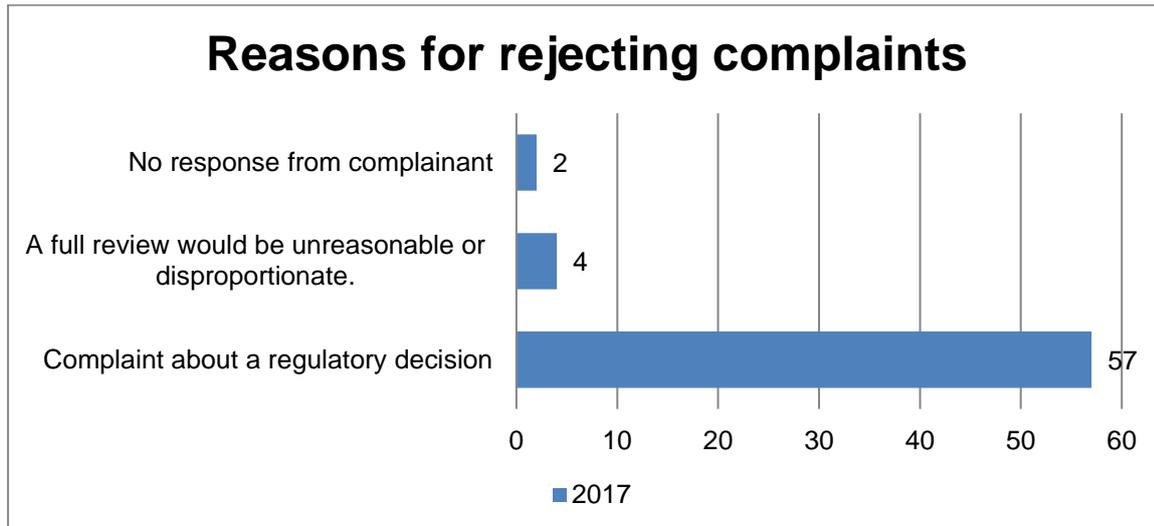
In summary:

Number of cases awaiting a Preliminary Review	Number of people whose complaint was rejected at the Preliminary Review stage	Number of people whose complaint we accepted for investigation
9	63	43



In 2016 we accepted 45% of the complaints where a preliminary review was carried out. In 2017, we accepted 41% of the complaints that we received – a slight decrease.

The reasons why we rejected complaints at the preliminary review stage between 1 November 2016 and 31 October 2017 are as follows:



Last year, we reported that the most common reason for us rejecting a complaint was that the complainant had asked us to review a regulatory decision. This remains the case this year. It is not the role of the Independent Reviewer to review decisions the SRA has taken in its role as a regulator and when this is clearly what is being sought, we inform people that we cannot help them.

Many of the complainants who contact us are unhappy that the SRA has either decided not to conduct an investigation into a report they have made about a solicitor, or they disagree with the action taken following an investigation. Despite the fact that the SRA explains to complainants that the Independent Reviewer does not have any remit to consider such regulatory decisions, many complainants remain surprised and / or disappointed when we advise them that we cannot help with their complaint.

We continue to be of the view that, with such a significant number of people approaching us with complaints that fall outside of our jurisdiction, it would be beneficial for the SRA to do more to ensure that complainants understand which complaints can be raised through the complaints procedure. The SRA has, this year reviewed some of the information it provides to complainants about our service. It could be that the reduction in complaint volumes we have experienced is linked to this new information.

We rejected four complaints where we felt that a full review would be unreasonable or disproportionate. In these complaints, we felt the issue(s) raised by the complainant did not warrant a formal investigation. For example, in one complaint, the complainant told us that the SRA had made some mistakes in correspondence – failing to sign the letter, inaccurate references to evidence and incorrectly referring the complainant to the Legal Ombudsman. These are all service issues which we could potentially investigate. The SRA had, however, already recognised the problems within its investigation and had provided an apology. We were satisfied with the SRA’s response and did not consider it proportionate or necessary for us to conduct our own investigation.

We rejected two complaints because we received no response from the complainant. In these cases, some of the issues raised fell inside our remit and some did not. We contacted the complainant to ask whether the complainant wanted us to proceed with the issues that we could investigate but we did not receive a response.

Last year, we rejected some complaints on the basis that the complainant had not completed the SRA’s complaint procedure or where the complainant had not complained to us within the given deadline (15 days from the date of the SRA’s Stage 2 Response) at the preliminary review stage.

We did not reject any complaints for these reasons at the preliminary review stage this year we do still receive some premature or out of time complaints. However, we now carry out more checks at the enquiry stage and are, therefore, able to quickly assess complaints that are clearly outside of our remit without the need for a preliminary review.

Full Investigations

After accepting a complaint for investigation, we ask both parties for the evidence we require. Once we have obtained all relevant evidence, we analyse it and make a decision. We will issue a draft report setting out our findings and invite the complainant and the SRA to make comments. Once we have received each party's response, we issue our final decision. If the complainant accepts the final decision we will ask the SRA to implement any recommendations we have made.

At the end of the last reporting period there were 25 investigations ongoing. In addition, we accepted a further 43 complaints for investigation between 1 November 2016 and 31 October 2017. Therefore, a total of 68 complaints were accepted for investigation.

Of the 68 complaints accepted for investigation:

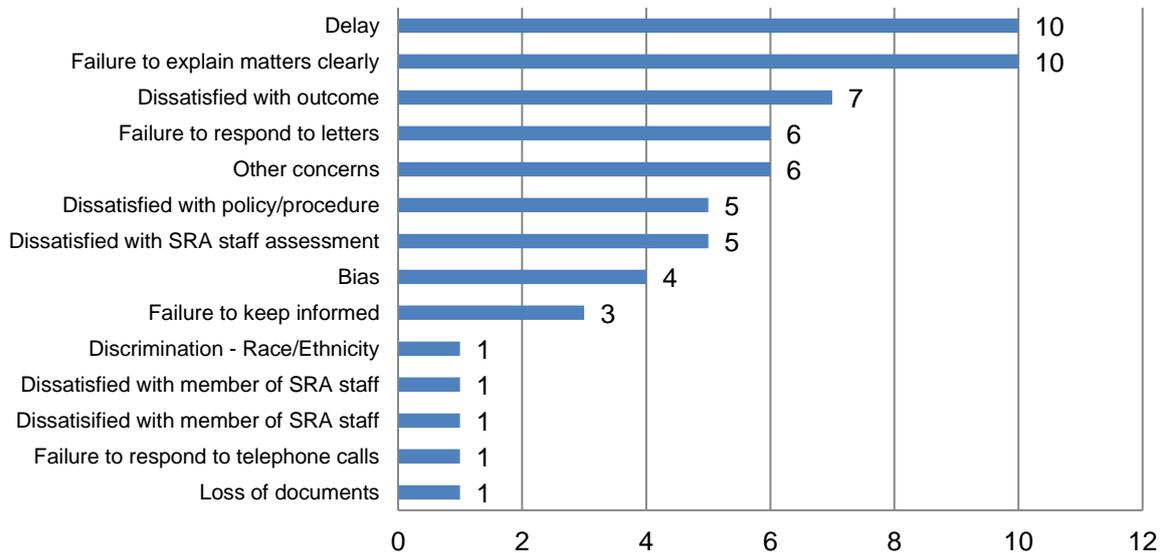
Closed without a draft report being issued	Investigations in progress at the end of the reporting period	Number of draft decisions issued
12	11	45

As can be seen from above, 12 complaints were discontinued without the need for a full investigation. In these cases, the complainants told us after further discussion with our investigation officer that they did not wish to continue with their complaint.

Of the 45 complaints where a draft decision was issued, 37 had been completed by the end of the reporting period.

When we conclude an investigation and issue our final decision, we record the subject(s) of the complaint. The following chart records the types of issue we were asked to consider in the 37 complaints we have completed:

Complaint issues identified within the complaints we have investigated



Delay is a new complaint category which was only introduced this year. It is the most common issue we investigated during this reporting period. Our complaint process audit highlighted some issues with delayed responses – although we have noted improvements at successive audits. The next section of this report will discuss this in more detail.

A number of complainants raised issues with the standard of SRA responses to queries and complaints. A total of 20 complaints were made by people who felt the SRA had not explained matters to their satisfaction, considered that they had not been kept informed or who alleged that it had failed to respond to correspondence or telephone calls.

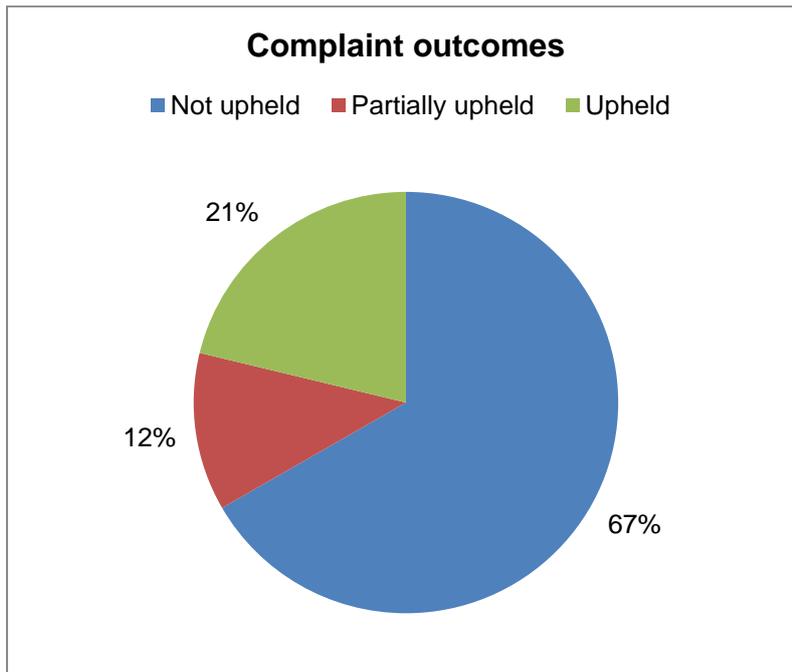
17 complaints related to concerns about some element of a decision made by the SRA such as its assessment of an allegation, the outcome of an investigation or allegations of discrimination and bias.

There was one complaint where it was alleged that the SRA discriminated against the complainant because of their race. We did not uphold this complaint.

The outcomes of our investigations

In this section, we set out the outcome of our audits of the SRA's handling of complaints, based on both our six-monthly audits and the individual complaints we have investigated.

When we close a complaint, we record the outcome of each issue we have considered. We record these as either “upheld”, “partially upheld” or “not upheld”. For the complaints we closed between 1 November 2016 and 31 October 2017, we recorded the following outcomes:



The vast majority of the issues we have considered have not been upheld.

Last year, we only upheld 6% of the complaint issues we investigated. This increased to 21% of complaint issues. This is a sizable increase.

Many of the complaints we upheld related to delays experienced by complainants. While delays are not the most serious category of complaint we investigate, they can be frustrating. In some of the complaints we reviewed, delays tended to be relatively short – perhaps a week or less. However, we have seen a small number of cases where delays were more pronounced. In these cases, the SRA overlooked a piece of correspondence and complainants therefore had to wait weeks or even, in some extreme cases, months for a response.

Our overall impression is that the SRA has improved the timeliness of its responses. Our complaint procedures audits have highlighted sustained improvements – with fewer people now experiencing delays and the delays which are experienced are shorter than previously. However, in several of the complaints we investigated the SRA's responses had been delayed.

Excluding issues of delay, the upheld rate is approximately 5%.

Our findings

In this section of the report, we set out some of the key themes and interesting issues that arisen from the complaints that we have dealt with.

We believe it is important to bear in mind that the SRA deals with many tens of thousands of contacts a year, whereas we typically only receive 150 contacts per year. The examples below therefore do not represent the typical experience of those who come into contact with the SRA. They do, however, represent the experience of those who have asked us to look into their concerns.

Transparency

We identified three issues which we have grouped under the banner of “transparency”. They relate to:

- Freedom of Information (FOI) Requests;
- Notifying a solicitor of an investigation;
- Notifying solicitors of the allegations under investigation.

We have addressed each of these below.

FOI requests

The SRA is not legally bound to comply with the Freedom of Information Act 2010. Nevertheless, it voluntarily applies its provisions under the SRA Transparency Code.

When allegations are put to solicitors, we have seen examples where solicitors have made an FOI request in order to obtain more information that might help them formulate their defence to the allegations.

In one of the complaints we reviewed, the SRA decided either that the FOI request was not valid but did not then notify the solicitor that the information would not be provided.

In another case, the SRA dealt with an FOI request for information informally at the department level. This resulted in the solicitor receiving some, but not all, of the information that he had requested. The result was that he had to make a subsequent second request in order to receive all of the information which would have been avoided had the initial request been dealt with by the information compliance team.

* most special payments made by the SRA are between £50 and £100.

ANONYMISED CASE SUMMARY 1

The SRA opened an investigation into the conduct of Mr A, a solicitor who, it was alleged, had failed to disclose the findings of another organisation’s investigation into his firm. The SRA contacted Mr A, presented the allegations to him and invited him to submit comments. Mr A provided a substantial response. The SRA’s investigation continued and it subsequently decided to refer the matter to the Solicitors Disciplinary Tribunal (SDT). However, the case presented to the SDT included new allegations which Mr A had not been given an opportunity to respond to. Mr A submitted a strike out application to the Tribunal and, subsequently, the SRA decided not to pursue the newer allegations. Mr A told us that he did not materially dispute the initial allegations. He felt the new allegations were insubstantial and if he had been given an opportunity to respond to them prior to the SDT’s involvement, there would have been no need for the SRA to take matters further.

We examined the evidence and established that the SRA’s rules required the organization to allow a solicitor to provide an explanation for their conduct before it took further action. We felt in this case, the SRA had not given Mr A such an opportunity before referral to the SDT. The SRA had already offered an apology to Mr A but we recommended that it consider a special payment* to recognize the distress caused.

ANONYMISED CASE EXAMPLE 2

A solicitor, Mrs B, moved to the UK and applied for a waiver of a qualification requirement to practise. It took the SRA several months to decide to decline the application. As well as being unhappy about the SRA's decision, Mrs B considered the time it had taken the SRA to decline the application was excessive.

We reviewed the complaint. We made it clear that we were unable to review the SRA's decision not to grant the waiver and that our investigation would focus on the time it has taken the SRA to consider the application. We acknowledged that the issue under consideration was not straightforward and that it was likely that take time for the SRA to formulate a view. However, after considering the evidence, we were of the opinion that Mrs B experienced a number of service shortfalls during the period when the SRA was considering the matter. For example, we saw extended periods in which the SRA did not appear to have taken any action to progress the application. We also felt that the SRA could have managed Mrs B's expectations more effectively, sometimes failing to provide updates as promised.

We recommended that, to recognise the frustration Mrs B had experienced, the SRA should apologise and provide a special payment*.

We accept that, under its Code, the SRA is not duty-bound to provide all information requested under an FOI request. Nevertheless, we think it is important that when the SRA decides not to share information, it informs the person making the request of the information that it will not share and the reasons why.

Notifying a solicitor of an investigation

In one complaint we reviewed, the SRA undertook an investigation into a firm. A forensic investigator carried out an investigation. Towards the end of the investigation, the forensic investigator contacted the compliance officer of the firm and told him that he wanted to meet to discuss a few matters. However, on arrival at the meeting, the solicitor discovered that the SRA intended to conduct a formal, recorded interview in which he was questioned over some serious allegations. The solicitor told us that he found the experience was distressing, particularly because he was not informed about the nature of the interview.

We understand and accept that, in some cases, the SRA would not want to disclose an investigation because it might prejudice its enquiries.

However, in the case in question, we could not see any reason why the SRA could not have informed the solicitor that he would be subject to a formal interview. We were particularly concerned that the solicitor had not been given an opportunity to prepare for the interview because of the lack of information from the SRA.

Notifying solicitors of allegations

When the SRA conducts an investigation into a solicitor, its rules state that the solicitor must be given the opportunity to explain their conduct prior to the SRA taking action.

In one case we investigated, the solicitor had been given notice of allegations the SRA was investigating and submitted a substantial response. However, as the investigation developed, new allegations were identified by the SRA but the solicitor was not given an opportunity to comment on them prior to the case being referred to the Solicitors Disciplinary Tribunal. We understand that during the course of an investigation, the SRA may uncover evidence of further potential misconduct. We think that when new allegations come to light, the solicitor should be given a further opportunity to respond before the SRA takes further action – to ensure that any action it takes is reasonable and proportionate.

* most special payments made by the SRA are between £50 and £100.

It should be noted that the above issues are isolated examples and we did not identify a wider trend. Nonetheless, the complaints raise issues which the SRA should review to ensure its investigations are fair.

Delay

Delay is the most common issue we have investigated – raised in 10 of the complaints we investigated. In several cases, we agreed that the complainant had experienced a delay.

Some of the cases related to the length of time it had taken the SRA to complete investigations into solicitors. For example, in one case, the SRA took nearly three years to conclude an investigation. We identified periods in which the SRA was not taking action and other periods where evidence could have been collected sooner.

Other complaints involved delays in responding to correspondence. In two cases, delays were caused because SRA staff were not at work for a period and no one was covering their work. In one case, a matter was being dealt with by two different departments and there was confusion as to which department was responsible for communicating with a complainant. Because of this a piece of correspondence did not receive a response.

In three complaints, customers waited a long time for a response when their request did not fall within an established procedure and where the SRA had not committed to a set time frame.

As previously stated, our complaint audits have revealed improvements in the time it takes the SRA to respond to complainants. We do, however, consider that this is an area where there was still room for improvement, based on the complaints we investigated.

The SRA has recently committed to reduce its response times for complaints at stage two from 20 working days to 15 working days – an indication that the SRA is committed to responding to complainants in a timely manner.

ANONYMISED CASE EXAMPLE 3

Mrs C submitted a report about a solicitor to the SRA. Mrs C alleged that the solicitor had retained a payment received in relation a claim for arrears from a former tenant. The SRA decided to act on the report and opened an investigation. Mrs C complained that the SRA subsequently failed to inform her of the progress of its investigation.

When we considered the complaint, we identified that the SRA had written to both Mrs C and the firm shortly after opening its investigation to inform them that it was satisfied that no misconduct had occurred. Unfortunately, it appeared that the letter to Mrs C had been lost in the post. We were satisfied that the SRA's case file demonstrated that the letter had been sent.

As Mrs C had not received the letter, she wrote to the SRA a few months later to ask for an update. The SRA sent Mrs C an acknowledgement but then failed to follow it up with a substantive response. Mrs C had to make another request for an update before the SRA informed her of the outcome of its investigation. This was a clear shortfall in service. Mrs C was left with a very poor impression of the SRA's service, even though in reality it had only failed to respond to one letter. We required the SRA to apologise for the lack of response.

Failure to respond to correspondence

On some occasions the SRA failed to respond to correspondence. There were a number of reasons for this.

In some cases, complainants sent in correspondence that was simply missed by the SRA.

In one case, a complainant submitted new information during an investigation. The SRA was not due to provide an update on the investigation on the case, and so, although the information was placed on file, the complainant did not receive any acknowledgement, and did not know it had been safely received.

In another case, an email was sent to an official who had left the SRA. It appeared to us as though the complainant had not received a bounce back email to inform them that the email address was no longer in use.

This issue is closely related to issues of delay. In the cases we had reviewed, it appears the failures were avoidable, if proper measures had been put in place. We consider this is an area that the SRA should take steps to improve.

Signposting

It is important that the SRA ensures that anyone who wishes to make a complaint is aware of how this can be done and how matters can be escalated if they remain unhappy.

We have seen a few complaints where the complainant was not made aware of how they could pursue their complaint.

Most complainants who complain in writing are informed of the complaint handling procedure. We have, however, raised concerns about complaints made by telephone. In the complaints we have reviewed, some were not informed that they have a right to escalate their complaint to the next stage of the complaint handling procedure. We have recommended that this is reviewed.

During our audits, we also identified some complaints made in writing where the complainant was not informed of their right to bring complaints to our office, for example when the complaint was made by an MP on behalf of their constituent or when the complainant had indicated that they intended to issue court proceedings against the SRA. Again, this is an area for improvement.