

The SRA's response to the ICRS's annual report

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Introduction

1. Following a thorough review of our internal complaints procedures in 2010, the SRA launched a new organisation-wide policy [<https://www.sra.org.uk/sra/complaints-service/complaints-policy/>] that set out the way complaints about the SRA would be handled. In summary, the complaints procedure provides for two internal reviews of a complaint (stage 1 in the unit in which the complaint arose and stage 2 from a central complaints team located within the Inclusion Directorate) and a final independent external review (stage 3).
2. The complaints policy allows us to consider complaints about aspects of the service we have provided; for example mistakes or lack of care, unreasonable delay, unprofessional behaviour, discrimination and bias. The scope of the policy does not include the ability to review or change the outcome of regulatory decisions made by the SRA. Where appropriate we advise complainants to use any available appeal process, the reconsideration policy or judicial review.
3. With the closure of the Legal Services Ombudsman Office (LSO), and the fact that the Legal Services Board (LSB) had not set up an alternative arrangement to enable complainants to have their complaints independently reviewed, we felt it important to establish our own arrangements. This arrangement gives complainants the opportunity to have an independent and transparent review of the way in which their complaint has been handled should they remain dissatisfied with the stage 2 response, the final internal recourse. This external independent review engenders public confidence and transparency in the complaint handling process and demonstrates the SRA's commitment to treat complaints seriously.
4. In October 2010, following a tender process, the SRA appointed the Independent Complaints Resolution Service

(ICRS) not only to provide a final independent response to individual complaints but also to oversee the way we carry out our complaints handling function, and to provide feedback to help improve the way we handle complaints in general.

5. Although complaints about the outcome of regulatory decisions are not something that the ICRS is able to consider, they can consider the process by which decisions are reached. This may include looking at questions of fairness and communication.
6. On completion of a complaint review, the ICRS provides a full response and explanation of how the complaint was handled. Where poor service is identified, the ICRS can recommend that the SRA provide one or more of the following remedies: an apology; action to rectify the situation for the complainant, such as an extension of time to respond to a deadline; action to improve the SRA's practices or procedures; a payment in accordance with the SRA's special payments guidance.
7. This report sets out the SRA's response to the findings and recommendations made by the ICRS in their first annual report.

SRA's response

1. The SRA welcomes the ICRS's first annual report. It is reassuring that the ICRS's reviews have found that overall the SRA has in place sound and appropriate complaint handling processes. In particular, we were pleased to note that the ICRS did not find any evidence of unfairness in the way the SRA addressed and responded to complaints of discrimination. We welcome the recommendations the ICRS has made for further improvements.
2. We are pleased to note that a relatively small number of complaints were referred by complainants for full review in the ICRS's first year. The number of full reviews undertaken by the ICRS represents less than 5 per cent of the total

number of complaints received at stage 1 in the same period.

3. The SRA carefully considers all the recommendations made by the ICRS in individual cases. Where we do not agree with the recommendation, we provide a full explanation. In some cases recommendations made by the ICRS have already been identified by the central complaint team or in other SRA units. For example: we had identified several improvements to ensure consumer clarity in relation to the SRA's new communication approach with those who provide information about potential misconduct; a triage file allocation system was already in development when the recommendation was received from the ICRS, which is now operational, and a Compensation Fund Charter, setting out our timescales, was also a piece of work already in progress and has now been finalised and published on the SRA's website. These three examples indicate that some improvements take a little time to implement and may not be in place when the ICRS are reviewing a complaint. Nevertheless, the fact that the ICRS makes similar recommendations shows that the internal complaints process is working well.
4. Overall the SRA has found the ICRS recommendations extremely helpful to drive forward continual improvement; examples of which can be seen below.
5. In considering the ICRS's first annual report, we have identified three key themes in particular that encapsulate the recommendations made by the ICRS. We have set out below what we have done to implement these recommendations.

Public confusion about the role of the SRA and relationship with other organisations involved in dealing with concerns about solicitors

6. The SRA had identified the need to provide more clarity to consumers about its role and that of other organisations such as the Legal Ombudsman (LeO) who also deal with concerns about solicitors. The ICRS in their report also identified consumer/public confusion as a key concern within



the complaints they had reviewed. Over the last six months, the SRA has taken the following steps to improve the clarity of information available to consumers and the public:

1. development of a consumer section on our website that explains when complaints should be made to the Legal Ombudsman and to the SRA;
 2. literature has been published and is available in Citizens Advice Bureaux, for example, explaining how to complain about a solicitor and the roles of different organisations involved;
 3. the Memorandum of Understanding between LeO and the SRA has been updated; the two organisations working more closely than ever before for the benefit of consumers;
 4. staff at the SRA will signpost individuals to the correct organisation when appropriate and our Operations and Outsourcing Support Unit now take a hands on role in assisting individuals by referring matters to LeO for them;
 5. our web team has ensured that our website is accessible and the information is clear and jargon free. We have taken care to write the information on the website so it can be zoomed, reflowed and is compatible with assistive technologies such as screen readers. We have worked with our Disability Advisory Group in this area and they have tested the website, providing us with positive feedback about its accessibility.
7. The SRA recognises that while there has been an improvement in providing greater clarity and support to consumers about our role and the role of other organisations, this is an area that can be improved further. We welcome the ICRS's views on any additional improvements we can make to our website and the provision of information to consumers and the public.

*Outcomes-focused and risk-based
regulation and the SRA's
communication with those who provide
information*



8. The ICRS's review of cases have included a number relating to the SRA's development of "outcome-focused" and "risk-based" regulation and in particular our approach to communication with those who provide information to the SRA.
9. We have gone through an extensive transformation programme overhauling our approach to regulation. Part of our strategy was to move away from our traditional, prescriptive and reactive regulatory approach towards one where monitoring and investigative activity is better targeted through the more effective use of intelligence and based on robust risk criteria. This enables the SRA to ensure resources are focused on dealing with serious risk that most affects the public interest, as opposed to our previous approach that resulted in a certain concentration upon low-risk issues.
10. In practice, outcomes-focused and risk-based regulation (OFR) means the SRA does not investigate each and every allegation made ¹ [¶n1] . Neither would the SRA generally inform those who provide regulatory information what it is doing with that information. This change has enabled the SRA to target resources to areas of greatest risk which results in better protection for the public as a whole. The change in approach has understandably led to some individuals feeling aggrieved because they would like more information about what the SRA is doing with their specific information.
11. We have been monitoring consumer dissatisfaction with the new communication approach, implemented in 2011. Between May and December 2011 nearly 7,000 individuals were informed about the SRA's communication approach. Less than 1 per cent of those individuals complained at stage 2 of the SRA's procedure with an even smaller percentage approaching the ICRS. We recognise that the low number of formal complaints does not necessarily mean that those who have not complained are happy with the new approach and we are exploring ways of assessing the level of dissatisfaction.

12. We recognise, however, how dissatisfied individuals may feel at times about not receiving further information from us on matters reported, and it is crucial that we do everything we can to engender public confidence in what we do and how we do it. There is always room for improvement and as a result of the information received, through complaints and from the ICRS, the following action has been taken:
1. we have improved the content of the standard letters we send to those who provide information about solicitors to us, for example, our letters now include more general information about the SRA's approach to regulation and the reasons for it;
 2. a triage system has been put in place to ensure that more tailored information is provided to individuals in appropriate cases, such as those who are vulnerable;
 3. we ensure we signpost individuals when the SRA is not the correct organisation to deal with the information received;
 4. we have made improvements to our website and launched a section specifically for consumers where information about the SRA's outcomes-focused and risk-based approach to regulation can be found [<https://www.sra.org.uk/consumers/who-we-are/sra-regulate/>] ;
 5. the SRA publishes more details now about how we investigates firms and the principles underpinning our regulatory decision making than ever before. In addition to our decision-making guidance [<https://www.sra.org.uk/sra/decision-making/>] , we publish quarterly outcome reports [<https://www.sra.org.uk/sra/how-we-work/archive/reports/>] with a range of regulatory information including the number of cases prosecuted at the Solicitor Disciplinary Tribunal, the number of interventions, the number of individual casework investigations concluded and the number of allegations that were upheld and the sanctions imposed.
13. Consumer confidence in the regulator is a key performance indicator. Improving and publishing relevant and accessible information about how the SRA risk assess and regulates solicitors will help enhance public confidence and provide assurances in the SRA's regulatory processes. We also recognise that more work can be done in this area and we will continue to keep this under review. Again, we welcome the further suggestions the ICRS makes.

Challenging regulatory decisions

14. The SRA's internal complaints procedure does not apply to complaints about regulatory decisions but does apply to the process by which a decision is reached, and can look at questions of fairness and communication. The ICRS states that their experience suggests that as there is no recourse to an LSO type of service, individuals are unhappy and confused as to what avenue they now have to challenge regulatory decisions taken by the SRA.
15. It was never the case that the LSO could look at complaints about any regulatory decisions made to it by any complainant. The LSO's scope was limited to looking at the way the SRA handled a consumer's complaint about a solicitor. A solicitor generally did not have the right of recourse to the LSO if unhappy with regulatory action taken against him or her. The LSO could not look at decisions regarding student enrolment or decisions regarding applications to the roll, for example.
16. If consumers have a complaint about a regulatory decision, the SRA will usually explain that decision and/or technically review the decision in appropriate circumstances.
17. If a solicitor has concerns about a regulatory decision the appropriate mechanism for review would be to exhaust any appeal procedure. In addition, we have published a reconsideration policy that applies to formal Adjudication decisions. If it appears, for example, that an Adjudication decision was made in the absence of material facts that were available to the SRA, the decision may be reconsidered.
18. There are therefore mechanisms in place to address the issue identified by the ICRS.

The SRA's commitment to equality and diversity

19. During the first year of operation, two cases were fully reviewed by the ICRS that raised allegations of

discrimination; one case raised allegations of disability discrimination.

20. We are pleased to note that the ICRS has recognised the efforts the SRA makes to ensure we handle complaints of discrimination sensitively and objectively. We are assured that the ICRS found that our practices are fair and free from discrimination. While it is reassuring that the ICRS found no evidence of discrimination, it did comment that our process for reasonable adjustments lacked clarity and consistency.
21. It should be noted that these comments emerged from one very complex case where key learning points had been identified before the case was referred to the ICRS. The SRA had, prior to the complaint being considered, developed and published a policy on reasonable adjustments and developed a training programme to ensure staff were equipped with the practical tools to put the policy into effect. It is important to recognise that this area is complex and reasonable adjustments must be considered on a case by case basis, as no two cases are the same. Nevertheless, we have reviewed our process in this regard and will publish examples of the adjustments we have made, to help reassure users that our policy is adhered to in our decision making.

Complaint handling generally

22. The SRA recognises that there is scope for further improvement in the way that complaints are handled at stage 1 of our procedure, in particular. In 2012 the SRA has set out its plan to:
1. provide core training to all staff on communication skills;
 2. provide advanced communication skills training to those handling complaints at stage 1;
 3. ensure the expertise identified in the complaints handling department is shared more widely across the SRA through coaching and support for staff who deal with complaints.

23. We would like to thank the ICRS for its first annual report.

We look forward to another constructive year of working with the ICRS to drive forward further improvements in our complaint handling processes.

1. Prior to OFR the SRA did not investigate each and every allegation made to it but it did generally explain to individuals what it was doing with the information that had been provided.