

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 October 2018 to 31 October 2019. It is the first report from the Centre for Effective Dispute Resolution (CEDR) since we took over the service in October 2018. The report covers a 13-month period from our appointment so as to align it with the SRA's reporting calendar.

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.

As was experienced by our predecessor, the SRA continues to demonstrate high standards in its handling of complaints about its service. The number of complaints referred to us represents a remarkably small proportion of the SRA's overall caseload. Furthermore, those complaints which we do see are invariably accompanied by very thorough and considered responses from the SRA Corporate Complaints Team.

Of course, the significance of an Independent Review process derives not just from the number of cases that it handles but, more importantly, from the very fact of its existence and the underlying philosophy of the organisation that complaints are not about blame but instead provide valuable opportunities to learn from experience and identify improvements that will benefit future service users. This commitment to continuous learning informs the work of our reviewers, as it does the SRA's Corporate Complaints Team.

In that spirit, this report does contain some suggestions as to where more work may be beneficial, particularly in terms of assisting the general public to have a clearer understanding of the specific role that the SRA plays in the regulation of solicitors in England and Wales. At present, many appear to have a misconception as to how the SRA approaches complaints about solicitors, and this in turn contributes to complaints about the SRA itself. This is not a new observation as it has been raised before by some of our predecessors; this is, however, a complicated area that merits further consideration.

Finally, 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 biannual 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 complaints are undertaken by the Corporate Complaints Team.

During the course of the year our audits have 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, Contact Centre, Ethics Guidance, and Investigation and Supervision.

The findings from the two audit visits so far undertaken are 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 and we also observed a high standard of customer service professionalism in the telephone-based stage 1 complaints handling within the Contact Centre.

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 13-month period from 1 October 2018 to 31 October 2019, we received 156 initial enquiries about our work.

This level of initial enquiry is broadly consistent with that reported by our predecessor over the past two years (131 in the year to 31 October 2017; 139 in the 11 months to 30 September 2018).

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

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

	13 months to 31 October 2019	11 months to 30 September 2018	12 months to 31 October 2017
Proceeded to review	82	80	99
Closed	74	59	32
Total enquiries	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 156 enquiries, 82 subsequently resulted in the completion of our application form and have proceeded to review. This figure includes 9 applications that were originally made to our predecessor, Ombudsman Services Limited, in June 2018 but did not come to light until August 2019 when they were passed over to us to review.

Of the remaining 74 enquiries received during the year, we identified 32 as being premature, in that the individual had yet to complete the first two stages of the SRA complaints procedure. The remaining 42 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 82 enquiries for which application forms were completed, 57 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.

	13 months to 31 October 2019	11 months to 30 September 2018	12 months to 31 October 2017
Preliminary review reports - cases rejected	n/a	55	90
Accepted for investigation after preliminary review - full review reports issued	n/a	26	37
Reports issued	57	n/a	n/a
Total	57	81	127

The above table reflects a difference of approach as between CEDR and the previous Independent Reviewer, Ombudsman Services Limited.

Our predecessor's approach was to undertake a Preliminary Review of each application received, and then to provide a report to the complainant confirming their understanding of the complaint and indicating which, if any, aspects fell within the terms of reference. It was then only those eligible matters which were taken forward for a Full Review.

In contrast, CEDR's approach starts from a recognition that, even if the subject matter of a particular complaint falls outside our scope, there may well be aspects about customer service which we can look at. For example, with a complaint about a regulatory decision, we cannot look at the merits of that decision, but we can consider the timelines and clarity of the SRA's communications with the complainant about that decision. For this reason, CEDR does not make a distinction between preliminary and full review reports. Rather, each application receives a considered response.

This change of approach also has an impact upon the comparison of the total number of reports issued in that CEDR's customer service team engage significantly with prospective complainants when they first approach us so as to ensure that they are fully aware of our remit. No-one is discouraged or prevented from applying for independent review, but we try to ensure that every complainant receives a full explanation of our remit before they go to the trouble of completing an application form and submitting their paperwork. These contacts are included within our totals for enquirers, but the related administrative communications are not included within the above totals for reports issued.

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 57 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, was all that was being complained about.

These complaints related to the following regulatory decisions:

	13 months to 31 October 2019	11 months to 30 September 2018	12 months to 31 October 2017
SRA decision not to take regulatory action after an allegation of misconduct against complainant's own solicitor	20))) Analysis	
SRA decision not to take regulatory action after an allegation of misconduct against solicitor acting for complainant's opponent	28) not) available) from	
SRA decision not to take regulatory action after an allegation of misconduct against another solicitor	6) predecessor's) report)	
SRA decision to take regulatory action against complainant (a solicitor)	3)	
	57	52	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 do so.

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 three referrals arising from complaints about other solicitors, one related to their personal behaviour in a professional setting whilst the other two related to their conduct in matters that did not involve the delivery of professional services but were nevertheless potentially breaches of the Code of Conduct.

Of the three referrals from solicitors complaining about the SRA's conduct in relation to their own situation, one related to the operation of professional exams and the other two were from solicitors who believed that they had received overly robust and unfair treatment in 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 complaints.

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.

This challenge has been raised by predecessor Independent Reviewers on a number of occasions in recent years, and 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 reporting of alleged misconduct by solicitors. This has led some individuals who have reported allegations of misconduct having unrealistic expectations with regard to actions that the SRA might take. In such situations, 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 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*.

	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	23	n/a	17
Failure to respond fully / failure to explain	11	n/a	10
Poor quality of response	7	n/a	5
Failure to keep complainant informed	5	n/a	3
Bias / discrimination	6	n/a	5
SRA policy	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

As was our predecessor's experience, delay is the most common issue that we encountered in our review of the detail of complaints. Within the 57 reviews we completed during the period, delay was a feature of the complaint in 23 instances, with 4 of those complainants adding a related concern that the SRA had failed to keep them properly updated on the progress of its investigations.

In each case, 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.

Some of the most 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.

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 but nevertheless it is encouraging to see that these issues are being addressed.

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. One particularly difficult area was when complainants sought to challenge a regulatory decision by posing a lengthy list of questions which were clearly not designed to elicit information so much as to argue why the SRA had erred in its decision.

We have also advised the SRA to caution its complaint respondents against inappropriate speculation within response letters. There were a few occasions where a stage 1 investigator rightly observed that the particular facts of an episode were unclear, and that no conclusion could reasonably be drawn. However, they then went on to offer some possible explanations of what might have happened. For example, in one instance, a complaint that a firm of solicitors had not taken a particular action sought by a non-client was met with a suggestion that possibly the firm had been dis-instructed, or had not read a letter, or had been instructed differently by their actual client. Any one of these suggestions could have been correct but, given that the SRA had already determined that the complaint was not something that they needed to follow up with the solicitor directly, the impression was inadvertently given that the SRA was somehow seeking to defend a solicitor's actions by explaining them away.

Bias and discrimination

It was in this context that six cases 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 discrimination on the grounds that they were not a UK-qualified lawyer; two involved complaints (which we did not uphold) that the SRA had failed to comply with complainants' requests for reasonable adjustments in the light of their access needs; and the other three arose from arguments that the SRA had chosen to side with legal professionals and discriminate against complainants. None of the complaints included any specific racial or gender aspects.

From our detailed reviews of these six 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 six complaints.

These occasional allegations are, however, a further reminder of the challenge which the SRA still faces. In spite of very clear explanations of its role on its website and in annual reports, there remains a perception that the SRA will take up every complaint made about a solicitor so as to deliver the "justice" that the complainant seeks. Hence, when they decline to do so, some members of the public mistakenly regard the SRA as being a professional body with a remit to defend its members.

Policy issues

Of the three complaints about SRA policy issues, two related to the detailed operation of discretionary payments from the Compensation Fund, a matter which we considered to be beyond our remit. The third arose from a complainant's view that the SRA should extend its regulatory oversight to encompass all individuals purporting to be lawyers or litigators, regardless of their qualifications. We accepted that society could well benefit from there being a clearer consensus about the usage of certain professional labels, but this was not something that either we or the SRA could address alone.

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.

For the sake of consistency with our predecessor, we can, however, report that within the 57 Independent Review reports issued in the period, we found no failings and had no recommendations to make in 49 (i.e. 86%) of those reports. The closest comparable statistic in our predecessor's report for 2018/19 is that they did not uphold complaints in 67% of instances.

Within the remaining eight reports that we issued, there were four in which we identified additional information or explanations that we recommended should be provided to the complainant. In the remaining four, we agreed that there had been minor failings in the complaints handling process, including delay, but that these were matters which had previously been identified and addressed by the Corporate Complaints Team and, therefore, did not require any additional comment from ourselves.

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

- Justine Mensa-Bonsu
- Uju Obi