

## 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 2021 to 31 October 2022.

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 Corporate 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).

Our Independent Reviewers have a very specific remit. We cannot overturn any regulatory decision taken by the SRA. However, we can look at how it has handled and responded to complaints about its own service, including such matters as:

- Was the investigation thorough and fair?
- Were all the relevant facts were taken into account?
- Were the conclusions reached reasonable and properly explained?
- Was the investigation handled efficiently, without unnecessary delay?

Although this report covers our Independent Review work during the period 1 November 2021 to 31 October 2022, it is important to recognise that much of the investigation work on the original referral to the SRA will have been undertaken during Covid-19 lockdown periods where both the SRA's and solicitors' offices were closed, and remote working was prevalent. Undoubtedly this 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. Indeed, our overall conclusion is that the standard of service being delivered by the Corporate Complaints Team has advanced even further over the past year, not least because of the introduction of a new case management system which seems to be assisting in ensuring the timeliness of responses.

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*

## INDIVIDUAL CASEWORK

### *Initial enquiries*

During the 12-month period from 1 November 2021 to 31 October 2022, we received 143 initial enquiries about our work. This level of initial enquiry is consistent with last year's level.

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 2022	12 months to 31 October 2021	12 months to 31 October 2020	13 months to 31 October 2019
Solicitors	5	4	9	10
Members of the public	138	146	103	146
Total enquiries	143	150	112	156

	12 months to 31 October 2022	12 months to 31 October 2021	12 months to 31 October 2020	13 months to 31 October 2019
Proceeded to review	81	72	73	82
Closed	62	78	39	74
Total enquiries	143	150	112	156

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 143 enquiries received during the year, 81 subsequently resulted in the completion of our application form and have proceeded to review.

Of the remaining 62 enquiries received during the year, we identified 11 as being premature, in that the individual had yet to complete the first two stages of the SRA complaints procedure. The remaining 51 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 81 enquiries for which application forms were completed in the year, 74 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 3 applications where we were first contacted during 2020/21.

Hence, a total of 77 Independent Review reports were issued in the year. This is a consistent the number of reports issued last year (2021: 74 reports).

## **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 77 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 many instances, that was all that was being complained about.

These complaints related to the following regulatory decisions:

	12 months to 31 October 2022	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	24	19	36	20
SRA decision not to take regulatory action after an allegation of misconduct against solicitor acting for complainant's opponent	40	40	55	28
SRA decision not to take regulatory action after an allegation of misconduct against another solicitor	5	5	6	6
SRA decision in connection with regulatory action against	3	6	8	3

complainant (a solicitor)				
	72	70	105	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 ethical 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, none of these involved the delivery of professional services but were nevertheless argued as being potential breaches of the Code of Conduct. One turned out to refer to an individual who was not a solicitor; one to the conduct of a solicitor in a managerial role at an organisation; and another to the personal life of a solicitor. The remaining two such cases related to the behaviour of individual solicitors in their dealings with professional colleagues.

Of the three referrals from solicitors complaining about the SRA's conduct in relation to their own situation, one arose from a disagreement with the decision taken by the SRA about the eligibility of a foreign lawyer to be admitted to the roll; whilst two were from solicitors who believed that they had received overly robust and unfair treatment during the SRA's investigations into clients' complaints about themselves (neither of which had resulted in any regulatory action being taken against the solicitor concerned).

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.

We have identified two reasons for this situation. Firstly the general public still 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. Secondly, we regularly see within complainants' referrals to us that they feel very strongly about their situation and will turn to any organisation who they perceive as being in a position of authority and, therefore, able to assist them. Where, however, the matter is not something on which the organisation is able to assist, it is not uncommon for the organisation itself, and its personnel, then to be subjected to criticism and complaint.

From our review of their dealings with individual complainants, we have observed that the Corporate Complaints Team are clearly explaining the way that risk-based regulation works, with a risk assessment using the SRA's three stage Assessment Threshold Test being undertaken before any allegation is investigated fully. Unfortunately, this has not led to any reduction in the number of out-of-scope complaints which come to us for Independent Review, not least because complainants typically perceive their own concerns as being sufficiently serious as to warrant regulatory action against a solicitor.

It may be that this situation is just an inevitable consequence of complainants' strength of feeling and that nothing more may be done to allay concerns. We would recommend, however, that further consideration is given to clarifying the respective roles of the SRA and the Legal Ombudsman so as to improve sign-posting to the appropriate body in the first instance. For example, we believe that, in the SRA's website section on "Problems and Complaints," the explanation about "When you should report a solicitor to the SRA" would usefully be given greater prominence.

### ***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 2022	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	15	26	23
Failure to respond fully / failure to explain	7	2	13	11
Poor quality of responses	13	5	5	7
Failure to keep complainant informed	2	3	4	5

Bias / discrimination	7	2	10	6
SRA policy	5	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. On a few occasions, these concerns were accompanied by an additional complaint that the SRA had not kept the complainant properly informed of progress in a case.

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. Where appropriate, they had also acknowledged and apologised for any failure to provide updates to the complainant.

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. We have, however, previously been advised that the SRA was upgrading its case management systems and, accordingly, we looked specifically at this aspect during our audit of complaint handling activities. This review work led us to conclude that the SRA now has a very good handle on timescales once a matter reaches the stage of being a complaint about the SRA (i.e. stages 1 and 2) and responses are generally being issued promptly.

### **Quality of responses**

A significant number of the cases referred for Independent Review contained complaints about the quality of the SRA's responses to complainants; this included complaints that certain issues had not been addressed or, alternatively, that some conclusions had not been properly explained.

Our reviews identified 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. However, in the majority of those instances, any shortcoming in the stage 1 response had already been identified and addressed in the stage 2 response, so there was nothing more that our Reviewer needed to add.

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

There were seven cases which required us to consider allegations of bias and discrimination by the SRA.

Five of these arose from situations in which a complainant alleged that the SRA's decision not to pursue regulatory action against a solicitor arose from bias and discrimination against the complainant. In each instance, our Reviewer found no evidence to suggest that bias or discrimination had been a factor in the SRA's assessment.

The remaining two cases involved complaints about the institutional behaviour of the SRA itself, including allegations of discrimination and corruption. However, in neither instance was any evidence provided in support of these allegations.

We did not uphold any complaints on this topic. Furthermore, from our broader casework reviews, we found no evidence of any actual bias or discrimination by the SRA and we concluded that each individual matter was addressed fairly.

### ***Policy issues***

Of the five complaints about SRA policy issues, three arose from complaints that applications to the Compensation Fund fell outside its scope; one arose from a disagreement with the SRA's powers in relation to complaints about the work of the Solicitors' Disciplinary Tribunal; and the final complaint dealt more generally with the SRA's approach to investigating complaints raised about solicitors.

Strictly, such policy differences fall outside our remit as Independent Reviewers. We can, however, comment that we were entirely comfortable with the approach taken by the SRA in each of the instances and not only was the underlying policy clearly documented but appropriate explanations were given in responses to complainants.

## **OUTCOMES OF OUR CASE WORK**

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 77 Independent Review reports issued in the period, we found no failings and had no recommendations to make in 69 (i.e. 90%) of those reports. This is slightly ahead of the 85% figure reported last year.

Amongst the eight recommendations that we did make, five dealt with case-specific

aspects where we considered that the SRA's responses had not been as clear or comprehensive as they could have been. The remaining three recommendations covered areas where our Reviewers had identified areas for possible improvement in the SRA's procedures. One related to the handling of urgent requests for documents from the Intervention Archives; one to possible improvements in the online complaint form; and the third to ensuring that, where the SRA's responses include information obtained from a solicitor who has been the subject of a complaint, it should be made clear whether that information had come from the individual concerned or from a representative of his/her firm.

Where our Independent Reviewer concludes that a complaint has been upheld, one of the remedies which is available to them to recommend is an ex gratia payment in line with the SRA's special payments guidance. During the year under review, there was just one occasion on which such a payment, of £100, was recommended in recognition of distress and uncertainty caused by the SRA's failure to address an individual's complaints in full.

## 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 again observed a consistently high standard of complaints handling at both stage 1 and stage 2.

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 and appropriately empathetic. It is pleasing to report that not only have these standards been maintained this year, but we noted an even higher level of quality, particularly as regards the clarity of explanations being offered by the Corporate Complaints Team.

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



## 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
- Eisei Higashi
- Helen Holmes
- Justine Mensa-Bonsu