

# SRA Independent Reviewer

Annual report 2018

November 2017 to September 2018



## The work of the Independent Reviewer

People turn to solicitors for help at important points in 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. When an individual 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.

## Ombudsman Services

Between October 2015 and September 2018, Ombudsman Services acted as the Independent Reviewer for the SRA.

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 sectors such as energy, communications and private parking.

## Remit

The Independent Reviewer is able to accept complaints from members of the public 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 within the remit of the Independent Reviewer.

The Independent Reviewer cannot review or overturn regulatory decisions made by the SRA. Examples of such regulatory decisions 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 its compensation scheme.

The Independent Reviewer does not investigate complaints about individual solicitors or legal firms.

Before the Independent Reviewer can become involved in a complaint, the complainant must have contacted the SRA and given it an opportunity to address their concerns.

In most cases, complainants will receive a Stage 1 response from the unit of the SRA where the complaint arose and, if they remained dissatisfied, a Stage 2 response from its 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.

Complainants must ask the Independent Reviewer to consider their complaint within 20 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, they contact the Independent Reviewer themselves.

## Executive summary

We are pleased to introduce the third and final annual report of the Independent Reviewer service we have provided to the Solicitors Regulation Authority.

The purpose of this report is to give an overview of our experience of running the service in the 11-month period between 1 November 2017 and 30 September 2018.

The report includes information about the number of enquires we have received, complaints we have accepted for investigation and investigations we have completed. We have also set out how complaints reach us, the reasons why some complaints fall outside of our remit and the nature of some of the complaints we have upheld.

From the outset, we have been of the view that the SRA is as an organisation that is committed to providing a high-quality service to those who it comes into contact with. We only receive a small number of complaints about the service it offers and, in many cases, we have not upheld the concerns raised. In those cases where shortfalls in service have been identified, we have found that the SRA is prepared to put things right and learn from its mistakes. Throughout the three years we have been working with the SRA, we have seen consistent improvements in the service it offers in several areas.

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. This year, we have identified some themes around the service offered to solicitors who are the subject of an investigation, the supervision of files claimed when the SRA intervenes in a firm, the way in which the SRA explains decisions it had taken and some delays. Our comments should be taken in the context of the fact that very few of the 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 vital in helping the SRA to understand how it can improve the service it offers.

We would also like to express our thanks to the SRA, in particular to the Corporate Complaints Team, for the constructive, professional way in which it has worked with us over the last three years - we have always felt able to obtain information and evidence from the SRA to allow us to complete our investigations and have been able to hold honest, open conversations about issues we have identified.

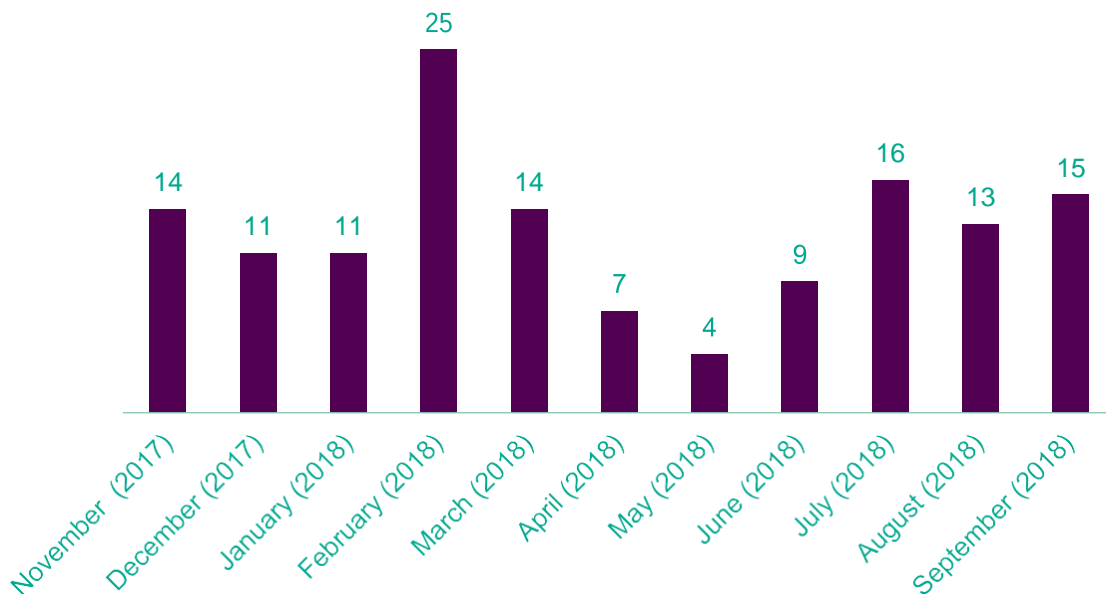
We now hand over responsibility for the Independent Reviewer service to a new organisation, CEDR, confident that the SRA will continue to engage positively with complaints.

Jonathan Lenton  
**Independent Reviewer**

## Key facts and figures

### Number of enquiries by month

The following chart shows the number of people who made an initial enquiry each month from November 2017 to September 2018:



In total, we received enquiries from 139 people over the 11-month period at an average of 12.6 complaints per month. This was slightly higher than in previous years. In our first year, we received approximately 12 new enquiries per month and in our second year we received around 11.

We received a relatively large number of enquiries in February 2018. We reviewed the nature of these to determine whether there was a specific issue driving them but we did not find any significant trends.

In common with a number of the schemes we operate, we noticed a reduction in the number of SRA complaints received during the early and mid-summer 2018. We have attributed the reduction to the good summer weather and the focus on the football World Cup. The above-average number of complaints received between July and September 2018 might well have been a corrective – perhaps because people delayed making complaints that otherwise would have been made earlier.

Some of the people who enquired about our service had, appropriately, completed the SRA's complaint handling procedure and were in a position to ask us to review their complaint. We sent those people an application form so that we could complete a preliminary review to decide whether

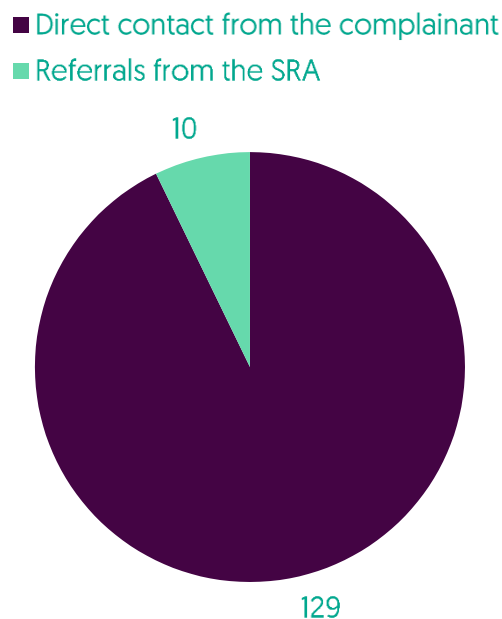
their complaint fell within our remit. We helped those who had not completed the SRA's complaints procedure to understand what they needed to do to progress their complaint. We also received enquiries from people who were not looking to make a service complaint. Again, we did our best to help by signposting to an appropriate organisation.

Of the 139 initial enquiries received between 1 November 2017 and 30 September 2018, 80 proceeded to a preliminary review and 59 were closed without a review.

## How did complainants contact us?

When a complainant has exhausted the SRA's complaint handling procedure it will advise them of their right to make a complaint to the Independent Reviewer. The SRA will give the complainant the contact details of the Independent Reviewer so they can make contact directly. The SRA will also offer to refer the complaint direct to us if the complainant wants them to.

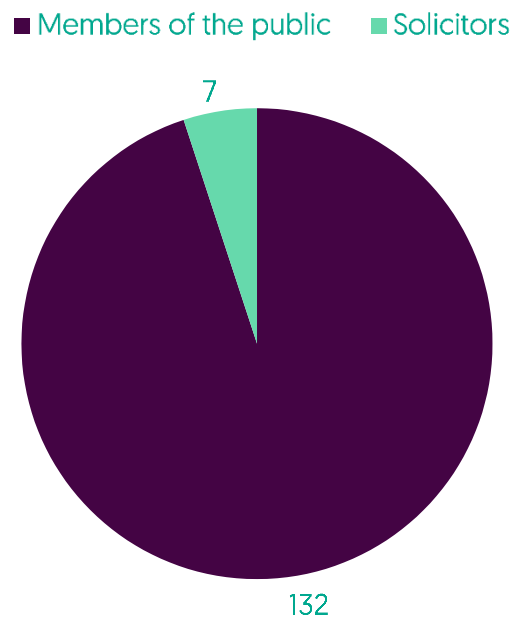
The following chart shows the number of people who were referred to us by the SRA, versus the number who chose to contact us directly, between November 2017 and September 2018:



The vast majority of complainants chose to contact us directly. Given the low number of complainants who take up the option for the SRA to refer complaints to the Independent Reviewer, the SRA may wish to review whether it is still necessary to offer this option.

## Who complained to us?

The following chart shows the breakdown of complainants who complained to us between November 2017 and September 2018:



The vast majority of the enquiries we received were made by members of the public. In our first 13 months, we received 149 enquiries from members of the public (an average of 11.5 per month). In the 12-month period between November 2016 and October 2017, we received 113 enquiries from the public (an average of 9.4 complaints per month). This increased to 131 enquiries between November 2017 and September 2018 (an average of 11.9 complaints per month).

So, after a significant reduction in complaints and enquiries received last year, this year we saw more members of the public contacting our service.

In our first 13 months, we received 12 enquiries from solicitors (an average of 0.92 per month). This increased to 18 in the 12-month period November 2016 to October 2017 (an average of 1.5 per month). As can be seen from the chart above, enquiries from solicitors reduced to just 7 in the 11 months between November 2017 and September 2018 (an average of just 0.63 per month).

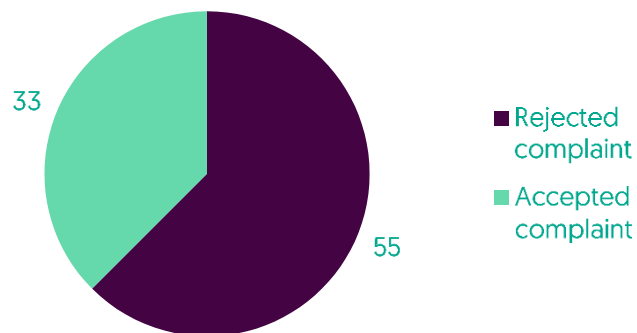
It is clearly good news that the number of enquiries being made by solicitors has reached its lowest level since we started to review SRA complaints. Later in this report we will, however, discuss some issues we have identified in relation to the service the SRA is offering to solicitors. It is possible that the low level of complaints received from solicitors is not entirely representative of high levels of satisfaction and we think therefore that the SRA should consider collecting feedback from the profession from other sources, if it is not already doing so.

## Preliminary reviews

Prior to accepting any complaint for investigation, we conducted a preliminary review to determine whether the issues raised fell within our remit.

Between November 2017 and September 2018, we completed 88 preliminary reviews – made up of the 80 complaints received in this reporting period and eight reviews carried over from the previous one.

Total cases reviewed in the period	Number of cases we rejected at the preliminary review stage	Number of cases we accepted for investigation
88	55	33



Between November 2017 and November 2018, we accepted 38% of complaints and rejected 62% of complaints. These are very similar proportions to those seen in previous years.

refusing cases during this reporting period:



As we have reported in previous years, the vast majority of the cases we decided not to investigate were because the complaint related to a regulatory decision made by the SRA. It is not within the remit of the Independent Reviewer to investigate how the SRA has exercised its regulatory powers. These were, most frequently, matters where the SRA had decided either not to investigate concerns raised about a solicitor and the person who had originally raised the concerns then complained about the SRA’s decision, or it had decided to take action against the solicitor and the solicitor complained. Clearly those who had contacted us in these circumstances were disappointed when we advised them that we could not assist them but we tried to explain our position as helpfully as we could.

As the above graph shows, there were two complaints that we did not take forward because the service issues were very minor and did not warrant a formal investigation.

In one complaint, we decided that some of the issues raised by the complainant fell inside our remit but others did not. We asked the complainant whether they would like us to investigate the issues that were in scope but they did not respond. Consequently, we did not proceed with an investigation.

### Full Investigations

After accepting a complaint for investigation, we ask both parties for the evidence we need. The investigating officer will then consider the complaint points in light of the evidence, and determine what remedial action, if any, is needed. We will then issue a draft report and invite both parties to make any final comments before we reach our final decision.



We accepted 33 cases for investigation between November 2017 and September 2018. In addition, we had eight investigations ongoing at the end of the previous reporting period. As at 30 November 2018, the status of the 41 cases is as follows:

<b>Investigations currently in progress</b>	<b>Number of reports issued during the period</b>	<b>Number of cases closed without a report being issued</b>
11	26	4

We closed four complaints without issuing a report because either the complainant decided to withdraw their complaint or we decided to discontinue our investigation because the SRA was taking disciplinary action in the case and our investigation could delay the proceedings.

## Key themes and wider commentary

In this section of the report, we set out some of the key themes and interesting issues that we identified from the complaints we investigated this year.

It is important to bear in mind that the SRA will come into contact with tens of thousands of people over the course of each year, and only a small handful contacted us to ask that we review the service they received. And, whilst we have identified some issues in a small number of complaints, these do seem to be the exception rather than the norm. Nonetheless, we know the SRA will use our comments to further improve the service it is offering to regulated persons, members of the public and others that it comes into contact with.

### Complaints from solicitors

While we receive very few complaints from solicitors about the service they have received from the SRA, there were some common themes in the complaints we received from those in the profession.

When the SRA decides to investigate allegations of misconduct it will normally write to the solicitor concerned to ask for their views on the issues raised. Solicitors are usually given two weeks to provide their initial response. The SRA will then take account of the solicitor's comments when deciding whether to investigate further.

In some of the cases we reviewed we did not feel that the solicitor had been given sufficient time to respond.

In two cases, the SRA sent an initial letter to a solicitor under investigation in which it set out the allegations it intended to investigate and enclosed a significant amount of information. In both cases, the SRA asked for a response within two weeks. In both cases we felt the SRA missed an opportunity to proactively recognise and acknowledge the work that would be involved, and to provide a more realistic timescale upfront. Although in both of these cases the SRA granted an extension, in one case we did not consider the extra time allowed was sufficient to allow the solicitor to provide a response. We could understand why the situation felt unfair to the solicitor involved.

In a couple of cases, we also commented on the lack of updates provided to solicitors under investigation. We know that in recent years the SRA has put a lot of effort into ensuring that individuals who have reported potential misconduct issues are kept up to date about the progress of investigations. We feel that more could be done, however, to let regulated individuals know about the status of investigations. This is important given that they are facing the possibility of disciplinary action being taken against them.

The need to ensure investigations are completed promptly, to protect the public interest, should be balanced against the need to give solicitors a reasonable opportunity to respond to the allegations made against them. We therefore recommend that the SRA reviews its standard timescales and

approach to time extensions for solicitors to ensure they are appropriate. We also recommend that the process for updating solicitors is reviewed.

### **Interventions**

When the SRA intervenes to close a firm, it has a duty to ensure that, as far as possible, it recovers the client's files. It has a responsibility to ensure that the files are appropriately stored and are available to the relevant clients. In two complaints we reviewed this year, clients told us about problems they had in retrieving their files following an intervention.

In one complaint, a firm had entered into administration. The administrators advised the SRA that the office had been re-let and all the client files had been removed. However, the SRA subsequently received information which suggested that some files may still have been stored at the office. The SRA failed to act on the second piece of information, assuming that all client files had, in fact, been removed. It later emerged that there were some files left behind and these were recovered two years later.

In another complaint, the daughter of a client of a firm that had been closed following an intervention, contacted the SRA in the hope that she could obtain her father's will. The SRA initially informed her, after a search, that it did not have the will in its possession. However, after another person made the same request, the SRA located the file and provided the will. Obviously, the initial advice to the client's daughter had been inaccurate.

We realise that during an intervention the SRA may seize thousands of files and that in many cases they will not be in good order. And it may well be that the two complaints above are isolated incidents of poor service. However, we recommend that the SRA carries out a review to check it is satisfied it has robust procedures in place to ensure it obtains and stores client files effectively.

### **Explanations**

In some cases, we felt the SRA could have been clearer in explaining its decisions. In particular, we saw several cases where we felt it could have better explained the reasons for discontinuing regulatory investigations to the people who had raised the initial allegations of misconduct.

For example, in one complaint the SRA had explained that it was not going to investigate concerns raised about a solicitor because they related to the service the solicitor had offered, rather than misconduct. The complainant was signposted to the Legal Ombudsman. The complainant was confused by this response, believing that the solicitor's conduct had been inappropriate. We reviewed the complaint and explained to the complainant that the SRA was right in advising them that a complaint about the service of a legal firm, and in order to obtain redress should be directed to the Legal Ombudsman. We also explained that the SRA is responsible for setting the rules that

solicitors must follow and can take enforcement action if they consider the solicitor's conduct to be inappropriate. We clarified that poor service can constitute misconduct if it is particularly grievous. One of the SRA's principles states that "solicitors should provide a proper standard of service to their clients." We felt there was an implication, in this case, that the SRA would not consider poor service to constitute misconduct under any circumstances and the information given to the complainant had not been entirely accurate. That said, we understand there is a balance to be struck between giving simple, understandable messages and more complicated but technically accurate information.

Similarly, in another complaint, we felt that the SRA had given a complainant the impression that it did not consider matters involving negligence could ever amount to misconduct. We took the view that the SRA had meant to say that the negligence the complainant alleged had not been proven, but this had not been clear in the letter the itsent.

There were instances where we did not feel that the SRA had addressed all the points a complainant had raised.

The role and work of the SRA is not always well known, and it can be difficult to understand. As mentioned above, there are occasions when it could improve the explanations it provides. We appreciate that the SRA tries to be concise in its communication and give clear and simple messages when responding to complaints about solicitors, but we think it is important that it ensures that all issues raised by a complainant are addressed.

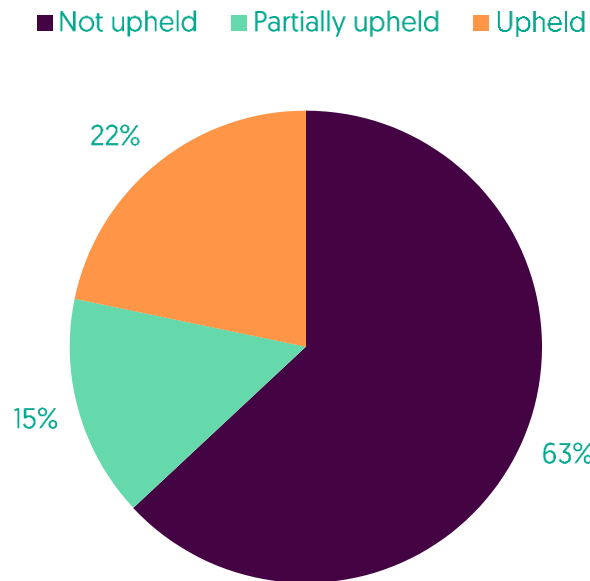
## **Delays**

The most common reason for which we upheld complaints was in relation to delay. We upheld 10 complaints made by people who took issue with the time taken to receive a response from the SRA. In most of these the delay was fairly short - perhaps a few days or a couple of weeks. In some, the delay was longer. Delays are obviously annoying, and the SRA should continue to work to ensure that it provides responses within its published timescales.

We investigated three complaints from solicitors who were unhappy about the length of time taken to carry out a regulatory investigation into their conduct. In two of these, we were broadly of the view that while the investigation had taken several months [or more] to complete, the investigation had progressed promptly at each stage, and the overall length of time taken was due to the complexities of the cases. In the third case, we highlighted a three-month period of apparent inactivity and therefore decided that the investigation could have been completed more quickly.

## Outcomes of our reviews

Here is a summary of the outcome of our investigations:



These results are very similar to last year, where we reported 21% upheld, 12% partially upheld, and 67% not upheld respectively. Clearly, we are only upholding a small proportion of issues raised – in most of the complaints we reviewed, we felt the SRA had acted reasonably.

Last year, we upheld many complaints on the basis that the complainant had experienced a delay during the complaints procedure. We reviewed the reasons for upholding complaints this year and found no clear trends. They appear to relate to isolated incidences of poor service rather than being representative of systemic failures.

## Contact details

[www.Ombudsman-Services.org](http://www.Ombudsman-Services.org)

Independent Reviewer, PO Box 1272, Warrington, WA4 9RP

0333 300 1336 [our phone line will be closed from January  
2019]

Phone lines open 9am until 5pm Monday to Friday. Closed on weekends and bank holidays.

Please note 03 numbers introduced by Ofcom are an alternative to chargeable 08 numbers such as 0845. Calls to 03 numbers cost the same or less than calls to 01 or 02 numbers and are included in any inclusive minutes or discount packages. These rules apply to calls from any type of line including mobile, fixed line or payphone.

Information and figures in this report were based on Ombudsman Services complaints data collated from 1 November 2017 to 30 September 2018

**Please do not use the registered address for correspondence or to raise a complaint.** If you wish to raise a complaint, please visit [www.Ombudsman-Services.org](http://www.Ombudsman-Services.org)

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