

Meeting	OLC Board	Agenda Item Paper No.	7 128.3
Date of meeting	20 July 2023	Time required	15 minutes
Title	Scheme Rules Update		
Sponsor	Steve Pearson – Deputy Chief Ombudsman		
Status	OFFICIAL		

Executive summary

As noted in previous Board updates, the revised Scheme Rules went live, as planned, on 1 April 2023.

Although there were a number of changes to the Scheme Rules, the principal changes, and the ones that have the potential to impact on the experience our customers receive, were as follows:

- Time Limits
 - Reducing the time limits from the historic six years from date of incident or, if later, then three years from date of awareness to one year from date of incident/awareness
- Ombudsman dismissals –
 - Separating SR 5.7(a) to enable dismissal for no reasonable prospects of success without the need for reference to “frivolous and vexatious”
 - Amending SR 5.7 (b) to permit dismissals where no evidence of significant impact
 - Adding SR 5.7 (p) to permit dismissals where complaint is disproportionate
 - Adding SR 5.7 (q) to permit dismissal where there has been an undue delay in bringing the complaint to LeO
- Referral to an Ombudsman for final decision
 - Amending SR 5.19/20 to permit a complaint to be treated as resolved by the case decision if not substantive / material comments raised in response to the case decision.

In response to the Scheme Rules consultation, it was evident that there was a real interest in understanding whether the changes to the Scheme Rules had any unanticipated impacts on levels of demand, access to justice or disproportionately impacted any specific group(s) of LeO’s customers. As a result, LeO committed to reviewing the impacts of the changes and, in order to better understand the impacts of the changes on our customers, we committed to collecting EDI data at the earliest possible opportunity in our process.

This paper sets out the data that has been collected since the Scheme Rules went live, the insights we can develop from that data and, where possible, compares data to historic baseline data.

The appendix to this paper sets out in more detail the EDI implications of the scheme rules changes.

Board are advised that although the rules have been successfully implemented, given the relatively short time since go live the conclusions that we are able to draw around the

operational and EDI implications of the changes are limited and should be treated with a degree of caution.	
Additionally, as we have not yet seen any of these cases progress through to investigation and resolution it is not possible to say whether there has been a positive impact on customer journey and experience.	
Recommendation / action required	
Board is asked to note the attached paper	
Equality Diversity and Inclusion	
EDI implications	Yes
EDI impact is a key consideration of how LeO is monitoring the introduction of our Scheme Rules changes. This paper and appendix provides a summary from the datasets that are significant enough at this stage to allow us to draw some meaningful conclusions to provide assurance to colleagues and stakeholders.	
Freedom of Information Act 2000 (Fol)	
Paragraph reference	Fol exemption and summary
N/A	N/A

SCHEME RULES UPDATE

1. Introduction

- 1.1. The work that took place in the lead up to the launch of the new scheme rules ensured that we put a number of points into our process where we could collect and compare data so as to understand whether the new Scheme Rules as a whole and any of the individual changes were having an impact on any group(s) of our customer.
- 1.2. In the following paragraphs we look the impacts of the new Scheme Rules in key areas of our business process.
- 1.3. This paper focusses on the practical application of the new Scheme Rules and what we can learn from what we have seen. Appendix 1 to this paper focusses and the EDI implications of the changes to the Scheme Rules.

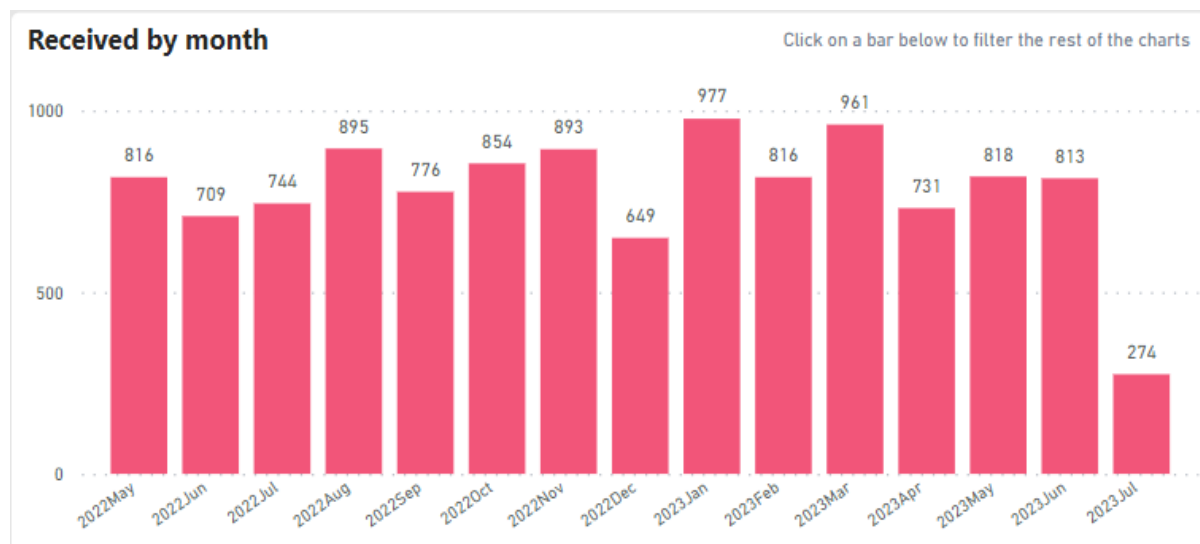
2. Eligibility Checker

- 2.1. The first point of contact for the bulk of LeO's customers is the Eligibility Checker (EC) on the website. The EC enables customers to identify whether they have complaint that we might be able to assist with by asking a range of questions geared around key jurisdictional criteria.
- 2.2. Board will recall that prior to the launch of the Scheme Rules we started collecting EDI data at the point where a customer starts using the EC – through this we were able to collect around 6 weeks of data relating to the old Scheme Rules which we have been able to use to compare the impacts of the new Scheme Rules to.
- 2.3. Historically the EC would not allow a customer to submit a complaint form if their complaint did not meet the previous time limits criteria. Currently, given the change to time limits and in the interests of ensuring that access to justice is not unduly restricted in this early transitional period, the EC is set up to explain to customers that their complaint may be out of time based on the information they have provided but still permit them to submit a complaint form (so that we can actively consider whether discretion should be applied).

	Old Scheme Rules (Weekly average)	New Scheme Rules (Weekly average)
Visits to EC	1052	862
Drop out pre completion of EC	662 (63%)	510 (59%)
Drop out at time limits question		9 (2%)

Completed EC	390 (37%)	352 (41%)
Files created by RPA*	203 (19%)	196 (23%)
Files in time (RPA)	195 (96%)	143 (73%)
Files Out of Time (RPA)	8 (4%)	53 (27%)

(* RPA refers to Robotic Process Automation – the process by which our system creates new files based on completed complaint forms)



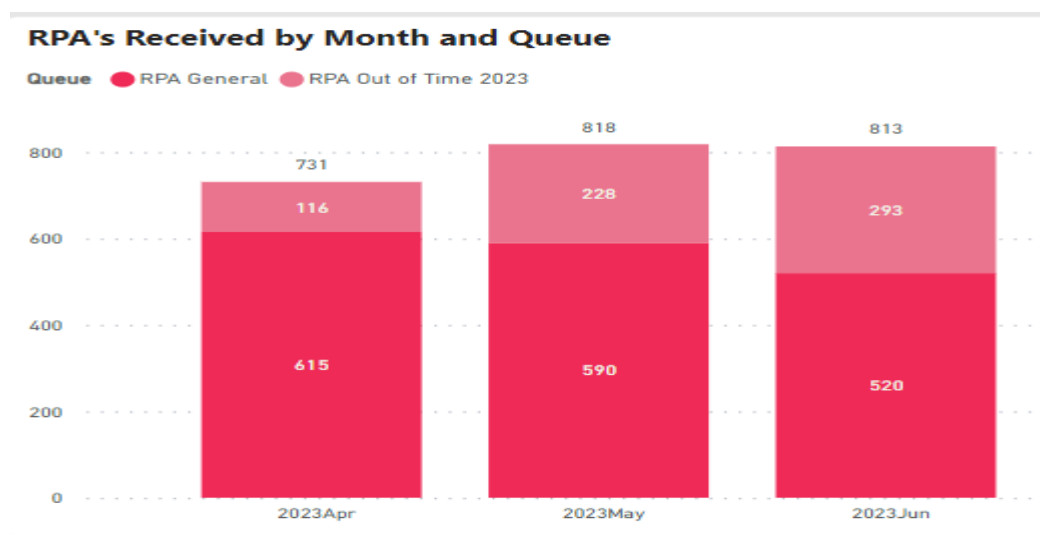
2.4. The reason for the drop in numbers of customers visiting the EC is not known as we are unable to access those customers to gain the necessary insight. However, given the work that was done in advance of the launch of the Scheme Rules to raise awareness of the changes to our time limits some of the possible drivers could be:

- Service provider signposting time limits restrictions at the completion of the first-tier complaint.
- Increased overall awareness as to LeO's time limits.
- Improved first tier complaint handling resulting in a reduction in numbers of escalation.
- Impact of early resolution initiatives driving improved complaints handling.

2.5. Although the number of visits to the EC has dropped the proportion of those visits which resulted in a complaint being submitted has actually increased from 19-23%. However, if we simply worked on the number of complaints that are within our time limits the then proportion would drop to around 17%. That number and proportion will increase through the application of ombudsman discretion to accept complaints that are out of time. The long term impact of the application of discretion on numbers cannot be accurately assessed at the moment as we are in a transitional period.

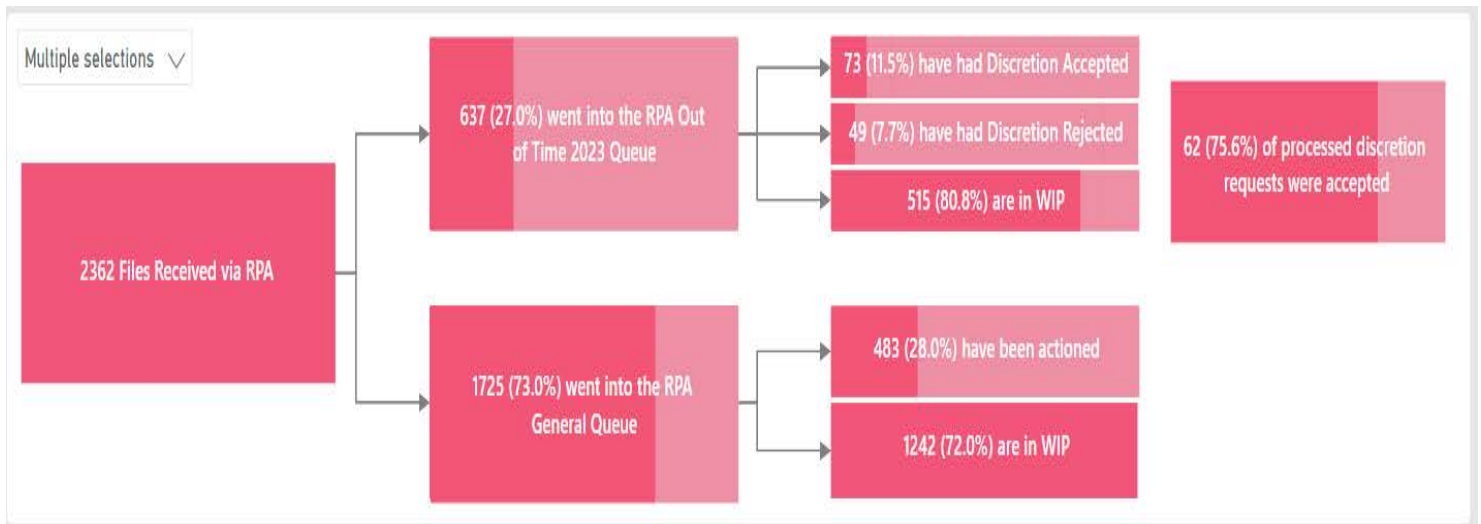
3. Time Limits and the application of discretion

- 3.1. As noted above, pre-1 April the EC was set up to exclude those customers whose complaint was out of time (based on the old Scheme Rules time limits) – customers could still contact LeO by phone/post/email to submit an Out of Time (“OOT”) complaint but they could not do so via the EC. LeO retained the discretion to accept an OOT complaint under the old Scheme Rules but only if there were exceptional circumstances. Given the width of the historic time the occasions when discretion was called upon or exercised were very few and far between.
- 3.2. Under the new Scheme Rules, LeO still retains the discretion to accept an OOT complaint but the test to be applied for that discretion has been widened to “fair and reasonable in the circumstances”. This was done to ensure that access to justice was not unduly restricted by the changes to the rules.
- 3.3. Our RPA is designed now to filter OOT complaints into a dedicated queue so that we can be sure to have identified all such complaints and have treated them all in a timely and consistent way. Of the files created by RPA since 1 April, the number created each month, broken down by whether they appear to be in or out of time, is set out below.



- 3.4. It was also agreed during this early transitional phase that LeO would take a proactive role in assessing whether it was appropriate to exercise discretion. This meant allowing customers to submit their complaints regardless of whether they were in or out of time and then working proactively with the customer to identify the information required to establish whether discretion could / should be applied.

- 3.5. This approach ensures that the impact on access to justice is mitigated as far as possible but it has proven to be a time consuming and resource intensive approach.
- 3.6. Up until the end of June, of the 637 cases that had been added to the Out Of Time queue for a review of the application of discretion, we had only been able to obtain the necessary information from the customer and have a Team Leader make the necessary discretion decision on around 120 files.



- 3.7. Board will note that we received just under 120 cases in April that required a decision around discretion and that by the end of June we had cleared around 120 cases. Therefore, it is taking around 2 months for us to be able to process discretion decisions.
- 3.8. Currently, of those cases where we have been able to make a decision on the application of discretion, we have applied it in 75% of cases.
- 3.9. It is evident from a review of the data available to us at this relatively early stage that the majority of applications for the exercise of discretion are approved on the basis that the complainant was not aware of the changes to the Scheme Rules and would have been in time on the basis of the Rules that they believed were in place at the time. 65% of approved applications for discretion are based on that ground with less than 5% being based around the customer's ill health.

Ground	Percentage
Valid under old Scheme Rules	65%
Justifiable delay by Customer in raising complaint	10%
Health	5%
Delayed investigation by Service Provider	1%
Other (for example closed firm)	19%

- 3.10. Operations have been very thorough and considered in how they are managing discretion. Measures that were implemented include ring fencing who can approve discussion requests to a very small number of team leaders. There is also a sign-off process for those team leaders that was put in place prior to them being authorised to make discretion decisions. Sample checks of those team leaders' discretion approvals or rejections have been completed by the Operations Managers.
- 3.11. Caution should be exercised when drawing any conclusions from the above data around long term performance trajectories. As the awareness of the implications of the new Scheme Rules continues to embed we will inevitably see changes in our data. By way of example, over time it is likely that more customers will bring their complaints to LeO in under 12 months, fewer customers will need to apply for discretion, the time taken to process discretion decisions should reduce, the resource required to process discretion decisions should reduce.
- 3.12. One of the key considerations for Board and external stakeholders around the changes to LeO's time limits was the impact on our customers. The Appendix to this paper talks specifically to the EDI impacts of the Scheme Rules changes.
- 3.13. We have, as the appendix notes, been able to collect a good data set in relation to the customers using and completing our EC. However, when we look to understand the impacts of this change (and others) on those customers are subject to the application of discretion, we are constrained by a relative lack of data.
- 3.14. For GDPR reasons, the EDI data we collect at the EC stage cannot be linked to a specific actual / prospective customer. As a result, we cannot use that data to understand the EDI implications of the application of discretion. To get that level of insight we need to approach our customers again for EDI data – this data can then be linked to the customer's file and used to provide the insights we are seeking.
- 3.15. However, anecdotally, we appear to be noticing an increased reluctance on our customers' part to provide EDI data for a second time. As a result, for those customers who have had a discretion decision in relation to time limits, we have only been able to collect additional EDI data in under 5% of cases. Given the small number of cases where a discretion decision has been made, the data set is currently too small to be able to draw any robust conclusions as to the impacts of this scheme rule change.

4. Chapter 5 dismissals

- 4.1. A key element of the revised Scheme Rules was to provide an ombudsman with greater clarity around the circumstances in which they could consider exercising discretion to dismiss a complaint either as part of the early resolution initiatives or during an investigation.

SR 5.7 in FET

- 4.2. Since go live on 1 April we have seen a total of 8 applications to dismiss a complaint under the new SR 5.7(a) of which 50% have been approved and 50% rejected.
- 4.3. We have not seen any applications for dismissal under any of the other new SR 5.7 grounds that were introduced under the new Scheme Rules.
- 4.4. Given the small number of cases where the rules have been applied it is not possible to draw any statistically reliable conclusions as to application of these new rules.

SR 5.7 in BAU Investigations

- 4.5. Given the number of cases still waiting in the PAP it will be some time before new Scheme Rules cases are ready to be investigated. As a result we have had no instances of the new SR 5.7 rules being applied in BAU investigations.

5. Scheme Rule 5.19/5.20

- 5.1. This rule was introduced to ensure that cases only went for an Ombudsman's decision where there was a clear reason why the case could not be resolved by way of the terms outlined in the case decision.
- 5.2. Similarly, to the application of SR 5.7, given the number of cases waiting in the PAP and the fact that an investigation has to be undertaken before a case decision can be issued, we have not as yet seen any new Scheme Rules cases reach the stage where the application of these new rules needs to be considered.

6. Trajectories

- 6.1. In the consultation for the new Scheme Rules, we suggested that, based on historic data, the changes to the time limits provisions could impact up to around 30% of LeO's future customers. However, we also acknowledged that through the application of discretion, the actual impact would likely be markedly less than 30%.

- 6.2. In the limited time since the Rules have gone live, we have seen that of the files created by RPA around 27% appear to be outside of our new time limits based on the information provided on the complaint form. Which is broadly aligned with the original assumptions as to likely impact.
- 6.3. In our original trajectories we suggested that, after the exercise of discretion, we could actually see a reduction in the number of new cases of around 5%. This level of reduction would apply for the earliest phases of the transition to the new scheme rules but would increase in subsequent quarters as the awareness of the new Rules increased and the justification for exercising discretion decreased.
- 6.4. Currently, we are seeing that we agree to exercise discretion to accept in around 75% of cases that are initially deemed out of time. In real terms, this means that of all the cases that come to us through RPA, discretion is refused in around 7% of cases. Given the relatively low numbers of files where discretion has been considered this reduction should be treated with a degree of caution. However, it is broadly aligned to the original assumption of a drop in demand of around 5%.
- 6.5. When reflecting on these numbers, we must be mindful that those customers who have discretion refused by a TL have the right to apply to an Ombudsman for that decision to be reviewed. Further, service providers also retain the right to challenge the decision to apply discretion. It is currently too early to draw any conclusions as to the likely volumes (and success rates) of either of these challenges.
- 6.6. As noted above the process for the consideration of discretion that we are currently adopting is highly time and resource intensive. This has had an impact on the speed with which new cases can be processed and will have some, as yet unquantifiable impact on trajectories. As we handle more such cases we will better understand those implications but also be able to put measure in place to mitigate any negative impacts.
- 6.7. As we have not seen the other new rules being applied in any great numbers, if at all, it is impossible to say whether the original assumptions about their likely impacts were realistic.

7. Summary

- 7.1. The Scheme Rules have been successfully implemented and although we have not, as yet, seen high levels of usage for some of the new grounds, that was to be expected.

- 7.2. The changes to our EC and the collection of EDI data at that point of our process is providing us with a level of insight that we did not previously have and will, eventually, enable us to better understand whether a high proportion of any group(s) of our potential customers drop out of our process because of the new time limit provisions.
- 7.3. Through the use of RPA we are able to identify those customers whose complaints appear to be out of time and by adopting a proactive approach to those customers' files we are able to ensure that access to justice is not unduly restricted as we go through this transitional phase.
- 7.4. Unfortunately, we have found that the process for understanding whether there is any basis to apply discretion to allow an out of time complaint, is both time consuming and resource intensive. We are looking at ways to speed up this process and reduce any adverse impacts on our customers.
- 7.5. As the months progress and awareness of the new Scheme Rules embeds with the sector and consumers of legal services, we envisage that the number of files where discretion is required will reduce. Further, as time progresses the circumstances in which it will be fair and reasonable to exercise discretion may change which again could reduce the number of instances where a discretion decision is required or where discretion is granted. However, it is currently too early to say when or indeed if this will happen and what the implications will be on customer experience or levels of demand.
- 7.6. Given that the new Scheme Rules have only relatively recently gone live, we have not as yet seen any significant usage of the SR 5.7 dismissal grounds or the SR5.19/5.20 – therefore it is not possible for us to draw any reliable conclusions on the likely usage of these grounds or the possible implications, if any, for our customers.
- 7.7. We will continue to monitor the levels of usage of the new Scheme Rules and to highlight, and take intervention as required, if the demonstrated usage is having any disproportionately adverse impacts on our customers. We will also continue to assess the impact of the changes on our operational trajectories.

Appendix 1

Scheme Rules changes – EDI impact update

1. Background and approach

- 1.1. As part of our commitment to ensuring that the scheme rule changes do not have a disproportionately less favourable outcome for any of our service users, we completed some equality impact assessment screenings on the proposed changes. These initial EIA screenings highlighted that there may be some potential adverse effects on the following three groups in particular: **disabled customers, male customers**, and from an **ethnicity** perspective.
- 1.2. Following those EIA screenings, more thorough full equality impact assessments were created to enable us to monitor the situation with regards to those potential risk areas. The project management team worked closely with the service and standards team, and EDI team to create a plan to build some reporting in power BI to monitor any impacts. This was originally planned to take one quarter (Q1) to complete this work. In the interim. It was agreed that we would do some manual monitoring for the first quarter using EDI data taken from the eligibility checker from the website. We would also track discretion information from CRM, and there was a commitment to build a series of PowerBi reports linked to the Scheme Rules changes.
- 1.3. Upon starting the work to build the impact assessments, the data team realised that due to the complexity of what was being requested, this was going to take significantly longer to build these reports than had been specified. They also concluded that that completing the work as detailed in the specification would then have impacts on their ability to deliver their BAU workload for the business. Currently 2 reports have been completed. However, the data that is displayed in those reports is not statistically significant to draw any meaningful conclusions at this stage due to the small volume of records that have been captured linked to where those files are in their journey through our process. The presentation of the data in those reports also needs refining to make them more user friendly. We know that due to the position of the files in their file journey, and the time it takes to progress a case through the various stages, we would not get any meaningful data to draw conclusions from those reports until 12 months after the scheme rules changes.
- 1.4. We appreciate that the Eligibility Checker EDI data from the website is only a partial view of determining the answer to the question of understanding the impacts of our changes.
- 1.5. We currently only have statistically significant data sets for the Eligibility Checker data and discretion information.
- 1.6. In terms of the data that we do have from the Eligibility Checker, we have a data set comprised of 18,852 records. That data set has data from six weeks prior to the scheme rules going live as that is the point when the EDI questions

were added to the eligibility checker on the website (6312 records). Then we have three months of data from the eligibility checker which covers the period of April to June 2023 post scheme rules changes being implemented (12,540 records). EDI data that we receive from the Eligibility Checker is reducing the substantive EDI forms that we receive from the casework EDI capture stage.

2. Analysis methodology

- 2.1. An initial analysis of 12,534 records was completed at the end of May. It focused on 'disability' EDI information from the Eligibility Checker and there were no signs to be concerned about from that analysis.
- 2.2. This updated analysis covers '**disability**', '**gender**' and '**ethnicity**'. Those are the 3 areas identified in the full EQIAs at risk of being potentially disproportionately affected by the SR changes.
- 2.3. The updated sample for this manual tracking exercise data is comprised of 18,852 records
 - Pre-scheme rules go live - sample size 6312 records
 - (6 weeks of data - 13 Feb 23 - 26 March)
 - Post-scheme rules go live - sample size 12,540 records
 - (13 weeks of data - 27 March 23 - 25 June 23)
- 2.4. The data for the manual tracking exercise was obtained by completing an extraction from the back-end system of the website (via the Ubracco system). The EDI info that is referenced comes from where the customer has entered their EDI info into the Eligibility Checker tool on the website.
- 2.5. The Disability & Health data does not include 'prefer not to say' or where the customer skipped EDI questions.
- 2.6. The EDI questions were added to the eligibility checker on the website w/c 17 February.
- 2.7. The discretion data is taken from PowerBI 'Ops report 1004' (see appendix).

3. Findings

3.1. Total visits

- 3.1.1. The Post-SR changes data set shows that out of the 'Total Visits' to the Complaint Checker 9.7% of them were 'out of time' compared 0.8% pre-SR change (increase of 8.9%) which is to be expected due to higher volume of cases in the post-SR changes data set.

3.2. Declined to complete the EDI questions on the Eligibility Checker

3.2.1. Of the total complainants that declined to complete the EDI questions on the Eligibility Checker there has been a negligible increase of 1% post-SR changes (64%) compared to pre-SR changes (63%).

3.2.2. Importantly, this also means that nearly two-thirds of complainants do not enter their EDI information (as this is optional).

3.3. **Completed the EDI questions on the Eligibility Checker**

3.3.1. Of the total complainants that visited the Eligibility checker there has been a slight decline of 1% of EDI checker completions post-SR changes compared to pre-SR changes.

3.4. **Disability**

3.4.1. Of the total complainants that completed the EDI questions there has been a marginal decline of 1% that 'do' have a Disability Health condition post-SR change when compared to pre-SR changes. There has been a marginal decline of 1% that 'do not' have a Disability / Health condition post-SR change when compared to pre-SR changes.

3.4.2. Of those complainants that declared their disability status, there appears to be 12% increase in 'disabled' complainants being 'out of time' post- SR changes compared to pre-SR changes, but this increase is almost in proportion to those 'non-disabled' complainants that were 'out of time' post-SR changes (10%).

3.4.3. Therefore, we can conclude there is no disproportionate impacts on this group at this stage.

3.5. **Gender**

3.5.1. Of the total complainants that completed the EDI checker there has been no change in the proportion of Male complainants post-SR changes when compared to pre-SR changes. However, that has been a marginal fall of 2% of Female complainants post-SR changes when compared to pre-SR changes.

3.5.2. Of those complainants that declared their sex, there appears to be 10% increase in 'Male' complainants being 'out of time' post- SR changes compared to pre-SR changes, but this increase is in proportion to those 'Female' complainants that were also 'out of time' post-SR changes (10%).

3.5.3. Therefore, we can conclude there is no disproportionate impacts on males at this stage.

3.6. **Ethnicity**

3.6.1. Of the total complainants that completed the EDI checker there has been a slight fall in the proportion of White complainants of 3% post-SR changes

when compared to pre-SR changes. However, there has been no change in proportion of Ethnically Diverse complainants post-SR changes when compared to pre-SR changes.

- 3.6.2. Of those complainants that declared their ethnicity, there appears to be 10% increase in 'White' complainants being 'out of time' post- SR changes compared to pre-SR changes, but this increase is in proportion to those 'Ethnically Diverse' complainants that were also 'out of time' post-SR changes (10%).
- 3.6.3. Therefore, we can conclude there is no disproportionate impacts in terms of ethnicity at this stage.

3.7. **Discretion**

- 3.7.1. The other data that we have access to relates to how discretion is being applied by colleagues in operations. We can see that during Q1 **76%** of all discretion requests are being approved (see appendix).
- 3.7.2. The main reason for valid discretion request approvals is that the request was still valid under the old scheme rules. Reassuringly, the lowest reason for discretion rejections was due to health.
- 3.7.3. The discretion process is not influenced in any way by gender or ethnicity it looks purely at the reasons that the complainant has requested that discretion is applied.
- 3.7.4. Operations have been very thorough and considered in how they are managing discretion. Measures that were implemented include ring fencing who can approve discussion requests to a very small number of team leaders. There is also a sign-off process for those team leaders that was put in place prior to them being authorised to make discretion decisions which mirrors our QAF sign off process. Sample checks of those team leaders' discretion approvals or rejections have been completed by the Operations Managers. GAs involved in this work also have sample phone calls quality checked.
- 3.7.5. From an EDI perspective we are confident that that discretion is being managed in a fair and inclusive manner aligned to our Public Sector Equality Duty commitments.

Appendix

Discretion information

- Note 1: Data shown below has been filtered to present Q1 information.
- Note 2: For Q1 **76%** of processed discretion requests were accepted.
- Note 3: For Q1 there are still **520** files to be processed for discretion requests.
- Source: [1004 - Ops Report - Power BI](#)

