

Meeting	OLC Board	Agenda Item No.	13
		Paper No.	117.10
Date of meeting	14 December 2021	Time required	20 Minutes

Title	Service Complaints Adjudicator Interim Report 2021/22
Sponsor	Susan Bradfor, Independent Service Complaint Adjudicator
Status	OFFICIAL
To be communicated to:	Members and those in attendance

Executive summary
This Paper provides the Board with the Service Complaints Adjudicator's Interim report for 2021/22.
Recommendation/action required
Board is asked to NOTE the report.

Service Complaints Adjudicator's Mid-Year Report 2021/2022

Introduction

1. This report sets out a summary of matters arising from the cases I have dealt with at Stage 3 of the service complaints process since my appointment in April 2021.
2. Six cases have been referred to me, and I provide a brief summary of the issues in Annex 2. The main matters complained of relate to the level of compensation offered for poor service, and communication. Most cases have had a clear focus around one or a small number of complaints. One complaint made by a legal service provider, consisted of 42 separate complaints, all of which he asked to be addressed at Stage 3, notwithstanding that a number had been upheld at earlier stages. I have recommended that the service considers implementing a 'vexatious complaints' policy in view of this conduct.
3. In five of these cases, I did not uphold the complaints referred to me (complaints which had been upheld at earlier stages in these cases were not referred to me for review). In the matter with 42 complaints, I upheld or partially upheld 9 complaints. These had also been upheld at earlier stages.

Areas for service improvement/development

4. It is commendable that the service complaints team actively identifies learning and areas for service improvement through the complaints process.
5. Key areas I have identified where further improvements could be made are:
 - The need for a clear distinction between a finding of poor service, and a complaint being upheld, when what is complained of is different to the poor service identified through the investigation process;
 - The importance of being alert to the needs of customers who may need additional assistance to effectively use the Legal Ombudsman service, and offering or making changes to standard approaches, for example to aid understanding or assist with communication.
6. In addition, I recommend that the service consider implementing a Vexatious Complaints policy and that the Dignity at Work policy be reviewed in so far as it relates to bullying (and harassment) to include an objective analysis of the conduct in question (see Annex 2, paragraph xiii).

7. In view of the fact that customers are frequently dissatisfied with the level of compensation offered to reflect detriment, it may be that suggestions I make at paragraph iv of Annex 2 below, could assist in managing expectations.

Overall Impression

8. I have been impressed by the open and transparent approach taken by the service complaints team, and the fact that the service complaints process is used as a vehicle to drive service improvement. I have found the standard of investigation, both in identifying and clarifying service complaints, and the depth of the investigations, to be high.
9. It is of note that an important area of dissatisfaction in most of the cases referred to me has related to the conduct of the investigation of the legal complaint, in addition to the outcome. In each case, the limitations of the service complaint process have been emphasised to the customer, and it has been pointed out that this process is unlikely to be able to provide them with a response to their real areas of concern, or the remedy they are seeking.

Susan Bradford
Service Complaints Adjudicator

Annex 1 - Workload

Year	Number of complaints Stage 1	Number of complaints Stage 2	Percentage Stage 1 to 2	Number of complaints Stage 3	Percentage Stage 2 to 3
2016/17	118	51	43%	21	41%
2017/18	129	42	32.5%	20	47.5%
2018/19	183	45	24.5%	28	62%
2019/20	164	51	31%	36	70.5%
2020/21	91	39	43%	23	59%
2021/22 to date	70	17	24%	6	35%

- a. It is apparent from the above that there was a significant reduction in complaints between 2019/20 and 2020/21, however a greater proportion progressed to stage 2 that year. This year may see a slight increase in the overall number of service complaints compared with last year, however if current trends continue, smaller proportions will progress to stages 2 and 3.
- b. Fewer cases progressing would be consistent with good complaint handling at stage 1. This is indeed what I have seen. In the matters that have progressed to me, I have been of the view that the complaint investigation at stage 1 has been thorough and has appropriately identified learning, which has been fed back to the teams involved. There has been transparency with customers, and it follows that a significant proportion do not seek to escalate their complaints further.
- c. Where complaints are escalated to stage 2, there have been occasions, from those which I have subsequently seen, where an additional matter is picked up. In the main, the stage 2 conclusion has been that the decisions reached and service improvements identified at stage 1, have been appropriate.
- d. Given the high standards of investigations and responses at stages 1 and 2, it has followed, that there has often been little for me to add at stage 3. In the main I have agreed with the approach and findings at those stages. Requests to me at stage 3 have largely been to review compensation offered, in addition to providing a decision in relation to complaints not previously upheld. I have not upheld any such complaints.

Annex 2 - Service Issues

Reference	Number of stage 3 complaints	Upheld	Service issues
SC-0627	1	0	Compensation
SC-0561	1	0	Compensation
SC-0642	3	0*	Communication, bullying
SC-0646	4	0	Communication, compensation
SC-0638	42	9	Delays, communication, being misled, documents withheld, failure to allocate different investigator, compensation
SC-0663	1	0	Compensation

*Although compensation was not referred to me for review, I found poor service in a matter separate to those complained of, and recommended an increased level of compensation to reflect that.

- i. In addition to the service complaints I have looked into, a recurring theme has been that customers remain unhappy with the outcome of their lawyer complaint, and have asked me to address matters such as insufficient weight being given to their evidence, complaints about how the investigation was conducted and allegations of bias.
- ii. I have explained that these are outside my remit, and re-sent the service complaints factsheet which sets out the scope of service complaints. In the last case I dealt with, I noted that a very clear explanation of the reason for the limitations to the service complaint process was provided by Mrs Handley to the complainant, through reference to the background to the Legal Services Act, resulting in the 'appeal' process for substantive matters being first to an ombudsman and then through judicial review. It may be that this explanation could be provided as standard information to customers who request that matters relating to the merits of the original investigation are addressed. This would provide reasoning behind the approach set out in the service complaints factsheet. On reflection, I can see that saying that remit of the complaints process is limited to service issues, without more, may well leave customers wondering why.
- iii. I have, on occasion, not upheld complaints that were upheld at previous stages. This is because in those stages, the focus has been to identify service failings. On occasion, the identified service failing has been rather different to the matter being complained of. An example was a complaint that a customer was misled. That was upheld at earlier stages, as an incorrect date was erroneously given in correspondence. There was therefore a service failing, and that was correctly identified as such. However, it did not follow

that the customer was misled. There was nothing to suggest that the incorrect date was given intentionally, or indeed, that it caused a level of confusion that could have been interpreted as misleading. It was a typographical error. I have pointed out this distinction in my reports, and I am of the view that the team has taken this on board.

Themes

Compensation

- iv. Given the small number of cases, I am cautious about attempting to identify themes. The level of compensation is however one, as this has been a matter I have been asked to review in five of the six cases. Expectations, or indeed the language used, may be factors. It may be that describing monetary offers as ex-gratia payments would have some effect. Alternatively, it could be stated explicitly when complaints are acknowledged, that such payments are not offered as a standard part of the process, but where detriment beyond that which can be remedied by an apology or steps to put matters right, is identified.
- v. Where I have been asked to review compensation, I have generally been satisfied that the analysis at earlier stages has been sound, and I have agreed with the compensation offered. In one case I recommended an additional £50 (making a total of £150) as one of the matters raised by the complainant from the outset was not picked up or addressed by the investigator, meaning that there remained an unanswered question, which could not be addressed as a final decision had been issued by an ombudsman. In another case I recommended that the sum offered be reduced from £250 to £150 as I concluded that the complainant, who was a legal service provider, should have taken responsibility for the consequence of his own inaction. I did not uphold some complaints that had previously been upheld, and that was reflected in the reduced compensation I recommended. I discussed this approach with Mrs Handley, and it was agreed that going forward, complainants will be informed, when they request escalation to me, that any compensation offered may be reduced or increased.

Language

- vi. It is of note that half of the matters escalated to me related to customers for whom English was not their first language. It was apparent to me that there had been misunderstandings. I have made some recommendations around the need for investigators and others to be alert to where customers may need additional assistance in order to either ensure the service can meet their needs, or alternatively, reduce complaints which can arise due to lack of understanding.

Recommendations

vii. I have made the following recommendations in my reports:

- Stage 1 and 2 responses do not go beyond the accepted service complaints remit, to avoid any confusion over the scope of the service complaints process (this arose from a case where a comment was made about whether the investigator's decision was rushed);
- complaint responses are clear as to whether complaints are upheld or, alternatively, a service failing has been identified, which is different to the complaint made.
- the service should consider whether the onus is on individual complainants to raise the need for reasonable adjustments, (such as the use of a telephone interpreter) or, whether staff should be alert to potential needs of individual customers and make offers of adjustments to accommodate individual needs;
- where customers have difficulty understanding, whether due to language or for other reasons, the service should consider adapting usual practice, to aid understanding and avoid confusion (this may include a manager becoming involved to provide reassurance at an early stage, mirroring the complainant's language for ease of understanding, or where complaints are re-ordered, re-worded and combined, setting out what has been done in a table or similar);
- the service considers developing a vexatious complaints policy relating to service complaints, noting that the Scheme Rules allow for lawyer complaints to be dismissed on the basis that they are frivolous or vexatious;

viii. A matter which has arisen in more than one case has been that complaints have been upheld, where the evidence or finding does not support that conclusion, but a related service failing has been identified.

ix. An example of this was a complaint about bullying. The complaint was said to have been upheld, but on seeking clarification, I was informed that the finding had been limited to the customer having been spoken to in an unreasonable manner.

Bullying

x. I dealt with a complaint of bullying which was not straightforward. I had a helpful discussion with the Chief Ombudsman, which enabled me to reflect on how to address such complaints. I raise it here as I believe that there may be a need for the service to review and revise its guidance. I did not make this recommendation in my report, as, had I applied the guidance as it stood, I felt I would have had no option but to have upheld the complaint. I concluded that applying a 'test' that was more nuanced and in accordance with current caselaw was necessary. I was of the view that had I then

recommended that the guidance be revised to reflect my approach, this could have appeared contradictory.

- xi. My starting point was the Dignity at Work policy, which, having defined bullying, harassment and victimisation, states 'The key is that the recipient views the actions or comments as unacceptable'. In the complaint, I was satisfied that the complainant genuinely felt that the way he had been spoken to and treated was unacceptable. The complaint related to a long telephone call, at the end of which he requested that the service did not communicate with him by telephone going forward. I was initially minded to uphold the complaint, applying the subjective test in the guidance. In my conversation with the Chief Ombudsman, he suggested that there must be an objective element to any analysis. I therefore reviewed how courts deal with such matters. In particular I noted *Daniel v Secretary of State for the Department of Health [2014] EWHC 2578*, where a claim of bullying by a senior employee was not made out because, although the employee had been forceful and blunt, the conduct was said not to be genuinely offensive or oppressive. The case of *H v Isle of Wight Council [2001] 2 WLUK 691* also provided helpful guidance as follows: "*The criterion for what does or does not amount to bullying in any given circumstances is not to be judged solely by the subjective perception of the victim himself, but involves an objective assessment of the observed behaviour taken in conjunction with any apparent vulnerability in the target of the behaviour complained of*".
- xii. I therefore adopted a two stage analysis, and concluded that whilst the complainant felt he had been bullied, the way he was spoken to would not objectively be considered to be bullying in nature.
- xiii. In addition to the recommendations I list above, I recommend that the Dignity at Work policy be reviewed and revised to reflect this objective element, in addition to the current subjective one.