

Report No: **SLAB/2021/09**

Agenda Item: **13**

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| **Report to:** | *The Board* |
| **Meeting Date:** | 15th March 2021 |
| **Report Title** | Complaints Update |
| **Report Category** | For Discussion |
| **Issue status:** | Business as usual |

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| **Written by:** | Stuart Drummond, Corporate Governance and Policy Officer and Andrew McIntosh, Corporate Support Manager |
| **Director responsible:** | Anne Dickson |
| **Presented by:** | Andrew McIntosh |
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| **Delivery of Strategic Objectives** | |
| Select the Strategic Objective(s) relevant to the issues | 1. We deliver a high quality user focussed service 2. We embed ways of working across the organisation that enhance the quality, consistency and transparency of our decisions and delivery 3. We engage with users and delivery partners across the legal aid and justice system to inform good design of our system and services |

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| **Link to Board or Committee Remit** |
| This paper is linked to the Board’s function of overseeing performance. |

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| **Publication of the Paper** |
| We have considered this paper for its suitability to be published. We recommend to the Board that the paper should be published. The information is not sensitive. |

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| **Previous Consideration** | |
| **Meeting** | **Detail** |
| 07 May 2019 | Members were updated on the new recording system and the further work that would be required to continue to improve the recording and handling of complaints and future board reporting.  Members discussed and **noted** the paper. |

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| **Report** |

**Background**

1. The preparation of this report has been delayed due to resourcing issues in the Chief Executive’s Office and, in terms of timescales, we have likely fallen short of the SPSO’s requirement to publish complaints data regularly.
2. **Frontline complaints** are issues that are straightforward and easily resolved with little or no investigation required. These complaints have a response deadline of five working days.
3. **Investigation complaints** are those that have not been resolved at the frontline or for issues that are serious, complex or high risk. These complaints have a response deadline of 20 working days.
4. The Civil Legal Assistance Office reported separately to the Board in December 2020, which included an overview of their complaints. As such, they have not been included in this report. However, they will be included in the report for the 2020-21 data which will follow at the Board meeting in May.
5. This paper covers the period 1st April 2019 to 31st March 2020. Resource limitations within the CEO department have delayed this report. Accordingly, the April 2020 to March 2021 update will be presented at the May 2021 Board. However, an initial examination of the 2020-21 data shows that there was a total of 38 resolved complaints, 2 of which were frontline and 36 investigation complaints.

**Analysis**

**Frontline complaints received**

1. See **Table 1** appended.
2. Sixteen frontline complaints were recorded during the reporting period.
3. Of these, 15 were found to be ‘not upheld’ and one ‘partly upheld’.
4. Most frontline complaints were in relation to dissatisfaction with SLAB policy or procedure, including the partially upheld complaint. Only one frontline complaint was in relation to poor communication or standard of service, and this was not upheld.
5. Of the 16 frontline complaints received, only six met the five-day working day target.
6. The main reason for not meeting the five-day timeframe is that several complaints were initially treated as another type of correspondence e.g. a representation made during our processing of a civil legal aid application, but it then became apparent that the correspondence also represented a complaint.
7. This points to some continued difficulty in identifying complaints as distinct from requests for reviews, or as correspondence that should be dealt with under a twin track approach. Our decision-making system has designed into it, opportunities for reviews of decisions, allowing solicitors and applicants to ask for decisions to be reconsidered. This avoids multiple applications on the same point, but it can make it difficult for staff to identify when a request to reconsider has become a complaint about the decision. We will look to give further clarification for staff on this.

**Investigation complaints received**

1. See **Table 2** appended.
2. Fifty-six investigation complaints were received, of which 47 were found to be ‘not upheld’. Only six were found to be ‘upheld’ and two ‘partly upheld’.
3. Thirty-one were classed as being ‘dissatisfaction with SLAB policy or procedure’. Of those, 28 were found to be ‘not upheld’.
4. Positively, of the 56 complaints responded to, 49 (87%) were responded to within the 20 working day deadline.
5. The pattern of departments which receive complaints mirrors, to a great extent, the volume and complexity of the aid types dealt with. Accordingly, the highest number of complaints are recorded in Civil Applications. The largest proportion of complainers to Civil Applications – 41% - were classified as “other”, most of whom were opponents in cases dissatisfied with a grant of legal aid. 31% of complainers were applicants. This pattern is not replicated in Criminal Applications as the nature of that work means that most of our contact is with solicitors rather than applicants. Furthermore, the criminal applications process – both means and merits – is less complex and therefore less likely to generate complaints.
6. Although Civil Applications received the highest proportion of the complaints only one was upheld and one partially upheld. The upheld complaint – from an applicant – was as a result of an administrative oversight meaning the application process was unnecessarily lengthened. This error was acknowledged, and a full apology made to the complainer.
7. Six out of the eight ‘upheld’ or ‘partially upheld’ complaints were to the Civil Accounts department, all from solicitors. Again, this perhaps reflects the complexity and volume of the work done in this area. Of the five justified complaints, four were classified as “poor communication or standard of service” as was the ‘partially upheld’ complaints. Apologies were offered as were meetings with the complainer. One of the ‘upheld’ complaints to Civil Accounts was classified as “dissatisfaction with SLAB policy or procedure”. This resulted in a change to SLAB guidance, which now clarifies that firms can charge for one page of a Terms of Business letter.

**Revised Model Complaints Handling Procedure (MCHP)**

1. Following a review of the MCHP in 2018-19 the Scottish Public Services Ombudsman has published a revised procedure which public bodies must implement by April 2021.
2. The changes are relatively minor in nature as follows:

**Structure and presentation**

* *Core text standardised across all sectors (with additional sector-specific text and examples in each version)*

**Resolving complaints**

* *Organisations may* ***resolve*** *a complaint by agreeing any action to be taken with the customer, without making a decision on whether to uphold / not uphold*
* *There must be a clear record of the resolution agreed and signposting to next stage*

**Agreeing complaint and outcome sought at stage 2**

* *Organisations must agree the points of complaint and outcome sought with the complainant at the start of stage 2 (investigation)*
* *Where the points of complaint and outcome sought are clear, this can be done by setting these out in the complaint acknowledgement letter*

**Time limit for making complaints**

* *The six-month timeframe to make a complaint also now applies where the customer wishes to escalate to Stage 2 because they are unhappy with the Stage 1 response*

**Supporting staff**

* *Organisations must share relevant parts of the complaint and response with any staff members complained about*
* *At stage 2, staff members must be given information about the complaint process and support available, and kept updated on any timeframe extensions*

**Equality and accessibility**

* *Organisations should set out what kind of actions staff may take to support equal access to the complaints process (this can be customised to reflect local context)*

**Complaints on social media (and other digital platforms)**

* *As a minimum, organisations must respond to complaints on the organisation’s own social media channels by signposting to the complaint process and support available*

**Contact from MPs/MSPs**

* *Organisations can set out details of local procedures but must ensure they comply with relevant legislation*
* *Where a complaint is brought by an MP/MSP, the organisation must handle it in line with the CHP and ensure they do* ***not*** *operate a two-tier system*

**Performance indicators**

* *Organisations to report and publish on complaint statistics in line with performance indicators published by the SPSO*

1. An EqIA will also be carried out.
2. To a great extent the MHCP dictates the complaints policy of public bodies and we cannot deviate from that by, for example, changing the definition of a complaint that we use. However, we do have flexibility in other areas to set our own policy e.g. around the accessibility of the complaints process.
3. The plan is that we will make a number of relatively simple changes by April to ensure we are compliant with the new MCHP. We will then follow this up with a separate review of further changes that could be made to discretional policy on our complaints handling in the second half of 2021-22.

**Conclusion**

1. Overall, there is nothing within the subject matter or pattern of complaints that would suggest systemic failures.

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|  | **Governance Links** |
| 1 | **Finance and Resources**  No issues of note. |
| 2 | **Risk**  Complaints are an important way in which we can assess our service. Acting as a result of justified complaints is a key control for several risks that we face. |
| 3 | **Legal and Compliance**  Our complaints handling procedure follows a mandatory model supplied by the Scottish Public Services Ombudsman. |
| 4 | **Performance**  No issues of note. |
| 5 | **Equalities Impact**  An equalities impact assessment will be carried out in relation to the changes made in line with the revised MCHP. |
| 6 | **Privacy Impact and Data Protection**  Nothing to note. |
| 7 | **Communications and Engagement**  This paper will be published as part of our ongoing commitment to publish board papers. |

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| **Conclusion and next steps** |
| Members are asked to note and comment on the report.  We will report to the Board again in May where we will report both on 2020-21 data but also plans to improve the management of complaints generally. |

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| **Appendices/Further Reading** |
| Appendix A: Frontline Complaints Table  Appendix B: Investigation Complaints Table |

Table 1 – Frontline Complaints



Table 2 – Investigation Complaints

