



Solicitors
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From the Chief Executive

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Dear Ms Clowrey

Re: Recent decisions of the SDT regarding junior lawyers

Thank you for your letter of 13 February 2019 on behalf of the Junior Lawyers Division of the Law Society, regarding issues arising from recent Court and Tribunal judgments in respect of junior lawyers. We note that this was an open letter and, for the avoidance of doubt, confirm that we are happy for you to publish this response.

We are very mindful of the difficult and vulnerable position that trainees and junior lawyers can find themselves in. We have direct experience of this from our work; and reports such as your Resilience and Wellbeing Survey 2018 have been helpful in raising the profile of issues around stress and bullying in the workplace, and the health and wellbeing of junior members of the profession.

Our new [Enforcement Strategy](#), published on 7 February, recognises the impact these matters have on our regulatory decision-making. It highlights the fact that, when considering an individual's conduct or behaviour, we will consider the systems and environment in which the events took place: We take into account any effect this had on their judgment, and the responsibility or control they had over the matters in question.

Specifically, we say within section 2.2: *We recognise the stressful circumstances in which many solicitors and firms are working and are aware that the health of the individual at the time of the events may have a significant bearing on the nature and seriousness of the alleged breach...*

Part of being fair and proportionate is ensuring that those within an organisation, with real control and influence over the situation, are held accountable. The context in which professionals work, the culture of an organisation and pressure from peers and managers, is likely to have significant impact on their actions and decisions. Therefore, we recognise that a person's inexperience or relatively junior role within an organisation may impact on their ability to take appropriate action, although will not be an answer to serious misconduct such as dishonesty.

In particular, that document highlights the impact in our decision-making of constructive engagement with us and of the prompt reporting of concerns. The importance of early engagement is highlighted in [our response to our recent consultation on reporting obligations](#), also published on 7 February. This states that the reporting obligation is critically important in a profession founded on trust and integrity, for the development of personal accountability, for shared values, and a culture of openness which allows for learning from mistakes. It is also important to ensure effective regulation, enabling us to have timely receipt of potential risks and issues and to identify whether we need to take any action.

In any given case, our aim is to act fairly and proportionately for everyone, whilst getting to the right outcome to adequately protect clients and the public from risk and uphold confidence in the profession. This can sometimes require difficult decisions and a careful balancing act.

In the cases in question, you have highlighted the powerful judicial comments describing the pressures the individuals were under and the unhealthy environments in which they worked. In both cases, their circumstances were taken into account and balanced against their conduct and level of culpability: Specifically, in Emily Scott's case the Tribunal noted that she had allowed herself to be persuaded to carry out instructions which she must have known were a breach of her professional obligations, had allowed serious misconduct to go unreported for nearly two years – during which time clients remained at significant risk of loss – and had knowingly assisted in the deception of the Legal Ombudsman.¹ In Sovani James' case, the Court highlighted the fact that her dishonest conduct had extended over 17 months, was repeated on a number of occasions, and had caused harm.²

Clearly, each case will turn on its own facts. And it would not, as I am sure you appreciate, be appropriate for me to discuss individual cases or matters that are not in the public domain.

However, in appropriate cases we are able to – and have – found that a solicitor's mental health was such that they could not be held responsible for their actions; or that their workplace environment, or the lack of support or supervision, has excused professional mistakes or failures in judgment.

As you will be aware, we no longer regulate training contracts directly, by directing or enforcing the terms of the contract, or approve training principals. But we do authorise firms as training providers and can take action if they fall below standards in that respect, as well as the standards in our code of conduct. The latter gives us power to discipline firms where they have an unhealthy culture, work or training environment; where they fail to run their business in a way that manages and monitors ethical and compliance risks, or to train or supervise the work of juniors. Or indeed where their behaviour demonstrates a fundamental lack of integrity or risk to public confidence in the profession.

¹ Paragraph 89 of the Tribunal judgment

² Paragraph 104 of the Court judgment

Of course, we also regulate solicitors and other individuals working within those firms: You will be aware that the first respondent in the Scott case was found to have failed, as training partner, to adequately supervise Ms Scott or to ensure day to day supervision was being carried out appropriately by the second respondent. His role as training partner and abuse of Ms Scott's trust were highlighted as aggravating features of the case against him³.

However, we are keen to look at what more we can do to provide support for junior lawyers, and to ensure that they are able to raise concerns and have their voice heard.

In 2016 we launched "[Your health, your career](#)" to provide key resources and examples of how we are able to help those facing difficulties. We also work closely with a wide range of organisations which have real expertise in helping solicitors in difficulty.

And following our recent consultation on our reporting obligation, we have responded to concerns about victimisation by introducing a clear rule prohibiting individuals suffering detrimental treatment for proposing to make, or making, a report. Where trainees are concerned about completing their training, our authorisation team are able to provide help, which may include granting waivers for short periods of time "missed" or advising on our "equivalent means" process.

As highlighted in our response document, we are currently undertaking a review of our whistleblowing guidance and procedures to make it easier for people to report sensitive and confidential issues to us. We would be keen to engage with your organisation to look at what more can be done to help solicitors report in a timely way and to ensure they find any support they need.

I hope this has helped to explain how seriously we view the issues you have raised and the work we are doing to ensure that our regulatory functions take appropriate account of them. I would be happy to meet to discuss further, if you would find that to be of assistance.

Yours sincerely



Paul Philip
Chief Executive
Solicitor Regulation Authority

³ Allegation 5.4 and paragraph 67 of the Tribunal judgment