

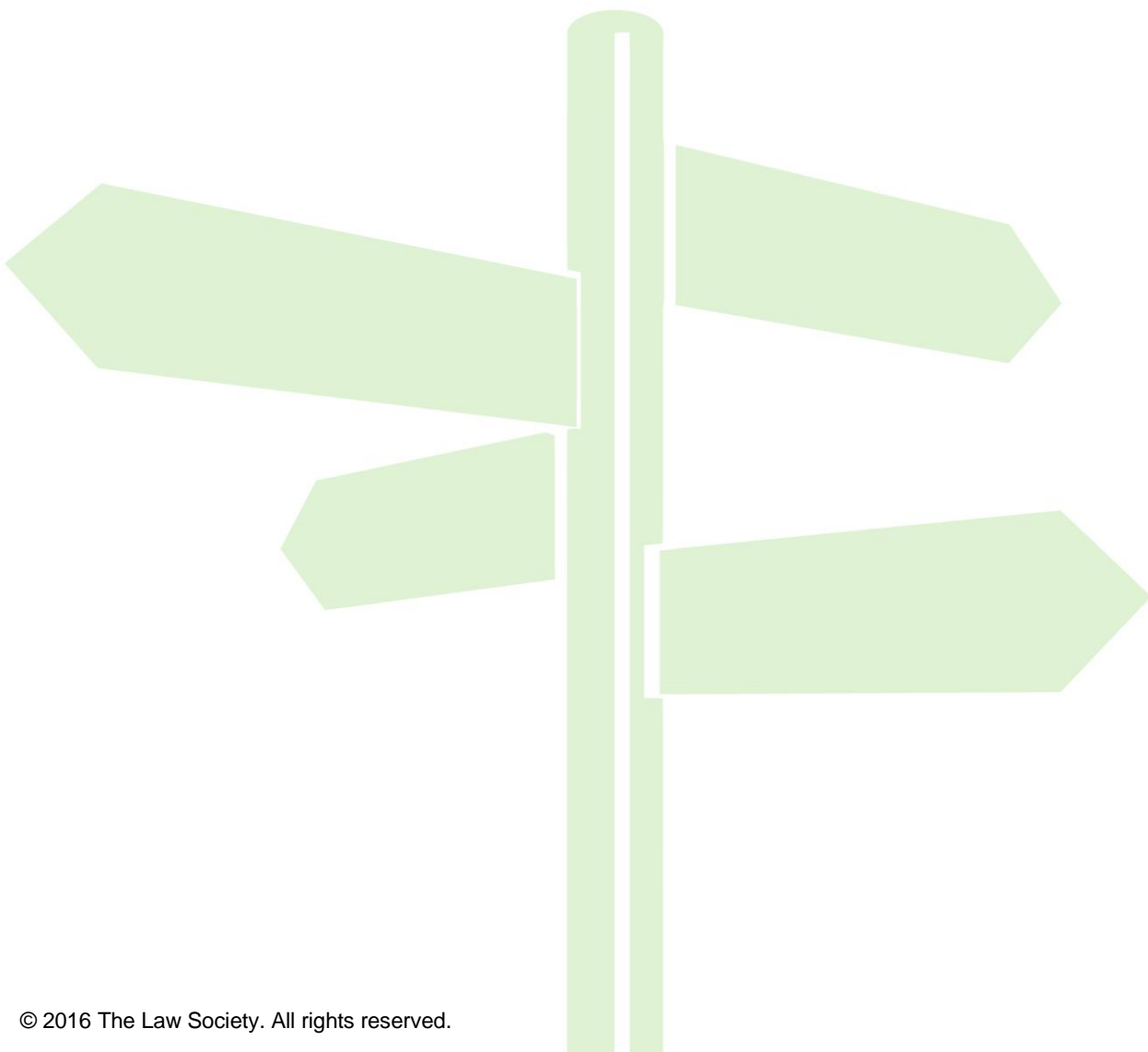


The Law Society

Legal Services Board Draft Business Plan 2019/20

Response of the Junior Lawyers Division

February 2019



Legal Services Board Draft Business Plan 2019/20

Response of the Junior Lawyers Division

The Junior Lawyers Division (JLD) is a division of the Law Society of England and Wales. The JLD is one of the largest communities within the Law Society with approximately 70,000 members. Membership of the JLD is free and automatic for those within its membership group including Legal Practice Course (LPC) students, LPC graduates, trainee solicitors and solicitors one to five years qualified.

The JLD has reviewed the Legal Services Board ('LSB') 'Draft Business Plan 2019/20 and consider that the following comments may be useful to the LSB. The JLD did not feel it necessary to answer each individual question.

The JLD would welcome the opportunity to engage with the LSB across all of its policy objectives but particularly those which affect our membership.

Q1 – Have we identified the most relevant developments in our external operating environment?

The political, regulatory and market developments identified by the LSB in the consultation document (p6-7) seem relatively comprehensive, subject to the following observations:

1. The JLD would like to remind the LSB that the developments noted in the consultation document are not necessarily non-contentious, and that the LSB's work should be informed by the spectrum of views held by stakeholders. More so when there has been significant opposition to certain developments, for example the Law Society's and other interested party's opposition to the SRA Handbook reforms which were approved by the LSB on 5 November 2018.
2. The JLD notes that the LSB's own statutory foundations have not been considered as an element of its external operating environment. Whilst the JLD acknowledges that the legislation itself is not a recent development, given that these foundations stem from the Legal Services Act 2007 ("the Act") and the JLD notes that a recent event has brought the LSB's exercise of its powers into focus, this is a relevant area for consideration.

On 26 March 2018 the LSB approved an application from the SRA regarding the introduction of the Solicitors Qualifying Examination ("SQE"). Prior to approval, various parties wrote to the LSB (examples are featured on the relevant page on the LSB website) expressing their concerns about the introduction of the SQE. In particular, the Chair of the House of Commons Justice Select Committee wrote to the LSB on 8 March 2018 citing these concerns and urging a delay in the approval in order for the proposals to receive further scrutiny.

The LSB's reply to the Justice Select Committee (dated 27 March 2018) said that "the rule approval process undertaken by the Legal Services Board (LSB) is not an assessment of whether or not we agree with proposals made by the SRA. It is an

analysis of whether the statutory criteria set out in the Legal Services Act 2007 (the Act) have been met...under the Act, the LSB may refuse an application only if it is satisfied that one of the **refusal criteria** has been met”(our emphasis added).

The refusal criteria are listed in paragraph 25(3) of Schedule 4 to the Act. Relevant extracts note that:

The Board may refuse the application only if it is satisfied that—

(a) *granting the application would be prejudicial to the **regulatory objectives**, (our emphasis added)*

...

(c) *granting the application would be contrary to the public interest,*

2.4) *The regulatory objectives are listed in Section 1(1) of the Act and include:*

(a) *protecting and promoting the public interest;*

...

(d) *protecting and promoting the interests of consumers;*

...

(h) *promoting and maintaining adherence to the **professional principles** (our emphasis added).*

2.5) *The professional principles are listed in Section 3 of the Act and include:*

...

(b) *that authorised persons should maintain proper standards of work,*

...

The LSB’s approval of the SRA’s application indicates that it was not satisfied that one or more of the refusal criteria had been met. The JLD notes however, that many of the concerns raised about the SQE by various parties (including by the JLD itself) suggested that its introduction would be contrary to the public interest, would not be in the interest of consumers and would result in lower professional standards.

Given the strength, breadth and nature of opposition to the SRA’s SQE application, the JLD is concerned that either the LSB misapplied the refusal criteria or that the refusal criteria themselves are inadequate. If the former, then the absence of an appeal or oversight mechanism in the Act is a problem which needs to be addressed. If the latter, then the refusal criteria themselves need amendment. Either way, the JLD would ask that the LSB does revisit the relevant legislative framework and make a request to the Ministry of Justice to investigate this.

Q2 – What are your views on our proposed five-year policy objectives?

1. The headline policy objectives appear reasonable, although the JLD reserves its position on how these will be implemented subject to further detail.
2. The JLD notes that the five-year policy objectives are tied to three-year strategic objectives, which will prima facie be reviewed (and potentially amended) before the programmes of work associated with the five-year policy objectives are complete. The LSB may therefore wish to consider amending the timescale for either its strategic or policy objectives so that they are simultaneously reviewed, and a situation where the organisation is pursuing

policy objectives which are not aligned with reinvigorated strategic objectives is avoided.

Q3 – Do you have any comments on our proposed business plan and work for 2019/20? Are there any workstreams that you disagree with? Is there any work that you think we should pursue that is not currently included?

1. The JLD would welcome a work stream which considers the role of regulators in protecting members of the profession - particularly at the junior end - who are working in hostile environments (such as in the recent Sovani James SDT matter) or who blow the whistle (such as in the recent Emily Scott SDT matter), whether misconduct has taken place in association with these events or not. We annex to this consultation the JLD's letter to the SRA dated 13 February 2019.

The JLD would welcome the opportunity to discuss this matter further with the LSB.

2. The JLD would support a proactive monitoring of the regulators' work on equality and diversity.

The JLD is particularly concerned about the impact of the SRA's decision to remove the mandatory minimum salary for trainee solicitors in August 2014. At the time, the JLD strongly opposed this move and stressed the negative impact the SRA's decision would have upon social mobility, equality and diversity in the profession.

The JLD and The Law Society felt that this decision left trainee solicitors open to exploitation and therefore worked together to develop a method of calculation for the amount of a recommended minimum salary. The calculation was based on the living wage plus the average yearly Legal Practice Course ("LPC") repayment.

The [2019 Salary and Benefits Benchmarker](#) conducted by Douglas Scott, legal recruiter, revealed that the number of trainee solicitors saying they are working for less than the recommended minimum salary has dropped by a third in 12 months. However, that said, the findings show that, despite the drop, 25% of trainees are still being paid below recommended levels. Further, in May of 2018, the SRA's own [impact assessment](#) revealed that the abolishment of the minimum salary had led to a fall in average pay (by £560 on average) and seen the gender pay gap widen.

Further, lower trainee solicitor salaries have a disproportionate impact on social mobility where there could be two candidates of the same merit but only one able to pursue a career in law due to their financial disparity.

Removing the regulated minimum salary for trainee solicitors has negatively impacted equality and diversity within the profession and directly conflicts with the SRA's obligation in "encouraging an independent, strong, diverse and effective legal profession" under section 1 (1)(f) of the Act.

The JLD would welcome the LSB taking proactive action in relation to the lack of a mandatory minimum salary for trainee solicitors in light of the impact this is having upon social mobility in the profession. We would also welcome the opportunity to discuss this matter further.

ANNEX: Letter from the JLD to Paul Philip, CEO, Solicitors Regulation Authority, 13 February 2019 (including annexes to that letter)

Paul Philip
Chief Executive Officer
Solicitors Regulation Authority

By email: paul.philip@sra.org.uk

13 February 2019

Dear Mr Philip

Recent decisions of the SDT regarding junior lawyers

This letter is written on behalf of the Junior Lawyers Division of the Law Society of England and Wales (“JLD”). The JLD represents LPC students, trainee solicitors, and qualified solicitors of up to five years’ post qualification experience.

We write in relation to recent decisions of the Solicitors Disciplinary Tribunal (“SDT”) and, in some cases, subsequent appeals to the High Court, regarding junior members of the profession. Specifically, we write with regard to decisions relating to the following junior lawyers:

1. Sovani James – struck off for backdating letters despite strong evidence to support that she was suffering from mental ill-health, had been subjected to bullying and oppressive management; and
2. Emily Scott – struck off as a trainee solicitor for breaching the SRA Code of Conduct following whistleblowing on her seniors despite the SDT finding that she had been bullied and pressured by those seniors.

We will deal with each matter in turn. Our primary concern is the most vulnerable lawyers in our profession, by their role and experience, are not currently being adequately protected by the SRA’s approach to enforcement or by any practical measures. The revised SRA Enforcement Policy announced in February appears not to address these well documented concerns.

1. Sovani James

In the context of our ongoing work stream focusing on the wellbeing of junior lawyers (which we will go on to discuss), the JLD has reviewed the initial SDT judgment and subsequent High Court appeal concerning the Sovani James disciplinary proceedings, with which we are sure that you will be familiar.

We note with concern the comments of both the relevant SDT and High Court judgments which highlighted how, at the firm (McMillan Williams) in question:

- '...pressures...were passed down to the fee earning team who must have felt that they were carrying the world on their shoulders.'

- '[Telling] junior solicitors that they had to make up hours by working weekends, long evenings, Bank Holidays... was a notable example of bad, ineffective and inappropriate management.'

- 'The letter from [the Chief Executive Officer] to the Respondent was threatening and harassing in tone. The Tribunal believed that the intention behind the letter was to frighten the recipient into compliance, namely into working long hours in the evenings, at weekends, at holiday times, in short doing whatever was necessary to make up time recording deficits and therefore increase billing. This was inappropriate...[and] hectoring of a junior employee.'

- '...[McMillan Williams] must take upon itself a significant proportion of blame [for the misconduct].'

- '...the pressure on the respondent was caused in large part by a culture in [McMillan Williams] which was toxic and uncaring. That may provide an explanation for her dishonesty having occurred.'

2. Emily Scott

Having reviewed the SDT judgment, noting that of the three Respondents only Ms Scott attended, the JLD understands that Ms Scott was stuck off for acting dishonestly and in breach of the SRA Code of Conduct whilst under the instruction of her seniors as a trainee solicitor. We understand that after leaving the firm Ms Scott then informed the SRA of the firm's (Quality Solicitors De Vita Platt) misconduct.

We note in particular the below comments of the SDT:

- '[Ms Scott's] motivation was to retain her employment. She stood to make no additional gain above and beyond that. The Tribunal noted that this was in the context of pressure from the Second Respondent'

- 'The circumstances were not planned on her part but [Ms Scott] carried out instructions and there was an element of planning required to do so'

- '[Ms Scott had limited responsibility for the circumstances giving rise to the misconduct. She had been attempting to conceal the misconduct of the Second Respondent'

- '[Ms Scott] had been deceived, pressured, bullied and manipulated by the Second Respondent'

The judgment makes reference to the Sovani James case (as discussed above). It is also noted that the SDT commented:

‘the fact that [Ms Scott] was under pressure and working in a horrendous environment could not excuse dishonesty’

3. Our concerns

The JLD has previously raised concerns about the protection of trainee and junior solicitors. We enclose the following communications:

- a. Letter from the JLD to the SRA (January 2013) raising the problem of lack of protection for trainees.
- b. Letter from JLD to SRA (July 2014) seeking a response to the January 2013 letter.
- c. Response from SRA to JLD (September 2014).
- d. Letter from JLD to SRA (October 2015).
- e. Response from SRA to JLD (November 2015).

You will note that our initial letter dated January 2013, raised concerns about circumstances not dissimilar to that of Ms Scott's. We also note that within the SDT judgment the training principals, although struck off, were not struck off or even reprimanded for grossly abusing their position as a training principal. The comments within the judgment are limited to the senior having ‘breached his position of trust’.

Training contract positions are difficult to obtain and are not standard employment positions. The pressures on trainees are unique in the profession and include a failure to complete the training would probably restrict the rest of a career.

We previously asked the SRA to protect trainee and junior solicitors who have access to files of those who are, perhaps in some way, in breach of the SRA Code of Conduct.

Specifically (and for your ease of reference) we stated that the JLD would:

‘[...] welcome an incorporation and acknowledgement of the protection of both junior whistleblowers and, if applicable, protection of their training contracts. This, however, will not wholly address the concerns we have about the lack of sanctions being brought against principal solicitors who fail to uphold the terms and aims of the training contract.’

In the case of Ms Scott, our concerns have been realised and we therefore now ask the SRA to confirm what protections are afforded to trainee solicitors and junior solicitors who whistleblow in circumstances whereby they may have been pressured into being complicit in actions that breach the SRA Code of Conduct.

Whilst choosing to reserve our opinion on the outcome of the above proceedings (in terms of the sanctions imposed on Ms Scott and Ms James) for the time being, the JLD would be grateful to know whether, given the above criticisms, any investigation has taken place into the conduct of the firm's training principal and also the firms in question (McMillan Williams and Quality Solicitors De Vita Platt).

If it is not possible to divulge this information, we should be grateful if you would clarify whether a hypothetical individual or firm which was criticised in a similar

fashion to the above would face investigation. We note the SRA has previously indicated it was not investigating McMillian Williams according to Law Society Gazette articles.

Whilst we have indicated that we reserve our opinion on the outcome of both proceedings, the JLD directs the SRA to its [Resilience and Wellbeing Survey Report 2018](#) which identified that 90% of respondents had experienced stress in their role, with 26% of those respondents experiencing severe/extreme levels of stress. The survey also highlighted that:

- 67.3% of respondents felt that a high workload was the cause of their stress;
- 42.8% of respondents felt that ineffective management was the cause of their stress; and - 45.0% of respondents felt that a lack of support was the cause of their stress.

The JLD should therefore be grateful if the SRA would set out the following:

- i. what practical support and measures the SRA has in place for junior lawyers who are facing difficulties in raising their concerns in the workplace;
- ii. what is the SRA doing to ensure that organisations employing junior solicitors are being supportive and that these organisations do not have 'toxic' cultures in which junior lawyers feel unable to raise concerns or ask for help.

The JLD would welcome the SRA taking action against organisations that do not provide healthy working environments for their junior lawyers and in which junior lawyers do not feel confident in raising concerns without reprisals. We would be keen to discuss these issues further with the SRA and how best the SRA might approach such matters in terms of developing practical support and measures which junior lawyers can have confidence in.

We would also point out that sanctions such as in the case of Ms James and Ms Scott are likely to deter individuals, particularly junior lawyers who are the most vulnerable in our profession, to disclose wrongdoing (either by their employer or by themselves) for fear that they will be struck off, landed with a heavy costs order and receive negative publicity.

We look forward to receiving your response on these serious issues.

Yours sincerely



Amy Clowrey
Chair, Junior Lawyers Division
Email: juniorlawyers@lawsociety.org.uk

Attachments: Previous correspondence between the JLD and the SRA 2013 to 2015.

Charles Plant
Chair, SRA Board

16 January 2013

Email: juniorlawyers@lawsociety.org.uk
Tel: 020 7320 5794

Dear Mr Plant

Protection for trainees

I write to you as the new chair of the Law Society's Junior Lawyers Division. We are a body who represent SRA members from LPC students, trainee solicitors, and qualified solicitors of up to five years' PQE. Our membership at any one time is in the region of 75,000.

I, myself, am a social welfare and housing lawyer and I qualified almost two years ago. At my admissions ceremony I distinctly recall John Wotton, former Law Society president who was officiating at the event, speaking about upholding integrity within the legal profession. Whilst wholeheartedly agreeing with Mr Wotton's sentiments, I felt that I personally had witnessed very poor standards of integrity within the firms I had encountered during my paralegal and training period.

It was not until I became vice-chair of the JLD that I realised that my experiences were far from unique.

We receive frequent communication from trainee solicitors asking for advice and assistance when their training principals bully, abuse, pressurise, and in some cases, blackmail them. These enquiries include trainees making financial errors which have been overlooked by their principals causing a deficit in the client account. Instead of the firm taking responsibility for the correction of this deficit, trainees have been asked to refund the money under the threat that if they do not carry out this action they will be unable to qualify as solicitors. Other examples, to name but a few, include when training contracts are signed by both parties and the firm fails to ever lodge the training contract with the SRA, and when trainees are told to ignore either financial breaches or unethical behaviour again under the threat of the withdrawal of their contracts.

The SRA issues, regulates, and provides guidance for the contract itself. When the JLD receive the type of enquiries cited above, we, of course, pass those enquiries to the SRA as the regulator of the training contract. The feedback received subsequent to these referrals is always that the trainee has been advised that the SRA cannot assist because it is not in "the public interest" for it to do so and/or it advises that any breach of the terms of the training contract should be taken up as employment matter to the Employment Tribunal Service. In light of the changes regarding the two year employment period needed to now bring a claim for unfair dismissal, a trainee working under a fixed term two year training contract has no recourse via the tribunal service.

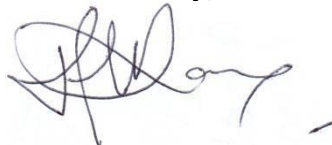
The JLD questions whether the SRA as a regulator is satisfied that it is doing enough to protect trainee solicitors and uphold the integrity of the profession. We suggest that, having closely followed the publication in the Law Gazette of the findings of the Solicitors' Disciplinary Tribunal, we cannot identify any cases of a training principal being reprimanded for grossly abusing his/her position.

The JLD has recently participated in your consultation regarding co-operation agreements by pointing out that the SRA should not necessarily only look to protect senior solicitors who whistleblow (and who may be complicit in some ways in a firm's misdemeanours), but it should also be protecting trainee solicitors who often have access to files of those who are, perhaps in some way, in breach of the Code of Conduct.

We would therefore welcome an incorporation and acknowledgement of the protection of both junior whistleblowers and, if applicable, protection of their training contracts. This, however, will not wholly address the concerns we have about the lack of sanctions being brought against principal solicitors who fail to uphold the terms and aims of the training contract. Is the SRA prepared, when receiving complaints from trainee solicitors, to fully investigate and act upon these complaints? We assert that protecting junior lawyers, who are themselves the future principals and senior solicitors, is absolutely in the "public interest". The SRA, as the regulatory body, should want all current and future lawyers to act with integrity and in full compliance of the Solicitors' Rules, the Code of Conduct, and the Legal Services Act 2007. We would like you to state precisely how the SRA intends to protect and uphold the requirements set out within the training contract and if it is not prepared to support this request then we ask for a full explanation as to why it feels that it is not in a position to do so.

We thank you for your consideration of this request and look forward to receiving your reply in due course.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Heather Iqbal-Rayner', with a stylized flourish at the end.

Heather Iqbal-Rayner
Chair,
Junior Lawyers Division

Charles Plant
Solicitors Regulation Authority
The Cube
199 Wharfside Street
Birmingham B1 1RN

1 July 2014
Email: juniorlawyers@lawsociety.org.uk

Dear Mr Plant

Protection for trainees

I write as the Chair of the Junior Lawyers Division ('JLD') on behalf of the JLD executive committee.

We write further to correspondence sent on 16 January 2013 to you in relation to the

Despite the correspondence being sent over 18 months ago, the JLD has yet to receive a formal response to this important issue. My predecessor, Heather Iqbal-Rayner, met with representatives of the SRA in February 2013 but in our view this meeting did not address the issues raised. A number of our members have raised their concerns and we feel duty bound to represent their interests.

Given the delays in this matter, we would appreciate a formal response to the issues raised by 1 August. After that date we would like to reserve the right to share this correspondence with the JLD membership, the legal press and colleagues at the Law Society who have an interest in this issue.

Should you require any further information, please do not hesitate to contact.

Your sincerely

Sophia Dirir
Chair
Junior Lawyers Division.

Miss Sophia Dirir
The Chair
Junior Lawyers Division
The Law Society
Chancery Lane
London
4 September, 2014

By e-mail only

Dear Sophia

Re: Protection for trainees

Thank you for your letter of 1 July, which we have since discussed.

There are a number of ways in which the SRA addresses the issues you raise.

1. Monitoring training contracts

First, we address complaints and concerns received from trainees, through our training contract monitoring system, which is triggered where we have concerns about the quality of the training provided, for example because of concerns raised by trainees or other information we have received.

The monitoring process comprises of two stages, the first being the completion of a questionnaire by the training principal and trainees, and the second stage a monitoring visit.

The Questionnaire

The key aim of the questionnaire is to gain an insight into the structures and systems that an organisation has in place for trainees and to determine whether the training establishment is meeting the SRA's regulatory requirements for training.

In order to obtain this information, the questionnaire asks for details of the training provision, including the training organisation's recruitment and induction procedures. Questions are also asked about the way that the training is organised and supervised, and how trainees are appraised. Additionally, trainees are required to provide a summary of their training record, detailing the type of work that they have undertaken and the skills that they have developed and used. Once completed and returned, a decision is made as to whether a monitoring visit should take place.

Monitoring visits

Monitoring visits are conducted by training contract monitors (monitors), who are experienced practitioners with significant experience of training and working with trainees. There are currently 19 monitors who are assigned to different areas of the country. The role of the monitor is to ensure that an organisation has in place the systems and resources to train and support a trainee throughout their period of training.

Prior to the visit, the monitor will usually receive copies of the completed questionnaires and this will be used to inform the meetings that take place during the visit.

During the monitoring visit, the monitor will meet trainees alone, the training principal and anyone else involved in supervising a trainee. At the end of the visit, the monitor will discuss his/her findings with the training principal and will prepare a report for the SRA. The report will provide details of the visit, including areas of good practice and a summary of the monitor's findings.

The outcomes from a monitoring visit can fall under 4 main headings:

- No concerns
- Suggestions for improvement
- Recommendations and follow-up action ☐ Follow-up visit

Typically, where suggestions for improvements, recommendations or follow-up visits are required, the monitor will discuss this with the training principal, and an appropriate timetable and action plan will be drawn up for implementing the recommendations.

The SRA keeps a record of the recommendations of the monitors and will follow up with an organisation to ensure that all the changes have been implemented.

2. Advice from the Ethics Helpline, Contact Centre or Education and Training Unit (ETU)

Trainees can and do seek guidance from, or report concerns to, the SRA Ethics Helpline or SRA Contact Centre. The response from the Ethics Helpline or Contact Centre will depend on the nature of the query raised.

If the concern is purely an employment issue (for example, an issue around working time), enquirers are told, as you report, that they should take employment advice. However, they are also referred to the Solicitors Assistance Scheme or The Law Society pastoral care line or more generally to the Law Society for representative help/support. It can at times be difficult to determine whether an issue is purely employment-law related or whether it also involves issues around poor training, or which relate to misconduct or non-compliance with the SRA Principles. However, where a training issue is identified, that will be referred to ETU and this may then trigger monitoring, as set out above. If the issue involves an allegation of misconduct, including relating to a client, the matter is referred to our Risk Assessment Team who will assess the matter for follow up as appropriate from the Supervision or Enforcement teams.

3. General protections in law

You raise the issue that some trainees have reported to you that they live under the threat of having their training contract cancelled if they report financial breaches or unethical behaviour.

In law a trainee is an apprentice and this affords additional protections against breach of contract and unfair dismissal, not available to ordinary employees. An apprenticeship can only be terminated early where there is serious misconduct, where the apprentice is so incapacitated that they are incapable of receiving training or where the business has closed or fundamentally changed. A trainee dismissed unfairly is entitled to enhanced compensation to reflect loss of earnings.

In relation to whistleblowing, the protections afforded under the Public Interest Disclosure Act 1998 apply to all workers. Trainees fall within the definition of workers in the act and so benefit from the full protections it provides.

It may be that part of the issue is not so much a lack of protection but a lack of understanding of what the protections are. We will review the guidance that we provide to trainees and publish on our website to ensure that it contains full and clear information on the issues that you have raised.

I am very sorry that you have struggled to get a satisfactory reply from the SRA for such a long period of time to a series of letters. I would happily meet with you to discuss this further if you felt that was useful.

Yours sincerely



Crispin Passmore
Executive Director
Solicitors Regulation Authority

Crispin Passmore
Executive Director
Solicitors Regulation Authority
The Cube
199 Wharfside Street
Birmingham
B1 1RN

29 October 2015

SRA Protections for Trainee Solicitors

Dear Mr. Passmore,

I am writing further to several grievances the Junior Lawyers Division of the Law Society of England and Wales ("JLD") has received relating to the SRA recently. As you are aware, the JLD is the division of the Law Society which represents LPC students, LPC graduates, trainee solicitors, and solicitors up to five years qualified across England and Wales.

The SRA has drastically reduced the protections it affords to trainee solicitors over the past few years. We have seen the abolition of the regulatory minimum salary for trainee solicitors, the withdrawal of the SRA from the voluntary code of recruitment, and the move away from prescribing training contract terms in the Training Regulations 2014. Beyond this, the JLD has received an increasing number of complaints that the SRA are failing to get involved in disputes involving trainee solicitors.

It must be the role of the regulator to intervene when a regulated training principal is breaching professional conduct rules, including the wide-ranging and important rules on ethics. Whilst these rules exist, it is not always clear what a trainee should do if they are faced with a situation where their training principal is breaching professional conducts rules / acting unethically.

To enable us to advise trainee solicitors appropriately, I would appreciate your response to the following questions:

1. What protections do the SRA afford trainee solicitors today? How can trainee solicitors go about obtaining these protections?
2. What plans do the SRA have in place to increase the protection it affords to trainee solicitors in the future?
3. In what situations will the SRA get involved in a dispute relating to a training contract? Please outline the process a trainee solicitor should follow in these situations.
4. In those situations where the SRA will not intervene, how should a trainee solicitor escalate their dispute?

In addition, we would appreciate if you could provide any other useful information or links that we can pass on to our members which relates to SRA protections for trainee solicitors.



I look forward to receiving your response to this matter, which I am sure you will agree is of utmost importance.

Yours sincerely,

A handwritten signature in blue ink that reads "Max D. Harris".

Max Harris

Chair, Junior Lawyers Division of the Law Society of England and Wales

Mr M Harris
Chair of Junior Lawyers Division of
The Law Society of England and Wales
113 Chancery Lane
London
WC2A 1PL

9th November 2015

Dear Max

RE: SRA Protections for Trainee Solicitors

Thank you for your letter dated 29th October 2015.

You ask about protections available to trainees, the SRA's role in disputes and how a trainee should escalate concerns. The answer depends on the nature of the problem.

1. Training issues

The training obligations of authorised training providers are set out in regulation 12.1(a) of the 2014 Training Regulations. They include the requirement to give trainees opportunities to develop the skills they need in practice and to meet the Practice Skills Standards. Where we have evidence that training does not meet the requirements of regulation 12, we may send in a Training Contract monitor. The monitoring process is in two stages, a questionnaire and a visit to the firm. Both stages are designed to assess the range and depth of the training provision and identify areas which could be improved. If we are satisfied that training is inadequate, we have the power to require further training, to revoke authorised training provider status or to refuse to recognise a period of training.

If a trainee has concerns about the quality of the training they are receiving, they should therefore inform us so we can decide whether or not to send in a training contract monitor.

2. Concerns about unethical behaviour

Individuals employed by a law firm have a duty to report to the SRA promptly, serious misconduct by any person or firm authorised by the SRA, or any employee, manager or owner of any such firm (outcome 10.4 of the Code of Conduct). If a trainee has concerns that the Training Principal is breaching professional conduct rules or acting unethically, or concerns that they have breached one or more of the SRA principles, they should report directly to us at report@sra.org.uk or at the postal address available on our website. When reporting an individual or firm we are more likely to investigate if those making the complaint set out their concerns clearly, identify any individual they consider responsible and include any evidence. Where the risk posed is serious we can take formal enforcement action, such as limiting or restricting the way a solicitor may work.

3. Work place disputes or termination of a period of recognised training

Under the pre-2014 training regulations, a Training Contract could not be terminated without our permission. This meant that disputes between the trainee and the firm which could result in termination were referred to us. Under the new training regulations, this is no longer the case and the SRA has no role to play in resolving disputes between trainee and employer, except where these relate to the quality of training or concerns about unethical behaviour as set out in paragraphs 1 and 2 above.

In reality our ability to resolve disputes under the old regulations was extremely limited: we had no power to order reinstatement or damages and so if a party wished to terminate a training contract we could not prevent it.

A trainee has significant protections under general employment law. A Period of Recognised Training (PRT) is likely to be an apprenticeship for employment law purposes. This confers enhanced protections, which mean that the contract between the trainee and the employer can only be terminated early where there is serious misconduct, the trainee is so incapacitated that they are incapable of being trained, or where the business has closed or fundamentally changed. Termination before the apprentice is qualified can result in enhanced awards for unfair dismissal which may include compensation for loss of wages, loss of training/trade and loss of status.

The introduction of the equivalent means provision in the 2014 Training Regulations gives trainees involved in disputes a better level of protection in having their experience recognised. Trainees who have had their training contracts or periods of recognised training terminated may demonstrate experience gained outside a formal period of training and still qualify as a solicitor. Previously we would only consider experience gained outside a training contract if the circumstances were sufficiently exceptional to justify an application for exemption or waiver.

Please do pass on the contents of this letter to your members, so they are clear about the SRA's role.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Crispin Passmore'.

Crispin Passmore
Executive Director, Policy
SRA