

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 black ink, appearing to read 'Heather Iqbal-Rayner', with a horizontal line extending to the right.

Heather Iqbal-Rayner
Chair, Junior Lawyers Division

Charles Plant
Solicitors Regulation Authority
The Cube
199 Wharfside Street
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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 above matter. A copy of this correspondence is attached for your information.

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.

Our ref:
Your ref: CP/JVT



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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



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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,



Max Harris

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



Solicitors
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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 trainings 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



Crispin Passmore
Executive Director, Policy