The SDT seeks to change the standard of proof

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In March 2014 the Legal Services Board ("LSB") recommended that the Civil Standard of Proof should be adopted in regulatory proceedings against all professionals.

In November 2017 the Bar Standards Board ("BSB") announced that the Civil Standard of Proof would be adopted in proceedings against barristers from this month.

The SDT consulted last year on whether the higher Standard of Proof should continue to apply in disciplinary proceedings against solicitors and this week it has confirmed that it will seek a change to rules so that the standard of proof in future will be the civil standard and the SRA will only have to establish dishonesty on the balance of probabilities.

There is a divergence of opinion between the SRA and the Law Society in relation to this issue. The SRA's position is that the reforms will provide greater protection for the public but the Law Society claims that there is no justification for this change and that the statistics clearly demonstrate that the SRA rarely fails to secure a conviction.

Edward Nally, President of the Tribunal denies that the decision was influenced by the changes to the Bar Tribunal and Adjudication Service ("BTAS") or that the reforms will make it "easier" for prosecutors to succeed before the Tribunal .

Currently, the statistics appear to demonstrate that a higher percentage of solicitors receive the ultimate sanction and are struck off compared with their colleagues at the Bar. The profession and its insurers will inevitably be fearful that the introduction of the Civil Standard of Proof will result in the SRA referring a greater number of solicitors to the SDT and could also result in harsher outcomes.

Those of us who represent solicitors before the SDT see at first hand how vigorously the Regulator pursues members of our profession. Even when the SRA loses, the solicitor is often unable to recover costs against the Regulator. Occasionally, they will fail to achieve the outcome that they seek but more often than not this is as a result of a procedural error on their part in the course of proceedings. This was illustrated in the case of *Peter Williams v SRA [2017] EWHC 1478*.

The changes, in our view, are unnecessary to ensure the protection of the public as under the current regime solicitors are closely monitored by a Regulator with "teeth" and their fate is determined by a robust Tribunal that rarely shows mercy. The SRA currently has a 98% success rate before the Tribunal and accordingly it is not surprising in our view that many members of the profession are questioning the need for this change. One small comfort is that the SDT's plans to do away with legally qualified Tribunal members in favour of lay members appears to have been abandoned. This will at least ensure that a panel with legal expertise will continue to inform the Tribunal's decision making.

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