

Regulatory outlook part 1 - lessons from recent cases

Published 6 May 2021

In recent months, there does now appear to be more recognition of solicitors' personal circumstances which might require the SRA to take a different approach to investigations and prosecutions.

On 14 January 2021, the SRA announced that it was halting its case against Allen & Overy partner Mark Mansell on "medical grounds". We have dealt with cases, particularly where solicitors have been suffering from mental health conditions or where they have felt suicidal as a result of on-going disciplinary proceedings, where no such indulgence has been shown.

In fact, the position is not as simple as it seems. The case against Mr Mansell has been stayed, possibly indefinitely, due to his medical condition after both he and the SRA obtained medical evidence which confirmed that the on-going proceedings posed a significant risk to Mr Mansell's life. That stay was imposed by the SDT, not the SRA, who opposed it on the basis that there was a strong public interest in the prosecution - which relates to the use of NDAs used on behalf of Harvey Weinstein - proceeding.

The SRA has previously taken a strict approach in cases where a solicitor has acted improperly even where they have been suffering from stress or a mental health condition. This arose in the SRA's joint appeal to the High Court in *SRA v Sovani James, Esteddar MacGregor & Peter Naylor* which was heard in November 2018. In each of those cases, the SDT had concluded that the solicitor Defendants had acted dishonestly, but that their mental health or stress excused that dishonesty to the extent that they should not be struck off. The SRA appealed those decisions successfully, as the Court concluded that the health conditions referred to did not amount to "exceptional circumstances" warranting a departure from the usual sanction of strike off.

Juliet Oliver, the General Counsel of the SRA, is a vocal spokesperson for what the SRA stands for and what it is trying to achieve.

Her view appears to be that the SRA should:-

- (i) Act fairly and proportionately, and consider the most serious cases to be those where the public has suffered harm as a result of a solicitor's conduct;
- (ii) Work with solicitors in a sensible, collegiate manner when carrying out its investigations;
- (iii) Be sympathetic to the inevitable stress which can result from SRA investigations and be sensitive to health conditions which might have led or contributed to the alleged misconduct;
- (iv) Not seek to punish solicitors or be unduly harsh especially where no harm has been suffered;
- (v) Look for opportunities to resolve cases without trial.

We predict:-

- (i) The SRA will take a more nuanced approach to cases, particularly where solicitors have self-reported their misconduct, they have cooperated with the SRA and no harm has been caused
- (ii) There are likely to be more cases where dishonesty will not automatically result in strike off.
- (iii) We will continue to see an increased willingness to enter into Agreed Outcomes, but we do not anticipate that this stage will be reached more quickly, as investigations and prosecutions continue to be very slow. The SRA may be more careful to bring cases which genuinely need to go to a final hearing after numerous criticisms in respect of their costs and costs awards being made against them.
- (iv) The SRA will focus more on conduct in the workplace and less on cases involving personal misconduct.

Ultimately, however, the SRA's commitment to monitoring and taking action against solicitors appears to be unwavering.

Authors

Tom Bedford

Bristol
+44 (0) 1633 657 680
tbedford@dacbeachcroft.com



DCB
DAC BEACHCROFT