As predicted? Some recent decisions in regulatory proceedings against solicitors

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Over the past year, in a number of articles and during the course of events, we have made a series of predictions. Some recently published cases have caused us to revisit those predictions:-

(i) Sexual misconduct claims are not over

During the course of lockdown in 2020, we asked whether firms could stop worrying about sexual misconduct. After all, if people were not together, how could sexual harassment occur?

Our concern was that we would start to see cases involving sexual harassment committed via electronic means, including by email and text messages. Whilst many would assume that the #metoo movement has pulled focus on such behaviour, sexual harassment remains a problem, and fortunately victims now feel more able to report it.

Whilst not committed in lockdown, the SRA made a Section 43 Order against Matthew Unwin, a former employee in DWF's finance team in March of this year, for sexually harassing a junior colleague by sending her sexually explicit WhatsApp messages.

This took place in 2018, but the decision reflects the time it can take for cases to progress. Because Unwin was not a solicitor, the SRA was able to use its own powers to prevent him from working in the law again without their permission. The case provides a reminder to firms not to be complacent about the risk of sexual harassment, and that all personnel can be the subject of the SRA's scrutiny.

(ii) The impact of #BLM has not yet been seen

Whilst Principle 6 of the SRA Principles requires solicitors to act in a way that encourages equality, diversity and inclusion, and the previous Principles included a similar obligation, there have been only a small number of cases where a solicitor's breach of this Principle has been properly examined. We predicted that this would change, not least given the impact of the #BlackLivesMatter movement.

Following a week-long hearing before the SDT in July 2021, Victor Stockinger, who had been the principal of his own firm, received the ultimate sanction and was struck off. Stockinger was found to have made racially, ethnically and religiously motivated statements at an event.

As well as being struck off, Stockinger was ordered to pay over £40,000.00 in costs. The case was aggravated by the fact that he was found to have lied to the SRA during the course of their investigation.

The case illustrates the impact that a solicitor's comments can have and how seriously the SRA takes the issue of racism. Stockinger has lodged an appeal, on the basis of a previously unsuccessful defence that his comments were taken out of context having regard to so-called "woke" perceptions of those he was speaking to.

(iii) Beware the dangers of social media

In the same way that figures in the public eye have faced career damaging consequences from their online postings, we predicted that solicitors would increasingly face the wrath of the SRA for sharing their distasteful views.

Luke Holder, a solicitor formerly employed by Shoosmiths, recently entered into a settlement with the SRA in which he submitted to a £2,000 fine for using threatening and abusive language towards three MPs on Twitter. Holder's account referred to his role as a solicitor, but it is likely in our view that he would have been the subject of regulatory proceedings in any event.

Although Holder can continue to practise, this case will clearly have damaged his reputation, not least because he was found to have failed to act with integrity and in a way that upholds public trust and confidence in the profession.

(iv) A more nuanced approach to dishonesty is on the horizon

Historically, where a solicitor was found by the SDT to have acted dishonestly, invariably they would be struck off.

We have started to see a more nuanced approach by both the SRA and SDT. This has continued, especially where a solicitor has a health issue. In the case of Alberto Khadra-Pozo, which was decided in July, Mr Khadra-Pozo was found to have made several incorrect statements and to have held himself out as a Notary Public, when he was not.

The SDT considered that although he was dishonest, Khadra-Pozo's motivation was not financial or malicious. They considered in particular the severe mental health issues he was suffering which "had undoubtedly impaired judgment at the time of the dishonest conduct".

Khadra-Pozo instead received an indefinite suspension, which although serious fell short of a strike off.

Similarly, another solicitor, Peter Maxfield Martin came before the SDT having admitted forging a colleague's signature on his firm's mental health re-accreditation application, having been authorised by that colleague to sign the form. Although he was held to have acted dishonestly, he was not struck off given that the conduct was not driven by personal gain, he was under pressure and had an unblemished history. Instead, he was suspended for a year.

What do these decisions have in common?

These cases show that the SRA and the SDT are anxious to be seen to be in step with society. It is easy to forget but firms and practitioners must remember that, at least in the SRA's view, being a solicitor carries certain privileges. With that, comes responsibility, and firms should as a consequence continue to monitor and evolve their approach to risk management.

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