

Paul Philip
Chief Executive Officer
Solicitors Regulation Authority

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

6 May 2020

Dear Mr Philip

Recent decision of the SDT regarding Claire Louise Matthews

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

Previous correspondence

We write further to the recent decision of the Solicitors Disciplinary Tribunal ('**SDT**') in respect of Claire Louise Matthews and to our letter dated 13 February 2019 (attached).

As you will no doubt recall, our letter of 13 February 2019 drew attention to the cases of Sovani James and Emily Scott. We set out concerns exemplified by these cases that junior lawyers (who are arguably the most vulnerable lawyers in our profession due to their limited experience) were not being adequately protected by the SRA's approach to enforcement, in that toxic working environments seemed to be ignored in favour of pursuing junior lawyers.

Claire Louise Matthews

The JLD has reviewed the recent SDT judgment concerning the Claire Louise Matthews disciplinary proceedings.

In common with Sovani James, Ms Matthews declared a history of mental health problems. We were alarmed to read Ms Matthews' account that in the relevant brief period (which was the subject of the hearing) she had barely eaten or slept, drank heavily (after a period of sobriety) and attempted to take her own life by taking bleach (judgement paragraph 19.40).

Although not privy to pre-hearing correspondence, we can only assume that Ms Matthew's account of her mental health (including a suicide attempt associated with the facts of the case) at the relevant time was known to the SRA in advance of the hearing. If this is the case then we are remarkably concerned that the SRA continued with its prosecution of a potentially suicidal person in the circumstances. In the alternative, in the unlikely event that

The professional body for solicitors

the hearing was the first time that the SRA had become aware of Ms Matthews' account of her mental health (and the suicide attempt associated with the facts of the case) then the SRA should have immediately made a submission for adjournment to consider the potential risks to Ms Matthews of continuing its prosecution.

Given the circumstances of Ms Matthew's case, we do not believe that the SRA's decision to prosecute was reasonable.

We further note that Ms Matthews did not provide independent expert evidence of her mental health at the relevant time and its impact on her decision-making. We note that Ms Matthews was earning £9/hour at the time of the hearing and as such infer that it would have been beyond her means to instruct an independent expert. In the interests of addressing the clear asymmetry between the SRA - who were paying £380/hour to a partner at Fieldfisher to prosecute the case - and Ms Matthews, the SRA should have offered to pay the costs of a jointly-instructed expert (who could have advised on the risk to Ms Matthews of continuing the prosecution, as well as any impact of her mental health at the relevant time). Instead, counsel for the SRA (presumably acting on instructions) used the absence of such evidence against Ms Matthews (judgement paragraph 22.8). The SRA should strongly reconsider its approach in comparable cases in the future.

We note that the SRA took part in the #SupportingSolicitors mental health campaign in 2019. We do not believe that the prosecution of Ms Matthews in the circumstances is consistent with the ethos of this campaign.

Disproportionate Sanction

We are extremely concerned at the severity of the sanction imposed by the SDT. We appreciate that the sanction is decided by the SDT, rather than the SRA, and shall be writing separately to them to outline our concerns (and to question an apparent disparity between the sanctions applied to barristers and to solicitors).

Loss of confidence in the SRA's approach to prosecuting junior lawyers

Regrettably, taken in the round, the Sovani James, Emily Scott and Claire Louise Matthews prosecutions have shaken our faith in the SRA's judgement to the point where we do not have confidence in its approach to regulatory matters involving junior lawyers who have mental health issues and/or have been working in toxic environments.

Only a short time ago, the General Medical Council ('GMC') lost the faith of many (if not most) medics following its deeply unpopular and ultimately untenable prosecution of Dr Bawa-Garba.¹ The GMC, to its credit, learned from this experience and has since strived to both examine its own approach and to regain the trust of doctors (including commissioning

¹<http://www.pulsetoday.co.uk/news/all-news/gmc-relationship-with-doctors-severely-damaged-following-bawa-garba-case/20038820.article>

an independent review).² The SRA should listen to those it regulates and give this serious thought. We understand that the SRA is already aware, and considering how to improve the issue that junior lawyers in particular are cautious and unwilling to report toxic culture or bad behaviour in their firms to the SRA or any other body. Cases such as those referenced in this letter only increase the worry junior lawyers have about reporting matters.

Unintended consequences

The SRA's approach has broader (unintended) consequences which should be considered. The sanctions in the cases of Ms James, Ms Scott and Ms Matthews are likely to deter individuals from disclosing wrongdoing for fear that they will be struck off, landed with a heavy costs order and receive significant negative publicity. We would not, of course, encourage individuals to hide mistakes for fear of disproportionate sanctions from their regulator. However, we cannot say that we would be surprised if they did.

In short, the SRA's recent approach to such matters runs the risk of mistakes being concealed, for fear of disproportionate sanction. This poses a commensurate risk to clients if mistakes are not admitted to and rectified, which defeats the purpose of regulation.

SRA action requested

We invite the SRA to immediately review its approach to prosecuting junior lawyers (including ongoing cases) where mental health or a toxic working environment could have impacted on any alleged misconduct, with a view to developing a proportionate framework which junior lawyers can have confidence in once more.

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

Yours sincerely



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Attachments: Letter to the SRA dated 13 February 2019 "Recent decisions of the SDT regarding junior lawyers"

² <https://www.gmc-uk.org/about/how-we-work/corporate-strategy-plans-and-impact/supporting-a-profession-under-pressure/independent-review-of-medical-manslaughter-and-culpable-homicide/why-have-we-commissioned-this-review>

The views expressed in this letter are those of the Junior Lawyers Division and do not necessarily reflect the views of the Law Society of England and Wales or any other organisation unless stated.

CC: Paul Tennant, CEO, The Law Society
Linda Lee, Chair, Regulatory Process Committee
Peter Wright, Chair, Policy and Regulatory Affairs Committee
Lubna Shuja, Chair, Membership Communications Committee
Elizabeth Rimmer, CEO, LawCare