



Association of Women Solicitors

Essential for Success

ASSOCIATION OF WOMEN SOLICITORS, LONDON

Response to SRA Consultation: A Question of Trust

January 2016

Response

The Consultation paper discusses the responsibilities of a solicitor as both a service provider and employer.

We as solicitors obviously acknowledge the importance of protection for the client but this response concerns the solicitor as an employer/engager of qualified and aspirant women solicitors in the 21st century variety of roles such as employee, trainee, consultant, colleague, paralegal and indeed opponent.

The values of Integrity and Independence which are included in the assessment of “Trust” can only be enhanced by a solid stand on Equality and Diversity and Discrimination. Discriminatory behaviour within the profession should therefore not be and be seen not be tolerated. Public confidence in the integrity of the profession will be hard to win and retain if the penalties for flouting Equality law are not sufficiently rigorous.

The main workplace issues for women solicitors are pay disparity, under use of flexible working, under representation at the top particularly in the private sector, bullying, abuse of maternity entitlements and sexual harassment.

For the avoidance of doubt our view is that the figures published this week in The Law Society “The Future of Legal Services” Report indicating that the feminisation of the profession is likely to continue do not negate our issues. On the contrary a majority of women in profession could actually make matters worse with those females mostly in junior roles and men continuing to occupy the top positions.

We answer the questions therefore from that perspective.

Question 1a

Are the three categories clear?

Yes.

Question 1b

If the categories of intent are not clear, how could they be improved?

N/A

Question 2a

Should 'lack of knowledge' be considered separately from 'recklessness'?

No. Lack of knowledge about basic equality and diversity issues on the part of a solicitor is inexcusable and should amount to the equivalent of recklessness.

Question 2b

If 'lack of knowledge' should be considered separately from 'recklessness', which is the more serious?

N/A

Question 3

Do you have any further comments on 'intent'?

No.

Question 4

Do you think criminal convictions (excluding minor motor offences), should be treated as matters of concern whether or not they relate to the regulated person's professional work?

Yes.

Question 5

Do you think that in considering complaints or making other decisions the SRA should include events that occur in an individual's private life, outside professional practice, that breach the professional principles?

Yes. A sexual assault on a female lawyer, or indeed any woman, outside the office (for example at the Christmas party) or showing open disrespect or vilification towards a female delegate at a Conference should be a matter of concern.

Question 6

Do you think breaches of clients' rights to privacy, dignity and non-discriminatory treatment should be treated as causing harm in themselves, even where there is no financial impact on the client?

Although this question only mentions the client our response is “Yes” because our view is that the SRA should not be seen to be endorsing *any* dilution of Equality & Diversity law and principles and should instead be seen as positively enforcing and upholding these principles.

Question 7

Do you think actions that have not resulted in harm, but have the potential to do so should be treated as less serious than the same actions where harm has arisen?

No.

Question 8

Do you think that actions that have not resulted in harm because they were identified early (e.g. by regulatory action), but had the potential to do so, should be treated as less serious than the same actions where detection only happened after harm had arisen?

No.

Question 9

Do you think that when we make decisions we should consider the impact of an individual's conduct on clients or other parties, as well as the nature and scale of the offence?

Yes.

VULNERABLE CLIENTS

Question 10

Should we view breaches as more serious where they involve vulnerable clients?

Question 11

Should we distinguish between levels of vulnerability resulting from:

- ⌚ **lack of legal knowledge or experience of legal services, and**
- ⌚ **vulnerability arising from personal circumstances, including mental or physical ill-health or disability?**

Question 12a

Are harm, intent and vulnerability the right factors for us to be taking into account?

Question 12b

Are there any other factors you consider should be included?

We have not answered these questions as they only cover the solicitor as a service provider to the client. Breaches involving vulnerable staff however such as paralegals and trainee and junior solicitors the majority of whom are female should be regarded as serious. Bullying, for example and non compliance with the Law Society's own guidance on Equal Pay and Flexible Working should be taken very seriously.

Question 13

We have focused on the professional principles set out in the Legal Services Act 2007. Do you think that we have covered the right issues and given clear examples?

The examples quoted are fine but as we have said solicitors also need to keep their own houses in order!

In Annex 1 Principle 1b: Integrity refers to Fairness and Non-discrimination.

Discrimination appears at both Level 3 and Level 5 of the Fairness and Non-Discrimination column. Some discriminatory actions are then defined but not others.

As we have said above the main workplace issues for women solicitors are pay disparity, under use of flexible working, under representation at the top particularly in the private sector, bullying, abuse of maternity entitlements and sexual harassment. All of these can amount to discrimination.

Our view is that Level 5, attracting a penalty of a large fine or suspension is the more appropriate at least as a starting point for any finding of discrimination.

The penalty could then be less for, say, an isolated incident of pay disparity which was rectified but more - Level 6 - for a very serious matter such as repeated harassment and bullying of a woman solicitor causing psychiatric injury.

The message from the SRA to solicitors on discrimination must continue to be "Up with this we will not Put!"

**Association of Women Solicitors, London
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About Association of Women Solicitors, London

Association of Women Solicitors, London was founded in 1992 and its aims include representing, supporting and developing the interests of women solicitors. Membership is open to all women solicitors and trainees and associate membership to other women lawyers including barristers, chartered legal executives and paralegals.

Further information can be found on our website

<http://www.awslondon.co.uk>