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Rule changes on health and wellbeing at work

Response from the Employment Lawyers Association

27 May 2022

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INTRODUCTION

1. The Employment Lawyers Association ("**ELA**") is an unaffiliated and non-political group of specialists in the field of employment law. We are made up of about 6,000 lawyers who practice in the field of employment law. We include those who represent Claimants and Respondents/Defendants in the Courts and Employment Tribunals and who advise both employees and employers. ELA's role is not to comment on the political merits or otherwise of proposed legislation or calls for evidence. We make observations from a legal standpoint. ELA's Legislative and Policy Committee is made up of both Barristers and Solicitors who meet regularly for a number of purposes, including to consider and respond to proposed new legislation and regulation or calls for evidence.

2. A Working Party chaired by Jonathan Chamberlain and Alistair Woodland was established by the ELA to respond to the Solicitors Regulation Authority's consultation "Rule changes on health and wellbeing at work" (the "**CP**"). The members of this sub-committee are listed at the end of this paper. Unless otherwise stated, references in this response to questions and paragraph numbers are to paragraphs in the CP.

3. References in this paper to the views of ELA are intended to be inclusive of the views of the minority as well as the majority of ELA members. Whilst not exhaustive of every possible viewpoint of every ELA member on the matters dealt with in this paper, the members of the Working Party have striven to reflect in a proportionate manner the diverse views of the ELA membership.

EXECUTIVE SUMMARY

4. We support the objectives of the proposed rule changes to promote fairness and respect in the workplace and ensure the provision of competent client services. However, our response raises some fundamental concerns with the proposed rule changes as currently formulated for the following reasons:

    4.1. The proposed rule changes go beyond the provisions already stated elsewhere

in SRA guidance.

4.2. No guidance is offered as to what would be considered 'fair treatment', and this terminology introduces vagueness and uncertainty that it is unworkable as a regulatory standard.

4.3. The proposed rule changes would place individuals under a positive obligation to challenge behaviour that is yet to be clearly defined and could lead individuals open to retributive action without protection– guidance or examples must also be given.

4.4. The potential scope of the proposal is so wide as to raise concerns that matters will be brought to the regulator which should not normally be within its proper remit or would otherwise be considered trivial.

4.5. The proposal will trigger considerably more reporting and likely reporting of more minor issues. That will deflect the SRA from its more serious duties and lead to further delay in its regulatory actions.

4.6. The health and fitness to practise proposals are likely to raise difficult issues in respect of the Equality Act 2010 and GDPR.

4.7. The health and fitness to practise proposals may have the unintended consequence of driving more solicitors not to disclose health issues or lead to the weaponizing of those issues by employers.

5. The proposals impose uncertain and ill-defined obligations on a wider range of conduct than the SRA has controlled before. Unless the duties are closely defined, with full guidance and limited to professional practice, they will place the profession under a Damoclean sword of undetermined duties of unpredictable width. Further, they risk the SRA being used as a forum to settle disputes between parties, for which it is not suited and does not have adequate funding, rather than the regulator of professional standards for which it is respected.

QUESTION 1

DO YOU AGREE WITH OUR PROPOSAL TO ADD TO THE CODES OF CONDUCT AN EXPLICIT REQUIREMENT FOR REGULATED INDIVIDUALS AND FIRMS TO TREAT PEOPLE FAIRLY AT WORK? PLEASE EXPLAIN THE REASONS FOR YOUR ANSWER.

We do not agree with this proposal, for the reasons set out below:

The term 'treating people fairly' is insufficiently clear

6. In the absence of clear and detailed guidance and consensus on what is meant by 'treating people fairly' in the workplace, we are concerned that the proposal would introduce a level of uncertainty that would mean it will be impossible for firms and

individuals to comply with this rule. There is no current requirement for employers to treat employees or workers 'fairly', and therefore no statutory or common law definition of 'fairness' in the workplace context which would assist in understanding of the scope of this rule. The lack of clarity and the potentially wide ambit of the term 'fairly' make the rule, in our view, unworkable.

A new 'fairness' concept would cut across the current frameworks both of employment rights and obligations as well as regulation

7. Employment law rarely imposes a positive duty. The well-established position in the employment context is that an employer should **not** (our emphasis) "*without reasonable and proper cause, conduct itself in a manner likely to destroy or seriously damage the relationship of trust and confidence between employer and employee*". Nor is there a requirement to dismiss fairly; rather, there are consequences for 'unfair dismissal'. Similarly, there is no duty to promote diversity, but a series of prohibitions of discrimination in respect of certain protected characteristics. Thus, imposing an obligation to treat employees 'fairly' would potentially impose a significantly higher burden upon employers in all aspects of the employment relationship.

8. No positive duty applies to partners or LLP members: the obligations of an LLP to its partners/members are as set out in the LLP Agreement. That LLP Agreement may contain a provision for the partners (and the firm) to act in 'good faith only'.

9. The scope of the proposal and its potential reach is too wide. As an example, decisions on pay/bonus arrangements may be caught. In that context, the Courts have made clear that they will only interfere with the exercise of discretion by employers where it is established that they have acted in an arbitrary, capricious or irrational way. As the authorities make clear, this is a high bar which requires clear and cogent evidence of irrationality. Imposing a 'fairness' requirement on employers through this proposal would require them to fundamentally alter the way in which they operate discretionary pay schemes.

10. Many LLP member remuneration schemes cede discretion in setting pay to the LLP. Challenge to remuneration decisions may not be possible under the LLP agreement but if a duty of 'fairness' is introduced as suggested then challenge might be made on regulatory grounds. We doubt the SRA would intend this or indeed be equipped to deal with it.

11. Grievance and disciplinary processes require firms to balance duties to the complainant, the 'accused' and any other individuals involved in the investigation (for example, witnesses). During the course of this balancing exercise, individuals may argue that they have been treated unfairly. There is obvious room for confusion between statutory and regulatory concepts of fairness. This confusion is unlikely to promote public confidence in the profession, as well as making outcomes uncertain.

12. Existing regulation imposes a positive duty to act with integrity. The duty is not

always easy to define in practice but in our experience there is some practical understanding and a degree of consensus as to its effect and limitations. A duty of fairness would presumably be distinct from the duty to act with integrity, but it is not clear how the two would relate. Is a duty of fairness a duty to act with more integrity, so it becomes a question of degree? Or is it conceptually different? If there is to be regulatory sanction for failure to comply, it will be crucial that any distinction is immediately and clearly understood.

The potential burden of imposing a 'fairness' rule

13. Leaving aside lack of clarity about the meaning of the word 'fairly', we are concerned that the proposal imposes an unworkably high burden on firms and individuals in the workplace context.

    13.1. It is not always possible to act fairly in relation to each individual employee or worker (as the proposed rule appears to require). An employer very often has to balance the interests of different groups of employees in reaching a decision, which may benefit one group and adversely impact another. For example, an employer may decide to relocate their office/primary place of work. This may be beneficial to employees who live closer to that new office, but adversely impact those who live further away. The disadvantaged group may consider that they have been treated 'unfairly', even where the employer is acting perfectly lawfully, and in the best interests of the firm as a whole.

    13.2. An employer may have to take other steps in relation to its business which are perfectly lawful and may be in the best interests of the business. For example, it may choose or be compelled by circumstance to make employees redundant. Or to save costs, it might decide to withdraw an employee benefit, or curtail pay rises. In each case, employees might perceive or argue that such actions adversely affect them and are 'unfair'.

14. There may also be wider commercial consequences for firms of regulatory sanction for them or their employees. Even relatively minor sanctions on a firm or its employees can be enough, for example, to exclude them from tenders for major contracts, particularly in the public sector. This may result in firms taking a hyper-vigilant approach, with solicitors facing dismissal for conduct which even in other regulated professions would be seen by the public as inconsequential for its protection.

Reporting and disclosure consequence

15. Due to the very wide subjective nature of the term 'fairness', the proposal could create a 'hair trigger' for regulatory reporting. Although the SRA has said that it would only take enforcement action in the case of 'serious' breaches, the proposed rule change could open the floodgates to regulator involvement in many, potentially minor, cases of workplace behaviour which are viewed by individuals as 'unfair' in order to establish 'seriousness' or to demonstrate parity of treatment. This may be

exacerbated by the fact that individuals and firms take a cautious view of regulatory requirements, and have a tendency to over-report – particularly in the case of broad or unclear obligations with enforcement consequences.

The existence of current rules and guidance

16. Page 8 of the CP refers to recent guidance titled "*Workplace environment: risks of failing to protect and support colleagues*" published on 7 February 2022 (the "**Guidance**"). We note that the Guidance states that "*We expect firms to treat all of their employees fairly and with dignity. This includes creating an environment that is inclusive and free from discrimination, bullying, harassment or victimisation.*" and provides that firms must take action to prevent or address serious cases of bullying, harassment, discrimination or victimisation, or otherwise risk being in breach of the SRA Principles.

17. According to page 8 of the CP, that Guidance already provides the SRA with "*clear grounds to take regulatory action*" for a breach of this 'fairness' principle. That being the case, we do not see the need for a further rule change. Introducing a further rule may be viewed as having the effect of imposing further, broader obligations on firms and individuals (beyond that set out in the Guidance). It is also more appropriate in light of the uncertainty around the meaning of the word 'fairly' in the workplace context, for this provision to be contained in guidance (rather than a rule).

Use of comparators

18. Page 10 of the CP refers to example requirements in other regulated professions relating to unfair treatment at work. As identified in the CP, similar wording is seen in the General Medical Council's (the "**GMC**") ethical guidance on leadership and management. We note however that this is 'ethical guidance' which should be followed as far as practical in the circumstances, but is not a rule or absolute requirement.

19. We further suggest that the healthcare sector is not necessarily a suitable point of comparison for the legal industry. The nature of the relationship between solicitor and client is not the same as/equivalent to the relationship between doctor and patient. In our view, the current Guidance is already equivalent and the proposed rule changes should be less, rather than more, stringent than those provided by the GMC.

QUESTION 2

DO YOU AGREE WITH OUR PROPOSAL TO INCLUDE AN EXPLICIT REQUIREMENT FOR REGULATED INDIVIDUALS AND FIRMS TO CHALLENGE BEHAVIOUR WHICH DOES NOT MEET THE NEW STANDARD? PLEASE EXPLAIN YOUR REASONS.

It follows from our answer to Question 1 that we do not agree.

20. In addition to the problem that it is not clear what behaviour would require challenge,

there is no clarity as to what form a 'challenge' should take. Would it be enough to speak to the colleague concerned, or their manager? Should the challenge be in a set form?

21. We have identified no precedent or comparator in other schemes of professional regulation that clarifies what might be an appropriate or compliant 'challenge'. As this lack of clarity would be in addition to the difficulties of delineating a requirement to treat people 'fairly', there would be no clear answer to the questions a solicitor may ask themselves: 'what do I have to do, and when do I have to do it?'. The cautious solicitor may challenge inappropriately, or make a challenge when none is necessary.

22. As these challenges are likely to take place in an employment context, there is a risk that in making an incorrect challenge, or challenging inappropriately, an employee or employer may undermine the implied term of trust and confidence. This risks breaching the employment contract. Employment law and regulation could find themselves acting in opposition. In practice this is rarely, if ever, an issue with current regulation for solicitors or other regulated professions. The relevant employment contracts are likely to expressly incorporate regulatory standards. For example – "*The employee must comply with all [regulatory obligations]*." However, a requirement to 'challenge' infringing behaviour is novel, so we have insufficient experience to say how such a provision might work in relation to the implied term. There is a material risk that regulatory and contractual obligations could point in opposite directions.

    22.1. We have considered the example of a colleague who has concerns about the behaviour of an associate in line for promotion to partnership. If the colleague 'challenges' the associate's behaviour, that promotion may not take place. If the colleague is obliged by the proposal to challenge, then they must do so but if their challenge is incorrect or inappropriately made the consequences for the associate, the firm and its clients may be so serious, even if temporary, that the firm cannot practically (never mind as a matter of law) have trust and confidence in the colleague who raised the challenge. Contractual orthodoxy may fail to protect the colleague in this example. The Courts have held that in the employment context, the implied term constrains the exercise of express terms. Thus, even if the employee/colleague can point to a clause requiring them to comply with their regulatory obligation and thus 'challenge' the particular behaviour, they may still, if the nature or manner of their challenge crosses ill-defined boundaries, find themselves in breach of the implied term.

23. In theory, this problem may also exist today in relation to existing requirements of integrity. However, there are two crucial distinctions from the proposal:

    23.1. there is currently no positive obligation to challenge in the workplace, only an obligation to report to the SRA. The employee making such a report is likely to be protected from detriment or dismissal by their employer as a 'whistle-blower', even if the report turns out to be unnecessary. It is not clear if a

'challenge' would qualify the maker for statutory protection as a 'protected disclosure' would do; and

23.2. if fairness is meant to be a broader, deeper and more consequential standard than integrity, there will be more occasions to challenge than there are currently to report.

24. We would therefore suggest instead that the SRA, like the FCA, builds on existing and relatively well-understood statutory concepts and processes. The SRA may:

24.1. require regulated firms or teams of regulated individuals to put in place appropriate whistle-blowing procedures; and

24.2. make it clear that in its view a regulated individual who uses that procedure to report behaviour which appears to fail to meet the requisite standard would attract the statutory protection of a whistle-blower in respect of that challenge.

25. This would follow the approach of an existing regulator and allow firms and individuals to build on best practice established elsewhere. It would encourage a 'speak-up' culture in the profession and give clear protection to those making disclosures.

QUESTION 3

DO YOU AGREE THAT THIS REQUIREMENT SHOULD COVER COLLEAGUES SUCH AS CONTRACTORS, CONSULTANTS AND EXPERTS, AS WELL AS STAFF IN A FORMAL EMPLOYMENT RELATIONSHIP? PLEASE EXPLAIN YOUR REASONS.

It follows from our answer to Question 1 that we do not agree.

26. Dealings between firms and contractors, consultants and experts are already governed by independently negotiated commercial contracts. We are concerned that the expansion of this requirement could result, in practice, in the inclusion of an additional "fairness" term in dealings between a firm and its commercial counter-parties. This could result, for example, in counter-parties alleging that a firm has acted "unfairly" in a case of a genuine commercial dispute, or in counter-parties threatening regulatory disclosures in the case of unpaid invoices. We think these issues should be a matter for the parties, not for a regulator.

27. The CP describes 'colleagues' as those "*with whom solicitors and firms regularly work closely*", however the proposal also covers behaviour outside of the workplace or the direct delivery of legal services (in this response, we have generally referred to this as 'social situations' although we appreciate that there may be other situations outside the workplace that are not social in nature). This may have the effect of extending the requirement to individuals with whom solicitors deal in their own private capacity (for example, a nanny, builder or tradesperson). We do not think that a regulator should become involved in disputes between a solicitor and a cleaner that they employ, for example.

QUESTION 4

DO YOU AGREE THAT THESE NEW OBLIGATIONS SHOULD APPLY TO BEHAVIOUR OUTSIDE OF THE WORKPLACE OR THE DIRECT DELIVERY OF LEGAL SERVICES? THIS IS WHERE BEHAVIOUR IS IN A RELATIONSHIP BETWEEN COLLEAGUES RATHER THAN A PURELY PERSONAL RELATIONSHIP. IF SO, SHOULD THIS BE MADE EXPLICIT IN THE NEW WORDING?

It follows from our answer to Question 1 that we do not agree.

28. The proposals, as currently drafted and also as a general principle, would have an extremely wide application to social situations which should not be the subject of SRA regulation. We note that the SRA Principles and enforcement strategy already outline when behaviour outside of work will be relevant i.e. only in situations where clients (and possibly staff) are put at risk. The positive obligation imposed by this proposal goes beyond that scope.

29. Regulated individuals would be under an obligation as a result of this proposal to behave in social situations in a manner that is currently undefined. This would impose upon that regulated individual a standard of behaviour higher than others in society. Furthermore, social behaviour is, in our view, already governed by appropriate laws and constraints applicable to all; we do not believe that it would be appropriate to extend the SRA's regulatory reach to social situations, particularly given the difficulty of arriving at a single objective and universally agreed measure of fairness.

30. We are concerned that the additional requirement to challenge behaviour would impose on firms a difficult requirement to police behaviour in social situations. In our view, inappropriate behaviour at work-related social functions should already be dealt with by an employer, who can determine whether it is something that requires action. To the extent that the behaviour amounts to bullying, harassment or unfair discrimination, or is unlawful, then that behaviour is likely to lead to disciplinary action and to be a breach of the current Codes of Conduct. We are concerned that to add a positive duty to also ensure fair behaviour to already established systems of disciplinary action and practice will impose on firms a difficult hurdle of policing social behaviour and will extend the regulatory reach beyond its proper focus. The potential range of behaviours caught by the proposal suggest that the SRA will have a duty to govern behaviour, social interaction and relationships which may not in any way impact on the regulatory objectives.

31. In addition, the proposals would require regulated individuals to police the behaviour of colleagues in social situations. This is a high burden and it will often be difficult to draw the line: is a regulated individual able to ignore a joke made by another in a social situation, even if in bad taste?

32. We believe that this proposal does not appropriately add to the safeguards that are already in place to ensure that regulated individuals and firms promote and

encourage fair and respectful behaviour in social situations. In addition, the definition of fair and respectful behaviour is, if anything, more difficult to determine in situations where work colleagues will normally interact less formally.

QUESTION 6

DO YOU HAVE ANY COMMENTS ON OUR PROPOSED APPROACH TO ENFORCING THE NEW REQUIREMENTS ON UNFAIR TREATMENT AT WORK?

It follows from our answer to Question 1 that we do not agree with the proposal. We comment below on the proposed approach to enforcement.

33. There are concerns over the ability of the SRA to 'enforce' the new requirements:

    33.1. the term 'fairness' has a wide and subjective nature, and there are resulting concerns that the proposal could create a 'hair trigger' for regulatory reporting thereby opening the floodgates to regulator involvement; and

    33.2. there is already a pressure on the SRA and its capacity to address referrals efficiently and effectively so as to maintain confidence in the regulator. As outlined above we consider that the SRA will potentially be inundated with referrals exacerbated on the basis that firms and individuals will over-report.

34. The enforcement strategy of the SRA is to regulate 'in the public interest'; however we envisage, given the underlying concerns (as detailed above), enforcement will be challenged often? on the basis of not being in the public interest, and that this could in fact undermine the public confidence in the regulator.

35. The strategy also states that enforcement action will only be taken in the case of allegations that "*seem likely to present a* ***serious*** (our emphasis) *risk to clients, colleagues or the wider public interest*." Whilst we welcome the reference to enforcement in the case of 'serious' breaches only, the concept of what is 'serious' is highly subjective. The CP appears to suggest that a 'serious regulatory failure' will be required, but it seems clear in our opinion that there will be serious breaches which may not be classed as 'serious regulatory failures'. In the absence of clear and detailed guidance as to what would be deemed serious and given the overall subjective nature of the term, we are concerned that it will be unclear to both the referral body and the regulator as to whether there should be enforcement action.

36. In terms of a 'serious regulatory failure', the examples provided include behaviours that create a culture in which unethical behaviour can flourish, do not support the delivery of appropriate outcomes and services to clients, and do not allow staff to raise concerns or have issues addressed. These examples are broad concerns and create a further level of ambiguity, which is unhelpful on the question of enforcement.

QUESTION 8

DO YOU AGREE WITH OUR PROPOSAL TO AMEND OUR RULES AND REGULATIONS TO MAKE IT CLEAR THAT FITNESS TO PRACTISE COVERS ALL ASPECTS OF PRACTISING AS A SOLICITOR, INCLUDING THE ABILITY TO MEET REGULATORY OBLIGATIONS AND BE SUBJECT TO REGULATORY PROCEEDINGS? PLEASE EXPLAIN THE REASONS FOR YOUR ANSWER.

37. We do not agree with the proposals. See our responses to question 10 and 11.

QUESTION 9

DO YOU HAVE ANY CHANGES TO SUGGEST TO OUR PROPOSED WORDING FOR THE AMENDMENTS? IF SO, PLEASE GIVE DETAILS.

38. See our responses to questions 10 and 11.

QUESTION 10

DO YOU HAVE ANY COMMENTS ON OUR APPROACH TO MANAGING HEALTH CONCERNS IN THE CONTEXT OF THE PROPOSED CHANGES TO OUR RULES?

39. We understand that certain health conditions require early intervention. However, it is not clear from the current proposals exactly when the threshold would be met in order for a referral of a practising solicitor to the SRA to be made as a result of their health condition. We would suggest that only the most extreme of conditions (for example suicidal thoughts and/or serious addictions that cannot be self-managed) should be referred to the SRA (provided that is consistent with any obligations of confidentiality). The reason for this is that the SRA already recognise that most solicitors with health conditions can manage their own health conditions without the need for SRA intervention.

40. In the event that the threshold (which needs to be clearly defined and a high bar to meet) was met for a referral to be made to the SRA, then the SRA needs to make clear whether the onus to report should be on the practising solicitor or the firm or company that employs them. If the onus is on the practising solicitor, we consider very few individuals are likely to 'self-refer' due to embarrassment, denial or fear. In the case of the firm or company, many may be risk averse and may not have sufficient medical evidence about the practising solicitor, or indeed, a sufficient level of medical expertise, to interpret that evidence to consider that they could make a well-founded referral. Further, the firm or company with medical information may be conflicted by a (perceived) obligation to refer to the SRA on the one hand and a concern about obligations of confidentiality to the individual, the potential for data privacy breaches and Equality Act 2010 claims on the other.

41. Further, if a firm or company is under a duty to notify the SRA, this may discourage individuals from disclosing or reporting health issues to their employer, which may deprive the employer of the ability to manage that condition or to provide help and

support to the individual. There is also the risk that this process could be weaponised by an aggrieved firm or company. An example would be a practising solicitor complaining about the firm or company's failure to make reasonable adjustments to accommodate a medical condition facing a referral by the firm or company to the SRA as being potentially unfit to practise.

42. The fact that the regulatory proceedings themselves are likely to be subject to significant delays (12-18 months for a decision) may of itself exacerbate a pre-existing health condition (hence the reason for referral). It is also unclear what happens to the individual whilst the regulatory proceedings are ongoing: do they continue to practise? Most health conditions (notably mental health) are fluid and temporary situations and as such an individual could well recover within the investigation period had it not been for the onus of facing SRA regulatory proceedings.

QUESTION 11

DO YOU HAVE ANY COMMENTS ON THE REGULATORY OR EQUALITY IMPACT OF OUR PROPOSALS ON SOLICITORS' HEALTH AND FITNESS TO PRACTISE?

43. We consider that the Equality Act 2010 and the law generally in this area already empowers staff to seek recourse where their respect and dignity is affected within the workplace, for example due to bullying, discrimination or harassment. Organisations should be encouraged by the SRA to have adequate policies and procedures in place, for example Grievance and Disciplinary Procedures, and policies referring to zero tolerance for bullying and harassment. We note that the SRA have already published guidance to firms to highlight the importance of adopting systems and a culture that ensure the safety of staff and the delivery of competent and ethical legal services, and we consider this is proportionate and adequate.

44. As regards the SRA's ability to protect the interests of clients and the public, we consider there are already sufficient mechanisms in place to do this. We note that other professions, such as the medical profession, may be held to a higher standard, for example, as some will be conducting invasive procedures and there is a higher risk to the health and safety of the public if the practitioner is unfit to practise. As noted above, we do not consider there is any need for the SRA to align its approach with healthcare regulators.

45. It is unclear how the SRA would propose to deal with concerns over practitioners' health affecting their fitness to practise. Any mandatory reporting requirement imposed on organisations relating to the health conditions of its staff would relate to 'special category' (that is, sensitive personal) data under data protection legislation, and the SRA and reporting organisations would be held to high standards by the ICO and practitioners who are the subject of the report. We are concerned that the reporting may actually lead to claims for disability discrimination under the Equality Act 2010 against the reporters.

46. The SRA notes that men and Black, Asian and other minority ethnic solicitors are over-represented in concerns raised with it, and in cases it takes forward for investigation. We consider that solicitors from these backgrounds may be more likely to be affected by the proposals than others, leading to claims of discrimination under the Equality Act 2010 against the practitioners' employers.

47. We also envisage that any new obligations that organisations are subjected to, to challenge unfair conduct, will not enhance the existing obligations. The SRA already has the power to take action if it believes that there has been a serious regulatory failure. For example, where there is evidence that the work environment does not support the delivery of appropriate outcomes and services to clients and creates a culture in which unethical behaviour can flourish. Complaints by members of the public may lead to a full investigation by the SRA in any event, and issues relating to conduct, capability, failings in support and unethical behaviour will naturally come to the forefront.

48. Further, the SRA already has a robust and disciplinary casework process in place, which includes solicitors having appropriate opportunities to provide evidence, including medical evidence about health issues. The measures include allocating all cases involving health concerns to a subject matter expert with specialist training in and experience of health cases, who then advise the investigation officer on progression of the case throughout the course of the investigation. The SRA already has the ability to impose conditions to protect the public from risks posed by the individual continuing to practise.

49. The SRA recognises that where a solicitor has health issues this will not always affect their ability to practise. We agree that in many cases health conditions will fluctuate. They can often be managed and reasonable adjustments put in place (in line with the obligations of the employer under the Equality Act 2010).

50. We note the SRA's objective that the ability to take part in its regulatory and disciplinary processes is an inherent element of fitness to practise. However, we envisage situations where a medical practitioner may advise that the solicitor is fit to practise but not fit to take part in any disciplinary processes due to the enhanced stress involved with such processes.

Members of ELA Working Party

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