HOUSE OF LORDS

Communications and Digital Committee

Corrected oral evidence: The future of news: impartiality, trust and technology

Tuesday 7 May 2024

3.40 pm

Watch the meeting

Members present: Baroness Stowell of Beeston (The Chair); Lord Dunlop; Lord Hall of Birkenhead; Baroness Healy of Primrose Hill; Lord Kamall; Lord Knight of Weymouth; The Lord Bishop of Leeds; Lord McNally; Lord Storey; Baroness Wheatcroft.

Evidence Session No. 16 Heard in Public Questions 153 - 156

Witnesses

I: Paul Philip, Chief Executive Officer, Solicitors Regulation Authority; Juliet Oliver, General Counsel, Solicitors Regulation Authority.

Examination of witnesses

Paul Philip and Juliet Oliver.

Q153 **The Chair:** We now have witnesses from the Solicitors Regulation Authority. Could I ask each of you to state the position that you hold at the SRA?

Paul Philip: Thank you. I am the chief executive of the Solicitors Regulation Authority.

Juliet Oliver: I am the general counsel and deputy chief executive.

The Chair: Thank you very much. You are sitting a little bit back—perhaps you could come a bit forward closer to the mics. Unfortunately, those mics do not move so they do not always pick up the sound as well as they need to.

I am glad that you were here and were able to listen to the testimony given by the previous group of witnesses, and you will have heard throughout the last hour the importance that they attached to the work of the SRA in the context of combating SLAPPs. We will touch on some of these things as we talk to you, but can we start with the specifics of the cases that you opened on SLAPPs when this first became acknowledged as a phenomenon that required regulatory action? Where are we with the cases that you have opened? How many have you completed and what action has been taken? It would be good to get an up-to-date picture.

Paul Philip: Thank you, Chair. Starting with that, at this point in time we have 71 cases or reports of SLAPPs that have been referred to the SRA to date. That is up from 40 the last time we gave evidence to this committee last year. We have closed 23 of those cases with no further action. That is either because they are not SLAPPs at all or because we believe there is insufficient proof. We have 48 cases that are still live. Very recently we made a decision to refer two cases to the tribunal.

I should say for those members who are not familiar with us, we prosecute cases in front of an independent tribunal, the Solicitors Disciplinary Tribunal. Where there is a very serious or material breach of our guidance, we would normally refer it to the tribunal so that it is publicly ventilated. We have recently made the decision in two of the cases to refer them to the tribunal and we expect two or three other cases to come to that point in the next two or three weeks.

The Chair: Those cases that you have taken to tribunal, when will they be heard at the tribunal?

Paul Philip: We have just made the decision to refer. What needs to happen now is that the tribunal needs to certify that it is happy to accept them. That is a formality in most cases, and we expect that that will happen in the next two to three weeks, possibly by the end of the month. At that point in time, the nature of the allegations, the firms or the individuals involved, will be put into the public domain, and given the profile of this matter, I have no doubt it will be picked up certainly in trade media, if not mainstream media, at that time.

The Chair: At that point, we will know which firms are—

Paul Philip: Yes—who is in the frame, which individuals or which firms that these cases pertain to. The matter is then in the hands of the tribunal, which, as I said, is outwith our responsibility. The tribunal's key performance measure is that it would like to hear the majority of those cases within six months, so we would expect something like that timeline in terms of getting to fruition.

The hearing should be in public and obviously both parties—us and the lawyers in question—will have their own representation. The matter will be ventilated in front of the tribunal. The tribunal will decide on findings of fact and then it will look at the seriousness of the matter and, depending on what the findings of fact are, come to a conclusion on the severity of the outcome, if any.

The Chair: The tribunal decides on the sanction that gets levied?

Paul Philip: It does, yes.

The Chair: Okay. On the 48 live cases that have not been concluded and have not been passed to the tribunal, what is the timeline on those? When are you expecting to conclude those, and are you expecting any of those to lead to you using your powers that fall short of you sending it to the tribunal?

Paul Philip: Yes, quite a mixed bag, I imagine. The short answer is that I do not know the answer to your question, but some of those will be fairly recent referrals to us; some of those may be older. As I said, from our perspective, we expect to make decisions on the outcome in terms of referral or not or a lesser sanction in two or three cases relatively soon, but for the majority I do not have the information at my fingertips. I am very happy to write you on that, my Lady.

The Chair: I have a couple of follow-up questions on that. The first is: if you take regulatory action that falls short of sending a case to a tribunal, do you make that public and are the names of the firms involved made public?

Paul Philip: If there is a negative outcome and they are disciplined—if I put it that way—that would be made public, yes.

The Chair: The firms involved and the disciplinary action or the fines that have been levied would become known?

Paul Philip: Absolutely, yes. It is worthwhile saying that these cases have their challenges. It is novel from our perspective. It is obviously quite complicated at times. It is sometimes voluminous. It is very fact-specific, and it is highly contended. So we have given the firms, and the individuals involved, the full amount of time they have requested to make representations in relation to it, so that we are not caught up in a potential procedural debate at a later time. That is certainly part of the reason why these two cases have taken this long, and it is probably why quite a number of the other cases have taken as long as they are.

The Chair: When you were here last year and I asked you how long you

expected it would take to conclude these cases, you estimated nine to 10 months. Is that what has been happening?

Paul Philip: Yes, 80% of all the cases that are referred to the SRA are dealt with within about 12 months. This cohort of cases is definitely in the other 20%. As I say, the reason for that is really because they are novel, they are complex, and we have given people adequate time to make their representations, because we see the first few cases very much as being test cases and we want to get them right.

The Chair: What about the use of your fining powers? You have had the cap lifted from £2,000 to £25,000. What is your view on having that cap lifted further?

Paul Philip: Yes. Our cap has gone up from £2,000 to £25,000 for traditional law firms. We have asked for that cap to be extended further in all cases. We asked for that as far back as the last time we gave evidence to this committee. We are somewhat frustrated that that has not happened but, obviously, as previous witnesses have said, the introduction of the economic crime Act has allowed us to increase our fining powers for a very definite list of economic crimes but not for this type of issue at all. So we would be very much in favour of increasing the cap across the board. As David Hooper said earlier, it is important that there are significant consequences when we find wrongdoing on the part of the profession.

The Chair: Just to be clear, you would advocate having no limit whatever—or I think is it £50 million—on economic crime?

Paul Philip: It is unlimited on economic crime.

The Chair: Unlimited, and that would be something that you would like to see—

Paul Philip: That is something that we have formally requested, yes.

The Chair: What response did you get from the MoJ?

Paul Philip: As I understand it, the matter is with the Legal Services Board.

The Chair: Do you have any other reactions to anything that was said by the witnesses on the first panel?

Paul Philip: Not particularly. As you have said, we are the professional regulator. The previous panel was far more expert than us in relation to the issue of SLAPPs and the Bill that is presently going through the House.

The Chair: How do you respond to their call for more transparency from yourselves?

Paul Philip: As you also heard, we did attempt to give more transparency in relation to what is a thematic and how we go about thematic reviews, so it is really important to understand that they are, from our perspective, an opportunity to first, highlight good practice and, secondly, to also highlight sharp practice. It is an opportunity for us to put to the profession what is good so that it might follow it and to make

clear what is unacceptable, so that it can understand where our red lines are drawn.

It is not a spot check. It is not an inspection. We do not have the statutory powers to do a spot check or an inspection, other than anti-money laundering work. In terms of asks, we would very much like to do spot checks or inspections of firms across the board. At the moment we need a very specific trigger in relation to an allegation of misconduct in order to do that. For instance, if you were to say, "Snooks & Co are really bad at X and Y", we cannot just suddenly go in there and look at all of Snooks & Co's work. There would need to be a very specific allegation in relation to a core set of facts before we would be able to do that.

Our thematic work is very much based on our code of practice and the fact that the law firms have an obligation to work with us—and by and large they do—but it is not an inspection, and it is not a spot check in the investigative sense of the word.

The Chair: I know that my colleague, Lord Dunlop, wants to ask some questions about the way in which you carry out the thematic reviews. I will hand over to him, but I may come back again at the end. Lord Dunlop.

Q154 **Lord Dunlop:** Thank you. I want to look at the tools that you have at your disposal for understanding the extent and nature of the SLAPPs problem and for improving standards of conduct in the legal profession. We have already mentioned thematic reviews, but also the guidance you issue and the enforcement action you take. As we have heard, the SRA published its second thematic review last month. That identified improvements in working practices, but I think it also identified that reporting of potential SLAPPs or breaches of conduct remains—I think in your words—a concern. My first question is, against that background, how confident are you that the SRA has a robust evidence base on which to take forward investigations and reviews?

Paul Philip: If you split the work into macro and micro work, from a macro perspective, I think that we have done quite a lot in this space. We produced guidance for the profession by way of a first warning notice about 14 months ago. We have provided guidance for the public, in terms of who might be subject to SLAPPs. That has been widely reported in the trade and national media.

As you have heard, we are in the process of updating that warning notice after the thematic that fed into the warning notice, and we have widely circulated it among key interest groups to ensure that we get it as accurate as it can be. We are working with the DCMS task force, as are other witnesses here today. So on the macro, I think we are doing quite a lot.

On the micro, we are limited by our statutory powers in terms of investigation. We have to have a specific trigger, a specific set of circumstances that alleges some sort of wrongdoing on behalf of the lawyer. On that basis, we can ask for production notices, essentially

summonses for information. We can go into the firm. We can investigate the firm. So, on the micro, on the specifics, I think we do fairly well.

However, if you were to look at our wider anti-money laundering work you will see that we have wider powers to go in and ask for lots more information from the firms across the whole practice, and not just the specifics. It is that that I think the Chair was alluding to a second ago. That is the type of thing that would allow spot checks. It would allow wide, sweeping inspections of law firms. That might—in fact, I am fairly sure it would—give us more information to feed into our specific investigation work.

Lord Dunlop: I think we will come on to looking at the whole money laundering issue but sticking with the macro, we heard from the previous panel concern about the transparency of the thematic review. I understand that in undertaking your most recent review, you looked at two files per firm and excluded firms that are currently under investigation. Could you explain in a bit more detail your methodology, including why you have excluded firms which might offer the richest insights in terms of sharp practice, and do you think this approach offers an adequate evidence base?

Paul Philip: I think the answer to the question falls in the nature of a thematic review. It is not an investigation process; it is a process to shine a light on a theme within the profession—in this case, SLAPPs—to look at what best practice is, to interview lawyers, and in this case to interview in-house lawyers or lawyers within the firm to understand what the issues are. In many ways, it is an education for us to make sure that we understand how that fits against the complexion of the background of our professional codes, and that we understand how any misconduct might manifest in this particular area of law.

We do look at some files. Again, it is educational for us to ensure that we understand how it works in practice. It is also used as a method whereby you can bring the discussion with lawyers in the firm to light as to how it is operating in practice.

On that basis, the purpose of the review is to shine a light on good practice and identify any red lines of unacceptable practice. On occasion we do find things that are obviously unacceptable, and we feed those into our investigation processes and then those fall within the normal trains of thought.

That is what a thematic review is. It is not intended to be an investigation tool. Therefore, the reason why we did not look at the specific firms or individuals involved in the investigation is because we do not want to prejudice the investigation that is taking place. It would be quite easy for us to be accused of being inappropriate or going on fishing expeditions, or to be biased against individual lawyers or law firms. Unless we have the specific evidence to do the investigation and to keep that investigation sacrosanct from this wider piece of work, I think we would land ourselves into some quite hot water and that is the reason why we do not do it.

Lord Dunlop: Can I just press you on excluding those firms, though? I totally get the point that thematic reviews are not investigations, but surely in the course of investigation you will get some pretty good insights into what I think you described as sharp practice. You can decide whether or not that informs the conclusions you have drawn in a thematic review, but my concern is: are you getting a complete picture when you exclude those firms from your reviews?

Paul Philip: Yes, I do understand the point. If we had the statutory authority to do spot checks or wider inspections on the firm, we would most definitely do that in those cases, but because we do not, we have taken the view, rightly or wrongly, to keep those separate for the time being.

Lord Dunlop: Moving on, since 2022 I think you have undertaken two thematic reviews, issued one warning notice to firms and provided a number of pieces of guidance and, as we have heard, the Government are also significantly increasing the fines that can be levied on firms found to have facilitated abusive litigation. Given that your role is to educate the legal community—and notwithstanding the good things we heard in the last session about the impact of the warning notice—how concerned are you that your latest review found that most law firms still do not have policies on how fee earners should identify and deal with SLAPPs? Does this highlight the need for spot checks, for you to have more powers to undertake those checks and for more regular reviews?

Paul Philip: In short, I think it does, yes. We are concerned when we find that senior lawyers are not familiar with recent guidance in relation to a variety of aspects of our work, and that does happen quite often in relation to other aspects of our work. It would be very helpful if we had wider investigation powers. It would give us much more teeth and would act as a significant deterrent to people doing things that are unacceptable.

Lord Dunlop: One final question: in the last session we talked about the SLAPPs Taskforce. I think you are also a member of the SLAPPs Taskforce, and the work plan includes the development of a data-gathering tool. Can you update us from your perspective on what progress has been made in developing that tool?

Paul Philip: My colleague on my left is most definitely the person in relation to the task force.

Juliet Oliver: Yes, I sit on the task force, along with the previous witnesses. We very much agree with the comments there about the opportunity that it delivers for bringing experts together from across the picture—regulators and other individuals and stakeholders.

I sit on two of the workstreams. One is the legal services ethics workstream, and that has been an incredibly useful forum for sharing insights and an opportunity for us to share our work and get feedback on our updated warning notice. That is one of the things that we have been doing through that workstream. I also sit on the guidance for journalists workstream, which is the one looking at the online safety tool. I can see

real value in that, as we have heard, as an opportunity to gather confidential information about incidents across the piece to look at themes and trends.

We fed into the development of that tool through the work that the workstream is doing to include the reporting of some of the issues that we are concerned about; for example, the reporting of oppressive use of correspondence, pre-action correspondence and the like. We think it would be very useful to gather that information about the prevalence of some of the issues that give rise to regulatory concerns.

We have also fed in, as we heard earlier, on the importance of the use of the tool to raise awareness for people of the things that they can do practically and the support that they can have, including the opportunity to report to us. For example, the development of the tool includes questions around whether or not incidents, if they are caused by a solicitor, have been reported to us, and the tool will provide information around that.

It is important work and I think it can really help give more evidence about the issues and improve reporting. As Paul mentioned, in terms of our micro work, the investigations, we do rely on people bringing those reports to us. All this helps to raise awareness.

The Chair: Thank you. Before we move on, can I clarify something on the question of fines, so I am clear that I have this right? On the removal of the £25,000 limit of fining power in the context of economic crime, am I right in understanding that you no longer have a limit, even in cases where a solicitor or a law firm has behaved in a way that is outside your rules and code of conduct, if it is in the context of economic crime?

Paul Philip: If it relates to a defined number of economic crimes that were set out in the Act.

The Chair: But if they meet that test, but it is not something that has made it all the way to court, and you have found that law firm to have acted in a way that is unacceptable, you have no limit on what you can fine it?

Paul Philip: Could I confer? Does there have to be a finding?

Juliet Oliver: That is correct: if we can prove that the conduct, in intention or effect, has prevented the investigation or detection of economic crime. In terms of a SLAPP action, we would need to look at the breaches of our rules, but in addition look at whether that has actually had that impact but, in those situations, yes, that increased fining power would apply.

The Chair: Thank you. Just so that we have that straight.

Q155 **Lord McNally:** First, I should declare an interest. I am a fellow of the Chartered Institute of Public Relations and a fellow of the Public Relations and Communications Association, and between 1987 and 2004 I was a director of two of the leading PR companies.

Our previous investigations into SLAPPs highlighted the role that money

laundering and specialised PR firms play in enabling SLAPP cases. How is the SRA addressing these problems? Is there any evidence that law firms are moving intimidating activities to unregulated areas such as PR firms?

Paul Philip: Yes, that is quite a difficult question for us to answer. If you were to ask whether we have any evidence that they are doing that, the answer is no, we do not. That is not to say that it does not happen. It just says that our ability to investigate is predicated on and limited by our statute, which looks at solicitors. Where solicitors engage with third parties, such as PR companies or private investigators, they do have obligations to make sure that those individuals are acting in a way that is ethical, and that we would hold the solicitors themselves to. Is that an area that we can investigate at the moment? The answer is no and, therefore, we just do not have the evidence to say whether or not it happens.

Lord McNally: Well, I can tell you that 20 years ago it was quite common for a company to hire both lawyers and PR, who would work together, quite legally, on the case. I agree that it is a difficult area. It is a murky area. I also said, certainly 20 years ago, there were PR companies operating whose main strength was their background in either the police or security services, which they then took into the private sector, and they are still operating as well.

On one of the things that we have been talking about particularly, which is money laundering, in previous evidence it was put to us that due diligence, which is common in the financial services industry, is not as clear cut as a responsibility in law firms. Would you agree with that?

Paul Philip: I think due diligence, in terms of things such as source of wealth checks—that type of thing—is much more enhanced under anti-money laundering regulations. We have much greater powers and, therefore, the lawyers have much greater obligations to do due diligence. But due diligence in all matters is a professional responsibility—who is your client? Who is the source of funds? Making sure you understand your client's case—and these are very much issues that we expect all lawyers to deal with, but in terms of AML it is enhanced.

Lord McNally: You published updated guidance on proceeds of crime in September 2023, with wider code of conduct obligations for firms. Do you think that is enough now? Does that cover the need to ensure proper due diligence, to put it better?

Juliet Oliver: Perhaps I can help. I think the force of that guidance was really to make the point—exactly as you and Paul have said—that, while the money laundering regulations are limited in scope, they are designed to cover financial and real property transactions and trust in company services, we have wider powers and a code of conduct, and we expect solicitors and firms to do what they need to do to identify the risks of the transaction more broadly; for example, to identify the risks that they might be dealing with a sanctioned individual. Those are things that sit outside the money laundering regulations, so the guidance does suggest that wider and more rounded due diligence is important.

This is an area where—particularly when it comes to sanctions obligations—we have been doing quite a lot of work, and doing some proactive work carrying out spot checks, and we will continue to do so, doing desk-based reviews and on-site inspections to have a look at what due diligence has been carried out across the piece outside of just the money laundering space. This is something that we make sure we are continuing to keep under review to understand how firms are responding to those obligations.

Lord McNally: One major law firm has recently established a PR business, "offering clients a multi-disciplinary model of legal, intelligence, investigations, security, strategy and communications all under one roof". Does that throw up problems for you as a regulator?

Paul Philip: As you have already said, this type of thing has been happening for a long time. If done properly and professionally, who can object to that? It is when it is not done appropriately or professionally—and some of the examples that were given by the previous panel were obviously quite shocking.

The key question is: what oversight is there of that? At the moment, it is certainly not through the Solicitors Regulation Authority because, as I say, we are limited by statutory authority. In that sense, is there any oversight of what actually happens and whether it is acceptable or not acceptable? From my point of view that would be a concern, but we certainly do not have any evidence of anybody doing anything wrong in that space, unfortunately.

Lord McNally: Finally, the individuals sanctioned by the UK Government have been able to use assets to fund SLAPP claims against journalists. The financial sanctions regime creates an offence of making assets or services available to those designated persons. If a solicitor wishes to be paid for services by a designated person, they must do so under a licence granted by the OFSI. You have said you have "issued guidance in this area that makes clear the importance of understanding the origin of funds in order to avoid breaching sanctions legislation". Do you think that guidance is now watertight?

Paul Philip: Yes, we try to work with OFSI, and we are still trying to develop a memorandum of understanding with that particular organisation. I think the guidance is as it is. Whether or not it could be tightened, I am afraid I am probably not the right person to answer that question. I am sorry but I probably cannot comment any further on that, apologies.

The Chair: Thank you. Just before we move on, Baroness Wheatcroft has a supplementary.

Baroness Wheatcroft: You intimated that if a firm of solicitors has a division engaging in PR investigations and so on, it is simply outside your remit, but it is the reputation of the legal firm that is at risk. Would you have your remit expanded to cope with that? I think the outside world will have a concept that solicitors are regulated by the SRA in everything they do.

Paul Philip: Yes, we would be interested in exploring that and understanding what that would mean for us. It would certainly need a much wider statutory base in order to do that. We need to think through how that would operate, what resources that would require, where the money would come from, that type of thing, but it is most definitely worth exploring.

Lord McNally: I forgot to say that when I worked in joint teams, the great difficulty was not in the PR men advising on the law but the lawyers advising on the PR.

Paul Philip: It was ever thus.

The Chair: That is a nice segue to Lord Kamall.

Lord Kamall: Thank you very much. I have been asked to do the sweep-up session part.

The Chair: I might have some sweep-up. So you not necessarily sweeping up.

Lord Kamall: A pre-sweep.

The Chair: You have a category of questions.

Lord Kamall: I am so sorry, exactly. I apologise to the Chair, the pre-sweep up, as it were.

Before that, I have two specific questions regarding things I have heard from you and the previous panel. The first one is just to follow on from the line of questioning from my colleague Baroness Wheatcroft. Clearly, where there is a law firm or a firm of solicitors which is also starting to offer other services, such as PR, investigation and so on, have you had any conversations with any of your counterpart regulatory bodies or professional bodies in this area? I know that you say you are a solicitors' regulator but, clearly, if they are moving to other areas, and you may not feel that is your area, are you having conversations with other professional bodies or regulators?

Paul Philip: Not as far as I am aware. Not as yet. We would not rule that out, but I do not think it has happened yet.

Lord Kamall: In the previous panel, Ms Coughtrie mentioned—and I just want to get this right—that most or all of the cases she has come across are not purely legal but have also involved harassment of some form. Are you aware of this with many of your cases? Is that your experience as well?

Paul Philip: It is not something that we look at, to be honest. It is not something that we can look at. As I say, I think some of the evidence given in the previous panel was quite shocking in terms of physical intimidation, that type of thing. We would probably say if we came across that we would refer that to the police.

Lord Kamall: Given also my colleague Baroness Wheatcroft said, I assume that you would always be concerned about the reputation of your profession. Would that not be an issue of concern to you?

Paul Philip: It would be an issue of concern. As I say, we have not come across it. If we were to come across it, we would refer the matter to the police and take the matter up with the law firm in question.

Q156 **Lord Kamall:** Let me move on to the pre-sweep up, as it were, and I always like to ask the question: what do you believe government should do and should definitely not do? In your view, what further changes do you think are needed to legislation or the work that the Government are doing in order to better address SLAPPs? It gives you an opportunity to put on record any of your concerns. For example, what are the gaps in your duties and powers to tackle SLAPPs-type behaviour, and also your views on the Private Members Bill? Let us start with any gaps in your duties and powers.

Paul Philip: I have already mentioned the two main things that I think would assist here from our perspective. The first is where wrongdoing is found, there needs to be a proportionate consequence to deter other people from doing it, so we would ask for our fining powers to be increased.

At the moment, I have said that we are referring serious matters to the Solicitors Disciplinary Tribunal. That is important because that is where it becomes properly ventilated, you hear from both parties, and you understand the issue. Once that has become known, there is a time lag—and we talked about that at the very beginning—and if we had wider fining powers and if a fine was the most appropriate outcome, particularly for a firm, we could issue a significant fine sooner and act as a more appropriate deterrent. In an individual case we would probably always still refer it to the tribunal. That is the first thing.

The second thing is—and we talked about thematic reviews, spot checks, investigations and the limitations on our statutory authority—if we had wider statutory authority to look at the firm in total without a very specific trigger that would assist in all our work and most certainly in relation to SLAPPs.

Lord Kamall: Are there any other gaps that you would want to identify at this stage or would want to look further at?

Paul Philip: Not as far as I am aware.

Lord Kamall: Nothing to add, okay. Your views on the Private Member's Bill: will it empower the SRA to take more concerted action or is this almost a repeat of the last question with the gaps that you have already identified?

Paul Philip: First of all, there is civil litigation over here and there is professional accountability over there. They are two connected but separate things, and obviously the Bill looks at attempting to curtail inappropriate litigation in the context of SLAPPs as soon as possible. We think that that is really useful in setting out what is acceptable in terms of professional practice from a solicitor. Any clarification there would be helpful, but of course we are looking at our code of conduct. Has the solicitor done the right thing? Have they acted independently? Have they

acted with integrity? Regardless of how any particular case under these new arrangements might work, we might still take action in relation to a solicitor.

Juliet Oliver: Picking up on one of the points that was made in the earlier session about the importance of behaviours being shaped—the right behaviours to take place upstream, right from the very outset—and the fact that many of these cases occur pre litigation and deal with correspondence that never gets to court, I think a clear and workable set of provisions in legislation, which give clear powers to the courts, would have a real impact. We would expect solicitors and firms to be advising their clients about the approach that the courts will take right from the outset, to have that in mind very much from the outset when they are taking on cases so that it does have that ability to drive the right behaviours upstream.

From our point of view, getting provisions that really can have an effect and give the courts effective powers is important. Whilst our regulatory framework sits separately from and alongside what the courts will do in terms of disposing of cases, of course, findings that the court might make may be useful in triggering or supporting any regulatory action that we might take. But Paul is correct, our action is not contingent on that happening and it is not limited to the situations where the courts might find something to be a SLAPP or not, but I think it has that real utility for our work.

Lord Kamall: Given what you just said, would you prefer that to be primary legislation, secondary or guidance, or you do not really mind as long as it says it somewhere?

Juliet Oliver: Others will be more expert on this than me, but I think there is force in having SLAPP issues in primary legislation. What we have at the moment is a vehicle whereby it is put into effect through secondary legislation, essentially through the Civil Procedure Rules. I can understand how working up the detail in that way is a very helpful way of doing so and can be quite flexible and easier to change, but having clear provisions on the face of statute does provide that certainty and really signals the significance of the issues as well.

Lord Kamall: Let us look at the flipside here, which is, are there things in the current Bill that you have some concerns about or maybe some advice or warning—let us hope it does not go there? Does that make sense, what I am trying to say here?

Juliet Oliver: As Paul mentioned at the outset, the panel that you just heard from is probably far more expert than we are in terms of how this would work in the courts. I can see the force in some of their arguments. It may be interesting for the committee to know that on the issue of intention, that is not something that we require in terms of our regulatory action. For example, we can take action if a solicitor or a firm has perhaps been reckless as to the impact of their conduct, reckless to the harm that that causes, and we do not require intention. That is something that might be useful to know. As I said, I can see the force in some of the comments that were made previously.

Lord Kamall: Is there anything that you want to add, Mr Philip?

Paul Philip: No, not at all. My colleague is much more versed in this than I am.

The Chair: Thank you. It was helpful what you just said about intent not being required by you to take regulatory action.

Can I go back to one of the exchanges that you just had with Lord Kamall, so that I am clear? In the Bill as drafted, and as you will have heard from the previous panel, concern was expressed that, as it stands, if any of the behaviour of the claimant in relation to the matters complained of in the claim is intended to cause a defendant, "harassment, alarm, distress, expense or any other harm or inconvenience beyond that which is ordinarily encountered in properly conducted litigation"—and it is the word "beyond" that was particularly problematic to the other witnesses—suggesting that what is going to be potentially put into law is lower than the standards that you set as the regulator. Do you have any comment to offer on that?

Paul Philip: The reading of our guidance by previous panellists is that it sets a higher standard than the present Bill. I have to say that that may well be the case, but it is probably not for us to comment on, other than, as a professional regulator, we are holding lawyers up against a code of conduct and a set of guidance, which we believe is the right thing to do. Obviously, it is a matter for Parliament whether or not it wishes to legislate on that lower standard.

The Chair: Yes, I can still ask your view.

Paul Philip: Yes. It is a matter for Parliament, Chair.

The Chair: Okay. Finally from me, going back to where we started and the cases that you have open at the moment and some of what you have said this afternoon about the need for you to conduct these cases thoroughly to avoid any challenge on a procedural basis, which I can understand and accept, I suppose that leads me to ask two questions. One is: does that mean of the 48 cases that are live, that there are some among them that would deserve regulatory action, but you are not able to take it because you feel that you have to have every "i" dotted and "t" crossed before you are confident yourself in actually taking regulatory action? My second question would be: at the SRA, have you ever felt that you have been put under undue pressure from law firms when you are subjecting them to perfectly legitimate public scrutiny?

Paul Philip: What I would say in relation to that is that, in my experience, law firms are very good at representing their rights. That is what they do for a living, and they are very good at doing it for themselves. Actually, for the most part, when it comes to the very serious end, they employ another firm of solicitors to act for them, and they are very good at doing that. So we are consistently challenged at every point of our process usually. That is just the norm. It is not just in relation to SLAPPs.

As I said, these are novel, they are complex, can be voluminous and very fact-specific. They are highly contended and, therefore, we gave those firms in the first few cases more time to allow them to make the representations they wanted to make. These cases will be test cases. We are as frustrated as anyone else that they have taken as long as they have taken but, nevertheless, we want to see them dealt with appropriately and appropriately publicly ventilated. Once we get through the first few, I would hope they would speed up.

The Chair: You hope that they will speed up. Will you be more confident to take action against some complaints that you might up to now have been hesitant on?

Paul Philip: I do not think we are hesitant. We are taking the time to ensure that we do not allow any procedural flaw in any decision-making that we hear or the representations that we take into account, and we make informed decisions. I do not think that there is anything different in that sense in the cases related to SLAPPs from any other aspect of our work. We are quite confident in taking action. It is just that in this new area of our work we wanted to give people the benefit of the doubt and allow them to make those representations, so I do not think there are any in those 48 cases that we would have any hesitation in prosecuting if we felt it was the right thing to do.

The Chair: Thank you very much for joining us again today and for answering our questions. We are very grateful to you.