Sensitivity: General

Solicitors Regulation Authority

The Cube
199 Wharfside Street
Birmingham B1 1RN

DX: 720293 BIRMINGHAM 47

UK 0370 606 2555
Int + 44 (0)121 329 6800

www.sra.org.uk

From the Chief Executive

The Rt Hon Baroness Stowell of Beeston MBE
Chair, Communications and Digital Committee
House of Lords
London
SW1A 0PW

Sent by email only to: shlappad@parliament.uk

19 April 2023

Dear Baroness Stowell

Re: Response to your letter dated 14 April 2023 concerning the Economic Crime and Corporate Transparency Bill.

Thank you for your recent letter in relation to the Economic Crime and Corporate Transparency Bill (EC&CTB). This follows on from my earlier correspondence and oral evidence with you and your committee in relation to strategic litigation against public participation (SLAPPs).

Since I last wrote we have now published our conduct in disputes thematic review which looked at how well firms understand and manage risks in relation to abusive litigation. We found that while most solicitors take their duties seriously some firms need to do more to meet the high standards expected. We will be carrying out a further review of firms in this area, while redoubling our efforts to make sure our message is getting through.

In relation to your specific questions.

1. **What proportion of the SRA's investigations into suspected SLAPP cases are related to economic crime? a. How many complaints about suspected SLAPP cases have the SRA received that are related to economic crime?**

We receive just over 10,000 reports of concerns each year on average. The numbers in relation to economic crime and SLAPPs remain only a small percentage of these. In the most recent year on which we have reported (2020-21) there were 273 reports of potential anti-money laundering breaches made to us, though that was significantly up from 196 the year before. In relation to SLAPPs, we continue to receive reports, and now have 49 cases open, of which just under half relate to economic crime.

Though the numbers are relatively small, we do recognise the significant impact that wrongdoing in each of these areas will have, and the need to continue to strengthen our work in these areas.

2. **What are the limits of the SRA's fining powers for: a. traditional law firms and solicitors, and b. Alternative Business Structures?**

Last summer our fining powers were raised to a maximum of £25k for solicitors, traditional firms (recognised bodies or recognised sole practices) and the individuals who work in them. For licensed bodies (Alternative Business Structures or ABS) and the individuals (including solicitors) which work in them, we can impose a greater financial penalty, ourselves, of up to £50 million for an individual or up to £250 million for the entity.

3. What are the main challenges the SRA face in identifying and tackling economic crime-related SLAPPs in the context of the current legal framework?

We believe that further legislative changes could further help our enforcement in the area of economic crime and SLAPPs, including as proposed in the EC&CT Bill currently at Committee Stage in the House of Lords:

- Proposals to introduce an early strike out test in the courts. A definition will provide clarity over what is abusive litigation in these circumstances, allowing for greater clarity around what instructions should not be accepted in the first place given the practical difficulties in proving a case lacks merits at an early stage and before something goes to court.
- Introducing a statutory designation as a prescribed person under the Public Interest Disclosure Act. This would bolster the protections we already have in place to make whistleblowers feel safe to come forward and report.
- Increasing our fining powers beyond the £25k (for solicitors, traditional firms (recognised bodies or recognised sole practices) and the individuals who work in them) could act as a greater deterrent for law firms, particularly when many larger firms are turning over hundreds of millions.

On this latter point, we have long argued for the removal of the legislative cap on our fining powers across the board; to put us in line with the other legal regulators and to allow us to impose – in house and in a streamlined way – fines that are an effective deterrent to the largest law firms. The Economic Crime and Corporate Transparency Bill (section 181) proposes a change to remove the cap for cases relating to:

- Failure to comply with a rule or requirement which applies only for the purpose of preventing or detecting economic crime.
- Failure to comply with a rule or requirement or misconduct which consisted of an act or omission which had the effect of inhibiting the prevention or detection of economic crime.

These tests are tightly drawn, and the numbers of cases which will fall within them limited. Around half – 23 – of the cases in our current cohort of 49 cases under investigation relate to publication of matters related to economic crime (as defined under the Bill). That leaves a significant number of cases that may not attract the unlimited fines proposed by the Economic Crime and Corporate Transparency Bill.

The existing drafting of the Bill would capture those cases where we could, on the evidence, draw a direct link between the SLAPP proceedings and the failure by others (for example, law enforcement) to prevent or detect the crime in question. However, this set of circumstances will in practice be rare and we would welcome wider scope to respond to SLAPP conduct.

4. Does the Proceeds of Crime Act 2002 (in particular section 327) currently provide sufficient safeguards to prevent solicitors from receiving criminal funds to pay for legal cases that aim to stifle legitimate investigations or reporting on economic crime? a. Is there any lack of clarity in this legislation, or associated case law, that would benefit from being addressed to help the SRA tackle SLAPP cases relating to economic crime?

There are limits to the scope of the existing anti-money laundering legal framework.

The Proceeds of Crime Act 2002 (POCA), which introduces the key money laundering offences (in sections 327 to 329), was enacted off the back of EU Directives and prior legislation which targeted financial and corporate transactions where there is the greatest risk of services of legal professionals being used for the purposes of money laundering.

The Money Laundering regulations – which set up the compliance framework within which lawyers must operate and establishes their obligations relating to client due diligence – deal with financial and real property transactions and trust and company services. Against this backdrop, the Court of Appeal in the case of Bowman v Fels ([2005] EWCA Civ 226) determined that section 328 POCA – the offence of entering or becoming concerned in an arrangement knowing/suspecting that this facilitates the handling of criminal property – is not intended to cover or affect the ordinary conduct of litigation by legal professionals. This protects actions taken by lawyers as part of legal proceedings enabling clients to take advice and pursue their rights in court and avoids creating an obligation to report matters that come to the attention of a lawyer during legal proceedings which are protected by legal professional privilege.

Whilst the position surrounding the taking of monies for legal fees is less clear, the question of whether this is capable of being an offence under POCA is cast into doubt by the way in which the Court of Appeal decision is framed – the judgment concluded that it was improbable that the UK legislator intended sections 327 to 329 to cover the ordinary conduct of legal proceedings or the ordinary giving of legal advice.

Therefore, in order for us to sanction lawyers for wrongdoing if they accept criminal property as funding for SLAPP cases, it would in our view be important for legislation to be enacted to make the position under POCA clear: for example, by putting beyond doubt that section 327 (the offence of “concealing, converting, transferring, disguising, removing” stolen property) applies to the taking of monies for legal fees in certain circumstances. Those circumstances could be limited to proceedings intended to prevent publication or reporting of the crimes that gave rise to those funds. Consequential changes to the money laundering regulations (Part 3 relating to client due diligence) would then need to follow suit.

I will of course write to you again as cases progress. If you would like to discuss any of the issues raised in the meantime, please let me know.

Yours sincerely

Paul Philip
Chief Executive
Solicitors Regulation Authority