

Sent by email only to Helen.Phillips@legalservicesboard.org.uk

Helen Philips
Chair, Legal Services Board
One Kemble Street
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WC2B 4AN



11 April 2019

Dear Helen,

The Legal Services Consumer Panel (Panel) has considered the Solicitors Regulation Authority's (SRA) rule change application about whistleblowers. We know that the Legal Services Board (LSB) can only assess the merits of this application, not whether the rule change itself is sufficient to protect the public. We accept that the LSB makes assessments about the adequacy of rules and standards through other avenues, e.g. its performance standards work.

The Panel recently wrote to the LSB about enforcement issues following the LSB's enforcement report. In that correspondence, we suggested that the current enforcement outcomes which regulators are measured against would benefit from improvements. The Panel also raised concerns about the lack of a robust whistleblowing policy. We are therefore responding to this application to bolster the points made in the previous correspondence. We hope that when the LSB does start its wider work on enforcement, the issues we have raised, and the gaps the Panel has identified, are considered with care.

Public Interest Disclosure Act and other intelligence

The SRA does not appear to have referenced the Public Interest Disclosure Act 1998, which is typically drawn on by regulators in other sectors. We believe this would be an important first step in considering issues around public interest disclosures.

The Panel is also aware that other regulatory bodies, outside the legal services sector, seem to have well developed policies to encourage and protect whistleblowers. In the LSB's wider work, it may be useful to consider how regulators such as Ofcom and the NHS deal with the 'test' for raising a concern.

The SRA appears to place little onus on firms to have good internal reporting systems so that people do not always have to go to the regulator to get anyone to listen to their concerns. Ofcom, for example, mentions Public Concern at Work (now renamed Protect), which has a free legal advice line for employees to help them raise concerns in ways that maximise the chances of them being acted on, and minimises the risk to the whistleblower of retaliation. Protect also provides training and other support to employers to put in place internal reporting mechanisms.

It is also noteworthy that the European Parliament has provisionally agreed measures aimed at making it easier and safer for whistleblowers to report irregularities. The rules cover a wide range of areas where public and private organisations with more than 50 employees will have to set up internal reporting channels that would allow people to report within the organisation itself, publicly or in some circumstances, to the media. Protection is also granted to people assisting whistleblowers, including journalists.

Overall, the Panel is of the strong view that the SRA needs a comprehensive policy that shows that it values people who are concerned enough about the public interest to risk coming forward. Such a policy must put the onus on firms to have good systems to hear concerns internally, and should make clearer what steps the regulator will take to protect whistleblowers, in compliance with PIDA.

I hope you find these points helpful when you turn your attention to your wider works on enforcement policy.

Yours sincerely

A handwritten signature in black ink that reads "S Chambers". The signature is written in a cursive, flowing style.

Sarah Chambers

Chair, Legal Services Consumer Panel