Rule changes on health and wellbeing at work

Consultation responses

January 2023

Consultation responses

These respondents, listed in the order in which they responded to the consultation, asked us to name them and publish their responses. The text of their responses follows the list of names.

Clive Lyons

Kunal Bhalla

Yeonhwa Jeon

Chris Carr

Richard Simon Walford

Paul Bennett

John Shelley

James Perry

Newcastle upon Tyne Law Society

Jason Pearce

Lawyers with Disabilities Division

Junior Lawyers Division

Liverpool Law Society

Manchester Law Society

LawCare

Emma Jones

Protect

Employment Lawyers Association

The Law Society

Birmingham Law Society

Solicitors Disciplinary Tribunal Policy Committee

Rule changes on health and wellbeing at work - Consultation

Response ID:6 Data

2. About you

1.
First name(s)

Clive

2.
Last name

Lyons

3.
Please enter your SRA ID (if applicable)

816825

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
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.

Yes - making this an explicit stand-alone requirement, rather than simply dealing with ut under other headings, can only improve clarity, outcomes, and our reputation across the public and other professions.

12.
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.

Yes, as (1) above.

13.
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 should certainly cover solicitors treatment of colleagues such as contractors, consultants and experts. I'm in two minds whether it should extend as far as a mandatory expectation that those colleagues in other professions, have and apply the same rule. Clearly it's desirable that they do, and that we seek insofar as possible only to deal with those who do; however, I'm reluctant to impose a formal requirement that may be hard or impossible to enforce, or to remedy if found to have been breached. Adopting a rule that neither the SRA nor its members have direct power to enforce, because it seeks to bind others not regulated by the SRA, may damage our reputation unless worded very carefully.

14.

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?

I absolutely support this. I accept that there is legitimate argument that some things which are clearly not OK in the workplace, may be OK in an entirely social or other setting outside it; however, if the fundamental duty to treat colleagues fairly, ends a the office door, it becomes easily possible to harass, discriminate and victimise colleagues in ways which have just as serious an effect on them, without ever breaking technically breaking the rules. Let's consider this the other way around, and ask ourselves how we would feel about a colleague who agrees they mustn't treat us unfairly at work, but says they really want to preserve the right to do so elsewhere?

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

For the "firms" wording, and under the duty to challenge offending behaviour, I would like to see a reference to positive encouragement and protection for employees who do so.

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

I think this probably goes without saying, but firms must be given the opportunity to deal effectively with complaints through internal process, before the SRA intervenes to do so.

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

As with all aspects of regulating our treatment of colleagues, it must first and predominantly be "a shield, not a sword", and we must be vigilant about attempts to abuse the rule as a weapon of harassment, discrimination or victimisation in itself.

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.

Yes - I confess I hadn't realised this wasn't already the case. Since the alternative is that some aspects of practising are excluded or exempted, I think the appropriate question isn't "why should all aspects be included" but rather, "why should any be excluded?"

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

N/A

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

N/A

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

N/A

Rule changes on health and wellbeing at work - Consultation

Response ID:49 Data

2. About you

1.
First name(s)

Kunal

2.
Last name

Bhalla

3.
Please enter your SRA ID (if applicable)

649100

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
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.

Yes. Introducing explicit obligations in the Codes of Conduct for both firms and individuals to treat colleagues fairly and with respect, and not to engage in bullying, harassment and unfair discrimination, can only move the profession forward in being a better place for individuals and in ensuring that higher levels of service are provided to members of the public.

12.
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.

Yes. This will help drive the profession forward in a meaningful way. Taking individual responsibility is necessary if we are to become a profession that represents the society we want to see.

13.
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.

N/A

14.
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?

Yes.

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

No.

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

No.

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

The changes will likely give those members of the profession (and wider society) who have historically been subject to such treatment a greater sense of inclusivity within the profession. This can be no bad thing if we are driving the profession to be a place where diversity and inclusion is not just a tick box exercise.

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.

Yes. The proposal makes logical sense.

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

No.

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

No.

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

No.

Rule changes on health and wellbeing at work - Consultation

Response ID:50 Data

2. About you

1.
First name(s)

Yeonhwa

2.
Last name

Jeon

3.
Please enter your SRA ID (if applicable)

669123

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
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.

Yes. Unfortunately, in many law firms people are treated in an unfair way. Additionally, managers often lack training in how to manage people generally or how to deal with people who are on autistic spectrum.

12.
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.

Yes. It must be very clear that if you don't complain about your abusive boss, the boss may abuse other people as well. We must also fight a bystander effect. Abusive behaviour should not be tolerated.

13.

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.

Yes. Abusive behaviour should not be tolerated, no matter who is a perpetrator, a victim, or a bystander.

14.
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?

Yes. This should be explicit in the wording. Bullying should not be tolerated, no matter where it takes place.

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

Yes. People in managerial roles should be obliged to pass a manager course and an exam. The course and exam should include instructions on how to manage people with various physical and mental disabilities, including people on autistic spectrum.

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

Yes. Anonimised and non-anonimised questionnaires should be available on the SRA website, which can be completed by victims and bystanders of abuse and harassment at work, and include an option to mention the name of a law firm or organization. The complaint procedures should be easy and transparent. The complaint directly to SRA should be possible, without a requirement to submit a complaint inside the law firm or the workplace first.

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

Hope it improves equality at work.

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.

Yes. As being a solicitor includes managing others, solicitors exam should include instructions on how to manage people in general, and people with physical and mental disabilities in particular, including people on autistic spectrum.

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

Bullying, abuse and harassment will not be tolerated.

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

Law firms and other organisations should have an explicit obligation to provide physical and mental health policy, which details what efforts the employer makes to improve physical and mental health of the employees, how to complain about bullying and harassment, and how to submit proposals for what else can be done.

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

Hope it helps to improve health.

Rule changes on health and wellbeing at work - Consultation

Response ID:64 Data

2. About you

1.
First name(s)

Chris

2.
Last name

Carr

3.
Please enter your SRA ID (if applicable)

314529

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

18.
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.

I agree but this needs to be more explicit to also deal with mental health protection.

19.
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.

Agreed, but we need to be careful that this doesn't result in creating a heavy duty for individuals to challenge such behaviours as it may be difficult to do so and it could result in people being held in breach of this duty even if they were being treated badly as well or knew they would be victimised if they speak out.

20.

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.

Yes

21.
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?

As long as this doesn't extend too far, for example leading to disciplinary action being taken against solicitors for expressing an opinion on social media.

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

Make it clearer what you are trying to achieve

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

It needs to explicitly include behaviours that harm the mental health of staff.

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

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.

Yes

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

Rule changes on health and wellbeing at work - Consultation

Response ID:98 Data

2. About you

1.
First name(s)

Richard Simon

2.
Last name

Walford

3.
Please enter your SRA ID (if applicable)

144635

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
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.

Yes. In an ideal world this would be unnecessary and superfluous but, in the world as it is, it is important that this requirement is made explicit as part of the expected conduct for members of the profession.

12.
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.

Yes. Whilst in certain organisations that might be a challenging thing to do it is important that members of the profession are given an obligation to call out unacceptable behaviour and - perhaps more importantly - that they have the backing of the regulator if they have to do so. I think that many of us who have been in practice for many years will have regrets about failures to challenge behaviour of which we disapproved in the early parts of our careers, when we felt unable to do anything other than

disapprove silently because we did not feel empowered to challenge. I hope that things are better now but I do think that there is a potential issue about enforcement of this requirement as there will be members of the profession who work in circumstances where an expectation of their challenging unacceptable behaviour might be unreasonable. For this reason I think that a rule requiring challenges to wrong doing needs to be applied with subtlety and good judgement accounting for the context in which it might be understandable/acceptable for someone to not speak out in order to mitigate the risk of taking action against someone who is themselves a victim.

13.

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.

I have difficulty with this. In principle I approve of spreading the net to everyone encountered in a professional/working environment. However, I do have worries about the practicalities and creating something which becomes so difficult to police that it becomes so rarely used that it becomes ineffective at setting standards of behaviour (because it can safely be ignored). Perhaps what is needed is guidance under each rule so that people for whom challenging unacceptable behaviour might present practical difficulties might be guided as to the extent of their obligations. For example is it sufficient to report a contractor's behaviour to management and dealt with at that level?

14.

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?

I think that it is difficult extending this outside an explicit work environment. Certainly it needs to apply to work based social occasions and other occasions which flow from being colleagues rather than interacting in another context, but I do not think one should extend things beyond that boundary. There comes a point where the profession and it's regulators have to concentrate on their own world and not seek to police the whole world. But, I do sympathise with the idea that these standards are what one expects members of the profession to exhibit in all aspects of their lives and that there is a level at which reputational damage to the profession is an issue irrespective of any lack of workplace context to their behaviour. Perhaps behaviour outside a professional context should be policed under our rules about bringing the profession into disrepute?

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

No.

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

Only to repeat my comments in respect of question two about the need not to victimise victims by expecting too much of people working in dysfunctional workplaces where the real issue lies with the management of the business. We don't want to be "breaking a butterfly on a wheel" whilst allowing those creating the toxic working environment which led to that individual falling short are allowed to continue without criticism or any requirement to reform, because insufficient account is taken of context in which that has taken place and the pressures that imposed on that individual. Which is a problem which I believe we have seen happening in a number of reported disciplinary cases in recent times.

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

Only to say that these are issue which need to be judged on their own merits rather than on their impact. Given that this is an effort simply to make everyone in the profession behave as they should do, it has huge merit even if its impact is low. In fact one would hope that the profession is in a state where the impact will be low because the vast majority behave properly as a matter of course. I suspect that it will have a huge impact in certain organisations (maybe more than I appreciate) but even if only one organisation becomes a better place to work then this is a worthwhile reform.

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.

Yes, as a matter of principle. The complexity of the issues - it seems to me - make it difficult to find practical means of dealing with the issues and I think this is very much an area where guidance is required and will be more useful and have greater impact than the rule changes themselves. Again this is an area where the subtlety of regulatory action will be integral to improving things.

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

No.

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

Just to repeat the usefulness to those managing practices of thorough guidance and examples of what can/should practically be done to achieve the desired impact.

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

No

Rule changes on health and wellbeing at work - Consultation

Response ID:123 Data

2. About you

1.
First name(s)

Paul

2.
Last name

Bennett

3.
Please enter your SRA ID (if applicable)

334641

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
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.

No - the approached proposed is unnecessary and seeks to take the SRA into employment law and partnership dispute issues which will drain the SRA's resources and delay resolution of such disputes and thus damage the public interest.

12.
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.

No - it is so vague as to be meaningless, the current obligations are clear and allow the SRA to challenge any such conduct.

13.
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.

No - see above the SRA is going to waste its resources engaging in the proxy disputes which current the employment and partnership law deals with.

14.
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?

No

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

Stepping away from the approach and the wording is the most appropriate course of action.

This flawed wording for PR and political reasons serves no one and risks wasting the SRA resources and reducing the public protection focus which should form the basis of the SRA's regulatory agenda.

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

There is no need, you have the right to address any concerns, you should instead be issuing none binding guidance on your positive expectations on solicitors and managers of law firms and using the existing arrangements effectively.

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

It is an abdication of responsibility and the SRA should introduce a proper and credible Fitness to Practise regime, public interest demands this, and the interests of the profession by addressing health in a credible are enhanced. The proposal is an unworkable PR stunt and lacks credibility.

The SRA should be leading on this issue which is a threat to the public and failing to address it properly risks undermining the SRA with the public and the profession.

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.

No - It is an abdication of responsibility and the SRA should introduce a proper and credible Fitness to Practise regime, public interest demands this, and the interests of the profession by addressing health in a credible are enhanced. The proposal is an unworkable PR stunt and lacks credibility.

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

Developing a Fitness To Practise regime, it is the only credible way forward for public protection. The understanding of physical and particularly mental health issues has moved on since the Legal Services Act 2007 and the SRA's sole discretion to introduce such a regime must now be actioned.

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

It fails the public interest, it fails the profession neither helps the SRA.

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

The public expects to be protected and for health professionals to return to act for them. In terms of mental health, the public will expect an understanding of the challenges arising and which often are faced by lay clients, the failure to address the issue from

the SRA in terms of Fitness To Practise and public protection needs a radical rethink.

Rule changes on health and wellbeing at work - Consultation

Response ID:146 Data

2. About you

1.
First name(s)

John

2.
Last name

Shelley

3.
Please enter your SRA ID (if applicable)

343801

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
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.

Yes. There are firms that that junior solicitors very poorly and do it in such a manner that if anything goes wrong they can blame that solicitor. Bullying and abuse - especially of female solicitors is very common. Might I suggest a little market research - I suspect the SRA will be shocked.

12.
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.

Yes... but with a Caveat. In a bullying culture challenging such behaviour is akin to painting a target on your forehead. I do not think it is is fair to expect Junior solicitors to "shop" their supervisors unless they can do it anonymously. A solicitor that drops the principals of a firm "in it" will find it almost impossible to get another job and the Resign and inform advice currently places the

junior solicitor in an impossible position.

13.

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.

Any person within a law firm should be able to report wrongdoing to the SRA no matter what the basis of their employment or role within the organisation i

14.

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?

Partly..... there are times when the conduct of solicitors out side the work place can reflect on the profession and sometimes not. I cannot see that there is anything wrong with two solicitors at the same firm having a relationship. The problem occurs if one of them then tries to use that relationship improperly or use sex as a passport for advancement.

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

No

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

Unless there is a way to do it anonymously - it isn't going to work.

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

No

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.

Yes... this seems self evident and should be uncontroversial

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

no

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

no

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

no

Rule changes on health and wellbeing at work - Consultation

Response ID:160 Data

2. About you

1.
First name(s)

James

2.
Last name

Perry

3.
Please enter your SRA ID (if applicable)

339056

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
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.

No, if it is to be done as proposed. Yes, if it is better defined. There is already this obligation on a law firm and to just expressly state it without defining it does not progress matters. A non-exhaustive list of unfair treatment should be drafted and updated regularly.

12.
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.

No, if it is to be done as proposed. Yes, if it is better defined. To just expressly state it without defining it does not progress matters. A non-exhaustive list of situations should be drafted and updated regularly. It should also be explained that in the case of a regulated individual, as they run the risk of losing their job, a safe forum within which to report (this is the safest way to

challenge) should be set up by the SRA. Solicitors will turn a blind eye to poor behaviour because they do not want it to impact on them personally. To change that the system of challenging has to be safe.

13.

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.

Yes, but dispensation should be given if a situation arises regarding these third parties. You cannot control contractors, consultants and experts as well as you can your staff.

14.

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?

There needs to be a bright line drawn between the two. Again, a non-exhaustive list of examples would be a useful starting point.

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

I have no suggested word changes but I would like to make a general comment. When rules that impact on individuals are widely drafted the individual will often err on the side of caution. Erring on the side of caution for these proposed changes could have serious detrimental effects on that individual's career progression. Having read the proposals I don't think the practicalities of these rule changes have been properly considered.

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

See above answers.

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

See above answers.

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.

No. They are too wide. To give an example, they are potentially going to be damaging to Solicitors who have mental health issues. They do not take account of the stigma of mental health in the workplace and they pay no regard to when you should start speaking to your employer about your mental health issues. Large firms will already have an occupational health third-party who you can turn to in confidence for guidance about work related health issues. However, many firms won't have this. These rules place an obligation on the individual speaking to their employer meaning that if you need to err on the side of caution (which is what the rules suggest) then you need to go to your employer direct. Your employer will then naturally err on the side of caution and before you know it restrictions will be placed on your ability to practice the law when they need not have been. This will ruin your chances of fair pay and progression and could lead to discriminatory outcomes. There desperately needs to be a list of examples of when you should be reporting to your employer or there needs to be a body set up where Solicitors disclose in private the challenges they are facing and the body decides whether restrictions should be placed on a PC. At the moment you don't know if there is a difference between starting medication which says a side effect could be brain fog (so should you let your employer know about it) and a violent schizophrenic episode. All I have heard from the SRA on this is that they will take a sensible approach, but what is that? We have all seen cases where the SRA have been criticised for not taking a sensible approach so how can we be sure our best interests are going to be properly safeguarded. If was cannot be certain then we will have to report anything and everything on the off chance that should something happen we can at least mitigate by referring to what we disclose. It is worrying that the SRA have not thought about the practical difficulties these proposed rule changes will have.

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

Please see above.

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

Yes. As currently drafted these rules have the potential to a. increase anxiety b. damage career prospects because reporting all concerns will mean the individual begins to look like a problem for their firm and c. they run the risk of individuals burying their health concerns because they fear that speaking out will detrimentally impact on them. These are serious, valid concerns and I believe the SRA should rethink their strategy here.

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

Please see above.

Rule changes on health and wellbeing at work - Consultation

Response ID:167 Data

2. About you

1.
First name(s)

Kathryn

2.
Last name

Goodings

3.
Please enter your SRA ID (if applicable)

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law society

8.
Please enter the name of the society

Newcastle upon Tyne

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
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.

While we agree strongly that lawyers should treat colleagues fairly we have after careful consideration and discussion decided that it would not be appropriate to make this an express requirement in the regulations. The reason for our reaching this conclusion is that this is already covered by employment law in relation to the largest group requiring protection and would simply be creating duplication and double jeopardy. We are also conscious of the need to avoid regulatory creep after the work carried out in reducing the length of regulations governing the profession.

11.

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.

Irrespective of the above, we feel that the requirement to challenge behaviours is problematic. It is one thing to expect a partner or director or other senior person in an organisation to challenge behaviours where appropriate but entirely different where more junior persons are involved. If the changes are introduced, we believe that this challenge requirement should be excluded or qualified with reference to taking into account the relative status of the parties involved.

12.

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.

If the changes are introduced, "Colleagues " is a term which requires definition. It should include staff in a formal employment relationship including locums and also fellow owners of the business such as partners. An outside expert is too remote

13.

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?

This is another problematic area. We must be very careful in relation to encroaching upon private lives and investigating conduct which does not touch on a solicitor's practice or the profession's standing. We feel that this view is consistent with the Beckwith case. For this reason new obligations should not extend to behaviour which is outside of the work place or the direct delivery of legal services.

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

Our strong view is as set out in our response to Q1. If the regulator still wishes to proceed to introduce a new specific obligation we feel that it should only introduce this for firms rather than in the Code of Conduct for Solicitors, RELs and RFLs. It would be the responsibility of firms to regulate and train their partners and staff in appropriate behaviours. There would though need to be clarification as to what a firm should be required to report to the regulator in the employment sphere or involving personal behaviours. It should also be appreciated that COLPs will often not be aware of individual behaviours in the firm.

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

We do not agree the new requirements should be introduced. See our answer to Question 1 above.

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

Nothing to add to the comments set out above

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.

See our Answer to Questions 1 & 6

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

See our Answer to Questions 1 & 6

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to

our rules?

See our Answer to Questions 1 & 6

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

See our Answers to Question 1 & 6

Rule changes on health and wellbeing at work - Consultation

Response ID:168 Data

2. About you

1.
First name(s)

Jason

2.
Last name

Pearce

3.
Please enter your SRA ID (if applicable)

166744

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
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.

No, it is a hopelessly vague requirement and therefore impossible to comply with.

12.
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.

No, I think this is too great a burden to put onto solicitors.

13.
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.

No, I think this is too great a burden to put onto solicitors.

14.

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?

No, I think this is too great a burden to put onto solicitors.

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

No

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

No

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

No

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.

No, I think that fitness to practise should exclude the ability to meet regulatory obligations and be subject to regulatory proceedings, as solicitors have no control over whether they can do this as we do not set the rules.

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

No

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

I think that solicitors' health concerns are their own business and should not have to be disclosed to the SRA or anyone else.

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

No

Rule changes on health and wellbeing at work - Consultation

Response ID:181 Data

2. About you

1.
First name(s)

Jane

2.
Last name

Burton

3.
Please enter your SRA ID (if applicable)

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Representative group

8.
Please enter the name of the group

Lawyers with Disabilities Division

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
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.

11.
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.

Yes, but what support will be given for these 'whistleblowers'? Historically, employees find it very difficult to make challenges, particularly involving those senior to them. What does 'challenging' look like? What does this requirement actually mean? There is a concern that a failure or delay through fear to challenge could then result in the affected employee being penalised by the

SRA.

12.

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.

Yes, if it applies to employees then the requirement should extend to anyone working in the sector, otherwise there becomes a two (or more) tier system.

13.

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?

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

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.

LDD have concerns regarding this. We already know that disclosure of disabilities is woeful in the profession and we consider that this will force disclosure numbers even lower for fear of having to jump yet another hurdle in what is a difficult environment for many people with disabilities. We also consider that firms who have been challenged, for example, due to not providing reasonable adjustments, or because they have discriminated against a solicitor on the grounds of disability, may see an opportunity to challenge competency in another way. Will the SRA be consulting with medical experts who understand an individuals condition i.e consider if they have a rare condition. Will there be an opportunity for re-assessment if SRA decide not fit to practice at a later time.

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

We suggest you read the following document and drop the idea of these discriminatory amendments.

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

It is odd to put this regressive proposal for regulation together with one on treating people fairly, with which few could argue.
Again, it would be good to have examples of how someone's health would make them unfit to practise. It all seems to be applying a very ableist model. What does 'unfit to practise' look like? If it means that someone's mental health means they are a danger to clients or colleagues, then that should already be adequately covered by rules about endangering clients and bringing the profession into disrepute.
Having specific requirements for people's health risks firms over-policing themselves. They could think that someone is unfit to practise when really they are not, especially if they were provided with reasonable adjustments. These assumptions could also affect people's chances of promotion.
Is someone with a fluctuating condition deemed fit to practise one day, but not the next? Would conditions put on the PC just apply to certain periods?
It seems that everything is on the individual to prove that they are fit to practise. They are basically being asked to fight for their own job.
Who will assess Fitness to practise? Will there be a cost for the disabled person and will there be a waiting time for such an assessment and if so who will cover any potential loss of salary.

What does 'fit to practise' mean? There is a risk that it will be interpreted as practising in a particular ableist manner and/or people being deemed only fit to practise in certain areas. Both are backwards steps to achieving a diverse profession.

What impact does the lack of accessibility of other parts of the legal system (e.g. court buildings) have on an individual's fitness to practise?
A lot of the proposal just seems geared towards easing the SRA's enforcement procedures – i.e. preventing someone raising health issues only after enforcement action has been taken.
This could discourage disabled people from entering the profession.

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

This step would have major implications around equality and discrimination. This would be a backward step and would be discriminatory.
The need to periodically prove fitness to practise will be stressful and may discourage people from identifying as disabled.
How much more information will need to be disclosed and to whom? Who assesses whether someone is fit to practise?
Someone's medical report may be lengthy and on the face of it sound 'awful' – but without actually reflecting them as individuals and what they can do.
People who have been practising perfectly well for years, will now be expected to adopt these new procedures.
We suggest that the consultation reads the REPORT OF A DRC FORMAL INVESTIGATION
Maintaining Standards: Promoting Equality
Professional regulation within nursing, teaching and social work and disabled people's access to these professions.
The full report can be found on https://disability-studies.leeds.ac.uk/library/keyword/Disability+Rights+Commission/

Executive Summary of the Disability Rights Commission
Introduction
Between Spring 2006 and Summer 2007, the Disability
Rights Commission (DRC) conducted a formal investigation examining the barriers that disabled people (including people with long-term health conditions)1 face when entering, and staying in nursing, teaching and social work. Specifically, we have looked at the barriers posed by the statutory regulation of health in these professions. The investigation covered England, Scotlandand Wales.
The professions of nursing, teaching and social work have a huge impact on the lives of all British citizens. Their workforces are substantial, with around half a million nurses, 700,000 teachers, and around 80,000 social workers in Great Britain2. It is important that these professions reflect the full diversity of society. The DRC believes that disabled people should be able, and encouraged, to play their full part in these professions.
After a decade of important advances for disabled people in many areas of public life, the barriers faced by disabled people in nursing, teaching and social work are still under-researched and under-discussed. It seems that where disabled people are considered, it is as patients, pupils or clients – and not as professionals.
1 Theumbrellaterm'disabledpeople'isoftenusedinthis document. When it appears it refers to all those who have a disability or long-term health condition such that they are likely to meet the definition of disability in the Disability Discrimination Act 1995. This includes people with sensory and visual impairments, learning disabilities, mental health conditions and long-term and/or fluctuating health conditions such as diabetes, HIV, multiple sclerosis and cancer.
2 Figures from Labour Force Survey January-March 2007
4
We were surprised to find that, more than 10 years on from the passage of the Disability Discrimination Act 1995 (DDA), much of the legislation and guidance that regulates entry to these professions does not reflect the DDA, and frequently undermines disability equality. Standards for 'good health' or 'fitness' determine who can enter and work within these professions. Some of these standards are explicitly set out in legislation, while others are found within guidance governing entry to education or employment.
With the exception of social work and teaching in Scotland, there are generalised health standards in teaching, social work, nursing and other health professions across Great Britain.
The conclusion of our investigation is that these standards have a negative impact upon disabled people's access to these professions; they are often in conflict with the DDA (as amended in 2005); they lead to discrimination; and they deter and exclude disabled people from entry and from being retained. We therefore recommend that they are revoked.

The DRC agrees that these professions must be regulated for the protection of the public. We support high standards of competence and conduct, including checks of criminal records, so that we can all feel confident in the professionalism of those who train and practise in these sectors. Disabled people have a strong interest in the protection that the regulatory bodies and these standards of competence and conduct provide.
However, we do not believe that the health standards themselves provide protection to the public. We have scrutinised the reports following high-profile cases where professionals have harmed and killed, and do not believe that regulating the mental or physical fitness of professionals would have prevented these criminal acts. We therefore recommend that they are not extended as a matter of course to other occupations undergoing professionalisation, and that existing health standards across nursing, teaching and social work are repealed.
5

About the investigation
The formal investigation looked at three main themes:
1. Theregulatoryframeworksthatoperatewithinthenursing, teaching and social work professions, and particularly those that lay down standards for the health or fitness of professionals.
2. Thewaythathealthisassessedinpractice,atvariousstagesof a professional's career, namely studying, qualifying, registering and working within these professions.
3. Theapproachthatdisabledpeopletaketowardsdisclosing their disabilities and health conditions to higher education institutions, regulatory bodies and employers; and the policies and practices of these organisations in relation to disclosure of disabilities and long-term health conditions.
The investigation's methodology had a variety of elements:
• •
3 DavidRuebain,JoHonigmann,HelenMountfieldandCamilla Parker (2006) Analysis of the statutory and regulatory frameworks and cases relating to fitness standards in nursing, teaching and social work.
4 JaneWray,HelenGibson,andJoAspland(2007)Researchinto assessments and decisions relating to 'fitness' in training, qualifying, and working within Teaching, Nursing and Social Work.
5 JaniceFong,ChihHoongSin,withJaneWray,HelenGibson,Jo Aspland and Data Captain Ltd. (2007) Assessments and decisions relating to 'fitness' for employment within teaching, nursing and social work: A survey of employers.
A review of the existing regulatory frameworks covering nursing, teaching and social work (and a range of health professions including medicine, dentistry and the
13 professions governed by the Health Professions Council)3.
Research looking at how universities4 and employers5 make decisions about disabled people's health within nursing, teaching and social work.
6

•
•
•
Partly because of inevitable limits to time, money and staff resources, and partly because of the context of the Disability Equality Duty, which came into force during the lifetime of the investigation in December 2006, we have focused on nursing, teaching and social work in the public sector and not delivered by private companies.
This investigation has covered three countries and three professions. This summary pulls out the main themes across the professions and countries, and the main differences. Readers who have a specific interest in the detailed findings – particularly the legislation, regulations and guidance –
that relate to a specific country or profession are advised to consult the appropriate sections of this report.
6 Nicky Stanley, Julie Ridley, Jill Manthorpe, Jessica Harris and Alan Hurst (2007) Disclosing Disability: Disabled students and practitioners in social work, nursing
and teaching.
7 Chih Hoong Sin, Janice Fong, Abul Momin and Victoria Forbes (2007) The Disability Rights Commission's formal investigation into fitness standards in the social work, nursing and teaching professions: Report on the call
Research into the factors that affect disabled people's disclosure of disabilities and long-term health conditions at different stages of the employment journey within these professions. 6
Analysis of written evidence on the issues under scrutiny, from organisations involved in the implementation of health standards,

and other relevant organisations (such as disability organisations and trade unions)7.
An 'inquiry panel' stage, chaired by barrister Karon Monaghan, with an expert group drawn from across the nursing, teaching and social work sectors, that questioned expert witnesses about the issues raised by health standards.
for evidence.
7

Health standards: their origins and effects
The DRC has found that across Great Britain, nursing and other health professions have similar regulatory frameworks, which all include generalised health standards and a requirement for people to disclose disabilities and long-term health conditions. In England and Wales, social work and teaching also have statutory generalised health standards. Scotland differs in that health standards do not apply to social work or teaching.
There is a complex array of primary and secondary legislation and statutory guidance laying down requirements for physical and mental fitness in social work, teaching, nursing and other health professions. Very few of the hundred or so pieces of statutory regulation and guidance refer to the DDA, except in teaching.
We have reviewed and analysed these standards and found that they are not legitimate competence standards8, because they do not determine whether someone is competent to practice in a profession. We found that they frequently lead to discriminatory attitudes, policies and practices.
In nursing, we found that there is a statutory requirement for "good health and good character" throughout England, Scotland and Wales. There is no acknowledgment of the DDA within the legislation or regulations, and the Nursing and Midwifery Council (NMC) has only just started to address the potentially discriminatory effects of these requirements. However, the NMC and many of the other organisations we consulted as part of this investigation share our view that these regulations are likely to lead to disability discrimination.
In teaching in England and Wales, we found similar health
8 AcompetencestandardisdefinedbytheDDAasan academic, medical or other standard applied by or on behalf of an education provider or qualifications body for the purpose of determining whether a person has a particular level of competence or ability"
8

requirements, despite stringent competence standards and requirements for good conduct. The DDA is acknowledged within legislation and guidance but we found that these documents are still likely to lead to discrimination. It is notable that generalised health standards for teachers and trainee teachers were abolished in Scotland in 2004, with no apparent negative effects.
For social work, we found that there is a requirement for 'physical and mental fitness' in England and Wales. This requirement is more stringent for students than for qualified social workers. Once again, the physical and mental fitness requirement does not exist in Scotland, where a framework of competence and conduct is considered sufficient to protect the public.
We found that within these professions, assumptions are frequently made that disabled professionals would pose a risk to the public. These three professions are ones in which anxieties about risk are understandably high, as nurses, teachers and social workers have regular, often unsupervised, contact with children, people who are ill or in other ways considered vulnerable.
A number of high-profile instances of murder of patients and pupils (for example by the nurse Beverley Allitt, the doctor Harold Shipman and the school caretaker Ian Huntley) have led to an increased focus on regulation, at registration but increasingly in the form of revalidation. These cases continue to haunt the professions, especially nursing where the Allitt case has had the strongest enduring impact.
The regulation of nursing and the approach taken to the health of nurses has been directly influenced by the report of the Clothier Inquiry, which looked into the crimes perpetrated by Allitt. The regulation of other health professions and social work in England and Wales has also been shaped by the recommendations from that report.
Within the teaching profession, the standards appear to derive from historical concerns about infectious diseases, particularly tuberculosis.
9

There is a current trend towards widening the scope of health standards to cover previously unregulated professions as a means of ensuring public safety.
During this investigation we felt it was important to explore whether the concerns about risk arising from disability or ill- health were rooted in fact or in prejudice. The DRC's inquiry panel looked in detail at the Clothier report and found inconsistencies between the evidence and analysis it presented and its findings and recommendations.
The Clothier report revealed that there was nothing in the history of Beverley Allitt that would have led anyone to predict that she

would commit the crimes that she did. Neither had there been a previous diagnosis of a mental health condition. To the extent that the murders could have been prevented, the Clothier report identified inadequate management as the reason they were not. Despite these findings, it made recommendations about health checks for people entering nursing that have led to a wave of regulation across the health and social care professions.

We also looked at the relevant Shipman reports, and agree with their finding that to reduce the likelihood of criminal activity of the kind perpetrated by Allitt and Shipman happening again, what is needed is proper management, supervision, information exchange and prompt action when inconsistencies and issues appear.

A particular outcome of the Clothier report has been the stigmatisation of people who have, or have had, mental health problems. This has led to people being excluded from training and employment and a consequent reluctance on behalf of professionals to disclose information about their mental health. In effect, they are often 'driven underground' by attitudes, policies and practices that are frequently discriminatory. This can mean that they do not receive appropriate treatment, support and adjustments to enable them to practise safely and effectively. This situation is plainly unsatisfactory to all concerned and cannot be said to aid protection of the public.

When we asked relevant organisations about the purpose of

generalised health standards, we found the role of these standards in protecting the public was an unexamined assumption, and not one that was based on any evidence.Our evidence told us that identification of health conditions is an irrelevance to public safety. Indeed it appears to be a 'red herring', detracting from the important issues – identified from previous tragic cases – of information exchange and monitoring of conduct.

We asked witnesses to our inquiry panel to give us their perceptions of which particular disabilities or health conditions were likely to present a risk to public safety. Although dyslexia, epilepsy and mental illness were frequently mentioned, witnesses were not able to explain what risk would remain for professionals, disabled or not, who had met these professions' rigorous standards of competence and conduct.

No evidence was presented to us that a diagnosis of mental ill health is a sufficient predictor of unsafe or poor practice for nurses, teachers or social workers. The impact of any condition is particular to the individual and their circumstances. This means that, for some people, mental ill health might raise issues of competence or conduct that could not be avoided through reasonable adjustments. These people would be unable to enter or remain in the profession because of not meeting those standards. For other people, mental illness would be well-managed and therefore irrelevant.

Generalised health standards encourage a diagnosis-led approach to the assessment of risk, rather than an individualised approach. Occupational health organisations told us that using health diagnoses serves no useful function at all in predicting future conduct or competence or in assessing risk.

Having gathered evidence from a wide range of organisations, including all the relevant regulatory bodies, we have therefore come to the conclusion that requirements for health or fitness of professionals, laid down in legislation, regulation and statutory guidance, should be revoked.

The Government9 is increasingly focused on revalidation of registration, particularly following the Shipman inquiry.

It has recently proposed that all statutorily regulated health professions have in place arrangements for revalidation, by which professionals must periodically demonstrate their continued fitness to practise.

The Government is also considering the regulation of other healthcare professionals.The aim is to standardise regulation across the health professions and give the Council for Healthcare Regulatory Excellence (CHRE) a pivotal role. There are, in addition, moves to increase the professionalisation of the whole children's workforce. The DRC does not object to these extensions of professional regulation or to the introduction or extension of revalidation but does not want to see health standards included. We believe that existing and new professional regulation should be based on competence and conduct, and not on health.

The DRC's investigation found only a very few circumstances in which it could be justifiable to consider a person's diagnosis in isolation (and irrespective of competence and conduct), the major example being the diagnosis of blood borne viruses. However, like the Nursing and Midwifery Council (NMC), we recognise that a blood borne virus is not justification on its own for the refusal of registration but should be an issue for employers in relation to particular jobs.

This investigation has focused on health related standards and not those relating to character. However, there can be a pernicious relationship between the health and character standards, which affects disabled people. A failure to disclose a disability or long-term health condition can be used as evidence of 'bad character" and can lead to disciplinary action. This is in the context of a culture, particularly within nursing, in which people who are disabled or have long-term health conditions often

do not feel safe to disclose.
9 TheWestminstergovernmenthasjurisdictionforhealth sector regulation across England, Scotland and Wales.
12

Role of Government and the Regulatory Bodies
Governments in England, Scotland and Wales, as well as the professional regulatory bodies, have responsibility both for protecting the public and for equality for disabled people. There have been some welcome initiatives, particularly in teaching (such as the setting up of the Disabled Teachers Taskforce). However, in other sectors the relationship between public safety and disability equality goes unexamined.
This investigation has aimed to achieve a balance between these two important concerns, which we believe to be mutually reinforcing, rather than being in conflict. We expect governments and the regulatory bodies together to consider the conclusions of this investigation, including the recommendation to revoke the current health standards in teaching, social work, nursing and other health professions.10
In 2008, Secretaries of State and Ministers (in Scotland and Wales) will be reporting on actions their Departments have taken to promote equality under the Disability Equality Duty (DED), which was introduced by the DDA 2005. These reports should cover what the relevant regulatory bodies have done to remove barriers to disabled people's participation in the professions.
Regulatory bodies should remove the health standards that are within their own remits, and should review guidance documents based on statutory health standards. If health standards are removed, there are still likely to be competence standards that have an adverse effect on disabled people. We do not believe that the standards of competence or conduct applied to disabled people should be lower than those for other professionals. However, all competence standards should be reviewed and, where they are found to have an adverse impact upon disabled people, the regulatory body
10 InScotland,therearenogeneralisedhealthstandardsfor social workers or teachers, so the recommendation to revoke these standards does not apply
13

should consider whether they are necessary, and consider how adjustments can be made under the DDA to the way that these standards are assessed.
For example, English language standards may be genuine competence standards and therefore not subject to the duty to make reasonable adjustments under DDA. However, reasonable adjustments do apply to the way these standards are assessed and in training people to meet these and other standards. There is a need for clear guidance from the regulatory bodies about making adjustments to enable disabled people to reach the required competencies. Responsibility for this guidance should fall to the regulatory bodies because of their guardianship role in relation to professional standards.
In relation to fitness to practise cases we considered the merit of the existing approach by the regulatory bodies of treating health issues separately to issues of competence or conduct, by having separate hearings. Some of those we spoke to felt there were benefits to the individual concerned, such as holding the hearing in private.
Even with the removal of health standards there are still likely to be competence or conduct cases that have a health or disability element. In practice we heard it is often difficult to distinguish the different elements.
We believe that the DDA provides a sufficient framework for ensuring that conduct or competence cases with a health or disability element are dealt with fairly and sensitively. Such hearings are covered by the DDA, and approaches to reasonable adjustments should take two forms.
First, the regulatory body should consider whether there are disability related reasons for the person's poor performance or unsatisfactory conduct that could be (or could have been) addressed through adjustments – such as additional support in the workplace. These reasons may affect the handling of the case.
Second, the regulatory body would need to consider adjustments to the actual process of the hearing, as required
14

under the provisions for qualifications bodies under Part 2 of the DDA. For example, the hearing could be held in private or the person under investigation could be allowed extra support or other adjustments during the hearing itself.
Higher education
This formal investigation did not include, as part of its scope, the barriers to entry to the professions before the higher education stage. However, we heard from a wide range of organisations that disabled people are discouraged from becoming nurses, social workers and teachers and are sometimes discriminated against before they apply to higher education. Potential students may not have had a chance to get relevant experience through voluntary work, possibly because they have not had access to

reasonable adjustments. Others have encountered prejudice in their previous educational careers, or in voluntary work.
Applicants to higher education have a statutory duty to disclose information about disabilities or long-term health conditions for nursing courses across Britain, and for social work and teaching courses in England and Wales. Procedures are laid down by the regulatory bodies (as well as the Department for Children, Schools and Families (DCSF) in the case of teaching) for the assessment of students' health.
People are often uncertain about what information they have to disclose. Forms and requests for disclosure are often not explicit about their purpose. For example, whether the information is required for making reasonable adjustments, for assessment of a person's health or fitness, or for monitoring purposes. Health questionnaires are frequently intrusive, irrelevant and assume a model of perfect health, asking questions such as: "Are you free from any physical defect or disability?". They often make no mention of the DDA.
The regulatory requirement to disclose undermines the DDA, in that it deters people from asking for reasonable adjustments in higher education, which can lead to them being judged as incompetent and unsafe. The health standards foster

the perception that they are there to prevent people who are disabled or have long-term health conditions from applying to higher education courses. Universities themselves express concern about the non-specific nature of the health standards and feel that they do not receive sufficient guidance from the regulatory bodies on managing the compulsory disclosure process.
This investigation also found that generalised health standards lead to universities and their occupational health services attempting to pre-judge the ability of disabled people to be able to practice competently and safely at the application stage or at entry to courses. It is important that disabled students – like all students – are given the opportunity to develop the relevant competencies during the course, with adjustments to enable them to achieve them.
We found particular barriers for students with dyslexia, especially within nursing. There is a common perception that people with dyslexia cannot read and are therefore automatically a risk. However, the nature of dyslexia varies from person to person and many people with dyslexia develop effective coping strategies, including practices and procedures that can enhance safe working for all nurses.
Requirements for written and spoken English, laid down as competencies by regulatory bodies and universities, can disadvantage deaf students. English language standards, unlike generalised health standards, are likely to be competence standards and therefore the standards themselves do not need to be adjusted under the DDA.
However, deaf people may be disadvantaged by these standards, so reasonable adjustments should be made to enable deaf people to have an equal chance of meeting these standards. People who use British Sign Language (BSL) need deaf nurses, social workers and teachers who can communicate directly with them in their first language, so it is important that deaf people are allowed to train for these professions. We received evidence from a social work course and a nursing course that had successfully integrated and supported deaf students, including first language BSL users.

Occupational health services play a prominent role in deciding whether an applicant is fit to study and practise, particularly in nursing. Some occupational health providers take account of the DDA in their practice and take an active role in suggesting adjustments, while others do not seem to understand their role in supporting universities and employers to meet their DDA obligations.
There are inconsistencies in the use of occupational health services. For example, for nursing courses, some universities use NHS occupational health services while others use services specifically for higher education institutions. Different services are likely to be assessing students for different things, for example whether they can complete the course or whether they are likely to be able to practise as a nurse.
The investigation found that students often have a particular difficulty with work placements. This can be because of failures by the university to plan properly for placements, or to communicate the need for adjustments, or to cooperate with placement providers in planning adjustments. Placement providers often lack awareness of disability equality and the DDA, particularly the concept of reasonable adjustments. This issue can be exacerbated by the students' own reluctance to disclose their disability or long-term health condition.
Employment
We looked at what impact the generalised health standards had on employment practice within nursing, teaching and social work. We found that it was occupational health services that were the significant determinant of how nurses, teachers and social workers were assessed. The regulatory bodies have a much smaller role in the regulation of employment than they do in the regulation of higher education. In teaching in England and Wales there is detailed statutory guidance on the assessment of

disabled people's fitness to be employed as teachers. The tone of these documents does not encourage disability equality, and the procedures laid down are likely to lead to discrimination.
17

The investigation found that public sector employers of nurses, teachers and social workers routinely use lengthy, over-inclusive and intrusive pre-employment health questionnaires. These are costly, not useful and potentially discriminatory because they focus on a person's diagnosis and not on the requirements of a particular job. Rejecting someone on the basis of a diagnosis, when this is irrelevant to the job, is direct discrimination under the DDA. Occupational health services used by these employers should instead focus on providing ongoing support for employees to retain them in the workforce.
There are specific jobs where it is necessary to require particular standards of health, for example the absence of a blood-borne virus or physical strength for lifting. However,
we consider that any medical requirements or assessments should be very closely linked to the actual tasks to be performed and should be subject to reasonable adjustments.
We conclude that employers should only ask health questions when these are relevant and, to avoid discrimination, not until after an offer of employment has been made. We believe that the practice of asking irrelevant pre-employment medical questions should be made unlawful. This is the approach in the United States, where the Americans with Disabilities Act (ADA) prohibits medical inquiries or examinations before the offer of a job. Where a disability or health condition means that someone is not able to do the job, the job offer can be withdrawn. In practice, this is likely to be infrequent.
We recommend that employers only use occupational health services that have an enabling, DDA-aware approach to providing these services, focusing on reasonable adjustments rather than the screening out of disabled people. Employers should also ensure that they understand their responsibilities under the DDA. Schools may have particular difficulties as decisions may fall on Head Teachers and governing bodies. Local authorities should support schools in becoming more DDA aware.
The DRC heard about the contribution that disabled people can make to the professions of nursing, teaching and social
18

work. We also received evidence about the discrimination disabled people face working in these sectors. Employers should ensure that they and their occupational health providers support disabled people to enter and stay in employment.
Disclosing disabilities and long-term health conditions
For people training and working in nursing, teaching and social work, decisions about disclosing disabilities and long- term health conditions are not simply personal choices. There are two regulatory frameworks that inform these decisions.
First, the health standards themselves lay down requirements for disclosure and, in some cases, procedures as well. Second, the reasonable adjustment duty of the DDA requires that higher education institutions, regulatory bodies and employers know about a person's disability in order to make specific adjustments.
The compulsory requirement for disclosure arising from the health standards causes confusion and anxiety. People may not know whether a particular condition needs to be disclosed, and they may have concerns about the consequences of disclosing, or of not disclosing.
The effect of the health standards is to create an unwillingness to disclose a disability or long-term health condition, which in turn can affect the availability of adjustments and support.
People with fluctuating conditions, such as depression or multiple sclerosis, face particular difficulties around disclosure and may only disclose when they are faced with a crisis in their education, work placement or employment.
People with mental health problems face particular stigma and are sometimes singled out for investigation. This arises out of an association of mental health conditions with risk, reinforced by the recommendations from the Clothier report and the health standards themselves.
19

Few of the organisations that gave evidence to the DRC were prepared to straightforwardly and unconditionally advise disabled people to disclose their disability within these professions. Some organisations recommend that disabled people have a positive strategy around their disclosure. This would consist of talking about reasonable adjustments rather than focusing on medical explanations, and having pre-prepared positive messages to counteract any negative reaction. It is imperative that a culture of trust exists within these professions, as disclosure is beneficial to everyone, including patients, pupils and clients.
Negative attitudes towards disabled professionals and students do not derive entirely from the health standards. The standards reflect, as much as they promote, negative attitudes towards disability at a societal level and perhaps simply provide a framework for formalising prejudice. They act as a deterrent to professionals who might not feel welcome within the professions

anyway. Within these professions, people who are disabled or have long-term health conditions are primarily regarded as vulnerable people who receive help or care – and not as helpers or carers themselves.
In Scotland, where health standards for teachers and social workers have been removed, we found evidence that negative attitudes persist – we were told that "the culture on the ground has not changed".
Nursing as a profession seems to be particularly intolerant of disabled practitioners. This may be linked to the perception of nurses as 'superhuman' and a desire to maintain the boundaries between those who care and those who are cared for. Without doubt, the Clothier report has had a lasting effect. Despite more than a decade of legal and social progress for disabled people, the perception still remains that disability, particularly a mental health condition, automatically means the presence of risk.

Statistics and research
The DRC found a dearth of research or data about disabled professionals within nursing, teaching and social work.
This was one of the concerns that prompted us to carry out this investigation. Statistics, where available, suggest that disabled people are under-represented or are present but not disclosing their health or disability status and so are not represented in the figures.
In teaching, across Great Britain, less than one per cent of those on the professional registers have declared a disability. In social work, the equivalent figure is around two per cent.
In nursing, the Nursing and Midwifery Council (NMC) has not yet collected any statistics about disabled people on its register, although it has recently started monitoring in relation to staff. Monitoring is something that the DRC advised qualifications bodies to do in its 2004 Code of Practice as a way of 'determining whether anti-discrimination measures taken by an organisation are effective'. Several regulatory bodies have acknowledged that there are problems with data collection, due to issues of trust and disclosure.
In guidance on the DED, the DRC recommends that it may be appropriate to collect information according to impairment type, as disabled people with different impairments can experience fundamentally different barriers. This formal investigation has found that disabled people in the professions do indeed face different barriers depending upon their type of impairment. For example, people with mental health problems face particular assumptions and have particular concerns about disclosure.
During this investigation, the DRC asked organisations to send in relevant research they had conducted or commissioned to inform their own organisational practice, or to contribute to their understanding of the barriers that disabled people face. Very little research came to light. However, our investigation also revealed the need for further research. We heard that organisations such as universities

need information and guidance from the regulatory bodies, such as guidance about reasonable adjustments. Research, including evidence of good practice, should be undertaken to inform such guidance.
The DRC also heard from a range of organisations about the value of disabled role models within these professions, for other disabled professionals and for disabled patients, pupils and clients. However, we are not aware of any research about the value of role models or of any practical projects or pilots relating to this issue. Similarly, the DRC has not found any evidence about the value of mentoring or networking for disabled people in these professions and few examples of mentoring or networking being used to support disabled people. Research projects and evaluated pilot projects could be used to inform these issues.
There is also a need for further research into the culture within these professions – specifically around attitudes towards disability and how these attitudes might present a barrier to disabled people working or progressing.
Finally, our literature search11 found little evidence of published or unpublished research about disabled people's perceptions of barriers to entry and training. Regulatory bodies should carry out or commission research of this nature to inform impact assessments about their own policies, procedures, practices and guidance documents.
Gathering disability information – through research or monitoring – is not an end itself, but should be placed in the broader context of promoting disability equality by using the information to help decide where action is most needed, taking such action, reviewing its effectiveness and deciding what further work needs to be done. This can be achieved by involving disabled people in framing the research questions
11 BackgroundtotheDRC'sformalinvestigationintofitness standards in the nursing, teaching and social work professions: Paper prepared by Chih Hoong Sin, Monica Kreel, Caroline Johnston, Alun Thomas and Janice Fong, DRC 2006

and designing the mechanisms for gathering information. The inadequate research base should not be used as an excuse for

delaying change; but without accurate knowledge of the barriers faced by disabled people within these sectors, these barriers cannot be successfully tackled.

Medicine, dentistry and other non-nursing health professions

The DRC's investigation focused mainly on nursing, teaching and social work. However the review of legislation, regulation and statutory guidance commissioned for this investigation, also covered (for reasons of comparison) the health standards, laid down in regulation, in medicine,

dentistry and the 13 professions currently regulated by the Health Professions Council (HPC).This review found that similar regulatory frameworks, including discriminatory health standards, also exist across this wider group of

health professions.

Evidence received from the HPC demonstrated a model of good practice within the current constraints imposed by the health standards. The HPC draws a crucial distinction between fitness to practise and fitness for a particular job in a particular setting. Registration does not guarantee that someone would be able to practise effectively in all settings. The HPC therefore argues that registration decisions should not be based on the possibility of future employment in a particular place.

The Commission for Equality and Human Rights (CEHR)

This investigation is published in the final month of the DRC's life (September 2007). The CEHR will take over the duties and powers of the DRC and we hope that it will follow up the findings and recommendations of this investigation vigorously.

Recommendations

The evidence collected for this formal investigation makes a compelling case for the revocation of generalised health standards for professionals in nursing, teaching and social work. It also makes the case for other actions to promote equality for disabled people. Below we summarise the main recommendations of the investigation in relation to who is responsible for them.

Many of these recommendations are things which public bodies should be doing in any event to comply with their Disability Equality Duty – in particular, the need to conduct impact assessments, so that they can ensure that due regard is being taken of disability equality.

The Department of Health and the Department for Children, Schools and Families should:

1. Revoke the statutory regulation of health in nursing across Great Britain and in teaching and social work in England and Wales.

2. Ensure that existing regulation of registration and revalidation are concerned with assessing competence and conduct, with effective methods of monitoring and information exchange.

3. Not extend the regulation of health to other occupations, to students, or through the introduction of revalidation. All extensions and harmonisation of professional regulation should focus on competence and conduct and not include mental or physical fitness or health.

4. Review their guidance to ensure that it is up to date with present legislation and is non-discriminatory.

5. Consider with the relevant regulatory bodies, the findings and recommendations of this report as part of the responsibility of Secretaries of State and Scottish and Welsh ministers to report on action their Departments have taken to promote equality under the Disability Equality Duty in 2008.

The Council for Healthcare Regulatory Excellence (CHRE) should:

6. Take a pivotal role in coordinating the regulation of healthcare professions and quality assuring mechanisms to assess competence and conduct.

The other relevant regulatory bodies across England, Scotland and Wales should:

7. Remove all requirements for good health or physical and mental fitness that are within their remits.

8. Review their statutory disability equality schemes and involvement of disabled people.

9. Carry out impact assessments of:

• their policies, practises and procedures

• their processes for assessing fitness to practise, for example fitness to practice hearings

• English language standards and competence standards in general

• their main methods of communication with actual and potential professionals.

10. Where competence standards are found to have an adverse impact on disabled people, consider whether they are necessary and, if they are, how adjustments can be made to enable disabled people to meet the required standards.

11. Carry out or commission research on the provision of reasonable adjustments for students (during university

based training and work placements) and pull together information about good practice.
12. Issue guidance to help higher education institutions to make adjustments to enable disabled people to meet the competence standards.
13. Review systematically existing publications and examine the quality of advice given verbally to individuals and higher education institutions.
14. Review registration application processes to ensure that disabled people are not disadvantaged and ensure that there are adequate feedback and complaints procedures.
15. Where appropriate, continue to make enquiries in relation to prospective registrants about conditions which are not covered by the DDA, such as alcohol and drug dependence, paedophilia and kleptomania.
16. Not use a failure to disclose a disability or long-term health condition as evidence of "bad character" or as something that should lead to disciplinary action.
Higher education institutions should:
17. Maintain high professional standards for disabled and non-disabled students alike but not pre-judge the professional competencies of disabled applicants or students.
18. Consider the experiences of those higher education institutions that have enabled deaf students to qualify and practise in these professions, for examples of good practice. Higher education institutions should also consider the research carried out, and advice given, by higher education institutions that have supported nursing students with dyslexia.
19. Properly plan work placements for disabled students. Higher education institutions should take steps to ensure

that, with the permission of disabled students, sufficient information about adjustments is shared with work placement providers
20. Ensure that occupational health (OH) services operate in accordance with the higher education institutions' obligations under the DDA, that they are enabling and focus on reasonable adjustments and not on medical diagnosis. Higher education institutions should ensure that OH services understand that professions include a variety of roles and that a student may be able to undertake some roles and not others.
21. Ensure that disabled people are not expected to meet competence standards at application, or at the beginning of courses, that other students are only expected to meet during, or at the end of, their courses.
22. Carry out impact assessments of:
• processes for allocating and arranging work placements
• the provision of occupational health services
• admission procedures.
23. Monitor the numbers and progress of disabled nursing, teaching and social work students, and monitor according to impairment category if considered relevant. Maximise the reliability of monitoring information by comparing it to other available disability statistics. Higher education institutions should consider how to use this information to inform impact assessments and action.

Employers should:
24. Not ask irrelevant health questions. Health questions, if relevant to a specific job, should only be asked after an offer of employment has been made.
25. At recruitment stage, prior to a job offer, limit questions about disability to those that are concerned with reasonable adjustments for the recruitment process.
26. Ensure that they use occupational health providers that understand the DDA, work in a DDA-compliant way, and focus on reasonable adjustments rather than medical diagnosis.
27. Monitor staff including the numbers of disabled nurses, social workers and teachers, and monitor according to impairment categories if this is considered to be relevant.
28. Maximise the reliability of monitoring information by comparing it to other available disability statistics. Employers need to consider how to use the information to inform impact assessments and action.
29. Carry out impact assessments of:
• their provision of occupational health services
• their recruitment processes (local authorities should also review the advice and guidance, both verbal and written, given to

schools about the employment of teachers)
• the way that work placements are made available to trainee nurses, teachers and social workers.
30. Not use a failure to disclose a disability or long-term health condition as evidence of 'bad character', and not use such a failure to disclose to trigger disciplinary action, unless there are serious concerns

about conduct or competence arising from this non- disclosure.
31. Test professionals for the presence of blood borne viruses prior to and during employment only in roles that involve invasive health treatments, such as working within a wound.
Occupational health services should:
32. Review, with employers, the questionnaires used to gather health information and ensure that assessment of health is tailored to particular jobs, and that these assessments are made only after the offer of a job.
33. Be clear about the purpose of their service, for example, supporting employers and employees to achieve health, well-being and productivity at work, mindful of the range of legal and ethical responsibilities of all parties.
34. Ensure a focus on providing long-term support where necessary to enable someone to stay on a course or in a job.
35. Under the leadership of the Faculty of Occupational Medicine, ensure that the practice of all services is raised to the standard of the best and that practitioners receive training on the DDA and disability equality.
36. Consider the recruitment and retention of disabled occupational health professionals.

All organisations12 responsible for the promotion of careers in nursing, teaching and social work should:
37. Actively promote entry of disabled people into the professions, for example through websites, literature, advertising, promotional events and through
careers services.
38. Use monitoring and research information from regulatory bodies, employers and higher education institutions to determine which groups are under- represented and use impact assessments to identify how they can encourage disabled people to enter the professions. In doing so, they will be fulfilling their disability equality duties.
All relevant organisations should:
39. Take action to tackle the confusion throughout these sectors on what does and does not constitute a 'disability' and who is covered by the DDA.
40. Combat the perception within these professions that disabled people are vulnerable people who receive help or care and cannot be professionals themselves.
41. Tackle the stigma and unwillingness to disclose in relation to many disabilities and health conditions, particularly mental health.
12 TheseorganisationsincludeNHSEmployers,NHSScotland, the Training and Development Agency for Schools, the General Teaching Council for Wales, the General Teaching Council for Scotland, The Department of Health, the Scottish Social Services Council and National Workforce Group for social work and social care staff in Scotland

42. Take a sensitive approach both to encouraging disclosure and to handling personal information following disclosure.
43. Make clear why information about disability or long- term health conditions is being collected, who will see it and what use it will be put to.
44. Create an inclusive culture and environment that promotes disclosure, including where:
• there are role models for disabled people –
for example, managers or tutors who are disabled and are open about their disability
• mistakes made by disabled people, particularly in a learning environment, will be expected and tolerated, as they would with any student or practitioner, and not automatically attributed to disability
• disability is seen as a welcome difference and not as a deficit
• reasonable adjustments are made, and disabled students and practitioners are aware that these have been made and aware of other adjustments that might be available to them
• colleagues, or in the case of higher education, fellow students, also have positive attitudes towards disability and understand that reasonable adjustments are about equality not preferential treatment.
45. Collaborate to increase the very limited evidence base on the experiences of disabled people in these professions, or

excluded from these professions, and the limited amount of statistical information available. Research should involve disabled people, not only as respondents.
31

Regulators and representative bodies within medicine, dentistry and other non-nursing health professions should:
46. Review the findings and recommendations of the DRC's investigation (including the analysis of regulatory frameworks) and consider their applicability to these other professions.
The Commission for Equality and Human Rights should:
47. Adopt the findings and recommendations of this investigation and press government for the revocation of the health standards.
48. Stimulate activities to encourage disabled people to work and stay in these professions and take action to address the barriers we have found.
32

Rule changes on health and wellbeing at work - Consultation

Response ID:187 Data

2. About you

1.
First name(s)

Suzanna

2.
Last name

Eames

3.
Please enter your SRA ID (if applicable)

644385

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law society

8.
Please enter the name of the society

Junior Lawyers Division

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
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 agree that solicitors and colleagues should work together effectively and treat each other with respect and dignity. We are glad that the SRA are addressing this with the seriousness it requires, given the evidence of bullying, discrimination and harassment in the profession.

11.
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.

Code of Conduct section 1 for solicitors: We do not agree with requiring solicitors to challenge behaviour that doesn't meet the standard required. This unfairly puts the burden on individuals, who may be being bullied themselves. If a junior solicitor is required to report the senior staff member to a senior staff member, this could have perverse consequences for the junior solicitor. It is too high a requirement.

Code of Conduct section 1 for firms: However we do agree with this wording for firms, as senior management are in a position to set the tone and culture of a firm, and should be actively challenging staff members to comply with the culture and behaviour required. This is a positive step forward and it is hoped this does encourage firms to do more to reduce the risk of unfair treatment.

12.
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.

We agree with the proposed scope of the obligations – bullying and harassment can often happen at work social events, and it is right to cover behaviour in the context of a relationship between colleagues which can impact the work environment. The SRA should regulate solicitors' behaviour in a work context, even if their behaviour is towards other colleagues such as non-solicitors, or outside the workplace.

Code of Conduct section 1 for solicitors: If the word 'colleagues' is to be used as a descriptor, there should be a clear definition to identify who this relates to. This scope needs to either be in the wording, or clarified in a separate document.

13.
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?

Please see above.

---

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

The wording for the Code of Conduct has been directly lifted from the GMC. We do not see that the GMC is the most comparable body, and as stated above, this has resulted in too high a standard for challenging others. CILEX and ICAEW are both comparable bodies. If the standard is lower to not require solicitors to challenge others, then a wider scope (changing it from colleagues to others) may be appropriate.

---

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

Changing the Code of Conduct will require the SRA to be more active in their enforcement of breaches. This will require further resources. It is not clear that the SRA has properly considered the increase in resources necessary to ensure that breaches are properly investigated.

---

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

It is hoped that treating this issue with the seriousness it deserves, and with higher regulatory standards, will lead to higher standards amongst leadership - which in turn will have a positive impact upon junior lawyers.

---

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.

We agree in principle with a fitness to practice regime, which provides the SRA with an alternative route which focusses

specifically on those with health difficulties outside of a disciplinary process. However, we are concerned the SRA has gone too far with its suggested approach.

Solicitors have an ongoing obligation to tell the SRA about anything which raises a question as to their character and suitability under Rule 6.5 This sufficiently covers the scenario that the SRA are concerned about upon entering the profession – the health condition would need to be disclosed if it means the solicitor may not be able to practise safely.

By singling out health as a criteria under rule 2, there is a real risk that this puts off disabled candidates from applying to become a solicitor. Explicitly listing it may make disabled candidates more reluctant to apply, thinking that this might be a barrier to the profession. There are further issues with how this will work in practice – do solicitors have to provide evidence upon admission and then every year? Do they provide evidence directly to the SRA, or through their firms? What if solicitors are not comfortable disclosing their health issues to their firms (or does this require them to do so)? Further thought needs to be given to this issue.

There are also numerous inconsistencies or unanswered questions which arise from the consultation.

We do not understand the distinction between not striking solicitors off on health grounds, but then not issuing a PC because of health concerns. If a health condition can be managed by conditions, surely it should not be the reason anyone is refused a PC?

Should it also not be the duty of the individual's firm to put reasonable adjustments in place for the solicitor as opposed to the SRA refusing to issue a PC on health grounds? What if there are potential reasonable adjustments which can be put in place, but the firm isn't doing so?

The SRA are suggesting that all staff have enhanced training. With respect, enhanced training is not the same as being a medical professional. It would be preferable to get one medical professional involved to consider health issues at an early stage to properly advise. Do other comparable professionals have medical professionals or simply people with some training?

What does 'working with individuals' to obtain further evidence mean? If there is a cost, who will bear it? Will people with health conditions be disadvantaged if they are unable to fund obtaining their own evidence? (Such as we have seen in the Claire Matthews case). The SRA must be careful to ensure that they do not place junior lawyers in a worse position due to the higher chance that they will not have sufficient resources to obtain evidence.

We also query the type of evidence that the SRA would require from individuals, assessments by the NHS are likely to take time which would mean that the solicitor has either been refused a PC or has conditions imposed on their PC for a long period of time.

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

Please see above.

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

Please see above.

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

Please see above; we are very concerned that these proposals will have a negative impact on junior solicitors as currently stated. Further consideration is needed before these proposals should be implemented.

Rule changes on health and wellbeing at work - Consultation

Response ID:189 Data

2. About you

1.
First name(s)

Ann

2.
Last name

Murphy

3.
Please enter your SRA ID (if applicable)

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law society

8.
Please enter the name of the society

Liverpool Law Society

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
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.

LLS does not agree with the proposal to add an explicit requirement to the Code of Conduct requiring regulated individuals and firms to treat people fairly at work, as it disagrees that the SRA requires additional powers to discharge its obligations as a regulator.
The issue of culture, the environment in which solicitors work and the health and well-being of the profession is quite rightly a matter on the SRA's agenda and few would disagree that health and well-being can impact on the efficient delivery of legal services. It is also correct to recognise that in more recent times there have been some serious instances of people in law firms being treated unfairly and inappropriately, which not only impacts at individual and firm level but has more wide-spread

repercussions on the trust the public places in the profession. According to the SRA, the solution is more clarity around what it expects from people who work in law firms and what action it can take in the event of a failure to meet those expectation. LLS would not be opposed to the SRA providing more clarity. However, it does not agree that the imposition of an explicit regulatory requirement on fairness in the workplace is required.

The Code of Conduct for Firms includes a requirement for firms to have in place effective systems and controls to comply with regulatory and legislative requirements, which would include employment legislation where the issue of the rights of the individual in the workplace is catered for as part of a comprehensive statutory framework. The Code of Conduct for Solicitors, RELs and RFLs contains equivalent standards for individuals. In addition, the Principles – the pillars upon which the Code is built and the backdrop against which the profession is judged- require firms and individuals to act with integrity, to uphold public confidence in the profession and to act in a way that encourages equality, diversity and inclusion. Indeed, it is accepted in the consultation paper that the existing rules afford the SRA clear grounds to take regulatory action in cases involving abuse of authority, harassment, discrimination, victimisation and failure to support or supervise staff. It is also, by implication, conceded that the existing rules require firms and individuals to treat people fairly at work. The SRA's complaint is that the aforesaid power is implicit rather than explicit. Its answer is to further arm-up by (a) adding an express obligation on individuals and firms to treat colleagues fairly and with respect and (b) requiring firms and individuals to challenge behaviour which does not meet this standard. However, if what is required is a change of culture is that solution fit for purpose? LLS would say that it is not. Cultural change has to come from the within the individual or organisation and change starts with a recognition that the status quo is not working. If, for example, a firm via its systems, controls and management is fostering a culture of inequality, oppression or bullying or is simply failing to identify that such a culture exists then the need for action is obvious and in the absence of the firm acting on its own initiative the SRA has the power to act. Interestingly, when commenting on enforcement and specifically when the SRA will take action the examples given in the consultation paper are where the work environment:

o does not support the delivery of appropriate outcomes and services to clients.

o creates a culture in which unethical behaviour can flourish.

o is one where staff are persistently unable to raise concerns or have issues addressed.

The SRA already has the powers within the existing Code to address the aforesaid shortcomings in the event they are serious. LLS also takes issue with the imposition of a positive duty (imposed on top of the legislative requirements on firms and individuals and to be enforced by a regulatory body) requiring individuals and firms to treat people fairly at work. Fairness is a nebulous and subjective concept, which makes the policing of it difficult and potentially time consuming. Leaving aside LLS doubts that the SRA has the manpower to deal with effective enforcement, given the propensity for its proposed new rules to result in numerous complaints from inside and outside the workplace, there remains the question of expertise. Is the SRA really well-placed to determine what is essentially an employment law issue, whether at tribunal level or before it gets to that stage? LLS notes with some concern that in advancing its case for change, the SRA has cited from the rules of healthcare regulators, who have set out explicit standards covering unfair treatment. Solicitors are not healthcare professional and the services they provide to the public, the day-to day job they do is very different to their counterparts who work in healthcare and LLS questions their appropriateness as comparators.

In summary, LLS would welcome specific guidance from the SRA to clarify its regulatory expectations and to keep the topic rising up the agenda for law firms. It does not, however, support the proposed changes to the Code.

11.

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.

LLS does not agree with the requirement for all regulated individuals to challenge behaviour that does not meet the new standard. The point has already been made that fairness does not readily lend itself to objective categorisation. Granted there will be behaviour which the majority would consider to be unfair treatment, but charging every regulated person within the workplace with the task of calling out unfair behaviour will not only put an undue burden on those individuals, but will also mean that the first determination of what is and is not fair comes down to the subjective view of that individual. Whilst LLS recognise that cultural change will only happen if there is wholesale buy-in and if poor behaviour does not go unchecked, having clear policies that unfair treatment of colleagues has no place in the business and a process for addressing unfair treatment of colleagues administered by trained and appropriate staff is, in LLS' view, the better approach. This not only has consistency of decision making and clarity to commend it, but it also avoids the individual who challenged the behaviour being drawn into the dispute when their only driver may have been to ensure they discharged their regulatory responsibilities.

12.

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.

LLS agrees that the regulated individuals and firms should treat non-employee colleagues fairly. Unfair treatment in any context is unacceptable and has no place in the profession. However, for the reasons given above, LLS disagrees with the introduction of new regulatory powers to govern this.

13.

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?

LLS is opposed to the extension of the proposed new obligations outside of the workplace or beyond the direct delivery of legal services. In support of this extension the SRA seemingly prays in aid that the way solicitors conduct themselves in their private lives can impact on public confidence in the profession, a statement with which LLS does not disagree, but what further justification is offered for what is undoubtedly an intrusion into the private lives of solicitors? The principles under which the SRA regulate require regulatory activity to be, amongst other things, proportionate and necessary. Without clear (and LLS would say substantial) evidence that the profession is consistently falling short, the extension cannot be said to be proportionate or necessary.

---

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

If, contrary to LLS's view, new rules are to be introduced consideration ought to be given to the existing obligations on firms and individuals imposed by employment legislation, not only to address the SRA's requirement only to regulate when necessary, but also to ensure consistent language is used. Further, the requirement for individuals to challenge unfair treatment should be removed.

---

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

LLS agrees that the SRA should only investigate allegations about behaviours that seem likely to present a serious risk to colleagues, clients or the wider public interest and should only take action where there has been a serious regulatory failure. It is noted that if the proposed rule changes are implemented the SRA proposes to update its guidance and enforcement strategy 'as needed'. What is lacking from the consultation paper is any sense of what would be considered a serious regulatory failure and the SRA's proposed scale of sanctions. This may well be covered off in the updated guidance that the SRA intends to roll out, but it would have been useful to have some information on both aspects as part of the consultation.

---

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

It is asserted that there would be no negative cost impact on firms who should already be taking reasonable steps to ensure that their staff are treated fairly. LLS agrees that firms should already have measures in place to ensure fair treatment. It does not agree that the proposal, particularly the proposal that regulated individuals should call out unfair treatment, will be cost neutral. For the reasons already stated, LLS considers that tasking individuals to challenge unfair treatment could make a dispute more likely to arise, more time consuming and more expensive to resolve.

LLS agrees that clarifying what is expected of the profession in this area is a positive step and will be of particular benefit to women, people within an ethnic minority background, those with a disability and junior solicitors.

---

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.

The LLS agrees that fitness to practise encompasses all aspects of practising as a solicitor including the ability to meet regulatory obligations. It also agrees the fitness to practise is fluid and thus it is a consideration not only at entry level into the profession but throughout an individual's career. However, an enquiry into a solicitor's ability to practise is likely to be intrusive

and involve the consideration of sensitive, personal information including medical records. What is lacking from the consultation is how the SRA proposes to implement its new powers outside of a disciplinary investigation and what information it considers it can request and/or access in order to determine fitness to practise.
LLS does not agree that fitness to practice should be taken to include the ability to be subject to prosecutions in the Solicitors Disciplinary Tribunal (SDT). Health conditions can take many forms, and some may be acute but temporary, which can be compounded by the stress of an SDT hearing, but that on its own should not be a reason to prohibit a solicitor from practising and losing their livelihood.

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

LLS suggest the following revisions to Rule 2 of the Assessment of Character and Suitability Rules:
'Solicitors have a statutory duty to comply with our regulatory arrangements and such compliance is part of what it means to practise as a solicitor. Therefore in assessing your suitability the SRA will take into account relevant information, including your health, which indicates you are unfit to meet your regulatory obligations.'
LLS disagrees with the proposed changes to Regulation 7.2, Authorisation of Individuals Regulations, as excessive and unnecessary. Reference to 'any reason' gives the SRA too wide a power and the impact be disproportionate, especially where this may result in a solicitor losing their ability to earn a living.

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

LLS refers to its response to Q9 above. The consultation paper does not explain how the SRA will utilise its new powers outside of a disciplinary investigation. LLS is concerned to ensure that the SRA's regulatory powers remain proportionate and necessary to fulfil its statutory remit.

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

LLS does not agree with the regulatory and equality impact of the proposed changes. What is the evidence that the SRA relies on for the statement that 'these changes will promote public confidence in the profession and benefit consumers of legal services. They will reduce the risk that health problems may cause a solicitor to: • fail to act in a client's best interests • meet the ethical standards that clients and the public are entitled to'.
We take the oppositive view to the statement that 'The changes should also reduce the delay, uncertainty and stress that can be generated for everyone involved where a health concern affects the progress of a Rule changes on health and wellbeing at work consultation'
We do not accept the statement that 'We expect these changes will also be positive for solicitors.' We believe these changes will only add to the stress for solicitors, particularly those suffering from health conditions. It may force them to have to divulge sensitive personal information (about their health) to their employer, when this may not be necessary or appropriate.

Rule changes on health and wellbeing at work - Consultation

Response ID:191 Data

2. About you

1.
First name(s)

Michelle

2.
Last name

Garlick

3.
Please enter your SRA ID (if applicable)

155308

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law society

8.
Please enter the name of the society

Manchester Law Society

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
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.

This response is submitted on behalf of Manchester Law Society ('MLS') members. By way of background, MLS has a membership of c3,750 solicitors and firms. It is one of the Joint V local law societies along with Birmingham, Bristol, Liverpool and Leeds. MLS has an active COLP, COFA and MLRO forum which meets regularly and this consultation has been discussed within that forum.

We fully recognise the good intentions for the proposed changes and agree that regulated individuals and firms should be

expected to treat people fairly at work. Improving the wellbeing of the profession is essential to avoiding the high levels of burnout, stress-related illnesses and high levels of attrition which have been identified eg in the LawCare's Life in the Law report. No member of the profession, but especially junior members, should be subjected to bullying or harassment by colleagues/those more senior to them. Sadly, the "toxic culture" described in the Sovani James SDT case, and examples given to MLS of pressurising behaviour such as being asked to work whilst on holiday, requiring responses to emails late at night and discrimination against primary care givers who are unable to devote as much time to their career as others, are still present in some firms. MLS agrees that these types of pressures are unacceptable and some positive action is required.

MLS has, however, received mixed views on whether the introduction of a rule change is the solution to the problem. Some say that it is the only way whilst others have expressed some concern over the practicalities and necessity of introducing, implementing and enforcing such a rule and whether doing so may stretch beyond the SRA's regulatory reach where, save only in the most serious cases, existing employment law ought to provide adequate remedies for complainants.

In November 2019, the SRA introduced the new Standards and Regulations to achieve a shorter, more Principles-based approach to regulation. The SRA accepts in its consultation that there is already scope within the current Principles and Codes to enable the SRA to take action where it sees serious failings in the working environment. If the intention is to "clarify rather than widen" the scope of the SRA's work, this could be done in more detailed guidance instead of introducing new rules, with reference to what good practice and culture might look like, perhaps drawing from some of the other regulators' experiences in practice.

11.

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.

We perceive some practical difficulties as to how regulated individuals (especially those in firms) would fulfil their obligations in this regard should a new rule be introduced. What would the SRA regard as a "challenge" to inappropriate behaviour and how would this be enforced? Would an individual be expected to raise the issue immediately/face to face with the person/after taking advice from HR etc?
There have been similar issues regarding regulated individuals' obligations in reporting breaches generally but this has at least been addressed by providing that if they report a matter to the COLP in the understanding that he or she will report the matter, their obligation has been complied with.
Without a similar mechanism in relation to challenging behaviour, or alternatively only imposing such an obligation on firms/those in senior positions, there is increased scope for unjustified or tactical complaints being made to the SRA. Challenging perceived inappropriate behaviour needs to be done by those who are experienced in dealing with such issues, otherwise the challenge itself could be the subject of a complaint. The SRA needs to avoid the unintended consequence of increasing pressure on junior regulated individuals by imposing an obligation on them to challenge behaviour which does not meet the new standard.

12.

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.

We cannot see any reason for making a distinction between employees and non-employee colleagues. We agree that solicitors should treat all non-employee colleagues (including contractors, consultants and experts) fairly and with respect in the same way as they should employees.
For the reasons given above, we cannot see the necessity for introducing any additional rule but if the SRA decides to do so, we do not think there should be an obligation imposed in non-employee scenarios save perhaps for senior managers, guided by advice and HR professionals.

13.

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?

We disagree and feel it is a step too far to extend SRA regulation into the personal lives of solicitors where there is a relationship between colleagues. The SRA must treat a solicitors right to a private life with respect – Beckwith v SRA [202]EWHC3231(Admin) confirms this "…in any event, such rules represent an intrusion into private life that cannot at the level of principle be justified by the public interest in the regulation of a profession" (para 49) and again at para 39 –"Rules made in exercise of the power at s31 of the 1974 Act ….cannot extend beyond what is necessary to regulate professional conduct and fitness to practise and maintain discipline within the profession".
In our view, the SRA should confine its attention to "conduct and behaviour relating to your practice".

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

If the SRA decides to introduce new rules, we suggest that in the proposed rule for firms, the SRA reconsiders the phrase "or discriminate unfairly" as it is our understanding that "fairness" is not a concept in discrimination law. The use of such wording implies that it might be possible to "discriminate fairly" which cannot be correct. We suggest such wording is replaced by "unlawful" discrimination".
We agree with the first part of the wording in the Code for Solicitors (subject to the replacement of unfairly with the word unlawful as above). The 2nd sentence "You challenge behaviour that does not meet this standard" should be deleted for the reasons given above.

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

It is right that SRA investigations should only be commenced if proportionate to the breach. However, there is no explanation of how the use of regulatory sanctions will be used proportionately. We appreciate the SRA has stated that if the rules are changed, the guidance and enforcement strategy will be updated. If that is the case, we see no reason why the guidance and enforcement strategy cannot just be revised without changing the current rules already in place. It will not, in our view, be helpful if the SRA simply approaches enforcement with an eye on punishment/sending a message to the rest of the profession/public but which could limit a solicitors ability to find employment. Attending training courses might be a more appropriate way of changing behaviours than pursuing a case to the SDT, for example.

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

We can see why the changes, if properly and proportionately enforced, might have a positive impact on solicitors suffering from stress/mental health issues (brought about by poor behaviour in the workplace) and also those more junior employees, subject to our comments above concerning the risk that by imposing an obligation to "call out" such behaviour might increase the stress placed on such members of staff .

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.

We agree that the rules should make reference to being able to take into account a solicitor's health.
However, we have concerns about fitness to practice being used in relation to the ability to be subject to prosecutions in the SDT. That could mean a solicitor with a severe mental health problem, made worse by the threat of disciplinary action, would be prohibited from practising as a solicitor. Even if the solicitor was found not guilty of the alleged offence, the rule change would mean that the solicitor would be unable to practise and earn a living because the SRA will say they aren't fit to practise.

It is also important to stress that the SRA should only take into account relevant factors. The rules should not assume that all information will be considered as there will be occasions when it will be improper to accept certain information (eg obtained without consent/from an unreliable source)

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

For the reasons above, we suggest the following amendment to Rule 2 Suitability Rules – "Solicitors have a statutory duty to comply with our regulatory arrangements and such compliance is part of what it means to practise as a solicitor. Therefore in assessing your suitability the SRA will take into account all relevant factors, including your health, which indicates you are unfit to meet your regulatory obligations .'

As regards Rule 7.2 Authorisation of Individuals regulations, the wording in bold is too wide and places an unreasonable level of power in the hands of the SRA to prevent a solicitor from earning a living as a solicitor. It goes beyond the imposition of conditions when a solicitor is unwell and unable to practise.
As the SRA imposes conditions as a paper exercise and oral hearings are rarely permitted, such a change in the wording could mean an unrepresented solicitor is at a considerable disadvantage when faced with an SRA's decision to impose conditions based on this proposed wording.

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

The measures referred to in the consultation which the SRA has introduced are welcome but the consultation generally is light on any data to enable those responding to provide more detailed comments/suggestions.
The key issue is for the SRA to support those solicitors with health, whether physical or mental, concerns and apply/introduce more innovative enforcement approaches. Publication of decisions/RSA's may not help in these scenarios, for example.

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

Nothing more to add to what we have already stated.

Rule changes on health and wellbeing at work - Consultation

Response ID:193 Data

2. About you

1.
First name(s)

Elizabeth

2.
Last name

Rimmer

3.
Please enter your SRA ID (if applicable)

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Representative group

8.
Please enter the name of the group

LawCare

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
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.

Introduction
We welcome the opportunity to respond to the questions raised in this consultation and believe this is an important step forward to addressing the deep-seated challenges in the culture and practice of law, which undermine mental wellbeing. Solicitors with poor mental wellbeing are more likely to make mistakes or poor ethical decisions, so addressing the factors that can lead to poor mental wellbeing in legal workplaces protects the public and maintains confidence in the legal profession.
LawCare has been supporting and promoting mental health in the UK's legal community for 25 years and in that time, we have listened to over 10,000 legal professionals talk about the pressures of Life in the Law. Last year we published the largest study

to date on lawyer mental health in the UK, with over 1700 professional responding. Full findings of the research can be found here https://www.lawcare.org.uk/life-in-the-law/. Key findings of our research showed that:

• Legal professionals surveyed were at high risk of burnout, associated with having a high workload, working long hours, and a psychologically unsafe working environment.

• 69% of legal professionals experienced mental ill-health in the 12 months preceding the survey, but only half of them had talked about it at work.

• 1 in 5 legal professionals surveyed have been bullied, harassed, or discriminated against in the workplace.

• Things that could make a difference: Provide management training, regular catch-ups, work towards a psychologically safe and supportive workplace.

• The culture and practice of law needs to change. Improving mental wellbeing is all of our responsibility – practitioners, employers, professional bodies, legal educators and regulators each have a role to play

• Intersectionality needs to be considered – some people are more impacted by the practice and culture of law, particularly junior lawyers, females, lawyers with disabilities and lawyers from ethnic minority backgrounds.

Our research builds on a growing body of national and international research that demonstrates we have a mental wellbeing challenge in the law. About 20% of our support contacts in 2021 directly related to bullying, harassment, discrimination, ethical questions and concerns about regulatory investigations, all issues raised in this consultation. The most common reason we are contacted for support is stress, which accounted for 33% of all contacts last year.

General comments

Data – the consultation has not set out how many regulated professionals have raised concerns about being treated unfairly and inappropriately, how many have raised mental and physical health concerns either voluntarily or as part of a disciplinary investigation or how many cases there have been where a practitioner's health issues have impacted their ability to practice safely or participate in disciplinary proceedings. There is also no data provided on how many firms or individuals have been sanctioned for poor workplace behaviours. We believe this data is needed to understand the context of this consultation and the scale of the problem it is seeking to address.

Education and training – these rule changes are about responding to problems when they have arisen; we would advocate for more good practice guidance, training and education to enable employers to create psychologically safe workplaces with a healthy speak up culture, so that regulated professionals feel able to seek help when they are struggling or unwell earlier rather than later. We would like to see more training, education and guidance on best practice in people management and supervision. Our Life in the Law research showed that the most valued mental health support in legal workplaces was regular catch ups, yet less than half the people who responded to our survey who had management responsibilities, had had any training in managing people; yet 90% of those who had it, reported the training as being helpful or very helpful.

Legal Education – there needs to be a greater emphasis in legal education and training on the human skills that go alongside the technical legal skills in the delivery of legal services; and the importance of understanding competence and ethical decision making and how this can be undermined by poor mental wellbeing. This should include how to manage situations where things have gone wrong or a mistake made, or how to respond to a difficult client or colleague.

We know from our Life in the Law stakeholder consultation with legal education providers, that timetable pressures and the optional aspect of any training in this area, means that it is overlooked. Academic staff also revealed the lack of training and inadequate time for student support, led to additional pressure on them and teaching time.

Legal representation – it is a concern to us that not all regulated professionals have access to legal representation when being investigated for disciplinary matters and/or referred to the tribunal; many struggle to fund this. A case in point is that of Claire Matthews, who was unrepresented, raised her mental health condition during proceedings, but was struck off for dishonesty; with pro bono legal representation where medical evidence was obtained, on appeal was then reinstated (with conditions). Whereas Susan Orton who had legal representation, was also found to be dishonest, but was able to provide evidence of her mental health condition and was not struck off (she did have conditions imposed on her practicing certificate). How does this align with Article 6 of the Human Rights Act 1998, that everyone has the right to a fair and public hearing? We would like to know how many regulated professionals are unrepresented during disciplinary investigations and proceedings.

Support for those facing disciplinary proceedings or who want to report the poor conduct of a colleague

We would like a formal referral system put in place for any regulated professional to be referred to us for emotional support when facing a disciplinary investigation or proceedings. Individuals who contact us for support when in the disciplinary process are vulnerable and often raise safeguarding concerns. We believe that if individuals were better supported both with professional legal advice and emotional support during an investigation, the process would be more efficient.

We know from our experience that it is difficult for legal professionals to challenge poor workplace behaviours for fear of negative repercussions. We provide emotional support to individuals who are experiencing harassment, bullying and

discrimination and not being treated fairly and with respect by colleagues, some do not report this to their employers, and most of this conduct goes unreported to regulatory bodies. Those who have experienced unfair treatment at work are vulnerable, usually experiencing stress and anxiety and are overwhelmed by the prospect of having to go through a formal process be that at work or through their regulator to call the behaviour out. We would advocate for a formal system that we could be funded to provide, to support those who are contemplating reporting conduct of this kind.
We would also like to see formal training and education for SRA staff who are working with regulated professionals in the disciplinary process on how to understand and respond to vulnerable people appropriately.

Now answering the question :

We very much welcome the SRA's desire to encourage a greater focus on workplace culture. The guidance which has already been published is a helpful start. The fair treatment of people at work is a moral duty and there cannot be any question raised in respect of the fundamental need to ensure this is protected for all.
However, we question the need for this explicit requirement in the Codes of Conduct for several reasons.
First, it is unclear how the proposed requirement will operate alongside the Equality Act 2010, which already imposes a legal obligation to treat people fairly at work, and not to bully, harass, or discriminate against them because of a protected characteristic. It is therefore unclear what additional purpose the proposed regulatory requirement will serve, beyond behaviour that is already covered by legislative provision, and bearing in mind that both individuals and firms already have a regulatory obligation to follow the law and regulation governing the way they work (Paragraph 7.1, Code of Conduct for Solicitors, RFLs, and RELs; Paragraph 3.1, Code of Conduct for Firms).
Secondly, SRA Principle 2 already provides a regulatory obligation on both individuals and firms to act in a way that upholds public trust and confidence in the solicitors' profession and in the provision of legal services, a breach of which may be clearly made out where there is evidence of unfair treatment.
Finally, we are concerned about how 'fairly' and 'with respect' would be defined. These terms are not only wide in respect of the various ways in which they may be interpreted, but they are also heavily subjective in their interpretation.
We are concerned that the proposed new rule is not sufficiently clear to be enforceable. To be effective as a mandatory rule, individuals and firms need to be very clear about how it will be interpreted and applied by the SRA. The difficulty with any obligation that centres on behaviours is that individuals will have varying views about whether certain behaviours are acceptable or not. Although guidance can be indicative of what is acceptable and what not, it is the rule which the SDT and court must interpret. Other regulatory bodies have tended to rely on guidance to bring about change (as set out in the consultation paper) and this may be because they have shied away from trying to draft an enforceable rule.
We think one answer may be to make more use of existing regulatory obligations as a means of improving workplace culture. Paragraph 3 of the Code of Conduct deals with competence. The LSB are already looking at the whole issue of what it is for a lawyer to be competent, including how staff are managed and how people within a firm treat each other. Competence has to embrace wider skills than just knowledge of the law and should cover things such as people management which brings in workplace culture. Another existing regulatory tool which could be used to deal with issues of lack of respect and unfairness is paragraph 1.2 of the Code which talks about not abusing your position by taking unfair advantage of clients and others. The" others" referred to must include fellow employees. Taking unfair advantage is probably harder edged and easier for people to interpret that "treating people fairly and with respect". Maybe these two existing rules should be used more than at present in the disciplinary process to bring about change.
Long term, the answer may be to introduce the proposed new rule, in conjunction with the guidance, and to see how easy or difficult it is to enforce and to tweak it as necessary. Bullying and harassment are examples of not treating people fairly and including these behaviours may give greater clarity to the rule. This may help the rule to be more easily enforced but it may also cause problems when claims are brought at the same time under the Equality Act in relation to the protected characteristics.

11.

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.

We do not agree that there should be an explicit requirement for all regulated individuals to challenge behaviour that does not meet the new standard. Our experience of 25 years of listening to legal professionals talk about their working lives, is that it is very difficult in practice, particularly for junior staff to call out inappropriate behaviour in colleagues. We do not have an accepted 'speak up' culture in law. This positive obligation could potentially lead to those individuals who witnessed poor workplace

behaviours being in breach of the rules by not calling them out. We would suggest that there needs to be a campaign across the profession to encourage challenging unacceptable behaviours in the workplace and training and education provided to employers to enable this.

We agree that there should be an explicit requirement for firm managers or the management of other legal workplaces (i.e., in house teams) to report conduct of this kind to the regulator. However, the needs of the individual who has been treated unfairly and the person who has been accused of this conduct need to be considered sensitively and they both need to be supported emotionally and legally during any ensuing investigation. We also anticipate there will be some difficulty over interpretation and how 'challenge' may be interpreted in different ways. It is unclear exactly what actions will be expected of individuals, in order to satisfy their obligation to challenge.

12.

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.

In principle, the fair treatment of colleagues in a workplace should extend to all people that a person or organisation has dealings with; however, we reiterate our concerns as outlined in response to Q1 and Q2 above in terms of the need for an explicit requirement. Further we think the priority should be to concentrate on firms' internal culture. Where there are problems with external contacts, these individuals have the option to walk away or sue if there is a breach of contract.

13.

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?

Defining 'workplace' and the context of this is important as post covid the workplace is no longer a physical building, some legal professionals may be working remotely and meeting colleagues for meetings at convenient locations such as coffee shops or restaurants. We believe this question is getting at behaviour that takes place in a purely social context and that this should only be looked at in the light of the SRA Principles. If behaviour breaches Principle 2 in that it is sufficient to undermine confidence in the solicitors' profession and legal services, then the SRA already has a hook to take action. We do not think that anything beyond this is necessary.

We do hear via our support channels of inappropriate conduct at social events that can then impact and escalate problems in the workplace. Again, we would reinforce the need for a speak up culture that encourages and supports legal professionals to challenge inappropriate behaviour.

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

None other than we have raised in our responses to the preceding questions.

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

How will it be determined that a culture is one in which 'unethical behaviour can flourish' or that 'staff are persistently unable to raise concerns or have issues addressed'.? Although it is stated in the consultation that the SRA would not expect to get involved in disagreements about targets or work allocation, our experience at LawCare would suggest that these are sometimes used as ways of discriminating against regulated individuals by setting unrealistic targets or the allocation of low-quality work.

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

Ultimately, a legal profession that welcomes and includes a diverse range of people who are treated with dignity in the workplace, whose mental wellbeing is not undermined by the culture and practice of law, is in the best interests of clients and upholds the reputation of the legal profession.

We are not confident that effective measures are already in place in most firms to ensure staff are treated fairly and therefore

question the assertion that these proposals should have no cost or other impact on firms. Our Life in the Law research found that only 47% of legal professionals with management responsibilities had had any relevant training, 20% of respondents reported bullying, harassment and discrimination and we found that legal professionals were significantly above the cut off point for being at 'high risk of burnout'. These findings do not speak to a culture in law where people are being effectively managed. We believe that to meet these proposals firms will have to significantly invest in providing training in people management and supervision, take steps to model and develop positive workplace behaviours, develop psychologically safe workplaces and respond to the challenge of the work intensity in law that undermines mental wellbeing.

We are not sure a rule change will promote the wellbeing of people who work in law firms by reducing the risk they will be treated unfairly. We would like to see these requirements framed in the positive i.e., firms encouraged to recognise the benefits positive mental wellbeing of their people brings to their organisations and see it as a given that investing in management training, effective supervision and creating an environment that welcomes everyone and where everyone is treated with dignity makes good business sense.

We believe there is the potential for more reports of unfair treatment at work with these proposed changes and that resources need to be dedicated at the SRA to respond to these effectively, to include appropriate training of staff on how to respond to vulnerable people. If the floodgates open and these cases are subject to delay this will undermine the reputation of the regulator.

We also would question what serious means in the statement that the SRA will investigate 'serious unfair treatment at work'.

We know from our Life in the Law research that females, junior lawyers, people with a minority ethnic background and those with a disability are more likely to experience unfair treatment in legal workplaces. We would recommend working closely with all the stakeholder groups, including LGBTQ+ groups, which represent the interests of those that are most impacted by working practices in law to raise awareness about the implications of the issues raised in this consultation and seek their views.

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.

It could be argued that the Assessment of Character and Suitability Rules already give the SRA power to consider all aspects of fitness to practice, including health issues (rule 2.2). However, it may help to emphasise that health issues are an aspect of fitness to practice. We would agree in principle with the proposed rule change in so far as there needs to be a fair, transparent and independent process that operates outside of the formal disciplinary process for dealing with health (or other) issues that have impaired a solicitor's competence to practice. However, we feel this aspect of the consultation is lacking in detail, which makes in difficult to respond to fully. We would suggest that this aspect of the consultation is redrafted and put out for another consultation. We have highlighted our questions in the sections below.

As set out in the consultation in most cases, the SRA only becomes aware of health issues when they are raised when there is a concern about conduct or behaviour. However there may be a number of solicitors practicing when their health has undermined their ability to practice safely but they have no insight into this i.e. they may have dementia or burnout; or they may be aware of the issues but are reluctant to seek help for fear of negative consequences. In these circumstances who should inform the SRA of these issues and what would be the process be? This needs to be handled sensitively.

Proposed addition to Rule 2 of the Assessment of Character and Suitability Rules

How will health issues be defined; do they need to be clinically diagnosed?

We do not consider that the sentence 'or be subject to regulatory investigations or proceedings' is necessary as it is already covered by meeting regulatory obligations.

Awareness of the need to declare health issues that may be affecting a solicitor's ability to practice safely and what the process is for how this will be dealt with is key to addressing the issues raised in this aspect of the consultation. All regulated professionals should be encouraged and supported to raise health issues that may be affecting their ability to meet their regulatory objectives early.

Proposed changes to Regulation 7.2 of the Authorisation of Individuals Regulations

It does need to be addressed that there are cases where health issues have stayed a tribunal hearing as the individual is deemed not fit to participate in the process for health reasons, yet they may still be able to practice as a solicitor. If a solicitor is not fit to take part in the disciplinary process, then there needs to be a process to determine their fitness to practice in these circumstances to protect the public and uphold the reputation of the profession. We believe this process needs to be carried out by an independent panel.

We are concerned about a possible condition 'to follow treatment recommendations of an appropriate healthcare provider'. Whose view as to what a 'treatment recommendation' is, would be regarded? There may be differing opinions. Is it appropriate

for the SRA to mandate that a solicitor follow a treatment recommendation? We would recommend that in these circumstances a solicitor with conditions imposed on their PC for health reasons is assessed after a period of time to determine if they are safe to practice, rather than being directed to follow a prescribed course of treatment.

Who will obtain the medical evidence in this situation and how will this be agreed? Who is going to assess the medical evidence and evaluate it? Who is going to pay for this? What constitutes medical evidence? We emphasise our belief that there will need to be an independent panel to determine and oversee this process.

We have a number of concerns about situations where conditions have been imposed due to the solicitor's inability to participate in the disciplinary process. If the conditions are lifted and the individual is then able to participate in the process, what emotional support will be provided for that individual? Legal representation in these cases should be assured. If that health condition led to or contributed to the misconduct, is it appropriate to conduct disciplinary investigations in the first place? What discretion will there be to discontinue any investigation in these circumstances?

There are serious implications for imposing health-based conditions, as practitioners may be obliged to disclose these to third parties, so a measured, transparent, fair, independent process is needed for determining this.

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

7.1.(b) c wording we would delete the wording in brackets, it is not necessary.

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

We do not believe there is sufficient detail in the current process or the proposed process to comment fully on the proposal.

The current process needs greater transparency and should be outlined in detail on your website, it should be clear to any solicitor what happens if they raise a health concern during a regulatory investigation and who has responsibility for making decisions and why. Any solicitor in these circumstances should be actively referred for support and legal representation, not just signposted.

Any process needs to be expedited and followed efficiently, a common complaint from people we support through the disciplinary process is how long it can take to resolve matters leading to greater stress, anxiety and impact on existing health conditions.

We have some questions:

• What enhanced training will relevant staff have, what does this look like?

• Who are the subject matter experts, are they independent?

• What are the templates that individuals can use to ask their physician for medical evidence? And what does working with them to obtain further evidence mean?

• 'Making sure medical evidence is carefully considered early in the investigation process by experienced manager and lawyers. Who are these individuals and what are their credentials?

• What conditions can be imposed? Can this include following a recommended course of treatment? Who will monitor compliance?

• Will the SRA publish outcomes and the effectiveness of this process?

• What measures does the SRA have in place to make sure health processes are transparent and proportionate?

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

Careful consideration needs to be given to the implication of any 'fitness to practice' regime and its impact on people with existing physical or mental health conditions or those groups who are most impacted by working practices and culture in the law. What steps will be taken to monitor this?

Data collection will be important to identify the factors that may be leading to health issues affecting a solicitor's ability to practice, so that steps can be taken to address these through education and training about any underlying causes that may be due to workplace practice and culture.

Rule changes on health and wellbeing at work - Consultation

Response ID:194 Data

2. About you

1.
First name(s)

Emma

2.
Last name

Jones

3.
Please enter your SRA ID (if applicable)

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Academic

8.
Please enter the name of your institution

University of Sheffield

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
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.

Our view is that an appropriately worded explicit requirement is valuable in crystallising expectations in this area. This is particularly important when evidence indicates that the legal workplace can include structural and cultural elements which are potentially detrimental to wellbeing (for recent examples, see LawCare's Life in the Law report and the IBA's global Survey of Mental Wellbeing in the Legal Profession). There is evidence that the impact of these elements can be ameliorated via peer support, collegiate behaviour and appropriate management and leadership.

We assume the term 'fairly' to mean equitably, impartially and without bias. We are unsure how this will address concerns

currently not covered by equality laws such as inappropriately high workload or allocation of blame to workplace mistakes if this is the general approach of the firm to all staff. Fair treatment could be construed as reactive and not proactive. This consultation provides an opportunity to include the requirement for positive support and thus we would like to see the obligation on regulated individuals and firms to go further in this respect.

11.

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.

We welcome the requirement to challenge behaviour and note that the difficulty for junior staff to take such a step has been recognised. However, given the significant difficulties potentially involved where, for example, a power imbalance exists or where there may be issues of unconscious bias, we would argue that such a requirement must be accompanied by explicit and unambiguous safeguards to ensure that no detriments arise (either directly or indirectly) as a result of such challenges to behaviour. An onus must be placed upon both regulated individuals but also regulated firms to ensure this is achieved.

There is interesting research into bystander intervention that might inform policy in this area. It is likely that much unfair behaviour is witnessed by other employees. Whether or not these bystanders then intervene is complex. Research indicates that there is a link between effective bystander intervention and organisational safety. Those in positions of power should ensure a culture of safety where bystanders and observers who intervene to challenge and report inappropriate behaviour are protected from negative consequences.

12.

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.

This seems to us to be a sensible approach to avoid potentially illogical disparities and to emphasise the importance of such a requirement. However, this is once again subject to our concerns over issues such as imbalances of power and our request that appropriate safeguards are incorporated.

13.

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?

We would view the requirement to treat people with respect and fairness as a basic minimum in all interactions, including behaviour between colleagues outside the workplace/direct delivery of legal services. However, the application of the requirement to challenge behaviour outside the workplace/direct delivery of legal services is more problematic because it once again raises the issues (for example, for junior staff) referred to in our response to question 2. We are unsure how this could be appropriately monitored or enforced in practice. If this cannot be achieved it could potentially undermine the efficiency of the overall changes being proposed.

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

Please see our comments about safeguards in response to question 2. We would be keen to work with the SRA to ensure the wording reflects the latest academic research on issues relating to health and wellbeing in the legal profession.

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

The proposed approach to enforcement and focus on 'serious regulatory failure' seems appropriate. We note that this is unlikely to cover many of the scenarios which currently lead to poor mental health and low levels of wellbeing in parts of the legal profession, for example, where working extremely long hours and feeling under constant pressures in terms of billing hours has become largely normalised and viewed as acceptable or even necessary. Therefore, it is important to acknowledge that, to be effective, this approach must be undertaken in tandem with efforts to promote wider structural and cultural change within the legal profession.

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

We note the impact assessment refers to the potential positive impacts to specific groupings as a result of improvements to the workplace environment. However, unless the requirement to challenge behaviour is worded and implemented with great care there is a danger it could detrimentally impact upon those in more junior, vulnerable or precarious positions within the legal profession. Given the EDI issues which still exist within the legal profession, this could have a negative impact regarding equality.

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.

We have significant concerns relating to this proposal, which could have extremely wide-reaching implications not fully addressed within the consultation document. For example, we note that the term 'health' (which is itself very broad) is not defined. It is unclear how any disclosures would be reviewed (and by whom), what the potential conditions placed on a practising certificate could be, who would be able to view such conditions and how this could impact upon a regulated individual or firm's professional indemnity insurance.

The reference to taking account of health issues at the point of entry to the profession also requires clarification. If this is proposing a system broadly similar to that within the USA then this raises myriad ethical questions which need careful consideration.

Thought also needs to be given on how to address changes to an individual's mental health. Given mental health states and mental illness are not static but are likely to change over time this could become a significant and resource-intensive issue.

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

As above, we would be keen to work with the SRA to ensure the wording reflects the latest academic research on issues relating to health and wellbeing in the legal profession.

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

It is unclear from the consultation document why a separate fitness to practice regime (such as that operated by the Bar Standards Board) has not been incorporated.

We are concerned that the changes that are being made around fitness to practice do not fully tackle the existing issues where an individual's behaviour and mental health is detrimentally impacted by their workplace environment (an issue highlighted by the Solicitors Disciplinary Tribunal). Whilst we appreciate the proposals to amend section 1 move some way to addressing this, overall there is still a significant burden placed on individuals, rather than shifting the focus onto regulated firms to promote the more fundamental structural and cultural changes required within parts of the profession.

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

The existing proposal has the potential to have detrimental impacts upon equality by stigmatizing and 'othering' individuals with mental health conditions whilst failing to provide the type of comprehensive support route required.

One aspect of this is the costs involved in investigation of any disciplinary proceedings arising under this section. For example, who will bear the costs of representation? We recommend that some consideration is given to a form of compulsory insurance, such as that in place for the medical profession, to cover the costs of managing the proposed new regime.

Protect
The Green House
244 - 254 Cambridge Heath Road
London E2 9DA
Tel: 020 3117 2520
Email: whistle@protect-advice.org.uk
www.protect-advice.org.uk

27 May 2022

Response to SRA's Rule changes on health and wellbeing at work: Consultation

1. This letter is Protect's response to the Solicitors Regulation Authority's (SRA) consultation on 'Rule changes on health and wellbeing at work'.

2. Protect seeks to answer the following questions:

   Q1: 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.

   Q2: 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.

   Q6: Do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

PROTECT – THE UK WHISTLEBLOWING CHARITY

3. Protect is the UK's whistleblowing charity and has the aim of protecting the public interest by helping workers to speak up to stop harm and wrongdoing. We support whistleblowers by providing free and confidential legal advice. We support employers to implement effective whistleblowing arrangements. We campaign for legal and policy reform to better protect whistleblowers. We want a world where no whistleblower goes unheard or unprotected.

REASON FOR SUBMITTING EVIDENCE

4. Protect welcomes this consultation on proposed changes to the SRA's rules and Codes of Conduct, particularly around appropriate treatment of work colleagues and raising concerns about such behaviour. Having a healthy workplace culture in which staff are treated fairly, with dignity, and can confidently speak up, is both good for business and good for the wellbeing of staff.
5. An organisation with clear conduct rules can help to deter wrongdoing; staff may not commit wrongdoing, treat colleagues unfairly, or act in breach of SRA's fitness to practice if they know that they are likely to be held accountable for their actions. It also helps to detect wrongdoing at an early stage, rather than escalating to a serious incident or a widespread cultural issue. Finally, it demonstrates organisational accountability; strong rules of conduct and the ability to raise concerns can improve transparency within an organisation, and help to maintain a good reputation. This has a positive impact on confidence on the industry/profession as a whole, as well as the interests of clients, thus serving a wider public interest.
6. For example, research from the Association of Certified Fraud Examiners (ACFE) has found that where an organisation has a strong code of conduct, the time taken to detect fraud reduced by 50%.[1] This finding would likely mirror across other types of wrongdoing and misconduct – not only fraud.
7. Further, research has shown that psychological safety is the most important element of what makes a team successful,[2] therefore highlighting the importance that staff wellbeing and the ability to raise concerns has on the quality of business.
8. We have focused our response to this consultation on the treatment of whistleblowers (i.e, those who raise concerns or "challenge" misconduct), and the ability for staff to "challenge" and whistleblow.

Q1: 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.

9. Protect agrees that a requirement for those regulated by the SRA to treat people they work with "fairly and with respect," and not to "bully or harass them or discriminate unfairly against them" is vital for a healthy workplace culture. However, this requirement will not be effective without

[1] Association of Certified Fraud Examiners (ACFE) Report to the Nations 2020
[2] Google re:work survey, 2015

appropriate whistleblowing protections and arrangements in place to ensure that people speak up where this standard is not met and are protected in doing so.

10. Protect proposes that within the Code of Conduct is clear guidance that those regulated by the SRA should not treat those who raise concerns (or "challenge") wrongdoing, or behaviour that does not meet the SRA's standards, in a detrimental or negative way.
11. Not only is negative treatment and dismissal of a whistleblower as a consequence of their raising public interest concerns a breach of their legal rights under the Public Interest Disclosure Act 1998, but it also casts doubt on the fitness to practice of a professional regulated by the SRA.
12. For example, in the Financial Conduct Authority's (FCA) Whistleblowing Rules (SYSC), the FCA makes a clear statement that:

    The FCA *would regard as a serious matter any evidence that a* firm *had acted to the detriment of a* whistleblower*. Such evidence could call into question the fitness and propriety of the* firm *or relevant members of its staff, and could therefore, if relevant, affect the* firm's *continuing satisfaction of* threshold condition *5 (Suitability) or, for an* approved person *or a* certification employee*, their status as such.*

13. Victimisation of those who raise concerns is not uncommon. 65% of whistleblowers contacting Protect for advice in the last five years have received negative treatment for raising their concerns.[3] Similarly, 70% of whistleblowers in the financial sector calling Protect between 2017-2019 were victimised, dismissed, or felt they had no choice but to resign[4]. Victimisation can have a significant impact on the wellbeing of the whistleblower themselves (their physical and emotional wellbeing, as well as their career progression and position in their organisation).
14. Victimisation can also have an impact on the whole organisation. The EU Directive on Whistleblowing states that, "where retaliation occurs undeterred and unpunished, it has a chilling effect on potential whistleblowers".[5] Where a whistleblower experiences victimisation, they are unlikely to raise other issues in the future and may leave the organisation. This means that their employer has lost a valuable member of staff who was willing to speak up and challenge wrongdoing and misconduct. Further, there can be a wider impact on other members of staff. Bad news travels fast; other staff members may be less likely to raise concerns if they have seen their colleagues suffer poor treatment. This will mean that concerns could go unreported and unresolved, having a harmful impact for the organisation itself, but also the

[3] Negative treatment: victimisation from managers, bullying from co-workers, suspension, dismissal, and resignation. Sample running from January 2017-December 2021
[4] Protect Silence in the City 2 Report, 2020
[5] Whistleblower Directive (Directive (EU) 2019/1937)

sector as a whole. Workers are the eyes and ears of an organisation. If staff feel unable to speak up because of their fear of victimisation, it will have a knock-on effect on the SRA's knowledge of wrongdoing and its ability to effectively regulate the sector.

15. By having a clearly stated standards not to treat whistleblowers, or those who challenge wrongdoing/misconduct, in a negative way may give prospective whistleblowers more courage and confidence to speak up to raise their concerns.

Q2: 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.

16. Many professional bodies, such as those listed in the consultation document e.g., the General Medical Council, have professional obligations on those that they regulate to "challenge" behaviour where is does not meet the standards set out in regulations.
17. If the SRA intends to have a requirement on its professionals to challenge this type of misconduct, it must have clear guidance not to treat those who do challenge this behaviour in a negative way (as set out in the response to Q1). Further, the SRA should ensure that there are processes in place to allow for those it regulates to safely speak up both internally (within the firms the SRA regulates) and externally, to the SRA.

A: Standards on firms regulated by the SRA to have whistleblowing processes in place

18. The SRA should consider following the example of the FCA here. The FCA imposed whistleblowing standards on the firms it regulates in 2016 which were designed "to build on and formalise examples of good practice already found in parts of the financial services industry and aim to encourage a culture in which individuals working in the industry feel comfortable raising concerns and challenge poor practice and behaviour."[6]
19. As a result of these standards, we have seen positive results for whistleblowing in the financial sector. For example, there is an increased awareness amongst workers in the sector of processes to raise concerns. According to a YouGov poll commissioned by Protect, across all sectors in the UK, only 43% of workers knew whether their employer had a whistleblowing policy – this compares to 73% in the financial sector. Similarly, in the health and medical services sector where whistleblowing rules also exist, 65% were aware of the employer's whistleblowing policy.
20. Having a policy is only the first step – this needs to be communicated to staff, and training is important. Our YouGov research found that 31% of workers said they knew how to raise a

[6] Protect commissioned YouGov survey of 2,005 people in March-April 2021

whistleblowing concern at work, this figure rose to 50% in financial services and 43% in the medical and health sector where whistleblowing rules and training has been done to drive up standards.[7]

21. This chimes with Protect's own research on the impact of whistleblowing rules in the financial sector. We examined where whistleblowers raised their concerns before and after the introduction of whistleblowing rules in 2016. Our Silence in the City 2 research in 2020, found a 15% increase in the number of whistleblowers raising their concerns about wrongdoing or malpractice with their employer, compared with our 2012 research[8]. This shows an increased use and possible trust in those internal procedures.
22. Taking inspiration from the EU whistleblowing requirements and the rules already in place in the financial sector, Protect have devised standards in our Draft Whistleblowing Bill[9] which the SRA should build on when applying standards to the firms it regulates.
23. The SRA should require that all employers with 50 or more employees, or with a turnover of £10 million, have the following:
    a. A whistleblowing policy or procedure for staff to raise concerns internally
    b. A designated 'senior person' responsible for the effectiveness of reporting channels and following up on disclosures, with this person's contact details being available to staff
    c. Timeframes for responding to disclosures and providing feedback to whistleblowers
    d. Duties to ensure the confidentiality of whistleblowers
    e. A requirement to train staff on how to raise concerns.

24. **B: The SRA's own whistleblowing processes** Protect understands that the SRA is currently in the process of becoming a 'Prescribed Person' under the Public Interest Disclosure (Prescribed Persons) Order 2014. Protect commends this move as prescribed persons provide workers with a vital mechanism to raise concerns to an independent body where they are unable to disclose concerns directly to their employer, or as a route of escalation where the workers feel their concerns have/will be ignored, or no action has/will be taken. The ability to blow the whistle to a prescribed person also provides workers with a safer alternative to making a wider disclosure, i.e., to a non-prescribed body or to the media, as there are fewer tests to satisfy to qualify for legal protection under the Public Interest Disclosure Act 1998. This will encourage more people

[7] Protect commissioned YouGov survey of 2,005 people in March-April 2021
[8] Protect Silence in the City 2 Report, 2020
[9] Protect Draft Whistleblowing Bill

to make the SRA aware of misconduct rather than raising concerns to the press or worse – not raising their concerns at all.

25. However, becoming prescribed is only a first step. Under the Public Interest Disclosure (Prescribed Persons) Order 2014, prescribed persons are required to publish an annual report in relation to the number of whistleblowing disclosures that they receive, any action they have taken as a result, and how this has impacted their own regulatory work. This requirement is intended to create transparency and increase the confidence among whistleblowers that their concerns are taken seriously.
26. The SRA should ensure that it complies with this reporting duty to provide detailed context and analysis of the types of concerns that it receives, a detailed breakdown of actionable steps that have been taken to both deal with the wrongdoing/misconduct, and how this information is used to improve the SRA's standards and service delivery.
27. Protect also propose that prescribed persons should meet certain standards when dealing with whistleblowing concerns. These standards follow that of Article 6 and Article 10 of the EU Whistleblowing Directive.[10] Protect recommends that the SRA follows these standards to ensure that whistleblowers raising concerns about behaviour that does not meet standards set out in the Code of Conduct (and wrongdoing more widely) have a safe process for speaking up to the SRA. These include that:
    a. The SRA should establish secure and confidential reporting channels for receiving and handling information provided by the person making a protected disclosure;
    b. The SRA should keep confidential records of all protected disclosures made to them;
    c. The SRA should give feedback to the person making a protected disclosure about the follow-up of the disclosure within a reasonable timeframe not exceeding three months or six months in duly justified cases;
    d. If the three-month timeframe is exceeded, the SRA must, at three months, issue the person making the disclosure with a reasonable explanation as to why the timeframe will be exceeded;
    e. The SRA should follow up on disclosures by taking the necessary measures to investigate, as appropriate, the subject-matter of the concerns. Where the SRA is not competent to investigate, they shall inform the person making the protected disclosure of their intention to pass the concern to the appropriate body;

[10] Whistleblower Directive (Directive (EU) 2019/1937)

f. Where the SRA receives a disclosure from another body (see point 'e' above) they shall take the necessary measures and investigate, as appropriate, the subject matter of the concerns;

g. The SRA must act to preserve the confidentiality of the whistleblower.

28. Protect also has a Guide, 'Better Regulators: Principles for Recommended Practice',[11] which sets out guidance on how regulators can better respond to whistleblowers to encourage people to raise concerns and stop harm sooner. Recommendations fall under six main principles:

    a. Accessibility and Awareness
    b. The Importance of Confidentiality
    c. Feedback
    d. Addressing Victimisation
    e. Requirements for Regulated Entities/Firms
    f. Whistleblowing and Professional Duties

29. Protect recommends that the SRA refers to this Guide and follows its recommendations to encourage those it regulates to raise concerns to the SRA where appropriate.

Q6: Do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

30. Protect welcomes that the SRA considers evidence of a work environment in which "staff are persistently unable to raise concerns or have issues addressed" to be within its regulatory remit. An organisation with a poor speak up culture is one in which wrongdoing thrives. It is also reassuring that the SRA recognises that the new obligation to challenge unfair conduct could cause difficulty for junior staff in raising concerns and challenging their seniors. As described above, 65% of whistleblowers are treated negatively for raising concerns,[12] but there is an increased likelihood if retaliation where there are other vulnerability factors such as gender, race, disability, and length of service.

31. In section 1.2 of the SRA's Enforcement Strategy, the SRA has guidance on reporting concerns, which will encompass concerns from whistleblowers. This guidance should be clearer for prospective whistleblowers.

[11] Better Regulators: Principles for Recommended Practice Guide, Protect

[12] Negative treatment: victimisation from managers, bullying from co-workers, suspension, dismissal, and resignation. Sample running from January 2017-December 2021

32. The guidance in section 1.2 should be clear about the types of concerns that the SRA wants people to raise. Currently, the guidance only states, “We do not want to receive reports or allegations that are without merit, frivolous or of breaches that are minor or technical in nature – that is not in anyone's interest. We do want to receive reports where it is possible that a serious breach of our standards or requirements has occurred and where we may wish to take regulatory action.” Whistleblowers would benefit from examples of what is a “serious breach,” for example, would a breach of the new proposed Code of Conduct amount to a serious breach? Clear guidance setting out the SRA’s regulatory remit accompanied with examples would help whistleblowers determine what is a “serious breach” and what is only “minor or technical in nature”. There is a risk that without explaining this distinction further, whistleblowers may be discouraged from coming forward for fear their concerns are ‘frivolous’ or ‘minor or technical in nature’.
33. Further, in section 1.2, the SRA only has a phone number (Red Alert line Telephone: 0345 850 0999) to report concerns. There should also be an email and contact form, to ensure accessibility for anyone who wants to raise concerns.
34. In section 1.2, the SRA should make it clear that certain individuals may be protected under the Public Interest Disclosure Act 1998 (PIDA) when they raise concerns. This should include guidance on the conditions under which persons making a protected disclosure qualify for protection under PIDA. This could include whether breaches of the SRA Code of Conduct could amount to a breach of a legal obligation in accordance with s43B(1)(b) Employment Rights Act 1996.
35. This guidance should also include a clear explanation remedies and procedures available for those who suffer victimisation and possibilities to receive confidential advice for persons contemplating making a disclosure. This would be particularly valuable to give reassurance to those junior members of staff the SRA have highlighted – and others – who may fear retaliation as a result of raising concerns.
36. As well as this, the SRA should consider providing clarity in the enforcement strategy on the circumstances where in-house lawyers are forbidden to raise concerns to the regulator because the concern relates to information covered by legal privilege. This could be by including a statement clearly explaining that persons making information available to the competent authority in accordance with the guidance are not considered to be infringing any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and are not to be involved in liability of any kind related to such disclosure.

37. By ensuring that the enforcement strategy is clearer as to when whistleblowers should speak up to the SRA, and when they will be protected in doing so, it will encourage more people to raise concerns where appropriate.

Sensitivity: General

EMPLOYMENT
LAWYERS
ASSOCIATION

PO Box 1609
High WycombeHP11 9NG
TELEPHONE 01895 256972
E-MAIL ela@elaweb.org.uk
WEBSITE www.elaweb.org.uk

Rule changes on health and wellbeing at work

Response from the Employment Lawyers Association

27 May 2022

Rule changes on health and wellbeing at work

Response from the Employment Lawyers Association

27 May 2022

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

Jonathan Chamberlain (Co-Chair)	Gowling WLG
Alistair Woodland (Co-Chair)	Clifford Chance LLP
Kate Meadowcroft	DWF LLP
Lizzie Twigger	Slaughter & May
Elizabeth Davey	Legal Advice Centre
Peter Baulf	Portsmouth County Council
Beth Bearder	Nelsons Solicitors LLP
Shazia Shah	Irwin Mitchell LLP
Rachel Easter	CMS Cameron McKenna

SRA's consultation on rule changes on health and wellbeing at work – Law Society response

26 May 2022

SRA consultation: Rule changes on health and wellbeing at work

The Law Society's response

May 2022

1. The Law Society is the independent professional body for solicitors in England and Wales. We are run by our members, and our role is to be the voice of solicitors, to drive excellence in the profession and to safeguard the rule of law.

2. The Law Society welcomes the opportunity to respond to the proposals put forward by the Solicitors Regulation Authority (SRA) consultation regarding the changes to rules on health and wellbeing in the workplace[1]. As the representative body for solicitors, we have a vested interest in the wellbeing of our members and in ensuring that they can carry out their professional duties to a high standard, with appropriate support from the regulator, where required.

3. We have serious concerns about the proposals within the consultation, which lack clarity, making concrete responses difficult to provide. We believe the proposals have been inadequately thought through and run the risk of overstepping the SRA's regulatory duties under the Legal Services Act 2007. These proposals will significantly widen the responsibilities placed on solicitors, without any clarity as to why they are necessary, how these would be managed in terms of enforceability, or how far reaching the impact may be.

4. We do not believe that the workplace culture thematic review, which lacks data or statistical information, represents a clear and robust evidence base, on which to justify these proposals. There is nothing in the review that specifically points to risk to clients arising from unfairness or discrimination towards or harassment of, for example, a solicitor in a firm. The SRA do not illustrate the risk or say how widespread or serious it is.

5. Whilst we recognise the importance of ensuring fair and equitable workplace culture, the consultation paper lacks supporting evidence, particularly of the harm the SRA's proposals are intended to address. We therefore encourage the SRA to provide more detailed proposals for us to review. In our view, a more appropriate and proportionate approach at this stage would be to encourage good practice and adherence to the existing SRA Principles and regulations, whilst engaging with the profession to identify specific gaps and the most suitable ways to address these. This might include guidance for, and communications with, the profession to highlight good practice and, where relevant, learning lessons from other sectors too.

Q1: 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.

6. We support the overarching principles of treating people fairly at work and promoting a culture where concerns and complaints can be raised and dealt with, however we do not support the proposals put forward within the consultation as we consider these are already covered by the existing SRA Principles.

[1] Consultation on Rule Changes on health and wellbeing at work

7. For example, the existing Principles 2, 5 and 6, provide that individuals must act:
    - in a way that upholds the public trust and confidence in the solicitor's profession and in legal services provided by authorised persons;
    - with integrity; and
    - in a way that encourages equality, diversity, and inclusion.

8. We believe that the requirement under principle 5 to act with integrity, would require solicitors to refrain from bullying clients, colleagues, or others and from discriminatory behaviour of any kind. Principle 6 requires solicitors to act in a way so as to encourage equality diversity and inclusion - a positive obligation against discrimination that may be broader than merely complying with the statutory requirements concerning discrimination in respect of protected characteristics. In addition, since the SRA Principles give effect to the professional principles set out at section 1 (3) of the Legal Services Act 2007, which the SRA must promote and to which they should maintain adherence, this is something the SRA must already enforce as a matter of its statutory duty.

9. It is not clear why the SRA believes its powers need to be reinforced, since the now abandoned 2011 and 2007 codes of conduct were made under the existing powers. Since the powers exercised by the SRA were sufficient to require that then, it is difficult to understand why they believe those powers are not sufficient to do so now, or why the SRA believe this requires reinforcement by means of a rule change, especially when the 2011 Code of Conduct was abolished so recently.

10. Much of what is being proposed is already covered by firms' HR policies, and in some cases by employment law and equality legislation. As such, it would be more appropriate, instead, to provide guidance as to how these existing principles and policies should be interpreted, set out and implemented. It would be useful to highlight clear examples of good practice. For example, treating people fairly can sometimes mean treating people differently, such as providing reasonable adjustments to people with disabilities.

11. Firms and senior leaders should be encouraged to focus on their organisational culture and to put in place the policies, training and support needed to make this a reality. This includes:
    - increasing awareness of what constitutes bullying, harassment and discrimination and the impact it has on others;
    - ensuring there are multiple channels for raising concerns and accessing support for those who experience such behaviour, recognising that there is often fear and anxiety about the consequences of speaking out and formally reporting such behaviour especially when there are significant power imbalances in the relationship between the complainant and the perpetrator (whether or not such a fear and anxiety is justified or not in a particular organisation the barriers to speaking out should be broken down by the use of multiple channels); and
    - ensuring there are clear and effective processes for responding to concerns or formal complaints with prompt action and effective communication with the parties involved.

12. Firms should also be encouraged to consider what other factors in their working practices and culture are likely to contribute to an environment in which individuals are not treated fairly. For example, the imposition of unrealistic targets, or poor-quality

supervision are likely to create greater stress, anxiety, and negative behaviours in the workplace. These will be standard in some form or other for some firms with individuals taking on their roles with full knowledge of this, although even then there should be an ongoing discussion and good supervision to ensure they are not overwhelmed, or unable to manage the workload or conditions.

13. We are aware of issues, particularly with junior lawyers, where they have felt unable to raise issues for fear of having their careers penalised. This is particularly relevant where there are issues of bullying, harassment, or discrimination within a supervision relationship by supervisors. We have noted that the SRA are also looking to provide guidance on what good supervision looks like and this piece of guidance should provide useful information to firms and individuals. Supervisors should not only be given clear guidance on how to avoid negative behaviours themselves but also how to respond in an appropriate way to any concerns raised with them about their behaviour or the behaviour of others.

14. Supervisors should possess the skills, knowledge, experience, and confidence to manage their team effectively. This naturally includes having difficult conversations with individuals who are underperforming, or whose behaviours are out of line with the expectations of the firm and/or the Standards and Regulations 2019. The SRA proposals inadvertently risk undermining the proactive effective supervision of such individuals by giving them a route to defer or delay engagement about their own negative behaviour or performance.

15. The SRA has, in our view, hastily moved directly to proposing a new regulatory requirement to challenge behaviour which falls foul of requirement to treat colleagues fairly and with respect, and not to bully, harass or unfairly discriminate against them, without fully considering the powers it already has and the current guidance and support to address bullying, harassment or discriminatory behaviour, or the effect it may have on the affected individual. Someone who has been subjected to bullying or harassment is likely to feel isolated, vulnerable, and undermined, making it difficult for them to challenge behaviour, especially if they are in a minority or position of vulnerability in the workplace and escalating the impact of raising concerns by way of regulatory obligation as the SRA proposes risks silencing the most vulnerable because the consequences would potentially feel out of control and more high profile. Instead of moving straight to imposing a new regulatory requirement, the SRA should consider the efficacy of measures that have been proven to work elsewhere, such as encouraging speaking up, through speak up guardians and confidential reporting mechanisms.

Q2: 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.

16. Within the impact assessment, the consultation states that there should be no negative costs or other impacts on firms, since firms should already be taking reasonable steps to ensure that their staff are being treated fairly. If this is the case, then it is unclear as to why the SRA is proposing such stringent changes. We would expect firms to have effective and robust HR policies, which include a grievance and whistleblowing procedures to challenge behaviour that does not meet the required standard. In addition, if they are complying with the legislation that the Code of Conduct for firms

requires them to, that is accompanied by clear procedures. It is unclear what the SRA believe these proposals add in terms of positive impact.

17. As in our response to Q1, rather than adding to regulation, the SRA should consider what good practice guidance and support could be offered to firms to ensure poor behaviour is likely to be reported and challenged in an effective way. Within this guidance should be recognition that it will often be more difficult for junior staff and those from under-represented groups to challenge behaviour and that steps need to be taken to ensure people feel safe and know how they should raise concerns. The proposals in the consultation do not address the imbalance of power within workplaces nor the culture of fear that is often cited as a reason why issues are not raised. The natural way forward is for a joint piece of work between the SRA and Law Society to help firms and solicitors address the issues arising, including effective supervision and acceptance of reasonable feedback for individuals. Regulation for the sake of being seen to be taking some steps is not the answer.

18. The emphasis in any guidance in this area should be on the importance of senior staff modelling positive behaviour. This includes listening and responding effectively when concerns are raised and acting when junior staff or those in more vulnerable positions may find it harder to challenge. Senior staff set the tone for workplace culture and if they fail to respond in an appropriate and effective way in challenging bullying, harassment, or discrimination or when concerns are raised, others will stay silent and become reluctant to challenge. It should be clear that the responsibility to challenge behaviour should be appropriate to the role, with more senior staff having a particular responsibility in setting a tone where all staff can challenge problematic behaviour. This is more appropriately addressed through guidance, than through a one size fits all regulatory requirement, which takes no account of the reality of working within a firm or organisation.

19. It is important that any guidance issued in this area encourages individuals to challenge behaviour at an early stage, to avoid issues escalating and to reduce the impact on those connected to any dispute and in ways that are most likely to be effective and safe for the individuals involved. Calling people out publicly may not be as effective as ‘calling in,’ addressing the issue in private and discussing and agreeing a way forward. However, there must also be awareness of when it is appropriate and proportionate to escalate matters to a formal complaint. This might be where behaviour is repeated despite attempts to deal with things informally, or if it is a serious and harmful one-off incident.

20. For the requirement not to discriminate, there is a clear point where it becomes a matter for an employment tribunal. The SRA should be clear about where its responsibility in this area ends so that those affected can seek the most appropriate way to deal with this type of issue. We note that the SRA has gone some way to addressing this in its workplace environment guidance. This could be expanded to support solicitors engaging with this area to use the most appropriate resource already available.

21. Consideration should also be given in specific guidance as to how behaviour should be challenged within smaller firms. There are unique issues which arise when challenging behaviour in a smaller working environment, such as where there are concerns about the behaviour of another partner who co-owns the practice. From a practical point of view, procedures that are sensible for large firms may not be workable in smaller firms and guidance on this would enable solicitors to put in place appropriate policies and procedures.

Q3: 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.

22. We support the principle of treating all who work within a firm or organisation equally and fairly, regardless of their employment status and would welcome the SRA making clear in guidance that this should be the case. The SRA has not provided evidence of a particular issue in this area, and it is not something the Law Society is aware of as being an issue. The current SRA Principles cover such situations in any case.

23. Consideration should be given to the more precarious status within the organisation that those in these types of roles have. As non-permanent members of staff (such as locum solicitors or self-employed solicitors) the dynamics and power these individuals have is of course different to that of permanent staff and is likely to create greater barriers, both psychological and procedural, to speaking up and challenging behaviour. If permanent staff are appropriately supported this will enable them to support these individuals. It will also set an important tone in the overall workplace culture, which will benefit all, as not addressing incidents targeted at these individuals, risks signalling tolerance for such conduct.

24. The SRA should look at how firms and organisations could be better supported to adopt good practice in this area.

Q4: 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?

25. Interactions between staff outside of the workplace is not a matter for the SRA. It would be difficult, if not impossible, to be clear about where any line would be drawn, and regulatory requirements are consequently an inappropriate way to deal with a potentially nuanced situation. The SRA has, in any case, failed to clearly set out in the consultation document what the parameters it is suggesting would be. It could be considered a matter of ethics and values where it has an impact on the workplace and must fit into an organisation's holistic approach to ensuring the fairness of the working environment for its staff.

26. We recognise that interactions outside of the workplace have the potential to directly impact individuals in the conducti of their duties in the workplace and that there is greater scope for behaviour to become problematic away from the confines of the office. For example, bullying and harassment can happen at work social events and can impact the work environment.

27. Hybrid working is evolving as we learn to live with Covid-19 and therefore individuals, firms and organisations requires evolving working methods, fresh thinking, and updated policies to cover situations that may arise as a result. There must be a change in working culture in line with the changes taking place in working practices. As a result of this shift the Law Society has, after requests from and consultation with the profession, produced guidance on remote supervision to support the profession in this area.

28. If the SRA believes there is potential for issues to arise, it would be appropriate to set out good practice examples more generally as the profession moves out of the pandemic and into this new way of working as a permanent change. Further engagement with the profession may provide useful insights into the types of situations employers and individuals can see arising, to ensure that guidance and good practice examples adequately covers them.

Q5: Do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

29. The wording of the guidance we are proposing, as an alternative to the proposed regulations, must include a clearer definition of what is meant by the terms used. For example, what is meant by "fairly"? Language is important and definitions must be tied down and examples or case studies would assist the profession's understanding of what the SRA is promoting in terms of improved practices. The proposals set out by the SRA in this consultation are wide sweeping and lack clarity, highlighting that regulation is not the appropriate tool with which to encourage improvements in practice in this area.

30. Firms should have systems and processes in place to enable concerns to be raised confidentially about unfair treatment or negative behaviour, then dealt with in a proportionate and proper way. Indeed, many firms will already have appropriate HR policies and processes in place, which will cover this area as part of their compliance with relevant employment and equality law requirements.

31. Consistent early-stage intervention through good supervision and performance management has been shown to be effective in preventing bullying, harassment, and discriminatory behaviours. This is where clarity about the steps organisations should take and the responsibilities on senior staff to set an appropriate tone within the working environment should be set out.

Q6: Do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

32. The SRA has failed to adequately outline its approach for enforcement in relation to the regulatory proposals. Without examples of what this enforcement approach would look like, it is impossible to accurately assess the appropriateness. It is only in practice that measures such as these can be appropriately assessed. For example, the consultation document notes that if these changes are made there will be consequential changes to the SRA's guidance and enforcement strategy as needed but it does not expand on what these might look like.

33. Clarity is necessary and has been extremely useful in other areas, for example when dealing with a refusal to have qualifying work experience (QWE) confirmed. It gives those seeking help clear steps to take to address the issues themselves and a clear idea of when it is appropriate to seek the SRA's involvement. It also reduces the burden on the SRA in dealing with queries that do not meet the bar for its involvement.

34. The SRA online workplace environment case studies are a useful way to illustrate this process and add to the understanding of the processes and requirements that exist. The existing guidance referenced in the consultation also makes clear where individuals can seek further information and how the current processes work.

35. Situations that are likely to have an impact on an individual's cognition and ability to perform well and to treat others with respect and consideration, such as blurred work/ life boundaries caused by hybrid working, should be considered for inclusion in this guidance. ACAS' examples of workplace bullying[2] do include excessive work demands, though, and the SRA should examine this issue, instead of dismissing it as part of an expected culture of the profession. There is a difference between long hours and high workloads, which are at times an unavoidable part of the work of a solicitor, and unreasonable demands arising because of poor management, supervision, and resource management by firms.

36. Firms should be directed to set clear expectations, to avoid passively creating an unfair working situation and climate of high anxiety and stress, which is likely to have knock on effects on the quality of legal services provided. We are aware of the SRA's work on supervision and providing better guidance on what good supervision looks like, which will hopefully address some of these issues but could be complemented by good practice guidance in this area.

Q7: Do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

37. We wish to express our disappointment that the consultation omits to reference the experiences or negative impact behaviours on LGBT+ individuals in the profession such as bullying, harassment or discrimination. The complete lack of acknowledgement of such negative behaviour on LGBT+ individuals in the entire consultation paper is a serious oversight and undermines the SRA proposals. We would direct the SRA to the Law Society's Pride in the Law report for evidence and insights, and our trans and non-binary workplace guidance, which provides examples of inclusive practices. We also know that law firms are included in "best employer" lists for LGBT+ employers across all sectors, so law is a sector with positives, but equality issues should be addressed in every potential regulatory change.

38. Improvements to working culture are likely to benefit women, ethnic minority staff and disabled staff. We also believe that it will benefit LGBT+ staff. We do not believe that additional regulation is the way to achieve this change, though.

39. We strongly recommend that the SRA consider more fully the best way to address this area of practice, look at good examples of practice in other regulatory areas and consider the best tools available to deal with this complex, nuanced area.

Q8: 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.

40. We strongly oppose these proposals as they are unclear and risk opening the door to a repressive regulatory regime for those affected. It is not immediately apparent how effective these proposals would be in addressing the issues the SRA consider problematic. This is a sensitive and complicated area, with a danger that individuals will be stigmatised or discriminated against because of their health, particularly where the issues relate to mental health. A properly thought-through and developed fitness

[2] https://www.acas.org.uk/if-youre-treated-unfairly-at-work/being-bullied

to practise regime should protect the public first but also ensure that those individuals with health issues are able to return to the profession once well.

41. The proposals as currently drafted could penalise individuals, potentially from the beginning of their careers. They could also be seen as applying an ableist model, or a medical model of disability that blames the individual, rather than the environment or culture of workplaces being the issue. With such high risks it is inappropriate to implement these inadequately considered proposals.

42. There should be clear evidence requiring any measure such as this to be introduced, which the SRA has not adequately outlined in this consultation. The Law Society would want to see more detail as to the processes the SRA has in mind and what measures they would include to safeguard the rights of solicitors and measures that would be put in place to ensure inclusion is not negatively impacted. We would also wish to hear more about the problem the SRA seeks to address and how much of a risk to clients and the public it actually presents. Any changes must not discourage individuals from entering or returning to the profession or from disclosing issues as this may lead to them not getting the necessary help, support, and adjustments they need to work effectively in the working environment.

43. The SRA must first define what constitutes being 'unfit to practise' as this is not a straightforward matter. For example, for fluctuating conditions this could mean being deemed fit to practise one day, but not the next. The primary objective in this work must be that individuals should be allowed to continue to practise, with as few restrictions as necessary to ensure public safety.

44. The Law Society would welcome discussions with the SRA on an appropriate way to manage health concerns in relation to fitness to practise, particularly with disabled lawyers, regulatory lawyers and others directly involved with the current processes and affected by the proposals.

Q9: Do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

45. As before, the terms used by the SRA should be clearly defined. Health is a broad concept and a definition of the term in this context is necessary. The human rights principle of 'nothing about us without us' should be used as a guiding ideal, that no policy should be decided without the full and direct participation of members of the group(s) affected by that policy. As such, disabled people's organisations should be consulted in the drafting of these changes. The Law Society's Lawyers with Disabilities Division is happy to participate in discussions about anything coming out of this consultation process.

Q10: Do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

46. We are concerned that the processes suggested to manage those who are affected by these changes are lacking in transparency and are not appropriate for the gravity of the impact they will have on affected individuals. Many of the other regulators noted in the consultation paper have a transparent formal hearings process set up to deal with health-related fitness to practise cases. For example, the Bar Standards Board's (BSB's) processes require decisions about a practitioner's fitness to practise to be made by a panel which comprises three barristers, a layperson, and a medical

practitioner. This allows the individual concerned to present evidence at a hearing and for the committee to seek medical advice before coming to a decision together as to the best course of action.

47. The consultation paper suggests that SRA staff will be responsible for making and confirming these decisions, without explaining what expertise and training will be required or how this will be determined to be appropriate. At the very least, this calls for clinical experience and judgement, neither of which is ordinarily at the SRA's disposal. There is also no discussion about the nature of the evidence on which such judgement would be made or how it would be obtained.

48. The consultation paper does not provide any discussion or any details as to how information concerning the solicitor's health is to be obtained if not volunteered, in such a way as to respect the solicitor's rights under the Human Rights Act 1998 and to comply with the SRA's duties under the Equality Act 2010. Neither does the SRA set out how sensitive information concerning any solicitor's health is to be safeguarded to meet the requirements of current data protection legislation.

49. The proposal for an amendment to rule 7.2 in respect of conditions which the SRA may place on a solicitor's practising certificate (or registration in the case of RFLs and RELs), is also short on detail. Placing a condition on a practising certificate that a solicitor must follow the treatment recommendations of an appropriate healthcare practitioner would almost certainly reveal information about a solicitor which may be confidential and sensitive, potentially controversial and which might very well be subject to frequent change.

50. We feel that insufficient consideration has been given to the individual affected by the proposed process, who is likely to be vulnerable and should be provided with appropriate support to engage with this process. The SRA has acknowledged that such individuals may not be able to appropriately engage with standard fitness to practise procedures due to health issues, but this factor is not mentioned in relation to their ability to engage with the health processes proposed. Appropriate independent health (mental or physical) experts should be available to support the individual and to assess the cases. Careful consideration must be given to how this is funded, with individuals not being unduly financially penalised for being subjected to this process.

51. The SRA does not appear to have considered how this process will be determined to be successful if implemented. It has also not considered the wider, worrisome implications of making health concerns a regulatory matter. A full and detailed piece of work is required to fully understand the implications before the SRA makes any changes. Without this the SRA risks arbitrarily penalising individuals who may already be vulnerable.

52. Once the SRA has arrived at a clear definition of success, in addition to the ongoing monitoring mentioned in the consultation document, we believe there needs to be a formal review at an appropriate point, the results of which should be made public. This would allow stakeholders who have responded to this consultation and those involved in the process to feed back to the SRA and review the effectiveness of any changes the SRA makes.

Q11: Do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

53. It needs to be recognised, as the Legally Disabled research found, that fear of stigma, ill-treatment or discrimination has led to low rates of solicitors disclosing a disability to employers and to the SRA, even in anonymous equality monitoring surveys. The research also identified difficulties accessing reasonable adjustments as a major problem in the profession.

54. These proposed requirements will have an impact on some disabled people or those with a long-term health condition in the profession, unless other steps are taken in parallel to create a more inclusive and supportive environment, including amongst all those who engage in fitness to practise cases. SRA staff must be properly trained on disability awareness and the reasonable adjustment requirements. Steps must also be taken to ensure that reasonable adjustments are made by the SRA for disabled individuals or those with long-term health conditions so they are treated fairly and can fully participate in fitness to practise procedures.

BIRMINGHAM LAW SOCIETY

one profession • one region • one voice

Response to SRA Consultation on rule changes for health and well-being at work

May 2022

Response of the Consultation Committee of the Birmingham Law Society to the SRA Consultation on rule changes for health & well-being at work

This response has been prepared by the Consultation Committee of the Birmingham Law Society. The Society is the largest local law society with some 5,000 members. The response represents the collective view of the Consultation Committee whose members are specialist lawyers practising in all aspects of professional regulation and discipline.

SRA questions in full

We welcome your views on the questions raised in this consultation, and on all aspects of our proposals. A full list of the consultation questions is below.

Q1 – 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 agree that regulated individuals and firms should be required to treat people fairly at work but the difficult question is how that requirement should be imposed and more importantly enforced? Fairness within the workplace is not an objective professional conduct standard. It varies from firm to firm from individual to individual and does not lend itself to consistent enforcement. Any rule would also duplicate firms' obligations under existing employment law. Is this another example of the SRA extending its regulatory reach into matters that would be better left alone? These type of investigations where subjective standards are in play and witnesses are reluctant to give evidence are fraught with difficulty. The SRA is already aware of these problems with its sexual misconduct investigations post MeToo. Does the SRA want to be concerned with even more complaints which it is required to investigate and which go nowhere? Where is the data or evidence to justify a new rule?

We would refer the SRA to the Legal Services Act 2007 under the heading "General duties of approved regulators" and in particular to Section 28(3) which provides that

"The approved regulator must have regard to—

(a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and ***targeted only at cases in which action is needed (emphasis added).***

The SRA should question whether these rule changes are necessary. Is there sufficient data to support action in this area? Does the existing employment law provide adequate remedies for complainants? These are the sort of considerations that the Legal Services Board would expect a regulator to be asking itself.

Rather than introducing a rule immediately, the SRA should consider introducing more detailed Guidance covering this area with examples both drawn from SDT judgments and human resources expert input so that it is clear what the SRA requires of the profession – that would demonstrate effective professional regulation. In extreme cases, the SRA could investigate and enforce under the existing Principles and Rules – for example . Rule 1.2 Code for Firms You do not abuse your position by taking unfair advantage of clients **or others (emphasis added).** Principles 2 & 6 could also be relevant. We acknowledge that some guidance has already been published but this needs to be monitored and updated regularly and only the most extreme cases investigated and prosecuted.

If a rule were introduced, we consider that the rule should be enforced proportionately, without excessive prosecutions and the associated costs and that the enforcement approach should be specifically set out in the SRA's Enforcement Strategy, in order to achieve consistency of approach. Proportionate enforcement is essential as adding to professional rules may increase the costs of regulation, which can act to the detriment not only of regulated professional, but to clients and their ability to access justice.

The suggestion to treat people fairly, is however, not a new duty. Guidance in force previously in former Codes of Conduct, in particular the "The Guide to the Professional Conduct of Solicitors" (1999-8th Edition) ("the Guide") states:

"A solicitor must maintain his or her personal integrity and observe the requirements of good manners and courtesy towards other members of the profession ***or their staff****, no matter how bitter the feelings between clients."* (emphasis added).

This was part of the duty of good faith required of solicitors in Principle 19.01 of the Guide. Such a duty could be relevant for future Guidance or rules.

Although a rule is not a completely new suggestion in the regulation of solicitors, there is a lack of enforcement decisions. It is suspected that any such reported cases would have not reached the required threshold for formal investigation, except where they also involved a breach of the Equality Act 2010.

Q2 – 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.

Should the SRA decide to introduce rule changes in this area which we disagree with for the reasons stated above under question 1, we consider that any requirement to challenge behaviour, should primarily rest on the firms' managers (partners in a partnership, members of an LLP and directors of a company), and any specially designated persons on behalf of the firm. The focus of the SRA should always be on firms not individuals in order to ensure firms have good working environments for their staff and to avoid extreme examples such as the *Sovani James c*ase. In this way, the SRA has a better chance of succeeding with its investigations and enforcement as opposed to dealing with petty disputes or challenges by one employee against another. There is scope here for a myriad of unjustified or even tactical complaints to the SRA.

A challenge to perceived inappropriate behaviour should be done in a professional way, by trained employees and senior staff, otherwise, the challenge itself may be the subject of a complaint. Introducing such a requirement on all employees would also involve significant training costs.

What would a challenge in practical terms look like? A face-to-face conversation? Would that need to take place immediately, or should the person challenging the behaviour seek to conduct the challenge in a private office at a later time? Should an individual have the opportunity to take advice from a Human Resources professional before initiating the challenge? These are the practical issues that would be faced by solicitors subject to the duty. For these reasons, we feel that it would be more effective if only those in senior positions had a duty to challenge individuals, to avoid confrontations and complaints. If the rule were imposed on all employees, then potentially junior employees would have the duty to step in and challenge more senior employees or partners. This would be an unfair duty to impose on those under the authority of senior staff.

The SRA may find that the rule to treat employees fairly, is a difficult and costly one to enforce. In addition, to open up a new angle on prosecutions for those who had not made a sufficient challenge (would it be acceptable that a witness did not immediately challenge the behaviour, but had reported it, knowing that the designated HR professional would then investigate and would then challenge the behaviour?) would make enforcing the rule even more difficult and costly. The requirement to treat others fairly and with respect is primarily an employment law issue and therefore, the SRA should limit its involvement in this area only to very serious cases.

Many modern firms, such as alternative business structures that are licensed bodies and unregulated firms employing solicitors carrying out unreserved work will have a mixture of regulated and non-regulated staff. It would be very difficult to draw the distinction between solicitor employees and non-solicitor employees if this rule were introduced.

Q3 – 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.

We agree that solicitors should treat all non-employee colleagues such as contractors, consultants and experts fairly and with respect. We do not consider that the SRA should extend its regulatory reach in this area for the reasons already expounded above. However, should there be a rule, there should not be a duty to challenge, in non-employee situations except, perhaps by senior managers, who would be guided by advice and Human Resource professionals.

Q4 – 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?

Extending the SRA's regulation into the personal lives of solicitors, even if that personal relationship is between solicitors is a step too far. The decision to introduce such a rule could expose the SRA or even the Legal Services Board to a judicial review of its decision based on The European Convention of Human Rights, article 8, the right to respect for private life. The SRA must treat a solicitor's right to a private life with respect. The SRA was subject to an adverse decision in the case of Beckwith v SRA [2020] EWHC 3231 (Admin) where it was argued that Mr Beckwith's right to respect for a private life had been infringed, *". . .in any event, such rules represent an intrusion into private life that cannot at the level of principle, be justified by the public interest in the regulation of a profession."* (para 49).

In the transition from the 2011 to the 2019 Codes of Conduct, the SRA lost the Application chapter which made it clear which parts of the code applied outside of practice. Now it is stated in the Code in the introduction that the Code applies to a solicitors practice, " *They apply to conduct and behaviour relating to your practice,. . .".* If requirements were introduced that applied outside of practice, the SRA would need to reintroduce an Application rule and amend the Code to make it clear that it applied outside of practice, because as it currently stands, the Code does not apply outside of practice.

Paragraph 39 of the Beckwith Judgment states:

"Yet the approach we have taken in this case is not any form of permission to expand the scope of the obligation to act with integrity simply by making rules that extend ever further into personal life. Rules made in exercise of the power at section 31 of the 1974 Act (in the language of the Handbook, the "outcomes" and the "indicative behaviours") cannot extend beyond what is necessary to regulate professional conduct and fitness to practise and maintain discipline within the profession."

It would appear that a rule that required investigation into the private relationship of two solicitors would *"extend beyond what is necessary to regulate professional conduct".*

That is not to say there is no issue with how solicitors conduct themselves in their private lives as solicitors have been properly prosecuted before the Solicitors Disciplinary Tribunal for convictions of domestic abuse.

The SRA should also be wary of using the phrase *"outside of the workplace"* which is unhelpful and suggests that professional conduct is linked to an office location. In these days of flexible working and working from home, this is no longer the case. The SRA should confine its attention (as has always been the case) to *"conduct and behaviour relating to your practice".*

Q5 – do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

Should a rule be introduced, we agree with the wording for the Code of Conduct for Firms, with two suggested amendments

First, the insertion of the word *"managers"* for reasons explained above.

Secondly, the SRA needs to reconsider the draft wording *"or discriminate unfairly".* It is our understanding that *"fairness"* is not a concept in discrimination law. For example, positive action under section 159 of the Equality Act is lawful. A preferred

approach may be to make it clear that any discrimination should be unlawful. Also the existing wording to *"discriminate unfairly"* suggests that it is permissible to *"discriminate fairly"* which of course cannot be the case.

Please see suggested amends below:-

'*You treat those who work for and with you fairly and with respect, and do not bully or harass them or unlawfully discriminate against them. You require your managers and employees to meet this standard, and your managers challenge behaviour that does not meet this standard.'*

We agree with the wording for the Code of Conduct for Solicitors, with deleting the requirement to challenge behaviour.

'*You treat colleagues fairly and with respect. You do not bully or harass them or unlawfully discriminate against them. ~~You challenge behaviour that does not meet this standard.'~~*

Q6 – do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

We agree that SRA investigations should only be initiated where it is proportionate to the breach. However, what is missing from the consultation is an explanation as to how the use of regulatory sanctions will be used proportionately. For example, letters of advice and Regulatory Settlement Agreements could be used whereby the solicitor will agree to attend training courses. The SRA needs to consider what enforcement measures are proportionate, but also which ones will have the effect of changing behaviour, rather than removing the individual from the profession altogether, which in practical terms is what might happen with a formal prosecution, as an appearance at the Solicitors Disciplinary Tribunal which would limit a solicitor's ability to find employment. The SRA needs to use the carrot and not the stick in this area. Encouragement and the sharing of best practice is the way forward not heavy-handed investigation and prosecution.

Q7 – do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

It should be noted from the anecdotal evidence of junior lawyers prosecuted by the SRA (e.g., the toxic working arrangements case), that both age and (mental health) disability are relevant and these are protected characteristics under the Equality Act 2010. It would not be for a junior solicitor to have a duty to challenge their firm's compliance with the duty to treat others with respect. It would appear that the changes, if properly and proportionately enforced, would have a positive impact on solicitors with a mental health disability and would have a positive impact on solicitors who are likely to be younger in age.

Q8 - 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.

In broad terms, we agree that the rules should make reference to being able to take into account a solicitor's health. However, a regulator must discern what information is relevant and that which is not relevant or comes from an unreliable source. The rules should not assume that all information will be considered, indeed, it may be improper to accept some information, for example medical records that have not been disclosed with the consent of the solicitor.

We do not agree that fitness to practice should be taken to include the ability to be subject to prosecutions in the Solicitors Disciplinary Tribunal. Effectively, that would mean a solicitor who was subject to a severe mental health condition, possibly made worse by the threat of disciplinary action, would be prohibited from practising as a solicitor because they were suffering, possibly from a temporary, but severe, mental health condition. Even if the solicitor was not guilty of the offence, the rule change effectively says that the solicitor will be unable to practise and earn a living because the SRA will say they are not fit to practise.

Q9 – do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

We suggest the following amendment to the proposed addition to Rule 2 Assessment of Character & Suitability Rules:

'Solicitors have a statutory duty to comply with our regulatory arrangements and such compliance is part of what it means to practise as a solicitor. Therefore, in assessing your suitability the SRA will take into account ~~anything~~ all relevant factors, including your health, which indicates you are unfit to meet your regulatory obligations ~~or to be subject to regulatory investigations or proceedings.~~'

We disagree with the proposed changes to Regulation 7.2, Authorisation of Individuals Regulations. The new wording in bold goes much too far and is too wide. It places too much power in the hands of the SRA to curtail a solicitor's practice. It goes far beyond the imposition of conditions when a solicitor is unwell and unable to practise. For example, it would enable the SRA to impose a condition preventing a solicitor from practising in a situation where a solicitor has been unable to comply with an investigation for a genuine reason wholly unconnected to ill health.

Another reason for caution is that the SRA deals with the imposition of conditions as a paper exercise. It rarely permits an oral hearing. An unrepresented solicitor could find himself at a considerable disadvantage in such a situation.

Q10 – do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

The SRA could give further information about what they have done in the past to help inform the consultation process. This consultation paper is light on data. How many solicitors are subject to practising certificate conditions due to their health? The emphasis on enforcement should be to support those solicitors with health concerns

and disabilities. The SRA needs to innovate more positive enforcement approaches. For example, private (not public due to the sensitive nature of health information) Regulatory Settlement Agreements where an individual will agree to remain in certain employment, or work with the supervision of another solicitor, or undergo training. Managing the process through private agreements, rather than public agreements or information may be a better way of dealing with sensitive issues, even if the agreement includes a provision to inform an employer. Conditions on a practising certificate appear to have negative connotations as they are also imposed when there have been disciplinary investigations, or breaches. Reaching private agreements, would encourage constructive engagement with the SRA.

Q11 – do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

A rule which effectively prevents solicitors with mental health conditions from practising, particularly when the disciplinary process is so brutal, appears to raise the question of compliance with the Equality Act 2010.

Birmingham Law Society Consultation Committee
6 May 2022

Solicitors Regulation Authority (SRA) Rule changes on health and wellbeing at work

Consultation Paper Response

Introduction

The Solicitors Disciplinary Tribunal ("the Tribunal") should not make public statements (even in the context of consultation) which might give rise to a complaint at a future date from those appearing before it of predetermination and/or apparent bias.

Accordingly, the Tribunal does not intend to comment on the questions relating to wellbeing and unfair treatment at work. In so far as the questions in relation to a solicitors' health and fitness to practise are concerned in so far as they relate to proceedings that may come before the Tribunal this has a direct impact upon the work of the Tribunal and a response is appropriate.

Q8 - 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.

1. The Tribunal considers it important that all solicitors understand 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. It is of significant concern to the Tribunal when a respondent before it is too unwell to participate in regulatory proceedings but is continuing to practise. The Tribunal considers that this poses a potential risk to the public but unfortunately does not have any interim powers and is reliant on the SRA to manage the risk pending the determination of the proceedings.

Q9 – do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

2. The wording is a matter for the SRA.

Q10 – do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

3. The Tribunal notes that the SRA does not currently intend to introduce a stand-alone fitness to practise procedure under its powers. In a very small number of cases the SRA currently commence proceedings before the Tribunal where it is clear that the respondent has significant health issues and it is far from clear that the respondent is well enough to participate in the proceedings. These proceedings tend to be stayed or adjourned on several occasions due to the health issues.

4. If the SRA know that a respondent is too unwell to participate in regulatory proceedings the Tribunal considers that the SRA should have sufficient powers to ensure that the person involved cannot practise until the health issues are resolved. This protects the individual solicitor, their clients and the public. Issuing proceedings before the Tribunal that cannot be progressed does not provide this necessary protection.

Q11 – do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

5. Please see response to question 10 above. If it was considered appropriate exploration could be given to the SDT having an appeal jurisdiction (alongside or in place of the High Court) in relation to conditions imposed by the SRA on an individual's practising certificate.

Response provided on behalf of the Policy Committee of the Solicitors Disciplinary Tribunal

12 May 2022

The following responses were submitted by respondents who asked us to publish their responses but not their names.

Rule changes on health and wellbeing at work - Consultation

Response ID:2 Data

2. About you

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

11.
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.

Absolutely

12.
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.

I agree with the additional requirement in relation to regulated firms but not individuals. It seems to me that more junior fee earners or support staff may end up falling short of the new requirements not because they actively discriminate against someone but if they fail to take action against someone else's attitude. This would be unfair as they may not feel able to do so and they should not be penalised for it. The requirement should apply to firms and partners only.

13.
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.

I agree provided it is only for the firm and partners to ensure the requirement is observed

14.
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?

No. It would be an over-reach if the SRA regulated solicitors' behaviour outside the workplace to this extent. Solicitors should not feel under constant threat from their regulatory body.

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

Maybe the requirement for regulated individuals to challenge behaviour should be softened with words like "should" and "to the extent you feel able to"

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

no

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair

treatment at work?

no

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.

No. Again, the SRA should not become a constant threat to solicitors. To what extent could this requirement be enforced. Would a temporary break down lead to a solicitor being struck off?

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

No

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

The focus should be on monitoring firm's policies of how they monitor performance. Major focus on financial targets, like in my firm, puts fee earners under tremendous sustained pressure and impacts on mental health. The SRA should take action against these policies, not against the individuals who suffer the consequences

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

as above. Fee earners, other than equity partners, should not be penalised for issues which stem from their firm's policies and work ethics

Response ID:7 Data

2. About you

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

11.
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.

I agree with the proposals as currently law firms are able to cover up extensive examples of bullying and harassment and frequently do so. There is a considerable hypocrisy in advising clients about whistle-blowing and anti-bullying and harassment while alloying it to happen wildly within private practice. In my experience bullying is widespread as is sexual harassment and other forms of harassment. It is never dealt with properly and tends to be resolved within teams by the partners rather than independently addressed. I have been assaulted on the premises by a male colleague bullying me and it was covered up by a powerful partner who relying upon this individual. A female colleague was asked about her sexual orientation by a partner on a night out after he had been making inappropriate comments.

12.
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.

Yes. It won't be done otherwise.

13.
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.

Yes.

14.
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?

I would not extend the requirements outside the workplace. Frankly, it's bad enough within workplaces so we should tackle it there first.

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

No

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

Firms should be obliged to undertake independent investigations into allegations and not manage things themselves. As things

stand team investigate accusations and then quickly brush them under the carpet.

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

No

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.

Yes.

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

None.

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

I think the only way to address the severe problem of poor mental health in the profession is to introduce a cap on hours of 50 hours per week. This would force firms to resource transactions more effectively and consider using process and technology to improve productivity.

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

I am very supportive.

Rule changes on health and wellbeing at work - Consultation

Response ID:8 Data

2. About you

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

11.
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.

No. Legislation already exists to protect people treated unfairly at work, i cannot see why solicitors are to be held to a higher standard in this regard.

12.
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.

No, not at all for the reasons above.

13.
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.

No, not at all for the reasons above.

14.
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?

No, not at all for the reasons above.

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

None.

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

None.

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

None.

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.

No, not at all for the reasons above.

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

None.

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

None,

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

None.

Rule changes on health and wellbeing at work - Consultation

Response ID:14 Data

2. About you

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

11.
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.

Yes. It is disappointing that in this day and age a rule like this is needed, but sadly some people are treated very poorly by others in the profession.

12.
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.

Yes. Hopefully just the threat of this will be sufficient to regulate behaviour.

13.
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.

Yes

14.
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?

Yes

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

No

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

No

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

Hopefully these will improve

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.

Not sure

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

No

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

No

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

No

Rule changes on health and wellbeing at work - Consultation

Response ID:29 Data

2. About you

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

11.
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.

Yes. It is a function of acting with integrity and upholding the law more generally.

12.
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.

Yes. Improper treatment towards colleagues often goes unaddressed because of a lack of corroborating evidence. Witnesses often refuse to give evidence or indeed on occasion are directed by their employers not to do so. This is closely aligned with abuse of NDAs. Solicitors should be required to speak up. It does not however mean they will be honest. In my experience solicitors frequently lie or lose their memory in mysterious circumstances if they feel their career may be impacted.

13.
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.

Yes.

14.
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?

Yes.

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

That colleagues who enter into personal relationships should disclose them to their firm to avoid conflicts of interest.

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

It is important that a solicitor who reports misconduct is not left having to defend themselves in malicious harrassment or defamation proceedings, or enforcing rights in employment tribunal proceedings at personal cost. It should be appreciated that experienced solicitors "play the system". A solicitor who has committed misconduct may inappropriately try to gain leverage over another solicitor to stop them reporting them or by way of retaliation.

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

No

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.

Yes. If regulatory obligations cannot be enforced it would seem to follow that the solicitor is not fit to practice but it should be appreciated that a party may be unwell as a result of abuse they have suffered from a fellow solicitor.

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

No

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

It should be appreciated that bullying by colleagues in work/personal relationships can give rise to substantial trauma including post traumatic stress disorder. The impact can be far greater than in an ordinary personal relationship because it also attacks the individual's career and financial security with potential lasting damage beyond the end of the relationship. The motivations for the relationship can also be questionable, as it can involve manipulation for business development opportunities and other financial gain as well as result in abuse of personal data rights.

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

Mental health issues can arise as a result of conditions experienced at work. In particular they can arise as a result of bullying and so it is especially important that any enforcement action regarding a solicitor's health takes proper consideration of any work related causes.

Rule changes on health and wellbeing at work - Consultation

Response ID:47 Data

2. About you

9.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

10.
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.

Yes, having worked in Law firm management I've seen cases of staff being treated unfairly by partners, which they think because of their status its acceptable, which clearly it is not. It make it harder for management to challenge them on their behavior. This requirement would hold them accountable and hopefully make them change their ways, or at least there would be repercussions?

11.
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.

Yes, however it would need to be very clear what is "deemed acceptable behavior". Also how would you deal with for example people who have a disability where for example it impacts their behavior in some circumstances. E.g. someone with Asperger's using colorful language, which is normal circumstances is unprofessional or someone on the autistic spectrum coming across rude or blunt which is not their intention or an extremely stressed solicitor having a breakdown at work? Just something to think about.....

12.
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.

Of course, everyone who is representing the firm and profession should uphold standards.

13.
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?

Yes it should apply to both and be in the wording. People need to be of good character both inside and outside of work. Firm social events is an example of where unacceptable behavior of a solicitor can sometimes be seen (e.g. taking people to strip clubs and heavy drinking sessions).

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

no

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

no

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

It's a positive step.

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.

Yes, because it makes it clear it covers everything.

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

7.2 (b) include the word "colleagues"

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

could be subjective, who decides? is there an SRA appointed / neutral doctor appointed? It could be unfair for non medical trained people to make decisions. Process needs to be fair.

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

This could cause more stress to people who already have health conditions. Therefore cases which come up should be dealt with very quickly to reduce further stress and anxiety. Yes there absolutely needs to be protection for clients and colleagues, but also support / signposting put in place for the person, because it will feel like a very personal attack, they may have worked for years as a solicitor and it might all be taken away from them, which I can imagine being extremely hard (even if they had messed up, maybe due to a health condition outside of their control).

Rule changes on health and wellbeing at work - Consultation

Response ID:56 Data

2. About you

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

11.
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.

Yes, Many workplaces are not fair and women particularly are not treated equally

12.
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.

Yes

13.
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.

Yes, particularly practice managers who are often not client facing and yet dictate business rules to those who are..

14.
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?

Yes-some colleagues are hounded whilst at home to do certain work.

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

Not yet but would like the chance to comment after the consultation

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

All staff, including those who are not solicitors should be subject to these rules and to suspension or disciplinary action if they break them

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

It would be helpful if the SRA would support those who feel they are so treated. often they feel isolated in a toxic environment and have no 'champions'.

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.

Yes, but it must be understood that if lawyers are made ill by firms who pressure them to work too hard, they are not to be disciplined for it or lose their jobs (which is the usual implied threat)

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

Not yet

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

No

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

Rule changes on health and wellbeing at work - Consultation

Response ID:59 Data

2. About you

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

11.
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.

Yes, but will need clear guidance on "fair". Is it unfair to allocate a case to one solicitor over another?

12.
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.

No, you could be exposing very junior lawyers to a requirement to confront far more senior/powerful Managers. That is simply not fair. A requirement on the firm/Managers/Compliance Officer should suffice. Imposing this on a trainee solicitor (for example) could have devastating consequences.

13.
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.

No, unrealistic

14.
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?

No, the SRA should learn from the parameters set in Beckwith.

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

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.

Yes

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

Rule changes on health and wellbeing at work - Consultation

Response ID:61 Data

2. About you

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

11.
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.

Yes.

12.
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.

Not sure.

13.
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.

Yes.

14.
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?

Not sure.

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

No.

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

Fairness and right of appeal are necessary.

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

No

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.

No. This seems to conflate very different concepts.

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

No.

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

No.

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

No.

Rule changes on health and wellbeing at work - Consultation

Response ID:71 Data

2. About you

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

11.
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.

Yes - I have personal experience of bullying and harassment by a senior solicitor who remains practicing despite several colleagues reporting the solicitor to the SRA.

12.
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.

Yes - although I have personal experience of a toxic workplace culture in which the senior solicitor made explicit threats to staff about serious consequences if they were to 'cross him' or report him to the SRA. The SRA should bear in mind the possible pressure they would place on individuals caught between a bullying employer and their regulator - so this should be considered carefully.

13.
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.

In a light touch and nuanced way so as not to have a chilling effect on professionals working with solicitors.

14.
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?

In my experience the SRA has not intervened quickly even in cases of sexual harassment between colleagues - so to suggest the SRA could significantly broaden its scope does not seem possible to me. It would likely result in even weaker responses to serious issues in the workplace.

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

The wording is only as good as its enforcement - my personal experience is that the SRA does not enforce its own rules and does not support solicitors who have reported misconduct.

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

My only comment is regarding my personal experience of having reported clear harassment in the workplace which resulted in

myself and my fellow director resigning from our firm only to find the senior solicitor who perpetrated the sexual harassment still practising some 2.5 years later.

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

I am male and have been more comfortable reporting a solicitor who made threats to myself and my colleagues ()who were female). My female colleagues are so afraid of the senior solicitor that they are unwilling to provide evidence at a tribunal. Therefore, I think the SRA should consider how it can better support solicitors who wish to report misconduct but who have been threatened with repercussions for so doing.

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.

Yes - again, I am aware of a senior solicitor who has committed several acts of misconduct but who remains practicing in spite of reports form myself and my fellow directors.

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

The wording is only as good as its enforcement, investigation and support provided to reporting solicitors. Amending the wording without amending enforcement is a pointless exercise.

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

I was subjected to bullying and harassment and resigned as director of a firm in order to report my fellow director. The SRA has not offered any form of support in spite of the fact I have notified the SRA of ongoing threats made to me by the solicitor I reported.

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

No

Rule changes on health and wellbeing at work - Consultation

Response ID:79 Data

2. About you

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

11.
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.

Yes, the professional should have regulated values in a code of conduct to ensure fair treatment of all at work in the legal profession to put people first.

12.
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.

Yes I agree and processes would need to be implemented to ensure transparency and how this would be policed by the SRA.

13.
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.

Yes it's to create a culture of good practice across a workforce

14.
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?

Yes creating a culture of fairness and good treatment across a workforce both inside and outside the workplace.

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

No

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

Good practice processes would need to be aligned with HR system and reporting systems to the SRA for breach.

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

Would create a culture of best practice across the profession.

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.

Yes regulating fairness and treatment of the workforce should be made plain and accountable within the profession.

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

The SRA should investigate health concerns and as I mentioned the process aligned with HR systems.

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

Rule changes on health and wellbeing at work - Consultation

Response ID:91 Data

2. About you

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

11.
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.

Yes

For too long the legal profession has treated people badly. Mistakes have then been made and the firms have received no consequences as a result of the position they have placed the fee earner in.

12.
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.

Yes

Although I query whether people would actually have the confidence to raise a challenge

13.
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.

Yes

14.
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?

Yes

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

Firms must be held to account under the new regulations there will be no point to them if the SRA does not enforce them.

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

No

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.

Yes

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

Response ID:95 Data

2. About you

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

11.
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.

Yes I do have personally experienced bullying and harassment in a previous role. I was not adequately supervised by my line manager as she was not a litigator. No risk assessments were undertaken before work was allocated to staff for example my line manager tried to pass me work such as employment without checking whether I had ever done this work. She tried to claim that I should be able to do this work as a litigator despite my application saying I specialised in Regulatory work. She admitted that she had never dine employment work. I had to get to the SRA to get confirmation that I should not act. On another occasion her and the overall boss tried to make me act in conflict of interest. I had already advised a client on the service of a noise abatement notice and there was an appeal pending in the Mags Court. I was then asked to act as an independent legal adviser in relation to a temporary event notice hearing for Licensing where my client had objected to the extended hours on the same issues of noise. Both managers tried to make me do the hearing. We both to the SRA and I had to obtain written advice not to act as I would not be independent. I stepped down but there was no apology for the stress and anxiety. The code should cover unregulated organisations as I work in Local Government. There is no sanctions when I worked there as these managers were the Deputy Monitoring Officer and Monitoring Officer and responsible for investigating my complaint when they were the problem. Spoke to HR and they said to raise a grievance which would be v stressful. I decided to find another job. I was then against my better judgement pushed into a Planning Inquiry where I had not done one for many years. I struggled with the technology and the law and the client complained. All the stress from this job resulted in the first time in my life going off sick for my two months notice period and then starting a new job on a lower grade. Essentially I felt I was pushed out of my previous job by the behaviour of managers. I was also turned down for promotion even though I was an experienced lawyer and Deputy Monitoring Officer.

12.
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.

Yes as above.

13.
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.

Yes as I had experienced as a Locum Solicitor in Local Government being bullied and harassed and for the same reasons above. It not the first time I have experienced this but this must cover unregulated organisations such as local government.

14.
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?

Yes I agree as well.

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

No.

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

No

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

No

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.

Yes.

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

No

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

No

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

No

Rule changes on health and wellbeing at work - Consultation

Response ID:99 Data

2. About you

9.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

10.
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.

Yes. It is important that we set out the requirement to treat people fairly at work explicitly in the Codes of Conduct. People who are bullied or mistreated at work are less effective and are likely to provide a reduced standard of service through no fault of their own.

11.
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.

Yes. It is the responsibility of Partners and senior managers of a law firm to ensure that staff and colleagues adhere to acceptable standards of behaviour.

12.
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.

Yes. Case law around the Employment Rights Act 1996 makes it clear that requirements around fair treatment extend to contractors etc. both in terms of how they are entitled to be treated and how they are expected to treat others when in a workplace. It would be perverse if similar standards were not required by regulators. There is an expectation that - for example - contractual terms and conditions are applied to contractors expecting them to comply with the Bribery Act 2010 and ss45-46 of the Criminal Finances Act 2017. Similar requirements could apply to behavioural standards.

13.
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?

Yes. It should be clear that behaviour outside work will be regarded as a regulatory issue where the behaviour reflects on conduct which would be regarded as unacceptable in the work environment such as sexism, racism or bullying.

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

Behaviour outside work may be regarded as a regulatory issue where such behaviour involves conduct which would be regarded as unacceptable in the work environment such as sexism, racism or bullying.

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

Specific mention should be made of mistreatment at work in breach of ERA and the Equality Act and sanctions for such behaviour, such as subjecvting whistleblowers to detriment, and for sexual harassment should be proportionately higher.

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

My view is that the public expects high standards of behaviour in the workplace and having a strong regulatory message can only enhance the profession and therefore the delivery of legal services.

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.

Yes.

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

It is essential that physical and mental health are considered at an early stage of any investigation to make sure that such factors are taken into account as appropriate. It is also critical that people are not allowed to practice if their health issues make it impossible for them to deliver services effectively.

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

Response ID:102 Data

2. About you

9.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

10.
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.

Having worked across numerous law firms I have encountered a degree of unfairness. I could attribute this treatment to a numerous of factors. I am a young female working in top management and ageism is a real concern. In my experience, Law firms have an antiquated to age diversity and do not promote the views of younger staff. There is a culture whereby the higher PQE you have, the more respect you demand, and this approach does not promote fairness. This is a very vulnerable position to be in when you are expected to challenge poor behavior, due to the risks of it effecting your professional development and other opportunities within the firm. It is important non qualified individuals, junior staff and support staff have protection, as often this group is overlooked due to their lack of fee earning capacity.

11.
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.

Yes, absolutely. Over the years, in previous firms, there have been numerous occasions where I have challenged poor behavior of partners. One involved, a partner hanging out of a window of the office shouting profanities, another sexual harassment and another a racist post on social media. In all cases, the partner hierarchy prevailed and no action was taken against the individuals. Had there being a rule in force at the time, myself and other staff in the firm would have had an obligation to self report, which may have resulted in a different outcome.

I think the rules should make it clear that this obligation applies to anyone working in a law firm and not just regulated persons. It is often non qualified and support teams who may notice poor behavior and identify risks to clients.

12.
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.

Yes for formal employees as per my answer above.

13.
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?

Yes. Business development and networking would fall outside of the direct delivery of legal services and should be captured by

the requirements. This should extent to any event organized by the firm including social events and charity events.

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

I am a single mother of two young children. I am also part of senior management and being present at executive board meetings is essential to enable me to perform my role and for my professional development. Our monthly executive board meetings are arranged at 4pm to 6:30pm. This is a prime time for any parent as it is when the children need feeding, homework and putting to bed. It has been suggested to me by the senior partner that I should put my children in front of the TV so that I can attend the meeting remotely. I would like to see more protection for parents. It is unfair to be in a position to have to choose between being a parent or having a successful career. The Codes should include a mandatory requirement for firms to have a documented set of ethical standards. Firms should communicate how they will treat staff fairly and promote a strong ethical culture. For example: The firm acknowledges the difficulties of juggling family life and staff will not be required to work outside of core hours. Many firms use standard templates for equality/ethic policies and these often do not represent the actual culture or behaviors of the firm. A tailored approach should be taken when drafting a set of ethical standard based on the demographic of the firms staff. This approach would be beneficial for staff retention in law firms and induction of new staff.

There is also inequality based on the type of legal qualifications a person may hold. I have 20 years experience working in compliance and management roles in law firms, yet my progression is often limited because of an antiquated culture where a partner must retain key roles (SRO, MLRO, MLCO, COFA, COLP). This is unfair when the nominated partners do not do the work, know the rules or take any interest in providing support. I would like to see a change to the requirements of these roles to promote diversity and encourage non qualified staff to be able to fulfil these roles more easily, if they have the experience and are responsible for doing the work.

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

Yes. In my experience, staff/HR department will often not challenge poor behavior of senior individuals for self preservation reasons and the risks to their professional development and job security. I think the SRA would capture much more instances of poor behavior if there was a method to report behavior to the SRA on an anonymous basis or an assurance that anonymity can be guaranted.

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

No

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.

Yes.

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

No.

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

No.

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

No

Rule changes on health and wellbeing at work - Consultation

Response ID:109 Data

2. About you

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

11.
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.

Yes. I have worked at a few different law firms and have in my experience, found that smaller law firms tend to treat people less fairly at work.

12.
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.

No - it is not easy for individuals to challenge behaviour in the work place which might put their job at risk.

13.
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.

Yes - everyone in the work place should be treated fairly, regardless of their employment status.

14.
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?

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

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.

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

Rule changes on health and wellbeing at work - Consultation

Response ID:111 Data

2. About you

9.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

10.
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.

Yes - as a trainee I have been left at the whims of various different supervisors, some have been absolutely awful, while others have been delightful. Due to the significant control and influence that they have over my professional career there is significant pressure not to report performance issues to HR.

11.
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.

Yes, if there is no requirement to challenge this behaviour it is entirely possible that it will be dismissed and not taken seriously enough.

12.
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.

This should cover anyone that we deal with in a professional capacity, the risk is that failure to include the above would incentive firms to categorise members of staff as contractors in order to treat them worse.

13.
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?

Yes, this should be made explicit. External relationships can still exert the same pressure professionally.

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

The requirement for supervisors specifically to treat trainees with respect and dignity, there is a culture of "I had to put up with it" amongst some supervisors which leaves many trainees suffering needlessly out of a sense of spite. This has also caused issues with LGBTQ employees particularly trainees being in a position whereby they are not comfortable being open with their identity due to the bigoted views of a supervisor.

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

No comments.

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

It will only be a good thing for these proposals to go forward.

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.

Yes - failure to meet and comply with regulatory requirements is clearly not suitable to act as a solicitor.

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

No.

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

Given the increased concerns regarding immunocompromised employees, there should be some protection for these employees in making sure that they are not unduly pressured to attend the office in person or expose themselves to risk due to the whims of a particularly "office minded" supervisor.

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

No.

Rule changes on health and wellbeing at work - Consultation

Response ID:113 Data

2. About you

9.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

10.
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.

Yes I agree. Everyone should be treated fairly. I come from a working class background. I did not go to university as I had to work. I studied and qualified as a lawyer studying at nights and weekends whilst working full time. I have on too many occasions felt judged by my accent and the way I achieved my academic qualifications.

11.
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.

Yes I do. By being silent to inappropriate behaviour you are in affect consenting to it and fuelling a negative and poisonous environment.

12.
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.

Yes it should. Everyone should be treated with equal respect whether employee, consultants, contractors etc. Its a mind set and lifestyle of a form of behaviour that should be consistent.

13.
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?

This is not quite so simple. Outside of work colleagues can become friends and their relationship can change as can the informality.

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

Training is paramount. Its pointless just issuing a policy that everyone must read. Regular positive training and promotion of

embracing an inclusive workplace that is not judgemental.

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.

It depends what you mean by meet regulatory obligations and be subject to regulatory proceedings. I really do not think lawyers should live in permanent fear. There is far too much defensive lawyering as I call it. Everyone is frightened to do anything. We must not have a culture of going straight to one thousand per cent punishment. We are all just people after all.

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

Be careful not to destroy the profession. I see so many lawyers packing in law as they have had enough of the constant threat to report them, warn them, regulate them. It has to be done in a positive way. Training, positive enforcement. Not the constant threat of being reprimanded. The profession is like no other. Lawyers are 24/7 aware of what they say, what they do. They avoid giving opinions about anything unless giving legal advice within their job.

Response ID:116 Data

2. About you

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

11.
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.

I entirely agree.
During the course of my 10 year + career in law I have been appalled at the level of bullying and intimidation.
Employers often rely on the fact Lawyers won't easily quit their job or the profession owing to the pride they have and the sacrifice they made to get there.
Golden handcuffs are also often used as a means to exercise control over legal professionals.

12.
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.

I agree.
However, there must be the highest level of protection for those who come forward. And a robust anonymous process for doing so.
For me, if a "name" is presented to the SRA - the SRA should be able to sit within the organisation at which the person named works, for as long as it takes in order to establish if the allegations are to be upheld. The person named ought not need divulging to the firm - but just simply that someone is being investigated.
The SRA would swiftly get an understanding of the culture from spending only a short period of time in the organisation and questioning staff randomly.

13.
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.

I am impartial.
I think it could be rolled out in stages.
So first, deal with the issue of colleagues / management behaviour.

14.
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?

I am impartial.
As above, I think it ought to start simpler. And perhaps expand.

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

Only so as to incorporate my answers above.

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

Yes- I think my suggestion makes the most sense (albeit resource heavy!). I think those referred to the SRA ought to be investigated. Naturally, the reports that lead to an investigation ought to be substantiated by either witness testimony, or evidence (such as aggressive or bullying emails etc).

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

no comment.

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.

I agree as this highlights the severity.

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

Only so as to incorporate my answers above.

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

No comment.

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

No comment.

Response ID:122 Data

2. About you

9.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

10.
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.

Yes. It is integral to the honour and respectability of the profession.

11.
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.

Yes. Inappropriate behaviour is unacceptable of any professional.

12.
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.

Yes. There is no place in the profession for toxic behaviour.

13.
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?

Yes - even outside of the workplace, professional standards should be upheld. It should also be made explicit in the new wording for the avoidance of all doubt.

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

No.

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

No.

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

No.

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.

Yes. All aspects of the profession should be included.

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

No.

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

No.

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

No.

Rule changes on health and wellbeing at work - Consultation

Response ID:125 Data

2. About you

9.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

10.
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.

Yes. From the perspective of a trainee at the start of their career, it is very easy to be pushed down and treated badly, with little clear protection in place to fall back on. I think it should already be the case that firms treat people fairly at work and it is disappointing to be joining a sector where unfair practices are rife. I think the introduction of this Code will be a start at producing a fairer profession with less ill-effects on those at all levels, but particularly those entering the profession.

11.
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.

I think the idea of having to 'challenge' someone, particularly if you have been subjected to bullying or harassment, comes across like an uphill battle and a daunting concept. It is undoubtedly crucial for those witnessing subpar behaviour to call it out and report misconduct on behalf of those who may not be strong enough to do so themselves, but this duty should be made clear. There should certainly be a requirement for behaviour to be reported and challenged but I think it needs to be clear that it need not only be the person who is suffering from it who can report it or call it out.

12.
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.

Yes. I think it should also cover trainees, paralegals, legal assistants etc and should be aimed at producing a minimum standard of treatment across the legal industry. It is not enough to apply only to those qualified or working internally in a firm, it should also extend to anyone with whom they have professional contact in order to try and raise the standard universally and not just in a few select areas. As a trainee, it feels like there is very little protection for those at lower levels to be treated with respect, and making the Code apply to those of us in that position would be invaluable in helping people come forward.

13.
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?

I think it should apply to behaviour outside the workplace, because many individuals may feel that the ill-treatment continues beyond the office and there should be no place for these behaviours in law firms. If it did not extend this far then it may be used as an opportunity for such behaviour to occur away from the office. Further, with the increase in hybrid/remote working styles it is imperative that the definition of "workplace" extends beyond a physical location in order to protect those who may be

fully/partially remote. As such, it would be more simple to extend the obligations beyond the definition of a workplace to avoid ambiguity in construing where the workplace is.

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

N/A

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

You need to ensure the enforcement system is accessible for individuals at all levels of the profession, including consultants, experts ("colleagues") etc, so they can easily report a complaint without fear of repercussions, and with faith that speaking up will result in a positive change to those suffering in negative workplaces. Detailed guidance on when you can help would be useful to enable people to make an informed decision about whether to report behaviour. However, a significant issue I have experienced is that many are scared to speak up due to fear of how it will impact their career or that it will not achieve a positive change. You need to manage the expectations of those relying on the new Code so that they are aware from the outset what the SRA's enforcement strategy/steps when invoking the new code looks like, how long it will take and the possible outcomes.

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

I hope it will clarify the position on wellbeing at work and encourage more people to come forward and report complaints so that the minimum standard of behaviour and respect in the industry is improved.

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.

It is helpful to clarify the Codes and make the meaning clear to those subject to them. However, it is important that this is not used to discriminate against those with disabilities in general and is only invoked as a last resort when ill-health makes it impossible for an individual to safely act.

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

Some guidance and examples on the new wording would be helpful, such as an example of being unable to 'engage' with your regulator.

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

It would be useful to have a maximum length of time imposed for the investigations to conclude. This could reduce anxiety for those going through the process. I think it will also be important to have a comprehensive list of support sources before investigations to begin to ensure individuals are looked after. There should also be an appeal procedure.

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

N/A

Response ID:152 Data

2. About you

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

11.
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.

Yes. Make a better environment, and regulate some peoples behaviour in the workplace more

12.
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.

Yes, it needs to be addressed and will give employers formal grounds to address it more easily

13.
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.

Yes, across the board, encourages respect in the profession

14.
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?

Diificult question to answer -but generally if it is colleagues then they should owe a duty of respect towards each other, even out of work really

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

No

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

It should encourage employers and staff to think more about the way they treat others

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

No

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.

Yes. It will uphold the integrity of the profession

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

No

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

No

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

No

Response ID:158 Data

2. About you

9.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

10.
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.

Agree.

First, this is to bring the SRA Codes of Conduct into line with requirements in other regulated professions. As stated in this consultation paper, at least six other regulated professions in England & Wales have explicit requirements of regulated persons to treat people fairly and with dignity. Making it explicit is a clear statement by the SRA that certain poor behaviours are not acceptable and will not be tolerated without consequences.

Second, it is unrealistic to assume that bullying and harassment do not exist in the legal profession that is highly competitive and full of aggressiveness. It is therefore important to have a requirement for the SRA to enforce in order to scrutinise and deter certain behaviours, to punish wrongdoers, and to maintain the integrity of the profession.

Third, it is especially important to make it explicit in the Codes of Conduct of the legal profession. When peoples are treated unfairly at work by lawyers, not only do they lose trust on lawyers, they have little, if any, access to competent legal advice and representation compared to other lay persons who work for and with other lay employers. Solicitors care about the opportunities to join other law firms laterally. Barristers care about the past, present and future opportunities to receive instructions from certain law firms. While these economic considerations harmonise business relationships, they severely limit the choices of lawyers whom victims can seek help from. Lawyers are entrusted with powers. Unfair treatment at work is clearly one kind of abuses of power that jeopardises the integrity of the profession. It is therefore important for the SRA to have a cause to step in and to strike a fairer balance among the interests of all stakeholders.

11.
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.

Agree, but challenging such behaviours will not be without risks, and having a provision or some mechanism that addresses the issue of retaliation will be helpful in managing such risks.

The legal profession works in a rather strict hierarchical structure that ranks practitioners by seniority and years of post qualification experience. Billable hourly rates are substantially based on the years of post qualification experience, adjusted when pitching for specific matters according to the relevance of substantive experience. Economically, the effective bargaining power of each fee earner is reflected by their fee earning powers, i.e. hourly rates, among other things such as books and other business opportunities that they can bring in. And these reduce to job titles such as equity partners, salaried partners, senior consultants, consultants, managing associates, senior associates, associates, trainees and paralegals. The higher one is positioned in the hierarchy, the more they are valued and relatively irreplaceable. These create an inherent risk for the

management to cover up the misconducts of those higher in the hierarchy, reason them as business decisions and accuse the victims lower down the hierarchy for not being engaged or not communicating well while the victims are indeed bullied, harassed and retaliated. One obvious example is that when a partner or senior consultant bully a paralegal, because they are more likely to become in-house counsels and partners that can bring in businesses, the victim paralegal is the one to be let go, coerced to sign and threatened on a separation agreement with non-disclosure clause, and find it difficult to find work in the profession again because of the lack of recommendations. When others have seen adverse consequences of those who stood up for themselves or others and challenged certain behaviours, they will either keep quiet about what actually happened or say only what the powerful ones want them to say. This is because they want to keep their own jobs and will therefore not do anything that go against the power that feeds them. As a result, challenging behaviour will be reduced, people become quiet and either tolerate certain behaviours to fit in or quietly seek their way out, and there can be no accurate statistics on misconduct and retaliation.

12.

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.

Agree. Who? Anyone who they deal with in their professional capacity as solicitors. Because these are situations in which they hold themselves out and/or are known as solicitors, SRA regulated persons, their behaviours thus affect the integrity of the profession and the SRA shall have authority to regulate such behaviours. In terms of wording, it does not harm if a non-exhaustive list on "who" are covered is included.

13.

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?

Agree. When and where? Anytime and anywhere that they deal with others in their professional capacity as solicitors. Because these are situations in which they hold themselves out and/or are known as solicitors, SRA regulated persons, their behaviours thus affect the integrity of the profession and the SRA shall have authority to regulate such behaviours. In terms of wording, it does not harm if a non-exhaustive list on "when and where" are covered is included.

---

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

When the wordings are broad, what the wordings mean will rely on the actual enforcement actions. An analogy can be drawn to the U.S. Federal Trade Commission (FTC) enforcement power against "unfair" acts or practices in or affecting commerce. What constitutes "unfair" are determined when enforcement actions are actually taken, and the enforcement actions are of precedential values.

In the U.S., American Bar Association (ABA) Model Rules of Professional Conduct (MRPC) are adapted by many states. Rules 8.4 Maintaining The Integrity Of The Profession states that "It is professional misconduct for a lawyer to: … (g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules." (See https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_8_4_misconduct/)

It is interesting to note that ABA MRPC Rule 8.4 uses the wording "conduct that the lawyer knows or reasonably should know is harassment or discrimination", which denotes actual knowledge of the fact in question. The bases are listed because there are legally protected classes in the U.S. Constitution, federal and state laws. While the U.K. has no one written constitution, it is worth considering whether some known bases of harassment or discrimination may be listed in the new requirements or any accompanying guidelines. If no basis are named explicitly, it would be easier for solicitors to lose sight of what the requirements

actually entail. If some bases are named explicitly, current and future solicitors would be constantly reminded of such requirements.

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

The consultation paper acknowledges that the SRA would "recognise the difficulties that junior staff may face both in raising concerns and in challenging their seniors." Retaliations are not possibilities but probabilities for practical reasons as elaborated in the responses above. California has an explicit rule addressing retaliation, Rule 8.4.1 Prohibited Discrimination, Harassment and Retaliation. It may be of reference value if the SRA is serious about enforcement. University of California, Berkeley Center on Comparative Equality & Anti-Discrimination Law has compiled a pack of materials on the topic, "Rule 8.4.1 Program Preventing Lawyer Harassment: California's New Regulatory Approach" available at https://www.law.berkeley.edu/research/berkeley-center-on-comparative-equality-anti-discrimination-law/our-working-groups/sexual-harassment-and-violence/rule-8-4-1-program-the-duty-of-lawyers-to-prevent-harassment-californias-new-regulatory-approach/

Another enforcement approach that may be worth more attention of the SRA is that there should be enforcement mechanism against certain poor behaviours done by SRA regulated persons outside of England & Wales. England & Wales is often seen as leading other common law jurisdictions. It is not uncommon to see that many lawyers in former British colonies and current commonwealth jurisdictions are also dual qualified in England & Wales, i.e. SRA regulated persons or BSB regulated persons. Foreign persons including foreign regulators of lawyers pay high respect to England & Wales regulators. Foreign workers may join certain law practices because they are headed by SRA regulated persons. It would damage the reputation and integrity of England & Wales legal profession if SRA regulated persons bully and harass others outside of England & Wales but the SRA does not enforce against them. Many more evidentiary hurdles exist in foreign enforcement than local enforcement, and it may be helpful if some mechanism can be in place perhaps through the SRA collaborating with foreign regulators of lawyers addressing the unique challenges in scrutinising certain poor behaviours of dual qualified lawyers outside of England & Wales.

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

No comment

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.

No comment

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

No comment

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

No comment

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

No comment

Rule changes on health and wellbeing at work - Consultation

Response ID:163 Data

2. About you

9.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

10.
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.

Yes, whole heartedly so. It is almost impossible for concerns regarding colleague well-being and the fairness of staff treatment to be recognised within a conveyancing environment, with efforts to do so often being ignored, or when acknowledged, treated with disregard and gaslighting feedback. My experience is based in a volume conveyancing firm, and the incredible way in which staff are expected to achieve the impossible, whilst running caseloads of up to 400 files and pressurised to complete unlimited overtime is a detriment to my own well-being and the well-being of my colleagues

11.
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.

Yes. There does not appear to be any current legislation which forces conveyancing firms to acknowledge their accountability in maintaining a healthy working environment. There is no regulation of the allocation of an achievable amount of work to any individual or team, and no consequences for the inception and continuation of a toxic work environment, unbalanced team structures and neglect of staff overall. Senior management are able to disregard the concerns of their staff and consistently overlook practical suggestions for ways in which to improve working conditions, staff treatment and internal procedures. The support of the SRA to bring about legislation to which firms could be held accountable can only serve to improve this in the long run.

12.
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.

Yes, all staff considered to be within a firms employment, whether contractual or freelance based, should have the benefit of this protection, and the ability for this legislation to bring to light their accountability to consider and enforce employee fairness and well-treatment.

13.
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?

I do believe this should be the case, although I understand the difficulties of enforcing this extension of the legislation change when considering behaviour out of the workplace.

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give

details.

The changes proposed would be beneficial, and I would hope sufficient to encourage law firms to acknowledge the importance of well-being and fairness within the work place, if only on the basis that appropriate action can be taken by the SRA, to financial their detriment should their failure to comply be ongoing and well documented, as would be the case in my specific experiences

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

I do believe employees should be encouraged to keep record of all concerns to ensure adequate evidence of unfair treatment can be provided to the SRA, as it is often the case that firms are able to quash the claims of their employees by the manipulation of events which are not formally reported to HR, or are deleted by "proactive" IT manoeuvres, such as the regular mass deletion of emails from their staffs' inboxes. It is the right of any firm to defend their course of action and decision making, but this is made easier in instances where mistreatment has occurred due to ease in which documentary evidence to unfairness, inappropriate comment and manipulation/ gaslighting are unavailable for referral to any governing body or higher authority.

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

Please see earlier comments

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.

Yes. In my opinion, failure to adhere with the proposed changes should hold significant consequences for the allowance of any registered solicitor, or firm, to practice. This would encourage compliance not only to the firm's senior partners, but to their immediate management teams, who currently do not appear to address matters with senior partners in an adequate or effective manner.

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

I can only attest to my own experience of the mistreatment of employee well-being and Heath within a law firm. To give specifics, I have had numerous conversations with my line manager, and other line managers with the firm, regarding the mental well-being of myself and my colleagues. No action has been taken to provide additional resource or support has been provided, and a constant mantra of 'it will get better' has been used beyond measure. My first conversation/ correspondence to this effective would have been over 12 months ago. Despite several further conversations and instances in which myself and my colleagues have been in visible distress whilst in our office, no realistic improvement has been made to inflated caseloads, unrealistic expectations and failure to acknowledge and work upon the struggles of our staff members.

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

Rule changes on health and wellbeing at work - Consultation

Response ID:164 Data

2. About you

9.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

10.
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.

Yes, strongly so. The last 2 years have been awful. I work in a volume conveyancing firm based in Leeds. Staff are treated awfully. We are given way too much work while management sit back and reap the rewards.

11.
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.

Yes I agree. All management should put staff well-being ahead of all else and any failure to adhere to the new standard should be challenged immediately.

12.
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.

This agreement should cover all colleagues no matter what level. All members of staff have the right to be treated with kindness and respect.

13.
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?

This should apply only in the workplace. Outside of work people should be left alone.

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

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.

Yes, I do agree. A certain standard should apply and be adhered to.

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

Rule changes on health and wellbeing at work - Consultation

Response ID:170 Data

2. About you

9.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

10.
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.

Yes, feel that it has always been an unwritten part of the code that has been open to interpretation. Think it can only improve the profession and assist in change

11.
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.

Yes as culture often goes unchallenged due to the power imbalance and I think if its part of the code juniors will be more protected and supported

12.
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.

Yes, everyone who you have contact with should be treated fairly and with respect

13.
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?

Yes it should apply outside workplace to anything that is slightly related to your role and the delivery of legal services

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

No

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

No

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

Think it will assist in challenging unfair treatment

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.

Yes, it should be explicit that it covers such matters

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

Might want to extend to social media as well like RCIS

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

No

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

No

Response ID:171 Data

2. About you

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

11.
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.

Yes. Without an incentive to treat people fairly at work, firms are currently free to act in ways which runs counter to this principle, provided that their conduct does not constitute unlawful behaviour.

12.
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.

Yes. Though it will largely require firms to self-regulate. Many well-intended "values" statements HR policies will have this sort of behaviour codified, but when push comes to shove, firms will almost invariably put profit ahead of the welfare of people (as they are first and foremost economic entities).

13.
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.

Yes - purely because it seems sensible to do so. However, query how practicable this would be.

14.
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?

I think the SRA needs to be careful here that it does not overreach its remit. In addition to its primary regulatory function, I think it ought to provide a place of recourse and protection for legal professionals insofar as the workplace is concerned.

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

I like the reference the paper makes to the Institute of Chartered Accountants in England and Wales (ICAEW) guidance on standards of behaviour, which says 'we will treat others with dignity, as
we would want to be treated'. Could that "golden rule" (as philosophers call it) be integrated into this wording? It would be quite revolutionary for law firms, but many IHC already operate on this principle.

On a separate point, I think that firms promoting people into managerial duties should be under an obligation to demonstrate that managers have been trained in how to work with people; this training should include emotional intelligence. There should

be a pass-fail element to this training. Until a manager has passed the training, they ought to be held back from managerial duties. This would not prevent them from dealing with clients (where they can be charming and courteous), but would protect junior colleagues from unstructured or unhealthy management. The training should be administered and monitored independently - firms should not be able to self-certify.

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

The paper states that "...it will only be appropriate for us to investigate allegations about behaviours that seem likely to present a serious risk to clients, colleagues or the wider public interest."

A real problem in law is diversity, in particular career progression for flexible workers and primary caregivers, who cannot devote as much time as non-flexible or non-primary caregivers. This creates an imbalance in the profession, and any behaviour which penalises this (e.g. demanding 24x7 attention to clients, which only certain people can give) could be said to be a "wider public interest" issue for the purposes of the above statement.

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

If they gain traction, they will help create more of a level playing field and a greater sense of inclusion in the professions, for the reasons outlined above.

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.

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

The wording might have the unintended consequence of making it easier to bar someone from the profession who had committed an error and perhaps even covered it up, due to e.g. mental health issues (such as a toxic work environment, where senior lawyers scapegoat more junior lawyers.

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

Only as outlined above.

Rule changes on health and wellbeing at work - Consultation

Response ID:176 Data

2. About you

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

11.
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.

Yes
We are a collegiate profession and we should treat all members and associated staff with respect, dignity and with fairness.

12.
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.

Yes
It is our collective responsibility to hold the profession to the highest standards of probity

13.
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.

Yes

14.
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?

Yes and yes

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

No

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

None

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

None

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.

I worry about unintended consequences of this

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

No

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

None

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

None

Rule changes on health and wellbeing at work - Consultation

Response ID:186 Data

2. About you

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

11.
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 agree with the principle that these standards represent. However:
i. We do not believe it is necessary to include a separate standard to this effect as this appears to already be covered by the existing Standards & Regulations (e.g. Principles 2, 5, and 6 and Overseas Principles 2, 5 and 6). Could this not be made clear/bolstered by issuing guidance to that effect?
ii. If these standards are to be introduced, the standard for Solicitors, RELs and RFLs is drafted differently to the standard for Firms: the standard for Solicitors, RELs and RFLs breaks the obligation to treat colleagues fairly and with respect and not to bully, harass or discriminate unfairly against them into two sentences. It therefore reads as if the second sentence is an elaboration of the first. By contrast, the standard for firms deals with it in one sentence, which suggests each point is separate. This creates ambiguity as to what each standard means. To avoid this, the drafting should be consistent (i.e. the first sentence of the standard in the Code for Firms should be replaced with the first two sentences from the standard for the Code for Solicitors, or vice versa).
Further, words such as 'harass' and 'discriminate' have legally recognised definitions, whereas words such as 'fairly' and 'bully' do not and are subjective terms. The terms remaining undefined could result in numerous reports for fairly minor examples of this behaviour, which could otherwise be dealt with by firms internally. It would be helpful if 'fairly' and 'bully' were defined within the standards or updated guidance to make clear what the SRA believes they mean.

12.
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.

The obligation to challenge may be better placed on firms by putting requirements on them to create the right environment and to demonstrate a culture which enables challenging unacceptable behaviour, rather than placing an obligation on individuals at this stage. This appears to already be in process via the recent Thematic Workplace Culture Review published by the SRA, which seems to be a better way of dealing with this.
If an explicit requirement is introduced, it will be difficult to implement. We note the consultation document acknowledges the difficulties that junior staff may face in challenging their seniors and says this will be dealt with, if the proposed changes to the Codes of Conduct are made, by making consequential changes to update the SRA's guidance and enforcement strategy. This difficulty will apply to all levels of the profession, not just the junior levels as equally it may be difficult for a partner to report another partner. An alternative would be to amend the standard to require either the challenging or reporting (internally to, e.g. HR or someone appropriate) of unacceptable behaviour and then have the onus on firms to manage this issue / report it where needed.
Further, if there is to be an obligation to challenge then SRA guidance on how to challenge and what to challenge would be helpful.

13.

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.

To the extent a requirement to treat others with whom we work with respect exists, whether through a new standard, updated guidance or the Thematic Workplace Culture Review, we agree that employees and contractors, consultants and experts who fall within the SRA definition of 'employee' within the SRA glossary should be required to treat those whom they work and with whom they have contact with respect. This is desirable to keep things simple (an individual will not necessarily know if the individual with whom they are interacting is an employee or a contractor), and because the contractual nature of an individual's relationship with a firm should not affect whether they can expect to be treated respectfully by others.
However, firms should not be held responsible for how other third parties treat their own employees and others with whom they work.

14.

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 is not clear why the new obligations need to apply to behaviour outside of the workplace.
This seems to be an area that would be fraught with ambiguity and extremely difficult for firms and COLPs to apply. Additional and detailed guidance would be needed to make clear what constitutes "behaviour in the context of a relationship between colleagues" as compared to a "purely personal relationship" and where/how the distinction between the two is drawn.
For example, would a "purely personal relationship" be one that a solicitor has with a person whom they have only ever known outside of a work context? What about two people who were friends/acquaintances before becoming colleagues at the same firm (or even before entering the legal profession); once they work at the same firm, could they be said to have a "purely personal relationship" when meeting/socialising after work/at the weekend?

---

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

We have no further comments.

---

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

See our responses to Questions 1 and 2.
Is this not already covered in the existing SRA framework? It seems the SRA guidance could be updated, as oppose to introducing a new standard.
In addition, as drafted, the new standards would appear to not apply to staff (including England & Wales qualified solicitors, RFLs/RELs) working in Overseas Practices. It should be clearly confirmed whether this is the intention or if, in fact, the SRA would seek to apply these rules to individuals working in Overseas Practices, the extent of such application should be clearly stated in the rules/guidance.

---

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

Please refer to our comments at 6.

---

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.

The proposed approach is likely to create a reluctance from people to come forward with and to possibly conceal health issues, particularly mental health issues due to fear of it impacting their career. It might also conflict with firms' obligations under disability discrimination laws.
In the consultation the SRA lists various other professional bodies that already have provisions for limiting professionals' ability to practise where health issues affect their fitness to do so. However, the SRA would need to look very carefully at how those

other bodies implement this in practice and communicate the rules and guidance to their members so as to ensure:
(i) the rules are implemented fairly in a way that allows people to continue to practise so far as reasonably possible and appropriate; and
(ii) individuals are open with their regulator and feel comfortable sharing this information without fear of draconian consequences.
It may be better to impose obligations on firms to introduce guidance, support and supervision to allow employees to manage issues internally. Obligations on individuals to seek support at work could also be introduced.
It should only be the most extreme cases which should require a report to the SRA, yet such cases would already be covered by the existing SRA framework regarding fitness to work. So we query whether any change is in fact needed in this regard.

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

Please refer to our response to question 8.

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

Please refer to our response to question 8.

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

Please refer to our response to question 8.

Rule changes on health and wellbeing at work - Consultation

Response ID:188 Data

2. About you

9.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

10.
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.

Yes. This places an obligation on the firm and makes it a regulatory issue if not complied with. Colleagues have redress if treated unfairly and will feel more able to complain about inappropriate behaviour.

11.
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.

Yes. If forces firms to put in place procedures for dealing with inappropriate behaviour and makes it an obligation so they are more likely to take notice of what it going on and to act.

12.
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.

Yes. The health and well-being of colleagues is affected by everything around them so to ensure that colleagues are well protected, the requirement should cover contractors as work may be affected if they are not treated fairly . It also forces certain professional standards which can be applied across the board.

13.
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?

No. Whilst people can be placed under obligation to behave in a certain way in the workplace , outside the workplace may be hard to measure or police . Direct delivery of legal service is more appropriate. Outside workplace is too vague or wide .

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

The wording to include all workers and cover support staff . That is the group most likely to get bullied or treated unfairly and the effect of experiencing this behaviour can affect their work and in turn, the work of colleagues.

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

Colleagues to be given adequate chance to defend themselves:

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

Easier for colleagues to raise concerns

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.

No . Regulatory proceedings imposes additional stress on individuals . Whereas their health conditions may not impact their ability to work . Being forced to undertake regulatory proceedings may make their health worse . Performance of duty must be distinguished from taking part in misconduct hearing .

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

No

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

Huge concerns on how conditions can be targeted towards the risk posed by the solicitors continued unrestricted practice. Hard to see how the proposal can work without have specific examples.

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

The effect of the proposal could be non disclosure of health conditions due to fear or effects on solicitors income and livelihood.

Response ID:190 Data

2. About you

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

11.
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.

There is a lot of regulation in this space – given the changes in the Code recently – so the legal profession and SRA are aware and set up to deal with bullying, harassment and discrimination.

We agree this is an important topic and in principle, we agree with the proposal. However this is caveated by the following point – to the extent that it is an area that is crucial to how individuals perform in their role in the workplace. We believe the question that the Regulator must grapple with is – in such instances a solicitors health will be very subjective - how do the SRA propose to be objective about this in terms of context/circumstances and/or will the SRA seek to gain an understanding of all sides of the equation? Particularly when one considers the impact of an SRA investigation and the time that this can take.

These are cultural questions – both from a learning and behavioural perspective. How will they be dealt with and followed up on?

12.
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.

We are unable to proffer a defined view in terms of this proposal as it currently stands. The proposal is very broadly drafted and as such we would preface our answer to this point with the following statement: it is our understanding that the SRA already has the power to challenge behaviours of individuals who work within a law firm – when it relates to their conduct in the domain of providing legal services. The other main question we have is - how far does a firm have to go to show that it challenges such behaviours which do not meet the new standard and what will suffice from an SRA perspective?

Given the above, we would question whether this should be included as an explicit requirement – but we would question how far the SRA propose to pursue this into private lives and/or conduct which we would consider to be the domain for Employment law and HR.

In terms of extending it to relationships between work colleagues – will this also cover those who don't provide legal services? We presume it will – given the SRA's powers over non-admitted individuals – but we would want this point to be clarified.

13.
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.

As a firm, we ask that everyone, irrelevant of their position, upholds our values such as treating everyone fairly and with respect,

with a zero tolerance on bullying, harassment and discrimination. As a firm, we also encourage such behaviours to be challenged in order to foster a collegiate approach. With this in mind, we do not foresee an issue for this approach to cover the above mentioned colleagues.

14.

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?

We would ask you to be mindful and ensure the appropriate considerations are made in relation to any potential invasion of privacy. Where does the boundary end when it comes to the working life and private life if the obligations apply to behaviour outside of the workplace? If these new obligations applied to behaviour outside of the workplace, would this arguably be encroaching on individuals' private life?
We would also asked you to consider whether there are any other regulatory bodies that would have the same approach as referenced re contractors - if the SRA does extend the obligations in this way, then it should be made explicit in the new wording.

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

We consider that the wording could be more explicit – in order to clarify the SRA's approach with this. Will it sit In between the space of bullying and harassment and treating colleagues fairly?

How will the SRA deal with this and unconscious bias?

There is already a framework in place for dealing with bullying and harassment - so where will this sit? Law firms will require more guidance from the SRA to address these points before we can consider any changes to the proposed wording – other than it would benefit from being clearer and address the specifics that the SRA proposes to deal with.

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

We understand that action is already taken if there is belief that there's been a serious regulatory failure so we would like to understand how this proposed approach is different please?

We note the comments regarding junior staff facing issues in raising concerns however, we do not think this is an issue for this Firm as we encourage issues relating to treatment at work to be disclosed in order that we can appropriately deal with matters. Due to this, individuals raise issues internally and these are dealt with appropriately so we are unsure of the benefit in this proposed approach?

We would also ask you to consider the impact of this proposed approach and would encourage you to be cautious as this could mean that you will be inundated with complaints e.g. when an individual is being performance managed, they often complain about treatment. We note that the Consultation document comments that the SRA do not expect a 'material change to the number of cases they investigate'? We would ask how the SRA has arrived at this point of view? From the law firm perspective ,if all of the changes are implemented as they are currently drafted, surely there would be an increase in the number of reports that the SRA receive.

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

We consider that failure to challenge is a difficult space to deal with.

Indeed whilst it is possible to show policies and procedures for example; or the ethos at the firm ; this will be a challenge for firms to show they couldn't have done more.

The introduction of this proposed change, is in our view, likely to mean an increase in the number of reports that the SRA

receive – even in cases where there is no substantiated basis for the individual to make such a notification.

As ever, it will turn on the circumstances and context in any given matter.

We believe that with such issues – these would need be established objectively – however, our concern is in relation to the professional and personal boundary. The proposals as currently drafted (and their impact) go beyond employment contract [ie contractors] and will cover what happens both in and out of professional life/the workplace – and into personal life.

With this consultation – there does, in our view appear to be a moving of the regulatory goalposts and that the SRA is moving into an area it shouldn't be. Effectively – the SRA are looking to introduce a new test.

As stated above – there is an overlap – for example with discrimination [employment cases] – with the likely spike in the level and numbers of reports to the SRA – even when an individual has already made a claim to the Employment Tribunal. How would the SRA propose to deal with such circumstances?

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.

Key question one: how do the SRA intend to split out that it may well be the Disciplinary proceedings instigated by the SRA that could cause individuals to suffer from stress/anxiety/mental issues – especially when one considers how protracted SRA Disciplinary Proceedings can be – sometimes stemming over a number of years?

Key question two: In broad terms, we agree that the rules should make reference to being able to take into account a solicitor's health. However, a regulator must discern what information is relevant and that which is not relevant or comes from an unreliable source. The rules should not assume that all information will be considered, indeed, it may be improper to accept some information, for example medical records that have not been disclosed with the consent of the solicitor.

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

From our perspective, where we are made aware of health issues, we take immediate action and have had positive comments regarding our approach to health and wellbeing (even more so since COVID).

The comments regarding an individual's ability to participate with a disciplinary process however are interesting, given this is often the reason provided as to why someone cannot participate with the process.

We think that the wording in Rule 2 Assessment of Character & Suitability Rules should be changed to incorporate the words "all relevant factors".

With regards to Regulation 7.2, Authorisation of Individuals Regulations – in our view the new wording in bold goes much too far and is too wide. It places too much power in the hands of the SRA to curtail a solicitor's practice – whereby a solicitor may have a genuine reason for not being able to assist or take part in an investigation that is not connected in any way to ill health

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

In our view this consultation paper does not contain enough relevant data to enable an informed view to be given on such a question. For example – how many solicitors are there who are currently practising but have a practising certificate that is subject to conditions due to their health? Could the SRA share this information and/or give further information about what they have done to help inform those they have consulted. There should in our view be a focus on supporting those solicitors with health conditions or disabilities – particularly when it comes to potential enforcement.

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

This is an important area to address – particularly when one considers the impact on an individual's mental health where they

may or may not be considered to be in a position to practice. The key question here is how will the SRA view this – will there be an objective assessment and if so, who will carry this out? Where will the cut-off point be in terms of mental health? Is this another way of imposing a rule which could prevent solicitors from working if they have mental health issues that stem from practising – is this in keeping with the rights and/or aligned with the legislation that is contained within the Equality Act 2010?

Rule changes on health and wellbeing at work - Consultation

Response ID:198 Data

2. About you

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

11.
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.

The word "fair" is too vague to be a meaningful addition. Also life is not fair. Requiring people to obey the law is fair enough. Requiring them to follow some undefined standard of fairness is unacceptable.

12.
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.

As the new standard would be very hard to define it follows this requirement is not a good change too. Eg someone might think it unfair they are obliged to give pro nouns on a work email and someone else think that is essential. Someone might think it fair they leave early as they have a small child and someone with a dog at home might think it ought to apply to them.

The bottom line is life and work is not fair, although the obligations to comply with the Equality Act 2010 ie the law are something rightly expected of solicitors.

13.
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.

This is even worse. If a solicitor hires a transwoman accountant and the fundamenalist Islamic receptionist get into a debate at the reception desk who is right and what is fair?

14.
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?

Again what is the definition of being fair? If is fair if I had been up all night breastfeeding a baby as I often was before work that I should have to get into work at the same time as colleagues without children? In my view yes but in the view of others not. Is it fair I might have got job where someone who did not inherit the same IQ did not? Life is riven with unfairnesses. is it fair I who am not keen on socialising might not get on as well at work as someone who is the life and soul of the party? There is no way it is right to impose on solicitors duties to try to make an unfair world fair other than compliance with the law. Look at the mess Garden Court Chambers have got themselves into with the current Alison B litigation because there is an inherent conflict between women trying to ensure protection for our rights as a sex enshrined in law against some non legal desire of GCC to put the rights of trans people above that. it is a political minefield to try to be fair particularly when views clash.

It should be made clear that neither in or outside the work;ace is there a duty to be fair but simply duties to comply with the law. Indeed the law allows us to be unfair and indeed sometimes requires it eg age discrimination law allows some discrimination on age grounds eg those with less experience etc etc. The law is carefully thought out. A new duty to be fair would not be.

5) do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

Do not proceed with the change.

6) do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

Stick only to requirements to comply with the law. If we really have to have some new duty of fairness than be clear it is not a breach of the rules if you honest held a view on fairness eg if you think autism should trump ADHD or feminism trump trans or vice versa or fundamentalist religious belief should prevail over gay rights or vice versa. Or favouring someone black over Asian or set out what paperwork you need to prove your position under the rules in deciding what unfairness you can try to correct at work if you don't correct another.

7) do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

Better not to bother. It is a can of worms.

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.

I am happy with rules that require solicitors to comply with the law

9) do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

N/A

10) do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

It is never easy to be fair when some people are never ill and some are shirkers and some are genuinely very ill often.

11) do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

Yes, you need to look at all the trans litigation very carefully and check nothing is contrary to women's protected rights as to our sex (not gender) in anything proposed.

Hampshire Law Society asked us to name them, but not to publish their response.

We also received a number of responses from respondents who asked that we do not name them and do not publish their responses.