SRA CONSUMER PROTECTION REVIEW- PROTECTING THE PUBLIC OR EMASCULATING THE PROFESSION?

Against the backdrop of the Axiom Ince debacle, the SRA has launched a Consumer Protection Review. The aim of the Review is stated to be "protecting consumers when they place their trust in a regulated law firm". As we know, the SRA is awaiting the outcome of an investigation into its supervision of Axiom Ince which has been commissioned by the Legal Services Board and is being conducted by an independent law firm in Northern Ireland writes Jayne Willetts Solicitor Advocate of Jayne Willetts & Co Solicitors Ltd.

Some of my more sceptical readers may conclude that this Review is directed at deflecting attention from the SRA's alleged shortcomings in relation to its supervision of Axiom Ince but I could not possibly comment.

The Review is focussed upon two main areas – client account and the Compensation Fund but the authorisation approval process and the ongoing monitoring of firms are also included. The Review is not badged as a consultation because there are no firm proposals being made by the SRA at this stage. A series of webinars is taking place to inform the profession and "*to explore options*". The actual consultation is planned to commence in September 2024.

What is the problem here? The SRA discussion paper supporting the Review is heavy on lofty ideals and objectives – but light on evidence and data. One of the reasons for the Review is stated to be the overall increase in the number of interventions in 2023 but no data is provided as to the number of interventions and how this compares with previous years. The cost of these interventions, the type of firm involved and the reasons for the intervention would also be essential information. Whilst one could hazard a guess that the increased cost is due to the failure of a small number of "*accumulator*" firms, it is unsafe to conduct a full-scale review based upon guesswork. Hard evidence and data need to be available to the stakeholders to explain the need for change before this Review gets off the ground. It is not good enough to begin overturning the key elements of client protection to deflect attention from the SRA's shortcomings in the way it regulates and authorises firms and without more forensic evidence to underpin a review.

In relation to client account, the SRA has raised for debate a proposal to restrict firms from holding client money. The SRA intends to explore with other regulators, escrow account providers and insurers different approaches to managing the risks of holding client money and this could include alternative approaches to holding client money or certain categories of client money. The SRA wants to consider "*whether there are certain circumstances when it is or isn't prudent for firms to hold client money*". It is worth bearing in mind that the SRA already has power to iimpose conditions on individual practising certificates or a firm's authorisation. Is this not adequate protection where there are identified risks to client money?

Holding client money is a key element of the delivery of legal services. The majority of legal work involves transactions and the transmission of client money through client accounts. It is already difficult enough because of AML and sanctions requirements as well as the banking rule (Rule 3.3) for consumers to deal with solicitors. Does the profession need a further level of complexity imposed upon the solicitor-client relationship?

The "*options to explore*" for the Compensation Fund are more numerous and more specific. One of the more draconian ideas is to phase out the Compensation Fund and limit the safety net to insurance. The SRA suggests that "*Firms can choose to insure against fraud/ dishonesty by their staff or other directors but the insurance could only cover those who were not involved in the fraud (i.e. you cannot insure against your own dishonesty)*" Does this mean that some SRA regulated firms would have insurance to protect their clients and some would not? Where does this leave the hapless client in selecting a firm? The regulated legal services market is already tricky enough to navigate for consumers. Also, the cost of such insurance would be high and this would be passed on to the consumer.

Is this another example of the SRA's changing the rules for the majority because of the default of a tiny minority? Non-disclosure agreements: SLAPPs and well-being come to mind as examples. Client account and the Compensation Fund are key elements of the solicitor-client relationship – even unique selling points. Without them what use is the legal profession to the consumer – who might as well instruct an unregulated firm.

The SRA does have an unenviable task in policing the profession but it does have the opportunity every single time an authorisation application is made to scrutinise the financial common sense of the merger or acquisition. Two insolvent firms with poor management do not magically become one well managed solvent firm. The SRA could set up a panel of managing partner type experts to assist on a consultancy basis – they would know in a nanosecond whether a proposal was realistic or whether it needed further detailed investigation or immediate rejection.The SRA needs to focus much more closely upon improving its authorisation procedures. After all it was the SRA that approved the expansion of Axiom Ince and the other "accumulator" firms. It also needs to concentrate on its monitoring function. There was a time when the SRA (and its predecessors) used to inspect each firm every five years or so via its Practice Management Unit. This enabled a closer working relationship between the regulator and the profession. The regulator staff had more of a hands-on experience of the workings of law firms and the profession was given constructive criticism and the impetus to improve.

The SRA does undertake thematic reviews but these focus upon specific issues as opposed to a more holistic review. There are fewer firms now than there were. The SRA could consider reorganising its risk-based approach to a more interventionist approach – even perhaps targeted at the high-risk firms.

In considering these proposals, the SRA is sending out the message that the profession cannot be trusted, yet being able to trust in the honesty and integrity of solicitors is the bedrock that sets the profession apart. Instead of considering restrictions on holding client money and abolishing the Compensation Fund and thereby damaging yet further the worth of the legal profession to the public, the SRA should look internally to its own performance and focus upon self-improvement particularly in authorisation and monitoring. An admission of failure and proposals for improvement would go a long way to restoring the reputation of the SRA in the eyes of the profession. If the SRA needs expert help from the profession it should say so. After all it is in the interests of all of us to avoid disasters such as Axiom Ince.

This Review needs to be followed closely by the profession. It is not enough to expect others to comment. It is too important for that. The SRA tends to be influenced by the number of responses – so this needs more than a detailed response from the Law Society. I would encourage as many as possible to become involved in this Review and to follow its progress through this year.

https://www.sra.org.uk/sra/consultations/discussion-papers/consumer-protection-review/