



Kevin De Silva Memorial Legal Article Competition 2022



Has the SRA caught the wellbeing buzz?

Burnout. Wellbeing. Stress. Although the legal profession is becoming slightly more comfortable with talking about these issues, it appears the regulator feels they might need to step in to kickstart action.

It's not surprising that lawyers face a wellbeing challenge. LawCare's recent ['Life in the Law' research](#) reveals significant statistics including:

- 69% of respondents experienced mental ill-health (clinically or self-diagnosed) in the previous 12 months, with 43.5% of those not disclosing it at work;
- 22% had experienced bullying, harassment or discrimination in the previous 12 months;
- participants aged between 26 and 35 had the highest burnout scores; and
- to keep up with workload 65% felt they had to check emails outside working hours, with 28% feeling there was a requirement to be available for clients 24/7.

It's important to flag that the study relates to October 2020 to January 2021 – meaning it doesn't reflect wellbeing levels in the post-pandemic, recession-looming, hybrid-working, cost-of-living-crisis world that lawyers now work in.

So, what is the Solicitors Regulation Authority ("SRA") doing you might ask. After all, 46% of LawCare's respondents felt the SRA had a *"pivotal responsibility"* to address lawyer wellbeing.

In February 2022, the SRA published their [Workplace Culture Thematic Review](#) alongside the release of new ['workplace wellbeing' guidance](#). The guidance confirmed the SRA's perceived lack of bite in dealing with these issues in two introductory sentences:

"As a regulator, we do not direct the working practices or procedures that firms should adopt. However, we will take action if we believe that there has been a serious regulatory failure."

It's clear the SRA expects firms to introduce, communicate and implement acceptable working practices that protect and bolster their staff. The SRA will act only if there is a serious breach of the regulations, with particular focus likely to fall on Principles 2 (upholding public trust and confidence), 5 (acting with integrity) and 6 (acting in a way that encourages equality, diversity and inclusion).

Thinking back to the statistics, will the unwritten expectation to be available to clients 24/7 or one-off incidents of bullying - which have a very definite negative impact on a person's workplace wellbeing - be classed as a "serious regulatory failure"? Very few incidents, its likely, will reach this high threshold.

In an attempt to create some certainty, the SRA carried out a consultation in early 2022 looking at introducing a new rule into the Code of Conduct worded as:

"You treat colleagues fairly and with respect. You do not bully or harass them or discriminate unfairly against them. You challenge behaviour that does not meet this standard."

A breach of this rule would then enable the SRA to take enforcement action.

Looking at this, you're likely to fall into one of three camps. The first being that the SRA should regulate what is happening behind the walls of firms and introducing this rule could make perpetrators think twice because of the threat of SRA enforcement – having a greater impact than internal disciplinary reprimands.

The second is that having a new regulation goes too far. In their [consultation response](#), the Law Society felt the existing SRA Principles were sufficient, and the harmful behaviour should be covered by HR policies, employment and equality legislation. The Law Society encouraged the SRA to provide guidance and to highlight good practice examples.

The last might be those who feel that regulation is needed but the wording proposed by the SRA doesn't quite hit the spot. Yes, it covers key issues of bullying, harassment and discrimination but remember the study. Is it certain that the new rule covers issues like expecting people to get on with high workloads or to ignore their burnout if targets aren't reached?

Others could reasonably find the proposed wording is too onerous. For example, if you are a victim or witness of bullying, you would breach the Code if you did not challenge it – something we know happens, especially with junior-senior power dynamics.

Unsurprisingly, firms don't need to take arduous steps to improve wellbeing. LawCare's respondents revealed regular catch-ups or appraisals were the most helpful workplace support measures, with these boosting confidence in personal development and reducing anxiety. Compare this against the fact 48% of managers or supervisor respondents had received no leadership or management training. Would the SRA's new rule require firms to put staff through necessary training or to carry out regular catch-ups? Probably not.

The future role of the SRA in improving wellbeing is yet to be confirmed. Since the consultation closed in May 2022, there has been no further news. Perhaps yet more evidence that the SRA may not be best placed to keep up with the speed of change and how this affects workplace wellbeing. And there goes the Teams ringtone of doom...



Eleanor Harrison, Freeths LLP
Kevin De Silva Memorial Legal Article Winner 2022