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Lawyers Reflect On Paul Philip's 10 Years At The SRA

By **Marialuisa Taddia**

Law360, London (February 6, 2024, 12:20 AM GMT) -- In his decade at the helm of the Solicitors Regulation Authority, one of the main themes of Paul Philip's tenure has been more rules, more oversight and more compliance costs for solicitors — something that some suggest has been driven more by external political pressure rather than independent regulatory objectives.

The government has increasingly focused on lawyers as it has cracked down on economic crime and money laundering over the period, but the Russian invasion of Ukraine has pushed the focus on the legal profession's role to new heights.

"The result is that law firms now need to spend really significant amounts of money on this kind of compliance, and they live in fear of being fined hundreds of thousands of pounds if they get it wrong," Reynolds Porter Chamberlain LLP partner Graham Reid said.

Law360 spoke with solicitors the SRA regulates and independent observers about their views of the watchdog under Philip's stewardship since the barrister took the helm in February 2014.

Tackling Workplace Culture

Under Philip's tenure, the SRA has also focused on workplace culture, prompting a shift within the legal services landscape.

That includes looking at the organizational culture of law firms, especially in the context of risk to clients and public perceptions of the profession, Reid said.

Among other things, in April 2023, the regulator introduced **new rules** into its codes of conduct that require solicitors and firms to treat colleagues fairly and with respect. They also place an obligation on partners and other firm managers to challenge behavior that does not meet this standard.

And that's good news, Reid said.

"Workplace culture is now firmly on the SRA's radar," he said. "In my experience, bad organizational culture can lead to poor client outcomes, unhappy lawyers, even disasters."

But the impetus was not entirely internal. The SRA came in for a lot of criticism about its stance in relation to the Sovani James case, which concerned a junior solicitor who was struck off for acting dishonestly. The theory is that the case and the backlash were the spur for the SRA to produce its new workplace culture rules, Reid said.

Although the High Court said this would not excuse dishonest behavior, it recognized that "the pressure on the respondent was caused in large part by a culture in the firm which was toxic and uncaring."

Along similar lines, the SRA has cracked down on sexual misconduct in the wake of the #MeToo movement.

Richard Moorhead, professor of law and professional ethics at Exeter Law School, commended the SRA on its ongoing efforts to stamp out sexual misconduct among solicitors in the workplace.

The SRA has "a noticeable tendency to engage in symbolic rather than actual regulation: quick to issue guidance on SLAPPs and NDAs but much slower to enforce it, or so it seems," Moorhead

said, but this is not true for sexual misconduct in law firms.

"They have led here, in the face of some predictably antediluvian responses, and should be given great credit for it," he said.

Indeed, the SRA has been **cracking the whip**. In 2023, it referred eight complaints to the Solicitors Disciplinary Tribunal, double the highest number of referrals in the last seven years.

At the same time, solicitors have voiced concerns the SRA is being overzealous in regulating the conduct of solicitors in their private lives.

For example, in January, the SRA said it had fined a practitioner nearly £14,000 (\$18,000), plus £1,350 in costs, for a drunk-driving conviction that, according to Robert Forman, consultant solicitor at Murdochs, had no effect on the solicitor's ability to practice law.

"This is a sign of things to come as a new tabulated form of calculating fines will often see solicitors fined between 16%-49% of their income if they do not act as a role model for society," he said.

Laissez-Faire Approach

On taking over the helm of the SRA, Philip set out his plan to liberalize the legal market by introducing new methods of practicing and doing away with regulatory "arbitrage" by establishing the SRA as the sole legal regulator. It also reduced red tape by moving from a rules to a principles-based regime, according to Forman.

For example, in November 2019, the SRA replaced its 450-page handbook of prescriptive rules with much shorter and streamlined "standards and regulations" incorporating codes of conduct for lawyers and law firms.

"Possibly, the SRA's efforts in simplifying the codes of conduct have had a lasting positive impact," RPC's Reid said. "The language used is sometimes imprecise in my view. Nonetheless, briefer and clearer language is not a bad thing when trying to regulate lawyers' behavior."

While the number of rules have been reduced, they have been replaced by a raft of guidance notes that the SRA often refers to in disciplinary proceedings as if they were prescriptive obligations, Forman said.

"The quality of the guidance notes is a mixed bag," he said. "At best they are very helpful, at their worst they are incorrect in law, or irreconcilable with the underlying rules."

Fielding LSB Critiques

In **its latest review** of the legal services regulators it oversees, the Legal Services Board said in January the SRA fell short of the standards expected on enforcement.

"It has not provided us with sufficient assurance about the quality of its handling of complaints about solicitors and how it is seeking to improve its performance in handling them," the LSB said at the time.

It also said it wanted to see further progress from the SRA in reducing its backlog of long-term cases.

So far, some say Philip's SRA hasn't made progress on disciplinary matters; Forman called the agency's efforts "markedly unsuccessful."

"While there has been some limited but insufficient improvement in the explanation of decisions, the timeliness and appropriateness of its decisions have not improved at all — they have worsened," the Murdochs consultant solicitor said. "Delays of two years in investigations are commonplace."

He said it is unclear whether the cause is "a lack of competence among some of its investigatory staff or a lack of resources." This state of affairs, he argued, undermines trust in the profession and contradicts the aims of the Legal Services Act, which governs the regulation of legal services.

Solicitors also criticize the watchdog for trying to circumvent the SDT.

In July 2022, the SRA's fining powers increased from £2,000 to £25,000 for so-called traditional law firms. Through legislation enacted in October, the government has granted the SRA unlimited fining powers for economic crimes such as failing to prevent money laundering or financial sanctions, but the SRA **wants these powers extended** to any breaches of its standards and regulations.

Forman argued that these moves are at the expense of the SDT, whose processes don't yield any delays, unlike the SRA.

"There is a strong sense that the SRA doesn't like being accountable to the SDT, probably the only body that holds the SRA accountable for its actions," he said.

Solicitors' Independence and Integrity

Solicitors acting without independence or integrity can damage public confidence in legal services and the rule of law. Moorhead said that in this important aspect of its work, the watchdog has been "far too tardy on areas of regulation where chickens are coming home to roost."

The agency has faced scrutiny recently over its efforts in two major scandals, including its oversight of the in-house lawyers at the Post Office.

Earlier in February, the inquiry into failings that led to hundreds of postmasters being wrongly convicted of fraud, theft and false accounting heard that lawyers who prosecuted the innocent people put the Post Office's interest above their professional obligations.

"A key problem area has been and will remain the actual and perceived size and skill of their enforcement team. The Post Office scandal will test this beyond their limits," Moorhead said.

Likewise, the SRA has fallen under the microscope for its handling of Axiom Ince Ltd., which collapsed over nearly £65 million of missing client money. In January, the Legal Services Board launched an investigation into the events that led to the SRA **closing the firm down** on Oct. 3.

On Monday, the watchdog announced a **comprehensive review** into how it authorizes and monitors firms, among other wide-ranging plans.

For Reid, Axiom Ince "will be seen with hindsight as one of the most challenging moments for the SRA and, of course, for the profession. The adverse impact on clients, and the reputation of the profession, has been considerable."

Moorhead, the Exeter Law School professor, argued the SRA has emphasized competition and innovation over the need for regulation to restrain wrongdoing and incompetence.

Under Philip, the SRA has streamlined authorization processes for opening new firms, including using alternative business models, and for the first time, solicitors could serve the public in new ways, through non-SRA entities, or as freelancers, Forman said.

He said that such liberalization measures had broadly been successful, with no significant regulatory issues coming up — that is, until the SRA's intervention into Axiom Ince.

"The enquiry that will follow may force the SRA to modify its light touch approach to the authorization of new firms," he said.

--Editing by Brian Baresch and Lakshna Mehta.