From the Chief Executive

The Rt Hon Baroness Stowell of Beeston MBE
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Sent by email only to: STOWELLT@parliament.uk

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Dear Baroness Stowell

Thank you for your email of 20 February about the SRA's decision last March not to take action following a complaint that Discreet Law pursued a SLAPP on behalf of its client, the late Yevgeny Prigozhin against Eliot Higgins.

I understand why people have questioned our decision, and recognise the concern that Mr Prigozhin was able to bring a claim to stifle reporting of his connection with the Russian mercenary force, the Wagner Group.

Some of the commentary has misunderstood our role and approach as well as our consideration in this case.

Our rules do not require us to define a case as a SLAPP or not; it is legislation that gives powers to the courts to strike out SLAPPs claims, and to protect parties from cost and other consequences. However, in holding solicitors and firms to our existing litigation standards, we help to ensure that they are not facilitating abuse of the legal system. This is because these require solicitors to take steps to satisfy themselves that cases they bring are properly arguable; that there are facts or arguments to test before the court and the case is not bound to fail. In this case we explored the actions taken by the solicitors and concluded that they had taken appropriate steps to do so. That facts later emerged which showed that what they had been told was false, does not mean that the firm acted improperly or that regulatory proceedings should necessarily follow.

I firmly agree in the importance of transparency in order to engender public confidence in our decision-making, and therefore thought it would be useful, given the significant public interest, to provide some details of our reasoning on the Discreet Law case as well as our wider role and powers in relation to SLAPPs. With your permission, I also propose that we share this letter with key external stakeholders.

Our position on SLAPPs and our role

First it is perhaps worth emphasising our position: that whilst it is important that individuals can bring legitimate claims to protect their interests, including their right to privacy and their reputation, SLAPPs are an abuse of that legal process. As you are aware, legislation defining what is a SLAPP in the context of economic crime, and powers for the courts to strike out such cases and protect defendants from onerous costs, are due to come into force in April. Your committee has played a vital role in advancing this.

Solicitors are critical in preventing – and not facilitating – abuse of the legal process. Our role as the regulator of solicitors is however distinct from the court's and does not depend on defining a case as a SLAPP. Under our rules solicitors must satisfy themselves that claims are properly arguable in fact and law. Failure to do so threatens the rule of law and administration of justice, and risks misleading the court. We can take action where there is evidence of misconduct; for example, where solicitors have acted improperly in their approach to meeting this obligation.

Our work, including our warnings on what is and is not acceptable (which were developed through wide consultation with stakeholders and firms from all sides of the debate, including members of the Government SLAPPs Taskforce), has helped to raise awareness and to shift behaviours in the profession and the culture around certain litigation practices.

Last year, we successfully prosecuted our first case before the Solicitors Disciplinary Tribunal resulting in a £50,000 fine in a case relating to a solicitor seeking to improperly prevent publication of correspondence. And we have further ongoing investigations, with another case due to be heard before the Tribunal and four where we have concluded our investigations and decisions on next steps are imminent. The types of issues in these cases include threatening legal proceedings for collateral purposes, using oppressive tactics involving pursuing claims across more than one jurisdiction, and improperly using labels (such as "without prejudice") on correspondence.

The Prigozhin case

We received a complaint in May 2022 that Discreet Law had inappropriately progressed defamation proceedings against a journalist for tweets referring to links between Mr Prigozhin and the Wagner Group.

Subsequent events show that Mr Prigozhin was a key player in the Wagner Group, as he admitted in September 2022, six months after Discreet Law stopped acting for him. Our detailed investigation, however, found no evidence that the firm was aware of this when representing him. At the time they were acting, Mr Prigozhin vehemently denied his involvement with the Group.

Our investigation looked closely at the steps taken by the Discreet Law to satisfy itself as to the legitimacy of their client's instructions and the merits of his claim. The firm took steps to verify the information provided to them, carried out independent research and gathered material and analysed documents underpinning the sanctions that had been imposed on him. While there was public speculation surrounding Mr Prigozhin's connection with the Wagner Group, there was no evidence to suggest the firm were aware, or should have been aware, that the instructions they received were false.

The merits of the defamation proceedings were tested with specialist counsel who settled the particulars of the claim, and the case progressed through the courts until the claim was eventually struck out in May 2022, following Mr Prigozhin's failure to comply with the court's directions after Discreet Law had stopped acting. The Particulars of Claim set out the reasons why Discreet Law issued against Mr Higgins and selected England as the appropriate jurisdiction; this was the subject of careful consideration and advice from counsel.

We also looked into the concerns raised as a result of media reports that the firm had accepted as an identity check a utility bill in the name of Mr Prigozhin's mother. In fact, the firm carried out checks above those required. As you will be aware from the evidence before the Select Committee, the due diligence requirements under the Money Laundering Regulations do not apply to litigation matters such as this. Nonetheless, the firm gathered various pieces of evidence to conduct identity checks, including raising queries to satisfy itself in relation to the bill in question.

Our conclusion was that on a careful review of the evidence, the firm did not act improperly. Our decision did not reach a conclusion or make any statement about whether the claim was a SLAPP. As highlighted above, that is not the basis on which we decide whether or not to take action.

Regulatory versus legislative action

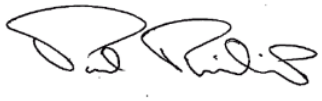
We are aware that cases in which the evidence suggests misconduct by the lawyers in SLAPPs cases will often involve novel issues, that are previously untested at the Tribunal. It is important we ventilate these issues, so the profession and the public have clarity around what behaviours are unacceptable. The recent Tribunal decision involving inappropriate labelling is one such example. However, bringing proceedings where the case will fail as there is not sufficient evidence of misconduct, will undermine confidence in both our and the system's ability to tackle SLAPPs.

This is inevitably a high threshold. Our role is to address the risk the individual solicitor or firm presents. And claimants are able in some circumstances to bring improper claims notwithstanding that their solicitors are acting competently and in good faith. Where there is a proper argument capable of being advanced within the prevailing legal framework, solicitors must advance their client's case in accordance with their instructions. This is why our guidance highlights the importance for solicitors of obtaining proper instructions and seeking to challenge and scrutinise what their client is telling them.

This is also why it is so important for there to be a robust legislative solution which addresses the wider public interest around whether a claim itself should be permitted to proceed, and to give courts powers in this respect – looking for example at questions around the type of claim, jurisdiction and choice of defendant, evidential burden and cost consequences for the parties. This is the principal way to reduce opportunities and incentives for claimants to abuse the system.

In the meantime, we will continue to do all we can to hold any solicitors to account where they fall short of our regulatory standards.

Yours sincerely



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