

Solicitors Regulation Authority

Enhanced Investigatory Powers



A response by the Association of Personal Injury Lawyers

May 2009

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. The association is dedicated to campaigning for improvements in the law to enable injured people to gain full access to justice, and promote their interests in all relevant political issues. Our members comprise principally of practitioners who specialise in personal injury litigation and whose interests are predominantly on behalf of injured claimants.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise;
- To provide a communication network for members.

APIL's executive committee would like to acknowledge the assistance of the following members in preparing this response:

Stephen Lawson – APIL Secretary

Any enquiries in respect of this response should be addressed, in the first instance, to:

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Executive summary

We believe the SRA's draft policy statement on the use of enhanced investigatory powers is clear and easily understood. We have some concerns about the proposed procedures for investigation meetings and believe that regulated persons should have the right to be accompanied in such meetings.

Introduction

We welcome the opportunity to respond to the SRA's consultation on the use of enhanced investigatory powers. We believe the publication of and consultation on the policy statement helps ensure that the way that the SRA regulates the solicitors' profession is transparent.

It is important that investigation meetings (or interviews as they are also referred to in the consultation) are run in such a way as enables the SRA to obtain the information it needs to investigate a particular case, in order that it can regulate effectively. We also believe that the process should be fair, open and easily understood, for the benefit of both regulated persons and their clients.

Consultation questions

1. Do you think that the purpose of our policy statement on the use of enhanced investigatory powers is clear and that the statement is able to be understood by non-lawyers?

Yes, the statement is clear and uses language in everyday use, not specific legal terms and so should be able to be understood by non-lawyers.

2. Do you agree that a notice to attend interview should only be authorised by the Head of Legal, Legal Director or Chief Executive as proposed in the policy statement?

We welcome the SRA's proposal that this power may only be exercised if authorised by a senior member of staff, but can not comment on the specific posts which should have such powers of authorisation.

3. (a) Do you consider that it would be helpful, necessary or not necessary for an SRA lawyer to be present at the investigation meeting?

3. (b) If SRA lawyers attend investigation meetings, what do you think their function should be?

We think it would be helpful for an SRA lawyer to be present to set out the SRA's view on any relevant legal positions.

4. Do you agree that a person attending for interview should have the right to be accompanied?

Yes. As the consultation makes clear, attending an interview is a serious matter. The outcome of an interview could affect a solicitor's ability to practice, which in turn affects clients and other staff members, and as such the regulated person may well feel they need legal advice at the interview. Furthermore, such an interview could be a pressurised situation, which could make the regulated person feel nervous and worried. Finally, it is important that the regulated person not feel intimidated by the interview panel so that he feels able to speak openly. Giving the regulated person the right to be accompanied could address all of these concerns, as it would ensure the regulated person is able to get legal advice and/or have moral support at the meeting.

5. Do you agree that the SRA lawyer should be able to exclude representatives who obstruct the meeting or otherwise act unreasonably?

Yes, although the right to be accompanied will only be meaningful if this power is exercised only where absolutely necessary. We also believe it would be reasonable for a warning to be given first.

6. Any further comments about the proposed powers in general.

Paragraph 5 of the consultation paper proposes that questions will not be provided to the regulated person in advance of the investigation meeting. Whilst we would support this, we also believe that if the regulated person knows the subject matter of the meeting before it takes place the meeting will be more productive and the process would be fairer.

Paragraph 10 of the policy statement sets out the circumstances in which the SRA will not give the usual notice that a meeting will take place. These include “frustration...to the SRA investigation”. This language could mean that an abridged notice period could be justified on the basis that the investigation could be slightly delayed by providing proper notice. We believe that “obstruction” or “impediment” would be more appropriate language than “frustration”.

Finally, paragraph 12(e) of the policy statement states that only the regulated person (rather than the person he is accompanied by) may provide explanations, unless the SRA agrees otherwise. There may be circumstances in which somebody other than the regulated person is best placed to provide explanations. If a regulated person was being investigated for a breach of the accounts rules, for example, the regulated person’s cashier or, in a highly technical area, the accountant who audited the accounts may be better placed to answer.

We hope, therefore, that the SRA makes provision for this in its policy, or at the very least takes a practical approach to agreeing to another more suitable person providing explanations.

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