

Legal Services Board  
3rd floor  
The Rookery  
2 Dyott Street  
London WC1A 1DE



Building a Brighter Future  
for Injured People

T: 0115 943 5400  
E: [mail@apil.org.uk](mailto:mail@apil.org.uk)  
[www.apil.org.uk](http://www.apil.org.uk)

27 May 2025

By email only: [consultations@legalservicesboard.org.uk](mailto:consultations@legalservicesboard.org.uk).

Dear Sir/ Madam,

### **Consultation on policy statement on professional ethics**

APIL welcomes the opportunity to comment on the Legal Services Board's (LSB) draft statement of policy on Upholding Professional Ethical Duties.

We support the establishment of a framework that outlines clear outcomes for regulators to implement in relation to legal professionals' ethical duties. APIL agrees with the LSB's comments in its consultation paper, which state that events in the last few years have emphasised the need for a consistent approach to ethics in the legal profession. The Post Office scandal is an example of the consequences of the lack of clarity with ethical duties, where lawyers believed they were fulfilling their ethical duty, but their actions focused entirely on their duty to the client and, as has become clear, failed to sufficiently uphold public trust.

Regulators need to provide clear guidance and require better training for practitioners to ensure they understand and comply with their ethical duties. Without such guidance, in some situations it is difficult for practitioners to know the right course of action, especially in complex issues where ethical boundaries are less clear and/or there are conflicting demands and expectations.

In Personal Injury litigation, specifically, the increasing frequency of fundamental dishonesty allegations is a growing concern, likely to inappropriately escalate if not addressed by regulators. The law concerning fundamental dishonesty is one-sided, as there is no equivalent provision for defendants, and there are no significant consequences for defendants raising unfounded or unsubstantiated allegations of dishonesty. There is insufficient guidance to practitioners about ethical boundaries in such circumstances.

The case of *Cullen v Henniker-Major*<sup>1</sup> illustrates our concerns, and in many respects, the judgement makes for shocking reading. This clinical negligence claim arose from a negligently delayed diagnosis of laryngeal cancer. Liability was admitted, but the defendant alleged that the claimant was fundamentally dishonest because she failed to disclose that

---

<sup>1</sup> [2024] EWHC 2809 (KB)

she could perform some of the actions required for a valve change, was dishonest regarding her funded care and the payment of carers, and misrepresented receiving 24-hour care and assistance. They also submitted that the claimant made a dishonest claim for a stairlift and was dishonest about her loss of amenity. The claimant was found to be an honest witness, and the allegations of fundamental dishonesty were fully rejected. This case is just an example of a growing trend of cases where defendants (and often these are lawyers acting for defendant insurance companies) take a 'scatter-gun' approach to fundamental dishonesty allegations in the hope that something 'sticks.' It is hard to overstate the degree of stress and anxiety this may cause for the injured claimant. Indeed, if that claimant is employed in a professional capacity, these sorts of allegations may even result in them losing their livelihood – this is a very serious matter and should be taken as such. There should certainly be a clear and severe sanction to deal with situations where s.57<sup>2</sup> allegations of fundamental dishonesty are found to have no substantive basis.

There is a very real tendency for defendant solicitors in these situations to prioritise their duty to the client at the expense of their duty to uphold public trust. There is a particular danger, without strict adherence to clear ethical boundaries, of injustice. This is particularly likely when institutional defendants, with almost unlimited resources, are taking action against individuals often of modest means in cases where, recoverability of costs is fixed. In these situations, however oppressively the defendant behaves, the claimant may not be able to recover costs for work necessary to protect their reputation and even liberty. In *Aviva Insurance Ltd v Nadeem*<sup>3</sup> the claimant, in a case subject to fixed costs, was found to have been fundamentally dishonest, in civil proceedings, to the criminal standard. Committal proceedings followed. In those proceedings, the judge not only refused to commit but concluded the findings of dishonesty should never have been made. This is another judgement which is a troubling read.

### Proposed outcomes

APIL agrees with all of the outcomes proposed by the LSB.

Considering outcome one, it is the view of APIL practitioners that often those entering the profession have not had the necessary ethical education and training as part of their professional route to qualification. In some cases, trainees have only been made aware of the SRA's Code of Conduct, but with little or no exploration of practical examples or applications.

APIL agrees and supports the requirement for regulators to establish a framework of rules and regulations, along with guidance and other resources (outcome two). We suggest that guidance includes examples of good and bad practice. Including practical examples in the guidance is helpful for practitioners to understand what is expected and how to apply ethical principles in real-world contexts. For example, the Solicitors Regulation Authority's (SRA) guidance about section 56 of the Legal Aid, Sentencing and Punishment of Offenders Act

---

<sup>2</sup> Section 57 of the Criminal Justice & Courts Act 2015

<sup>3</sup> [2024] EWHC 3445 (KB)

2012 (LASPO)<sup>4</sup> provides clear examples that have proven valuable for practitioners to understand their obligations and how to comply with them regarding referral fees.

Regarding the fourth outcome, it is key that regulators collect data and monitor non-compliance to identify risks and trends in order to continue to address non-compliance. We also agree with remedial actions provided they are proportionate.

T: 0115 943 5400  
E: [mail@apil.org.uk](mailto:mail@apil.org.uk)  
[www.apil.org.uk](http://www.apil.org.uk)

We hope our comments prove useful.

Yours sincerely,



Ana Ramos  
Legal Policy Officer

---

<sup>4</sup> <https://www.sra.org.uk/solicitors/guidance/prohibition-of-referral-fees-in-laspo-56-60/>