SRA General Counsel
The Cube
199 Wharfside Street
Birmingham B1 1RN

31 August 2022

Sent by email: dan@[redacted]

Dear Ms Oliver

SLAPPs and purported confidential letters before claim

Thank you for your letter of 19 August 2022.

I am delighted to hear you will be addressing the practice (which I believe to be widespread) of labelling pre-action libel correspondence as "private and confidential" and/or "without prejudice", and claiming that this prevents the recipient from publishing or even referring to the correspondence. I also welcome your announcement of a thematic review of law firms active in this area. The SRA now has a real opportunity to improve standards in the profession and strengthen the rule of law.

This, however, raises the further question of how past improper behaviour by solicitors should be remedied.

When a libel threat is accompanied by an assertion that it may not be published or referred to and (as will usually be the case) that assertion has no foundation in law, the effect is to deceive the recipient. It is of course axiomatic that a solicitor may not mislead third parties by an act or omission; the deception is particularly damaging when (as here) it damages the rule of law, and impedes the proper administration of justice.

The deception is most serious when the recipient is not legally advised. I have spoken to many bloggers and independent journalists who received communications of this kind, believed the assertion that they could not publish the letter and – having no resources to engage in a legal dispute – simply withdrew from public debate.

However, recipients may also be deceived even when they are sophisticated businesses with in-house lawyers and access to external counsel. I have spoken to many journalists working in the print and broadcast media who habitually receive pre-action libel correspondence which claims to be confidential. Their internal and external legal advice is usually that the claims of confidentiality are baseless, but the mere fact that the claims are asserted often makes their editors and publishers nervous about publishing the correspondence.

I would, therefore, ask you to add in your guidance that, where a solicitor has previously asserted that correspondence could not be published, and that assertion has no foundation in law, it is incumbent on the solicitor to now write to the recipient of the letter and withdraw their assertion. If the solicitor's client does not permit the solicitor to do so, then that cannot exclude the solicitor's duty to act in accordance with the Principles; the solicitor would need to consider whether he or she could continue to act for the client.

Thank you for your offer to keep me updated on your progress in this area – that would be most helpful.

Yours sincerely

Dan Neidle