Solicitors Regulation Authority

Annex B - Application to the LSB for the approval of regulatory arrangements

August 2018

Examples of guidance

1. SRA Enforcement Strategy
2. SRA MDP policy statement
3. List of guidance we intend to produce initially
4. Businesses that are not authorised by a legal services regulator and that employ SRA-regulated lawyers
5. Giving information to clients of businesses that are not authorised by a legal services regulator
6. Q&A – Do I need a client account
7. Discrimination case study
8. Does my employer need to be authorised by an approved regulator – decision tree
9. Improper use of client account as a banking facility – warning notice[1]
10. Topic guidance – criminal offences outside of practise
11. Topic guidance – driving with excess alcohol convictions
12. Topic guidance – competence and standard of service
13. Topic guidance – use of social media and offensive communications

[1] This warning notice has already been published on our website. References to our rules will be updated. Case studies to support this warning notice are available at: http://www.sra.org.uk/solicitors/code-of-conduct/guidance/case-study/improper-use-client-account-banking-facility.page.

SRA Enforcement Strategy

SRA Enforcement Strategy

1.1 Introduction

Our approach to enforcement is guided by our public interest purpose.

Our May 2014 policy statement (updated in November 2015) sets out our approach to regulation in order to meet the regulatory objectives and in particular, our public interest purpose. Our regulation therefore seeks to:

- ensure a strong, competitive, and highly effective legal market
- ensure a focus on quality and client care
- promote a culture in which ethical values and behaviours are embedded.

Through the SRA Principles and Codes of Conduct, we seek to give a clear message to the public and regulated individuals and firms about what regulation stands for and what a competent and an ethical legal profession looks like.

In short, our codes provide a benchmark which solicitors[1] and firms are expected to meet. In doing so, we will not second guess the approach they take or the way in which they choose to comply. We do, however, require all those we regulate to be familiar with our standards, explanatory guidance, and the law and regulation governing their work, and to be able to explain and justify their decisions and actions.

We have a number of regulatory tools at our disposal to support compliance. These include:

- conducting thematic reviews of areas of risk
- publishing a risk outlook highlighting our priority risks
- providing advice and support through our ethics helpline and a range of toolkits and guidance
- SRA Innovate, a service which helps legal services providers to develop their business in new ways.

However, the public and the profession have a right to expect that wrongdoing will be met by robust and proportionate sanctions, and that we as a regulator will enforce our rules evenly, consistently and fairly. We need to be accountable for our actions and to demonstrate that we will act fairly and proportionately.

This strategy explains how we use our enforcement powers, where there are concerns about failure to meet our standards or requirements. The strategy also provides clarity for the public, and for regulated individuals and firms, about what we

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[1] Solicitor includes RELs and RFLs where the context permits.

expect of those we regulate. Our codes of conduct place obligations on those we regulate to report to us any serious breach of our standards or requirements, and this strategy helps to explain the factors which we take into account to determine what is and is not serious. Further guidance on reporting concerns can be found *here*. [link][2]

All of our decision-makers are required to exercise their judgment on the facts of each case, on the basis of the guidance set out in this document and our suite of decision-making guidance, which also explains our approach to publishing our regulatory decisions.

The strategy is a living document which will be updated and revised as the need arises.

1.2 What is the purpose of enforcement?

Lawyers have a fiduciary relationship which brings obligations to clients. They also have obligations to the court and to members of the wider public who may be affected by their work (for example, as party to a dispute or in connection with the legal matter in hand) which are critical for the effective administration of justice and operation of the rule of law[3].

Our role is to regulate in the public interest; to protect clients and consumers of legal services, and to uphold the rule of law and the administration of justice.

This means we focus on issues which present an underlying risk to the public interest, ensuring that any decision to investigate a complaint or report is a proportionate response to that risk.

Our actions are not designed to punish people for past misdemeanours. Whilst the sanctions we impose may be punitive, they do not have that primary purpose. As Sir Thomas Bingham said in *Bolton -v- Law Society*:

"*There is, in some of these orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards required of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way. Those are traditional objects of punishment. But often the order is not punitive in intention... In most cases the order of the Tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence... The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth".*[4]

[2] This is in the process of being developed (June 2018).
[3] "Lawyers … have a duty to their clients, but they may not win by whatever means". Lord Hoffman, Arthur J S Hall –v- Simons [2002] 1 AC.
[4] Bolton –v- The Law Society [1993] EWCA Civ 32, para 15

The role of enforcement action can therefore be seen as:

- protecting clients and the public: controlling or limiting the risk of harm, and ensuring the individual or firm is not able to repeat the offending or similar behaviour or is, at least, deterred from doing so
- sending a signal to those we regulate more widely with the aim of preventing similar behaviour by others
- maintaining and upholding standards of competence and ethical behaviour
- upholding public confidence in the provision of legal services.

2.1 Our approach to enforcement

We recognise that both human and system error are unavoidable. And that to adopt a blanket response to non-compliance that does not take into account ethical behaviour, and the underlying purpose for the rule in question, can be counterproductive. Not only does it increase the regulatory burden, but risks inhibiting the development of shared values, the exercise of judgment and a culture of openness which allows for learning from mistakes.

Not every referral will lead us to open an investigation. Some cases fall outside of our regulatory remit. And we will not need to take action solely to address a breach that is minor in nature and where the evidence suggests that it is unlikely to be repeated and there is no ongoing risk.

We focus our action on the most serious issues: our codes of conduct confirm that we will take action in relation to breaches which are serious, either in isolation or because they demonstrate a persistent failure to comply or a concerning pattern of behaviour. The concept of “serious breach” is described further below. However, this includes within it matters that can be described as serious “misconduct” - or conduct that is improper and falls short of ethical standards - as well as other breaches of our rules and requirements (where serious) - for example, those relating to failures of firms’ systems and controls.

Even where we have opened an investigation, we will not necessarily sanction all breaches, but will take into account the circumstances including any aggravating and mitigating factors, while ensuring that the wider public interest (including the protection of the public) is upheld. This means that if the circumstances indicate that there is no underlying concern in terms of the public interest, we will close the matter without (further) investigation. If appropriate, we can close the case with advice, which may include a warning that further breaches may result in a greater sanction being imposed in future.

Our approach is to ensure that we only take those steps that are required in order to protect and promote the public interest. Therefore, when a case is subject to investigation, we will, if appropriate, seek to pursue methods of constructive

engagement to support firms and individuals to achieve compliance. Guidance, supervision and monitoring, coupled with an open, cooperative and constructive approach by firms and individuals, may lead us to decide against taking formal action. In those cases, we will expect the firm or individual to take prompt remedial action, agreed with us where necessary. In these circumstances, we will ask firms and individuals voluntarily to provide us with information and evidence of the steps taken to resolve matters.

For example, if a compliance officer for finance and administration (COFA) identifies a failure to pay to clients their residual balances and puts in place an action plan to remedy the breach, we may agree specific measures and targets in a compliance plan to which all the managers sign up. The plan would include regular updates to us so that we can monitor progress and escalate the matter if we have concerns about continuing risk.

Cooperation with an investigation by a firm or individual will be relevant throughout the life of a case at key decision making stages and may in some cases inform the progress of the investigation – for example whether formal steps need to be taken to compel evidence, or whether we are able to agree disposal by way of a regulatory settlement agreement (see our guidance on the use of our investigation powers and on regulatory settlement agreements [Links]) - or indeed the ultimate outcome that is appropriate in the public interest (see further below and in the table at **Annex A**).

2.2 Factors which affect our view of seriousness

Where a formal response is required, we will take action that is proportionate to the risk, weighing the interests of the public against those of the individual or firm involved. We will consider the available sanctions and controls in turn, starting with the least restrictive. The full range of regulatory and disciplinary outcomes available to us (both sanctions and controls), their purpose and indicative criteria for their use, is in **Annex A**.

As we have said, our response will reflect the seriousness of any breach. Our assessment of seriousness will necessarily involve looking at past conduct and behaviour. However, our assessment of any future risk will look forward as well as back. Mitigating features of a case which might be indicative of reduced or low future risk include expressions of apology, regret and remorse as well as a lack of repetition of the misconduct, or pattern of misconduct. Further, we can take into account the systems in place and environment in which the events took place; and the responsibility or control the individual had over the matters in question. This allows us to respond robustly, but appropriately, to concerns raised in relation to solicitors working in diverse range of practice settings, including outside of an authorised body.

In taking into account mitigation, we will distinguish between "contextual" mitigation – which relates to the events giving rise to the alleged breach and has a bearing on the nature and seriousness of the breach - and personal mitigation – which relates to the

background, character and circumstances of the individual or firm and which is usually more relevant to sanction. The former might include features of the environment in which the solicitor was working and which affected their judgment or any action they were able to take. Personal mitigation might include testimonials or evidence of insight, cooperation with any investigation or audit processes, or remedial action taken since the events. Sometimes information will be relevant to both: for example past misconduct or findings demonstrating a pattern of behaviour or a propensity to behave (for example) dishonestly.

We recognise the stressful circumstances in which many solicitors and firms are working and are aware that the health of the individual at the time of the events may have a significant bearing on the nature and seriousness of the alleged breach. Further, we are aware of the impact that being complained about and going through an investigation can have on people – and that this can exacerbate or trigger health issues. We have procedures in place to support those going through our processes, to make sure that we are fair and take into account their health needs and make reasonable adjustments to enable them to participate fully. [Link][5]

The nature of the allegation

We see certain types of allegations as inherently more serious than others: for example, we will always take seriously allegations of abuse of trust, taking unfair advantage of clients or others, and the misuse of client money; as we will sexual and violent misconduct, dishonesty and criminal behaviour (described further below). Information security is also of high importance to the public and protection of confidential information is a core professional principle in the Legal Services Act 2007[6].

More information on our approach to risk assessment and deciding whether to investigate a concern, can be found *here* [link].

However, there are some common factors that affect the view we take of how serious an allegation is as set out below:

Intent/Motivation

The seriousness of a breach may be dependent on the intention behind it. We will distinguish between people who are trying to do the right thing and those who are not.

Human and system error is inevitable and we will generally take no action where a poor outcome is solely the result of a **genuine mistake**. However, we may take action where a failure to meet our standards or requirements arises from a **lack of knowledge** which the individual should or could reasonably be expected to have

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[5] Link to existing guidance and link to the new guidance on eg medical evidence guidance when that has been finalised by Legal and Enforcement Team.

[6] Section 1(3)(e) Legal Services Act 2007

acquired, or which demonstrates a **lack of judgment** which is of concern, taking into account matters such as the experience and seniority of the individual involved (in other words, whether they knew, or should have known, better).

Where a firm or an individual has been a victim, for example of cybercrime, our primary focus would not be to penalise them for any adverse outcomes arising. However, we are likely to review, for example, whether their systems and procedures were robust enough and reasonable protective measures were in place.

In relation to errors of law or professional judgment, generally, we will not penalise a single negligent act or an omission without evidence of seriously or persistently poor levels of competence which demonstrate behaviour falling well below expected standards. We are likely to consider such matters as more serious where a firm or individual has knowingly acted outside their competence or has failed to take reasonable steps to update their knowledge and skills, or those of their employees.

We will view more seriously events which demonstrate that the individual or firm has a **deliberate or reckless** disregard for their obligations. Recklessness is serious because it demonstrates inappropriate risk taking, and a lack of regard for the consequences of one's actions.

Conduct or behaviour which demonstrates a lack of **honesty or integrity** are at the highest end of the spectrum, in a "profession whose reputation depends on trust": Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon them by the SDT.- The most serious involves proven dishonesty.[7]

This is important because of the uneven relationship, which requires clients to place their trust in their lawyers, for example, because of the information asymmetry between them, or the access the lawyer has to the client's funds and often sensitive personal information. Trust in the legal profession is also important to support the rule of law, because of the influence and impact the profession has upon the court process and the administration of justice.

When considering intent and motivation, we will consider factors such as whether the conduct was planned and premeditated, persistent or repeated. We will look at any benefit or advantage gained from the conduct and any response to the events including demonstrable insight and remedial action, or whether there has been an attempt to conceal a problem which can act as an aggravating factor, as well as being seen as an episode of dishonest misconduct in itself.

Harm and impact

We take into account the harm caused by the individual or firm's actions and the impact this has had on the victim. This will be fact sensitive and depend on individual

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[7] Bolton –v- The Law Society [1993] EWCA Civ 32, para 13

circumstances. We will look at the numbers of victims, the level of any financial loss or any physical or mental harm. We will also consider behaviour which harms an individual's personal autonomy and dignity, and treat fundamental rights to privacy and non-discriminatory treatment as at the higher end of seriousness, irrespective of any financial or other harm.

We also take into account harm that could reasonably have been anticipated to arise from the conduct or behaviour in question. This directs our focus onto behaviour that represents a risk, notwithstanding that harm may, in the event, not have materialised. For example, a solicitor may seek to mislead the court by creating a false document, which, in the event, is not relied upon in court and does not result in a different outcome for the parties. For this reason, the question of whether harm materialised is not determinative of whether we will take action: we may take action where no harm has arisen where the behaviour gave rise to a real risk of harm, or other aggravating features are present; and we may decide not to take action where harm arose from a genuine mistake or where other mitigating features are present.

However, in some cases, the actual harm suffered will increase the seriousness of the conduct, and either lead to a more serious outcome (for example, if a solicitor misuses client funds and this leads to a large number of clients suffering hardship and distress as a result) or will lead us to the decision that the case requires us to take action to maintain public confidence.

Vulnerability

As described above solicitors and clients have an uneven relationship, but not all clients are the same.

Some clients will be more susceptible to harm, for example as a result of:

- barriers preventing access to legal services, or the lack of choice of legal provider, for example due to cost or geographical location
- the situation giving rise to the need for advice, for example, involvement in a sensitive family matter
- the effect of a poor outcome leading to a greater impact, such as loss of personal liberty, or deportation in an asylum case
- their personal attributes or circumstances, such as a health issue or learning disability.

Vulnerability is not static: it may be short term, or permanent; and may result from the structure of the market, the nature of the legal services, the client's personal circumstances, or a combination of factors.[8] Corporate clients may have large in-house teams and be sophisticated purchasers of legal services - but may also be vulnerable in some transactions or circumstances.

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[8] see Recognising and Responding to consumer vulnerability, Legal Services Consumer Panel, October 2014

We consider it an important part of our role to protect those who are less able to protect themselves and will consider an allegation to be particularly serious where the client's – or a third party's – vulnerability is relevant to the culpable behaviour. This may be because the solicitor took advantage of the person's vulnerability to, for example, provide misleading information; because of the raised awareness the solicitor should have had about the need, for example, to communicate effectively or ensure that the client is in a position to protect their own rights; or because of any enhanced impact on the client as a result of their vulnerability which the solicitor could and should have anticipated.

Role, experience and seniority

We recognise that certain stages in an individual's career can present a steep learning curve - such as becoming a trainee, a newly qualified solicitor, or a partner for the first time. We would expect solicitors to gain a deeper understanding of appropriate behaviour and of the law and regulation governing their work, as their career progresses. And for those with more seniority and experience to have higher levels of insight, foresight, more knowledge and better judgment.

Part of being fair and proportionate is ensuring that those within an organisation, with real control and influence over the situation, are held accountable. The context in which professionals work, the culture of an organisation and pressure from peers and managers, is likely to have significant impact on their actions and decisions[9]. Therefore, we recognise that a person's inexperience or relatively junior role within an organisation may impact on their ability to take appropriate action, although will not be an answer to serious misconduct such as dishonesty.

Regulatory history and patterns of behaviour

Once we have identified a breach of our rules, a key factor when deciding what to do next will be whether the behaviour forms part of a pattern of repeated misconduct or regulatory breaches. This can indicate a propensity to commit certain breaches of our rules, or a failure in systems and controls, or an unwillingness or inability to learn lessons. This may result in our taking action notwithstanding that such breaches on their own might be regarded as less serious.

For this reason, we will review our records for previous complaints and findings against the individual or firm. This will include information about any findings made by other courts, tribunals and regulatory bodies as well as previous SRA matters resulting in, for example, a financial penalty or closure of a case with an advice or a warning, and previous disciplinary matters before the Tribunal where allegations were found proved, together with any sanction imposed.

Remediation

[9] see Designing Ethics Indicators for Legal Services Provision, Richard Moorhead et al, UCL Centre for Ethics and Law

When assessing the risk of future harm, factors such as the length of time since the events, insight into the conduct or behaviour, and any remedial action taken, are relevant to our decision whether to investigate an allegation and, if so, what action to take. For example, a firm with weak systems may have been a victim of a cyber-attack, and promptly taken action to ensure that this could not happen again. A timely self-report and early engagement provides us with evidence of that insight and gives us confidence that the firm has an ethical culture and the ability to manage risk.

However, there are some kinds of conduct for which such considerations have less relevance. For example, where the misconduct indicates a lack of honesty or integrity, we may consider that the matter cannot be remediated or that in any event, action is necessary in order to uphold public confidence in the legal profession. As stated in Bolton -v- The Law Society:

Because orders made by the Tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. ... All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness… The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price.

Relationship with legal practice and our core regulatory jurisdiction – other regulators

We operate within a wider framework of bodies that are currently providing oversight and redress in this sector. We are aware that our regulation will overlap with others where individuals regulated by other regulators such as, for example, barristers or members of the Chartered Institute of Legal Executives (CILEx) are working alongside solicitors in a firm we regulate. Further, the Legal Ombudsman (LeO) deals with service complaints about regulated lawyers and legal service providers. We have arrangements with LeO to make sure that there is a clear understanding about the type of complaints that should be handled by LeO in the first instance, and which by us.

Individuals and firms we regulate will also commonly be subject to other, non-legal, regulatory jurisdictions. They will be subject to the Information Commissioner's Office (ICO) in relation to their handling of personal data, or, for example, the Institute of Chartered Accountants in England and Wales (ICAEW) where working in or as an accountancy multi-disciplinary practice.

We will not investigate an issue which is the jurisdiction of another regulator or prosecuting authority, unless it also raises an issue which is core to our regulatory role and public interest purpose. The closer the matter is to our role and purpose, the more likely it is that we will take action. For example, enforcement of data protection

legislation is a matter for the ICO, but if a data protection breach also involves the disclosure of confidential client information, then we will investigate that as a regulatory offence. More guidance on our approach to taking forward an investigation where there are parallel proceedings can be found here [add link].

Private life

Our key role is to act on wrongdoing which relates to an individual or a firm's legal practice. We will not get involved in complaints against a solicitor which relate to, for example, their competence as a school governor or their involvement in a neighbour dispute. However, our Principles [**link]** set out the core ethical values we require of all those we regulate and apply at all times and in all contexts.

We are concerned with the impact of conduct outside of legal practice including in the private lives of those we regulate if this touches on risk to the delivery of safe legal services in future[10]. The closer any behaviour is to professional activities, or a reflection of how a solicitor might behave in a professional context, the more seriously we are likely to view it. For example, an allegation of financial impropriety against a solicitor when acting as a Member of Parliament, will raise a question as to their fitness to manage client funds. However, we will also be interested in matters that are so serious that they are capable of damaging public confidence, such as dishonest or discriminatory conduct in any context.

Criminal convictions

We will always investigate criminal convictions or cautions whether or not these relate to the individual's practice, given the importance of rule-abiding behaviour and public confidence in those involved in the overall effectiveness of our criminal justice system.

However, we continue to take a proportionate approach to our regulation and are less likely to be concerned about behaviour which is at a low-level in terms of seriousness (for example, actions that result in fixed penalty notices, or minor motoring offences). We will take more seriously convictions for drink driving, assault and other offences against the person, and property offences. At the most serious end of the spectrum are convictions resulting in custodial sentences, particularly those relating to dishonesty, fraud, bribery and extortion; those associated with terrorism, money laundering or obstructing the course of justice (such as perjury or witness tampering) or facilitating or concealing serious or organised criminality by others; or those involving violence, sexual misconduct or child pornography.

[10] In the case of *Pitt and Tyas v GPhC [April 2017]* the court held that a Regulator could regulate the behaviour of a professional in to both their professional and private life.

2.3 Inter-relationship between factors

The factors set out in section 2.2 are not the only factors which may affect our view of seriousness, and do not all have to be present.

For example, when a matter raises serious integrity issues, judgments about harm have less impact: A case involving dishonest behaviour which does not directly harm another party, such as providing false details in a CV or reference, will still be viewed by us as behaviour which is fundamentally incompatible with the practice of law. There are also some types of misconduct which are actionable without evidence of intent or harm, such as the use of a client account as a banking facility or involvement in a transaction which bears the hallmark of fraud, because of the significant link between those behaviours and the risk of the solicitors and law firms being used willingly or unwillingly to facilitate crime.

In many cases the factors will be interlinked. For example, a client or third party's **vulnerability** might provide an opportunity to take unfair advantage, indicating **intentional** misconduct, or exacerbating the **impact** of their behaviour.

3. Who is enforcement action taken against?

During an investigation, we will consider the position of both the firm and the individuals working within that firm in order to reach an informed decision as to whom we should be seeking to enforce against.

Our principles set out the values we expect all those we regulate to uphold; however, we have separate codes of conduct and authorisation requirements for solicitors and for firms we regulate. And we have certain rules and requirements (such as those relating to the operation of client accounts) that apply solely to firms.

Where obligations apply equally to firms and individuals, we are able to take enforcement action, in the public interest, against both or either, where there has been a serious breach.

We would take action against an individual where they were personally responsible. This addresses the risk they as an individual present to clients or to the wider public interest. It also ensures that specific action can be taken (such as striking off the roll or imposing conditions on their practising certificate) to ensure that they cannot avoid accountability and/or repeat similar behaviour simply by moving firms. Further, firms may cease to exist, deliberately or otherwise, and therefore where an individual is directly culpable we will generally proceed against them in order to mitigate that risk, particularly where the practice is small and may, in effect have no separation from its principal or partners.

However, we will usually take action against a firm alone, or in addition to taking action against an individual, where there is a breach of the code for firms or of our other requirements. For example:

- To mark the firm's responsibility and to hold it to account for the breach, especially where it is not possible or proportionate to establish individual responsibility.
- When the events demonstrate a failure which relates to the culture, systems, supervision arrangements or processes for which the firm, as a whole, should be held accountable.
- To encourage a culture of compliance and management of future risk.
- When firm-specific action is appropriate. This might include a fine to remove the benefit obtained from the wrongdoing, suspension or revocation of the firm's authorisation, or firm-based conditions or compliance plans. Examples of the latter might include: requirements relating to the firm's governance or oversight arrangements, mandatory remedial action such as establishing compliance systems or reporting to us of accounting records, or restrictions to prevent certain work being carried out or funds being held.

This ensures that the firm as a whole is responsible for future compliance and the management of risk.

As indicated above, we are able to take action in relation to systemic failure and this function is likely to become increasingly relevant as reliance upon information technology and artificial intelligence increases.

Employees and role-holders – managers, owners and compliance officers

A finding against a firm is not a finding of personal misconduct against the partners or other managers. We can, however, take disciplinary action against employees and managers responsible for a breach by their firm and can impose control orders preventing them from working in a law firm without our approval. And we have specific powers in relation to approved role-holders (which include managers and compliance officers within a firm), which include withdrawing or imposing conditions on their approval, as well as disqualifying people from taking up those roles. More guidance on our powers against non-authorised persons can be found in our guidance *here.*

Generally, we will only hold managers to account for the actions of the firm (as opposed to their own conduct or behaviour) where they had a responsibility for - or should have known about and should have intervened into - the relevant events.

Appendix A: Sanctions and Controls

Introduction

This table sets out the powers available to us when we take enforcement action against a regulated individual or firm for a breach of our regulatory requirements or for conduct which falls below the standards set out in our Principles and Codes of Conduct.

These include both sanctions and controls. The former are broadly intended to discipline the person to prevent similar behaviour by them or others, maintain standards and uphold public confidence in the profession. The latter are broadly intended to protect clients or the public by controlling or limiting the risk of harm.

Whilst not covered by the table below, our powers include interim or immediate protective measures as well as those which follow a finding. For example, we will take immediate action to suspend a person's practising certificate following certain events, such as a conviction for certain serious offences. We can also impose conditions on an interim basis where these are necessary and proportionate to address an identified risk pending a final outcome in the case. We are also able to intervene into a firm to protect clients' money or files in certain circumstances (see our guidance on Intervening to protect clients [link]).

We also have the power to take certain action against people who, although not authorised by us directly as individuals, are involved in a firm that we regulate. These include, the power to restrict their future employment in a law firm, or to prevent them holding certain positions in a firm. These powers are set out in our guidance [link] on the regulation of non-authorised persons and approved role holders.

The powers set out in the table below and guidance highlighted in the paragraphs above can in some cases effectively act as both a sanction and a control (for example, a decision to impose a warning, restrict a non-authorised person from employment in a law firm, or suspend a person's practising certificate). And they can be used in combination, where appropriate. For example. it may be appropriate to rebuke or fine a firm's employee for misleading a client, and also to restrict their future employment (as above).

The factors set out in the table below indicate some of the features which may lead us towards or away from imposing a particular sanction or control in any given circumstance. They do not comprise an exhaustive list and not all of the factors set out need to be present for us to consider that the relevant sanction or control is appropriate.

Some of the powers set out in the table below can only be exercised by the Solicitors Disciplinary Tribunal (SDT), such as the power to strike a solicitor off the roll or to impose greater than a specified level of fine on a solicitor or traditional law firm. The SDT has set out its approach to sanctions *here [Link]*. However, the factors in the

table below will help us to decision whether such a sanction is appropriate and to refer the matter to the SDT accordingly. Further information about the circumstances in which we will refer a matter for adjudication by the SDT is set out in our guidance which can be found *here*. [Link]

Letters which contain advice and warning		
Purpose	**Factors in favour**	**Factors against**
To respond to a minor regulatory breach which is not sufficiently serious to require action to protect the public/public interest, to restrict the regulated person's ability to practise or to rebuke or impose a fine. To advise the regulated person that they have breached our requirements/standards and to explain how these apply to the situation in question. To warn the regulated person that should the conduct/behaviour be repeated or the situation continue, more serious action is likely to be taken. The warning may be taken into account in any future proceedings. To promote understanding of our regulatory arrangements, and to raise standards by	• Isolated incident • No actual or lasting harm to consumers or third parties, or harm that could easily have been anticipated to result from the conduct • Breach minor or no more than moderate in nature • A degree of insight and understanding of the purpose of the regulatory requirement/standard • Apology/acknowledgment of breach/situation rectified as soon as possible • Negligible or low risk of repetition • Evidence of insight and remediation, such as apology; self report; acknowledgement of breach, situation rectified; cooperation with the SRA	*Where closure with no action is appropriate, eg:* • Issues relate solely to an inadvertent **breach**, or for some other reason there is no underlying concern about the individual or firm's conduct or behaviour that needs to be addressed or recorded - and therefore no regulatory action is required. *Where a more serious outcome is warranted to protect the public/public interest, eg:* • Dishonesty/lack of integrity/abuse of trust • Evidence of repetition of conduct/behaviour in question, particularly if previously warned/advised to stop • Evidence of a history of previous warnings suggesting a

encouraging positive behaviour.		pattern of wilful disregard or recklessness of regulatory obligations • Conduct/behaviour would tend to damage public confidence in the delivery of legal services • Intentional failure to comply/cooperate with regulatory obligations

Rebuke[11]		
Purpose	**Factors in favour**	**Factors against**
To sanction the regulated person for a breach of requirements/standards, but where the issues are only of moderate seriousness and do not require a higher level of response to maintain standards/uphold public confidence. To deter the individual and others from similar behaviour in future.	• No lasting significant harm to consumers or third parties • Conduct or behaviour reckless as to risk of harm/regulatory obligations • Breach rectified/remedial action taken, but persisted longer than reasonable/ only when prompted • Low risk of repetition • Some public sanction required to uphold public confidence in the delivery of legal services	• Any less serious sanction/outcome would be appropriate to protect the public/public interest *Where a more serious outcome is warranted to protect the public/public interest; eg:* • Dishonesty/lack of integrity/abuse of trust • Evidence of repetition of conduct/behaviour in question, particularly if previously warned/advised to stop • Intentional failure to comply/cooperate with regulatory obligations

[11] SDT refers to this as a reprimand

Conditions[12] - Individual *(The factors to be taken into consideration, below, relate to conditions imposed as a final sanction and not interim conditions)*		
Purpose	**Factors in favour**	**Factors against**
To control the risk of harm arising from a repetition of a breach of our regulatory requirements/standards. To restrict or prevent the involvement of an individual in certain activities or engaging in certain business agreements/associations or practising arrangements. To require an individual to take certain steps. To facilitate closer monitoring of an individual through regular reporting.	• Risk of serious harm or breach in the absence of conditions being imposed • Sufficient insight to enable compliance with conditions • Conduct/behaviour is likely to be repeated in the absence of control/support • Conditions available which address the risk of repetition/harm, and which are reasonable and proportionate, realistic and measurable • Evidence demonstrates person unsuitable for a particular role or activity which should be restricted	• Risk can be managed/matters remediated or rectified without formal regulatory intervention *Where a more serious outcome is warranted to protect the public/public interest; eg:* • Dishonesty/lack of integrity/abuse of trust • No conditions available which can manage the underlying conduct or behaviour • Previous history of failure to comply with regulatory obligations/evidence unable or willing to comply with conditions • Evidence unable/not competent to continue in legal practice at all • Continued practice, albeit restricted, would tend to damage public confidence in the delivery of legal services • Intentional failure to comply/cooperate with regulatory obligations

[12] SDT refers to this as a Restriction Order

Conditions – Firm *(The factors to be taken into consideration, below, relate to conditions imposed as a final sanction and not interim conditions)*		
Purpose	**Factors in favour**	**Factors against**
To control the risk of harm arising from a repetition of a breach of our regulatory requirements/standards. To restrict or prevent a firm, or one of its managers, employees, or interest holders from undertaking certain activities. To limit or prevent risks arising from a business agreement or association which the firm has or is likely to enter into, or a business practice which the firm has or is likely to adopt. To require the firm to take certain steps. To facilitate effective monitoring of the firm through regular reporting.	• Nature of breach relates to systemic/procedural issues • No lasting significant harm to consumers or third parties • Risk of serious harm or breach in the absence of conditions being imposed • Sufficient insight to enable compliance with conditions • Conduct/behaviour is likely to be repeated in the absence of control/support • Conditions available which address the risk of repetition/harm, and which are reasonable and proportionate, realistic and measurable • Evidence demonstrates firm, or person in firm, unsuitable for a particular activity which should be restricted	• Risk can be managed/matters remediated or rectified without formal regulatory intervention *Where a more serious outcome is warranted to protect the public/public interest; eg:* • Dishonesty/lack of integrity/abuse of trust • No conditions available which can manage the underlying conduct or behaviour • Previous history of failure to comply with regulatory obligations/evidence unable or willing to comply with conditions • No individual in firm who is willing and capable of implementing and monitoring compliance with conditions • Evidence that firm is unable to continue to operate or it would damage public confidence if it was to do so • Intentional failure to comply/cooperate with regulatory obligations

Financial penalty		
Purpose	**Factors in favour**	**Factors against**
To sanction the regulated firm or individual for a serious breach of requirements/standards, but where protection of the public/public interest does not require suspension or a striking off. To deter the firm or individual and others from similar behaviour in future. For the level of fine, see the indicative fining guidance published by the SRA from time to time [link].	• Conduct/behaviour caused/had potential to cause significant harm • Direct control/responsibility for conduct/behaviour • Conduct planned/pre-meditated • Wilful or reckless disregard of risk of harm/regulatory obligations • Breach rectified/remedial action taken, but persisted longer than reasonable/ only when prompted • Fine appropriate to remove financial gain or other benefit as a consequence of the breach	• Any less serious sanction/outcome would be appropriate to protect the public/public interest *Where a more serious outcome is warranted to protect the public/public interest; eg:* • Continued practice would tend to damage public confidence in the delivery of legal services • Evidence of insufficient means of the person directed to pay to pay 1.

Suspension of practising certificate by the SDT		
Purpose	**Factors in favour**	**Factors against**
To protect the public/public interest by preventing an individual from practising as a solicitor, in circumstances which do not justify striking them off the roll. Suspension can be for a fixed term or for an indefinite period. The length of the suspension	• Conduct/behaviour caused/had potential to cause significant harm to consumers or third parties • Dishonesty/lack of integrity • Abuse of trust or exploitation of vulnerability • Misconduct involving the commission of a criminal offence	• Any less serious sanction/outcome would be appropriate to protect the public/public interest *Where a more serious outcome is warranted to protect the public/public interest; eg:*

reflects the seriousness of the findings and the length of time needed for the solicitor to remediate. An indefinite suspension marks conduct falling just short of striking off the roll. To sanction the regulated person for a serious breach of requirements/standards. To deter the individual and others from similar behaviour in future. To show the public the consequences for a solicitor who commits serious misconduct.	• Direct control/responsibility for conduct/behaviour • Conduct planned/pre-meditated • Wilful or reckless disregard of risk of harm/regulatory obligations • Breach not rectified/no remedial action taken • Misconduct which continued over a period of time or was repeated	• Protection of the public/public interest requires a striking off • Remaining on the roll would tend to damage public confidence in the delivery of legal services

Striking off the roll by the SDT		
Purpose	**Factors in favour**	**Factors against**
To protect the public/public interest by preventing an individual from practising as a solicitor. To sanction the regulated person for a serious breach of requirements/standards. To deter the individual and others from similar behaviour in future.	• The seriousness of the misconduct is at the highest level, such that a lesser sanction is inappropriate • Conduct/behaviour caused/had potential to cause significant harm to consumers or third parties • Dishonesty/lack of integrity • Abuse of trust or exploitation of vulnerability • Misconduct involving the commission of a criminal offence.	• Any less serious sanction/outcome would be appropriate to protect the public/public interest

To signpost conduct or behaviour which is fundamentally incompatible with continued practice of the profession and to show the public the consequences for a solicitor who commits the most serious misconduct.	• Direct control/responsibility for conduct/behaviour • Conduct planned/pre-meditated • Wilful or reckless disregard of risk of harm/regulatory obligations • Breach not rectified/no remedial action taken • Misconduct which continued over a period of time or was repeated	

Suspension or revocation of firm's authorisation		
Purpose	**Factors in favour**	**Factors against**
To protect the public/public interest by removing a firm's authorisation either permanently or temporarily To sanction the firm for a serious breach of requirements/standards. To act as a deterrent to the firm and others. To show the public the consequences for a firm that commits the most serious misconduct.	• The body has failed to demonstrate or maintain the requirements for (ongoing) authorisation, including the provision of information or payment of fees required under the rules • Conduct/behaviour caused/had potential to cause significant harm to consumers or third parties • Direct control/responsibility for conduct/behaviour • Conduct planned/pre-meditated • Wilful or reckless disregard of risk of harm/regulatory obligations • Breach not rectified/no remedial	• Any less serious sanction/outcome would be appropriate to protect the public/public interest

	action taken and there is in effect no viable alternative to safeguard public protection	

SRA Policy

Multi-disciplinary practices

Amended 31.07.18

The regulation of non-reserved legal activity

A multi-disciplinary practice (MDP) is a licensed body that combines the delivery of legal services and other professional services. ‘Reserved legal activity’ and ‘legal activity’ have the meaning prescribed by s12 of the Legal Services Act 2007(LSA).

When licensing an MDP, our approach to whether we need to regulate non-reserved legal activity performed by non-legal professionals will be a flexible one - driven by the risks posed by the particular circumstances. However, we will exercise the discretion having regard to the regulatory objectives and to the principles set out in this statement.

The context when we agree that any particular non-reserved legal activity will be excluded from the activity that we regulate the MDP for is that:

a) Reserved legal activities and immigration work will always be SRA regulated

b) Any claims management activity engaged in by Solicitors, Registered European Lawyers (RELs) and Registered Foreign Lawyers (RFLs) will be SRA regulated unless the MDP is also authorised by the Claims Management Regulator

c) The MDP as a whole will be authorised and regulated by the SRA. The MDP and those who own it and work within it will need to comply with the authorisation and practising requirements applicable to licensed bodies and their owners, managers and employees as set out in the SRA regulatory scheme. For example, information from across the MDP will be disclosable to the SRA in accordance with the provisions of s93 LSA, and any misconduct of the firm or its members or employees in non-SRA regulated areas may be taken into account in relation to the firm’s fitness to hold the licence, or compliance with conditions

d) Solicitors, RELs and RFLs will continue to be subject to personal regulation by the SRA, this will include the Code of Conduct for Solicitors, RELs and RFLs. Individuals authorised by a body other than the SRA will be subject to the relevant requirements of their own regulator1

e) However, an activity that falls outside of the services that we regulate the MDP for, will not be subject to many of the other detailed provisions of our scheme – including the professional indemnity insurance and compensation fund provisions, the Accounts Rules, the SRA Principles or the SRA Code of Conduct for Firms (the ‘Code for Firms’)

Reserved legal activities and immigration work will always be SRA regulated, as will those activities that are integral to them. Linked to this requirement is the obligation to act in the client’s best interests and not to ‘case split’ in a way that removes appropriate protections, or which will leave the client confused as to the regulatory position2.

The following is a non- exclusive list of activity that we prescribe as integral to reserved legal activity or immigration activity and therefore regulated by us when carried out within the MDP:

- Claims management, when the MDP is instructed to conduct the litigation
- Administering an estate when the MDP is acting on the grant of probate
- Legal advice on liability or quantum when the MDP is instructed to conduct the litigation
- Providing employment advice on a client's right to enter or remain in the UK when the MDP is acting for the client in relation to the visa application
- 'Administering' a client's conveyancing matter whilst the MDP is instructed to draft the reserved instruments

We are particularly concerned that cases involving the provision of reserved legal activities do not move between SRA regulated and other services in a way that causes detriment.

Subsidiary but necessary

Where the non–reserved legal activity is performed as a subsidiary but necessary part of the activity of a non-legal professional (whose main activity does not involve the provision of legal advice or services), then subject to any risks posed in the particular case we will generally be prepared to agree to exclude this from the description of SRA regulated legal activity on the licence. Examples could include an IT consultant whose work may from time to time involve 'legal activity' such as providing advice on installing a new IT system that includes compliance with data protection legislation, or a human resources consultant who designs new disciplinary systems for firms which need to include procedures that are compliant with equality legislation.

The greater the amount of legal activity involved, and/or the closer it may be to reserved legal activity, the less likely we will be to exclude this activity from SRA regulated activity on this ground. So, for example, we are unlikely to exclude will writing, general legal advice, debt recovery, legal advice on debt or personal injury liability or the work of a chartered accountant who regularly acts in disputed tax matters from SRA regulation under this heading (but the suitable external regulation exception may apply).

We think it important in the interests of certainty for providers and the effectiveness and transparency of supervision and enforcement by the SRA that a description of the activities that are excluded from SRA regulation is contained on the terms of the licence.

Example 1: a firm of chartered surveyors wants to open a legal department to act in contested planning matters and applies to the SRA for authorisation as a licensed body. The normal work of the surveyors in the main part of the firm may from time to time involve providing what is effectively legal activity in relation to planning requirements. We are satisfied that the applicant firm has to date successfully delivered this service outside of legal services regulation with no consumer protection issues and has in place appropriate arrangements to refer the client to the legal team (e.g. if the matter becomes contested or there is an issue of disputed law). We therefore agree to exclude this activity from SRA regulated activity. In this case, the relevant wording on the licence could read:

- *"The following will be regulated by the SRA:*
- *- All reserved legal activity and immigration work*
- *- All non–reserved legal activity except for any such activity carried out by a surveyor as a subsidiary but necessary part of the provision of surveying services"*

Suitable external regulation

Where there might be a substantial overlap between legal activity provided by a non -legal professional and the kind of legal work that a lawyer would provide or be expected to supervise, we are likely to include the work as SRA regulated activity, unless it is subject to suitable external regulation. Examples of this would be:

- taxation advice
- providing legal advice on transactions or disputes in the role of a general consultant
- legal advice on debt or insolvency

In those cases, where providing legal advice could be said to be the core part of the service, we consider that extra protections should be in place in an SRA regulated entity.

For us to accept that an external regulatory scheme would be suitable for these purposes, we will need to be satisfied that compliance with the scheme will ensure that the SRA principles will be complied with. These principles are set out below.

1. uphold the rule of law and the proper administration of justice
2. act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by ***authorised persons***
3. act with independence
4. act with honesty
5. act with integrity
6. act in a way that encourages equality, diversity and inclusion
7. act in the best interests of each ***client***

We would also expect the regulatory scheme to provide for complaints, disciplinary procedures and enforcement. We would not consider external regulation to be suitable unless there are effective mechanisms to enforce the rules. For example, if a member can escape liability by simply resigning their membership and yet continue in practice, this could not provide an effective remedy. We would also expect the regulator to maintain regular reporting requirements and to carry out assurance checks/visits on a risk basis.

We agree that we need to apply the text flexibly to achieve a purposive approach, and there may be some circumstances where we may need to impose extra conditions to address what may be gaps in the external regulation.

We have already reviewed the schemes of the following regulators using these principles and are satisfied that they currently meet the test:

- The Association of Chartered Certified Accountants
- The Association of Taxation Technicians
- The Chartered Institute of Taxation
- The Financial Conduct Authority
- The Insolvency Practitioners Association
- The Institute of Chartered Accountants in England and Wales (ICAEW)

- The Royal Institution of Chartered Surveyors

Authorised individuals

Subject to the paragraphs below, any legal activity carried out by authorised individuals or under their direction or supervision will remain an SRA regulated activity. By authorised individual we mean an individual referred to in s18(1)(a) LSA who is authorised to provide one or more reserved legal activities.

However, there will be circumstances where the non-reserved legal activity will be provided under suitable external regulation as part of a service within the MDP that is not identified to clients as a legal service. For example, this could be legal advice on liability for tax as part of an accountancy engagement carried on by a mixed team of legal and non-legal professionals which is covered by ICAEW regulation. In such circumstances, we may agree on the MDP licence that specified services engaged in or supervised by the authorised individual will not be SRA regulated activity. This will be provided that the authorised individual is not providing a reserved service in the same matter and that the regulatory position is made clear to consumers.

In these circumstances although the work will not be SRA regulated activity within the Licensed Body, the SRA Principles and the provisions of the SRA Code of Conduct for Solicitors, RELs and RFLs (the ‘Code for Solicitors’) will apply to the involvement of any solicitor, REL or RFL.

In deciding whether to allow this exception, the factors that we will consider will include the firm’s arrangements for clear terms of engagement and for deciding when it will be in the client’s interests for the matter to be under SRA regulation, as well as the nature of their client base (for example are the clients principally corporate and professional clients who are likely to have experience of purchasing legal services and other professional services?).

The MDP should ensure that the activity is carried out at the direction and under the supervision of an authorised individual when it is in the client’s interests to do so – for example when it is important for the work to attract legal professional privilege.

Example 2: An accountancy firm is regulated overall by the Institute of Chartered Accountants in England and Wales (ICAEW). All of its activities are subject to the ICAEW Code of Ethics, professional indemnity insurance provisions, and (if the activity forms a significant part of turnover) the inspection regime. As well as providing accountancy services (including taxation advice and assistance in taxation disputes), the firm provides general consultancy services that are likely to include legal activities which would fall into the normal range of what a lawyer would deliver. We agree that a suitable external exception is appropriate.

If the firm is authorised, the description on the licence could read:

> *“The following will be regulated by the SRA:*
>
> *- All reserved legal activity and immigration work*
>
> *- All legal activity prescribed by the SRA as integral to reserved activity*
>
> *- All other non- reserved legal activity performed by or under the supervision of an authorised individual (except where: (a) the service in the matter falls into the categories*

> *of accountancy services or management consultancy advice overall and is identified as such to consumers and (b) the authorised individual is not providing a reserved service in the same matter."*

The background to this decision will be that the rest of the firm's non-reserved 'legal activity' will be regulated by ICAEW. We would place a condition on the licence that the MDP has a duty to notify us if their regulatory position changes or there is disciplinary action taken against them by another regulator.[3]

In this example, the rules on conflict of interests would apply to the MDP as follows:

(a) Two SRA regulated matters – paragraphs 6.1 and 6.2 of the Code for Firms will apply
(b) Two non-SRA regulated matters – the ICAEW Code of Ethics will apply
(c) One SRA regulated matter and one non-SRA regulated matter there will be a conflict of interests but not an SRA regulated conflict of interests so the ICAEW Code of Ethics will apply.

Where solicitors or RELs or RFLs are involved in scenarios (a) to (c) they will be subject to the duties regarding conflicts of interest set out in paragraphs 6.1 and 6.2 of the Code for Solicitors in relation to their personal involvement. So, they cannot act if there is an own interest conflict and cannot personally act for both clients together unless the safeguards in paragraph 6.2 are met.

Clients, complaints and the Legal Ombudsman

Any MDP must have procedures in place to ensure that clients are aware of their regulatory position – and which activity is SRA regulated and which is not.[5]

The exclusion of work from SRA regulated activity does not impact on the right of a client to take a complaint to the Legal Ombudsman in relation to the legal activities of any individual authorised person or of the MDP itself as an authorised person. Clients will therefore need access to a suitable complaints procedure and to be informed of their rights to pursue a complaint to the Legal Ombudsman even where the work is not SRA regulated activity.

The Compensation Fund

Under the SRA Compensation Fund Rules, the Fund will only cover defaulting licensed bodies where losses are incurred in the course of performance of an activity that we regulate on the terms of the licence. Therefore, defaults will not be covered if they fall outside of SRA regulated activity.

Professional Indemnity Insurance

We would prefer the same insurer across the MDP to avoid consumers being prejudiced by disputes over which policy covers a particular situation. We would expect that all legal activity whether SRA regulated or within the external regulation exception should be covered by a policy that meets the SRA's minimum terms and conditions. However, we will consider requests for waivers on a case-by case basis where acceptable alternative arrangements may be in place.

Turnover

Non-reserved legal activities that fall out of SRA regulated activity will not be included in turnover for the purpose of calculating periodical fees.

1 Note that S52 LSA provides that in any conflict between the rules of the Approved Regulator (an entity requirement) and the rules of another regulator (an individual requirement) the entity requirement prevails.

2 See SRA Principle 7 and paragraph 4.2 of the SRA Code for Firms

3 Note the firm may well have additional regulators, for example the FCA for investment advice.

4 See paragraph 7.2 (c) in the Code for Firms incorporating paragraph 8.10 of the Code for Solicitors, RELs and RFLs

The principles	**Behaving with integrity**
Code of conduct	**Whistleblowing, disclosure & Legal Professional Privilege (includes former Reg 3)**
	Discrimination case study
	Further EDI case studies
	Working with clients who lack capacity
	Guidance to help readers find where relevant legislation removed from the Code can be found
Freelance solicitors	**Expectations of freelance solicitors**
	Adequate and appropriate PII
Firm authorisation	**Does my business need to be authorised?**
	Can my business be authorised? (Eligibility)
	Preparing to become a sole practitioner

Individual authorisation	"do I need a PC?" - what this means if you are in a regulated / non LSA business or overseas
	In-house solicitors
Non-LSA legal service providers	Conflict and confidentiality in non-authorised businesses
	Conflict and confidentiality in non-authorised businesses - case studies
	Guidance for non-authorised businesses employing solicitors or SRA registered foreign lawyers
	Explaining regulatory safeguards to clients of non-authorised businesses
	Explaining regulatory safeguards to clients of non-authorised businesses - case studies
Enforcement strategy	Indicative fining guidance
	Topic guide: criminal offences outside practice
	Topic guide: use of social media and offensive communications
	Topic guide: driving with excess alcohol convictions
	Topic guide: competence and standard of service

	Topic guide: price transparency
Accounts Rules	**Operating a client account as a banking facility**
	Use of Third Party Managed Accounts (TPMA)
	Do I need to operate a client account?
	Accounting records and systems
	Guidance for firms and reporting accountants
	Accountant's report - when one is needed
	Record keeping around operation of joint accounts
	Combined guidance **i) Acting as a trustee and client money** **ii) Operation of a client's own account**
Overseas rules / REL and RFL	**REL and RFLs**

Financial services rules	**Keeping up to date with secondary legislation**
Better information	**Price and service publication guidance**
	The digital badge
	Engaging with online reviews and rating websites
	Publishing complaints procedure, including how to complain to LeO and us
	Client care letters
	‘Smile’ guide
Money laundering	**Money laundering duties**
Special bodies	**Special bodies guidance pack**

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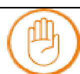
Businesses that are not authorised by a legal services regulator and that employ SRA-regulated lawyers

Issued on [INSERT DATE]



Status

This Guidance does not form part of the SRA Handbook. However, we may have regard to it when exercising our regulatory functions.

Who is this guidance for?

All employers of solicitors who provide services to the public or a section of the public on behalf of an entity which is not authorised specifically to provide legal services by a legal services regulator.

Although this guidance refers to solicitors, unless otherwise stated the advice will also apply if you employ registered European lawyers (RELs) or SRA registered foreign lawyers (RFLs).

Purpose of this guidance

This guidance is to help you if you employ a solicitor and your business is not authorised specifically to provide legal services by a legal services regulator under the Legal Services Act 2007 (which may be the Solicitors Regulation Authority of one of a number of other regulators that might be able to licence you). It will help you to understand what you can employ solicitors to do and what their regulatory duties are.

General

Solicitors can be employed by you to provide services and support your business in a variety of ways. They can work 'in house' providing legal advice to you as their employer, and/or they can provide legal services to others such as companies within your group or to the public more widely on your behalf. This guidance focuses on the alternative situation where the solicitor is providing services to external clients – the public or a section of the public. This includes commercial clients as well as individuals.

Solicitors bring with them the advantages of professional training and accreditation in law, and of adherence to the ethical and professional standards set out in the SRA's regulatory arrangements. These arrangements will benefit and protect both you and your customers, but you will want to ensure that systems and policies are in place within your business to enable the solicitor to comply. You may wish to discuss how best to do that with the solicitors that you employ, as well as considering this guidance and the other resources referred to in it.

What type of legal service can the solicitor offer to external clients?

The solicitor can provide any type of legal service except:

- Reserved legal services to the public or a section of the public, – see Does my business need to be authorised?

- Immigration work - unless your business is separately authorised by the Office of the Immigration Services Commissioner

- Claims management services - unless your business is separately authorised by the Financial Conduct Authority)

- Financial services or activities that are required to be authorised by the Financial Conduct Authority unless they are acting on behalf of your firm and you have the appropriate authorisation.

What can you say to clients and potential clients about the solicitor and your business?

Although the solicitor will be personally regulated by us, it is important that you do not either deliberately or inadvertently give the impression that your business is regulated by us. This can be a criminal offence.

A solicitor has a number of duties to give their clients information (for example as to regulation, the right to complain and the costs of the case) and you will find it helpful to read our separate guidance to solicitors on this topic "Giving information to clients of businesses that are not authorised by a legal services regulator"

Does the solicitor require a practising certificate?

If the solicitor is practising as a solicitor, they must obtain an annual 'practising certificate' from us – see our guidance. If you pay for this as an employer and employ a number of solicitors, then bulk payment and annual return facilities are available to make this easier for you (link.). This can include RELs and RFLs who are also required to renew their registration every year.

What about holding money on behalf of clients?

A solicitor working in your business is not allowed to hold client money in their own name.

"Client money" will include:

- Money that clients pay you on account of your charges or third-party costs (such as fees for reports)
- Any damages that your client receives as part of a settlement of a case
- The assets of an estate that is being administered by your firm
- Any other money that you are holding on your client's behalf to complete a transaction or for investment purposes.

Therefore, you should not, for example, ask clients to pay money to a bank account held by the solicitor in their name on behalf of your business as this would place the solicitor in breach of the rule. This does not prevent the solicitor from being a signatory to a bank account held by your business in its own name, as long as it is clear to clients that it is your business that is holding the money not the solicitor.

What if there is a complaint about a solicitor?

Under the SRA Code of Conduct for Solicitors, RELs and RFLs solicitors have a duty to establish and maintain, or participate in, an adequate system of complaints handling and to inform clients about how to complain under that system. So, if you do not already have one, your business will need to set up a complaints system if you want to employ a solicitor and they will be dealing with external clients. The clients will need to be told who to complain to about the solicitor and how that complaint will be dealt with.

If they are not satisfied with the result of that complaint, or if it has not been resolved within eight weeks, clients have the right to take any complaint about the standard of service offered by the solicitor to the Legal Ombudsman. The solicitor must tell clients about this right both at the time of engagement and when any complaint is made.

What other obligations on the solicitor should you take account of as an employer?

All solicitors are subject to the SRA Principles. These include the duties to act with honesty and integrity and in the best interests of clients.

Another key principle is the obligation to act "with independence." Of course, this includes providing you and your clients with independent advice. However, this duty also means that the solicitor cannot act for you as their employer (or "client") or for external clients in a way that compromises their independence.

For example, solicitors have a duty not to mislead the court or other third parties. This will override any duty they may have to follow your or any external client's instructions. Those principles which safeguard the wider public interest (such as the rule of law, public confidence in a trustworthy solicitors' profession and a safe and effective market for regulated legal services) take precedence over an individual client's interests, including yours as their employer. The solicitor must inform the client when these circumstances arise. Normally it would be sensible for the solicitor to have discussed the issues with you to prevent problems arising in the first place.

For case studies in this area see
https://www.sra.org.uk/solicitors/code-of-conduct/guidance/case-study/balancing-duty-court-clients-interests.page

https://www.sra.org.uk/solicitors/code-of-conduct/guidance/case-study/misleading-court-duty-uphold-rule-of-law.page

https://www.sra.org.uk/solicitors/code-of-conduct/guidance/case-study/lack-independence.page

All solicitors are also bound by the SRA Code of Conduct for Solicitors, RELs and RFLs and it is important that you read the Code in full. Some of its key provisions are set out below:

- A duty to maintain their competence and professional knowledge and that of any individuals they manage (paragraphs 3.3 and 3.6). For this to be effective, a solicitor will need to have access to resources for ongoing ethical and professional development. If you are a large organisation employing a number of lawyers, it may be beneficial for you to provide some of these resources in house. However, there are a number of ways in which support can be supplied externally. For example, you can pay for solicitors to go on external training, to achieve additional accreditations (such as those organised in particular specialisms by the Law Society[1] or others), to be part of a professional network[2] or to have access to online resources such as up to date case reports.

- A duty not to mislead the court and others (see above).

- A duty not to act for a client where they have an actual or potential conflict of interest with that client (paragraph 6.1) and not to act for two clients with an actual or potential conflict of interest with each other unless certain conditions are met (paragraph 6.2).

- Keeping the affairs of clients confidential (paragraph 6.3)

As a firm, you will want to have appropriate systems in place to ensure that solicitors can meet these crucial obligations in relation to conflicts of interest and confidentiality. We have issued separate guidance and case studies for solicitors in these situations which you will also find helpful in understanding the circumstances in which solicitors can and cannot act and when information can and cannot be passed on.

- Duties to co-operate with us and the Legal Ombudsman, to provide information to us and to report serious breaches of the rules to us or other approved regulators (paragraph 7.3 – 7.7).

What rights does the SRA have to access papers?

We will often request documents and information from solicitors as part of its investigations. However, should any solicitor who has been requested to produce documents refuse to do so voluntarily, we have the statutory power to formally request the documents and information in a Production Notice pursuant to section 44B of the Solicitors Act 1974.

If we do need to investigate a solicitor working for you, we will normally be in touch with you and keep you updated on what we are doing. In this situation, we may ask you to provide information or documents relating to the matter. You may wish or be able to disclose documents voluntarily, however we have statutory powers to compel information where appropriate. We can apply to the High Court under section 44BB to ask for an order that a third party produce documents where they are relevant to an investigation of breaches of regulatory arrangements by a solicitor or a solicitor's employee. For more information please see our guidance on Gathering Evidence.

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[1] http://www.lawsociety.org.uk/support-services/accreditation/

[2] For example the network communities run by the Law Society http://www.lawsociety.org.uk/communities but there are also numerous other networks for specific types of practice

Further guidance

See the case studies

See also related guidance:
Does my business need to be authorised?
Conflict and confidentiality in businesses that are not authorised by a legal services regulator
Giving information to clients of businesses that are not authorised by a legal services regulator

Further help

If you require any further assistance, please contact the Ethics helpline.

DN: A link will be inserted to text in blue

Giving information to clients of businesses that are not authorised by a legal services regulator

Issued on [INSERT DATE]

Status

This Guidance does not form part of the SRA Handbook. However, we may have regard to it when exercising our regulatory functions.

Who is this guidance for?

Solicitors, SRA registered European lawyers (RELs) and SRA registered foreign lawyers (RFLs) providing services to the public or a section of the public on behalf of an entity that is not authorised by an approved regulator under the Legal Services Act 2007.

Purpose of this guidance

To help you understand your obligations to give information to external clients when your employer is not authorised by us or any other approved regulator under the Legal Services Act 2007.

General

As your employer is a non-authorised business, you may wish to refer them to this and other related guidance and discuss with them any arrangements, policies or procedures necessary to support you to meet your ethical and regulatory obligations. Since you will need to give clients certain information about insurance (see below) as part of this discussion you will want to ask your employer for details of the professional indemnity insurance cover for your work.

This guidance is particularly aimed at the situation where you are providing services to external clients (and therefore you are dealing with the clients directly or they have been told that you are involved in providing services to them). However, the way in which these obligations will apply to you will depend on the context, including in particular the extent of your involvement with the matter and of your contact with the client.

When giving information to clients, you should do so in a way that they understand. You must ensure they are in a position to make informed decisions about the services they need, how their matter will be handled and the options available to them. (See paragraph 8.6 of the SRA Code of Conduct for Solicitors, RELs and RFLS).

Obligations that apply to you regarding regulatory information for clients

Paragraph 8.10 in the SRA Code of Conduct for Solicitors, RELs and RFLs sets out your obligations to make sure that clients understand whether and how the services you provide are regulated.

Paragraph 8.11 requires you to make sure that clients understand the regulatory protections available to them.

You will be providing the service on behalf of an employer that is not authorised and regulated to provide legal services, and it will be important for clients to understand this. You must not represent your employer as authorised by us.

Complying with paragraphs 8.10 and 8.11 will include explaining to the client which services are provided by you as an authorised person (i.e. as a solicitor, RFL or REL) and which are provided by others, and whether those persons are authorised or not.

This information is important for clients because it will determine which activities are subject to our jurisdiction and that of the Legal Ombudsman, and which are not, and therefore will determine the recourse clients might have if something goes wrong. The client also has a clear interest in understanding, and making informed choices, about who will be carrying out the work on their behalf. It may be the case for example that they chose to instruct the firm because they particularly wanted to use your services as a solicitor.

Explaining the position to clients will be more straightforward if you are handling or supervising either a discrete or particular aspect of the work, or indeed are handling or supervising the whole matter. You will remain responsible for the work of those you supervise as far as we are concerned (see paragraph 3.5 of the Code for Solicitors, RELs and RFLs). The Legal Ombudsman may also accept a complaint where it is clear that this has been supervised by a solicitor.

However, where you are working as part of a joint team and in practice it is not possible to draw a clear boundary around the services provided by you or other authorised lawyers, then the client should be informed that you will be carrying on this work jointly with others and you will be accountable to us for the work as a whole. In practice when investigating any concerns, we will consider your personal conduct and behaviour, and degree of responsibility for any problems that may arise, in accordance with our Enforcement Strategy

Professional indemnity insurance and the SRA Compensation Fund

Rule 4.3 of the SRA Transparency Rules 2018 requires you to give certain information to clients before they formally instruct you:

- That you are not required to have professional indemnity insurance that meets our Minimum Terms and Conditions. As with other information, this must be given to clients in a way that they understand. In essence this will involve explaining that we require the firms that we regulate to have compulsory insurance to protect them and clients in case something goes wrong. Then that this insurance requires certain minimum standards (such as a minimum level of cover of £2m, or £3m for limited companies) but that these arrangements do not apply to the firm you are in because it is not regulated by the SRA. Some clients may require more explanation in order to understand the position.
- If your work is covered by professional indemnity insurance (often this will have been arranged by your employer) then you should also inform clients of that fact, and if the client asks for further information give them relevant details as to the amount and scope of cover.
- You should tell clients that they will not be able to apply for a grant from the SRA Compensation Fund. Again, making this information intelligible to clients will usually require a brief explanation of what the fund is and stating that this will not be available to the client as the firm is not regulated by the SRA. Providing this information will not be necessary if the

client is a business with a turnover of £2m or more per year and is therefore not eligible to seek a grant in the first place.

Complaints

Under paragraph 8.2 of the SRA Code of Conduct for Solicitors, RELs and RFLs you must set up or participate in a complaints system and give clients information about how to complain under that system. Therefore, if your employer does not have a complaints system, you will need to ensure that one is set up, at least in relation to your work and work done by others under your supervision. You will then need to ensure that at the point of engagement, clients are told who to complain to about any problems with your services and about how to complain.

Paragraphs 8.3 and 8.4 set out your obligations to inform clients of their right to complain to the Legal Ombudsman if they are unhappy about the services you have provided. To be effective this will include explaining their jurisdiction over the work (as discussed above), providing the contact details for the Legal Ombudsman and explaining when a complaint can be made. This will be after the client has first used your internal complaints procedure and in any event within 8 weeks of making a complaint to you or your business if it has not been resolved to their satisfaction. This information should be given both at the time of engagement and when any complaint is made.

You should make sure that clients understand that while they will have this further right to complain to the Legal Ombudsman about the service you are providing, and a right to complain about your professional conduct to us, they will have no such rights in relation to your employer or the part of the service provided by non-authorised persons (except where those persons were acting under your supervision).

Meeting these obligations will involve you being aware of the client care information that your employer sends out about your services and discussing and agreeing amendments with your employer where necessary.

Other duties to provide information

You should be aware of all of the obligations that apply to you under the Code and Principles. Some of your other key obligations to supply information to clients in the Code for Solicitors, RELs and RFLs are:

- Telling clients about any referral fees that you or the firm have paid for the case, or about any financial interest any introducer has in referring the matter to you (paragraph 5.1)
- Making clients aware of all information material to their matter of which you have knowledge, subject to some limited exceptions (paragraph 6.4).
- Making sure that clients receive the best possible information about how their matter will be priced and, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of the matter and any costs incurred (paragraph 8.7).
- If your employer is connected to an SRA regulated firm (for example, one firm owns the other) such that your employer is a Separate Business then paragraph 5.3 states that the client must give informed consent for any matter to be divided between the regulated firm and the Separate Business – see the guidance on this issue

Further guidance

See the case studies

See also related guidance:

Conflict and confidentiality in non-authorised businesses

Businesses that are not authorised by a legal services regulator and that employ SRA regulated lawyers

Further help

If you require further assistance, please contact the Ethics helpline [LINK]

Practical Q&As: Do I need to operate a client account?

Issued on [INSERT DATE]

These Q&As are for SRA authorised firms that receive and hold client money in the form of fees and disbursements and want to rely on the exemption not to operate a client account.

Q.1 What does client money include?

Client money is money of any currency that is received and held as cash, cheque, draft or electronic transfer by a firm when they are providing legal services. Examples of the types of client money include:

- Client damages received by a firm in a personal injury matter
- Mortgage money received from a lender (third party) on behalf of the client
- Money held to pay nursing home fees for a client where a solicitor has been appointed as Court of Protection deputy
- Money for the firm's fees, and any unpaid expert fees, that have been received before a bill has been sent to the client for those fees.

We define client money in rule 2.1 of the SRA Accounts Rules.

Q.2 Can I hold and receive any client money if I do not operate a client account?

Yes, if:

- the **only** client moneythat is received by you is advance payments for fees and unpaid disbursements. The money must relate to your fees or expenses incurred by you on behalf of your client and for which you are liable, for example, counsel or expert fees (this would not include, for example, disbursements for which your client is liable (such as stamp duty land tax), and

- you have made sure that your client has been properly advised and is given sufficient information about where their money will be held t). You should explain to your client that their money will not be held on account for them or specifically ring fenced as the money may be held and used as part of the firm's own money in their business account.. This is so that they can make an informed decision about whether they wish for their money to be held outside of a client account or consider other alternatives.

This exemption is set out in Rule 2.2 of the Accounts Rules.

Q.3 What sort of risks do I need to think about and discuss with my clients if I rely on the Rule 2.2 exemption?

A key risk that you should consider and make sure potential clients have properly understood is , for example, what happens in the event of your firm becoming insolvent as the money would not be ringfenced and could be incorporated into the insolvent estate.

If you are subject to an insolvency event before the client's work has been completed, the client will be treated like any other creditor. This impact could be greater for clients who

might not have easy access to additional funds to pay another firm for work to be completed.

Q.4 What if my client does not agree for the money to be held outside a client account?

You should consider whether:

- it is necessary for you to operate a client account, or
- the money can be held in a third party managed account, or
- you can make other arrangements so that the money does not have to be held by you (eg the client paying disbursements to third parties directly and only requesting payment for your services once a bill has been issued), or
- you can continue to act for the client if no alternative can be agreed upon.

Q.5 Because I do not operate a client account, can the client make a payment directly to the third party, for example to counsel?

Yes. If the client has agreed to make payment to a third party directly you should make sure the client is clear about this and knows how, when and to who they should make any payments. You should keep a record of the communication with your client and a note of when the payment has been made.

Q.6 At the end of my retainer with the client, what do I need to do if I am left with a balance of client money?

There may be circumstances where this arises, for example, if advance payments from a client exceed the final fees that you set out in your bill to the client when the work is completed. Though you do not operate a client account you will still need to comply with Rule 2.5 of the Accounts Rules and make sure that client money is returned **promptly** to the client as soon as there is no longer any proper reason to hold the money.

Q.7 Can I rely on the exemption in Rule 2.2 of the Accounts Rules and arrange for my client to use a third party managed account (TPMA)?

Yes – providing it is appropriate in the circumstances.

For example, you may need a facility for holding ***client money*** (an example being, damages awarded in a litigation case) on a temporary basis and you do not want to open a client account. A TPMA can provide an alternative for receiving the damages and making any payments.

Further information about TPMAs can be found here [insert link to TPMA guidance].

Q.8 Do I need to obtain an accountant's report if I do not operate a client account?

No. The requirements to obtain and deliver an accountant's report do not apply if you are holding client money in accordance with Rule 2.2.

Q.9 Are there any other parts of the Accounts Rules or the SRA Handbook that I need to think about even though I am relying on the exemption in Rule 2.2?

Yes. You should:

- make sure that you have, for example, given your client a bill or other written notification of costs [Rule 4.3(a)],
- keep accurate records showing receipts and payments of client money in real time. The purpose of a client ledger is to record any client money wherever it is held and can be used even if the firm does not have a client account [Rule 8.1(a)], and
- bear in mind your duty to act in the best interests of each client and to safeguard money on behalf of clients and other third parties.

Q.10 If there is an event which results in the client's money going missing or my firm being unable to account for it, can the client make a claim on the SRA's Compensation Fund?

Providing the client is eligible to claim and can evidence that money was paid to the firm for work not completed, then a claim can be made. More information about how we make decisions and how we deal with claims can be found here [http://www.sra.org.uk/sra/decision-making/guidance/consumer-payments-compensation-fund.page]

Q.11 What do I need to do if things change and I cannot rely on the Rule 2.2 exemption?

If for any reason you cannot rely on the exemption, for instance you start to receive other types of client money, the Accounts Rules will apply in their entirety and you must place any client money held or received by you into a client account or consider alternative arrangements as set out in response to Question 4.

Further help

If you require further assistance, please contact the Ethics helpline [LINK].

Case Study - discrimination

Issued on:

Background

A is a newly-qualified solicitor in a small firm of solicitors. The firm has been instructed to apply for a premises licence for a restaurant owned by a local family. B has day to day conduct of the file and is supervised and managed by C, who is one of the firm's two partners. When B goes on holiday, D, the firm's senior partner and Compliance Officer for Legal Practice (COLP), asks A to have conduct of the file.

A reads the file. The file contains emails between B and C which make abusive and offensive comments about the racial origin of the firm's clients. In one email to C, B says she thinks the restaurant will be staffed entirely by illegal immigrants and that the hygiene levels will be "third world". C replies and suggests that they never go there for lunch. B tells C in another email that she has other clients and matters which she will give priority to instead. C's reply simply says "noted".

A tells D about the emails. D makes a report to us. A chose to report the matter to D as he is the COLP and also the partner responsible for equality, diversity and inclusion at the firm.

B's position

Paragraph 1.1 of the SRA Code of Conduct for Solicitors, RELs and RFLs (Individuals' Code), sets out that an individual we authorise must not unfairly discriminate by allowing their personal views to affect their professional relationships and the way in which they provide their services.

By prioritising the work of other clients on the grounds of racial origin, B has unfairly discriminated against this client in breach of Paragraph 1.1. By doing this and by making offensive comments in emails to C, B has also breached Principle 2 (to act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons) and Principle 6 (to act in a way that encourages equality, diversity and inclusion).

C's position

The comments made by C in the email exchange with B, suggest that C has also breached Principles 2 and 6, as well as Paragraph 1.1 of the Individuals' Code.

As B's supervisor and manager, C has additional obligations. C must effectively supervise the work done by B (Paragraph 3.5 (b) of the Individuals' Code) and ensure that B's understanding of his legal, ethical and regulatory obligations is up to date (Paragraph 3.6 of the Individuals' Code). On receipt of the first email from B containing offensive comments, C should have taken appropriate steps to stop the behaviour and deal with B (for example by arranging training or in accordance with the firm's disciplinary policy). By instead entering into the email exchange with B, C has failed to meet the standards set out above.

C has also failed to make a prompt report to us about a serious breach of the regulatory arrangements in breach of Paragraph 7.7 of the Individuals' Code.

Our view

We take a serious view of behaviour by a solicitor which breaches a person's right not to be discriminated against. We see this behaviour as undermining public trust and confidence in the solicitors' profession. We view the behaviour by B and C to be at the higher end of seriousness, irrespective of any financial or other harm. We need to act robustly to protect clients and to maintain standards and uphold public confidence.

A's position

A has an obligation under Paragraph 7.7 of the Individuals' Code to report serious regulatory breaches to us. A has met this obligation by reporting the correspondence to D as the firm's COLP, on the understanding that D will notify us (Paragraph 7.10 of the Individuals' Code).

D's position

By making a prompt report to us, D has complied with her obligation under Paragraph 7.7 of the Individuals' Code.

The firm's position

In this instance, it appears that B and C have acted individually and there is no evidence of a firm-wide issue. However, we may decide to look at the firm's systems and controls in relation to equality, diversity and inclusion and consider whether these were effective to ensure compliance with the Firm's Code.

Going forward, bearing in mind the requirements under Standard 2.5 of the Firms' Code to monitor and manage all material risks to its business, the firm may want to consider further Equality, Diversity and Inclusion training for everyone in the firm.

Further help

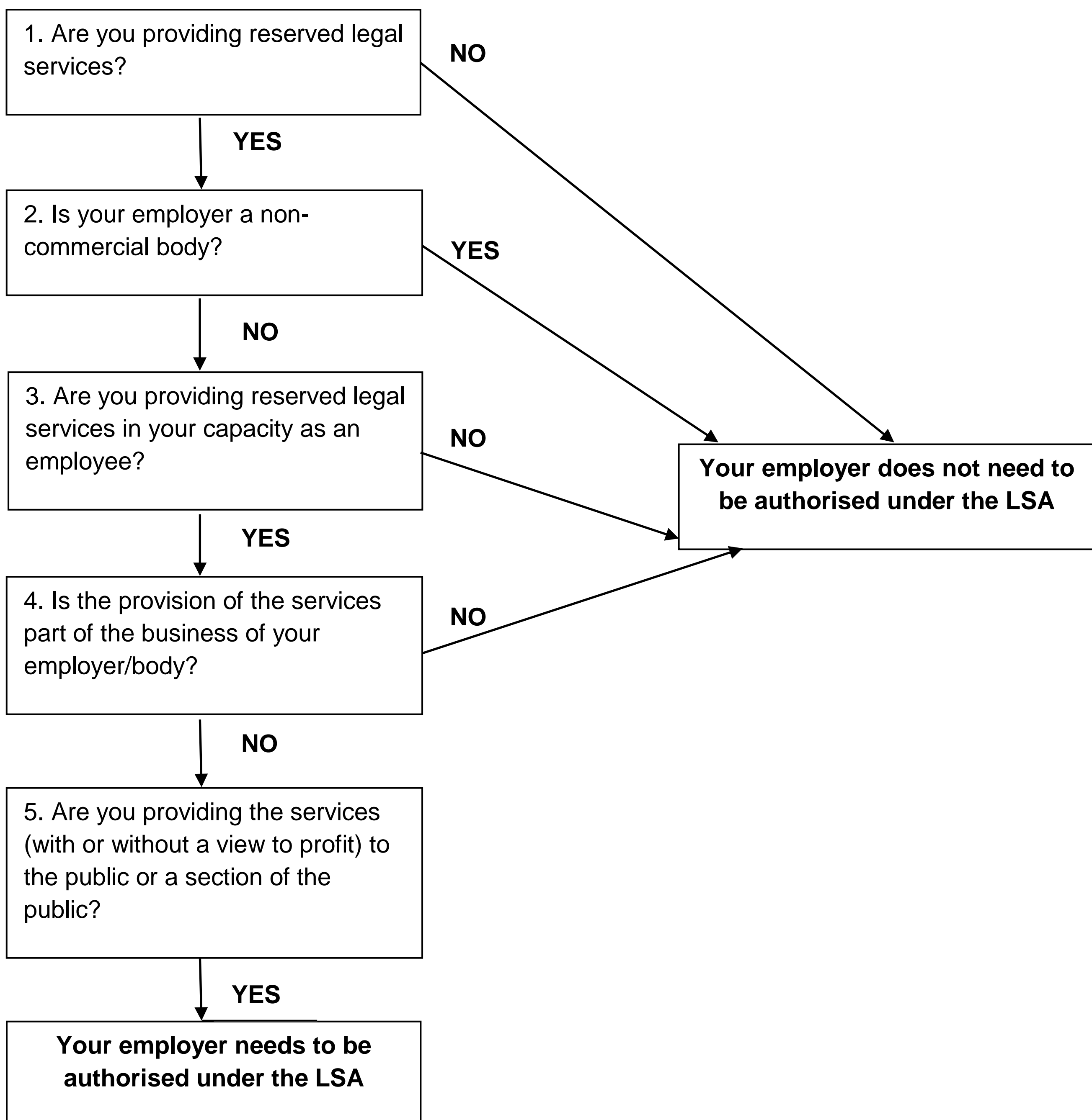
If you require further assistance, please contact the Ethics helpline.

Section 15 of the Legal Services Act 2007 (LSA)

Does my employer need to be authorised by an approved regulator under the LSA?

Introduction

This flow chart and the accompanying notes are intended to assist solicitors, registered European lawyers and registered foreign lawyers in deciding whether their employer needs to be authorised under the LSA. This represents our interpretation of the position under the LSA but it is ultimately a matter to be determined by the Courts.



Notes to the flow chart on section 15 of the Legal Services Act 2007 (LSA)
Does my employer need to be authorised by an approved regulator under the LSA?

1. Are you providing reserved legal services?

Section 13(1) of the Legal Services Act 2007 (LSA) makes it clear that the question whether a person is entitled to carry on a reserved legal activity is determined solely by reference to the LSA.

Section 15 LSA, which determines whether an person's employer needs to be authorised by the SRA or another approved (legal services) regulator, only applies to reserved legal services. These are services that consist or include any of the following reserved legal activities, which are set out in section 12 and schedule 2 of the Legal Services Act 2007 (the Act):

(a) the exercise of a right of audience before certain (higher) courts
(b) the conduct of litigation (which can be described as the taking of formal steps in proceedings, such as issuing a claim or filing documents or forms)
(c) reserved instrument activities (which covers certain conveyancing transactions - for example preparing and lodging transfers or charges with the Land Registry - and preparing instruments relating to court proceedings, such as pleadings)
(d) probate activities, namely preparing papers on which to seek or challenge grant of probate or letters of administration
(e) notarial activities (for which you are authorised by the Master of the Faculties)
(f) the administration of oaths

2. Is your employer a non-commercial body?

If your employer is a not for profit body, a community interest company or an independent trade union, then they will not need to be authorised by us or another approved regulator because of transitional arrangements under section 23 of the LSA. The transitional period, which began on 1 January 2010, will be brought to an end by an order of the Lord Chancellor and we are currently not aware of any plans to do so.

3. Are you providing reserved legal services in your capacity as an employee?

In deciding whether you are providing reserved legal services in your capacity as an employee, you may wish to consider whether, for example, you are required by your employer to carry out the activities in question, are held out as carrying out the activities on behalf of the employer and/or are paid for the time spent doing them. When considering whether you are, conversely, acting independently, it may also be relevant whether you are providing the services during working hours and/or from your employer's business premises.

These factors are not exhaustive, or determinative, and the question will turn on the facts. However, for example, you are unlikely to be acting in your capacity as an employee where you are doing pro bono work with your employer's permission (but not at their request) by volunteering at a law centre outside working hours, and make it clear that you are acting independently in doing so.

4. Is the provision of the services part of the business of your employer/body?

The factors relevant to this question will necessarily overlap with those in question 3. For example, you will want to consider the extent to which the employer is itself involved with the activities (for example, by requiring you to carry them out, or to hold yourself out as acting on their behalf) and factors such as when and where they are carried out. However, you may in addition wish to consider:

(a) whether your employer describes its business as including the relevant services

(b) how regularly it provides the services, the number of employees that do so and the overall proportion of time spent on providing them

(c) the extent to which these services complement or enhance the business of your employer

(d) whether your employer provides management, training or supervision in relation to the provision of these services, or rewards you (directly or indirectly) for doing the work

(e) who provides the necessary indemnity insurance cover.

Once again these factors are not exhaustive or determinative, and you will need to look at the circumstances in the round.

5. Are you providing the services (with or without a view to profit) to the public or a section of the public?

What is meant by the “public or a section of the public” is not defined in the LSA, although it has been considered by the courts in other contexts (for example, discrimination).

In order to understand what is meant by this phrase it is necessary to consider the overall purpose of these particular statutory provisions. Firstly, it is important to note that a key overall purpose of the Act is to safeguard the protection of the public generally, and consumers of legal services in particular, and it is in this context that the authorisation requirements for employers must be considered. The Explanatory Notes to section 15 explain the intended effect: "for example, that where a body employs lawyers to provide in-house legal services to that body or to certain persons connected to the body, but not to the public or a section of the public, the body in question will not need to be an authorised person. ..”.

Therefore the question will not depend on the characteristics of the client (whether an individual or an organisation, or whether within the public or private sector for example). Rather, the relevant question to ask is: are you only providing the services to your employer or a person (individual or organisation) connected to your employer?

In some situations this will be obvious, for example where the person is:

(a) a holding, associated or subsidiary company of your employer

(b) a partnership, LLP, syndicate or joint venture company in which your employer has an interest;

(c) a present or former employee, manager, director, company secretary, board member or trustee of your employer, where the matter relates to their work in that capacity

(d) an association, club or pension fund operated for the benefit of the employees of your employer.

In other situations, deciding what constitutes "the public or a section of the public" will not always be easy to answer, but will also depend on a clear and specific relationship your client has with your employer.

This will ultimately be a matter to be determined by the Courts. However, it is useful to bear in mind the following key indicators:

(a) if your employer is a club or association, and you are providing services to its members, the size of its membership, and whether it has rules allowing for genuine selection of members - case law in the discrimination field suggests that this would mean that members are not the public or a section of the public

(b) how the person to whom you are providing services came to you/the employer – they are likely to fall within the definition of public or a section of the public if they come to you haphazardly or as a result of marketing your services

(c) conversely, if the services are only provided to a closely defined group with a specific relationship with the employer, they are likely not to be classed as a section of the public, for example where a local authority enters into a joint venture to share services with one or more neighbouring authorities

(d) whether the services are provided to the public at large, or members of a disparate group united by a particular feature but not selected in this way - for example prisoners or asylum detainees, or those affected by a breach of trading standards legislation.

Warning Notice

Improper use of client account as a banking facility

Issued on: XX
Updated: 5 July 2018

Status

While this guidance does not form part of the SRA Handbook, we may have regard to it when exercising our regulatory functions.

Who is this guidance relevant to?

This guidance is relevant to all practitioners who have any involvement in holding or using money received for clients or others.

For a number of years, we have warned that solicitors must not provide banking facilities to clients or others. This warning notice is a reminder of some of the key issues and risks of which you should be aware. We have also set out some case studies (insert link) to help you comply with your obligations.

OUR RULES AND PRINCIPLES

Rule 14.5 of the SRA Accounts Rules 2011 provides that:

> "You must not provide banking facilities through a client account. Payments into, and transfers or withdrawals from, a client account must be in respect of instructions relating to an underlying transaction (and the funds arising therefrom) or to a service forming part of your normal regulated activities."

The rule's guidance note states that:

> "Rule 14.5 reflects decisions of the Solicitors Disciplinary Tribunal that it is not a proper part of a solicitor's everyday business or practice to operate a banking facility for third parties, whether they are clients of the firm or not. It should be noted that any exemption under the Financial Services and Markets Act 2000 is likely to be lost if a deposit is taken in circumstances which do not form part of your practice. It should also be borne in mind that there are criminal sanctions against assisting money launderers."

Concerns about the improper use of client account have been clearly and more broadly stated in case law. You should make sure that you are fully aware of the relevant case law including the *Fuglers*,[1] *Patel*,[2] and *Zambia*[3] cases.

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[1] *Fuglers LLP v SRA* [2014] EWHC 179 (Admin).
[2] *Premji Naram Patel v Solicitors' Regulation Authority* [2012] EWHC 3373 (Admin).
[3] *Attorney General of Zambia v Meer Care & Desai* [2008] EWCA Civ 1007.

The Principles

A breach of rule 14.5 is a serious matter in itself.

If you allow your firm's client account to be used improperly this may also result in a breach of the SRA Principles including:

- **Principle 1**: upholding the rule of law and the proper administration of justice;
- **Principle 3:** not allowing your independence to be compromised;
- **Principle 6**: behaving in a way that maintains the trust the public places in you and the provision of legal services; and
- **Principle 8**: running your business or carrying out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles.

Our concerns

You or your firm should not be used to provide banking facilities to clients or third parties. You must also actively consider whether there are any risk factors suggesting that the transaction on which you are acting, even if it appears to be the normal work of a solicitor, is not genuine or is suspicious.

Some of the key issues you should be aware of include the following.

Providing banking facilities through a client account is objectionable in itself

The prohibition in rule 14.5 is simple and clear: "You must not provide banking facilities through a client account." The second sentence in the rule recognises that holding and moving money for clients may not be a breach where doing so is related to proper instructions regarding a transaction on which you are acting or in connection with the professional services you are providing.

The courts have confirmed that operating a banking facility for clients divorced from any legal or other professional work is in itself objectionable. You are not regulated as a bank to provide such facilities. If you do provide banking facilities for clients, you are trading on the trust and reputation from your status as a solicitor in doing so.[4]

You must therefore only receive funds into your client account where there is a proper connection between receipt of the funds and the legal services you are providing. It is not sufficient that there is simply an underlying transaction if you are not providing legal advice on the matter, or if the handling of money has no proper connection to that advice.

There must be a proper connection between the underlying legal transaction or advice and the payments you are asked to make or receive

The rule is not intended to prevent usual practice in traditional work undertaken by solicitors such as conveyancing, company acquisitions, the administration of estates or dealing with formal trusts. So, it does not affect your ability to make usual and proper payments from client account when they are related to the transaction (such as the payment of estate agents' fees in a conveyancing transaction).

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[4] Cranston J at [34] SRA v Patel [2012] EWHC 3373 (Admin), Fuglers & Ors v SRA [2014] EWHC 179 (Admin) (QB)

Whether there is such a proper connection will depend on the facts of each case. The fact that you have a retainer with a client is insufficient to allow you to process funds freely through client account. You need to think carefully about whether there is any justification for money to pass through your client account when it could be simply paid directly between the clients.

Historically, some solicitors have held funds for clients to enable them to pay the client's routine outgoings. This has been mainly for the clients' convenience such as where they are long term private clients or based abroad. In view of technological change, such as the ease of internet and telephone banking, we consider that allowing client account to be used in this way is no longer justifiable and a breach of rule 14.5. Clients can now operate their bank accounts from their own homes or indeed from anywhere in the world. Allowing clients simply to hold money in a client account gives rise to significant risks and may evade sophisticated controls and risk analyses that banks apply to money held for their customers.

Factors you should bear in mind when considering such issues include:

- Throughout the retainer, you should question why you are being asked to receive funds and for what purpose. The further the details of the transaction are from the norm or from the usual services a solicitor provides, the higher the risk that you may breach rule 14.5.

- You should always ask why you are being asked to make a payment or why the client cannot make or receive the payment directly themselves. The client's convenience is not a legitimate reason, nor is not having access to a bank account in the UK. Risk factors could involve the payment of substantial sums to others, including family members, or to corporate entities, particularly overseas, if there is no reason why the client could not receive the money into their own account and transfer it from there.

- You have a separate obligation to return client money to the client promptly, as soon as there is no longer any proper reason for you to retain those funds (rule 14.3 of the SRA Accounts Rules). If you retain funds in client account after completion of a transaction, there is risk (depending on how long you hold the money) of breaching both rule 14.3 and 14.5.

Risk of insolvency

You should be aware that a client may ask you to hold or deal with money in client account to avoid their obligations under insolvency legislation. Banks commonly withdraw facilities when told that there has been a winding up petition. If a law firm allows its client account to be used in an insolvency situation to receive and process money, the client will improperly obtain a banking service which would otherwise be unavailable to it. There are also risks that in making payments to order. You may improperly favour one creditor over another. Finally, section 127 of the Insolvency Act 1986 may apply to require creditors to reimburse payments from the client account in a subsequent liquidation. A solicitor who knowingly makes or facilitates such payments may be subject to a personal liability, in addition to the liability of the payee to reimburse the amount transferred.

Rule 14.5 and the risk of money laundering

Allowing a client account to be used as a banking facility carries with it the additional risk that you may assist money laundering. Our rules specifically require you to

comply with all relevant anti-money laundering legislation including the Money Laundering, Terrorist Financing and Transfer of Funds (information on the payer) Regulations 2017 (MLRs).

You should also be familiar with our warning notices on:

- Money laundering and terrorist financing [hyperlink to all 3]
- Investment schemes (including conveyancing)
- Investment schemes and client account

You must remain alert to any unusual or suspicious factors such as concern about the source of funds or what you are asked to do with them. Your obligation to comply with rule 14.5 offers an important 'first line of defence' against clients or others who seek to use your client account to launder money. It also helps you to secure professional independence from your client in compliance with Principle 3.

We have also seen firms making multiple transfers of money between the ledgers of different clients or companies without evidence of the purpose or legal basis for the transfers (such as Board resolutions or contracts). Transfers in such circumstances will be a breach of rule 14.5, particularly if they are simply carried out on request. It is an important principle of anti-money laundering regulation that transactions are properly recorded and can be reconstructed.[5] Such conduct would be of significant concern to us as it makes the tracking of money difficult and may be aggravated by the number and the value of such transfers.

Although, allowing client account to be used as a banking facility can facilitate money laundering, rule 14.5 exists independently of the MLRs and a breach of rule 14.5 does not require there to be evidence of laundering. If there is such evidence, we would expect a prosecution under the Proceeds of Crime Act 2002[6]. It is no defence or mitigation of a breach of rule 14.5 that there was no evidence of actual laundering. Indeed, such arguments indicate a lack of insight into the reasons for rule 14.5 and the risks it addresses. For example:

- Rule 14.5 and the MLRs are to a large extent preventative provisions, intended to make it more difficult for people to use regulated businesses for improper purposes but also to deter law firms from helping such people.

- Any impropriety may be distant from the movement of money through a client account. In a classic laundering process, the movement through a client account may be the third or fourth stage of laundering the proceeds of a distant crime. But every stage contributes to the effectiveness of the laundering process.

- There are many potential forms of impropriety as well as money laundering. The *Fuglers*[7] case is one example in an insolvency context but there are many others such as hiding assets improperly in commercial or matrimonial disputes.

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[5] See, for example, regulation 40(2)(b) of the Money Laundering, Terrorist Financing and Transfer of Funds (information on the payer) Regulations 2017.
[6] See for example *R v Khan (Shadab)* [2010] EWCA Crim 2841 (four years' imprisonment) and *SRA v Neil Bolton* (9 months).
[7] *Fuglers LLP v SRA* [2014] EWHC 179 (Admin).

- Movement of money through client account is attractive to those with an improper purpose:

    - Attempts by law enforcement or opposing litigants to obtain information may be blocked by a claim to privilege, even though the claim to privilege may be unsustainable on proper analysis with access to the documents.

    - It largely circumvents the sophisticated risk systems used by banks.

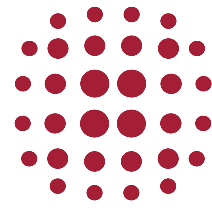
    - Solicitors, particularly in smaller firms, with a close relationship to an important client may be vulnerable to pressure to avoid making suspicious activity reports.

Enforcement action

You should be prepared to justify to us any decision that you make that it was appropriate for you to hold or move client money. Failure to have proper regard to this warning notice is likely to lead to disciplinary action.

Further guidance

For guidance on conduct issues, contact the Professional Ethics Guidance Team.



Topic guidance

Criminal offences outside of practice

Criminal offences outside of practice

Background

This guidance focuses on our approach to criminal offences outside of practice. Drink driving is covered by separate guidance.

We will always investigate criminal offences given the importance of solicitors and law firms upholding the rule of law, recognising the key role that solicitors play in the criminal justice system.

Serious criminal conduct outside of practice raises questions of integrity and is likely to damage public confidence in the provision of legal services.

We will not generally look behind a criminal finding. The rules of evidence of the Solicitors Disciplinary Tribunal provide that a certificate of conviction comprises proof of the person's guilt and, save in exceptional circumstances, the underlying facts. Further, a person who accepts a caution can only do so if they admit they committed the offence. This means we will not generally re-examine the evidence or how the finding was made. However, we will take account of any sentence the court imposes and, where available, its reasons for doing so.

If a person is charged with a serious offence we will consider whether controls need to be imposed immediately to address a specific risk prior to any trial.

Where proceedings remain ongoing, or a person is appealing their conviction we will consider the SRA's published decision making guidance on parallel investigations

Indicative sanctions guidelines

The presence of mitigating features will indicate a less serious sanction. Strong mitigating features combined with a lack of aggravating features is likely to result in either a warning or a rebuke.

We will impose serious sanctions where the criminal offence is of a nature indicated in the first row below, and will generally be referred for a hearing before the Solicitors Disciplinary Tribunal. We also take very seriously any failure to cooperate with disciplinary or criminal investigations and inquiries, or to comply with duties to report. These underpin the rule of law as they are essential to the effective operation of the criminal justice and/or regulatory systems.

Common mitigating and aggravating features	
- Mitigating features	**+ Aggravating features**
	The offence involves: dishonesty, fraud, extortion or bribery, discrimination, violence or sexual misconduct, and child pornography. The offence is associated with terrorism; money laundering, or obstructing the course of justice (eg. perjury or witness tampering).
The offence is dealt with by fixed penalty notice, discharge, a small fine or low-level community order	The regulated individual receives a custodial or suspended sentence
	The regulated individual has been included on the Violent and Sex Offender Register following the offence
	There is evidence of planning or prior intent
There is no (or limited) loss, harm or distress caused	The offence caused significant loss, harm or distress , involved multiple victims, or targeted a vulnerable individual or individuals
It was an isolated incident, and is out of character	There is a pattern of offending behaviour
The regulated individual has made prompt remediation and shown remorse	The regulated individual has not shown remorse and made little or no attempt at remediation
	There was a failure to report, or delay in reporting, the matter to the SRA or any other body to whom the person had a duty to disclose the finding
	The regulated individual failed to co-operate with the police or the criminal justice system

Solicitors Regulation Authority

Topic guidance

Driving with excess alcohol convictions

Driving with excess alcohol convictions

Background

This guidance relates to convictions of driving with excess alcohol.

The SRA's role in dealing with reports of such convictions is not to duplicate the criminal process or punish a person twice for the same offence. However, regulated individuals are expected to uphold the rule of law and behave in a way which promotes the public trust in the profession.

Driving with excess alcohol presents a risk of serious harm or death to individuals, and where a regulated individual has a conviction for an offence of this nature this demonstrates conduct that would tend to diminish public trust and the confidence in the profession.

When considering the appropriate sanction, the sentence handed down by the courts will often in itself will be an indication of the seriousness of the case, as this will reflect its aggravating or mitigating features. Therefore, in all cases, as a minimum, a certificate of conviction will be obtained, and generally, in addition, a record of the summary circumstances of the offence and, where appropriate, the judge's sentencing remarks.

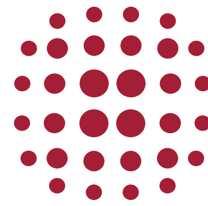
Indicative sanctions guidelines

The presence of mitigating features will indicate a less serious sanction. Strong mitigating features combined with a lack of aggravating features is likely to result in either a warning or a rebuke.

We will impose serious sanctions where aggravating features are present, and in the most serious cases refer the matter for consideration at a hearing before the Solicitors Disciplinary Tribunal. For example, cases which suggest persistent or repeat offending, or in which the circumstances demonstrate a lack of honesty or integrity, and/or a recklessness to the possibility of causing serious harm or death.

We also take very seriously any failure to cooperate with the criminal process (such as resisting arrest, fleeing the scene or refusing to be breathalysed/failing to provide a specimen), or to comply with any duty to report. These underpin the rule of law as they are essential to the effective operation of the criminal justice and/or regulatory systems.

Common aggravating and mitigating features	
- Mitigating features	+ Aggravating features
Prompt reporting of conviction to the SRA, and any employer or other body to whom the individual has an obligation to report the conviction	There has been a failure to report, or delay in reporting, the conviction to the SRA, bodies and any employer or other body to whom the individual has an obligation to report the conviction
This is an isolated incident, and is out of character	There are historical convictions of driving with excess alcohol, or a pattern of offending behaviour
No harm has been caused to property or persons as a result of the offence	Harm was caused to property or persons as a result of the offence
Insight and remorse has been shown	Third parties were travelling in the vehicle who were not able to give consent for travel ie • Children • Vulnerable adults
	There was a refusal to be breathalysed or produce a specimen
	Individual resisted arrest or fled the scene
	Attempts to mislead police, courts, employer or SRA in relation to event
	Particularly high level of alcohol in blood, urine or breath
	High sentence given such as a ban of over 18 months or a custodial sentence



Topic guidance

Competence and standard of service

Competence and standard of service

Background

This guidance focuses on our approach to investigating individuals and firms when the level of competence and standard of service falls below what we would expect.

Matters of poor service are generally investigated by the Legal Ombudsman, which is able to take certain action we cannot– for example, award compensation, reduce a bill or make a solicitor or firm take a specific course of action in relation to a matter.

Further, we will not consider mere negligence to be a regulatory matter, and this is normally dealt with by the courts.

However, negligent acts and omissions that are particularly serious may indicate a serious failure by a regulated person to act within the boundaries of their competence, or to act in the best interests of their client, or to provide a proper standard of service (for which, meeting the competences set out in our Competence Statement for solicitors (made up of a statement of solicitor competence, threshold standard and statement of legal knowledge), is an integral part).

Indicative sanctions guidelines

We will generally take no action where someone makes a genuine mistake. We want to encourage a culture of learning from mistakes and improving standards.

Strong mitigating factors will generally result in us engaging with firms and individuals to improve standards. This may involve agreeing or imposing conditions or controls to prevent the firm or individual from providing certain services if we do not consider they can do so safely and effectively, or to ensure that appropriate training or remediation–or systems of supervision–are put in place.

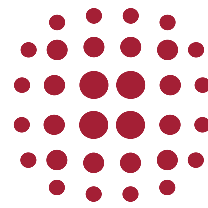
We will impose serious sanctions where the misconduct involves aggravating features, such as where:

- the person has taken action knowingly or recklessly outside the boundaries of their competence
- serious harm has arisen from the person's action which would tend to undermine public confidence in the profession
- action has been take to cover up a problem, or a client or third party has been misled
- the person has shown a failure to address clear training and development needs
- a firm or individual puts their interests above their clients'
- the concerning conduct or behaviour is repeated or persistent.

Further, the code of conduct requires both individuals and firms to keep themselves and those working for them up to date and fit to practise, and to supervise work effectively.

So therefore, notwithstanding any involvement of LeO or the courts, we will investigate competence or service issues where these are particularly grave or suggest multiple failures or repeat or persistent poor conduct.

Common aggravating and mitigating features	
- Mitigating features	**+ Aggravating features**
The matter soley relates to a poor outcome or a genuine mistake	The regulated person knowingly or recklessly took action outside their competence
Client informed about the matters that have gone wrong, and the potential consequences and advised to take independent legal advice	Failure to handle complaint in a manner that is open, fair and free of cost, and/or to inform clients of right to complain to LeO
	The client, the court or a third party has been misled about something that has gone wrong
	The firm or individual puts their own interest in limiting their liability above the best interests of the client
There has been minimal impact on clients or third parties	The impact on clients or third parties is high
It is an isolated incident	It is a regular failure demonstrating a pattern of behaviour
	There is a failure to co-operate with the Legal Ombudsman, SRA or other investigations or inquiries into the events
Robust systems of supervision of work	There is a failure to properly supervise work
The person has reflected on development and training needs and undertaken–or implemented–appropriate continuing professional development activities	The person has failed to consider or address training and development needs
Steps have been taken to put matters right and to ensure likelihood of repetition is low	Failure to take appropriate steps to put matters right or reduce likelihood of repetition



Topic guidance

Use of social media and offensive communications

Use of social media and offensive communications

Background

This guidance focuses on our approach to complaints about the nature of communications including those made via emails, texts and on social media networks. We treat seriously communications that are offensive, derogatory or inappropriate whether in nature, tone or content.

Our position on offensive communications has been made clear in our Warning Notice.

These may be sent or posted in a work context (within a firm, or externally to clients or third parties). But equally regulatory action can be taken if the sender is identifiable as a solicitor (even if acting in a personal capacity) and the communication would tend to damage public confidence in the profession. This will be due to the nature of the communication and it is not necessary for there to be evidence that particular individuals or classes of individuals have viewed or been affected by the communication.

Further, regulated individuals are expected to act at all times with honesty and integrity and this includes in communications that are–or are intended to be–private, and whether or not the sender is identifiable as a solicitor.

It is not our role to sanction fair comment or opinions, even if strongly put and others disagree. Nor will we determine whether comments are defamatory; that is for the Court and a finding of defamation would not, of itself, necessarily result in disciplinary action. We will consider any aggravating factors, as set out below.

Passing on offensive communications, without the individual making it clear they disagree, may be taken as an endorsement of that communication and result in us taking action.

Where a communication is made through a regulated person's email or social media account, we will start from a presumption that the regulated person is the author. Strong evidence will be needed to refute that.

If a regulated person is not the author of communications made in their name, we may still take action against them if they have not been appropriately vigilant in auditing those communications and safeguarding access to their accounts.

Indicative sanctions guidelines

The presence of mitigating features will indicate a less serious sanction. Strong mitigating features combined with a lack of aggravating features, is likely to result in closure accompanied by a request to remove or retract the communication (where appropriate) and advice to the regulated individual or a warning about their future conduct.

We will impose serious sanctions where the communication involves aggravating features.

Communications which:

- demonstrate dishonesty, discrimination, harassment or abuse, are targeted at or take advantage of vulnerable individuals, or
- demonstrate a lack of integrity or independence or undermine the rule of law

will generally be referred for a hearing before the Solicitors Disciplinary Tribunal.

Common mitigating and aggravating features	
− Mitigating features	+ Aggravating features
	The communication was discriminatory
The communication was made spontaneously and without thought or reflection	The communication used abusive or threatening language or images, or was likely and/or intended to shock, harass or victimise others
The communication caused no actual harm, distress or offence	The communication caused significant harm, distress or offence to clients, third parties or the public or targeted a vulnerable or unrepresented person
It was an isolated incident out of character	There is a pattern of frequent or a large number of concerning communications
	The communication demonstrates a lack of independence or objectivity in carrying out role, or undermines the rule of law or legal systems
The person offered a prompt apology, retraction and expression of remorse and has corrected or removed the communication	The person failed to heed a challenge or warning about the nature, tone or content of communication and has failed to correct or remove the communication
The behaviour relates solely to a failure to refute or censure someone else's communication	
The person was responding to inappropriate, offensive or threatening behaviour	
	The communication discloses confidential information, or relates to client matters