

Annex two: 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.

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 according to the severity of the wrongdoing and the risk posed to the public and the profession.

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 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.

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 law¹.

Our role is to regulate in the public interest; to protect consumers, and 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. Instead, we seek to assess the risk they present in light of the evidence available. The sanctions we impose may therefore be punitive, but 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”².

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.

¹ “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.

² *Bolton –v- The Law Society* [1993] EWCA Civ 32, para 15

2.1 Our approach to enforcement

When we will take action

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, for example where a breach is minor and unlikely to be repeated, we are likely to decide that no action would be warranted.

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. 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. For the avoidance of doubt, we will generally only take into account personal mitigation, such as character and testimonial evidence, following an investigation into the events, when we are considering the appropriate outcome.

In short, our codes provide a benchmark which solicitors 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.

Approach to investigations

Our approach to investigations 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.

Throughout the lifetime of a case, cooperation with an investigation by a firm and an individual is likely to be relevant at key decision making stages and may in some cases inform the progress of the investigation or outcome reached in a matter.

2.2 Factors in deciding what action to take

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 be proportionate to, and will reflect the seriousness of any breach. Our assessment of seriousness will necessarily involve looking at the past misconduct. However, our assessment of any future risk arising from that misconduct will look forward as well as back. Where the misconduct was particularly serious, this may indicate a greater likelihood of future risk but other features of the case subsequent to the initial event will also be relevant. 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 mitigating features which reduce the seriousness of the misconduct itself and personal mitigation which is usually more relevant to sanction. The former might relate to the events in question, and might include for example misconduct which was isolated, not sustained over time, or circumstances or environmental factors which affected the conduct or behaviour. An example of personal mitigation might include evidence of insight or remedial action taken since the misconduct took place and any

rehabilitative steps. Sometimes there will be an overlap between mitigating features relevant to the misconduct and personal mitigation, for example, the individual's level of experience.

We see certain 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. 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 2007³. More information on our approach to risk assessment and deciding whether to investigate a concern, can be found in our documents and guidance on our approach to risk available *here* [link].

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 acquired, or which demonstrates a concerning **lack of judgment**, taking into account matters such as the experience and seniority of the individual involved.

Where a firm or an individual has been a victim, for example of cybercrime, our primary focus would not be to penalise those firms or individuals for any adverse outcomes arising. However, we are likely to review, for example, whether systems were robust enough and those firms or individuals had taken reasonable protective measures. The SRA is able to take action in relation to systemic error and this function is likely to become increasingly relevant as reliance upon information technology and artificial intelligence increases.

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 will view more seriously events which demonstrate that the individual or firm has a **deliberate or reckless** disregard for their obligations. Recklessness is serious

³ Section 1(3)(e) Legal Services Act 2007

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.⁴

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 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 seeks to mislead the court by creating a false document, which, in the event, is not relied upon in court or results in a difference in the outcome of litigation.

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

⁴ Bolton –v- The Law Society [1993] EWCA Civ 32, para 13

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 (for example, a conviction for death by dangerous driving, is likely to be regarded as more serious than a driving conviction that has not resulted in any injury).

Vulnerability

As described above, solicitors and clients have an uneven relationship: but not all clients are the same. Some 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.⁵ 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.

We will consider an allegation to be particularly serious where the client's – or a third party's – vulnerability is relevant to the offence. 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 them 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

⁵ see Recognising and Responding to consumer vulnerability, Legal Services Consumer Panel, October 2014

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 decisions⁶.

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.

We also consider it important to take demonstrable action where those with greatest standing, who act as role models, do wrong. As Popple J stated in *Fuglers –v- SRA*: *It is permissible to impose larger fines on more substantial or well known firms because of the important purpose of the sanction in sending out a message to promote and maintain the standards in, and standing of, the profession.*

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 failure. 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 similar 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, including information about any findings made by other courts, tribunals and regulatory bodies. We will also consider previous matters resulting in, for example, a financial penalty or closure of a case with an advice or a warning. We will also review previous disciplinary matters before the Tribunal where allegations were found proved, together with any sanction imposed.

Remediation

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

⁶ see [Designing Ethics Indicators for Legal Services Provision](#), Richard Moorhead et al, UCL Centre for Ethics and Law

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, 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 legal service providers. We have arrangements with LeO to make sure that there is a clear understanding about the type of complaints LeO deals with itself (and which, if made to us, we will refer to them) and the complaints that it receives that need to be referred to 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 (the protection of consumers of legal services, and the rule of law and administration of justice). The closer the matter is to our core regulatory role, 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].

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.

Private life

However, we are concerned with the impact of conduct in the private lives of those we regulate if this touches on risk to the delivery of safe legal services in future⁷. 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 school governor, 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. We have stated that the breach of a principle demonstrates a lack of the ethical values we require of those involved in legal practice.

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, bribery and extortion, or those which undermine the rule of law, such as perjury or witness tampering, or those involving violence, sexual misconduct or child pornography.

⁷ 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 for solicitors and for firms we regulate. The former sets out a framework for competent and ethical practice, and the latter focuses on compliance systems and core client service requirements. We take enforcement action, as appropriate in the public interest, against both individuals and firms, where there has been a breach of the principles and/or the relevant code and bearing in mind the purpose of enforcement as set out in section 1.

In addition, we would take action against an individual where they were personally responsible for a serious breach of other requirements in our Handbook, for example, a failure to apply our client account requirements or ensure the safety of client money.

This addresses the risk they as an individual present to clients or to the wider public interest, and 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.

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 although it may be relevant in the future as part of their regulatory history. 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 [\[insert link\]](#).

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 for misconduct 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, these 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 on the regulation of non-authorised persons [\[link\]](#) and approved role holders [\[link\]](#).

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 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 in [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 [link].

| Letters which contain advice and warning | | |
|---|---|---|
| Purpose | Factors in favour | Factors against |
| <p>To respond to a minor regulatory breach which does not require action, to protect the public/public interest and where the regulatory breach is not sufficiently serious to require action to restrict the regulated person's ability to practise or to rebuke or impose a fine.</p> <p>To advise the regulated person that they have breached our requirements/standards and to explain how these apply to the situation in question.</p> <p>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</p> | <ul style="list-style-type: none"> • 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 | <p><i>Where closure with no action is appropriate, eg:</i></p> <ul style="list-style-type: none"> • 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. <p><i>Where a more serious outcome is warranted to protect the public/public interest, eg:</i></p> <ul style="list-style-type: none"> • Dishonesty/lack of integrity/abuse of trust • Evidence of repetition of conduct/behaviour in question, particularly if |

| | | |
|---|--|---|
| <p>be taken into account in any future proceedings.</p> <p>To promote understanding of our regulatory arrangements, and to raise standards by encouraging positive behaviour.</p> | | <p>previously warned/advised to stop</p> <ul style="list-style-type: none"> • Evidence of a history of previous warnings suggesting a 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 |
|---|--|---|

| Rebuke⁸ | | |
|--|--|---|
| Purpose | Factors in favour | Factors against |
| <p>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.</p> <p>To deter the individual and others from similar behaviour in future.</p> | <ul style="list-style-type: none"> • 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 | <ul style="list-style-type: none"> • Any less serious sanction/outcome would be appropriate to protect the public/public interest <p><i>Where a more serious outcome is warranted to protect the public/public interest; eg:</i></p> <ul style="list-style-type: none"> • Dishonesty/lack of integrity/abuse of trust • Evidence of repetition of conduct/behaviour in question, particularly if |

⁸ SDT refers to this as a reprimand

| | | |
|--|----------------------------|---|
| | delivery of legal services | previously warned/advised to stop <ul style="list-style-type: none"> Intentional failure to comply/cooperate with regulatory obligations |
|--|----------------------------|---|

| Conditions⁹ - Individual | | |
|---|--|---|
| <i>(The factors to be taken into consideration, below, relate to conditions imposed as a final sanction and not interim conditions)</i> | | |
| Purpose | Factors in favour | Factors against |
| <p>To control the risk of harm arising from a repetition of a breach of our regulatory requirements/standards.</p> <p>To restrict or prevent the involvement of an individual in certain activities or engaging in certain business agreements/associations or practising arrangements.</p> <p>To require an individual to take certain steps.</p> <p>To facilitate closer monitoring of an individual through regular reporting.</p> | <ul style="list-style-type: none"> 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 | <ul style="list-style-type: none"> Risk can be managed/matters remediated or rectified without formal regulatory intervention <p><i>Where a more serious outcome is warranted to protect the public/public interest; eg:</i></p> <ul style="list-style-type: none"> 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 |

⁹ SDT refers to this as a Restriction Order

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| | | <p>continue in legal practice at all</p> <ul style="list-style-type: none"> Continued practice, albeit restricted, would tend to damage public confidence in the delivery of legal services Intentional failure to comply/cooperate with regulatory obligations |
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| Conditions – Firm | | |
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| <i>(The factors to be taken into consideration, below, relate to conditions imposed as a final sanction and not interim conditions)</i> | | |
| Purpose | Factors in favour | Factors against |
| <p>To control the risk of harm arising from a repetition of a breach of our regulatory requirements/standards.</p> <p>To restrict or prevent a firm, or one of its managers, employees, or interest holders from undertaking certain activities.</p> <p>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.</p> | <ul style="list-style-type: none"> 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 | <ul style="list-style-type: none"> Risk can be managed/matters remediated or rectified without formal regulatory intervention <p><i>Where a more serious outcome is warranted to protect the public/public interest; eg:</i></p> <ul style="list-style-type: none"> 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 |

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| <p>To require the firm to take certain steps.</p> <p>To facilitate effective monitoring of the firm through regular reporting.</p> | <ul style="list-style-type: none"> • Evidence demonstrates firm, or person in firm, unsuitable for a particular activity which should be restricted | <p>capable of implementing and monitoring compliance with conditions</p> <ul style="list-style-type: none"> • 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 |
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| Financial penalty | | |
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| Purpose | Factors in favour | Factors against |
| <p>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.</p> <p>To deter the firm or individual and others from similar behaviour in future.</p> <p>For the level of fine, see the indicative fining guidance published by the SRA from time to time [link].</p> | <ul style="list-style-type: none"> • 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 | <ul style="list-style-type: none"> • Any less serious sanction/outcome would be appropriate to protect the public/public interest <p><i>Where a more serious outcome is warranted to protect the public/public interest; eg:</i></p> <ul style="list-style-type: none"> • 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 <p>1.</p> |

| Suspension of practising certificate by the SDT | | |
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| Purpose | Factors in favour | Factors against |
| <p>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.</p> <p>Suspension can be for a fixed term or for an indefinite period. The length of the suspension 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.</p> <p>To sanction the regulated person for a serious breach of requirements/standards.</p> <p>To deter the individual and others from similar behaviour in future.</p> <p>To show the public the consequences for a solicitor who commits serious misconduct.</p> | <ul style="list-style-type: none"> • 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 • 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 | <ul style="list-style-type: none"> • Any less serious sanction/outcome would be appropriate to protect the public/public interest <p><i>Where a more serious outcome is warranted to protect the public/public interest; eg:</i></p> <ul style="list-style-type: none"> • 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 | | |
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| Purpose | Factors in favour | Factors against |
| <p>To protect the public/public interest by preventing an individual from practising as a solicitor.</p> <p>To sanction the regulated person for a serious breach of requirements/standards.</p> <p>To deter the individual and others from similar behaviour in future.</p> <p>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.</p> | <ul style="list-style-type: none"> • 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. • 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 | <ul style="list-style-type: none"> • Any less serious sanction/outcome would be appropriate to protect the public/public interest |

| Suspension or revocation of firm's authorisation | | |
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| Purpose | Factors in favour | Factors against |
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| <p>To protect the public/public interest by removing a firm's authorisation either permanently or temporarily</p> <p>To sanction the firm for a serious breach of requirements/standards.</p> <p>To act as a deterrent to the firm and others.</p> <p>To show the public the consequences for a firm that commits the most serious misconduct.</p> | <ul style="list-style-type: none"> • 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 action taken and there is in effect no viable alternative to safeguard public protection | <ul style="list-style-type: none"> • Any less serious sanction/outcome would be appropriate to protect the public/public interest |
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