

## **Guidance**

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### **Acting with integrity**

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## **Status**

This guidance is to help you understand your obligations and how to comply with them. We will have regard to it when exercising our regulatory functions.

### **Who is this guidance for?**

All SRA regulated firms, their principals, role holders and employees. All solicitors, registered European lawyers or registered foreign lawyers.

### **Purpose of this guidance**

To explain the requirement to act with integrity in [SRA Principle 5](https://update.sra.org.uk/solicitors/standards-regulations/principles/) [https://update.sra.org.uk/solicitors/standards-regulations/principles/].

### **Lack of integrity vs dishonesty**

SRA Principle 5 requires you to act with integrity. While someone acting dishonestly can be said to be acting without integrity, the concept of integrity is wider than just acting dishonestly. This means that it is possible to behave without integrity but not necessarily being dishonest.

For more details about our approach to dishonesty and the test we apply see [SRA Principle 4: Act with honesty and associated guidance](https://update.sra.org.uk/solicitors/standards-regulations/principles/) [https://update.sra.org.uk/solicitors/standards-regulations/principles/].

The meaning of integrity has been considered several times by the courts in recent years. The most recent cases include that of Wingate and another v SRA and Malins v SRA [2018 ECWA Civ 3666], considered together by the Court of Appeal in 2018 and also Ryan Beckwith v SRA considered by the High Court in 2020 [2020 EWHC 3231 (Admin)].

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### **Wingate case**

#### **Wingate case facts**

- W was a partner in a solicitors' firm who arranged a large loan for the firm from a litigation funding company called Axiom.



- The written terms of the loan were that it was to be used only to fund litigation.
- In fact, it was used to partly repay the firm's debts and to pay an arrangement fee to a corporate manager of Axiom.
- It was accepted that this use of the money was based on a verbal agreement between W, the Axiom corporate manager and a solicitor representing Axiom, and that W expected the written loan agreement to be replaced by a less onerous arrangement in due course.
- However, the Court of Appeal found that W was aware that his firm could not and would not comply with the written terms, that the firm would not receive the money unless the 'sham' written agreement was entered into and that doing so would trigger serious financial consequences.
- When Axiom later went into receivership, W's firm were only able to repay part of the loan and the Axiom investors lost out.

Although it was not alleged in the Court of Appeal that W had acted dishonestly, the court found that he had acted without integrity. It did not matter for these purposes that the investors in Axiom were not clients of W or his firm.

## **Malins case**

### **Malins case facts**

- M had falsified a backdated letter in order to be able to claim an after-the-event insurance fee from an opponent.
- The SDT struck M off, finding that he had acted dishonestly and without integrity.
- At first instance, the High Court overturned the decision of the SDT, partly because of procedural unfairness and partly because, in its view, there was no difference between lack of integrity and dishonesty.

The Court of Appeal allowed the SRA's appeal and reinstated the SDT decision. In giving the leading judgment, Lord Justice Jackson said: 'Integrity is a broader concept than honesty. In professional codes of conduct the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members.'

Lord Justice Jackson added: 'Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. For example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator, will take particular care not to mislead.'

'Such a professional person is expected to be even more scrupulous about accuracy than a member of the public in daily discourse. The duty to act with integrity applies not only to what professional persons say but to what they do.'

## **Beckwith case**

### **Beckwith case facts**

- B was a solicitor and a partner at a large firm, A was an associate in the same department and at the time of the allegations was serving a period of



- notice and preparing to leave for a role at a new firm.
- Both A and B were part of a larger group who were drinking at a pub after work, at A's leaving party. A became heavily intoxicated. They went on to A's home where there was a sexual encounter. A subsequently complained to the firm and the SRA, alleging an abuse of B's position of authority over her.
- The SRA alleged that in engaging in sexual activity with A while she was intoxicated, and vulnerable, and he was in a position of authority over her, B had breached Principles 2 and 6 of the 2011 Principles (which required a solicitor to act with integrity and to behave in a way that maintains the trust the public places in them and the provision of legal services). There was no allegation that the activity was not consensual.

The SDT found that B was in a position of authority over A but did not find that she was 'vulnerable' or that B had acted in abuse of his position.

It did however find that he knew that A was heavily intoxicated and that her judgement and decision-making ability was impaired. It found that B's actions were 'inappropriate', and breached Principles 2 and 6.

The High Court allowed B's appeal, overturning the decision of the SDT. The court referenced earlier cases on integrity and concluded that three points of principle could be established:

- While decisions around the application of the Principles are to be made on a case-by-case basis - it not being appropriate to attempt a comprehensive list of what is permitted and prohibited - breach of the integrity principle should, wherever possible, be grounded in one or more underlying provisions of the relevant Code of Conduct, or applicable regulatory rules or guidance.
- Integrity is a legitimate and relevant Principle for solicitors (and some other professionals), and is ingrained in the SRA Principles and through decisions ratifying the application of the principle of integrity (eg. Malins and Wingate). This is a higher ethical standard than that which is imposed on ordinary citizens but is legitimately imposed upon solicitors as a condition of their membership of the profession.
- Solicitors and their employees are not required to be 'paragons of virtue'.

The court was clear that the alleged wrongdoing must touch realistically upon the individual's practice of the profession and in a way that is demonstrably relevant.

However, they did confirm that the exercise of whether (and if so what) ethical standards emerge that are relevant to the alleged misconduct should be conducted on a case-by-case basis. Any attempt to formulate a list of what is prohibited and what is permitted detached from the circumstances of a specific case was neither necessary nor desirable.

## **Our approach**

Acting with integrity means different things in different situations and contexts.

When making any judgment and deciding whether to allege a lack of integrity we will make assessments on a case-by-case basis, recognising that each case is different and turns on its own facts.

For example, we will consider relevant regulatory obligations under our standards and regulations as well as any statutory requirements, case law and guidance we have issued.

As stated, acting with integrity means different things in different situations and contexts, whether in a practise/professional context or in a private setting outside of legal practice.

Situations when we are likely to take disciplinary action for a lack of integrity include:

- Where there has been a wilful or reckless disregard of standards, rules, legal requirements or ethics, including an indifference to what the applicable provisions are or to the impacts or consequences of a breach.
- Where the regulated firm or individual has taken unfair advantage of clients or third parties or has helped or allowed others to do so.
- Where the regulated firm or individual has knowingly or recklessly caused prejudice, harm or distress to another.
- Where clients or third parties have been misled or allowed to be misled (except where this is a result of simple error that the regulated firm or individual has corrected as soon as becoming aware of it).

In the Beckwith case the court considered the application of the principle of integrity to a solicitor's private life and was clear that the conduct must touch realistically upon the individual's practice of the profession and in a way that is demonstrably relevant.

We take the approach that the closer any behaviour is to the individual's professional activities, workplace or relationships, and/or the more it reflects how they might behave in a professional context, the more seriously we are likely to view it.

However, where no such connection exists we will still take action where the conduct is sufficiently serious and morally culpable as to call into question whether they meet the high personal standards expected from a member of the solicitors' profession.

As explained in our [enforcement strategy](https://update.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/) [https://update.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/], we are concerned with the impact of conduct outside legal practice where it jeopardises the delivery of proper and effective legal services or risks damaging [public trust and confidence](https://update.sra.org.uk/solicitors/guidance/public-trust-confidence/#:~:text=trust%20and%20confidence.-,Guidance,heart%20of%20the%20legal%20system.) [https://update.sra.org.uk/solicitors/guidance/public-trust-confidence/#:~:text=trust%20and%20confidence.-,Guidance,heart%20of%20the%20legal%20system.] in the solicitor profession.

## **Integrity and dishonesty**

Integrity is a much broader concept than dishonesty. If the circumstances of a case demonstrate dishonesty on the part of a regulated firm or individual then we will take action for breach of SRA Principle 4 (you must act with honesty). However, we might in the alternative plead a lack of integrity, particularly where the allegation of dishonesty is contested but notwithstanding this, where the conduct would nonetheless comprise a lack of integrity.

Sexual misconduct is an obvious example of behaviour which lacks integrity but often involves no dishonesty. Instead, it typically involves an abuse of trust



(stemming from a position of seniority or authority), a lack of respect, or simply taking unfair advantage of others.

Other cases where the SDT have upheld allegations of a lack of integrity outside practice include bullying, harassing and offensive or discriminatory remarks made on social media by solicitors in a personal capacity.

See our separate guidance on [sexual misconduct](https://update.sra.org.uk/solicitors/guidance/sexual-misconduct/) [https://update.sra.org.uk/solicitors/guidance/sexual-misconduct/] and our warning notice on [offensive communications](https://update.sra.org.uk/solicitors/guidance/offensive-communications/) [https://update.sra.org.uk/solicitors/guidance/offensive-communications/].

## **Example case studies**

The following cases illustrate the principles outlined above where we have taken disciplinary action against the solicitor(s) involved on grounds of acting without integrity<sup>1</sup> [n1].

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### **Creating a 'sham partnership' to avoid sole practitioner requirements**

Solicitor E entered into a sham partnership with solicitor O in order that E could practise as a sole practitioner when he did not have the necessary three years' experience. E and O were also found guilty of breaches of other requirements, including the Accounts Rules.

The SDT fined O and E but we appealed, arguing that the correct penalty was suspension or strike off. O and E argued that neither of them had been found guilty of dishonesty and that suspension or striking off should be reserved for far more serious cases.

Mr Justice Burnett allowed our appeal and determined that both solicitors should be struck off. He said the essential principle remained, identified by Sir Thomas Bingham MR in *Bolton v Law Society*: 'The profession of solicitor requires complete integrity, probity and trustworthiness. Lapses less serious than dishonesty may nonetheless require striking off if the reputation of the solicitors' profession "to be trusted to the ends of the earth" is to be maintained.'

Mr Justice Barnett added that in cases featuring a lapse in standards of integrity, probity or trustworthiness a solicitor should expect to be struck off even if dishonesty had not been proved.

### **Recklessly but not dishonestly misleading the court**

Solicitor B worked as a legal manager for a national newspaper. He was asked for advice on a potential story concerning an individual (K) who had been identified using unauthorised access to his email account. B advised that reliance on such material was unacceptable and unlawful.

The reporter concerned then pieced together publicly available information which he claimed would have enabled him to lawfully identify K anyway. The allegations in the story were then put to K.



K applied to the High Court for an injunction to prevent publication. B handled the litigation, filing a witness statement on behalf of the reporter stating that K had been identified by only lawful means. In correspondence with K's solicitors B also stated that the allegation that K's email account had been accessed was 'baseless'. K's application was dismissed.

In subsequent disciplinary proceedings before the SDT, B stated that he had not revealed the hacking of the email to the court because the information had been given to him in confidence and was legally privileged.

The SDT found B's duty to the court outweighed any such confidence. It stated that B had not acted dishonestly but knowingly allowing the court to be misled, had acted without integrity. B then appealed to the High Court.

In allowing the appeal in part only, Mr Justice Wilkie (who gave the leading judgment) held as follows:

- Although B was not entitled to breach legal professional privilege he was also required not to mislead the Court - and had to find a way to reconcile both those positions. He could, for example, have asked/persuaded the reporter to waive privilege. Or he might have made it clear, in either the witness statement or the pleadings, that it was not claimed that K had been identified via legal means only but that he could have been.
- Since the SDT found that B had not acted dishonestly it was contradictory (and not open to it) then to find that B had 'knowingly' misled the court.
- However, B had 'recklessly' misled the court (going beyond mere negligence) and on that basis he was also guilty of a breach of the duty to act with integrity.

### **Putting personal financial interests before those of the client**

Two solicitors had introduced numerous conveyancing clients to stamp duty tax avoidance schemes which were of considerable potential risk and disadvantage to the clients. However, they were of considerable potential profit to the solicitors in the form of commissions and referral fees from the scheme providers.

They did not inform the clients of the risky nature of the schemes nor of their own personal opportunity to gain commissions. In doing so they put the interests of their clients below their own personal profit.

Although the two solicitors had not been accused of dishonesty the High Court found that on these facts a finding of lack of integrity was not just proper but inevitable.

### **Making improper payments out of client account**

A solicitor made a number of improper payments from client account. The SDT found him to have acted without integrity - but not dishonestly - and ordered him to be struck off.

Dismissing the solicitor's appeal to the High Court, Lady Justice Sharp said: 'A person can lack integrity without being dishonest. One example which applied here was by being reckless as to the use of various client accounts.'



'As the SDT found, the appellant had not enquired as to the reasons for the improper payments and transfers out of client account, he had not cared at all about what he was instructed to authorise and he had not shown any steady adherence to any kind of ethical code.

'Accordingly, it was not so much a case of what the appellant thought but that he neither thought nor cared about what was required by the rules governing his profession.'

### **Failing to protect clients from mortgage fraud**

Solicitor N recruited two new partners without any real vetting. When N became aware that a fraud had been committed by one of them in a conveyancing matter she took no real steps to protect clients in other transactions.

In agreeing with the SDT's conclusion that N had acted without integrity Mr Justice Morris in the High Court said: '...actual knowledge or recklessness in the sense of being aware that the conduct posed a risk and consciously taking it, will be highly likely to give rise to a finding of lack of integrity. However, I accept the SRA's submission that it is wrong to define lack of integrity as requiring recklessness. Lack of integrity does not necessarily involve risk taking.

'So, for example, the solicitor who dips into the client account with the intention of putting the money back lacks integrity because a client account is sacrosanct regardless of the risk of the money not being repaid.'

### **Making false representations on behalf of the client**

Solicitor W represented a bankrupt client who was seeking to arrange the purchase by an associated company of his former home from the creditor bank.

W did not inform the bank that a third party had made the client a much higher offer than that made by the associated company. The plan was for the associated company to resell the property to the third party with a share of the profit going to the client.

Instead W told the bank on several occasions that the associated company's offer was the highest that he felt could be achieved but that he would try and negotiate more.

The High Court overturned the SDT's findings of dishonesty, due to procedural irregularities, but allowed a finding of lack of integrity to stand.

Giving judgment, Mrs Justice Carr stated: 'want of integrity arises when, objectively judged, a solicitor fails to meet the high professional standards to be expected of a solicitor. It does not require the subjective element of conscious wrongdoing.'

Sir Brian Leveson P added: 'Honesty, ie. a lack of dishonesty, is a base standard which society requires everyone to meet. Professional standards rightly impose on those who aspire to them a higher obligation to demonstrate integrity in all of their work. There is a real difference between them.'

### **Accepting a loan from a client**





Solicitor A accepted a £350,000 loan from a client, supported by an agreement drafted by the solicitor and signed by his client in the presence of the client's friend. It was repayable at the end of an eight month period with interest at a 'preferential' rate of 2 per cent above the base rate.

The agreement was later varied, again by an agreement drafted by the solicitor, to extend the repayment date. In neither case did the solicitor make sure that the client obtained independent advice.

The client subsequently obtained a default judgment against the solicitor. At the time of the SDT hearing neither the loan nor any interest had been paid. The solicitor's evidence was that his client did not need independent advice because her friend who had witnessed the agreement was an 'intelligent and financially knowledgeable employee of a banking institution'. The solicitor inferred that the friend had given independent legal advice.

The SDT accepted the client's evidence that her friend was neither legally qualified nor gave legal advice about the loan.

Despite the solicitor being able to demonstrate that he held a well-respected practice with many loyal clients, supported by glowing references, and he said he 'felt bad' about his inability to repay the loan, the SDT found that the solicitor failed to act with integrity - as well as failing to uphold public trust and confidence by accepting the loan and failing to ensure his client took independent advice.

### **Behaviour towards a colleague**

Solicitor C was a senior partner and owner of the firm where person B was a recently recruited paralegal working a short-term contract. While at a local wine bar with other employees and a client of the firm solicitor C touched person B's leg, back, shoulder and bottom and rested their head on Person B's shoulder.

The touching was unwanted by person B and C, who was extremely drunk, should have known that it was uninvited and unwanted, not least because a client was present and there was no indication of interest nor direct invitation from person B.

At the SDT, solicitor C admitted the allegation, including that their conduct had been unwanted by person B.

The SDT found the allegations proved and found that Solicitor C had acted without integrity, in addition to failing to behave in a way that maintained the trust the public placed in them. In making its finding the SDT referenced the imbalance of power between solicitor C and person B as being a relevant factor.

### **Further guidance**

Our [enforcement strategy](https://update.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/) [https://update.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/]

Our [warning notice on offensive communications](https://update.sra.org.uk/solicitors/guidance/offensive-communications/) [https://update.sra.org.uk/solicitors/guidance/offensive-communications/]

[Guidance on sexual misconduct](https://update.sra.org.uk/solicitors/guidance/sexual-misconduct/) [https://update.sra.org.uk/solicitors/guidance/sexual-misconduct/]



## Further help

If you require further assistance, please contact the [Professional Ethics helpline](https://update.sra.org.uk/contactus) [<https://update.sra.org.uk/contactus>].

## Footnotes

1. This can include requirements which are necessarily implicit in the relevant code, even if not express. Other authoritative sources for grounding breaches of the principle are available, such as obligations deriving from legislation or common law, or previous caselaw demonstrating acceptance of a regulatory approach.