

# Settlement of regulatory and disciplinary cases

## Policy statement

### Introduction

1. Modernisation of regulatory and disciplinary decisions is needed to:
  - Improve transparency of process and outcome for the public and regulated persons;
  - Enable proportionate outcomes to be reached efficiently, at reasonable cost, and in the interests of the public.
2. This statement establishes the SRA's policy regarding agreements that can be reached between solicitors and the SRA.
3. The new approach established by this Statement supplements existing processes.
4. Reference to "the SRA" in this Statement includes those exercising decision-making powers delegated by the SRA Board.
5. Reference to "solicitor" includes solicitors' practices and all persons who may be affected by the SRA's decisions such as Registered European Lawyers, Registered Foreign Lawyers, Recognised Bodies, and unadmitted persons subjected to investigation or application pursuant to section 43 of the Solicitors Act 1974.
6. Reference to "investigation" includes all disciplinary and regulatory investigations and prosecutions.
7. This policy applies to any investigations whenever commenced.

### Agreements

8. Agreements may be reached with solicitors in two forms:
  - By settlement of an investigation (a "Settlement Agreement");
  - Upon a particular issue relating to an investigation, such as the appropriate way to compensate victims of wrongdoing, without concluding the investigation (an "Issue Agreement").

9. Agreements reached must expressly state whether they are a Settlement Agreement or an Issue Agreement. If they are silent, their nature is determinable by the SRA.
10. Agreements are subject to any reconsideration policy in place from time to time and may also be rescinded by the SRA if the solicitor has materially misled the SRA or any other person whether intentionally or not.
11. Agreements between the SRA and solicitors are not the equivalent of settlement of all or part of a commercial dispute. Agreements are regulatory decisions by the SRA, the terms of which are accepted by the solicitor. There is no compulsion on the SRA or staff to negotiate or enter into an agreement. The existence of negotiations will not generally be permitted to delay formal processes.
12. The terms of any agreement will:
  - be in writing and be agreed by the SRA and the solicitor concerned;
  - state the relevant facts;
  - identify any failings admitted by the solicitor;
  - identify the action the solicitor has taken or has committed to take;
  - identify any sanction imposed by the agreement;
  - be published by the SRA unless expressly stated otherwise in the agreement.
13. All discussions with a view to agreement being reached will be conducted “without prejudice” and, subject to order of the SDT or the court, are therefore not admissible in investigations or proceedings upon the same principles that apply to “without prejudice” communications as a matter of law.
14. A relevant factor which may influence the SRA in deciding whether to enter into discussions or reach an agreement with a solicitor is whether the solicitor’s integrity is in question and in particular whether compliance with an agreement can be relied upon.
15. The SRA considers that solicitors who materially breach a Settlement Agreement or Issue Agreement will be guilty of professional misconduct and potentially in breach of specific rules relevant to the factual circumstances.
16. The SRA in its absolute discretion may proceed with the original investigation, or any other investigation, if it considers that a solicitor has materially failed to comply with an agreement or, having entered into an agreement, behaves in a way inconsistent with it (such as by denying misconduct or other failings admitted in the agreement or by materially misrepresenting the agreement to any person).

17. Example agreements are set out below.

*Agreed public statements*

18. The SRA may agree that a statement be published by the solicitor and the SRA. This is likely to be appropriate in the following circumstances:

- The solicitor acknowledges a failure (which may or may not constitute misconduct);
- The solicitor states what has been done and what will be done to avoid such a failure in the future;
- Where publication is part of a Settlement Agreement, publicity for the admitted failure is considered by the SRA to be a proportionate outcome in all the circumstances.

19. Examples of circumstances which might be appropriately concluded by a public statement include:

- A systems failure within a firm, rather than a culpable individual failure, where there is clear evidence that the systems failure has been and will continue to be addressed.
- A failure of supervision or systems within a firm contributing to misconduct by an individual who is no longer practising or within the firm.

20. Whilst agreed public statements are more likely to be part of a Settlement Agreement, it is possible that they will be Issue Agreements. For example, an agreed statement may state that the firm accepts a failure properly to identify conflicts of interest and that a conflicts checking system has been established to avoid problems arising in future - even though investigation against one or more individuals continues.

*Schemes for correction, improvement and restitution*

21. It may be in the interests of clients or the public that solicitors establish schemes to correct problems arising from their conduct or to improve their processes. Again, agreement to a scheme may be part of a Settlement Agreement or an Issue Agreement.

22. Examples of schemes of correction or improvement that might mitigate the solicitors' conduct include:

- Where solicitors have made payments from clients' money, such as for amounts not properly due to the solicitors or not properly due to third parties, the solicitors may establish a scheme by which they will:

- Pro-actively identify and contact all clients (or others) affected;
  - Refund money to them;
  - Report periodically to the SRA on the progress of the scheme;
  - Submit to monitoring.
- Where the solicitors have failed to identify conflicts of interest, they may propose a comprehensive conflict identification procedure supported by specialist training for all staff, with verification by the SRA.
  - Where the solicitors have missed time limits for issuing personal injury claims or registering titles, by which they will:
    - review all files relating to an agreed period;
    - rectify any errors;
    - notify any clients who have suffered or may suffer loss or inconvenience of the circumstances and possible remedies;
    - pay any penalties or refer clients to the solicitors' indemnity insurers;
    - submit to monitoring;
    - establish systems to minimise the risk of recurrence.
23. Agreements that solicitors will implement a scheme of correction, particularly if part of a Settlement Agreement, are likely to require compliance protections including:
- an enforceable professional undertaking from the solicitors that they will comply – although this will normally be implicit in the agreement;
  - a residual power for the SRA in its absolute discretion to proceed with the original investigation if not satisfied that the scheme of correction has been fully or properly implemented.

#### *Practising controls*

24. The SRA may be prepared to accept undertakings from solicitors that result in control of their practising arrangements such as that the solicitors will:
- not engage in a particular form of work such as conveyancing, acting for lenders, or litigation;
  - close their firm within a set period;
  - by a stated date, engage in practising only as employees, perhaps pending the outcome of an investigation;
  - correct errors in their accounts and provide independent evidence when the accounts are in compliance;

- seek medical treatment and provide independent evidence of the outcome (such as that the solicitor has overcome an addiction);
- consent to being examined by a medical practitioner and to the provision of medical records for the purpose of a report being provided to the SRA as to their fitness to practise whether at all or in controlled circumstances;
- not personally have contact with witnesses in the conduct of criminal or civil litigation.

*Removal from the Roll by consent*

25. It may be in the interests of the public that the SRA consent to an application for removal from the Roll by a solicitor against whom disciplinary proceedings are likely to be taken.
26. The Solicitors (Keeping of the Roll) Regulations 1999 provide in effect that the SRA may refuse to remove the name of a solicitor from the Roll who is the subject of an outstanding complaint and that the SRA shall not remove a solicitor from the Roll who is the subject of disciplinary proceedings before the Solicitors Disciplinary Tribunal. The SRA may be prepared to agree to an application for removal from the Roll where the solicitor signs an agreement attaching a witness statement (an "Admission Statement"):
- containing a statement of truth;
  - admitting allegations of misconduct;
  - admitting facts relevant to those allegations;
  - acknowledging any previous disciplinary or regulatory findings;
  - acknowledging that serious disciplinary action by the Solicitors Disciplinary Tribunal could be taken in the light of his admissions;
  - requesting removal from the Roll to save costs, distress and further risk to the public;
  - acknowledging that the statement is made voluntarily;
  - acknowledging that the statement and agreement will be published by the SRA;
  - undertaking not to seek restoration to the Roll;
  - undertaking not to work for a solicitors' practice without the written permission of the SRA;
  - making full and frank disclosure to any prospective employer of the agreement with the SRA.