

Guidance

Guidance

Undertakings given by, or on behalf of, incorporated practices

Undertakings given by, or on behalf of, incorporated practices

Published: 9 August 2022

Who is this guidance for?

All SRA-regulated solicitors and SRA-regulated firms, their managers, owners and employees.

Purpose of this guidance

To explain your obligations when undertakings are provided by, or on behalf of, incorporated practices. This is because a Supreme Court decision has confirmed that the courts have no jurisdiction to enforce undertakings against incorporated practices. However, an incorporated practice could still face regulatory proceedings as there might have been a breach of our rules.

The regulatory position

Paragraph 1.3 of both the Code of Conduct for Solicitors and the Code of Conduct for Firms states, 'You perform all undertakings given by you, and do so within an agreed timescale or if no timescale has been agreed then within a reasonable amount of time.'

Accordingly, breach of an undertaking by authorised individuals and firms - including solicitors and incorporated practices - would give rise to a breach of professional conduct and could result in disciplinary action being taken against the solicitor, the firm, its members and/or directors.

The legal position

Pursuant to section 50 of the Solicitors Act 1974, solicitors are officers of the court and so subject to the supervisory jurisdiction of the High Court. This means that undertakings given by solicitors can be enforced by the court.

The jurisdiction does not extend to undertakings given by, or on behalf of, incorporated practices. The practices are not in themselves officers of the court. This means they cannot be compelled by the court to perform the undertaking, award compensation, or become subject to potential contempt proceedings in respect of the undertaking. This position was confirmed in the recent decision of the Supreme Court in *Harcus Sinclair LLP and Another v Your Lawyers Ltd* [2021].

The Law Society has produced guidance on professional undertakings, including the impact of different business structures on the enforcement of undertakings

Further guidance

Law Society Guidance on Professional Undertakings

[<https://www.lawsociety.org.uk/topics/regulation/professional-undertakings>]

Further help

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