

Guidance

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Workplace environment: risks of failing to protect and support colleagues

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Status

This new 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 individuals and firms we regulate, including managers and other individuals involved in senior leadership within law firms and other organisations delivering legal services.

Where this guidance refers to the managers of a firm, it means people who are defined as managers in our Glossary

[<https://www.sra.org.uk/solicitors/standards-regulations/glossary/>] . These are the partners in an SRA-regulated law firm that is a partnership, and their equivalents in other SRA-regulated firms.

Purpose of this guidance

This guidance explains our approach where we consider that individuals and firms have failed to take appropriate steps to look after colleagues' wellbeing. It sets out the main standards that apply to solicitors, and to law firms and those responsible for their culture and the systems in place within them.

Introduction

We have received complaints that some firms have an unsupportive, bullying or toxic working environment and culture.

These include concerns ranging from systemic bullying, discrimination or harassment to the failure to address such unacceptable behaviours when complaints are raised. From the failure to provide the support systems and

supervision necessary to deliver legally competent services, to exerting pressure to take short cuts or act unethically.

This kind of environment can impact significantly on the wellbeing and mental health of a firm's staff. It can also lead to mistakes and poor outcomes for clients - or serious ethical concerns, for example when staff feel under pressure to cover up problems.

We are particularly concerned that evidence shows some solicitors with protected characteristics experience higher levels of unfair treatment at work. These include women, people from a Black, Asian or minority ethnic background, those with a disability, junior solicitors and LGBTQ+ solicitors.

We recognise that practising law can sometimes be pressurised and stressful, involving long hours, heavy workloads and dealing with challenging and demanding clients and situations. A career in the law can and should nonetheless be rewarding.

As a regulator, we do not direct the working practices or procedures that firms and the individuals working in firms should adopt. However, we will take action if we believe that there has been a serious regulatory failure. For example, where the work environment does not support the delivery of appropriate outcomes and services to clients. Or creates a culture in which unethical behaviour can flourish or where staff are persistently unable to raise concerns or have issues addressed.

We take these issues seriously. We encourage anyone who has experienced or come across bullying, harassment, discrimination and victimisation in the workplace to report them to us. See our guidance on reporting and notification obligations

[<https://www.sra.org.uk/solicitors/guidance/reporting-notification-obligations/>] .

We appreciate that for some individuals this may be challenging and that this takes courage - our guidance on Your Health, your Career

[<https://www.sra.org.uk/solicitors/resources/your-health-your-career/>] includes a section 'Where to get help'.

Our Codes of Conduct make it clear that both firms and individuals must not subject anyone to detrimental treatment for making or proposing to make any such report to us. Or attempt to prevent anyone from doing so.

Bullying, harassment, discrimination and victimisation

There is no legal definition of bullying. We and other regulators consider bullying to include unwanted behaviour that is either:

- Offensive, intimidating, malicious or insulting; or



- An abuse or misuse of power that undermines, humiliates, or causes physical or emotional harm to someone.

Bullying can be a regular pattern of behaviour or a one-off incident. It can happen face to face or remotely.

Harassment is defined by s26 of the Equality Act 2010

[<https://www.legislation.gov.uk/ukpga/2010/15/contents>] . It is unwanted conduct, including conduct related to a relevant protected characteristic and conduct of a sexual nature or that is related to gender reassignment or sex). This is with the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

Discrimination is defined by s13 of the Equality Act 2010 as where someone is treated less favourably than others because of a protected characteristic under the Act.

Victimisation is defined by s27 of the Equality Act 2010. It is subjecting an individual to a detriment because that person has taken (or is thought to have, or to be considering taking) a protected action under the Act.

The Equality and Human Rights Commission has published further guidance [<https://www.equalityhumanrights.com/equality/equality-act-2010/your-rights-under-equality-act-2010/terms-used-equality-act>] on the words and terms used in the Equality Act.

Our expectations on individuals

Our Principles require individuals to act with integrity, in a way that encourages equality, diversity and inclusion, and to uphold public confidence in the solicitor's profession.

Our Code of Conduct for Solicitors, RELs and RFLs

[<https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/#rule-1>]

(paragraph 1.5) expands on the Principles by requiring:

- All individual solicitors, RELs and RFLs to treat colleagues fairly and with respect, and not to bully or harass them or discriminate unfairly against them.
- Specified managers of firms to challenge behaviour that does not meet this standard.

What does 'treating colleagues fairly' mean in this context?

In a regulatory context, treating colleagues fairly and with respect is not the same as complying with employment law. Employment law – and ultimately

an employment tribunal – is the primary route to decide whether treatment is unfair in the context of an individual's status as an employee. And to award redress accordingly.

Our role as a regulator is to manage the risks that serious unfair behaviour can pose for consumers and the wider public interest. As such we would only expect for example to get involved in employment disputes, or disagreements about role-related matters such as targets or the allocation of work, where they raise regulatory concerns.

Our expectation is that those we regulate will:

- Not create or sustain a working environment which risks leading to mistakes and poor outcomes for clients, or to serious ethical concerns. For instance, when staff are placed under pressure to cover up problems.
- Maintain public confidence in the integrity of the profession and in the legal workplace as a safe and inclusive environment.

Our Enforcement Strategy [<https://www.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/>] (section 2.1) explains that we will not take action on every breach; We focus our action on the issues that are most serious, either in isolation or because they demonstrate a persistent failure to comply or a concerning pattern of behaviour.

When considering whether any unfair treatment is serious, things we will take into account include:

- Whether the behaviour could reasonably be seen by others as intended to bully, belittle, harass, intimidate, undermine or take advantage of colleagues.
- The respective seniority of those involved, and factors such as whether an individual has control or influence over another's career.
- Whether individuals have specific characteristics or vulnerabilities (for instance in relation to age, sex, disability or ethnicity), particularly if this appears to have been a factor in the behaviour complained of.

What does the term 'colleagues' mean?

'Colleagues' not only refers to people who are formally employed by the firm or organisation in which a solicitor works but others with whom the solicitor works closely, such as contractors, consultants, barristers and experts who may be instructed by the firm.

This is because working relationships key to the delivery of legal services and the culture of the workplace are not defined by employment status.

Conduct towards a colleague that takes place away from the physical or virtual workplace can be covered by our Codes of Conduct. Factors such as the pandemic and changes in technology have changed the patterns in which people work. And professional relationships are no longer centred around the traditional office environment. Further, conduct at work-related events can impact upon professional relationships.

As the introduction to our Codes of Conduct explains, conduct away from the workplace will only be covered by the Codes where it touches realistically upon the practice of the profession, in a way that is demonstrably relevant.

This is distinct from purely social events arranged outside of the workplace or relating to someone in a personal capacity. For example, where they are a neighbour, friend or partner, who also happens to be a solicitor or colleague.

We have published case studies [<https://www.sra.org.uk/solicitors/guidance/workplace-environment-case-studies/>] illustrating how this can occur and further guidance on sexual misconduct [<https://www.sra.org.uk/solicitors/guidance/sexual-misconduct/>].

The term 'colleagues' does not cover clients, or third parties such as those acting on the other side in a case. However, solicitors are bound by other obligations and must act in the best interests of each client and must not take unfair advantage of clients or others.

What does 'challenge behaviour' mean?

The obligation to challenge unfair behaviour applies to those we define as a firm's managers (see 'Who is this guidance for?' above). It is an important element of a safe and ethical workplace that a firm's managers are ready to speak out where they see unfair treatment. This means taking action to address the behaviour which has been witnessed. We do not prescribe how this should be done and the action does not necessarily need to be formal, but it should be effective.

Where it is feasible for a manager who witnesses unfair treatment to intervene immediately to stop it, we expect them to do so. In other cases it may be more appropriate for the manager to take action soon after the event. This could be by raising their concerns directly with the person who has behaved unfairly. Or by reporting to another senior colleague such as the firm's COLP, the managing partner or the director responsible for HR issues.

In any of these circumstances, managers and firms should also consider how best to record the incident and the action taken. They need to bear in mind the requirement in paragraph 2.2 of the Code of Conduct for Firms

[<https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/#rule-2>] to keep records demonstrating compliance with our regulatory arrangements.

Managers and firms should also consider whether it is appropriate to report incidents to us. This is in line with the requirement in paragraph 7.7 of the Code of Conduct for Solicitors, RELs and RFLs to report potential serious breaches of regulatory arrangements. This may be appropriate, for example:

- Where a challenge to unfair behaviour is attempted but does not succeed in ending the behaviour. This may raise regulatory concerns because the unfair behaviour has continued even after being challenged, and/or because the firm has failed to resolve the issue.
- Where a challenge does succeed in a particular instance, but the nature of the unfair behaviour may still pose regulatory risks.
- In cases involving a senior member of staff which cannot realistically be challenged successfully within the firm.

Our expectations on firms

Firms should do everything they reasonably can to look after the wellbeing of those who work in and with the firm. And protect them from bullying, harassment, discrimination and victimisation, while supporting them so they can work safely and effectively.

This means taking steps such as:

- Having effective systems and controls to supervise work, and monitor concerns which may affect individuals' wellbeing and competence.
- Providing a safe environment for people to raise concerns and addressing them promptly and in a constructive manner. Firms should also be aware that that poor performance by an individual could be a warning sign that an individual is working under stress or duress.
- Treating people with dignity and respect to create an ethical workplace and an engaged workforce that provides a better client experience.
- Having in place and implementing policies on bullying, harassment, discrimination and victimisation as well as disciplinary procedures for breach of those policies.

A failure to do so may involve breaches of equalities legislation or employment law, or health and safety legislation. We encourage individuals to raise any issues with the firm and we expect that these will be properly dealt with in accordance with the firm's own HR policies in the first instance. Once that process has been exhausted, the Employment Tribunal is often

then the primary route for redress where an individual remains concerned about how they have been treated.

However, such a failure may also lead to breaches by the firm of our regulatory requirements, as set out in the sections below.

Systems and controls

Paragraph 2 of the Code of Conduct for Firms

[\[https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/\]](https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/) requires all firms to have in place effective governance structures, arrangements, systems and controls. This is to ensure that they and their staff can comply with all applicable regulatory and legislative requirements, and manage all material risks to their business.

Requirements such as these aim to create and maintain the right culture and environment for the delivery of competent and ethical legal services to clients.

A failure to put in place and effectively implement systems to support and protect staff will increase the risk that individuals or firms breach our regulatory requirements.

Supervision and competence

Paragraph 4 of the Code of Conduct for Firms requires firms to make sure that services provided to clients are competent and delivered in a timely manner. And that managers and employees are competent and keep their knowledge and understanding of their legal, ethical and regulatory obligations up to date.

Firms also need to have proper systems for supervising clients' matters. We have published guidance on effective supervision

[\[https://www.sra.org.uk/solicitors/guidance/effective-supervision-guidance/\]](https://www.sra.org.uk/solicitors/guidance/effective-supervision-guidance/) for firms and supervisors.

Proper supervision is more than just checking that staff are progressing client matters. It means making sure that, at the very least, firms have in place arrangements to regularly monitor and assess:

- Individuals' workloads and capacity
- Their competence to do the work.

We also expect that firms have in place the systems and culture so that individuals can safely and confidently raise concerns. And be supported if they are experiencing problems, including on difficult or sensitive issues.

We provide more detail on the things you can put in place in our Workplace Culture Thematic Review [<https://www.sra.org.uk/sra/research-publications/workplace-culture-thematic-review/>] . These include training your managers on dealing with concerns, having regular one-to-ones and rewarding positive behaviours which demonstrate treating others with respect and dignity. This will help to prevent problems arising in the first place, or the situation worsening.

Staff that are not adequately supervised and supported, or worse, experience bullying or blame, may not come forward and disclose their mistakes. They may even cover them up, increasing the risks for clients, and a far more serious regulatory outcome for breach of Principle 4 or 5 (acting with honesty and integrity).

Fairness and inclusion

Our Principles require firms to act with integrity, in a way that encourages equality, diversity and inclusion, and to uphold public confidence in the solicitor's profession.

Paragraph 1.2 of the Code for Firms provides that firms should not abuse their position by taking unfair advantage. And paragraph 1.6 requires firms to:

- Treat those who work for and with the firm fairly and with respect, and not to bully or harass them or discriminate unfairly against them.
- Require their employees to meet this standard.

These requirements parallel the requirement for individual solicitors, RELs and RFLs to treat colleagues fairly (see Our expectations on individuals [#"individuals"]) . The expectations set out in our guidance for individuals apply equally to firms.

This expectation includes creating an environment that is inclusive and free from discrimination, bullying, harassment or victimisation. To help build such an environment, individuals need to be confident that such complaints will be dealt with by firms and their managers promptly, fairly, openly and effectively.

Where we find serious cases of bullying, harassment, discrimination or victimisation within firms, we will expect the firm to take action to prevent or address this behaviour. Where this is not the case, this may lead to allegations that the firm has failed to meet:

- Paragraph 1.6 of the Code for Firms
- Principle 2
- Principle 6

Where proper systems and procedures are put in place by firms to address these issues, this will reduce the risk of problems. And demonstrate that firms are taking appropriate steps to meet their obligations. So, for example, having policies that address workplace behaviours and which highlight that bullying, harassment, discrimination or victimisation will not be tolerated and that action will be taken by the firm where they become aware of such issues.

Firms should be able to evidence how they monitor the effect of such policies, and the action they have taken when such issues have arisen. This is in line with the requirements in the Conduct for Firms to:

- Have effective systems and controls in place to make sure compliance with our regulatory arrangements.
- Keep records to demonstrate compliance.

When we will take regulatory action

We will hold individuals and firms to account for serious failures to meet our standards in accordance with our Enforcement Strategy.

As the strategy makes clear, we focus on breaches that are particularly serious in isolation. Or which demonstrate a persistent failure to comply or a concerning pattern of behaviour. Therefore, in relation to individuals or firms, a one-off complaint for example due to a single episode of bullying, is unlikely to lead to regulatory action.

We are likely to take action against an individual where, for example, there is evidence of:

- Behaviours which intentionally undermine, bully or harass a colleague, or which are discriminatory.
- Repeated or blatant unfair treatment of colleagues which leads to culture, practices or actions which are unethical or against the interests of clients.
- Intentionally placing pressure on a person to act improperly, or victimising them for acting properly.
- A manager repeatedly failing to challenge or address any such behaviour in a prompt or effective way.

We are likely to take action against a firm where, for example, there is evidence of:

- A pattern of the abuse of authority by senior staff that has been left unchecked by the firm



- A complaint of discrimination, victimisation or harassment not dealt with by the firm in a prompt and fair manner
- Complaints of bullying raised with the firm over a period of time involving a number of staff and inadequate action taken by the firm as a result. Or evidence that the incidents had not been brought to light sooner because of the firm's culture and/or inadequate reporting and disciplinary procedures
- A history of the firm's managers failing to challenge the unfair treatment of staff in a reasonably prompt or effective way
- A firm pressurising staff to withdraw their complaints
- Ineffective systems and controls, including failure to supervise or support staff leading to serious competence or performance issues or delivery failures
- The imposition of wholly unreasonable workloads or targets.

In addition, senior managers may have responsibility for a firm's culture and systems and be held responsible for failures under paragraph 8.1 of the Code of Conduct for Firms. This is as well as making sure that staff are competently and properly supervised where they supervise or manage others. (Paragraphs 3.5 and 3.6 of the Code of Conduct for Solicitors, RELs and RFLs).

The accompanying case studies [<https://www.sra.org.uk/solicitors/guidance/workplace-environment-case-studies/>] provide examples - especially of bullying - of the types of reports which we consider may or may not meet our thresholds for potential investigation and taking disciplinary action.

These illustrate some of the components of cases we see and are provided to explain our decision making and potential outcomes. They are not formal records of actual cases.

Encouraging good practice

We have set out separately advice and guidance to help firms make sure they avoid the risks referred to above and maintain healthy working environments where staff are valued and supported. Please see:

- Our Workplace Culture Thematic Review
- Encouraging equality, diversity and inclusion
[<https://www.sra.org.uk/solicitors/resources/diversity-toolkit/>]
- Guidance on the SRA's approach to equality, diversity and inclusion
[<https://www.sra.org.uk/solicitors/guidance/sra-approach-equality-diversity-inclusion/>] . This highlights the importance of, and the overlap between, an inclusive culture and a healthy working environment

- Our guidance on the requirement to act with integrity
[<https://www.sra.org.uk/solicitors/guidance/acting-with-integrity/>]
- Our guidance for solicitors and firms on our approach to sexual misconduct, including the boundary between an individual's behaviour in their private and professional life
- Our guidance: Your health, Your career
[<https://www.sra.org.uk/solicitors/resources/your-health-your-career/>]

Firms might also wish to look at:

- Guidance from ACAS on Understanding bullying, harassment and discrimination and handling a bullying, harassment or discrimination complaint [<https://www.acas.org.uk/handling-a-bullying-harassment-discrimination-complaint>]
- LawCare's Life in the Law [<https://www.lawcare.org.uk/life-in-the-law/>] report, other materials and their website
- The Law Society's diversity and inclusion framework
[<https://www.lawsociety.org.uk/topics/diversity-and-inclusion-framework>]
- The Law Society Disabled Solicitors Network's best practice guidance
[<https://www.lawsociety.org.uk/topics/lawyers-with-disabilities/reasonable-adjustments-in-organisations-best-practice-for-disability-inclusion>] on reasonable adjustments for disability inclusion
- Equality and Human Rights Commission (EHRC) guidance on the Equality Act [<https://www.equalityhumanrights.com/guidance>] .

Further help

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