

Guidance

Guidance

If we are investigating you

If we are investigating you

Published: 25 November 2019

Status

This guidance is to help give you an oversight of how we investigate allegations of a breach of our Standards and Regulations.

Who is this guidance for?

Anyone we are investigating.

Purpose of this guidance

This guidance aims to help you understand how we investigate allegations in terms of the steps we take and possible outcomes. It should be read alongside our Regulatory and Disciplinary Procedure Rules [<https://www.sra.org.uk/solicitors/standards-regulations/regulatory-disciplinary-procedure-rules/>]. The rules cover process, evidential, procedural matters and outcomes as well as publication and costs. We may vary the procedures set out in these rules where we consider it to be in the interests of justice or in the overriding public interest (rule 8.1 of the Regulatory and Disciplinary Procedure Rules).

General

We regulate you if you are a solicitor, registered foreign lawyer, registered European lawyer or an employee or manager of a firm, regardless of your being a lawyer or not.

We regulate in the public interest to protect customers and maintain public trust and confidence in legal services.

If we are investigating you, we understand you are likely to have a number of questions. Below are answers to the most common questions.

To discuss your particular case in more detail, you should contact the person handling the investigation. You will be given their details when we contact you to tell you we are investigating you.

Open all [#]

Q.1 How do we decide to start an investigation?

Most investigations start because we receive a complaint or report about a potential breach of our Standards and Regulations. More

We assess all complaints and reports and decide if we need to investigate (rule 1.1 of the Regulatory and Disciplinary Procedure Rules). Our guidance on making decisions to investigate concerns [<https://www.sra.org.uk/sra/decision-making/guidance/investigations-decisions-investigate-concerns/>] explains how we do this.

Q.2 When will we tell you we have decided to investigate you?

In most cases, we will contact you by telephone or email to tell you we have decided to investigate you. We will tell you about the nature of the allegations we are investigating and what will happen next. More

Occasionally we will not contact you where we consider it is in the public interest not to do so (rule 2.2 of the Regulatory and Disciplinary Procedure Rules). However, that decision will be kept under review and we will tell you about our investigation as soon as we consider we can.

Q.3 Will we tell anyone else about our investigation?

We will usually tell your employer that we are investigating you (rule 2.2 of the Regulatory and Disciplinary Procedure Rules). More

We will also tell the person who made the initial complaint or report to us. If you are regulated by anyone else, we are likely to tell them about the investigation as well.

We may also need to tell people about the investigation to help us gather relevant evidence. These people may include anyone holding relevant information or documentation.

Q.4 What happens during an investigation?

Most investigations are desk-based. We will gather evidence to try and establish the facts and form a view on whether we need to take action. More

This means we will contact relevant people and ask them to provide us with evidence, usually in the form of documentary evidence. We may contact potential witnesses where we think they may be able to assist.

You are likely to be closely involved in this process. You may be asked to provide information and documents or you may volunteer to do so as part of your explanations to us. You may be also asked to comment on the evidence and to explain why you acted as alleged.

Sometimes we carry out an on-site investigation where we visit your firm. There are a number of reasons why we might decide to do this and our guidance on on-site investigations [<https://www.sra.org.uk/sra/decision-making/guidance/investigations-on-site/>] explains why we conduct them, and what you can expect if we carry one out.

We may decide to take no action and if we do, we will close the matter, although, in some cases, we may decide to issue advice or a warning about your future conduct (rule 2.4 of the Regulatory and Disciplinary Procedure Rules).

We will not impose a regulatory or disciplinary decision against you without first giving you notice setting out the allegation, facts and evidence in support along with our recommendation as to the outcome (rule 2.3 of the Regulatory and Disciplinary Rules).

We will also invite you to respond with written representations, usually within 14 days of us notifying you (rule 2.3 of the Regulatory and Disciplinary Procedure Rules). In some cases, we may decide not to give you notice (see rule 2.5 of the Regulatory and Disciplinary Procedure Rules).

Pending our final decision, or that of the Solicitors Disciplinary Tribunal, we may impose interim conditions on your practising certificate or registration if you are a solicitor, registered European lawyer or registered foreign lawyer or on the authorisation of your firm.

Q.5 How long does an investigation take?

We aim to complete 93 per cent of our investigations within 12 months. More

However, it is difficult to accurately predict how long any investigation will take.

Sometimes we obtain the information we need very quickly to enable us to make a decision. In other cases, the evidence may be extensive and so our analysis will take time. In some cases, this can take many months.

We will keep you updated on progress and will always be as open as we can with you. Occasionally, due to the nature of the allegations or individuals involved, there may some things we may not be able to tell you.

Q.6 What investigative powers does the SRA have?



Legislation gives us strong powers to require you to provide us with documents, information and explanations. More

Your obligations can be found in rules 7.3 and 7.4 of the Code of Conduct for solicitors, RELs and RFLs and rule 3.2 and 3.3 of the Code of Conduct for firms. We can also ask the court to order people or firms outside our regulated community to give us information.

Our guidance on gathering evidence [<https://www.sra.org.uk/sra/decision-making/guidance/investigations-gathering-evidence/>] gives more information about our investigative powers.

Q.7 What are the most common outcomes of an investigation?

We close the vast majority of our investigations without taking any formal regulatory action. More

However, where we identify what we consider to be serious breaches of our Standards or Regulations we take action.

Our Enforcement Strategy [<https://www.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/>] sets out our approach and underpins how we decide what is serious and what we tolerate. Annex A sets out the most common action we take including the factors we take into account.

Q.8 Will I be able to appeal any decision made against me?

Decisions to impose a regulatory or disciplinary outcome are made under rule 3.1 of our Regulatory and Disciplinary Procedure Rules. More

These include the decision to give you a written rebuke or to fine you.

When we tell you we have made one of the decisions listed in rule 3.1 of the Regulatory and Disciplinary Procedure Rules, we will also tell you what rights you have to ask us for a review or to appeal

[<https://www.sra.org.uk/solicitors/standards-regulations/regulatory-disciplinary-procedure-rules/>] to the High Court or Solicitors Disciplinary Tribunal (where relevant). Rights of review and appeal are set out in our Application, Notice, Review and Appeal Rules. Specifically, rights of review and appeal are found in annexes 1-3 of those rules.

If we decide to refer your conduct and issue proceedings against you at the Solicitors Disciplinary Tribunal, you do not have a right of review or appeal against that decision.

Q9. Is there any other guidance I should be aware of?

Our Enforcement Strategy and guidance on are the key pieces of guidance in understanding our investigations and any action which follows. More

However, depending on the circumstances, you may also be interested in our guidance on:

- parallel investigations [<https://www.sra.org.uk/sra/decision-making/guidance/investigations-parallel/>]
- on-site investigations [<https://www.sra.org.uk/sra/decision-making/guidance/investigations-on-site/>]
- regulation of non-authorised persons [<https://www.sra.org.uk/sra/decision-making/guidance/general-regulation-non-authorised-persons/>]
- dishonesty [<https://www.sra.org.uk/sra/decision-making/guidance/general-dishonesty/>]
- regulatory settlement agreements [<https://www.sra.org.uk/sra/decision-making/guidance/disciplinary-regulatory-settlement-agreements/>]
- bringing criminal proceedings [<https://www.sra.org.uk/sra/decision-making/guidance/disciplinary-bringing-criminal-proceedings/>]
- issuing Solicitors Disciplinary Tribunal proceedings
[<https://www.sra.org.uk/sra/decision-making/guidance/disciplinary-issuing-solicitors-disciplinary-tribunal-proceedings/>]
- publishing regulatory and disciplinary decisions.
[<https://www.sra.org.uk/sra/decision-making/guidance/disciplinary-publishing-regulatory-disciplinary-decisions/>]

Further help

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