

Guidance

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Professional duties during action taken by the Criminal Bar Association

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Published: 30 August 2022

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, solicitors, registered European lawyers and registered foreign lawyers.

Purpose of this guidance

To help you understand what our Standards and Regulations require when acting for clients who may be affected by industrial action taken by the Criminal Bar Association (CBA).

Introduction

Since April hundreds of CBA members have adopted 'no returns' as part of industrial action aimed at making the government uplift rates by 25 per cent. We reminded the profession in April's SRA Update [<https://www.sra.org.uk/sra/news/sra-update-102-bar-strike/>] of its duties in relation to such cases.

Since then CBA members have voted in support of escalating the action. Because of the CBA's increased escalation of industrial action we are concerned that more and more firms and clients might be affected or solicitors withdraw services or take some form of action in support of barristers. There is a risk that some solicitor firm clients might end up unrepresented.

Professional obligations

We expect solicitors to act in accordance with their professional obligations when acting for clients in relation to criminal matters. Solicitors have a duty to act in their client's best interests (Principle 7

[<https://www.sra.org.uk/solicitors/standards-regulations/principles/>]).

Solicitors also have a duty to uphold the constitutional principle of the rule of law and the proper administration of justice (Principle 1

[<https://www.sra.org.uk/solicitors/standards-regulations/principles/>]), as well as a duty under the SRA Codes of Conduct [<https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/#rule-2>] not to waste court time.

This includes making all reasonable efforts to ensure court hearings take place when tabled unless adjourned with the agreement of the court. We suggest that it would be helpful to explain this to clients.

In relation to barristers taking action, if the advocate instructed to appear at a hearing is taking part in strike action, solicitors are advised to make the following efforts (which they should document):

- Contact as many chambers or firms as practicable to find another suitable barrister or solicitor advocate.
- Ensure that difficulties are explained to the court and the prosecution at the earliest opportunity to assist with proactive case management.
- Use their firm's solicitor advocates, if they have any, where they have the skills and resources to take the work on (paragraphs 4.2 and 4.3 [<https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/#rule-4>] of the Code of Conduct for Firms and paragraph 3.2 [<https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/#rule-3>] of the SRA Code of Conduct for individuals).
- Assist the client to represent themselves as best they can if they are unable to locate an advocate and the court is unwilling to adjourn. This will involve considering how best to engage with the court, if this is required - which might include attending court with their client where practicable and they consider it in the client's interests to do so. This will also involve offering any support they can to the client before and during the hearing. This might include for example providing advice on the issues in the case, or signposting to useful resources.

For the avoidance of doubt we do not expect solicitors to act beyond their competency to do so. Nor do we expect solicitors to undertake advocacy when they do not have the required rights of audience.

We would encourage solicitors when accepting new instructions to consider what services they will provide to client, the possible unavailability of counsel and any alternative options, and to discuss this with them to ensure they are in a position to make an informed decision.

It would not necessarily be acting in the client's interest to take on a matter knowing that representation by an advocate is not confirmed. There might be circumstances where it is in the client's best interests to have litigation representation notwithstanding the firm cannot provide advocacy services - it will all depend on the individual needs of the client.

Further help

Solicitors who are still unsure can contact our Ethics Guidance helpline [<https://www.sra.org.uk/home/contact-us/>] . Or see the Law Society's guidance [<https://www.lawsociety.org.uk/topics/legal-aid/bar-strike-what-you-need-to-know>] on this matter.