

Integrity and ethics

23 November 2020

'It is essential that solicitors can be 'trusted to the ends of the earth'.¹ [#n1]

Why this risk matters

The solicitors' profession depends on trust. Unethical behaviour can harm public confidence in your firm and the whole legal system. The reports to us about unethical behaviour are often concerns about the integrity, independence and honesty of a solicitor.

Users of legal services could also face negative consequences to their lives, liberty and finances where, for example:

- their case is without merit but still pursued
- their claim is prejudiced when their solicitor does not lodge court documents but fails to tell them
- the solicitor turns a blind eye to some information about the case
- the solicitor is not independent.

Solicitors and law firms face serious consequences if they do not show integrity, especially if they have been dishonest. These cases are likely to lead to a referral to the Solicitors Disciplinary Tribunal (SDT) and, if proved, a serious sanction, such as a strike off.

The uncertainties and challenges ahead, as set out in the market landscape [<https://www.sra.org.uk/sra/research-publications/risk-outlook-2020-21/market-landscape-in-2020/>], are likely to increase the pressure on solicitors and test their integrity. We know that most solicitors are doing all they can to maintain compliance with their obligations. It is important that trust is intact, even in difficult circumstances. An important part of this is having a workplace culture that encourages integrity and being open when mistakes have been made.

Who is most at risk?

Consumers are at risk if their solicitor acts unethically. For example, they might enter into a transaction that is not in their interests because they trust the information they were given by a solicitor.

Firms that do not encourage an open and transparent environment are at risk. That can lead to staff trying to cover up problems, rather than the firm being able to remedy them. Having good support and role models will

encourage integrity. And workplace culture is key to promoting ethical behaviour.

Solicitors are likely to be under more pressure during the financial difficulties of a recession and the rapid changes from the Covid-19 pandemic, so they need to be even more vigilant.

Case example: Backdating property documents leads to a strike off

A solicitor had backdated property documents submitted to the Welsh Revenue Authority to avoid a late registration penalty. They admitted that this was dishonest and the SDT struck them off the roll. The solicitor had no other misconduct issues in more than 40 years in practice. But, an act of dishonesty usually results in being struck off, unless there are exceptional circumstances.

Case example: Solicitor fined for compromising independence in managing claims

One firm's independence was compromised because of their relationship with a claims management company (CMC). The firm received most of its work from the CMC. The CMC's agreement with customers:

- required them to use the law firm
- authorised the firm to pass their data to a connected medical reporting company, whether or not the consumer wanted to use that company
- waived their rights to cancel their instructions.

The sole practitioner did not:

- advise their clients on the content of the agreement or on their rights
- give their staff training on client confidentiality or data protection
- have systems to manage these risks until after they were reported to us.

The solicitor noted that they had not enforced the cancellation waiver or passed on unnecessary medical information. They accepted that they had allowed their independence to be compromised and were fined £2,000 in a regulatory settlement agreement.

Case example: Solicitor fined for bringing unarguable immigration cases

The SDT found that a solicitor had acted without integrity in making repeated immigration judicial review claims that they knew were

unarguable. The solicitor had brought 11 claims that the courts had certified as being totally without merit and an abuse of process. In many claims, they were challenging decisions that could not be separately challenged and were identical to ones that had been previously rejected.

The solicitor admitted that they had made applications with no legitimate purpose as they had no prospect of success. These types of claims are clearly not in the public interest. They were fined £60,000 and indefinitely barred from doing any judicial review work.

Spotlight on investment schemes

Dubious investment schemes significantly harm the finances and lives of the people who invest. It can take people some time to realise they have been a victim of a dubious investment scheme. This means that there is a delay in the reports to us and other bodies, which leaves more people vulnerable to the same schemes.

We reviewed cases where firms had acted for sellers of potentially dubious schemes. Our report [<https://www.sra.org.uk/sra/how-we-work/archive/reports/investment-schemes-that-are-potentially-dubious/>] highlights examples of poor practice where people could fall victim to dubious schemes. This was often because firms did not carry out proper due diligence on those who ran the schemes, or focused on the interests of the scheme promoter and were not properly protecting the interest of consumers.

Our latest warning notice [<https://www.sra.org.uk/solicitors/guidance/investment-schemes-including-conveyancing/>] sets out the signs that solicitors must watch out for, such as transferring funds through their client account, without the transactions being connected to any underlying legal work and doing no real legal work and generating unnecessary legal fees.

Our minimum terms and conditions for professional indemnity insurance (PII) cap the insurers' liability at £2m (or £3m for incorporated firms) for 'a series of related matters or transactions'. The principals of firms involved in fraudulent investment schemes could be personally liable for any claims above this cap.

On the horizon for investment schemes

Some people might now be more vulnerable to dubious investment schemes because of possible negative interest rates and recent changes in spending and saving habits.

During the first national lockdown, one bank saw a 49% increase in 'investment scams' in one month and schemes around crypto currency

increasing.² [n2]

‘Historically, fraud is a crime that increases during recessions. As the economy slides and unemployment rises, all solicitors must therefore be alert to that risk, especially if a deal seems too good to be true.’ Simon Davis, former president of the Law Society of England and Wales³ [n3]

We recommend

Know your obligations

You must:

- understand your ethical obligations as set out in our Standards and Regulations [<https://www.sra.org.uk/solicitors/standards-regulations/>]
- keep up to date with our warning notices [<https://www.sra.org.uk/solicitors/guidance/>]
- carry out proper due diligence in all of your work.

You should contact our Professional Ethics Helpline

[<https://www.sra.org.uk/home/contact-us/>] if you are concerned that your working practices breach our rules. If any detriment has been caused, you need to tell anyone affected and explain how you will remedy it. Also, senior partners could lead by example and share their mistakes to foster a ‘no-blame culture’.

We strongly encourage you to make responsible and lawful reports to us with information about any serious misconduct and risks, at the earliest possible stage. Your prompt report can protect consumers and other members of the public from reckless or dishonest behaviour.

Firms should address any behaviour that falls outside the expected standards. The supervision of staff needs to be fit for purpose in firms’ current working practices. Technology can support this.

Solicitors are officers of the court and must uphold the rule of law and the proper administration of justice. And, while they also owe duties to their clients and colleagues, their duties to the wider public interest should always be considered.

Our Principles can also apply outside of practice. For instance, where a solicitor’s behaviour suggests that an improper approach might be taken in delivering legal services in the future or is so serious that it affects public confidence.

Have the right controls



Ask yourself	Actions to help you control the risk
Do the actions and communications from senior staff reflect the standards of the profession?	Senior staff set the tone of your workplace culture, so it is important that they role model the appropriate behaviour and address others' behaviour where needed.
Do you have the support in place so that staff feel able to report concerns, problems and issues?	Your firm should encourage staff to be open when mistakes happen or when they see non-compliance. This will help everyone to learn from mistakes and will help protect your firm and the public.
Are you clear about your role in all transactions?	You should always consider what your role is when taking instructions. And you should do your due diligence, so you can avoid acting where a solicitor is not needed, such as certain investment scheme work or claims about mis-sold financial products.
Are you confident that all staff can meet their obligations in difficult circumstances?	You need to find ways to maintain effective management and training in rapidly changing times. Supporting staff in their work and skills development will help to maintain the expected standards.
Do all staff recognise their duties and maintain their independence and integrity?	If the Principles come into conflict, safeguarding the wider public interest takes priority over an individual client's interests. You should, where relevant, tell people when your duty to the court and other professional obligations outweighs your duty to them.

You need to know who you owe duties to and where there might be a conflict. You should refuse instructions where necessary.

Get more information

Our paper on balancing duties in litigation [<https://www.sra.org.uk/archive/risk/risk-resources/>] and our guide to applying Principle 1 [<https://www.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/enforcement-practice/guide-application-principle-1/>] give examples of how solicitors' duties might conflict and how to manage these risks.

Our guidance on acting with honesty [<https://www.sra.org.uk/solicitors/guidance/general-dishonesty/>] explains how we approach the requirement to act with honesty and the test we apply when deciding if a person is dishonest.

Our guidance on your reporting obligations [<https://www.sra.org.uk/solicitors/guidance/reporting-notification-obligations/>] and on whistleblowing [<https://www.sra.org.uk/consumers/problems/report-solicitor/whistleblowing-to-sra/>] sets out what you need to tell us, how and when. It also includes information about disclosing material to us which might be sensitive, confidential or privileged, and having appropriate protections for those who make reports to us.

The Equality and Human Rights Commission's guidance on confidentiality agreements [<https://www.equalityhumanrights.com/guidance/business/use-confidentiality-agreements-discrimination-cases>] describes good practice for the use of these and explains when they would be unlawful. And, our warning notice [<https://www.sra.org.uk/solicitors/guidance/non-disclosure-agreements-ndas/>] is a reminder of some of the issues and risks when drafting non-disclosure agreements.

The Law Society has practice notes [<https://www.lawsociety.org.uk/topics/practice-notes>] that provide guidance on a range of subjects.

What we are doing

Supporting firms and solicitors

Our Professional Ethics Helpline [<https://www.sra.org.uk/home/contact-us/>] helps you to meet your obligations. Our Standards and Regulations [<https://www.sra.org.uk/solicitors/standards-regulations-resources/>] support you to use your own professional judgment.

Regulating based on evidence

We carried out a thematic review [<https://www.sra.org.uk/sra/how-we-work/archive/reports/investment-schemes-that-are-potentially-dubious/>] to better understand how firms conduct work relating to potentially dubious investment schemes. We then updated our warning [<https://www.sra.org.uk/solicitors/guidance/investment-schemes-including-conveyancing/>] notice that it is professional misconduct for a solicitor to act in a dubious investment scheme.

We listen to, and receive information from, other regulators and bodies so that our decisions are based on as much information as possible.

Taking appropriate action

Our enforcement strategy sets out the types of conduct that we will not accept. It also shows the types of misconduct that we consider to be especially serious.

We will take disciplinary action against solicitors who fail to carry out reasonable checks to satisfy themselves that transactions are not fraudulent or taking unfair advantage of consumers.

Helping consumers

As noted in the client money section, we require all firms to have appropriate PII and people can make a claim on the compensation fund if the claim falls under our rules. We also work with other regulators and bodies and take action to protect consumers where needed.

On the horizon

The government plans to update existing laws to allow digital identity verification to be used as widely as possible. When this happens, it might end the need for original physical documents to be produced and make many legal processes simpler. The government has committed to further consultations on consumer protections, privacy standards and specific rights for individuals.

Notes

1. Bolton v Law Society [1993] EWCA Civ 32
2. Barclays, Scammers take advantage of Covid-19, cashing in on nation's uncertainty [<https://home.barclays/news/press-releases/2020/08/scammers-take-advantage-of-covid-19--cashing-in-on-nations--unce/>] , 2020
3. Law Society, SRA releases report on dubious investment schemes, 2020