

Topic guide

25 November 2019

Criminal offences outside of practice

Background

This guidance focuses on our approach to criminal offences outside of practice. Drink driving [<https://www.sra.org.uk/sra/strategy/sub-strategies/enforcement-practice/driving-excess-alcohol-convictions>] is covered by separate guidance.

Our approach to enforcement

We always investigate criminal offences given the key role that solicitors play in the administration of justice. Serious criminal conduct outside of practice raises questions of integrity and is likely to damage public confidence.

We will not generally look behind a criminal finding. Both us and the Solicitors Disciplinary Tribunal regard a certificate of conviction as conclusive proof of the person's guilt and, save in exceptional circumstances, the underlying facts. Further, a person who accepts a caution can only do so if they admit they committed the offence.

This means that, unless there are exceptional circumstances, we will not re-examine the evidence or how the finding was made or make enquiries into claims that the conviction was wrongfully imposed. However, we will take account of any sentence a court imposes and, where available, its reasons for doing so, for example, in its sentencing remarks.

If a person is charged with a serious offence, we will consider whether controls need to be imposed immediately to address a specific risk prior to any trial.

Where proceedings remain ongoing, or a person is appealing their conviction we will consider our guidance on parallel investigations [<https://www.sra.org.uk/sra/decision-making/guidance/investigations-parallel/>] .

Application of SRA Principles to criminal convictions

We have published separate guidance on the application of Principle 1 and its relationship with criminal behaviour [<https://www.sra.org.uk/sra/strategy/sub-strategies/enforcement-practice/guide-application-principle-1>] .

Principle 2: public trust and confidence

We consider that the requirement to behave in a way that maintains public trust is likely to be breached by the commission of a criminal offence, given the high degree of trust which is placed in solicitors and law firms by the public.

Principle 5: integrity

The meaning of integrity was considered by the Court of Appeal in *Wingate & Others v SRA* [2018] EWCA Civ 366: "the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members."

Common aggravating and mitigating factors

In considering what action we need to take, if any, we will consider any mitigating and aggravating factors, including those set out below.

| Mitigating factors | Aggravating factors |
|---|--|
| | <p>The offence involves: dishonesty, fraud, extortion or bribery; discrimination; violence or sexual misconduct; child sexual abuse images</p> <p>The offence is associated with terrorism; money laundering, or obstructing the course of justice (eg perjury or witness tampering); or facilitating or concealing serious or organised criminality by others</p> |
| The offence is dealt with by fixed penalty notice, discharge, a small fine or low-level community order | The regulated individual receives a custodial or suspended sentence |
| | The regulated individual has been included on the Violent and Sex Offender Register (VISOR) following the offence |
| | There is evidence of planning or prior intent |
| There is no (or limited) loss, harm or distress caused | The offence caused significant loss, harm or distress, involved multiple victims, or targeted a vulnerable individual or individuals |
| It was an isolated incident, out of character | There is a pattern of offending behaviour |
| The regulated individual has made prompt remediation | The regulated individual has not shown remorse or insight and made |

| | |
|---|---|
| and shown remorse or insight into their offending, such that the risk of re-offending appears to be low | little or no attempt at remediation, indicating a higher risk of re-offending |
| | There was a failure to report, or delay in reporting, the matter to the SRA or any other body to whom the person had a duty to disclose the finding |
| | The regulated individual failed to co-operate with the police or the criminal justice system |

Indicative sanctions guidelines

The presence of mitigating factors is likely to lead to a less serious sanction. Strong mitigating factors, combined with a lack of aggravating factors, is likely to result in either a warning or a rebuke.

The nature of the sentence imposed by a court may be relevant to the sanction to be applied, although they are intended to achieve different objectives. For example, inclusion on the VISOR may be an indicator of the degree of risk to the public or vulnerable individuals, which may be relevant to the regulatory risk arising from the criminal conduct. The President of the Queen's Bench Division said, in *SRA v Farrimond* ([2018] EWHC 321 (Admin) paragraph 34) that "it is simply inconceivable that a prisoner, serving a sentence of 6 years' imprisonment, should be able to describe himself as a solicitor and officer of the court albeit suspended from practice."

We will impose serious sanctions where the criminal offence is of a nature indicated in the first row above. Such cases will generally be referred for a hearing before the Solicitors Disciplinary Tribunal.

We also take very seriously any failure to cooperate with disciplinary or criminal investigations and inquiries, or to comply with duties to report. Prompt reporting, in accordance with clear regulatory requirements, is essential to the effective operation of the regulatory system. Any failure to report convictions will be treated as a significant aggravating factor.