

Joint statement from the SRA and SDT

Joint statement on referrals to the Solicitors Disciplinary Tribunal (SDT)

30 January 2023

This is a joint statement from the Solicitors Regulation Authority (SRA) and Solicitors Disciplinary Tribunal (SDT) about referrals to the SDT.

The SRA investigates complaints against solicitors and law firms. If it finds evidence of professional misconduct, the SRA can take action, including fining individuals and firms. However, in some instances, particularly if the SRA's view is that the misconduct is so serious it requires a solicitor to be prevented from practising, it will refer cases to be heard before the SDT. Only the SDT can suspend and strike-off solicitors, while it also has unlimited fining powers.

In July 2022 the Ministry of Justice increased the SRA's fining [<https://www.gov.uk/government/news/extra-powers-for-regulators-to-clamp-down-on-rule-breaking-solicitors>] powers from £2,000 to £25,000 for solicitors and traditional law firms. This means the SRA can take action in more cases without the need to refer them to the SDT.

Therefore, the SRA and SDT have developed a shared expectation of the types of case that would be referred to the SDT and those the SRA alone would deal with.

It should be noted, however, that since the July 2022 change, there have been further developments in relation to the SRA's fining powers. The Economic Crime and Corporate Transparency Bill [<https://bills.parliament.uk/bills/3339>] has been introduced into Parliament. It has completed the Committee stage in the House of Commons (November 2022) and has now (January 2023) entered the Report stage. The Bill will introduce a new regulatory objective for the legal regulators, as well as giving the SRA unlimited fining powers in relation to economic crime.

Therefore, the SRA and SDT will need to revisit - and likely update - this statement when this new Bill is being enacted.

Overall approach of the SRA and SDT

The SRA's position

Each case will always be considered on its own facts and circumstances in accordance with the SRA's referral test

[<https://www.sra.org.uk/solicitors/guidance/disciplinary-issuing-solicitors-disciplinary-tribunal-proceedings/>] . In reaching a decision as to whether a matter should be referred to the SDT the SRA will consider all the circumstances of the case, including any aggravating and mitigating factors. It will also make sure it protects the wider public interest and that decision-making is open and transparent and upholds public confidence.

The SRA's referral test states that any sanction outside of its own sanctioning powers will be referred.

The SRA will apply its new fining powers to all cases where it considers that a fine of between £2,000 and £25,000 is appropriate. This means it will be able to deal with those matters more swiftly and at a reduced cost compared to making a referral to the SDT. This benefits the individual or firm under investigation ('the respondent'), as well as those who have complained about them.

The SDT's position

The SDT recognises the following:

- It is a matter for the SRA to determine which matters to bring before the SDT.
- The SDT has no remit until a case is lodged with it for issue.
- The SDT has a duty to maintain the public's confidence in the reputation of the solicitor profession for honesty, probity, trustworthiness, independence, and integrity. Factors determining whether cases should be referred to the SDT include the likely sanction, and the nature and motivating factors of the offending misconduct itself.

Cases that will generally be referred to the SDT

The SDT will continue to hear the most serious cases of individual professional misconduct. The likely result in such cases, if allegations are proven, would be a sanction such as a suspension or strike off that would stop an individual from practising. The SDT will also continue to deal with cases against firms where the likely financial penalty exceeds £25,000 (except in cases relating to licensed bodies, which are reserved to the SRA and where their powers already provide for maximum penalties of up to £250million).

These cases are likely to require the SDT to consider significant public protection and wider professional reputational issues.

There will be a variety of issues for these types of cases. Allegations are likely to include dishonesty or serious lack of integrity, as well as convictions, as discussed in the SRA's enforcement strategy

[<https://www.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/>] . These also include cases which otherwise involve a failure to meet the obligations under the SRA principles to uphold public trust and confidence or the rule of law.

The motivation of the regulated individual or law firm will be relevant and whether there is serious recklessness or willful disregard of regulatory requirements. The impact of the misconduct will also be an important consideration.

Cases that should typically be referred to the SDT

There are also cases that will also be best heard by the Tribunal, irrespective of whether the SRA has relevant sanctioning powers. For example:

- Cases that are of high public interest or that involve a novel point of law.
- Cases involving allegations of sexual misconduct, racism, bullying, harassment or other counter-inclusive misconduct and/or conduct that targets an individual because of a protected characteristic.
- A failure by a law firm to take appropriate steps to protect an employee from counter-inclusive misconduct, or to ensure a safe working environment (for example, where there is evidence of a pervasive toxic culture).
- A serious failure by a law firm to comply with the regulatory framework resulting in harm to individuals (either clients or employees).
- Cases involving significant and/or manifest incompetence or recklessness, including where there has been serious misconduct by others.
- Cases involving more than one respondent, where some or all the respondents contest the allegations.
- Cases involving misappropriation of client money, and/or other serious misuse of client money which may or may not involve non-compliance with legislative requirements such as anti-money laundering requirements.

It might also include cases where there have been repeated failures to correct poor practices, despite warnings from the SRA or others. This would indicate a wilful disregard of professional obligations, even where the failure itself would not merit a referral.

Additionally, cases involving a material dispute between the parties that can only be resolved through an oral hearing should be referred to the Tribunal (save for applications relating to licensed bodies). Not only does the Tribunal have the relevant experience and capability to deal with these, but this clearly meets the SRA's open justice and public interest objectives.

Matters no longer referred

The SRA's increased fining powers now mean there is an opportunity to make sure that cases are not referred to the Tribunal unnecessarily.

It might now be able to deal with cases at a higher level of seriousness than previously. For example, these cases might involve a breach of the SRA's Accounts Rules with personal culpability, but with no deliberate intention to misappropriate money or personal gain. There might also be principle breaches related to serious poor practice, recklessness or a failure by omission, although it would be unlikely to deal with cases that involve wilful disregard of rules of practice or professional obligations.

Conclusion

As set out in this statement, the changes in the SRA's powers have implications for both the SRA and SDT. Both organisations will continue to liaise to consider how these changes work in practice, and that their shared expectations remain aligned.