

Topic guides

Issued 7 February 2019 | Updated 25 November 2019

A guide to the application of Principle 1

Background

Principle 1 of the SRA Principles provides as follows:

You act in a way that upholds the constitutional principle of the rule of law, and the proper administration of justice.

This guidance sets out examples of circumstances in which consideration should be given to whether Principle 1 is engaged.

The rule of law

The principle

Most recently, the rule of law has been interpreted by the late Senior Law Lord, Baron Bingham of Cornhill KG PC who stated that:

"The core of the existing principle is...that all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly and prospectively promulgated and publicly administered in the courts."

We consider that the rule of law is a principle that the law is of equal application, and this is put into effect by individuals and organisations, including "emanations of the State", and through activities engaging the justice system.

When may a breach occur?

The commission of a criminal offence may engage Principle 1. For further guidance specifically in respect of convictions, see the guidance on criminal convictions outside of practice [<https://www.sra.org.uk/sra/strategy/sub-strategies/enforcement-practice/criminal-offences-outside-practice>] and on convictions for driving with excess alcohol [<https://www.sra.org.uk/sra/strategy/sub-strategies/enforcement-practice/driving-excess-alcohol-convictions>] .

However, this is not necessarily the case, and it is also possible that Principle 1 will be engaged by conduct which is not the subject of a criminal conviction.

Any behaviour which indicates a serious disregard for the principle that the law applies equally to all, is likely to be a breach of Principle 1. For

example:

- Very serious, organised and premeditated offending involving terrorism, violence and/or dishonesty, showing deliberate disregard for the law.
- A sustained course of serious offending.
- Repeated convictions for the same offence.
- Involvement in or links to organised crime.
- Involvement in money laundering or the facilitation or concealment of serious or organised criminality by others.
- Premeditated actions, intended deliberately to impede or prevent the judicial process or judicial decision-making, or the lawful exercise of enforcement powers, could give rise to a breach of the duty to uphold the constitutional principle of the rule of law as well as the duty to uphold the proper administration of justice (see below).

Example 1

A solicitor knowingly facilitates organised people trafficking. This could involve,

- the handling and laundering of substantial funds through their client account
 - the submission of knowingly false information concerning individuals' immigration status.
-

Example 2

A solicitor repeatedly committed a low level criminal offence, in the knowledge that the sanction imposed. For example, a fine that was exceeded by the profit to be derived by the solicitor from the offence.

Example 3

A solicitor acts in breach of a restraining order imposed upon them by the court which set out steps to control their behaviour.

Proper administration of justice

The principle

A solicitor is first and foremost an officer of the court. A solicitor's duty to the court may override other duties or principles, such as the duty (reflected in Principle 7) to act in a client's best interests. The preamble to the Principles provides that:

"Should the Principles come into conflict, those which safeguard the wider public interest (such as the rule of law, and public confidence in a trustworthy solicitors' profession and a safe and effective market for regulated legal services) take precedence over an individual client's interests"

This approach has been reflected by the courts themselves: in *Arthur J S Hall v Simons* [2002]1 AC 615, Lord Hoffman held:

"Lawyers conducting litigation owe a divided loyalty. They have a duty to their clients, but they may not win by whatever means. They also owe a duty to the court and the administration of justice... Sometimes the performance of these duties to the court may annoy the client. So, it was said, the possibility of a claim for negligence might inhibit the lawyer from acting in accordance with his overriding duty to the court. That would be prejudicial to the interests of justice."

When may a breach occur?

Interference with and abuse of the judicial process

At its most serious, failure to uphold the proper administration of justice may occur if a solicitor seeks to interfere with or intimidate a witness with the intention of causing them to change, or refuse to give, evidence in court proceedings. Similarly, a solicitor who knowingly gives untrue evidence or seeks to facilitate the interference with a jury would undermine the proper administration of justice.

A solicitor who seeks to manipulate or abuse the court system would also be failing in their duty to uphold the proper administration of justice.

Example 4

A solicitor allowed a witness to give evidence in support of their client in the knowledge that such evidence was untrue, and had been influenced by the actions of a client in seeking to intimidate the witness.

Example 5

A solicitor who repeatedly brings spurious or hopeless immigration applications knowing, or suspecting, that the true purpose of these was to delay the lawful removal of their clients from the country.

Misleading the court

A solicitor is likely to breach the obligation to uphold the proper administration of justice if they mislead the court, or knowingly or recklessly allow the court to be misled.

Read more about a solicitors' obligations when conducting litigation is provided in our "Balancing duties in litigation

[<https://www.sra.org.uk/archive/risk/risk-resources/balancing-duties-litigation/>] " paper.

The Lord Chief Justice said in *Brett v SRA* [2014] EWHC 2974 (Admin) that

"...misleading the court is regarded by the court and must be regarded by any disciplinary tribunal as one of the most serious offences that an advocate or litigator can commit. It is not simply a breach of a rule of a game, but a fundamental affront to a rule designed to safeguard the fairness and justice of proceedings. Such conduct will normally attract an exemplary and deterrent sentence. That is in part because our system for the administration of justice relies so heavily upon the integrity of the profession and the full discharge of the profession's duties and in part because the privilege of conducting litigation or appearing in court is granted on terms that the rules are observed not merely in their letter but in their spirit. Indeed, the reputation of the system of the administration of justice in England and Wales and the standing of the profession depends particularly upon the discharge of the duties owed to the court."

Example 6

A solicitor allows the court to be misled. For example, if a solicitor conducting civil proceedings files a misleading document and does not inform the court of the true picture at the earliest opportunity.

Failure to comply with the lawful exercise of investigative powers

A solicitor may fail to uphold the proper administration of justice if they fail to comply with powers lawfully exercised by the court or another enforcement authority. For example, the following may amount to a breach of the principle:

- failing to comply with a lawfully issued summons to give evidence to a court
- failing to provide a specimen of breath where it is lawfully required
- failing to produce documents when lawfully sought, under a statutory power, by a regulatory or other authority.

Further we may view a failure by a solicitor to report a criminal conviction or regulatory breach as a breach of Principle 1 in addition to any other of our obligations.

Example 7

A solicitor acts deliberately to impede the lawful exercise of investigative powers. For example, by "tipping off" a client or third party as to the

likelihood of a police search, or advising clients to take steps to impede such a search by placing evidence beyond reach.