

# Guidance

## Guidance

### Approval of employment under s41 and s43 of the Solicitors Act 1974

#### *Approval of employment under s41 and s43 of the Solicitors Act 1974*

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#### *Status*

This guidance is to help those we regulate understand how to obtain our approval to employ or remunerate struck off or suspended solicitors and those subject to a control order. We will have regard to it when exercising our regulatory functions.

#### *Who is this guidance for?*

This guidance applies to those wanting to employ or remunerate someone who is subject to section 41 or 43 of the Solicitors Act 1974. Specifically:

- all SRA-regulated firms (including recognised sole practices, recognised bodies and licensed bodies)
- any solicitor or registered European lawyer (REL) whose practice consists entirely of carrying on non-reserved legal activities as permitted by regulation 10.2(a) of the Authorisation of Individuals Regulations.

#### *Purpose of this guidance*

To help understand how to apply for, and how we decide on, approval of employment of an individual who has been struck off the roll of solicitors, suspended from practice or whose practising certificate has been suspended due to bankruptcy (section 41 of the Solicitors Act 1974) or who has been made subject to a control Order (section 43 of the Solicitors Act 1974).

This guidance sets out how you can apply to us for written permission and how we will decide on your application.

This guidance should be read in the context of our decision making [<https://www.sra.org.uk/sra/decision-making/decision-making-sra/>] and other guidance documents listed at the end. We will update this from time to time.

## General

There are some circumstances where you must obtain our approval before you can employ or remunerate certain individuals.

Section 41 requires you to obtain our approval where, to your knowledge, a person has:

- been struck off the roll
- been suspended from practice
- had their practising certificate suspended while they are an undischarged bankrupt.

Section 41 applies to you if you are a solicitor or an REL. If you are a recognised body, Section 9 paragraph 9 of Schedule 2 to the Administration of Justice Act 1985 applies section 41 to you. We apply this legislation to all firms we regulate, including licensed bodies through rule 10.1 (a) and (b) of the Authorisation of Firms Rules [<https://www.sra.org.uk/solicitors/standards-regulations/authorisation-firms-rules/>] .

Section 43 deals with our ability to make an order preventing you from employing or remunerating a person who is not a solicitor without first getting our written permission. This is because they have either committed a criminal offence or their conduct is such that they need our approval to work at a practice. Find out more in our guidance on non-authorised persons [<https://www.sra.org.uk/sra/decision-making/guidance/general-regulation-non-authorised-persons/>] .

Someone is involved in a legal practice if they:

- are working for or remunerated by a solicitor in connection with the solicitor's (or REL) practice
- are working in the name of, or under the direction or supervision of, a solicitor (or REL)
- are working for or remunerated by a firm we regulate
- are working for or remunerated by a manager or employee of a firm we regulate in connection with its business
- are a manager of a firm we regulate
- own or plan to own part or all of a firm we regulate.

If you knowingly employ or remunerate in connection with your legal practice any solicitor who is subject to a section 41 Order without seeking our prior approval, you will be acting in contravention of that Order (section 41 (4) of the Solicitors Act 1974).

Similarly, if you knowingly employ or remunerate any person who is the subject of a section 43 Order, without seeking our prior approval, you will be acting in contravention of that Order, according to section 44 (2) of the Solicitors Act 1974.

Sections 41(4) and 44 (2) of the Solicitors Act 1974 give us statutory powers to initiate regulatory action against you for such contraventions.

If the individual you want to employ is subject to section 41 or 43 but is seeking a review against such an Order (or related conviction or finding), you may still apply for permission to employ them while the review is underway. If we decide to grant the approval, our decision will remain in place in the event of the individual's application for review being unsuccessful.

### *How to apply*

You, as the proposed employer, and not the person you want to employ, must apply to us for approval. The individual you want to employ can give us information, but they cannot apply themselves or withdraw an application or appeal our decision. To apply, use our application.

[<https://www.sra.org.uk/solicitors/firm-based-authorisation/existing-firms-applications/apply-for-approval-of-employment/>]

To help us decide, you need to tell us:

- about the role of the person you want to employ, including their tasks and responsibilities and their normal place of business
- whether the person you want to employ will:
  - supervise other staff
  - be responsible for handling client money
  - be a signatory to the firm's client accounts
  - have direct contact with clients
- how the person you want to employ will be supervised.

The person you want to employ must:

- tell us about the work they have done since being struck off the roll or suspended from practice or becoming subject to a section 43 order; and
- supply references from previous employers with details of positions they have held and in particular any positions of trust and responsibility.

For struck off or suspended solicitors under section 41, we are unlikely to be able to deal with your application until we have received the detailed

findings of the Solicitors Disciplinary Tribunal (SDT). This is because the findings contain detailed reasons for the SDT's decision, which may, in turn, affect our decision. We take very seriously any recommendations from the SDT or the courts.

### *How we decide*

When deciding an application, we take several factors into account:

- the risk to clients or to the public
- the type of role the individual will carry out, for example, if they will supervise others, have access to client money or firm accounts, carry out reserved legal activities, or deal directly with clients
- the proposed job title of the individual and whether any false impressions will be created to the public in terms of their professional status and what they can do
- how well the individual will be supervised and how will this supervision operate in practice
- who will be responsible for the individual's work and behaviour and do they have enough seniority to take on this supervisory role, such that they would report to us any concerns if necessary
- the location of where the individual will work and if this will fit with the proposed supervisory arrangements.

Our approval is almost always subject to conditions. We use these to limit the risks to clients and public confidence and adapt them to fit each of the circumstances of each case. We look at applications carefully, on a case-by-case basis, but some examples of conditions we might impose include that the person we approve:

- will be closely supervised by one or more named solicitors at the firm
- will not supervise any other employees
- will not be an authorised signatory to any client or office account
- will not hold, receive, or have any responsibility for client money.

We will normally also require the firm to immediately inform us of any proposed variation in the person's duties or supervision arrangements prior to any variation taking place.

### *Dishonesty/Convictions*

We will take the same approach outlined above in deciding whether to grant permission to employ anyone who has:

- been convicted of an offence involving dishonesty
- been convicted of an offence which has resulted in a custodial (or equivalent) sentence
- had a finding of dishonesty made against them in civil, regulatory or disciplinary proceedings.

We consider the full circumstances in each case, weighing up a number of factors. These include:

- the individual's behaviour at the time of the offence
- any evidence of rehabilitation since that time
- assurances the proposed employing firm or practice provide in support of the application.

### *What you can expect from us*

Once we have all the information we need, we will consider the application carefully and then prepare a report recommending that it be approved or rejected. We will send our report to you and to the person you want to employ.

Both you and the person you want to employ can respond to the report before we make a decision.

### *Timescales*

We aim to decide about each application we receive within 120 days.

### *Withdrawing an application*

You can withdraw your application at any time before we make a decision.

If you do not respond promptly to our requests or if our questions go unanswered, the application will be incomplete, and we can close your application.

### *What to do if you are not happy with our decision*

You (not the person you want to employ) have the right to request we review our decision within 28 days of the date we notify you of the decision, in line with rules 3.2, 3.5 (a), and Annex 1 of our Application, Notice, Review and Appeal Rules. Under section 41 (3) of the Solicitors Act 1974, you can also appeal to the High Court if you are not satisfied with any review decision we take.

### *Publication*

We may publish decisions we make on approval of employment in line with our guidance on publishing regulatory and disciplinary decisions

[<https://www.sra.org.uk/sra/decision-making/guidance/disciplinary-publishing-regulatory-disciplinary-decisions/>] .

#### *Case Study 1 - Granting approval of employment*

In 2010 a solicitor, Mr A, is convicted of possession of a class A drug (cocaine) and sentenced to 6 months imprisonment. The conviction is based on one incident and no previous criminal history.

In 2011 Mr A is struck off by the SDT in proceedings that he did not contest. In 2019 we receive an application from a sole practitioner, Mr B, seeking to employ Mr A as a personal injury claims handler. The application confirms that Mr A will have no contact with clients and will be directly supervised by Mr B (who has 15 years' practising experience and specialises in personal injury cases).

Mr A provides evidence of his rehabilitation and a number of positive references. We grant Mr B approval to employ Mr A on conditions including that Mr B carry out regular file reviews and audits of Mr A's work and notify us of any changes to the structure or working arrangements within the firm.

#### *Case Study 2 - Refusing approval of employment*

Mr R is struck off the roll of solicitors by the SDT for misuse of client money. The SDT finds he has been dishonest.

One month later, firm S applies to us for permission to employ Mr R as a part-time self-employed paralegal. Firm S provides us with details of Mr R's proposed responsibilities and proposed supervision arrangements. Firm S confirms that Mr R will have no contact with clients and that his work will be confined to legal research and organising files.

We refuse firm S permission to employ Mr R. We do not find any mitigating circumstances which permit us to grant the application and Mr R has not demonstrated his rehabilitation in the few months since he was struck off. We consider that public confidence in the delivery of legal services will be severely damaged if permission were granted in this case.

### ***Further resources***

Decision making guidance [<https://www.sra.org.uk/sra/decision-making/>]

Guidance on publication of regulatory and disciplinary decisions

[<https://www.sra.org.uk/sra/decision-making/guidance/disciplinary-publishing-regulatory-disciplinary-decisions/>]

Approval of employment application [<https://www.sra.org.uk/solicitors/firm-based-authorisation/existing-firms-applications/apply-for-approval-of-employment/>]

### *Further help*

If you require further assistance, please contact the Professional Ethics helpline [<https://www.sra.org.uk/contactus/>] .