

# Guidance

## Guidance

### How we make decisions and the criteria we apply

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#### *Status*

This guidance is to help you understand how we make decisions and the criteria we apply.

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

All SRA regulated firms and individuals.

#### *Purpose of this guidance*

We are the regulator of legal services delivered by solicitors, law firms, and individuals working and holding roles within those firms in England and Wales. We use our regulatory powers to protect consumers of legal services and support the operation of the rule of law and the proper administration of justice.

We make many regulatory decisions every day. These decisions can be final (those which bring our involvement with an application or disciplinary case to an end) or interim (such as during investigation of a complaint). Some of our decisions may give rise to a right of review, but all can have a significant impact on the person who is the subject of the decision.

In short, fair and effective decision making is a crucial part of our work and this guidance sets out our approach to that role.

This guidance should be read in the context of other guidance documents listed at the end of this document. It is a living document and we will update it from time to time.

#### *Our overarching obligations*

In making decisions, we always have in mind our public interest role, namely to protect consumers of legal services, and support the operation of the rule of law and the proper administration of justice.

In addition, we must act in a way which is compatible with, and most appropriate to meet the regulatory objectives set out in Section 1 of the Legal Services Act 2007:

- a. protecting and promoting the public interest
- b. supporting the constitutional principle of the rule of law
- c. improving access to justice
- d. protecting and promoting the interests of consumers
- e. promoting competition in the provision of legal services
- f. encouraging an independent, strong, diverse and effective legal profession
- g. increasing public understanding of the citizen's legal rights and duties
- h. promoting and maintaining adherence to the professional principles, namely that authorised persons should act with independence and integrity, maintain proper standards of work, act in the best interests of clients, in exercising rights of audience or conducting litigation should comply with the duty to the court to act with independence in the interests with justice, and to keep affairs of clients confidential.

These regulatory objectives may at times pull in different directions. However, what is important is that we have balanced the considerations they give rise to, in order to take the most appropriate course of action.

We are also required, under section 28 of the Legal Services Act 2007, to have regard to best regulatory practice and make sure our work is transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.

These overarching obligations form the backbone of our decision-making process and are reflected in our Standards and Regulations [<https://www.sra.org.uk/solicitors/standards-regulations-resources/>] which our decision makers apply when taking decisions.

As a public authority, we have a duty under the Human Rights Act 1998 to act in compliance with the European Convention on Human Rights.

There are certain rights which are likely to be engaged in our decision-making. These include the right to peaceful enjoyment of possessions (Article 1, Protocol 1) which will be engaged when our decisions touch on an individual's right to practice their profession or to run a business, and the right to respect for private and family life (Article 8), which includes the right

to personal autonomy, freedom and respect for private and confidential information.

These are qualified rights, so there is no breach if we act in accordance with the law, and our action is proportionate in pursuit of a legitimate aim. Any interference with the former (Article 1, Protocol 1), must also achieve a fair balance between the general public interest and the protection of an individual's property rights. In addition, Article 6, which safeguards the right to a fair trial when civil rights (such as the right to practice a profession) are being determined, is of key importance and is discussed further below.

We seek to demonstrate that we are a fair regulator and that decisions are made without unlawful discrimination. In line with section 149 of the Equality Act 2010, we have due regard to the need to eliminate unlawful discrimination, harassment and victimisation, and advance equality of opportunity and foster good relations as between people who share protected characteristics and those who do not.

We also consider carefully the health and capacity of those we deal with during our work and understand the stress that involvement with the SRA can cause, for example to complainants, witnesses and those we regulate. We make reasonable adjustments accordingly.

Our decisions are based on the application of guidelines and criteria, which are: (a) fair to all individuals and groups, (b) published and transparent and (c) applied consistently. Our guidance and criteria are subject to equality impact assessment and our principles set out below support fair, objective and evidence-based decision-making.

## *Our Principles of good decision-making*

### *Fairness*

Our decisions must be fair and be seen to be fair. In order to make sure we act fairly, we apply a published decision-making process.

In summary, fairness includes the following principles, which are encompassed by the common law principles of natural justice and Article 6 of the European Convention on Human Rights (the right to a fair trial).

### *Proportionality*

We take a risk-based approach, focussing our resources on the individuals and firms most likely to harm the public interest. Any decision to use our regulatory powers is proportionate, balancing the public interest with those of the individual or firm whose conduct or behaviour has been called into question.

This means the action we take is necessary to achieve a desired effect. Our decision-makers need to be clear about the public interest objective their

decision seeks to achieve and why the decision reached is required in order to meet it.

#### *Equality of arms*

We make sure that any person who may be adversely affected by a decision has enough information to understand the nature of the decision and what the decision-maker is basing their decision on. We also give those affected the opportunity to make representations before the decision is taken, which we then consider as part of our decision-making process.

We may take some decisions without disclosing part, or all of the information and grounds in advance, such as where we need to close a firm's business urgently to protect the public. In some cases, we may be unable to disclose highly sensitive confidential information or information that might prejudice an ongoing investigation. These situations will be exceptional and, where possible, the person involved will be informed of any non-disclosure.

#### *Impartiality*

We make sure decisions are free from bias and discrimination, and any perception of bias, from the point of view of a fair-minded and informed observer. Decision makers must declare any conflict of interest and remove themselves from cases in which they have any personal relationship, or a financial or other interest. This includes, in certain circumstances, separation between those reaching final decisions and front line staff involved in the matter.

Each case must be considered on its own merits, on an objective analysis of the facts, and in accordance with our published policies, guidance and criteria. The information available to the decision maker needs to be relevant and sufficient to enable a full and fair decision to be made. We have powers to seek information and decision-makers will ask for more information if they consider it necessary.

More information about our powers can be found in our guidance on how we gather evidence in our regulatory and disciplinary investigations

[<https://www.sra.org.uk/solicitors/guidance/investigations-gathering-evidence/>].

#### *Right of review*

We provide one level of internal review for all final decisions, including those which give rise to an external appeal to a tribunal or Court.

We can also correct errors without undertaking a full review (rule 3.1(a) of the Application, Notice, Review and Appeal Rules). We can also review our decisions on our own initiative (rule 3.1(b) of the Application, Notice, Review and Appeal Rules).

## *Transparency*

We seek to be transparent about the way in which we reach decisions and publish our criteria and guidelines, as well as, wherever possible, our decisions. Publishing our decisions helps to make sure we are accountable for our actions and that consumers are able to make informed choices. It also safeguards public confidence in the provision of legal services. More information on the decisions we publish can be found in our guidance on publishing regulatory and disciplinary decisions

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

We make sure our decisions and the information we have considered are properly recorded. We notify our decisions to those affected promptly and with sufficient reasons to explain what decision was reached and why. We work with people who complain to us or may be witnesses and aim to keep them updated on the progress of our work and the outcome.

## *Taken only by appropriate decision-makers*

Our decisions are only taken by those who are authorised to do so under our Schedule of delegation [<https://www.sra.org.uk/sra/decision-making/schedule-delegation/>] . This improves transparency and helps to make sure we are accountable in our decision-making. We also define the technical and behavioural competencies that are required to make decisions at each level and make sure all decision-makers are trained and competent for the role.

## *Quality assurance*

Our decisions and criteria on which they are based undergo internal monitoring and audit processes to safeguard their quality, fairness and consistency. We also review the efficiency and effectiveness of our procedures to support decision-making, including our criteria and guidance.

## *Further guidance*

Guidance on publishing regulatory and disciplinary decisions.

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

Guidance on how we gather evidence in our regulatory and disciplinary investigations. [<https://www.sra.org.uk/solicitors/guidance/investigations-gathering-evidence/>]

## *Further help*

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

