

Guidance

Guidance

Publishing regulatory and disciplinary decisions

Publishing regulatory and disciplinary decisions

Updated 25 November 2019 (Date first published: 1 September 2016)

Status

This guidance explains the approach we take when deciding whether to publish regulatory and disciplinary decisions.

Who is this guidance for?

All SRA-regulated firms, their managers, role holders and employees.

All solicitors, registered European lawyers (RELs) or registered foreign lawyers (RFLs).

Purpose of this guidance

This offers guidance on the approach we take when deciding whether to publish regulatory and disciplinary decisions on our website.

This guidance should be read in the context of our decision making and other guidance. This will be updated from time to time.

Why do we publish regulatory and disciplinary decisions?

We act in the public interest and this includes providing appropriate protection for consumers and supporting the administration of justice and the rule of law. There is a public interest in being transparent about the decisions we make and why we have made them, in order to:

- raise awareness amongst those we regulate about the action we have taken, to improve understanding of our expectations, and deter them from action which would fall below our standards or breach our requirements
- make sure consumers and others, including prospective employers are able to access appropriate information to:
 - inform them about the closure of a firm as a result of an intervention



- enable them to make informed choices about whom to instruct or to employ
- decide whether behaviour of concern should be reported to us for action
- make sure we are properly accountable to the public for the decisions we make and show that we are acting proportionately and consistently; and
- maintain public confidence by demonstrating appropriate action is taken when things go wrong.

What do we publish?

Our Roll, Registers and Publication Regulations set out the types of regulatory and disciplinary decisions that we publish on our website.

Many of these decisions are made under our Regulatory and Disciplinary Procedure Rules [<https://www.sra.org.uk/solicitors/standards-regulations/regulatory-disciplinary-procedure-rules/>]. These rules provide that we will publish such decisions, unless we consider the particular circumstances outweigh the public interest in publication.

The types of regulatory and disciplinary decisions we publish include:

- authorisation
- any current suspension, for example, of a solicitor's practising certificate or a body's authorisation
- any other decision subject to publication under rule 9.2, such as when we issue proceedings against a solicitor before the Solicitors Disciplinary Tribunal (SDT)
- any other order made by the SDT; and
- the exercise of our powers of intervention.

We may also publish other further information if we consider that it helps us meet the regulatory objectives, for example, we publish:

- approval of employment of people who are subject to section 43 of the Solicitors Act 1974 or struck off or suspended solicitors, under s41 of the Solicitors Act 1974; or
- refusal to issue a practising certificate.

We may also publish other information about our work and key decisions where we consider it is in the public interest, such as the status of our ongoing investigations.

*When might publication not be **in the public interest**?*

Generally, we expect that the regulatory and disciplinary decisions covered in our rules [<https://www.sra.org.uk/solicitors/standards-regulations/roll-registers-publication-regulations/>] will be published on our website as it is in the public interest for us to do so.

Each decision to publish will be taken on its own merits and we will take into account all of the relevant circumstances. These include any representations made by the person who is subject of the decision and, where appropriate, other relevant third parties.

So we may decide not to publish a decision if we are satisfied that:

- we would be unable to do so without:
 - disclosing someone's confidential or legally privileged information, such as a confidential or sensitive medical condition
 - prejudicing other investigations or legal proceedings
- in all the circumstances the impact of publication on the regulated person would be disproportionate. In particular, we need to consider Article 8 of the European Convention on Human Rights and balance the right to a private life with the legitimate aim of publication, as set out above.

These factors are not exhaustive, and we will take into account all other factors that we consider to be relevant.

Example 1

We decide to fine a solicitor for a caution they receive in relation to a criminal offence committed outside of practice. The solicitor provides medical evidence to us which confirms that the stress of the publication of the fine will cause them to become a suicide risk. Taking these factors into account, we decide that publication is not in the public interest.

Nature of the publication

We will publish the decision on our website. We will usually include a short statement of the decision with brief factual details, such as where the person is currently working or was previously working, and the reasons for the decision.

We will take reasonable steps to avoid the publication of information relating to other identifiable persons. Where it is necessary to refer to clients or colleagues their details will be appropriately anonymised.

Where we have reached any such relevant decisions by agreement, these will normally be published in full. The aim is to give the public enough information so they can understand the nature of and reason for the agreement we have reached and the reason for the outcome.

For more detail on our approach to such agreements, see our guidance on Regulatory Settlement Agreements

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

Timing and length of publication

We will normally publish decisions promptly. In exceptional cases, we may publish the fact of a referral to the SDT prior to certification by them, if we consider it is in the public interest for us to do so.

Certain decisions we publish are subject to review, such as fines and conditions. Generally, we will not publish such decisions during any period for their review and until any review has been determined or withdrawn.

When we intervene into a firm, it is important to let the clients know the firm has closed as soon as possible, so we aim to publish such decisions immediately following the intervention.

With the exception of intervention decisions, we will generally give the regulated person or firm the opportunity to comment in advance about whether the decision should be published. We will take their views in to account when deciding whether to publish and will tell them our decision.

We may determine that it is not appropriate to publish the decision at the time it was made, for example, if this will risk prejudicing any ongoing proceedings. But we may then do so at a later date once those proceedings have concluded, or the risk is no longer material.

Generally, we will automatically remove decisions from our website three years after the date of publication - unless we consider that exceptionally it is not in the public interest for us to do so.

However, some publications such as section 43 orders or decisions by the SDT to strike off or suspend a solicitor for more than three years, will remain on our website until the suspension has ended, or a successful application is made for the section 43 order, suspension or strike off to be lifted. This allows the public or other interested parties to find out important information about individuals we regulate.

Example 2

We issue proceedings against a solicitor at the SDT for allegations around significant misuse of client money and failure to comply with our Accounts Rules.

After considering their representations, we decide that it is appropriate to publish details of the referral. We therefore publish a brief summary of the allegations on our website, making it clear that they have not yet been proven.

At the SDT hearing the solicitor is struck from the roll. We then update the referral decision, confirming the sanction imposed and including a link to the SDT's website should anyone require access to the full judgment (normally available six-eight weeks after the decision).

We update the solicitor's details on our website to make it clear that they are now prohibited from practice. We will keep this in place until the solicitor has successfully applied to be restored to the roll.

Review of publication

Decisions may be amended or removed from our website where we consider that publication is no longer necessary in the public interest, or to correct or update the information. We may decide to do this ourselves. For example, we will update the summary of allegations to be made at the SDT if they have agreed to make an amendment to those allegations, and as a result the published summary is inaccurate.

If we are asked to remove a publication within the three-year period because of new information or a change in circumstances, we will consider if this is appropriate. In doing so, we will have regard to all the circumstances and consider the request in line with the factors relating to the decision to publish set out above.

Further help

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