



# Bossing the rules: the SRA's Enforcement Strategy

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February 2020

## What has changed?

**The SRA's Enforcement Strategy was published in February 2019, in advance of the new SRA Standards and Regulations ("SStaRs"), and updated in November 2019.**

We no longer have objectives or indicative behaviours against which the conduct of firms or solicitors can be measured, and so the Enforcement Strategy sets out the SRA's approach for enforcing the new, more flexible, rules.

The primary focus for the SRA when enforcing SStaRs will be on the concept of the seriousness of a breach, with action being taken against solicitors and firms in relation to breaches which are "serious, either in isolation or because they demonstrate a persistent failure to comply or a concerning pattern of behaviour".

While there is no definitive list of what amounts to a serious issue, certain types of behaviour will be viewed as inherently more serious than others:

- abuse of trust
- taking unfair advantage of clients or others
- misuse of client money
- sexual and violent misconduct
- dishonesty
- criminal behaviour

Aside from these key areas, the Enforcement Strategy sets out factors which the SRA will consider in assessing the seriousness

of a breach. These include the intent and experience of the individual, any expressions of apology or remorse, whether the offending act was repeated or planned, the impact on any victim, and whether any remedial steps were taken. The SRA will look back and take past conduct and behaviour into account, as well as considering whether there is any pattern of misconduct (which could be ongoing if unchecked).

The SRA will not necessarily sanction all breaches, but will primarily take account of the wider public interest, together with any contextual aggravating or mitigating factors. Mitigating factors could include supervision arrangements, or possibly toxic working environments, and the SRA have expressly noted that the health of an individual can have a significant bearing on the seriousness of a breach. Personal mitigating factors such as the background, character and circumstances of an individual will lend towards the level of sanction applied.

In keeping with a key theme of SStaRs - the importance of honesty and integrity - the Enforcement Strategy specifies that conduct or behaviour which demonstrates a lack of honesty or integrity is at the "highest end of the spectrum" and will receive the most significant sanctions. We have commented further on the duty of integrity in our article [The problem of integrity](#).

## What are the issues?

A major change for solicitors and firms is the duty to report matters which you reasonably believe are capable of amounting to a serious breach. The term “serious breach” is not defined – indeed, the SRA has stated that it is not desirable for it to do so – but there is some clarification on what the SRA will consider to be “serious” in the Enforcement Strategy. Solicitors and firms will need to become familiar with the SRA’s enforcement approach in order properly to comply with their reporting obligations. For more detail and guidance on this is in our previous blog “Bossing the rules: your obligations to report concerns”.

A second issue is that enforcement action can be taken against firms or individual solicitors, or both. This ties in with the change from the old Code of Conduct in that separate sets of rules now apply for firms and solicitors. It is crucial that solicitors and firms become familiar with the separate guidance that applies to them. A separate blog dealing with this issue in more depth will be coming shortly!

Action can be taken against individuals if the SRA deem them to be personally responsible. This includes a review of the risk that they, as individuals, present to clients or to the wider public interest. Specific sanctions can be severe, such as striking off the Roll or imposing conditions on an individual’s practising certificate in an effort to ensure that behaviour is not repeated. However, where the breach concerns the Code of Conduct for Firms, the SRA will generally take action against a firm, either alone or in addition to taking action against an individual.

Thirdly, the SRA say that, while the threshold for it to take action outside the workplace is high it expects solicitors to abide by the Principles in all contexts. We can expect misconduct (if this is sufficiently serious or damages public trust in the profession) to be sanctioned even if this occurs outside of work. In a separate article ([SRA v Ryan Beckwith and the regulation of the private lives of solicitors](#)) we look in detail at the extent of the new regulations into solicitor’s private lives but in summary, the SRA are concerned with the “impact of conduct outside of legal practice, including in the private lives of those we regulate if this touches on risk to the delivery of safe legal services in future”. Conduct which calls into question a solicitor’s fitness to practise or which could damage public confidence in the profession (for example drink driving or assaults) will be taken more seriously.

The Enforcement Strategy states that SRA will always investigate reports of solicitors having committed criminal offences outside of work, but will take a proportionate approach in this regard. This means that ‘low-level’ offences such as minor motoring offences are unlikely to cause any issues. However, even seemingly minor incidents which demonstrate a failure to act with honesty or integrity, or a failure to report matters of character and suitability (even if these are in themselves minor) are likely to be taken more seriously by the SRA.

## Is there any guidance?

The SRA have published ‘topic guides’ which demonstrate particular areas of interest (and therefore scrutiny):

- competence and standard of service
- criminal offences outside of practice
- driving with excess alcohol convictions
- SRA transparency rules
- use of social media and offensive communications

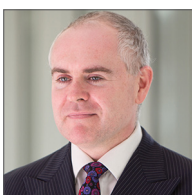
These are designed as reference tools rather than strict checklists – the final decision on how any matter is dealt with will be considered on a case by case basis.

The separate focus on transparency and social media reflects the increasing emphasis on cybersecurity and online behaviour which we expect to increase over time. The SRA have confirmed that it will use thematic web reviews and random web sweeps as well as working with consumer groups in order to identify non-compliance with transparency rules. Use of social media which is offensive, derogatory or inappropriate can be enforced by the SRA even in a personal context if the communication would damage public confidence.

## Practical tips

We would encourage all solicitor and firms to review the Enforcement Strategy as this underpins all the changes in the new regulations and will need to be applied to each solicitor’s own practice and/or working environment. In particular, in the absence of any definitive process for determining the seriousness of a breach, solicitors should become familiar with the factors the SRA have identified in relation to seriousness.

We would also recommend that solicitors and firms should note the SRA’s expectation that they actively engage with an investigation and fully comply with SRA enquiries.



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