

## Closed Consultation

### Rule changes on health and wellbeing at work

4 March 2022

- [Download the consultation paper \[#download\]](#) or read it below - along with the consultation responses
- The consultation period ended on **27 May 2022**

## About this consultation

We are consulting on proposed changes to our rules and Codes of Conduct. We want to clarify our approach to issues around:

- appropriate treatment of work colleagues by the individuals and firms we regulate
- a solicitor's health and fitness to practise.

The purpose of the proposed changes is to:

- make it clear that those we regulate must treat colleagues with respect and dignity. And that if they fail to do so, we will take action where necessary to protect the interests of clients and the public
- support our ability to take appropriate and proportionate action where necessary to deal with concerns over a solicitor's health affecting their fitness to practise.

This consultation is running from 4 March 2022 until 27 May 2022.

After this consultation closes, our next steps will be to collate and analyse all the responses. We will then decide what proposals we need to take forward.

Any rule changes we decide on following this consultation will be subject to approval by the Legal Services Board.

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## Introduction

The Solicitors Regulation Authority (SRA) is the regulator of solicitors and law firms in England and Wales. We work to protect members of the public and support the rule of law and the administration of justice. We do this by overseeing all education and training requirements necessary to practise as a solicitor, licensing individuals and firms to practise, setting the standards of the profession and regulating and enforcing compliance with these standards.

We are the largest regulator of legal services in England and Wales, covering around 90% of the regulated market. We oversee some 212,000 solicitors and around 10,000 law firms.

The delivery of competent and ethical legal services depends not only on the ability and behaviour of solicitors, but also on the culture and environment they

work in. And health and wellbeing is vital in enabling the profession to work effectively for the benefit of its clients and the wider public interest.

The purpose of the proposed changes on which we are consulting is to:

- make it clear that those we regulate must treat colleagues with respect and dignity, and that if they fail to do so, we will act where necessary to protect the interests of clients and the public
- support our ability to take appropriate and proportionate action where necessary to deal with concerns over practitioners' health affecting their fitness to practise.

The consultation addresses two key issues:

1. We have seen some serious instances of people who work in law firms being treated unfairly and inappropriately. We consider it is vital that solicitors and their colleagues work together effectively and treat each other with respect and dignity. This is not only for the wellbeing of those involved, but also to make sure that:
  - firms act in the best interests of clients
  - they are able to meet our standards
  - the public has confidence in the profession as one they can trust.
2. There has been an increase in cases where a solicitor's health issues impacted on their ability to practise safely or participate in disciplinary proceedings to address concerns about their practice. This creates risks to their clients and to the public interest. In some circumstances, it means a hearing before the Solicitors Disciplinary Tribunal (SDT) cannot fairly take place, allowing the solicitor to continue to practise when their fitness to do so is in question.

For each of these issues, this consultation sets out the background and the changes we are proposing. It also gives our view of the likely regulatory and equalities impact of the proposed changes.

We welcome your views on the questions in this consultation and on all aspects of our proposals. We want to take all perspectives into account before we decide on the next steps.

## **Wellbeing and unfair treatment at work**

### **Background**

Unfair treatment of work colleagues in a legal environment can pose significant regulatory risks. These include concerns ranging from bullying, discrimination or harassment to the failure to address such unacceptable behaviours when complaints are raised. They can also include failing to provide the support systems and supervision necessary to deliver legally competent services, or exerting pressure to take short cuts or act unethically.

This kind of environment can have a significant impact on the wellbeing and mental health of a firm's staff. It can also lead to mistakes and poor outcomes for clients or to serious ethical concerns, for example when staff feel under pressure to cover up problems.



Publicity around cases involving solicitors acting dishonestly affects public confidence in the profession and in wider legal services. And cases of discrimination, sexual harassment and toxic working environments can also damage confidence in the profession as a safe and inclusive environment among clients and prospective employees.

Our concerns have been reflected in evidence from other sources such as the 2019 resilience and wellbeing [\[https://communities.lawsociety.org.uk/Uploads/b/y/k/resilience-wellbeing-survey-report-2019.pdf\]](https://communities.lawsociety.org.uk/Uploads/b/y/k/resilience-wellbeing-survey-report-2019.pdf) by the Junior Lawyers Division of the Law Society (JLD). This found that more than 75% of respondents thought their employer could do more to provide support in relation to stress and mental health at work.

In the LawCare survey 'Life in the law 2020/21' [\[https://www.lawcare.org.uk/media/14vhquzz/lawcare-lifeinthelaw-v6-final.pdf\]](https://www.lawcare.org.uk/media/14vhquzz/lawcare-lifeinthelaw-v6-final.pdf), more than 20% of respondents said they had been subjected to bullying, harassment or discrimination in their workplace. While 69% reported experiencing mental health issues in the last 12 months. This survey also highlighted equality concerns, finding that women, people with an ethnic minority background and those with a disability were more likely to experience bullying, harassment or discrimination at work.

We recently published our [workplace culture thematic review](https://referral.sra.org.uk/sra/research-publications/workplace-culture-thematic-review/) [\[https://referral.sra.org.uk/sra/research-publications/workplace-culture-thematic-review/\]](https://referral.sra.org.uk/sra/research-publications/workplace-culture-thematic-review/), based on a survey of around 200 solicitors, engagement with firms and feedback from stakeholders including LawCare and the JLD. The review found that while three quarters of respondents reported working in a broadly positive environment, there are still concerns and issues. These included:

- working long hours, significantly beyond those contracted (half of all respondents)
- levels of stress and pressure
- focus on financial targets rather than other achievements
- anxiety around reporting mental health issues and bullying behaviour.

The review also highlights best practice from a wide range of firms delivering positive working environments, as well as checklists and action plans that firms can use.

We have also published [new guidance](https://referral.sra.org.uk/solicitors/guidance/workplace-environment/) [\[https://referral.sra.org.uk/solicitors/guidance/workplace-environment/\]](https://referral.sra.org.uk/solicitors/guidance/workplace-environment/) and [accompanying case studies](https://referral.sra.org.uk/solicitors/guidance/workplace-environment-case-studies/) [\[https://referral.sra.org.uk/solicitors/guidance/workplace-environment-case-studies/\]](https://referral.sra.org.uk/solicitors/guidance/workplace-environment-case-studies/) to make our regulatory expectations clearer for firms. These highlight the importance of systems and culture that ensure the safety of staff and the delivery of competent and ethical legal services.

### **Our current rules**

Our current regulatory arrangements provide us with powers to act where we see serious failings in the working environment. This is set out in more detail in our guidance, as described above. In summary:

- the [Code of Conduct for Firms](https://referral.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/) [\[https://referral.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/\]](https://referral.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/) requires firms to have effective systems and controls to ensure compliance with regulatory and legislative requirements. This includes employment, equality and health and safety legislation (paragraph 2). And obligations around effective supervision of client work



(paragraph 4). The Code of Conduct for Solicitors, RELs and RFLs contains equivalent standards for individuals, including those carrying out a managerial role (paragraphs 7 and 3 respectively).

- our [Principles](https://referral.sra.org.uk/solicitors/standards-regulations/principles/) [https://referral.sra.org.uk/solicitors/standards-regulations/principles/] require firms and individuals to act in a way that encourages equality, diversity and inclusion, to act with integrity, and to uphold public confidence in the solicitor's profession. In the case of *Beckwith v SRA* [2020] EWHC 3231 (Admin) the court confirmed that the public would expect members of the profession to treat juniors with respect.

These rules give us clear grounds to take regulatory action in cases involving behaviour such as:

- abuse by an individual of their position of authority, or behaviour that amounts to discrimination, victimisation or harassment
- a pattern of the abuse of authority by senior staff that has been left unchecked by the firm
- a complaint of discrimination, victimisation or harassment that is not dealt with by the firm in a prompt and fair way
- ineffective systems and controls, including failure to supervise or support staff leading to serious competence or performance issues or delivery failures.

However, our current Codes of Conduct do not include an explicit requirement to treat people fairly at work, requiring us to rely on these wider Principles and Standards.

## The proposed changes

We are now consulting on these proposed rule changes:

- Adding to our Codes of Conduct an explicit obligation both on individuals and on firms to treat colleagues fairly and with respect, and not to bully, harass or unfairly discriminate against them.
- Requiring firms and individuals to challenge behaviour which does not meet this standard, with the aim of fostering a collegiate approach and a culture in which poor behaviours are not tolerated.

These changes would:

- demonstrate our commitment to tackling any kind of serious unfair treatment of work colleagues
- make it clear to the regulated community that such behaviour is not acceptable.

The proposed wording of the new requirements is:

**Proposed new standard in section 1 ('maintaining trust and acting fairly') of our [Code of Conduct for Solicitors, RELs and RFLs](https://referral.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/)** [https://referral.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/]:

'You treat colleagues fairly and with respect. You do not bully or harass them or discriminate unfairly against them. You challenge behaviour that does not meet this standard.'



**Proposed new standard in section 1 ('maintaining trust and acting fairly') of our [Code of Conduct for Firms](#)**

[\[https://referral.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/\]](https://referral.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/):

'You treat those who work for and with you fairly and with respect, and do not bully or harass them or discriminate unfairly against them. You require your managers and employees to meet this standard, and you challenge behaviour that does not meet this standard.'

We welcome views on this proposed wording.

Our proposal is that the obligation should go beyond staff in a formal employment relationship, to include others with whom solicitors and firms regularly work closely, such as contractors, consultants, barristers and experts who may be instructed by the firm. This is reflected in the use of the term 'colleagues' in the draft standard.

Although the obligation is principally intended to cover behaviour at work (whether in an office or remotely), in our view it would also cover behaviour outside the workplace or direct delivery of legal services as well. This is where behaviour is in the context of a relationship between colleagues rather than a purely personal relationship.

We welcome views on whether this aspect of the scope of the obligation should be made explicit in the new wording.

**Requirements in other regulated professions**

In considering the case for change we have reviewed the rules of regulators of other professions in England and Wales. Several healthcare regulators have set out explicit standards or overriding duties covering unfair treatment at work.

For instance, the [General Medical Council's ethical guidance](https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/leadership-and-management-for-all-doctors/working-with-colleagues#respect-for-colleagues) [\[https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/leadership-and-management-for-all-doctors/working-with-colleagues#respect-for-colleagues\]](https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/leadership-and-management-for-all-doctors/working-with-colleagues#respect-for-colleagues) on leadership and management says (para 7): 'You must treat your colleagues fairly and with respect. You must not bully or harass them or unfairly discriminate against them. You should challenge the behaviour of colleagues who do not meet this standard.'

The [General Dental Council's standards](https://standards.gdc-uk.org/pages/principle6/principle6.aspx) [\[https://standards.gdc-uk.org/pages/principle6/principle6.aspx\]](https://standards.gdc-uk.org/pages/principle6/principle6.aspx) (principle 6.1) and the [Nursing and Midwifery Council's Code](https://www.nmc.org.uk/globalassets/sitedocuments/nmc-publications/nmc-code.pdf) [\[https://www.nmc.org.uk/globalassets/sitedocuments/nmc-publications/nmc-code.pdf\]](https://www.nmc.org.uk/globalassets/sitedocuments/nmc-publications/nmc-code.pdf) (section 20.2) include similar requirements on bullying and harassment. Regulators in other sectors have issued guidance on the same subject, including the [Institute of Chartered Accountants in England and Wales \(ICAEW\) guidance](https://www.icaew.com/about-icaew/who-we-are/our-business-values-and-standards-of-behaviour#respect) [\[https://www.icaew.com/about-icaew/who-we-are/our-business-values-and-standards-of-behaviour#respect\]](https://www.icaew.com/about-icaew/who-we-are/our-business-values-and-standards-of-behaviour#respect) on standards of behaviour which says 'we will treat others with dignity, as we would want to be treated'.

The rules of legal regulators in England and Wales such as the Bar Standards Board and CLC focus on illegal harassment and discrimination, rather than on a broader range of unfair treatment including bullying, although [CILEx Regulation's Code of Conduct](https://cilexregulation.org.uk/wp-content/uploads/2018/11/2.-Code-of-Conduct-2019.pdf) [\[https://cilexregulation.org.uk/wp-content/uploads/2018/11/2.-Code-of-Conduct-2019.pdf\]](https://cilexregulation.org.uk/wp-content/uploads/2018/11/2.-Code-of-Conduct-2019.pdf) (principle 6) includes a broad requirement to 'treat everyone fairly and without prejudice'.



Our proposal would therefore be in line with the approach taken by healthcare regulators, using the term 'colleagues', while some other regulators use wider terms; for instance, the ICAEW guidance refers to 'others', and the CILEx Regulation Code of Conduct uses 'everyone'.

**Question 1 - Do you agree with our proposal to add to the Codes of Conduct an explicit requirement for regulated individuals and firms to treat people fairly at work? Please explain the reasons for your answer.**

**Question 2 - Do you agree with our proposal to include an explicit requirement for regulated individuals and firms to challenge behaviour which does not meet the new standard? Please explain your reasons.**

**Question 3 - Do you agree that this requirement should cover colleagues such as contractors, consultants and experts, as well as staff in a formal employment relationship? Please explain your reasons.**

**Question 4 - Do you agree that these new obligations should apply to behaviour outside of the workplace or the direct delivery of legal services? This is where behaviour is in a relationship between colleagues rather than a purely personal relationship. If so, should this be made explicit in the new wording?**

**Question 5 - Do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.**

### **Our approach to enforcement**

Our [enforcement strategy](https://referral.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/) [https://referral.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/] explains that:

'Our role is to regulate in the public interest; to protect clients and consumers of legal services, and to uphold the rule of law and the administration of justice. This means we focus on issues which present an underlying risk to the public interest, ensuring that any decision to investigate a complaint or report is a proportionate response to that risk'.

This means it will only be appropriate for us to investigate allegations about behaviours that seem likely to present a serious risk to clients, colleagues or the wider public interest.

As highlighted in our guidance, we recognise that practising law can sometimes be pressurised and stressful. That it can involve long hours, heavy workloads and dealing with challenging and demanding clients and situations. However, a career in the law can and should nonetheless be rewarding.

As a regulator, we do not direct the working practices or procedures that firms should adopt. Therefore, without more, we would not expect to get involved in disagreements about targets or allocation of work, or routine employment law matters.

However, we will take action if we believe that there has been a serious regulatory failure. For example, where there is evidence that the work environment:

- does not support the delivery of appropriate outcomes and services to clients
- creates a culture in which unethical behaviour can flourish



- is one where staff are persistently unable to raise concerns or have issues addressed.

In respect of the proposed new obligation to challenge unfair conduct, we would recognise the difficulties that junior staff may face both in raising concerns and in challenging their seniors.

If we make the changes to our Codes of Conduct proposed, then we will make consequential changes to update our guidance and enforcement strategy as needed.

**Question 6 - Do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?**

**Impact assessment**

We welcome views on the regulatory and equality impact of the proposed changes. Our current view is that in terms of overall regulatory impact, our proposal would:

- benefit legal services consumers by reducing the risk that unfair treatment of staff and colleagues may lead to behaviour which is against the interests of clients
- promote the wellbeing of people who work in law firms by reducing the risk that they will be treated unfairly. This would encourage an independent, strong, diverse and effective legal profession
- have no negative cost or other impact on firms, which should already be taking reasonable steps to ensure that their staff are treated fairly. If our proposal means some firms take stronger measures to ensure fair treatment, we consider that to be a reasonable burden as effective measures should already be in place.

Our proposal may lead to more reports to us of concerns about unfair treatment at work. Since these proposals are intended to clarify our role rather than widen the scope of our work, we do not expect any material change to the number of cases we investigate. However, we will keep this under review.

In terms of equality, we expect our proposal to have a positive impact for everyone, in particular for women, people with an ethnic minority background and those with a disability, given the LawCare survey which found that people with these characteristics are more likely to experience unfair. We also expect the proposal to benefit junior solicitors given the JLD's past findings on stress and mental health at work. Our proposal may:

- prompt firms to do more to reduce the risk of serious unfair treatment at work
- encourage more reporting to us of serious unfair treatment, by making it clear that such behaviour breaches our standards and may lead to regulatory action.

We have not identified any other equality impacts of these proposed changes.

**Question 7 - Do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?**

**[Solicitors' health and fitness to practise](#)**





## Background

Health issues can affect a solicitor's ability to exercise appropriate legal or ethical judgement and practise safely. Many can experience ill health or disability during their working lives, and most continue to practise safely without the need to engage with us. Most solicitors will be in a position to manage the impact of their health conditions on their work themselves, by limiting or restricting their practice as needed. Alternatively, they may seek assistance or apply reasonable adjustments to enable them to continue to practise.

There are regulatory risks if a solicitor does not or cannot effectively manage a health issue which may affect their ability to practise safely, or does not recognise they have such an issue. In most cases we only become aware of such health issues after concerns about conduct or behaviour have been raised with us. The health issue is often then raised by the respondent as a defence to the allegation, or as mitigation.

In such cases, we will consider whether the medical evidence provides a complete or partial defence to the allegation, or whether it should be treated as mitigation. We will also look at whether the health issue creates any ongoing risk. And whether we need to address that risk (for example by conditions on practice) either as part of the conclusion of proceedings or independently of them.

There are also an increasing number of cases where health issues are raised as a reason why a solicitor cannot take part in an investigation or disciplinary process or requires special treatment to do so, such as anonymity. This is particularly significant where health issues have the potential to impede due process because a hearing cannot fairly take place in public or at all.

This can undermine the regulatory process, allowing the solicitor to continue to practise when their fitness to do so is in question because of the issues raised in the complaint or allegation. This may pose a continuing risk to clients, consumers, and others – and ultimately to the wider public interest if the regulatory process cannot ensure accountability.

We therefore propose to make it clear in our rules that we can act to address health issues which present a regulatory risk at any point.

## Our current rules

Our [Assessment of Character and Suitability Rules](https://referral.sra.org.uk/solicitors/standards-regulations/assessment-character-suitability-rules/)

[\[https://referral.sra.org.uk/solicitors/standards-regulations/assessment-character-suitability-rules/\]](https://referral.sra.org.uk/solicitors/standards-regulations/assessment-character-suitability-rules/) set out what we take into account when considering whether someone is suitable to be admitted or restored as a solicitor or as a registered European or foreign lawyer. The rules say that:

- when considering suitability we will take into account the overriding need to protect the public interest and maintain confidence in the profession (Rule 2.1)
- the SRA will 'consider any information available to it and take into account all relevant matters. These will include but are not limited to' the criminal and other conduct and behaviour listed in the Rules (Rule 2.2)
- solicitors have an ongoing obligation, which continues after admission to the roll, to tell us promptly about anything that raises a question as to their character and suitability (Rule 6.5).





These rules do not explicitly state that health issues affecting a solicitor's ability to practise or to meet their regulatory obligations are grounds to restrict admission to the solicitors profession. However, we consider that the wide scope of our rules allows us to consider any issue, on admission or subsequently, that impacts a solicitor's ability to practise or to meet the obligations of a regulated professional. And that we should be informed of any such issues as they may arise.

<https://referral.sra.org.uk/solicitors/standards-regulations/authorisation-individuals-regulations/>. For instance, we may impose conditions if we are satisfied that a solicitor is likely to put at risk the interests of clients or others, or that they will not comply with our regulatory arrangements (Regulation 7.2). Conditions may for example restrict the solicitor from carrying on particular activities or holding a particular role (Regulation 73).

## **The proposed changes**

We are proposing two rule changes to make it explicit that fitness to practise as a solicitor means the ability both to perform the work of a solicitor and to meet the obligations of a regulated professional. If someone is not fit to meet those obligations because of health issues, or for any other reason, then they are not fit to practise.

Our proposals will also clarify that we may act to address such health issues at any point when these arise.

### **Proposed addition to Rule 2 of the Assessment of Character and Suitability Rules**

We propose to amend Rule 2 of our suitability rules to make it clear that fitness to practise covers all aspects of practising as a solicitor, including the ability to meet regulatory obligations. This would put beyond doubt our ability to consider health issues which raise a regulatory risk, at the point of admission as a solicitor.

The proposed addition to Rule 2 is:

'Solicitors have a statutory duty to comply with our regulatory arrangements and such compliance is part of what it means to practise as a solicitor. Therefore in assessing your suitability the SRA will take into account anything, including your health, which indicates you are unfit to meet your regulatory obligations or to be subject to regulatory investigations or proceedings.'

### **Proposed changes to Regulation 7.2 of the Authorisation of Individuals Regulations**

We also propose to amend Regulation 7.2 of our Authorisation of Individuals Regulations. Again to put beyond doubt that, where appropriate, we may refuse to issue a PC (or grant registration as a European or foreign lawyer), or impose conditions on a PC (or registration), to address concerns about fitness to practise on health grounds. Conditions might include a requirement for the individual:

- to follow treatment recommendations of an appropriate healthcare practitioner
- to work under the supervision of a senior solicitor
- to limit their practice to a certain area or function.



Such conditions are reviewed annually at renewal and can also be reviewed at any time at the request of the individual or on our initiative. The conditions can be amended or lifted if medical evidence shows that the risk being managed by the conditions has been successfully addressed.

Where we have imposed conditions in response to a health issue which was adversely affecting the individual's ability to participate in a disciplinary process, the lifting of conditions may lead to the disciplinary process being resumed where appropriate.

The proposed changes to Regulation 7.2 are (new wording in bold):

'The SRA may impose conditions under regulation 7.1(b) if it is satisfied **for any reason, including health issues, lack of competence or misconduct**, that you:

- a. are unsuitable to undertake certain activities or engage in certain business or practising arrangements;
- b. are putting, or are likely to put, at risk the interests of clients, third parties or the public;
- c. will not comply, **or are unable to comply**, with the SRA's regulatory arrangements **(which includes your ability to engage with your regulator on any matter that may require investigation and take part in any disciplinary process)** or require monitoring of compliance with the SRA's regulatory arrangements; or
- d. should take specified steps conducive to the regulatory objectives.'

## Requirements in other regulated professions

Our current rules are unusual among professional regulation frameworks in England and Wales in making no explicit provision for limiting the practice of people whose fitness to practise is affected by health issues. For instance:

- The Bar Standards Board's [Fitness to Practise Panel](https://www.barstandardsboard.org.uk/about-us/how-we-regulate/the-decisions-we-take/decisions-about-barristers-fitness-to-practise.html) [https://www.barstandardsboard.org.uk/about-us/how-we-regulate/the-decisions-we-take/decisions-about-barristers-fitness-to-practise.html] process is designed solely to consider concerns that a barrister's ability to do their job is impaired because of their health. The process can result in restrictions and conditions being imposed on a barrister's practice
- CILEx Regulation has a [Health Committee](https://cilexregulation.org.uk/wp-content/uploads/2018/12/Enforcement-Handbook-Annex-5.pdf) [https://cilexregulation.org.uk/wp-content/uploads/2018/12/Enforcement-Handbook-Annex-5.pdf] process to respond to information that raises questions about an individual's fitness to practise on the grounds of health. The process can result in the suspension of an individual's membership 'for the protection of the public or in the member's own interest' or in the Health Committee making 'any such order as it sees fit'
- The [ICAEW's](https://www.icaew.com/-/media/corporate/files/members/regulations-standards-and-guidance/legal-services-disciplinary-by-laws.ashx?la=en) [https://www.icaew.com/-/media/corporate/files/members/regulations-standards-and-guidance/legal-services-disciplinary-by-laws.ashx?la=en] Fitness Committee processes deal with concerns that a person's fitness to participate in disciplinary proceedings and/or professional competence might be seriously impaired through their physical or mental health. The process can result in any licence or registration being suspended or conditions being imposed
- The General Medical Council, like other healthcare regulators, [requires](https://www.gmc-uk.org/-/media/documents/current-health-and-ftp-guidance_pdf-78763009.pdf) [https://www.gmc-uk.org/-/media/documents/current-health-and-ftp-guidance\_pdf-78763009.pdf] applicants for registration to declare health issues that may affect their fitness to practise, and can deal with health as a separate grounds for action



in the [fitness to practise](https://www.gmc-uk.org/-/media/documents/DC4541_The_GMC_s_Fitness_to_Practise_procedures.pdf_25416512.pdf) [\[https://www.gmc-uk.org/-/media/documents/DC4541\\_The\\_GMC\\_s\\_Fitness\\_to\\_Practise\\_procedures.pdf\\_25416512.pdf\]](https://www.gmc-uk.org/-/media/documents/DC4541_The_GMC_s_Fitness_to_Practise_procedures.pdf_25416512.pdf) process<sup>1</sup> [\[#n1\]](#). A fitness to practise tribunal may place conditions on registration, suspend registration or erase someone from the register, but registrants cannot be erased on health grounds alone.

None of these processes allow for an individual to be struck off the relevant professional register solely for health reasons. Our proposed changes would follow a similar approach by allowing us to impose conditions on a solicitor's PC or refuse to issue one because of documented health concerns. As in other professions, it would not be possible to strike off or suspend a solicitor from the roll solely for health reasons.

**Question 8 - Do you agree with our proposal to amend our Rules and Regulations to make it clear that fitness to practise covers all aspects of practising as a solicitor, including the ability to meet regulatory obligations and be subject to regulatory proceedings? Please explain the reasons for your answer.**

**Question 9 - Do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.**

### **Managing health concerns in disciplinary casework**

Situations in which health issues pose a risk to the public, and we become involved as a result, are relatively rare. And these almost always come to our attention as the result of a misconduct complaint. Although relatively few, it is important that we deal with these cases in a fair, consistent and timely manner when they arise.

We aim to handle concerns over solicitors' health in a way that is sensitive and appropriate. We take all the circumstances into account including medical evidence, making reasonable adjustments where appropriate, and fairly balancing the interests of the parties and the public interest.

We recognise that restricting a solicitor's ability to practice is a significant step which should only be taken where necessary for public protection. Any action we take will be aimed at protecting clients and the public and will go no further than is required to do so.

We have recently reviewed and updated our disciplinary casework processes; in order to maintain public protection while making sure solicitors receive a fair hearing about health issues and have appropriate opportunities to provide evidence, including medical evidence.

The measures we have introduced include:

- When we first contact someone about a regulatory investigation, we advise them to tell us about any health issues that may affect their ability to engage with the process. We also signpost them to sources of support
- Making sure our staff involved in discussions with people under investigation have enhanced training. This helps them to recognise and explore any health issues, and to explain how we can work with individuals to assess their ability to engage with the investigation and make any reasonable adjustments
- Allocating all cases involving health concerns to a subject matter expert with specialist training in and experience of health cases. They then advise the



investigation officer on progression of the case throughout the course of the investigation

- Developing templates that individuals can use when asking their physician for relevant medical evidence, and working with them where necessary to obtain further evidence
- Making sure that medical evidence is carefully considered early in the investigation process by experienced managers and lawyers
- During the investigation, keeping under review whether we should use conditions to protect the public from risks posed by the individual continuing to practise
- Where appropriate, using alternative resolutions such as Regulatory Settlement Agreements or a 'lay on file' procedure, instead of continuing an investigation, with suitable conditions in place to protect the public where needed
- Making sure that all decisions on case management and the conclusion of health cases are taken only by experienced investigation officers and lawyers and are approved by managers with similar expertise.

Where we apply conditions, we do so in line with our established guidance. We recognise that any conditions we impose must be specific and targeted towards the risks posed by the solicitor's continued unrestricted practice. They must also be clear and unambiguous, so the solicitor understands what is required of them and compliance can be monitored.

We do not currently intend to introduce a stand-alone process to manage fitness to practise concerns relating to health. This is because we think our updated processes as outlined above enable us to take a fair and proportionate approach in cases where health is a concern.

We will monitor health cases, including the outcomes arising from our new process, on an ongoing basis. This means we can keep the effectiveness of the process under review and report on key developments and trends as required.

### **Question 10 - Do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?**

#### **Impact assessment**

We welcome views on the regulatory and equality impact of the proposed changes.

In terms of regulatory impact, we think these changes will promote public confidence in the profession and benefit consumers of legal services. They will reduce the risk that health problems may cause a solicitor to:

- fail to act in a client's best interests
- meet the ethical standards that clients and the public are entitled to.

The changes should also reduce the delay, uncertainty and stress that can be generated for everyone involved where a health concern affects the progress of a case. The SDT encouraged us to consider making procedures in respect of fitness to practise on health grounds following a 2019 consultation on its procedural rules.

We think the proposed rule changes, together with the changes to our existing health processes, will deal effectively and proportionately with the issues identified through our casework. As a result we do not think separate procedures



relating to health grounds are needed. If we put the proposed rule changes into effect, we will be in a stronger position to balance the public interest and consumer protection against the impact on affected solicitors and their ability to practise.

We expect these changes will also be positive for solicitors. They will reinforce our ability to take prompt, constructive and proportionate action where a health issue affects a solicitor's ability to practise. Some stakeholders within the profession have argued that we should introduce rules and processes to deal with health concerns for this reason<sup>2</sup>.

In terms of equality impact, we are mindful that where a solicitor has health issues this will not always affect their ability to practise. In many cases health conditions can be managed and reasonable adjustments arranged. We will only become involved where there is evidence of a potential risk to the public and will only act as far as required to protect clients and the public.

These proposed changes will make it clear to all solicitors, on admission and in practice, that the ability to take part in our regulatory and disciplinary processes is an inherent element of fitness to practise. This should have a positive impact, encouraging those whose health issues may affect their fitness to practise, including those with a disability, to be proactive in managing any issues. It should also encourage the firms within which they work to be responsible for supporting them in doing so. This should in turn foster frank discussions between individuals, firms and us as the regulator about supportive measures and reasonable adjustments where needed.

There may be intersectionality between health and other characteristics. As discussed above, LawCare have found that women, people with an ethnic minority background and those with a disability were more likely than others to experience bullying, harassment or discrimination at work. This may in turn lead to stress and other health issues.

In respect of age, past surveys indicate a high incidence of mental health issues in young lawyers compared with the general population, while age-related health conditions may affect older solicitors.

We have considered how these proposals may have a negative impact on individuals within our disciplinary processes. We know from our monitoring data that compared with the overall population, men and Black, Asian and other minority ethnic solicitors are over-represented in concerns raised with us and in cases we take forward for investigation. We are therefore mindful that solicitors from these backgrounds may be more likely to be affected by our proposals than others. As set out above, we have measures in place to make sure our processes for managing health issues are applied in a transparent and proportionate manner. These measures will include monitoring case outcomes. We will consider equality impacts as part of our monitoring to make sure our processes are not disproportionately affecting solicitors from these groups.

We welcome views and evidence on the regulatory and equality impact of our proposals.

**Question 11 - Do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?**

**[Consultation questions](#)**



1. Do you agree with our proposal to add to the Codes of Conduct an explicit requirement for regulated individuals and firms to treat people fairly at work? Please explain the reasons for your answer.
2. Do you agree with our proposal to include an explicit requirement for regulated individuals and firms to challenge behaviour which does not meet the new standard? Please explain your reasons.
3. Do you agree that this requirement should cover colleagues such as contractors, consultants and experts, as well as staff in a formal employment relationship? Please explain your reasons.
4. Do you agree that these new obligations should apply to behaviour outside of the workplace or the direct delivery of legal services? This is where behaviour is in a relationship between colleagues rather than a purely personal relationship. If so, should this be made explicit in the new wording?
5. Do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.
6. Do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?
7. Do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?
8. Do you agree with our proposal to amend our Rules and Regulations to make it clear that fitness to practise covers all aspects of practising as a solicitor, including the ability to meet regulatory obligations and be subject to regulatory proceedings? Please explain the reasons for your answer.
9. Do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.
10. Do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?
11. Do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

### Notes

1. In 2021 the [Department for Health and Social Care \(DHSC\)](https://www.gov.uk/government/consultations/regulating-healthcare-professionals-protecting-the-public) consulted [\[https://www.gov.uk/government/consultations/regulating-healthcare-professionals-protecting-the-public\]](https://www.gov.uk/government/consultations/regulating-healthcare-professionals-protecting-the-public) on changes to healthcare regulators' frameworks including the removal of health as a separate grounds for action in fitness to practise cases, with health concerns instead handled under the grounds for action of misconduct (para 262). The DHSC is currently considering its next steps.
2. See for instance two Law Society Gazette articles - [Is the fitness to practise regime fit for purpose?](https://www.lawgazette.co.uk/commentary-and-opinion/is-the-fitness-to-practise-regime-fit-for-purpose/5070151.article) [\[https://www.lawgazette.co.uk/commentary-and-opinion/is-the-fitness-to-practise-regime-fit-for-purpose/5070151.article\]](https://www.lawgazette.co.uk/commentary-and-opinion/is-the-fitness-to-practise-regime-fit-for-purpose/5070151.article) and [Society ponders SDT support for lawyers](https://www.lawgazette.co.uk/news/society-ponders-sdt-support-for-lawyers/5110111.article) [\[https://www.lawgazette.co.uk/news/society-ponders-sdt-support-for-lawyers/5110111.article\]](https://www.lawgazette.co.uk/news/society-ponders-sdt-support-for-lawyers/5110111.article)

## Downloads

- [Consultation - Rule changes on health and wellbeing at work \(PDF 22 pages, 276KB\)](https://referral.sra.org.uk/globalassets/documents/sra/consultations/wellbeing-rule-changes-consultation-2022.pdf) [\[https://referral.sra.org.uk/globalassets/documents/sra/consultations/wellbeing-rule-changes-consultation-2022.pdf\]](https://referral.sra.org.uk/globalassets/documents/sra/consultations/wellbeing-rule-changes-consultation-2022.pdf)
- [Consultation response and analysis of responses \[PDF 178 pages, 2,775 Kb\].pdf](https://referral.sra.org.uk/globalassets/documents/sra/consultations/consultation-response-and-analysis-of-responses-pdf-178-pages-2775-kb.pdf) [\[https://referral.sra.org.uk/globalassets/documents/sra/consultations/consultation-response-and-analysis-of-responses-pdf-178-pages-2775-kb.pdf\]](https://referral.sra.org.uk/globalassets/documents/sra/consultations/consultation-response-and-analysis-of-responses-pdf-178-pages-2775-kb.pdf)
- [Consultation responses \[PDF 30 pages, 360 Kb\].pdf](https://referral.sra.org.uk/globalassets/documents/sra/consultations/consultation-responses-pdf-30-pages-360-kb.pdf) [\[https://referral.sra.org.uk/globalassets/documents/sra/consultations/consultation-responses-pdf-30-pages-360-kb.pdf\]](https://referral.sra.org.uk/globalassets/documents/sra/consultations/consultation-responses-pdf-30-pages-360-kb.pdf)

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