



## Guidance

## Guidance

### Reporting and notification obligations

## Reporting and notification obligations

Published: 25 November 2019

[Print this page \[#\]](#) [Save as PDF \[https://referral.sra.org.uk/pdfcentre/?type=Id&data=533999778\]](#)

## Status

This guidance is to help you understand your obligations and how to comply with them. We will have regard to it when exercising our regulatory functions.

## Who does this guidance apply to?

All SRA-regulated firms and individuals.

## Purpose of this guidance

This guidance provides supporting information in relation to your reporting and notification obligations, set out in our [Standards and Regulations \[https://referral.sra.org.uk/solicitors/standards-regulations/\]](#) and [Enforcement Strategy \[https://referral.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/\]](#). This sets out:

1. A summary of what you need to tell us and when
2. Relevant considerations including:
  - disclosing material to us which may be sensitive, confidential or privileged
  - putting in place appropriate protections for those who make reports to us
3. Details of how to make a confidential report to us, and references to other sources of advice or assistance.

## Reporting and notification requirements

Some events, such as bankruptcy, trigger an automatic obligation to notify us. We refer to these as notifications. A summary of your notification obligations to us is set out in [Schedule 1 \[#schedules\]](#).

Other types of reports are required which will involve the application of your judgment to a set of facts. A summary of your wider reporting



obligations is set out in [Schedule 2](#) [\[#schedules\]](#).

Our Enforcement Strategy explains more about the obligation we place on those we regulate to report concerns to us and other legal regulators. The Strategy explains why we need to know about concerns and describes the various factors which we take into account to determine what makes a breach serious. It also explains the role of a firm's compliance officer in dealing with reports they may receive from an individual solicitor, registered European lawyer (REL) or registered foreign lawyer (RFL) working in their firm and those individuals' own obligations to report. This guidance should therefore always be read in conjunction with our Enforcement Strategy.

There will also be other requirements placed on you to report or notify matters to other law enforcement agencies or regulators that fall outside the scope of this guidance. These include but are not limited to:

- the requirement to make a suspicious activity report to the NCA pursuant to either the Proceeds of Crime Act 2002 or the Terrorism Act 2000 (as amended)
- the obligation to report a personal data breach to the ICO pursuant to UK GDPR or the Data Protection Act 2018.

## **Freedom to speak up**

We regard the freedom to speak up as a fundamental aspect of reporting concerns to us. This is the case notwithstanding the fact that we are not currently a prescribed person under the Public Interest Disclosure Act 1998 ("the PIDA 1998"). A prescribed person is an individual or organisation, prescribed by an order of the Secretary of State, that a worker may approach outside their workplace to report suspected or known wrongdoing.

Broadly, the PIDA 1998 protects workers and other stakeholders who disclose information about malpractice in the workplace from suffering detriment as a result. The aims of the PIDA 1998 are closely aligned with our statutory function as a regulator and we will not tolerate the victimisation of an individual who has made a disclosure to us in the public interest.

We strongly support and encourage public interest disclosures and expect the profession to do the same. If you are making a report to us, then we will treat information provided to us sensitively and will always discuss with you any needs or concerns that you may have. Individuals and firms regulated by us have a duty to bring risks to the public interest to our attention, but we recognise that this can be difficult and additional support may be required.

## **If you are vulnerable**



We have information on our website about how [we can help provide you with additional support](https://referral.sra.org.uk/solicitors/resources-archived/your-health-your-career/) [https://referral.sra.org.uk/solicitors/resources-archived/your-health-your-career/], particularly if a disability or health problem is making things harder for you.

We understand that there may be the need to provide support to those who make allegations of a sensitive or sexual nature about the conduct of someone at the law firm where they work. We understand the difficulties of this, but it is important that you feel that you are able to speak up - either to someone in the firm where you work, by making a report to the police, by speaking to us or all of these.

If sensitive information is shared with you by one of the people involved on a confidential basis we appreciate that this may cause you difficulty; for example, the person may not want you to disclose their name to us and may make it clear that they do not wish to help us in any investigation.

Although we understand that this is a difficult situation for everyone involved, if the information you have been told raises a concern that someone we regulate has committed a serious breach, you have a duty to report it to us and we can, if appropriate, deal with the request for anonymity or confidentiality. We need to know so we can assess the risk and decide what action we should take.

We have significant experience of dealing sensitively with the issues caused by such reports and dealing with requests for anonymity or confidentiality. For example, if a matter raised with us is to be heard at the Solicitors Disciplinary Tribunal, there are special measures that we can apply to have put in place to ensure that a witness has the support needed to give evidence.

Further information on the [support we can provide to witnesses in this position](https://referral.sra.org.uk/consumers/problems/report-solicitor/guidance-witnesses/) [https://referral.sra.org.uk/consumers/problems/report-solicitor/guidance-witnesses/].

## **Preventing you speaking up**

All those regulated by us have an obligation to ensure that they do not attempt to prevent anyone from making a complaint or providing information to us, or any other body exercising regulatory, investigatory or prosecutory functions in the public interest. Our warning notice on the [use of non-disclosure agreements](https://referral.sra.org.uk/solicitors/guidance/non-disclosure-agreements-ndas/) [https://referral.sra.org.uk/solicitors/guidance/non-disclosure-agreements-ndas/] clarifies our position that such agreements should not be entered into or relied upon in order to prevent a person reporting relevant information to us or other authorities.

They are also under an obligation to make sure no individual suffers adverse consequences as a result of speaking up about an issue because



they consider that it is in the public interest to do so. This is irrespective of whether we subsequently investigate or take further action in respect of the matter raised. We will take reports of adverse treatment of an individual in this context extremely seriously. We will investigate any such concerns raised with us and if substantiated, we will take appropriate disciplinary action in line with our Enforcement Strategy.

### **Confidentiality and anonymity**

Although most information is provided to us openly, we do receive information from individuals who request that we keep their identity confidential. If information is provided to us on a confidential basis, we will take appropriate steps to protect your identity.

However, because we have a statutory obligation to investigate serious concerns raised with us about those we regulate, we are not able to guarantee that we will not disclose your name where it is likely to impede our ability to investigate. We will let you know if this may happen.

Please do let us know when making your report if you wish your report to remain confidential. Otherwise we will assume that we can disclose it as part of our regulatory action in the matter.

Sometimes reports are also made to us anonymously. It is very difficult for us to act on such reports since it is not usually possible to obtain sufficient details or evidence to investigate and take forward the concerns. We therefore urge you to provide your name and a means of contacting you if you are making a report in the public interest. We can then work with you to ensure that appropriate safeguards are in place to protect your wish to remain confidential.

Equally, sometimes people wish to make a report on a no names basis, without providing the identity of the individuals involved. This can sometimes be a useful way to discuss our approach to matters on a hypothetical basis; however, we cannot take action on the information and so do not class this as a formal report.

### **Cooperating with an investigation**

If you have concerns that you might also face regulatory action for your own part or involvement in a serious breach of our requirements, then we still urge you to make a prompt report to us. Your help could provide us with vital assistance in determining the course or outcome of a case especially where proving very serious misconduct by others is likely only to be reasonably possible when supported by evidence from a witness close to and possibly involved in the behaviour of concern.

Contextual mitigation for your part in such misconduct, such as the fact that you held a junior position at the time or were afraid of reprisals will

be taken into consideration by us when deciding on the appropriate outcome in your particular case.

It is therefore in your own interests as much as in the public interest to make a report to us. Reporting and subsequently co-operating with us as a potential witness is significant mitigation that could result in a decision that no action needs to be taken against you or any agreed sanction can be reduced from what would otherwise have been imposed in the absence of co-operation.

Conversely, if you assist in covering up, colluding in or concealing potential wrong-doing of which you have knowledge, such aggravating factors will always be taken into account in the outcome of any case against you. It may be considered misconduct in its own right. This is particularly the case where your failure to report occurs over a prolonged period or the requirement to report is obvious.

### **What information can be disclosed to us**

Your obligation to report matters to us may require you to make judgments relating to competing considerations. By way of example, information may be sensitive, personal, confidential or covered by legal professional privilege.

We understand that these judgments can be difficult, and cover some of the key considerations below. However, early and continuing engagement with us is important.

If you have concerns about the nature of the information under consideration, then our [Professional Ethics helpline](https://referral.sra.org.uk/contactus) [https://referral.sra.org.uk/contactus] can help or you can seek independent legal advice. If you are seeking legal advice then you should consider whether it is appropriate to let us know that there is information that you cannot give us yet, the broad reason(s) for this and the steps that you are taking to meet your reporting obligations.

This will additionally allow us to discuss with you and decide on whether we should use our powers to compel you to give us the information or some of the information. This is discussed in more detail below. Equally, there may be ways of limiting the information you give to us whilst still allowing us to carry out a full investigation.

In some cases it may be necessary for us to make onward disclosure of information provided by you to other agencies including the police.

### **Confidential information**

In some cases, particular care will be required in assessing whether information may be disclosed to us owing to its confidential nature.



Examples include information which is:

- commercially sensitive
- related to health
- related to a court case involving a child
- barred from third party disclosure by order of a court or tribunal

The duty to keep client matters confidential exists as both an obligation in law and in professional conduct. It is also one of the core professional principles set out in the Legal Services Act 2007. Separate guidance covers our approach to potential breach of [client confidentiality](https://referral.sra.org.uk/solicitors/guidance/confidentiality-client-information/) [\[https://referral.sra.org.uk/solicitors/guidance/confidentiality-client-information/\]](https://referral.sra.org.uk/solicitors/guidance/confidentiality-client-information/).

The fact that information is confidential should not deter you from making a report to us when it is appropriate to do so. Whilst a balancing exercise is required to consider where the public interest lies, there is a clear public interest in reporting misconduct to us and the disclosure of confidential information is likely to be justified where this is provided in order to enable us to discharge our regulatory function.

Sometimes those we regulate receive information in confidence, for example, from a junior colleague; see the [if you are vulnerable section above \[ #vulnerable \]](#). Your obligation to report information to us does not extend to notifying us of every allegation of wrongdoing. However, we want to receive reports of serious matters, where we may wish to take regulatory action, bearing in mind that we do so in the public interest – and may need to act to protect clients or the public from risk of harm.

Similarly, we may need to see information even when this contains highly sensitive content: for example, relating to a person's health or because it references a vulnerable individual, such as a child, or is the subject of a court order barring disclosure. In such cases we will work with you to ensure that information is handled sensitively and with appropriate safeguards in place. While we cannot ourselves give you legal advice we can try and help you understand what we might need and how we would handle it; and we have a duty to ensure that data is processed lawfully and fairly.

### **Data protection law (UK)**

Whilst firms and organisations will need to give consideration to the General Data Protection Regulation (UK GDPR), we consider that you are unlikely to breach the provisions of the UK GDPR if you are disclosing information which enables us to discharge our regulatory function. We recognise it may not always be possible to seek an individual's consent to disclose their personal data. However, specific provision is made in the UK GDPR for disclosing information where: *processing is necessary for the performance of a task carried out in the public interest*. Further, we



are entitled to request and to see personal data in pursuance of our statutory obligations as a regulator.

The Information Commissioner's Office (ICO) is the authority responsible for upholding information rights in the UK. If you are considering reporting a matter to us but are unsure of your obligations under the UK GDPR then in addition to contacting us you should also have reference to the detailed guidance on complying with data protection law available on the [ICO website \[http://www.ico.org.uk/\]](http://www.ico.org.uk/).

## **Legal Professional Privilege**

Reporting of information which may be subject to Legal Professional Privilege ("LLP") requires particularly careful consideration. LPP is important because it protects clients by allowing them to speak frankly with their legal representative on the basis that communications between them will not be disclosed to third parties without their specific consent.

In certain circumstances we are entitled to see information that would otherwise be covered by LPP. To allow this, we may request that you obtain specific client consent in order to disclose information to us, or you may judge it necessary to seek consent of your own accord so that you can bring a relevant matter to our attention. Without client consent, we may seek a statutory production notice for disclosure of the information. This allows us to access information and documents held by regulated firms and individuals, even where such material attracts LPP. If a statutory production notice is served on you requiring the disclosure of material, then you must produce this to us.

## **How to make a report**

Once you have decided that you need to report to us, you should do so as soon as possible. This is the case even in instances where the information relates to events that occurred in the past. Delay is likely to impede our ability to investigate the matter as effectively as possible, and evidence may be lost. It may also prevent us from being able to understand and take action to address patterns and trends.

Failure to make reports promptly can also lead to further harm or loss and carries a risk that regulatory action will be taken against you for not giving us the information that we need in a timely manner.

There is no particular format in which a report needs to be made although we encourage you to use our [reporting form \[https://referral.sra.org.uk/consumers/problems/report-solicitor/#heading\\_efda\]](https://referral.sra.org.uk/consumers/problems/report-solicitor/#heading_efda).

Further, whilst if we investigate the matter we will need to gather all relevant evidence, you do not need to provide us with a fully





documented report or set of allegations. Clearly the more information and supporting evidence you are able to provide to us the better. However, what we need to understand is the nature of your concerns and the likely availability of any key evidence.

Where you become aware of an issue, we recognise that you may well wish to investigate the nature of any concerns to understand whether they are serious and whether the evidence is sufficient to give you reason to believe that they will result in a finding. We do not expect you simply to pass on any concerns that are raised with you without question and expect you to consider the matter and be able to justify your decision.

If you become aware of an issue which has not been reported as it should have been, or the relevant events are aged or historic in nature, then you should still report this to us as soon as possible. You may wish to set out any explanation for why a report was not made earlier. Where there is a credible reason for a failure to make an early report, or where we consider a report should have been made but a decision has been reached after careful and rational analysis of the facts reasonably available, it is highly unlikely that regulatory action will follow.

You should be prepared to evidence to us how you have reached your decision whether to report (or not) to us and any related issues that have influenced your decision.

## **Useful links and sources of further information**

### **Reporting fraud**

If you know, or suspect, that another regulated person, or their employee is involved in fraud, dishonesty or serious misconduct, please contact our [Red Alert line](https://referral.sra.org.uk/contactus) [https://referral.sra.org.uk/contactus]. Red Alert line is exclusively for solicitors and their staff who know or suspect that another regulated person or their employee is involved in this specific misconduct.

### **Reporting other types of misconduct to us**

If you wish to make a report to us, please use our form and [email report](https://referral.sra.org.uk/contactus) [https://referral.sra.org.uk/contactus].

For all other matters, contact us via our [Contact Centre](https://referral.sra.org.uk/contactus/) [https://referral.sra.org.uk/contactus/].

Further advice is available through our [Professional Ethics Team](https://referral.sra.org.uk/contactus) [https://referral.sra.org.uk/contactus].

### **Public interest disclosure**





Read further information on [public interest disclosure](https://publications.parliament.uk/pa/cm201415/cmselect/cmpubacc/593/59302.htm) [<https://publications.parliament.uk/pa/cm201415/cmselect/cmpubacc/593/59302.htm>].

## **Enforcement Strategy**

Particular guidance is provided to you in 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/>] which explains the factors that we will take into account in determining whether a breach is serious.

The Strategy also sets out who should make the report, when the report should be made and the role of a firm's compliance officers.

## **Additional guidance:**

You can find out more information about reporting information to us, as follows.

For solicitors:

- [support we can offer](https://referral.sra.org.uk/solicitors/resources-archived/your-health-your-career/) [<https://referral.sra.org.uk/solicitors/resources-archived/your-health-your-career/>]

For your clients:

- [reporting a solicitor](https://referral.sra.org.uk/consumers/problems/report-solicitor/) [<https://referral.sra.org.uk/consumers/problems/report-solicitor/>]

## **Case studies on reporting**

We have also produced [case studies](https://referral.sra.org.uk/solicitors/guidance/reporting-notification-guidance/) [<https://referral.sra.org.uk/solicitors/guidance/reporting-notification-guidance/>] to provide guidance and clarity around the reporting concerns requirements set out in our Standards and Regulations and as detailed above.

# **Schedules**

[Open all](#) [#]

## **Schedule 1**

### **Notification obligations**

To notify us promptly if you are charged, convicted or cautioned with a criminal offence, become insolvent or become aware of any change to the information we hold about you.

### **Provision**

- Paragraph 7.6, Code for Individuals
- Paragraphs 3.6 and 3.8, Code for Firms

For firms, there is an additional obligation to report any indicators of serious financial difficulty or an intention to stop trading

To adhere to notification obligations around deemed approval - rules 13.4, 13.6, 13.10 and 13.11, Authorisation of Firms Rules

To inform us within seven days of becoming aware of a relevant event leading to the loss of eligibility of an authorised body - rule 14.1, Authorisation of Firms Rules

To notify us of an event leading to an apportionment of periodical fees on succession - rule 16.1, Authorisation of Firms Rules

To notify us about an individual starting a period of recognised training - regulation 5.1(b), Education, Training and Assessment Provider Regulations

To notify us if you are carrying on insurance distribution activities; and

- rules 5.3 and 5.4, Financial Services (Scope) Rules

of any changes to information appearing on the Financial Services Register

In an overseas context to notify us if you or anyone for whom you are responsible is convicted of a criminal offence, subject to disciplinary action or is in serious financial difficulty.

- rules 4.3 and 4.6, Overseas and Cross-border Practice Rules

To notify us promptly if you are charged, convicted or cautioned with a criminal offence, become insolvent or become aware of any change to the information we hold about you.

- Paragraph 7.6, Code for Individuals

- Paragraphs 3.6 and 3.8, Code for Firms

For firms, there is an additional obligation to report any indicators of serious financial difficulty or an intention to stop trading

To adhere to reporting requirements in relation to insurance policy periods

- rule 8.1, Indemnity Insurance Rules 2013

To notify us of any changes to the identity of a firm's nominated Money Laundering Reporting Officer and Money Laundering Compliance

- regulation 21, Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017



Officer pursuant to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

To notify us of any new individuals that are considered a manager, beneficial owner or officer of the firm pursuant to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

- regulation 26, Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

Alongside the specific money laundering regulations notification requirements referred to in Schedule 1, you should notify us more generally if your firm offers or changes the services that are subject to money laundering regulations. This includes as a trust or company service provider.

Further guidance can be found for [new and existing firms](https://referral.sra.org.uk/solicitors/firm-based-authorisation/) [\[https://referral.sra.org.uk/solicitors/firm-based-authorisation/\]](https://referral.sra.org.uk/solicitors/firm-based-authorisation/).

## **Schedule 2**

<b>Reporting obligations</b>	<b>Provision</b>
To report to us (or to another approved regulator, if appropriate) any facts or matters that you reasonably believe are capable of amounting to a serious breach of regulatory arrangements by any person regulated by us or by another approved regulator (including you)	<p>- Paragraph 7.7, Code for Individuals</p> <p>- Paragraph 3.9, Code for Firms</p>
To report promptly to us any facts or matters that you reasonably believe should be brought to our attention in order that we may (i) investigate whether a serious breach of our regulatory arrangements has occurred or (ii) exercise our relevant regulatory powers	<p>- Paragraph 7.8, Code for Individuals</p> <p>- Paragraph 3.10, Code for Firms</p>
To not subject anyone to detrimental treatment for making or proposing to make a report or providing or proposing to provide information based on a reasonably held belief, irrespective of whether we or another approved regulator subsequently investigate or takes any action in	<p>- Paragraph 7.9, Code for Individuals</p> <p>- Paragraph 3.12, Code for Firms</p>



relation to the facts or matters in question

Adhere to additional requirements imposed on Compliance Officers which mirror the obligations set out at Paragraphs 7.7 and 7.8 of the Code for Individuals

- Paragraphs 9.1(d) and (e) and 9.2 (b) and (c), Code for Firms

To report to us any serious breach of the Overseas and Cross-border Practice Rules

- Rule 4.2, Overseas and Cross-border Practice Rules

To tell us about anything which raises questions as to your character and suitability, or any changes to any information disclosed to us previously in support of an application, on an ongoing basis

- Rule 6.5, Assessment of Character and Suitability Rules