

Dealing with vulnerable individuals in misconduct investigations: law firm compliance

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A note outlining the regulatory issues that law firms regulated by the Solicitors Regulation Authority (SRA) should consider when conducting an internal misconduct investigation which may involve individuals experiencing vulnerability. It offers practical tips on how to adapt investigation procedures accordingly.

Scope of this note

A law firm may carry out a misconduct investigation for a variety of reasons. The alleged misconduct may relate solely to compliance with the firm's internal procedures, or it may additionally concern professional regulatory duties, for example, the Solicitors Regulation Authority's (SRA) Standards and Regulations 2019 (StaRs 2019). The subject of the investigation may be an individual working for or with the firm or, in regulatory investigations, it could be the firm itself.

Investigations may involve dealings with a vulnerable individual, either as the subject of the investigation, or as a witness. Their vulnerability may be due to, for example, their physical or mental health or capacities, life circumstances, or age.

This note highlights the regulatory considerations that SRA-regulated law firms and individuals practising in England and Wales should bear in mind when dealing with vulnerable, or potentially vulnerable, individuals in internal misconduct investigations. It outlines how vulnerability can take different forms and how a firm might adjust its internal investigation process accordingly. For the purposes of this note, misconduct is construed broadly as any conduct likely to be referred to a firm's HR or risk and compliance professionals for investigation. The alleged misconduct might have occurred in a work context or in an individual's private life.

The note covers the regulatory considerations arising from the StaRs 2019. It does not address any HR considerations, or those arising from other areas of law such as employment, health and safety, partnership, or professional indemnity law.

This note may also be of interest to other types of legal services business.

Scope of misconduct investigation

Depending on the nature and seriousness of the misconduct, the firm's investigation may be purely of internal significance, for example, to decide whether disciplinary or performance management measures are appropriate. Alternatively, it may have external ramifications, requiring the firm to decide whether it must report the misconduct to the SRA under rule 3.9 or 3.10 of the SRA: Code of Conduct for Firms (for information about reporting obligations, see [Practice note, SRA Principles and Codes of Conduct: reporting obligations and whistleblowing](#)).

An internal misconduct investigation may involve individuals or teams from any area of the firm, any seniority level, and whether legally qualified or not. Investigators should be aware that any of the individuals involved may have a vulnerability.

Regulatory obligations

The regulatory obligations set out in the StaRs 2019 go beyond the minimum standards imposed by legislation, for example, under the Equality Act 2010 and the Management of Health and Safety at Work Regulations 1999 (SI 1999/3242).

Treating colleagues fairly

In April 2023, the SRA introduced rule 1.5 into the SRA: Code of Conduct for Individuals and rule 1.6 into the SRA: Code of Conduct for Firms (commonly referred to as the wellbeing rules). These similarly worded rules require the firm and those who work in it to treat colleagues fairly and with respect, and not bully, harass or discriminate unfairly against them. Under these rules, the firm must require all employees to meet that

standard, and managers within the firm must challenge behaviour that breaches it.

In May 2023, the SRA updated its guidance note [Workplace environment: risks of failing to protect and support colleagues](#) to include coverage of these rules. While the guidance note is geared towards workplace culture generally, it applies to all dealings between the firm and its staff and so is relevant to dealing with vulnerable individuals in misconduct investigations.

The note states that, when the SRA is considering whether any 'unfair treatment' is 'serious', it will take into account whether the recipient of the unfair treatment is vulnerable, particularly where this appears to have been a factor in the behaviour complained of.

The firm should be aware that an individual's vulnerability might be a causal factor in any misconduct (for example, where the misconduct occurred as a result of an acute stress reaction) or alternatively the vulnerability might be consequent to the misconduct (for example, in a victim of sexual misconduct, or as a result of the subject of the complaint facing investigation).

A failure to identify vulnerability and appropriately adapt procedures when investigating the misconduct may, in serious cases, be considered evidence of a poor workplace culture, and therefore negatively impact the firm's risk profile.

Therefore, when investigating misconduct (in addition to meeting minimum legislative requirements), firms should:

- Assess whether any individual engaging in that process is vulnerable and, if so, adjust that process to protect that person's wellbeing.
- Assess the relevance of any determined vulnerability to the misconduct being investigated.
- Assess whether the firm's workplace culture, and any failure to effect suitable policies, procedures and controls to deal with vulnerable individuals, contributed to the potential misconduct.

Governance and culture

Effective policies, procedures and controls reduce the likelihood of the firm's conduct breaching minimum legislative requirements or causing or aggravating a vulnerability. Such policies, procedures and controls may also help demonstrate to the SRA that the firm's treatment of a vulnerable individual is fair or, if it is unfair, that the issue is not systemic (which would expose the entity, managers and compliance officers to regulatory sanctions).

All firms must have in place effective governance structures, systems and controls to ensure that the firm and staff can comply with legal and regulatory

obligations, and that the firm can effectively manage the risks to its business (SRA: Code of Conduct for Firms, rule 2).

The SRA considers that poor workplace culture poses a risk to delivering competent and ethical legal services to clients, as well as increasing the risk of unethical behaviour by staff when problems occur.

To comply with rule 2, the SRA expects firms to put in place systems to support and protect staff, look after their wellbeing, and promote a positive workplace culture in which toxic behaviour is not tolerated at any level of the firm.

The SRA says that firms should do "everything they reasonably can" to achieve these standards and provides the following examples of how to do so:

- Have effective systems to supervise staff and monitor any issues or concerns which may affect staff wellbeing and competence. Poor performance could be a warning sign that an individual is working under stress or other pressures (including, for example, the stress of suffering misconduct by others).
- Provide a safe and supportive environment where:
 - staff are treated with dignity and respect;
 - staff they feel able to raise concerns; and
 - the firm deals with concerns promptly and constructively.
- Train all managers on effective supervision (including one-to-one meetings where staff can raise issues privately) and dealing with concerns, and reward positive behaviours which demonstrate treating others with respect and dignity.
- Have clear firm policies on bullying, harassment, discrimination and victimisation, and the disciplinary procedures that apply to those behaviours, to ensure that all staff are aware they will not be tolerated.

Where an individual fails to act competently or ethically, and the SRA considers that workplace culture was a factor, it may find that the firm has breached rule 2 of the Code of Conduct for Firms.

For information about promoting a positive workplace culture, see [Law firm regulation: ethics and culture: toolkit](#).

For information about designing internal investigation policies and procedures, see [Internal Investigations Toolkit \(International\)](#).

Managers and the COLP

All managers of a firm are responsible for the firm's compliance with the StaRs 2019 (SRA: Code of Conduct for Firms, rule 8).

The firm's [compliance officer for legal practice \(COLP\)](#) must take all reasonable steps to ensure compliance by all members of the firm (*rule 9*). They therefore need to ensure the firm establishes policies, procedures and controls to ensure compliance in its day-to-day practice. For further information about the COLP's responsibilities, see [Practice note, Law firm compliance officers: roles and responsibilities](#).

In serious cases where vulnerable individuals involved in a misconduct investigation have not been treated fairly or with dignity, the SRA may investigate whether the issue is systemic and whether the firm's managers and COLP have complied with the Code of Conduct for Firms.

Where a firm identifies that one of its solicitors is vulnerable and the firm is concerned that they are not, for example, managing a health issue appropriately, the SRA requires this to be reported to them. In particular, the SRA guidance note [SRA approach to health issues and medical evidence](#) issued in May 2023 indicates that health issues that could affect an individual's ability to practise safely or to comply with their regulatory requirements should be reported. This applies whether or not the individual is being investigated or involved in disciplinary proceedings.

Encouraging equality, diversity and inclusion

Firms and practitioners must act in a way that encourages equality, diversity and inclusion (SRA: Principles, Principle 6).

Where a firm's treatment of a vulnerable individual in a misconduct investigation results in a court or tribunal finding of discrimination or other breach of legislation, the SRA may allege that Principle 6 has been breached. In serious and clear cases, the SRA may allege that Principle 6 has been breached even without a judicial finding.

The SRA takes the view that Principle 6, together with rule 1.2 (which requires firms not to abuse their position by taking unfair advantage of others) and rule 1.6 of the SRA: Code of Conduct for Firms, impose an obligation on firms to:

- Treat employees fairly and with dignity.
- Create an environment that is inclusive and free from discrimination, bullying, harassment or victimisation.

Therefore, when dealing with a vulnerable individual in the context of a misconduct investigation, in addition to avoiding discriminatory behaviour, firms should ensure that their procedures are fair and do not undermine dignity.

For further information about equality, diversity and inclusion, see [Diversity, equity and inclusion \(DEI\) toolkit](#).

Identifying vulnerability

Firms may already have systems in place to assess potential vulnerability in clients (for example, see [Checklist, Client onboarding: Assessing client vulnerability, needs and requirements](#)).

Investigators should be aware that vulnerability may impact a person's ability to engage properly and fairly with the proposed investigation.

Vulnerability can take many forms, some of which may be easy to identify (or may be known to the firm as a matter of record) and some of which may be less obvious. Vulnerability can be permanent or may be temporary, for example, in response to events.

Examples of vulnerability include:

- Mental incapacity, mental health disorders, cognitive disability, neurodivergence (for example, autism spectrum disorders and attention deficit hyperactivity disorder), anxiety disorders, phobias or emotional distress.
- Physical disabilities and health disorders.
- Acute reactions to life events.
- Age, reliance on others, abuse or vulnerability to undue influence.
- Victims of domestic or other abuse or violence.
- Substance use or addiction.
- Communication challenges, such as:
 - literacy or language issues;
 - learning disabilities such as dyslexia, dyspraxia or dyscalculia;
 - deafness or hardness of hearing;
 - blindness or vision loss;
 - speech disability; and
 - intellectual, educational or attentiveness issues.

If possible, investigators should make the firm's HR team aware of the individuals who will be involved in the investigation, so that HR can flag any known vulnerability issues or adjustment needs (bearing in mind confidentiality) or join the investigation process to manage this aspect.

Throughout the investigation, investigators should also continue to look out for indicators of potential vulnerability in their interactions with individuals.

Adapting internal investigations

Although it requires additional consideration, the involvement of a vulnerable individual should not dissuade a firm from properly investigating misconduct. Firms must identify and manage risks (SRA: Code of Conduct for Firms, rule 2.5) or any matters which may give rise to a requirement to report concerns to the SRA (rules 3.9 and 3.10).

To ensure that vulnerable individuals in misconduct investigations are treated fairly, firms should be:

- Proactive in establishing policies, procedures and controls for dealing with such matters.
- Reactive in adapting the policy standards to the needs of the investigation.
- Firms should also prudently review the SRA's guidance note [SRA approach to health issues and medical evidence](#), issued in May 2023. Although the guidance addresses how the SRA handles misconduct investigations when, for example, the subject of the investigation complains of health concerns, some of the procedures employed by the SRA will have equal relevance to internal firm investigations involving a vulnerable individual.

Training investigators

The firm should train investigators on how to manage the investigation process and what adjustments may be needed to address any vulnerability issues so that the investigation can proceed effectively.

Investigators should be trained on:

- The wide range of forms that vulnerability can take and how to identify them (see Identifying vulnerability).
- How to consider the possibility that an individual is vulnerable, even if not expressly disclosed or readily identified.
- How vulnerability may impact an individual's engagement with the investigation process.
- How a vulnerable individual may not be able to fairly advocate their position or accurately report what they have experienced or witnessed.
- How best to conduct the investigation in the light of any perceived or disclosed vulnerability and what, if any, adjustments may be needed (whether provided by the firm or externally).

It may be helpful to maintain a written policy or guidance notes for investigators to review regularly and during an investigation as a reminder. This also

helps demonstrate the firm's compliance to the SRA if required (see Demonstrating compliance).

Making appropriate adjustments

Legal representation

Where the firm, or the individual, considers that the individual's vulnerability is likely to impact their ability to engage with, or advocate for themselves in, the investigation, the firm may decide to recommend, and perhaps even fund, independent legal representation for the individual.

Companions

The firm may offer the individual the right to be accompanied by a colleague, or by a friend or family member from outside the firm. A close friend or family member may be better placed to notice when the vulnerability is impacting the individual's wellbeing or accuracy when engaging with a difficult question. Where someone from outside the firm is involved, the firm should redact or anonymise any confidential or sensitive information, particularly client information.

Expert reports

Expert psychiatric reports in Solicitors Disciplinary Tribunal cases often highlight how seriously vulnerability can impact an individual's engagement with an investigation. For example, those suffering from acute stress reactions may feel compelled to take actions and give accounts that are designed to immediately displace that stress, whether or not those actions are logical or the accounts are truthful. Experts indicate that these individuals often cannot override that behaviour, even in cases where they know, for example, that what they are saying is untrue.

Depending on the circumstances, a firm may consider that a professional medical or psychiatric assessment should be conducted before proceeding with the investigation, to advise the firm on any appropriate accommodations or adjustments in how the matter is handled.

Procedural adjustments

The firm should consider whether any adjustments to the practicalities of the process are appropriate to accommodate individual vulnerabilities, for example:

- Selecting an appropriate venue for meetings, so that issues such as the size, location, heating or other features of a particular room do not trigger or increase a vulnerability.

- Avoiding sending large volumes of documents requiring an urgent response to an individual where this may trigger or increase a vulnerability, as well as affect the individual's absorption of the information or decision making.
- Reducing or avoiding contact between different individuals involved in the investigation, for example, between the alleged victim and alleged perpetrator of bullying or sexual misconduct.

Managing atmosphere

Irrespective of the involvement or management of vulnerability issues, the firm should avoid making any pre-judgements or creating a heavy-handed or adversarial process, as well as ensuring investigators do not have defensive or overly commercial mindsets.

Even where the misconduct is very serious, the investigation should be conducted in an open-minded, measured and objective manner. Everyone involved should be given the opportunity to present their position as clearly and fully as possible. This will ensure that the fullest and most accurate information possible is considered and help investigators to reach the most appropriate conclusion about outcomes and next steps.

Demonstrating compliance

The firm may be asked to demonstrate to the SRA that their treatment of a vulnerable individual is fair and that there are no problems with workplace culture in the firm.

Being able to demonstrate a firm's competence to follow a sensitive and fair process may improve a firm's risk profile. It decreases the prospect of regulatory intervention and increases staff loyalty and engagement.

To help demonstrate compliance, the firm should maintain written policies, procedures and controls in relation to:

- The standards expected for interpersonal behaviour within the firm.
- How the firm will investigate and deal with misconduct.
- Training for managers and investigators on dealing with vulnerable individuals, particularly in misconduct investigations.

The firm should also document each individual misconduct investigation, recording any processes undertaken and any adjustments made and why. In keeping records, the firm should consider how legal privilege may apply (see Privilege).

Privilege

In keeping records of internal misconduct investigations, and in conducting communications in relation to the misconduct and the investigation, the firm should be aware that its internal communications may not attract legal professional privilege, even if related to a client matter, and may therefore be the subject of an SRA Production Notice (section 44B, *Solicitors Act 1974*) (*Parry-Jones v Law Society [1969] 1 Ch 1*). The firm may consider seeking specialist legal advice about how legal professional privilege may apply in the context of the investigation.

For information about privilege, see:

- [Video, Legal professional privilege: internal investigations and external scrutiny.](#)
- [Practice note, Legal professional privilege for law firm compliance professionals.](#)
- [Practice note, Waiving privilege in an internal investigation.](#)
- [Practice note, Privilege: frequently asked questions.](#)
- [Checklist, Guide to legal professional privilege.](#)
- [Flowchart, Legal professional privilege.](#)

Managing interpersonal behaviour and vulnerability: further resources

For further resources on managing interpersonal behaviour and vulnerability within a law firm, see:

- [Checklist, Law firm regulation: ethics and culture: creating a safe and supportive workplace.](#)
- [Practice note, Promoting workplace diversity, equity and inclusion.](#)
- [Practice note, Managing stress and mental health at work.](#)
- [Practice note, Wellbeing: six habits to help you meet your management responsibilities.](#)

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- Practice note, Emotional intelligence: an introduction.
- Practice note, Diversity, equity and inclusion: an introduction to neurodiversity.
- Practice note, Gender reassignment discrimination.
- Standard document, Anti-harassment and bullying policy (short form).
- Standard document, Stress and mental wellbeing at work policy.

See also [SRA: Workplace Culture Thematic Review](#), which provides advice and guidance to help the firm avoid the risks addressed in this note and maintain healthy working environments where staff are valued and supported.

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