

Investigating regulatory misconduct in a law firm

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A note outlining the regulatory issues, reporting requirements and procedural steps that a law firm should consider when investigating any indication or allegation of professional misconduct or other regulatory breach within the firm.

Scope of this note

Law firms regulated by the Solicitors Regulation Authority (SRA) (and the solicitors that work for those firms) must comply with the SRA's regulatory standards. These include the SRA Standards and Regulations 2019 (StaRs 2019), which comprise the SRA: Code of Conduct for Firms and the SRA: Code of Conduct for Individuals (together, codes of conduct). The codes of conduct set out the responsibilities of specific members of the firm and how they are expected to act while providing professional legal services to clients. Any misconduct by the firm or an individual may lead to regulatory action by the SRA. To mitigate the severity of that action (and any reputational risk), a law firm should investigate any allegations of misconduct promptly and thoroughly, and report those findings to the SRA where appropriate.

This note outlines the regulatory issues, reporting requirements and procedural steps that a law firm should consider in investigating any indication or allegation of professional misconduct or other regulatory breach. It sets out the likely sources of misconduct allegations and how to triage complaints. The note explains who the firm must notify and when. It also outlines the action the firm should take in response to the findings of the investigation (and how to demonstrate that action to regulatory bodies).

The note is aimed at law firms regulated by the SRA and practising in England and Wales, but may be of interest to other legal services businesses. It offers practical guidance for law firm compliance professionals taking the first steps in response to an incident. However, misconduct and regulation are technical areas of practice, and the processes of self-reporting and notifying other interested bodies are sensitive. Once the firm has formed an initial view on the incident, it may therefore consider seeking external specialist advice.

For the purposes of this note, misconduct is construed broadly as any conduct likely to be referred to a firm's

risk and compliance professionals for investigation. It is then for the risk and compliance professionals to consider whether the regulatory standards have been breached and whether any further action is required.

The note does not cover any implications of a misconduct investigation in employment or criminal law, or the law relating to partnerships, limited liability partnerships (LLPs), limited companies or other business structures. It also does not seek to address any related data, cyber or IT risks that may arise out of the incident.

SRA Standards and Regulations 2019

The StaRs 2019 include codes of conduct for both firms and individuals, both of which are relevant to an internal investigation into potential regulatory misconduct.

Codes of conduct

The SRA: Code of Conduct for Firms sets out the responsibilities of the firm as a whole, including for the firm's managers, Compliance Officer for Legal Practice (COLP) and Compliance Officer for Finance and Administration (COFA). The SRA: Code of Conduct for Individuals sets out the responsibilities of individual practitioners within the firm.

Relevant provisions of the Code of Conduct for Firms include:

- Rule 2, particularly rule 2.5, which requires the firm to identify, monitor and manage all material risks to the business, including those which may arise from any connected businesses.
- Rule 3, particularly:
 - rule 3.5, which requires the firm to investigate whether anyone may have a claim against the firm
 - s inform the SRA and the potential claimant of the outcome; and

- rule 3.9, which requires the firm to self-report to the regulator anything that it reasonably believes could amount to a serious regulatory breach.
- Rule 7, which incorporates relevant sections of the Code of Conduct for Individuals into the Code of Conduct for Firms.
- Rule 9, which sets out the responsibilities of the firm's COLP and COFA.

The firm should also familiarise itself with the following SRA guidance:

- [SRA: Enforcement strategy](#), which explains how the SRA uses its enforcement powers where it is concerned that an individual or a firm has failed to meet its standards or requirements.
- [SRA: Guidance: Putting matters right when things go wrong, and own interest conflicts](#), which provides guidance on when a firm can take action to rectify a mistake on a client matter and how it should deal with the situation if there is a risk of own interest conflict.

Serious regulatory breaches

The firm must self-report to the SRA any matters that it reasonably believes either:

- Could amount to a serious regulatory breach.
- Should be brought to the SRA's attention so that it may investigate whether a serious breach has occurred.

(*Rules 3.9 and 3.10, SRA: Code of Conduct for Firms.*)

These requirements are worded broadly: they do not limit the reporting obligation to situations where the firm has concluded there has been a breach.

In the introductions to the codes of conduct, the SRA states that, if it finds that there has been a serious failure to meet its standards and regulatory requirements, it may take action against the firm itself as an entity, its managers or compliance officers, or individual employees within the firm.

What amounts to a "serious" breach or failure for these purposes is a matter to consider. A serious breach might be an individual breach which is serious in isolation, or a series of similar breaches which (even if minor individually) might indicate a systemic problem or concerning pattern of behaviour. See Consider seriousness of misconduct.

Robust compliance training and policies

Prevention is better than cure. The firm should develop robust internal compliance policies, procedures and

staff training programmes, including in relation to internal misconduct investigations, and monitor and maintain these regularly. This helps the firm to manage and reduce the risk of misconduct and regulatory breaches arising in the first place. It also makes all staff aware of what to expect from any internal investigation. Managing the expectations of the individuals involved helps to smooth the internal investigation process and avoid unnecessary personal frictions.

Additionally, if the regulator, court or other external bodies become involved, being able to evidence a robust compliance programme may help demonstrate:

- The secure running of the firm.
- The firm's ability to prevent and respond to risk.
- The firm's robust investigative measures.
- The firm's ability to learn from mistakes.

This may improve the outcome of any external investigation for the firm, if not necessarily for any individuals involved.

Reasons to conduct an internal investigation

Regulatory obligations

Implementing robust and thorough policies and procedures for recording and investigating incidents of potential misconduct or regulatory breach helps the firm to:

- Demonstrate compliance with its compliance management obligations under rule 2 of the SRA: Code of Conduct for Firms.
- Comply with the self-reporting requirements of rule 3.9 of the SRA: Code of Conduct for Firms.

Mitigating impact on firm

Beyond the impact of the individual incident, misconduct within a law firm can have wider and more significant long-term ramifications.

Misconduct takes many forms and arises for many reasons. For example, it may be deliberate and calculated with dishonest intent or it may be inadvertent, such as an undertaking given in good faith but which cannot be performed. It may be a minor infraction that is quickly remedied with no lasting effect or it may be grievous and have a lasting impact on others.

Depending on the circumstances, the misconduct may be reported to the SRA or other regulatory bodies, to any clients involved, and to the firm's professional indemnity insurers (or other insurers). Serious

misconduct can therefore adversely impact the firm's risk profile with these stakeholders. It may lead to:

- Client loss and reputational damage.
- Regulatory fines or sanctions.
- Problems with renewing regulatory authorisation.
- (Particularly if a claim results) increased professional indemnity insurance (PII) premiums or, at worst, difficulty obtaining PII at all.

However, the firm may be able to mitigate the impact and improve outcomes by taking proactive action to:

- Investigate the misconduct.
- Rectify any damage.
- Address any identifiable causes.
- Develop and implement measures to prevent recurrence.

These actions help to satisfy the SRA that the firm has acted appropriately and in compliance with its obligations under rule 2 of the Code of Conduct for Firms.

The firm can only take (and demonstrate) this action if it first conducts a robust and thorough investigation into the misconduct to understand precisely what happened, how and why.

Identify source of allegations

Misconduct issues arise from various sources, not all of which are obvious. The firm needs to be alert to the potential for misconduct issues to emerge from a wide range of risk, compliance and operational incidents during a firm's practice, so that those issues can be identified quickly and reported or managed as appropriate.

Client complaints

The most common source of allegations of lawyer misconduct is client complaints. Most complaints deal with purely service issues. However, many include allegations of misconduct, even if the complaint does not clearly articulate or expressly reference misconduct. For guidance on assessing whether a complaint raises conduct issues, see [Practice note, Triaging professional negligence claims, complaints and conduct allegations: Identifying professional conduct and regulatory issues: questions to ask](#).

Whether or not the firm considers a client complaint to have merit, it should deal with the complaint in line with its complaints procedure (for a template procedure, see [Standard document, Law firm client facing complaints procedure](#)).

Third party complaints

Misconduct allegations (whether or not they are clearly or expressly stated) may be raised by complaints from third parties that do not fall within the scope of the firm's complaints procedure. The firm should therefore be wary of dismissing such complaints out of hand, as this may lead to regulatory issues which require attention being overlooked.

It is prudent to scrutinise all complaints and concerns to assess the merit of the complaint itself and to consider whether the allegations or underlying facts might indicate any potential regulatory problem.

Court proceedings

Concerns about a party's conduct during court proceedings may be raised by the other party or by the presiding judge. The judge may raise concerns about misconduct in observations during the proceedings or even refer to them in the written judgment. There are many instances where judges refer the matter to the SRA themselves. Remember solicitors are officers of the court.

Employee complaints

Internal complaints and concerns raised by staff may include potential regulatory breaches, for example:

- Complaints of bullying, sexual harassment or assault, discrimination and equality issues.
- Concerns about potential accounts or financial mismanagement.

In relation to interpersonal complaints between staff, the firm must ensure that staff and colleagues are treated fairly by the firm and by each other (SRA: Code of Conduct for Firms, *rule 1.6*; SRA: Code of Conduct for Individuals, *rule 1.5*). The firm should also make its HR team aware of the sorts of issues that they should refer to the firm's compliance team.

Operational concerns raised by staff should be considered carefully and dealt with in accordance with the firm's whistleblowing policy, if appropriate (see [Practice notes, SRA Principles and Codes of Conduct: reporting obligations and whistleblowing: Whistleblowing and Whistleblowing \(1\): legal framework and who is protected?](#)).

Identify object of allegations

The firm must tailor its approach to the misconduct concerns (and any investigation) according to who is the central object of the concerns. The SRA is likely to view misconduct by, for example, a COLP far more seriously than misconduct by a non-qualified receptionist.

The primary object of the concern may be difficult to determine, as the incident may involve more than one entity or person. However, the firm should do its best to clearly identify who is primarily responsible for the alleged misconduct.

This could be:

- The firm itself, for example, if there has been a systemic failure like supervision or a failure to act on an obvious red flag like an internal email from an employee raising concerns.
- A partner (if the firm is a partnership). In this case, the firm must determine whether they are an equity partner or a salaried partner with limited or no control over the firm's systems and governance.
- A director or officer of the firm, or other individual with significant responsibilities or authority, for example, the COLP, COFA, Money Laundering Reporting Officer (MLRO) and so on.
- An employee. In this case, the firm should determine whether they are legally qualified (and, if so, the nature of their qualification and current practising status) or a non-qualified employee, and identify the nature of their role within the firm.

Identify type of misconduct

The firm should identify the type(s) of potential misconduct as quickly as possible to inform its approach to the investigation. Some areas of misconduct need to be treated with increased sensitivity or are likely to be viewed as more serious by the regulator.

Questions to ask about the misconduct include:

- Whether it involves:
 - client monies. Serious concerns include actual or attempted theft, overbilling, money laundering, and so on;
 - client or own-interest conflicts of interest;
 - breach of an undertaking;
 - dishonesty or a failure to act with integrity; or
 - backdating, fabrication or inappropriate alteration of documents.
- Whether the conduct is by all or part of the firm, such as department malpractice, personal misconduct by a specific individual(s) or both.
- Whether it is a single isolated incident, a course of behaviour or a series of similar incidents which together might indicate a systemic failure.
- Whether it has taken place in the workplace (equality or diversity issues) or in an individual's private life. Some situations are difficult to determine, for

example, allegations of sexual misconduct with another member of staff, which may have occurred either during working or non-working time.

Consider seriousness of misconduct

The firm has a duty to self-report any serious misconduct to the SRA. It must therefore form a view about the seriousness of the incident (see Serious regulatory breaches).

The firm should be wary of dismissing any allegation, complaint or concern as having no merit, for example, because it comes from a client who habitually complains. The firm should initially assume that all complaints and concerns have merit and require investigation.

Having a clear policy which evidences this approach helps to manage the expectations of any person who is the object of a complaint about how the firm approaches misconduct allegations. This prevents personal relationships from clouding the methodology of the investigation. It also helps the investigator to maintain objectivity and reduces interpersonal friction.

Triage and manage imminent risk

The firm must determine whether the misconduct presents any imminent risk to the firm, its clients or others to inform what (if any) action the firm should take in addition to the internal investigation.

The firm should consider this question broadly, looking beyond the individual incident to its causes. The issues in the individual incident may be quickly dealt with. However, if the underlying cause of the incident was, for example, a systemic failure or an individual's fundamental misunderstanding of the regulatory requirements, then the firm (and its clients) are at risk of further misconduct.

Unaddressed systemic or behavioural problems also increase the seriousness with which the SRA views the situation if it is reported to it (see Serious regulatory breaches).

The firm's strategy for dealing with the incident should therefore include:

- Addressing and resolving any adverse effects of the incident(s), particularly damage, loss or risk to the client, so far as this can be done:
 - in line with rule 7.11 of the SRA: Code of Conduct for Individuals;
 - without conflict of interests; and
 - in accordance with the terms of the firm's PII policy.

- Investigating the underlying causes of the incident to ascertain whether there is a systemic, behavioural or other ongoing problem.
- Reporting the matter to regulatory bodies or PII insurers if required (see [Notify external bodies](#)).
- Addressing and resolving any underlying causes of the incident to reduce the risk of recurrence.

Determine who should investigate misconduct

The firm should determine who should investigate the alleged misconduct. This is influenced by the nature of the potential misconduct (see [Identify type of misconduct](#)) and by its seriousness (see [Consider seriousness of misconduct](#)).

In devising its investigation strategy, the firm must act appropriately but proportionally. For infractions that are obviously minor and easily rectified, such as a failure to run a conflict check, it might be appropriate for a junior member of the risk and compliance team to investigate, or even the individual's supervisor or head of team. However, incidents that are more serious in nature or severity or have heightened sensitivity, such as allegations of bullying, sexual misconduct or dishonesty, should be investigated by a senior individual like the COLP or head of compliance.

Most matters can be investigated internally within the firm, but it may be prudent to instruct an external firm or specialist to investigate where technical specialism is needed.

Consider funding for investigation

Internal investigations

Internal investigations in law firms are usually funded by the firm itself. However, some PII or directors' and officers' (D&O) insurance policies might include funding for internal investigations. The firm should examine its insurance policies carefully to check for cover. If in doubt, the firm might wish to discuss this with its insurance brokers (see [Practice note, Role of professional indemnity insurers, brokers and panel solicitors: quick guide: Direct insurance brokers and sub-brokers](#)).

External investigations

The alleged misconduct may lead to an SRA investigation. This may be prompted by either the firm self-reporting the issue, the SRA being notified by a

third party (for example, a complaining client) or by the SRA itself deciding to investigate the firm.

The SRA might launch its own investigation in parallel with the firm where, for example:

- The firm has failed to supervise individuals (whether partners or employees), teams, or departments.
- There has been systemic or thematic misconduct over a period.
- There have been catastrophic failures in the firm's policies or a lack of any (or adequate) policies.

In an external investigation, the most significant cost of a misconduct incident is often dealing with the SRA itself. This might be limited if the matter is dealt with in-house by the SRA but significant if the matter is referred to the SDT. However, the biggest impact is often considered to be the adverse publicity on any finding.

Design structure of investigation

The firm's assessment of the immediate risk presented by the misconduct informs the specific investigation strategy that the firm adopts for a particular incident (see [Triage and manage imminent risk](#)).

However, steps relevant to almost all investigations include:

- Establish the remit of the investigation and plan timelines.
- Secure evidence and records (particularly paper files, CSM records and emails) and take statements from witnesses as soon as possible.
- Consider taking interim staffing measures pending the outcome of the investigation. This may include:
 - suspension of individuals;
 - removal of individuals from positions of responsibility; and
 - changes to supervision arrangements, management lines or workplaces.
- Consider whether the incident raises any employment or partnership law issues and whether the firm should seek external advice from employment or partnership specialists.
- Manage internal reactions to the situation and particularly inappropriate "gossip" or conversation about the matter.

For more information about these aspects of conducting an internal investigation, see [Practice note, Conducting an internal investigation: a step-by-step guide \(UK\)](#).

Notify external bodies

Once the firm has formed a clearer picture of the potential misconduct, it should consider whether it needs to make any external notifications.

SRA and other regulators

If the situation is uncertain, it may be appropriate to report to the SRA, or any other relevant regulatory bodies (for example, the Information Commissioner's Office (ICO)), once the outcome of the firm's internal investigation is known. However, it is often prudent to make a preliminary self-report as early as possible, before the outcome is known, indicating that the firm has had a potential breach of conduct (describing this briefly) and is investigating.

PII insurers

The firm should consider the reporting terms set out in its PII policy and comply with them carefully. Many insurers require reporting to be done through the firm's PII broker. It is prudent to discuss with the broker if the firm has any doubt about reporting requirements.

If there is significant uncertainty, it may be sufficient to report to insurers once the outcome of the investigation is known. However, the firm may prefer to make a preliminary precautionary notification before the investigation is concluded. This can be particularly helpful to bring insurers up to speed if the firm anticipates that a claim may be imminent, or that it may need urgent insurer approval for action once the outcome is known.

If the firm determines that it must make a self-report to the SRA, best practice is to notify PII insurers at the same time. This avoids any confusion in liaising with the two bodies and reduces the risk of any future insurer criticism for late reporting or making admissions without authority. Prompt reporting, even if precautionary, may also enhance insurer confidence in the firm when it comes to the next policy renewal. See [Checklist, Preparing to notify insurers](#).

Clients

If the client could be affected, the firm is required to inform them under rule 3.5 of the SRA: Code of Conduct for Firms (and rule 7.11 of the SRA: Code of Conduct for Individuals). It is prudent to liaise with the firm's PII insurers first to agree the approach to avoid the risk of breaching the terms of the firm's PII policy (see [Practice note, Law firm professional indemnity insurance: coverage issues and disputes with insurers: Obligation to inform client](#)).

Crime prevention organisations

Depending on the nature of the misconduct, the firm may need to make a report to the police, Action Fraud or other relevant organisations. See [Practice note, Anti-money laundering for law firms: overview and key organisations](#).

Legal privilege

The firm must be mindful of when correspondence about the incident with external bodies (other than the SRA) does, or does not, attract legal privilege. For guidance, see:

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

Respond to investigation findings

Once the internal investigation is concluded, the firm should evaluate the findings and take any required action on the outcome as quickly as possible.

Take internal action

Whether or not the outcome is a finding of misconduct, it is best practice to work through the following steps:

- Consider whether any immediate action is required to rectify the breach, particularly any breaches of the SRA: Accounts Rules. The firm should develop and document (for later evidential purposes) a clear action plan for any rectification work.
- Consider whether the firm should suspend or dismiss any individuals in serious cases.
- Conduct a root-cause analysis as far as possible to identify any factors that may have contributed to the misconduct, and review the firm's supervision and risk management procedures and policies as appropriate.

These actions help the firm to resolve any failings by the firm or its compliance officers and prevent recurrence.

Demonstrate action to relevant bodies

Demonstrating a proactive approach to resolving issues and rectifying compliance failings also reassures the regulator, insurers and other external bodies that the firm has a robust approach to risk management and continuous improvement.

The firm should therefore carefully document the outcome and any steps it takes in response, and provide a written update to its PII insurers, the regulator and any others it notified of the misconduct (see Notify external bodies).

Post-investigation steps

No misconduct

If there is no misconduct and the detail of the investigation is reported to the SRA, then the SRA may accept the firm's findings or begin its own investigation in any event. In deciding whether to launch its own investigation, the SRA considers its own previous analysis of the firm's risk profile and the level of credibility it attaches to assurances from the firm as a result.

Investigation into individuals

If the internal investigation made findings of personal misconduct, unless the misconduct is very minor, it is highly likely that the SRA will launch an investigation into the relevant individuals.

Investigation into firm

In addition to investigating an individual, the SRA may also launch an investigation into the firm if:

- There is any indication of systemic failings such as inadequate policies or procedures.
- The individual blames the firm for the misconduct, for example, by alleging a toxic firm culture.
- The firm routinely condoned the conduct in issue.

In extreme cases of systematic failings, the SRA could consider intervening in the firm. This risk is heightened if there is a suspicion of dishonesty, or serious breaches of the SRA Accounts Rules leading to a client account shortfall. In such cases the firm should seek specialist advice immediately.

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