

## **Guidance**

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### **Understanding in-house solicitor's professional obligations as an employer**

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Updated 18 November 2024 (Date first published: 4 March 2024)

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## **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.

[What has changed since the last version \[#changed\]?](#)

## **Who is this guidance for?**

This guidance is for any organisation that employs an in-house solicitor, to help you to understand the regulatory duties and standards they must comply with.

This guidance is for senior executives and non-executives (or equivalent), as well as HR professionals and those who are responsible for managing and supervising solicitors and legal teams.

## **Purpose of this guidance**

This guidance seeks to offer support to your organisation, so that you get the best from your in-house solicitors in accordance with their professional obligations.

We set out:

- The regulatory duties and standards that all solicitors must comply with as members of a regulated profession.
- How these can benefit your organisation and support its goals.
- What you can expect from in-house solicitors and what they can and can't do.



Many of the considerations you will have in relation to solicitors within your organisation will be common to all employees. However, in-house solicitors, in common with all solicitors that you might work with, have specific obligations as officers of the court and members of a regulated profession, that they are personally accountable for meeting.

This means that solicitors play a valuable role providing critical checks and balances to help your organisation behave legally, fairly and ethically, identify and manage risks and make sound decisions.

To help governing boards and senior executives understand the regulatory duties solicitors must comply with and how they add value to organisational decision-making, we have developed a [summary document](https://higher-rights.sra.org.uk/solicitors/guidance/governing-boards-chief-executives-senior-officers/) [<https://higher-rights.sra.org.uk/solicitors/guidance/governing-boards-chief-executives-senior-officers/>].

This guidance forms part of a series of guidance on related matters for in house solicitors. Links to relevant resources which expand on points set out here, can be found at the end.

For organisations that employ solicitors to provide legal services on its behalf to the public, please ensure you also read this [separate guidance](https://higher-rights.sra.org.uk/solicitors/guidance/unregulated-organisations-employers-sra-regulated-lawyers/) [<https://higher-rights.sra.org.uk/solicitors/guidance/unregulated-organisations-employers-sra-regulated-lawyers/>] to help you understand what the solicitors you employ can do and what their regulatory duties are in this respect.

## **The regulation of solicitors**

We are the regulator for solicitors and law firms in England and Wales. We are responsible for ensuring that solicitors and law firms adhere to high professional standards, in the public interest.

It is a legal requirement that solicitors should meet the professional obligations and standards set by us. Serious breaches of our regulatory standards can result in serious consequences, including restrictions on their ability to practise as a solicitor and in the most serious cases, being struck off the roll of solicitors. If they are struck off, this means they can no longer practise as a solicitor. As well as having serious consequences for the solicitor, this could impact your organisation's work and reputation.

It is important that you understand the obligations and requirements that your in-house solicitors' status as regulated professionals' places upon them.

By understanding these obligations, you will be better equipped to provide the support they need to meet their responsibilities and to grow and develop in their professional careers. Conversely, if these are not fully understood, it may create challenges or conflicts that could impact their role.



## **Our regulatory requirements**

We will ask the most senior or lead solicitor to account to us, as the contact point for regulatory matters in respect of the solicitors and legal work within your organisation.

To support your legal team in fulfilling their professional duties, you should have open discussions with them about their regulatory obligations and how these apply to their roles as your employees. There is real value in having an early conversation to make sure your solicitors have confidence you understand and will support them in meeting their obligations, and you may find it helpful to include relevant terms and safeguards in their terms of employment.

All in-house solicitors must adhere to our [Principles, \[https://higher-rights.sra.org.uk/solicitors/standards-regulations/principles/1\]](https://higher-rights.sra.org.uk/solicitors/standards-regulations/principles/1) which outline the ethical standards expected of all solicitors. These principles require in-house solicitors to act:

- in a way that upholds the rule of law and the proper administration of justice
- in a way that upholds public trust and confidence in the solicitors' profession
- with independence
- with honesty
- with integrity
- in a way that encourages equality, diversity and inclusion
- in the best interests of each client.

Where these obligations conflict, those that protect the wider public interest (for example, acting with independence and integrity and upholding the rule of law and public trust and confidence) take precedence.

Therefore, all solicitors must prioritise the principles that safeguard wider public interest over the interests of any client. This means that there may be situations where an in-house solicitor cannot follow your instructions or may advise against a certain course of action.

In addition to following our Principles, all solicitors must comply with our [Code of Conduct for Solicitors, RELs, and RFLs. \[https://higher-rights.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/1\]](https://higher-rights.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/1)

## **What you can expect from your regulated in-house solicitors**

Based on the regulatory duties and standards we set, in-house solicitors you employ must:

- Demonstrate high levels of professionalism, acting with honesty and integrity at all times (Principles 4 and 5). This means they will alert



you if they believe your organisation is breaching or at risk of breaching its legal or, where relevant, regulatory obligations.

- Offer advice that is independent, impartial, and free from any internal, external or personal interests (Principle 3).
- Develop a good understanding of your organisation to ensure their legal advice is business-oriented, tailored to your needs and aligned with your strategy and values. This is because solicitors must act in their clients' best interests (Principle 7) and consider their clients' attributes, needs, and circumstances (paragraph 3.4 of the Code of Conduct).
- Maintain their competence to carry out their roles effectively and keep their professional knowledge and skills up to date. If they supervise or manage a team, they must ensure that the individuals they manage are also competent (paragraphs 3.3 and 3.6 of the Code of Conduct). This means that in-house solicitors need to have access to appropriate training and resources in order to do so.
- Effectively supervise work done by individuals they manage or supervise. Solicitors supervising or managing teams remain accountable for any work carried out through them (paragraph 3.5 of the Code of Conduct).
- Alert you, and refrain from acting, where they are put in a position of conflict such that they are unable to act in your best interests, or where there is a significant risk of such a conflict arising (paragraphs 6.1 and 6.2 of the Code of Conduct).

Keep your matters confidential unless you agree to disclosure or it is required or permitted by law (paragraph 6.3 of the Code of Conduct). Additionally, certain communications with your in-house solicitors will be protected from disclosure without your consent due to legal professional privilege (LPP). However, not all communications with a solicitor in your organisation will be privileged; this depends on the nature and purpose of the communication and the recipients.

### **What you can't expect your in-house solicitors to do**

Solicitors are expected to tell you if they are asked to do anything which conflicts with their regulatory obligations, and to explain why they cannot do what is being asked of them.

Specifically, no one should expect an in-house solicitor to:

- Approve, support, facilitate or ignore any dishonest or illegal action, as doing this would directly conflict with their regulatory duties to act honestly and with integrity, and in a way that upholds the rule of law and public confidence in the profession. Acting in the best interests of a client means that an in-house solicitor is duty bound to ensure their client organisation is aware of:
  - any legal or regulatory requirements



- the actions the organisation should take if these requirements are not being met
- the risks that might materialise if the organisation does not comply with these requirements.

This is a valuable function of the solicitor's role. They should be empowered and supported to raise concerns. A solicitor should not be disciplined or punished for doing so.

- Act in ways which compromise their duty to act with independence. This includes, for example, being pressured to change their legal advice to prioritise commercial goals or to achieve a particular outcome from a decision-making process or internal investigation.
- Mislead the court or others, for example by making false or misleading statements or failing to disclose relevant evidence. All claims and statements made in litigation or pre-action correspondence must be properly arguable and must not be advanced in an unduly aggressive or intimidating way.
- Act dishonestly, including backdating documents or destroying any correspondence which may be relevant to future litigation or any investigations.
- Breach any duties of confidentiality or LPP owed, subject to limited circumstances where these duties are overridden by legal or professional obligations. This may mean that some individuals or departments will not have access to certain legal advice or information.
- Act outside of their competence. It is unrealistic to expect in-house solicitors to be expert in every area of law on which your organisation may require legal advice. If they are asked to advise on something that is outside their expertise, they should tell you that is the case and offer an alternative solution, for example, instructing specialist advice from external solicitors or counsel.

### **What your in-house solicitor should expect from you**

You should discuss with your in-house solicitors their regulatory obligations and how these relate to their role as an employee of your organisation. Setting mutual expectations in light of the regulatory obligations which solicitors must comply with at all times, is critical for them to be able to perform their duties effectively. This can be outlined in, or alongside, their employment contract. As stated above, there is also real value in the conversation, to give your solicitors confidence you will support them in meeting their obligations and that they can discuss issues and raise concerns with you.

It is also beneficial to have an early conversation to make sure your in-house solicitors understand what insurance arrangements or support you can provide to them in relation to any liability arising from their role. We do not set mandatory indemnity insurance requirements for solicitors



working outside of regulated law firms; however you will want to consider including your in-house solicitors in your Directors and Officers Insurance or equivalent, and may need to bear in mind how this might cover advice/services provided to others for example in a group company.

There are particular risks that can prevent solicitors from meeting their regulatory obligations that you should take action to mitigate and manage. You should:

Provide systems and processes to allow solicitors to meet their obligations to provide independent and impartial advice, avoid conflicts of interest and act in the best interest of their client. This includes:

- Making sure that solicitors know who they are advising, have the information they need to be able to advise/act, can agree realistic delivery timeframes and can identify and manage legal and regulatory risks – for example potential conflicts – at the outset of each matter and on an ongoing basis.
- Introducing safeguards to protect against personal objectives, performance rewards and incentives that create an inherent risk of conflict with regulatory and legal objectives of the role. For example, bonuses focused solely on completing a deal rather than completing a deal in a way that aligns to your agreed legal and regulatory risk appetite and meets their professional obligations.
- Allowing the legal function to participate in leadership and operational roles / decisions across the business, helping the Board and executive to set your legal and regulatory risk appetite and deliver against this. However, solicitors should not be penalised for declining to participate in an activity or role where there is a real likelihood of conflict of roles or of infringing regulatory obligations. This could be where you seek to combine their role as in-house solicitor and a commercial role, for example, acting as the director of a subsidiary or leading a sales initiative, in circumstances where their objectives or incentives would conflict with their professional obligations.
- Providing appropriate levels of access to organisational decision makers and information to allow the legal team to identify issues and risks.
- Providing channels through which solicitors can explain the firm's legal or regulatory compliance position and seek improvement or change when needed. You should have clear reporting lines to allow them to escalate concerns which include access to the organisation's board, where appropriate.
- Encouraging a speak up culture and ensuring solicitors are not disciplined or victimised for raising concerns about potential wrongdoing, or refusing to act where to do so would compromise their regulatory obligations. Teams should be organised so that solicitors are supported to freely discuss concerns about wrongdoing or risk. The independence and integrity shown by a solicitor when



advising against a proposed course of action is an asset, not a liability.

Provide support to make sure that solicitors can meet their regulatory obligations to provide a competent service, including:

- Implementing processes and resources that allow solicitors to keep their professional knowledge and skills up to date, referencing our solicitors [competence statement](https://higher-rights.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/competence-statement/) [https://higher-rights.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/competence-statement/]. This should be a key focus during supervision, appraisal and learning and development discussions. All solicitors are required to make an annual declaration to us that they have reflected on and addressed their learning needs, kept up to date on relevant legal and technical skills and on their professional obligations.
- Managing cost pressures so they do not compromise their ability to provide a competent and ethical legal service that meets both organisational requirements and regulatory standards.
- Setting mutual expectations of roles in the light of the regulatory obligations in-house solicitors must comply with at all times. This is critical for them to perform their roles effectively and can be included in, or alongside, their employment contract with your organisation.

## What has changed since the last version?

The following summary outlines the key changes made since the draft guidance was published in March 2024. It reflects both the input from respondents and our commitment to delivering clear, practical guidance that supports in-house solicitors.

**You said:** Include further information of regulatory duties to help solicitors and organisational leaders understand professional standards.

**We did:** The guidance is now more concise and focussed on the regulatory framework and obligations that apply to in-house solicitors, what employers can expect from them and what they can't expect them to do.

**You said:** There needs to be greater clarity around what in-house solicitors should expect from their employers.

**We did:** We highlighted the importance of mutual expectations, and the value of having open discussions about this. We also expanded the section on how employers can support in house solicitors, to include consideration of insurance cover.

**You said:** The guidance should clearly define its purpose and scope to ensure it is applicable to all relevant stakeholders.





**We did:** We specified that the guidance is intended for any organisation employing in-house solicitors, and all those responsible within organisations including senior executives, non-executives, HR professionals, and those responsible for managing legal teams.

**We also did:** We placed the key points for board and executive officers into a separate document, to increase its accessibility for this audience.

## **Related guidance**

We have produced a suite of guidance to support in-house solicitors which you may find it useful to read, relating to:

- [Identifying your client when working in-house](https://higher-rights.sra.org.uk/solicitors/guidance/identifying-client-working-in-house-guidance/) [https://higher-rights.sra.org.uk/solicitors/guidance/identifying-client-working-in-house-guidance/]
- [Internal investigations](https://higher-rights.sra.org.uk/solicitors/guidance/internal-investigations/) [https://higher-rights.sra.org.uk/solicitors/guidance/internal-investigations/]
- [Key points for governing boards, chief executives and senior officers in organisations employing in-house solicitors](https://higher-rights.sra.org.uk/solicitors/guidance/governing-boards-chief-executives-senior-officers/) [https://higher-rights.sra.org.uk/solicitors/guidance/governing-boards-chief-executives-senior-officers/]
- [Legal professional privilege when working in-house](https://higher-rights.sra.org.uk/solicitors/guidance/professional-privilege-in-house/) [https://higher-rights.sra.org.uk/solicitors/guidance/professional-privilege-in-house/]
- [Reporting concerns about wrongdoing when working in-house](https://higher-rights.sra.org.uk/solicitors/guidance/reporting-concerns-wrong-doing-working-in-house-guidance/) [https://higher-rights.sra.org.uk/solicitors/guidance/reporting-concerns-wrong-doing-working-in-house-guidance/] [https://higher-rights.sra.org.uk/solicitors/guidance/understanding-in-house-solicitors-professional-obligations-employer/] [https://higher-rights.sra.org.uk/solicitors/guidance/reporting-concerns-wrong-doing-working-in-house-guidance/]