

# Legal threats from a solicitor or law firm

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Concerned about a letter from a law firm or a solicitor threatening legal action against you?

## What is the purpose of this guidance?

Members of the public and stakeholders have raised concerns with us that some solicitors and law firms are using litigation or the threat of litigation to prevent the publication of information that could be in the public interest.

This guidance could be helpful to anyone who is either subject to legal action or threatened with legal action, who thinks a law firm or solicitor is behaving inappropriately.

However, it is likely to be particularly relevant where the legal action or threat of action aims to suppress freedom of speech. This could include activists, journalists, academics, or campaigners.

## Introduction

It can be worrying and even feel intimidating, to receive a letter from a solicitor or a law firm telling you they are taking legal action against you (making a claim) or that they might do so.

However, while solicitors and law firms are usually expected to send letters before making a claim and are entitled to bring claims to protect their client's rights and interests - and to do so robustly - there might be some circumstances where their actions are unacceptable. If that happens, we, as their regulator, can take action.

Solicitors and SRA-regulated law firms do not only owe duties to their clients. Our [Standards and Regulations](https://higher-rights.sra.org.uk/solicitors/standards-regulations/principles/) [\[https://higher-rights.sra.org.uk/solicitors/standards-regulations/principles/\]](https://higher-rights.sra.org.uk/solicitors/standards-regulations/principles/) impose additional duties and wider public interest obligations over-ride the duty to act in the best interests of any single client. When taking legal action, solicitors and law firms should not engage in any form of abusive conduct, and this is something we can investigate and take action on if it is reported to us.

The aim of this guidance is to explain the obligations solicitors and law firms regulated by us have when sending communications on behalf of their clients, or when conducting litigation, and how to report a solicitor or law firm to us if you think they have breached those duties.

We are unable to become involved in, or influence, the litigation itself, but we have set out details of the action we might be able to take, below.



## **Strategic Lawsuits against Public Participation (SLAPPs)**

Strategic Lawsuits against Public Participation (SLAPPs) are a type of abusive approach to litigation. This could include the steps taken before legal action is taken, such as sending letters before a claim. We are particularly concerned about SLAPPs - they are a threat to freedom of the press and the rule of law (a principle under which all persons, institutions and entities are equally subject to the law).

SLAPPs aim to prevent publication of matters of public importance. This could include:

- academic research
- whistleblowing
- campaign or advocacy material
- investigative or campaigning journalism.

Victims are often activists, journalists, academics, or campaigners. The primary objective of a SLAPP is generally to harass or intimidate the victim to discourage public criticism of the claimant.

SLAPP threats do not usually reach court as the victim will often agree, in response to threatening legal letters, to end their investigation, change or remove a publication, or not publish at all. The victim is worried and wants to bring an end to the threats and may also want to avoid potentially ruinous costs. Whether or not the case reaches court, we can still investigate any concerns about SLAPPs.

Although SLAPPs are one type of abusive litigation, we take action against any form of abusive conduct relating to litigation or pre-action correspondence.

### **Conduct that might indicate abusive litigation**

The following examples show behaviour which might indicate such abusive conduct. If you experience any of these behaviours when faced with claims or potential claims made against you by a solicitor or a law firm we regulate, we would like you to tell us about it so that we can investigate and take action if appropriate

#### **Allegations without merit**

Solicitors should not be making allegations without legal merit. That means making claims that have no basis in law or would stand no chance of being successful if heard in court.

This could mean solicitors bringing claims having made insufficient enquiries of, or lack of consideration of their merits. Some solicitors



might rely on your lack of legal understanding to bring a meritless claim in order to try to intimidate or pressure you into a certain course of action.

### **Exaggerated consequences**

We have had reports of solicitors threatening exaggerated adverse consequences or making threats of consequences which are not legally valid, for example threatening imprisonment in a case where this could never be an option, or making claims of cost consequences over and above what could be claimed.

### **Overly aggressive letters**

Letters which are overly aggressive, intimidating or threatening, including threats intended to intimidate you into changing your intended course of action or avoiding seeking your own legal advice. You should expect correspondence to be set out in strong terms and that the solicitor or law firm will be trying to persuade you into a certain course of action. However, language should not be used with the intention of intimidating or harassing you.

### **Disproportionate correspondence**

Sending you excessive correspondence that is disproportionate to the issues in dispute and/or the number or nature of responses you have sent. Correspondence includes any type of communication such as letters, emails and phone calls.

### **Labels in correspondence**

Telling you or indicating that there will be adverse consequences if you tell anyone else about the correspondence they have sent you. This can include labelling correspondence with 'strictly private and confidential', 'not for publication', 'private and confidential' or 'without prejudice' with the aim of misleading you into believing that if you tell anyone about the correspondence, there will be adverse consequences.

There can be valid reasons for using these labels, for example to ensure that correspondence is not read by an unintended recipient in a privacy claim, to disclose confidential information in order to disprove an intended article, or to enable negotiations to begin between the parties with a view to settling the claim. However, we expect solicitors to carefully consider why they are choosing to label correspondence in these ways and take particular care to explain the position to a recipient, particularly where they might be vulnerable or unrepresented.



You are always able to seek legal advice no matter how correspondence is labelled and our warning notices makes it clear that a solicitor must not lead you to believe otherwise.

## **How solicitors should behave**

Our principles [<https://higher-rights.sra.org.uk/solicitors/standards-regulations/principles/1>] and our codes of conduct aim to guard against SLAPPs, and abusive litigation more generally. Our [conduct in disputes guidance](https://higher-rights.sra.org.uk/solicitors/guidance/conduct-disputes/1) [<https://higher-rights.sra.org.uk/solicitors/guidance/conduct-disputes/1>] sets out how our principles and codes of conduct apply to all firms and solicitors who conduct litigation.

A solicitor must act in a way that upholds all of our principles, but in particular, if you are involved in a legal dispute, you can expect all solicitors to act:

- With independence – a solicitor must be prepared to say no to their client if what their client is asking them to do conflicts with their wider responsibilities as a solicitor, for example, their duty not to take advantage of others.
- With honesty – a solicitor should not mislead you or others (such as the courts) or knowingly allow you or others to be misled.
- In a way that upholds public trust and confidence in the solicitors' profession and in legal services.

If you think a solicitor has not acted in this way, you should tell us. You do not need to prove that you are experiencing abusive litigation (including a SLAPP) if you make a report to us.

## **How to report a concern to us**

To report a concern to us complete the [online reporting form](https://higher-rights.sra.org.uk/consumers/problems/report-solicitor/1) [<https://higher-rights.sra.org.uk/consumers/problems/report-solicitor/1>] to set out your concerns, attaching any evidence you have in support.

We will deal with your report sensitively and although information is often provided to us openly, if you decide that you want to remain anonymous or provide information to us on a confidential basis, we will take appropriate steps to protect your identity.

Please tell us when making your report if you wish your report to remain confidential otherwise we might assume we can disclose it as part of our regulatory action.

In some cases we will need to discuss with you whether you are prepared to be identified at some stage. Depending upon the facts of the case we might have difficulty in taking enforcement or disciplinary action without formally and openly relying upon your evidence.



## **Sending sensitive or confidential information to us**

In some circumstances part of the information you share with us might be sensitive or confidential. If you are unsure if you can share your documentation with us then speak to us before you send it or you may wish to seek independent legal advice.

We can help you to understand what can be shared and discuss with you whether it would be appropriate for us to use our powers to access certain information. Equally, there might be ways of limiting the information you give to us while still allowing us to carry out a full investigation.

For further guidance [call our contact centre](https://higher-rights.sra.org.uk/contact-us/) [<https://higher-rights.sra.org.uk/contact-us/>]

There are organisations who offer support to those who believe they have been impacted by SLAPPs. For additional support we recommend contacting the UK Anti-SLAPP Coalition. You can visit [their website](https://antislapp.uk/) [<https://antislapp.uk/>] or email them at [info@antislapp.uk](mailto:info@antislapp.uk).

## **Action we can take**

If we investigate and find that a solicitor or law firm has engaged in any form of abusive litigation conduct, we can take the following actions:

- Issue warnings about future conduct.
- Impose sanctions such as fines.
- Control how solicitors work.
- Refer a case to the Solicitors Disciplinary Tribunal who have powers to discipline solicitors which are greater than our own, for example to suspend or remove a solicitor from practice.
- Make orders to restrict people from being employed by law firms we regulate, or removing a law firm's permissions.
- Close a law firm with immediate effect.

In some cases, we may decide to take action against both an individual solicitor and the law firm they work for.

## **What we cannot do**

We cannot require a solicitor or law firm to compensate you if you have suffered harm or financial loss.

## **Further reading**

[SLAPPs warning notice](https://higher-rights.sra.org.uk/solicitors/guidance/slapps-warning-notice/) [<https://higher-rights.sra.org.uk/solicitors/guidance/slapps-warning-notice/>]

[SRA Enforcement Strategy \[https://higher-rights.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/\]](https://higher-rights.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/)