

## Guidance

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### How we regulate non-authorised persons

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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.

## Who is this guidance for?

This guidance applies to all persons who are not regulated directly by us as individuals but who are either:

- involved in a firm we regulate; or
- undertake work in the name of, or under the supervision of, a solicitor; or
- employed by a solicitor operating under regulation 10.2(a) of the Authorisation of Individuals Regulations.

## Purpose of this guidance

This guidance is about how we regulate you if you are not authorised by us directly as an individual, but where you are involved in a firm we regulate or work for or are supervised by a solicitor.

You may be a non-lawyer such as an accountant, a finance administrator or an office junior. You might also be a lawyer regulated by another legal regulator, such as a barrister or legal executive.

For the purpose of this guidance we refer to you as a '**non-authorised person**'.

This guidance aims to identify and explain how you are regulated by us and how we exercise our disciplinary and regulatory decision making powers in respect of you.



Our approach to making decisions about you is the same as for solicitors, RELs and RFLs. The public should be able to trust you in the delivery of legal services to act competently and ethically.

Our powers derive from several pieces of legislation and are set out in different parts of our Standards and Regulations.

This guidance should be read in the context of [decision making at the SRA \[https://higher-rights.sra.org.uk/sra/decision-making/\]](https://higher-rights.sra.org.uk/sra/decision-making/) and other guidance, listed at the end of this document. It is a living document and we will update from time to time.

## **General**

### **1. What can a non-authorised person do?**

You can fulfil a wide range of roles. You can be an employee or manager, compliance officer, owner or shareholder of a firm regulated by us. Compliance officers, managers and certain owners must be approved by us as suitable to take up their role. Guidance on how we [decide to grant or withdraw approval \[https://higher-rights.sra.org.uk/solicitors/guidance/authorisation-approval-role-holders/\]](https://higher-rights.sra.org.uk/solicitors/guidance/authorisation-approval-role-holders/) for non-authorised persons can be found here. Similarly, non-authorised persons may also be employed and/or supervised by individual solicitors and this can include solicitors who provide of non-reserved legal services through a practice not regulated by us (regulation 10.2(a) of the Authorisation of Individuals Regulations).

In some cases, you are limited in the type of legal work you can do. It is important to understand what those limitations are and whether you are entitled to undertake the work you do. The extent of what you can do varies depending on whether you are a lawyer, for example a barrister. The details are set out in sections 12 and 13 and schedules 2 to 4 of the Legal Services Act 2007.

In general, if you are not a lawyer you can only do certain work under the direct supervision of a regulated lawyer in the firm. Some types of work are simply not allowed. For example, as non-authorised person you can only prepare legal documents under the supervision of a regulated lawyer, but you cannot stand up in court and represent clients. In no circumstances, can you pretend or even suggest you are a lawyer. It is a criminal offence for you to:

- wilfully pretend to be or take or use any name, title, addition or description implying you are qualified or recognised by law as qualified to act as a solicitor (section 21 Solicitors Act 1974) when you are not;
- wilfully pretend to be entitled to carry on reserved legal activities within the meaning of section 12(1) of the Legal Services Act 2007



when not so entitled or to take on or use any name, title or description with the intention of falsely implying such entitlement (section 17(1) Legal Services Act 2007).

For more information see our guidance on bringing [criminal proceedings](https://higher-rights.sra.org.uk/solicitors/guidance/disciplinary-bringing-criminal-proceedings/) [https://higher-rights.sra.org.uk/solicitors/guidance/disciplinary-bringing-criminal-proceedings/].

## **2. What is our approach to a non-authorised person's conduct outside of legal practice?**

Our Standards and Regulations can sometimes apply to your conduct outside of your legal work. The closer any conduct is to your legal work the more seriously we will take it and so, if for example, while working outside your legal work as a trustee for a local charity you falsify documents, we are likely to consider disciplinary or regulatory action.

We may also take action where you are convicted of a criminal offence outside of the workplace, by imposing an order under section 43 of the Solicitors Act 1974 (s43 Order) which controls where you are allowed to work. More details about when we will impose a s43 Order following a conviction can be found at paragraph 3.3 below.

### **Our disciplinary and regulatory powers**

Our powers to regulate you mean we can seek explanations from you, obtain information and documents from you and impose sanctions and controls including requiring any firm seeking to employ you to first obtain our approval or we can disqualify you from being involved in firms we regulate.

Our decisions about the appropriate outcome will be informed by the risk posed by your behaviour, its impact and the likelihood of it happening again. We will consider the need to protect consumers and the public (by supporting the rule of law and the administration of justice) and maintain public confidence in the delivery of legal services.

We can decide to impose more than one of the regulatory or disciplinary outcomes available to us (rule 3.1 of our Regulatory and Disciplinary Procedure Rules). None of our powers are dependent upon each other. We will consider if we should impose more than one outcome such as a s43 Order or disqualification as well as, or instead of, a disciplinary sanction, in order to address risks arising from your behaviour.

The Solicitors Disciplinary Tribunal (SDT) also has similar powers to us including the power to impose unlimited fines and to make a s43 Order. We explain more in our guidance on [issuing SDT proceedings](https://higher-rights.sra.org.uk/solicitors/guidance/disciplinary-issuing-solicitors-disciplinary-tribunal-proceedings/) [https://higher-rights.sra.org.uk/solicitors/guidance/disciplinary-issuing-solicitors-disciplinary-tribunal-proceedings/] and at paragraph 3.3 below.



### **3.1 Obtaining documents and information**

As a non-authorised person involved in a firm regulated by us, or undertaking work for, or under the supervision of a solicitor, we expect you to co-operate with us and provide us with an explanation of your conduct if we ask you to.

We have statutory powers under sections 44B and 44BB of the Solicitors Act 1974 and section 93 of the Legal Services Act 2007 to require you to provide us with documents and information which we say you must give us. This includes the power to interview you about the documents and information we have asked for (Section 44BA of the Solicitors Act 1974).

More information about our powers to obtain documents and information can be found in our guidance on how [we gather evidence](https://higher-rights.sra.org.uk/solicitors/guidance/investigations-gathering-evidence/) [https://higher-rights.sra.org.uk/solicitors/guidance/investigations-gathering-evidence/] in our regulatory and disciplinary investigations.

### **3.2 Disciplining a non-authorised person**

Our disciplinary sanctions include a fine or rebuke. We also have the power to publish our decisions.

Further details of the available outcomes and the tests we apply can be found in our [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/].

We focus on issues which present an underlying risk to the public interest and make sure that any disciplinary decision we make is a proportionate response to that risk. Our enforcement action is aimed at protecting clients and the public, maintaining public confidence in the provision of legal services, and preventing or deterring individuals and others from repeating offending behaviour.

When determining the right enforcement action to take, we will consider the nature of the allegation, the intention or motivation behind the alleged behaviour, the harm caused and impact this has had on the victim, the vulnerability of persons affected by the behaviour, the level of seniority and responsibility you hold, your regulatory history, patterns of behaviour and any criminal convictions you might have, as well as the type of involvement you have in the law firm we regulate or solicitor you work for.

#### **The non-authorised person must be an employee of a firm we regulate**

We may need to establish if you are an employee, as opposed to a self-employed consultant. This is because we do not have any powers to discipline you as a consultant. Neither do we have the power to discipline you as a person employed by a solicitor delivering only non-reserved



legal activities and so operating under regulation 10.2(a) of the Authorisation of Individuals Regulations. We may, however, impose controls in both cases.

We construe the term "employee" broadly, applying its ordinary meaning. Whilst we consider the provisions of any contractual relationship between the parties, we will investigate the facts of each case to determine if you can be viewed in the round as an employee of the firm.

Outlined below are some non-exhaustive factors we consider when seeking to determine if you are an employee of a firm:

- you are required to work regularly unless on leave, e.g., holiday, sick leave or paternity leave
- you are required to do a minimum number of hours and expects to be paid for time worked
- your workload is supervised by, or subject to, the direction of a solicitor, saying how the work should be done
- you cannot substitute someone else to do your work; i.e. the "employee" is personally providing services (or obliged to provide services) to the "employer" firm
- the firm deducts tax and National Insurance contributions from your wages
- you get paid for holiday leave; contractual or Statutory Sick Pay, and maternity or paternity pay
- you can join the firm's pension scheme
- the firm's disciplinary and grievance procedures apply to you
- you work at the firm's premises or at an address specified by the firm or solicitor you work for
- your contract sets out redundancy procedures
- the firm or solicitor you work for provides the materials, tools and equipment for your work
- you only work for the firm or if you do have another job, it is completely different from your work for the firm or solicitor you work for
- your contract, statement of terms and conditions or offer letter use terms like "employer" and "employee".

### **3.3 Controlling where a non-authorised person can work - 's43 Order'**

We have the power under s43 of the Solicitors Act 1974 to prevent you from working in a law firm we regulate. This is reflected in rule 3.1(d) of our Regulatory and Disciplinary Procedure Rules. The SDT also has the power to make a s43 Order on our application.

For more information about the consequences of a s43 Order and how we make decisions about allowing law firms to employ you see our Enforcement Strategy on the sanctions and controls we can impose.



A s43 Order can be made in respect of a you if you:

- are employed or remunerated in some way by a firm
- conduct work under the supervision of a solicitor
- are a manager of a firm
- have or intends to acquire an interest in a firm.

The wording is wide and includes consultants and those who intend to take an interest in a firm. It also includes you if you are employed by a solicitor operating under regulation 10.2 (a) of the Authorisation of Individuals Regulations.

We apply s43 Order more broadly than to just those who are contractually “employees” of solicitors or recognised bodies. We will look at and consider the conduct of employees who are employed through corporate vehicles such as service companies when these companies are providing services to solicitors or recognised bodies. We will also consider whether the service company is owned by the law firm itself or its directors. We expect solicitors and recognised bodies who use such service companies to report to us serious breaches by them or their employees of our regulatory arrangements in accordance with our Codes of Conduct.

We can seek a s43 Order against you as a result of your actions while working overseas, for example in the European office of a firm we regulate. You do not have to be physically present in England or Wales for us to have jurisdiction.

Section 43 provides two situations where an order can be imposed, namely where you have:

s43 (1) (a) been convicted of a criminal offence which is such that in the opinion of the SRA it would be undesirable for you to be involved in a legal practice

s43 (1) (b) in our opinion occasioned or been a party to, with or without the connivance of a solicitor, an act or default in relation to a legal practice which involved conduct on your part of such a nature that in our opinion it would be undesirable for you to be involved in a legal practice.

### **Criminal Convictions**

We may not always decide it is necessary to impose a s43 Order on the basis of a conviction. We have to decide if, as a result of the conviction, it is undesirable for you to be involved in legal practice in the future. The term “undesirable” is not defined and so we apply its natural meaning and exercise our judgment in deciding if the order is appropriate. In doing so, we will take into account factors including:



- The type of offence. If it involves dishonesty, of any sort, we are likely to consider a s43 Order is appropriate. This is because of the risk the behaviour will be repeated in the workplace, causing harm to clients. However, we may also impose a s43 Order for other types of criminal offences such as a conviction for causing Grievous Bodily Harm. We might do this if we consider that either there is risk of repetition of such conduct in the workplace, or if the conviction is likely to damage public confidence in the delivery of legal services.
- The seriousness of the criminal offence. As above, we will consider whether the offence is likely to damage public confidence in the delivery of legal services. In deciding the level of seriousness, we look at the sentence given, such as whether a custodial sentence was imposed, and any sentencing remarks given by the judge.
- The circumstances in which the offence took place. For example, we are likely to consider it more undesirable for you to be involved in a law firm we regulate if the victim of the offence was vulnerable. This is because of the damage such an offence would cause to public confidence and the risk of you abusing any position of trust by working in a law firm or with a solicitor in the future.

### **Case Study 1**

Ms S, an employed secretary, takes £5,000 from the firm she works for. She does this by writing out a cheque which she signs on behalf of the senior partner in favour of her mother. To cover her tracks, she writes a fake email which she pretends has been sent from a client to explain the withdrawal.

Ms S is convicted of a number of criminal offences of fraud and receives a six-month suspended prison sentence. Prior to her conviction, Ms S repays all of the money she stole. Ms S had worked in law firms for 30 years and describes her actions as a "moment of madness" due to her severe financial problems at that time.

We impose a s43 Order so that any future firm wanting to employ Ms S will need our consent to do so. We also discipline Ms S for her conduct by imposing a rebuke against her. We do not impose a fine due to Ms S's poor financial position and also take into account her repayment of the money. We publish both of our decisions.

### **Undesirable conduct**

We also have the power to impose a s43 Order where you have been involved in an "act or default" in relation to a legal practice and have therefore behaved in a way which we think makes it "undesirable" for you to be involved in legal practice in the future. To fall within this limb, the act must be in connection with legal practice. This contrasts with a conviction which can be outside of the workplace.





Again, we exercise our judgment in deciding if the order is appropriate. The term 'undesirable' is not defined and we give the term its ordinary meaning. However, we take into account conduct that calls into question your character and ethics, including behaviour which:

- is unacceptable in view of a client's expectation of a trustworthy and reliable service
- demonstrates a serious lack of judgment given your position or role
- brings into doubt your ability to make sound and competent decisions in a client's best interests
- demonstrates impropriety or unethical behaviour.

## **Case Study 2**

Mr A works as a fee earner in a large law firm, doing personal injury work. He is in poor health and responsible for looking after his elderly parents. As a result, he falls behind with his work. He does not explain to the firm that he is in difficulty in meeting work deadlines as he feels embarrassed. In one case he gives the client the impression during a telephone call that he has lodged proceedings on her matter, when in fact he has not, lodging them several days later. The matter comes to light after Mr A owns up to a colleague. The firm investigates the matter and reports it to us. The client is informed but is happy with the situation and the firm decides to give Mr A a warning under its own disciplinary process.

We decide it is necessary for us to fine Mr A in this case, and we are concerned about the risk he might pose to clients in the future. We therefore agree with Mr A that he should be made subject to a s43 Order. We also publish our decision.

### **Who makes the s43 order?**

Since the purpose of a s43 Order is to protect the public from risk, we will generally seek to make the order ourselves, rather than issuing proceedings before the SDT. This is because it is quicker and usually more cost effective if we make the order.

However, in some cases we may decide to issue SDT proceedings seeking a s43 Order. Our reasons for doing so may include:

- There are numerous other individuals, such as solicitors as well as you being referred to the SDT and therefore, in the interests of fairness, it is appropriate for the s43 Order to be considered by the SDT.
- Serious conflicts of fact need to be resolved by cross examination. Generally, we make our decisions about non-authorized persons based on the papers. We do not, as a general rule, need to ask the SDT to make the order simply because we are alleging a serious





offence, even where defended by you. However, this will be necessary where that defence, or the credibility of any witness, needs to be tested through oral evidence.

### **3.4 Decisions to disqualify a non-authorised person in an ABS**

Section 99 of the Legal Services Act 2007 gives us powers to disqualify you from being an employee or from taking up certain activities, such as acting as a manager, the Head of Legal Practice (HOLP) or the Head of Finance and Administration (HOFA). This is reflected in rule 3.1(c) of our Regulatory and Disciplinary Procedure Rules. Where we make a decision to disqualify, we notify the Legal Services Board (LSB) of our decision (rule 9.3 (a) of the Regulatory and Disciplinary Procedure Rules).

#### **How we make disqualification decisions**

Rule 5.1 of the Regulatory and Disciplinary Procedure Rules, states that we will only decide to disqualify you from acting as a HOLP, HOFA, manager or employee of a licensed body if we are satisfied that it is undesirable for you to engage in those positions.

Some examples of when we may be satisfied in this regard include where your conduct:

- has caused significant loss or harm
- involved an abuse of trust
- has caused harm to or to the interests of a vulnerable person
- was motivated by any form of discrimination
- was deliberate, pre-meditated, repeated or reckless
- has put the public confidence in the regulation of the profession at risk; or
- indicates you are unsuitable for the role being undertaken.

The following factors might support a decision not to disqualify you:

- the misconduct was committed as a result of a genuine mistake or misunderstanding
- you have cooperated fully with the SRA
- the conduct was trivial; or
- there is a low likelihood of repetition of the conduct.

We might also impose other outcomes in addition to disqualification, such as a fine. If we do not consider that disqualification is appropriate, we may consider that a disciplinary decision on its own is the right outcome.

#### **Case Study 3**



The Head of Finance and Administration of a large licensed body we regulate improperly transfers significant sums from a client account on several occasions to keep the firm's office account within the overdraft limits set by the firm's owners. If she does not do this, the firm will exceed its overdraft and she will not be entitled to a large performance bonus. The funds are replaced by the firm after our investigation. In view of her seniority and the abuse of her position of trust, we disqualify her from being any type of compliance officer or from being a manager in any firm we regulate. We also decide to fine her £10,000 and publish both decisions.

### **3.5 Referral to other regulators**

In addition, or instead of, we or the SDT may also decide that your conduct should be referred to another regulator. For example, if you are an accountant, your conduct might also be referred to the Institute of Chartered Accountants in England and Wales for them to consider if any action is needed.

### **3.6 How to request the removal of a s43 or disqualification order**

If there has been a material change in circumstances, you can apply to us under rules 7.1 of the Regulatory and Disciplinary Procedure Rules asking that a s43 order or disqualification order cease to be in force. We will consider if you can demonstrate behaviours of rehabilitation over a reasonable period of time.

## **Further guidance**

[Guidance on how we make decisions \(high-level\) \[https://higher-rights.sra.org.uk/solicitors/guidance/make-decisions-criteria-apply/\]](https://higher-rights.sra.org.uk/solicitors/guidance/make-decisions-criteria-apply/)

[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/)

[Guidance on approval of role holders \[https://higher-rights.sra.org.uk/solicitors/guidance/authorisation-approval-role-holders/\]](https://higher-rights.sra.org.uk/solicitors/guidance/authorisation-approval-role-holders/)

[Guidance on bringing criminal proceedings \[https://higher-rights.sra.org.uk/solicitors/guidance/disciplinary-bringing-criminal-proceedings/\]](https://higher-rights.sra.org.uk/solicitors/guidance/disciplinary-bringing-criminal-proceedings/)

[Guidance on issuing SDT proceedings \[https://higher-rights.sra.org.uk/solicitors/guidance/disciplinary-issuing-solicitors-disciplinary-tribunal-proceedings/\]](https://higher-rights.sra.org.uk/solicitors/guidance/disciplinary-issuing-solicitors-disciplinary-tribunal-proceedings/)

[Guidance on how we gather evidence in our disciplinary and regulatory investigations \[https://higher-rights.sra.org.uk/solicitors/guidance/investigations-gathering-evidence/\]](https://higher-rights.sra.org.uk/solicitors/guidance/investigations-gathering-evidence/)

## **Further help**

If you require further assistance, please contact the [Professional Ethics helpline](https://higher-rights.sra.org.uk/contactus) [<https://higher-rights.sra.org.uk/contactus>].