



## Guidance

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### Identifying your client when working in-house

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Updated: 18 November 2024 (Date first published: 1 March 2024)

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## Related case study

This guidance should be read in conjunction with the following case study: [Identifying your client when working in-house case study \[https://higher-rights.sra.org.uk/solicitors/guidance/identifying-client-working-in-house-case-study/\]](#).

## 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 \[#changes\].?](#)

## Who is this guidance for?

This guidance is for in-house solicitors, Registered European Lawyers and Registered Foreign Lawyers regulated by the SRA. Where we use the term solicitors in this document this includes Registered European Lawyers and Registered Foreign Lawyers.

## Introduction

In all settings, it is important to be clear about who your client is from the outset. This is straightforward in a law firm, but this is not always the case when working in-house.

This is important so that you are able to meet a range of professional obligations, including, taking appropriate instructions, managing conflicts and ensuring client confidentiality.

Principle 7 of the Standards and Regulations requires you to act in the best interests of your client. Accordingly, making sure you know who

your client is and being clear on whether you can act is key to discharging your regulatory obligations to act in their best interests.

You must balance this obligation against your other regulatory obligations, such as the need to act with independence (Principle 3) and integrity (Principle 5) and in a way that upholds the rule of law and public trust and confidence in the solicitors' profession (Principles 1 and 2). These duties take precedence over an individual client's interests.

You also have duties to ensure you do not act if you have a conflict of interest or a significant risk of conflict in accordance with rules 6.1 and 6.2. This may be a conflict between your own interests and that of the client or it may arise where you have more than one client with divergent interests. Further, you have an obligation to disclose material information to your client (rule 6.4). Alongside this, you also have an ongoing duty to keep the affairs of your client confidential (rule 6.3) unless such a disclosure is permitted by law.

For many in-house solicitors their client will be their employer. However, we recognise the variety and complexity of organisations and structures in which in-house solicitors operate, and that your client may vary from one matter to another. For example, if you work for an organisation with a complex structure, you may be asked to advise other companies within the group. This guidance sets out the key considerations for in-house solicitors regardless of the structure of your employer.

This guidance will help you accurately identify your client and so navigate any regulatory risks.

## **Acting for your employer**

'Employer' means the organisation you work for by virtue of your contract of employment or services contract. The terms of your contract may specify to whom you are to provide advice.

However, generally, your client will be the organisation itself: This is distinct from the individual or part of the organisation you may take instructions from or report to. You are required to act in the best interests of the organisation as a whole, rather than in the interests of specific individuals within it, including your line manager or an individual director or senior executive.

Your obligations to your 'client' should therefore be focussed on the needs of the organisation. This will depend on the type of organisation for which you work. For example, in a commercial organisation, it will include considering the organisation's corporate and strategic objectives and may involve consideration of its constitutional documents, such as articles of association. In a charity you will need to take into account its charitable purpose and objects; and in central government you should act in accordance with the Civil Service Code which specifies how

decisions made by ministers are communicated to and implemented by civil servants.

The ultimate representative of your client will generally be the part of the organisation responsible for strategy and decision-making at the most senior level and ultimately accountable for the organisation's operational risk and performance. This means for example, the governing body which, in different contexts, includes:

- Charities: Board of Trustees.
- NHS bodies: the Trust Board.
- Private and public companies: the Board of Directors.
- Central Government: the position here is more complex, so you should make sure you have clarity in any given situation if you are in any doubt.
- Local Authority: The Council.

Where the interests of the governing body are not aligned with the organisation's interests, again it will be the organisation's, rather than those of its governing body, that you need to act towards.

## **Confidentiality considerations**

You are generally required to disclose information within your knowledge, that is material to a matter, to your client. Your obligation to disclose means that you can't necessarily treat conversations with fellow employees or colleagues – even those providing you with instructions – as confidential, but may have to disclose them internally.

When taking instructions, you will also need to consider whether your client expects you to treat certain matters as confidential to one team or group within the organisation or whether you can disclose this more widely internally.

There may be circumstances in which compliance with our Principles means that you should disclose confidential information without your client's consent, such as reporting wrongdoing to an external authority.

For more details, read our guidance on the [duty of confidentiality](https://higher-rights.sra.org.uk/solicitors/guidance/confidentiality-client-information/) and on [reporting concerns about wrongdoing when working in-house](https://higher-rights.sra.org.uk/solicitors/guidance/reporting-concerns-wrong-doing-working-in-house-guidance/).

## **Acting for related bodies/third parties or colleagues**

As an in-house solicitor you may be asked to act for a body or individual related to your employer. This could include, for example:



- one or more companies within a group, for example your employer's holding or subsidiary company
- an individual member of your organisation's governing council or board

From a regulatory point of view, it is possible for you to act for your employer and another client as long as there is no actual or significant risk of a conflict with your employer's interests.

## **Conflicts of interest**

Conflicts of interest can arise from various scenarios, and it is critical for in-house solicitors to identify and manage them effectively.

These occur where your duty to act in the best interests of your client in relation to a matter conflicts with your own interests in relation to that or a related matter. These may also occur if you are acting on behalf of a separate entity/individual to your employer client and your separate duties to act in the best interests of your employer and of the separate entity/individual, in relation to a matter or related matters, conflict.

From a regulatory point of view, you are unable to act on a matter if there is a conflict or a significant risk of one arising.

In private practice we would expect a solicitor not to take on a new client if there would be a conflict with an existing client with whom there is a current retainer. In an in-house context there may be an ongoing relationship with one or more clients and decisions about how you manage ongoing work will depend on the circumstances you are in. In that situation, you should:

- speak to those seeking to instruct you to understand the potential or identified conflicts
- seek advice from your line manager or direction from a relevant senior colleague.

Where you consider that there may be a conflict, you should speak to those seeking to instruct you to discuss your concerns and consider possible solutions. This may mean that you are unable to act for one or other of the clients, in which case you need to consider solutions. This may be to engage external legal advice or alternatively you may be able to manage matters to prevent significant risk of conflict arising (see below).

Read our further guidance on [conflicts of interest \[https://higher-rights.sra.org.uk/solicitors/guidance/conflicts-interest/1\]](https://higher-rights.sra.org.uk/solicitors/guidance/conflicts-interest/1), including any exceptions which might apply.

## **Managing conflicts**

Example One: A conflict of interest could arise if you are acting for company A and its subsidiary B, and the two have different corporate objectives.

In managing this potential conflict, you may want to consider the following:

- How aligned are the interests of the subsidiary to the corporate objectives of the employer? For instance, these may be opposed if the subsidiary intends to grow its operations while the parent company envisages them being scaled down.
- What is the matter on which you are instructed? Conflicting objectives do not in and of themselves give rise to a conflict of interest unless these are relevant to the issues. For example, terms may have been agreed and all relevant information shared before your involvement. If you foresee the need for extensive negotiations or that the relationship between the parties may change significantly after contracts are signed, then you will need to consider whether you can act for both parties.
- Are there appropriate arrangements/agreements in place so that expectations relating to confidentiality surrounding the subsidiaries dealings are addressed?
- Are you in possession of information from one client which is material to the matter and which you would be required to disclose to the other if you also acted for them?
- Information sharing arrangements must be meaningful in order to properly ringfence information relevant to the deal. You should also consider carefully who in your team can access certain material to prevent accidental disclosure.

Example two: An own interest conflict could arise where a local authority in-house solicitor acts in an advisory capacity to a licensing committee and then is subsequently asked to act as an advocate for the local authority when the licensing committee's decision is appealed.

It is not always the case that this scenario will result in an own interest conflict – you will need to consider carefully your involvement in the original decision. For example, is there a risk that you have given the wrong advice to the client or wrong action was taken on their behalf? If this has happened see our guidance on [putting matters right](https://higher-rights.sra.org.uk/solicitors/guidance/putting-matters-right-own-interest-conflicts/) [https://higher-rights.sra.org.uk/solicitors/guidance/putting-matters-right-own-interest-conflicts/]. Where you consider that there is a risk of an own interest conflict, you should suggest your client seek external legal advice (you should not be involved in providing instructions) or advice from another in-house lawyer who has not had involvement and does not report to you.

## **Acting for colleagues on personal matters**

As an in-house solicitor you might be asked to advise on personal matters for colleagues who are employed at your organisation. From a regulatory perspective, you can do this as long as there is no conflict of interest, or no significant risk of one arising, between your employer and the colleague you are being asked to advise. However, there are important considerations to be aware of before you decide to act:

- Check the terms of your employment contract to ensure that there aren't any clauses that would prevent this. You should also consult any relevant policies or procedures in place within your organisation which may provide guidance on this. Advising a colleague where your employer prohibits this will place you in breach of the terms of your employment.
- Consider your professional obligations (such as confidentiality, conflict of interest and legal professional privilege). For example, should your colleague ask you for advice on their employment contract, this may place you in conflict with your duty to act in the best interests of your employer. It may also risk the need to disclose confidential information to the individual that you have obtained through your work.
- Consider whether you have any professional indemnity insurance cover and if so, whether the terms of your insurance would extend to advising colleagues on personal matters.
- Taking on legal work outside the terms of your contract of employment may amount to acting as a freelance solicitor. Find out more in our [acting as a freelancer](https://higher-rights.sra.org.uk/solicitors/guidance/preparing-sole-practitioner-regulated-independent-solicitor/) [https://higher-rights.sra.org.uk/solicitors/guidance/preparing-sole-practitioner-regulated-independent-solicitor/] guidance.

## **Working on behalf of your employer for members of the public**

As an in-house solicitor, in some circumstances you may provide services to members of the public on behalf of your employer. From a regulatory perspective, this is permissible under certain conditions.

For more information on acting for external clients as an in-house solicitor, please see our [unregulated organisations for employers of SRA regulated lawyers](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/] guidance.

## **Systems for instructions, advising and reporting**

While informal discussions with colleagues are common, a lack of controls around instructions can pose risks to the legal function. These risks can include:

- carrying out work for colleagues where you do not have all the relevant information.



- ad hoc advice or opinions being relied on out of context.
- misunderstanding of the risk level of instructions.
- failure to identify confidentiality and conflicts risks, or material information that you need to report.

In-house legal teams should make sure that colleagues know how to instruct and work with the team effectively. Having a system in place can also help make sure you are able to allocate/escalate instructions by reference to levels of risk. This system could be for example, a dedicated mailbox or a digital portal or platform. Alternatively, colleagues may be able to approach you or members of your team directly.

The responsibility for decision-making may vary depending on the type or nature of decision being made, and its associated risk level. You should consider who or which board/committee will be ultimately responsible for making decisions in relation to the matter. In less complex structures, responsibility may be split between different teams or individuals. Carefully consider how widely your advice will be circulated within the organisation, as it is relevant to questions around confidentiality and legal professional privilege (see below). You may need to take steps to ensure that advice isn't distributed widely, and have policies, procedures and training in place accordingly.

## **Setting expectations**

Formalising how instructions are received and managed can help to avoid situations where in-house teams are unfairly pressured by individuals who do not have authority to instruct them. Establishing clear methods to identify potential conflicts of interest and clarifying to whom the duties of confidentiality are owed will help to avoid any regulatory breaches.

Organisational policies and terms of engagement can enable in-house solicitors to inform the organisation of the ethical standards that underpin their work. Such policies may cover:

- The solicitor's duties to the employer and/or relevant client: clearly outline the responsibilities and obligations of the in-house solicitor
- Guidelines on confidentiality: provide detailed instructions on maintaining confidentiality and handling of sensitive information
- Instruction protocols: from whom the in-house solicitor takes instructions and how this authority can be delegated
- Managing conflicts of interest: outline procedures for addressing potential conflicts of interest within the group and what actions should be taken when conflicts arise.

## **Navigating legal and regulatory risks**



Legal and regulatory risks can arise at any time during the lifetime of a matter you have been instructed to advise on. Establishing ways to proactively identify, monitor and record such risks will help to ensure that they can be managed and addressed appropriately which will benefit both the in-house legal team and organisation.

Additionally, by analysing risk records, you can identify patterns and trends that may highlight training needs within the in-house legal team and across the organisation. This not only supports the team's capabilities but also aligns with your obligation to keep the client well-informed of material information that could impact their decision-making.

Regardless of your seniority, it is important you are familiar with the procedures for reporting any issues that present a risk to the organisation's best interests or your regulatory obligations. All solicitors should have clear channels by which they can raise and escalate any concerns they might have and should be protected against any potential detriment for reporting these issues. This supports you in upholding your duty to act in the best interests of your client while maintaining compliance with legal and ethical standards, including your independence and integrity.

For more information on reporting concerns and establishing internal reporting lines, please refer to our guidance for in-house lawyers on [reporting client wrongdoing](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/>].

## **Legal Professional Privilege**

As legal professional privilege belongs to the 'client', it is particularly important in this context to identify who this is – and in particular the 'client group' of individuals who are authorised to request and receive your legal advice on the client's behalf – and to manage how relevant advice or correspondence containing legal advice or relating to litigation are labelled, stored and shared within the organisation to avoid inadvertent waiver or loss of privilege.

For more information on these issues see our separate advice on [legal professional privilege for in-house lawyers](https://higher-rights.sra.org.uk/solicitors/guidance/professional-privilege-in-house/) [<https://higher-rights.sra.org.uk/solicitors/guidance/professional-privilege-in-house/>].

## **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:** There can be significant challenges with identifying clients within organisational structures, particularly within complex structures.

**We did:** We provided greater clarity over the role of governing boards within client organisations and provided examples of different types of complex organisational structure.

**You said:** The guidance needs to have further information on managing conflicts of interest. It also needs to provide clarification on acting for related bodies or individuals connected to the employer.

**We did:** We expanded the guidance in relation to solicitors acting for third parties/related entities, such as holding or subsidiary companies, and the case study and criteria for determining when this is permissible without conflicts of interest.

**You said:** We need further information and clarification on advising colleagues on personal matters.

**We did:** We amended our guidance and expanded the section setting out considerations to be aware of before deciding to act for colleagues on personal matters including, addressing employment contract considerations, professional obligations like confidentiality and conflict of interest, and insurance coverage.

**You said:** There needs to be clarity and more information on legal professional privilege.

**We did:** We created a new piece of guidance focused solely on legal professional privilege for the in-house solicitor, given the importance of the issues across all of the guidance areas.

We also introduced an annex with a checklist for receiving instructions, offering a practical resource for ensuring thorough consideration of all necessary factors when taking on new work.

## Related guidance

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

- [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-) [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/)
- [Understanding in-house solicitors professional obligations employer](https://higher-rights.sra.org.uk/solicitors/guidance/understanding-in-house-solicitors-professional-obligations-employer/) [<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/>]