

SRA Guidance for in-house solicitors (November 2024)

The SRA has issued guidance for in-house solicitors, following its draft guidance and consultation in March 2024.

The guidance is helpful both for in-house solicitors and their employers (particularly for governing boards, chief executives and directors of organisations which are not regulated by the SRA) to help understand the SRA's regulatory regime and how this might impact on in-house lawyers' work in practice.

Employer guidance – understanding in-house obligations

- Guidance for employers (HR professionals and managers, as well as senior and non-execs) on the SRA's regulatory framework and what in-house solicitors can / cannot be expected to do
- In-house solicitors should be able to discuss their expectations with their employer: e.g. need access to appropriate training and resources to keep themselves and any teams that they manage up to date and competent
- Employers to consider insurance (without mandatory PII, could D&O or other insurance provide coverage?)
- **New separate document for governing boards, chief executives and senior officers**

Legal professional privilege (“LPP”) when in-house

Guidance on:

- types of LPP and how in-house solicitors can identify where it may apply, including practical advice on how to track and protect LPP
- exceptions e.g. iniquity exception where no duty of confidence (so no LPP)
- Waiver/loss of privilege, including sharing material with third parties
- Labelling, including proper use and function of LPP labels
- Investigations and the scope of LPP
- Reporting wrongdoing and the SRA's treatment of information

Internal Investigations (applies to all SRA regulated firms and all solicitors)

- Guidance on key principles and standards for solicitors who are instigating or conducting an internal investigation, with information on risks of poor conduct/report of an investigation
- Importance of setting out the scope of the investigation, the roles of those involved and the processes to be followed for evidence gathering, document and data management, confidentiality and privilege, decision-making
- Importance of fair treatment and support for individuals involved
- In-house solicitors need to be particularly conscious of their duty of independence, and when to report concerns

Identifying your client (applies to in-house solicitors, including RELs and RFLs)

- Guidance to help in-house solicitors identify who their client is for the purpose of complying with their professional obligations, with example scenarios
- Introduction of an annex with a checklist for receiving instructions
- Section on identifying and managing conflicts of interest has been substantially rewritten, covering different potential conflict scenarios – such as acting for third parties or related entities and own interest conflicts – and what to do in the event of an issue
- Greater detail and clarity is given on confidentiality considerations, and on acting for colleagues on personal matters
- Guidance on the need for proper systems, policies and procedures to record terms of engagement, instructions, advice, decision-making, and to monitor monitoring legal and regulatory risks.

Reporting concerns about wrongdoing (applies to in-house solicitors, including RELs and RFLs)

- Guidance for solicitors in balancing duties when faced with concerns around an organisation's actions or decisions
- Practical guidance and clarification of when to report or escalate concerns is included, with examples of conduct that would require internal or external reporting, and guidance on reporting lines and whistleblowing procedures. This includes considering resignation, and what to do when issues remain persistently unresolved
- Importance of clear reporting lines, processes and procedures on how to raise concerns internally and externally – a “speak up” culture
- Solicitors should not turn a blind eye to, or be complicit in, any wrongdoing, including drafting documents which further that wrongdoing

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