

# Publication of regulatory and disciplinary decisions

## Policy statement

### Introduction

1. The Solicitors Regulation Authority (SRA) will publish regulatory decisions when it considers it to be in the public interest to do so.
2. In developing this policy we have had regard to the principles of good regulation:
  - Proportionality
  - Accountability
  - Consistency
  - Transparency
  - Targeting
3. We are convinced that publishing our regulatory decisions wherever possible is an important contribution to ensuring that what we do is transparent. It will inform users of legal services, and help others to hold us accountable by helping them to assess whether we are acting proportionately and consistently.

### Decisions that may be published

4. Regulatory decisions that may be published include:
  - Findings pursuant to section 44D of the Solicitors Act 1974 (when in force) resulting in a rebuke or a direction to pay a penalty;
  - The imposition of practising certificate conditions when they are first imposed or materially varied (and continuing the current policy of disclosing practising certificate conditions on enquiry);
  - Decisions to prosecute at the Solicitors Disciplinary Tribunal (SDT) once the Tribunal has certified a prima facie case;
  - Settlement Agreements<sup>1</sup> and Issue Agreements<sup>2</sup> unless otherwise stated in the Agreement;

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<sup>1</sup> Settlement Agreements record the outcome of an investigation agreed by the SRA and a solicitor.

For alternative formats, email [info.services@sra.org.uk](mailto:info.services@sra.org.uk) or telephone 0870 606 2555.

- Intervention decisions<sup>3</sup> and the legal basis for the decision.
- 4A. The nature of the decision to publish in the public interest will vary depending on the decision. Findings of misconduct pursuant to section 44D above require a statutory decision to publish and that will usually be part of the adjudication. In contrast, decisions to intervene have long been published as an essential part of informing clients that their solicitor's firm has been closed down. Similarly, a referral to the SDT, once a prima facie case has been certified, will lead to a public hearing, and conditions on practising certificates are already publicly available to telephone enquirers. Accordingly, whilst each decision in these circumstances by a staff member at caseworker level or equivalent in the relevant unit or at adjudication as appropriate will be taken on its own merits, it is expected that decisions will usually be published unless such a staff member considers that one or more of the factors at paragraph 8 below would make such publication inappropriate.
5. Decisions will not generally be published when they are the subject of an outstanding internal appeal or appeal to the Master of the Rolls, High Court or SDT.
6. Intervention decisions and the legal basis for the decision will generally be published even if there is an application to the High Court for the intervention notice to be withdrawn.

### **Criteria for publication**

7. Factors which support a decision to publish include:
- The importance of transparency in the SRA's decision-making processes;
  - The importance of providing information about regulatory action against solicitors to enable, for example:
    - prospective clients to make informed choices about whom to instruct;
    - clients and others to decide whether behaviour of concern should be reported to the SRA;
  - The need to maintain public confidence in the regulatory system by demonstrating what regulatory action is being or has been taken and why.
8. Factors which support a decision to keep a decision confidential include:
- Potential damage to the underlying purpose of a Settlement or Issue Agreement, such as where substantial redress may be provided to

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<sup>2</sup> Issue Agreements record agreement on one or more issues in the course of a continuing investigation.

<sup>3</sup> An intervention involves the SRA taking possession of the money and documents in a solicitors' practice.

clients or others but there is a risk of prejudicing the position of the solicitors or others in related litigation or potential claims;

- Inability to publish without:
    - disclosing a client's confidential or legally privileged information;
    - disclosing a solicitor's confidential medical condition or treatment;
    - prejudicing civil or criminal proceedings;
    - a significant risk of breaching a person's rights under Article 8 of the European Convention on Human Rights.
9. Published information will usually be limited to a short statement of the decision with brief factual details such as the basis of a finding under section 44D of the Solicitors Act 1974 and the sanction imposed, the reasons for imposition of a practising certificate condition, or the basis of a referral to the SDT. The solicitor's name and practising details (at the time of the matters giving rise to the decision and at the time of publication) will usually be provided.
10. Decisions will normally be published promptly but the SRA retains discretion to publish them or parts of them at a later time. This may be necessary, for example, if an investigation or prosecution is sensitive, such as where there is a risk of prejudice to other proceedings or regulatory activity.
11. Other decisions or information may be published if the SRA considers it in the public interest to do so. For example, in relation to an investigation giving rise to significant public concern, it may be in the public interest to disclose how the investigation is progressing or that it has concluded without an adverse finding against the solicitor.
12. Information about internal decisions of the SRA which are not otherwise in the public domain will be removed from the SRA website three years after publication.

## Notes

1. Reference to "solicitor" includes solicitors' practices and all persons who may be affected by the SRA's decisions such as Registered European Lawyers, Registered Foreign Lawyers, Recognised Bodies and unadmitted persons subjected to investigation or application pursuant to section 43 of the Solicitors Act 1974.
2. Reference to "investigation" includes all disciplinary and regulatory applications, investigations and prosecutions.
3. This policy applies to investigations commenced on or after 1 January 2008, save that decisions to refer a solicitor to the SDT may be published immediately upon adoption of this Statement (in accordance with paragraph 4). For the purposes of this policy the commencement of an investigation includes the sending of a letter to a solicitor requiring the

production of documents or information pursuant to practice rules or a written request for a solicitor to provide information or an explanation of a matter.

4. The new approach established by this Statement supplements existing processes.
5. Reference to “the SRA” in this Statement includes those exercising delegated decision-making powers on its behalf.