

Guidance

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SRA approach to health issues and medical evidence

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Status

This guidance is to help those we regulate understand how we approach health issues in our regulatory work and the medical evidence we might ask for.

Who is this guidance for?

Anyone who wants to understand how we manage health issues in our regulatory work. This includes anyone we are investigating who wishes to raise a health issue with us.

Purpose of this guidance

This guidance is to help you understand the approach we take to health issues in our regulatory work, including the medical evidence we might ask for. It covers health issues reported to us by a solicitor, and those which lead to an investigation or emerge during an investigation.

You may also find the following guidance helpful:

- Our guidance on character and suitability [<https://www.sra.org.uk/become-solicitor/character-and-suitability/>] to be a solicitor, and on applying for a practising certificate [<https://www.sra.org.uk/mysra/manage-account/individual-account/step-by-step-guides/apply-practising-certificate/>] , which explains when you need to report a health issue to us.
- Our reasonable adjustment policy [<https://www.sra.org.uk/sra/equality-diversity/diversity-policies/policy/reasonable-adjustment-policy/>] and if we are investigating you [<https://www.sra.org.uk/solicitors/guidance/investigating-you/>] .
- Our your health, your career [<https://www.sra.org.uk/solicitors/resources/your-health-your-career/>] section.

Health issues and our regulatory work

In this guidance we refer to health issues, which can include physical and mental health conditions and disabilities.

Health issues can affect a solicitor's ability to exercise appropriate legal or ethical judgement and practise safely. In such cases, a solicitor's health issues can pose risks to themselves, to clients and the public and/or to colleagues.

Health issues can also be a regulatory concern if they affect a solicitor's ability to engage with us about regulatory matters. For instance, by taking part in an investigation or disciplinary process.

Most solicitors who experience ill health or disability during their working lives continue to practise safely without us needing to get involved. They are often able to manage any impact on their work by limiting or restricting their practice as needed, or obtaining help from their employer. This can include agreeing reasonable adjustments.

There may be occasions when your health makes it difficult for you to practise safely or to engage with us about regulatory matters. This document signposts to our guidance on when you should report a health issue to us. It also explains:

- How we deal with health issues when we are in contact with you about a regulatory matter.
- When and how we will obtain medical evidence.
- When we may need to impose conditions on your practice because of a health issue.

Reporting health issues to us

As a solicitor, you have an ongoing responsibility to make sure you are meeting our character and suitability requirements. Our guidance on how we assess individuals' character and suitability [<https://www.sra.org.uk/become-solicitor/character-and-suitability/>] to be a solicitor explains that:

- Where relevant, we take health conditions and how they are being managed into account when determining suitability.
- You should tell us about any health issue which may affect your ability to practise safely, or to comply with our regulatory requirements, as and when it arises.
- You do not need to tell us about a health condition if you are satisfied that you are taking appropriate steps to address the condition. And to mitigate any regulatory risks it poses.



- If you are not certain that you can safely manage any risk that a health condition may pose, you should tell us about it.
- The need to meet our character and suitability requirements is ongoing. So individuals should tell us about anything relevant that emerges after they have been admitted as a solicitor.

Our guidance on applying for a practising certificate

[<https://www.sra.org.uk/mysra/manage-account/individual-account/step-by-step-guides/apply-practising-certificate/>] also reminds solicitors to tell us about any health issue that may affect their ability to practise safely. Or to comply with their regulatory obligations.

If you work in a firm and they renew your practising certificate on your behalf you can tell us about such issues directly or via your firm.

If you are a manager of a firm and you are concerned that a solicitor at the firm is not managing a health issue appropriately, you should contact us.

You must tell us about health issues that could affect your ability to practise safely or to comply with our regulatory requirements. This applies whether or not you are being investigated or involved in disciplinary proceedings.

Health issues that could affect you in future

If you have a health condition that could affect your practice in future, we encourage you to discuss it with your employer at the relevant time. You can then plan how to arrange suitable support where necessary to help you manage your condition. This applies to both solicitors and aspiring solicitors.

If you think you may not be able to fully address a health condition's impact, you must tell us when you apply for admission as a solicitor (or earlier). We can then work with you, and where relevant with your employer, to explore the options and consider if any conditions on your practice are needed.

Health issues in an investigation

Find out more at what happens when we investigate someone

[<https://www.sra.org.uk/solicitors/guidance/investigating-you/>].

We recognise that the regulatory process can be a stressful and anxious time for those who we are investigating. This includes those who are particularly vulnerable because of poor physical or mental health. Sometimes the regulatory process itself can trigger health issues or make them worse.

In such situations, as a responsible regulator, we need to balance carefully the public interest against the interests of the individual. This involves us

taking a consistent, fair and proportionate approach when health issues are raised.

We consider health issues in a variety of contexts such as:

- Requests made for an extension of time, postponement of the proceedings.
- A reasonable adjustment to be made.
- Mitigating features to be considered...
- or, in certain exceptional cases, a stay of proceedings altogether.

Where a question of health has been raised, we will always apply a careful evaluation in assessing the potential impact on the case overall and next steps.

In many cases, we can quickly resolve health issues when they arise. For example, where someone we are investigating requests an extension of a week to respond to us because they are suffering from the 'flu'. Here we would usually agree this without the need for further evidence.

Similarly, a hospital appointment letter will be sufficient evidence of an operation where extra time has been requested. And a diagnosis of a health condition could usually be confirmed to us by a GP letter.

However, in less straightforward cases, there are occasions when we might require a more detailed medical report before we make a relevant decision. (See medical reports) [#medical]

Raising a health issue with us during an investigation

We encourage those who we are investigating to raise, as soon as possible, any concerns they have about their health.

This could be at different points of the regulatory process. For example, early on at the investigation stage. Or later on when in more serious cases matters might need to be resolved by proceedings before the Solicitors Disciplinary Tribunal (SDT).

Health issues are often raised by a respondent as a defence to the allegation, or as mitigation. In such cases, we will consider whether the medical evidence provides a complete or partial defence to the allegation. Or whether it should be treated as mitigation. We will also look at whether the health issue creates any ongoing risk.

We may need to address that risk (for example by imposing conditions on practice) either as part of the conclusion of proceedings or independently of them.

There may be cases where health issues are raised as a reason why a solicitor cannot take part in an investigation or disciplinary process. Or requires special treatment to do so, such as anonymity. This is particularly significant where health issues have the potential to impede due process because a hearing cannot fairly take place in public or at all.

Our approach to managing health issues in an investigation

We aim to handle concerns over solicitors' health in a way that is sensitive and appropriate. We take all the circumstances into account including medical evidence and the individual's own account of the impact of their health issue. We make reasonable adjustments where appropriate and balance fairly the interests of the parties and the public interest.

Our disciplinary casework processes are intended to maintain public protection while making sure solicitors receive a fair hearing about health issues. And have appropriate opportunities to provide evidence, including medical evidence.

If a health issue means you are finding it difficult to engage with us in an investigation, we will try to help. For instance:

- When we contact someone about an investigation we advise them to tell us about any health issues that may affect their ability to engage with the process. We also signpost them to sources of support including LawCare [<https://www.lawcare.org.uk/>]
- We train all our staff involved in discussions with people under investigation to recognise and explore any health issues. And to explain how we can work with individuals to assess their ability to engage with the investigation and make any reasonable adjustments.
- We respect individuals' contact preferences as far as practicable.
- We allocate all cases involving health concerns to a member of our team who is a subject matter expert with specialist training in and experience of health cases.
- We carefully consider medical evidence early in the investigation process, and ensure that medical expertise is obtained where needed.
- Where appropriate, we aim to resolve cases without continuing an investigation, using suitable conditions to protect the public where needed.

We recognise that restricting a solicitor's ability to practice because of a health issue is a significant step which should only be taken where necessary for public protection. Any action we take will be aimed at protecting clients and the public and will go no further than is required to do so. (See health issues and conditions on your practice) [#issues]

Medical reports

We may require a medical report to:

- Inform an investigation
- Help us understand how to deal with a health issue during an investigation
- Support a decision on whether and how to impose conditions on someone's practice.

We will give careful consideration to whether:

- The medical evidence already available is sufficient
- If further clarification or detailed information is required
- Or expert medical opinion is necessary.

In each case we will consider whether the evidence available is sufficient for the relevant decision to be made by us and, if not, what further information is required to correct this. Other parties, such as the SDT, may also expect detailed medical reports to support certain applications made to them.

Responsibility for obtaining medical evidence usually sits with the individual who is the subject of investigation or proceedings. However, we will consider whether to obtain our own expert evidence or consider joint instruction of an expert where appropriate. If you are unable to obtain your own medical evidence you should contact us.

What we look for in medical reports

Medical reports help us to clearly understand:

- Any underlying health issues you may have.
- The likely impact these may have on our investigation (or in some cases, on any subsequent proceedings at the SDT).
- How we can help you.

Each medical report is fact specific but depending on the circumstances of the case, a good medical report allows us to consider:

1. Whether the health issue raised is likely to have a reasonably significant impact on case progression.

For example, because you are not well enough to instruct solicitors or make representations in your defence on your

own behalf. This can be either while we are investigating you or in proceedings before the SDT.

2. Any reasonable adjustments we can make in order to mitigate the effects of the health issue.

For example, in a long-standing illness where we have clarification of prognosis and a time-frame for recovery. Here we might be able to agree a timetable for progression of the case.

3. Whether the health issue is so severe that it might impact on the disposal of the case.

For example, this might arise in the case of a terminal cancer diagnosis or severe mental illness exacerbated by proceedings before the SDT. And where a request is made for a stay or discontinuance of the proceedings. If a stay is granted, we will normally keep the situation under regular review to identify whether and when the matter can proceed. And the medical evidence that underpinned that decision.

Proceedings must be fair but they should also not become open ended. The public interest requires efficient and timely progression of cases and case disposal. It follows that our position on any such application is that issues of health should not be a reason to stay or discontinue proceedings. This is except in exceptional cases where very cogent medical evidence will be required in support.

In some cases we might consider dealing with the case by way of a regulatory settlement agreement (RSA) or an agreed outcome at the SDT (AO). This allows us to protect consumers and the public interest by reaching an appropriate outcome swiftly and without the need for a contested hearing or adjudication process. This will generally only be appropriate where full admissions have been made to the underlying conduct allegations.

Our RSA guidance [<https://www.sra.org.uk/sra/decision-making/guidance/disciplinary-regulatory-settlement-agreements/>] makes it clear that for reasons of public confidence, we will generally refer serious dishonesty allegations to the SDT. This is for the individual to be struck from the roll.



However, in exceptional cases where we have cogent medical evidence, we might also consent to an RSA/AO. This is where the public interest which could otherwise be satisfied by SDT findings is satisfied by what is proposed in the RSA/AO.

4. Whether the health issue might have an impact on findings of fact by us or at the SDT or provide mitigation which is sufficiently compelling to indicate a different course to be taken or outcome to be reached in the case.

This might be as the health issue has meant that the respondent was so unwell that they could not have known. For example, that they were acting dishonestly at the time and therefore do not meet the requisite test.

Instructing medical experts

The onus to obtain medical evidence in support of the position or defence sits with the individual under investigation or has proceedings before the SDT. We will explain this to respondents if the question arises.

However, we will also consider whether we would wish to obtain our own expert evidence, for instance where a health issue is material to our prosecution of a case. Particularly in cases before the SDT there may be circumstances (generally, relating to current medical condition and prognosis) where it is appropriate and helpful to consider instruction of a joint expert. If so, we will discuss this with you.

Where you have produced evidence already, we might ask for further evidence. For example, where an existing expert report about a mental health condition report is extremely comprehensive but does not address prognosis then we might ask for clarification on this. Time frames for recovery are always relevant where a condition is relapsing and remitting.

Where a medical report has already been prepared, we will make an assessment of the quality of the report. For example, a report by a regulated and registered health care professional is likely to carry more weight with us than a report by an individual who is not subject to the rigours of revalidation and the standards required by health regulators.

Where you are instructing your own medical expert to prepare a report for consideration by us or by the SDT, you and they might like to consider:

- The experience / qualifications of the expert and whether they have prepared similar reports.



- That depending on your health issue, they are a specialist in the correct and relevant field.
- That their professional qualifications can be verified.
- That they receive clear instructions on the issues which need to be considered by them and us or the SDT if proceedings have reached that stage.
- That the author of any report understands that their duty is to the Court/ SDT and not to those instructing them.
- That they may be cross examined on the contents of their report.
- Confirmation in any report that it is based on records and/ or a face to face consultation.
- Confirmation that all relevant material has been considered such as GP records or occupational health reports.
- Clarification of whether any report is based on observation and treatment at the time of events or retrospectively.
- That in psychiatrist reports the international classification of diseases (ICD) rating, which will denote the seriousness of the condition, is clearly set out.
- That any source material is identified and where appropriate attached.
- That a prognosis and estimated timeframe for recovery is provided in any report.
- Any reasonable adjustments that could be recommended to assist with the progression of our investigation or any proceedings before the SDT.
- In exceptional cases, an opinion on whether meaningful participation is or is likely to be possible in the future in any investigation or proceedings before the SDT.

Situations where we might obtain our own medical report

As stated above, medical evidence is usually obtained by the individual who is the subject of investigation or proceedings before the SDT. We would not usually produce evidence in advancement of a defence application or submission.

That said there are some instances where we might obtain our own report. This is especially where it would be in the public interest or in the interests of justice to do so.

In some instances, the particular facts of the case might require another expert to provide an opinion which requires us to obtain one as well.

Or this might include the situation where the individual is unable to obtain evidence for themselves. For example, where a GP has stated that an individual is particularly vulnerable because of their mental health and too unwell to arrange to obtain their own report.

Further examples would be where a time-critical and sensitive case listing is put in jeopardy because the medical evidence or report produced by a respondent is inadequate. Or, where despite repeated requests, information has not been forthcoming and the case cannot proceed justly without it.

Where a medical assessment has been directed or agreed, we expect the individual to attend. If either on a repeated basis or without good cause, they do not attend, then we may seek to rely on any existing records alone. And/or we may ask the SDT to draw appropriate inferences from the failure to attend. We will seek to avoid any unnecessary delays, including through our approach to applications for adjournments to arrange attendance.

The weight to be afforded to medical evidence is related to its provenance and the credibility of the practitioner who drafted it rather than by the individual or organisation producing it. It follows that a medical report that we obtain is not intrinsically more reliable than one produced by someone who we are investigating. Or who is the subject of proceedings before the SDT.

We also consider that where medical opinions vary, decision makers in a case (including the SDT) are well placed to assess competing considerations in forming a reasoned judgment.

Health issues and conditions on your practice

Where we apply conditions on the practice of an individual to address risks arising from a health condition, we do so in line with our established guidance. We recognise that any conditions we impose must be specific and targeted towards the risks posed by the solicitor's continued unrestricted practice. They must also be clear and unambiguous, so the solicitor understands what is required of them and compliance can be monitored.

In some cases interim conditions might be appropriate to allow the individual to practise safely and carry on working pending the final outcome of an investigation.

In other cases, conditions can be imposed as a final outcome to an investigation. These might allow us to monitor an individual's health by the production of regular medical reports over a certain period of time. This is so we can decide when they are fit to practise without restriction. Any conditions imposed will need to address the specific risk the individual poses as well as being reasonable, proportionate, realistic and measurable.

For example, we may apply conditions to:

- Address the cause of a health issue - such as requiring you to undertake specified appropriate treatment in line with medical advice if you wish to continue to practise.
- Manage the risks posed by a health issue – such as requiring your work to be supervised by a manager who is aware of the risks linked to your condition. Or where necessary, restricting the range of legal services and tasks that you can provide.

We will not take action on health grounds unless we have medical evidence to justify it. But in some cases we may need to restrict an individual's practice on conduct rather than health grounds in order to protect clients and the public.

Detailed questions and answers about health issues and medical evidence

Open all (#)

Health conditions that affect your ability to practise

I have discovered I have a health condition that could affect my practice. Will the SRA take action against me?

We do not take regulatory action against individuals simply because they have a health condition. Most solicitors are able to manage the impact of their health conditions themselves, by limiting or restricting their practice as needed. They may also get help from their firm or employer, including reasonable adjustments to enable them to continue to practise.

We will only take action in situations where:

- A solicitor's health condition means they cannot safely practise or engage with our regulatory processes, and
- The solicitor has not taken their own steps to sufficiently address the impact of their condition. For instance, by restricting their practice or obtaining the support they need from their firm
- And we are concerned that as a result, the solicitor poses significant risks to clients or the public.

If for any reason you are concerned that you may not be able to fully address the impact of a health condition, you must tell us. We can then work with you (and where relevant with your employer) to explore the options. And consider whether we need to place any conditions on your practice.



I have a fluctuating health condition. Do I need to provide recent medical evidence every time I renew my practising certificate?

If you think a health condition affects your ability to practise safely or to comply with your regulatory obligations, you must tell us. You do not need to provide medical evidence unless we ask you to.

If it is not affecting your ability to practise safely or to comply with your regulatory obligations, you do not need to tell us about it or provide medical evidence.

If you are not certain that you can safely manage any risk that your health condition may pose, you should let us know.

Under investigation with health issues

I am being investigated and have a health condition but I do not have the resources to obtain medical evidence about my condition. Can the SRA obtain the evidence for me?

We have published guidance on instructing medical experts [<https://www.sra.org.uk/solicitors/guidance/sra-investigations-health-issues-and-medical-evidence/>]. This says that responsibility for obtaining medical evidence in support of the position or defence of an individual who is the subject of investigation or proceedings sits with that individual.

However, we will also consider whether to obtain our own expert evidence, for instance where a health issue is material to our prosecution of a case. There may be circumstances where it is appropriate to consider instruction of a joint expert, and if so we will discuss this with you.

I am being investigated and conditions have been imposed on my practice while I wait for an NHS assessment of my health condition. How long will these conditions stay in place?

We may need to restrict an individual's practice in some circumstances while a health assessment is being obtained because of potential risks to clients or the public.

We aim to minimise the time these conditions are imposed. We review conditions regularly and you may be able to appeal our decision to impose conditions. Take a look at our Conditions on practising certificates and registration [<https://www.sra.org.uk/solicitors/enforcement/practising-certificate-pc-conditions-suspension-removal-roll/conditions-appeal/>] guidance.

I am being investigated and the stress of this is making my health condition worse so I don't feel able to take

part in the investigation. What should I do?

You should tell us as soon as possible and provide any medical evidence you have. We will signpost you to potential external sources of help and support. You can find information about some sources of help on our 'Your health, your career' [<https://www.sra.org.uk/solicitors/resources/your-health-your-career/>] pages.

We will consider the evidence about your health condition carefully and talk to you about the appropriate way forward. We will also look at whether we need to take any immediate steps to protect your clients and the public.

We aim to handle concerns over solicitors' health in a way that is sensitive and appropriate, fairly balancing the interests of the parties and the public interest. We take all the circumstances into account including medical evidence and will make reasonable adjustments where appropriate.

You can read more about our approach in the how we manage health issues in our investigations [<https://www.sra.org.uk/solicitors/guidance/sra-investigations-health-issues-and-medical-evidence/>] section of our approach to health conditions guidance.

I am being investigated for alleged rule breaches caused by my health condition. What sort of action might the SRA take? Could I be removed from the roll?

We recognise that restricting a solicitor's ability to practice is a significant step which should only be taken where necessary for public protection.

We will consider whether the medical evidence provides a complete or partial defence to the allegation, or whether it should be treated as mitigation. This will help inform the sort of action we take.

If a solicitor is not managing a health issue affecting their ability to perform certain tasks, and adversely affecting clients, we can impose conditions on how they work. These help to make sure the individual only handles those tasks with appropriate controls and support in place.

We cannot remove a solicitor from the roll solely for health reasons. However, we can refuse to issue a practising certificate if we think that is the only reasonable way to manage risks to clients or the public.

Trainee solicitor with health condition

I am training to be a solicitor but I have a health condition that could affect my ability to practise safely in future. What should I do?

Most solicitors with a health condition are able to manage its impact - either on their own or with support from their firm or employer. And continue to

practise safely without us getting involved.

If you have a health condition that could affect your practice in future, we encourage you to discuss it with your employer at the relevant time. You can then plan how to arrange suitable support where necessary to help you manage your condition. This applies to both solicitors and aspiring solicitors.

If you think you may not be able to fully address a health condition's impact, you must tell us when you apply for admission as a solicitor (or earlier). We can then work with you, and where relevant with your employer, to explore the options and consider if any conditions on your practice are needed.

Transparency in the way we regulate

As set out in the next section below any information we receive about the health of an individual will generally be confidential. And details relating to an individual's health will usually be removed from decisions that we publish.

Although discrete matters of health will generally be considered confidential, we are committed to being transparent and open about our processes.

We adopt the 'open justice principle' which means that, in general, justice should be administered in public and:

- Hearings should be held in public
- Evidence should be communicated publicly
- Fair, accurate and contemporaneous media reporting of proceedings should not be prevented unless strictly necessary.

The fundamental principle of open justice applies as much to disciplinary proceedings before the SDT as it does to court proceedings. (SRA v Spector [2016] 4 WLR 16 at [26]).

The burden of establishing the need for any departure from this principle is on the individual seeking it and must be established by clear and cogent evidence. Where issues of health are raised, for example, to a decision to publish a decision by the SRA or SDT, more often than not the public interest will outweigh the interests of the individual.

As set out below, where we decide to disclose personal health information, we will always inform the individual who is the subject of the disclosure in advance. And where possible, agree the nature and scope of the disclosure, unless there are compelling public interest reasons not to do so.

Confidentiality, publication and disclosure

Any information we receive about the health of an individual will generally be, by its nature, confidential. This is as well as being afforded greater protection under data protection legislation.

Details relating to an individual's health will usually be removed from any decisions that we publish [<https://www.sra.org.uk/sra/decision-making/guidance/disciplinary-publishing-regulatory-disciplinary-decisions/>] following the conclusion of an investigation. If necessary, we can produce a public and private version of any decision.

Similarly, if a health issue is canvassed in SDT disciplinary proceedings then they would usually go into private session for the duration of any deliberations concerning it.

However, there will be cases where a decision to disclose health information is necessary in order for us to fulfil our statutory function of protecting the public interest. In such cases this will be strictly limited to only the minimum amount of information necessary to fulfil the purpose of the disclosure.

Examples of where we may consider that limited disclosure relating to a health issue is warranted include:

- Where we need to explain a decision or reasons for it in very broad terms, with generic reference to the individual's 'health' or 'medical condition'.
- Where in proceedings before the SDT there are co-respondents in a case. And the information meets the test for disclosure or it is otherwise in the interests of justice to make disclosure.
- Where there are safeguarding concerns, for example where an individual is at risk of self-harm.
- Where there is a statutory obligation on us to disclose the information, for example where a request has been made from another regulator.

We will always inform the individual who is the subject of the disclosure beforehand and where possible agree the nature and scope of the disclosure. This is unless there are compelling reasons not to do so.

For example, where another individual may be put at risk or where prejudice may be caused to an ongoing investigation by us or another organisation.

Further help

If you have questions about this guidance please contact the Professional Ethics helpline. [<https://www.sra.org.uk/contact-us>]

See our other online resources Your health, your career

[<https://www.sra.org.uk/solicitors/resources/your-health-your-career/>] which covers a wide range of health-related issues.