

Guidance

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Acting with honesty

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Status

This guidance is to help you understand your obligations and how to comply with them. We may have regard to it when exercising our regulatory functions.

Who is this guidance for?

SRA-regulated firms, their managers, role holders and employees.

Purpose of this guidance

This guidance sets out how we approach the requirement to act with honesty found in Principle 4 and the test we apply when deciding if a person is dishonest.

This guidance should be read in the context of decision making at the SRA and other guidance documents listed at the end of this document. It is a living document and we will update it from time to time.

General

Principle 4 requires you to act with honesty. While someone acting dishonestly can be said to be acting without integrity, the concept of integrity is wider than just acting dishonestly

[<https://www.sra.org.uk/solicitors/guidance/acting-with-integrity/>].

The courts have made clear that the standard of honesty required for solicitors is that they may be "trusted to the ends of the earth" (*Bolton v Law Society* [1993] EWCA Civ 32). This is because solicitors, for example:

- are relied on by the courts to be honest in how they deal with cases
- often give important evidence in court cases
- deal and advise on large amounts of other people's money and valuable assets such as their home or pension fund
- help people in difficult and distressing situations which involve sensitive information, such as divorce, child protection and criminal charges.

A finding that someone we regulate has acted dishonestly is a serious matter. The courts have indicated that confidence in the legal profession, as a whole, is more important than the interests of one lawyer (*Bolton v Law Society* [1993] EWCA Civ 32). For that reason, as well as making sure the public is protected from any repetition of the offending behaviour, a finding of dishonesty against a solicitor is likely to result in the most serious disciplinary sanction, being struck off the roll.

It may also act to protect the public more widely. For example, if the person intends to work in another industry such as financial services, where public protection is also very important, our finding can be taken into account by another regulator in deciding whether to allow them to work (*Elliott v Financial Services Authority* [2006] UKFSM FSM027). Where the person already works in another profession, or regulated industry that regulator may also take action based on our decision.

The test we apply

Many different behaviours may be considered dishonest. Some examples include:

- taking or using someone else's money without their knowledge or agreement. There may be dishonesty, even if the solicitor did not intend to permanently deprive the other person of their money (*Bultitude v Law Society* [2004] EWCA Civ 1853)
- lying to, or misleading someone, such as telling a client that their case is going well when it has failed
- knowingly bringing a false case to a court
- helping other people to act improperly, such as by giving credibility to a dubious or suspicious investment scheme run by others
- giving false information to their firm's insurer (*Ijomanta v Solicitors Regulation Authority* [2013] EWHC 3905 (Admin))
- misleading a court, tribunal, a regulator (*Solicitors Regulation Authority v Spence* [2012] EWHC 2977 (Admin)).
- lying on a CV and misleading partners in their firm (*Solicitors Regulation Authority v Dennison* [2012] EWCA Civ 421)
- backdating or creating false documents.

When considering if conduct is dishonest, we apply a two-stage test. This requires us to ask the following questions (*Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67):

- First, what was the individual's genuine knowledge or belief as to the facts at the time?

- Second, in view of their knowledge or belief at the time, was their conduct dishonest by the standards of ordinary decent people?

The first question requires us to ascertain what the individual genuinely knew or believed at the time. The reasonableness of their belief or knowledge is relevant to us determining whether it is genuinely held, but there is no additional requirement that it must be objectively reasonable.

Once we have determined the individual's state of mind, we then consider their conduct in light of it. The test is to objectively judge if they acted dishonestly by the standards of ordinary, decent people. There is no additional requirement that they have to appreciate that what they have done was dishonest. This second test means that while a person's state of mind is relevant, they cannot escape a finding of dishonesty based on a warped personal belief they were honest.

On the other hand, it also means that because we must consider their state of mind in the context of ordinary, decent people, we take account of the context in which the conduct happened.

The courts have rejected arguments that the standard of honesty can be based on how others in the same profession or industry behave (*R v Hayes* [2015] EWCA Crim 1944). While in one medical case it was decided that the test for professional disciplinary proceedings should refer to the standards of 'reasonable and honest doctors' this was held in another case to have no practical effect. The standards of regulated professionals, who have to comply with rules that set high ethical standards are, "at least as scrupulous about integrity in [their] professional work than the population at large might be" and what is important is to "attribute to any theoretical arbiter enough knowledge of the context and purpose of the activity involved to allow an informed judgment to be developed" (*Hussain v General Medical Council* [2014] EWCS Civ 2246; *Dowson v General Medical Council* [2015] EWHC 3379 (Admin)).

However, the way colleagues and peers behave, might be relevant to asking, "what was the person's genuine belief at the time?" (*R v Hayes* [2015] EWCA Crim 1944). In considering this, we look at the person's state of mind at the time and take account of the context.

Even if a person we regulate is not found to have acted dishonestly, they may still have lacked integrity where, for example, they did not appreciate the distinction between honest or dishonest standards or were reckless as to the issue (*Scott v Solicitors Regulation Authority* [2016] EWHC 1256). If so, we may take action against them to protect the public, as can be seen in example 1 (See also *Bryant v Law Society* [2007] EWHC 3043 (Admin); *Law Society v Waddingham* [2012] EWHC 1519 (Admin)).

Example 1



A young solicitor is accused of acting with a lack of integrity and of being dishonest. He admits acting with a lack of integrity but denies dishonesty. He sent wills to clients for them to sign and when the clients returned their wills, he and the senior partner in his firm signed them as the witnesses. He did this about twenty times. The senior partner, who has since died, had told him that this was normal practice because it was more efficient for the clients. He said it avoided them having to ask relatives to witness their signing of the will, which he said "could cause arguments and legal problems".

The young solicitor says that other solicitors in the firm also told him the approach was fine. He argues that since he genuinely believed it was normal practice, he had not acted dishonestly. The SDT accepts this argument that given his belief at the time, his conduct was not dishonest by the standards of ordinary decent people. However, the SDT decided he lacked integrity and the behaviour could well cause problems for clients whose wills have not been properly witnessed. The young solicitor is suspended from practice for two years.

How the SRA deals with dishonesty in practice

We recognise that allegations of dishonesty are a serious matter and ensure that they are subject to careful scrutiny. Although we will always apply the same legal test, how we approach dishonesty in practical terms will vary in different situations.

Whether or not someone we regulate has been dishonest is relevant to a wide range of our work. For example:

- If we bring a case before the SDT and prove that a solicitor acted dishonestly, they will almost invariably be struck off (*Bolton v Law Society* [1993] EWCA Civ 32. *Law Society v Salsbury* [2008] EWCA Civ 1285 and *Solicitors Regulation Authority v Dennison* [2012] EWCA Civ 421).
- If we find an employee of a law firm who is not a solicitor has acted dishonestly, in some cases we may disqualify them from being involved in a firm regulated by us or we can control them by requiring any future firm to get our approval to employ them.
- We can intervene [<https://www.sra.org.uk/solicitors/guidance/consumer-intervening-protect-clients/>] into a law firm if we have "reason to suspect dishonesty" by people within the firm.
- If we find that a person has acted or may have acted dishonestly in some way, we may refuse to accept an application they make to us, such as to become a solicitor [<https://www.sra.org.uk/solicitors/guidance/firm-authorisation/>] or to manage or own a firm [<https://www.sra.org.uk/solicitors/guidance/authorisation-approval-role-holders/>].

- We can pay grants from our compensation fund to people who have lost money because of the dishonest behaviour of someone we regulate.

Intervening into a law firm

We can intervene into a firm for a number of reasons, but one of them is that we have "reason to suspect dishonesty" by an individual in the firm. That does not require final proof of actual dishonesty, because it recognises that we sometimes have to take action to urgently protect clients and others. It also recognises that the risks arising from a solicitor suspected of dishonesty are very serious.

We will decide on the balance of probabilities whether we have reason to suspect dishonesty. We do not need to decide that the person actually acted dishonestly, but simply that we suspect it. We will only then go on to intervene into the firm if we decide it is necessary having balanced the public interest of taking action, against the impact on the solicitor or firm. Following a decision to intervene, the solicitor could be prosecuted at the SDT and it will decide whether the individual actually acted dishonestly (*Sritharan v Law Society* [2005] EWCA Civ 476).

Disqualify and control someone from working in a law firm

In contrast, if we decide a person who is not regulated by us directly but who is involved in a firm that we regulate, has acted dishonestly, we may use our powers to prevent that person from working in a law firm without our approval. For more details of the action we can take over such non authorised persons see our guidance

[<https://www.sra.org.uk/solicitors/guidance/general-regulation-non-authorised-persons/>].

Example 2

Miss C is not a solicitor but has worked in law firms for 20 years. She is very experienced in dealing with conveyancing. The partners in the firm report to us that they have found that she has not been registering clients as owners of houses they have bought. She has been hiding letters asking about this. She has written to clients incorrectly telling them that their house has been registered, or that there is delay because of inefficiency by others such as the Land Registry.

She admits that she "got into a mess" and "behaved stupidly". She argues that she was not dishonest, because she was simply under too much pressure at work and tried to give herself more time by misleading clients. The partners in the firm are fairly sympathetic but provide us with documents showing that Miss C has done this more than 50 times over three years. We consider her arguments carefully and conclude that there is

clear evidence of her lying to clients and other people. We decide her conduct is dishonest by the standards of ordinary decent people and we disqualify her.

Applications to us

Examples of applications we deal with where questions of dishonesty may arise, include where someone asks us to allow them:

- to be admitted as a solicitor
- to be the owner or manager of a firm
- to be the compliance officer of a firm
- to open a new law firm, or to change its owners or managers
- to have their annual practising certificate.

Specific rules apply to each application. If we are concerned that the person applying to us has acted improperly, how we deal with that will depend on the facts of the case.

In some cases, we can protect the public by imposing a control on a solicitor when they apply to us for their annual practising certificate (we can also do this during the practising year). We might do this because we have just started an investigation about their possible dishonesty. We can impose an interim control if we are satisfied there is a 'risk' of dishonesty. We do not need to prove the dishonesty as a matter of fact. That will be done later.

Example 3

Mrs A applies to us for her annual practising certificate. She is not currently working but wants a practising certificate to try to get a job or to set up a new firm. She is being investigated by us as a result of a complaint from her previous employment and we have prepared a report alleging very serious dishonesty by her, including that more than £1 million has gone missing. She strongly denies she has done anything wrong and argues that she is the victim of a fraud by other people.

We bring a case against her at the SDT. When we decide on her application for a practising certificate, we will not decide whether or not she took the £1m. The SDT will decide that. However, to protect the public, we have to take account of the risk that she has acted improperly and perhaps dishonestly and might do so in the future. We consider refusing to give her a practising certificate at all, but in the end decide to give her a certificate that allows her only to act as an employee of a law firm where she has no control or access to client money.

We may refuse to admit a person as a solicitor if we decide they have been dishonest.

Example 4

Ms Y wants to be admitted as a solicitor. When we are looking at her application, we find that three years ago she was convicted of assault and fined £1,000 in relation to a family argument that spilled out into the street. She had been in a difficult situation but had over-reacted and punched someone in the face.

One of our concerns is that Ms Y did not mention the conviction in her application form. In fact, she said she had no convictions. When we ask her why she did not mention it, she says she thought she did. She says that her sister, who is a doctor, had filled in the form for her. Ms Y also says that she herself posted a letter to us enclosing a copy of the certificate of conviction. We have not received it. She says it must have been lost in the post and sends us a copy. We contact her sister who says that she knows nothing about any form. She signs a statement saying that she has had no contact with Ms Y since the assault which she thinks was Ms Y's fault.

We look closely at the copy letter Ms Y has sent to us and notice that her address on it is the one where she is currently living and not the one where she lived when she is supposed to have sent the letter to us. We tell her that there is evidence that she has acted dishonestly and ask her to explain the problem with the letter and respond to what her sister has said. She does not reply. We refuse her application to become a solicitor because we decide on the evidence that she has acted dishonestly in three ways:

- In light of her sister's witness statement, we find that Ms Y lied to us when she said her sister filled in the form for her.
- Ms Y deliberately did not tell us about her conviction, hoping that we would not find out about it.
- Ms Y misled us by making up a false copy letter and sending it to us.

Alleging dishonesty in an SDT case

When we bring proceedings before the SDT, it is the SDT that decides whether the person has acted dishonestly. We simply present the evidence and the SDT hears both sides of the case.

We will allege a person acted dishonestly, if we believe that there is enough evidence for the SDT to be asked to decide the issue. It is important to do so:

- because it is fair, if we consider they have been dishonest, to say so clearly, rather than by implication

- because the SDT will not generally be able to decide that someone has acted dishonestly, even if that is their view, if we have not clearly alleged it
- so that an appropriate sanction or control can be put in place
- so that others, including clients, the public and other regulators, will know about their behaviour and will be able to take appropriate steps to protect themselves
- because a finding of dishonesty may affect whether we feel able to subsequently reach agreement with the person. For example, to work in a particular law firm, or to take certain steps or comply with conditions imposed on them.

Evidence and indicators of dishonesty

It can be difficult to assess whether false or inaccurate statements were made dishonestly. People make mistakes and not all inaccurate statements are considered, by the standards of ordinary decent people, to be dishonest. Proof of a dishonest motive is not required to make a finding of dishonesty. However, evidence suggesting a motive, for example that the conduct led to financial gain or concealed an error, may carry significant weight.

Evidence of what a person was thinking and knew at the time is very important. Similarly, evidence of the person's actual behaviour and their own words, such as in emails or other documents they write, is often crucial as this can often demonstrate what they knew, or what they were thinking.

Example 5

Mr D is accused of acting for two clients at the same time when there was a conflict between their interests. At first, he denies that he realised there was a conflict. Our investigators find an email he sent to a trainee solicitor at the time. It is marked "highly confidential" and says: "I know this doesn't look good, but we need the fees from both of them or we will all be out of a job. You act for him and I will act for her, but we will need to liaise closely to avoid problems." We decide that Mr D did know about the conflict and attempted to cover it up. Mr D is found to have acted dishonestly, as his conduct was dishonest by the standards of ordinary decent people.

In many cases, the evidence is not as clear cut. Instead, it is necessary, to study all of the evidence to decide what it shows overall. An illustration is Example 4 which requires careful consideration all of the surrounding evidence.

Further help

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