

SRA disclosure of information by witness evidence

Reviewed 25 November 2019

Introduction

From time to time the SRA receives requests for members of its staff to provide witness evidence in civil or criminal proceedings in which the SRA is not directly involved. This note sets out how we approach such requests and apply the "SRA First Principles of Disclosure" ("the Disclosure Principles") to them.

Relevance of evidence

Any request should be made in writing and explain in reasonable detail:

- The identity of any proposed SRA witness;
- The specific nature of the evidence sought;
- How the evidence sought is likely to be material for the purpose of the relevant proceedings;
- Why the provision of the evidence by the SRA is necessary in the interests of justice;
- How and over what time period any proposed witness statement is to be prepared;
- When and for how long any attendance at Court may be required.

Information held by the SRA generally

The Disclosure Principles set out the context within which we make decisions about the disclosure of information. The provision of information by way of witness evidence may be inappropriate where a focused request for documents could provide the necessary information. It would be unusual for us to hold material information which could only be communicated appropriately by oral evidence.

General information about a regulated person or firm

We may hold very extensive information and documents relating to a firm and its clients particularly following intervention. Consideration of the disclosure of information is likely to raise particular legal issues such as client legal professional privilege. If a request is unfocused, very substantial

practical issues of document identification and cost may arise and therefore any request need to be as specific as possible.

Expert evidence

It is not part of our role to provide, at the request of a party, expert or opinion evidence on regulatory issues in proceedings in which we are not involved.

Content of any witness statement

Our approach to the content of any statement will be in accordance with the Disclosure Principles. Where we agree to provide a statement in criminal proceedings:

- It should be limited to relevant and material evidence;
- It should be under the provisions of Section 9 of the Criminal Justice Act 1967;
- We will not proactively undertake any identification of unused material.

Parties in civil proceedings

We would normally expect the parties in any civil proceedings to deal with each other before making any request for evidence from us. We would not expect to provide information obtainable from parties by way of disclosure.

Representations

We would normally expect someone asking us to provide witness evidence to have provided any person with an arguable right to object an opportunity to make representations to either ourselves or the court. Delay may result if we need to do this following a request.

Costs incurred in preparation of evidence

Where we expect to incur material costs in relation to a request for evidence we may seek an undertaking for reimbursement. Costs may include time spent by our staff in attending or preparing for interview, reviewing draft of any statements, collating documents and/or in the use of external lawyers where that is appropriate.

Court Orders

We may indicate that a witness or information will not be made available without a witness summons or court order. This will often be where there are matters which we feel need to be raised with the Court. These may include, for example, where the request:

- Is not one which we are satisfied can be met in accordance with this guidance or the Disclosure Principles;
- Is disproportionate, unfocused, late or sets unreasonable timescales;
- Raises issues upon which we would wish to make representations to the Court;
- Requires an opportunity for third party representations to the Court; or
- Seeks information which by its nature ought only to be provided by order of the Court.

Making a request

Any request for witness evidence should be made to:[prospective witness copied to Legal Administration, Legal Department]