

# SRA Assessment of Character and Suitability Rules

## Introduction

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All individuals applying for admission or seeking restoration to the roll of solicitors or those applying to become or renewing their registration to be a REL or a RFL must be of satisfactory character and suitability or in the case of those applying to become an authorised role holder, a REL or a RFL, be fit and proper to hold a role.

These provisions set out the kind of factors we will take into account when considering your character and suitability, and the obligations you have, both at the outset and on an ongoing basis, to provide relevant information to inform the decisions we make.

## Character and suitability requirements

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- 1.1 These rules apply where the **SRA** is making a decision as to whether it is satisfied regarding your **character and suitability**, in relation to:
  - (a) admission or restoration to the roll under regulations [1.1], [3.1], [3A.1], [3F.1], [3G.1] and [4.8] of the SRA Authorisation of Individuals Regulations];
  - (b) approval as an authorised role holder under [rule 14.1] of the SRA Authorisation of Firms Rules]; and
  - (c) registration or renewal of registration as a **REL** or **RFL** under [5.3] or [5.4] of the SRA Authorisation of Individuals Regulations.
- 1.2 When considering your **character and suitability**, the **SRA** will take into account the overriding need to:
  - (a) protect the public and the public interest; and
  - (b) maintain public trust and confidence in the **solicitors'** profession and in legal services provided by **authorised persons**.In doing so, the **SRA** will take into account the nature of your role, and your individual circumstances, on a case by case basis.
- 1.3 The **SRA** will therefore consider any information available to it, and take into account all relevant matters. These will include but are not limited to the criminal findings and examples of misconduct set out in rules 2 and 3 below.
- 1.4 If you are applying for approval as a **compliance officer**, in assessing your suitability the **SRA** will consider whether you are of sufficient seniority and in a position of sufficient responsibility to fulfil the requirements of the role.

## Part 1: Relevant conduct and behaviour

### 2. Criminal findings

- 2.1 The **SRA** will consider criminal findings when assessing your *character and suitability*, in accordance with table 1 below, subject to the Rehabilitation of Offenders Act 1974 and the Rehabilitation of Offenders Act 1974 (Exceptions Order) 1975, and bearing in mind the public interest in supporting the rehabilitation of offenders. For the avoidance of doubt, table 1 is a non-exhaustive list.

**Table 1: Criminal findings**

<b>Most serious</b> (A finding in this category is most likely to result in refusal)	<b>Serious</b> (A finding in this category may result in refusal)
<p>You have been convicted by a <i>court</i> of a criminal offence:</p> <ul style="list-style-type: none"><li>• for which you received a custodial or suspended sentence;</li><li>• involving dishonesty, fraud, perjury and/or bribery;</li><li>• specifically, in relation to which you have been included on the Violent and Sex Offender Register;</li><li>• associated with obstructing the course of justice;</li><li>• which demonstrated behaviour showing signs of <i>discrimination</i> towards others;</li><li>• associated with terrorism;</li></ul> <p>You have been convicted by a <i>court</i> of more than one criminal offence (these could be less serious offences when considered in isolation but taken more seriously because of frequency and/or repetition).</p> <p>You have shown a pattern of criminal offences or criminal behaviours (eg starting from a caution but moving through to convictions).</p>	<p>You have been convicted by a <i>court</i> of a criminal offence not falling within the most serious category.</p> <p>You are currently subject to a conditional discharge or bind over by a <i>court</i>.</p> <p>You have been included on the Violent and Sex Offender register but in relation to your inclusion on the register you have not been convicted by a <i>court</i> of a criminal offence.</p> <p>You have accepted a caution from the police for an offence involving dishonesty or violence.</p> <p>You have more than one:</p> <ul style="list-style-type: none"><li>• caution from the police not involving dishonesty or violence;</li><li>• local warning from the police;</li><li>• Penalty Notice for Disorder from the police;</li><li>• final warning or reprimand from the police (youths only); and/or</li><li>• referral order from the <i>courts</i> (youths only)</li></ul>

### 3. Other conduct issues

- 3.1 Table 2 sets out non-exhaustive examples of the types of information, conduct or behaviour that the **SRA** will take into account when assessing your *character and suitability*.

**Table 2: Other conduct issues**

Type of behaviour	Examples
Behavioural and conduct issues	<p>You have behaved in a way:</p> <ul style="list-style-type: none"> <li>• which is dishonest</li> <li>• which is violent</li> <li>• where there is evidence of <i>discrimination</i> towards others</li> </ul> <p>You have misused your position to obtain pecuniary advantage.</p> <p>You have misused your position of trust in relation to vulnerable people.</p> <p>We have evidence reflecting on the honesty and integrity of a person you are related to, affiliated with, or act together with where we have reason to believe that the person may have an influence over the way in which you will exercise your authorised role.</p>
Assessment offences	You have committed and/or have been adjudged by an education establishment to have committed a deliberate assessment offence, which amounts to plagiarism or cheating, in order to gain an advantage for you or others.
Financial conduct/events	<p>There is evidence:</p> <ul style="list-style-type: none"> <li>• that you have deliberately sought to avoid responsibility for your debts</li> <li>• of dishonesty in relation to the management of your finances</li> <li>• that you have been declared bankrupt, entered into any individual voluntary arrangements (IVA), have a current County Court Judgment issued against you or have been made subject to a Debt Relief Order</li> <li>• that any <i>company</i>, <i>LLP</i> or <i>partnership</i> of which you are/were a <i>manager</i> or <i>owner</i> has been the subject of a winding up order, an administrative order or an administrative receivership, or has otherwise been wound up or put into administration in circumstances of insolvency</li> </ul>

	<ul style="list-style-type: none"> <li>that you cannot satisfactorily manage your finances (eg you have fallen behind with six or more consecutive payments and/or have been registered with a credit reference agency)</li> <li>that you are subject to possession proceedings (eg for falling behind on mortgage payments) and/or are subject to a Liability Order (eg for non-payment of council tax)</li> </ul>
Regulatory or disciplinary findings	<p>You have been made the subject of a serious disciplinary or regulatory finding, sanction or action by a regulatory body and/or any <i>court</i> or other body hearing appeals in relation to disciplinary or regulatory findings.</p> <p>You have failed to disclose information to a regulatory body (including the <i>SRA</i>) when required to do so, or have provided false or misleading information.</p> <p>You have significantly breached the requirements of a regulatory body.</p> <p>You have failed to comply with the reasonable requests of a regulatory body resulting in a finding against you.</p> <p>You have been rebuked, reprimanded or received a warning about your conduct by a regulatory body.</p> <p>You are disqualified from being a <i>charity</i> trustee or a trustee for a <i>charity</i> under section 178(1) of the Charities Act 2011.</p> <p>You have been removed and/or disqualified as a <i>company director</i>.</p> <p>You are a corporate person and other matters that call into question your fitness and propriety are disclosed or come to light.</p> <p>You have committed an offence under the <i>Companies Acts</i>.</p>

## Part 2: Aggravating and mitigating factors

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- 4.1 Table 3 sets out a non-exhaustive list of the types of aggravating and mitigating factors the *SRA* will take into account where you have disclosed, or it has received, information which calls into question your *character and suitability*.

**Table 3: Aggravating and mitigating factors**

Aggravating Factors	Mitigating Factors
<ul style="list-style-type: none"> <li>• no evidence of successful rehabilitation</li> <li>• no evidence of steps taken to remedy conduct</li> <li>• no (or little) evidence of remorse</li> <li>• repeated behaviour, or a pattern of behaviour, or event occurred very recently</li> <li>• person was in a position of trust</li> <li>• person held a senior position</li> <li>• vulnerability of those impacted by the behaviour</li> <li>• behaviour likely to harm public confidence in the profession</li> <li>• no (or insufficient) supporting references</li> </ul>	<ul style="list-style-type: none"> <li>• evidence of successful rehabilitation</li> <li>• evidence of steps taken to remedy conduct</li> <li>• evidence of remorse</li> <li>• one off event, or event occurred some time ago</li> <li>• person was in a junior or non-legal role</li> <li>• no evidence of harm being caused to individuals</li> <li>• behaviour unlikely to harm public confidence in the profession</li> <li>• credible and cogent supporting references</li> </ul>

### Part 3: Disclosure and evidential requirements

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- 5.1 You must disclose all information relating to matters whether in the **UK** or **overseas**, which are relevant to the **SRA's** assessment of your **character and suitability**. If the **SRA** requests any such information, you must provide it by the date specified (which will be not less than 14 days).
- 5.2 You must provide a certificate from the Disclosure and Barring Service (DBS), or equivalent, which is no more than three months old. If you are a **REL** or a **RFL**, you must provide a certificate of good standing which is no more than three months old from any regulatory body with which you are registered or authorised.
- 5.3 You have an ongoing obligation to tell the **SRA** promptly about any material change to your circumstances in respect of your **character and suitability**, or to any information previously disclosed to the **SRA** in support of your application, after it has been made. This obligation continues once you have been admitted as a **solicitor**, registered as a **REL** or a **RFL**, or approved as a role holder
- 5.4 The onus is on you to provide any evidence relevant to the **SRA's** consideration of your **character and suitability**. However, the **SRA** may undertake any investigation

as it considers appropriate to determine your *character and suitability*, and may verify any evidence you provide with a third party.

- 5.5 If you fail to disclose any information relevant to the *SRA's* assessment of your *character and suitability*, the *SRA* will take this into account when making a determination as to your *character and suitability*.
- 5.6 Where you have made a disclosure or the *SRA* has received information, which calls into question your *character and suitability*, you must include, as appropriate, the following types of information as set out at Table 4.
- 5.7 Notwithstanding the above, if you are only seeking registration or renewal of registration as an *REL* or *RFL* you are only required to provide the certificate of good standing under rule 5.2.

**Table 4: Evidential requirements**

**General evidential requirements**

- reference from at least two independent people who have supervised your work, such as a current or former employer or an academic tutor and who know you well and are familiar with the matters being considered
- evidence of any rehabilitation that shows you have learnt from an experience or event, such as probation reports, references from employers or tutors
- documentary evidence in support of your case and, where possible, an independent corroboration of your account of the event
- a statement from you including details of the event leading up to the matter disclosed and which reflect your attitude towards the event
- proof that you have also disclosed the matter to any professional or other body to which you have an obligation to do so

**Evidence relating to criminal offences**

- at least one independent report relating to the event such as a report from the police, a *court* or a *solicitor*
- any sentencing remarks for your case
- any Memorandum of an Entry on the Court Register
- proof you have paid any penalty or fine imposed or costs ordered for you to pay as a result of the matter you disclosed

- in relation to any motoring offence, your online driving licence

#### **Evidence relating to assessment offences**

- any minutes from any meeting and any transcripts from any hearing relating to the offence
- outcome of any investigation, any decision, sanction or appeal relating to the offence
- details which describe the extent to which you could reasonably have been expected to realise that the offence did not constitute legitimate academic practice

#### **Evidence relating to financial conduct/events**

- in relation to county court judgments or IVAs, proof that you have met the creditor's agreement in full or that it continues to be met; a copy of any judgment; a certificate of satisfaction from the court or a Registry Trust Limited report; and a credit report of no more than one month old
- in relation to bankruptcy, a copy of the bankruptcy petition; or if you have been discharged from bankruptcy, a copy of the Certificate of Discharge; and a credit report no more than one month old
- details of any actions you have taken to clear any debts, satisfy any judgments and manage your finances

## **Part 4: Assessment**

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- 6.1 If on the information available, the **SRA** cannot be satisfied you are of good character and suitable for the role, it will refuse your application. If, however, any risk to the public or the public interest can be addressed accordingly, the **SRA** must impose conditions on your authorisation or approval under regulation [6.1(b)] or regulation [6.2] of the SRA Authorisation of Individuals Regulations as appropriate.
- 6.2 Following any previous assessment by the **SRA** of your **character and suitability** which led to a refusal, you may only seek a further assessment where there has been a material change in your circumstances which is relevant to the **SRA's** assessment under these rules. This includes the factors set out in table 3, which may cause the **SRA** to then be satisfied as to your **character and suitability**.

#### **Supplemental notes**

Made by the SRA Board on [date]

Made under sections 28, 79, and 80 of the Solicitors Act 1974

Approved by the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007, on [date]

Commencing on [date] 2018 and replacing the SRA Suitability Test 2011

**Useful information - criminal findings**

You have an ongoing obligation to tell us about any material change in your circumstances which may cause you to no longer meet our requirements relating to character and suitability.

One specific example is where you are charged with, or arrested in relation, to a criminal offence. You must then inform the SRA within seven days if you are committed to prison in civil or criminal proceedings, or are charged with or convicted of a criminal offence. You must also inform us about the outcome of the matter.

Where a criminal conviction, warning, simple caution, Penalty Notice for Disorder (PND) and/or inclusion on the Violent and Sex Offender Register has been disclosed to us, we will not look behind the decision made or any court finding. However, we will take into account any material provided, such as sentencing remarks and any other independent information, where relevant.

You should disclose to us, as soon as possible, details of any criminal charge(s) you may be facing. We will not make a determination as to your character and assessment, however, until you can confirm that the charge(s) has/have either been dropped or the outcome of your case is known.

Police can only issue a caution if there is evidence that you are guilty of an offence and if you admit that you committed the offence. Therefore, by accepting a caution, you are making an admission of guilt.

In relation to PNDs, no admission of guilt is required, and by paying the penalty, a recipient discharges liability for conviction for the offence - you should, however, still disclose such matters as we may need to consider them when we assess your character and suitability.

You must disclose to us motoring offences that resulted in a criminal conviction and/or were heard before a court. Motoring offences that do not result in a criminal conviction and/or were not heard before a court do not need to be disclosed.

When a person pleads guilty or is found guilty, they are said to be convicted of that offence. However, in terms of sentencing, if the person is given either an absolute or a conditional discharge under the Powers of Criminal Courts (Sentencing) Act 2000, then these sentences are said not to amount to a conviction (except insofar as they relate to those proceedings, or any future proceedings) and they are therefore treated differently to other sentences.

By way of explanation, someone who is discharged absolutely is treated as forever as if they were never convicted (which does not mean they are treated as not having done the crime), whereas a conditional discharge is conditional on the offender not committing a further offence within the period of the discharge.

However, we may still take absolute and conditional discharges into account when assessing character and suitability, as such sentences do not mean and must not be equated with the fact that the offender did not do the crime, or the crime is in some way extinguished. For the purposes of assessing character and suitability under our rules, they are still likely to be taken into account as a conviction, and we will consider them as part of our overall assessment.

#### **Useful information - spent and protected convictions, spent cautions**

We will take into account the provisions of the 1974 Act and the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (the 1975 Order) when we assess your character and suitability.

This means that if you fall within the 1975 Order, we will take into account the fact that the conviction is spent, and the time that has passed since the conviction was given, together with any other material circumstances when making any determination as to your character and suitability.

The following individuals and roles fall within the Exceptions Order and therefore, spent convictions and cautions, excluding a protected conviction and caution, must be disclosed:

- applicants seeking admission as solicitors;
- non-lawyer managers in existing Legal Disciplinary Practices;
- non-lawyer owners who hold a material interest in a licensed body; and
- COLPs and COFAs of licensed bodies.

The following individuals and roles do not fall within the Exceptions Order and spent convictions and cautions should not be disclosed:

- former solicitors seeking restoration to the roll;
- owners of recognised bodies;
- COLPs and COFAs of recognised bodies;
- owners of licensed bodies who do not require approval under Schedule 13 to the LSA; and
- managers of authorised bodies.

In May 2013, amendments to the 1975 Order introduced the "protected conviction" and "protected caution". Questions we ask about convictions or cautions will, therefore, exclude a protected conviction or caution and failure to disclose will not be considered to amount to evidence of dishonest behaviour.

#### **Protected cautions and protected convictions**

A caution is a "protected caution" if:

- (a) it was given other than for an offence listed in article 2A (5) of the Exceptions Order, and;
- (b) where the person was aged:
  - (A) 18 or over at the time the caution was given, six years or more have passed since the caution was given, or;
  - (B) under 18 at the time the caution was given, two years or more have passed since the caution was given.

A conviction is a "protected conviction" if:

- (a) it was given other than for an offence listed in article 2A (5) of the Exceptions Order;
- (b) a sentence other than custody or service detention was imposed;
- (c) the person has not been convicted of any other offence at any time, and;
- (d) where the person was aged:
  - (A) 18 or over at the time of the conviction, 11 years or more have passed since the date of conviction, or
  - (B) under 18 at the time of the conviction, five and a half years or more have passed since the date of conviction.

The DBS check will filter any protected convictions and cautions, so they will not appear on standard disclosures.

#### Rehabilitation

A period of rehabilitation, particularly after we have decided to refuse you based upon our assessment of your character and suitability, will not in itself result in automatic admission/authorisation. We need you to show, through a period of good behaviour, that you have taken steps to rehabilitate yourself by your own volition.

#### Useful information - County Court Judgments (CCJs)

CCJs that have been set aside will not need to be disclosed.