Integrity and ethics

Why this risk matters

- Solicitors are responsible for meeting high professional standards. They owe duties to the court, the wider public interest, their clients, colleagues and third parties. The business culture in law firms should reflect this.
- Acting without integrity and ethics can lead to poor outcomes and undermines the proper administration of justice. Cases where solicitors put their clients’ interests above all other considerations can also harm public trust in legal services, which undermines the rule of law.

Trends

- We received 2,090 reports about concerns of solicitors acting without integrity or ethics in 2017, and 1,350 in the first three quarters of 2018. Although these reports have reduced this year, any evidence of a solicitor acting without integrity is serious.
- HM Revenue & Customs (HMRC) is imposing a penalty on the enablers of tax avoidance schemes where they defeat a scheme that has abused the tax law. Enablers include solicitors advising on schemes and those that create companies or trusts for schemes. When a company has had 50 or more penalties or has received a penalty over £25,000, HMRC can publish their details.
- The role of solicitors in drafting inappropriate non-disclosure agreements (NDAs) in relation to allegations of harassment has received public and political attention. We have received and are investigating more than 50 reports about allegations of harassment by solicitors. We will take action where needed.

What firms can do

- Solicitors must always act with integrity. As well as not being dishonest, this includes having sound morals and following the ethical codes of the legal profession. Solicitors are expected to follow high standards in both what they say and what they do.
- Solicitors must put their ethical obligations first and keep their independence. This means that they must not put their own, or their clients’, interests above their wider professional obligations to the:
  - administration of justice
  - rule of law
  - courts.
- Based on their professional responsibilities, solicitors should be prepared to decline instructions that conflict with their obligations.
- When handling litigation, solicitors must bring cases honestly and professionally, without allowing themselves to become complicit in misleading the court. For example:
  - They must not abuse the court system by using proceedings simply to delay merited immigration removals.
  - They must make sure they have full information and make the court aware of any limitations in their case.
Solicitors advising on taxation need to be aware of the legal position of artificial tax avoidance arrangements and the penalties for ‘enablers’, such as those that advise on schemes. We warned firms about facilitating tax avoidance schemes that are aggressive in ways that go beyond the intentions of Parliament. HMRC has produced a fact sheet on the penalties that it can apply to enablers of tax schemes that it defeats.

Solicitors must not draft the terms of NDAs in a way that suggests a person may not report misconduct to a regulator or a law enforcement agency or make a protected disclosure. We will act against any firm that uses NDAs to cover criminal activity or serious professional misconduct. Our warning notice provides further detail, and our updated paper, Balancing duties in litigation, includes warnings about using non-disclosure agreements to take unfair advantage of someone or to conceal criminal activity. We have received and are investigating more than 50 reports about allegations of harassment by solicitors. We will take action where needed.

Firms and senior management teams need to set a culture where harassment is taken seriously. Staff who are affected need to have a safe environment to report such issues and access to support, perhaps through staff networks as well as external sources. Some firms have set up confidential helplines for this purpose.

What we are doing

We are reforming our regulations with shorter, less prescriptive rules that focus on ethical standards. This lets solicitors use their professional and ethical judgment in their work.

We take inappropriate behaviour in the workplace very seriously. We have asked the largest firms that we regulate about how they prevent, and respond to allegations of, sexual harassment in the workplace. We have asked them to tell us about their training for staff and how they support a person making an allegation of sexual harassment. We are reviewing their responses and we will share examples of good and poor practice.

We are working with the Equality and Human Rights Commission and other legal regulators about what more we can do to promote awareness and encourage good practice among law firms to tackle sexual harassment.

Read our full Risk Outlook