

Guidance (Draft)

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Understanding in-house solicitor's professional obligations as an employer

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Status

This is draft guidance.

This guidance is to help your employer understand the regulatory duties and standards you must comply with as an in-house solicitor.

Who is this guidance for?

Any organisation which employs an in-house solicitor to provide expert independent legal advice. This guidance is for senior executives/non executives (or equivalent).

Purpose of this guidance

This guidance seeks to offer support to your organisation, so that you get the best from your in-house solicitors in accordance with their professional obligations.

Many of the considerations you will have in relation to solicitors within your organisation will be common to all employees. However, they do have specific obligations as a member of a regulated profession that they are personally accountable for meeting.

This guidance aims to help employers of in-house solicitors understand:

- the regulatory duties and standards that all solicitors must comply with as members of a regulated profession
- what you can expect from in-house solicitors and what they are unable to do.

For organisations that employ solicitors to provide legal services on its behalf to the public, please also read this separate guidance to help you understand what the solicitors you employ can do and what their regulatory duties are.

Help for governing boards

For in-house solicitors providing legal services to their employer, practically speaking, the governing board of the organisation will in most cases be the client.

To help governing boards understand the regulatory duties solicitors must comply with and how they add value to organisational decision-making, we have developed a summary document [\[#heading_31cc\]](#) . Some non-listed entities do not have non-executive directors or formal governance. Your in-house solicitors can assist you in this situation.

We use the phrase governing board to describe the most senior body of individuals with overall accountability for operational risk and performance and responsibility for organisational strategy and decision-making.

For charities, the governing board will be the Board of Trustees and for NHS bodies, the governing board will be the Trust Board. In private and public companies, the governing board will be the Board of Directors.

In local authorities, the governing board is the Council, and a statutory Monitoring Officer will be appointed pursuant to section 5 of the Local Government and Housing Act 1989 (LGHA 1989). It is the role of the Monitoring Officer, who is often but not always legally qualified, to:

- report on matters they believe to be illegal or amount to maladministration
- be responsible for matters relating to the conduct of councillors and officers
- be responsible for the operation of the council's constitution.

The regulation of solicitors

We are the regulator for solicitors and law firms in England and Wales. We make sure that solicitors meet high professional standards so that public confidence in the profession, the rule of law and the interests of justice are maintained and that clients receive quality legal services.

Solicitors must meet the professional obligations and standards set by us. Serious breaches of our regulatory standards could result in serious consequences, including restrictions on their ability to practise as a solicitor and in the most serious cases, being struck off the roll of solicitors. If they are struck off, this means they can no longer practise as a solicitor. As well as having serious consequences for the solicitor, this could impact your organisation's work and reputation.

It is therefore important that you understand the obligations and requirements that their status as a regulated professional places upon them. If these are not fully understood, it may create challenges or conflicts for solicitors which may impact on them and their role. This will also enable you to provide the support they need to meet their obligations and to grow and develop in their professional career.

Our regulatory requirements

We will ask the lead sol to account for legal matters that take place within your organisation. You should speak to your solicitors about their regulatory obligations and how they are relevant to their role as an employee.

All solicitors, whether working in-house or in a law firm, must act in accordance with our Principles [<https://www.sra.org.uk/solicitors/standards-regulations/principles/>] which set out the standards of ethical behaviour we expect. This means that in common with all solicitors, an in-house solicitor must act:

- in a way that upholds the rule of law and the proper administration of justice
- in a way that upholds public trust and confidence in the solicitors' profession
- with independence
- with honesty
- with integrity
- in a way that encourages equality, diversity and inclusion
- in the best interests of each client.

Where these obligations conflict, those which safeguard the wider public interest take precedence over the employer client's interests. This includes acting with independence and integrity and upholding the rule of law and public trust and confidence.

As well as meeting the obligations set in our Principles, all solicitors must also comply with our Code of Conduct for Solicitors, RELs and RFLs.

[<https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/>]

What you can expect from your regulated in-house solicitors

Based on the regulatory duties and standards we set, in-house solicitors you employ must:

- Demonstrate high levels of professionalism, including acting with honesty and integrity at all times (Principles 4 and 5). This means they will need to



alert you when they believe the organisation is breaching or at risk of breaching its legal or regulatory obligations.

- Offer advice which is independent, impartial and free from any external or personal interests (Principle 3).
- Develop a good understanding of your organisation so that their legal advice is business-oriented and aligned to organisational strategy and values. This is because all solicitors we regulate must act in their clients' best interests (Principle 7) and consider and take into account their client's attributes, needs and circumstances (paragraph 3.4 of the Code of Conduct for Solicitors, RELs and RFLs).
- Maintain their competence to carry out their role and keep their professional knowledge and skills up to date. If they supervise or manage a team, they also must ensure that the individuals they manage are competent to carry out their role (paragraphs 3.3 and 3.6 of the Code of Conduct for Solicitors, RELs and RFLs).
- Effectively supervise work done by individuals they manage or supervise. Solicitors supervising or managing teams remain accountable for any work carried out through them (paragraph 3.5 of the Code of Conduct for Solicitors, RELs and RFLs).
- Not act on a matter where there is a conflict with their own interests or a significant risk of one arising (paragraph 6.1 of the Code of Conduct for individuals). Nor will they act for both you and someone else where this puts them in a position of conflict, such that they are unable to act in your best interests (more details on this obligation, including limited exceptions which apply, are found at paragraph 6.2 of the Code of Conduct for Solicitors, RELs and RFLs).
- Keep your affairs confidential unless you consent to disclosure or disclosure is required or permitted by law (paragraph 6.3 of the Code of Conduct for Solicitors, RELs and RFLs). Further, certain communications with your in-house solicitors will be protected from disclosure without your consent, as they will attract legal professional privilege (LPP). However, you should not assume that all communications sent to or from a solicitor in your organisation will be privileged; this will depend on the nature and purpose of the communication, and who they are addressed to. More information about the scope of privilege in relation to in house lawyers

[<https://www.sra.org.uk/solicitors/guidance/reporting-concerns-wrong-doing-working-in-house-guidance/>].

What you can't expect your in-house solicitors to do

We expect all solicitors to prioritise the principles which safeguard wider public interest over the interests of any client. This means that there may be situations in which an in-house solicitor would not be able to do what you ask them to do or may advise against a course of action.

We would expect the solicitor to tell you if they are asked to do anything which conflicts with their regulatory obligations, and to explain why they cannot do what is being asked of them.

Specifically, no one should expect an in-house solicitor they employ to:

- Approve, support, facilitate or ignore any dishonest or illegal action as doing so would directly conflict with their regulatory duties to act honestly and with integrity, and in a way that upholds the rule of law and public confidence in the profession. Acting in the best interests of a client means that an in-house solicitor is duty bound to make sure that their employer is made aware of:
 - any legal or regulatory requirements
 - what action the organisation should take if they are not being met
 - the risks which might materialise if the organisation does not.

This is a valuable function of the solicitor's role. They should be empowered and supported to raise concerns. A solicitor should not be disciplined or punished for doing so. Read our guidance on when we expect in-house solicitors to report [<https://www.sra.org.uk/solicitors/guidance/reporting-concerns-wrong-doing-working-in-house-guidance/>].

- Act in ways which compromise their duty to act with independence. This could include, for example, pressurising a solicitor to change their legal advice to prioritise commercial goals. Or to achieve a particular outcome from a decision-making process or internal investigation.
- Mislead the court or others, for example by making false or misleading statements or failing to disclose relevant evidence. All claims and statements made in litigation or pre-action correspondence must be properly arguable and must not be advanced in an unduly aggressive or intimidating way.
- Act dishonestly, including backdating documents or destroying any correspondence which may be relevant to future litigation or any investigation.
- Breach any duties of confidentiality or LPP owed. Duties of confidentiality and LPP are owed to the particular individuals authorised to obtain legal advice on behalf of an employer organisation. As described above, this means that there may be occasions where some individuals or departments will be unable to see what a solicitor has advised on in relation to a particular issue. And there may be situations where this duty may conflict with their other professional obligations.
- Act outside of their competence. It would be unrealistic to expect in-house solicitors to be expert in every area of law which your organisation may require legal advice on. If they are asked to advise on something that is

outside their competence, they should tell you that is the case and offer an alternative solution which will meet your requirements, for example, instructing specialist advice from external solicitors or counsel.

What your in-house solicitor should expect from you

You should speak to your in-house solicitors about their regulatory obligations and how they are relevant to their role as an employee of your organisation. Setting mutual expectations of roles in light of the regulatory obligations which solicitors must comply with at all times, is critical to the ability of solicitors to deliver their roles effectively. This can be included in, or alongside their contract of employment.

You may also find it useful to have an early conversation to make sure your in-house solicitors understand what insurance arrangements or support you are able to provide to them in relation to any liability arising from the carrying out of their role.

There are particular risks to solicitors being able to meet their regulatory obligations that you should take action to mitigate and manage. You should:

Provide systems and processes to allow solicitors to meet their obligations to provide independent and impartial advice, avoid conflicts of interest and act in the best interest of their client. This includes:

- Making sure that solicitors are certain about who they are advising, that they have the information they need to be able to advise/act, can agree realistic delivery timeframes and can identify and manage legal and regulatory risks –for example potential conflicts – at the outset of each piece of advice and in the context of the scope of the solicitors / legal function more broadly [<https://www.sra.org.uk/solicitors/guidance/identifying-client-working-in-house-guidance/>] .
- Protecting against personal objectives, performance rewards and incentives being designed in a way that creates an inherent risk of conflict with regulatory and legal objectives of the role. For example, bonuses focused solely on completing a deal rather than completing a deal in a way that aligns to your agreed legal and regulatory risk appetite.
- Providing for the legal function to be able to participate in leadership and operational roles / decisions across the business, helping the Board and executive to set your legal and regulatory risk appetite and deliver against this. However, solicitors should not be penalised for declining to participate in an activity or role where there a real likelihood of conflict of roles or of infringing regulatory obligations would arise from this participation. For example, acting as the director of a subsidiary or leading a sales initiative.
- Providing appropriate levels of access to organisational decision makers and information to allow the legal team to identify issues and risks.



- Providing reporting lines through which to explain the firm's legal compliance position and seek improvement or change when needed. This is likely to include having reporting lines to advise the organisation's board, where appropriate. Read more in our [identify your client](https://www.sra.org.uk/solicitors/guidance/identifying-client-working-in-house-guidance/) [https://www.sra.org.uk/solicitors/guidance/identifying-client-working-in-house-guidance/] and [reporting concerns guidance](https://www.sra.org.uk/solicitors/guidance/reporting-concerns-wrong-doing-working-in-house-guidance/) [https://www.sra.org.uk/solicitors/guidance/reporting-concerns-wrong-doing-working-in-house-guidance/].
- Encouraging a speak up culture and ensuring solicitors are not disciplined or victimised for raising concerns about potential wrongdoing. Teams should be organised so that solicitors are supported to freely discuss concerns about wrong doing or risk. The independence and integrity shown by a solicitor when advising against a proposed course of action is an asset, not a liability.

Support to make sure that solicitors can meet their regulatory obligations to provide a competent service, including:

- That there are processes and resources in place to allow solicitors to keep their professional knowledge and skills up to date, referencing our [solicitors competence statement](https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/competence-statement/) [https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/competence-statement/]. This should be a focus within supervision, appraisal and learning / development discussions. We require all solicitors to make a declaration to us annually that they have reflected on and addressed their learning needs, keeping up to date on relevant legal and technical skills and on their professional obligations.
- That cost pressures do not compromise the ability to provide a competent and ethical legal service that meets both organisational requirements and regulatory standards
- You should set mutual expectations of roles in the light of the regulatory obligations in-house solicitors must comply with at all times. This is critical to their ability to deliver their roles effectively. This can be included in, or alongside, their contract of employment with your organisation.

We trust this note helps you to understand the professional framework in which your solicitors must operate.

Key points for governing boards and chief executives

The following information has been developed to assist boards and chief executive officers of organisations that employ in-house solicitors to better understand the varied role(s) and responsibilities of the in-house solicitor. It aims to help support discussion around mutual expectations of both parties.

General Counsel and in house teams play a key role in helping organisations to behave legally, fairly and ethically by

- supporting good corporate governance
- improving accountability
- managing risk
- supporting robust evidence based and lawful decision making and
- supporting and enhancing a strong ethical culture within the business.

Working with in-house solicitors to achieve these aims means that companies can meet the standards set out within the Financial Reporting Council's Corporate Governance Code (even where this is not a requirement) which emphasises the value of good corporate governance and the need to promote a culture of openness and debate.

All solicitors, whether in house or in private practice, are required to comply with the standards set out in the SRA's Code of Conduct and Principles. These articulate the fundamental rules of ethical behaviour we expect them to uphold which includes that they should act in the **best interests of clients**.

They also have other regulatory duties including the duties to act with **integrity** and with **independence** and in a way that **upholds the rule of law and the proper administration of justice** and **public trust and confidence** in the solicitors' profession. These duties are intended to safeguard the wider public interest and will take precedence over an individual client's interests. Solicitors working in-house must give effect to these professional obligations, whilst performing their contract of employment.

Where a solicitor is found to be in breach of those standards, we can take enforcement action.

How solicitors may work within your organisation

In-house solicitors can have visibility over the whole business and are often referred to as being both the trusted adviser and business partner. They can be involved in operational risk management and strategic decision making. They may have a role supporting your Audit or Finance Committee, act as Company Secretary, or act in a compliance role advising on requirements under the Companies Act or from regulators such as the Financial Conduct Authority or the Charity Commission. They are well placed to identify and intervene where they see wider risks and issues in the business.

One of the key benefits of having in-house solicitors is that they are embedded in an organisation and can provide tailored advice that is both business orientated and aligned with the strategy and values of the organisation. This means that the advice you receive will be practical,

bespoke to the needs of your business and can consider long term objectives.

Whilst this has numerous advantages for the business, it can present as a challenge where the activities of a business come into conflict with a solicitor's professional obligations. An open and supportive environment will allow solicitors to meet their professional obligations. There are occasions where commercial interests will not be aligned with regulatory interests or the public interest. This means that an in-house solicitor will, on occasion, need to inform you as their client that they have a concern something improper or unethical may be taking place within the organisation. This is a valuable function of the solicitor's role. In-house solicitors should be empowered and supported to raise concerns. A solicitor should not be disciplined or punished for doing so.

Boards can support their in-house teams by encouraging appropriate reporting lines for raising concerns, the development of dedicated policies and controls to record and report risks, manage conflicts and confidentiality, and systems and support to ensure they are able to provide competent services.

This content is:

Not in effect