

# Guidance (Draft)

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### Reporting concerns about wrongdoing when working in-house

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#### *Draft, related case studies*

This draft guidance should be read in conjunction with the following draft case study: Reporting concerns about wrongdoing when working in-house case studies [<https://www.sra.org.uk/solicitors/guidance/reporting-concerns-in-house-case-study/>] .

#### *Status*

**This is draft guidance.**

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

#### *Who is this guidance for?*

This guidance is for in-house solicitors employed by organisations not regulated by the SRA.

#### *Purpose of this guidance*

To help you understand what we expect you to do when you are concerned about actions taken or decisions made by your organisation. This includes escalating and reporting your concerns internally and when you should make or consider making a report externally to a relevant authority.

This guidance does not set out any new regulatory standards or requirements beyond those in our current Standards and Regulations. It should help you to understand how these apply when you have concerns about the actions or decisions of your organisation and help you to comply with our regulatory requirements.

Like all solicitors, those working in-house must take care to comply with their regulatory obligations in circumstances where their client has acted improperly. We recognise that this can be more complex for those working in-house, since their client is, in most cases, their employer (see our guidance on identifying your client

[<https://www.sra.org.uk/solicitors/guidance/identifying-client-working-in-house-guidance/>]).

This guidance is therefore to help you understand your competing duties and obligations. This could be, for example, your obligations to act in the best interests of your client and maintain confidentiality whilst acting with independence and in a way that upholds public trust and confidence in the solicitors' profession.

### *Your regulatory obligations*

The following obligations are most likely to be engaged when you have identified that your organisation, or individuals within or connected to it, have acted improperly. However, this is not exhaustive, and which obligations are engaged will depend on the circumstances.

#### *Duties to your organisation:*

- Principle 7 – you act in the best interests of each client.
- Paragraph 6.3 of the Code of Conduct for Solicitors, RELs and RFLs [<https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/>] You keep the affairs of current and former clients confidential unless disclosure is required or permitted by law or the client consents.

### *Wider public interest duties*

We expect you to act in accordance with our Principles

[<https://www.sra.org.uk/solicitors/standards-regulations/principles/>], including acting:

- in a way that upholds the constitutional principle of the rule of law, and the proper administration of justice (Principle 1)
- in a way that upholds public trust and confidence in the solicitors' profession (Principle 2)
- with independence (Principle 3), honesty (Principle 4) and integrity (Principle 5).

Acting in a way that breaches these or other regulatory requirements may lead to disciplinary action.

Should any of these obligations come into conflict, those which safeguard the wider public interest take precedence over an individual client's interests. This includes acting with integrity, independence and in a way which upholds public trust and confidence in the solicitors' profession.

You should, where relevant, inform your employer of the circumstances in which your duty to the court and other professional obligations will outweigh your duty to them.

### *Concerns that may need to be reported*

You will see a wide range of conduct as an employee and/or a colleague that you may feel is wrong. Not all of this conduct will need to be reported internally or externally. For example, you do not need to make a report simply because your legal advice is not followed. It could be that the position is not certain and/or the organisation has taken a risk-based decision.

You should make sure that you are aware of your obligations and those of the organisation you work for. You would then report any concerns you have that the organisation (or any of its employees) will breach these. For example, we would expect you to report concerns about:

- an actual or potential breach of regulatory requirements
- an actual or potential breach of the law
- a risk that requires the organisation to take action or report to an external body.

If you are a Monitoring Officer in a local authority, you will be under a statutory duty to formally report to the authority any actual, likely or prospective, breach of law or code of practice or on any maladministration.

### *When you identify a concern that needs to be reported*

Where you have identified that your organisation has acted, or is proposing to act, improperly, you will need to raise your concerns. This includes the possible implications for the organisation and what actions they should take. It is important that you advise your client accordingly and meet your obligations to act in their best interests, as well as meeting your wider public interest duties set out above. For example, if you did not raise your concerns because a manager asked you not to, you may breach your duty to act with independence. If it became public knowledge that a solicitor had known about the improper action but had stayed silent, this may damage public trust and confidence in the profession.

The right person, committee or board to raise your concerns with will depend on the individual circumstances, including the chain of reporting in your organisation and your position in it. It will also depend on the response you receive when you raise your concerns and whether you consider it necessary to escalate further.

You will also need to consider whether you need to report to an external organisation, such as a regulator or a law enforcement agency. In some situations, you will be under a legal or regulatory obligation to do so. In others, you will need to carefully balance the public interest duties against your duty to act in the best interests of your client and to keep their affairs confidential.

You will also need to keep in mind that should the Principles come into conflict, those which safeguard the wider public interest take precedence over the interests of your organisation, as set out above.

This guidance is to help you navigate your obligations and decide on the right course of action.

### *Reporting concerns to your organisation*

Where you identify that something has gone wrong or may go wrong, the first step will often be to alert the person or team instructing you or the relevant manager. However, there will be occasions where you need to escalate your concerns, for example, where they have been ignored or the issue is so serious.

Your client is likely to be the governing board of your organisation, although this will not always be the case. See our guidance on identifying your client [<https://www.sra.org.uk/solicitors/guidance/identifying-client-working-in-house-guidance/>] for more help in understanding this in an in-house context.

However, depending on your role, you may not need to report directly to the Board. You would normally do this through the chain of legal management, with the most senior lawyer able to report to the Board if necessary. Some in-house solicitors are themselves a member of the relevant Board. In this case, you would need to raise your concerns to the rest of the Board. If you work in a local authority, reports of wrongdoing will also need to go to the Monitoring Officer. Again, you would normally do this through the chain of legal management.

All in-house solicitors should make sure that they understand how they report concerns in their organisation in advance of needing to do so. This will give you confidence that there are clear reporting lines and that there will be support if you need it.

There may be times when it is not possible or appropriate to raise concerns in accordance with established reporting lines. This may be where, for example, the person to whom you would usually report is unavailable and the situation is time critical, or they are the person responsible for the wrongdoing. Consider who else in the organisation you can raise concerns with if this is the case.

If you are the sole solicitor in an organisation, you should discuss with your employer how you will report concerns. This may mean reporting directly to the governing body. Similarly, if there are no established procedures for reporting concerns in your organisation, you should raise this through the chain of legal management if there is one, or with your line manager if there is not. A lack of procedure does not negate the need to report concerns. In any cases where solicitors are reporting to non-legally qualified persons, the solicitor should make them aware of the solicitor's regulatory obligations [<https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/>] .

### *When wrongdoing persists*

Where you have reported your concerns but no action is taken, or any action has not stopped the wrongdoing, you need to consider your next steps. This will depend on the individual circumstances. For example, if the person you reported to did not take any further action, you should escalate your concerns – usually to the next person in the reporting chain.

The situation is more difficult if you report to the governing body but they decide that the wrongdoing should persist. In order to meet your wider public interest obligations, you must not turn a blind eye to wrongdoing or be complicit in it. This means that you must not:

- Do anything that helps to facilitate the wrongdoing. For example, you should not draft a contract or agreement which you know your employer will have to breach the law to fulfil. Or help your client to exploit loopholes in legislation which clearly defeat the intention of the legislation.
- Do anything which suppresses exposure of the wrongdoing. For example, you should not draft a non-disclosure agreement that seeks to prevent someone from reporting an offence to a law enforcement agency. In the event of an investigation by a regulator or law enforcement agency, you must not agree to withhold disclosure of relevant documents if you are able to disclose them without breaching confidentiality or privilege.
- Where you are acting in a leadership or management capacity, allow action to be taken that helps to facilitate, or suppress exposure of, the wrongdoing. For example, you should not take part in a decision to do something you know or should know to be wrong. You cannot facilitate the wrongdoing through the actions of those you manage and lead, whether or not they are themselves lawyers, and you have a responsibility to oversee their work effectively and satisfy yourself this is not the case and that any issues, if identified, are addressed.

You will not be complicit in the wrongdoing simply because you work in an organisation where it has taken place. Or by offering advice on how your employer might be able to reach the same objective in a way that avoids wrongdoing or brings any wrongdoing to an end.

Where wrongdoing persists despite you reporting your concerns, you should carefully consider whether you can meet your regulatory obligations and continue working for your organisation. For example, consider whether you can continue to act with independence and in a way that upholds the rule of law and the proper administration of justice, whilst working where the wrongdoing persists. You should also consider whether, if the matter and your role in it became public, public trust and confidence in the solicitors' profession would be damaged.

### *Where you are asked to assist with remediating wrongdoing*

You may be asked to assist with remediating wrongdoing identified and we take a positive view of solicitors helping organisations to put these right. Should you perform this role, make sure that you act in a way which aligns with your regulatory obligations, including that you act with integrity and independence. You may need to consider whether external legal advice should be sought where there is a conflict of interest or a risk of a conflict arising.

If you are asked to lead an internal investigation, we have further guidance that can help. [\[#related\]](#)

### *Keeping written records*

Where you have identified potential wrongdoing by your organisation, or individuals within or connected to it, you should keep a written record of:

- the nature of your concerns
- what actions you took
- the outcome of those actions
- the reasons for any decisions you have made.

This will be helpful evidence if any questions are raised about whether or not you met your regulatory obligations.

Where you are asked to assist with remediation of wrongdoing, again keep written records about what you have been asked to do and any steps you have taken to safeguard your regulatory obligations. This could be, for example, seeking external advice.

### *Making reports externally*

Separately to reporting concerns about wrongdoing within your organisation, you should consider whether you need to make a report to an

external authority. This will usually be in addition and subsequent to reporting your concerns internally, but not always.

In some circumstances, you will be required by law to make a report, for example, a suspicious activity report to the National Crime Agency under the proceeds of crime legislation. Or you may be under a regulatory obligation to report to us, or another regulator, for example the Financial Conduct Authority, if your employer is a bank.

In other circumstances, we would still expect you to carefully consider whether to report your concerns externally and to balance the reasons for and against this action. This means you will need to look at the situation impartially and make a careful balancing judgment. It will be harder to justify a decision not to make a report where the wrongdoing:

- Involves serious criminal offences or there is a risk of serious harm or loss. For example, a toy manufactured in breach of legislation poses a danger to children. Or an investment scheme devised to be tax efficient appears to carry a significant risk of HM Revenue and Customs pursuing customers for underpaid tax.
- Has a negative impact on the rule of law or the administration of justice, for example, you know that the wrongdoing is likely to result in a miscarriage of justice.

It is more likely that a decision not to make a report will be justified where there are serious counterbalancing considerations. For example:

- You think there are risks to the personal safety of yourself or others if you make a report.
- You have a genuine belief that the issue has been or will be reported or addressed to the extent that no report is required.
- You believe your employer is likely to have a valid claim against you for breaching your duties of confidentiality or legal professional privilege (LPP), although see further information about this below.

Your obligation to consider whether you need to make a report to an external authority continues even if you decide that you are unable to continue to work for your employer.

#### The Department for Business and Trade

[<https://www.gov.uk/government/organisations/department-for-business-and-trade>] lists prescribed people and bodies to which incidents of wrongdoing by your employer can be reported. This includes a brief description about the types of matters you can report to each prescribed person/body.

We recognise that in practice these judgments will sometimes be difficult. From a regulatory perspective, we will support solicitors that err on the side of caution and make a report.

Whether or not you decide to make a report to an external authority, you should record the action you have decided to take together with your reasons. This will help to demonstrate that you have acted with independence, honesty and integrity and in a way that maintains public trust and confidence in the solicitors' profession.

### *Confidentiality and legal professional privilege*

In most cases when considering disclosing information outside of your organisation, you need to carefully consider your duties of confidentiality and LPP.

These duties will not always apply where wrongdoing exists. It is important to note that you will not have a duty of confidence if you are being used by your organisation to perpetrate fraud or, by analogy, any other crime, and therefore no privilege will attach to the relevant communication. See for example, *Gartside v Outram* [1857] 26 LJ Ch (NS) 113.

Where confidentiality and/or LPP do apply, it may not constrain you from making a report. For example, it may apply to certain information, but it is unlikely to apply to all and so you should consider whether you can disclose sufficient information without breaching privilege. You could also consider speaking, on a confidential basis, to the relevant organisation to understand the routes available for you to disclose information, and whether you might be able to do so without breaching confidentiality or LPP.

Where you report to us, in certain circumstances we are entitled to see information that would otherwise be covered by LPP. To allow this, we may request that you obtain specific client consent in order to disclose information to us. Or you may judge it necessary to seek consent of your own accord so that you can bring a relevant matter to our attention. Without client consent, we may seek a statutory production notice for disclosure of the information. This allows us to access information and documents held by regulated firms and individuals, even where such material attracts LPP.

We have published guidance on confidentiality

[<https://www.sra.org.uk/solicitors/guidance/confidentiality-client-information/>] and LPP considerations. This provides more information on the circumstances in which it may be possible to disclose confidential information, and the steps you should take prior to any disclosure. We will support solicitors erring on the side of reporting when faced with genuine concerns about serious wrongdoing.



Where you are uncertain about whether you can make a report, you may want to seek legal advice. Or contact Protect [<https://protect-advice.org.uk/>], the UK's whistleblowing charity.

### *When you must make a report to us*

Your obligations to make a report to us are set out in our reporting and notification guidance. [<https://www.sra.org.uk/solicitors/guidance/reporting-notification-obligations/>] You are required to report to us (or to another approved legal services regulator if appropriate) any facts or matters which you reasonably believe are capable of amounting to a serious breach of regulatory obligations. This includes where you think you, or another in-house solicitor has seriously breached our requirements.

### *Further help*

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

Protect [<https://protect-advice.org.uk/>], the UK's whistleblowing charity has detailed information on whistleblowing as a solicitor. They also run a free and confidential adviceline.

### *Related guidance*

Guidance for employers [<https://www.sra.org.uk/solicitors/guidance/understanding-in-house-solicitors-professional-obligations-employer/>]

Identifying your client when working in-house

[<https://www.sra.org.uk/solicitors/guidance/identifying-client-working-in-house-guidance/>]

Conducting internal investigations [<https://www.sra.org.uk/solicitors/guidance/internal-investigations/>]

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Not in effect