

Guidance

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Separate Business Guidance

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Status

This guidance is to help you understand your obligations and how to comply with them. We will have regard to it when exercising our regulatory functions.

Who is this guidance for?

All SRA regulated firms, their managers, owners and employees.

Purpose of this guidance

To explain your obligations when you are linked with a separate business.

General

As set out in the SRA Glossary, a “separate business” means, where you *are an authorised body* or own, manage or are employed by an authorised body, a separate business:

1. which you own;
2. which you are owned by;
3. where you actively participate in the provision of its services, including where you have any direct control over the business or any indirect control over the business through another person, or
4. which you are connected with,

and which is not an authorised body, an authorised non-SRA firm, or an overseas practice.

Examples of situations involving separate business include:

- A solicitor in a recognised body that has shares in a company that produces medical reports in personal injury cases

- A recognised body that owns a separate company that provides online legal services and is not authorised
- A solicitor who practises in a recognised body but who also works on their own account as a “freelance solicitor” without being authorised as a recognised sole practice

The SRA does not regulate separate businesses. However:

- Paragraphs 5.3 of the Code of Conduct for Solicitors, RELs and RFLs and 7.1(b) of the Code of Conduct for Firms contain obligations that apply when clients are referred, recommended or introduced to a separate business or their matter is divided between the authorised body and the separate business.
- Action by the separate business may lead to a linked authorised body or individual being in breach of SRA Principles especially where they have an element of control over the separate business or actively participate in it.

Example: a recognised business (RB) owns a claims management company (CMC). The CMC is fined by the Financial Conduct Authority for sending out misleading publicity and cold-calling. We decide that the CMC was controlled by the partners of the RB and take enforcement action against the firm and responsible managers for breach of Principle 2 (Act in a way that upholds public trust and confidence in the solicitors profession and in legal services provided by authorised persons) and Principle 5 (Act with integrity).

Information to clients and publicity

You are obliged to make sure that clients understand whether and how the services you provide are regulated and the regulatory protections available to them. See paragraphs 8.10 and 8.11 of the Code of Conduct for Solicitors, RELs and RFLs and paragraph 7.1 (c) of the Code of Conduct for Firms.

Therefore, when practising in a separate business that is unauthorised you will need to follow the information requirements appropriate to clients of an unauthorised business.

See Unregulated organisations giving information to clients

[<https://www.sra.org.uk/solicitors/guidance/ethics-guidance/unregulated-organisations---giving-information-to-clients/>]

You also have the obligation to ensure that any publicity in relation to your practice is not misleading. See paragraph 8.8 of the Code of Conduct for Solicitors, RELs and RFLs and paragraph 7.1 (c) of the Code of Conduct for Firms.

To comply with this obligation, you must take care to ensure that clients are not confused between the authorised firm and the unauthorised separate business.

The extent to which this will require specific measures on your part will depend on the likelihood of the confusion arising.

The more obviously 'separate' the business, and the further away its activities are from legal services that consumers might expect to be provided by a lawyer, then the lower the likelihood of confusion.

Example: W & Co (a recognised body) is a part owner of G Properties (an estate agency). G Properties is therefore a separate business. The two businesses do not share premises, staff, publicity or a website, although referrals occur between them. G Properties do not employ any practising solicitors but do engage in some legal activity that is routine for estate agents - for example, providing draft leases to residential landlords. However, legal cases are never 'split' between the two firms and W & Co only refer clients for estate agent activities.

There would seem to be little risk of consumers being confused as to the nature or regulatory status of the different entities. When referring clients to G Properties, W & Co will simply need to comply with referral requirements in the SRA Codes (see below).

Factors that will require more specific information about regulatory status and protections to be provided to consumers will include:

- You and the separate business sharing the same or a similar name, and/or

premises, and/or staff - especially if the staff will deal directly with consumers.

- You and the separate business having shared (or linked) websites, contact details or publicity.
- The extent to which the separate business provides legal services that consumers would expect to be provided by a lawyer.
- Whether clients seeking legal services will be first directed to the separate business.
- Whether legal matters will be divided between you and the separate business -see below.

Example: R Solicitors own R Estates, a separate business. The two firms share a website which directs clients that require estate administration or probate services to R Estates via e-mail contact or a helpline number. These clients are only referred to R Solicitors in order to obtain the grant of probate, and R Estates deal with the administration throughout. The

website itself will need to explain clearly that R Solicitors are regulated by the SRA and that R Estates are not and any web page or information relating to R Solicitors will need to comply with the SRA Transparency Rules [<https://www.sra.org.uk/solicitors/standards-regulations/transparency-rules/>] . However, there will be a need to go further and obtain the client's informed consent to the matter being divided between the firms and to provide specific information as to the differences in regulation and redress.

Informed Consent

You will need the client's informed consent before

- referring, recommending or introducing the client to a separate business (referred to collectively in this guidance as 'passing on' the client), or
- dividing (or allowing to be divided) the client's matter between you and a separate business.

What is informed consent?

What will constitute the client's 'informed consent' will depend on the circumstances.

'Informed consent' will always involve the client being made aware of the nature of your links to the separate business and any interest you have in passing them on.

If the client is passed on to the separate business for a separate matter, not involving legal activities, then it may be unnecessary for detailed information, for example the differences in regulatory redress, to be supplied. Clearly, you will need the client's agreement before passing on details to the separate business, But the client may of course contact the separate business directly having been given the appropriate information and the fact of them making the contact could constitute informed consent in those circumstances.

Example: RTA & Co is a recognised body that handles personal injury claims. RTA & Co are part of a group of companies which includes a separate business 'Fast Car' that hires out cars following accidents. RTA & Co can recommend Fast Car for car hire to their personal injury clients provided that it is in the client's best interests to do so, the provisions of the SRA Codes, relating to referrals and introductions to third parties, are satisfied (see below); and the client understands the nature of the links between the two businesses and any financial benefit.

The client's agreement would be needed to pass their details to Fast Car if the client does not make the contact directly themselves.

If a legal matter is divided with a separate business or the referral is for the primary purpose of the separate business carrying on legal activity, then it is important for the client to be made aware of the differences in regulatory protection and of redress between the two businesses. The concept of informed consent includes the client understanding the consequences of these differences, not just the facts of them before agreeing to the referral. This is likely to include that

- the business will not be regulated by the SRA and that:
- there will be no right to complain to the Legal Ombudsman (except for any work carried out in the unregulated business by an authorised person)
- there will be no right to apply for a grant to be made out of the Compensation Fund (if the client would be eligible)
- the work will not be covered by compulsory professional indemnity insurance (PII) (you may explain what insurance arrangements the separate business has in place),
- the work may not be covered by legal professional privilege.

See Unregulated organisations giving information to clients

[<https://www.sra.org.uk/solicitors/guidance/ethics-guidance/unregulated-organisations---giving-information-to-clients/>]

Where the separate business is regulated elsewhere then the information may be amended to reflect the protections and rights of redress offered by that regulation. For example, other professionals will often have their own compulsory PII schemes, and there may be a right to complain to another Ombudsman such as the Financial Ombudsman Service.

Other factors that may be taken into account in deciding the appropriateness of the information is the client's existing knowledge and whether the client would have a reasonable expectation that protections relating to authorised legal services would apply. In some circumstances, certain elements of the information will not be relevant or necessary. For example, corporate clients with a turnover of £2m or more will not have the right to access the Legal Ombudsman or the Compensation Fund in any event. However, all clients should be given sufficient information so that they can understand the risks they are taking on - including any potential loss of legal professional privilege.

Where you are dealing with a commercial client and regularly make referrals to the separate business as part of your doing business with that client then the informed consent may be for a series of such referrals where the circumstances for each are not materially different.

Other referral, introduction and fee sharing requirements

Where you refer a client to a separate business, receive an introduction from or share fees with the separate business then you must also comply with the general requirements relating to those activities. See paragraphs 5.1 of the Code of Conduct for Solicitors, RELs and RFLs and 7.1 (b) of the Code of Conduct for Firms.

Therefore, you should make the client aware of any relevant financial interest you have in the referral or introduction and the client should be informed of any fee sharing arrangements.

Further you should not make or receive payments for referrals and introductions in relation to criminal proceedings.

If the separate business is carrying out claims management activity then you should not pay that business a prohibited referral fee under the terms of the Legal Aid Sentencing and Punishment of Offenders Act 2012.

It is important to be aware that you cannot accept a referral or introduction from a separate business if that business acquired the client in a way that you would have been forbidden from doing under the SRA's regulatory arrangements. So, if for example the separate business acquired the clients by cold calling, you could not accept a referral or introduction of those clients to you because the SRA Codes would forbid you from directly obtaining the clients that way yourself. See paragraphs 8.9 of the Code of Conduct for Solicitors, RELs and RFLs and 7.1 (c) of the Code of Conduct for Firms.

Dividing or allowing a matter to be divided

As set out above dividing or allowing a matter to be divided between you and a separate business requires the client's informed consent.

It is not possible to give an exhaustive definition of a 'matter'. This will often be a question of what the client's reasonable expectations would be - i.e. would the client reasonably regard it as the same matter?

The following is always likely to be part of the same matter for these purposes:

- the grant of probate and administration of the estate,
- all legal activity in relation to conveyancing,
- all legal activity in relation to the same cause of action in a civil dispute, and
- all legal activity in relation to a family dispute.

Separate business: conflicts of interest and confidentiality

See:



- Conflicts of interest [<https://www.sra.org.uk/solicitors/guidance/ethics-guidance/conflicts-interest/>]
- Confidentiality of client information [<https://www.sra.org.uk/solicitors/guidance/ethics-guidance/confidentiality-client-information/>]

An own interest conflict which prevents you acting for the client will include situations where passing the client on to or sharing the case with the separate business would benefit the separate business but is not in the client's best interests.

Conflict of interest: the separate business will be a separate entity and therefore you are able to act for clients who may be in conflict with other clients of the separate business (provided that you as an individual are not acting for both clients in breach of the rules). However, it is vital to ensure that confidential information is not passed between the businesses.

Confidentiality: Separate businesses that are closely linked to the authorised body, whether or not they share premises, may bring a number of risks to confidentiality. These include:

- IT systems - if you share an IT system with a separate business it is important that this is suitably secure and set up so that only you can access your firm's client information and cases.
- Telephones - clients should be clear which firm they are speaking to. Ideally, there will be separate phone numbers for you and the separate business.
- Sharing of information - you cannot share information with the separate business (or vice versa without the client's consent).
- Sharing of staff – information acquired for one purpose should not be used for a different purpose.

You should also consider and comply with your obligations under data protection legislation.

SRA Accounts Rules

The client account of an SRA regulated entity must not be used to hold money for the separate business, or the separate business used to hold money that should be in the client account.

Further guidance

Unregulated organisations giving information to clients

[<https://www.sra.org.uk/solicitors/guidance/ethics-guidance/unregulated-organisations---giving-information-to-clients/>]

Conflicts of interest [<https://www.sra.org.uk/solicitors/guidance/ethics-guidance/conflicts-interest/>]

Confidentiality of client information [<https://www.sra.org.uk/solicitors/guidance/ethics-guidance/confidentiality-client-information/>]

Further help

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