

# Case studies

## Case studies

### Reporting and notification obligations

#### *Reporting and notification obligations*

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#### **Related guidance**

This case study should be read in conjunction with the guidance on reporting and notification obligations

[<https://www.sra.org.uk/solicitors/guidance/reporting-notification-obligations/>]

#### *Sexual assault*

##### *Background*

Chloe worked as a junior lawyer in the litigation team in an international law firm called Ace law. Five years ago she attended a three-day training event and a series of workshops for employees at the firm's Manchester office. At the conclusion of the event, Chloe attended a social event put on for the attendees together with a number of her colleagues. This was hosted at a local nightclub by the head of the office and senior partner, Phillip.

Marcus is a senior colleague of Chloe's at the law firm where she now works, Delta Law. Recently, Chloe told Marcus about the training event and said that throughout the three days she had been subjected to unwanted attention from Phillip. This included him putting his arm around her shoulders and waist, telling her that she should come and work for him because he liked having beautiful girls around him and sending her inappropriate text messages including sexualised content. At the social event Philip had put his hand up her skirt and underneath her underwear on two occasions. Chloe says that she had not encouraged this conduct in any way and that it was unwelcome and unwanted.

Marcus is very troubled by Chloe's disclosure and considers that Chloe should report the conduct described to the SRA. Chloe says that the whole thing was a long time ago and that she just wants to forget about it now.

Marcus is concerned for Chloe and for his own position because his area of law is a small specialism and Ace Lawyers are a rival firm where there is a lot of staff crossover. Philip is an important and prominent figure in the market. Marcus is considering making a report to us, but he is worried about getting himself and Chloe into trouble.

### *Our position*

Chloe's disclosure includes serious misconduct (sexual harassment) as well as potential criminal misconduct (sexual assault). The public interest is firmly engaged, and a report should be made. Marcus has an obligation to report to us as he now has information which he believes to be genuine and credible, about a matter that if proved would amount to serious breaches of our standards and codes.

We appreciate Marcus's concerns about reporting but as he is clearly reporting in the public interest. We will not tolerate any victimisation of him or Chloe arising from the report.

Chloe may also be worried about the age of the matter and the fact she did not report this before. Neither Chloe nor Marcus should be deterred from making a report by the fact that the allegations relate to a period five years ago.

We may have additional information about Philip or Ace Firm which makes reporting particularly important. We will always take into account the reasons why a report was not made at the time of the event. For instance, the fact that a sexual assault may have taken place indicates that it is extremely unlikely that we would be concerned about the delay in the circumstances.

We appreciate that it can be difficult for those who have been subject to violent or sexual misconduct to speak up. We also know that people can be unwilling to report matters because of fear of repercussions, the status of the perpetrator and the issues being endemic in certain workplaces.

In such circumstances we would offer Chloe our full support in relation to the process, next steps and support measures that can be put in place. The fact of Philip's misconduct is a matter we need to know about even if Chloe decides ultimately that she does not wish to give evidence against him. We may, for example, have received other reports about him in the past or other witnesses may come forward following a report made to us.

As this case discloses potentially criminal conduct, we would usually consider making an onward disclosure to the police. If we took the decision to alert the police, then we would inform Chloe about this in advance.

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### *Discrimination*

A paralegal accepts a job with a new firm. In his pre-employment paperwork he gives details of a physical disability which greatly reduces his mobility which will require various reasonable adjustments to be made by his employer.

The day after they submit this paperwork, the firm withdraw the job offer, giving only a brief explanation as to the reasons behind this decision; namely firm-wide restructuring making the position now redundant. The paralegal makes a formal complaint to the firm, alleging disability discrimination.

The Compliance Officers for Legal Practice (COLP) looks into the complaint. As part of her investigation she undertakes a full review, looking at:

- the selection criteria
- interview notes
- equal opportunities data for all candidates
- reason why the offer of employment was withdrawn as a result of the firm-wide restructure.

Following this full audit, the COLP wrote a report concluding that the withdrawal of the offer of employment was unrelated to the candidate's disability. The COLP specifically looked at whether a self-report to us is warranted in the circumstances and concludes that it is not. This took into account the fact that the relevant decision makers were unaware of the candidate's disability at the time the employment offer was withdrawn.

The candidate is sent a decision letter together with a copy of the report and is invited to comment and offered the opportunity to correct any factual errors. The candidate does not respond but subsequently issues a claim for unfair discrimination in the employment tribunal (EAT).

While preparing for the tribunal, the COLP becomes aware that the primary decision maker in the withdrawal of the employment offer was aware of the candidate's disability and had been untruthful when asked about this before. For this reason, the firm are advised that they may wish to settle the claim. But notwithstanding this, counsel's advice in relation to the EAT claim is that the firm have good prospects of success in defending this.

The COLP is concerned about the fact that the decision maker misled her about the state of his knowledge of the disability and promptly reports this to us. However, she does not raise in her report to us a concern about discriminatory conduct as she has concluded that this is not made out on the evidence.

### *Our position*

The firm and its management team have a duty to run the business in a way that encourages equality of opportunity and respect for diversity. It must also make reasonable adjustments to ensure that disabled employees



are not put at a substantial disadvantage and must not discriminate unlawfully.

Individual solicitors clearly have a duty to be honest, to act with integrity and to assist with legitimate enquiries both internal and external. If the allegations of discrimination and failure to assist with legitimate enquiries are found proved, then these would be capable of amounting to serious breaches of our standards and codes.

In this case, the COLP initially acted on a reasonably held belief that there was nothing about the original decision to raise a regulatory concern in relation to the firm or decision-makers' approach to the candidate's disability. The COLP's decision to undertake an internal investigation before reporting to us was also reasonable.

Following receipt of the additional evidence and the fact that the primary decision maker may have lied to the COLP, as she properly identified, a regulatory concern now arises in relation to the potentially misleading representation to her. The COLP made a prompt report to us once she became aware of the additional evidence uncovered during the EAT investigation.

However, on the basis of the evidence and counsel's advice, notwithstanding any decision that may be made to settle the employment tribunal proceedings, it was reasonable for the COLP to decide not to report to us the discrimination allegation. This is because nothing in that advice would have changed her belief regarding whether the decision to withdraw the offer of employment was discriminatory.

The obligation to report is likely to have arisen at this stage, however if the barrister's advice suggested that the prospects of success were poor on the evidence. The COLP will want to assess the reasons for this in light of the facts and evidence that resulted in counsel changing their advice and whether this gives rise to a reasonable belief that discrimination had in fact occurred.

In that situation given the EAT claim will be brought to our attention in any event, the COLP may wish to consider seeking consent to disclose the barrister's advice (which would be covered by Legal Professional Privilege). Further, if the matter does proceed to an EAT hearing, and any particular criticism or findings are made against the firm or any individual decision-makers, we would expect a report to be made at that time.

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## *Advocacy*

Kilo Law specialise in defending personal injury claims. Kilo Law's in-house advocacy team present personal injury claims on behalf of the firm when these cases go to court. Recently, one of Kilo Law's advocates complained

to his head of section about a solicitor, Mr X, who was representing the other side in one of his cases.

Mr X works in a local firm that is also involved in this area of work, Metric Law. The concerns mentioned to him included:

- Mr X being late to the court hearing
- appearing not to have read a number of key documents
- acting without instructions including on major decisions in the case.

The head of section at Kilo Law knows that there have been anecdotal rumblings about the poor quality in the Metric Law team for some time. Specifically, he is aware of at least one other report to him within the last year about Mr X not appearing to have instructions when in court. The head of section recalls that when acting for a vulnerable adult, Mr X was pulled up by the judge for trying to agree an order when he did not have the client's approval for this. The judge adjourned the case as a result and made a wasted costs order against Mr X personally.

The head of section decides that there is no need for them to report Mr X to us because the matter is really about Mr X 's poor skills as advocate, rather than anything to do with his character or conduct. He also tells himself that Mr X's clients might complain to Metric Law which would bring it to the firm's attention for them to deal with.

### *Our position*

We consider that it would be appropriate to make a report to us. Although the head of section thinks this is just about poor advocacy skills, there is clearly a pattern here and some of the concerns described are relatively serious in particular acting without instructions.

The head of section has an obligation to report to us promptly facts that he reasonably believes should be brought to our attention for us to investigate whether a serious breach has occurred or otherwise exercise our regulatory powers.

Reporting to us will allow us to investigate to see if the matter is in fact serious – we may be able to piece together issues of poor advocacy skills, incompetence and other failures to act in Mr X's clients' best interests (some of whom may be vulnerable). For example, we may have received more than one report about the incidents (say from the judge). We may have received complaints by Metrics Law's own clients although often clients do not have the knowledge to assess the quality of the advocacy they are receiving and so may not know to make a report to us or the firm.

We consider that our regulatory function may be engaged here. Therefore we are likely to need further details regarding both the individual advocate and the firm's systems for handling and supervising this work to make sure the clients' interests are properly being looked after.