

# Guidance

## Guidance

### Sexual Misconduct

#### *Sexual Misconduct*

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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 principals, role holders and employees.

All solicitors, registered European or registered foreign lawyers.

#### *Purpose of this guidance*

The purpose of this guidance is to help you:

- Understand our approach to allegations of sexual misconduct, what behaviours are unacceptable and when they might become a regulatory matter.
- Identify the boundary between an individual's behaviour in their private and professional life, where they might overlap and why the distinction is important.
- Understand our expectations that firms will promote and ensure a workplace culture that does not tolerate sexual misconduct.
- Understand firms' obligations both when investigating these matters internally and reporting them to us

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

This guidance will therefore:

- Provide clarity for those we regulate of what we expect from them when dealing with sexual misconduct allegations.
- Assist those who have to make decisions about reporting possible sexual misconduct to us.
- Assist complainants who are thinking of reporting allegations of sexual misconduct to us.

- Provide examples from our work of how sexual misconduct has manifested itself both in the workplace and in other contexts.

## *Sexual misconduct*

We use the term 'sexual misconduct' to describe conduct related to sexual behaviour which raises a regulatory issue.

Not all sexual behaviour raises a regulatory issue. For example, consensual sexual relationships between colleagues will not, without more, be investigated or sanctioned.

However, a person must not abuse their professional position to initiate or pursue an improper sexual or emotional relationship or encounter with a client, a colleague or anyone else. At all times individuals must make sure that their conduct preserves and justifies clients' and colleagues' trust in them, as well as the public's trust in the profession. That trust is undermined by the exploitation of a professional position for sexual purposes.

Sexual misconduct might take place in the workplace and be directly relevant to an individual's professional life and their professional standing (example 1 below).

Sometimes however, the line between an individual's private and professional life can begin to get blurred, making judgments about whether any conduct constitutes a regulatory matter more difficult.

The High Court has endorsed the regulation of professionals in the public interest by reference to private conduct [Ryan Beckwith v SRA [2020] EWHC 3231 (Admin) [<https://www.bailii.org/ew/cases/EWHC/Admin/2020/3231.html>] ].

The closer any behaviour or alleged wrongdoing touches realistically upon the individual's practice or reflects how a solicitor might behave in a professional context, the more likely it is that the conduct may impact on the individual's integrity or trust in the profession.

Sexual misconduct might not directly relate to an individual's work as a lawyer or the work being done by a firm but have a connection to practice, their role, and their position in relation to the recipient of the behaviour (example 2 below).

Sexual misconduct might also happen entirely outside of practice and not directly relate to the practice of the individual but might be so serious that we consider it raises a regulatory issue.

Some sexual misconduct allegations totally removed from legal practice might still be so serious that they damage public confidence in the profession and therefore might still amount to professional misconduct.

Examples include criminal convictions for sexual offences as well as serious non-consensual sexual touching even where no criminal proceedings are planned, current or concluded.

### *The regulatory framework*

Our Principles [<https://www.sra.org.uk/solicitors/standards-regulations/principles/>] set out the core ethical values we require of all those we regulate which apply at all times and in all contexts.

Most relevant to allegations of sexual misconduct are those requiring integrity (Principle 5), acting in a way that upholds public trust and confidence in the profession (Principle 2) and requiring you to act in a way that encourages equality, diversity and inclusion (Principle 6).

More details on the obligation to act with integrity, the consequences of failing to do so and the circumstances in which we are likely to take action, are explained in our guidance on Acting with Integrity

[<https://www.sra.org.uk/solicitors/guidance/acting-with-integrity/>] .

In each case, in deciding whether to take regulatory action, we will apply our Enforcement Strategy [<https://www.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/>] and our Assessment Threshold Test

[<https://www.sra.org.uk/solicitors/guidance/investigations-decisions-investigate-concerns/>] .

We will consider all the circumstances of the case including any aggravating and mitigating factors, while ensuring that the wider public interest (including the protection of the public) is upheld.

Explained and illustrated below - with reference to some more detailed examples from our work in this area - are the different factors we take into account when deciding what behaviour might or might not amount to sexual misconduct and when it becomes a regulatory issue for us.

### *Proximity to practice*

The closer any behaviour is to an individual's professional practice the more likely it is that the conduct might impact on or call into question the integrity of the individual or the wider trust in the profession - and therefore more likely the need for regulatory action (example 1 below).

Sometimes a complaint is received by us about a regulated person but their professional status has no relevance to the incident itself. A complainant might, for example, say that a family friend who is a solicitor made inappropriate sexualised comments or gestures to her at a family party. If the friend just happens to be a solicitor there would be no real link to professional practice and the complaint unlikely to be investigated.

However, as stated, some complaints are so serious that even if they arise from a private setting we will consider bringing proceedings.

Unless the conduct is so serious that it offends public trust and confidence irrespective of context, it will generally be necessary to identify whether this relates to professional practice in order to identify whether it is a regulatory issue.

The reason for this is that some matters which would not merit regulatory action in a private setting would do so if they impacted on workplace relationships or took place in a work environment.

For example, commenting on someone's personal appearance in private life is likely to be acceptable but might not be appropriate in the office. Or two mutually consenting people who happen to be work colleagues, engaging in flirtatious conversation at a bar one evening is completely different to a training principal making sexually suggestive comments to a trainee in the office.

Identifying whether there is a connection to professional practice can sometimes be difficult. Relevant considerations in assessing proximity include whether the conduct:

- Took place on practice premises.
- Arose from a practice context - this includes official or informal firm events at a firm's premises or in other locations. Such events could include a firm seminar, a social event such as a firm Christmas party, after-work drinks, or a firm trip/holiday. The event might begin at one location yet still hold a link to practice if further locations were visited subsequently - although the connection might be lost after a certain point.
- Involved a colleague or a client or any other professional acquaintance.
- Stemmed from a professional origin but was not a firm sponsored event. For example, a professional networking or training event.
- Took place after a firm event or event linked to the profession but at a separate location or venue such as informal after-event drinks at a pub or in someone's home.

### *Seriousness of the conduct*

Our general approach to gravity is set out in section 2.2 of our Enforcement Strategy.

Where we receive a complaint about unwanted comments or touching and there is evidence of a sexual motivation then the misconduct becomes more serious.



For example, someone being overly friendly and putting an arm around someone's waist might be objectionable to an individual but is not necessarily serious enough for us to take regulatory action. However, if the touching were intentionally on the bottom or breast it would obviously be more sexualised and therefore more serious.

The criteria listed below are all relevant to an assessment of gravity. However, the overall seriousness of the sexual misconduct is informed by all the circumstances of the case including the proximity to practice (as set out above) as well as the following considerations:

- Did it involve physical contact? For the misconduct to be sexual the touching must obviously have a sexual element to it or be accompanied by sexualised language. This is difficult to describe in general or abstract terms - but the type and place of touching, level of intimacy and duration will all be relevant.
- Did it involve violence, exploitation, threats, malice, coercion, pressure, manipulation, victimisation, harassment, discrimination, intimidation, influence, breach of privacy or bullying? These are regarded as significant aggravating factors. Some examples include:
  - sexualised conduct accompanied by threats (amounting in effect to blackmail) if the conduct is reported to line managers
  - suggesting or demanding that junior staff wear certain attire, such as high heels, fewer items of clothing or more revealing clothing or make up
  - intentionally plying someone with extreme or significant quantities of alcohol which might suggest that it is being done to lower both physical and emotional resistance while also reducing their capacity to clearly recollect events
  - use of internships and traineeships, future work or access to clients (or implicit/explicit offers of such) as inducements, or the threat of their withdrawal, to manipulate
  - physically cornering or obstructing a complainant so as to prevent exit or escape
  - giving sexualised gifts, such as sex toys
  - comments about sex life (of either party)
  - demeaning, embarrassing, or criticising the other person to third parties (by reference to some factor associated with their gender or sexual orientation). For example, 'rating' staff and/or commenting on their personal appearance and grooming habits or vice versa.
- Was the conduct repeated? The frequency can indicate a pattern and can impact on seriousness and insight. Did the conduct persist despite

warnings to stop? This will be considered as a significant aggravating factor.

- Was it directed at a junior colleague or vulnerable individual or more than one individual?
- Was the regulated person aware or should they have been aware that their conduct was unwelcome?
- Was it spontaneous or planned? A sequence of conduct not only reflects gravity, but also undermines a defence of spontaneity.

Sexual misconduct is more obvious when it involves physical touching. However, comments by themselves can also amount to sexual misconduct. It is possible for comments to be implicit or veiled or deliberately ambiguous, yet objectionable. In such situations we will consider:

- The nature of the comments – were they overtly sexual in nature?
- Did the comments also involve gestures? If so, what meaning did any gesture convey (or intend to convey).

### *Criminality of the conduct*

Where we receive a report of alleged sexual misconduct which could amount to a criminal offence, we will consider whether it is appropriate for us to make a report to the police.

If a criminal conviction is already recorded we will rely on that finding, sentence and any judicial sentencing remarks when taking any regulatory action.

A conviction for an offence that appears limited to a person's private life might still raise professional misconduct issues. For example, a conviction for rape or sexual assault in a non-practice context is so serious that it is relevant to professional standing, as it would diminish public confidence in the profession, as well as having a bearing on the integrity of the individual concerned.

In *SRA v Main* [2018] EWHC 3666 (Admin) [[https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Admin/2018/3666.html&query=\(%22Alastair\)+AND+\(Main%22\)\)](https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Admin/2018/3666.html&query=(%22Alastair)+AND+(Main%22)))], the High Court agreed with our assertion that it would harm the reputation of the profession and the trust the public places in the provision of legal services if a person who had recent convictions for sexual assault, and therefore on the sex offenders register, was allowed to continue to practice.

However, criminality is not a pre-requisite for us to make a finding of sexual misconduct.

We are entitled to investigate possible misconduct even if no criminal proceedings are planned, current or concluded. This could be because the alleged misconduct could not amount to a criminal offence but might nevertheless be serious enough to necessitate regulatory action, or because the prosecuting authorities have decided not to proceed.

Even after such a decision, or an acquittal, it might still be appropriate for us to investigate because professional misconduct is a wider concept than the criminal law.

## *Consent*

Just as consent is often relevant to criminal allegations of sexual offences, so it is sometimes relevant to regulatory complaints of sexual misconduct. But we recognise that assessing the issue of consent is very complex and can be hard to determine. It can be affected by such factors as relative seniority/inferiority, vulnerability, intimidation, and intoxication. In some cases these can reduce and even remove the capacity of someone to give meaningful consent. Consent can also fluctuate from time to time and from context to context.

## *Vulnerability*

Vulnerability (of the alleged victim) might be a relevant factor. Although it is well established that vulnerability can be an aggravating feature - attempting a definition is difficult. It can take many forms and might arise from an array of factors, present either individually or in combination. These include:

- Professional status (two parties of different seniority).
- Professional relationship (a professional can be unduly dependent on a client (for supply of work) or a client can be unduly reliant on a professional for effective advice/representation, especially in certain areas of law, and especially if the work is publicly funded or pro bono because alternatives might be less readily available).
- Fragile health (physical or mental).
- Disability.
- Age.
- Sexual orientation.
- Emotional, financial or career dependency.
- Temporary vulnerability, such as intoxication (by alcohol or drugs)
- Isolation or impaired access to effective support or remedies.
- Cultural vulnerability.

## *Intoxication*

Being intoxicated is often raised as a defence to allegations of sexual misconduct. Depending on the context intoxication could aggravate or mitigate the behaviour. It is never a defence to an allegation.

## *Our expectations of firms*

We have recently published guidance

[<https://www.sra.org.uk/solicitors/guidance/workplace-environment/>] specifically aimed at clarifying our expectations for firms in ensuring the wellbeing of their staff.

We expect firms to foster a culture of zero tolerance of sexual misconduct, where staff feel that they can speak up freely and report matters to their firm and to us.

Any allegation of sexual harassment in the workplace presents an issue firms will need to investigate sensitively and appropriately in compliance with their legal and regulatory obligations.

We appreciate that firms will need to consider difficult and often sensitive issues (such as a non-supportive complainant or contradictory evidence from different parties) when dealing with issues of this nature. However, we expect firms to have robust procedures and policies in place to properly manage and investigate complaints of sexual misconduct when they are made.

Firms are required to report matters promptly to us which are capable of amounting to a serious breach of our rules.

In addition to this guidance, firms considering whether to report allegations of sexual misconduct to us should also consider our Reporting and Notification Obligations [<https://www.sra.org.uk/solicitors/guidance/reporting-notification-obligations/>] guidance. [<https://www.sra.org.uk/solicitors/guidance/reporting-notification-obligations/>] Our Enforcement Strategy makes clear that we regard allegations of sexual misconduct very seriously.

## *Sexual misconduct examples*

The following examples of sexual misconduct and the different contexts within which it can occur help to illustrate how these different factors can interplay.

These are actual examples - some of the many that are reported to us and they are clearly unacceptable.

They are not exhaustive but help demonstrate behaviours which are not acceptable in a professional setting and which could constitute conduct related to sexual behaviour which we will treat as raising a regulatory issue.

### *1: Unwanted sexual attention in the workplace*



This unfortunately can be an all-too-common occurrence in the workplace. It usually involves sexualised comments which the perpetrator often seeks to justify - and might genuinely regard - as 'flirting' or 'banter' or even 'complimentary'.

Examples are comments indicating sexual interest: 'You are sexy' or 'I find you attractive'.

More serious are distasteful sexualised comments: 'You could come over here, sit on my knee and see what pops up.'

The most serious comments are overtly sexually specific remarks about sexual activity or intimate parts of the body. If rebuffed, the comments may be aggravated by direct or veiled references to the speaker's seniority and/or the imprudence or futility of any complaint.

If a complaint is made and the firm backs the perpetrator it might lead a firm to try to persuade or pressurise a complainant to resolve the matter by entering into a settlement agreement.

Sexually offensive, derogatory or explicit comments about a complainant can also be made to (or overheard by or copied to) third parties. Of critical importance is the nature and context of any sexualised remarks, including the demeanour of the perpetrator and the effect on any audience. A particular context can transform what would normally or otherwise be a neutral, ambiguous, or injudicious comment into something improper and offensive.

More serious is unwarranted and unwanted touching (assault). Typically, the perpetrator seeks to justify (and might genuinely regard) the touching as consensual or accepted or, at least, not wholly unwelcome. But the complainant thinks differently.

In all of the above situations it will be necessary to consider whether the words or actions were abusive or simply awkward, clumsy and unwise and whether the person knew or should have known that the words or actions were unwanted or made the person feel uncomfortable. This depends on all the surrounding circumstances. The more unwarranted, intimate, and persistent the touching, the more likely it is to be regarded as abusive.

In the workplace, the boundaries are clearer and stricter than in a social setting.

## *2: A firm social event*

This is another common situation giving rise to complaints of sexual misconduct, both consensual and non-consensual. It also illustrates further the blurring of the line between professional and private life.

The link to professional life is weakened if a firm social event, which has been organised at one venue, moves on to another as the night progresses.

For example, attendees move to a restaurant or pub and/or the parties break away from a wider group of colleagues and move to a hotel room or home. However, the link is not always broken by such a transition. The working relationship remains the origin and the context - even if the misconduct itself takes place in other premises.

The same is true of residential (including overseas) events attended in a professional capacity which involve a mix of both work and social elements.

There may also be a strong connection with professional life where trips or holidays are arranged by or through a firm using a social committee and/or work communications systems. Sometimes the firm might fund part of the cost. The practice connection is stronger if an off-premises professional event (such as a conference) is organised by the parties' own firm, regardless of who attends. A trip away from the workplace (including overseas) on firm business, such as visiting a client, is of course much closer to the normal working environment.

### *3: Consensual workplace relationship that becomes non-consensual*

Sometimes a sexual relationship begins consensually but one party subsequently ends it. A complaint is prompted when the other party persists in the (now unwanted) sexual attention or seeks to revive the relationship by bullying or harassment or, in extreme cases where the professional relationship is unequal, by threatening adverse career consequences if the relationship is not revived.

As in other scenarios, abuse of an uneven/unequal power relationship (between professionals, clients and social contacts) can be a common feature.

The abuse and misconduct might also involve either incentivising (by offering pro bono work or an internship or some other career advancement) or intimidating (by threatening career stagnation or regression) or even punishment (through poor appraisals).

### *4: Use of social media*

Social media includes blogs, internet forums, content communities, business platforms such as LinkedIn and other social networking sites.

Expected standards do not change because communication is made through social media rather than by more traditional means. Increasingly,

however, social media messages and content are another means by which sexual misconduct is perpetrated (and evidenced).

It is also another example of the way in which the line between professional and private life can be blurred.

The link to practice is clearly closer if use is made of a professional channel of communication, such as a firm's email account/address or its networking/conferencing platform. But this is also true if the initial approach or 'friending' stems from some professional context - even a remote or indirect one, such as responding to a request for legal help on a Facebook community page.

Social media (including private messaging) must not be used to sexually harass, intimidate, or pressurise a colleague at work. Nor should such channels be used to, for example, make targeted sexualised comments about a colleague's physical appearance (sometimes referenced to photographs) which the author might then try to minimise as 'flirting'.

Although usually intended to have a limited audience (and separate from any professional platform), social media communications/postings might become more widely available, thereby causing distress and damage. If they do (or could), allegations of a breach of confidence might follow.

### *Further guidance*

#### Reporting and notification requirements

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

#### Acting with integrity [<https://www.sra.org.uk/solicitors/guidance/acting-with-integrity/>]

Public trust and confidence [<https://www.sra.org.uk/solicitors/guidance/public-trust-confidence/>] [<https://www.sra.org.uk/solicitors/guidance/sra-approach-equality-diversity-inclusion/>]

#### The SRA's approach to equality, diversity and inclusion

[<https://www.sra.org.uk/solicitors/guidance/sra-approach-equality-diversity-inclusion/>]

#### Workplace Environment: risks of failing to protect and support colleagues

[<https://www.sra.org.uk/solicitors/guidance/workplace-environment-case-studies/>]

#### Making decisions to investigate concerns

[<https://www.sra.org.uk/solicitors/guidance/investigations-decisions-investigate-concerns/>]

SRA Enforcement Strategy [<https://www.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/>]

SRA Principles [<https://www.sra.org.uk/solicitors/standards-regulations/principles/>]

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