

# Upholding Professional Standards 2017/18

30 July 2019

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Our Upholding Professional Standards report sets out information about how complaints are handled, how we conduct investigations, and how we decide whether and what sort of regulatory action is necessary.

The report includes statistics and commentary on the types of matters we dealt with during the period November 2017 to October 2018. It also includes case studies of action taken and covers developing trends such as sexual harassment and the use of NDAs, money laundering and dubious investment schemes.

Publication of the report is part of our ongoing drive for transparency and openness. It follows the publication earlier this year of our new Enforcement Strategy [<https://www.sra.org.uk/sra/strategy/sub-strategies/sra-enforcement-strategy>] and associated 'topic guides' [<https://www.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/>], which summarise the main mitigating and aggravating factors taken into account when considering possible action across a number of common areas.

## *About us*

The Solicitors Regulation Authority (SRA) is the regulator of solicitors and law firms in England and Wales.

We work to protect members of the public and support the rule of law and the administration of justice. We do this by overseeing all education and training requirements necessary to practise as a solicitor, licensing individuals and firms to practise, setting the standards of the profession and regulating and enforcing compliance against these standards.

We are the largest regulator of legal services in England and Wales, covering around 80 percent of the regulated market. We oversee some 192,000 solicitors and more than 10,400 law firms.

## *Foreword*

### *A word from our chair*



The standards we set are critical to establishing and maintaining public confidence in the rule of law, the administration of justice and, of course, solicitors' professional practice. Standards like integrity, confidentiality, independence and acting in the best interests of clients are what people expect of solicitors and what we try to assure. In this new report, we set out how we uphold these standards through our enforcement activity.

Most solicitors and law firms do a good job, providing high-quality legal services to the public and to businesses within a robust ethical framework. But, when things go wrong, we have to take firm and fair action to make sure that standards are upheld and that the public can continue to place confidence in both individual solicitors and the profession as a whole.

Our primary purpose in taking action is to protect current and future users of legal services, and we will pursue the most effective and efficient way to do so. We try to prevent problems by using information from concerns coming into us and by doing research to identify potential issues. We then raise awareness among the profession to try to prevent these issues arising, reducing risks for the public.

Because public protection is our priority, we will often also try to address less serious concerns through working with a firm or solicitor to put things right. But, sometimes, we take more serious action by referring cases to the Solicitors Disciplinary Tribunal (SDT), which can issue much higher fines for individual solicitors than we can, or even strike them off the roll of solicitors. We don't always win these cases, but even where the outcome is uncertain, we think it is in the public interest that some issues are tested through the SDT and court processes.

Enforcing standards comes at a price – high-quality investigation and action is complex and costly. Our work is funded by the profession, and these costs are ultimately passed onto the public. This is one of the many reasons why we think it is important to be open about our work and its costs – this report is part of that transparency. I hope it provides some insight into what is a very important, but often difficult and challenging, part of our work.

**Anna Bradley**

**Chair of the SRA Board**

Open all [#]

### *Our approach to enforcement*

The role of our enforcement work is to:

- Maintain and uphold standards of competence and ethical behaviour.
- Protect clients and the public – we control or limit the risk of harm by making sure individuals and firms are not able to offend again or are

deterred from doing so in the future.

- Send a signal to the people we regulate more widely with the aim of preventing similar behaviour by others.
- Uphold public confidence in the provision of legal services.

## *Our enforcement work*

### *Our powers*

Our own powers to impose sanctions are limited. For example, our fining powers for individual solicitors are limited to £2,000, and we are not able to strike off a solicitor. If we think this sort of action is necessary, we must take the case to the SDT. We can, in some circumstances, place restrictions on a solicitor's practice or on a non-solicitor who works in a law firm.

We have more robust powers in relation to certain types of legal businesses. We can impose a fine of up to £250m on an alternative business structure (ABS), also known as a licensed body, and up to £50m on managers and employees of an ABS. These greater powers reflect concerns about these types of businesses when they were first introduced. However, there is no evidence that they present any greater risk than traditional law firms.

A table of sanctions we and the SDT impose can be found in "Action we take and action the SDT takes" [\[#info\]](#) .

### *Our new Enforcement Strategy*

Our new Enforcement Strategy [\[https://www.sra.org.uk/sra/strategy/sub-strategies/sra-enforcement-strategy\]](https://www.sra.org.uk/sra/strategy/sub-strategies/sra-enforcement-strategy) sets out how we will use our enforcement powers when a business or person we regulate has not met the standards we expect. It provides clarity on how we decide whether we should act in given circumstances and what we take into account when assessing the seriousness of misconduct and the action to take.

We revised and published our new Enforcement Strategy in February 2019, after over three years of engagement with members of the public and the profession. We talked to more than 5,400 people and asked their views on what should happen when the people we regulate fall below the standards we – and the public – expect.

### *Helping firms and solicitors get it right*

To help firms and solicitors know when they could be most at risk of falling short of the standards we expect, or not complying with our rules, we provide a range of services and publications, such as:

- our Professional Ethics helpline and webchat service, on hand to answer questions about our rules and regulations
- guidance to help firms understand how our rules and regulations work
- our annual Risk Outlook publication, which highlights the biggest risks in the sector and how firms and solicitors can tackle them
- thematic reviews of key areas within the legal sector, highlighting risks and raising awareness about what good and bad practice looks like.

### *Key themes in 2017/18*

We regulate some 146,000 practising solicitors and receive around 11,000 reports of concerns every year.

The number that result in some form of sanction is very small, indicating that the vast majority of solicitors and law firms do a good job and earn the trust we all place in them.

Some of the concerns reported to us are issues that are raised regularly, for example, breaches of confidentiality, misleading the court or taking advantage of a third party. Common areas of the law are also reflected – conveyancing and probate, for example.

Each case is different, and many are complex, with a mixture of potential breaches of our regulations. And, although there is variation, we do see particular issues emerging year on year.

The work of solicitors may often become involved in wider public policy issues. For example, sexual harassment in the workplace, payment protection insurance or leasehold issues have all been topical issues. This can mean a rise in the numbers of related concerns being raised with us and we may remind the profession about its responsibilities in those areas.

Such topical issues can be high profile, attracting significant public – and therefore press and parliamentary – interest. Our work to maintain professional standards can play an important part in addressing these concerns, alongside other activity, perhaps by law enforcement agencies or legislative reform.

### *Sexual harassment*

One of the key themes for 2017/18 was concern about sexual harassment in the workplace, sparked by the #metoo movement. Solicitor involvement in drafting potentially inappropriate clauses in non-disclosure agreements (NDAs) in relation to harassment was part of the wider debate. We issued a warning notice in March 2018 to remind the profession of its obligations when drafting NDAs.



During the year, we received some 70 complaints about harassment in the workplace (many of which were about law firm working environments), of which 13 related to the potential misuse of NDAs. These are difficult and sensitive matters, so we put in place a dedicated team to investigate the concerns. The team had the benefit of expert help as we worked with the victims of harassment. We included detail on NDAs in our revised 'Walking the Line – balancing duties in litigation' Risk Outlook paper.

### *Dubious investment schemes*

This year we investigated 19 cases about solicitor involvement in dubious investment schemes. At a time of low interest rates, many people find investment schemes offering high interest rates very attractive, and, in some cases, they lose their money.

Some of these 'too good to be true' schemes use law firms as middlemen to make dubious investment schemes seem trustworthy and safe. Although the vast majority of solicitors act with honesty and integrity, a small number abuse their position of trust or take risks by assisting in schemes they do not understand. In many instances, the involvement of a law firm in a 150,000 views of website scam alerts dubious investment scheme does not form part of the usual business of a firm or solicitor. This can be a key reason why our Compensation Fund (and often the firm's insurance) cannot help with restoring the money people have lost. But we can and do investigate the solicitors involved and we take action where we find misconduct. For example, in 2017/18, we took a case to the SDT and it fined a City law firm £500,000 and struck off a solicitor for involvement in such a scheme.

### *Money laundering*

Further warning notices in 2017/18 covered the use of client accounts as a banking facility (which is not allowed under our rules) and, separately, the facilitation of money laundering and terrorist financing, and when solicitors should report suspicious transactions.

The legal sector is attractive to criminals because it can give the appearance of legitimacy to the holding of or transfer of money gained from criminal activity. Law firms and solicitors often hold large sums of money in their client accounts and can transfer money through property or other transactions. They have, however, a range of responsibilities set out in legislation and money laundering reports to us are rising significantly. We saw 218 reports in the first nine months of 2018 compared with 152 in the same period in 2017 – a rise of 43%.

### *Immigration and asylum*

Immigration and asylum are high-risk areas of law and clients are often very vulnerable, and the consequences and impact of the decisions made can be significant. We undertook a review of the quality of advice for asylum seekers in 2016. It showed both good practice and areas for concern. During 2017/18, we also continued to investigate reports of totally without merit judicial review claims in immigration and asylum work. Several firms were referred to the SDT as a result of our concerns, such as, among other things, the impact on the administration of justice.

### *Holiday sickness claims*

Over the last few years, we have had complaints about law firms pursuing large numbers of invalid or dubious holiday sickness claims. We published a warning notice making it clear that solicitors must act properly in these matters by, for example, advising clients about what will be expected of them when making a claim. This notice, the high-profile prosecutions of holidaymakers making false claims and widespread media coverage of stories of intermediaries touting for claims in popular resorts seem to be reducing the volume of reports coming into us.

In a similar vein, we issued a warning notice on payment protection insurance claims, because of our concern that firms and solicitors were failing to act properly. For example, by acting in matters without first investigating whether claims were valid. As a result of this and other work to raise awareness, we did not handle any new cases in 2017/18 relating to payment protection insurance claims.

We also issued a warning about personal injury referrals, which were banned in 2013, and poor handling of personal injury claims. We continue to receive reports of concerns about this area.

### *Risk alert*

We scan the legal environment to identify potential risks. We produce a range of material to raise awareness and assist the profession to manage problems, helping to protect the users of legal services.

In 2017/18, our well-used Risk Outlook publication again highlighted solicitor involvement in dubious investment schemes as a key priority risk. It also addressed the threat of money laundering and improperly managed claims – both of which are areas where solicitors' responsibilities have changed following the introduction of new rules or regulations.

Cybercrime also continues to be a risk in the legal sector, as it is in other industries. We have encouraged law firms to report cyberattacks and near misses to us, so that we can warn the wider profession about criminals' latest tactics through our alerts and ebulletins.

We also issue scam alerts on our website. These were viewed over 150,000 times in 2017/18. They are designed to alert firms and members of the public about businesses that are misusing law firm details and fake law firms that are attempting to defraud people.

We take the actions outlined above as part of our commitment to understanding and sharing the patterns of issues reported to us and raising awareness about areas of difficulty.

### *Reporting concerns to the SRA*

Some concerns come to us direct from the profession, such as from solicitors or the compliance officers who work in law firms.

Others come from members of the public, the police and the courts. We also work closely with the Legal Ombudsman (LeO), the organisation that handles complaints about the standards of service people receive from their lawyer. It will contact us if, during one of its investigations, it has concerns that a solicitor may have breached our rules. Like all regulators, we also monitor media reports.

### *Who made reports to us in 2017/18?*

We also identify concerns as we undertake other aspects of our work. For example, we carry out thematic reviews of particular types of legal work or requirements, such as anti-money laundering procedures.

### *Concerns raised*

Each year, we receive between 11,000 and 12,000 reports raising concerns about the solicitors and legal businesses we regulate. The 'Key stages when considering a concern' [key] diagram gives an overview of what happens once we start looking into a concern.

We carefully consider the information sent to us and decide if we need to investigate. We may ask relevant parties questions to better understand the issues.

In some cases, we can resolve the concerns through prompt engagement with the firm, making sure they correct any shortcomings. Where necessary, we will take witness statements, visit firms in person and analyse evidence, for example, bank accounts, financial statements and other documents.

After carefully considering the issue and speaking to all parties concerned, we will make a decision on next steps in line with our Enforcement Strategy [<https://www.sra.org.uk/sra/strategy/sub-strategies/sra-enforcement-strategy>] .

In very serious cases, we refer the firm or solicitor to the SDT. The SDT is independent of us and has powers we do not. For example, it can suspend

a solicitor, issue an unlimited fine or stop them from practising.

## *Key stages when considering a concern*

### *Stage one*

An initial look at concerns. In many cases, there will be no need for us to investigate. We will always explain why this is the case. In other cases, we redirect the matter to the Legal Ombudsman, or LeO. LeO deals with complaints about a law firm's or solicitor's standard of service. We work closely with LeO. We send relevant matters to it and vice versa. We also redirect matters to other authorities. In some cases, we are unable to investigate as it is not in our jurisdiction or is about firms or people we do not regulate. We also redirect the matter internally. We do this if, for example, it is in fact a claim on our Compensation Fund or an authorisation query.

### *Stage two*

We investigate. We normally need to ask for more information and talk to all concerned parties. We may talk to the person who raised the concern with us and the firm or the solicitor involved and/or contact a third party. We will write or speak to the firm or solicitor, formally setting out our concerns. They have the opportunity to respond. We keep parties up to date throughout the investigation. Most of our investigations are resolved within a year. In 2017/18, the median time taken to complete an investigation was 88 days.

### *Stage three*

Bringing an investigation to a close. In cases where we find that the firm or solicitor has not fallen short of the standards we expect, we will always explain our findings and why we are not taking action to the people who initially reported the matter to us. We also resolve matters through engagement with the firm. This happens when the breach of our standards or regulations is minor, there is no ongoing or future risk to the public, the firm or solicitor took swift steps to remedy the issue and had a cooperative and constructive approach to resolving the matter. In some cases we will take enforcement action and impose a sanction or agree an outcome. This can include fining a firm or solicitor or imposing restrictions on their practising certificate.

### *Stage four*

A referral to the Solicitors Disciplinary Tribunal, also known as the S.D.T. . The SDT considers the matter and decides whether there should be a hearing. If there is a hearing, the S.D.T. will decide if issuing a sanction is appropriate. We and the firms and solicitors involved can apply to appeal S.D.T. decisions.



The 'Concerns reported to us 2017/18' [#Concerns] diagram gives an overview of the number of reports we received about firms' and solicitors' behaviour in 2017/18 and the outcomes recorded in the same period. There is no linear relationship between the number of reports we receive and the number of outcomes in a 12-month period. This is because not all cases will be resolved within that timeframe.

Most of our investigations are resolved within a year. In 2017/18, the median time taken to complete an initial assessment of a concern raised with us was four days.<sup>1</sup> [#n1] The median time taken to complete an investigation was 88 days. However, if, for example, a matter is referred to the SDT, or there is other activity such as a police investigation or we receive further related reports, it may take much longer.

The majority of concerns do not result in us taking enforcement action or referring a case to the SDT. This is because in many cases we can resolve matters through engagement and without the need for enforcement action. In many others, we find that the solicitor or firm has not breached our rules. We keep all information sent to us in our records and, if appropriate, use it to profile risk if concerns are raised in the future.

### *Concerns reported to us 2017/18*

A section 43 order means we restrict non-lawyers, eg managers and other employees, from working in a law firm without our permission.

A 47 (2) (g) order means a former solicitor who has been removed from the roll cannot be restored unless the SDT allows it.

'Other', appearing in the SDT outcomes branch, can mean, for example, a reprimand or section 43 order.

All other explanations on the different types of outcomes can be found in the glossary [#Glossary] and Action we take and action the SDT takes [#info] . As explained in the diagram [#Concerns] , there is no linear relationship between the number of reports we receive and the number of outcomes in a 12-month period.

Please note, one case can result in multiple outcomes.

### *Constructive engagement – supporting compliance*

In some cases, engaging with a firm or solicitor to resolve a matter and help with compliance will be an appropriate course of action.

For example, we might offer guidance to the firm or solicitor and supervise and monitor them as they take steps to remedy the issue. This will be when the breach of our rules has been minor, where evidence suggests it is

unlikely to be repeated and where there is no ongoing risk. It will also be where the firm or solicitor involved has an open, cooperative and constructive approach towards resolving the issues.

### *Taking appropriate next steps*

When we have decided on the appropriate steps to take in each case that comes to our attention, we will always explain how we have come to our decision to those involved.

We only take the steps that are needed to protect and promote the public interest and we consider everything on a case-by-case basis. Our focus is on the most serious of issues, such as where a firm or solicitor has fallen well below the standards we expect in an isolated instance, or where they have persistently fallen well below these standards. In these cases, it is likely we will take enforcement action.

### *Taking action to deal with an immediate risk to the public*

If we find, or are alerted to, an issue of a more serious nature and there is an immediate risk to the public, there are steps we can take to limit any immediate risk. These are:

- Intervening into a law firm – we can act quickly and take possession of all money and files that the firm or solicitor holds, effectively closing down the firm or solicitor's practice. We do this in cases where we know that people are at risk of receiving legal services from a dishonest solicitor, or it is otherwise necessary to protect the interests of clients.
- Placing conditions on practising certificates – these can stop the individual solicitor or firm concerned from, for example, handling client money or acting as a manager of a firm.
- Imposing a section 43 order – this stops non-solicitors from working in a firm we regulate without the firm first contacting us and asking our permission.

### *Case study | Identifying breach of Account Rules*

We opened an investigation after a solicitor reported to us that they were unable to verify the client account details of a firm they were dealing with in a conveyancing transaction. We opened an investigation into the matter and identified that the firm had not obtained its latest accountant's report, as necessary under our rules.

The firm closed shortly after we commenced our investigation. It did, however, obtain the missing accountant's report. This identified some

breaches of the Accounts Rules for us to consider. We commissioned a forensic investigation to inspect the firm's accounts.

Among other concerns, the investigation found that:

- On a previous occasion, client money had been held in the personal account of one of the firm's partners. This had been corrected by the time of our inspection.
- A shortage existed on the firm's client account. The firm later explained it had replaced this.

This raised serious concerns, which we mitigated by imposing immediate conditions on the practising certificates of the firm's managers. This meant they were not allowed to:

- act as a manager, owner or compliance officer of a firm that we regulate
- hold, receive or have access to client money, act as a signatory to a client account, or authorise any transactions from the client account.

These conditions protected the public while we referred the matter to the SDT.

### *Issuing sanctions and regulatory settlement agreements*

If there has been a serious breach of our rules by a firm or solicitor, we will, usually, issue a sanction. We impose in-house sanctions if they are an appropriate and proportionate outcome to the issue at hand.

When considering a matter, we see certain types of allegations as inherently more serious than others. When assessing if a serious breach has taken place, there are some common factors we will consider:

- intent and/or motivation
- harm and impact
- vulnerability
- role, experience and seniority
- regulatory history and patterns of behaviour
- remediation
- private life
- criminal convictions.



The range of sanctions we can impose is limited. For example, our fining powers for individual solicitors are limited to £2,000, and we are not able to strike off a solicitor. However, we can impose a fine of up to £250m on an ABS, also known as a licensed body, and up to £50m on managers and employees of an ABS.

Where appropriate, we can also resolve a matter through a regulatory settlement agreement (RSA). Under an RSA, the facts and outcome are agreed on by both parties. RSAs allow us to protect both consumers and the public interest by reaching appropriate outcomes swiftly, efficiently and at a proportionate cost.

We will always publish the details of our sanctions, including RSAs on our website, unless it would be inappropriate to do so.

### *Case study | Poor standard of service*

We received a report from the police about a solicitor accepting instructions from a third party to change the will of one of the solicitor's other clients, client A, to the benefit of the third party. The police were concerned that the solicitor might have breached their professional duties.

The third party had also been a client of the solicitors for a long time. The third party was also close friends with client A. The solicitor had taken the third party's word that client A wanted their will changed. The solicitor did not check with client A that these were actually their instructions nor that they had given their authority to the third party to act on their behalf.

We started by reviewing the evidence and interview records that the police had given us. We were able to confirm that client A's wishes were as represented by the third party, but the solicitor had not carried out their professional duties by checking with client A.

The solicitor's level of competence in this matter and the consequent standard of service to their client was below what we would expect. We contacted the solicitor and alleged that they had not acted in the best interests of their client and had failed to act in a way that maintains the public's trust in the profession and in legal services more widely. The solicitor denied the allegations.

After carefully considering the case, we found that the solicitor was reckless in failing to take instructions direct from client A or confirming that client A wanted instructions to be given by the third party.

We issued the solicitor a rebuke and a fine of £2,000. The solicitor was also ordered to pay £1,350 towards our investigation costs.

### *Bringing cases to the Solicitors Disciplinary Tribunal*

We prosecute the most serious cases at the SDT. It is independent of us and can impose a wider range of sanctions than we can.

For example, it can impose unlimited fines, or suspend or strike a solicitor off the roll of solicitors, meaning they can no longer work as a solicitor. A full breakdown of the sanctions we impose and the sanctions the SDT imposes can be found in [Action we take and action the SDT takes](#) [info] . In 2017/18, we referred 134 cases to the Tribunal.

When deciding whether to bring a case to the SDT, we consider whether:

- we have enough evidence to provide a realistic prospect that a finding of misconduct will be made by the SDT, based upon the criminal standard of proof (ie beyond all reasonable doubt)
- the SDT is likely to impose a sanction that we cannot
- it is in the public interest to make the application.

### *Case study | Fraudulent claims*

If a solicitor, firm, or another person we regulate is found guilty of a criminal offence, or if we have evidence that shows they have committed a criminal offence, we will investigate, given the key role that solicitors play in upholding the rule of law and the administration of justice. We will often take enforcement action in these cases.

We prosecuted a solicitor at the SDT after they were found guilty of fraudulently claiming almost £40,000 in income tax repayments from HMRC. The solicitor had already been sentenced to 21 months in prison, suspended for 18 months and ordered to carry out 200 hours of unpaid work.

The SDT struck the solicitor off, stating that to allow them to remain on the roll would have a significantly detrimental effect on public confidence in the reputation of the legal profession. The solicitor was ordered to pay our costs of £4,000.

### *Agreed outcomes*

If we refer a matter to the SDT and it says there is a case to answer and the firm or individual admits the allegations, it may be appropriate to conclude the matter by an agreed outcome rather than through a full hearing. In these circumstances, the firm or individual makes admissions and we will agree an outcome based on a set of facts, sanction(s) and costs.

Agreed outcomes allow us to protect both consumers and the public interest swiftly, efficiently and at a proportionate cost.

The agreed outcomes shown to the right are a subset of the overall number of cases we referred to the SDT in 2017/18 (134). It should be noted that a case with an agreed outcome can have more than one outcome. For example, a solicitor may be fined as well as suspended from practice.

### *Agreed outcomes 2017/18*

2017/18	
Cases with agreed outcomes	37
Struck off	15
Suspend	6
Fine	43
Rebuke or reprimand	0
Section 43 order	1
Section 47 (2) (g)	0

### *Case study | Dubious investment schemes*

We reached an agreed outcome with a firm after it admitted it had become involved with transactions that “bore the hallmarks of dubious financial arrangements or investment schemes.” One of its solicitors used the firm’s client account to handle more than £21m associated with the schemes. The money was not linked to an underlying legal transaction or service forming part of the firm’s normal regulated activities and was associated with the dubious financial dealings.

Through the agreed outcome, the SDT fined the firm £500,000 for failing to prevent its client account being used inappropriately, failing to have effective systems in place to spot potential conflicts of interests, and failing to properly supervise the matters.

The case was concluded by an agreed outcome because the firm made early admissions. Also, the firm reported the matter to us as soon as it realised there was a problem and made a number changes to improve its internal practices and processes.

### *The appeals process*

There are rights of appeal against decisions we make in-house and decisions the SDT makes.

### *Appealing our decisions*

Firms and individuals subject to our conditions or sanctions have the right to appeal. Appeals against our decisions are considered in-house by our Adjudication team. It will not have been involved with the initial investigation and will consider the matter for the first time. Parties have further rights of appeal to either the SDT (in the case of a fine, rebuke or section 43 order) or to the High Court.

Successful appeals	Successful in part	Unsuccessful appeals	Total appeals
2	1	12	15

Successful in part means, for example, where the terms of any outcome change, such as the type of conditions placed on a practising certificate.

### *Appealing SDT decisions*

Firms and solicitors subject to our or the SDT's decisions can bring an appeal in the courts. We can also appeal SDT decisions in the courts. The right to appeal is a fundamental part of due legal process and the administration of justice.

Appeals allow courts to correct any errors that may have been made and to clarify the interpretation of law.

When deciding whether to appeal a decision the SDT makes, there are several factors that we will take into consideration. For example:

- Acting in the public interest: we take cases to the SDT to make clear what we consider to be inappropriate, and to deter other firms and solicitors from acting in ways that we consider unethical or potentially harmful to the public. We also want to make sure the public can maintain trust in the profession.
- Public protection: if we think the sanction the SDT imposed is too lenient and that the public may, as a result, be at risk, we will consider whether an appeal is appropriate. For example, we may appeal a decision where we consider that a solicitor should have been struck off the roll, rather than suspended for a short period.
- Clarification on the law: if the SDT makes a decision that may appear to contradict a point of law, we will consider whether we should appeal. This is because we need to make sure we understand our powers as a regulator, and the people we regulate need to understand what they can and cannot do. We also need to know when we should take action and what the likely decisions of the SDT could be. This helps us to use our resources more effectively.

A firm, solicitor or other person who has been the subject of an SDT decision may appeal if they believe the decision is wrong.

To appeal an SDT decision, we or the respondent must apply to the High Court. SDT appeals rarely go beyond this point.

### *Appeals against SDT decisions 2017/18*

Our appeals		Respondents' appeals		Total appeals
9		12		21
Successful appeals	Unsuccessful appeals	Successful appeals	Unsuccessful appeals	
7	2	2	2	

### *Case study | Missing client money*

We referred a solicitor who was a partner in a firm to the SDT after finding more than £1.2m missing from the firm's client account. We had already intervened into the firm and had closed it down because we suspected that the partner was acting dishonestly.

At the SDT, we alleged that the solicitor had breached our Accounts Rules by making improper payments to be made out of the firm's client account, and that the solicitor had acted dishonestly.

The SDT struck off the solicitor and ordered them to pay £20,000 towards our costs. It took the view that members of the public would be concerned about how the solicitor had behaved. The SDT

did not, however, find that the solicitor had acted dishonestly, but had acted without integrity.

### *Appeal and cross-appeal*

The solicitor appealed to the High Court against the decision to strike them off and on a minor procedural point. We acted in the public interest to cross-appeal.

The High Court upheld the SDT's finding of a lack of integrity. It found that the solicitor had demonstrated a serious lack of integrity over a significant period of time and in a number of different respects.

The High Court also found that the solicitor had acted dishonestly in relation to one conveyancing matter. The solicitor had transferred £545,000 to three unconnected parties.



The court upheld the SDT's decision to strike off the solicitor. It found that, even without the SDT's finding of dishonesty, a lack of integrity goes directly to undermining trust in the solicitors' profession and should be taken very seriously.

### *Our costs*

Every year, we collect practising fees from solicitors and law firms in England and Wales, and from solicitors and law firms practising English and Welsh law overseas.

The practising fees we collect fully, or partly, fund six organisations, including us. In 2017/18, we collected £98.6m in total, £52.6m of which went towards our overall expenditure.

In 2017/18, £14.6m of this was spent on our disciplinary processes, which are a fundamental part of our work to ensure high professional standards. By keeping how we work under review, we have steadily reduced the costs of our disciplinary processes from £16.7m in 2015/16. To keep costs under control in any case, we work to key principles. These are to act quickly, fairly and proportionately.

### *High-value cases*

Our enforcement work can be high profile and often relates to topical issues of wider public interest. This means there can be interest in how much it costs us to bring cases to the SDT and to make an appeal. There are a number of factors that affect this. These include the complexity and lifespan of a case and the number and cooperation of those involved.

#### *Cases costing more than £100,000 in 2017/18*

Of the 134 cases we brought to the SDT in 2017/18 and the 21 cases we appealed, there were six where our costs exceeded (approximately) £100,000. The costs in these cases [#Highvalue] will generally have accrued over a number of years.

The figures include the costs claimed (or agreed) for:

- bringing the case to the SDT
- bringing an appeal, if there was one
- costs awarded to the opposing party.

The costs of bringing a case generally cover:

- our work in investigating a case

- preparing for hearings before the SDT and the High Court, whether in-house or by instructing a panel firm
- advice from or instructing counsel when our internal legal team is handling a case.

### *High-value cases 2017/18*

In some of these cases, we were awarded some or all of our costs by the SDT.

Parties involved	Costs of the case	Nature of the case and the final outcome
Leigh Day (a firm) and three of its solicitors, Martyn Day (the firm's senior partner), partner Sapna Malik and solicitor Anna Crowther. There was an appeal heard at the High Court in this case.	£4.1m No costs reclaimed.	Allegations of professional misconduct arising out of claims against the British army. The SDT did not uphold our allegations. Our appeal to the High Court against certain aspects of the SDT's decision was dismissed in October 2018.
Two solicitors, Kulwant Manak and Rajbinder Dhillon, who worked at Heer Manak Solicitors (we did not bring action against the firm). There was an appeal to the High Court in this case.	£445,914 The High Court has awarded us £112,000 of costs; some costs are still to be assessed.	Misusing client money and the firm's client account. The SDT suspended Kulwant Manak from practice for two years and made him subject to practising conditions, to come into effect at the end of the suspension period. Kulwant Manak appealed to the High Court. In July 2018, the court removed some of the conditions imposed by the SDT but, in all other respects, dismissed his appeal. The SDT made an order under section 47(2)(g) against Rajbinder Dhillon, prohibiting her from having her name restored to the roll.
Four solicitors: Richard Emmett, Lindsay Helen Emmett, Matthew Stokes and Mary Hunter, and two non-lawyers, David Rae and Dale Stephenson, who worked at Emmett Solicitors, also known as Ashton Fox (we did not	£252,500 Costs are still to be assessed.	Issues about the management of a firm and use of a business loan. The SDT struck off the four solicitors. It fined the non-lawyers – David Rae was fined £200,000, Dale Stephenson was fined £50,000 and both were made subject to section 43 orders.

bring action against the firm).		
Six solicitors: Nick Carr, Stephen Benson, Paul Brown, Mark Gibson, Jeremy Green and Richard Webb, and two non-lawyers, James Boyd and Stephen Thornton, who worked at law firm Cobbetts LLP (we did not bring action against the firm).	£203,000 The SDT awarded us all of these costs.	Issues about the management and closure of a firm. By way of an agreed outcome, the SDT fined the six solicitors and two non-lawyers a total of £98,503.
Two solicitors: Roger Coleman and Nigel Tarrant who worked at law firm Colemans-CTTS LLP (we did not bring action against the firm).	£135,000 The SDT awarded us all of these costs.	Acting in transactions that were outside of the firm's area of expertise, knowledge and experience. By way of an agreed outcome, the SDT fined Roger Coleman £30,000 and suspended Nigel Tarrant from practice for three years.
Lutfur Rahman	£99,422 The SDT awarded us costs of £86,400.	Regulatory action after an election court found the non-practising solicitor guilty of illegal and corrupt practices in connection with an election. The SDT struck off Lutfur Rahman.

### *Wellbeing in the legal profession*

We know that working in law can be challenging and stressful.

When this stress has a negative impact on the work of a solicitor or a firm, it can affect competence and lead to mistakes and, potentially, serious breaches of our standards, such as dishonesty. This can result in taking action, which may be avoided if solicitors recognise the warning signs early on and seek the correct support and help.

### *Seeking support*

We understand that being part of an investigation can be a stressful and daunting time, particularly for people with health problems, or who are in a vulnerable situation. If this is the case, we encourage people to talk to their SRA contact, as there are actions we can take to make the process easier. Some examples of how we can offer support are:



- providing one point of contact
- allowing extra time to respond to us (where we are able to)
- putting an investigation on short-term hold
- putting controls in places, such as conditions on a practising certificate, rather than taking more immediate serious enforcement action.

This is not an exhaustive list and we approach each matter based on its circumstances. Members of the public and solicitors who raise concerns with us may also need support, particularly when they are in a vulnerable situation. We signpost people to a range of resources and organisations that can help, and all our staff have training on making reasonable adjustments.

### *Our wider commitment to wellbeing in the profession*

We launched our Your Health, Your Career

[<https://www.sra.org.uk/solicitors/resources/your-health-your-career/>] campaign in 2016 to encourage solicitors to talk to us if they are having difficulties with their health or wellbeing that may be affecting their work. Solicitors can talk to us about this and ask any questions they may have about our regulations and the problems they are facing.

We are a member of the Legal Professions Wellbeing Taskforce in England and Wales, alongside other legal regulators and legal organisations. Our aim is to share best practice, improve the perception of mental health and wellbeing, and address stigma as a barrier to accessing support.

### *Whistleblowing to the SRA*

If information is provided to us on a confidential basis, we will take appropriate steps to protect the reporter's identity and deal with the matter sensitively.

Individuals and firms who we regulate must report matters to us in any event. However, for someone who is regulated by us and is concerned about whether they may be investigated for their own part in any wrongdoing, reporting the issues and co-operating with us could constitute mitigation. This is particularly so where issues are reported to us at an early stage. However, we would rather solicitors and others working in the legal sector provided information late than not at all. Although we cannot guarantee that we will not take any action against the reporter, bringing the information to us is likely to help their position.

### *Supporting witnesses*

When we are investigating a solicitor or firm, it may be necessary to take a statement or interview witnesses. This will help us in our investigation and, possibly, to decide whether we need to refer the matter to the SDT.

We understand this can be distressing, so we do everything we can to support witnesses. For example, if English is not the witness's first language, we might be able to offer a translator or interpreter. If the witness is also the person who reported the concern to us, we will keep them up to date with how we are progressing with the matter.

## *Glossary of terms*

### **Agreed outcome**

An alternative to having a case heard at the SDT. Where appropriate, it is a cost-effective, swift and proportionate way of resolving a matter. Agreed outcomes have to be approved by the SDT.

### **Alternative business structure (ABS)**

Also known as a licensed body, ABSs allow non-lawyers to own or invest in law firms, opening up what was previously a closed market.

### **Finding/finding and warning**

An outcome for more significant but one-off misconduct. The finding/finding and warning can be taken into account in the outcome of any future investigation.

### **Fine**

A monetary sanction. We are able to issue a fine up to the value of £2,000 for firms, solicitors and other individuals we regulate. We can fine an ABS up to £250m and up to £50m for manager and employees of an ABS we regulate. The SDT can impose unlimited fines on individuals and firms.

### **Intervene**

An action we take if we consider that people are at risk of receiving legal services from a dishonest solicitor, or it is otherwise necessary to protect the interests of clients. Generally, this will involve closing down the firm and taking away client money and files to keep safe.

**Legal Ombudsman (LeO)**

An organisation which handles complaints about the standards of service people receive from their lawyer.

**Letter of advice**

A letter we send to remind an individual or firm in writing of their regulatory responsibilities.

**No order**

In the context of an outcome at the SDT, no order can mean that the SDT finds in our favour but decides that it is not necessary or appropriate to impose a sanction or control. It can also mean that it does not find in our favour.

**Other decision**

In the context of an outcome at the SDT, other can mean, for example, a reprimand or section 43 order.

**Rebuke**

We rebuke an individual or a firm to show disapproval where there has been a moderately serious breach of our requirements or standards.

**Practising condition**

A sanction both we and the SDT are able to impose on solicitors, firms and other people we regulate. It restricts or prevents them from certain activity, and can help us to effectively monitor the firm or individual through regular reporting.

**Regulatory settlement agreement (RSA)**

Similar to agreed outcomes, RSAs allow us to agree appropriate outcomes with individuals and firms swiftly, efficiently and at a proportionate cost. Unlike agreed outcomes, they are handled in-house and generally take place before any decision has been made to refer the matter to the SDT.

**Reprimand**

The SDT reprimands an individual where they have breached our regulations. It is the SDT's equivalent of our rebuke.

**Respondent**

The respondent is the firm, solicitor or other person against which or whom we take enforcement action.

**Roll of solicitors**

This is a record of solicitors that we have authorised to practise English and Welsh law. Not all solicitors on the roll will actively be practising as a solicitor.

**Sanctions**

Actions taken to discipline firms, solicitors or other people we regulate to prevent similar behaviour by them or others in the future, and to maintain standards and uphold public confidence in the profession.

**Section 43 order**

A sanction we issue to non-lawyers working in the profession, eg non-lawyer managers and employees such as legal secretaries. We restrict them from working in a law firm without our permission.

**Section 47 (2) (g)**

An order the SDT imposes preventing a former solicitor who has been removed from the roll from being restored without its permission.

**Solicitors Disciplinary Tribunal (SDT)**

An independent tribunal where we bring prosecutions against firms, solicitors and other people we regulate. It has powers which we do not, eg imposing unlimited fines or striking solicitors off the roll.

**Strike off**

Sanction where the SDT stops a solicitor from practising and their name is removed from the roll.

**Suspension**

A sanction we can impose to suspend a firm's authorisation either permanently or temporarily. The SDT is able to suspend a solicitor from practising either for a fixed term or for an indefinite period. The SDT can also suspend a period of suspension, so long as a restriction order remains in place.

*Action we take and action the SDT takes*

Action taken and in what circumstances	Level of misconduct	Our sanction	Tribunal sanction
Letter of advice: we remind the individual or firm in writing of their regulatory responsibilities.	Minor or where there has been appropriate firm management of an issue.	✓	✗
Finding/finding and warning: for more significant but one-off misconduct. The finding/finding and warning can be taken into account in the outcome of any future investigation.	Moderate.	✓	✗
Rebuke: we rebuke an individual or a firm where there has been a moderately serious breach of our requirements or standards.	Moderate.	✓	✗
Fine: where there has been a serious breach of our requirements or standards and where, for example, the regulated person or firm could have financially benefited from the misconduct, and it is appropriate to remove or reduce their financial gain.	Serious or a series of incidents which together are serious.	✓ Up to £2,000 (however, we can impose a fine of up to £250m on an ABS and a fine of up to £50m on managers and employees of an ABS.)	✓ Unlimited.
Practising conditions placed on a solicitor or other person we regulate: we restrict or prevent the involvement of a solicitor or individual in certain activities or engaging in certain business agreements/associations or practising arrangements.	Serious or a series of incidents which together are serious, and when it is necessary to deal with the risk posed.	✓	✓ Referred to as a "restriction order".





Practising conditions placed on a firm: we restrict or prevent a firm, or one of its managers, employees, or interest holders, from undertaking certain activities. This can also help us to effectively monitor the firm or individual through regular reporting.	Serious or a series of incidents which together are serious, and when it is in the public interest to do so.	✓	✓ Referred to as a "restriction order".
Reprimand: the SDT sanctions the regulated person for a breach of our requirements and/or standards. It is the SDT's equivalent of our rebuke.	Moderate seriousness, or a series of incidents which together are moderately serious.	✗	✓
Section 43 order (for non-lawyers working in the profession, eg non-lawyer managers and employees such as legal secretaries): we restrict individuals from working in a law firm without our permission.	Serious or a series of incidents which together are serious.	✓	✓
Suspension or revocation of a firm's authorisation/recognition: we remove a firm's authorisation either permanently or temporarily.	Serious or a series of incidents which together are serious.	✓	✓
Suspension: the SDT suspends a solicitor from practising either for a fixed term or for an indefinite period. The SDT can also suspend a period of suspension, so long as a restriction order remains in place.	Serious or a series of incidents which together are serious	✗	✓
Strike off: the SDT stops a solicitor from practising entirely. The solicitor's name is removed from the roll.	Serious or a series of incidents which together are serious	✗	✓

1. The median figure is determined by listing the number of days it took to complete each initial assessment or each investigation in 2017/18 and extracting the number that sat in the middle of that list.