## Guidance

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## Decision-making, reviews and attendance procedures

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## Status

This document explains the procedures we adopt when we make decisions under our regulatory arrangements.

### Who is this guidance for?

All SRA regulated firms, their managers, role holders and employees.

All solicitors, registered European lawyers or registered foreign lawyers.

Members of the public.

## Purpose of this guidance

This document sets out how we make a first-instance decision (FID) and how we deal with an application for an internal review of that decision.

## General

We make a wide range of regulatory decisions in relation to applicants, ranging from from individuals wanting to be admitted to the Roll, firms which want to be authorised and members of the public applying for a grant from our Compensation Fund. We also make decisions following investigations about breaches of our Standards and Regulations.

Our decision-making is undertaken in a fair, transparent and proportionate way in accordance with our decision-making guidance [https://www.sra.org.uk/solicitors/guidance/make-decisions-criteria-apply/] .

We make all our decisions on the balance of probabilities, the civil standard of proof.

We make our decisions in accordance with the schedule of delegation [https://www.sra.org.uk/sra/decision-making/schedule-delegation/] in operation at the time the decision is made.

FIDs may be made by operational unit staff, a single adjudicator or an adjudication panel. The term 'adjudicators' includes full time adjudicators and panel adjudicators. 'Authorised decision-makers' includes adjudicators, both sole and sitting as a panel and operational unit staff making regulatory decisions for us.

In certain circumstances, FIDs may be referred directly to an adjudication panel. The criteria for determining if an adjudication panel will hear a matter include if:

- the case is particularly high profile, sensitive or complex
- the person under investigation is or was an employee of, or consultant for, us
- lay input is desirable
- it is otherwise in the public interest for the case to be considered by a panel.

Authorised decision-makers will not be involved in the consideration and/or determination of any review of an FID they have made.

We publish some of our decisions in accordance with our guidance on publishing regulatory and disciplinary decisions [https://www.sra.org.uk/solicitors/guidance/disciplinary-publishing-regulatory-disciplinary-decisions/] .

We can also agree outcomes, in particular disciplinary decisions under our Regulatory and Disciplinary Procedure Rules, by agreement – see our guidance on agreeing regulatory and disciplinary outcomes [https://www.sra.org.uk/solicitors/guidance/disciplinary-publishing-regulatory-disciplinary-decisions/] .

## The first-instance decision-making process

Before the authorised decision-maker makes their decision, the case officer will generally give notice to the relevant person of the issues to be decided.

For example, for disciplinary decisions under the Regulatory and Disciplinary Procedure Rules, we will generally give notice to the person under investigation:

a. setting out the allegations and the facts in support
b. summarising any regulatory or other history relevant to the person (or any associated person) which is relevant to the allegation
c. where appropriate, making a recommendation as to the decision to be made, publication and costs

d. accompanied by any evidence or documentation that we consider relevant to the allegations.

We will also invite the person to respond with written representations within such period as specified, which will generally be 14 days from the date of the notice. We can vary this process, if we think it is in the public interest to do so.

The decision-maker will make their determination by considering the facts and representations set out in the papers presented to them. In certain circumstances we may agree to the person who is the subject of the decision attending a meeting with the decision maker - see further below. If we do, the decision-maker will consider any representations made by the person attending when reaching their decision.

Although in most cases we expect to have completed our investigations and obtained all of the relevant evidence before we make our decision, in some cases, the decision-maker may decide that they need more information. This could be from the relevant person or from a third party. If so, the decision maker will ask for this in writing and note that they have done so in their decision. The request and any additional information provided to the decision-maker will be disclosed to the relevant person.

Where the decision-maker cannot make a final decision, they will provide their written reasons in the form of a preliminary, stand-over, decision. An example might be if the decision-maker thought it appropriate to give the relevant person time to complete certain actions or to provide additional information.

When making a stand-over decision, the decision-maker may give further directions for the fair and effective disposal of the matter.

## Hearing or attendance

Most of our decisions are made on a paper basis. However, in some circumstances, the decision-maker, including an adjudication panel, may decide to invite the relevant person to attend a meeting before making a final decision.  For example, if the decision-maker considers it necessary to meet the relevant person to assess their character and suitability to be admitted as a solicitor.

An adjudication panel will generally consider an application or allegation in private by way of a meeting. It may decide to invite the relevant person to attend that meeting before it makes its final decision. In some cases, the person may also ask if they can attend the meeting in person to make representations or give evidence about their matter. The relevant person may attend with a representative.

For disciplinary and regulatory decisions, the Regulatory and Disciplinary Procedure Rules [https://www.sra.org.uk/solicitors/standards-regulations/regulatory-disciplinary-procedure-rules/] provide that the adjudication panel may decide to consider an allegation at a hearing which the relevant person may attend and at which they can be represented. We may also be represented at any such hearing. The adjudication panel may decide to hold the hearing in public if it considers that it is in the public interest or the interests of justice to do so.

When considering whether to invite the person or agree to a such a request, the decision-maker will assess the material already available. They will have regard to all the circumstances of the case. Factors which may suggest the relevant person should attend a meeting or hearing include - but are not limited to - circumstances where:

- the honesty of the relevant person is being questioned; or
- there are important material facts in dispute which, in the opinion of the authorised decision-maker, cannot fairly be determined on the documentation alone; or
- the relevant person advances a significant explanation or mitigation which needs to be heard orally in order fairly to determine its credibility; or
- the decision-maker considers it appropriate and necessary to assist them in making a proper determination; or
- a reasonable adjustment is required; or
- there is the possibility that the decision-maker may impose a substantial fine; or
- there is the possibility of disqualification or revocation under relevant Rules or Regulations.

If the relevant person does not attend the meeting or the hearing or fails adequately to explain why they did not attend, the decision-maker or panel may proceed to consider the matter based solely on the documents available to them.

## Right to review

### Applications for review

We have set out when those subject to our decisions can apply to us for an internal review of, and any rights of external appeals against, our regulatory decisions in the Application, Notice, Review and Appeal Rules [https://www.sra.org.uk/solicitors/standards-regulations/application-notice-review-appeal-rules/] .

The decisions which can be reviewed internally by application are set out in Annex 1 of those rules. Any application for a review must be made in

accordance with them.

Examples of the types of decisions we allow a right of review on include:

- imposing conditions on a practising certificate or a recognised body
- the making of a section 43 order
- rebuking or fining an individual or a firm
- refusing admission to the Roll
- refusal of an application for 'equivalent means'.

There are some decisions that we do not allow a review from. Examples include a decision:

- to intervene into a practice as there is a right to apply to the High Court to withdraw an intervention notice
- to publish the referral of a regulated person’s conduct to the Solicitors Disciplinary Tribunal
- to refuse to grant a waiver.

An application for a review of a decision must be made within 28 days of written notification of the decision, or the reasons for the decision (if later). The applicant must explain the grounds of review and the reasons why it is sought.

After receipt of the application for review, the case officer will update the bundle of documents prepared and considered when the FID was made to include:

- an updated report with a brief summary of the application and any response to the review grounds
- the FID
- the notice and ground(s) of review
- any additional documents, correspondence or representations that are relevant to the review.

The review report may recommend an outcome or advocate a particular position. This recommendation is not binding on the decision-maker. The review report will be provided to the applicant for any comments or further submissions they wish to make prior to the review being determined by the decision-maker.

Depending on the type of decision and who has made it, a review will be determined by either a senior member of staff such as a head of business unit, a single adjudicator or by an adjudication panel. This will be determined in accordance with the schedule of delegation.

The  decision-maker will consider if the original decision was materially flawed, or if there is new information which would have had a material influence on the FID. This means that, for example:

a. The decision-maker will review the FID based only on the evidence available to the FID decision-maker at the time of their decision. The decision-maker considering the application for review will take account of new information only if it is in the public interest to do so.
b. The decision-maker should interfere with a decision under review only if satisfied that the FID was wrong or that the FID was unjust because of a serious procedural or other irregularity in the proceedings.
c. Where there is room for reasonable disagreement in evaluating facts the decision-maker should not generally interfere with the FID unless they are satisfied that the conclusion reached lay outside the bounds within which reasonable disagreement is possible.

## Application for a review on our own initiative

We can also review decisions on our own initiative. If we decide to do this, we must give the person subject to the decision, notice of our intention to conduct a review and an opportunity to provide written representations on the appropriate outcome. Save in exceptional circumstances we will not review a decision on our own initiative more than one year after it was made.

A review will be determined solely on written evidence- see rule 4.1 of the Application, Notice, Review and Appeal Rules.

Some decisions can be appealed directly to an external body, such as the High Court or the Solicitors Disciplinary Tribunal. The decisions which can be reviewed externally are set out in Annex 2 and Annex 3 of the Application, Notice, Review and Appeal Rules [https://www.sra.org.uk/solicitors/standards-regulations/application-notice-review-appeal-rules/] . Other decisions may be amenable to judicial review. An external body may expect an applicant to have first exhausted all internal review rights before exercising an external right of appeal.

## The operation of the adjudication panel

The adjudication panel will meet as often as necessary to discharge its functions. It may do so in person, in writing, by telephone, video link, email or other electronic means.

The adjudication panel will normally comprise:

i. a Chair and
ii. two other members.

The adjudication panel is quorate with two members. The Chair will have a casting vote. Decisions by an adjudication panel are made on a simple majority.

The adjudication panel will include a combination of legally qualified and lay members. There will be at least one lay member on each panel.

The adjudication panel will conduct itself in a manner that the Chair considers suitable to enable a fair and expeditious determination of the case being considered.

Adjudication panels will usually be supported by a panel adviser whose role is to:

- ensure all relevant papers are before the panel
- provide any technical or procedural advice on the application or interpretation of the relevant legislation and rules and/or relevant policy, guidance or criteria
- ensure administrative arrangements are effective
- ensure the Chair completes and documents the decision in an efficient and timely manner.

## Conflicts of interest

If an authorised decision-maker has, or considers that they may have, a conflict of interest in any matter in which they are asked to participate, they should disclose it as soon as reasonably practicable to their manager. The manager may seek assistance in considering the potential conflict.

If the manager considers it appropriate, the authorised decision-maker may be required to stand down from considering the matter. A replacement decision-maker will be identified as soon as possible.

If the potential conflict does not require the authorised decision-maker to stand down, the reasons for this will be recorded in the decision.