

## **Guidance**

### **Guidance**

## **Unregulated organisations for employers of SRA regulated lawyers**

# **Unregulated organisations for employers of SRA regulated lawyers**

Updated 25 November 2019 (Date first published: 23 July 2019)

[Print this page \[#\]](#) [Save as PDF \[https://upgrade.sra.org.uk/pdfcentre/?type=ld&data=1254572814\]](https://upgrade.sra.org.uk/pdfcentre/?type=ld&data=1254572814)

## **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 employers of solicitors who provide services to the public on behalf of a business or organisation which is not authorised specifically to provide legal services by a legal services regulator.

Although this guidance refers to solicitors, unless otherwise stated the advice will also apply if you employ registered European lawyers (REs) or registered foreign lawyers (RFLs).

## **Purpose of this guidance**

This guidance is to help you if you employ a solicitor and your business is not authorised specifically to provide legal services by a legal services regulator under the Legal Services Act 2007. It will help you to understand what you can employ solicitors to do and what their regulatory duties are.

## **General**

Solicitors can be employed by you to provide services and support your business in a variety of ways. They can work 'in house' providing legal advice to you as their employer, they can provide legal services to others such as companies within your group or they can provide services to the public on your behalf. This guidance focuses on the latter situation,

where the solicitor is providing services to external clients. This includes commercial clients as well as individuals.

Solicitors bring with them the advantages of professional training and accreditation in law, and of adherence to the ethical and professional standards set out in our regulatory arrangements. These arrangements will benefit and protect both you and your customers, but you will want to ensure that you have systems and policies in place within your business to enable the solicitor to comply with these. You may wish to discuss how best to do that with the solicitors that you employ, as well as considering this guidance and the other resources referred to in it.

### **What type of legal service can the solicitor offer to external clients?**

The solicitor can provide any type of legal service except:

- Reserved legal services to the public - see [Can my business be authorised?](https://upgrade.sra.org.uk/solicitors/guidance/can-my-business-be-authorized/) [<https://upgrade.sra.org.uk/solicitors/guidance/can-my-business-be-authorized/>]
- Immigration work - unless your business is separately authorised by the Office of the Immigration Services Commissioner
- Claims management services - unless your business is separately authorised for these services by the Financial Conduct Authority (FCA).
- Certain financial services or activities - unless your business is separately authorised for these by the FCA.

### **What can you say to clients and potential clients about the solicitor and your business?**

Although the solicitor will be personally regulated by us, it is important that you do not either deliberately or inadvertently give the impression that your business is regulated by us. So, whilst you can, for example, state on your website that you employ X solicitor and that they are authorised and regulated by the SRA in their personal capacity, it should be made clear that this authorisation and regulation does not apply to your firm, to the services that you offer more widely or to work carried out by others.

A solicitor has a number of duties surrounding information they are required to give to their clients (for example as to how the services are regulated, the regulatory protections available the right to complain and the costs of the case) and you will find it helpful to read our separate guidance to solicitors on this topic "Unregulated organisations - client information".

### **Does the solicitor require a practising certificate?**

If the solicitor is held out as such or is carrying out reserved activities in house directly for you they must obtain an annual 'practising certificate' from us - see our [guidance \[https://upgrade.sra.org.uk/solicitors/guidance/practising-certificate/\]](https://upgrade.sra.org.uk/solicitors/guidance/practising-certificate/). If you pay for this as an employer and employ a number of solicitors, then bulk payment and annual return facilities are available to make this easier for you. This can include RELs and RFLs who are also required to renew their registration every year.

## **What about holding money on behalf of clients?**

A solicitor working in your business is not allowed to hold client money in an account in their personal name.

"Client money" will include:

- Money that clients pay you on account of your charges or third-party costs (such as fees for expert reports)
- Any damages that your client receives as part of a settlement of a case
- The assets of an estate that is being administered by your firm
- Any other money that you are holding on your client's behalf to complete a transaction or for investment purposes.

Therefore, you should not, for example, ask clients to pay money to a bank account held by the solicitor in their name either on their own behalf or on behalf of your business, as this would place the solicitor in breach of the rule. This does not prevent the solicitor from being a signatory to a bank account held by your business in its own name.

## **What about professional indemnity insurance?**

A solicitor working in your business will not be subject to the SRA's compulsory professional indemnity insurance requirements. Since you will be vicariously liable for their actions as your employee, and since the solicitor will wish to ensure that their work is covered, you will want to consider how best to do so; and for example ensure that their work is included in your business's own insurance policy.

Solicitors you employ are required to inform any external clients of the insurance arrangements in place, prior to working with them.

## **What if there is a complaint about a solicitor?**

Under the [SRA Code of Conduct for Solicitors, RELs and RFLs \[https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/\]](https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/) solicitors have a duty to establish and maintain, or participate in, an adequate system of complaints handling and to inform clients about how to complain under that system. So, if you do not already have one, your business will need to set up a complaints procedure if you want to



employ a solicitor who will be dealing with external clients. The clients will need to be told who to complain to about the solicitor and how that complaint will be dealt with.

If they are not satisfied with the result of that complaint, or if it has not been resolved within eight weeks, clients have the right to take any complaint about the standard of service offered by the solicitor to the [Legal Ombudsman](https://www.legalombudsman.org.uk/) [https://www.legalombudsman.org.uk/]. The solicitor must tell clients about this right both at the time of engagement and when any complaint is made. If it upholds a complaint the Legal Ombudsman has a range of options available to it, including ordering a solicitor to reduce a bill or to pay compensation. As well as looking at the substance of the complaint, the Legal Ombudsman will look at the way in which the complaint has been handled, and this will be a factor in the decisions it takes, including whether to charge the solicitor the case fee for the matter.

### **What other obligations on the solicitor should you take account of as an employer?**

All solicitors are subject to the [SRA Principles](https://upgrade.sra.org.uk/solicitors/standards-regulations/principles/) [https://upgrade.sra.org.uk/solicitors/standards-regulations/principles/]. These include the duties to act with honesty and integrity and in the best interests of clients.

Another key principle is the obligation to act "with independence." Of course, this includes providing you and your clients with independent advice. However, this duty also means that the solicitor cannot act for you as their employer (or "client") or for external clients in a way that compromises their independence.

Solicitors must also act with integrity, and for example, have a duty not to mislead the court or other third parties. This will override any duty they may have to follow your or any external client's instructions.

Those principles which safeguard the wider public interest (such as the rule of law, public confidence in a trustworthy solicitors' profession and a safe and effective market for regulated legal services) take precedence over an individual client's interests, including yours as their employer. The solicitor must inform the client when these circumstances arise. Normally it would be sensible for the solicitor to have discussed the issues with you to prevent problems arising in the first place.

For guidance in this area see [Acting with Integrity](https://upgrade.sra.org.uk/solicitors/guidance/acting-with-integrity/) [https://upgrade.sra.org.uk/solicitors/guidance/acting-with-integrity/].

All solicitors are also bound by the SRA Code of Conduct for Solicitors, RELs and RFLs and it is important that you read the Code in full. Some of its key provisions are set out below:



- A duty to maintain their competence and professional knowledge and that of any individuals they manage as well as to keep their understanding of legal, ethical and regulatory obligations up to date ([paragraphs 3.3 and 3.6](https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/#rule-3) [https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/#rule-3]). For this to be effective, a solicitor will need to have access to resources for ongoing ethical and professional development. If you are a large organisation employing a number of lawyers, it may be beneficial for you to provide some of these resources in house. However, there are a number of ways in which support can be supplied externally. For example, you can pay for solicitors to go on external training, to achieve additional accreditations (such as those organised in particular specialisms by the Law Society<sup>1</sup> or others), to be part of a professional network<sup>2</sup> or to have access to online resources such as up to date case reports.
- A duty not to mislead the court and others (see above).
- A duty not to act for a client where they have an actual or potential conflict of interest with that client ([paragraph 6.1](https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/#rule-6) [https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/#rule-6]) and not to act for two clients where they are unable to act in the best interests of each due to an actual or potential conflict of interest unless certain conditions are met ([paragraph 6.2](https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/#rule-6) [https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/#rule-6]).
- Keeping the affairs of clients confidential ([paragraph 6.3](https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/#rule-6) [https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/#rule-6])

As a firm, you will want to have appropriate systems in place to ensure that solicitors can meet these crucial obligations in relation to conflicts of interest and confidentiality. We have issued separate guidance for solicitors in these situations which you will also find helpful in understanding the circumstances in which solicitors can and cannot act and when information can and cannot be passed on.

Duties to co-operate with us and the Legal Ombudsman, to provide information to us and to report serious breaches of the rules to us or other approved regulators ([paragraphs 7.3 - 7.7](https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/#rule-7) [https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/#rule-7]). The solicitor is also under a statutory duty to supply information and documents to the Legal Ombudsman on notice from them.<sup>3</sup>

Your firm will also want to ensure that the solicitor is able to comply with these professional and statutory obligations to cooperate with the Legal Ombudsman and supply information and documents and should be aware of the consequences for a solicitor if they do not comply. This includes but is not limited to court and disciplinary action against the solicitor in question.

## What rights does the SRA have to access papers?

We will often request documents and information from solicitors as part of its investigations. However, should any solicitor who has been requested to produce documents refuse to do so voluntarily, we have the statutory power to formally request the documents and information pursuant to section 44B of the Solicitors Act 1974.

If we do need to investigate a solicitor working for you, we will normally be in touch with you and keep you updated on what we are doing. In this situation, we may ask you to provide information or documents relating to the matter. You may wish or be able to disclose documents voluntarily, however we have statutory powers to compel information where appropriate. We can apply to the High Court under section 44BB to ask for an order that a third party produce documents where they are relevant to an investigation of breaches of regulatory arrangements by a solicitor or a solicitor's employee.

## Further guidance

### [Can my business be authorised?](https://upgrade.sra.org.uk/solicitors/guidance/can-my-business-be-authorised/)

[<https://upgrade.sra.org.uk/solicitors/guidance/can-my-business-be-authorised/>]

### [Unregulated organisations - conflict and confidentiality](https://upgrade.sra.org.uk/solicitors/guidance/unregulated-organisations-conflict-confidentiality/)

[<https://upgrade.sra.org.uk/solicitors/guidance/unregulated-organisations-conflict-confidentiality/>]

### [Unregulated organisations - giving information to clients](https://upgrade.sra.org.uk/solicitors/guidance/unregulated-organisations-giving-information-clients/)

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

[Case studies on complaints about solicitors working outside SRA-regulated firms](https://upgrade.sra.org.uk/solicitors/guidance/complaints-solicitors-working-outside-sra-regulated-firms/) [<https://upgrade.sra.org.uk/solicitors/guidance/complaints-solicitors-working-outside-sra-regulated-firms/>]

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

## Notes

1. <http://www.lawsociety.org.uk/support-services/accreditation/>  
[<http://www.lawsociety.org.uk/support-services/accreditation/>]
2. For example, the network communities run by the Law Society <http://www.lawsociety.org.uk/communities>  
[<http://www.lawsociety.org.uk/communities>] but there are also numerous other networks for specific types of practice
3. Gun Judge, Head of Resourcing at Addleshaw Goddard, has been the chair of the Law Trailblazer employer panel, working with Barclays, Browne Jacobson, Burges Salmon, Clyde and Co, DAC Beachcroft, Dentons, DWF, Eversheds, Gateley LLP, Kennedys Law, Lewis Silkin, Mayer Brown, Olswang, Pannone LLP, The Royal Bank of Scotland

(RBS), Simmons & Simmons, Stephenson Harwood, Thomas Eggar, Withers, the Chartered Institute of Legal Executives (CILEx), the Law Society and the Solicitors Regulation Authority (SRA) to develop the Trailblazer apprenticeship.