

## Topic guide

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# Competence and standards of service

## Background

This topic guide outlines our approach to individuals and firms where we have competence concerns, and the standard of service falls below what we expect.

Consumers of legal services expect their solicitor to be competent. Our aim is to protect consumers against the risks that a lack of competence may create.

Our [Code of Conduct for Solicitors, Registered European Lawyers and Registered Foreign Lawyers](https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/) [https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/] requires that:

- Solicitors maintain their competence by keeping their professional knowledge and skills up to date.
- The service solicitors provide to clients is competent and delivered in a timely manner and takes account of their client's attributes, needs and circumstances.
- Where a solicitor supervises or manages others providing legal services, they remain accountable for the work carried out through them; and they effectively supervise work being done for clients.
- Solicitors make sure that the individuals they manage are competent to carry out their role, and keep their professional knowledge and skills, as well as understanding of their legal, ethical and regulatory obligations, up to date.

Our [Code of Conduct for Firms](https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/) [https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/] requires that:

- The service they provide to clients is competent and delivered in a timely manner, and takes account of their client's attributes, needs and circumstances.
- They ensure that their managers and employees are competent to carry out their role, and keep their professional knowledge and skills, as well as understanding of their legal, ethical and regulatory obligations, up to date.
- They have an effective system for supervising clients' matters.

We set out the skills, knowledge and behaviours required of a competent solicitor in our [Statement of Solicitor Competence](https://upgrade.sra.org.uk/solicitors/resources/continuing-competence/competence-) [https://upgrade.sra.org.uk/solicitors/resources/continuing-competence/competence-]



[statement/1](#). Meeting these competences is integral to remaining competent and delivering good quality legal services.

## How we identify competence issues

We receive reports from the public and other stakeholders raising concerns about a solicitor's competence or handling of a legal matter. The type of reports we usually receive include:

- Poor service provided by a solicitor or a firm. These are generally investigated by the [Legal Ombudsman](https://www.legalombudsman.org.uk/) (LeO). It can take certain action we cannot, to put matters right for the client, for example, award compensation or reduce a bill.
- Negligence. These will normally be dealt with by the courts, who can award damages for loss. However, negligent acts and omissions that are particularly serious (either in themselves or because they suggest repeated or persistent patterns of behaviour) may amount to a serious regulatory failure, for example indicating a serious lack of competence.
- The conduct of a solicitor or a firm. All such concerns will be assessed in line with our [guidance](https://upgrade.sra.org.uk/solicitors/guidance/investigations-decisions-investigate-concerns/1) [\[https://upgrade.sra.org.uk/solicitors/guidance/investigations-decisions-investigate-concerns/1\]](https://upgrade.sra.org.uk/solicitors/guidance/investigations-decisions-investigate-concerns/1), this will include any concerns about competence. If concerns pass the assessment threshold test, they will be investigated as regulatory concerns.

We also use information from our work to identify if solicitors and firms are meeting their ongoing competence requirements and if there are competence concerns. This includes:

- Carrying out thematic reviews and inspections where we have competence concerns about an area of practice or a type of practice setting.
- A rolling programme of inspections to check on the extent to which firms are complying with anti-money laundering regulations.
- Carrying out specific checks on training and supervision arrangements in firms to understand the steps they take to assure themselves that the solicitors they employ are maintaining their competence.
- Reviewing training records to understand whether solicitors are carrying out learning and development and the type of activity they are carrying out.
- Monitoring the declarations made by solicitors to confirm they are maintaining their competence when they renew their practising certificate.

All concerns raised with us or identified through our work are assessed in line with our [guidance](https://upgrade.sra.org.uk/solicitors/guidance/investigations-decisions-investigate-concerns/1). [\[https://upgrade.sra.org.uk/solicitors/guidance/investigations-decisions-investigate-concerns/1\]](https://upgrade.sra.org.uk/solicitors/guidance/investigations-decisions-investigate-concerns/1) This involves assessing the information

brought to our attention by applying a three-stage test, called our assessment threshold test. This helps us decide if we should investigate.

## **Our approach to concerns that do not pass the assessment threshold test but do raise concerns about the competence of a regulated individual or a firm**

Some concerns may not pass the assessment threshold test, but they may give rise to concerns about a regulated individual's knowledge, skills or expertise.

A solicitor is expected to act in accordance with our Standards and Regulations and maintain their competence and always provide a competent service.

If a regulated person or firm falls below this standard, we may contact the firm or the regulated person. We will ask that they address the concerns identified and assure us of their competence as a solicitor. We will also ask that the firm assures us of the competence of the regulated individuals they employ.

We also recognise that some concerns raised with us may arise because of a genuine mistake and further assurances may not be appropriate. In these situations, we will close the report with no action.

We will look at evidence around steps taken to maintain competence as part of our assessment, including whether:

- A solicitor has taken reasonable steps to keep their knowledge and skills, or the knowledge and skills of those they supervise or manage, up to date.
- A firm has systems and controls in place to make sure its managers and employees have up to date knowledge and skills.

If we identify concerns about a solicitor's competence or the systems and controls a firm has in place to make sure managers and employees in a firm have up to date knowledge and skills, we will ask the solicitor or the firm to:

1. address the competence concerns and
2. provide us with a declaration assuring us:
  - a. they or their firm are satisfied that their firm's managers and employees involved in or delivering the work outlined in the report have the required professional knowledge and skills to carry out their roles or
  - b. their firm has taken action to address the concern(s) we have identified. We will ask that they tell us what action they have taken.



In the declaration, we require firms to explain to us how they ensure the competence of individuals they employ in response to the concerns we have raised. We will monitor further reports about the firm or individuals to understand if they are meeting this declaration. Where an individual is not working within a firm we regulate, we require the solicitor to make this declaration.

Our rules require solicitors and firms to cooperate with us and provide accurate explanations where required. We will take enforcement action, in line with our [Enforcement Strategy \[https://upgrade.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/\]](https://upgrade.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/), if a solicitor or firm fails to provide this declaration. For example, we could issue a fixed fine to a firm for a failure to provide a declaration.

## **Our approach to competence concerns that are serious and pass the assessment threshold test**

We will take enforcement action when a report about the competence of an individual or a firm is serious because:

- The regulated person knowingly or recklessly acted outside their competence.
- There has been a failure to handle a complaint in a manner that is open, fair and free of cost, and/or to inform clients of right to complain to LeO.
- The client, the court or a third party has been misled about something that has gone wrong, or information has been concealed or there has been a failure to disclose.
- The firm or individual puts their own interest in limiting their liability above the best interests of the client.
- The impact on clients or third parties is high.
- There is repeated failure or a pattern of behaviour.
- There is a failure to co-operate with the LeO, SRA or other investigations or inquiries into the events.
- There is a failure to properly supervise work.
- The regulated person has failed to consider or address training and development needs.
- There has been a failure to take appropriate steps to put matters right or reduce likelihood of repetition.

Our Enforcement Strategy explains how we use our enforcement powers, where there are concerns about failure to meet our standards or requirements. It outlines a range of approaches we can take in relation to those we regulate. Before considering what action to take, we will carefully consider the individual facts and circumstances of each case.

The outcome of an investigation can include:



- requiring that training, remediation, or supervision arrangements are put in place
- imposing interim conditions or controls to prevent a solicitor or firm from providing certain services
- imposing disciplinary sanctions to prevent similar behaviour and maintain standards in the profession.

## **Example scenario**

The example below illustrates the potential outcomes when competence concerns are identified. We have set out separate scenarios with different features that could result in different outcomes.

Solicitor A, qualified as a solicitor 11 months ago and was given responsibility for several civil litigation files having recently joined the team from the family law department of the firm.

Solicitor A failed to use the correct court form when filing a defence with the County Court.

### **Features**

- This was a one-off mistake.
- Solicitor A identified the mistake and contacted the court to remedy the administrative error.
- The firm has confirmed it has checked all other matters held by Solicitor A and no other concerns have been identified.

### **Comment**

A defence has now been filed using the correct form and there was no impact to the client's case. The mistake arose because of a genuine mistake which has been rectified.

### **Potential outcome**

No further action

### **Features**

- This error was made on two occasions.
- The error was not identified by Solicitor A or the firm and was reported to us by the court.
- The firm has confirmed it has checked all other matters held by Solicitor A and it has identified 'a few other concerns which are minor and will be addressed by a senior member of the firm'.
- A defence has now been filed using the correct form and there was no impact to the clients.

## Comment

We have identified that Solicitor A may:

- Not yet have the requisite knowledge to work in litigation.
- Need to be supervised and supported by the firm.

We may therefore ask the firm to assure us that Solicitor A is a competent solicitor by informing us of:

- the processes they have in place to properly supervise staff
- the steps they have taken to develop Solicitor A's knowledge
- the supervision arrangements they have in place to make sure Solicitor A's work is supervised.

## Potential outcome

Firm: Competence concern – seek declaration

## Features

- This error was made on two occasions.
- The error was not identified by Solicitor A or the firm and was reported to us by the court.
- The firm has confirmed it has checked all other matters held by Solicitor A and it has identified 'numerous other concerns which are minor and will be addressed by a senior member of the firm'.
- Solicitor A failed to inform the firm that they were not confident in the litigation department when asked this question at regular meetings.
- A defence has now been filed using the correct form and there was no impact to the client's case.

## Comment

Solicitor A: By failing to keep professional knowledge and skills up to date Solicitor A has acted in breach of paragraph 3.3 of 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/>].

We may therefore provide Solicitor A with advice to help Solicitor A's understanding of our regulatory arrangements and the behaviours that demonstrate a risk. This is intended to help Solicitor A comply in the future and prevent inadvertent repetition.

Firm: We expect the firm to have processes in place to supervise junior members of staff; by failing to ensure all employees are competent and failing to have in place effective systems for supervision the firm have

acted in breach of rule 4.3 and 4.4 of the [SRA Code of Conduct for Firms](https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/) [https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/].

We may issue the firm with a warning to remind them that we expect effective systems in place to make sure there is proper supervision of staff, and we are likely to take action if the breach continues or is repeated.

### **Potential outcome**

Solicitor A: Letter of Advice

Firm: Letter of Warning and a declaration

### **Features**

- Solicitor A missed the statutory deadline to file a defence.
- The court informed Solicitor A that a judgment had been made in default.
- Solicitor A failed to inform their supervisor of the default judgment.

Solicitor A told their client the matter was being considered by the court when they knew a default judgment had been made.

### **Comment**

Solicitor A:

- Concealed the outcome of the default judgment from their supervisor and
- Misled his client.

The matter is therefore likely to result in enforcement action.

### **Potential outcome**

Solicitor A: Enforcement action