

## Case studies

### Case studies

#### Complaints about solicitors working outside SRA-regulated firms

## Complaints about solicitors working outside SRA-regulated firms

Published: 25 November 2019

[Print this page \[#\]](#) [Save as PDF \[https://upgrade.sra.org.uk/pdfcentre/?type=ld&data=591606039\]](#)

Created alongside the Legal Ombudsman

[Open all \[#\]](#)

### [File ownership/adequacy of complaints procedures](#)

A member of the public visits a non-SRA regulated firm and receives some legal advice from a solicitor who is employed there. They are not happy with the advice received and contact the firm to say that the solicitor was aggressive and rude and gave very bad advice.

They request an apology and compensation, along with the name of the solicitor involved, so that they can make a complaint to both Legal Ombudsman (LeO) and the SRA. The firm refuses to disclose the name of the solicitor who has spoken to them, or to give them any details about how they can complain formally to the firm. They duly complain to both LeO and the SRA.

### Jurisdiction

Neither LeO nor the SRA have any jurisdiction over the firm. However, the solicitor who gave the advice has a duty to comply with both LeO and the SRA's requirements.

### Identifying the solicitor

The SRA will have details of any solicitors employed by the firm, which are available to LeO (and the public) via the SRA's [Solicitors Register \[https://upgrade.sra.org.uk/consumers/register/\]](https://upgrade.sra.org.uk/consumers/register/). Searching under the firm's name will list the solicitors employed there. Any such solicitor will have a duty to cooperate with both LeO and SRA under paragraph 7.3 of the SRA [Code of Conduct for Solicitors, RELs and RFLs](#)



<https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/>. The solicitor must also provide information to the SRA under paragraph 7.4 of the same Code.

7.3 You cooperate with the *SRA* other regulators, ombudsmen, and those bodies with a role overseeing and supervising the delivery of, or investigation concerns in relation to, legal services

7.4 You respond promptly to the *SRA* and:

- a. provide full and accurate explanations, information and documents in response to any request or requirement, and
- b. ensure that relevant information, which is held by you, or by third parties carrying out functions on your behalf which are critical to the delivery of your legal services, is available for inspection by the *SRA*.

## Complaints handling

The solicitor has a direct responsibility under the SRA Code of Conduct to participate in a complaints procedure relating to their legal services, and also to advise their clients of how to make a complaint:

8.2 You ensure that, as appropriate in the circumstances, you either establish and maintain, or participate in, a procedure for handling complaints in relation to the legal services you provide

8.3 You ensure that *clients* are informed in writing at the time of engagement about:

- a. their right to complain to you about your services and charges
- b. how a complaint can be made and to whom, and
- c. any right they have to make a complaint to the *Legal Ombudsman* and when they can make any such complaint.

## Next steps

The SRA are concerned that there may not be a robust complaints procedure in the firm in which the solicitor is working, and they may therefore be in breach of our regulatory requirements. This is something that we will want to investigate further.

As it is not clear whether the complaint has been flagged up to the solicitor by the firm, the SRA therefore contact them for an explanation. If we subsequently identify that they knew that a complaint had been made but had not engaged with the complaint, then that may lead us to conclude that there has been misconduct serious enough to result in the SRA taking regulatory action.



As there is also a complaint about poor service, the SRA are also able to share the solicitor's contact information with LeO, so that they can undertake a parallel investigation into potential poor service. LeO would continue with their process and would find poor complaints handling.

### **Gathering information and evidence**

If the SRA needs to see the file in question as part of our investigation, we can use our powers under Section 44B of the Solicitors Act 1974, to compel the solicitor (and others) to give us information and documents.

Where the solicitor does not have access to, or ownership of, the file we can apply to the High Court for an Order that another person or entity (such as the firm) gives us information and documents in their possession (Section 44BB).

### **Poor costs service**

In this case, an individual receives some legal advice from a solicitor working in a non-SRA authorised firm. The Legal Ombudsman receives a complaint about poor service on the part of the solicitor and undertakes an investigation. The solicitor cooperates with the investigation and agrees that their service had been poor. An informal resolution was agreed between the parties, but the solicitor was then unable to comply due to his own financial circumstances. The solicitor was then struck off the roll due to an unrelated matter.

The solicitor advised that he did hold insurance, but LeO are not able to establish the details of this. The solicitor was then declared bankrupt.

### **Financial remedies**

It is unlikely in this case that the solicitor will be in a position to comply with the agreed remedy, due to their personal circumstances, and ongoing financial difficulties. LeO do not have jurisdiction over the firm, and so cannot ensure redress is made available to the client by pursuing the firm.

### **Avenues open to the complainant**

The complainant could bring a negligence claim or consumer action against the unregulated firm. They could only do this where they have not accepted a final decision from LeO. LeO might inform the complainant of this option but would not advise them further.

The complainant should also have received information about the solicitor's insurance cover directly from the solicitor – as this is a requirement of the [SRA's rules](https://upgrade.sra.org.uk/solicitors/standards-) [https://upgrade.sra.org.uk/solicitors/standards-]



[regulations/transparency-rules/](#)]- including professional indemnity insurance held by the firm.

Ultimately, however, the current complaint is against the struck off solicitor, and the SRA does not have any current regulatory reach over the solicitor. Were the solicitor still to be on the roll, we could seek insurance details from him under Section 44B of the Solicitors Act 1974 which compels the solicitor (and others) to give us information and documents. We could also apply to the High Court for an Order that another person or entity (such as the firm) gives us information and documents in their possession (Section 44BB).

The service provider is still in jurisdiction for LeO if, at the time the act or omission occurred, they were authorised. However, enforcement is more likely to be unsuccessful in this case.

## **Poor advice**

The client hired an accounting company to deal with his personal finances. As a part of this retainer he received legal advice from a solicitor who was employed there, on how to approach a particular situation. He acted on the basis of the advice and lost a significant amount of money. He received further advice from an unrelated lawyer who was very critical of the advice he received from the first company at the time.

The client complained directly to the first individual, who no longer worked for the accounting company, and who maintained his advice was appropriate based on the information with which he had been provided.

Whilst he was able to provide some evidence around the advice he gave, he had not retained any information from the file over and above his own direct work, because the company kept their files after he had left.

## **LeO investigation**

The company refused to provide LeO with information from the file and would not assist with the investigation. Without being able to see what had prompted him to give the advice, LeO were unable to say whether it was so unreasonable that no other lawyer would have acted in the same way. The solicitor himself was fully cooperative - but maintained that the file as a whole belonged to the company, not to him.

The starting point for the complainant would be to make a claim against the firm. They may well also be regulated elsewhere, and if so, a complaint could also be made to the relevant accountancy regulator.

## **SRA approach**



The SRA could use our powers under Section 44BB of the Solicitors Act 1974 to seek a court order for the full file. Whether we would choose to use this power would depend on, primarily, whether there was sufficient evidence that a potentially serious breach has occurred.

This is because we would need to show the court that there is reasonable cause to believe that the information or document is likely to be of material significance to an investigation by us into professional misconduct or another breach of our rules, and we only investigate cases involving matters that are capable of amounting to a serious breach.

However, we would initially seek to obtain the information held by the solicitor, and the further information and advice provided by the second lawyer, before taking any such action in accordance 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/>].

This should help us to make a decision about whether there was a serious breach. For example, that the advice given seems to have been out of the area of competence of the solicitor, and/or it could be seen that harm or risk could have been anticipated, but the solicitor proceeded regardless.

In cases where there has been no serious breach of regulatory rules, LeO still might want to investigate the service issues. In these instances, if action against the firm has not succeeded, LeO would have to rely on evidence provided by the complainant alone. This may result in a more challenging investigation and could eventually result in LeO dismissing the case due to a lack of evidence.

### **Freelance solicitors working together in chambers**

A complaint is made about a solicitor who had worked on a freelance basis in a 'chambers' style arrangement with other solicitors. The complainant contacted the chambers, paid money to them, and was put in contact with one of the solicitors.

The complainant withdrew her instructions following an initial discussion with the solicitor but was unable to recover her money from the chambers. The solicitor advised that as she had not received the money, the complainant should take up her complaint directly with the chambers.

### **LeO investigation**

LeO would be able to investigate but would be concerned that any remedy directed by them may not be enforceable.

### **SRA position**



Our new rules are designed to make it easier for solicitors to work in chambers-like arrangement, like barristers. Whether the money would be directly recoverable from the solicitor would depend on the circumstances of the practice of the self-employed solicitor within the chamber.

In this scenario, the money has been paid directly to the chambers. This is a breach of the SRA's [rules on freelancers](https://upgrade.sra.org.uk/solicitors/standards-regulations/authorisation-individuals-regulations/) [<https://upgrade.sra.org.uk/solicitors/standards-regulations/authorisation-individuals-regulations/>], which require payment to be made to the solicitor directly.

Although the money has not been paid to the solicitor directly, she still has a duty to safeguard client money, and as part of that duty we would expect appropriate contractual arrangements to be in place so that clients' money is refunded if, for example, the service is not provided. This scenario would appear to breach that duty as well as the rules on freelancers, and we would investigate further.

As the solicitor has failed to account for the money, the client may also have a claim on the [SRA Compensation Fund](https://upgrade.sra.org.uk/consumers/compensation-fund/) [<https://upgrade.sra.org.uk/consumers/compensation-fund/>] to recover it. This is a discretionary fund, and before making a payment we would consider factors such as whether it is reasonable to expect the client to take proceedings for the return of the money first.

### **Solicitor leaves the chambers arrangement**

At the same time, we hear of a complaint made to the chambers by the client after another solicitor has finished working there. LeO begins to look into the complaint, and at that point the solicitor tells LeO that because he had ceased practising before the complaint was made, he has no awareness of the complaint. He also claims that as there was a complaints process operated entirely separately from his work, he cannot be held responsible, and takes no responsibility for the outcome.

### **Complaint handling**

Paragraph 8.2 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/>] places a direct responsibility on the solicitor to participate in a complaints system, and under 8.5 to ensure that all complaints are dealt with promptly, fairly, and free of charge. They would not be able to argue that they had no responsibility. It would obviously be more difficult to take action if the complaint arose after the solicitor had left. However, there are other Code obligations which are relevant here:

7.3 You cooperate with the SRA, other regulators, ombudsmen and those bodies with a role overseeing and supervising the delivery of, or investigating concerns in relation to, legal services



7.11 You are honest and open with *clients* if things go wrong, and if a *client* suffers loss or harm as a result you put matters right (if possible) and explain fully and promptly what has happened and the likely impact. If requested to do so by the *SRA* you investigate whether anyone may have a claim against you, provide the *SRA* with a report on the outcome of your investigation, and notify relevant persons that they may have such a claim, accordingly.

We will investigate further. If the solicitor refuses, without reasonable grounds, to either provide information to LeO or to pay any award/fee, then we are likely to consider this a serious breach of our requirements, and to take disciplinary action against the solicitor.

This is because the obligations are personal to the solicitor and cannot be passed on to chambers. If the chambers is no longer providing a complaints process for them, the solicitor will have to deal with the complaint themselves.

The same principle will apply to other breaches of SRA standards and rules which may occur as a result of the actions of the chambers. A freelance solicitor cannot have employees but can contract with others, such as a chambers, for them to provide supporting administrative services. However, the solicitor's personal obligations to clients under the SRA Code for Solicitors, RELs and RFLs remain in place.

### **LeO investigation**

LeO would proceed on the basis that the solicitor agreed to the complaints procedure and did not put alternative arrangements in place when they left. Any decision, remedy or case fee would be directed against the individual solicitor and not the chambers.