

SRA (Disciplinary Procedure) Rules [2010]

Rules dated [the date of the approval of the Legal Services Board]]

commencing [1 March 2010 or the first day of the month following the approval of the Legal Services Board, whichever is the later]

made by the Solicitors Regulation Authority Board, after consultation with the Solicitors Disciplinary Tribunal, under sections 31, 44D, 79 and 80 of the Solicitors Act 1974, and section 9 of and paragraph 14B of Schedule 2 to the Administration of Justice Act 1985, with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007.

Part 1 – General

Rule 1 - Interpretation

In these rules, unless the context otherwise requires:

- (1) “adjudicator” means a person not involved in the investigation or preparation of a case who is authorised by the SRA to take disciplinary decisions;
- (2) “disciplinary decision” means a decision, following an SRA finding, to exercise one or more of the powers provided by section 44D(2) and (3) of the Solicitors Act 1974 or paragraph 14B(2) and (3) of Schedule 2 to the Administration of Justice Act 1985;
- (3) “discipline investigation” means an investigation by the SRA to determine whether a regulated person should be subject to an SRA finding, a disciplinary decision or an application to the Tribunal;
- (4) “LLP” means a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000;
- (5) “manager” means:
 - (a) a partner in a partnership;
 - (b) a member of an LLP; or
 - (c) a director of a company;
- (6) “recognised body” means a partnership, company or LLP recognised by the SRA under section 9 of the Administration of Justice Act 1985;
- (7) “registered European Lawyer” means a person registered by the SRA under regulation 17 of the European Communities (Lawyer’s Practice) Regulations 2000;
- (8) “registered foreign lawyer” means a person registered by the SRA under section 89 of the Courts and Legal Services Act 1990;

- (9) “regulated person” means:
- (a) a solicitor;
 - (b) a registered European lawyer;
 - (c) a registered foreign lawyer;
 - (d) a recognised body;
 - (e) a manager of a recognised body; or
 - (f) an employee of a recognised body, a solicitor or a registered European lawyer;
- (10) “SRA” means the Solicitors Regulation Authority, the independent regulatory body of the Law Society of England and Wales;
- (11) “SRA finding” is a decision that the SRA is satisfied in accordance with section 44D(1) of the Solicitors Act 1974 or paragraph 14B(1) of Schedule 2 to the Administration of Justice Act 1985 and for the avoidance of doubt does not include:
- (a) investigatory decisions such as to require the production of information or documents;
 - (b) directions as to the provision or obtaining of further information or explanation;
 - (c) decisions to stay or adjourn;
 - (d) authorisation of the making of an application to the Tribunal;
 - (e) authorisation of an intervention pursuant to the Solicitors Act 1974, the Administration of Justice Act 1985 or the Courts and Legal Services Act 1990;
 - (f) a letter of advice from the SRA to the regulated person.
- (12) “the Tribunal” means the Solicitors Disciplinary Tribunal which is an independent statutory tribunal constituted under section 46 of the Solicitors Act 1974;
- (13) the singular includes the plural and vice versa.

Rule 2 – Scope

- (1) These rules govern the procedure for the SRA to:
- (a) exercise its powers pursuant to section 44D of the Solicitors Act 1974 or paragraph 14B of Schedule 2 to the Administration of Justice Act 1985; or
 - (b) subject to rule 6(9), authorise an application to the Tribunal.
- (2) The powers referred to in sub-rule (1)(a) are to do one or a combination of the following:
- (a) give a regulated person a written rebuke;
 - (b) direct a regulated person to pay a penalty not exceeding the maximum permitted by law;
 - (c) publish details of a written rebuke or a direction to pay a penalty if the SRA considers it to be in the public interest to do so.
- (3) These rules shall not prevent, prohibit or restrict the exercise of any other powers or other action by the SRA.

Rule 3 – Disciplinary powers

- (1) The circumstances in which the SRA may make a disciplinary decision to give a regulated person a written rebuke or to direct a regulated person to pay a penalty are when the following three conditions are met:
 - (a) the first condition is that the SRA is satisfied that the act or omission by the regulated person which gives rise to the SRA finding fulfils one or more of the following in that it:
 - (i) was deliberate or reckless;
 - (ii) caused or had the potential to cause loss or significant inconvenience to any other person;
 - (iii) was or was related to a failure or refusal to ascertain, recognise or comply with the regulated person's professional or regulatory obligations such as, but not limited to, compliance with requirements imposed by legislation or rules made pursuant to legislation, the SRA, the Law Society, the Legal Complaints Service, the Tribunal or the court;
 - (iv) continued for an unreasonable period taking into account its seriousness;
 - (v) persisted after the regulated person realised or should have realised that it was improper;
 - (vi) misled or had the potential to mislead clients, the court or other persons, whether or not that was appreciated by the regulated person;
 - (vii) affected or had the potential to affect a vulnerable person or child;
 - (viii) affected or had the potential to affect a substantial, high-value or high-profile matter; or
 - (ix) formed or forms part of a pattern of misconduct or other regulatory failure by the regulated person;
 - (b) the second condition is that a proportionate outcome in the public interest is one or both of the following:
 - (i) a written rebuke;
 - (ii) a direction to pay a penalty not exceeding the maximum permitted by law; and
 - (c) the third condition is that the act or omission by the regulated person which gives rise to the SRA finding was neither trivial nor justifiably inadvertent.
- (2) The SRA may make a disciplinary decision to publish details of a written rebuke or a direction to pay a penalty when it considers it to be in the public interest to do so in accordance with the publication criteria in the appendix to these rules.
- (3) Nothing in this rule shall prevent the authorisation of an application to the Tribunal in accordance with rule 8.

Part 2 – Practice and Procedure

Rule 4 – Investigations

- (1) The parties to a discipline investigation are the SRA and the regulated person.
- (2) The SRA may exercise any investigative or other powers at any time including those arising from:
 - (a) sections 44B, 44BA, 44BB of the Solicitors Act 1974;
 - (b) rules made by the Law Society or the SRA for the production of documents, information or explanations.
- (3) Subject to sub-rule (4), the SRA may disclose any information or documents (including the outcome) arising from its discipline investigation:
 - (a) to an informant;
 - (b) to a regulated person who is under investigation;
 - (c) to any person in order to facilitate its investigation and in particular to identify and obtain evidence, comments or information;
 - (d) to other regulators, law enforcement agencies, or other persons in the public interest.
- (4) The SRA may restrict disclosure of information to protect another person's right of confidentiality or privilege.

Rule 5 – Seeking explanations

- (1) The SRA will give the regulated person the opportunity to provide an explanation of the regulated person's conduct.
- (2) When seeking an explanation from the regulated person as referred to in sub-rule (1) above, the SRA will warn the regulated person that:
 - (a) failure to reply to the SRA may in itself lead to disciplinary action;
 - (b) the reply and other information may be disclosed to other persons pursuant to rule 4(3); and
 - (c) the reply may be used by the SRA for regulatory purposes including as evidence in any investigation, decision by the SRA, or proceedings brought by or against the SRA.
- (3) The regulated person must provide the explanation referred to in sub-rule (1) or any other information within a time period specified by the SRA, which shall be no less than 14 calendar days from the request for an explanation and where no explanation or information is received within the specified time, the SRA may proceed to decision in the absence of an explanation.

Rule 6 – Report stage

- (1) Before making a disciplinary decision, the SRA will prepare a report for disclosure to the regulated person.
- (2) Subject to sub-rule (7), the report will summarise the allegations against the regulated person, explain the supporting facts and evidence, and attach documentary evidence that the SRA considers to be relevant.
- (3) The report may also include evidence of the regulated person's propensity to particular behaviour and a summary of the regulatory and disciplinary history of the regulated person and of any other person that the SRA considers relevant.
- (4) The report will be provided to the regulated person for the regulated person to provide written comments upon it within a time period specified by the SRA, which shall be no less than 14 calendar days from the date on which the report has been sent to the regulated person.
- (5) The regulated person will also be invited to make submissions on whether any decision which is made by the SRA, in respect of the matters in the report, should be published. Any such submissions must be made within a time specified by the SRA, which shall be no less than 14 calendar days from the date on which the report has been sent to the regulated person.
- (6) The report may be disclosed by the SRA to any other person with a legitimate interest in the matter to enable that person to comment upon it. Any such comments shall be disclosed to the regulated person if they are to be included in the documents referred for adjudication.
- (7) The SRA may restrict disclosure of part of the report or all or part of the attached documents in the public interest or in the interests of efficiency and proportionality, such as:
 - (a) by only providing to the regulated person or any other person documents that are not already in their possession;
 - (b) by not providing to a person other than the regulated person whose conduct is to be considered the report or documents if they include information that is or might be subject to another person's right of confidentiality or privilege.
- (8) The SRA may recommend an outcome or advocate a particular position in the report or otherwise.
- (9) The report and comments received shall be referred for consideration within a reasonable time after receipt of any comments or the expiry of any time period specified for the provision of comments.
- (10) The SRA is not required to adopt the procedure in rules 5 and 6 in order to make an SRA finding or an application to the Tribunal under rule 8 below.
- (11) Where the SRA considers that it is just and in the public interest to do so the SRA may dispense with or vary the procedure and the time limits set out in rules 5 and 6.

- (12) Where the SRA dispenses with or varies the procedure or the time limits in accordance with sub-rule (11), the SRA shall, so far as practicable, notify the regulated person that it has done so.

Part 3 – Decisions and Referrals to the Tribunal

Rule 7 – Decisions

- (1) An SRA finding may be made by:
- (a) agreement between the regulated person and the SRA;
 - (b) a person duly authorised by the SRA;
 - (c) a single adjudicator; or
 - (d) an adjudication panel.
- (2) A disciplinary decision may be made by:
- (a) agreement between the regulated person and the SRA;
 - (b) a single adjudicator; or
 - (c) an adjudication panel.
- (3) An SRA finding which does not involve a consequential disciplinary decision may incorporate or be accompanied by:
- (a) advice to the regulated person as to the regulated person's regulatory obligations;
 - (b) a warning to the regulated person as to the regulated person's future conduct.
- (4) A disciplinary decision may be made by a single adjudicator but the SRA may refer a matter to an adjudication panel for such a decision.
- (5) An adjudication panel shall be properly constituted if at least two members are present.
- (6) Where an adjudication panel is comprised of three or more members, a decision may be made by a majority.
- (7) The strict rules of evidence shall not apply to decisions of the SRA.
- (8) The standard of proof shall be the civil standard.
- (9) Decisions will normally be made on consideration of the report described in rule 6 but an adjudicator or adjudication panel may give directions as necessary as to the provision of evidence or representations whether oral or otherwise.
- (10) The decision shall be made when it is sent to the regulated person in writing. The decision will be accompanied with information in writing about any right of appeal within the SRA and any external right of appeal.
- (11) Where the SRA directs the regulated person to pay a penalty, such penalty shall be paid within a time and in the manner specified by the SRA but shall not become payable until:

- (a) the end of the period during which an appeal may be made under rule 9 below, section 44E of the Solicitors Act 1974 or paragraph 14C of Schedule 2 to the Administration of Justice Act 1985; or
- (b) if such an appeal is made, such time as the appeal is determined or withdrawn.

Rule 8 – Referrals to the Tribunal

- (1) The SRA may make an application to the Tribunal in respect of a regulated person at any time if the SRA is satisfied that:
 - (a) there is sufficient evidence to provide a realistic prospect that the application will be upheld by the Tribunal;
 - (b) the allegation to be made against the regulated person either in itself or in the light of other allegations is sufficiently serious that the Tribunal is likely to order that the regulated person:
 - (i) be struck off;
 - (ii) be suspended;
 - (iii) be subject to an order revoking its recognition;
 - (iv) pay a penalty exceeding the maximum that can be imposed from time to time by the SRA; or
 - (v) be subject to any other order that the SRA is not empowered to make; and
 - (c) it is in the public interest to make the application.
- (2) The SRA will apply sub-rule (1) in accordance with a code for referral to the Tribunal as promulgated by the SRA from time to time.
- (3) An application in respect of a regulated person to the Tribunal may be authorised by:
 - (a) agreement between the regulated person and the SRA;
 - (b) a person duly authorised by the SRA;
 - (c) a single adjudicator; or
 - (d) an adjudication panel.
- (4) There is no right of appeal against authorisation of an application to the Tribunal.
- (5) Subject to any contrary order of the Tribunal, the SRA may exercise any investigative or other powers at any time before a final hearing of an application at the Tribunal, including those arising from:
 - (a) sections 44B, 44BA, 44BB of the Solicitors Act 1974;
 - (b) rules made by the Law Society or the SRA for the production of documents, information or explanations.

Part 4 – Appeals and Reconsideration

Rule 9 – Internal appeals

- (1) A regulated person may appeal against all or any part of an SRA finding, a disciplinary decision or both.
- (2) There is no appeal under this rule against:
 - (a) any decision other than an SRA finding or a disciplinary decision;
 - (b) a decision on an appeal; or
 - (c) an SRA finding or a disciplinary decision which has been made by agreement between the regulated person and the SRA.
- (3) An appeal by a regulated person must be made within 14 calendar days of the date of the letter or electronic communication informing the regulated person of the decision or within a longer time period specified by the SRA.
- (4) An appeal shall:
 - (a) be in writing; and
 - (b) provide reasoned arguments in support.
- (5) Appeals will be determined as follows:
 - (a) where the decision was made by a person duly authorised by the SRA , the appeal will be decided by a single adjudicator;
 - (b) where the decision was made by a single adjudicator, the appeal will be decided by an adjudication panel;
 - (c) where the decision was made by an adjudication panel, the appeal will be decided by a differently constituted panel.
- (6) Appeals will be limited to a review of the decision which is being appealed, taking into account the reasoned arguments provided by the regulated person. Failure to provide reasoned arguments either at all or in sufficient or clear terms may result in summary dismissal of the appeal.
- (7) All powers available to the SRA on adjudication are exercisable on appeal and for the avoidance of doubt this means that an appeal decision may include findings or sanctions more severe than those made or applied in the decision being appealed.
- (8) Nothing in these rules shall affect a regulated person's right of appeal to the Tribunal under section 44E of the Solicitors Act 1974 or paragraph 14C of Schedule 2 to the Administration of Justice Act 1985.
- (9) Subject to any rule made by the Tribunal pursuant to section 46(9)(b) of the Solicitors Act 1974, an appeal to the Tribunal by a regulated person must be made within 21 calendar days of the date of the letter or electronic communication informing the regulated person of the decision or, if there has been an internal appeal, within 21 calendar days of the date of the letter or electronic communication informing the regulated person of that decision.

Rule 10 – Reconsideration

- (1) The SRA may reconsider or rescind any decision including an SRA finding, a disciplinary decision or authorisation of a referral to the Tribunal with the agreement of the regulated person.
- (2) In its absolute discretion the SRA may also reconsider any decision including an SRA finding, a disciplinary decision or authorisation of a referral to the Tribunal when it appears that the person or panel who made the decision:
 - (a) was not provided with material evidence that was available to the SRA;
 - (b) was materially misled by the regulated person or any other person;
 - (c) failed to take proper account of material facts or evidence;
 - (d) took into account immaterial facts or evidence;
 - (e) made a material error of law;
 - (f) made a decision which was otherwise irrational or procedurally unfair;
 - (g) made a decision which was ultra vires; or
 - (h) failed to give sufficient reasons.
- (3) Reconsideration pursuant to this rule may be directed by a duly authorised person who may also give directions for:
 - (a) further investigations to be undertaken;
 - (b) further information or explanation to be obtained from any person;
 - (c) consideration of whether to authorise an application to the Tribunal;
 - (d) the reconsideration of the decision to be undertaken by the original decision maker or adjudication panel or by a different decision maker or a differently constituted adjudication panel.
- (4) Nothing in these rules requires the SRA to commence or continue with any proceedings or prospective proceedings in the Tribunal or any other court or tribunal. A duly authorised person may rescind a decision to take proceedings in the Tribunal.

Part 5 – Publication and Commencement

Rule 11– Publication of decisions

- (1) This rule governs the publication of details of a written rebuke or a direction to pay a penalty.
- (2) Subject to sub-rule (4), publication in accordance with this rule:
 - (a) will include a short statement of the disciplinary decision including brief details of its factual basis and the reasons for the decision;
 - (b) will identify the regulated person;
 - (c) will take reasonable steps to avoid the publication of information relating to other identifiable persons;
 - (d) will provide the practising details of the regulated person at the time of the matters giving rise to the decision and at the time of decision if different;
 - (e) will be in such form as the SRA may from time to time decide;
 - (f) may include provision of a copy of the publishable information upon request by any person;

- (g) will be made promptly after the decision has been made, provided that the SRA may delay or withhold publication in the public interest.
- (3) The SRA may vary or dispense with any of the requirements in sub-rule (2) in the public interest.
- (4) The SRA may not publish details of a written rebuke or a direction to pay a penalty:
 - (a) during the period in which an appeal may be made under rule 9 above, section 44E of the Solicitors Act 1974 or paragraph 14C of Schedule 2 to the Administration of Justice Act 1985; or
 - (b) if such an appeal has been made, until such time as it is determined or withdrawn.
- (5) For the avoidance of doubt, the SRA may also publish information about other decisions or investigations.

Rule 12 – Commencement

These rules shall come into force on [1 March 2010 or the first day of the month following the approval of the Legal Services Board, whichever is the later] but shall not apply to any matters where the act or omission which gives rise to the SRA finding occurred wholly before these rules came into force.

APPENDIX
Publication Criteria (Rule 3(2))

1. In deciding whether or not to publish a decision to give a regulated person a written rebuke or direct the regulated person to pay a penalty, the SRA will take into account all relevant circumstances including the following factors when relevant.
2. Each case will be decided on its own merits.
3. The following support a decision to publish:
 - (a) the circumstances leading to the rebuke or penalty, or the rebuke or penalty itself, are matters of legitimate public concern or interest;
 - (b) the importance of transparency in the regulatory and disciplinary process;
 - (c) the existence or details of the rebuke or penalty will or might be relevant to a client or prospective client of a regulated person in deciding whether to instruct or continue to instruct the regulated person, or as to the instructions to be given;
 - (d) the existence or details of the rebuke or penalty will or might be relevant as to how any other person will deal with a regulated person;
 - (e) the seriousness of the finding against the regulated person;
 - (f) the rebuke or penalty has been given to a regulated person who has previously been the subject of disciplinary or regulatory decisions whether private or published;
 - (g) the rebuke or penalty arises from facts that affected or may affect or have affected a number of clients or other persons;
 - (h) the rebuke or penalty arises from facts that relate to the administration of justice.
4. The following support a decision not to publish:
 - (a) publication would disclose a person's confidential or legally privileged information;
 - (b) publication would disclose a regulated person's confidential medical condition or treatment;
 - (c) publication may prejudice legal proceedings or legal, regulatory or disciplinary investigations;
 - (d) publication would involve a significant risk of breaching a person's rights under Article 8 of the European Convention on Human Rights;
 - (e) in all the circumstances the impact of publication on the individual or the firm would be disproportionate.

5. In deciding whether to publish, the SRA may also take into account:
 - (a) the overall disciplinary and regulatory history of another regulated person when relevant;
 - (b) whether any disciplinary or regulatory action by another body is being or has been taken against the regulated person.
6. The factors set out above are not exhaustive and do not prevent the SRA from taking into account other factors that it considers to be relevant.
7. The SRA will from time to time publish indicative guidance about the application of these criteria.