

## **Guidance**

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### **Reporting duties under the SRA Overseas Rules**

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## **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?**

Any responsible authorised body with an overseas practice; and

any regulated individual who is practising overseas

and the word "You" used in this guidance applies to both where the context admits.

## **Purpose of this guidance**

To explain your duties to report to the [SRA under the SRA Overseas and Cross Border Practice Rules \(Overseas Rules\)](https://news.sra.org.uk/solicitors/standards-regulations/overseas-cross-border-practice-rules/).

[\[https://news.sra.org.uk/solicitors/standards-regulations/overseas-cross-border-practice-rules/\]](https://news.sra.org.uk/solicitors/standards-regulations/overseas-cross-border-practice-rules/).

## **General duty to report**

The Overseas Rules do not apply the same level of detail as the rules for those practising within England and Wales. For example:

- the Codes of Conduct do not apply
- the Overseas Principles apply instead of the SRA Principles
- rule 3.1 of the Overseas Rules applies instead of the SRA Account Rules.

This is not because lower standards apply to an overseas practice, but it is a recognition that detailed regulatory requirements are less



appropriate in a situation where the services are being provided from outside the jurisdiction, and where there will be different legal, regulatory and cultural practices.

You have a duty under rule 4.2 of the Overseas Rules to report any serious breach to us as soon as reasonably practicable.

This means that you must report any serious breach of:

- The Overseas Principles
- The requirements in rule 3 as to dealing with client money
- The reporting, cooperation and accountability requirements in rule 4.

If you are the responsible authorised body you also have the duty to monitor compliance with the Overseas Rules.

Our [Enforcement Strategy](https://news.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/) [https://news.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/] sets out guidance on factors which inform our view of whether any breach is "serious". This also sets out our view about when behaviour outside practise is likely to comprise a breach of the Overseas Principles. These factors apply equally, where the context admits, to an overseas practice. There is no special or more limited interpretation of "serious breach" in an overseas context.

However, we recognise the need to act in a way that is proportionate to the regulatory risks arising from overseas practice. This is reflected in the flexibility within the Overseas Rules and Principles, which are focussed on matters which present a serious risk to the public interest and, in particular, on public trust and confidence in regulated legal services in England and Wales.

So, we would not expect you routinely to monitor client work or matters, or for any breaches to be reported to us unless they

- a. show systemic issues amounting to a serious breach of the Principles or rules (for example a systemic failure to protect client money);
- b. are likely to impact on the character and suitability of any individual solicitors, or those managers, members or owners that are involved in the day-to-day or strategic management of your overseas practice, to be involved in the delivery of legal services; or
- c. otherwise risk undermining public trust and confidence in the solicitors' profession or in legal services provided by authorised persons in England and Wales (Overseas Principle 2).

Further, Overseas Rule 1.2 provides that if the Overseas Rules conflict with any obligations imposed by local law and regulation then the latter prevail. This means that overseas practices and regulated individuals practising overseas should comply with the Overseas Rules and

Principles wherever and to the extent they are able to within the local legal and regulatory framework within which they operate. However, conduct which might otherwise be a breach will not be if it is a requirement of local law or regulation.

The exception is Overseas Principle 2. This reflects the overriding importance of acting in a way which maintains public confidence in the English and Welsh legal system and its regulation. Our guidance on SRA Principle 2 (which has the same wording as Overseas Principle 2) will help you to understand the circumstances in which we consider that this principle has been breached. However, we believe that the circumstances in which any action taken to comply with local law or regulation will tend to damage public confidence are likely to be rare.

Under the Overseas Rules the duty to report arises if a serious breach has occurred. This differs from the domestic reporting obligations and reflects the fact that there will generally be local processes in place to investigate matters, as well as local regulators and law enforcement agencies. We would expect those to take precedence, but to be informed if they reveal a serious issue which we might also wish to act upon.

However, if in doubt then firms should contact us to let us know of their concerns. And this does not mean that you cannot or should not report a matter if it is denied, or that it must have been proved beyond all reasonable doubt before you report it. This is a matter for your professional judgment and if you consider in light of the evidence available to you (albeit that this will usually be after a local investigation or proceedings have taken place) that the serious breach occurred, you should report it. You may wish to seek our views in cases where you are unsure.

## **Who do you have to report for serious breaches?**

You will need to report any serious breach of the Overseas Rules by:

- You
- Your overseas practice
- Any individual managers, members or owners that are involved in the day-to-day or strategic management of your overseas practice. This reflects the fact that it will be the conduct of these individuals with which we are most concerned, and we expect it to be reported if they fall seriously short of the high standards of probity that we expect.

Although the Overseas Rules apply to all managers, members or owners in the overseas practice, we are interested primarily in conduct which has led to a serious breach of the Overseas Rules by the overseas practice itself. For this reason, the monitoring and reporting by the authorised firm is limited to those involved in day to day or strategic management of the overseas practice. This includes, for example,



partners who supervise client departments, offices or practice areas, as well as those on the management board or equivalent. Any authorised persons have a personal duty to report matters relevant to their character and suitability to us in any event.

## **Reporting duty in relation to convictions and regulatory action**

Rule 4.3 also requires you to report

- any conviction in any overseas or UK court of a criminal offence or
- any regulatory action by an overseas or UK regulator

in relation to the same persons that you are required to report for a serious breach.

We will not generally look behind a criminal conviction or regulatory finding. In our proceedings a conviction or finding by an overseas court or a finding by an overseas regulator will be conclusive proof of the conviction or finding or of the facts behind it. See rule 8.9 of the [SRA Regulatory and Disciplinary Procedure Rules](https://news.sra.org.uk/solicitors/standards-regulations/regulatory-disciplinary-procedure-rules/1) [\[https://news.sra.org.uk/solicitors/standards-regulations/regulatory-disciplinary-procedure-rules/1\]](https://news.sra.org.uk/solicitors/standards-regulations/regulatory-disciplinary-procedure-rules/1). The approach taken by the Solicitors Disciplinary Tribunal to previous findings is set out in their rules.

We will consider any convictions overseas or findings by overseas regulators on a case by case basis, as with our approach to enforcement generally, and will be guided by our assessment of the risk they pose to the public interest.

While we will always carry out an investigation into a conviction, some foreign convictions may be of less concern than others, particularly those that would not amount to offences or be unlikely to be prosecuted in England and Wales.

### **Example**

An individual was convicted in a Gulf State for issuing a cheque in bad faith. On the face of it this would involve lack of integrity or dishonesty, which would always lead to action on our part. However, the background involved an acrimonious divorce, ongoing child access and maintenance issues, a disputed signature and a prosecution initiated by the ex-spouse's brother. It is unlikely that the matter would have ended up in the criminal courts here and in the Gulf jurisdiction had resulted only in a small fine. We therefore decided to take no action

This contrasts with the situation where the conduct concerned would be clearly an offence in England and Wales – see our case studies.



The requirement to report regulatory action under Overseas Rule 4.3(b) applies to any disciplinary proceedings taken or adverse findings made by an overseas regulator. This rule does not require you to report an investigation by the overseas regulator which has not yet led to formal proceedings. However, if the underlying conduct which is being investigated means that there has been a serious breach of the Overseas Rules then you have a duty to report that conduct.

## **Financial instability**

If the overseas practice or any of its managers, members or owners that are involved in its day-to-day or strategic management are in serious financial difficulty then you must also report this promptly to the SRA. See Overseas Rule 4.3 (b).

## **Reporting to the COLP/COFA**

A regulated individual or the overseas practice can meet their reporting obligations under the Overseas Rules by reporting the matter to the responsible authorised body's COLP or COFA as appropriate on the understanding that they will then pass the information on to the SRA (subject to any additional information they may hold or further investigation they may carry out, which would lead them to a different judgment). This is provided that the matter is reported to the COLP or COFA promptly and without delay. See Overseas Rule 4.6.

## **Further help**

[See case studies \[https://news.sra.org.uk/solicitors/guidance/overseas-rules-case-studies/\]](https://news.sra.org.uk/solicitors/guidance/overseas-rules-case-studies/)

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