Case studies

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Reporting duties under the SRA Overseas Rules

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Related guidance

This case study should be read in conjunction with the guidance on Reporting duties under the SRA Overseas Rules [https://news.sra.org.uk/solicitors/guidance/overseas-rules-case-studies/] .

Case study 1: Criminal offence committed outside work

Background Facts

A dual qualified lawyer (being an England and Wales solicitor and French qualified avocat) who works in Paris in the overseas practice of a law firm headquartered in England, is charged with committing a motoring offence in France. He is a partner and sits on the management committee of the overseas practice.

He is breathalysed and found to have been driving over the permissible alcohol limit, after having a minor accident, and is charged with a drink driving offence. No personal injuries or material damage to property were involved in the accident.

He is advised that on conviction he is likely to have his driving licence suspended for a number of months and/or to receive a large fine.

He is extremely remorseful, has never committed any similar (or other) offence and intends to accept the charges and plead guilty. He advises his fellow partner who heads up the overseas practice in Paris, but this isn’t immediately reported to the firm's COLP in London. This is because they considered it a outside work local issue that would be handled by the local courts and reported as required in due course following the court process.

Discussion and guidance

Once the court proceedings have concluded then either the dual qualified lawyer or the authorised firm should report the conviction to the SRA. Overseas Rule [https://news.sra.org.uk/solicitors/standards-regulations/overseas-cross-border-practice-rules/] 4.3(a) requires that all regulated persons practising overseas, including all England and Wales solicitors and partners in the firm who are convicted by any court of a criminal offence overseas, will promptly report this to the SRA.

This duty also lies on the authorised firm if the individual is a "person for whom [the authorised firm] is responsible" including a partner who is responsible for the day to day or (as here) the strategic management of the overseas practice. (Note that, as a solicitor, the French lawyer also has an obligation under the SRA Character and Suitability Rules to report any conviction).

The question arises however as to whether the matter should be reported to the SRA before the court proceedings take place.

Under Overseas Rule 4.2 any serious breach of the Overseas Rules (including of the Overseas Principles) must be reported. The Overseas Principles apply to this lawyer's conduct as he is a regulated individual practising overseas (being an England and Wales solicitor even if he currently practises solely as a French avocat and his England and Wales qualification was obtained several years previously, say, when on secondment in London).

As he has accepted he has committed a criminal offence, which would be an offence in England and Wales as well as in France, his conduct (ie his serious driving offence committed outside work) would tend to diminish public trust and confidence in the solicitors'' profession of England and Wales.

Whether or not this represents a serious breach of Overseas Principle 2, however, (the obligation to "[act] in a way that upholds public trust and confidence in the solicitors' profession of England and Wales and in legal services provided by authorised persons.") that should be reported to the SRA will depend upon the circumstances.

This case involves a first offence for drink driving with no damage suffered by a third party; it appears to be an isolated incident and the offender has shown remorse. In the absence of aggravating features, the firm's COLP may consider that, if reported, it would likely result in no more than a warning from the SRA and therefore arguably on the information currently available would not amount to a serious breach of Overseas Principle 2 and so is not reportable by the firm (see our guidance [https://news.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/enforcement-practice/driving-excess-alcohol-convictions/] on this topic).

We are therefore unlikely to consider that the Overseas Rules have been breached by the matter not being reported at this stage. This is

particularly given the fact that we recognise that it is generally appropriate and proportionate for overseas proceedings to take precedence.

Note that if the French lawyer was neither dual qualified (ie if only qualified locally as a French avocat) nor a person for whom the firm is responsible under the Overseas Rules then he would most likely not be required to comply with the Overseas Principles. For example, if he was only an associate with no management role. Personal conduct of this nature outside work by an employee would not cause the overseas practice itself to breach the Overseas Principles. So, in those circumstances this sort of offence would not normally be capable of resulting in a breach that is reportable to the SRA.

Case study 2: Confidentiality breach under the Overseas Rules

Background facts

A German partner based in the Munich office of an international law firm headquartered in the UK is approached by a German client to act on a high profile significant litigation matter relating to bringing legal proceedings against a company based in Spain.

He finds out when doing a conflict check that this Spanish company is a major client of the firm’s office in Madrid and he decides to contact the partner in Madrid, who he knows well and who manages this Spanish client relationship, to discuss with him whether the firm would have a problem taking on this important new instruction. That would normally be an issue handled sensitively by the firm’s conflicts team but since the German partner knows the Madrid partner well, he decides to contact him to discuss this directly.

The Spanish partner unfortunately does not realise that the possible instruction and litigation is highly confidential and contacts his client in Madrid to ask if they would have a problem with the firm acting on this specific matter against them. The Spanish client tells him they would indeed object, as this is a sensitive and important matter for them which in fact they may want our help within future in any event, and he concludes that for the firm to act for the German client would seriously damage our future relationship with them.

The Spanish partner passes this information back to his partner in Munich and the German partner then tells his client in Germany that we cannot act "for conflicts reasons" adding, when pressed for an explanation, that having asked them the Spanish client unfortunately will not consent to us acting against them.

The German client reacts angrily. They are furious that we have disclosed to a third party in Spain (ie the counterparty on this matter if it proceeds) that they intended to take action against them and asserts that the firm and its partners in Spain and in Munich have breached their confidentiality duties which they may "report to the regulators". The German partner apologises and promptly reports this concern to the firm's COLP.

Discussion and guidance

The Overseas Principles under the SRA Overseas Practice Rules will apply to the conduct of both these partners, if they are regulated individuals who are established overseas. They will be, even though they are not qualified England and Wales solicitors, if they are partners in a general partnership or members of an English LLP headquartered in England and Wales which is an SRA authorised firm. (For SRA purposes they will be "managers" of an SRA authorised law firm).

It appears that they are directly involved in the business of the German and Spanish offices respectively. If they are, in addition, involved in the day to day or strategic management of the overseas practice, then the responsible authorised body in England and Wales would be required to ensure that they comply with the Principles and to report any serious breach.

The Spanish partner in Madrid has clearly breached duties of confidentiality by disclosing the German client's plans to the counterparty to its proposed litigation. The German partner may also be deemed to have breached his duties, having failed to follow the firm's normal business acceptance procedures and by not emphasising in discussions with his Spanish partner that the information about his German client's intentions was confidential and could not be disclosed to the Spanish company or any third party. This may result in breaches of local bar rules in Madrid and/or Munich that need to be disclosed to the relevant authorities, either voluntarily by the firm, or following a client complaint.

As this incident occurs as part of the firm’s and the partners’ overseas practice, whether the partners and the firm are required to report this incident to the SRA will turn on whether they reasonably believe it is capable of amounting to a "serious breach" of the Overseas Principles. This sort of incident would normally be treated as breaching Overseas Principle 7, as being a failure to "act in the best interests of each client".

However, an inadvertent failure to follow the firm’s new business acceptance procedures involving a confidentiality breach overseas, is unlikely to amount to a serious breach of Overseas Principle 7. If it does not form part of a pattern of behaviour suggesting a systemic problem and does not also involve honesty and integrity or public confidence

issues then such an incident will not normally be reportable, even if it gives rise to high profile client concerns and complaints overseas.

The SRA would therefore normally expect this sort of incident to be handled in accordance with local rules in Germany and in Spain and not require it to be reported. That is because the SRA does not expect or require the same level of detailed monitoring, reporting and notification from those practising overseas as it would expect of regulated individuals and authorised bodies in England and Wales. The level of reporting the SRA expects is proportionate to the level of regulatory risk posed by an overseas practice.

However, if the regulators in Spain or Germany do take disciplinary action then the matter is reportable under Overseas Rule 4.3(a). However, absent a pattern of behaviour which has resulted in a serious breach by the overseas practice, the SRA is unlikely to take further action in this case.

Note that the position would be the same even if either or both of the partners involved were English solicitors provided that they are practising overseas.