Guidance

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Agreeing regulatory and disciplinary outcomes

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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?

All SRA-regulated firms and individuals.

Purpose of this guidance

To help you understand when we may agree regulatory and disciplinary outcomes by Regulatory Settlement Agreement (RSA).

This guidance should be read in the context of decision making at the SRA and other guidance documents listed at the end. We will update this from time to time.

What is an RSA?

An RSA is an agreement to end disciplinary proceedings in whole or in part. RSAs allow us to protect both consumers and the public interest by reaching appropriate outcomes swiftly, efficiently and at proportionate cost.

There is no obligation on us to negotiate or enter into an RSA and our decision to do so will always depend on the individual facts of the case. They are not 'commercial' settlements.

We may consider entering into an RSA if the firm or individual we are investigating agrees with our proposed sanction or control. They are flexible to ensure that we can reach the best possible outcome in the public interest. They will usually involve a sanction such as a rebuke or

fine, or may include practising certificate restrictions, a Control Order (such as a section 43 order) or undertakings given by the individual for example to take remedial action or remove themselves from the roll with our consent.

In all cases where a sanction is agreed in an RSA, it has the same effect and status as one imposed by a decision maker such as one of our adjudicators.

To enable an open exchange of views, communications about a possible RSA are held "without prejudice". This means that statements made (in writing or orally) in a genuine attempt to settle an issue are prevented from being used as evidence of admissions against the interest of the party that made them.

In effect, this means that both we and the regulated firm or individual cannot disclose any admissions to a Tribunal or adjudicator dealing with the case should the settlement discussions fail. This does not mean we would ignore facts or evidence disclosed to us in any such correspondence which is relevant to the outcome. If information comes to our attention during the course of a without prejudice discussion, we will take this into account in any future handling of the matter.

Who can RSAs be with?

We can enter into RSAs with anyone we regulate, including law firms, solicitors, managers, employees, foreign lawyers and other role holders.

What matters might be suitable for an RSA?

The matters that might be dealt with by an RSA can involve a wide range of issues, relating to conduct both inside and outside of practice.

We will not, however, enter into an RSA with a firm or individual where:

- we are not satisfied that they would comply with any terms in the agreement as part of the outcome we felt necessary. This might be because of the nature of the issues (for example, dishonesty) or because they have a history of persistent non-compliance with our regulatory controls
- we consider that in light of the seriousness of the matter, this should be referred for determination in order to uphold public confidence in the provision of legal services and provide credible deterrence to others. For example, we are likely to refer a case of serious fraud or dishonesty to the SDT for an individual to be struck from the roll; even they asked to enter into an agreement to voluntarily come off the roll
- the appropriate outcome is outside of our current in-house powers, such as a substantial fine which can only be ordered by the SDT.

Example 1

We receive a number of complaints about the closure of a law firm and its failure to return money and files to clients. We investigate and find a number of breaches of our Code of Conduct for Firms and Accounts Rules, including:

- a small shortage on client account
- handing live files to a third party without the client's knowledge
- a failure to obtain any run off insurance cover.

The managers quickly accept the issue which were caused by problems at another firm recently taken over. We confirm this through our investigation and suggest an RSA to the managers who have already replaced the small shortage. As part of the RSA, the managers accept the breaches and undertake to help resolve the outstanding issues around client money and files. We agree the managers will be rebuked and pay a total of £2,500 towards our costs. We publish RSAs [https://news.sra.org.uk/consumers/solicitor-check/] .

How do we decide if an RSA is appropriate?

When considering if an RSA is appropriate, we will take into account the factors set out in in our Enforcement Strategy [https://news.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/] . Where we are proposing a sanction by RSA pursuant to rule 8.2 of the Regulatory and Disciplinary Procedure Rules, we make a finding under rule 3.1 and then decide on the appropriate sanction or control, if any.

Some of the factors we take into account include:

- If the regulated person has fully accepted that things have gone wrong. If they do not accept that they have breached our Standards and Regulations, then an RSA will not be possible. The matter will be referred to an authorised decision maker for determination in the usual way.
- Any action already taken or planned to be taken to put the matter right, such as repaying money improperly charged to clients or agreeing improvements to a firm's conflict checking systems. This may also be regarded as mitigation that will reduce the level of any sanction in line with our Enforcement Strategy.
- The regulated person's health. Where ill health is raised as a relevant factor, we will usually require independent medical evidence. An RSA may be appropriate because the person's health means that they will be unable to withstand a public hearing. But may nonetheless be able to agree a sanction which enables us to achieve appropriate protection for the public.
- The regulated person's regulatory history. Previous warnings and sanctions may indicate a risk of misconduct recurring and may

mean a more serious penalty may be merited than we have power to impose.

What does an RSA typically include?

The terms of an RSA will generally:

- be in writing, having been agreed by us and the firm or individual concerned
- state the relevant facts
- identify any admitted failings
- set out the firm's or individual's mitigation for the breaches
- identify any action the regulated firm or individual has taken or has committed to take
- identify any sanction imposed by the agreement, the factors we have taken into account in deciding the outcome, and why we have decided to agree an RSA
- provide that costs are payable.

Timing and timeliness

We will start discussions for an RSA if we consider it is an appropriate case for us to do so. We welcome those we regulate also raising the possibility of an RSA and we will consider any such request. However, we will generally only agree an RSA when we have finished our investigation of the facts and have received from the relevant firm or individual an explanation of the issues raised. This is so we can make sure that an RSA is appropriate in all the circumstances and decide on the right outcome taking into account all of the evidence.

Further details on how we investigate can be found in our guidance on how we make decisions on investigating concerns [https://news.sra.org.uk/solicitors/guidance/investigations-decisions-investigate-concerns/] .

Any discussions or draft RSAs are provisional until formally signed by us. We will not allow the existence of any discussions about the RSA to delay our investigatory processes, which will generally run in parallel.

We will not generally consider entering into an RSA on one matter, if there are other ongoing investigations into a different matter that relate to the same person or firm. This is because the decision maker would need to consider all aspects of that person's or firm's behaviour at the same time.

We can also enter into an RSA when the case has already been referred for a hearing before the SDT. A reason for this may be because of new evidence or issues coming to light such as significant ill health. This may change our view of the correct outcome of the case in the public interest.

If we have already issued proceedings, we can only stop them if the SDT agrees. We would ask them for permission to withdraw the proceedings and show the proposed terms of the RSA. It is however open to the SDT to refuse our request and to hear the case and, if so, impose the same or a different sanction.

In some instances, it can help cases to be finished quickly and at reasonable cost if a statement of facts and admissions can be agreed. This is different to an RSA, as it will only set out the facts and the admissions made, leaving the decision regarding sanction to the SDT to decide on.

Multiple parties

When we investigate a number of firms or individuals concerning the same matter, we can enter into an RSA with one firm or individual and continue to proceed with an application to the SDT for the others. We will do this when we can reach fair outcomes more efficiently and quickly than if we were to proceed to the SDT against all the firms and individuals. In some cases, it may be appropriate to carry on against all parties, because their respective responsibilities will only come out properly at a full hearing.

Example 2

Four partners and two assistant solicitors are alleged to have breached of the Accounts Rules, arising out of multiple transactions conducted by one partner and the two assistants. It becomes clear that one assistant is heavily involved in all of the transactions, but the other is only involved in one of them. We consider it proportionate to agree an RSA imposing a rebuke against the latter assistant, rather than prosecute her before the SDT with the partners and the other assistant solicitor.

Publication

We will generally publish RSAs if it contains a disciplinary or regulatory outcome that we would ordinarily publish in accordance with our guidance on publication of regulatory and disciplinary decisions [https://news.sra.org.uk/solicitors/guidance/disciplinary-publishing-regulatory-disciplinary-decisions/] . Publication of RSAs is particularly important to achieve transparency and to hold us to account for our decisions, both of which help maintain public confidence.

Recovering our costs

Achieving an early resolution of an investigation minimises costs for us and the regulated firm or individual. We will seek to recover our full costs from those who are found to have breached our Standards and

Regulations. This reduces the amount of costs we pass on to our wider regulated community and ultimately to consumers.

If a person with whom we are discussing an RSA provides evidence of inability to pay, we may seek to agree an instalment or payment plan.

Variation to an RSA

Circumstances inevitably change. We may agree to a variation of the RSA at the request of the regulated firm or individual. For example, we may extend the deadline for an action to be taken if we consider that it is reasonable to do so. Alternatively, we may have agreed that someone should be made subject to a regulatory control and be asked several years later for the order to be lifted as the person considers that it is no longer required. In such circumstances, we will consider the request in line with our usual process and may ask for relevant evidence to support us in our decision making.

Rule 3.3(b) of the Application, Notice, Review and Appeals Rules makes it clear says that we will not consider an application to review a decision made by an RSA. This is because the outcome has been agreed by both us and the regulated individual or firm.

However, we can always correct any administrative errors in decisions we make. We can also review an RSA if we find that the person has materially misled us (whether intentionally or not), or new information comes to light which makes it necessary in the public interest to re-open the underlying case.

Non-compliance with an RSA

Non-compliance with the terms of an RSA is rare. We will always check that the person meets the terms of any undertakings given in the agreement.

We regard any behaviour that is inconsistent with the RSA as a breach of our Standards and Regulations. For example, denying the breaches that have been admitted, or by materially misrepresenting the agreement. We can also reopen the original investigation, and act on any new information that suggests regulatory action is required, including the non-compliance itself.

How we make decisions and the criterial we apply
[https://news.sra.org.uk/sra/decision-making/decision-making-sra/]

Publication of regulatory and disciplinary decisions
[https://news.sra.org.uk/solicitors/guidance/disciplinary-publishing-regulatory-disciplinary-decisions/]

Making decisions on investigating concerns
[https://news.sra.org.uk/solicitors/guidance/investigations-decisions-investigate-concerns/]

Enforcement Strategy [https://news.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/]

Further help

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