

SRA 'fair treatment' rules

FAQs

The SRA has updated its Codes of Conduct for both individuals and firms to require them to treat colleagues and those working for them fairly and with respect, and not to bully or harass them or discriminate unfairly against them. In addition, managers of firms are expected to challenge behaviour that does not meet this standard. These new regulatory requirements are often referred to as the 'fair treatment' rules.

What are the new fair treatment rules?

The new rules apply to both individuals and firms as follows:

For individuals: "You treat colleagues fairly and with respect. You do not bully or harass them or discriminate unfairly against them. If you are a manager you challenge behaviour that does not meet this standard." (*Paragraph 1.5, SRA's Code of Conduct for Solicitors, RELS and RFLs*)

For firms: "You treat those who work for and with you fairly and with respect, and do not bully or harass them or discriminate unfairly against them. You require your employees to meet this standard." (*Paragraph 1.6, SRA's Code of Conduct for Firms*)

Why has the SRA introduced the fair treatment rules?

The fair treatment rules were introduced following the SRA's Workplace Culture Thematic Review, which found evidence of an unsupportive, bullying or toxic working environment or culture at many law firms, including discrimination and harassment.

The SRA recognised that in addition to damaging the wellbeing and mental health of a firm's staff, such an environment can also lead to mistakes and poor outcomes for clients, or create a culture in which unethical behaviour can flourish because staff feel unable to raise concerns.

The new rules are intended to address these concerns by putting the onus on firms and individuals to create and maintain the right culture and environment for the delivery of competent and ethical legal services to clients.

How is bullying defined?

The SRA considers that bullying includes unwanted behaviour that is offensive, intimidating, malicious or insulting and behaviour amounting to an abuse or misuse of power that undermines, humiliates or causes physical or emotional harm to someone.

Examples of bullying include:

- constantly putting someone down in meetings or singling an associate out for criticism on a group call;
- only allocating work to strong performers despite others having capacity, but not addressing development needs with the weaker performers;
- shouting at colleagues;
- belittling a trainee in front of counsel;
- requiring an associate to work all night when this is not necessary to meet client needs/setting arbitrary deadlines.

How is harassment defined?

Harassment is defined in the Equality Act 2010 as unwanted conduct relating to a protected characteristic (e.g. gender, race, age, disability, etc), which either:

- Violates a person's dignity; or
- Creates an intimidating, hostile, degrading, humiliating or offensive environment for the person.

Examples of harassment include:

- mocking an older colleague for not being as adept at using technology as younger colleagues;
- asking questions about someone's sex life;
- making jokes about someone's sexual orientation; and
- making it known you think associates who take maternity/other parental leave are not as committed as other colleagues.

It is important to recognise that bullying and/or harassment may:

- Be part of a pattern of behaviour or a one-off incident;
- Be face to face or virtual;

- Be in the workplace or in a work-related situation, e.g. a work-organised event;
- Be upward or downward, i.e. from a more senior individual to a junior individual or vice versa; and
- Be inadvertent / not intentional.

How should we challenge unfair treatment when it is identified?

If possible, intervene immediately.

If you cannot intervene immediately, take action promptly after the event. Action could include;

- Raising concerns directly, raising them with COLP, HR, Managing or Senior Partner;
- Record keeping of the incident/s and action/s taken; and
- Consider if it needs to be reported to the SRA.

Where will the SRA take action?

SRA's enforcement strategy indicates that they will not take action on every breach, but will instead focus their action on the issues that are most serious.

The SRA is likely to take action against an individual where, for example, there is evidence of:

- Intentional bullying, harassment or discrimination;
- Repeated or blatant unfair treatment;
- Pressuring a colleague to act improperly;
- Victimising a colleague for acting properly; and
- Repeated failure to challenge or address the above behaviours.

The SRA is likely to take action against a firm where, for example, there is evidence of:

- Abuses of authority being left unchecked by the firm;
- Discrimination, victimisation or harassment complaints not being dealt with by the firm;
- Inadequate responses to complaints of bullying;
- A failure of the firm's managers to challenge unfair treatment;
- Pressuring individuals to withdraw complaints;
- Serious competence or performance issues due to ineffective systems and controls; and
- Unreasonable workloads or targets being imposed.

Is there a duty to report breaches of the rules to the SRA?

The SRA Code of Conduct requires SRA-regulated firms and individuals to report misconduct or serious compliance failures, including:

- "Any facts or matters that [they] reasonably believe are capable of amounting to a serious breach of their regulatory arrangements by any person regulated by [the SRA]"; and
- "Any facts or matters that [they] reasonably believe should be brought to [the SRA's] attention in order that [the SRA] may investigate whether a serious breach of its regulatory arrangements has occurred or otherwise exercise its regulatory powers".

This will cover serious breaches of the new fair treatment rules.

There is an express provision in the SRA Code of Conduct for Individuals aimed at preventing those who make a report being victimised. Paragraph 7.9 of the Code outlines that any person making or proposing to make a report should not be subject to detrimental treatment. A breach of this Code can lead to personal and firm liability.

What can firms do to prevent breaches of the rules?

The SRA expects firms to be proactive in building a positive workplace culture and minimising practices and behaviours that could lead to poor mental health or encourage professional misconduct.

Firms can do the below to aid in preventing rules breaches:

- Support employees in managing their workload;
- Support employees in managing their mental health;
- Consider how effective supervision arrangements are in supporting employees;
- Provide relevant training and information sessions for employees.

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Fox Williams LLP
10 Finsbury Square
London EC2A 1AF
T:+44 (0)20 7628 2000

foxwilliams.com

