

SRA THEMATIC REVIEW OF ASYLUM LEGAL SERVICES 2024



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The SRA's Immigration & Asylum Thematic Review

Following the SRA's thematic review of Immigration & Asylum work in 2022, it issued and updated its detailed [findings](#) alongside [guidance](#) on performing Immigration work in November 2022. This was followed by a [warning notice](#), issued in September 2023, regarding solicitors potentially advising clients to falsify or fabricate information to support Home Office applications for asylum or leave to remain. This guidance was issued following a newspaper sting in which a number of firms and individuals were reported to the SRA for potentially advising clients or prospective clients to falsify or fabricate information. In addition, the SRA was concerned that it had also identified risks around solicitors producing poorly drafted applications, or advising their clients to pursue totally without merit appeals of Home Office decisions through the courts. The SRA took disciplinary action and closed down three firms.

The SRA undertook a further thematic review of Immigration & Asylum work during 2023/2024.

Summary of Review

This most recent review focused on the following four key themes:

- ❖ how firms engage with clients and the evidence in asylum matters
- ❖ how firms maintain effective oversight of work and their supervision arrangements
- ❖ how firms ensure the ongoing competence of fee earners
- ❖ the extent to which individuals were reporting concerns about other solicitors and authorised firms to the SRA.

The SRA visited 25, compared to 38, firms visited in the 2022 review. These included sole practitioners and firms who hold a legal aid contract. Five of the firms had also previously been visited as part of the 2022 review. At each firm, the SRA:

- ❖ spoke with the person with overall responsibility for asylum matters (the 'head of department')
- ❖ spoke with the fee earner who dealt with asylum matters
- ❖ reviewed two files handled by a fee earner (if the firm engaged a consultant, two of their files were also reviewed).

The SRA reviewed a total of 64 files.

You can find the details of the SRA's thematic review and the findings here: <https://www.sra.org.uk/sra/research-publications/thematic-review-asylum-legal-services/>. It is a very lengthy document, and all practitioners are advised to read it in full, however we have attempted to capture the most salient points in this advice note.

The SRA's report is split into four key themes. Within each key theme, the SRA sets out what its expectations are of firms and individuals working within SRA regulated firms and also confirms its findings in respect of each key theme considered as part of the review.

It is important that practitioners familiarise themselves with the SRA's expectations so they are able to ensure they and their firm are fully compliant.

Key Themes

1. Engaging With Clients

SRA EXPECTATIONS

The SRA expects firms and solicitors to comply with and uphold the core Principles of ethical behaviour and the framework within which asylum legal services should be provided. In particular:

- ❖ Principle 1 – act in a way that upholds the constitutional principle of the rule of law and the proper administration of justice
- ❖ Principle 2 – act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons
- ❖ Principle 3 – act with independence
- ❖ Principle 4 – act with honesty
- ❖ Principle 5 – act with integrity.

The SRA Code of Conduct for Solicitors, RELs and RFLs and Code of Conduct for Firms also place obligations on firms and solicitors. The following rules are particularly relevant in the delivery of asylum legal services:

- ❖ you do not mislead or attempt to mislead clients, the court, or others (paragraph 1.4 of the Code for Solicitors)
- ❖ you do not misuse or tamper with evidence or attempt to do so (paragraph 2.1 of the Code for Solicitors)
- ❖ you do not seek to influence the substance of evidence, including generating false evidence or persuading witnesses to change their evidence (paragraph 2 of the Code for Solicitors)
- ❖ you only make assertions or put forward statements, representations or submissions to the court or others which are properly arguable (paragraph 2.4 of the Code for Solicitors).

As part of its consideration of how individuals and firms were engaging with clients, the SRA looked at the following areas:

- ❖ Validating claims
- ❖ Ways of working
- ❖ Client referrals and identification checks
- ❖ How firms and solicitors engage with evidence in asylum claims
- ❖ Evidence Gathering
- ❖ Assessing the evidence
- ❖ Providing Costs Information
- ❖ Eligibility for legal aid
- ❖ Firms' use of WhatsApp
- ❖ Language barriers and use of interpreters.

Validating claims

Generally, the SRA found that firms take a proactive approach to working with prospective clients to consider the merits of a potential asylum claim, in terms of advising clients clearly on likely evidence that may be required to support any claim before it is made and having measures in place to scrutinise the authenticity of client identities and evidence.

Ways of working

The SRA found firms adopting a range of methods through which to communicate with and support their clients, which were generally sympathetic to the needs and circumstances of clients. The importance of meeting claimants face-to-face, explaining the asylum process clearly from the outset and using technology to keep clients updated were widely acknowledged.

Client referrals and identification checks

Knowing how clients are referred to a firm and verifying their identity is key to understanding a client's background and circumstances. It also helps to identify individuals who may have been coerced or misled into seeking asylum and to safeguard those making genuine claims.

Most heads of department advised that they received new instructions because of local word-of-mouth recommendations, or from current or previous clients. Two firms advised that they received referrals from consultants, however the matter would not be handled by the referring consultant to make sure the clients' interests took priority over that of any referrer.

It is important that any referral arrangement, however informal, does not compromise a fee earner's independence. The SRA found no instances of inappropriate referrals to firms.

How firms and solicitors engage with evidence in asylum claims

How fee earners engage with the evidence in asylum cases is crucial. Fee earners must be satisfied as to the authenticity of any evidence clients provide and that the evidence supports the risk that the client claims to be facing.

The SRA highlighted that solicitors who are complicit with their client in misleading the court, or who do so themselves, risk serious consequences. The courts have made it very clear that they regard this as *'one of the most serious offences that an advocate or litigator can commit'*. Such behaviour also undermines public trust and confidence in the broader asylum law sector.

Solicitors are expected, as officers of the court, to act in a way which [upholds the proper administration of justice](#) and [not to waste the court's time](#).

Evidence Gathering

92% of fee earners typically saw and discussed evidence in support of a client's asylum claim during an initial client meeting. This helped them decide whether there is a proper evidential basis for a claim and to identify potential weaknesses or inconsistencies in an asylum application before it was submitted. It also managed a client's expectations.

Firms that did not ask clients to bring evidence to an initial meeting said they did so because they did not wish to overwhelm the client. The SRA highlighted that this approach carries a risk, as a fee earner has no more than a client's account to assess their prospects of success.

It was acknowledged that clients would often return to provide further evidence in support of their claim after the initial meeting. Where this occurred, 92% of firms stated they would revisit their previous merits assessment. The SRA file reviews showed that where a fee earner had revisited their initial merits assessment, they had recorded the outcome of this on the file and communicated this to the client.

Assessing the evidence

The SRA highlighted the importance of reviewing and assessing all evidence, as well as querying why a client might be unable to provide any supporting evidence.

A positive idea is to 'always set aside at least 10 minutes' immediately before any meeting with the client to remind yourself of the case, check for any inconsistencies and be prepared to explore these with the client.

The SRA highlighted the importance of examining and discussing any supporting evidence with the client in person as opposed to virtually. A face-to-face meeting allows fee earners to rigorously test the evidence presented and provides an opportunity to check whether anybody is influencing the client's evidence and to see the client's body language when responding to questions.

The SRA found that just over a third of fee earners verified the authenticity of client evidence, such as overseas arrest warrants, foreign court transcripts and marriage certificates with an external third-party expert or issuing authority.

The remaining 64% of fee earners relied on their own judgment gained through their professional experience to assess if a document was genuine. The SRA highlighted that it is important that fee earners who use this approach do not become complacent. There is a risk that they make assumptions about the authenticity of evidence. All evidence should be properly scrutinised, regardless of whether a fee earner has seen that type of document before.

Providing Costs Information

Clients should receive the best possible information about the likely overall cost of the matter, both at the time of engagement and as the matter progresses.

Most client care letters reviewed contained costs information in writing. 84% of heads of department also said they expected fee earners to discuss costs during an initial client meeting and this was evidenced in the file reviews undertaken by the SRA.

Eligibility for legal aid

Checking a client's eligibility for legal aid at an initial meeting is important. Doing so helps to safeguard fair access to legal representation, especially for those with limited financial means. Asylum applicants are also often unfamiliar with the UK's legal system and might not be aware of their eligibility for legal aid.

Just over three quarters of fee earners interviewed by the SRA about their files confirmed that the clients were eligible for legal aid. However, 72% of firms did not provide their services on a legal aid basis because the client had chosen to fund the cost of legal advice privately.

The SRA advised that:

- ❏ Fee earners should be proactive in considering whether a client is eligible for legal aid
- ❏ Where clients are eligible, they should be afforded the opportunity to go to a firm which holds a legal aid contract before proceeding to instruct the firm on a private fee paying basis
- ❏ Fee earners should monitor clients' eligibility for legal aid throughout a matter
- ❏ It is good practice for fee earners to record in attendance notes and in the initial client care letter the reasons why, despite being eligible for legal aid, a client has chosen to pay privately for legal services. Doing so is a good way of ensuring transparency. The SRA's review of files showed that less than half of firms record this information.

Firms' use of WhatsApp

The SRA noted that the use of WhatsApp by fee earners to communicate with asylum applicants is widespread, which reflects the use of WhatsApp within broader society, as it provides a fast and safe way for messages to be exchanged.

Firms typically use WhatsApp to update clients about the progress of their case and to share administrative details, including appointment reminders and confirmations. The SRA confirmed that there was no evidence that firms or fee earners were providing legal advice via WhatsApp.

The SRA's advice is that if legal advice is provided via WhatsApp (or any other text message system) firms should ensure the advice is properly supervised and that a record of that advice is on the client file.

Points to Consider:

- ❏ Do you have a clear written usage policy for fee earners about whether they should be using WhatsApp on their personal mobile phones to contact clients? If not, this poses data protection risks and the potential for exploitation of vulnerable clients
- ❏ A clear usage policy is important so firms can ensure that communication follows professional standards and stays consistent and confidential. It is also important so there is oversight of fee earner communication with clients. Areas that a usage policy may cover include:
 - using personal mobile phones to contact clients on WhatsApp
 - what fee earners can/can't talk about with clients via WhatsApp
 - how to keep WhatsApp conversations with clients confidential (especially if a fee earner is using their personal mobile phone)
 - when and how WhatsApp conversations should be saved to client files
 - what documents should/shouldn't be shared via WhatsApp
 - the security of any client data stored on a personal device
 - when it is appropriate to use voice notes or in-app audio/video calls
 - expectations about responding to clients and at what time of day
 - what information should be included in a business profile if the firm uses a WhatsApp business account

- whether the read receipt function should be turned on or off
- professional conduct and use of language
- ✦ All WhatsApp conversations must be saved to the client file. If a matter does not accurately reflect all communication between a fee earner and a client, this can also adversely impact a supervisor's ability to oversee the matter. One example of good practice the SRA highlighted included a fee earner who used a browser version of WhatsApp on the firm's computer. This meant that messages were regularly backed up to the firm's secure cloud service account and added to the client file once a matter had been concluded
- ✦ WhatsApp might also provide message senders with delivery and read receipts. Firms should carefully consider the impact of this on fee earners' wellbeing, particularly if a fee earner is using their personal mobile phone. Constant connectivity might lead to increased expectations for immediate responses, challenging work-life balance. Setting clear boundaries and expectations for WhatsApp use, along with strategies for managing workloads, is key to protecting fee earner wellbeing. The SRA has published [guidance on workplace environment](#).

Language barriers and use of interpreters

A language barrier between an asylum applicant and a fee earner can be a significant risk, as an inability to understand the information and nuances of a client's case might lead to poor decisions or outcomes.

52% of firms visited use professional interpreters and offer all clients the option to use one. Firms that do not use interpreters, or who do not offer clients the choice, stated this was because they had a fee earner who spoke the same language as the client. Some clients also chose to bring a friend or family member along to help translate.

SRA Advice

- ✦ Always ask the client whether they consent to a friend or family member interpreting on their behalf. This question should be asked when the friend or family member is not present
- ✦ Adopt a client-specific approach to managing language needs and think carefully about the proportionality of choosing not to represent someone because they speak a different language. Turning clients away based solely on the languages they do/don't speak risks conflicting with your professional responsibilities. For example, the need to act in a way that encourages equality, diversity, and inclusion (SRA Principle 6).

Questions for heads of department and/or fee earners to consider

- ✦ *How do you make sure that a client's claim has a reasonable likelihood of succeeding?*
- ✦ *How do you test or verify any evidence presented by your client?*
- ✦ *Have you assessed and noted on file if the client has any individual needs or vulnerabilities that should be considered?*
- ✦ *Have you set out clearly to the client the costs involved in progressing their case and whether they are eligible for legal aid?*
- ✦ *Do your asylum files reflect all your interactions with the client?*

2. Supervision

SRA EXPECTATIONS

Firms are expected to have an effective system for supervising clients' matters (paragraph 4.4 Code for Firms). This is likely to involve adopting a risk-based approach to supervision.

The SRA's [Effective Supervision guidance](#) sets out things to consider and gives examples of good practice to help firms meet both statutory and regulatory requirements.

Paragraph 3.5 of the Code for Solicitors states that where you supervise or manage others providing legal services, you remain accountable for the work carried out through them and you effectively supervise work being done for clients.

As well as being a regulatory requirement, effective supervision is also a requirement under the Immigration and Asylum Act 1999 (IAA). Under the IAA, you must be a 'qualified' person (section 84(1)) to provide asylum advice and services. Solicitors, RELs and RFLs with a valid practising certificate and SRA-authorized bodies are 'qualified' under the IAA.

A failure to supervise someone who is not authorised and acting on your behalf risks contravening the IAA general prohibition, which is a criminal offence.

Under the key theme of Supervision, the SRA looked at:

- 🔗 Continuing competence
- 🔗 Reporting concerns: safeguarding professional standards and ethics
- 🔗 Policies and procedures
- 🔗 Supervisors
- 🔗 Who is supervised?
- 🔗 Fee earner and consultant working arrangements
- 🔗 What does supervision look like?
- 🔗 Barriers to Effective Supervision
- 🔗 Background checks on fee earners.

Generally, the SRA found all the firms visited had structures in place to ensure work was being monitored by a more experienced supervisor to check quality. It was clear that individual fee earners felt able to escalate individual cases and questions to a more senior colleague when needed.

However, the SRA highlighted its concern that only 62% of files reviewed had evidence of supervision on them. The SRA states that it considers it *'good practice to evidence supervision has taken place on all files'*.

Continuing competence

The SRA found that the firms visited generally understood their obligations to ensure their fee earners stay up to date with their continuing competence obligations. However, it did find inconsistent

approaches to evidencing that development needs were being reviewed on a regular basis or recording of training being subsequently undertaken.

Although many asylum applicants might be vulnerable, have to recount traumatic experiences or be suffering from poor physical or mental health, the SRA found very few firms provided their solicitors with training or support in dealing with such individuals.

Reporting concerns: safeguarding professional standards and ethics

The SRA found that most heads of department and fee earners working on asylum matters were aware of the SRA's reporting guidance and requirements. Yet few stated that they had, in practice, come across any behaviour which they believed could amount to a serious breach of the SRA's rules or standards.

Policies and procedures

The SRA highlighted that having formalised policies and procedures can help set expectations around how an asylum matter should be supervised.

What might your policies/procedures need to cover?

- ❖ How matters should be allocated. For example, considering a fee earner's skill, experience and competence when allocating files
- ❖ Areas to consider when taking on new asylum clients. For example, whether they are eligible for legal aid, how to assess the client's prospect of success and whether the firm has the expertise to deal with the matter
- ❖ How matters should be progressed and supervision expectations. For example, a fee earner should carry out day to day tasks and be the main point of contact for a client, but the supervisor would retain overall responsibility
- ❖ A defined procedure for signing off documents
- ❖ How fee earners could identify and support vulnerable clients. For example, a checklist of questions fee earners could ask themselves to ensure they had undertaken a robust assessment of client vulnerability
- ❖ The asylum process and specific practical steps which needed to be taken or considered with the client. For example, when to instruct an interpreter and how to conduct online hearings
- ❖ Reference to the SRA's warning notices and guidance. The SRA highlighted this as a good opportunity to bring the key messages to the attention of fee earners.

Supervisors

Being able to disclose when work is beyond an individual's capability and knowing when to seek the advice of others is a requirement of the SRA's [statement of solicitor competence](#). It is also important as it means clients will receive timely and properly considered advice.

The SRA highlighted factors to be considered when deciding whether a piece of work needed to be signed off, including:

- ❖ The legal complexities of a matter

- ✿ Whether the matter was novel in nature or unfamiliar to the fee earner
- ✿ Whether a client's witness statement was particularly complex or contained sensitive information
- ✿ Whether the matter was deemed to be higher risk than others e.g. where the client might be vulnerable (in particular, issues affecting the client's mental health) or where there was a risk of loss of liberty or life.

The SRA was clear that supervision can be evidenced by keeping attendance notes, documentation created during file reviews or comments on draft documents (for example, handwritten notes or electronic track changes).

Who is supervised?

The SRA was clear that firms should regularly review their supervision arrangements to ensure they are beneficial for supervisors and fee earners. One suggestion was to encourage fee earners to provide feedback on both the supervision structure and arrangements. This could be done confidentially. The head of department could then consider any feedback and discuss with the supervisor to see if any changes are necessary. This would help make sure that any supervision arrangements remain effective for both the supervisor and the supervisee.

What effective supervision looks like will vary from practice to practice and a risk-based, proactive approach should be adopted. It is important for firms to periodically review the delivery of supervision to make sure it remains effective.

Fee earner and consultant working arrangements

All individuals interviewed by the SRA typically worked in the firm's office. Few worked remotely, and those who did, only did so occasionally.

The use of consultants by the firms spoken to by the SRA was low.

The SRA highlighted specific risks that would need to be mitigated if firms did use consultants, such as:

- ✿ Ensuring clear oversight of a consultant's work – this related to both signing off work and seeing how they interacted with clients
- ✿ Consultants might feel a sense of split loyalty if working for more than one firm and prioritise work according to how they are remunerated
- ✿ There could be issues of client confidentiality if a consultant deliberately or inadvertently disclosed information to another firm.

What does supervision look like?

The SRA noted that regular file reviews as well as more formal file audits were the most common supervision methods used by firms.

It was highlighted that while file reviews are useful, they are often done after work has been carried out. Supervisors should ensure they have clear oversight of work being done while it is live and at all key stages of a matter.

The SRA was concerned that whilst most heads of department said they maintained close oversight of the asylum department's work and had knowledge of all the firm's asylum matters, it was difficult to verify this as often there was nothing on files to demonstrate that supervision had taken place.

SRA Advice

Ask fee earners to keep a file note to demonstrate that supervision has taken place:

- Save emails on file between a supervisor and supervisee evidencing supervision
- Save documents on file showing tracked changes as evidence of supervision.

While it may not be necessary to capture every instance of supervision, such as ongoing informal discussions or where the supervisor is working directly with the fee earner, the supervision should reflect the risk-based reasons behind the approach the firm has taken.

Barriers to effective supervision

Most heads of department told the SRA that they set aside dedicated time to supervise matters.

Some chose to check every piece of work and correspondence before it was sent out, which could be time consuming, but they did so because they acknowledged the high risk and detriment to the client if poor legal services were provided. They also acknowledged that, as supervisors, the SRA will hold them accountable for the actions of those they supervise.

Background checks on fee earners

The SRA highlighted that background checks serve as a vital precaution to check a legal professional's work experience and character. Trust and integrity are important given that asylum applications typically involve vulnerable clients, including unaccompanied minors.

The SRA considers it to be good practice that firms who are not required to carry out Disclosure and Barring Service (DBS) checks on fee earners every two years, as they do not have legal aid contracts, still choose to do so.

Questions for heads of department and/or fee earners to consider

- *Does your firm use a risk-based approach to supervising matters?*
- *How could you improve your supervision structure to make sure that it remains effective?*
- *How would firms and fee earners be able to demonstrate that appropriate supervision takes place?*
- *If evidence of supervision should be on file, are you satisfied that fee earners are doing this in practice?*
- *If you use consultants, have you identified any risks involved and taken steps to mitigate them?*

3. Continuing Competence

SRA EXPECTATIONS

Solicitors must maintain their competence and keep professional knowledge and skills up to date (paragraph 3.3 of the Code for Solicitors). They should also be able to demonstrate the steps they have taken to do this.

This means they must reflect on their practice and undertake regular learning and development, so their skills and knowledge remain up to date. Solicitors responsible for managing individuals who provide asylum legal services must also make sure those people are competent to carry out their role.

The SRA expects solicitors to act in accordance with their regulatory requirements. This means being familiar with the SRA warning notices and guidance. Firms and solicitors delivering asylum legal services are less likely to understand their professional obligations unless they read and understand the following:

- ❖ [Warning Notice on immigration work](#)
- ❖ [Immigration work - guidance](#)
- ❖ [Effective supervision guidance](#)
- ❖ [Reporting a solicitor or firm to us.](#)

Under the heading of Continuing Competence, the SRA considered:

- ❖ Reflecting on fee earner competence
- ❖ Addressing learning and development needs
- ❖ Recording and evaluating competence
- ❖ SRA warning notices and guidance.

Reflecting on fee earner competence

The SRA recognised that Immigration is an area of law where procedural requirements and precedent can often change. It emphasised the importance of fee earners regularly reflecting on the quality of their practice to identify any learning and development needs, as and when they arise.

Fee earners can use the SRA's [learning and development template](#) to help reflect and record any learning and development needs.

It is acknowledged that asylum clients often recount traumatic experiences and might suffer from poor physical or mental health. Despite this, the SRA noted that few fee earners could demonstrate how and when they had reflected on their competence and ability to support clients.

Suggested methods of testing competence include:

- ❖ Regular file reviews

- ✿ Asking a fee earner to explain to another fee earner a proposed course of action – this allows fee earners to reflect and learn from their own practice as well as learning from other people
- ✿ Asking a fee earner to present or deliver training on a particular area during a team meeting
- ✿ Reporting back to the wider team about any training an individual has attended
- ✿ Checking a fee earner's learning and development record as part of the appraisal process
- ✿ Checking that a fee earner has reflected on their practice and addressed any identified learning and development needs before applying for a practising certificate
- ✿ Including a specific section on learning and development on the firm's appraisal form
- ✿ Discussing a fee earner's work and development needs during catch-up meetings
- ✿ Discussing any training undertaken at team meetings
- ✿ Delivering in-house training at team meetings or discussing certain cases.

Addressing learning and development needs

The SRA acknowledged that 'on-the-job learning' was the most effective way to address learning and development needs, given that rules and procedures can change quickly in asylum law.

The process of allocating matters may be used to help support the personal development of fee earners. For example:

- ✿ Allocating new matters to certain fee earners. The fee earner, with appropriate support, could then gain a good understanding of the whole process from start to finish
- ✿ Giving a fee earner the opportunity to develop a specialism, for example dealing with a particular nationality, requiring them to be familiar with any country-specific guidance
- ✿ Giving a fee earner exposure to a particular client vulnerability, for example a client who had fled domestic violence or been politically persecuted. Again, the fee earner should be appropriately supported to make sure the client received a quality service.

Other more structured methods of continuing competence may include:

- ✿ Attending training sessions run by external providers or barrister chambers (online or in person) on changes in the law, procedural changes, updates on caselaw or SRA updates and guidance
- ✿ Undertaking online training courses – some of these included a knowledge test at the end of the course
- ✿ Reading guidance and external resources provided by compliance consultants or companies
- ✿ Attending the SRA's annual compliance conference.

Recording and evaluating competence

The SRA noted that although most fee earners could produce a record or list of the learning and development activities they had undertaken, few fee earners evaluated whether the steps they had taken had addressed the initial learning and development need(s) or whether additional needs had been identified. The SRA was clear that this is an area in which fee earners need to improve. Reflection should be completed on a regular basis so that learning and development needs can be identified as they arise.

Keeping a centralised record helps give the head of department an overview of fee earner competence.

SRA warning notices and guidance

The SRA emphasised that it publishes warning notices and guidance to help firms and individuals understand their obligations and how to comply with them. It can, and does, refer to these when exercising regulatory functions.

It is clear that firms are unlikely to fully understand their professional obligations unless they read and understand these warning notices and guidance.

Questions for heads of department and/or fee earners to consider

- *What approach do you and your fee earners take towards continuing competence?*
- *How would you demonstrate that you and your fee earners are meeting continuing competence requirements?*
- *How often do you reflect on your own competence and/or the competence of fee earners?*
- *How can you use your supervision processes and procedures (such as file reviews) and 'on-the-job learning' to reflect and identify learning and development needs?*
- *What personal and professional learning and development opportunities can you and your fee earners access?*

4. Reporting Concerns: Safeguarding Professional Standards And Ethics

SRA EXPECTATIONS

Individual solicitors and firms must promptly report any facts or matters they reasonably believe could amount to a serious breach of the SRA's Standards and Regulations – (paragraph 7.7 of the Code for Solicitors and paragraph 3.9 of the Code for Firms).

There is no room for ambiguity. Understanding what may amount to a serious breach and how to report concerns is crucial. Detailed guidance on these matters is available in the SRA's [Enforcement Strategy](#) and in [Reporting and Notification Obligations guidance](#).

Regulated solicitors have no excuse; you must be familiar with these requirements and expectations. If you are unsure about whether to make a report, you should err on the side of caution and do so.

The SRA emphasised that it is a fundamental obligation rooted in the professional principles of trust and integrity that firms and fee earners must promptly report any matters that may amount to a serious breach of the Standards and Regulations.

Findings

- ❖ 17 of the 25 heads of department acted as the firm's COLP but had not read the warning notices and guidance. Some were aware of the key messages but only after they had read about these in the legal press. This resulted in some misunderstanding about their professional obligations
- ❖ Most heads of department and fee earners were aware of the SRA's reporting guidance and requirements, yet few stated they had, in practice, come across any behaviour which they believed could amount to a serious breach of the SRA's rules or standards.

Examples of what could amount to a serious breach include if a firm or solicitor had:

- ❖ Acted dishonestly by providing false or misleading information to a client or submitting applications fraudulently or with zero prospects of success
- ❖ Been negligent by providing fundamentally incorrect legal advice or missing key deadlines as part of the asylum process
- ❖ Breached confidentiality rules by meeting clients in public spaces to discuss cases or discussed applications with third parties, including interpreters
- ❖ Taken advantage of vulnerable clients. For example, by charging clients' money without then carrying out the work promised
- ❖ Acted unethically by encouraging clients to lie about their case or to embellish their accounts, fabricating evidence themselves or asking clients to produce fake documents
- ❖ Committed financial misconduct by overcharging clients, charging excessive amounts for routine tasks or being unclear about fee arrangements.

If a matter can amount to a serious breach, SRA regulated individuals and firms are under a duty to report the matter to the SRA promptly.

Whether or not a concern should be reported is a matter of judgment which will depend on the individual facts and circumstances. If you are unsure about whether to make a report, you should err on the side of caution and do so. Further guidance on what you should consider before deciding to report a matter to the SRA can be found in the [Reporting and Notification Obligations guidance](#).

The SRA was clear that if a firm or a solicitor does not report a serious breach when they should have done, it may take enforcement action against that firm or solicitor.

Some firms told the SRA that it is not unusual for asylum clients to change law firms. The SRA highlighted that this gives newly instructed firms an opportunity to review the work done by the previous fee earner and report any concerns to them. This could include instances where the level of service and quality of the work undertaken by the previous firm falls below what can reasonably be expected.

The duty to report serious misconduct is clear and is not subject to client consent or the duty of confidentiality. Reporting potential misconduct to the SRA is in the public interest and disclosing confidential information will be justified if it helps the SRA to fulfil its regulatory role.

Questions for heads of department and/or fee earners to consider

- Are you (and your fee earners) aware of the SRA's reporting obligations?*
- Are you (and your fee earners) aware of how to report a matter?*
- Are there any matters that you are currently aware of which ought to be reported? And if so, have they been reported?*
- Are fee earners aware of who the COLP is within your firm and understand what their role involves?*
- Have fee earners been trained to identify potential breaches within the specific context of asylum law applications?*

What Can We Do To Ensure Compliance?

We strongly recommend that firms review all of their quality and supervision systems immediately to ascertain whether they are sufficiently robust, effective and in keeping with the SRA's requirements. Where improvements are required, these should be implemented without delay.

DG Legal can offer advice and tailored support to ensure that you are able to evidence a strong and effective supervision system within your firm. Please contact us at admin@dglegal.co.uk to discuss your needs.

APPENDIX A

QUALITY ASSURANCE REVIEW

ISSUES IDENTIFIED BY THE SRA	DOCUMENTS / SYSTEMS REVIEWED	FINDINGS	UPDATE REQUIRED (Y/N)	DETAILS OF IMPROVEMENTS
ENGAGING WITH CLIENTS				
How do you make sure that a client's claim has a reasonable likelihood of succeeding?	<p>Client files</p> <ul style="list-style-type: none"> • <i>When do you ask clients to provide supporting evidence?</i> • <i>Do you question a lack of supporting evidence?</i> • <i>Do you discuss evidence with clients face-to-face?</i> • <i>Do you cross-reference documents such as interview records, statements, country information and pieces of evidence?</i> • <i>Do you get documents independently translated and authenticated by an expert?</i> • <i>Do you advise on merits?</i> 	<p><i>We are satisfied that the procedures we have in place for ensuring that a client's claim has a reasonable likelihood of succeeding are sufficient.</i></p> <p><i>Statements are taken.</i></p> <p><i>Evidence is reviewed, discussed and cross-referenced.</i></p> <p><i>OR</i></p> <p><i>We have identified that we need to ensure that we always take appropriate steps in every case to properly engage with clients and their evidence (or lack thereof) to ensure that their claim has a reasonable likelihood of succeeding. This must always be evidenced on the file.</i></p>		<i>We will ensure that...</i>

ISSUES IDENTIFIED BY THE SRA	DOCUMENTS / SYSTEMS REVIEWED	FINDINGS	UPDATE REQUIRED (Y/N)	DETAILS OF IMPROVEMENTS
<p>How do you test or verify any evidence presented by your client?</p>	<p>Client files</p> <ul style="list-style-type: none"> • Do you question a lack of supporting evidence? • Do you discuss evidence with clients face-to-face? • Do you cross-reference documents such as interview records, statements, country information and pieces of evidence? • Do you get documents independently translated and authenticated by an expert? 	<p><i>We are satisfied that we thoroughly test/verify evidence presented by our clients in the following ways...</i></p> <p><i>This is evidenced on our files.</i></p> <p><i>OR</i></p> <p><i>We have identified that we need to ensure that evidence presented by our clients is appropriately tested and verified. We will ensure that this is done by...</i></p>		<p><i>Update training to be provided to all fee earners.</i></p> <p><i>All draft versions of statements/correspondence to be maintained on file.</i></p>
<p>Have you assessed and noted on file if the client has any individual needs or vulnerabilities that should be considered?</p>	<p>Client files</p>	<p><i>We are satisfied that we always ascertain whether a client has any individual needs or vulnerabilities that should be considered. This is discussed with the client at the initial appointment and the fee earner will also record any observations of concern. Where appropriate, steps will be taken to ensure that we adapt our approach to ensure that the client's needs are met, including making any referrals to third parties, where necessary.</i></p>		<p><i>Safeguarding Training to be provided to all staff.</i></p> <p><i>Equality, Diversity & Inclusion Training to be provided to all staff.</i></p>

ISSUES IDENTIFIED BY THE SRA	DOCUMENTS / SYSTEMS REVIEWED	FINDINGS	UPDATE REQUIRED (Y/N)	DETAILS OF IMPROVEMENTS
		<p><i>Our assessment is kept under constant review throughout the life of the matter.</i></p> <p><i>OR</i></p> <p><i>We have identified that we need to ensure that we always take appropriate steps in every case to assess whether a client has any individual needs or vulnerabilities which should be considered. This assessment and findings and any steps taken as a result must always be evidenced on the file.</i></p>		
<p>Have you set out clearly to the client the costs involved in progressing their case and whether they are eligible for legal aid?</p>	<p>Client Care Letter</p> <p>Initial Attendance Note</p> <p>Costs Update Letter</p>	<p><i>We are satisfied that we set out clearly to clients the costs involved in progressing their case and whether they are eligible for legal aid. We document this in our client care letter and initial attendance note.</i></p> <p><i>OR</i></p> <p><i>We have identified that we need to set out clearly to clients the costs involved in progressing their case and whether they are eligible for legal aid. We will document this in</i></p>		<p><i>Update training to be provided to all staff on legal aid eligibility.</i></p> <p><i>Template client care letters to be reviewed and updated.</i></p> <p><i>Template initial attendance notes to be reviewed and updated.</i></p>

ISSUES IDENTIFIED BY THE SRA	DOCUMENTS / SYSTEMS REVIEWED	FINDINGS	UPDATE REQUIRED (Y/N)	DETAILS OF IMPROVEMENTS
		<i>our client care letter and initial attendance note.</i>		
Do your asylum files reflect all your interactions with the client?	Client files <ul style="list-style-type: none"> Are all methods of communication recorded on file, e.g. attendances, calls, texts, WhatsApp, emails etc. 	<i>We are satisfied that our asylum files reflect all our interactions with the client.</i> <i>OR</i> <i>We have identified that we need to ensure that our asylum files better reflect all our interactions with the client.</i>		<i>Review/implement Personally Owned Devices Policy.</i> <i>Review/implement WhatsApp Usage Policy.</i> <i>Update training to be provided to all staff.</i>
SUPERVISION				
Does your firm use a risk-based approach to supervising matters?	Supervision Policy Supervision Records File Review System	<i>Yes, we are satisfied that the firm uses a risk-based approach to supervision matters. We do this through the following methods:</i> <ul style="list-style-type: none"> <i>work allocated by Head of Dept to appropriate caseworker based on experience and/or training needs</i> <i>incoming and outgoing post checked by Head of Dept</i> <i>strict induction programme</i> <i>one to one supervision meetings</i> 		<i>Supervision Policy reviewed and updated.</i> <i>File Review System reviewed and updated.</i>

ISSUES IDENTIFIED BY THE SRA	DOCUMENTS / SYSTEMS REVIEWED	FINDINGS	UPDATE REQUIRED (Y/N)	DETAILS OF IMPROVEMENTS
		<ul style="list-style-type: none"> • <i>number of files reviewed depends on experience of caseworker and any identified concerns.</i> <p>OR</p> <p><i>We have identified that we need to adopt a more risk-based approach to supervising matters. We will do this by:</i></p> <ul style="list-style-type: none"> • <i>work being allocated by Head of Dept to appropriate caseworker based on experience and/or training needs</i> • <i>incoming and outgoing post checked by Head of Dept</i> • <i>strict induction programme</i> • <i>one to one supervision meetings</i> • <i>number of files reviewed dependent on experience of caseworker and any identified concerns.</i> 		
How could you improve your supervision structure to make	Organisation Chart / Supervision Structure	<i>We are satisfied that our supervision structure is effective and no changes are required at present. However, we will keep this under constant review.</i>		<i>Organisation Chart / Supervision Structure reviewed and updated.</i>

ISSUES IDENTIFIED BY THE SRA	DOCUMENTS / SYSTEMS REVIEWED	FINDINGS	UPDATE REQUIRED (Y/N)	DETAILS OF IMPROVEMENTS
sure it remains effective?		<p>OR</p> <p><i>We have reviewed our supervision structure and have determined that to make sure it remains effective, we will implement the following changes:</i></p> <ul style="list-style-type: none"> • <i>allocate deputy supervisor to assist Head of Dept</i> • <i>allocate some supervision tasks to senior caseworkers to assist Head of Dept.</i> 		
How can you demonstrate that appropriate supervision takes place?	Client files File Review Records Team Meeting Minutes Email Correspondence Supervision Logs	<p><i>We are satisfied that appropriate supervision takes place.</i></p> <p>OR</p> <p><i>We have determined that we need to amend our practices to ensure that appropriate supervision is taking place and evidenced on files.</i></p>		
If evidence of supervision should be on file, are you satisfied that fee	Client files	<p><i>We are satisfied that there is evidence of supervision on our files, as required.</i></p> <p>OR</p>		

ISSUES IDENTIFIED BY THE SRA	DOCUMENTS / SYSTEMS REVIEWED	FINDINGS	UPDATE REQUIRED (Y/N)	DETAILS OF IMPROVEMENTS
<p>earners are doing this in practice?</p>		<p><i>We are satisfied that some of our files show evidence of supervision, as required, however this is not always evident on each file as it should be.</i></p> <p><i>OR</i></p> <p><i>We have reviewed our practices and need to ensure that evidence of supervision is always evidenced on the file. We will do this by:</i></p> <ul style="list-style-type: none"> <i>• saving a copy of file reviews on file</i> <i>• keeping notes of supervision discussions on file</i> <i>• keeping copies of email supervision advice on file</i> <i>• keeping copies of changes made by supervisor to draft documents on file</i> <i>• where a document has been checked and approved by a supervisor, a note will be retained on the file.</i> 		
<p>If you use consultants, have you identified any risks involved and</p>	<p>Consultancy Agreements</p>	<p><i>We do not use Consultants.</i></p> <p><i>OR</i></p>		<p><i>Consultancy Agreements reviewed and updated.</i></p>

ISSUES IDENTIFIED BY THE SRA	DOCUMENTS / SYSTEMS REVIEWED	FINDINGS	UPDATE REQUIRED (Y/N)	DETAILS OF IMPROVEMENTS
<p>taken steps to mitigate them?</p>		<p><i>We do use Consultants and have reviewed our agreements with them to ensure that we have identified any potential risks and taken steps to mitigate them. Steps we have taken include:</i></p> <ul style="list-style-type: none"> • <i>consultants may not have conduct of work they refer</i> • <i>all consultants sign a confidentiality agreement</i> • <i>all consultants agree to be bound by the firm's policies and procedures at all times</i> • <i>all consultants are supervised in the same way as employed staff and are subject to file reviews and performance reviews.</i> 		
CONTINUING COMPETENCE				
<p>What approach do you and your fee earners take towards continuing competence?</p>	<p><i>Training Records</i></p> <p><i>Competence Statements</i></p> <p><i>Appraisal Records</i></p>	<p><i>All staff are required to comply with the SRA's continuing competence scheme.</i></p> <p><i>All staff are required to provide a copy of the competence statement at their appraisal and at the renewal of practising certificates.</i></p> <p><i>Records of all training, both formal and informal, must be recorded in training records.</i></p>		<p><i>All staff will be required to comply with the SRA's continuing competence scheme.</i></p> <p><i>All staff will be required to provide a copy of the competence statement at their appraisal and at the renewal of practising certificates.</i></p>

ISSUES IDENTIFIED BY THE SRA	DOCUMENTS / SYSTEMS REVIEWED	FINDINGS	UPDATE REQUIRED (Y/N)	DETAILS OF IMPROVEMENTS
		<p><i>Notes of training attended should be circulated to staff who did not attend.</i></p> <p><i>Continuing competence and training needs are discussed as part of the annual appraisal process.</i></p>		<p><i>Records of all training, both formal and informal, must be recorded in training records.</i></p> <p><i>Notes of training attended should be circulated to staff who did not attend.</i></p> <p><i>Continuing competence and training needs will be discussed as part of the annual appraisal process.</i></p>
<p>How would you demonstrate that you and your fee earners are meeting the continuing competence requirements?</p>	<p><i>Training Records</i></p> <p><i>Competence Statements</i></p> <p><i>Appraisal Records</i></p>	<p><i>All staff are required to provide a copy of the competence statement at their appraisal and at the renewal of practising certificates.</i></p> <p><i>Records of all training, both formal and informal, must be recorded in training records and provided at staff appraisals each year.</i></p> <p><i>Continuing competence and training needs are discussed as part of the annual appraisal process.</i></p>		<p><i>Update training to be provided to all staff.</i></p> <p><i>All staff will be required to provide a copy of the competence statement at their appraisal and at the renewal of practising certificates.</i></p> <p><i>Records of all training, both formal and informal, must be recorded in training records and provided at staff appraisals each year.</i></p>

ISSUES IDENTIFIED BY THE SRA	DOCUMENTS / SYSTEMS REVIEWED	FINDINGS	UPDATE REQUIRED (Y/N)	DETAILS OF IMPROVEMENTS
				<i>Continuing competence and training needs will be discussed as part of the annual appraisal process.</i>
How often do you reflect on your own competence and/or the competence of fee earners?	<i>Training Records Competence Statements Appraisal Records</i>	<i>At least annually and usually more frequently during supervision meetings or one to ones if an issue arises during the course of a matter such as a complaint, an issue found on file review or a particularly complex case.</i>		<i>Competence and training needs will be discussed at monthly/weekly supervision meetings and in detail at the annual appraisal.</i>
How can you use your supervision processes and procedures (such as file reviews) and 'on-the-job learning' to reflect and identify learning and development needs?	<i>Training Records Competence Statements Appraisal Records</i>	<i>Learning and development needs may be identified through issues raised on file review, complaints, supervision meetings, during annual appraisal or difficulties in managing a complex case. Where there are changes in the law or procedure, training will be provided to all staff.</i>		
What personal and professional learning and development	<i>Training Records Competence Statements</i>	<ul style="list-style-type: none"> • <i>EIN</i> • <i>Free Movement</i> • <i>ILPA</i> • <i>Immigration WhatsApp Group</i> 		<i>We have subscribed to...</i>

ISSUES IDENTIFIED BY THE SRA	DOCUMENTS / SYSTEMS REVIEWED	FINDINGS	UPDATE REQUIRED (Y/N)	DETAILS OF IMPROVEMENTS
opportunities can you and your fee earners access?	<i>Appraisal Records</i>	<ul style="list-style-type: none"> • <i>Internal Training</i> • <i>External Training.</i> 		
REPORTING CONCERNS: SAFEGUARDING PROFESSIONAL STANDARDS & ETHICS				
Are you (and your fee earners) aware of your reporting obligations?		<p><i>Yes. Training has been provided to all staff on our reporting obligations.</i></p> <p><i>OR</i></p> <p><i>No. We are attending training on our reporting obligations.</i></p>		<i>Training to be provided to all staff on reporting obligations.</i>
Are you (and your fee earners) aware of how to report a matter?	SRA Guidance	<p><i>Yes. Training has been provided to all staff on how to report a matter.</i></p> <p><i>OR</i></p> <p><i>No. We are attending training on how to report a matter.</i></p>		<i>Training to be provided to all staff on how to report a matter.</i>
Are there any matters of which you are currently aware which ought to be reported to	Client files	<p><i>Yes – we have reviewed and reported these matters to the SRA.</i></p> <p><i>OR</i></p>		<i>Matters of concern to be promptly reported to the SRA.</i>

ISSUES IDENTIFIED BY THE SRA	DOCUMENTS / SYSTEMS REVIEWED	FINDINGS	UPDATE REQUIRED (Y/N)	DETAILS OF IMPROVEMENTS
the SRA? And if so, have they been reported?		<p><i>No – we are not aware of any matters which ought to be reported to the SRA.</i></p> <p><i>OR</i></p> <p><i>No – there are matters of which we are aware but which have not yet been reported to the SRA.</i></p>		
Are fee earners aware of who the COLP is within the firm and understand what their role involves?	<p>Organisation Chart</p> <p>Staff List</p>	<p><i>Yes – all staff are aware that our COLP is xxxx.</i></p> <p><i>OR</i></p> <p><i>No – we are not confident that all staff are aware that our COLP is xxxx.</i></p>		<p><i>Organisation Chart and Staff List updated to reflect Compliance Officers.</i></p>
Have fee earners been trained to identify potential breaches within the specific context of asylum law applications?		<p><i>Yes – all staff have been trained on how to identify potential breaches in Immigration/Asylum law.</i></p> <p><i>OR</i></p> <p><i>No – we have arranged training for all staff on potential breaches.</i></p>		<p><i>Update training to be provided to all staff.</i></p> <p><i>Training Records to be updated after training.</i></p>



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