Guidance

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Status

This guidance explains how parallel proceedings arise, and our approach towards investigating breaches of our regulatory requirements which relate to the same or similar underlying facts as concurrent civil, regulatory or criminal proceedings.

Who is this guidance for?

All SRA-regulated firms, their managers, role holders and employees.

All solicitors, registered European lawyers or registered foreign lawyers.

Purpose of this guidance

Our work comprises a wide range of regulatory and disciplinary functions, including investigating possible breaches of our regulatory requirements by individuals and firms, which may lead to us imposing a sanction or control, or issuing proceedings before the Solicitors Disciplinary Tribunal (SDT).

This guidance sets out how our work may be affected by investigations or proceedings by others that relate to the same underlying conduct. These parallel proceedings (sometimes also called concurrent litigation) include disciplinary, civil or criminal investigations, such as those brought by the police or other regulators like the Bar Standards Board or the Information Commissioner's Office.

The guidance also sets out how we rely on the findings of another body, court or tribunal in our work.

This guidance should be read in the context of decision making at the SRA and other guidance documents listed at the end of this document. It is a living document and we will update it from time to time.

General

How do parallel proceedings arise?

When we are investigating a case, we will take account of any action being taken by another regulator or prosecuting authority on the same or similar facts.

It is not unusual for us to be investigating the conduct of a solicitor who is also being sued in a civil case, investigated by the police or investigated by another regulator such as the Financial Conduct Authority (see, for example, Allen Elliott v Financial Services Authority (2005) FSMT which decided that the Financial Services and Markets Tribunal could rely on findings of the SDT. See also Financial Services Authority v Fox Hayes [2009] EWCA Civ 76 which led to subsequent proceedings before the SDT: Manning and others SDT No. 10105-2008) . We have a Memorandum of Understanding with most other regulators and law enforcement agencies and will decide whether one case should proceed first, or whether it is necessary for cases to proceed in parallel.

There is no double jeopardy arising from parallel proceedings (Ashraf v General Dental Council [2014] EWHC 2618 (Admin)). This is because the character and purpose of civil, criminal and regulatory proceedings are different. The purpose of disciplinary proceedings against a person convicted of a criminal offence is not to punish them a second time for the same offence, but to protect the public and to maintain high professional standards and public confidence. Further, even if the person is acquitted of a criminal offence, it may nonetheless be appropriate to proceed with allegations relating to professional misconduct arising from the same facts. This is the case regardless of whether the standard of proof in the regulatory proceedings is the civil or criminal standard (R (Redgrave) v Commissioner of Police for the Metropolis [2003] 1 WLR 1136).

Proceeding with our investigation

General principle

It is important that our work proceeds promptly. We may need to take steps to protect the public urgently. The public is entitled to expect us to take disciplinary action quickly and it is fairer to those we regulate that their cases are completed as soon as possible. Therefore, our general policy is that our work will continue unless there is a real risk of prejudice to the regulated person or to other proceedings.

Our approach takes account of a High Court judgment (R (on the application of Land and Others) v The Executive Counsel of the Joint Disciplinary Scheme [2002] EWHC 2086 (Admin) citing the general principles in R v Executive Counsel of the JDS, ex p Hipps (1996)). This

case decided that parallel proceedings should only be stayed "where there is a real risk of serious prejudice which might lead to injustice".

The general principles from that case which we apply when considering a request for a stay of our action are:

- where there are two sets of proceedings arising out of the same matter which are being dealt with at the same time, the power to stay one set must be exercised sparingly and with great care
- unless a party seeking a stay can show that if a stay is refused, there is a real risk of serious prejudice which may lead to injustice in one or both of the proceedings, a stay will be refused
- if there is a real risk of such prejudice, this should be balanced against other considerations which will almost always include the strong public interest in seeing that the disciplinary process is not impeded.

The factors we apply when considering whether to stay our proceedings

We act in the public interest, to protect consumers and uphold the rule of law and administration of justice. It is in the interests of the public, as well as the respondent and any potential witnesses, for our proceedings to be resolved, and any sanctions or controls imposed, in a timely manner. We will balance that public interest against any factors suggesting a stay may be appropriate.

Factors we consider include:

- Our need to take immediate action to prevent harm to clients or others and whether the public can be protected by other means.

  For example, if we find repeated and serious breaches of our Accounts Rules which suggest fraudulent activity, it may be necessary to take urgent steps to remove the regulated person from practice. We may also seek to protect the public through conditions on the individual's practising certificate pending a final decision on the case.

- Any concerns that another regulator or law enforcement agency has about us continuing with our work. This commonly arises where the police are investigating and may be concerned about, for example, the risk of suspects being tipped off.

- The stage of any parallel proceedings – whether they are only contemplated, ongoing or near conclusion.

  We are more likely to delay our proceedings if the parallel proceedings are due to come to an end in a short or finite period. We are less likely to stay our investigation when a criminal

investigation is at an early stage. It is not unusual for such investigations to take a long time and result in no charges being brought.

- The need to preserve evidence.

  We will generally investigate if we need to do so in order to gather evidence before documents are misplaced or destroyed. We will also consider whether there is a need to hear oral evidence as, if so, we will need to ensure this happens as soon as possible before memories fade.

- Whether we have sufficient evidence to take action.

  We may need to await the outcome of proceedings in order to establish the facts or to rely on the outcome of, for example, any charges of criminality or allegations of unlawful discrimination. A criminal conviction can be relied upon before the SDT [https://rules.sra.org.uk/sra/decision-making/guidance/investigations-parallel/#para4] as conclusive evidence of the underlying facts, and therefore will carry particular weight and can avoid the need for a lengthy hearing (for more detail see below section Relying on outcomes from concluded parallel proceedings in our work.

  However, we may decide not to do so if we already have sufficient evidence to take action which addresses the underlying conduct or behaviour, and which protects the public.

- The burden on the regulated person and any witnesses of having to deal with parallel investigations.

  Where the subject of our action is facing very similar allegations by another body, we will consider whether we can rely on evidence gathered by that body or for the purposes of those proceedings to avoid unnecessary duplication.

Example 1

Ms A and Mr B are partners in a two-partner firm, specialising in criminal defence work. They have been subject to a long running police investigation concerning their firm's involvement with a criminal gang which the police strongly believe is involved in drug trafficking and money laundering. The police tell us there is substantial evidence that the partners have been laundering the proceeds of crime through the firm's client account. The police also have evidence that both partners are involved in assisting the gang to import the drugs into the UK.

The police contact us to advise of their investigation and the evidence they have. Given the scale of the police investigation, and the potentially large number of suspects involved, the police ask us not to

make any investigations of our own until those involved have been charged. The police expect arrests to be made within a few weeks (including the two partners). They say their investigation is at serious risk of being prejudiced if we start to make any form of enquiry of the firm in relation to the money laundering allegation. They are particularly concerned that the criminal gang will be tipped off and attempt to flee.

Given the scale of the police investigation, the significant harm that could be caused to the criminal action if we were to raise the allegations of misconduct with the firm, and the stage that it is at, we agree to stay our action until the police have made the arrests and any charges.

Example 2

We are investigating a practising solicitor, Mrs J, for allegedly facilitating mortgage fraud. We have all the evidence we need to proceed with the case. The police are also investigating the matter.

After we formally raise the matter with Mrs J, we receive a request from her solicitors to stay our investigation pending the outcome of the police investigation or any subsequent prosecution. They say that there is an almost complete overlap between what we have asked Mrs J in our enquiries and what is anticipated will form any eventual police prosecution. The police, however, have no objection to us continuing with our investigation. We are aware that Mrs J has not been charged or interviewed by the police at this time and that their investigation is potentially a long running one. It is also uncertain at this point whether she will face charges.

We conclude it is in the public interest for us to proceed with our investigation. We inform Mrs J of this decision and confirm we will listen to any concerns she raises as the matter develops.

We will continually assess our investigation as things progress. For example, if a regulated person tells us that they have been charged with a criminal offence or a trial date has been set, we will make a decision about how best to proceed at that stage.

Relying on outcomes from concluded parallel proceedings in our work

We may also rely on the outcomes of parallel proceedings, such as regulatory findings, civil court or tribunal judgments and criminal convictions both in our own investigations and disciplinary decisions, and in proceedings we issue before the SDT.

In the Solicitors Disciplinary Tribunal

The rules of evidence before the SDT make a distinction between whether the decision is a criminal or civil matter.

Under Rule 32(1) of The Solicitors (Disciplinary Proceedings) Rules 2019, a certificate of criminal conviction is evidence that the person in question was guilty of the offence. Unless there are exceptional circumstances, the findings of fact on which that conviction was based will be admissible by the SDT as conclusive proof of those facts.

Under rule 32(2), the judgment of any civil court or tribunal exercising a professional or disciplinary jurisdiction may be proved by producing a certified copy of the judgment. In contrast to criminal proceedings, findings of fact on which that judgment is based can be used by the SDT as proof of the facts found, but not conclusive proof. The facts of a civil judgment can, therefore, be refuted, (the burden shifting to the respondent to show that the judgment was not correct) although the starting point is that they would be of convincing and decisive weight in any proceedings. However, whether it is appropriate to give the judgment determinative weight, depends on the "particular circumstances," for example:

- whether the respondent played a full part at the hearing that gave rise to the judgment
- whether the factual allegations made in the proceedings leading to the prior judgment were sufficiently similar to those faced by the respondent (these principles derive from the case of Advani, SDT Case No. 10865-2011, which referred to the judgments of the High Court and Court of Appeal in Constantinides v Law Society [2006] EWHC 725 (Admin) and Choudry v Law Society [2001] EWCA Civ 1665).

Internal SRA decisions

We rely on criminal convictions in our investigations and when making regulatory and disciplinary decisions, such as the imposition of a section 43 order or fine and rebuke. In doing so, we will regard a certificate of conviction as conclusive proof that the person in question is guilty of the offence and of the findings of fact upon which it is based. We will take into account material such as sentencing remarks and any other independent information. In exceptional circumstances we may reconsider the underlying evidence.

We also rely on civil court judgments and the decisions of other disciplinary and regulatory authorities in our work. We will generally regard a certified judgment or decision as conclusive proof of the findings reached, including the facts upon which the decision is based. In doing so, we will take into account any related evidence and the surrounding circumstances. We may reconsider the underlying evidence if we consider it appropriate to do so.

Where there has been a criminal conviction and an appeal against that conviction is outstanding

We are sometimes advised that a criminal conviction we are intending to rely upon in enforcement proceedings is subject to an appeal.

Because, public protection means our work should proceed promptly in the public interest, an important factor is whether there is an immediate prospect of the appeal being resolved. If there is not, we are likely to continue with our investigation. If appropriate, any decision made is capable of being reviewed by us * in the event that the conviction is successfully overturned.

We are also likely to continue if the appeal is brought in respect of sanction only.

We will take into account whether there appears to be a genuine prospect that any appeal will be successful.

If an investigation results in a referral to the Solicitors Disciplinary Tribunal, its own rules provide a means of revocation in the event of a criminal conviction being quashed.

If our enforcement proceedings rely upon a civil judgment which is being appealed the same factors apply and we will exercise our discretion as to whether a stay of our proceedings is appropriate.

Example 3

Mr A is convicted of several assault charges and receives a custodial sentence of 5 years. We investigate and proceedings are issued at the Solicitors Disciplinary Tribunal (SDT).

Before the final hearing, Mr A makes an application for an adjournment of the SDT proceedings on the basis that he has issued an appeal against the conviction. The appeal has not yet been listed.

The SDT says that it will not look behind the conviction but decides on the facts presented before it that the trust and confidence in the profession has been undermined by Mr A's misconduct and it is in the public interest for the matter to be heard at the earliest opportunity. It is noted that if the appeal is ultimately successful, its own rules provided a mechanism whereby any order made by it could be revoked.

The application to adjourn is refused and Mr A is struck off. The appeal is eventually listed and is unsuccessful.

Example 4

Mr B is convicted of driving under the influence of alcohol for the second time. He is fined, disqualified from driving for 36 months and ordered to pay costs. He fails to inform us at any stage. There is local media interest and we investigate. Mr B advises us he is going to appeal the length of disqualification and invites us to await the outcome. We decline to stay our investigation on the basis that he is only appealing sanction and the underlying facts are not in dispute. Mr B is referred to the SDT, fined £15,000 and is ordered to pay our costs.

Further help

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