

## **Guidance**

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#### **On-site investigations (inspections)**

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### **Status**

This guidance is to help you how we make decisions to conduct an on-site inspection and your obligations in that regard. We will have regard to it when exercising our regulatory functions.

### **Who is this guidance for?**

All SRA regulated firms, their managers, compliance officers and employees

All solicitors, registered European lawyers or registered foreign lawyers

### **General**

Where we have concerns that you or your firm are not complying with our rules, we investigate. We do this in two ways; either by a desk-based investigation, or by visiting the place where you work. We call these on-site investigations 'inspections'. The guidance does not aim to cover every step taken during an inspection. Inspections may take place parallel to, or in sequence with, other investigatory steps and can form part of a wider investigation.

Most of our investigations are desk based. In both cases, we seek evidence and explanations from those we are investigating, and where necessary from third parties. More information about our powers to require documents and information can be found in our guidance on [how we gather evidence in our regulatory and disciplinary investigations](https://rules.sra.org.uk/solicitors/guidance/investigations-gathering-evidence/) [https://rules.sra.org.uk/solicitors/guidance/investigations-gathering-evidence/].

This guidance is a living document and we will update it from time to time.

### **Why might we carry out an on-site inspection?**



When deciding whether it is necessary to inspect, we will take into account a range of factors which may include the following:

- The seriousness of our concerns. We are able to carry out inspections with no notice or within a very short timescale. This allows us to quickly identify whether we need to investigate further, or take any urgent protective action, such as intervening (to seize documents or funds, or close a firm down), or restricting a solicitor's ability to practice.
- This might arise where we have received reports of missing or stolen client funds, significant overcharging, failure to make payments when due, or fraudulent activity.
- The amount of documents and materials for us to review. If the volumes are significant, an inspection may be the most efficient and proportionate use of our resources. For example, we may want to sample several client files to assess the scale of the potential breaches. This might arise where:
  - a solicitor is alleged to have been involved in fraudulent schemes, such as investment scams
  - the allegations relate to a pattern of failures, for example, in property transactions, (such as failure to register a charge or a transfer) or immigration cases (such as facilitating unlawful applications).
- Whether we will need to review electronic data.. This might arise where we need to review computer records to look at a firm's electronic case management system. This might arise where we suspect a firm is money laundering, involved in organised crime or financing terrorism.

Often, it can be more effective to review data by an inspection rather than by using other powers available to us. This way it can cause less disruption.

- The sensitivity or complexity of the issues and so, for example, interviewing individuals can progress the investigation more effectively than seeking lengthy explanations in writing. This also may be because we need to test the credibility of a person's account or there are areas of ambiguity, which need to be carefully and sensitively explored.

This might arise where we need to assess the motivation of someone alleged to have been involved in a complex conflict, or the solicitor is alleged to have taken advantage of vulnerable clients or individuals.

- Whether we need to look at the firm's accounting records which are often computer based or complicated.

This might arise where we have received complaints that the firm has not accounted to clients for money due to them and we want an in-depth review of the firm's accounting systems.



One or more of the above factors may apply and we will help us to consider if an inspection is proportionate. In some cases, it may be timelier and more effective to investigate by corresponding with the firm or the individual concerned. This may be because we already have the evidence in our possession (for example, a client may have provided it to us with a complaint) or it can be easily obtained from the party concerned.

### **Example 1**

We receive three complaints from different firms of solicitors that another firm, Firm B, has breached undertakings given in the course of conveyancing transactions. The complaining firms supply all of the relevant documentation including the undertakings and their correspondence with Firm B about the failure to comply. Firm B has not replied to the firms despite them having chased several times.

In this case we have been provided with most of the evidence we require. We can ask for the firm's COLP to explain to us in writing why the breaches arose and whether they have now been complied with. If the firm refuses, we can require the relevant information to be given. In this type of situation it is unlikely that we would inspect.

### **Do we give notice of our intention to inspect?**

We usually tell those we regulate that we are going to carry out an inspection. We do this by writing to them before the inspection starts. However, sometimes we do not:

- If there is a risk that those under investigation may destroy evidence, seek to influence witnesses, default, or abscond if we send notice of the inspection.
- If notification would cause us to commit a criminal offence, such as a tipping off offence about possible money laundering
- If notification would otherwise prejudice or frustrate an investigation or prosecution by another body, or other regulatory action that we may wish to take.

### **Do we give reasons for an inspection?**

When providing notification of an inspection we normally give a brief statement of the reasons. This helps maximise the transparency and fairness of our processes. It also assists those under investigation to respond constructively and can reduce the stress involved.

However, we may decide that it is not appropriate to give reasons for the inspection for the reasons set out above, or because to do so might:

- breach any duty of confidentiality

- disclose, or risk disclosing, a confidential source of information.

We do not delay our investigations by entering into lengthy discussions about the reasons given or the extent of the reasons given. The decision to investigate on-site is ours. When we disclose the reason for the inspection, we do so by giving a brief statement which sets out at a high level our concerns.

When on-site, we are not restricted to investigating only those issues referred to in the reasons given. Sometimes additional issues may be identified during an inspection. At other times there may be other reasons that are undisclosed, as noted above.

### **Do we have a right of entry?**

We do not have a right of entry into a place of business regulated by us. However, a failure to produce certain documents is a breach of paragraphs 7.3 and 7.4 of the Code of Conduct for Solicitors, RELs and RFLs and paragraphs 3.2 and 3.3 of the Code of Conduct for Firms. These rules respectively require regulated individuals and firms to cooperate with us and provide full documentation in response to any request by us. It could lead to us taking regulatory action for a breach of our rules.

### **Where and how will we carry out an inspection?**

We usually visit the main practice address. We may also visit branch addresses and sometimes home addresses. We hold initial meetings with managers, owners, or other individuals such as the firm's compliance officers. Usually only one person will conduct the inspection, but sometimes two people will attend. This happens where, for example, the inspection is particularly complex. We normally request information, documents, and explanations (usually as part of an interview). Our inspection will continue until we are satisfied that we have gathered all the information we need. We may make an audio recording of any interviews held. We understand that inspections are stressful for those involved and reasonable adjustments will be made if a person under investigation is unwell. For example, regular breaks may be provided if necessary.

### **What kind of documents do we look at?**

When we inform you or your firm of our intention to inspect, we ask for standard documents to be prepared ready for our arrival. These generally relate to the firm's financial records such as books of accounts, bank statements and bank mandates. We also review documents relating to the running of the firm such as management accounts, insurance documents and the firm's procedures. We usually look at client files where they are relevant to the issue we are investigating.

We do not take original documents away with us, but we must be provided with copies if we ask for them. You or your firm must produce material kept electronically in the form we require. If necessary, you or your firm must obtain written permission for us to seek verification from clients, staff, banks, building societies and any other financial institutions.

In addition to the notice to inspect, we may in parallel require production of specific original documents or information by giving notice under Section 44B of the Solicitors Act 1974 or the equivalent under Section 93 of the Legal Services Act 2007.

## **What happens at the end of the inspection?**

After each inspection you will be notified of the outcome. There are various possible outcomes including no further action. If alleged breaches are identified, this may result in a report containing the facts and evidence to support the case. In such circumstances, you will be provided with a copy of the report and will have the opportunity to comment on it.

## **Further guidance**

[Decision making guidance](https://rules.sra.org.uk/solicitors/guidance/investigations-decisions-investigate-concerns/) [https://rules.sra.org.uk/solicitors/guidance/investigations-decisions-investigate-concerns/]

[Guidance on how we gather evidence in our regulatory and disciplinary investigations](https://rules.sra.org.uk/solicitors/guidance/investigations-gathering-evidence/) [https://rules.sra.org.uk/solicitors/guidance/investigations-gathering-evidence/]

## **Further help**

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