

**How to respond to an investigation by the Solicitors Regulation  
Authority And Solicitors Disciplinary Tribunal Proceedings**

By

Jonathan Goodwin

Solicitor Advocate

## **Introduction**

If you are facing an investigation by the Solicitors Regulation Authority (“SRA”) or proceedings before the Solicitors Disciplinary Tribunal (“SDT”) I can help you.

This guide is a starting point to do just that, the next part involves you taking action to protect your ability to practise.

## **Why should you listen to me?**

I am a Solicitor Advocate with over 20 years’ experience in regulation and professional disciplinary law relating to solicitors. I have prosecuted on behalf of the SRA and its predecessors, the Solicitors Complaints Bureau and the Office for the Supervision of Solicitors, for more than 20 years and have been involved in some of the leading cases relating to solicitors regulation.



I have an enviable reputation in defending individuals and protecting solicitors’ rights to practise with unrivalled experience having prosecuted and defended more than 650 cases before the SDT.

It is this experience that has helped me develop my approach to advocacy in this specialist area of law.

My passion is achieving the best possible outcome for my client whether that be by persuasive written representations that result in no action, or a successful outcome following a hearing before the SDT.

My experience in both prosecuting and defending solicitors before the SDT provides me with a unique insight and an unrivalled level of experience.

If you need advice and assistance in responding to an SRA Investigation or are facing proceedings before the SDT, I can help you.

Increased vigilance and moves towards a better regulated profession have resulted in an increase in the number of matters being investigated by the SRA and matters brought before the SDT.

In turn, this has resulted in the development of law and practice in relation to disciplinary matters touching the activities and practices of many more solicitors.

This short guide will provide some assistance to those who are the subject of an SRA investigation and/or conduct proceedings before the SDT. However, there is no substitute for seeking expert guidance, advice and representation at the earliest possible opportunity.

Protecting your ability to practise is so important. If you need help and you are asking the question most solicitors ask having received a letter from the SRA or been served with proceedings by the SDT, "*Where on earth do I start?*", then I can help you.

Let me show you exactly what you need to do. I have been involved in this area of law since 1996 so I am in a unique and unrivalled position to get you moving forward in the right direction, extremely quickly.

Do not hesitate; for a confidential, no obligation discussion please call me on 0151 909 2380 or email [info@jglaw.co.uk](mailto:info@jglaw.co.uk)

## **SRA investigations**

The SRA has the power to supervise and investigate those they regulate.

The investigation may be commenced by an event within the firm such as a report of misconduct or complaint by a client or other party.

The SRA may engage with the firm over the telephone, in correspondence or by visits. The SRA has statutory powers to require individuals and firms to provide information and cooperate. A failure to cooperate or provide information when requested, may form the basis of discrete allegations to the SDT.

## **SRA Letter**

The SRA provide the solicitor, the subject of the investigation, with the opportunity to provide an explanation with a warning that a failure to reply may in itself lead to disciplinary action and that the reply and other information provided may be used by the SRA for regulatory purposes. This will include being used as evidence in any investigation, decision or proceedings commenced before the SDT.

This letter is referred to as an Explanation with Warnings ("EWW") letter. The response to the EWW is of crucial importance. Your response to the EWW will be relied upon by the SRA in reaching a decision as to the further progress of the matter. Your response to the EWW will be relied upon in proceedings commenced before the SDT in the event a referral decision to the SDT is made by the SRA.

The contents of the response to the SRA letter can have profound, significant and potentially adverse consequences if not properly drafted. The explanation offered by you will be carefully analysed and used as part of the decision making process as to whether further action is required. You will usually only be given 14 days to prepare a response to the EWW.

Your response to the EWW letter will need to be considered, coherent and consistent with any explanation you may give if the case reaches the SDT.

Your response to the EWW letter will form the basis of any defence you may advance throughout the investigation stage and before the SDT, if the matter is referred for formal disciplinary proceedings.

It will, therefore, be appreciated that great care needs to be taken in drafting the response to the EWW to avoid aggravating the situation.

The importance of obtaining expert advice and assistance in drafting a response to the EWW cannot be over stated.

I have significant experience in preparing responses to the SRA and it is essential that advice be obtained at the earliest possible stage of an investigation.

Notice may be provided to you that a Forensic Investigation visit by the SRA will take place. A Forensic Investigation is never random and will be generated as a result of a specific concern.

Whilst there is an obligation on you to deal with the SRA in an open, prompt and co-operative way, there may be circumstances in which there is need for proper consideration or advice, such that you can request in appropriate circumstances, clarification of requests by seeking them in writing.

I can help you with this. An investigation will encompass consideration of the firm's accounts, office systems and business arrangements, together with client files being reviewed and requests being made for further information and explanation as matters arise.

### **Interview**

The investigation will often conclude with a final interview.

This is another very important stage of the investigation process. The interview is not under caution, and there is no obligation to give the caution, as the matter is not a criminal investigation. However, the interview will be a summary of all matters identified by the investigator as cause for concern. It can be challenging, and on occasion, potentially hostile in terms of the style of questioning.

Admission that rules have been broken may be expressly requested by the investigator. The interview is ordinarily recorded. Following the interview the investigation officer will prepare a Report which will subsequently be disclosed to the solicitor for comment and explanation.

Transcripts of the recorded interview will frequently be used in subsequent disciplinary proceedings before the SDT. It will therefore be recognised that the importance of seeking expert advice, assistance and representation is of crucial importance.

If you are asked to attend an interview I can help. It is easier for me, as an experienced and objective solicitor advocate to raise concern and/or prevent the investigator from continually asking confrontational or unfair questions.

It is often the case that unrepresented solicitors compromise their position during interview if not represented at this stage with such being used against them in subsequent disciplinary proceedings before the SDT.

## **Referral to the SDT**

Following the investigation stage the SRA Adjudicator/Authorised Officer can refer a solicitor to the SDT.

I am able to provide you with advice, assistance and representation as to whether a referral is likely to be made or not together with identifying the factors for or against a referral.

I can help you.

## **The Solicitors Disciplinary Tribunal.**

The SDT is a statutory tribunal set up under the provisions of Section 46 of the Solicitors Act 1974 and proceedings are governed by The Solicitors (Disciplinary Proceedings) Rules 2019. The Tribunal has a wide discretion to regulate its own procedure.

The SDT consists of practising solicitors of not less than 10 years standing and lay members who are neither solicitors nor barristers.

A division of the SDT hearing first instance cases shall be constituted by two solicitor members and one lay member, with one of the solicitor members acting as Chairman.

The Tribunal will be helped by the Clerk or deputy Clerk who will take a written note of the proceedings to include the submissions and evidence, although the proceedings are also recorded.

The SRA in house legal department or an external prosecuting solicitor will prepare the disciplinary proceedings papers.

Rule 12 of the Tribunal's Rules sets out the documents required by the SDT to commence proceedings. The Rule 12 Statement, as the allegation document is referred to, sets out the allegations and the facts and matters supporting the application and each allegation contained in it.

The Rule 12 Statement will be accompanied by a bundle of documents. On lodging the originating application with the SDT the SRA or prosecuting solicitor has to provide a worst case scenario time estimate in respect of the substantive hearing.

**It is vitally important that you are in a position to respond to the Tribunal's directions and/or prepare your case in sufficient time to be able to put forward the best possible defence to protect your ability to practise.**

I am in a position to accept service of the proceedings on your behalf if you wish me to do so. This can be important as normally the SDT serves the originating application and supporting papers on your practice address. It can avoid difficulty and potential embarrassment in the event someone other than you opens the application if I am instructed to accept service of the proceedings.

### **Filing Your Answer.**

The Tribunal's directions will require you to file an Answer to the Rule 12 Statement and allegations. The time period with which to file an Answer is tight and it is important that you seek expert advice assistance and representation at the earliest opportunity.

The Answer, in the same way as your response to the SRA EWW letter, is of vital importance and a key step in the disciplinary process.

The directions require that your Answer should state which allegations (if any) are admitted and which (if any) are denied. If any of the allegations are denied your Answer must set out the reasons for the denial.

It is important that the Answer accurately and consistently reflects your position.

I have significant experience in drafting Answers and it is essential that expert legal advice, assistance and representation be obtained at the earliest possible stage.

I can help you.

With effect from 25 November 2019 the Tribunal applies the civil standard of proof (Rule 5 of the 2019 Rules).

With my unique insight and unrivalled experience I can help you and put forward the best possible representations.

The SDT can make such order as it thinks right.

Orders may include striking off the Roll, indefinite or determinate suspension, unlimited fine, or reprimands and the payment of costs, with costs either being summarily assessed at the hearing, or by way of a detailed assessment before the Court.

**An order made is final and binding subject to appeal.**

The Tribunal's Rules provide that as soon as is practicable the Tribunal shall deliver its detailed written findings which shall include reasons and conclusions upon the evidence before it.

The written judgment is prepared after the order is made with the Tribunal aiming to prepare the written judgment some weeks after the substantive hearing, dependant on the length of the case.

**Sanctions**

I can provide you with advice, assistance and representation in relation to possible sanction and the factors the Tribunal is likely to take into account.

**Dishonesty cases**

The test for dishonesty in SDT proceedings was known as the "Twinsectra" test arising from the House of Lords decision in *Twinsectra Ltd v Yardley and Others* (2002).

On 25 October 2017 The Supreme Court held in *Ivey (Appellant) v Genting Casinos (UK) Ltd t/a Crockfords (Respondent)* [2017] UKSC67 that the test previously applied does not correctly represent the law and should no longer be applied.

The test for dishonesty is now that set out at paragraph 74 of the Ivey Judgment, namely:

*“When dishonesty is in question the fact-finding Tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”*

It is crucial that expert advice, assistance and representation is obtained at the earliest possible stage. It is very often the case that solicitors who delay seeking advice and representation generally and in particular in respect of dishonesty cases, may well have strengthened their position by seeking early advice as to the steps to be adopted.

I can provide you with the necessary advice, assistance and representation as to whether exceptional circumstances may be considered to exist in your case.

### **Types of misconduct**

It is important to keep in mind that the outcome of every case depends on its own facts and circumstances and that the sanctions imposed in many types of misconduct can range from a reprimand to a strike off. The types of misconduct and allegations form proceedings before the SDT are wide and varied.

I will be able to provide you with advice, assistance and representation in relation to the allegations of misconduct alleged against you in your particular case and which will be important in determining the appropriate sanction in the event the allegations are proved.

## **Costs.**

The SDT has power to make such order as it may think fit and any such order may in particular include provision for the payment by any party of costs or a contribution towards costs of such amount as the Tribunal may consider reasonable.

It is the usual practice of the Tribunal to summarily assess costs and orders for detailed assessment are the exception rather than the rule.

I can provide you with advice, assistance and representation in respect of the costs of the disciplinary proceedings and negotiate with the SRA on your behalf.

## **Conclusion**

I hope this brief guide will assist those who are facing investigation by the SRA and/or proceedings before the SDT.

It is, however, no substitute for expert help and assistance.

No one can guarantee the outcome of an investigation or disciplinary hearing, but it is vitally important that you give yourself the best possible chance of protecting your ability to practise. It will be seen from the above that the importance of the initial response to the EWW letter from the SRA, the conduct of the final interview and the Answer in SDT proceedings is of vital importance requiring great care and consideration.

Faced with an investigation or proceedings you may feel overwhelmed, frightened and not know where to turn.

You will have in mind the potential adverse consequences of an investigation or outcome following proceedings before the SDT.

Very often people in your position have an overwhelming fear of not knowing how to respond or who to turn to for advice and help.

It is vitally important that you have regard to protecting your ability to practise and to take all appropriate and necessary steps to give you the best possible chance of avoiding adverse consequences or losing your ability to practise.

A solution is available to you.

I am able to offer you advice, assistance and representation in all of the areas discussed in this guide.

I will offer you the best possible chance of protecting your ability to practise and achieving a favourable outcome whether in respect of an SRA investigation or proceedings before the SDT.

My passion is achieving for you the best possible outcome, whether that be by persuasive written representations to the EWW SRA letter that result in no action or internal sanction by the SRA or a successful outcome following a hearing before the SDT.

Having prosecuted for more than 20 years I am now available as a defence advocate with unique insight and unrivalled experience to assist you through the process from start to finish.

I can help you.

For a confidential no obligation discussion please call me on **0151 909 2380** or email [info@jglaw.co.uk](mailto:info@jglaw.co.uk)