

GUIDE TO BREACH REPORTING



INTRODUCTION

The firm's COLP and COFA are required to record regulatory failures and to make these records available to the SRA on request.

Paragraph 7.7 of the SRA Code of Conduct for Solicitors, REL's and RFL's (COCS) requires that *You report promptly to the SRA, or another approved regulator, as appropriate, any facts or matters that you reasonably believe are capable of amounting to a serious breach of their regulatory arrangements by any person regulated by them (including you).*

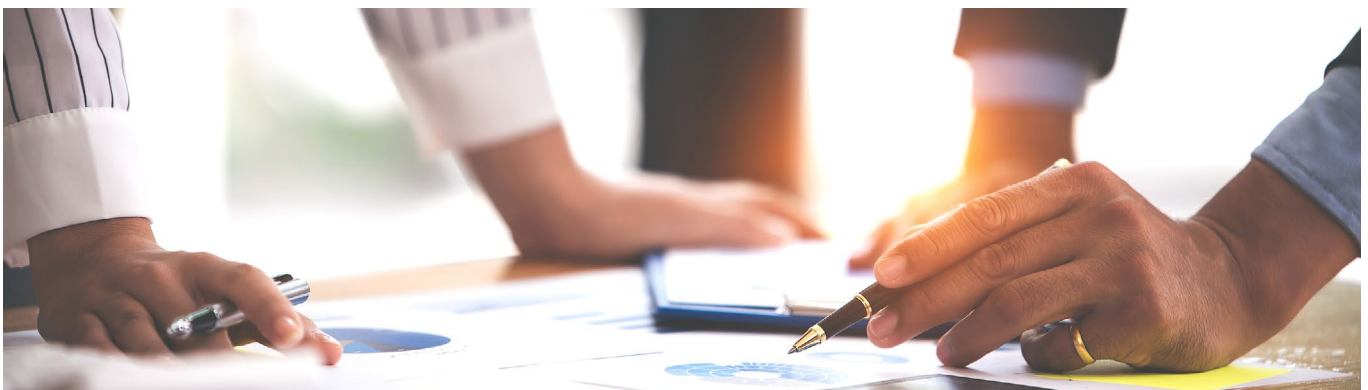
Paragraph 3.9 of the SRA Code of Conduct for Firms (COCF) places an identical obligation on firms with the additional measure: *If requested to do so by the SRA, you investigate whether there have been any serious breaches that should be reported to the SRA.*

Paragraph 9.1 of the COCF states if you are a COLP you must take all reasonable steps to:

- a. Ensure compliance with the terms and conditions of your firm's authorisation.
- b. Ensure compliance by your firm and its managers, employees, or interest holders with the SRA's regulatory arrangements which apply to them.
- c. Ensure that your firm's managers and interest holders and those they employ or contract with do not cause or substantially contribute to a breach of the SRA's regulatory arrangements.
- d. Ensure that a prompt report is made to the SRA of any facts or matters that you reasonably believe are capable of amounting to a serious breach of the terms and conditions of your firm's authorisation, or the SRA's regulatory arrangements which apply to your firm, managers or employees, save in relation to the matters which are the responsibility of the COFA.

Paragraph 9.2 of the COCF states if you are a COFA you must take all reasonable steps to:

- a. Ensure that your firm and its managers and employees comply with any obligations imposed upon them under the SRA Accounts Rules.
- b. Ensure that a prompt report is made to the SRA of any facts or matters that you reasonably believe are capable of amounting to a serious breach of the SRA Accounts Rules which apply to them.
- c. Notwithstanding sub-paragraph (b), you ensure that the SRA is informed promptly of any facts or matters that you reasonably believe should be brought to its attention in order that it may investigate whether a serious breach of its regulatory arrangements has occurred or otherwise exercise its regulatory powers.



IDENTIFICATION AND REPORTING

Identification and Reporting of breaches to the COLP/COFA

A question asked by many staff is “What is a breach?”

A breach can be defined as a failure to adhere to any applicable law, rules or regulations that apply to a law firm.

To enable a COLP or COFA to meet their obligations it is essential that all issues, incidents and breaches, no matter how small and/or insignificant they may appear, are reported and brought to the attention of the COLP or COFA so that they can be analysed and, where appropriate, those breaches capable of amounting to a serious breach can be distinguished and reported to the SRA as appropriate.

To assist the COLP or COFA in identifying individual or collective matters or facts which are capable of amounting to a serious breach we recommend that firms have a Breach or Incident Reporting policy so that all incidents (or issues) are reported and recorded in a central register.

Please see the Lockton portal for a guide and checklist on Incident Reporting.

Once incidents have been reported it is recommended that a root cause analysis is carried out to identify the category of the incident (eg. complaint, claim, breach or incident), the consequences of the incident and the steps/action that need to be taken. Please see the Lockton portal for the Guide and Checklist on Root Cause Analysis.

If an incident is categorised as a breach, it will also need to be logged in the breach register and a decision made by the COLP or COFA (depending on the type of breach) as to whether a report needs to be made to the SRA. The decision process and the rationale should also be recorded. By reporting all incidents, categorising them and recording them a COLP or COFA will be able to identify any patterns or trends as well as any matters or facts which either individually or collectively are capable of amounting to a serious breach and are therefore reportable to the SRA.

To ensure that all breaches are reported by staff it is important that all staff are aware of what a breach is, to whom any breach should be reported, the timeframe in which a breach needs to be reported and the processes and procedures that need to be followed when they become aware of a breach.



RESPONSIBILITIES OF THE FIRM’S COLP AND COFA

It is the firm’s Compliance Officers’ (COLP and COFA) responsibility to record all failures of regulatory non-compliance in a Breach Register and to report all serious breaches or facts and matters capable of amounting to a serious breach.

A Breach Register is a document which records all regulatory failures that have been reported or come to the attention of the COLP/COFA. Please see the Lockton portal for a template Breach Register.

The Firm’s COLP is required to take all reasonable steps to ensure that the Firm complies with its regulatory arrangements and must report all serious breaches to the SRA.

The Firm’s COFA is responsible for recording any breaches of the SRA Accounts Rules and for reporting all serious breaches to the SRA.

Please note that there is a distinction between the responsibilities of the Compliance Officers and the managers of the Firm. The COLP and COFA are responsible for systems and for recording and reporting compliance failings/breaches, but it is the managers of the firm who can be responsible for specific breaches.

Paragraph 8.1 of COCF states that the managers are responsible for the firm’s compliance with the COCF and Rule 1.2 of the SRA Accounts Rules states that the managers are jointly and severally responsible for compliance with the Accounts Rules by the Firm, its managers and its employees.



WHAT BREACHES ARE REPORTABLE TO THE SRA?

COLPs and COFAs are obliged to:

- Promptly report facts or matters to the SRA which they reasonably believe are capable of amounting to a serious breach by the firm (they do not need to determine whether it is serious).
- Report facts and matters, whether relating to the firm or not, they reasonably believe should be brought to the SRA's attention in order that it may investigate whether a serious breach of its regulatory arrangements has occurred or otherwise exercise its regulatory powers.

The SRA does not provide a definition of what constitutes a “serious” breach and one of the main challenges faced by COLPs and COFAs is what should be reported to the SRA.

Guidance is available in the SRA COCS and COCFs and the SRA Enforcement Strategy. The introduction to the COCS and the COCF states that a failure or breach may be serious either in isolation or because it comprises a persistent or concerning pattern of behaviour.

The SRA has stated that a mere breach is not in itself reportable, and it must be “serious”. The SRA Enforcement strategy is a useful guide to assist when considering whether a matter needs to be reported and the SRA suggests that *if you are unsure about whether to make a report you should err on the side of caution and do so.*

The SRA also has a Professional Ethics helpline which can assist in helping you decide whether a report needs to be made. Whilst the SRA does not provide a definition of what constitutes a “serious” breach, its enforcement strategy sets out factors which affect the SRA's view of seriousness and which a COLP/COFA should consider and take into account when making a decision as to whether a report needs to be made to the SRA. These factors include the following:

- Past Behaviour.
- Future Risk – including expressions of apology & remorse and whether the conduct has been repeated.
- The Firm's systems in place and environment in which the events took place.
- The responsibility/control the individual had over the matters in question.
- The nature of the breach and scale. Competence of the fee-earner.
- The detriment or risk of detriment to clients.
- The impact/harm on the Firm, its clients and third parties.
- Vulnerability of the client.
- Role, experience, and seniority of fee-earner.

It is also helpful for a firm's COLP/COFA to consider and review the SRA warning notices when deciding whether a breach is serious and/or should be reported to the SRA.

SRA warning notices are issued by the SRA on its website from time to time and they give an indication of issues and breaches that the SRA perceive as being serious. These warning notices also contain examples of the type of conduct which is permitted and the type of conduct which is not.

When a COLP/COFA is deciding whether or not a matter or a breach needs to be reported a note of their decision should be made together with details of the reasons, related issues and factors that were taken into account when making the decision. Any internal investigations or evidence as to how the issue or breach occurred should also be kept and provided to the SRA if necessary.

Before disclosing any evidence or documentation to the SRA, the COLP/COFA should consider whether there are any confidentiality, data protection or legal professional privilege issues that prevent the documentation from being disclosed.

You should also ensure that consideration is given as to whether the breach needs to be reported to your PI insurers or any other regulatory body such as the National Crime Agency or the Information Commissioner's Office.

TIMEFRAME FOR REPORTING TO THE SRA

The COCF states that any serious breaches or facts and matters capable of amounting to a serious breach must be reported to the SRA promptly.

SRA Guidance – Reporting and Notification Obligations states *once you have decided that a report needs to be made to the SRA it should be made as soon as possible* even if the information relates to a historic matter of which you have only recently become aware of.

MONITORING COMPLIANCE AND REVIEW

The Breach Register should be regularly reviewed and monitored by the person responsible for its management. The person responsible for this is usually the COLP (or the COFA in respect of financial breaches).

A Breach Register is a vital tool in helping a firm monitor, manage, and record its breaches. It is very important that it is accurate and regularly maintained as the SRA may request sight of it.

The information contained within a Breach Register should be reviewed and analysed regularly so that lessons can be learnt from the breaches and any necessary steps taken to improve the firm's processes and procedures. Please see the Lockton portal for the guide and checklist on Root Cause Analysis

TRAINING

All staff should be provided with training on breaches.

This training should include:

- Examples of breaches.
- Who a breach should be reported to and/or who can be contacted regarding any breach related queries.
- Why it is important for breaches to be reported as soon as staff become aware of one.
- The consequences for the firm if breaches are not reported promptly.

Training should be provided to all staff upon induction and then at least on a regular/annual basis.

Useful resources

SRA Guidance: Reporting and Notification Obligations (November 2019):

- [SRA | Reporting and notification obligations | Solicitors Regulation Authority](#).

SRA Enforcement Strategy (updated October 2024):

- [SRA | SRA enforcement strategy | Solicitors Regulation Authority](#).

