

## Guidelines on the assessment of character and suitability

### 1. Introduction

- 1.1 The Solicitors Act 1974, the Training Regulations 1990, the Qualified Lawyers Transfer Regulations 1990 and the Admission Regulations 1994 place an obligation on the Solicitors Regulation Authority (referred to throughout these guidelines as 'SRA') to ensure that, before admission, an individual is of the character and suitability to become a solicitor. This requirement holds true for an individual throughout the qualification process, although the construction of the Regulations means that issues of character and suitability are likely to be considered at specific points in this process, eg applications for enrolment or admission. Neither within the Solicitors Act 1974 or the SRA's Regulations is the term 'character and suitability' defined.
- 1.2 The SRA's role is to ensure that an individual admitted as a solicitor has the level of honesty, integrity and professionalism expected by the public and other stakeholders, as well as other members of the profession, and does not pose a risk to the public or the profession.
- 1.3 Character and suitability issues are considered mainly as a result of self declaration at the student enrolment or admission stage, although some are also considered as a result of direct referral from other organisations, such as training establishments, the police or universities. Character and suitability is also considered as part of the application process under the Qualified Lawyers Transfer Regulations, or applications in relation to the Establishment Directive. The SRA reserves the right to verify the information volunteered by the applicant. As explained below, the SRA regards failure to disclose information as evidence that an applicant might not be of acceptable character and suitability.
- 1.4 The following questions are asked at the point of student enrolment:
- i) *Have you ever been convicted of an offence in any court of the UK or elsewhere (other than a motoring offence which did not result in disqualification)?*
  - ii) *Have you ever committed an act of plagiarism or cheating in any form of assessment?*
  - iii) *Are there any other factors, such as bankruptcy, County Court Judgements or any other matter relating to your character and suitability to become a solicitor which should be considered?*

- iv) *Are you or have you ever been under investigation by a professional/regulatory body in the UK or any other country?*
- v) *Have you ever been criticised, censured, disciplined, suspended or the subject of any other disciplinary activity by a professional/regulatory body in the UK or any other country?*
- vi) *Have you ever been subject to an investigation about alleged misconduct or malpractice in connection with a business activity?*

1.5 Instances in relation to any of the above issues warrant investigation and assessment. These guidelines detail the underlying approach that is to be taken in all such circumstances.

## **2. General principles for assessment**

2.1 The consideration of character and suitability issues is a process that is based primarily on a risk assessment of the individual and the danger he or she may pose to clients, to the public's confidence in the profession or the legal process and to the confidence of the profession itself. The objective is to ensure that those admitted to the Roll of solicitors have a level of honesty, integrity and professionalism expected by the public and members of the profession. An applicant should only be admitted to the Roll of solicitors where there is confidence that he or she is of appropriate character and suitability.

2.2 Before admitting an individual to the Roll, or allowing him or her to proceed towards admission, it should be established that, taking into account the past and current behaviours, there is confidence that the individual is:

- honest and trustworthy; and
- willing to comply with regulatory requirements; and
- able responsibly to manage financial affairs for themselves and clients;

and that there is no reasonable risk that his or her admission will:

- diminish the public's confidence in the solicitors' profession; or
- be harmful to members of the public, the profession or to him or herself.

2.3 When considering an application against these criteria the SRA will apply the following tests.

### **3. Is there confidence that the applicant is trustworthy and honest?**

3.1 Unless there are exceptional circumstances there will not be confidence if the applicant has:

- convictions for offences involving dishonesty;
- deceived or sought to deceive others, eg academic authorities (see note at end) or employers.

3.2 In such cases, unless confidence can be established, the application should be refused.

3.3 The following might enable confidence to be established in the applicant's trustworthiness and honesty:

- the behaviour occurred many years ago and there was subsequent evidence of rehabilitation;
- the incident was not of a serious nature, as indicated by the sentence or sanction applied.

3.4 The evidence considered should include the following:

- at least one independent account of the event(s), including sentencing remarks following a criminal conviction;
- references from at least two independent people who know the applicant well and are familiar with the matters being considered. Ideally one of the references should be provided by a solicitor of good standing;
- evidence of rehabilitation eg probation reports, references from employers;
- the applicant's account of the events and attitude towards them.

### **4. Is there confidence that the applicant is willing to comply with legal and regulatory requirements?**

4.1 Unless there are exceptional circumstances there will not be confidence if the applicant:

- has been convicted of a criminal offence;
- has failed to disclose information to a regulatory body when required to do so, or has provided false or misleading information;
- has breached the requirements of a regulatory body;
- has failed to comply with the reasonable requests of regulatory body.

- 4.2 In such cases, and unless confidence can be established, the application should be refused.
- 4.3 The following might enable confidence to be established in the applicant's willingness to comply with legal and regulatory requirements:
- the incident occurred many years ago and there is evidence of rehabilitation;
  - a matter that was not disclosed was trivial or occurred many years ago or the breach was not serious, as indicated by any sanction;
  - the incident was the result of a genuine mistake or oversight.
- 4.4 The evidence considered should include the following:
- the material itemised at paragraph 3.4 above in relation to a criminal offence.
  - certificates of standing or statements from the relevant regulatory body or disciplinary tribunal and any limitations on the applicant's rights to practise/freedom to act;
  - the applicant's explanation for his or her failure to comply.

## **5. Is there confidence that the applicant is able to manage responsibly financial affairs?**

- 5.1 Unless there are exceptional circumstances there will not be confidence that the applicant can manage responsibly financial affairs if:
- the applicant has been made bankrupt, has entered into individual voluntary arrangements or has unmanageable debts arising from the applicant's recklessness, incompetence or dishonesty;
  - the applicant has deliberately sought to avoid responsibility for their debts;
  - there is evidence of dishonesty in relation to the management of finances.
- 5.2 In such cases, and unless confidence can be established, the application should be refused.
- 5.3 The following might help to establish confidence in the applicant's ability to manage financial affairs:
- the bankruptcy/debts occurred many years ago and there is evidence of subsequent sound financial management and conduct and that creditors have been repaid;

- the applicant was affected by exceptional circumstances beyond his or her control or which he or she could not have reasonably have foreseen.

5.4 The evidence considered should include the following:

- credit check information;
- the applicant's explanation of event, corroborated where possible;
- actions taken to clear any debts.

## **6. Is there a risk that the applicant's admission would diminish public confidence in the solicitor's profession?**

6.1 Unless there are exceptional circumstances there is a risk that public confidence in the profession would be diminished by the following:

- the admission of an individual who had served a prison sentence, who remained on licence or who was listed on the sexual offences register;
- the admission of an individual who had misused his or her position, particularly if associated with the provision of legal services, to obtain pecuniary advantage;
- the admission of an individual who had been responsible for dishonest or violent behaviour;
- the admission of an individual who had been convicted of offences associated with obstructing the course of justice;
- the admission of an individual who had been convicted of a racially motivated offence.

6.2 In such cases, unless the risk can be addressed satisfactorily, the application should be refused.

6.3 The risk might be addressed satisfactorily if:

- the misbehaviour occurred many years previously and there was subsequent evidence of rehabilitation
- the misbehaviour was not of a serious nature, as indicated by the sentence or sanction applied.

6.4 The evidence considered should include:

- independent accounts of the convictions and behaviours that have given rise to the concerns, eg sentencing remarks.

**7. Is there a risk that the individual's admission could cause harm to members of the public, the profession or him or herself?**

7.1 Unless there are exceptional circumstances to consider there will be a risk if there is evidence:

- that the applicant is or has been dependent on drugs or alcohol;
- that the applicant's mental health or exposure to stressful situations can seriously impair his or her judgement, and/or ability to manage his or her work and/or professional relationships;
- that the applicant has been violent with colleagues or clients.

7.2 In such cases, unless the risk can be addressed satisfactorily, the application should be refused.

7.3 The risk might be addressed if:

- the behaviour/dependency/illness occurred many years ago and there has been no subsequent cause for concern.

7.4 The evidence considered should include:

- recent and medical reports including psychiatric reports where relevant;
- accounts from employers and other parties;
- a statement from the applicant;
- any other evidence that might be indicative of recurrent illness or dependency concerns

## Notes

1. Where a conviction or disciplinary hearing is being considered the SRA will not question or look behind the finding, although material such as sentencing remarks and explanatory statement will be considered.
2. Where the matter being considered concerns academic misconduct the SRA will take into account the range of academic offences that occur.

For the purposes of the assessment of character and suitability to become a solicitor there will be particular concern where academic offences have been:

***deliberate and dishonest acts committed in order to achieve personal gain or advantage***

In assessing whether this is the case, the following factors would be of particular interest:

- the extent to which the individual was aware of the rules and procedures governing the referencing of material, or the use of group work or collaborative material;
- the extent to which the individual could reasonably have been expected to realise that the offence did not constitute legitimate academic practice;
- the extent to which the individual acted with intent to deceive;
- the degree of benefit or advantage gained as a result of the offence.

As in the approach to consideration of criminal convictions, the assessment will not seek to re-open the investigation undertaken by the training organisation, nor will it cast doubt on the veracity of the decision taken, providing appropriate investigation and disciplinary proceedings were followed, but statements intended to explain or mitigate the conduct in the issue will be considered.