

Consultation on decision-making criteria

Consultation questionnaire form

This form is designed to be completed electronically—in MS Word. Please save it locally before and after completing it.

For the **SRA's published decision-making criteria**, please visit our website:

- www.sra.org.uk/sra/how-we-work/decision-making/criteria.page

Question 1

Do you think that the criteria that we have published are clear and can be understood easily by all of our stakeholders and users, including lawyers and non-lawyers?

Yes

No

Comments

While the criteria are clear there are some areas where clarification may be helpful.

Page 2: the criteria refer to "no or low adverse consequences". It would help if the SRA set out (if applicable) their scale of consequences e.g. severe, serious, moderate, low and give some guidance as to how each has been defined

Page 3: The criteria might benefit from defining who is a "recognised body".

Page 3: Should the scope of the document cover third parties - for example the LSC holds solicitors client files in the course of their business. In some cases, you will need to issue an order to them to provide you with the files you need.

Page 4: bullets 5 and 6 appear identical - this may be a typing error.

Page 4: Last Bullet: The criteria here might also cover solicitors under investigation by third parties such as the SFO, Police, SOCA and LSC and HMCS Investigations.

Page 5: Last Bullet: The criteria here might also cover solicitors under investigation

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by third parties such as the SFO, Police, SOCA and LSC and HMCS Investigators.

Page 6: Penultimate Bullet: The criteria here might also cover solicitors under investigation by third parties such as the SFO, Police, SOCA and LSC and HMCS Investigators.

Page 7: Waiving the requirement to deliver an accountant's report would cause us concern. This should apply in exceptional cases only and there should be explicit grounds.

Page 8: Would an application for certificate of good standing or attestation be suspended if a solicitor is under investigation by the SFO, Police, SOCA, LSC or HMCS?

Page 9: It would be helpful if the guidelines could provide some examples of misconduct which would bar a non-lawyer from working for a solicitor

Page 10: The seriousness of the case is obviously relevant, need explanation of how the circumstances of the solicitor would affect the decision (bullet point 5)

Page 11 - The type of penalty should not, in itself, be used to determine whether conduct should be subject to disciplinary proceedings. The penalty decision should arise out of the proceedings. If likely penalties are used as a decision making criteria this will lead to inconsistencies - as some will regard some forms of conduct as more serious than others.

Page 12 - 6 What cause for delay would make it unreasonable to proceed to SDT?

Page 13 - 7: The phrase "Any investigations" would benefit from clarification. Investigations by whom?

Page 13 -8 bullet 2: The phrase "without concluding the investigation" gives rise to some concern. All investigations should be concluded - it is an injustice on those investigated to have enquiries hanging over them for long periods and can lead to acute stress and anxiety for those affected. It is also unclear why the SRA / SDT would wish to make an agreement prior to the conclusion of enquiries as you don't know if something else will be uncovered which renders the agreement inappropriate

Page 13 - Agreements should not be reached if there are outstanding matters arising out of investigations by third parties such as the SFO, Police, LSC and HMCS. This is because any agreements reached with the SRA in these circumstances could undermine their enquiries.

Pages 14-16: Monitoring - All agreements should be subject to monitoring by the SRA - on a sliding scale basis. For example full checks to ensure compliance with agreements / schemes at the end of year 1 and if these are satisfactory, lesser checks in say two years time. If not, then full monitoring should continue year on year until the SRA are satisfied with progress. It is not enough to make monitoring a proposed part of a scheme / agreement. It needs to be upgraded to standard operating procedures.

Practicing controls - accounts - The LSC is unsure how corrections to accounts will be enforced as some practices do not produce audited or independently examined accounts. This fact may hinder the SRA's ability to supervise the financial affairs of

solicitors practices as there can be no confidence in the value of the financial information provided.

Question 2

We are committed to ensuring that our decision-making process is more transparent. Do you think that publishing our criteria will help us to achieve this?

Yes

No

Comments

Your proposals go a long way to achieving this - although some aspects of your criteria would benefit from further clarification - please see above.

While transparency and defined assessment criteria are useful tools to ensure that solicitors are treated consistently and fairly, these need to be defined in such a way that allow for some discretion to be applied when the circumstances dictate. It is not clear from the documents supplied how this balance would be struck.

It is essential that the published criteria are drafted in such a way as to prevent solicitors (or their representatives) arguing that disciplinary procedures are not appropriate for "definitional" reasons

Question 3

Do you think it would be helpful for us to refer to the specific published decision-making criteria when we make our decisions?

Yes

No

Comments

This would be helpful in ensuring consistency of treatment from case to case and explain to those involved the reasons why action is being (or not being) taken against them. Such disclosure would also help those involved understand the reasoning behind any remedial schemes put in place and thus assist them in implementing the spirit as well as the letter of such schemes.

Question 4

Would it be helpful if the criteria, or our website, gave examples of how the criteria might be applied in practice?

Yes

No

Question 5

At the moment, the decision-making criteria are only available on our website. Would you like the information to be available elsewhere?

Yes

No

Comments

(If appropriate, indicate where you like the information to be available.)

In all publications which describe the disciplinary process. The criteria should also be part of the LPC syllabus.

Question 6

Do you think the application of these criteria could have an adverse impact on any of the following groups within the profession? (Please select all of the options that you think apply.)

- Older or younger solicitors
- Men or women
- Solicitors with a disability
- Solicitors from any particular ethnic background

Comments

The list of public interest factors against a referral to the SDT include length of time between misconduct taking place and the hearing. They also refer to age as a factor for not proceeding with an SDT referral. While the reasons for the inclusion of these factors are understood, they may be seen as discriminatory against younger solicitors. Age, in itself, should not be a bar to disciplinary action.

Question 7

If you have any other comments about the criteria or their application, please add them here.

Comments

The move to a more transparent disciplinary process is to be welcomed. However, the guidelines would benefit from a recognition that bodies other than the SRA / SDT have a stake in the process - for example when investigating allegations of crime, poor quality service or financial loss. The guidelines should reflect the needs and potential input of these external stakeholders.

The guidelines do not stress enough that disciplinary action might be taken not just over a particular incident or set of behaviours, but also from a catalogue of events which, although not significant individually, become significant when taken together over a period of time. This could be more usefully brought out.

Thank you for completing the **Consultation questionnaire form**.

Please save a copy of the completed form.

Please return it, along with your completed **About you form**, as an email attachment to consultation@sra.org.uk, by **8 May 2009**.

Alternatively, print the completed form and submit it by post, along with a printed copy of your **About you form**, to

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