

# Regulation Report

## Acting with integrity – what does it mean?

**Principle 2 of the SRA Code of Conduct 2011 imposes a professional duty to “act with integrity”. It is primarily a personal obligation that applies to the conduct of individuals. It would be difficult to envisage an LLP or a limited company law firm being accused of lack of integrity.**

So, what it is meant by integrity in this context? There is no definition in the 2011 Code. Integrity can therefore mean whatever the SRA would like it to mean until and unless the SRA's enthusiasm is curbed by the SDT. Lack of integrity is often alleged by the SRA when it strongly disapproves of the conduct of a practitioner but does not have sufficient evidence to allege dishonesty. A breach of Principle 2 has come to be regarded as a “*poor man's*” dishonesty.

In the 2007 Code, exactly the same obligation appeared at Rule 1.02 – you must act with integrity. However, a note to Rule 1.02 helpfully stated “*Personal integrity is central to your role as the client's trusted adviser and must characterise all your professional dealings – with clients, the court, other lawyers and the public.*” One can see an attempt here to define integrity as an outward demonstration of ethical reliability in a solicitor's dealings with the outside world.

But before 2007, the duty was slightly different. Practice Rule 1 of the Solicitors' Practice Rules 1990 provided that “*a solicitor shall not do anything in the course of practising as a solicitor which compromises or impairs the solicitor's independence or integrity.*” One can see that the original obligation was not to engage in deliberate conduct that might affect the integrity of a solicitor. This rule contrasts with the 2007 and 2011 Codes which impose a positive duty to act with integrity and therefore constitute a more onerous requirement.

The recent judgment of the Administrative Court in *Scott v Solicitors Regulation Authority [2016] EWHC 1256 (Admin)* has provided some guidance on the test for lack of integrity. Mr Scott had appeared before the SDT in June 2014 and been struck off for failure to co-operate with the SRA, breaches of the Accounts Rules and failure to run his business effectively. In particular, it was alleged that he had made improper payments from client account and used client account as a banking facility. The SDT found that Mr Scott had acted dishonestly on the objective basis but not the subjective basis i.e. that he did not realise that by the standards of reasonable and honest people his conduct was dishonest. The SRA's allegations of dishonesty were therefore found not proved but the SDT did find that he had failed to act with integrity because he showed no regard at all for his obligation to protect client money and assets. The Tribunal declared that “*there was no steady adherence to any kind of ethical*

*code in the operation of the ledgers or the inter ledger transfers*”

Mr Scott appealed against the sanction and against the finding that he had acted without integrity. The Administrative Court dismissed both grounds of appeal and held that the test for acting with a lack of integrity was an objective one and that in this case the test was satisfied to the required standard. The judgment of the Administrative Court was that a person can lack integrity without being dishonest. It was not so much a case of what Mr Scott thought but that he neither thought nor cared about what was required by the rules governing his profession.

Why is this definition so important? A finding of lack of integrity can be devastating to a solicitor's reputation. As well as affecting career prospects it can affect professional indemnity insurance as well as tenders for future business

An allegation of lack of integrity should only be made by the SRA in appropriate cases and not used to aggravate the facts of each and every case. In a serious case, the facts of the case speak for themselves. The SDT is an experienced and expert tribunal. For example, where there has been a serious breach of the Accounts Rules (which are strict liability), the Tribunal has the authority to impose a striking off order (*Weston v Law Society The Times Law Reports July 15 1998*). It does not need the added complication of considering integrity.

We are awaiting from the SRA a new draft Handbook promised by Spring 2016. We are expecting a shortened Handbook so there will be less guidance not more. This will place even more discretion in the hands of the SRA to interpret the activities of the profession as it sees fit without being constrained by definitions and rules and guidance.

Alongside this came an announcement this week that the government has approved the recommendations of the Insurance Fraud Taskforce to increase the in-house fining powers of the SRA (currently £2000) and to review the standard of proof used in the Tribunal (currently the criminal standard). This is part of the government's strategy to assist the insurance industry in cracking down on insurance fraud. The SRA has previously failed to achieve an increase in its internal fining powers and also failed to secure a civil standard of proof for case before the SDT.

Space does not permit a full discussion on this topic but the profession needs to be on the alert this year when the various consultation papers start dropping through the letter box.



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