

## **Test for a referral of a solicitor's conduct to the SDT**

**October 2006**

The test for a referral to the SDT changed on 1 June 2004. A referral will be made only where two tests are passed as follows:

- 1 The evidential test
- 2 The public interest test

### **The evidential test**

The Law Society must be satisfied that there is enough evidence to provide a 'realistic prospect' that the solicitor will be found guilty of misconduct, taking into account what the solicitor's case in response may be and how that is likely to affect the Law Society's case. A realistic prospect of a finding of misconduct is an objective test. It means that the SDT, properly directed in accordance with the law, is more likely than not to make a finding of misconduct against the respondent solicitor.

In deciding whether there is enough evidence to proceed, the Law Society must consider whether the evidence can be used and is reliable.

### **The public interest test**

The public interest must be considered in each case when the evidential test has been fulfilled. A case will normally be referred to the SDT if a finding of misconduct is likely to lead to a fine, a suspension, a strike off, or the exercise of any other power vested in the SDT, unless there are public interest factors tending against that course of action which clearly outweigh those tending in favour.

The factors for and against pursuing the case to the SDT should be balanced carefully and fairly. Public interest factors that can affect a decision to pursue the case usually depend on the seriousness of the misconduct or the circumstances of the solicitor.

Lists of public interest factors, for and against prosecution, are set out below. These are not intended to be exhaustive.

### **Some public interest factors in favour of prosecution**

The more serious the alleged conduct, the more likely it is that a case should be referred to the SDT in the public interest. A referral is likely to be needed if:

- there is evidence that the conduct was pre-meditated, repeated, systematic or otherwise dishonest;
- the solicitor abused a position of authority or trust;
- a client or other person's interests have been seriously compromised;
- any victim of the misconduct was vulnerable;
- the misconduct was motivated by any form of discrimination;
- the solicitor's previous disciplinary history is relevant;
- there are grounds for believing that the conduct is likely to be continued or repeated;
- there has been financial loss or the reputation of the profession has been damaged;
- practice rules, or requirements under statute, have been breached and the breach is not de minimis;
- the conduct has damaged or brought disrepute on the administration of justice;
- the conduct brings disrepute on the regulatory system, such as a failure by the solicitor to deal properly with a client complaint, failure to reply to the Law Society or failure to comply with a direction of the Law Society.

### **Some common public interest factors against pursuing the referral to the SDT**

Pursuing the matter to the SDT is less likely to be needed if:

- the SDT is likely to impose a nominal penalty;
- the misconduct was committed as a result of a genuine mistake or misunderstanding;
- the solicitor is elderly and no longer practising;
- the solicitor is, or was at the time of the misconduct, suffering from significant mental or physical ill health, unless the misconduct is serious or there is a real possibility that it may be repeated;
- the solicitor has co-operated fully with the Law Society, in particular by providing prompt redress;
- there has been a long delay between the misconduct taking place and the date of the hearing, unless:
  - the misconduct is serious;
  - the delay has been caused in part by the solicitor;
  - the misconduct has only recently come to light;
  - the complexity of the misconduct has meant that there has been a long investigation.