

SRA Consultation: Reporting Concerns

1) Do you agree that a person should report facts and matters that are capable of resulting in a finding by the SRA, rather than decide whether a breach has occurred?

Yes

2) Where do you think the evidential threshold for reporting should lie?

- a) **Belief**
- b) **Likelihood**
- c) **Any other options**

Belief – but we prefer reasonable grounds to believe – please see comments at 3 and 4 below.

3) Do you think that an objective element – such as "reasonable belief" or "reasonable grounds" would assist decision makers, or unnecessarily hamper their discretion? If you have a view, please explain why.

We think it would assist decision makes because:

- Objectivity would give firms more confidence to report. That said, firms should be reminded of the types of things which need not be reported, e.g. internal/HR issues such as capability/competence; and be reminded that the reporting function should not be misused, e.g. where there is a dispute between employee and employer

The evidential threshold being 'reasonable grounds to believe' would require those reporting to adopt a considered approach to the evidence i.e. are there reasonable grounds for believing that the evidence reveals serious misconduct? At the same time those reporting would not be required to determine the exact breaches of the Handbook that might arise, this being a task for the SRA.

4) Do you have a preferred drafting option – if so, which option is it?

Of the 4 options provided, Option 2 is our preferred option. However, the question of whether there has been a "*serious breach of their regulatory arrangements*" is for the SRA to decide. The SRA is the regulator and has responsibility for investigating the evidence and determining whether any breaches of the Handbook arise. It is not the responsibility of those reporting to determine which breaches are appropriate to any set of reported facts.

We therefore prefer the wording used by the Bar Standards Board: "*...reasonable grounds to believe there has been serious misconduct*". The test introduces an element of objectivity which is to be welcomed – as per the comments at 3 above.

5) What else can the SRA do to help those we regulate report matters in a way that allows us to act appropriately in the public interest?

We recommend that the SRA could more clearly explain what constitutes professional misconduct as opposed to employee failures (the latter being a matter for the firm), by providing examples of the types of issues which almost always should be reported. A list of more obvious examples would give firms confidence in reporting and save time. There will always be borderline cases but a list would make life easier for the profession. For example:

- Criminal convictions
- Anything involving dishonesty, e.g:
 - Theft of money from client account
 - Fiddling expenses

- Forging/ backdating documents
 - Misrepresentations to clients (such as the state of play on their cases)
- Breach of client confidentiality
- Breach of undertakings
- Failure to comply with AML procedures