

LEGAL PROFESSION - SRA GUIDANCE

If one of your concerns about a drink driving conviction is the impact of a conviction on your ability to practice or qualify as a solicitor or barrister, we have outlined the relevant regulations within this factsheet.

Regulated individuals – Solicitors

All solicitors must comply and uphold the 10 Principles of the Solicitors Regulation Authority Principles 2011.

A solicitor who commits a criminal offence and is subsequently convicted could find themselves in breach of Principles 1, 2 and 6 of the SRA Principles 2011. They could be considered to have:

- ✓ Failed to uphold the rule of law and the proper administration of justice;
- ✓ Failed to act with integrity; or
- ✓ Failed to behave in a way that maintains the trust the public places in solicitors and in the provision of legal services.

Outcome 10.3 of the Code of Conduct states that there is a personal obligation to report when there has been a serious failure to achieve an Outcome or to comply with a Principle. Unfortunately, there is no clear guidance from the SRA that states whether a particular alcohol/drug driving conviction will amount to a **serious failure** for the purposes of Outcome 10.3. Each matter will be determined on its facts, having regard to any mitigating or aggravating factors to the offence itself and the individuals conduct thereafter.

It is unlikely that minor summary only motoring offences will lead to full disciplinary sanction by the SRA, but solicitors need to be aware of the self-reporting obligation.

The SRA have provided guidance specifically on the issue of [drink driving convictions](#) explaining how they would deal with a drink driving conviction and the same guidance is likely to apply to drug driving offences. We anticipate that the same ought to apply to offences of a similar nature such as failure to provide an evidential specimen and driving whilst unfit through drink or drugs.

The SRA have stated that they do not seek to duplicate the criminal process or punish a person twice. However, they must take into account the fact that a regulated person must act with integrity, promote public trust in the legal profession and also uphold the law and the proper administration of justice in accordance with Principle 1 of the SRA Principles 2011.

The SRA have stated that a driving offence that involves drink or drugs tends to diminish public trust and confidence in the profession. Therefore, when they determine the appropriate sanction against an individual they will take into account the following:

1. The sentence handed down by the courts to help determine the seriousness of the case, as this will reflect its aggravating or mitigating features;
2. A certificate of conviction from the Court;
3. A record of the summary circumstances of the offence; and
4. Where available, the court's sentencing remarks.

The SRA have published the usual mitigating and aggravating factors they will take into account to determine the appropriate sanction:

Mitigating Features	Aggravating Features
Prompt reporting of conviction to the SRA, and any employer or body to whom the individual has an obligation to report the conviction	There has been a failure to report, or delay in reporting, the conviction to the SRA, and any employer or other body to whom the individual has an obligation to report the conviction
This is an isolated incident, and is out of character	There are historical convictions of Driving with Excess Alcohol, or a pattern of offending behaviour
No harm has been caused to property or persons as a result of the offence	Harm was caused to property or persons as a result of the offence
Insight and remorse has been shown	Third parties were travelling in the vehicle who were not able to give consent ie children and/or vulnerable adults
	There was a refusal to be breathalysed or produce a specimen
	Individual resisted arrest or fled the scene
	Attempts to mislead police, courts, employer or SRA in relation to event
	Particularly high level of alcohol in blood, urine or breath
	High sentence given such as a ban of over 18 months or a custodial sentence

Indicative sanctions guidelines

If there are strong mitigating features present, the SRA are less likely to pursue the matter to a Solicitors Disciplinary Tribunal. The cases are likely to be dealt with by way of a warning or a rebuke.

A case where there are aggravating factors will most likely be referred to the Solicitors Disciplinary Tribunal for a hearing. The Tribunal will determine the appropriate sanction that should be imposed. In the worst case scenario, a solicitor could be struck off the roll and costs would be payable as a result.



The guidance note states they should disclose details of any criminal charge(s) they may be facing. The SRA will not determine the application until they can confirm that the charge(s) has/have either been dropped or the outcome of the case is known. Motoring offences that result in a criminal conviction **must be disclosed**. This would include [drink driving](#), [failure to provide a specimen](#), [drug driving](#) etc.

Motoring offences that do not result in a criminal conviction do not need to be disclosed such as [speeding](#), [using a mobile phone whilst driving](#) and [failing to give driver details](#).



Trainee solicitor – suitability test

To be enrolled as a solicitor, a trainee solicitor must meet the suitability test in accordance with the [SRA Suitability Test 2011](#):

The SRA seek to ensure that any individual admitted as a solicitor has, and maintains, the level of honesty, integrity and the professionalism expected by the public and other stakeholders and professionals, and does not pose a risk to the public or the profession.

If a person receives a drink driving conviction or a conviction of a similar nature then they may not be able to meet certain criterion that is required by the SRA to be enrolled as a solicitor

There are a number of criminal convictions that would prevent a person being enrolled but the ones that apply to drink driving etc are:

- ✓ if they have received a custodial or suspended sentence;
- ✓ associated with obstructing the course of justice; or
- ✓ they have been convicted by a court for more than one criminal offence.

An applicant can put forward exceptional circumstances to the SRA for them to determine whether it is so serious as to prevent admission as a solicitor.

The SRA are more likely than not to refuse an application if a person has been convicted by a court of a criminal offence (which does not fall into one of the categories above), but which has an impact on their character and suitability (Section 3 of the Solicitors Act 1974).

Barristers Standards

Both registered and non-registered barristers (those without a practicing certificate) regulated by the Bar Standards Board must adhere to the statutory regulatory objectives set out in the Legal Service Act 2007 (the Act). This includes promoting and protecting the public interest and that of consumers as well as upholding the professional principles. Furthermore, a barrister must adhere to the Core Duty (CD5) which requires that they do not behave in a way that is likely to diminish the trust and confidence which the public places in them or the profession.

The published [guidance from the BSB](#) takes the view that it is almost a foregone conclusion that in incurring a criminal conviction or caution a barrister will be in breach of Core Duty 5.

Reporting of criminal convictions/activity

Regulated barristers must report a conviction for an indictable offence. This includes offences such as causing death by dangerous driving and perverting the course of justice. These offences are only tried in the Crown Court and often a custodial sentence will be imposed when sentenced. They are also required to report when they are convicted of, or accept a caution for any criminal offence in any jurisdiction except a minor criminal offence. The definition of a “minor criminal offence” is set out at Definition 130 of Part 6 of the Handbook and effectively covers offences that are subject to fixed penalty fines or are related to parking

offences. A failure to report a criminal charge, caution or conviction is in itself a breach of Handbook requirements which could attract enforcement action.

Enforcement

The enforcement system includes a range of available options for addressing breaches of the Handbook which includes both non-disciplinary enforcement action (imposition of administrative sanctions) and also disciplinary action (referral to the Determination by Consent procedure or a Disciplinary Tribunal on charges of professional misconduct).

In relation to criminal convictions, the BSB takes a firm policy stance that no form of criminal conviction is appropriate to be dealt with by non-disciplinary means (administrative sanctions) except where there are exceptional mitigating circumstances, given the risk to public confidence in the profession and thereby the confidence in the administration of justice. Therefore, nearly all criminal convictions, regardless of their nature, will result in disciplinary action for professional misconduct.

It is recognised that there may be exceptional circumstances where a criminal conviction might warrant the imposition of an administrative sanction or indeed no enforcement action being taken but these are likely to be rare. Such circumstances would need to involve a background of extreme and adverse personal circumstances in which the criminal activity occurred, with the criminal activity being unintentional and/or not recognised as such and a negligible risk that the behaviour will be repeated.

There is of course a wide range of criminal offences, which vary in their level of seriousness as reflected not only by the maximum sentence which they might attract under the law but also by the sentence imposed in the individual circumstances of the case. While the default position is that all criminal convictions should be subject to disciplinary action, the type of disciplinary action the PCC decides to take will be dependent on the offence in question and the surrounding circumstances.

What do I do next?

We are always happy to discuss your case with you, we are specialists in defending drivers nationwide for all types of motoring offences. Call our team on **0800 1389 123** for some free initial advice.

However, the following general principles apply:

a. Low level criminal offences - such as drink driving.

Where the criminal penalty was a fine or a lesser penalty, there was no element of dishonesty and the facts of the offence are agreed - likely to be suitable for referral to the Determination by Consent procedure because a sanction greater than a fine is unlikely to be necessary to address the risk of the behaviour occurring again. Where there is any disagreement as to the facts of the offence, the case should be referred to a three person Disciplinary Tribunal

b. More serious criminal offences

These usually do not involve a custodial sentence but perhaps a community sentence are likely to be suitable for referral to a three person Disciplinary Tribunal which has the ability to suspend a barrister from practise for up to a year.

c. Serious criminal offences that result in a custodial sentence

Regardless of the length (whether suspended or not) are likely to be suitable to be referred to a five person Disciplinary Tribunal which has the powers to suspend for more than 12 months or disbar.

Training to become a barrister

The admission declaration for those being "called to the Bar by an Inn of Court" requires the applicant to confirm they have not been convicted of a criminal offence and/or have any pending criminal proceedings against them. This includes all criminal convictions except those that could be punishable by way of a fixed penalty such as speeding and parking offences. All convictions which are not spent within the meaning of the Rehabilitation of Offenders Act 1974 must be declared. Therefore, you may be prevented from being called to the Bar if you have a criminal conviction or a pending criminal prosecution.

**CALL US NOW
ON FREEPHONE**

**0800
1389 123**



**Call Geoffrey
Miller Solicitors
24 hours
7 days a week**

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