

**Memorandum of Understanding**  
**between**  
**HM Revenue & Customs (HMRC)**  
**and**  
**Solicitors Regulation Authority (SRA)**

## **Introduction**

1. Her Majesty's Revenue & Customs (HMRC) and the Solicitors Regulation Authority (SRA) ("the parties") are committed to working together to achieve the appropriate public interest outcomes in the investigation and prosecution of Revenue and Customs offences and the regulation of legal services. In support of that aim, this Memorandum of Understanding ("Memorandum") sets out the framework for effective liaison and communications between HMRC and the SRA.
2. The aims of this Memorandum include:
  - a. To assist both parties in their investigation or supervision work in the public interest so far as such assistance is lawful;
  - b. To provide a framework for the lawful disclosure of information by the SRA to HMRC.
  - c. To set out the legal framework under which HMRC may lawfully disclose information to the SRA.
3. HMRC and the SRA recognise and respect their differing statutory duties, operational priorities and constraints, and confidentiality requirements. However, both parties agree to professional co-operation in preventing or taking action in relation to dishonesty or default involving law firms or solicitors including those involved with or enabling taxation offences in the British Isles.

## **Legal status and effect**

4. Nothing in this Memorandum of Understanding shall, or is intended to:
  - a. create any legal or procedural right or obligation which is enforceable by either of the parties against the other; or
  - b. create any legal or procedural right or obligation which is enforceable by any third party against either of the parties, or against any other third party; or
  - c. prevent either of the parties from complying with any law which applies to them; or
  - d. fetter or restrict in any way whatsoever the exercise of any discretion which the law requires or allows the parties to exercise; or
  - e. create any legitimate expectation on the part of any person that either of the parties to this Memorandum of Understanding will do any act (either at all, or in any particular way, or at any particular time), or will refrain from doing any act.

Nevertheless, the parties agree to pursue the aims and purposes of this Memorandum in good faith, and intend to act in accordance with its terms on a voluntary basis.

### **Roles and responsibilities**

5. HMRC was established in April 2005 by the Commissioners for Revenue and Customs Act 2005 ('CRCA 2005'), merging the Inland Revenue and HM Customs and Excise.
6. HMRC's functions are set out in sections 5 - 7, 9 and Schedule 1 of the CRCA 2005 and can be summarised as all powers pertaining and ancillary to the collection and management of the revenue and duties.
7. HMRC's purpose is to make sure that the money is available to fund the UK's public services. HMRC also helps families and individuals with targeted financial support.
8. HMRC's objectives are:
  - Maximise revenue to close the tax gap
  - Improve customer experience
  - Deliver an affordable and sustainable cost base providing value for money for the taxpayer
  - Improve our leadership capability and create a working environment that motivates our people
  - Improve our professionalism in dealing with customers and stakeholders, the security of our customers' information and our external impact
  - Transform performance by high quality IT delivery
9. The SRA is the independent regulatory body established by the Law Society for the regulation of legal services by law firms and solicitors in England and Wales. The SRA's powers arise from various statutes and regulations including the Solicitors Act 1974, the Administration of Justice Act 1985, the Courts and Legal Services Act 1990, the Legal Services Act 2007 and the SRA's Handbook: <http://www.sra.org.uk/solicitors/handbook/welcome.page>
10. The SRA has statutory and rule-based powers to require the production of documents or information, such as section 44B of the Solicitors 1974 and section 93 of the Legal Services Act 2007. The SRA may inspect material that is subject to a law firm's client's legal professional privilege (LPP) or confidentiality but may only use such material for its regulatory purposes. The SRA also protects the LPP and confidentiality of clients. LPP material will not be disclosed by the SRA to any other person other than where necessary for its regulatory purposes. Material that is not subject to LPP may be disclosable in the public interest, in the absolute discretion of the SRA, including material comprising communications in furtherance of crime or fraud.

### **Information sharing**

11. Where it is lawful to do so, the SRA agree to disclose information HMRC:
  - a. so that alleged fraud, criminality, misconduct, or other failures relating to the functions of HMRC are properly investigated and decided upon; and

- b. for the purposes of any legal proceedings;
12. HMRC will consider all information received from the SRA against the criteria laid out in the HMRC Criminal Investigation Policy.
  13. Section 18 of the Commissioners for Revenue and Customs Act (CRCA) 2005 provides that HMRC officials must not disclose information, which is held by HMRC in relation to its functions, to an outside person or agency.
  14. However, section 18(2) provides a number of exceptions to this rule of confidentiality and enables officials to disclose information in certain, specified circumstances. In addition to section 18(2), a number of statutes also enable HMRC to disclose information to others. These provisions are known as 'gateways' and the relevant gateways in respect of this protocol are detailed below.
  15. HMRC can disclose information to the SRA if a High Court order is obtained to enforce an order made under section 44B Solicitors Act 1974 or an order made pursuant to S44BB, related or analogous legislation. Court orders are an exception to HMRC's duty of confidentiality under section 18(2)(e) CRCA 2005.
  16. HMRC may request information from the SRA by means of a Third Party Information Notice under Schedule 36 of the Finance Act 2008.
  17. Both parties will ensure that they meet their respective obligations under the Data Protection Act 1998 and Human Rights Act 1998 in respect of any information sharing under this MoU.
  18. The recipient of information received from the other party will:
    - a) For the purposes of the Data Protection Act (DPA) 1998, become the data controller once the information is received and comply at all times with the DPA and any related or analogous legislation;
    - b) keep the information secure (see section below);
    - c) destroy it once the information is no longer required;
    - d) use the information only for proper purposes, such as regulatory, disciplinary or other legal investigations or proceedings; and
    - e) liaise or co-operate where appropriate to avoid action that prejudices or may prejudice an investigation by another party or person.

19. Proper purposes may also include further lawful disclosure of the information such as to persons under investigation, witnesses, legal advisers, other regulators, professional bodies, prosecuting bodies, and law enforcement agencies including the police, HM Revenue and Customs, the Serious Organised Crime Agency (or any body that in future carries out the functions of such bodies).
20. Information HMRC receives for one function can be shared across its other functions (section 17 CRCA 2005).
21. The parties agree to ensure that disclosures to the other party are lawful.
22. The disclosing party also agrees to notify the recipient of:
  - a. any restrictions on the use to which the information can be put, and
  - b. any restrictions which apply to the onward disclosure of the information, and

in the absence of such notification, the receiving party may assume that there are no such restrictions (in addition to any restrictions that apply as a matter of law).

#### **Practical exchange of information**

23. The SRA has a Fraud and Confidential Intelligence Bureau (FCIB) whose role includes the lawful facilitation of intelligence and information sharing with other bodies.
24. The exemptions provided by s29(3) DPA 1998 provide for an exchange of personal information by the SRA where this is for the purposes of
  - a. the prevention or detection of crime
  - b. the apprehension or prosecution of offenders, or
  - c. the assessment or collection of any tax or duty or of any imposition of a similar nature
25. All information to be provided to HMRC should be passed via the nominated Single Point of Contact (SPOC). All information to be provided to HMRC should be sent to [intelligence.bureau@hmrc.gsi.gov.uk](mailto:intelligence.bureau@hmrc.gsi.gov.uk)

If necessary contact Gerry McDermott on 0117 9153 503 for advice.

#### **Additional assistance**

26. Either of the parties may request additional co-operation in the following areas, and such requests shall be given due consideration:
  - a. sharing subject matter expertise;

- b. supplying witness statements, expert advice or oral evidence for use or potential use in court or tribunal proceedings
27. If the SRA consider that they need to make a request for information from HMRC then this should be submitted only via the RIS Gateway Exchange Team at:

London First Floor, Custom House Annexe, 20 Lower Thames Street,  
London EC3R 6EE  
Email: Get.London@hmrc.gsi.gov.uk  
Telephone: 0870 785 2220

### **Security and assurance**

28. The parties agree to
- a. only use the data for purposes for which they have received it;
  - b. store data securely;
  - c. ensure that only people who have a genuine business need to see that data will have access to it;
  - d. report data losses or wrongful disclosure to the SPOC's;
  - e. only hold it while there is a business need to keep it;
  - f. destroy it in line with applicable guidelines;
  - g. provide assurance that they have complied with these principles, upon request.

### **Freedom of information (Fol) Act 2000**

29. If a Fol request is received in relation to the information supplied by the SRA to HMRC then HMRC will inform the SRA, and invite representations on the potential impact of disclosure.

### **Costs/charges**

30. No charges will be made.

### **Resolving issues**

31. Issues and problems that arise between the two will be resolved through discussion by the SPOCs, with escalation to more senior managers where necessary.


### **Reporting and review arrangements**

32. This Memorandum will remain in force until terminated by either party. The parties will use their best endeavours to review its operation every two years.
33. Any changes to this Memorandum may be agreed in writing.


## Transparency

34. This Memorandum is a public document and the parties may publish it as they separately see fit.

## Signatories

  
..... for HMRC Date 23/01/2013

Name: Tom Gardiner  
Description: Assistant Director, Risk & Intelligence Service

  
..... for the SRA Date 28/01/2013

Name: Mike Jeacock  
Description: Chief Operating Officer