

**Memorandum of Understanding**  
**Made between**  
**The Judicial Appointments Commission**  
**And**  
**The Solicitors Regulatory Authority**

**The Parties**

1. This Memorandum of Understanding (MOU) is made between:
  - a. **Judicial Appointments Committee** (“the JAC”); and
  - b. The **Solicitors Regulatory Authority** (“the SRA”) in its role as the regulatory body of legal services by law firms and solicitors in England and Wales.
2. The terms “JAC” and “SRA” include the relevant bodies and any staff, Commissioners, other persons, panels or groups acting on the parties’ behalf or under their jurisdiction.

**Purpose and status**

3. The purpose of this MOU is to set out the arrangements between the JAC and the SRA in relation to the exchange of information regarding complaints, disciplinary findings and controls imposed for professional misconduct, made against or involving solicitors who have applied for a judicial appointment.
4. Nothing in this MOU 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 MOU will do any act (either at all, or in any particular way, or particular time), or will refrain from doing any act.
5. Nevertheless, the parties are genuinely committed to pursuing the aims and purposes of this MOU in good faith and intend to act in accordance with its terms on a voluntary basis.

### **Functions of the JAC and the SRA**

6. 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 standards and regulations. The SRA investigates allegations of misconduct and, where appropriate, makes findings of misconduct. In more serious cases, the SRA prosecutes allegations of misconduct before the Solicitors Disciplinary Tribunal. The SDT has powers to impose sanctions under the Solicitors Act 1974.
7. The SRA has statutory and rule-based powers to require the production of documents or information such as section 44B of the Solicitors Act 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 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 it is 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 a crime or fraud.

## 8. The Judicial Appointments Commission

The Judicial Appointments Commission (JAC) is an executive non-department public body, sponsored by the Ministry of Justice. The JAC was established in April 2006 under the Constitutional Reform Act 2005 as an independent body to select candidates for judicial office in courts and tribunals in England and Wales and for some tribunals whose jurisdiction extends across the UK.

9. Under the Constitutional Reform Act, the JAC's statutory duties are to:

- Select candidates solely on merit
- Select only people of good character
- Have regard to the need to encourage diversity in the range of persons available for judicial selection

10. In line with the JAC's statutory obligation to select only people of good character, the JAC undertakes character checks with professional bodies including the Solicitors Regulatory Authority.

11. The information provided by the SRA assists in informing the Commission of any concerns relating to a candidate's suitability for appointment to a judicial role.

### **Disclosure to the JAC**

12. Where it is lawful and in the public interest to do so the SRA agrees to disclose information to the JAC to minimise the risk of damaging public confidence in the appointment to judicial office process including where the applicant has:

- i. acted without integrity or honesty;
- ii. acted improperly;
- iii. acted in an incompetent way;
- iv. ignored standards and rules including regulatory or legal obligations;
- v. failed to cooperate with their regulator
- vi. been involved with an authorised firm at a time when misconduct led to a sanction or control against the firm's managers and/or employees
- vii. supervised a person at a time when misconduct or undesirable behaviour led to a sanction or control against that person.

13. In each case, the SRA will inform the JAC of the context and culpability of the applicant in relation to the finding.

14. The parties will:

- a) comply with the General Data Protection Regulation (GDPR) and as later saved by the EU Withdrawal Bill, the Data Protection Act 2018, any relevant codes or conduct or certifications along with any related or analogous legislation;
- b) keep information secure;
- c) use the information only for proper purposes provided the JAC is reasonably considered by the SRA to need the information as part of the application process.

**Professional conduct checks on applicants for appointment.**

15. The JAC will send a list of solicitor applicants confidentially to the designated member of staff at the SRA, requesting that disciplinary history checks are made. The SRA will, in response, carry out the checks and provide, on a case by case basis, where lawful and in the public interest, provide in writing the following “relevant information”:

- a. Summary details of any disciplinary findings for professional misconduct or regulatory control made against each solicitor personally and, where applicable, information about whether the finding or control is open to, or subject to, appeal;
- b. Summary of details of disciplinary findings for professional misconduct or regulatory control made against managers or employees of authorised firms in which the applicant is or has been involved at the time of the misconduct and, where applicable, information about whether the finding or control is open to, or subject to, appeal;
- c. Summary of details of disciplinary findings for professional misconduct or regulatory control made against a person supervised by the applicant at the time of the misconduct or undesirable behaviour and, where applicable,

information about whether the finding or control is open to, or subject to, appeal;

- d. Summary details of any pending allegations/complaints which have been referred to disciplinary action but have not yet been determined.

16. The information in paragraph 15 above will be provided by the SRA within a reasonable timescale agreed between the JAC and the SRA. Where there is no relevant information recorded against a solicitor, the SRA will ensure that this is recorded in its written return to the JAC.

17. In response to a further request from the JAC later in the application process, the SRA will update information provided previously under paragraph 15, including, where lawful informing JAC of any new relevant information that has arisen during the intervening period.

#### **JAC use of information provided by the SRA**

18. The JAC agrees to use the information provided by the SRA only for the purposes of assessing a solicitor's suitability for the appointment to a judicial post and will not disclose the information to third parties for any other purposes. For the sake of clarity, the JAC agrees to keep all information provided by the SRA confidential and remain compliant with the terms in paragraph 14 above.

#### **SRA use of information provided by the JAC**

19. The SRA will treat the fact of an application for appointment to judicial office as confidential.

#### **Agreed timescales**

20. The SRA will complete vetting checks requested by the JAC within 30 days unless otherwise agreed with or communicated to the JAC.

21. If the number of checks requested exceeds 60 per calendar month, the SRA will contact the JAC to agree a variation of the 30-day timescale suitable to the volume of vetting checks received. Any changes to the original 30-day service level will be communicated

to the JAC within 2 working days upon receipt of vetting checks requested. This communication will confirm the revised service level the SRA can achieve in agreement with the JAC.

### **Security and assurance**

22. The parties agree to:

- a) only use data for legitimate purposes;
- b) store data securely;
- c) ensure that only people who have a genuine business need to see the data will have access to it;
- d) report any data losses or wrongful disclosure to each organisation contacts;
- e) only hold data for as long as necessary;
- f) destroy data in line with retention policies;
- g) provide assurance that each has complied with these principles upon request.

### **Resolving issues**

23. Issues and problems that arise will be resolved through discussion with the relevant contacts with escalation to more senior managers where necessary.

### **Amendments and review to the MOU**

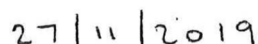
24. This MOU is applicable from the date of its final signature until such time as it is amended by agreement between the parties.

25. Any changes to this MOU may be agreed in writing.

**Signature:**



**Date:**



**Alex McMurtrie**  
**Head of Selection Policy**  
**On behalf of the JAC**

Signature:

CA Westrop

Date:

9.12.2019

**Carol Westrop**

**Head of Legal Policy, General Counsel and Case Direction Directorate**

**On behalf of the SRA**