

Memorandum of Understanding between the Solicitors Regulation Authority and the Legal Ombudsman

Introduction

1. This Memorandum of Understanding (MOU) sets out a framework for the Solicitors Regulation Authority (SRA) and the Legal Ombudsman ('the parties') to work together in order to carry out their independent roles and separate functions in accordance with the Legal Services Act 2007 (the Act).
2. The purpose of this MoU is to put in place clear arrangements and practices that will foster an effective and cooperative working relationship between the Legal Ombudsman and the SRA and to provide a framework for the lawful flow of information between the parties.
3. In agreeing this MoU, the SRA and Legal Ombudsman agree that in working together, each will have regard to the need to promote effective systems of redress for consumers of legal services and regulation of solicitors and the organisations regulated by the SRA.
4. The Legal Ombudsman and SRA are committed to cooperating and sharing knowledge and expertise to benefit consumers of legal services and the legal profession.

Legal status and effect

5. Unless any statutory provision amounts to a legal obligation, 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 are genuinely committed to pursuing the aims and purposes of this Memorandum in good faith, and intend to act in accordance with its terms on a voluntary basis.

Roles of SRA and OLC

- 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 & 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>
- 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.
- 8. 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.
- 9. The Legal Ombudsman is administered by the Office for Legal Complaints under the Act. The Legal Ombudsman is an independent and impartial service that users of legal services can access to resolve complaints about the service provided by their lawyer or firm.
- 10. The statutory objective of the Legal Ombudsman is to resolve disputes quickly and with minimum formality on the basis of what is fair and reasonable in the circumstances.

Cooperation and information sharing

- 11. The SRA and the Legal Ombudsman agree that they will:

- a. seek to make sure consumers, solicitors and others understand and are not confused about the different roles of each organisation;
- b. seek to achieve a complementary and consistent approach as far as possible;
- c. meet and communicate regularly to discuss matters of mutual interest;
- d. seek to share expertise;
- e. consult one another at an early stage on any issues which might have significant implications for the other organisation.
- f. disclose information to the other where it is lawful and in the public interest to do so.

Disclosure of information

12. The recipient of information received from the other party will:

- a. comply at all times with the Data Protection Act 1998 and any related or analogous legislation;
- b. keep the information secure;
- c. use the information only for proper purposes, such as regulatory, disciplinary, contractual or other legal investigations or proceedings; and
- d. liaise or co-operate where appropriate to avoid action that prejudices or may prejudice an investigation by another party or person.

13. 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).

14. The parties agree to ensure that disclosures to the other party are lawful.

15. In addition to any information disclosed between the Legal Ombudsman and the SRA in compliance with sections 143 and 144 of the Legal Services Act 2007, the SRA may seek information from the Legal Ombudsman pursuant to section 44BB of the Solicitors Act 1974 or any analogous or replacement power.

16. 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

17. The SRA and Legal Ombudsman will agree and periodically review operational procedures on:

- a. routine information sharing including general reporting requirements to support the investigation of complaints by the Legal Ombudsman and the regulatory functions of the SRA;
- b. dealing with cases or trends that raise broader regulatory, policy or other issues; and
- c. any other relevant operational arrangements.

18. SRA and Legal Ombudsman supervision and operational staff will meet on a regular basis to discuss:

- a. routine reporting and information sharing is taking place as agreed;
- b. any current matters of concern, for example issues around a particular firm's level of service

19. SRA and Legal Ombudsman senior staff will meet on a regular basis to ensure that issues of strategic importance are considered and to ensure that both organisations maintain a good working relationship.

20. Subject to relevant restrictions on the disclosure of confidential information:

- a. the Legal Ombudsman will give the SRA information which suggests that regulatory action may be required in relation to persons regulated by the SRA or the organisations in which they work;
- b. other than in exceptional cases, where information falling within (a) above is about a solicitor, Registered Foreign Lawyer or Registered European Lawyer who is working for an organisation authorised by another approved regulator, the Legal Ombudsman will give such information to the relevant approved

regulator in addition to the SRA; and

- c. the SRA will give the Legal Ombudsman information which may assist the Legal Ombudsman to carry out its statutory functions, including, where the Legal Ombudsman so requires, information about a conduct matter referred to the SRA by the Legal Ombudsman.

21. The MoU will be complemented and supported by an underlying protocol agreed between the Legal Ombudsman and SRA. At a minimum these procedures will prescribe:

- the information to be disclosed and the circumstances in which such disclosure must be made in compliance with section 144(1) and (2) of the Act;
- details on the procedures for co-operation and information sharing;
- arrangements for the Legal Ombudsman to report professional misconduct to the SRA in accordance with section 143 and 144 of the Act.

22. The Head of Policy, Research and Communications of the Legal Ombudsman and the Head of Legal Policy, General Counsel Directorate of the SRA will be responsible for agreeing operational procedures and putting in place effective working practices that meet the over-arching objectives of this MoU.

23. The Legal Ombudsman and SRA will continue to monitor the operation of this memorandum of understanding (MoU) and review it as necessary. A review will take place in three years of the date of this memorandum of understanding



Nick Hawkins

Chief Executive

Date 23/8/16



Carol Westrop

Head of Legal Policy

General Counsel Directorate

Date 24/8/16