

Memorandum of Understanding

between

**The Gibraltar Financial Services
Commission (the GFSC)**

and

**Solicitors Regulation Authority
(SRA)**

Introduction

1. The Gibraltar Financial Services Commission (the GFSC) and the Solicitors Regulation Authority (SRA) ("the parties") are committed to working together to achieve appropriate public interest outcomes in the regulation of dishonesty, incompetence and malpractice in the community regulated by the SRA and the GFSC. In support of that aim, this memorandum of understanding ("Memorandum") sets out the framework for effective liaison and communications between the GFSC and the SRA.
2. The aims of this Memorandum include:
 - a. To assist both parties in their authorisation, supervision, regulation and enforcement work in the public interest so far as such assistance is lawful
 - b. To provide a framework for the lawful flow of information between the SRA and the GFSC.
3. The GFSC and the SRA recognise and respect their differing duties, operational priorities and constraints, and confidentiality requirements. However, in the public interest they commit themselves to professional cooperation in preventing or taking action in relation to dishonesty, incompetence and malpractice involving law firms regulated by the SRA or the financial services sector in Gibraltar, including individuals regulated by the SRA.

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 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 and responsibilities

5. 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>
6. 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.
7. 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.
8. The GFSC is an independent regulatory body established by the Gibraltar Parliament under the Financial Services Commission Act 2007 for the regulation of the financial services industry in Gibraltar.
9. The GFSC has statutory powers to require the production of documents or information under a number of pieces of legislation including the Financial Services (Investment and Fiduciary Services) 1989, the Financial Services (Information Gathering and Cooperation) Act 2013 and a number of other Supervisory Acts.

Information sharing

10. Where it is lawful and in the public interest to do so, the parties agree to assist and disclose information to the other:
 - a. to enable the assessment of risk to the public such as to:
 - i. minimise the risk of financial default;
 - ii. minimise the risk of fraud or other criminality including terrorism; and
 - iii. identify the risk of financial failure; **and**
 - iv. iv minimise the risk to clients

- b. so that alleged criminality, misconduct, financial unsoundness, or other failures are properly investigated and decided upon
- c. to enable the proper processing of applications for authorisation or licence of a law firm or financial institution or the admission or approval of an individual by the SRA
- d. to enable the proper processing of claims or applications for redress or compensation of any description and
- e. for the purposes of enforcement, disciplinary or other legal proceedings, whether in public or not

provided that the other party or recipient is reasonably considered able to take regulatory or other proper action upon the information.

11. The recipient of information received from the other party will:
- a. comply at all times with relevant or analogous data protection legislation;
 - b. treat the information as confidential and keep it secure;
 - c. use the information only for proper purposes, such as regulatory, disciplinary 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.
12. 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.
13. The parties agree to ensure that disclosures to the other party are lawful.
14. The SRA may seek information from the Commission pursuant to section 44BB of the Solicitors Act 1974 or any analogous or replacement power.
15. The disclosing party also agrees to notify the recipient of
- a. any conditions attached to the disclosure, and
 - b. any conditions 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 conditions (save those that apply as a matter of law).

Practical exchange of information

16. All information exchanged between the parties should be passed via nominated Single Points Of Contact (SPOC).
17. The nominated SPOC for the SRA is the Intelligence Team Leader of Fraud and Confidential Intelligence Bureau (FCIB) whose contact details are 0121 329 0121 329 6827, SRA, The Cube, 12th Floor, 199 Wharfside Street, Birmingham B1.
18. The SPOC for the GFSC is the Technical Advisor, International Affairs whose contact details are 00350 200 40283, GFSC, PO Box 940, Suite 3 Ground Floor, Atlantic Suites, Europort Avenue, GX11 1AA Gibraltar.

Additional assistance

19. 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

Security and assurance

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

Data Protection Act 1998, Data Protection Act 2004 and Human Rights Act 1998

21. Both parties undertake to comply with the requirements of relevant data protection laws and human rights protections in the operation of this agreement.

Freedom of Information Act 2000

22. If a Fol request is received in relation to the other party's information then the receiving party will inform the other party, and invite representations on the potential impact of disclosure.

Costs/charges

23. No charges will be made.

Resolving issues

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

Reporting and review arrangements

25. This Memorandum will remain in force until terminated by either party. The parties will use their best endeavours to review its operation every 3 years.

26. Any changes to this Memorandum may be agreed in writing.

Transparency

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



for the Gibraltar Financial Services Commission

Date: 5/5/17

Name: Samantha Barrass

Description: Chief Executive Officer



for the Solicitors Regulation Authority

Date: 11/5/17

Name: Carol Westrop

Description: Head of Legal Policy
General Counsel Directorate