

**Memorandum of Understanding**

**between**

**HM Land Registry**

**and**

**Solicitors Regulation Authority**

## Introduction

1. HM Land Registry (HMLR) and the Solicitors Regulation Authority (SRA) ("the parties") are committed to working together to achieve the appropriate public interest outcomes in relation to guaranteeing ownership of land, facilitating property transactions 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 HMLR and the SRA.
2. The aims of this Memorandum are, in particular:
  - 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 flow of information between the SRA and HMLR.
3. HMLR and the SRA recognise and respect their differing statutory duties, operational priorities and constraints, and confidentiality requirements. However, in the public interest they commit themselves to professional co-operation and the lawful exchange of information to assist with the prevention, detection, investigation and taking of action in relation to fraud or other criminal activity involving the regulation of legal services and the registration of title and other services provided by HMLR in England and Wales:
4. This Memorandum does not cover or affect any other memoranda or agreements or arrangements which exist between HMLR and the SRA.

## Legal status and effect

5. Nothing in this Memorandum 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 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**

6. HMLR, is a non-ministerial government department established as an executive agency of the Lord Chancellor in 1990 and as a trading fund in 1993. The Land Registration Act 2002 ("LRA 2002") and the Land Registration Rules 2003 provide the legislative framework for the services and information provided by the HMLR.
7. HMLR is primarily responsible for:
  - a. the maintenance and development of a stable and effective land registration system throughout England and Wales;
  - b. the guarantee of title to registered estates and interests in land for England and Wales and in administering the state indemnity under Schedule 8 of the LRA2002;
  - c. providing ready access to up to date land information relating to registered land;
  - d. consultancy services as defined in section 105 LRA 2002.
8. 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>
9. 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.
10. 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.

- a. ensure that disclosures to the other party are lawful and to comply at all times with the Data Protection Legislation (as defined in the Schedule), freedom of information requests and Human Rights Act 1998;
- b. store data securely;
- c. ensure that only people who have a genuine business need to see that information will have access to it;
- d. report data losses or wrongful disclosure to the SPOCs as soon as either party becomes aware of any such loss or disclosure;
- e. only hold the data for as long as it is needed for the purpose for which it was shared;
- f. destroy it securely in a manner to make reconstruction unlikely;
- g. Comply with any relevant codes of conduct and certifications;
- h. liaise or co-operate where appropriate to avoid action that prejudices or may prejudice an investigation by another party or person; and
- i. provide assurance that they have complied with these principles, upon request.

#### **Data Protection**

11. HMLR and SRA are under a duty to comply with data protection principles in relation to data that constitutes personal data within the meaning of the Data Protection Legislation defined in the attached schedule. It is agreed between HMLR and the SRA that all personal and sensitive information will be shared in compliance with the requirements of the Data Protection Legislation, the Human Rights Act 1998 and the common law. It is acknowledged and agreed that there must be no unauthorised access, loss, misuse, modification or disclosure of this information. HMLR will only share this information with another agency when the law allows it to do so and when disclosure will help its investigations or prevent a crime. Any information shared with another agency must not be disclosed further without the consent of the other party.
12. The data protection provisions set out in the Schedule are incorporated into this Memorandum.

#### **Freedom of Information Act 2000 (F01) and SRA Transparency Code**

13. If a freedom of information 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. The SRA is not subject to the Freedom of Information Act 2000 but operates its own Transparency Code in spirit of the Act.

14. HMLR is under a duty to comply with the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. It is acknowledged that HMLR may disclose any information in order to comply with any legislation including the Freedom of Information Act 2000 and Environmental Information Regulations 2004 or order of court without obtaining the SRA's consent. SRA will assist and cooperate with HMLR to enable HMLR to comply with these information disclosure requirements.

#### **Costs/charges**

15. No charges will be made.

#### **Resolving issues**

16. Issues and problems that arise between the two parties relating to this Memorandum will be resolved through discussion by the SPOCs, with escalation to more senior managers where necessary.
17. The respective representatives will try to resolve any dispute within 14 days of referral. In the event that the dispute is not resolved then the parties will attempt to settle it by a mediator to be agreed by the parties and in default of agreement to be appointed by the Information Commissioner.

#### **Duration and Termination**

18. This Memorandum will remain in force until terminated by either party. Either party may terminate this Memorandum on reasonable written notice of not less than 3 months to the other at any time during its duration. On expiry of the notice it will become null and void. The Memorandum will be reviewed every two years or earlier at the written request of either party.
19. Any changes to this Memorandum may be agreed between the parties in writing.

#### **Transparency**

20. This Memorandum may be published as the parties separately see fit. If published all signatures will be redacted.

## Schedule - Data Protection

### DEFINITIONS

**Agreed Purposes:** The performance by each party of its obligations under this Memorandum.

**Controller, data controller, data processor, data subject, personal data, processing, supervisory authority and appropriate technical and organisational measures:** as set out in the Data Protection Legislation in force at the time.

**Data Protection Legislation:** (i) the Data Protection Act 1998, until the effective date of its repeal (ii) the General Data Protection Regulation ((EU) 2016/679) (**GDPR**), as saved by the EU Withdrawal Bill and any national implementing laws, regulations and secondary legislation, for so long as the GDPR is effective in the UK, and (iii) any successor legislation to the Data Protection Act 1998 and the GDPR, in particular the Data Protection Bill 2017-2019, once it becomes law.

**Shared Personal Data:** the personal data to be shared between the parties under clause 11 of this Memorandum.

### 1. DATA PROTECTION

#### 1.1 Shared Personal Data

This Schedule sets out the framework for the sharing of personal data between the parties as data controllers. Each party acknowledges that one party (the Data Discloser) will disclose to the other party (the Data Recipient) Shared Personal Data collected by the Data Discloser for the Agreed Purposes.

#### 1.2 Effect of non-compliance with Data Protection Legislation.

Each party shall comply with all the obligations imposed on a controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this Memorandum with immediate effect.

#### 1.3 Particular obligations relating to data sharing

Each party shall:

- (a) process the Shared Personal Data only for the Agreed Purposes;

- (b) ensure that all personnel who have access to and/or process the personal data are obliged to keep the personal data confidential;
- (c) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data;
- (d) not transfer any personal data received from the Data Discloser outside the EEA.

#### **1.4 Mutual assistance.**

1.4.1 Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:

- (a) notify the other party without undue delay on becoming aware of a potential or actual personal data breach to enable the parties to consider and agree what action is required in order to resolve the issue in accordance with the Data Protection Legislation; the parties agree to provide such reasonable assistance as is necessary to each other to facilitate the handling of any personal data breach in an expeditious and compliant manner;
- (b) notify the other party without undue delay and respond promptly to enquiries and communications from the relevant supervisory authority in relation to the Shared Personal Data;
- (c) promptly inform the other party about the receipt of any data subject access request;
- (e) not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other party wherever possible;
- (f) assist the other party in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and communications from supervisory authorities or regulators;
- (g) notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
- (h) at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this Memorandum unless required by law to store the personal data;
- (i) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
- (j) maintain complete and accurate records and information to demonstrate its compliance with this Schedule and
- (k) provide the other party with contact details of a point of contact for issues arising out of the Data Protection Legislation, including the procedures to be followed in the event of a data security breach.

1.4.2 In the event of a dispute or claim brought by a data subject or the relevant supervisory authority concerning the processing of Shared Personal Data against either or both parties, the parties will inform each other about

any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.