

Memorandum of Understanding
between
Judicial Conduct Investigations Office
and
Solicitors Regulation Authority

Introduction

1. The Judicial Conduct Investigations Office (JCIO) is subject to a statutory framework in relation to disclosure of information held for the purposes of, complaints about, and discipline of, judicial office holders. The Solicitors Regulation Authority (SRA) regulates in the public interest. The parties recognise that where a judicial office holder (in their capacity as a member of the legal profession) is also regulated by the SRA, there are circumstances where the disclosure of information is necessary to ensure the public is protected or to allow for the proper consideration and determination of the conduct of a judicial office holder who is also regulated by the SRA.
2. The aims of this Memorandum of Understanding include:
 - to identify the circumstances in which information can be properly and proportionately disclosed; and
 - to provide a framework for the lawful disclosure of information between the SRA and the JCIO.
3. The JCIO and the SRA recognise and respect their differing statutory duties, operational priorities and constraints and requirements.

Legal status and effect

4. Nothing in this Memorandum of Understanding shall, or is intended to:
 - create any legal or procedural right or obligation which is enforceable by either of the parties against the other; or
 - 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
 - prevent either of the parties from complying with any law which applies to them; or
 - fetter or restrict in any way whatsoever the exercise of any discretion which the law requires or allows the parties to exercise; or
 - 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.
5. Nevertheless, the parties are genuinely committed to pursuing the aims and purposes of this Memorandum of Understanding in good faith, and intend to act in accordance with its terms on a voluntary basis.

Roles and responsibilities

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> In some cases, those holding judicial office are also regulated by the SRA.

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 Constitutional Reform Act 2005 ('the Act') gives the Lord Chancellor and the Lord Chief Justice disciplinary powers in relation to judicial office holders in England and Wales. This memorandum relates to judicial office holders in England and Wales who are also regulated by the SRA. That Act also makes provision for regulations to be made setting out the procedures that are to be followed in the investigation and determination of allegations of misconduct by judicial office holders.
9. The Judicial Discipline (Prescribed Procedures) Regulations 2014 ('the Regulations') are made in exercise of those powers, and the Judicial Conduct (Judicial and other office holders) Rules 2014; the Judicial Conduct (Tribunals) Rules 2014 and the Judicial Conduct (Magistrates) Rules 2014 also form part of the legal framework governing the handling of misconduct by judicial office holders. Provision is made in the regulations for the JCIO to be established for the purpose of performing functions under the Regulations and the Rules. Accordingly, the JCIO handles complaints and provides advice and assistance to the Lord Chancellor and Lord Chief Justice in relation to the exercise of their disciplinary powers.
10. The JCIO is subject to duties of confidentiality provided by section 139 of the Act, prohibiting disclosure of any information relating to an identified or identifiable individual where such information is given for the purposes of dealing with judicial appointments, complaints or discipline. Such information may only be lawfully disclosed in specified circumstances:
 - each party to whom the information relates consents; or
 - disclosure is for, and is necessary for, the exercise of functions under specified relevant provisions; or
 - disclosure is for, and is necessary for, the exercise of functions under section 11(3) of the Senior Courts Act 1981; or
 - disclosure is necessary for the exercise of disciplinary powers pursuant to section 108 of the Constitutional Reform Act 2005; or
 - disclosure is required under rules of court or a court order for the purposes of legal proceedings of any description.
11. In addition, regulation 18 of the Regulations makes provision for the Lord Chancellor and the Lord Chief Justice to publish information about disciplinary proceedings or the taking of disciplinary action, and such disclosure is not prevented by section 139.
12. The parties must also act in compliance with the General Data Protection Regulation (GDPR) (as later saved by the EU Withdrawal Bill), the Data Protection Act 2018, and any relevant codes of conduct or certifications when handling personal data.

Disclosure of information by the JCIO to the SRA

13. Where there is a risk, or possible risk, to the public such that it is necessary for the SRA to exercise its regulatory powers and the JCIO is in possession of information which is relevant to the exercise of those powers, the JCIO, as soon as practicable, agrees to:

- to seek the consent of each person who is the subject of the information held (subject to section 139(5) of the Act); or
 - where appropriate, ask the SRA to consider doing so.
14. Such disclosure is, if necessary, to be made during the investigation by the JCIO.
15. Where the Lord Chancellor and Lord Chief Justice have made a final determination and where such a decision is either published in accordance with the Lord Chancellor and Lord Chief Justices' Publication Policy, or where a decision has not been published, but where the JCIO considers there is a possible risk to the public, the JCIO agrees to
- seek the consent of each person who is the subject of the information held (subject to section 139(5) of the Act) or, where appropriate, ask the SRA to consider doing so; or
 - engage the publication of decision provisions of section 139 (6) and regulation 18 of the Regulations.
16. Alternatively, the SRA may obtain an Order from the High Court pursuant to S44BB of the Solicitors Act 1974 requiring the JCIO to disclose information.

Disclosure of information by the SRA to the JCIO

17. Where it is lawful the SRA agrees to disclose information to the JCIO provided the SRA is satisfied:
- the SRA is able to comply with the GDP (as later saved by the EU Withdrawal Bill), the Data Protection Act 2018 and any relevant codes of conduct or certifications, the Human Rights Act 1998 and any common law principles of confidentiality, privacy and LPP; and
 - the SRA is satisfied the JCIO is reasonably considered able to take appropriate action upon the information.

Exchange of information between the parties

18. The recipient of information received from the other party will:
- comply at all times with the GDPR (as later saved by the EU Withdrawal Bill) the Data Protection Act 2018 and any relevant codes of conduct or certifications and any related or analogous legislation;
 - keep the information secure; and
 - use the information only for purposes for which it was disclosed to it.
19. The parties agree to ensure that disclosures to the other party are lawful.
20. The disclosing party also agrees to confirm or notify the recipient of:
- any additional restrictions on the use to which the information can be put; and
 - any specific restrictions which apply to the onward disclosure of the information.

Practical exchange of information

21. All information to be provided to the SRA should be passed via the nominated Single Point Of Contact (SPOC). The nominated SPOC for the SRA is Ann Marie Keeling of the General Counsel and Case Direction directorate. The nominated SPOC for the JCIO is the Head of the JCIO.

Additional assistance

22. Where appropriate, the parties agree to liaise or co-operate to avoid action that prejudices, or may prejudice, an investigation or proceedings by the other party or another person. This may mean awaiting the outcome of one or other of the parties' investigation.
23. Where disclosure of information has been made during an on-going investigation or proceedings, each party agrees to notify the other if a decision is made to defer or suspend the same where it is satisfied it is lawful to do so.

Costs/charges

24. No charges will be made.

Resolving issues

25. 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

26. This Memorandum of Understanding will remain in force until terminated by either party. The parties will use their best endeavours to review its operation every three years.
27. Any changes to this Memorandum of Understanding may be agreed in writing.

Transparency

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

Signatories



for SRA 28 May 2019

Carol Westrop
Head of Legal Policy
General Council and Case Direction Directorate



for JCIO 7 June 2019

Name: Joanna Otterburn
Joint Head of the JCIO