

# **Memorandum of Understanding**

**between**

**The Legal Aid Agency (LAA)**

**and**

**Solicitors Regulation Authority  
(SRA)**

## **Introduction**

1. The Legal Aid Agency (LAA) and the Solicitors Regulation Authority (SRA) (“the parties”) are committed to working together to achieve the appropriate public interest outcomes in the prevention, detection, investigation and prosecution of dishonesty and serious misconduct in the community regulated by the SRA and funded by the LAA. In support of that aim, this memorandum of understanding (“Memorandum”) sets out the framework for effective liaison and communications between the LAA and the SRA.
2. The aims of the Memorandum include:
  - 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 the LAA.
3. The LAA 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 co-operation in preventing or taking action in relation to dishonesty or serious misconduct.

## **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 purpose 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 clients 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 communication in furtherance of crime or fraud.
8. The LAA became an Executive Agency of the Ministry of Justice in April 2013 and was previously known as the Legal Services Commission. The Lord Chancellor and Secretary of State for Justice are accountable to Parliament for the LAA's activities and performance.
9. The Agency provides Legal Aid in England and Wales, both for criminal and civil matters of law. The aim of the Agency is to provide legal advice and services to those who meet the eligibility criteria or who cannot afford to purchase it privately. The LAA contracts out legal services to Solicitors where required to assist legal aid clients.
10. The Legal Aid Agency has a dedicated Contract Management team who manage the relationship with legal aid providers and a Counter Fraud and Investigations team who detect, deter and investigate abuse of the legal aid system by clients and providers.

#### **Information sharing**

11. Where it is lawful and in the public interest to do so, the parties agree to 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; and
    - iii. identify the risk of financial failure; and
    - iv. minimise the risk to clients.
  - b. so that alleged criminality, misconduct, breach of the SRA principles, or other failures are properly investigated and decided upon;
  - c. to enable the proper processing of claims or applications for redress or compensation or any description; and

- d. for the purpose of regulatory, disciplinary, contractual or other legal proceedings, whether in public or not;
- provided that the receipt is reasonably considered able to take regulatory or other proper action upon the information.
12. The recipient of information received from the other party will:
- a. comply at all times with the Data Protection Act 1998 and thereafter the General Data Protection Regulation (GDPR) as saved by the EU Withdrawal Bill, UK data protection legislation and any relevant codes or conduct or certifications ;
  - 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. The LAA must have regard to S33(2) and s34(2) of the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO) and to regulation 4 of the Legal Aid (Disclosure of Information) Regulations 2013 which provides that information must not be disclosed for the purposes of the investigation of prosecution of an offence (or suspected offence) which (a) related to the defence of an individual or legal person who has made an application for criminal legal aid (whether or not the determination is made in their favour); and (b) may be used for the purposes of the prosecution of that individual or legal person in that case.
16. However, the LAA may disclose information to the SRA where it can satisfy itself it is able to do so in compliance with S35(2)(a) being a disclosure of information in accordance with the law of England and Wales or an order of a court or S35(2)(e) for the purpose of facilitating the proper performance by a tribunal of disciplinary functions. The LAA may disclose information about financial resources in connection with facilitating a determination of an individual's financial resources where it is able to comply with S33(3)(a).
17. The SRA may seek information from the LAA pursuant to section 44BB of the Solicitors Act 1974 or any analogous or replacement power.

18. 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).
19. The parties agree that, subject to the disclosure being lawful in each case, and in compliance with the paragraphs above, the information described in paragraphs 20 and 21 will be exchanged as provided in those paragraphs.
20. The SRA will notify the LAA of:
  - a. interventions, as soon as practicable after a formal decision. In most cases, this means the day before the intervention is carried out; in those cases where 'no notice' is given to the relevant practice, notification will be made once the SRA is effecting the intervention;
  - b. a decision to make an application to the Solicitors Disciplinary Tribunal to prosecute a firm or individual, as soon as reasonably practicable;
  - c. the outcome of a prosecution before the Solicitors Disciplinary Tribunal, within 7 days of the decision;
  - d. The inability of a providers to obtain indemnity insurance.
21. The LAA will notify the SRA of:
  - a. All contract terminations at the end of a review, within 3 days;
  - b. Serious contract sanctions, within 3 days of the sanction being imposed;
  - c. The conclusion of official investigations through the provision of a copy of the report.
22. Where the SRA considers appropriate, it may remind a firm of its obligations to the LAA where the firm is in financial difficulty.

### **Practical exchange of information**

23. All information exchanged between the parties should be passed via nominated Single Points Of Contact (SPOC). The nominated SPOC for notification of an intervention decision is the Technical Manager of Client Protection. The nominated point of contact for notification of applications to the Solicitors Disciplinary Tribunal and the outcome of a prosecution is the relevant Legal Adviser appointed to the case. The nominated point of contact for notification of insurance details will be one of the Senior Technical Advisers in Supervision. In each case, these points of contact will notify the SRA head of the FCIB.

24. The SRA has a Fraud and Confidential Intelligence Bureau (FCIB) whose role includes the lawful facilitation of intelligence and information sharing with other bodies. The SRA Head of the FCIB acts as a SPOC in all other cases.
25. The SPOC for the LAA is the Head of Counter Fraud and Investigations.

#### **Additional assistance**

26. 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**

27. The parties agree to:
  - a. only use the 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 that data will have access to it;
  - d. report data losses or wrongful disclosure to the SPOCs.
  - e. only hold it while there is a business need to keep it;
  - f. destroy it in line with applicable guidelines;
  - g. provide assurance that they have complied with these principles, upon request.

#### **Data Protection Act 1998 (DPA) and, Human Rights Act 1998 (HRA)**

28. Both parties undertake to comply with the requirements of:
  - a) the DPA and thereafter the General Data Protection Regulation (GDPR) as saved by the EU Withdrawal Bill, UK data protection legislation and any relevant codes of conduct or certifications and
  - b) the HRA in the operation of this agreement.

#### **Freedom of information (FoI) Act 2000**

29. If a FoI 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**

30. No charges will be made.

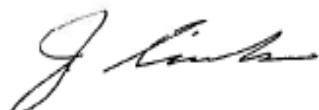
#### **Resolving issues**

31. 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**

- 32 This Memorandum will remain in force until terminated by either party. The parties will use their best endeavours to review its operation every quarter.
- 33 Any changes to this Memorandum may be agreed in writing. Transparency
- 34 This Memorandum is a public document and the parties may publish it as they separately see fit.

Signatories



for the LAA

Date 29/11/17

Name: John Sirodcar

Description: Head of Contract Management



for the SRA

Date 29/11/2017

Name: Carol Westrop

Description: Head of Legal Policy