

Memorandum of Understanding
between
Regulator of Community Interest Companies
and
Solicitors Regulation Authority (SRA)

MEMORANDUM OF UNDERSTANDING

The purpose of the memorandum of understanding is to set out the agreement reached between the CIC Regulator and the Solicitors Regulation Authority, and the framework for co-operation and collaboration.

Introduction

1. The Regulator or Community Interest Companies (the Regulator) and the Solicitors Regulation Authority (SRA) ("the parties") are committed to working together to achieve the appropriate public interest outcomes in the investigation of dishonesty and serious misconduct in the community regulated by the SRA and the Regulator. In support of that aim, this memorandum of understanding ("Memorandum") sets out the framework for effective liaison and communications between the Regulator and the SRA.
2. The aims of this Memorandum include:
 - a. To assist both parties in their investigation in the public interest so far as such assistance is lawful;
 - b. To provide a framework for the lawful flow of information between the Regulator and the SRA.
3. The Regulator 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 involving law firms and individuals authorised with the SRA and registered with the Regulator.

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 and 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 Government established the community interest company structure for use by social enterprises who wish to operate as limited companies.
9. The Companies (Audit, Investigations and Community Enterprise) Act 2004 (CAICE) and the 2005 Regulations provide the legislative framework for the community interest company structure.
10. CAICE established the CIC Regulator as an independent statutory office-holder appointed by the Secretary of State. The CIC Regulator's appointment was subject to an open public recruitment process monitored by the Office of the Commissioner for Public Appointments. The CIC Regulator's powers and duties are set out in the CAICE Act and CIC Regulations 2005.
11. The CAICE Act provides the CIC Regulator with wide enforcement powers which include:
 - a. to bring civil proceedings in the name of the CIC;
 - b. to Appoint or Remove directors when a 'default condition' has arisen;
 - c. to appoint a manager or a CIC when a 'default condition' has arisen;
 - d. to vest (in trust) the property of a CIC.

These powers are used as a last resort. As a "light touch regulator" we seek regulation.

Information sharing

12. 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 CIC principles, or other failures are properly investigated and decided upon;
- c. to enable the proper processing of claims or applications for redress of any description; and
- d. for the purposes of regulatory, disciplinary, contractual or other legal proceedings, whether in public or not;

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

13. 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.

14. 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 National Crime Agency (or any body that in future carries out the functions of such bodies).

15. SRA may seek information from the Regulator pursuant to section 44BB of the Solicitors Act 1974 or any analogous or replacement regulatory powers.
<http://www.legislation.gov.uk/ukpga/1974/47/section/44BB>
16. The parties agree to ensure that disclosures to the other party are lawful.
17. 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, andin 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).
18. 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 11 and 13 will be exchanged as provided in those paragraphs.

Practical exchange of information

19. In order to ensure that matters are handled at the appropriate levels, and that developing policy considerations are taken fully into account, all information exchanged between the parties should be passed via nominated Single Points of Contact (SPOC) (see Annex 1). Where they consider it appropriate, designated points of contact may delegate ongoing liaison to members of their staff.

Additional assistance

20. 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

21. 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)

- 22. Both parties undertake to comply with the requirements of the DPA and the HRA in the operation of this agreement.

Freedom of Information (Fol) Act 2000

- 23. 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

- 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 shall operate upon signature by the Regulator of Community Interest Companies and Head of Legal Policy of the Solicitors Regulation Authority.
- 27. This Memorandum will remain in force until terminated by either party.
- 28. The parties will use their best endeavours to review its operation every three years from 1st April 2015.
- 29. Any changes to this Memorandum may be agreed in writing.

Transparency

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

ANNEX 1

Single Points of Contact

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| <p>Area of responsibility</p> <p>Lead Officer Memorandum</p> | <p>Solicitors Regulation Authority</p> <p>Heather Gelder</p> <p>FCIB</p> <p>0121 329 6298</p> <p>heather.gelder@sra.org.uk</p> | <p>The Regulator of Community Interest Companies</p> <p>Phillip Horrell</p> <p>Room 3.68</p> <p>Companies House</p> <p>Cardiff</p> <p>CF14 3UZ</p> <p>02920346285</p> <p>phorrell@companieshouse.gov.uk</p> |
| <p>Interpretation of Memorandum</p> | <p>Carol Westrop</p> <p>Head of Legal Policy</p> <p>carol.westrop@sra.org.uk</p> | <p>Sara Burgess</p> <p>Regulator</p> <p>Room 3.68</p> <p>Companies House</p> <p>Cardiff</p> <p>CF14 3UZ</p> <p>02920346285</p> <p>cicregulator@companieshouse.gov.uk</p> |
| <p>Policy Designated point of Contact</p> | <p>Heather Gelder</p> <p>FCIB</p> <p>0121 329 6298</p> <p>heather.gelder@sra.org.uk</p> | <p>Phillip Horrell</p> <p>Room 3.68</p> <p>Companies House</p> <p>Cardiff</p> <p>CF14 3UZ</p> <p>02920346285</p> <p>phorrell@companieshouse.gov.uk</p> |
| <p>Operational Designated point of Contact</p> | <p>Ann Marie Keeling</p> <p>Senior Technical Adviser</p> <p>Legal Policy</p> <p>0121 329 6447</p> <p>Ann.Keeling@sra.org.uk</p> | <p>Marilyn Liddon</p> <p>Room 3.68</p> <p>Companies House</p> <p>Cardiff</p> <p>CF14 3UZ</p> <p>02920346285</p> <p>mliddon@companieshouse.gov.uk</p> |
| <p>Fraud and Confidential Intelligence Bureau Intelligence Manager</p> | <p>Heather Gelder</p> <p>FCIB</p> <p>0121 329 6298</p> <p>heather.gelder@sra.org.uk</p> | |
| <p>Legal Policy</p> | <p>Ann Marie Keeling</p> <p>Senior Technical Adviser</p> <p>Legal Policy</p> <p>0121 329 6447</p> <p>Ann.Keeling@sra.org.uk</p> | |

Signatories



..... for the CIC

Date 30 March 2015

Name: Sara Burgess

Description: Regulator of Community Interest Companies



..... for the SRA

Date 29 April 2015

Name: Carol Westrop

Description: Head of Legal Policy