

# **Memorandum of Understanding**

**between**

**Royal Institution of Chartered  
Surveyors (RICS)**

**and**

**Solicitors Regulation Authority  
(SRA)**

## Introduction

1. The Royal Institution of Chartered Surveyors (RICS) and the Solicitors Regulation Authority (SRA) (“the parties”) are committed to working together to achieve the prevention, detection, investigation and prosecution of dishonesty and serious misconduct in the community regulated by the SRA and RICS. In support of that aim, this memorandum of understanding (“Memorandum”) sets out the framework for effective liaison and communications between the RICS and the SRA.
2. The aims of this 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 RICS.
3. The RICS 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 or solicitors involved in carrying out land, property and construction transactions regulated by RICS.

## 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 RICS is the independent Chartered organisation that regulates and maintains the professional standards of over 100,000 qualified Members (FRICS, MRICS and AssocRICS and Regulated Non-Members and 11,000 Regulated Firms. It regulates across 146 countries, and is governed by a Royal Charter, which requires it to maintain and promote the usefulness of the profession for the public advantage. By its Charter, RICS has full power to establish alone or in conjunction with other bodies regulatory schemes or arrangements in respect of the activities of its Members, Regulated Non-Members and Firms.
9. RICS Regulation takes a risk-based approach to monitoring and regulation. In line with the better regulation principles. RICS' regulatory activities are transparent, proportionate, accountable, consistent and targeted. These regulatory activities are government by an independent Regulatory Board.
10. Where appropriate, RICS Regulation takes disciplinary action where Members and/or Regulated Firms fall short of what is expected of them.

## 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;
    - iii. minimise the risk to clients; and
    - iv. minimise the risk to the public.

- b. so that alleged criminality, misconduct, breach of the SRA principles, or RICS Bye-laws, Rules of Conduct, or other failures are properly investigated and decided upon;
- c. to enable the proper processing of claims or applications for redress or compensation of any description; and
- d. for the purposes of regulatory, disciplinary 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.

12. The recipient of information received from the other party will:
- a. comply at all times with all applicable data protection and privacy legislation in force from time to time in the UK including (without limitation) the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended, together with any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party;;
  - b. comply with common law principles of common law and privacy;
  - c. comply with the Human Rights Act 1998 and any relevant legislation;
  - d. keep the information secure;
  - e. use the information only for proper purposes, such as regulatory, disciplinary or other legal investigations or proceedings; and
  - f. 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 National 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 SRA may seek information from the RICS pursuant to section 44BB of the Solicitors Act 1974 or any analogous or replacement power.

16. The disclosing party also agrees to notify the recipient of and the recipient agrees to abide by:
- 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).

### **Practical exchange of information**

17. All information exchanged between the parties should be passed via nominated Single Points Of Contact (SPOC).
18. The SRA SPOC is the Intelligence Team Leader of the SRA's Intelligence Team, whose role includes the lawful facilitation of intelligence and information sharing with other bodies.
19. The RICS SPOC is the RICS' Head of Conduct.

### **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.

### Freedom of Information (Fol) Act 2000

22. If a Freedom of Information request is received by one party in relation to information provided by another party then the receiving party agrees to inform the other party and to invite representations on the potential impact of disclosure.
23. Both parties acknowledge that neither the SRA nor RICS are subject to the provisions of the Freedom of Information Act 2000 (FOIA), however, as a transparent regulator the SRA applies its own SRA Transparency Code in a similar way to the FOIA.

### 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 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 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 RICS

Date 29/5/2019

Name: Luay Al-Khatib

Description: Director of Regulation Europe Middle East and Africa



for the SRA

Date 11/6/2019

Name: Carol Westrop

Description: Head of Legal Policy, General Counsel and Case Direction Directorate