



**Switching between approved regulators
protocol:**

(switching protocol between the SRA and CLC)

Introduction

1. The parties to this switching protocol are the SRA and the CLC. It sits under the overarching Framework Memorandum of understanding (FMOU) signed by the approved regulators and other professional regulators and under the bilateral MOU between the parties. Its purpose is to specifically deal with switching arrangements from one party to the other.
2. For the purposes of this switching protocol the term 'approved regulator' is used to mean either approved regulator or licensing authority.
3. This switching protocol mirrors the terms of paragraph 3 of the FMOU and does not create any legal or procedural rights, prevent compliance with the law, fetter or restrict discretion of the parties nor create any legitimate expectations on the part of the parties to it.
4. Consumer protection arrangements including requirements for the level and scope of professional indemnity insurance ("indemnity arrangements") can be put in place by approved regulators to provide financial protection to clients of firms. These protections are overseen by the Legal Services Board.
5. The Legal Services Board has recently reviewed switching arrangements across the approved regulators. The review acknowledged that switching arrangements between regulators do not present a material risk to consumers. The findings indicated that while the level of switching remained low, the data on this was captured in an inconsistent manner. It also identified a need for greater assurance about the information sharing between regulators during the authorisation processes.
6. The aim of this switching protocol is to:
 - a. confirm the parties' responsibility for a firm's regulation and its indemnity arrangements once a firm switches regulator.
 - b. provide a framework to facilitate the switching between the parties, including the sharing of lawful information in support of the protection of consumers.
 - c. support the parties in keeping consumers informed about who regulates which individuals and firms.

Protecting the financial interests of consumers

7. This protocol recognises that:
 - a. absolute protection is not achievable at reasonable cost and this is ultimately reflected in the cost of legal services to the public.
 - b. indemnity arrangements differ across the approved regulators.

Responsibility for indemnity arrangements

8. Consumer protection provided by indemnity arrangements is the responsibility of the regulator authorising a firm.
9. It is the responsibility of the receiving regulator to assess all relevant risks to consumers should the switch take place and to make such enquiries as it thinks fit to satisfy itself that it can be a suitable regulator of the firm seeking to switch.
10. The receiving regulator becomes 'the regulator' upon its authorisation of the firm and from that date is solely responsible for the indemnity arrangements of the firm including for historic work.
11. The receiving regulator will decide if it is necessary for the firm to take steps, as the regulator thinks fit, to notify clients of any changes to their protection.

Responsibility for compensation arrangements

12. Consumer protection provided by compensation arrangements will be dealt with under the appropriate rules of each regulator.

Handling of compensation claims between regulators

13. Issues and problems that arise between the parties will be resolved on the basis of paragraph 22 of the bilateral MOU (as may be amended from time to time).

Sharing information

14. Where it is lawful, the parties agree to disclose information to enable the receiving regulator to evaluate the level of consumer protection it will need to have in place following the proposed switch.
15. Where information is shared it is shared in accordance with paragraphs 9 -13 and 15 of the bilateral MOU.

Keeping consumers informed

16. Each party agrees to take whatever steps it considers reasonable to make sure consumers are informed so they understand:
 - a) who regulates relevant individuals and firms
 - b) the protections afforded in each case
 - c) where and how redress may be sought.

The date of this protocol is.....5 Dec 2017

Signatories:

Approved Regulators	Signed on behalf of the Regulator
Solicitors Regulation Authority	 Name: Position: Head of Legal Policy
Council for Licensed Conveyancers	 Name: Sheila A. Kumar Position: CEO

Explanations

Approved regulators are designated under Part 1 of Schedule 4 of the LSA 2007 in respect of reserved legal activities as specified in the Schedule. Approved regulators authorise individuals to carry on any reserved legal activity in respect of which it is a relevant¹ approved regulator. Approved regulators also regulate traditional entities² pursuant to the LSA 2007 and other legislation applicable to each regulator. In most cases where the Approved Regulator is also the representative body, regulatory functions are delegated to front line regulators.

Licensing authorities are permitted under the LSA 2007 to license entities known as licensed bodies which can provide reserved legal services alongside non-reserved and non-legal services. An approved regulator may be designated as a licensing authority under Part 1 of Schedule 10 of the LSA 2007 in respect of its approved reserved legal activities.

Individuals are regulated personally by their own professional regulator but may be involved in an entity which itself is regulated by a different regulator being either a licensing authority or an approved regulator. In these cases, such an individual may also be regulated by the entity regulator.

¹ An approved regulator is a 'relevant approved regulator' in relation to an activity which is a reserved legal activity of which the approved regulator is designated by Part 1, or under Part 2, of Schedule 4 to that reserved legal activity (520(3)(a) of LSA 2007)

² Firms delivering only legal services

Annex 1 - Bilateral Memorandum of Understanding (MOU) between the Council for Licensed Conveyancers (CLC) and Solicitors Regulation Authority (SRA) signed in September 2015

Memorandum of Understanding

between

Council for Licensed Conveyancers

and

Solicitors Regulation Authority

Introduction

- 1 The Solicitors Regulation Authority (SRA) and Council for Licensed Conveyancers (CLC) are committed to working together to establish working arrangements to facilitate the operation of the Framework MOU dated 2 May 2012.
2. The aims of this Memorandum include:
 - a. To assist both parties in their regulatory 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 CLC;
 - c. As far as reasonably practical, to prevent or resolve regulatory conflicts and prevent unnecessary duplication;
 - d. a mechanism for resolving complex issues and to ensure consumers are best informed of the regulatory environment.
3. The CLC and the SRA recognise and respect their differing operational priorities 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 those they regulate.

Legal status and effect

5. 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> In some cases, those holding judicial office are also regulated by the SRA.
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 CLC regulates those qualified to provide conveyancing and probate services, including Alternative Business Structures when licensed by it. Established by the Administration of Justice Act 1985, the CLC is bound by the regulatory objectives of the Legal Services Act 2007.

Protecting the financial interests of consumers

8. The parties will co-ordinate their regulatory work to help protect the financial interests of consumers in relation to indemnity and compensation arrangements. It is recognised that:
 - a. absolute protection is not achievable at reasonable cost;
 - b. this is ultimately reflected in the cost of legal services to the public;
 - c. compensation funds provide appropriate mitigation by way of discretionary grants to relieve or mitigate loss or hardship (section 21(2) of the LSA 2007);
 - d. a primary aim of this Memorandum of Understanding is to avoid or mitigate the risk of consumers who are likely to benefit from grants being adversely affected by delay or uncertainty as to which approved regulator will deal with their application.

Sharing information and co-ordinated oversight; minimising duplication

9. 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;
 - iv. minimise the risk to clients;
 - v. ensure clients understand who is dealing with matters;
 - vi. resolve regulatory conflicts; and
 - vii. minimise duplication;

- b. ensure that alleged criminality, misconduct or other failures are properly investigated and decided upon by the most appropriate regulator;
- c. to ensure that the financial interests of consumers are protected and that, so far as reasonably practicable, the direction of complaints and redress are transparent and that any complications are invisible to the consumer;

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

10. Where appropriate the parties will co-ordinate their regulatory work. This may include sharing the context of work by one party in relation to the other, such as potential risks to consumers and outcomes sought. Where a risk of duplication or inconsistency exists each party will work towards a resolution which best protects consumers and the general public, contains costs and ensures consistency.
11. In all cases, 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.
12. 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).
13. The parties agree to ensure that disclosures to the other party are lawful.
14. The SRA may seek information from the CLC pursuant to section 44BB of the Solicitors Act 1974 or any analogous or replacement power.
15. 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).

Transparency

16. Each regulator agrees to keep relevant consumers fully informed so as to ensure they understand:
 - a. who regulates relevant individuals and entities;
 - b. the protections afforded in each case, including any limitations of protection;
 - c. to which regulator complaints should be addressed; and
 - d. where redress may be sought.

Practical exchange of information

17. All information to be provided to the SRA should be passed via the nominated Single Point Of Contact (SPOC).

Resolution of regulatory conflicts or duplication

18. Where appropriate, the parties agree to co-operate to avoid action that prejudices or may prejudice an investigation or proceedings by the other party or another person and to resolve regulatory conflicts.
19. Where lawful to do so the parties agree to disclose information about investigations which may affect the decision of the other in terms of timing or final outcomes.

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

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

Costs/charges

21. No charges will be made.

Resolving issues

22. 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

23. This Memorandum will remain in force until terminated by either party. The parties will use their best endeavours to review its operation every two years and in line with the Framework Memorandum of Understanding.
24. Any changes to this Memorandum may be agreed in writing.

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

Signatories



..... for SRA Date 5 December 2017

Name: Carol Westrop

Description:

Head of Legal Policy; General Council Directorate



..... for CLC Date 5 December 2017

Name: Simon Blandy

Description:

Director of Policy and Standards