

Framework Memorandum of Understanding

To assist the approved regulators of legal services in their regulatory work for the public interest

June 2017



This Framework Memorandum of Understanding does not override other Memorandum of Understandings that may have already been agreed bilaterally between the regulators of legal services.

Framework Memorandum of Understanding

Introduction

1. The Legal Services Act 2007 (LSA 2007) regulates and authorises the provision of legal services alone, or in conjunction with, the provision of non-legal services through entities. In permitting the provision of these services the LSA 2007 provides for the designation of specified regulators appointed to authorise individuals and entities. These regulators, along with other professional regulators, monitor and control individuals involved in these entities. The aim of this Memorandum is to help the regulators to work collaboratively in exercising their public functions and to meet the needs of consumers.
2. The parties to this Memorandum of Understanding are:
 - a) approved regulators as defined by the LSA 2007;
 - b) licensing authorities as defined in the LSA 2007; and
 - c) professional regulators (for the purposes of this Memorandum are those not falling within a) or b)) which regulate the conduct of firms and individuals within their jurisdiction, where those firms and individuals are licensed or approved bodies for the supply of legal services under the LSA 2007.
3. Nothing in this Memorandum of Understanding shall, or is intended to:
 - a) create any legal or procedural right or obligation which is enforceable by any of the parties against another;
 - b) create any legal or procedural right or obligation which is enforceable by any third party against the parties, or against any other third party;
 - c) prevent the parties from complying with any law which applies to them;
 - 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 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 (in so far as acting would not conflict with any legal obligation).

4. **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 and entities to carry on reserved

legal activities for which they are relevant¹ approved regulators. Approved regulators may authorise entities in cases where all managers and owners² of those entities are authorised persons. In most cases where the Approved Regulator is also the representative body, regulatory functions are delegated to front line regulators.

5. **Licensing authorities** are permitted under the LSA 2007 to license entities known as licensed bodies in cases where not all managers or owners of the entities are authorised persons. 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.
6. 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.
7. This Memorandum of Understanding seeks to clarify, so far as is practicable, the roles of the approved regulators, licensing authorities and professional regulators.
8. This Memorandum of Understanding recognises that the parties have duties to exercise various functions autonomously and in the public interest. Approved regulators and licensing authorities are required to act compatibly with the regulatory objectives set out in s1 of the LSA 2007. The professional regulators each have their own statutory and non-statutory objectives.
9. The aims of this Memorandum include:
 - a) To assist the 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 parties;
 - c) To assist in meeting the requirements of sections 52 (conflicts between approved regulators) and 54 (conflicts between approved regulators and other professional regulators) of the LSA 2007 in so far as reasonably practicable so as to:
 - (i) prevent regulatory conflicts;
 - (ii) provide for the resolution of any regulatory conflicts which arise; and
 - (iii) prevent unnecessary duplication of regulatory provisions made by regulatory and professional bodies.
 - d) To support the parties in keeping consumers informed about who regulates which individuals and entities.

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 (S20(3)(a) of LSA 2007)

² With the exception of de minimis holdings.

Sharing information

10. 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) identify the risk of financial failure;
 - (iv) minimise the risk to consumers;
 - (v) ensure clients understand which regulator is dealing with matters;
 - (vi) resolve regulatory conflicts; and
 - (vii) minimise duplication.
 - b) ensure that alleged 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 is transparent
provided that;
 - (i) the recipient is reasonably considered able to take regulatory or other proper action upon the information; and
 - (ii) for the purposes of any future Freedom of Information request, all disclosures are made in confidence.
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, the Freedom of Information Act 2000 (where it relates to that body) and any related or analogous legislation;
 - b) keep the information secure;
 - c) use the information only for proper purposes, such as regulatory, disciplinary, 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.

As part of this clause it is recognised that the Financial Conduct Authority (FCA) may only disclose information where such disclosure is permitted under the Financial Services and Markets Act 2000 (Disclosure of Confidential Information Regulations) 2001.

It is further recognised that the LSS may only disclose information in compliance with s52 of the Legal Profession and Legal Aid (Scotland) Act 2007.

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.
13. 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 always apply as a matter of law).

Co-ordinated oversight: minimising duplication

14. Investigations will usually be undertaken or led by the regulator of the entity rather than by the regulator of any particular individual within it. However, where that entity regulator identifies that an individual involved in that entity may present a risk to the public interest, the entity regulator will notify the individual's regulator unless it is unlawful to do so. In those circumstances the entity regulator will determine what information may be disclosed in accordance with paragraph 10 of this agreement.
15. Where appropriate the parties will co-operate in co-ordinating the oversight of any investigations (and related matters such as consequential action) with the aim of ensuring :
 - a) action is effective in protecting the public;
 - b) investigations are not prejudiced;
 - c) investigations and consequential action, in so far as reasonably practicable, are not duplicated; and
 - d) regulatory cost is proportionate.

Where oversight bodies have initiated investigations under statutory powers in connection with a firm or individual then other regulatory bodies may suspend their own activity until those investigations have been completed.

Protecting the interests of consumers

16. Each party agrees to aim to keep relevant consumers fully informed so that 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 and how redress may be sought.
17. It is agreed that the FCA will maintain requirements for any licensed body it regulates to arrange adequate protection for client money, so that
- a) client money held by a licensed body is held separately from other money it holds, where possible and client money held in relation to the provision of legal services is held in accordance with the requirements of the relevant/appropriate Regulator ; and
 - b) the overarching principle that clients' money must be protected at all times is met.
18. The parties will co-ordinate their regulatory work to help protect the financial interests of consumers in relation to indemnity and compensation fund arrangements where these apply. The parties will work to mitigate the risk of consumers being adversely affected by delay or uncertainty as to which regulator will deal any relevant compensation fund application. The parties will, so far as reasonably practicable and subject to matters in the control of independent statutory compensation schemes, endeavour to:
- a) signpost consumers to the appropriate insurance or compensation scheme in response to individual queries;
 - b) minimise complexity and delay for consumers and others involved in any claim or application for compensation; and
 - c) promptly resolve any uncertainty as to liability, jurisdiction or coverage of insurance or compensation schemes and provide clear guidance to the consumer as to how to pursue recovery.

Resolution of conflict

19. Parties are expected to cooperate with each other if a dispute arises. Parties to the agreement will seek to:
- a) avoid disputes arising in the first instance; and
 - b) settle disputes amicably if/when they do arise.

Where disputes do arise, the points at issue need to be fully documented in a format readily understood by a third party. Where necessary, disputes will be referred to senior management or any relevant committees in the respective regulators for resolution.”

General

20. The parties will provide each other with points of contact to ensure prompt co-operation and communication on practical and other issues arising from the operation of this Memorandum.
21. This memorandum may be reviewed at any time at the request of one of the parties but will in any event be reviewed within 3 years of its date.
22. This Memorandum is a public document and may be published by any party.

The date of this memorandum of understanding is 1 June 2017.