

**Memorandum of Understanding**  
**between**  
**Solicitors Regulation Authority (SRA)**  
**and**  
**The Pensions Regulator**

## **1. About this Memorandum**

### **1.1 Parties**

The parties to this Memorandum of Understanding are:

- The Pensions Regulator;<sup>1</sup> and
- The Solicitors Regulation Authority.<sup>2</sup>  
(hereafter referred to as 'the parties')

### **1.2 Aims and purposes**

The purposes of this Memorandum of Understanding are:

- to outline a practical framework for a closer working relationship between the Solicitors Regulation Authority (hereafter 'the Authority') and the Pensions Regulator (hereafter 'the Regulator'), with the aim of promoting greater co-operation between the two bodies,
- to ensure that such co-operation remains centrally organised and co-ordinated through the designation of a Single Point of Contact in each organisation who will be responsible for overseeing and managing the relationship with the other organisation,
- to promote mutual understanding of the Authority's and the Regulator's respective roles, responsibilities, powers, obligations, constraints, policies and procedures;
- to identify areas of mutual interest or concern, and to identify opportunities for joint working and co-operation;
- to facilitate the lawful and orderly disclosure of information and intelligence between the Authority and the Regulator, so that each may pursue their respective statutory objectives and discharge their respective statutory functions more effectively.

### **1.3 Legal status and effect**

Nothing in this Memorandum of Understanding is intended:

- to create any legal or procedural right or obligation which is enforceable by either of the parties against the other; or
- to 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
- to prevent either of the parties from complying with any law which applies to them; or
- to fetter or restrict in any way whatsoever the exercise of any discretion which the law requires or allows the parties to exercise; or

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<sup>1</sup> The Pensions Regulator is the body corporate established under section 1 of the *Pensions Act 2004*.

<sup>2</sup> The Solicitors Regulation Authority is the independent regulatory body of the Law Society of England and Wales.

- account the express intention of the parties as to its legal status and effect (as set out in section 1.3 above).

## **2. Description of the Parties: their objectives, functions, powers, governing legislation and information sources**

### **2.1 The Pensions Regulator**

#### **2.1.1 Status and role**

The Pensions Regulator is established as a body corporate under section 1 of the Pensions Act 2004.

The Regulator is a non-departmental public body, and its sponsoring department is the Department for Work and Pensions.

The Pensions Regulator is the regulator of 'work-based pension schemes'<sup>3</sup> for the whole of the United Kingdom.

#### **2.1.2 Governing legislation**

The key pieces of primary legislation which govern the activities of the Regulator and the pension schemes which it is responsible for regulating are:

- the Pensions Schemes Act 1993;
- the Pensions Act 1995;
- the Welfare Reform and Pensions Act 1999;
- the Pensions Act 2004; and
- the Pensions Act 2008.

#### **2.1.3 Statutory objectives**

The statutory objectives of The Pensions Regulator are:

- to protect the benefits of members of work-based pension schemes
- to reduce the risk of situations arising which may lead to compensation being payable from the Pension Protection Fund<sup>4</sup>
- to promote and to improve understanding of the good administration of work based pension schemes

<sup>3</sup> A 'work-based pension scheme' is defined as section 5(3) of the Pensions Act 2004 as meaning:

- (a) an occupational pension scheme,
- (b) a personal pension scheme where direct payment arrangements exist in respect of one or more members of the scheme who are employees, or
- (c) a stakeholder pension scheme.

<sup>4</sup> The Pension Protection Fund is a statutory compensation fund for members of pension schemes which cannot meet their liabilities.

From 2012 onwards, a further statutory objective will be added, namely:

The Pensions Regulator passively receives large volumes of information relating to pension schemes, because it is nominated legislation as the destination point for various statutory reports and filings. Various persons involved in the management of pension schemes are required to submit these filings and reports to the Regulator.

In particular, the Pensions Regulator:

- maintains a register of nearly every occupational and personal pension scheme in the UK
- receives a scheme return from the majority of UK pension schemes once every three years, valuing its assets and liabilities and providing information about the scheme and those involved in running it
- receives 'notifiable event' reports from trustees and sponsoring employers (these reports are intended to act as early warning signs that the scheme may be troubled in various ways or may soon become insolvent)
- receives 'breach of law reports' from people involved in managing, administering and advising pension schemes and from the sponsoring employers of pension schemes
- receives information from various public bodies, both local and foreign.

#### **2.1.4 Active investigations**

The Regulator sometimes gathers information more actively, using its formal investigative powers.

In particular, the Regulator has the power to:

- compel the production of pensions-related information through the use of a statutory notice<sup>5</sup>
- inspect premises where pensions-related information is held<sup>6</sup>
- obtain and execute search warrants to investigate various criminal and regulatory matters<sup>7</sup>
- These investigative powers are backed up by criminal sanctions in the case of non-compliance<sup>8</sup>
- The Regulator can also commission a 'Skilled Persons Report' into any technical matter relevant to the regulation of pension schemes.<sup>9</sup>

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<sup>5</sup> Pensions Act 2004 section 72

<sup>6</sup> Pensions Act 2004 section 73

<sup>7</sup> Pensions Act 2004 section 78

<sup>8</sup> Pensions Act 2004 sections 77 and 80

<sup>9</sup> Pensions Act 2004 section 71

## **2.2 The Solicitors Regulation Authority (SRA)**

### **2.2.1 Status and role**

The Authority is the independent regulatory body of the Law Society of England and Wales. It regulates law firms and more than 100,000 solicitors in England and Wales. The rules and regulations of the Authority are detailed and subject to regular updating. Up to date details are in its Handbook on its website at <http://www.sra.org.uk/solicitors/handbook/welcome.page>

### **2.2.2 Regulatory powers**

The Authority has a wide range of powers. These include:

- The power to impose disciplinary sanctions (to rebuke and/or impose a financial penalty in respect of those it regulates, including the power to publish those sanctions where the Authority considers it in the public interest to do so;
- The power to intervene into a practice which effectively closes the practice; the Authority takes possession of file and documents and client and office monies vest in the Authority;
- The power to impose conditions on the recognition or licensing of a firm, approval of non-lawyer managers, the practising certificate of a solicitor or registration of a registered European Lawyer or registered Foreign Lawyer;
- The power to withdraw approval of a non-lawyer Manager;
- The power to refer the conduct of a firm or individual to the Solicitors Disciplinary Tribunal, which has unlimited fining powers and can strike off or suspend solicitors as well as revoke recognition and licences.

### **2.2.3 Information held, received and obtained**

The Authority holds a large amount of information about those it regulates received from numerous sources, including information requested from firms when making applications for recognition or authorisation. Historic details are retained about firm and individuals about previous regulatory history with the Authority.

The Authority has the power to:

- Investigate by inspection of a practice. Reasons for the inspection are usually given, however, we may not do so if, by doing so, it would:
  - a) breach any duty of confidentiality;
  - b) disclose or risk disclosure of a confidential source of information;

- c) significantly increase the risk that those under investigation may destroy evidence, seek to influence witnesses, default, or abscond; or
- d) otherwise prejudice or frustrate an investigation or other regulatory action.

Where the Authority gives reasons, its investigation is not limited to or constrained by the reason given for the investigation.

- serve those it regulates with a notice to provide it with all relevant documents in their possession.

#### **2.2.4 Changes in SPOC to be notified**

Each party will promptly notify the other in writing of any temporary or permanent change in the person designated as its Single Point of Contact.

#### **2.2.5 Availability of SPOC**

The parties will ensure that any vacancy in the position of SPOC is filled promptly, and that there is always somebody within their organisation who can act as the SPOC on a temporary or interim basis where the usual person is unavailable for any reason.

However, the parties, will take care to ensure that the use of temporary or interim SPOCs does not lead to a fragmentation of the role, or to a lack of co-ordination, consistency or comprehensive oversight.

### **3. Regular meetings**

#### **3.1 Timing and location of meetings**

The parties agree to attend regular meetings with each other, at a mutually convenient and agreed time and location.

#### **3.2 Frequency of Meetings**

A meeting between the parties shall be held at least once in every calendar year.

Meetings may be held more frequently by agreement between the parties.

#### **3.3 Notice of meetings**

The Single Point of Contact for each body shall be given reasonable notice of all meetings which are proposed to be held between the management and staff of the Regulator and the management and staff of the Authority.

Notice of such meetings shall always include details of its timing, location and agenda.

### **3.4 Attendance at meetings by Single Point of Contact**

Each body's Single Point of Contact shall be invited to attend all meetings between the members and staff of the Regulator and the members and staff of the Authority, and shall actually attend whenever reasonably practicable.

The parties may also nominate other persons to attend particular meetings, as they think appropriate.

## **4. Entitlements of receiving party**

The receiving party is entitled to assume the lawfulness of any disclosure made to it.

The receiving party is entitled to be notified of:

- any particular restrictions on the use to which the disclosed information can be put, and
- any particular restrictions on onward disclosure

In the absence of notification, the receiving party is entitled to assume that there are no such restrictions.

## **5. Restrictions on disclosure by the Regulator: 'Restricted Information'**

The Regulator is governed by the 'restricted information' provisions in sections 82 to 88, 71 (9), and 235 of the Pensions Act 2004.

In general, information is legally considered 'restricted information' if:

- it was obtained by the Regulator in the exercise of its functions, and
- it relates to the business and affairs of any person

unless:

- it has already been made available to the public from other sources; or
- it is framed so that information relating to any particular person cannot be ascertained by it

A great deal of the information which the Regulator holds will therefore count as 'restricted information'.

Restricted information can only be lawfully disclosed where there is a specific statutory exception authorising its disclosure.

The statutory exceptions authorising disclosure are often termed 'information gateways'.

### **5.1 Unauthorised disclosure of restricted information by the regulator is a criminal offence**

The disclosure of restricted information in circumstances where there is no statutory exception authorising it is a criminal offence. The offence is punishable by a maximum term of two years' imprisonment, or a large fine.

The Regulator will never disclose restricted information to the Authority where to do so would or could constitute a criminal offence.

#### **5.1.2 Information gateways authorising disclosure by the Regulator**

A number of different exceptions may authorise the Regulator to disclose restricted information to the Solicitors Regulation Authority in a particular case.

Although the Authority is not, for its own purposes inhibited by issues of confidentiality or legal professional privilege (LPP), it cannot disclose LPP material and disclosure of confidential material that is not subject to LPP will be considered carefully by the Authority where appropriate to determine whether or not disclosure can properly be made in the public interest. It may be necessary to give notice to the person entitled to the confidentiality to enable them to make representations about the possible disclosure. All disclosures are discretionary.

The requirements of the Data Protection Act 1998 will be complied with at all times, taking into account provisions allowing disclosure when they properly apply.

Requests made by the Regulator to the Authority should be made in writing and supported, where possible, with as much background information, including copies of relevant documents.

Any disclosures made by the Authority to the Regulator will be:

- relevant
- proportionate
- redacted, if necessary, to remove irrelevant material or material which cannot be disclosed legally
- supported by reasons



## **5.2 Disclosure of information: general requirements**

### **5.2.1 Single Point of Contact to be notified of all disclosures made or received**

In order to ensure that the disclosure of information between the parties is centrally co-ordinated and properly recorded, each party's Single Point of Contact must be notified of all disclosures (and requests for disclosures) which the management or staff of the parties make.

### **5.2.2 Maintenance of disclosure log**

Each Party shall maintain a centralised log recording all disclosures made and received from or to the other party.

- the log shall include:
- details of the date of the disclosure;
- the names of the disclosing and receiving individuals;
- a copy of all the disclosed material;
- details of the legal basis for the disclosure and;
- a brief statement of the purpose of the disclosure

Each party shall also maintain a record of all pull requests made and received, whether or not they were satisfied, and if not why not.

Neither the Authority nor the Regulator will disclose information received under the terms of this Memorandum to any other person or body without first consulting the disclosing party.

One party may provide standing authorisation for the other party to make onward disclosure of certain classes of information, where this is convenient and appropriate.

## **5.3 Disclosed information to remain labelled as to its origin and special restrictions**

Disclosed information (and any copies of it, and any repetition of its substance) must be and remain labelled as to:

- its origin;
- any specified restrictions on its use (see section 5.3.4 above)
- any specified restrictions on its onward disclosure (see section 5.3.5 above)
- any such labels must always remain affixed to the disclosed information

When exchanging information the disclosing party will make it with any security classification that applies to it.

### **5.3.1 Secure storage**

The parties will ensure that information received from the other party is always securely stored, taking particular care with information which is stored in electronic form.

### **5.3.2 Restrictions on access**

The parties will ensure that access to information received from the other party is limited to those staff who genuinely need to use it in some legitimate way in the course of their regulatory work.

### **5.3.3 Disposal and destruction**

The parties will ensure that information received from the other party is only retained for so long as it is genuinely needed and not for excessive periods of time.

The parties will comply with the Data Protection Act 1998 and any other laws which govern the retention and destruction of information by public bodies.

Where information received from the other party is physically destroyed or disposed of, it shall be done so securely.

### **5.3.4 Information Security Concerns**

Where either of the parties has concerns about the security of information it has disclosed to the other party, it may request that the other party make reasonable internal enquiries into whether there has been any information security breach and shall inform the other party of the outcome of these enquiries.

### **5.3.5 Pull requests to be made considerately**

The parties agree to appropriately limit the number and nature of such requests, balancing the usefulness of the information for them against the burden for the other party in satisfying the request.

The parties agree to explain their reasons for making a pull request and why the information is important to them.

### **5.3.6 All pull requests made must receive due consideration**

A party who receives a pull request will give due consideration to disclosing the requested information.

### **5.3.7 Reasons for the denial of a pull request to be provided**

Where a party is unable or unwilling to satisfy a pull request in whole or in part (eg because they do not actually have the information, or because it would be unlawful to disclose it, or because retrieving it would be excessively burdensome or costly), they shall promptly inform the requesting party, and provide them with brief reasons as to why they are unwilling or unable to satisfy the request. Where possible, they will confirm whether they do or do not hold the information requested.

The parties agree to provide such a response within a reasonable period following receipt of any pull request.

## **5.4 Manner and form of disclosure**

### **5.4.1 Electronic vs paper**

Wherever possible, the parties will disclose information to each other in electronic rather than paper form.

The parties will avoid the use of unusual file formats if possible and will consult with the other party before disclosing information in unusual file formats.

### **5.4.2 Bulk and recurring disclosure**

Where there is a need to disclose a large amount of information, or to disclose information in a recurring fashion, the parties will consult with each other on what transmission method would be most convenient for them to both send, receive and process.

### **5.4.3 Secure transmission**

The parties will always transmit information to each other in a secure and confidential fashion.

Electronic information will usually be transmitted via the gsi network. Electronic information will always be encrypted or password protected when in transit between the parties.

Paper documents and removable digital media, shall be sent by secure courier, using a recorded delivery service.

- Liaison arrangements

The case-specific protocol will build on the matters agreed in this Memorandum.

Where co-ordinated investigations or joint regulatory actions generate media interest, both parties will liaise with each other and agree in advance, before it is made, the content of any statement that is to be made to the media.

## **6.0 Avoiding prejudice to each others' investigations and regulatory activities**

There may be circumstances where the investigations or regulatory actions of one party have the potential to interfere with, or cause prejudice to, parallel investigations, criminal or civil proceedings or regulatory activities being undertaken by the other party (because, for example, the investigations overlap and relate to the same persons or events).

The parties will endeavour to proactively identify such circumstances and where the potential for prejudice or interference is identified, will consult with each other on how such interference or prejudice might be minimised or avoided.

Either party should notify the other if it becomes aware that the other party is undertaking activities which could cause prejudice to its investigations and regulatory actions. Where either party is notified, it will give serious consideration to ceasing, modifying or delaying the prejudicial activity for the benefit of the other party.

#### 6.1 Availability of witnesses

On request, each party agrees to make members of its staff available to the other where they are reasonably required by the other party to attend any court or tribunal as witnesses in any regulatory, civil or criminal proceedings.

The parties also agree to prepare witness statements where these are necessary to introduce disclosed documents into evidence, or to contextualise them, or prove their provenance or continuity, or for similar reasons.

#### 7. Complaints and disputes: the escalation process

Where either of the parties believes that the other party, or any member of its staff, is not acting in accordance with this Memorandum, or where they wish to propose a change to its terms and/or the way it is being interpreted, operated or applied, they should escalate the matter in accordance with this escalation process and not otherwise.

##### 7.1 Within the Pensions Regulator

In the first instance, they should raise the matter with the Regulator's Single Point of Contact, who for the time being is:

Anna Riley  
01273 627695  
anna.reilly@thepensionsregulator.gsi.gov.uk

#### Signatories



..... for SRA

Date 27 March 2012

Name: David Middleton  
Description: Executive Director - Legal



..... for the SRA

Date 27 March 2012

Name: Stephen Wilmott  
Description: Director of Intelligence & Investigations