

## SRA response

### *Disclosure of Information by the OLC and the LSB, Ministry of Justice consultation*

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#### *Introduction*

1. The Solicitors Regulation Authority (SRA) is the independent regulatory arm of the Law Society for England and Wales. We regulate individual solicitors, certain other lawyers and non lawyers with whom they practise, solicitors' firms and their staff.
2. We welcome the opportunity to take part in this consultation, and have set out some comments below.

#### *SRA comments*

*Q1. Do you agree that the OFT should be included in a section 152(3)(g) order for the purposes of administering the consumer credit licensing scheme and monitoring the fitness of people undertaking estate agency work?*

3. Currently the Office of Fair Trading's (OFT) regulatory functions under the Consumer Credit Act 1974 (as described on page 10 of the consultation paper) are underpinned by information sharing protocols with the SRA and the Legal Complaints Service, whereby information relating to, for example, solicitor suitability for carrying out consumer credit work, can be exchanged with the OFT. We agree that the transfer of consumer-lawyer dispute resolution services from existing approved regulators to the Office for Legal Complaints (OLC) must be supported by a mechanism by which information of relevance to the OFT's regulatory approach regarding solicitors and other lawyers can continue to be communicated. We agree that this must also be the case for information of relevance to the OFT in exercising its functions under the Estate Agents Act 1979.

4. In practice however, we would expect that the OLC's primary point of contact with information relating to regulated individuals and firms would rightly be the approved regulators, and from there that information would channel through to the OFT via existing information sharing protocols. If it is decided to include the OFT in a section 152(3)(g) order we would expect that to be designed and introduced in such a way that does not excessively replicate or impact any existing information sharing arrangements between the OFT and the approved regulators.



*Q2. Do you agree that the FSA should be included in a section 152(3)(g) order for the purpose of regulating the financial services industry?*

5. We agree with the reasoning given on page 11 of the consultation paper, that information sharing protocols should exist to support the Financial Services Authority's (FSA) regulatory approach. Where the OLC identifies information that it believes is of relevance to the FSA, there must be a mechanism for that information to be brought to its attention.

6. However, we would again highlight the existence of memorandums of understanding and information sharing protocols between the FSA and different approved regulators; we would not want to see section 152(3)(g) enacted in such a way that resulted in duplicative channels of communication between the FSA, the OLC and the approved regulators, or in a 'worst-case' scenario resulted in information relating to the conduct of a regulated individual or firm being shared between the FSA and the OLC, but not feeding through to the approved legal services regulator responsible for that individual or firm.

*Q3. Do you agree that the LSC should be included in a section 152(3)(g) order for the purposes of ensuring that lawyers or firms in receipt of legal aid payments are adhering to its standards and contracts?*

7. We agree that the Legal Services Commission (LSC) needs to be able to access the information it requires to support its regulatory approach toward legal providers that receive legal aid payments. However, as lawyers and firms in England and Wales are also regulated by an approved regulator under the Legal Services Act 2007, it is important that information exchanged at this level can also be supplied to the relevant approved regulator – so again we urge caution in the use of a section 152(3)(g) order to achieve this information exchange with the OLC, in order to avoid any compromise of other pre-existing information sharing arrangements between the OLC and the approved regulators.

*Q4. Do you agree that the JAC should be included in a section 152(3)(g) order for the purpose of properly considering the suitability of applicants for judicial office?*

8. As the Judicial Appointments Commission (JAC) will need to liaise with the OLC regarding character and suitability of judiciary applicants we agree that section 152(3)(g) may be a suitable means of formalising this communication.

*Q5. Do you agree that the FRC and its operating bodies should be included in a section 152(3)(g) order for the purposes of exercising their functions?*



9. We agree that the OLC may come across information that may be of relevance to the Financial Reporting Council (FRC), and as such agree that there should be a means of this information being communicated.

*Q6. Do you agree that the CMR should be included in a section 152(3)(g) order for the purpose of regulating the claims management sector?*

10. We agree with the position set out at paragraph 27 of the consultation paper, that the work of the Claims Management Regulator (CMR) needs to be informed by investigations carried out by the approved regulators and in future the OLC. A section 152(3)(g) may be one way of achieving this information flow.

*Q7. Do you agree that the Law Society of Scotland and the Scottish Legal Complaints Commission should be included in a section 152(3)(g) order for the purpose of discharging their regulatory functions?*

11. We agree that the Law Society of Scotland and the Scottish Legal Complaints Commission should be able to share information with the OLC, and receive relevant information in exchange. The best way to achieve this may be to include these bodies in a section 152(3)(g) order, although we would highlight again the importance of enacting this section of the Act in a way that does not detract or bypass the information requirements of the approved regulators.

*Q8. Do you agree that the Law Society of Northern Ireland should be included in a section 152(3)(g) order? What information would these persons or bodies require and for what purpose?*

12. We agree also that the Law Society of Northern Ireland and its complaints handling mechanism should be able to share information with the OLC. We again would highlight our comments above, that the relevant approved regulators must also be party to this information exchange.

*Q9. Are there any regulators of legal services in other jurisdictions that you believe should be included in a section 152(3)(g) order? What information would these persons or bodies require and for what purpose?*

13. We have no specific comments.

*Q10. Do you think there would be value in drafting a more general provision which would allow the OLC to disclose information to all overseas regulators of legal services with regulatory responsibilities in relation to a legal professional that the OLC is investigating?*



14. We believe that interaction with other overseas regulators of legal services is most appropriately managed by the approved regulators who should, in practice, be party to the OLC's investigations already. We believe that the approved regulator(s) with responsibility for regulating the particular legal professional will be best placed to initiate this information exchange, although we expect that this would be likely to involve the OLC by virtue of the investigation itself.

*Q11. Do you agree that the OISC should be included in a section 152(3)(g) order for the purpose of discharging their regulatory functions?*

15. We note that the Immigration and Asylum Act 1999 makes some provision for information sharing already. If it is decided to add the Office of the Immigration Services Commissioner into a section 152(3)(g) order, we would only echo our earlier point, that this should be done in such a way that does not impede approved regulators from also being party to important regulatory information.

*Q12. Do you agree that the Information Commissioner should be included in a section 152(3)(g) order for the purpose of regulating data controllers?*

16. Again, we note the existence already of legislation to support the Information Commissioner in requesting/receiving information from the OLC. Any decision to formalise this arrangement into a section 152(3)(g) should only be taken once there is confidence that such an arrangement would not result in regulatory information bypassing the approved regulators.

*Q13. Are there any other persons or bodies that you believe should be included in a section 152(3)(g) order? What information would these persons or bodies require and for what purpose? Are you aware of any powers that these persons or bodies have that would allow them to obtain or request the desired information were they not to be included in an order?*

17. We have no further comments.

*Q14. Do you agree that the Insolvency Service should be included in a section 168(3)(g) order for the purpose of regulating Recognised Professional Bodies under the Insolvency Act 1986?*

18. We agree that there will be circumstances under which the Insolvency Service might require information from the LSB. When acting in its regulatory capacity toward the authorisation of insolvency practitioners, there may be circumstances under which the exercise of this function might require information relating to the regulatory performance of approved



regulators under the Legal Services Act 2007. We therefore agree it is sensible for these information requirements to be accommodated within formal arrangements made under the Act.

*Q15. Do you agree that the Financial Reporting Council should be included in a section 168(3)(g) order for the purpose of providing oversight regulation of the auditing and accountancy professions?*

19. We have no objections to the proposal to include the Financial Reporting Council or its Professional Oversight Board in a section 168(3)(g). However, we agree that the MoJ is right to conclude at paragraph 40 of the consultation paper that it is more appropriate for the approved regulators to disclose information in the event that it relates to specific regulated persons.

*Q16. Are there any other persons or bodies that you believe should be included in a section 168(3)(g) order? What information would these persons or bodies require and for what purpose? Are you aware of any powers that these persons or bodies have that would not allow them to obtain or request the desired information were they not to be included in an order?*

20. We do not have any further suggestions.

*Q17. Do you know of any persons that might hold information that would be relevant to the exercise of the LSB's functions, who would be restricted from disclosing this information to the LSB if they were not included in an order under section 169(9)? For any persons mentioned, please refer to the legislation or reason for disclosure being restricted in the first instance.*

21. We have no comments.

*Q18. Do you agree with the consultation stage impact assessment attached to this consultation? Do you have any evidence of impacts we have not considered?*

22. We have reviewed the impact assessment and have not identified anything not covered already.