

Memorandum of Understanding

between

**The Office of the Immigration
Services Commissioner (OISC)**

and

**Solicitors Regulation Authority
(SRA)**

Introduction

1. The Office of the Immigration Services Commissioner (OISC) and the Solicitors Regulation Authority (SRA) (“the parties”) are committed to working together to achieve the appropriate public interest outcomes in the prevention, detection, investigation and prosecution of dishonesty and serious misconduct in the work of immigration as regulated by the SRA and the OISC. In support of that aim, this memorandum of understanding (“Memorandum”) sets out the framework for effective liaison and communications between the OISC and the SRA.
2. The aims of this Memorandum include:
 - a. To assist both parties in their investigation, supervision and criminal prosecutions 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 OISC;
3. The OISC 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 in immigration work.

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 OISC was established by the Immigration and Asylum Act 1999 (as amended) to ensure that those who provide immigration advice and services are fit and competent to do so. It may receive complaints about persons providing immigration advice and services irrespective of whether such persons are OISC regulated, or regulated by one of the Designated Qualified Regulators for the purposes of paragraph 1 of schedule 4 to the Legal Services Act 2007.
9. The OISC re-directs complaints related to solicitors practising in England and Wales to the Legal Ombudsman with whom it has an MOU. The Legal Ombudsman only handles service complaints about those solicitors and, under another MOU held with the SRA, re-directs disciplinary matters to the SRA.

Information sharing

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 poor quality or illegal immigration advice and services;
 - ii. minimise the risk of fraud or other criminality; and
 - iii. minimise the risk to clients.
 - b. so that alleged criminality, misconduct, breach of the SRA principles, or other failures are properly investigated and decided upon and,

where appropriate, to assist in the prosecution by OISC before the criminal courts and by the SRA before the Solicitors Disciplinary Tribunal;

- c. to ensure OISC knows when we authorise a firm or have concerns about an individual's fitness to provide immigration advice and services;
- d. understand the working practices of each party, including the relationship between persons regulated by the parties in the public interest;

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

11. The recipient of information received from the other party will:
 - a. comply at all times with the General Data Protection Regulation (GDPR) and UK data protection legislation and any ICO relevant codes of conduct or certifications ;
 - 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 Serious Organised 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 OISC pursuant to section 44BB of the Solicitors Act 1974 or any analogous or replacement power. Pursuant to S.93 (1) Immigration and Asylum Act 1999 (as amended) the SRA may give the Commissioner information which is necessary for the discharge of the Commissioner's functions.
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).

16. The parties agree that, subject to the disclosure being lawful in each case, and in compliance with the paragraphs above, the information described in paragraphs 10 will be exchanged as provided in those paragraphs.
17. In relation to immigration advice and service matters, the SRA will notify the OISC of:
 - a. interventions, as soon as practicable after a formal decision. In most cases, this means the day before the intervention is carried out; in those cases where 'no notice' is given to the relevant practice, notification will be made once the SRA is affecting the intervention;
 - b. a decision to make an application to the Solicitors Disciplinary Tribunal to prosecute a firm or individual within 7 days of the decision;
 - c. the outcome of a prosecution before the Solicitors Disciplinary Tribunal, within 7 days of the decision;
 - d. relevant information about licensable body applicants involving OISC organisations and advisers intending to provide immigration advice or services. Any information of this type will be on a case by case basis;
 - e. A refusal to authorise an individual to provide immigration advice services whether regulated by OISC or not
18. The SRA will as far as reasonably practicable assist the OISC with its criminal prosecutions.

Practical exchange of information

19. All information exchanged between the parties is passed via nominated Single Points Of Contact (SPOC). The nominated SPOC for notification of an intervention decision is the Technical Manager of Client Protection. The nominated point of contact for notification of applications to the Solicitors Disciplinary Tribunal and the outcome of a prosecution is the relevant Legal Adviser appointed to the case. In each case, these points of contact will notify the SRA head of the FCIB.
20. The SRA has a Fraud and Confidential Intelligence Bureau (FCIB) whose role includes the lawful facilitation of intelligence and information sharing with other bodies. The SRA Head of the FCIB acts as a SPOC in all other cases.
21. The SPOC for the OISC is the Intelligence Team Manager.

Additional assistance

22. 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;
- c. working together where needed on external communications affecting both parties jointly;
- d. advice and guidance on its rules of conduct and regulatory procedures to each other, particularly in the course of an investigation by either organisation.

Security and assurance

23. 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 and/or Data Protection Officers.
 - e. only hold it while it is reasonably necessary to keep it;
 - f. destroy it in line with applicable guidelines;
 - g. provide assurance that they have complied with these principles, upon request.

General Data Protection Regulation (GDPR), Data Protection Act 2018 (DPA) and Human Rights Act 1998 (HRA)

24. Both parties undertake to comply with the requirements of:
- a) the GDPR, the DPA and thereafter the General Data Protection Regulation (GDPR) and any relevant ICO codes of conduct or certifications; and
 - b) the HRA; and
 - c) the common law principles of confidentiality and privacy
- in the operation of this agreement.

Freedom of Information (Fol) Act 2000

25. The SRA is not subject to the Fol but in the interests of transparency operates its own Transparency Code. If a Fol request is received in relation in respect of the other party's information the receiving party may inform the other party and invite representations on the potential impact of disclosure.

Costs/charges

26. No charges will be made for sharing information.

Resolving issues

27. Issues and problems that arise between the two will be resolved through discussion by the SPOCs, with escalation to more senior managers where necessary.

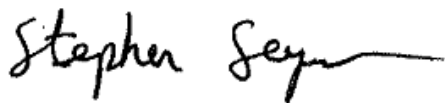
Reporting and review arrangements

28. 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.
29. Any changes to this Memorandum may be agreed in writing.

Transparency

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

Signatories



.....
Name: Stephen Seymour
Description: Director of Operations

for the OISC

Date 1/10/2020



.....
Name: Carol Westrop
Description: Head of Legal Policy

for the SRA

Date 30 9 2020