

Memorandum of Understanding
between
the Solicitors Regulation Authority
and
the Financial Conduct Authority

13 March 2019

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Memorandum of Understanding ("MoU")

Between

**Solicitors Regulation Authority
("SRA")**

and

**Financial Conduct Authority
("FCA")**

Recitals

A. 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 1995, the Courts and Legal Services Act 1990, the Legal Services Act 2007 and the SRA Rules.

B. The FCA is responsible for ensuring that relevant markets function well. In doing so, it aims to advance the protection of consumers, the integrity of the UK financial system and promote effective competition. It is responsible for the conduct regulation of all financial services firms in the UK. As of 1 April 2019, the FCA is the regulator of claims management companies established or serving customers in England, Wales and Scotland. The six sectors of claims management activities regulated by the FCA are personal injury, financial services and products, housing disrepair, specified benefits, criminal injuries, and employment. The FCA's regulation of conduct includes acting to prevent market abuse and ensuring that financial firms treat customers fairly. The FCA is also responsible for the micro-prudential regulation of those financial services firms not supervised by the Prudential Regulation Authority ("PRA"), which include claims management companies.

C. The effect of Article 89N of the RAO is that some claims management activities carried out by legal practitioners are regulated by the SRA as part of the legal services they provide.

D. Sections 56-60 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 set out the statutory ban on referral fees in personal injury cases. The SRA and the FCA both have responsibilities to monitor and enforce the ban. Regulated persons include an authorised person (within the meaning of the Financial Services and Markets Act 2000) of a description specified in regulations made by the Treasury and a person authorised by the SRA to carry on a reserved legal activity within the meaning of the Legal Services Act 2007.

E. This MoU replaces the 2015 MoU between the SRA and the FCA on the statutory ban of referral fees in personal injury under s56-60 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). Otherwise this MoU does not replace, or affect the application of, any other MoU between the SRA and the FCA already in existence.

Operative Part

Interpretation

1. In this MoU, unless the context requires otherwise:

"administering" an applicable law, regulation or requirement includes enforcing the same;

"applicable laws, regulations and requirements" means any law, regulation or requirement applicable in England and Wales, and where the context permits includes:

- (a) relevant European legislation that has not yet been transposed into the law of England and Wales so far as relevant in the UK;
- (b) any law, regulation or requirement applicable in England or Wales; and
- (c) any rule, direction, requirement, guidance or policy made or given by or to be taken into account by an Authority;

"Authority" means the SRA or the FCA (together, the Authorities);

"Authorised body" means: (a) a body that has been authorised by the SRA to practise as a licensed body or a recognised body; or (b) a sole practitioner's practice that has been authorised by the SRA as a recognised sole practice;

"FCA" means the Financial Conduct Authority;

"FCA Authorised person" means (in accordance with section 31 of FSMA (Authorised persons)) one of the following: (a) a person who has a Part 4A permission to carry on one or more regulated activities; (b) an incoming EEA firm; (c) an incoming Treaty firm; (d) a UCITS qualifier; (e) an ICVC; or (f) the Society of Lloyd's, all terms as defined in the FCA's Handbook;

"FCA Rules" means the rules set out in the FCA's Handbook;

"FSMA" means the Financial Services and Markets Act 2000;

"Gateway Regulations" means The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001;

"LASPO" means the Legal Aid Sentencing and Punishment of Offenders Act 2012;

"person" means a natural person, legal entity, partnership or unincorporated association;

"RAO" means Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

"SRA" means the Solicitors Regulation Authority;

"SRA Rules" means the standards and requirements contained in the SRA Handbook or the SRA Standards and Regulations;

Purpose and Principles

2. The purpose of this MoU is to establish a formal basis for co-operation, including the areas of exchanging information, communications, and investigative assistance.
3. Exchange of information is for, but is not limited to, the following purposes:
 - (a) to enable alleged breaches of the Compensation Act 2006, FSMA, Financial Guidance and Claims Act 2018, LASPO, misconduct, breaches of the SRA Rules, breaches of the FCA Rules, or other failures, to be properly investigated and decided upon, and the risk to the public to be assessed;
 - (b) to enable the proper processing of claims or applications for redress or compensation of any description;
 - (c) for the purposes of regulatory, disciplinary or other legal proceedings, whether in public or not, provided that the recipient is reasonably considered able to take regulatory or other proper action upon the information;
 - (d) for the purposes of further lawful disclosure of the information to persons under investigation, witnesses, legal advisers, other regulators, professional bodies, prosecuting bodies, and law enforcement agencies including the police;
 - (e) for the assessment of applications for authorised bodies or FCA authorised persons or other applications where relevant.
4. The Authorities acknowledge that they may only provide information under this MoU if permitted or not prevented under applicable laws, regulations and requirements.

Legal Status and Effect

5. This MoU is a statement of intent and nothing in it shall, or is intended to:
 - a) create any legal or procedural right or obligation which is enforceable by either of the Authorities against the other; or
 - b) create any legal or procedural right or obligation which is enforceable by any third party against either of the Authorities, or against any other third party; or
 - c) prevent either of the Authorities 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 Authorities to exercise; or
 - e) modify or supersede any laws or regulatory requirements in force, or applying in England and Wales and other national laws that may apply; or
 - f) affect any arrangements in any other MoUs; or
 - g) create any legitimate expectation on the part of any person that either of the Authorities will do any act (either at all, or in any particular way, or at any particular time), or will refrain from doing any act.

6. Nevertheless, the Authorities are genuinely committed to pursuing the aims and purposes of this MoU in good faith and intend to act in accordance with its terms on a voluntary basis.

Provision of Unsolicited Information

7. The Authorities may provide information, or arrange for information to be provided, on a voluntary basis even though no request has been made.

Applications for Authorisation of Firms, Suspension and Revocation

8. Notwithstanding paragraphs 23 to 30 below, the Authorities will exchange information on relevant issues of interest to the extent permitted by law, and as appropriate and relevant to their respective objectives. This may include information in relation to applications for authorisation in respect of firms carrying on claims management activities and decisions made in relation to such applications and specifically details of when authorisation is refused, suspended or revoked.
9. In response to a request for information made, either Authority will provide any data or intelligence it holds which may be relevant to the other Authority's assessment of an applicant firm's suitability to be authorised.

Disclosure of information

10. Section 348(1) of FSMA prevents the FCA from disclosing any confidential information it receives except in certain circumstances. Confidential information is defined in section 348(2) of FSMA. Where the information has lawfully been made available to the public or is in the form of a collection of data or a summary so that it cannot be attributed to a particular firm or individual, that information is not confidential information (see section 348(4) of FSMA).
11. The restriction on the disclosure of confidential information under section 348 FSMA does not apply where the person from whom the information was received (and, if different, the person to whom the information relates) has consented to the disclosure of the material.
12. Section 349 of FSMA allows HM Treasury to make regulations to permit the disclosure of confidential information in certain circumstances. The Gateway Regulations set out the circumstances in which disclosure may be made. The Gateway Regulations are permissive, enabling the FCA to disclose information in certain circumstances, but do not compel the FCA to do so.
13. The Gateway Regulations generally permit the disclosure of confidential information to the SRA (in relation to current or former authorised persons) where the disclosure of confidential information is made for the purposes of enabling or assisting the FCA to discharge any of its public functions (see regulation 3(1)(a) of the Gateway Regulations), i.e. its functions under FSMA and certain other legislation.
14. When the FCA discloses confidential information to the SRA, the SRA will be bound by the statutory confidentiality regime in FSMA.
15. 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. The SRA may inspect material that is subject to a law firm's client's legal professional privilege (LPP) but may only use

such material for its regulatory purposes. The SRA also protects 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.

16. An Authority will not make disclosures to the other which are:
 - contrary to common law principles; or
 - contrary to the General Data Protection Regulation (including as saved with the European Union (Withdrawal) Act 2018, the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 and any subsequent analogous legislation) and the Data Protection Act 2018, along with any relevant codes or certifications; or
 - prohibited by Part 1 of the Regulatory Investigations Powers Act 2000); or
 - contrary to the Human Rights Act 1998 and other relevant legislation.
17. An Authority that receives non-public information under this MoU will only further disclose information sent to it in accordance with disclosure permitted under its applicable laws, regulations and requirements. The recipient Authority will endeavour to consult with the other Authority if it proposes to pass on information to another person if lawful to do so. The recipient Authority will endeavour to comply with any restrictions on the use of information that are imposed when the information is provided. In the absence of any such restrictions, the recipient Authority may assume that there are no such restrictions (other than any restrictions that apply as a matter of law).
18. The SRA is not subject to the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations (EIR), however, as a transparent regulator the SRA applies its own SRA Transparency Code (the Code) in a similar way to the FOIA. If the SRA receives an SRA Transparency Code request for information provided to it by the FCA, the SRA will inform the FCA of the request. The FCA will then inform the SRA whether it considers that the information should be released under the Code, and if not, the FCA will provide the SRA with the details of its concerns to assist the SRA in its decision making. Any final decision in relation to a Code request to the SRA is a matter for the SRA.
19. If there is a legally enforceable demand for information supplied under this MoU, the Authority receiving the demand will notify the Authority that supplied the information of the demand, unless this is not lawful or practicable for reasons of urgency. The Authority receiving the demand will use all reasonable legal means to resist such a demand, including asserting such appropriate legal exemptions or privileges with respect to that information as may be available.

Regulatory conflicts and duplication of effort

20. In order to ensure effective working, the Authorities will meet periodically in order to discuss investigations or issues of mutual interest. Where possible and in appropriate cases, the Authorities will co-operate in the course of investigations or issues arising with a view to avoiding duplication of investigative work in order to better deliver their respective functions.

21. If simultaneous investigations are carried out the Authorities will coordinate to ensure any enforcement action is, where possible, consistent in both effect and the time it takes.
22. Any issues or difficulties will be resolved through discussions between the Authorities and where necessary will be referred to senior management in the respective organisations for resolution.

Requests for Assistance

23. If a request for assistance is made, each Authority will use reasonable efforts to provide assistance to the other, subject to paragraphs 10 to 19 above. Assistance may include for example:
 - (a) where lawful providing information in the possession of the requested Authority;
 - (b) where lawful confirming or verifying information provided to it for that purpose by the requesting Authority;
 - (c) exchanging information, collaborating on communications or discussing issues of mutual interest;
 - (d) where lawful obtaining specified information and documents from persons; or
 - (e) permitting the representatives of the requesting Authority to participate in the conduct of enquiries made by or on behalf of the requested Authority pursuant to paragraph (d).

Procedure for Requests

24. Requests for the provision of information or other assistance will be made in writing. If a request is made orally this will be confirmed in writing within ten business days. To facilitate assistance, the requesting Authority should specify in any written request:
 - (a) the information or other assistance requested (identity of persons, specific questions to be asked etc.);
 - (b) if information is provided by the requesting Authority for confirmation or verification, the information and the kind of confirmation or verification sought;
 - (c) the purpose for which the information or other assistance is sought;
 - (d) to whom, if anyone, onward disclosure of information provided to the requesting Authority is likely to be necessary and, in relation to onward disclosure to a person who is not a permitted onward recipient, the purpose such disclosure would serve;
 - (e) if the request for assistance is for the purpose of actual or possible enforcement investigation or action (including (i) for the purposes of any investigation whatever which is being or may be carried out, whether in the United Kingdom or elsewhere; (ii) for the purposes of any proceedings whatever which have been or may be initiated, whether in the United Kingdom or elsewhere; or (iii) for the purpose of initiating or bringing to an

end any such investigation or proceedings, or of facilitating a determination of whether it or they should be initiated or brought to an end); and

- (f) any other matters specified by the requested Authority and by the applicable laws, regulations and requirements in relation to the requested Authority.

Investigation and Enforcement

- 25. The Authorities recognise that there are areas in which they have complementary functions and powers. They will therefore endeavour to ensure that in these cases, the most appropriate Authority or Authorities will commence and lead investigations. To the extent permitted by law and having regard to their respective powers, expertise and resources, they will seek to ensure that in cases of investigations, the Authorities will notify each other of significant developments where the other is likely to have an interest. Where appropriate, the Authorities will discuss the steps they propose to take and ensure co-ordination takes place in a timely manner, where possible, allowing for a proper exchange of views.
- 26. The Authorities may refer a matter for action if the other Authority is considered more appropriate to deal with the matter. Any such referral will include the action sought and the legal powers it considers are available to the other. Where the other party determines not to proceed, an explanation will be provided, where possible.
- 27. Where the Authorities agree that an investigation should be carried out by both Authorities, it will usually be appropriate that both investigations proceed in parallel. However, in appropriate circumstances, they will consider whether the particular facts of the matter, as they are known at that time, suggest that one Authority's investigation should proceed before the others.
- 28. Where either Authority carries out any subsequent investigation and proceedings alone, that party will keep the other regularly updated on material aspects of the progress of the investigation.
- 29. If a decision is made by either Authority to take action against a subject, each Authority should consider whether it is possible and would be appropriate to co-ordinate publication of applicable enforcement announcements so that both Authorities publish the outcome of their investigations simultaneously. In any event, the Authorities will endeavour to give the other appropriate notice of any press release or other public statement it intends to make relating to enforcement cases in which the other may have an interest, no later than 24 hours prior to publication unless there are overriding reasons which prevent or delay such notice.
- 30. Relevant FCA and SRA staff will, where appropriate, seek to maintain general awareness and understanding of each other's functions and needs and will liaise with each other to ensure that issues are appropriately identified.

Assessing Requests

- 31. Each request for assistance will be assessed on a case-by-case basis by the requested Authority to determine whether assistance can be provided under the terms of this MoU. In any case where the request cannot be fulfilled in part or whole, the requested Authority will consider whether there may be other assistance which can be given by itself or by any other authority.
- 32. In deciding whether and to what extent to fulfil a request, the requested Authority may take into account:

- (a) whether the request conforms with this MoU;
 - (b) whether the provision of assistance would be unreasonably burdensome to the performance of the requested Authority's functions;
 - (c) whether it would be otherwise contrary to the public interest or the essential national interest of the requested Authority's jurisdiction to give the assistance sought;
 - (d) any other matters specified by the laws, regulations and requirements of the requested Authority's jurisdiction (in particular those relating to confidentiality and professional secrecy, data protection and privacy, and procedural fairness); and
 - (e) whether complying with the request may otherwise be prejudicial to the performance by the requested Authority of its functions.
33. The Authorities recognise that assistance may be denied in whole or in part for any of the reasons mentioned in paragraph 32 in the discretion of the requested Authority.

Contact Points

34. The Authorities will provide a list of contact points to which information or requests for information or assistance under this MoU should be directed.
35. Those individuals will maintain an open dialogue between each other in order to ensure that the MoU remains effective and fit for purpose. They will also seek to identify any difficulties in the working relationship, and proactively seek to minimise the same.

Consultation

36. The Authorities will use their best endeavours to review the operation of this MoU every three years and will consult with each other when necessary with a view to improving its operation and resolving any matters.
37. Any minor changes to this MoU identified between reviews may be agreed in writing between the Authorities.
38. Where the specific conduct set out in the request for assistance may constitute a breach of a law, regulation or requirement, the relevant Authorities will consult to determine the most appropriate means for each Authority to provide assistance.

Commencement

39. This MoU will take effect when both Authorities have signed it, and will continue to have effect until terminated by either Authority giving 30 days advance written notice to the other Authority. It may be amended by agreement in writing.

Transparency

40. This MoU is a public document, and the Authorities may publish it as they separately see fit and will notify the other Authority in good time in advance of such publication.

Executed by the Authorities:

For the SRA



Carol Westrop

Head of Legal Policy

Date: 13 March 2019

For the FCA



Philip Salter

Director of Retail Lending

Date: 13 March 2019