

## **MEMORANDUM OF UNDERSTANDING**

**Between**

**The Solicitors Regulation Authority**

**And**

**The Financial Services Compensation Scheme**

### **Introduction**

1. The Solicitors Regulation Authority (“SRA”) and the Financial Services Compensation Scheme (“FSCS”) (“the parties”) are committed to working together in the public interest to promote best practice amongst law firms representing customers who bring claims for compensation to the FSCS. In support of this aim, this Memorandum of Understanding (“MoU”) sets out the framework for effective liaison and communication between the SRA and the FSCS.
2. The purpose of this MoU is to:
  - a. put in place clear arrangements and practices that will foster an effective and cooperative working relationship between FSCS and the SRA; and
  - b. to provide a framework for the lawful flow of information between the parties.

### **Legal status and effect**

3. Nothing in this MoU 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 in this MoU will do any act (either at all, or in any particular way, or at any particular time) or will refrain from doing any act.
4. Nevertheless, the parties 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.

## **Role of the SRA**

5. The SRA is a company (Solicitors Regulation Authority Limited) registered in England and Wales (company registration number 12608059) whose registered office is at the Cube, 199 Wharfside Street, Birmingham B1 1RN. It is the independent regulatory body responsible for the regulation of legal services by law firms and solicitors in England and 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 2007 and the SRA's Standards and Regulations.
6. The SRA investigates allegations of breaches of its requirements and where appropriate makes findings and imposes disciplinary sanctions. 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.

## **Role of the FSCS**

8. The FSCS was established, as required by the Financial Services and Markets Act 2000 ("FSMA"), as a limited company. As scheme manager, the FSCS is responsible for compensation arrangements for the Financial Conduct Authority ("FCA")-regulated activities under rules made by the FCA. It also administers the scheme protecting deposit and insurance provision in accordance with rules made by the Prudential Regulation Authority ("PRA").
9. The FSCS, as scheme manager, is independent from, but accountable to, both the FCA and the PRA for the effective operation of the scheme. The day-to-day operation of the Scheme is the responsibility of the FSCS and its board.
10. FSCS is responsible for establishing and implementing procedures to enable FSCS to perform its relevant function, raising levies for management expenses and compensation costs for the use of its resources in an efficient and economic way and for reporting to the FCA on the discharge of its function.
11. The FSCS, as a major creditor of failed financial services' businesses, also has a responsibility to seek to recover as much as it can from the estates of those

businesses and/or from third parties responsible for consumers' losses in order to offset the costs of compensation.

12. FSCS also has a strategic objective to share what it learns about the causes and consequences of failures with government and regulators. This is done with the ambition of contributing to improving regulation, preventing future firm failures and preventing consumer detriment.

### **Information sharing**

13. 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) protect clients or beneficiaries (iii) minimise the risk of fraud or other criminality and (iv) identify the risk of financial failure;
- b. so that alleged criminality, misconduct, breaches of the SRA Principles or other failures are properly investigated and decided upon;
- c. to enable the proper processing of claims or applications for redress or compensation of any description; and
- d. 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 receipt of the information.

14. The recipient of information received from the other party will:

- a. comply at all times with UK data protection legislation and any relevant codes of conduct or certifications
- 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.

15. 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.

16. The parties agree to ensure that disclosures to the other party are lawful including the common law principles of confidentiality and privacy and the Human Rights Act 1998.

17. 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
- c. in the absence of such notification the receiving party will assume that there are no further restrictions except those which apply as a matter of law.

18. The parties agree that, where one party has received information from the other, they will seek consent before passing the information on to a third party, subject to any duties under any applicable laws.

### **Practical exchange of information and relevant points of contact**

19. Where matters of policy, principle or general issues that the FSCS or SRA think could pose a risk to customers or other joint interests not relating to a specific case need to be raised, the relevant point of contact at the SRA will be the Intelligence Manager of the Intelligence Unit who will liaise directly with the relevant point of contact at the FSCS, namely the Relationship Manager and Head of Service Delivery for the FSCS.

20. Where the SRA and FSCS wish to communicate in respect of specific firms of solicitors that are, or could be, causing customer detriment or significantly hindering the operation of FSCS, the contact at the SRA will be the Intelligence Manager of the Intelligence Unit who will liaise directly with the Relationship Manager and Head of Service Delivery for the FSCS.

### **Security and assurance**

21. The parties agree to:

- a. only use the data for the purposes for which they have received it;
- b. store the data securely;
- c. ensure that only people who have a genuine business need to see the data will have access to it;
- d. report data losses or wrongful disclosure to the relevant points of contact as detailed in paragraph 19 and to each organisation's designated data controller;
- e. only hold the data while there is a business need to keep it and in accordance with data protection legislation;

- f. destroy the data in line with retention policies; and
- g. upon request, provide assurance that they have complied with these principles.

### **Freedom of information Act 2000 (“FOIA”)**

- 22. The FSCS is not bound by the FOIA. However, when there is a request for information from a member of the public under relevant freedom of information law (which is binding on the party receiving it or with which the receiving party wishes to voluntarily comply), the party receiving the request will inform the other party and invite representations on the potential impact of disclosure.
- 23. The SRA similarly is not subject to the provisions of the FOIA, however as a transparent regulator the SRA applies its own Transparency Code in a similar way to the FOIA.

### **Costs/charges/liability**

- 24. No charges will be made in relation to the supply of information by either party. Neither party shall be liable to the other for any loss howsoever arising in connection with this agreement in so far as permitted by law.

### **Resolving issues**

- 25. Issues and problems that arise between the parties will be resolved through discussion by the relevant points of contact as detailed in paragraph 19 with escalation to more senior managers where necessary.

### **Reporting and reviewing arrangements**

- 26. This MoU will remain in force until terminated by either party.
- 27. The signatories of the parties will use their best endeavours to review the operation of this MoU on an annual basis.
- 28. Any changes to this MoU must be agreed in writing.

### **Transparency**

- 29. This MoU is a public document, and the parties may publish it as they separately see fit.