

Dated
28th June 2016

Memorandum of Understanding

Between

The Law Society of Scotland

and

the Council for Licensed Conveyancers

Introduction

1. The Legal Services Act 2007 (LSA 2007) provides a licensing framework that permits licensed bodies (LBs) to provide reserved legal services alongside non-reserved and non-legal services. This facilitates the creation of alternative business structures (ABS) which can provide a potentially wide range of services. This may lead to the establishment of firms (including individuals within them) that are subject to the oversight of one or more regulators or professional bodies. This memorandum of understanding seeks to clarify so far as is practicable the roles of the regulators and professional bodies. One of the purposes of this memorandum of understanding is to contribute to the requirements of section 54 LSA 2007 (set out in full in Annex 2) to “make such provision as is reasonably practicable and, in all the circumstances, appropriate—
 - (a) to prevent external regulatory conflicts;
 - (b) to provide for the resolution of any external regulatory conflicts which arise; and
 - (c) to prevent unnecessary duplication of regulatory provisions made by an external regulatory body”.
2. This memorandum of understanding also takes into account the Guidance (relevant extracts of which are set out in Annex 3) issued by the Legal Services Board requiring a single framework memorandum of understanding to be implemented by all relevant bodies and provide a mechanism to resolve overlaps in ways which:
 - (a) provide the best form of consumer protection and redress;
 - (b) minimise confusion for market participants; and
 - (c) reduce/remove conflict in the future.
3. This memorandum of understanding recognises that regulators and professional bodies have duties to exercise various functions (sometimes deriving from statute) autonomously and in the public interest or with the public interest in mind. Co-operation and appropriate information sharing should provide clarity for consumers and regulated businesses and should also reduce regulatory cost by minimising duplication of effort by all concerned.
4. The parties to this memorandum of understanding (“the Regulators”) are:

- 4.1 approved regulators as defined in the LSA 2007 (and which, for the avoidance of doubt, means entities which exercise the regulatory functions of bodies specified as approved regulators in the LSA 2007);
 - 4.2 licensing authorities as defined in the LSA 2007; and
 - 4.3 other regulators or professional bodies which do not come within 4.1 or 4.2 but which oversee the conduct of their members or of other persons within their jurisdiction and who, for the purposes of this memorandum of understanding, are involved in LBs.
5. This memorandum of understanding records non-binding arrangements between the Regulators, which are bodies that regulate, inspect, or oversee the carrying on of various activities by individuals and LBs. This memorandum also records a mutual understanding of the public interest in proper co-operation and co-ordination, particularly in the light of the obligation on approved regulators and licensing authorities to act in a way which is compatible with the regulatory objectives set out in section 1 of the LSA 2007 (see Annex 1). It provides a framework for co-operation, co-ordination and exchange of information in order to facilitate effective public protection and working relationships. It does not create legal rights or liabilities, but is a statement of intent, comprising principles to which the signatories will adhere so far as they practicably and lawfully can.
6. Approved regulators are required to act compatibly with the regulatory objectives set out in section 1 of the LSA 2007. Approved regulators acknowledge that other regulators have their own statutory or non-statutory objectives.

Principles

7. The regulatory objectives in the LSA 2007 establish the key guiding principles of this memorandum of understanding. Further agreed principles are set out below to assist in a fuller understanding of how the Regulators will communicate and cooperate to facilitate the proper exercise of their functions, avoid duplication, avoid conflict between differing regulatory arrangements, and seek to ensure that consumers and others do not suffer detriment as a result of failure to co-operate or co-ordinate.

Sharing of information

8. Where it is lawful and in the public interest to do so, the Regulators agree to disclose information to one or other of the Regulators that is a

signatory to this memorandum of understanding as provided in Annex 4.

Co-ordinated oversight: minimising duplication so far as is reasonably practicable

9. The Regulators will co-operate where appropriate in co-ordinating oversight and investigation (and related matters such as consequential action) so that:
 - 9.1 action is effective in protecting the public;
 - 9.2 investigations are not prejudiced; and
 - 9.3 regulatory cost is proportionate.

10. Investigations will usually be undertaken or led by the regulator of the entity rather than any particular individual within it.

11. When one of the Regulators identifies that an investigation of an LB or a person within it is desirable, it will endeavour to identify whether any other of the Regulators has a proper interest in the issues or persons to be investigated and, if so, discuss the proposed investigation with a view to agreeing whether one of the Regulators or both should pursue an investigation.

12. It is desirable to minimise the risk of duplicative and potentially inconsistent acts and decisions on the same facts by the Regulators and tribunals or committees before which they bring cases. The risks include:
 - 12.1 the same or similar issues of fact are subject to dispute in more than one forum;
 - 12.2 witnesses and respondents are engaged in parallel or sequential proceedings on the same facts;
 - 12.3 cost is unnecessarily imposed on respondents and the Regulators; and
 - 12.4 decisions are inconsistent.

13. While acknowledging that there are legal and practical difficulties (such as differences between the rules of independent tribunals), the following working principles are agreed as outcomes which the

Regulators would wish to achieve (acknowledging also the differing structures of Regulators' investigation and disciplinary processes):

- 13.1 the evidence obtained by one of the Regulators should be admissible in action by others:
 - 13.1.1 the Regulators' rules should permit the admission of such evidence;
 - 13.1.2 the Regulators should make submissions at an appropriate time to any independent tribunal or committee to the effect that its rules should permit the admission of such evidence; and
 - 13.1.3 the Regulators should make submissions and applications in individual cases, so far as is appropriate and lawful, to support the principle that such evidence be admitted.
- 13.2 The formal findings of other Regulators or of any court or tribunal in matters conducted by another of the Regulators should be admissible in the proceedings of, or conducted by, recipient Regulators as evidence of the facts found.
14. Any of the Regulators who provide evidence or findings to another of the Regulators will co-operate so far as is reasonably practicable in making that evidence formally available for the purposes of proceedings by or involving the recipient Regulator, such as by the provision of live witnesses and/or written evidence.
15. Regulators will notify other Regulators of findings against the latter's members or those they regulate.

Protecting the financial interests of consumers

16. It is agreed that:
 - 16.1 client money held by an LB should be held separately from other money it holds, and client money held in relation to the provision of legal services should be held in accordance with the requirements of the relevant regulating authority governing the LB; and
 - 16.2 the overarching principle is that clients' money must be protected at all times.
17. The Regulators will work together to reduce differences in respect of the treatment of clients' money by those they regulate. Standards and

definitions should be as similar as possible and guidance should be agreed so far as possible to assist LBs to deal with complex situations.

18. The Regulators will work together to assist consumers to understand what activities of an LB are, and are not, subject to regulatory protections and in particular indemnity insurance and compensation arrangements.
19. Where there is loss to clients or others that may be covered by indemnity insurance or other compensation arrangements (such as a compensation fund or scheme), the Regulators will so far as reasonably practicable and, subject to matters in the control of independent statutory compensation schemes, endeavour:
 - 19.1 to signpost consumers to the appropriate insurance or compensation scheme systematically and in response to individual queries;
 - 19.2 to minimise complexity and delay for consumers and others involved in any claim or application for compensation;
 - 19.3 to promptly resolve any uncertainty as to liability, jurisdiction or coverage of insurance or compensation schemes and provide clear guidance to the consumer as to how to pursue recovery, and (if such uncertainty cannot be promptly and conclusively resolved), to seek to ensure that consumers' claims or applications are dealt with by one insurer or compensation scheme, on the basis that ultimate responsibility for such claims or applications is subsequently resolved between the insurer or compensation scheme and such other applicable insurer or compensation scheme; and
 - 19.4 to work towards insurance and compensation schemes that formalise the approach described above, perhaps by powers vested in the Regulator to direct particular insurers or schemes initially to deal with claims or applications on the basis that responsibility will be resolved subsequently.

Resolution of regulatory conflicts

20. The Regulators will work together to seek to establish appropriate arrangements to prevent and where necessary to resolve regulatory conflicts. This may include:
 - 20.1 further memoranda of understanding dealing with particular subjects in more detail;

- 20.2 the establishment or continuation of working groups to reduce inconsistency or uncertainty in regulatory obligations where appropriate;
- 20.3 informal resolution mechanisms for procedural issues such as prompt resolution of disagreement about how investigations should be sequenced or co-ordinated; and
- 20.4 formal resolution mechanisms for issues that create risk to consumers such as those that might otherwise cause delay in the processing or payment of compensation.

Transparency

21. The Regulators will work together to agree common standards as to:
 - 21.1 information to be provided to consumers about the status of the person acting for them, who regulates them and how to complain;
 - 21.2 signposting of consumers to the correct complaints or redress scheme;
 - 21.3 transparency in the publication of regulatory decisions; and
 - 21.4 clarity and transparency for regulated businesses in understanding how they are regulated.

General

22. The Regulators will provide each other with points of contact to ensure prompt co-operation and communication on practical and other issues arising.
23. This memorandum of understanding may be reviewed at any time at the request of one of the Regulators but will in any event be reviewed within 3 years of its date.
24. This memorandum is a public document and may be published by any Regulator.

The date of this memorandum of understanding is

Signatories:

Signed on behalf of the Regulator:

Council for Licensed Conveyancers



.....
Name: Simon Blandy

Position: Director of Regulatory Standards

Law Society of Scotland



.....
Name: LORNA JACK

Position: CEO

Annex 1

1 The regulatory objectives

- (1) In this Act a reference to “the regulatory objectives” is a reference to the objectives of—
- (a) protecting and promoting the public interest;
 - (b) supporting the constitutional principle of the rule of law;
 - (c) improving access to justice;
 - (d) protecting and promoting the interests of consumers;
 - (e) promoting competition in the provision of services within subsection (2);
 - (f) encouraging an independent, strong, diverse and effective legal profession;
 - (g) increasing public understanding of the citizen’s legal rights and duties; and
-
- (h) promoting and maintaining adherence to the professional principles.
- (2) The services within this subsection are services such as are provided by authorised persons (including services which do not involve the carrying on of activities which are reserved legal activities).
- (3) The “professional principles” are—
- (a) that authorised persons should act with independence and integrity;
 - (b) that authorised persons should maintain proper standards of work;
 - (c) that authorised persons should act in the best interests of their clients,
 - (d) that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice; and
 - (e) that the affairs of clients should be kept confidential.

- (4) In this section "authorised persons" means authorised persons in relation to activities which are reserved legal activities.

Annex 2

54 Regulatory conflict with other regulatory regimes

- (1) The regulatory arrangements of an approved regulator must make such provision as is reasonably practicable and, in all the circumstances, appropriate—
 - (a) to prevent external regulatory conflicts;
 - (b) to provide for the resolution of any external regulatory conflicts which arise; and
 - (c) to prevent unnecessary duplication of regulatory provisions made by an external regulatory body.
- (2) For the purposes of this section, an external regulatory conflict is a conflict between—
 - (a) a requirement of the regulatory arrangements of the approved regulator; and
 - (b) a requirement of any regulatory provision made by an external regulatory body.
- (3) For this purpose "external regulatory body" means a person (other than an approved regulator) who exercises regulatory functions in relation to a particular description of persons with a view to ensuring compliance with rules (whether statutory or non-statutory) by those persons.
- (4) Regulatory arrangements made for the purposes of subsection (1)(b) may, with the consent of the Board, provide for the Board to exercise functions in connection with the resolution of conflicts.

Annex 3

**Extract from “Alternative business structures: approaches to licensing
Guidance to licensing authorities on the content of licensing rules”
(Legal Services Board, [date])**

Regulatory overlaps

29. A single framework Memorandum of Understanding (“MoU”) is implemented by all relevant bodies and provides a mechanism to resolve overlaps in ways which:

provide the best form of consumer protection and redress;

minimise confusion for market participants; and

reduce/remove conflict in future.

...

Requirement:

Licensing rules of a Licensing Authority must contain the provision required by Sections 52 and 54 (resolution of regulatory conflict) (including those provisions as applied by Section 103) (section 83(5)(f))

Guidance:

58. LAs must set out the details of how they comply with this requirement. This includes how they will interact with other regulators (including any Memoranda of Understanding). We also expect LAs to identify any conflicts with other regulators’ arrangements and the steps they have taken to try to resolve them.

Annex 4

Information Sharing

1. Where it is lawful and in the public interest to do so, the Regulators agree to disclose information to one or other of the Regulators that is a signatory to this memorandum of understanding:

1.1 to enable the assessment of risk to the public such as to:

1.1.1 minimise the risk of financial default;

1.1.2 minimise the risk of fraud;

1.1.3 identify the risk of financial failure; and

1.1.4 identify increasing complaints or other concerns about the LB or persons within it.

1.2 so that alleged misconduct or other failures are properly investigated and decided upon;

1.3 to enable the proper processing of claims or applications for redress or compensation of any description; and

1.4 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 action upon the information.

2. Any Regulator that receives or holds information received from another of the Regulators must:

2.1 comply at all times with the Data Protection Act 1998 and any related or analogous legislation;

2.2 keep the information secure;

2.3 use the information only for proper purposes, such as regulatory, disciplinary or other legal investigations or proceedings; and

2.4 not unreasonably take action that prejudices or may prejudice an investigation by another party or person.

3. 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 National Crime Agency (or any body that in future carries out the functions of such bodies).

4. So far as they can lawfully do so, Regulators will require those they regulate or oversee to consent to the sharing of information with others who have a proper interest in receiving it (such as the parties to this memorandum of understanding) by the use of licence conditions or analogous mechanisms.

[ends]