

Memorandum of Understanding

between

Insolvency Service (INSS)

and

**Solicitors Regulation Authority
(SRA)**



Introduction

1. The Insolvency Service (INSS) and the Solicitors Regulation Authority (SRA) ("the parties") are committed to working together to achieve the appropriate public interest outcomes in the investigation and enforcement of financial and corporate misconduct in the community regulated by the SRA and the INSS. In support of that aim, this memorandum of understanding ("Memorandum") sets out the framework for effective liaison and communications between the INSS and the SRA.
2. The aims of this Memorandum include:
 - a. the provision of assistance to both parties in the investigation and enforcement work that they carry out in the public interest, so far as such assistance is lawful;
 - b. the provision of a framework for the lawful flow of information between the SRA and the INSS.
3. The INSS and the SRA recognise and respect each other's differing duties, operational priorities and constraints, and confidentiality requirements. However, they are committed to co-operating effectively and professionally in the public interest to prevent or take action in relation to financial and corporate misconduct.

Legal status and effect

4. Nothing in this Memorandum shall, or is intended
 - c. create any legal or procedural right or obligation which is enforceable by either of the parties against the other; or
 - d. 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
 - e. prevent either of the parties from complying with any law which applies to them; or
 - f. fetter or restrict in any way whatsoever the exercise of any discretion which the law requires or allows the parties to exercise.
5. Nevertheless, the parties again are 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

6. 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.paae>

7. 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.
1. 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, where appropriate, including material comprising communications in furtherance of crime or fraud.
2. The INSS is an executive agency of the Department for Business, Energy and Industrial Strategy. It fulfils a range of statutory functions and delivers a range of public services on behalf of the Secretary of State. It exercises powers and duties on behalf of the Secretary of State arising under the Insolvency Acts 1986 and 2000, the Company Directors Disqualification Act 1986, the Employment Rights Act 1996 and the Companies Acts 1985 and 2006, as well as under secondary legislation relating to these Acts.
3. The INSS has numerous powers and responsibilities ranging from the statutory role of trustee and liquidator through to policy development, redundancy payments processing, regulation of the insolvency profession and investigation and enforcement work relating to corporate misconduct, financial wrongdoing and the promotion and protection of fair markets.
4. More specifically as regards its investigation and enforcement remit, the INSS exercises statutory powers to:
 - carry out confidential enquiries into companies' affairs under the provisions of the Companies Act 1985 in cases where there is reason to believe the company's activities are being conducted in a manner contrary to the public interest;
 - investigate the affairs of companies that have entered into insolvency and individuals who have entered into bankruptcy or other formal debt relief procedures;
 - bring civil legal proceedings against company directors ("Director Disqualification Orders / Undertakings") and insolvent individuals ("Bankruptcy Restriction Orders / Undertakings" and "Debt Relief Restriction Orders") where their conduct can be shown to have fallen below required standards;

- investigate and prosecute individuals for a range of criminal offences relevant to the role and functions of the INSS;
- petition for the winding-up of companies where it is in the public interest to do so.

Information sharing

12. Both INSS and the SRA have statutory objectives and / or powers of investigation and enforcement under their respective legislation. Both conduct intelligence activities to inform decisions whether or not to exercise such powers. Parliament through legislation requires, and the public and the Government expect, the INSS and the SRA to use their powers to tackle corporate misconduct and the commission of crime.

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. minimise the risk of fraud or other financial misconduct,
- iii. minimise breaches of statutory regulations,
- iv. minimise corporate misconduct,
- v. identify the risk of financial failure or unfitness and
- vi. minimise the risk to the public;

b. so that alleged financial misconduct, breach of the SRA principles, or other failures are properly investigated and decided upon;

c. and otherwise 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.

14. The parties when acting as recipient of information under this Memorandum will

- a. comply at all times with the Data Protection Act 1998 and any related or analogous legislation;
- 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, person or authority.



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, HM Revenue and Customs, the National Crime Agency or any body that in future carries out the functions of such bodies.
16. The parties agree to ensure that disclosures to the receiving party are lawful.
17. Information that has been obtained by the INSS in connection with an inquiry into a company pursuant to s447 of the Companies Act 1985, or under s448A or s453A, is restricted under s449 of that Act, which creates a criminal offence in relation to disclosures of 's447 material', subject to certain exceptions.
18. Schedules 15C and 15D to the Companies Act 1985 set out respectively people to whom, and purposes for which, information may be disclosed. Information held by INSS which is restricted under s449 can be disclosed to the SRA under Schedule 15D paragraph 46 for the purpose of disciplinary proceedings relating to the performance by a relevant lawyer of his or her professional duties.
19. The SRA may seek information from the INSS pursuant to section 44BB of the Solicitors Act 1974 or any analogous or replacement power.
20. 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.
21. It is then the responsibility of the recipient, to ensure any onward disclosure is permissible as a matter of law.

Practical exchange of information

22. 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 General Counsel directorate of the SRA advises on the lawful disclosure of information and personal data.
21. All information exchanged between the parties should be passed via nominated Single Points of Contact (SPOC). The nominated SPOCs for the SRA are the Intelligence Team Leader of Fraud and Confidential Intelligence Bureau (FCIB) whose contact details are 0121 329 6827, SRA, The Cube, 12th Floor, 199 Wharfside Street, Birmingham B1 1RN and the Senior Legal Consultant of General Counsel Team whose contact details are 0121 329 6447/ AnnMarie.Keeling@sra.org.uk.



24. The SPOC for the INSS is the Manager of the Intelligence Team / Investigation & Enforcement Services Division whose contact details are 0207 596 6194 / Intel.Team ITO insolvency.gsi.gov.uk.

Additional assistance

25. 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.

Security and assurance

26. 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.
 - e. only hold it while there is a business need to keep it;
 - f. destroy it in line with applicable guidelines;
 - g. provide assurance that they have complied with these principles, upon request.

Data Protection Act 1998 (DPA), General Data Protection Regulations, and Human Rights Act 1998 (HRA)

27. Both parties undertake to comply with the requirements of the DPA and the HRA in the operation of this agreement. This undertaking extends to ensuring that the operation of this agreement will also comply with the General Data Protection Regulations when these are applied in the UK from 25 May 2018.

Freedom of Information (FoI) Act 2000

28. The SRA is not subject to the FOI Act but operates its own voluntary code. The INSS is obliged to comply with the FOI Act. (The Official Receiver in his capacity as a statutory office holder or as trustee in bankruptcy is not a public authority and therefore is not subject to FOIA.) Each party will notify the other when it receives a FOI request for information provided to it by the other



party. The party who receives the FOI request will notify the other if it considers the information should be released under the FOI Act or code, as appropriate, and if not which exemptions or limitations it considers may apply within the relevant timescales.

Costs/charges

29. No charges will be made.

Resolving issues

30. 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

31. This Memorandum will remain in force until terminated by either party. The parties will use their best endeavours to review its operation every 2 years.

32. Any changes to this Memorandum may be agreed in

writing. **Transparency**


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

Signatories

Name: Alec Pybus
Description: Chief Operating Officer

for INSS

Date 20/09/2017


Name: Carol Westrop
Description: Head of Legal Policy

for the SRA

Date 20/09/2017