



Ministry of
JUSTICE



Solicitors
Regulation
Authority

Agreement

THE OFFICE OF THE PUBLIC
GUARDIAN

AND

THE SOLICITORS
REGULATION AUTHORITY

1. Introduction

1. The Office of the Public Guardian (OPG) and the Solicitors Regulation Authority (SRA) (“the parties”) are committed to working together to achieve the appropriate public interest outcomes in the regulation of solicitors who:
 - a. advise on or prepare Enduring or Lasting Powers of Attorney,
 - b. exercise powers under those instruments,
 - c. act as deputy appointed by the Court of Protection.
2. In support of that aim, this agreement (“Agreement”) sets out the framework for effective liaison and communications between OPG and the SRA.
3. The aims of this Agreement include:
 - a. to assist both parties in their investigation or supervision work in the public interest so far as such assistance is lawful;
 - b. to establish clear channels of communication between the two organisations.
 - c. to promote a clear understanding of the SRA and OPG investigative processes, relevant legislation, working procedures and legal constraints.
 - d. to enable the SRA and OPG to co-operate operationally.
 - e. to facilitate effective investigation and the lawful exchange of information between the parties to further the respective organisations’ aims in protecting vulnerable people and those accessing legal services.
4. OPG and the SRA recognise and respect their differing statutory 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 suspected abuse of vulnerable adults involving law firms or solicitors.
5. This Agreement sets out in one place a way of working where it is necessary to share information about solicitors and solicitors’ firms whose work involves the preparation of Lasting Powers of Attorney (LPA), registration of LPA and Enduring Powers of Attorney (EPA), holding office as a deputy and acting as an attorney under either an LPA or EPA.

2. Legal status and effect

6. Nothing in this Agreement 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 Agreement will do any act (either at all, or in any particular way, or at any particular time), or will refrain from doing any act.
7. Nevertheless, the parties are genuinely committed to pursuing the aims and purposes of this Agreement in good faith and intend to act in accordance with its terms on a voluntary basis.

3. The Role of the OPG

8. The Public Guardian was created under section 57 of the Mental Capacity 2005 (“the Act”). OPG is an emanation of the Public Guardian and supports the Public Guardian in the registration of EPAs and LPAs, and the supervision of deputies appointed by the Court of Protection. It helps attorneys and deputies to carry out their duties, and protects people who lack the mental capacity to make decisions for themselves (“P”).
9. OPG’s statutory powers derive from the Act and Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007 (‘the 2007 Regulations’) and (Amendment) Regulations 2010 (‘the 2010 Regulations’). The powers include the supervision of Court of Protection Deputies and dealing with representations about the way in which a Court of Protection Deputy or an attorney acting under a registered Enduring or Lasting Power of Attorney is exercising his or her powers. OPG’s enquiry and regulatory powers are found in:
- Section 58 of the Act – ‘Functions of the Public Guardian’
 - Regulation 40, 41, 46, 47 of the 2007 Regulations
 - Regulation 48 of the 2007 Regulations as amended by the 2010 Regulations
10. OPG may bring proceedings in the Court of Protection against attorneys or deputies who are alleged not to be acting in the best interests of P with regards to LPAs and deputyships or, in respect of EPAs, are unsuitable.

4. The Role of the Solicitors Regulation Authority (SRA)

11. The SRA is the independent regulatory body established by the Law Society for the regulation of the solicitors’ profession 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 and the Legal Services Act 2007. The SRA Handbook are subordinate legislation enacted under these statutory powers.

12. The SRA has statutory powers for the regulation of conduct and effective enforcement of the SRA principles, standards and regulations.
13. 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.
14. 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.
15. The SRA is able to take action on information from any source, including clients and members of the public, solicitors and firms, or organisations such as the OPG. Where it decides to investigate it may follow one of two approaches:
 - a. a paper based investigation which includes an explanation from the subject solicitor.
 - b. investigation by attendance on solicitors' premises which includes the inspection of accounts and client files. These inspections may be undertaken without notice.
 - c. decide to either close the investigation without further action or to take some form of action such as issuing a warning, to a rebuke or fine or a condition on a practising certificate. Most internal decisions made by the SRA are published on its website.
16. The investigation of serious misconduct, including dishonesty, may lead to two possible outcomes:
 - a. Intervention – the SRA can effectively close down a solicitor's practice where there is "reason to suspect dishonesty" by the solicitor or there are serious breaches of our standards and regulations. In deciding whether or not to intervene, a balance must be achieved between protection of the public and the interests of the solicitor: failure to intervene may have serious consequences for clients, but the consequences of an intervention for solicitors are generally very serious also.
 - b. prosecution before the Solicitors Disciplinary Tribunal – in any case where it is likely that a solicitor would be subject to a suspension from practice, or a striking off, the case may be referred to the independent Solicitors Disciplinary Tribunal (the Tribunal) for a hearing which is generally held in public and where formal evidence, including cross examination, is taken. The SRA prosecutes the subject before the Tribunal.

17. Solicitors may contest an intervention in the High Court and defend themselves at the Solicitors Disciplinary Tribunal. The SRA also investigates and prosecutes breaches of Sections 20 to 25 of the Solicitors Act 1974, which relate to offences committed by non solicitors holding themselves out as solicitors, undertaking functions reserved for qualified solicitors or obtaining employment in solicitors' offices as solicitors These alleged breaches are commonly referred to as 'bogus solicitor offences'.

5. Information sharing

18. 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 vulnerable 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, breach 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 the information.

19. The recipient of information received from the other party will:
- a. comply at all times with the General Data Protection Regulation ('GDPR') (and as later saved by the EU Withdrawal Bill), the Data Protection Act 2018, any relevant codes or conduct or certifications along with 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 or person.
20. 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).

21. 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.
22. 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).

23. In general:
 - a. The SRA will provide the OPG, so far as it is practicable and lawful to do so, and in accordance with the procedure set in this Agreement, with indications or evidence of any misconduct on the part of a solicitor where it has reason to believe they are acting as a Court of Protection Deputy or as attorney under a registered Enduring or Lasting Power of Attorney. This includes may include evidence of breaches or potential breaches of the civil law duties of a Deputy or attorney.
 - b. OPG will, so far as it is practicable and lawful to do so, and in accordance with this Agreement, pass to the SRA indications of professional misconduct on the part of a solicitor in the course of his or her acting as a Court of Protection Deputy or as attorney under a registered Enduring or Lasting Power of Attorney.
24. The objective is to enable both parties to make a considered decision as to what regulatory action should be taken to protect the public, and what further co-operative action may be required or desirable.

6. Practical exchange of information

25. The SRA may seek information from OPG pursuant to section 44BB of the Solicitors Act 1974 or any analogous or replacement power.
26. All information exchanged between the parties should pass via the nominated Single Point of Contract (SPOC).
 - a. The SRA's Head of Fraud and Confidential Intelligence Bureau (FCIB) and The SRA's General Counsel Directorate's Senior Legal Consultant.
 - b. OPG's Operational Delivery Manager (Investigations) and OPG's Head of Information Assurance.

The named individuals who hold the relevant roles are included in Schedule One.

27. All correspondence will be between these persons only or their respective nominees and this may include those working on a particular file. The SRA and OPG SPOCs may change from time to time; the parties will notify each other in writing of any such change.
28. In general, where the SRA or OPG receives information relating to suspected criminal activity or associations or misconduct which does not indicate a specific crime, such information shall, in appropriate cases, be passed between the SPOCs.
29. When the SRA receives evidence of an allegation of fraud or other criminal activity, a representative will in appropriate cases notify OPG's representative as soon as practicable by email, and where appropriate, before any overt action is taken. The parties can then consider the proper course of action having regard to their respective priorities and any requirement for confidentiality.
30. Similarly, when OPG has suspicions or concerns about a solicitor's conduct or that of a solicitor's employee contact will in the first instance be between the OPG SPOC and the FCIB SPOC in order to exchange information and assess the nature and urgency of the problem.

7. Meetings

31. In order to ensure effective working relationships the respective representatives of the SRA and the OPG will meet on request of either party in order to discuss current cases with a view to establish best practice.

8. Other Assistance

32. Where the SRA has intervened in a solicitor's practice and an agent is in possession of files the SRA is bound by the same duty of client confidentiality and duty to protect legal privileged material as was owed by the solicitor. The crime/fraud exception may render this duty inapplicable.
33. On occasions third parties ask the SRA to take action and indicate that a crime or crimes may have been committed by a solicitor. The complainant will normally be directed to inform the police and OPG insofar as it relates to a matter within the terms of this Agreement. Such facts can sometimes only be communicated to the police or OPG with the person's consent.
34. Where, as a result of investigation by the SRA and subsequent findings by the Solicitors Disciplinary Tribunal, a solicitor is found guilty of professional misconduct and the person concerned is also a Court of Protection Deputy or an attorney, the SRA will advise OPG of this fact.
35. 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.

9. Security and assurance

36. 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.

10. Freedom of Information Act 2000 (FOIA)

37. The SRA is not subject to the FOIA but as transparent regulator operates its own voluntary code ('The SRA Transparency Code'). The OPG is subject to the FOIA. Each party will notify the other when it receives a freedom of information request for information provided to it by the other party. The party in receipt of the request will notify the other if it considers the information should be released under the FOIA or SRA Transparency Code, as appropriate, and if not which exemptions or limitations it considers may apply within reasonable timescales. Any final decision is a matter for the party in receipt of the request.

11. Costs/charges/liability

38. No charges will be made. 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.

12. Resolving issues

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

13. Reporting and review arrangements

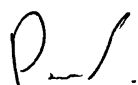
40. This Agreement will remain in force until terminated by either party. The parties will use their best endeavours to review its operation every three years.

41. Any changes to this Agreement may be agreed in writing.

14. Transparency

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

Signatories



for OPG

Date 19 February 2019

Name: Alan Eccles

Description: Public Guardian and Chief Executive



for SRA

Name: Carol Westrop

Date 18 February 2019

Description: Head of Legal Policy

Schedule One

Single Point of Contact Details

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Name: Chris Hall

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