Framework Memorandum of Understanding

Licensed Bodies as Multi-Disciplinary Practices Constituted as Alternative Business Structures

This Memorandum was signed on 2 May 2012 but with effect from 1 April 2013, the Financial Services Authority, one of the parties to this memorandum, ceased to exist and their responsibilities, so far as is relevant to this memorandum, have been transferred to the Financial Conduct Authority. Accordingly, all references to the FSA in this memorandum have been replaced with 'FCA'. The parties to this memorandum intend the 3 years referred to in paragraph 23 of this memorandum to continue to run from the original date of 2 May 2012

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. It is acknowledged that the FCA may only disclose confidential information where such disclosure is permitted under the Financial Services and Markets Act 2000 or the Financial Services and Markets Act 2000 (Disclosure of Confidential Information Regulations) 2001.

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: [i]**The FCA will maintain requirements for an LB to arrange adequate protection for client money , such that -**

16.1 client money held by an LB should be held separately from other money it holds, **where possible** and client money held in relation to the provision of legal services should be held in accordance with the requirements of the relevant/appropriate regulating authority ; and

16.2 the overarching principle is that clients' money must be protected at all times.

17. The Regulators will work together to reduce **material** 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 2 May 2012

Signatories:

[Note these have separately been signed by the relevant regulators but not in a consolidated document]

A. Approved regulators who have signed up to this memorandum

Solicitors Regulation Authority
Bar Standards Board, part of the Bar Council
Council for Licensed Conveyancers
CILEx Regulation, part of the Institute of Legal Executives group
The Patent Regulation Board (established by The Chartered Institute of Patent Attorneys) and the Trade Mark Regulation Board (established by The Institute of Trade Mark Attorneys) (together The Intellectual Property Regulation Board) each signing pursuant to Clause 5 of the Delegation Agreement dated [2nd] December 2009
Institute of Chartered Accountants of England and Wales

B. External regulatory/professional bodies:

Financial Conduct Authority

The Law Society of Scotland
Royal Institution of Chartered Surveyors
National Federation of Property Professionals
Institute of Chartered Accountants of Scotland
Ministry of Justice acting as Claims Management Regulator

[i] The additional text in bold in paras 16 and 17 applies only to the FCA version of the MoU.