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**Association of Chief Police Officers of England,
Wales and Northern Ireland**

MEMORANDUM OF UNDERSTANDING BETWEEN

**THE ASSOCIATION OF CHIEF POLICE
OFFICERS
OF ENGLAND AND WALES**

AND

THE LAW SOCIETY

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1. Statement of Intent

This document records an understanding between the Association of Chief Police Officers, England and Wales and the Law Society about the operation of certain functions in which they have a mutual interest. It sets out the manner in which the reports of alleged criminal conduct, malpractice or professional misconduct by solicitors and their employees or intelligence related to such conduct, can be exchanged, and consideration given to the appropriate course of action under the Rules of the Law Society or criminal law or both. This initiative is intended to create a better working relationship and to develop clear lines of communication to the mutual benefit of both professional bodies, and to further their aims to protect clients and the general public.

2. The Role of the Law Society and the Office for the Supervision of Solicitors (OSS)

- 2.1 The Law Society is the governing body for the solicitors' profession in England and Wales, and has powers and duties under the Solicitors Act 1974 as amended and subsequent legislation. The Solicitors' Practice Rules and Solicitors' Accounts Rules are enacted under these statutory powers. The Rules are designed to ensure that all solicitors observe proper standards of conduct, probity and service when dealing with clients and other solicitors.
- 2.2 The Law Society's statutory powers for the regulation of conduct and discipline have been delegated to the Office for the Supervision of Solicitors to provide impartial and fair investigation of complaints, and effective policing of the Solicitors' Practice Rules and Solicitors' Accounts Rules.
- 2.3 The Solicitors Complaints Bureau, now the Office for the Supervision of Solicitors, was set up in 1986 by the Law Society's Council to investigate complaints and to police the profession independently of the Law Society. The staff of the OSS headed by the Director, investigate and resolve the majority of complaints. Under powers delegated by the Law Society's Council, the Director, the Deputy Directors and Assistant Directors may adjudicate at first instance on professional services complaints and may award compensation, reduce or remit fees and/or order rectification. They may also exercise the power of inspection of solicitors' accounts, impose or renew conditions on practising certificates, and undertake a considerable number of other regulatory functions. Most first instance decisions are subject to a right of appeal to the Compliance and Supervision Committee (The Committee), although there is no appeal to the Committee against a resolution by the Director, Deputy Directors or an Assistant Director to inspect solicitors' accounts.
- 2.4 The Committee is a standing committee of the Law Society, and comprises both solicitors and lay members. Its function is to make first instance decisions on complaints of misconduct and other matters and to act as an appellate body in relation to all first instance decisions which carry a right of appeal. Only the Committee (or in certain circumstances its chairman)

has the power on behalf of the Law Society to order an intervention into a solicitor's practice (implemented by OSS staff) and (except in certain limited circumstances where delegated powers have been granted) to send a solicitor for disciplinary proceedings before the independent Solicitors Disciplinary Tribunal in which the OSS acts as prosecutor. There is no right of appeal to the Committee in relation to a decision to intervene, but there are statutory rights of appeal to the courts.

The OSS also administers the Law Society's Compensation Fund.

3. The Cost of Default Programme

3.1 The Law Society and the OSS have taken the following steps to combat solicitor dishonesty and default. The Law Society has a Fraud Intelligence Office located within the Monitoring and Investigation Unit of the OSS. The Monitoring and Investigation Unit combines a substantial programme of targeted and random monitoring of solicitors' accounts together with an investigation role tasked with investigating and providing forensic evidence of dishonesty and breaches of the Solicitors' Accounts Rules. Inspections of accounts may be authorised immediately by delegated authority of the Law Society's Council and subject to urgency, can be implemented without notice by the Monitoring and Investigation Unit. It is the policy of the Law Society's Council, enshrined within the Solicitors Accounts Rules, not to provide reasons for an inspection.

3.2 The role of the Head of Fraud Intelligence Office and his staff is to gather information of potential fraud and dishonesty by maintaining contacts not only within the Monitoring and Investigation Unit and other Law Society departments but also with a wide range of interested parties such as financial institutions and enforcement agencies. They also have responsibility for the Red Alert telephone system which provides a confidential telephone line for solicitors to provide information on default and dishonesty. All interested parties, including the OSS's enforcement staff, representatives of the Solicitors Indemnity Fund and a representative of the Legal Aid Board meet monthly as the Fraud Intelligence Group.

Members of the Monitoring and Investigation Unit also work in close liaison with the other staff of the OSS, and in particular the Solicitors Practice Unit which deals with the professional conduct and regulation of solicitors.

3.3 In taking steps to pool information on default and dishonesty the Law Society is conscious of the need to maintain the flow of information between its departments and police forces. It also recognises that the provision and exchange of such information can assist the police to take a clear view of a suspect's activities.

4. Exchange of Information

The Law Society (including the OSS) will provide to a police force, so far as is practicable and in accordance with the procedure set out below, any indication or evidence of a crime committed by a solicitor or employee. The police will, so far as is practicable and in accordance with the procedure, pass to the Law Society indications of crime, malpractice and/or professional misconduct committed by a solicitor or employee or intelligence relating to such matters.

The objective is to enable both parties to make a considered decision as to what further action may be taken through disciplinary, regulatory or criminal procedures, and what further co-operative action may be required or desirable.

- 4.2 In order to facilitate the flow of information, with both confidence and confidentiality, each police force and the National Criminal Intelligence Service will appoint a nominated senior CID officer to liaise with the Law Society. This officer will act as a filter and authority in order to ensure that information/intelligence passing between the police and the Law Society is screened and processed with an appropriate degree of uniformity and expediency. It is envisaged that some information will be of a sensitive nature and source protection may therefore be essential. Care will need to be taken that the parties are not burdened with trivial or speculative matters. Contact between police forces and the Law Society will normally be through the Law Society's Fraud Intelligence Office. However, contact on ongoing prosecutions and investigations, or in relation to urgent action, may be directly with the Assistant Director (Solicitors Practice Unit) or the Deputy Head of the Monitoring and Investigation Unit at the OSS.
- 4.3 When the OSS or another Law Society Department receives evidence of an allegation of fraud or other criminal activity an authorised person at the OSS or the Head of the Fraud Intelligence Office will in appropriate cases communicate with the nominated liaison officer as soon as practicable 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 requirement for confidentiality.
- 4.4 Where either the Law Society (including the OSS) or a police force receives information relating to suspected criminal activity or associations or malpractice which does not indicate the commission of a specific crime, such information shall, in appropriate cases, be passed between the nominated liaison officer of the police force concerned and the Fraud Intelligence Office. Similarly, when a police force has suspicions or concerns about a solicitors' conduct or employee contact will in the first instance be between the nominated liaison officer and the Fraud Intelligence Office in order to exchange information and assess the nature and urgency of the problem.
- 4.5 When a police force has evidence of crime, malpractice or professional misconduct or has arrested a solicitor or employee, the nominated liaison officer will in appropriate cases contact the Head of Fraud Intelligence or a number of his staff at the OSS. Where an arrest is contemplated but has yet to take place, the police may ask through its nominated liaison officer for information and/or assistance.
- 4.6 Whilst contact respectively with the Fraud Intelligence Office and the OSS is defined by the urgency of the situation or the substantive nature of the information or evidence, the objective is to ensure co-operation and the sharing of intelligence in appropriate cases between the Law Society and the police. Any such intelligence will be pooled.

5. Other Assistance

- 5.1 Where police are involved in an investigation into an allegation of crime, malpractice and/or professional misconduct the Law Society (including the OSS) will in appropriate cases and subject to available resources, provide

advice and guidance to the Investigating Officer on the Solicitors' Practice Rules or Accounts Rules. For extended periods of assistance, a charge may need to be made. If requested by a senior police officer an appropriate representative of the Law Society will provide a statement of evidence relating to the Law Society's Solicitors' Practice Rules or Accounts Rules. Other than in exceptional circumstances, when there is evidence of crime in the Monitoring and Investigation Unit's report, a copy will normally be provided to the police.

- 5.2 Where the OSS has intervened in a solicitor's practice and an agent is in possession of files on which there is evidence of an offence by the client, the Law Society is bound by the same duty of confidentiality as was owned by the solicitor. Where the solicitor and the client are both believed to be involved in criminal activity, this duty of confidentiality does not exist. However, the objective of an intervention is to prevent the solicitor continuing in practice with minimum inconvenience to clients. Whilst this does not include identifying evidence of crime, every co-operation will be afforded to the police by the OSS in appropriate cases.
- 5.3 It should be noted that the ownership of a client's file always remains with the client. Following intervention, the authority for the police to examine a client's file can only be obtained directly from the client concerned or by order of a court under the provisions of the Police and Criminal Evidence Act 1984 or other statutory authority.
- 5.4 On occasions complainants ask the OSS 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. However, the Law Society and the OSS reserve the right to inform the police within the terms of this memorandum. It should be noted that such facts can only be communicated to the police with the client's consent, or where the Law Society (including the OSS) is protected by public interest immunity.

6. Conclusion

The Association of Chief Police Officers of England and Wales and the Law Society recognise and respect their differing statutory duties, operational priorities and constraints, and confidentiality requirements. However, in the public interest they commit themselves to improved professional co-operation and to systematic exchange of information their joint campaign against dishonesty and default involving solicitors or their employees.