

**Memorandum of Understanding**

**between**

**HMRC**

**and**

**the Council for Licensed  
Conveyancers**

## **Introduction**

1. Her Majesty's Revenue & Customs (HMRC) and the Council for Licensed Conveyancers (CLC) ("the parties") are committed to working together to achieve the appropriate public interest outcomes in the investigation and prosecution of Revenue and Customs offences and the regulation of legal services. In support of that aim, this memorandum of understanding ("Memorandum") sets out the framework for effective liaison and communications between HMRC and the CLC.
2. The aims of this Memorandum 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 provide a framework for the lawful flow of information between the CLC and HMRC.
3. HMRC and the CLC 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 dishonesty or default involving law firms or licensed conveyancers including those involved with or enabling taxation offences in the British Isles.

## **Legal status and effect**

4. Nothing in this Memorandum of Understanding 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 Memorandum of Understanding will do any act (either at all, or in any particular way, or at any particular time), or will refrain from doing any act.

Nevertheless, the parties are genuinely 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**

5. HMRC was established in April 2005 by the Commissioners for Revenue and Customs Act 2005 (CRCA 2005), merging the Inland Revenue and HM Customs and Excise.
6. HMRC's functions are set out in sections 5-7, 9 and Schedule 1 of the CRCA 2005 and can be summarised as all powers pertaining and ancillary to the collection and management of the revenue and duties
7. HMRC's purpose is to make sure that the money is available to fund the UK's *public services*. HMRC also helps families and individuals with Targeted financial support.
8. HMRC's objectives are:
  - Maximise revenue to close the tax gap
  - Improve customer experience
  - Deliver an affordable and sustainable cost base providing value for money for the taxpayer
  - *Improve our leadership capability and create a working environment that motivates our people*
  - Improve our professionalism in dealing with customers and stakeholders, the security of our customers' information and our external impact.
  - Transform performance by high quality IT delivery
9. The CLC is established to license and regulate law firms and licensed conveyancers in England & Wales in the provision of conveyancing and probate services and other non-reserved legal activities. The CLC's powers arise from various statutes and regulations including the Administration of Justice Act 1985, the Courts and Legal Services Act 1990, the Legal Services Act 2007 and the CLC's Regulatory Arrangements: [http://clc-uk.org/regulatory\\_arrangements.php](http://clc-uk.org/regulatory_arrangements.php)
10. The CLC has statutory and rule-based powers to require the production of documents or information, such as section 31 Administration of Justice Act 1985 and section 93 of the Legal Services Act 2007.
11. The CLC 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 CLC also protects the LPP and confidentiality of clients. LPP material will not be disclosed by the CLC 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 CLC, including material comprising communications in furtherance of crime or fraud.

### **Information sharing**

12. 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 criminality; and
- iii. identify the risk of financial failure.

b. so that alleged fraud, criminality, misconduct, breach of the CLC 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,

provided that the recipient is reasonably considered able to take regulatory or other proper action upon the information.

13. The recipient of information received from the other party 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 or person.
14. 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).
15. The parties agree to ensure that disclosures to the other party are lawful.
16. 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).
17. Section 18 of the Commissioners for Revenue and Customs Act (CRCA) 2005 provides that HMRC officials must not disclose information, which is held by HMRC in relation to its functions, to an outside person or agency.
18. However, section 18(2) provides a number of exceptions to this rule of confidentiality and enables officials to disclose information in certain, specific circumstances. In addition to section 18(2), a number of statutes also

enable HMRC to disclose information to others. These provisions are known as *gateways* and the relevant *gateways* in respect of this protocol are detailed below.

19. HMRC can disclose information to the CLC if a High Court order is obtained to enforce an order made under section 44B Solicitors Act 1974 or an order made pursuant to S44BB, related or analogous legislation. Court orders are an exception to HMRC's duty of confidentiality under section 18(2)(e) CRCA 2005.
20. HMRC may request information from the CLC by means of a Third Party Information Notice under Schedule 36 of the Finance Act 2008.
21. Both parties will ensure that they meet their respective obligations under the Data Protection Act 1998 and Human Rights Act 1998 in respect of any information sharing under this MoU.
22. The recipient of information received from the other party will:
  - a. For the purposes of the Data Protection Act (DPA) 1998, become the data controller once the information is received and comply at all times with the DPA and any related or analogous legislation;
  - b. keep the information secure (see section below);
  - c. destroy it once the information is no longer required;
  - d. use the information only for proper purposes, such as regulatory, disciplinary or other legal investigations or proceedings; and
  - e. liaise or co-operate where appropriate to avoid action that prejudices or may prejudice an investigation by another party or person.
23. 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).
24. Information HMRC receives for one function can be shared across its other functions (section 17 CRCA 2005).
25. The parties agree to ensure that disclosures to the other party are lawful.
26. 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).

### **Practical exchange of information**

27. The CLC's role includes the lawful facilitation of intelligence and information sharing with other bodies.
28. HMRC may request information from the CLC by means of a Third Party Information Notice under Schedule 36 of the Finance Act 2008.
29. HMRC will consider all information received from the CLC against the criteria laid out in the Criminal Investigation Policy.
30. All information to be provided to HMRC should be passed via the nominated Single Point Of Contact (SPOC). The nominated SPOC for HMRC is Karen Lynch of the Stamp Office Birmingham The nominated SPOC for CLC is Simon Blandy.

### **Additional assistance**

31. 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**

32. 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) and, Human Rights Act 1998 (HRA)**

33. Both parties undertake to comply with the requirements of the DPA and the HRA in the operation of this agreement.

**Freedom of Information (Fol) Act 2000**

34. If a Fol request is received in relation to the other party's information then the receiving party will inform the other party, and invite representations on the potential impact of disclosure (noting that the CLC is not currently subject to Fol).

**Costs/charges**

35. No charges will be made

**Resolving issues**

36. 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**

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

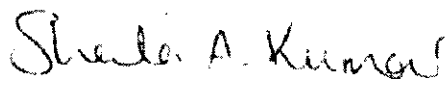
38. Any changes to this Memorandum may be agreed in writing.

**Transparency**

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

**Signatories**

  
..... for HMRC                      Date 8/10/2014  
Name: Geoff Yapp  
Description: Deputy Director CTIS Head of Stamps

  
  
Sheila Kumar  
..... for CLC                      Date .....

Description: Chief Executive