

Switching between approved regulators protocol: the Solicitors Regulation Authority (SRA) and the Bar Standards Board (BSB)

Introduction

1. The parties to this switching protocol are the SRA and the BSB. It sits under the overarching Framework Memorandum of understanding (FMOU) signed by the approved regulators and other professional regulators and under the bilateral MOU between the parties. Its purpose is to specifically deal with switching arrangements from one party to the other. This protocol has been agreed between the SRA and the BSB, the independent regulatory bodies of the Law Society and the Bar Council respectively, who are both approved regulators.
2. For the purposes of this switching protocol the term 'approved regulator' is used to mean either approved regulator or licensing authority.
3. This switching protocol mirrors the terms of paragraph 3 of the FMOU and does not create any legal or procedural rights, prevent compliance with the law, fetter or restrict discretion of the parties nor create any legitimate expectations on the part of the parties to it.
4. Consumer protection arrangements including requirements for the level and scope of professional indemnity insurance ("indemnity arrangements") can be put in place by approved regulators to provide financial protection to clients of firms. These protections are overseen by the Legal Services Board.
5. The Legal Services Board has recently reviewed switching arrangements across the approved regulators. The review acknowledged that switching arrangements between regulators do not present a material risk to consumers. The findings indicated that while the level of switching remained low, the data on this was captured in an inconsistent manner. It also identified a need for greater assurance about the information sharing between regulators during the authorisation processes.
6. The aim of this switching protocol is to:
 - a. confirm the parties' responsibility for a firm's regulation and its indemnity arrangements once a firm switches regulator.
 - b. provide a framework to facilitate the switching between the parties, including the sharing of lawful information in support of the protection of consumers.
 - c. support the parties in keeping consumers informed about who regulates which individuals and firms.

Protecting the financial interests of consumers

7. This protocol recognises that:
 - a. absolute protection is not achievable at reasonable cost and this is ultimately reflected in the cost of legal services to the public.
 - b. indemnity arrangements differ across the approved regulators.

Responsibility for indemnity arrangements

8. Consumer protection provided by indemnity arrangements is the responsibility of the regulator authorising a firm.
9. It is the responsibility of the receiving regulator to assess all relevant risks to consumers should the switch take place and to make such enquiries as it thinks fit to satisfy itself that it can be a suitable regulator of the firm seeking to switch.
10. The receiving regulator becomes 'the regulator' upon its authorisation of the firm and from that date is solely responsible for the indemnity arrangements of the firm including for historic work.
11. The receiving regulator will decide if it is necessary for the firm to take steps, as the regulator thinks fit, to notify clients of any changes to their protection.

Responsibility for compensation arrangements

12. Consumer protection provided by compensation arrangements will be dealt with under the appropriate rules of each regulator.

Handling of compensation claims between regulators

13. Issues and problems that arise between the parties will be resolved on the basis of the bilateral MOU at paragraph 17.

Sharing information

14. Where it is lawful, the parties agree to disclose information to enable the receiving regulator to evaluate the level of consumer protection the receiving regulator will need to have in place following the proposed switch.
15. Where information is shared it is shared in accordance with paragraphs 10 - 12 and 14 of the bilateral MOU.

Keeping consumers informed

16. Each party agrees to take whatever steps it considers reasonable to make sure consumers are informed so they understand:
 - a) who regulates relevant individuals and firms;
 - b) the protections afforded in each case
 - c) where and how redress may be sought.

The date of this protocol is.....1 February 2018

Signatories:

Approved Regulators	Signed on behalf of the Regulator
Solicitors Regulation Authority (the independent regulatory body of the Law Society)	 Name: Position: <i>Head of Legal Policy</i>
Bar Standards Board (the independent regulatory body of the Bar Council)	 Name: Ewen Macleod Position: Director of Strategy and Policy

Definitions

Approved regulators are designated under Part 1 of Schedule 4 of the LSA 2007 in respect of reserved legal activities as specified in the Schedule. Approved regulators authorise individuals to carry on any reserved legal activity in respect of which it is a relevant¹ approved regulator. Approved regulators also regulate traditional entities² pursuant to the LSA 2007 and other legislation applicable to each regulator. In most cases where the Approved Regulator is also the representative body, regulatory functions are delegated to front line regulators.

Licensing authorities are permitted under the LSA 2007 to license entities known as licensed bodies which can provide reserved legal services alongside non-reserved and non-legal services. An approved regulator may be designated as a licensing authority under Part 1 of Schedule 10 of the LSA 2007 in respect of its approved reserved legal activities.

Individuals are regulated personally by their own professional regulator but may be involved in an entity which itself is regulated by a different regulator being either a licensing authority or an approved regulator. In these cases, such an individual may also be regulated by the entity regulator.

¹ An approved regulator is a 'relevant approved regulator' in relation to an activity which is a reserved legal activity of which the approved regulator is designated by Part 1, or under Part 2, of Schedule 4 to that reserved legal activity (S20(3)(a) of LSA 2007)

² Firms delivering only legal services

