

Memorandum of Understanding ("MOU")

Parties

This MOU is dated 23 day of August 2019 and is made between the Legal Services Board (the "LSB"), the Solicitors Disciplinary Tribunal (the "SDT"), the Solicitors Disciplinary Tribunal Administration Ltd. (the "Administration Company") and the Law Society (the " Law Society") (together " parties" and each a "party").

1. Purpose

- 1.1 This MOU sets out the process which the parties have agreed to follow in order to fulfill their respective obligations and duties under Section 46A of the Solicitors Act 1974 (the "SA") inserted into the SA by Paragraph 48 of Schedule 16 to the Legal Services Act 2007 (the "LSA") (attached at Annex A)
- 1.2 The parties agree that this MOU shall be in the public domain.

2. Definitions

Additional Funding Application – the SDT's application to the Law Society for funding over and above the Approved Amount.

Annual Budget Application – the SDT's annual application to the LSB setting out the amount the SDT considers necessary to operate in a calendar year.

Approved Amount – the amount of money that the LSB approves having considered the SDT's Annual Budget Application.

Required Information – such information as the LSB might require from the SDT and the Law Society before approving any part of the SDT's Annual Budget Application.

SDT's Budget - the amount of money provided for the SDT to operate in a calendar year.

Statutory Procedure – the procedure contained in Section 46A of the SA.

3. The Respective Roles of the Parties

- 3.1 The LSB is responsible for overseeing legal regulators in England and Wales. It is independent of Government and of the legal profession. It oversees the "approved regulators" each of whom, together with the LSB must act in a way that is compatible with the eight regulatory objectives set out in the LSA and which it considers most appropriate in meeting those objectives.
- 3.2 At the date of this MOU the SDT is constituted as an independent statutory tribunal under the SA. Its primary duties are to protect the public and the good reputation of the solicitors' profession in exercise of its jurisdiction over solicitors, registered foreign lawyers, registered European lawyers, recognised bodies, persons employed or remunerated by solicitors and former solicitors and has the power, inter alia, to strike off, suspend or fine and, in the case of an unadmitted person, to order that his or her employment within the profession be restricted. It has the power to restore a struck-off solicitor to the Roll, bring an indefinite period of suspension to an end and revoke an order made in respect of an unadmitted person. The SDT has the power to award costs. The SDT has the power to hear and determine appeals under section 44E SA, paragraph 14C of Schedule 2 of the Administration of Justice Act 1985 and under Part 5 of the Legal Services Act 2007. Appeals against substantive decisions of the SDT lie to the High Court.
- 3.3 The administration of the SDT, including the management of financial resources, is conducted through the Administration Company which is a company limited by guarantee. The Administration Company is obliged to comply with the Companies Acts including the obligation to file audited annual accounts with Companies House.
- 3.4 The Law Society is the professional body for solicitors in England and Wales. The Law Society represents solicitors' interests, including through negotiation and lobbying of the profession's regulators, Government and others. The Law Society also offers training and advice to its members, and seeks generally to help, protect and promote solicitors across England and Wales. Under the LSA, the Law Society is an Approved Regulator, and is responsible for making the arrangements for the regulation of solicitors.

4. Core Principles

4.1 The parties agree that in fulfilling their respective obligations and duties under the Statutory Procedure, they will adhere to the following core principles:

- Mutual respect and trust – each party acknowledges the other parties' statutory basis and independence and their respective obligations and duties under the Statutory Procedure.
- Evidence-based approach – each party shall adopt an evidence-based approach in fulfilling their respective obligations and duties under the Statutory Procedure.
- Communication – the parties agree that they will communicate openly and meaningfully with each other in a manner which promotes an understanding of, and addresses, the other parties' respective concerns.
- Reasonableness – all parties will act reasonably in their dealings with each other.
- Timely information provision – the parties agree to provide information to each other in a timely manner to assist the other parties in complying with their respective obligations and duties under the Statutory Procedure.
- Confidentiality – each party shall respect the confidentiality of any information provided to it by another party.

5. The Agreed Procedure

Annual Budget Application

5.1 The SDT must submit an Annual Budget Application each year to the Law Society, which has been approved by the LSB.

5.2 A budget for a year is a statement of the amount of money which the SDT estimates that it will require to meet all of its expenditure in the next calendar year (having regard to any amounts received but not spent in previous years).

5.3 The SDT shall submit its Annual Budget Application to the LSB and shall include the following:

- The amount of money being sought by the SDT to conduct its business in the following calendar year, specifying also a breakdown of the amount sought by such individual line items as may be appropriate under the following headings:

- salary and related costs;
 - general administration costs;
 - building costs;
 - contingency;
 - irrecoverable VAT;
 - total revenue costs and capital expenditure.
- The factors that are determining the SDT's likely case load for the following year. This shall include consideration of the:
 - estimated case load the SDT may receive from the Solicitors Regulation Authority;
 - estimated case load the SDT may receive from other sources (such as cases being carried through from previous calendar years and enquiries and cases from sources other than the Solicitors Regulation Authority); and
 - estimated amount of time the SDT will require to consider its estimated cases.
- Explanation for individual line items of the amount of money being sought, including:
 - descriptions of what is included in the line items;
 - explanation for any variances over or under five per cent, or more than £10,000 in difference, between the current year's funding levels and the amount being sought; and
 - explanation for the addition or removal of any line items from the budget application as compared with the current year's budget.
- A comparison of the current year's actual expenditure with the current year's budget with explanation for any variances, for each line item, over or under five per cent or more than £10,000 in difference.
- The final out-turn of the previous year's budget following the format and the line item breakdown utilised when the Annual Budget Application for the current year was submitted in the previous year, including explanation for any variance over or under five per cent, or more than £10,000 in

difference, between the previous year's year end out-turn and the previous year's budget.

- 5.4 In preparing its Annual Budget Application, the SDT shall share such information that it considers relevant, acting reasonably, with the Law Society and the Law Society shall be entitled to make reasonable requests for further information.

Additional Funding Applications

- 5.5 Under the SA, the Law Society may pay the SDT such other amounts as the Law Society considers appropriate.
- 5.6 If the SDT considers that additional funding is required, it will submit an Additional Funding Application to the Law Society that shall include the following information:
- an explanation of the requirement for the additional funding;
 - an explanation why the additional funding was not included in the Annual Budget Application;
 - an analysis of what the likely impact of the non-approval of the additional funding will be if not approved; and
 - when the SDT requires the additional funding to be approved and paid.
- 5.7 In preparing its Additional Funding Application, the SDT shall share such information that it considers relevant, acting reasonably, with the Law Society and the Law Society shall be entitled to make reasonable requests for further information.
- 5.8 The Law Society will assess the Additional Funding Application and decide to approve, all or part of, the funding sought as soon as reasonably practicable and in any event within 40 working days from the date when it received the Additional Funding Application, giving reasons for its decision.
- 5.9 In making its decision whether or not to approve the Additional Funding Application, the Law Society shall consider the LSB's views on the application. The LSB will provide views on the application as soon as reasonably practicable and in any event within 15 working days from the date when it received the application from the Law Society.
- 5.10 Upon its approval, in whole or in part of the Additional Funding Application, the Law Society will pay the approved Additional Funding Amount to the SDT

on a date as agreed between the SDT and the Law Society, and in any event not later than 28 working days from the date of such approval.

General

- 5.11 The Administration Company will provide its monthly management accounts to the Law Society by the end of the month following the month to which the monthly management account relates. The Law Society may seek clarification from the Administration Company on any matters with regard to the monthly management accounts.
- 5.12 The SDT will provide a preliminary estimate of the likely amount to be sought in its Annual Budget Application to the Law Society no later than 20th May of each year.
- 5.13 The SDT will prepare its Annual Budget Application and submit it to the LSB with a copy to the Law Society no later than 10th September in each year.
- 5.14 The SDT has developed annual Key Performance Indicators (KPIs) as part of a methodology to measure its performance. It will review its KPIs periodically in line with good practice and will consult on any changes it proposes with the LSB.
- 5.15 The SDT will report to the LSB on its performance against its KPIs in a calendar year by the end of February in the following year.

6. Procedure for the approval of the SDT's Annual Budget Application

- 6.1 Upon receiving the Annual Budget Application, the LSB will assess it and decide whether to approve all, or part, of the estimated amount of funding being sought.
- 6.2 In upholding the core principles referred to in paragraph 4, the LSB will assess the Annual Budget Application on an evidence-based approach. For the avoidance of doubt, the LSB shall not approve, or shall only partially approve, the Annual Budget Application if it considers, acting reasonably, that it does not have sufficient information in respect of the matters referred to in paragraphs 5.3 and 5.15 (the "Required Information") to enable it to discharge its obligations under the Statutory Procedure and the LSA generally.
- 6.3 Under the Statutory Procedure, the LSB must consult the Law Society prior to making its decision, providing at least 15 working days for comment, whether or not to approve the Annual Budget Application.

- 6.4 If requested to do so by the LSB, the SDT and the Law Society will provide information to assist its understanding of the Annual Budget Application in a timely manner.
- 6.5 In making its decision, the LSB will advise the SDT and the Law Society of the reasons for approving all, or part, of the amount of funding being sought ("Approved Amount").

7. Payment of Funds

- 7.1 The Law Society will pay the Administration Company a quarter of the Approved Amount on each of 1st January, 1st April, 1st July and 1st October in each year, or as otherwise agreed with the SDT.
- 7.2 Should the Administration Company's expenditure prove to be lower than the funding paid it may retain the amount of the underspend, either in whole or in part, for the purpose of building up and/or maintaining reserves, acting in accordance with its published reserves policy. Alternatively, the whole or part of the underspend amount may be deducted from the payment to be made to the Administration Company on the basis of the current two years in arrears arrangement, or as otherwise agreed between the Administration Company and the Law Society.
- 7.3 The SDT's reserves policy and application of it will be considered by the LSB as part of the procedure for approval of the SDT's Annual Budget Application. The Law Society will have the opportunity to comment via the consultation process on the SDT's Annual Budget Application set out in paragraph 6.3.

8. List of Agreed Dates

- By 20th May – the SDT to provide its preliminary budget estimate to the Law Society.
- By 10th September - the SDT to submit its Annual Budget Application to the LSB. The LSB to consult the Law Society on the Annual Budget Application, allowing no less than 15 working days for comments.
- By 31st October - the LSB to approve the Annual Budget Application.
- By 30th November - the SDT to submit its approved Annual Budget Application to the Law Society.
- 1st January, 1st April, 1st July and 1st October - one quarter of the Approved Amount to be paid by the Law Society to the Administration

Company on each of these dates, or as agreed between the Law Society and the SDT.

9. Contact points

9.1 Each party to appoint a person to serve as the official contact and to coordinate the activities of the parties to this MOU. The parties will notify each other immediately when there is any change in the appointed person and a list of contact details will be circulated each year.

10. Meetings

10.1 The parties will meet should any one party request this.

11. Effective date and review

11.1 This MOU may be amended only by the written agreement of all parties.

11.2 The parties will review this MOU every three years from the date of the document.

12. Signatures



Dr Helen Phillips

Chair

Legal Services Board

Date: 23/8/19



Edward Nally

Chairman

Solicitors Disciplinary Tribunal

Administration Ltd

Date: 23/8/19



Edward Nally

President

Solicitors Disciplinary Tribunal

Date: 23/8/19



Paul Tennant

Chief Executive

The Law Society

Date: 23/8/19

Annex A

Section 46A of the Solicitors Act 1974 as inserted by Paragraph 48 of Schedule 16 to the Legal Services Act 2007

46A Funding of the Tribunal

- (1) The Tribunal must submit to the Society in respect of each year a budget for the year approved by the Legal Services Board.**
- (2) A budget for a year is a statement of the amount of money which the Tribunal estimates is required to enable it to meet all of its expenditure in that year (having regard to any amounts received but not spent in previous years).**
- (3) Before approving a statement for the purposes of subsection (1) the Legal Services Board must consult the Society.**
- (4) The budget for a year must be submitted to the Society under subsection (1) no later than the date in the preceding year specified by the Society for the purposes of this subsection.**
- (5) Before specifying a date for this purpose the Society must consult the Tribunal.**
- (6) The amount specified in a budget submitted under subsection (1) must be paid by the Society to the Tribunal—**
 - (a) in such instalments and at such times as may be agreed between the Society and the Tribunal, or**
 - (b) in the absence of such agreement, before the beginning of the year to which the budget relates.**
- (7) The Society may pay the Tribunal such other amounts as the Society considers appropriate.**
- (8) In this section "year" means a calendar year.**

