

Memorandum of Understanding between
the Office of Fair Trading (the OFT) and
the Financial Ombudsman Service Limited (the FOS Ltd)



Introduction

1. This Memorandum of Understanding establishes a framework for cooperation and constructive communication between the OFT, in its role as independent consumer and competition authority (including responsibility for regulating consumer credit licensees), and the FOS Ltd, in its role of resolving individual complaints about consumer credit and other financial activities.
2. This Memorandum also complements the Statement of Roles and Responsibilities and the Wider Implication Procedures agreed between the OFT and the Financial Services Authority (FSA) and the FOS Ltd.
3. This Memorandum is available on the OFT and the FOS Ltd websites. Both organisations will monitor its operation and review it from time to time as necessary.

Roles of the OFT and the FOS Ltd

4. The OFT is the UK's independent consumer and competition authority. It is a non-ministerial Government department established by statute and accountable to the public through Parliament. It has a broad remit covering the whole of the UK economy, including some aspects of financial services, and a diverse set of tools to fulfill its mission which is to make markets work well for consumers. The OFT has direct regulatory responsibilities in relation to the consumer credit and merger control regimes. It also has powers under UK competition and consumer law.
5. The FOS Ltd's role is to operate a scheme to resolve disputes between individuals or small businesses and financial businesses, as an alternative to the civil courts. The scheme's statutory objectives are to resolve disputes quickly and with minimum formality on the basis of what is fair and reasonable in the circumstances of each case. In considering what is fair and reasonable, the scheme takes into account the relevant law, regulations, regulators' rules and guidance and standards, relevant codes of practice (such as the Banking Code), and good industry practice at the relevant time. The scheme has three jurisdictions: the compulsory jurisdiction; the consumer credit jurisdiction; and the voluntary jurisdiction.

Statutory responsibilities

6. Under the Consumer Credit Act 1974, as amended by the Consumer Credit Act 2006 (the Act), the OFT is responsible, among other matters, for:
 - a) the licensing system established by the Act;
 - b) superintending the enforcement of the Act, in partnership with Local Authority Trading Standards Services; and
 - c) publishing guidance and other advice on its interpretation of the Act and how it will enforce it.
7. Under the Financial Services and Markets Act 2000 (FSMA), as amended by the Consumer Credit Act 2006, the OFT is also responsible for collecting on behalf of the FOS Ltd the levy required towards the funding of the consumer credit jurisdiction.
8. The OFT is responsible for enforcing competition law in the UK under the Competition Act 1998, the Enterprise Act 2002 and certain specific legislation including FSMA. Although the FSA is the lead regulator for financial services, it falls to the OFT to ensure that competition law is effectively applied in this sector. Duties include keeping the FSA's regulating provisions and practices under review.

9. The OFT is the lead enforcer of the Unfair Terms in Consumer Contracts Regulations 1999. There are a number of other qualifying bodies, the FSA is one, who can exercise powers under these Regulations.
10. Under FSMA the FOS Ltd (with the consent/approval of the FSA) is responsible, among other matters, for:
 - a) making rules (or standard terms) for the consumer credit and voluntary jurisdictions on: complaint-handling by respondents; activities covered; complainants eligible; time-limits; and limits on awards;
 - b) making rules (or standard terms) for the compulsory, consumer credit and voluntary jurisdictions on: ombudsman procedures; awards of costs and interest; and case fees; and
 - c) determining the sums to be recovered by the OFT from licensees to establish and operate the consumer credit jurisdiction.
11. The FOS Ltd is responsible, in particular, for:
 - a) operating the ombudsman scheme (which is known as the Financial Ombudsman Service); and
 - b) appointing the ombudsmen (including the chief ombudsman) on terms consistent with their independence.


Funding

12. The OFT and the FOS Ltd will cooperate in the smooth running, and periodic review, of the funding arrangements for the consumer credit jurisdiction, in particular the collection by the OFT, on behalf of the FOS Ltd, of the industry levy required towards the funding of that jurisdiction.

Cooperation and information sharing

13. The OFT and the FOS Ltd agree that they will:
 - a) seek to resolve any differing perceptions about their respective roles;
 - b) seek to achieve a complementary and consistent approach within the constraints of their independent roles;
 - c) meet and communicate regularly to discuss matters of mutual interest;
 - d) consult one another at an early stage on any issues which might have significant implications for the other organisation; and
 - e) share (for comment) at an early stage draft documents (such as consultation papers, guidance and briefings) that may impact on the other's functions.
14. The FOS Ltd will inform the OFT of issues that appear likely to have significant regulatory implications, which the OFT will then evaluate and consider whether any OFT action is required.
15. The OFT and the FOS Ltd will agree, publish and periodically review operational procedures on:
 - a) dealing with cases that raise wider implications issues; and
 - b) routine information-sharing.
16. Any information-sharing between the two organisations is subject to relevant restrictions on disclosure of information.
17. So long as it has regard to any rights of privacy, the FOS Ltd may disclose information to the OFT for the purpose of assisting the OFT or the FOS Ltd to discharge its functions.

18. Subject to the appropriate disclosure restrictions under Part 9 of the Enterprise Act 2002, the OFT may disclose confidential information to the FOS Ltd to facilitate the carrying out of a public function of the OFT or a function of the FOS Ltd.
19. The operational procedures for information-sharing will include the following:
- a) The FOS Ltd will give the OFT the information it reasonably requires to enable it to discharge its obligations with regard to the scheme;
 - b) Routinely, the FOS Ltd will give the OFT regular information about the number and types of complaints handled;
 - c) The FOS Ltd will give the OFT information about: serious shortcomings in a licensee's complaint-handling; concerns about the fitness and propriety of a consumer credit licensee including relevant information about the failure to comply or cooperate with an ombudsman; or other issues that may require action by the OFT in accordance with its statutory objectives;
 - d) If the OFT requests information in pursuance of regulatory action, the FOS Ltd will provide such information to the OFT (regarding the licensee which is the subject of the intended action) including: the number and types of complaints received about the licensee; and specific initial and final decisions; and .
 - e) The OFT will provide the FOS Ltd information about proposed changes to guidance or other material which may be relevant to the handling of complaints as appropriate; and, when it is relevant to the FOS Ltd's functions, actual and contemplated regulatory action in respect of licensees.



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