

Memorandum of Understanding between the Financial Conduct Authority (the FCA) and the scheme operator, the Financial Ombudsman Service Limited

This document

- 1 This memorandum of understanding describes how the FCA and the Financial Ombudsman Service Limited will co-operate with each other in the exercise of their respective functions for the purposes of paragraph 3A(2) of Schedule 17 of the Financial Services and Markets Act 2000 (FSMA).
- 2 This memorandum of understanding provides a framework for the FCA and the Financial Ombudsman Service Limited to cooperate and communicate constructively to carry out their independent roles and separate functions.
- 3 This cooperation and communication benefits both consumers of financial services and the financial services industry by contributing to the efficient functioning of the statutory systems for conduct regulation and dispute-resolution.
- 4 This is particularly important where the FCA is taking supervisory or regulatory action and, at the same time, the Financial Ombudsman Service Limited's ombudsman scheme is receiving a significant number of cases concerning the same issue.
- 5 This is the inaugural memorandum of understanding entered into between the FCA and the Financial Ombudsman Service Limited. The FCA and the Financial Ombudsman Service Limited will continue to monitor its operation and review it from time to time as necessary.

Roles of the FCA and the Financial Ombudsman Service Limited

- 6 Under the Financial Services and Markets Act 2000 (FSMA):
 - (a) The FCA operates as the financial conduct regulator. Its' strategic objective is ensuring that the relevant markets function well¹. Further, its' operational objectives include securing an appropriate degree of protection for consumers; protecting and enhancing the integrity of the UK financial system; and promoting effective competition in the interests of consumers in the market for regulated financial services. It is answerable, through the Treasury, to Parliament for the effective discharge of its functions.
 - (b) The Financial Ombudsman Service Limited's main role, as the scheme operator, is to operate a scheme to resolve disputes, 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. The scheme has three jurisdictions – the compulsory jurisdiction, the consumer credit jurisdiction and the voluntary jurisdiction.

Statutory responsibilities

- 7 Under FSMA, the FCA is required to take such steps as are necessary to ensure that the scheme operator, the Financial Ombudsman Service Limited, is, at all times, capable of exercising its statutory functions, and in particular is responsible for:

¹ The relevant markets are the financial markets, the markets for regulated financial services and the markets for services that are provided by persons other than authorised persons in carrying on regulated activities but are provided without contravening the general prohibition.

- (a) appointing and removing the directors (including the chairman) of the Financial Ombudsman Service Limited (in the case of the chairman, with the approval of the Treasury);
 - (b) ensuring that the directors' terms of appointment (and particularly those governing removal from office) secure their independence from the FCA in the operation of the scheme; and
 - (c) making rules for the compulsory jurisdiction on: complaint-handling by firms; activities covered; complainants eligible; time-limits; limits on awards; and levies to cover the establishment and operation of that jurisdiction.
- 8 The Financial Ombudsman Service Limited (with the consent/approval of the FCA) is responsible, in particular, for:
- (a) adopting a budget (which must indicate amounts of income arising/expected to arise and distribution of resources deployed) distinguishing between each of the scheme's three jurisdictions;
 - (b) making rules (or standard terms) for the consumer credit and voluntary jurisdictions on: complaint-handling by respondents, activities covered, complainants eligible, time-limits, limits on awards and levies to cover the establishment and operation of those jurisdictions; and
 - (c) making rules (or standard terms) for the compulsory, consumer credit and voluntary jurisdictions on: ombudsman procedures; awards of costs and interest; and case fees.
- 9 The Financial Ombudsman Service Limited is responsible, in particular, for:
- (a) operating the ombudsman scheme (which is known as the Financial Ombudsman Service);
 - (b) appointing the ombudsmen (including the chief ombudsman) on terms consistent with their independence; and
 - (c) making a yearly report to the FCA on the discharge of its functions and publishing that report.

Governance issues

- 10 Mindful of its obligation to take such steps as are necessary to ensure that the scheme operator, the Financial Ombudsman Service Limited, is at all times, capable of exercising its statutory functions, the FCA will:
- (a) consider the appropriateness and suitability of the persons who the FCA may consider for appointment as a director of the Financial Ombudsman Service Limited (and in the case of the appointment of the chairman, seek the approval of the Treasury);
 - (b) review the reports submitted to it by the Financial Ombudsman Service Limited on the discharge of its functions and review the report by the Chief Ombudsman on the discharge of his or her functions;
 - (c) periodically review and consult the Financial Ombudsman Service Limited on the desirability (or not) of developing any rules regarding the requirements for reports on the discharge of its or the Chief Ombudsman's functions;
 - (d) review the annual accounts and the report by the Comptroller and Auditor General;
 - (e) consider and, where appropriate, approve, the annual budget proposed by the Financial Ombudsman Service Limited in a timely manner; and
 - (f) take any other steps that may be necessary to ensure that the Financial Ombudsman Service Limited is, at all times, capable of exercising its statutory functions.

- 11 In appointing the directors of the Financial Ombudsman Service Limited, the FCA will take into account the views of the chairman of the Financial Ombudsman Service Limited and the need to maintain an appropriate balance in the composition of the board.
- 12 The FCA and the Financial Ombudsman Service Limited will cooperate in the smooth running, and periodic review, of the arrangements for:
 - (a) the appointment of new directors to the Financial Ombudsman Service Limited
 - (b) setting the Financial Ombudsman Service Limited's budget and the associated levies and case fees;
 - (c) collection by the FCA, on behalf of the Financial Ombudsman Service Limited, of the levy in relation to the compulsory jurisdiction; and
 - (d) consulting on and making rules affecting the Financial Ombudsman Service.

Cooperation

- 13 The FCA and the Financial Ombudsman Service Limited agree that they will:
 - (a) seek to dispel confusions and misunderstandings about their different roles;
 - (b) seek to achieve a complementary and consistent approach, so far as that is consistent with their independent roles;
 - (c) meet and communicate regularly – at appropriate levels of seniority – to discuss matters of mutual interest;
 - (d) consult one another at an early stage on any issues that might have significant implications for the other organisation; and
 - (e) share (for comment) at an early stage draft documents (such as consultation papers and briefings) that affect the other's functions.

Information sharing

- 14 The Financial Ombudsman Service Limited must disclose information to the FCA where in its opinion it considers that the information would or might be of assistance to the FCA in advancing one or more of the FCA's operational objectives. The FCA will have regard to this information in giving effect to its consumer protection objectives.
- 15 Subject to any restrictions on disclosure of information (confidential or otherwise) at law:
 - (a) The Financial Ombudsman Service Limited may disclose information to the FCA for the purpose of assisting the Financial Ombudsman Service Limited discharge its own functions
 - (b) The FCA may disclose information to the Financial Ombudsman Service Limited for the purpose of facilitating the carrying out of a public function of the FCA or a function of the Financial Ombudsman Service Limited.
- 16 The FCA and the Financial Ombudsman Service Limited will seek to adhere to the following procedures when sharing information between the two entities:
 - (a) The Financial Ombudsman Service Limited will give the FCA the information the FCA reasonably requires to enable it to discharge its statutory obligations with regard to the scheme.
 - (b) Routinely, the Financial Ombudsman Service Limited will give the FCA regular information about the number and types of complaints handled.

- (c) If concerns arise, the Financial Ombudsman Service Limited will give the FCA information about: serious shortcomings in a firm's complaint-handling; concerns about the fitness and propriety of a firm or approved person; or other issues that may require action by the FCA in accordance with its statutory objectives.
 - (d) If the FCA requests it for actual or contemplated regulatory action, the Financial Ombudsman Service Limited may give the FCA (for the specific firm concerned) information that is relevant to the discharge of the FCA's statutory functions.
 - (e) The FCA will give the Financial Ombudsman Service Limited information about: proposed changes to rules or guidance on complaints-handling; and, when it is relevant to the Financial Ombudsman Service Limited's functions, actual and contemplated regulatory action.
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