

Memorandum of Understanding between the Financial Conduct Authority and the Information Commissioner's Office

1. Purpose and scope

1.1 This Memorandum of Understanding (MoU) concerns the arrangements for co-operation and co-ordination between the Financial Conduct Authority (FCA) and the Information Commissioner's Office (the Commissioner) in carrying out their respective regulatory responsibilities under the Financial Services and Markets Act 2000 (FSMA), the Data Protection Act 1998 (DPA), the Freedom of Information Act 2000 (FOIA), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR), the Environmental Information Regulations 2004 (EIR) and the INSPIRE Regulations 2009.

1.2 Its purpose is to facilitate and provide a framework for co-operation and co-ordination between the FCA and the Commissioner by setting out the respective regulatory responsibilities of the FCA and the Commissioner and the arrangements for co-operation and the exchange of relevant information.

1.3 The arrangements set out in this MoU are subject to what is permitted and required by law (including the obligation of each organisation to have regard to its objectives when considering each case to which the arrangements apply).

1.4 The FCA and the Commissioner have separate but overlapping mandates. It is important that they understand and respect each other's roles and responsibilities, co-ordinate in areas of common interest, and co-operate in others.

1.5 This memorandum does not give rise to legally binding obligations on the part of the FCA or the Commissioner.

2. Roles and responsibilities of the FCA and the Commissioner

FCA

2.1 The FCA and Prudential Regulation Authority (PRA) regulate the financial services industry in the UK. The FCA's aim is to protect consumers, ensure the financial services industry remains stable and to promote healthy competition between financial services providers.

2.2 The FCA has rule-making, investigative and enforcement powers that it uses to protect and regulate the financial services industry. These powers derive from the Financial Services Act 2012 and Financial Services and Markets Act 2000. From April 2015, the FCA has powers under the Competition Act 1998 and the Enterprise Act 2002.

The Commissioner

2.3 The Commissioner is the UK's independent regulator designed to promote public access to official information and protect personal data. The Commissioner regulates the DPA, FOIA, PECR, EIR and INSPIRE Regulations 2009.

2.4 Section 51 of the DPA places a duty on the Commissioner to promote good practice by data controllers and the observance of the requirements of the DPA.

2.5 Where the Commissioner is satisfied that any of the data protection principles have been breached, a number of steps can be taken to seek to change the behaviour of the organisation including:

- serving information notices requiring organisations to provide the Commissioner with specified information within a certain time period;
- issuing undertakings committing an organisation to a particular course of action in order to improve its compliance;
- serving enforcement notices where there has been a breach, requiring organisations to take (or refrain from taking) specified steps in order to ensure they comply with the law;
- conducting consensual assessments to check organisations are complying; and
- issuing monetary penalty notices, requiring organisations to pay up to £500,000 for serious breaches.

2.6 The Commissioner may also prosecute those who commit criminal offences under the DPA.

3. Co-operation between the Commissioner and the FCA

3.1 Subject to any legal restrictions on the disclosure of information and at their discretion, both the FCA and the Commissioner will alert each other to any potential breaches of legislation applicable to the other regulator that it discovers whilst undertaking its duties, and provide relevant supporting information.

3.2 Subject to any legal restrictions on the disclosure of information, and at their discretion, both the FCA and the Commissioner will:

- a) Communicate regularly to discuss matters of mutual interest (this may involve participating in multi-agency groups to address common issues and threats); and
- b) Consult one another on any issues which might have significant implications for the other regulator.

3.3 Subject to any disclosure restrictions applicable to the FCA, the FCA may disclose confidential information to the Commissioner to facilitate the carrying out of a statutory function of the FCA or a statutory function of the Commissioner.

3.4 Where the FCA wishes to disclose to the Commissioner information necessary for the discharge by the Commissioner of its functions under the DPA or FOIA, section 58 DPA provides that no enactment or rule of law prohibiting or restricting the disclosure of information shall preclude the FCA from providing such information to the Commissioner.

3.5 Section 59(2)(e) DPA provides that a disclosure by the Commissioner of information obtained by or provided to it is made with lawful authority where, having regard to the rights and freedoms or legitimate interests of any person, the disclosure is necessary in the public interest.

3.6 In addition, section 59(2)(d) DPA provides that a disclosure of information by the Commissioner is made with lawful authority where the disclosure is made for the purposes of any legal proceedings, whether criminal or civil.

3.7 The Commissioner may, at its discretion, and in accordance with sub-sections 59(2)(d) and/or (e) DPA or otherwise, disclose confidential information to the FCA, where this is necessary to perform its functions.

4. Information sharing: general

4.1 The FCA and the Commissioner will exchange information on relevant issues of interest to the extent permitted by law, and as appropriate and relevant to their respective objectives. This may include, but is not limited to:

- information about investigations and notifying the other about any relevant action taken against a person or firm by one regulator which may be relevant to the functions of the other.
- information held by either regulator regarding fraud/criminal or any other activity that might cast doubt on the fitness and propriety of an FCA-authorized firm or an approved person.
- information or intelligence held by the Commissioner which indicates that there may be a failure of an FCA-authorized firm's governance or culture (including the implementation or effectiveness of its systems and controls).

4.2 The FCA and the Commissioner may request information from each other and will include the details of the information sought and why it would assist them to carry out their functions. Each may suggest a reasonable deadline for response, including an explanation of any urgency.

4.3 The FCA and the Commissioner may consult and co-ordinate in respect of reviews, calls for evidence and recommendations directed towards both parties, where appropriate.

5. Policy and rule-making

5.1 Each regulator will make rules and/or policies in pursuit of their separate objective(s). The FCA and the Commissioner will seek to co-ordinate work on their respective policies that have a material effect on the other's objectives. This may include, as appropriate, work on:

- regulatory policy
- industry standards and recommendations
- regulatory materials, such as codes of practice, rules and guidance
- assessments of the landscape and risk analysis to inform policy-making
- FCA consumer alerts concerning advertising
- competition in the financial advertising sector
- any other projects that may be identified on an ad hoc basis, particularly to aid market understanding of how the two regulators work together.

5.2 The FCA and the Commissioner will liaise closely to ensure that their separate awareness activities are complementary. Both regulators will share communication and publication plans to facilitate joined up messages and effective resource planning, where appropriate.

6. Investigation and enforcement

6.1 The FCA and the Commissioner recognise that there are areas in which they have complementary functions and powers. They will therefore endeavour to ensure that in these cases, the most appropriate body or bodies will commence and lead investigations. To the extent permitted by law and having regard to their respective powers, expertise and resources, they will seek to ensure that: in cases of investigations, the FCA and the Commissioner will notify each other of significant developments where the other is likely to have an interest and discuss where appropriate the steps they propose to take and co-ordination takes place in a timely manner, where possible, allowing for a proper exchange of views.

6.2 The FCA and the Commissioner may refer a matter for action if the other body is considered more appropriate to deal with the matter. Any such referral will include the action sought and the legal powers it considers are available to the other. Where the other recipient determines not to proceed, an explanation will be provided, where possible.

6.3 Relevant FCA and the Commissioner's staff will, where appropriate, seek to maintain general awareness and understanding of each other's functions and needs and will liaise with each other to ensure that issues are appropriately identified.

7. Confidentiality

7.1 In accordance with relevant legislation, the FCA and the Commissioner will protect the confidentiality and sensitivity of all unpublished regulatory and other confidential information received from the other regulator.

7.2 Where one regulator has received information from the other, it will consult with, and where required by statute, obtain the consent of the other before passing the information to a third party or using the information in an enforcement proceeding or court case.

7.3 The FCA and the Commissioner will liaise where relevant, to the extent permitted by law and having regard to their respective objectives, on responding to enquiries from the public, including Freedom of Information requests and will consult each other before releasing information originally belonging to the other.

8. Maintaining the MoU

8.1 The FCA and the Commissioner will review each year the operation of the MoU and the effectiveness of co-operation and co-ordination between the FCA and the Commissioner on or around the anniversary of the signing of this MoU.

9. Contact

9.1 In the first instance, the following should be used as points of contact:

- Manager, Financial Promotions Team, Specialist Supervision Department, Financial Conduct Authority, 25 The North Colonnade, London. E14 5HS. [REDACTED]
- Mr. Adam Stevens, Intelligence Hub Manager, Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow. SK9 5AF. [REDACTED] Email: [REDACTED]

9.2 Early contact between the FCA and the Commissioner is essential to avoid duplication of effort. It is recommended that contact be maintained during the life of a referred case and an update given (subject to confidentiality provisions) once it has been concluded.

Signed by the FCA and Information Commissioner

Dated: 29 September 2014

Signed by:



Martin Wheatley
CEO, Financial Conduct Authority



Christopher Graham, Information Commissioner