

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE FINANCIAL CONDUCT AUTHORITY ('FCA') AND
THE LENDING STANDARDS BOARD ('LSB')**

1. SCOPE AND PURPOSE

1.1 The purpose of this Memorandum is to record the framework for co-operation and communication between the FCA and the LSB, to the extent permitted by law, in carrying out their respective functions under the Banking Conduct Regime and the Consumer Credit Regime (as defined in clause 4.2 (a) (i) below), and under the various Standards and Codes for which the LSB has oversight (as set out in clause 3.3).

1.2 This Memorandum does not give rise to legally binding obligations on the part of either the FCA or the LSB and is subject to any legal requirement affecting the FCA or the LSB, including contractual obligations.

1.3 This Memorandum is not intended to:

- (a) restrict the exercise or discretion which the law requires or allows the FCA or the LSB to exercise (including the FCA's discretion to take supervisory or enforcement action or to exercise any of its powers in areas of regulatory overlap);
- (b) create any legitimate expectation on the part of any person that the FCA or the LSB will do any act or will refrain from doing any act; or
- (c) prevent the FCA or the LSB from complying with any law which applies to them, for example, applicable statutory or procedural restrictions on disclosure or obligations under applicable data protection legislation in force.

2. THE FINANCIAL CONDUCT AUTHORITY

2.1 The FCA has a strategic objective to ensure that the relevant markets function well under s.1B(1)(2) Financial Services and Markets Act 2000 ("FSMA"); and must so far as it is reasonably possible act in a way which is compatible with the strategic objective and which advances one or more of its "operational objectives."

2.2 The three operational objectives are: securing an appropriate degree of protection for consumers (including wholesale consumers) (s.1C FSMA); protecting and enhancing the integrity of the UK financial system (s.1D FSMA); and promoting effective competition and the interest of consumers in relevant markets (s.1E FSMA).

2.3 For the purposes of FSMA and paragraphs 2.1 and 2.2 of this Memorandum, 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 contained in s.19 FSMA.

2.3 Broadly, under FSMA the FCA is responsible for:

- i. regulating standards of conduct in retail and wholesale markets;
- ii. the prudential supervision of firms that are not PRA-regulated; and
- iii. the regulation of primary markets including monitoring market disclosures; reviewing and approving prospectuses and operating the UK listing regime.

2.4 The FCA is also responsible for monitoring and enforcing compliance with the Payment Services Regulations 2017 (the “PSRs”), with the exception of some provisions for which the Payment Systems Regulator takes responsibility. The PSRs govern the authorisation and associated requirements for authorised or registered payment institutions. They also set the conduct of business rules for firms providing payment services.

3. THE LENDING STANDARDS BOARD

3.1 The LSB has an overarching mission to drive fair customer outcomes within financial services through independent oversight.

3.2 The LSB is an independent oversight organisation which sets standards through, and provides independent oversight of, the Standards of Lending Practice and other codes of practice within its remit. These cover retail and business lending and financing, access to banking services, and protections from authorised push payment scams.

3.3 The Standards and Codes overseen by the LSB are:

- (a) The Standards of Lending Practice for personal customers. The personal Standards apply to credit card, overdraft and unsecured loan products provided to personal customers. In relation to personal lending, the LSB also oversees a number credit card related industry agreements and the four information remedies flowing from the FCA’s Credit Card Market Study.
- (b) Standards of Lending Practice for business customers. This set of Standards applies to products offered for business lending purposes (including loan, commercial mortgage, overdraft, credit card, and chargecard products) to businesses with a consolidated turnover of up to £25 million. These Standards are recognised by the FCA (where the lending is not a regulated activity) as an industry Code of Best Practice. The LSB also oversees the Standards of Lending Practice for business customers – Asset Finance which cover asset finance products made available to business customers with a turnover of up to £6.5 million.
- (c) The Access to Banking Standard which is overseen by the LSB and owned by UK Finance applies to branch closure programmes (other than temporary closures, and those forced by significant unplanned external or emergency events), and branches where the opening hours are reduced by more than 30% over 1 year.
- (d) The Contingent Reimbursement Model Code for Authorised Push Payment Scams (‘CRM Code’). The Code provides for protections against Authorised Push Payments (‘APP’) executed across Faster Payments, CHAPS or an internal book transfer, authorised by a customer in accordance with regulation 67 of the PSRs.

3.4 Firms can be signatories to any combination of the Standards and Codes overseen by the LSB. Firms signed up to one or more of the LSB Standards or Codes are referred to as ‘registered firms’.

3.5 Registered firms that are signatories to the Standards and Codes overseen by the LSB include UK retail banks and lenders to personal and business customers in the UK. In addition, firms undertaking debt purchase or debt collection activities may also be registered firms for the purposes of either of the Standards of Lending Practice (as set out in 3.3 (a) and 3.3 (b) of this Memorandum).

4. AREAS OF OVERLAP BETWEEN THE LSB AND FCA

4.1 The FCA has powers derived from primary and secondary legislation. The LSB has powers derived from registered firms agreeing to be bound by the LSB’s Registration Rules and, in turn, to comply with the requirements of the Standards or Codes to which they are signatories.

4.2 The FCA and the LSB have a mutual regulatory interest in the following key areas, (referred to in this Memorandum as ‘areas of overlap’):

a. For lending to retail or personal customers:

- i. Under the Financial Services and Markets Act 2000 (Regulated Activities Order) 2001 (as amended), businesses undertaking but not limited to, the provision of credit cards, overdraft and unsecured loan products to personal customers as well as businesses undertaking ancillary activities such as debt collection and debt purchase in relation to this lending, are subject to the Principles, Rules and Guidance contained in the FCA Handbook, and in particular the Consumer Credit Sourcebook (CONC) as well as statutory provisions under the Consumer Credit Act 1974 (as amended); these sources being collectively known as the Consumer Credit Regime. Under the Financial Services and Markets Act 2000 (Regulated Activities Order) 2001 (as amended), businesses which accept deposits for purposes specified in paragraph 5(1) are subject to the Principles, Rules and Guidance contained in the FCA Handbook and in particular the Banking Conduct of Business Sourcebook (“BCOBs”); these sources being collectively known as the Banking Conduct Regime.
- ii. The LSB’s Standards of Lending Practice for personal customers apply to credit card, charge card, overdraft and unsecured loan products provided to customers. They set out good practice for registered firms to adhere to across the relevant product lifecycles. The Standards cover product and service design, product sale, account maintenance and servicing, supporting customers to help with money management, supporting customers in financial difficulty and supporting customers at risk due to vulnerability. In addition to the Standards, the LSB provides oversight for credit card related industry agreements relating to promotional rate expiry, borrowing prompts, payment date changes, unsolicited credit limit increases, and engagement with customers making frequent minimum or low value repayments.

b. For lending to business customers:

- i. Under the Financial Services and Markets Act 2000 (Regulated Activities Order) 2001 (as amended) (the “RAO”), businesses undertaking but not limited to the regulated activities

referred to in articles 60B(1) and 60B(2) of the RAO (lending and exercising a lender's rights) are subject to the Principles, Rules and Guidance contained in the FCA Handbook, and in particular the Consumer Credit Sourcebook (CONC) as well as, but not limited to, statutory provisions under the Consumer Credit Act 1974 (as amended), collectively known as the Consumer Credit Regime. Businesses undertaking regulated debt collection (under article 39F of the RAO), as well as other credit-related regulated activities are also subject to the Consumer Credit Regime.

- ii. The LSB's Standards of Lending Practice for business customers apply to loan, commercial mortgage, overdraft, credit card and charge card products provided to business customers. They set out good practice for registered firms to adhere to across the relevant product lifecycles. The Standards cover product information, product sale, declined application, product execution, credit monitoring, treatment of customer in financial difficulty, business support units, portfolio management, and supporting customers in vulnerable circumstances. In addition, the LSB Standards of Lending Practice for business – asset finance - cover product information, product sale, declined application, product execution, credit risk management, treatment of customer in financial difficulty, portfolio management, and supporting customers in vulnerable circumstances.

c. With regard to access to retail banking services:

- i. The FCA has issued Guidance for firms (FG 22/6) setting out their expectations that firms should assess customer needs and consider the availability and provision of alternatives where closures or conversions are planned. It applies to regulated firms that operate (or have agents operate) branches, or ATMs (cash machines or cashpoints), and who are subject to Principles 6, 7, and 11 of the FCA's Principles for Businesses. It applies when such a firm proposes or decides to close such sites, fully or partially, or to convert a free-to-use ATM to pay-to-use, with some limited exceptions. The FCA seeks to ensure the way firms implement these decisions leads to fair outcomes for customers, particularly those in vulnerable circumstances.
- ii. The LSB provides oversight for the Access to Banking Standard which commits registered firms to ensuring that, when a bank branch is closed (other than temporary closures, and those forced by significant unplanned external or emergency events) or services are significantly reduced (i.e. where the opening hours are reduced by more than 30% over 1 year), their customers are communicated with openly and treated fairly.

d. With regard to Authorised Push Payment Scams:

- i. Payment service providers (PSPs) (as defined in the PSRs) are required to comply with certain rules about providing payment services, including specific requirements relating to the authorisation and execution of payment transactions. The PSRs set out liability provisions relating to unauthorised payment transactions, as well as non-execution or defective or late execution of payment transactions.
- ii. The LSB provides oversight of the CRM Code which provides for protections relating to Authorised Push Payments ('APP') scams executed across Faster Payments, CHAPS or an

internal book transfer, where the PSPs involved in the transaction are not liable under the PSRs. The Code sets out commitments by registered firms to take steps to detect and prevent APP scams and to, on a contingent basis, reimburse victims of APP scams where they are not to blame for the success of the scam.

5. INVESTIGATION AND ENFORCEMENT

5.1 The FCA and the LSB recognise the desirability of:

- (a) promoting an approach to monitoring, supervision, and enforcement in areas of overlap that is coordinated, transparent, proportionate and responsive to the issues; and
- (b) avoiding undue duplication of investigation and enforcement work in areas of mutual regulatory interest.

5.2 The FCA's approach to enforcement of its FSMA responsibilities is set out in the Enforcement Guide (EG). The FCA's approach to enforcing the PSRs mirrors its general approach to enforcement under FSMA. The FCA may, where appropriate, take account of the work being performed by the LSB and the adherence to the Standards and Codes by registered firms when determining what resources to deploy in supervising and enforcing in relation to requirements within the FCA's remit.

5.3 The LSB undertakes independent oversight to assist registered firms in adhering to the provisions of the Standards and Codes overseen by the LSB and to identify areas of non-compliance. When an issue is identified that could potentially require actions by either the FCA or the LSB, the two bodies may consult each other to agree which is best placed to take action in the first instance.

6. CO-OPERATION, CO-ORDINATION AND EXCHANGE OF INFORMATION

6.1 The FCA and the LSB will seek to:

- (a) co-operate in a timely way with regard to their respective roles;
- (b) maintain general awareness and understanding of each other's functions;
- (c) share good practice regarding monitoring and enforcement methodology in areas of overlap; and
- (d) meet as necessary to seek to achieve these benefits, including regular meetings at staff level and meetings at least annually at senior management level. Meetings at staff level will take place at least quarterly and more frequently on an ad hoc basis as necessary. These meetings may include discussion of the quality of compliance in areas of overlap and will review progress in dealing with any specific issues that have arisen since the previous regular meeting, to the extent this is compatible with legal restrictions on disclosure.

CO-OPERATION AND CO-ORDINATION

6.2 The LSB, subject to restrictions set out in the LSB's Registration Rules, and the FCA, subject to statutory restrictions, will, from time to time, share general insight regarding the planning, undertaking and

outcomes of compliance, monitoring and supervisory work, and the development of Standards, Codes or regulation in line with the respective organisations' objectives. This approach will seek to ensure:

- (a) a consistent understanding of expectations in relation to the application of relevant Standards, Codes or regulation;
- (b) there is the opportunity for the FCA and LSB to take account of the respective organisation's work when planning or undertaking supervisory, monitoring or policy development work;
- (c) where work is being undertaken in an area of mutual regulatory interest, the LSB and FCA can take steps to work collaboratively to prevent duplication of supervisory work. In addition, due consideration will be given to FCA rules and guidance and LSB Standards and Codes when undertaking policy development.

EXCHANGE OF INFORMATION

6.3 The FCA's ability to disclose information to the LSB is subject to statutory restriction. The co-operation arrangements outlined in this section do not affect or override those restrictions. Subject to these restrictions, the FCA's 'self-help' gateway¹ permits the FCA to exchange information where it is satisfied that the disclosure will assist it to carry out its regulatory functions in relation to the firm or firms concerned.

6.4 The LSB Registration Rules impose a duty of confidentiality on the LSB, but they provide a gateway for confidential information to be passed to the FCA.

6.5 The FCA and the LSB will ensure that any processing (including disclosure) of personal data pursuant to these arrangements fully complies with both the Data Protection Act 2018 and the UK General Data Protection Regulation (Regulation (EU) 2016/679).

6.6 Subject to the above three paragraphs, the FCA and the LSB expect to exchange information as appropriate in connection with the carrying out of their respective responsibilities in relation to the banking and lending services. This will include, where relevant:

- (a) the LSB will notify the FCA of information that may indicate an infringement of an FCA rule or FCA-enforceable regulation in an area of overlap, where that information becomes apparent to the LSB;
- (b) the FCA will, subject to statutory restrictions, notify the LSB of information held by the FCA which the FCA considers may warrant investigation by the LSB;
- (c) the parties may consult with each other in relation to any proposed FCA or LSB public announcement that may be relevant to the functions of the other party.

6.7 The FCA and the LSB will keep any non-public information received under this Memorandum, including the fact of requests and information contained therein, confidential and will not onward disclose it without the consent of the other, unless required by law. In such a case, the FCA or the LSB will use all

¹ Regulation 3 of the FSMA 2000 (Disclosure of Confidential Information) Regulation 2001

reasonable endeavours to notify the other prior to complying or assert such appropriate legal exemptions or privileges as may be applicable.

7. REVIEW OF MEMORANDUM OF UNDERSTANDING

7.1 The FCA and the LSB will consider formally, from time to time and as appropriate:

- (a) any issues that have arisen from the operation of this Memorandum;
- (b) the content and application of this Memorandum and any changes which need to be made;
- (c) the exercise of the FCA's and the LSB's respective responsibilities; and
- (d) whether any rules or procedures need to be reviewed for possible change.

7.2 Either the FCA or the LSB may terminate the Memorandum at any time, but will endeavour to give the other body reasonable notice before doing so.

8. PUBLICATION

Copies of this Memorandum will be available on the FCA and LSB websites.

9. SPECIAL CIRCUMSTANCES

Whilst it is intended that the arrangements in this Memorandum should apply generally, it is recognised that some circumstances will require special handling. Nothing in the Memorandum prevents the making of arrangements to meet specific exceptional needs.

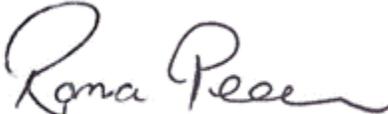
Signed by:

For the Financial Conduct Authority

For the Lending Standards Board

Name: Roma Pearson
Position: Director of Consumer Finance

Name: Emma Lovell
Position: Chief Executive

Signature: 

Signature: 

Date: 28 November 2022

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