

Draft: Memorandum of Understanding between the Financial Conduct Authority and The Pensions Regulator

Purpose and scope

1. This Memorandum of Understanding (MOU) concerns the arrangements for co-operation and co-ordination between the Financial Conduct Authority (FCA) and The Pensions Regulator (TPR) in carrying out their respective regulatory responsibilities under the Financial Services and Markets Act 2000 (FSMA), the Pensions Acts of 2004 and 2008, and other relevant legislation.
2. Its purpose is to facilitate and provide a framework for co-operation and co-ordination between the FCA and TPR by setting out:
 - (i) the respective regulatory responsibilities of the FCA and TPR; and
 - (ii) arrangements for co-operation and the exchange of relevant information.
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).
4. The FCA and TPR have a number of complementary regulatory responsibilities for the regulation of occupational and personal, including stakeholder, pension schemes. These responsibilities mostly extend to different activities and objectives, as outlined below. Co-operation and co-ordination between the FCA and TPR on areas of mutual interest will help ensure that-
 - i. Each regulator is effective in achieving its statutory objectives
 - ii. The respective roles and responsibilities of the two regulators are clear to interested parties, in particular in terms of the different aspects of pensions regulation.
 - iii. There is better understanding of the impact of each regulator's respective legislation on pension schemes, FCA-authorised firms and the financial system as a whole.
 - iv. The application of each regulator's governing legislation and the carrying out of their duties will, so far as possible, be complementary and transparent.
 - v. The FCA and TPR's public communications on issues of common interest will be appropriately co-ordinated.

Roles and responsibilities of the FCA and TPR

5. The FCA is responsible for regulating the standards of conduct in retail and wholesale, financial markets and for supervising the infrastructure that supports those markets. The FCA also has responsibility for the prudential regulation of firms that are not regulated by the Prudential Regulation Authority (PRA). The FCA's single strategic objective is to ensure that the markets for financial services function well. This objective is underpinned by three operational objectives which are: 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 financial services. In respect of pension schemes, the FCA:

- regulates firms that provide, promote, market, advise on or sell personal, including stakeholder, pensions and annuities – occupational trust based pension schemes are specifically excluded from its remit;
- regulates the establishment, operation and winding-up of personal pension schemes;
- supervises the prudential risks of firms that are not regulated by the PRA who provide personal, including stakeholder, pensions;
- has an indirect interest in occupational trust based pension schemes because it regulates firms which provide investments and investment services to occupational trust based pension schemes (e.g. investment managers, insurers selling insurance-based pension products, advice given to scheme trustees on investments);
- is accountable, in a number of significant respects, for the Financial Ombudsman Service (FOS), which handles complaints about personal, including stakeholder, pensions – FOS shares this complaints handling role with the Pensions Ombudsman; and
- is responsible under FSMA, in conjunction with the PRA, for the Financial Services Compensation Scheme, which covers, amongst other things, the liabilities of FCA- authorised firms which provide or advise on personal, including stakeholder, pensions.

6. TPR is the statutory regulator of work-based pensions. TPR's objectives are protecting the benefits of members of occupational pension schemes; protecting the benefits of members of personal pension schemes where direct payment arrangements are in place; reducing the risk of situations arising that may lead to compensation being payable under the Pension Protection Fund (PPF); promoting, and improving understanding of, the good administration of work-based

pension schemes; and to maximise employer compliance with employer duties and employer safeguards under the Pensions Act 2008. TPR:

- regulates occupational pension schemes, including their funding, governance and administration;
- regulates certain aspects, including administration, of work-based personal pension schemes;
- provides information, education and assistance in relation to work-based pension schemes to:
 - those involved in the governance and administration of work-based pensions;
 - those who advise trustees and managers on the operation of work-based pensions;
 - statutory employers of work-based schemes and people who advise them
- regulates the registration of stakeholder pensions and their compliance with the conditions that define a stakeholder pension
- regulates duties imposed on, trustees, managers, employers and other parties in relation to work-based pensions. For example, in respect of employers, the timely payment of contributions;

Policy and rule-making

7. Each regulator will make rules and / or policies in pursuit of its separate objective(s). The FCA and TPR 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 to Ministers
- 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 pensions matters;
- any other projects that may be identified on an ad hoc basis, particularly to aid market understanding of how the two regulators work together.

8. The FCA and TPR 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.

Areas of common interest

9. The FCA and TPR share a number of areas of interest including, but not limited to, the areas outlined below. Areas of interest and the regulatory priorities of each organisation may change, and the FCA and TPR will seek to co-ordinate and co-operate in relation to these matters where appropriate.

Regulation of work-based personal pension schemes

10. The FCA and TPR have shared interest and regulatory responsibilities in relation to work-based personal pension schemes. These are personal and stakeholder pension schemes where contributions are paid into them through direct payment arrangements, i.e. the mechanism of employer payments, whether these payments are employer contributions or are employee contributions deducted from pay.

11. The FCA's main areas of responsibility in respect of these schemes are in relation to regulation of financial advice given to employees and the supervision of providers that are not regulated by the PRA. TPR's main areas of responsibilities in respect of these schemes are promoting good administration of the schemes, the requirements on employers around the payment of contributions into the schemes, and to maximise compliance with employer duties and safeguards under the Pensions Act 2008.

12. In the event of significant risks to members of work-based personal pension schemes, the regulators will co-ordinate or inform each other where appropriate regarding any substantive action to be taken.

13. Where significant risks are identified which relate across a provider's personal pension portfolio (i.e. where the risks involve both individual personal pensions and work-based personal pension schemes), the FCA is more likely to lead on this area since the risks may affect matters outside of TPR's jurisdiction.

14. Where there are problems which primarily relate to group personal pensions then the regulators will liaise. TPR is more likely to take the lead where there are issues which relate to the employer.

15. If the matter is particularly serious there may be occasions where both regulators will seek to address issues. This would be done following discussions between the regulators as to how this can be done in a complementary manner.

Governance and administration

16. FCA and TPR share an interest in achieving good governance and administration in relation to pension schemes in order to achieve the best outcome for members. This interest includes, but is not limited to, issues around systems and controls.

Pensions Liberation and fraud

17. FCA and TPR share an interest in fraudulent activity where it threatens the benefits of pension scheme members. FCA and TPR also share an interest in detecting and disrupting pension liberation activity¹ and any associated fraud and in warning consumers of the pitfalls of such activities.

Pension schemes sponsored by FCA-authorised firms

18. The FCA has responsibility for the prudential regulation of firms that do not fall under the Prudential Regulation Authority's (PRA) scope. As employers, these FCA-authorised firms may provide work-based pension schemes to their employees and ex-employees. As such, the FCA and TPR share an interest in the pension liabilities and overall solvency of such firms.

Complaints, redress and compensation arrangements

19. A separate Memorandum of Understanding between the Pensions Ombudsman and the Financial Ombudsman Service governs the handling of complaints relating to occupational and personal, including stakeholder, pensions by these bodies. The FCA and TPR will liaise with each other as necessary on pensions-related complaints to ensure that shared issues are given appropriate consideration.

20. The FCA and TPR will liaise with each other as necessary on the compensation arrangements provided by the Financial Services Compensation Scheme, the PPF and the Fraud Compensation Fund. This may include careful co-ordination and exchange of information, where relevant, in cases where defaults or potential defaults under any of these compensation schemes could have a bearing on the other regulator's responsibilities.

¹ Pension liberation is a transfer of scheme members' savings to an arrangement that will allow them to access their funds before the age 55. Pension liberation can result in tax charges and penalties of more than half the value of a member's pension savings, and those being targeted are usually not being told about the potential tax implications. This is in addition to high charges, typically 20 to 30% for entering into one of these arrangements and high risk investments for the remaining pension savings.

Information sharing

21. The FCA and TPR will exchange information on relevant issues of interest to the extent permitted by law. FCA and TPR will seek to exchange information on a broad range of issues, 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. This may include for example notification of prohibition orders, the FCA's withdrawal of an approved person's approval, TPR's improvement notices, TPR's third party notices, etc;
- information and intelligence held by TPR which gives rise to concerns or potential concerns about an FCA-authorised firm's prudential soundness, fitness or propriety;
- any concerns from either regulator about an FCA-authorised firm's compliance with statutory funding requirements for defined benefit pension schemes;
- information or intelligence held by the FCA which indicates serious risks to the solvency of pension providers, providers of services in support of pension schemes (such as administration or investment) or of employers; information about any decision by TPR that has a material impact on a listed company's finances in relation to its liabilities to its defined benefit pension scheme;
- information held by either regulator about fraud / criminal or any other activity that might cast doubt on the fitness and propriety of an FCA-authorised firm, an approved person, or a pension trustee; and
- information or intelligence held by TPR which indicates that there may be a failure of an FCA-authorised firm's systems and controls.

22. The FCA and TPR may request information from each other and will include the details of the information sought and the legal gateways it considers are available to permit sharing. Each may suggest a reasonable deadline for response, including an explanation of any urgency.

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

Confidentiality

24. In accordance with relevant legislation, the FCA and TPR will protect the confidentiality and sensitivity of all unpublished regulatory and other confidential information received from the other regulator.
25. 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 (i) passing the information to a third party; or (ii) using the information in an enforcement proceeding or court case.
26. The FCA and TPR 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.

Investigation and enforcement

27. The FCA and TPR 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 TPR 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.
28. The FCA and TPR 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.
29. Relevant FCA and TPR 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.

Coordination with other authorities

30. The FCA and TPR will liaise with each other and co-ordinate their activities as appropriate on European and international developments on pension matters, including

the relevant work at EIOPA (the European Insurance and Occupational Pensions Authority). Where appropriate, TPR and the FCA will coordinate their activities with the PRA

31. Where relevant to their respective objectives, co-ordination in relation to EIOPA will include, in particular:
- i. designating individuals who will act as points of contact for the exchange of information; and,
 - ii. consulting each other in respect of areas of common interest to come to an understanding of each other's views; and,
 - iii. Engaging in a timely manner, ensuring both regulators have the opportunity to provide input in advance of decisions being made.

Regular Engagement

32 Senior executives of the FCA and TPR will meet at least annually with regular working level engagement as determined by the areas of interest at any given time.

Review of MOU

33 The FCA and TPR will review each year the operation of the MOU and the effectiveness of co-operation and co-ordination between the two regulators.



Signed.....

Sheila Nicoll

Director of Policy

for the Financial Conduct Authority

Date 26 March 2013



Signed.....

Bill Galvin

Chief Executive

for The Pensions Regulator

Date 26 March 2013