

Terms of Reference for the Wider Implications Framework (incorporating the statutory statement of policy for the cooperation duty under section 415C FSMA)

Purpose

1. The Wider Implications Framework (“the Framework”) provides a structure for its members to cooperate on opportunities, risks and matters of interest (collectively referred to in these Terms of Reference as “issues”) with significant implications, with the aim of achieving beneficial outcomes for consumers and other participants in the financial services industry.
2. The Framework is in addition to other regular collaboration, such as sharing of information, which members already undertake pursuant to applicable statutory provisions and arrangements, such as bilateral Memoranda of Understanding (MoU).
3. The members of the Framework are independent bodies with separate statutory functions and duties, as set out at Annex A to these Terms of Reference (“Annex A”). The purpose of the Framework is to establish a procedure consistent with members’ independent roles and statutory functions and duties to:
 - a. discuss openly, frankly and promptly issues that may have significant implications, as described in paragraph 11; and
 - b. agree the most appropriate approach to managing these risks and issues, including which members should be involved, which member(s) should lead on that approach and which, if any, other persons should be consulted.
4. These Terms of Reference, therefore, set out the steps members collectively agree to take to cooperate and consult on issues with significant implications, while recognising that those members remain individually accountable for the delivery of their statutory functions and duties.
5. The Framework provides the principal means by which the core members listed at paragraph 9 will comply with the duty under section 415C(1) of the Financial Services and Markets Act 2000 (“FSMA 2000”) to cooperate and consult in relation to the exercise of functions (“the cooperation duty”). Section 415C(1) states that, in exercising its functions under FSMA 2000, a relevant organisation must take such steps as it considers appropriate to co-operate with each of the other relevant organisations in relation to matters of interest to that organisation, and

consult such other persons as it considers appropriate in relation to any matters that it considers to be of interest to those persons.

6. The steps set out in these Terms of Reference which the core members collectively agree to take to comply with the cooperation duty are subject to Annex A, which sets out the steps that each of the core members will individually take to comply with the cooperation duty.
7. Preparation and publication of these Terms of Reference and their annexes satisfies the requirement in section 415C(3) of FSMA 2000 that the core members prepare and publish a statement of policy with respect to compliance with the cooperation duty.

Membership

8. Members of the Framework are either “core members” (i.e. organisations subject to the cooperation duty) or “other members” (i.e. organisations not subject to the cooperation duty).

Core members

9. The core members are:
 - a. The Financial Conduct Authority (FCA)
 - b. The Financial Ombudsman Service (FOS)
 - c. The Financial Services Compensation Scheme (FSCS)

Other members

10. The other members are:
 - a. The Pensions Regulator (TPR)
 - b. The Money and Pensions Service (MaPS)

Scope

11. An issue will be considered under this Framework where one or more of the members assess that it has, or is likely to have, significant implications in relation to:
 - a. the exercise by those members (or any other members) of their statutory functions (see Annex A), or
 - b. the functioning generally of relevant markets within the meaning of section 1F of FSMA 2000.
12. For the purpose of paragraph 11, the members will give due regard to a range of factors when considering whether an issue has, or is likely to have, significant implications. These factors may include, but are not limited to:
 - a. the number and type of consumers affected;
 - b. the amount of potential loss or redress that may be owed;
 - c. the risk of firm failure;
 - d. where relevant, the extent of alignment between relevant members in their understanding of and approach to the issue;
 - e. the risk of contagion to other financial services businesses or markets;
 - f. wider regulatory action under contemplation, including but not limited to:

- i. industry-wide regulatory change that will impact general expectations of financial services businesses;
- ii. the use of the FCA's statutory powers to require the establishment and operation of a consumer redress scheme.

Outcome

13. The intended outcome of this Framework is, where compatible with members' independent roles and statutory functions and duties, to:
 - a. ensure that issues are considered by members in a timely manner, in a way which gives due recognition to the wider impact of those issues and the needs of consumers, for example the need to be quickly and fairly compensated for detriment caused by financial services businesses where applicable;
 - b. provide a transparent and robust process for managing issues within the scope of this Framework; and
 - c. seek a consistent and complementary approach to dealing with issues within the scope of this Framework, in order to provide greater certainty for users and providers of financial services and efficient resolution of problems and detriment (if applicable) for all concerned.
14. The relevant members will decide whether to define further outcomes at the outset of considering a particular issue under this Framework.
15. At the outset of considering a particular issue under this Framework, relevant members will, wherever possible, agree objectives for the management of the issue that are well-defined with a clear outcome in mind, measurable (e.g. with clear criteria for success and a timeline for achieving the intended outcome) and time-bound (i.e. with a projected start and end date).

Governance

16. The Framework comprises:

Working-level engagement

Relevant members will meet regularly to identify potential issues for management under the Framework and progress issues that the Executive-level has agreed should be managed under the Framework.

Director-level engagement

Director-level meetings will be held four times a year between Director-level representatives of each member. Meetings may be called more frequently as the need arises.

These meetings are to receive and consider updates on issues being managed under the Framework, provide an escalation point, and agree on matters for referral to the Executive-level.

Executive-level engagement

Executive-level meetings will be held twice a year, attended by the CEO or an Executive Director of each member. Meetings may be called more frequently as the need arises. Where appropriate, decisions may be taken in writing.

These meetings are to:

- decide which issues should be managed under the Framework and the approach to managing those issues;
- receive and consider significant updates on issues (and provide an escalation point for significant issues); and
- decide whether issues should be removed from, or readmitted to, the Framework.

Chair-level engagement

Chair-level meetings will be held once a year, usually in May, with the Chair from each member as well as the CEO or a relevant Executive Director from each member.

These meetings are to provide strategic direction within the scope of this Framework, including but not limited to approving the Annual Report.

Quorum

17. All members to which the relevant issue pertains must be present.

Transparency and accountability

18. The following will, where appropriate, and subject to any applicable legal restrictions be published on the FCA's website:

- a. these Terms of Reference;
- b. a log of issues (published after each Executive-level meeting);
- c. summary minutes of the Executive-level and Chair-level meetings (published after each meeting);
- d. a copy of the Framework Annual Report (see 19-21 below); and
- e. a copy of the MoUs between members on information sharing.

Framework Annual Report

19. Members will assess at the end of each financial year if the Framework is achieving its purpose. As part of this assessment, the core members will assess their compliance with the cooperation duty. These assessments will be set out in a published Annual Report, which will be approved at the Chair-level meeting.

20. Members will operate a dedicated email address to enable stakeholders to make representations on the Framework Annual Report and the Framework more generally.

21. Except in the case of the Framework Annual Report prepared in the 2023-2024 financial year, each Framework Annual Report will include a summary of representations received during the period covered by the Framework Annual Report.

Information sharing

22. Information sharing between members will be subject to any restrictions in relevant legislation and each member's independent role and statutory functions. However, members agree to make every effort to share information at the earliest possible stage to support and facilitate discussions of the issues within the scope of this Framework.

23. Information sharing is supported by the existing MoUs between certain members and information sharing legislative gateways.

Consultation with other stakeholders

24. Where an issue may also be relevant for other regulatory bodies, for example the Prudential Regulation Authority (PRA), the Bank of England (BoE), The Pensions Ombudsman (TPO) and the Payment Systems Regulator (PSR), the members may invite the relevant body to engage with them on the issue in question.

25. The members may invite any person or organisation who is not a member, such as trade associations and consumer groups or regulatory levy payers, to make representations if the members consider this appropriate. This could be done by invitation to participate in meetings or to make written submissions on particular points of interest.

Chair

26. Representatives of the FCA will chair the Framework and the meetings that it comprises.

Secretariat

27. The FCA will provide an appropriate Secretariat for the meetings. The Secretariat will be responsible for organising the meetings and ensuring proper records are kept.

Annex A: Members' statutory functions (including steps each of the core members will individually take to comply with the cooperation duty under section 415C FSMA)

The Financial Conduct Authority (FCA)

A1. The FCA regulates financial conduct and is the prudential regulator for authorised persons that are not regulated by the Prudential Regulation Authority. Its strategic objective is ensuring that relevant markets function well.

A2. Its operational objectives are:

- a. securing an appropriate degree of protection for consumers,
- b. protecting and enhancing the integrity of the UK financial system, and
- c. promoting effective competition in the interests of consumers in the market for regulated financial services.

A3. Its secondary objective is, so far as reasonably possible, facilitating, subject to aligning with relevant international standards:

- a. the international competitiveness of the economy of the United Kingdom (including in particular the financial services sector), and
- b. its growth in the medium to long term.

Duty to cooperate with the Financial Ombudsman Service and the FSCS

A4. The FCA shall comply with its obligations under s.415C FSMA having regard to its strategic and operational objectives.

A5. Under s.415C(1) and (2) FSMA the FCA is under a duty to:

- a. Take such steps as it considers appropriate to co-operate with the Financial Ombudsman Service and/or the FSCS in relation to matters of interest to the Financial Ombudsman Service and/or the FSCS, and
- b. Consult such other persons as the FCA considers appropriate in relation to any matters that the FCA considers to be of interest to those persons

A6. A matter will be of interest to the Financial Ombudsman Service or the FSCS if it appears to the FCA that it has, or is likely to have, significant implications in relation to:

- a. the exercise by the Financial Ombudsman Service or FSCS of functions under statute
- b. the functioning generally of relevant markets within the meaning set out in s.1F FSMA.

A7. In determining whether a matter will be of interest to the Financial Ombudsman Service or the FSCS, the FCA will have regard to a range of factors, including but not limited to the factors set out at paragraph 12 of these Terms of Reference.

A8. The Director of Cross Cutting Policy and Strategy for the FCA, reporting to the Executive Director of Consumers and Competition shall have oversight of matters of interest discussed with the Financial Ombudsman Service, the FSCS, and (where relevant) other persons.

A9. The FCA intends to comply with its duty to co-operate with the Financial Ombudsman Service and/or the FSCS in relation to matters of interest as follows:

- a. The FCA shall review at regular intervals whether there are any trends or prevailing issues in its policy development, supervisory or enforcement activities which it considers would fall within the scope of the duty as set out at s.415C(1) FSMA. This process of review shall also be used as an opportunity to consider, where relevant, what information falling within s.415C(1) and (2) FSMA could be shared with the Financial Ombudsman Service and the FSCS in compliance with relevant legal requirements on disclosure. The Director of Cross Cutting Policy and Strategy will be responsible for undertaking this process of review in such manner as he/she considers appropriate.
- b. Where it is identified that s.415C(1) is engaged, the FCA will comply with s.415C(1) by liaising with the Financial Ombudsman Service, the FSCS and (where relevant) other persons in accordance with these Terms of Reference.

A10. The FCA shall seek to share information in compliance with the duty under s.415C(1) so far as is compatible with the relevant requirements under data protection and information law (see Annex B).

Financial Ombudsman Service

A11. The Financial Ombudsman Service is established under Part XVI and Schedule 17 of FSMA. Section 225(1) of FSMA identifies its key function as a scheme under which certain disputes may be resolved quickly and with minimum formality by an independent person and on the basis of what is fair and reasonable in all the circumstances.

Duty to cooperate with the FCA and the FSCS

A12. The Financial Ombudsman Service shall comply with its obligations under s.415C FSMA having regard to that key function.

A13. Under s.415C(1) and (2) FSMA the Financial Ombudsman Service is under a duty to:

- a. Take such steps as it considers appropriate to co-operate with the FCA and/or the FSCS in relation to matters of interest to the FCA and/or the FSCS and,

- b. Consult such other persons as the Financial Ombudsman Service considers appropriate in relation to any matters that the Financial Ombudsman Service considers to be of interest to those persons.

A14. A matter will be of interest to the FCA or the FSCS if it appears to the Financial Ombudsman Service that it has, or is likely to have, significant implications in relation to:

- a. the exercise by the FCA or the FSCS of functions under statute.
- b. the functioning generally of relevant markets within the meaning set out in s.1F FSMA.

A15. In determining whether a matter will be of interest to the FCA or the FSCS, the Financial Ombudsman Service will have regard to a range of factors, including but not limited to the factors set out at paragraph 12 of these Terms of Reference.

A16. The Head of Policy for the Financial Ombudsman Service, reporting to the Chief Ombudsman, shall have oversight of matters of interest discussed with the FCA, the FSCS and (where relevant) other persons.

A17. The Financial Ombudsman Service intends to comply with its duty to co-operate with the FCA and/or the FSCS in relation to matters of interest as follows:

- a. The Financial Ombudsman Service shall review at regular intervals whether there are any trends or prevailing issues in referred complaints which it considers would fall within the scope of the duty as set out at s.415C(1) FSMA. This process of review shall also be used as an opportunity to consider, where relevant, what information falling within s.415C(1) and (2) FSMA could be shared with the FCA and the FSCS in compliance with the relevant requirements under data protection and information law. The Head of Policy will be responsible for undertaking this process of review in such manner as he/she considers appropriate.
- b. Where it is identified that s.415C(1) is engaged, the Financial Ombudsman Service will comply with s.415C(1) by liaising with the FCA, the FSCS and (where relevant) other persons in accordance with the Framework.

A18. The Financial Ombudsman Service shall seek to share information in compliance with the duty under s.415C(1) so far as is compatible with the relevant legal requirements (see Annex B).

Financial Services Compensation Scheme (FSCS)

A19. The Financial Services Compensation Scheme is established under Part XV of FSMA. Sections 213 and 214 FSMA provide that if an authorised financial services business fails and cannot pay claims against it, the FSCS can step in to compensate customers.

Duty to cooperate with the FCA and the Financial Ombudsman Service

A20. Under s.415C(1) and (2) FSMA the FSCS is under a duty to:

- a. Take such steps as it considers appropriate to co-operate with the FCA and/or Financial Ombudsman Service in relation to matters of interest to the FCA and/or FOS and,

- b. Consult such other persons as FSCS considers appropriate in relation to any matters that FSCS considers to be of interest to those persons.

A21. A matter will be of interest to the FCA or Financial Ombudsman Service if it appears to the FSCS that it has, or is likely to have, significant implications in relation to:

- a. the exercise by the FCA or Financial Ombudsman Service of functions under statute
- b. the functioning generally of relevant markets within the meaning set out in s.1F FSMA.

A22. In determining whether a matter will be of interest to the FCA or Financial Ombudsman Service, FSCS will have regard to a range of factors, including but not limited to the factors set out at paragraph 12 of these Terms of Reference.

A23. The Chief Counsel shall have oversight of matters of interest discussed with the FCA, Financial Ombudsman Service, and (where relevant) other persons.

A24. FSCS intends to comply with its duty to co-operate with the FCA and/or the Financial Ombudsman Service in relation to matters of interest as follows:

- a. FSCS shall review at regular intervals whether there are any trends or prevailing issues in the carrying out of its statutory functions which it considers would fall within the scope of the duty as set out at s.415C(1) FSMA. This process of review shall also be used as an opportunity to consider, where relevant, what information falling within s.415C(1) and (2) FSMA could be shared with the FCA and/or Financial Ombudsman Service in compliance with relevant legal requirements on disclosure. The Chief Counsel will be responsible for undertaking this process of review in such manner as he/she considers appropriate.
- b. Where it is identified that s.415C(1) is engaged, FSCS will comply with s.415C(1) by liaising with the FCA, Financial Ombudsman Service and (where relevant) other persons in accordance with these Terms of Reference.

A25. The FSCS shall seek to share information in compliance with the duty under s.415C(1)) so far as is compatible with the relevant requirements under relevant data protection and information law (see Annex B).

The Pensions Regulator (TPR)

A26. TPR protects workplace pensions in the UK. They work with employers and those running pensions so that people can save safely for their retirement.

A27. TPR are responsible for:

- a. making sure employers put their staff into a pension scheme and pay money into it;
- b. protecting people's savings in workplace pensions;
- c. improving the way that workplace pension schemes are run;
- d. reducing the risk of pension schemes ending up in the Pension Protection Fund (PPF);

- e. making sure employers balance the needs of their defined benefit pension scheme with growing their business.

The Money and Pensions Service (MaPS)

A28. As set out in the Financial Guidance and Claims Act 2018 (S.2), MaPS exists to improve the ability of members of the public to make informed financial decisions:

- a. support the provision of information, guidance and advice in areas where it is lacking;
- b. ensure that information, guidance and advice is provided to members of the public in the clearest and most cost-effective way (including having regard to information provided by other organisations);
- c. ensure that information, guidance and advice is available to those most in need of it (and to allocate its resources accordingly), bearing in mind in particular the needs of people in vulnerable circumstances;
- d. and work closely with the devolved authorities as regards the provision of information, guidance and advice to members of the public in Scotland, Wales and Northern Ireland.

Annex B: Information sharing gateways

B1. To aid understanding of how the members can collaborate, this annex summarises the members' ability to disclose information, but it is not a comprehensive articulation of the legal position.

The Financial Conduct Authority (FCA)

B2. Subject to any legal restrictions on disclosure of information in force from time to time, and considering each disclosure on its own merits, the FCA may disclose information to:

- a. any person for the purposes of enabling or assisting the FCA to discharge any of its public functions;
- b. the Financial Ombudsman Service for the purpose or enabling or assisting it to discharge its functions;
- c. the Chief Ombudsman and any other member of the panel of ombudsmen for the purpose of enabling or assisting such persons to discharge their functions;
- d. TPR for the purpose of enabling or assisting it to discharge its functions;
- e. the FSCS for the purpose of enabling or assisting it to discharge its functions under Part XV of FSMA; and
- f. other bodies as described in legislation.

Financial Ombudsman Service

B3. The Financial Ombudsman Service 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.

B4. Subject to any other applicable legal restrictions or limitations on the disclosure of information (for example, confidential information or personal data), the Financial Ombudsman Service Limited may disclose information which it has received or generated and which is relevant to its functions under FSMA 2000 to:

- a. another person for the purpose of assisting the Financial Ombudsman Service to discharge its own functions under FSMA 2000; and
- b. the FCA for the purpose of enabling or assisting the FCA to discharge any of its public functions.

Financial Services Compensation Scheme (FSCS)

B5. The FSCS is subject to the FSMA (Disclosure of Information by Prescribed Persons) Regulations 2001.

B6. The FSCS 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.

- B7. Subject to any other applicable legal restrictions or limitations on the disclosure of information (for example, confidential information or personal data), the FSCS may disclose information which it has received or generated and which is relevant to its functions under FSMA:
- a. to another person for the purpose of assisting the FSCS to discharge its own functions under FSMA; and
 - b. to the FCA for the purpose of enabling or assisting the FCA to discharge any of its public functions.
- B8. The FSCS has entered into MoUs with a number of organisations which also set out circumstances in which we will share information with specific organisations.
- B9. The MoUs can be found on the FSCS website.

The Pensions Regulator (TPR)

- B10. TPR can disclose certain restricted information to other bodies listed within Schedule 3 of the Pensions Act 2004 (eg FCA and the Financial Ombudsman Service), so long as the TPR considers that the information shared would enable or assist them to facilitate exercise of their functions.
- B11. However, this disclosure is made subject to:
- a. the consent of the TPR, and
 - b. for the purpose of enabling or assisting the person to exercise any functions specified in relation to them. The FCA is covered for all of its functions whereas the Financial Ombudsman Service is covered specifically in relation to functions under the Pensions Schemes Act 1993.
- B12. Importantly, before deciding whether to give its consent to such a disclosure, TPR must take account of any representations made to it, by the person seeking to make the disclosure, as to the desirability or necessity for it. TPR can also disclose restricted information to any qualified person on any matter requiring the exercise of professional skill within the remit of Pensions Act 2004.
- B13. TPR cannot disclose information if subject to other legal restrictions or limitations on the disclosure of information (including Unpublished Price Sensitive Information, confidential information or personal data).

The Money and Pensions Service (MaPS)

- B14. As laid out in the Financial Guidance and Claims Act 2018 (S.17), MaPS may disclose information to the FCA, a devolved authority or delivery partner provided that the disclosure is:
- a. for the purpose of enabling or facilitating the exercise of a function that MaPS is carrying out;
 - b. for the purpose of enabling or facilitating the exercise of the consumer protection function;
 - c. relating to the provision of information or advice on debt;
 - d. or information for the purposes of a review of MaPS functions.