

# **MEMORANDUM OF UNDERSTANDING**

## **Association of Chief Police Officers England & Wales**



**and**

## **The Financial Services Authority**



## 1. **Definition of terms used in this Memorandum of Understanding**

<i>ACPO</i>	The Association of Chief Police Officers of England, Wales and Northern Ireland
<i>Disclosure Regulations</i>	The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001
<i>FSA</i>	The Financial Services Authority
<i>FSA Investigators</i>	persons appointed by the FSA under the provisions of FSMA to investigate misconduct in connection with the financial markets
<i>FSMA</i>	The Financial Services and Markets Act 2000
<i>Information requirement</i>	statutory requirement, imposed under the provisions of FSMA, requiring the recipient to provide information or produce documents to the FSA
<i>PACE</i>	The Police and Criminal Evidence Act 1984
<i>police</i>	any of the regional police forces represented by ACPO in England & Wales and Northern Ireland
<i>Request for Assistance</i>	a request for assistance, made by the FSA in accordance with the procedures set out in this memorandum
<i>voluntary interview</i>	the means by which a suspect may assist the FSA with their enquiries with the benefit of the protections of PACE 1984 without being arrested
<i>warrant</i>	a warrant to enter premises, issued to the FSA by a justice of the peace under the provisions of section 176 FSMA

## 2. **Status of this Memorandum of Understanding**

- 2.1. This memorandum replaces the Memorandum of Understanding between the FSA and the City of London Police dated 23 July 2003.

## 3. **The purpose of this Memorandum of Understanding**

- 3.1. This memorandum is intended to record the agreed best practice for co-operation between the police and the FSA with regard to:
- (a) the arrest of suspects where the FSA and the police have reasonable grounds to suspect that an individual has committed an arrestable offence, under 24(1) of PACE, and the FSA seeks the assistance of the police in questioning the suspect; or

- (b) a warrant obtained by the FSA where the FSA seeks the assistance of the police in connection with the execution of the warrant.
- 3.2. This memorandum is not intended to impose any legal or procedural requirements on either the police or the FSA. Nothing in this memorandum should be taken as preventing or inhibiting the police or the FSA in any way from acting in the proper performance of their statutory or other public functions.
- 4. Circumstances in which a request for assistance may be made**
- 4.1. FSMA provides the FSA with powers to investigate and prosecute certain criminal offences.
- 4.2. Criminal prosecutions brought by the FSA are normally initiated by way of Information and Summons.
- 4.3. FSA Investigators do not have powers of arrest.
- 4.4. It is provided:
  - (a) in Part XI of FSMA (section 176) that police constables have powers of search and seizure in connection with a warrant obtained by the FSA; and
  - (b) in Part II of PACE (section 16) that authorised persons (which may include FSA Investigators) may accompany a police constable executing a warrant and have the same powers of search and seizure as the police constable whom they accompany provided those powers are exercised only in the company, and under the supervision of, a police constable.
- 4.5. Requests for assistance may be made by the FSA to the police in connection with the exercise of:
  - (a) police powers of arrest under the provisions of PACE; or
  - (b) the FSA and/or police powers of search and seizure under warrant under the provisions of PACE and/or FSMA.

#### ***Arrest***

- 4.6. Where the FSA is investigating an offence which the FSA has powers to prosecute, the normal procedure for interviewing a suspect is for the FSA to invite the individual suspected of committing an arrestable offence to attend for an interview on a voluntary basis. Such interviews are carried out in compliance with the provisions of the Codes of Practice under PACE.
- 4.7. On occasions, it may not be possible or appropriate for the FSA to conduct a voluntary interview, for example:
  - (a) where it appears likely that to afford an individual the opportunity to attend on a voluntary basis would prejudice an ongoing investigation or risk the destruction of evidence or the dissipation of assets; or

- (b) where a suspect declines an invitation to attend a voluntary interview.
- 4.8. On such occasions, the FSA may make a request for assistance to the police, to arrest the individual for questioning by the FSA. The police will agree to assist the FSA provided they are satisfied that there are reasonable grounds to suspect that an arrestable offence has been committed or after a warrant to arrest has been obtained from a Magistrates' Court.

***Search and Seizure under warrant***

- 4.9. Where the FSA is investigating an offence which the FSA has power to prosecute, the normal procedure for obtaining information relevant to the matter under investigation is to impose an information requirement.
- 4.10. On occasions, it may not be possible or appropriate for the FSA to obtain information pursuant to an information requirement, for example:
  - (a) where a person on whom an information requirement has been imposed fails (wholly or in part) to comply with it; or
  - (b) where there are reasonable grounds for believing that if an information requirement were to be imposed, it would not be complied with, or that the documents or information to which the information requirement relates, would be removed, tampered with or destroyed.
- 4.11. On such occasions, the FSA may, pursuant to section 176 FSMA, apply to a justice of the peace for a warrant to enter the premises where the information is held.
- 4.12. A warrant obtained pursuant to section 176 FSMA authorises a police constable to:
  - (a) enter the premises specified in the warrant;
  - (b) search the premises and take possession of any documents or information appearing to be documents or information of a kind in respect of which the warrant was issued or to take, in relation to any such documents or information, any other steps which may appear to be necessary for preserving them or preventing interference with them;
  - (c) take copies of, or extracts from, any documents or information appearing to be of the relevant kind;
  - (d) require any person on the premises to provide an explanation of any document or information appearing to be of the relevant kind or to state where it may be found; and
  - (e) use such force as may be reasonably necessary.
- 4.13. By virtue of section 16(2A) and (2B) PACE and section 176(6) FSMA, an FSA Investigator has the same powers as the constable whom he accompanies in respect of the execution of the warrant and the seizure of anything to which the warrant relates. These powers, however, can only be exercised in the company, and under the

supervision, of a police constable.

- 4.14. The FSA may, on occasion, make a request to the police for assistance with the execution of a warrant.

## **5. Confidentiality**

- 5.1. Section 348 FSMA provides that any information relating to the business or affairs of any person received by the FSA for the purposes of, or in the discharge of its functions, constitutes “confidential information” and is subject to statutory restrictions on disclosure. The FSA and any person obtaining confidential information directly or indirectly from the FSA must not disclose the information without the consent of the person from whom the FSA obtained the information and, if different, the person to whom it relates, except where the legislation permits disclosure through one of the statutory “gateways” as provided by the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001.
- 5.2. Any confidential information disclosed by the FSA to the police will be made in accordance with a statutory gateway. Normally the relevant gateway would be pursuant to:
  - (a) Regulation 3 of the Disclosure Regulations, which permits the FSA to disclose information for the purposes of enabling or assisting the FSA to discharge its public functions; and/or
  - (b) Regulation 4 of the Disclosure Regulations, which permits the FSA to disclose information for the purposes of any criminal investigation; criminal proceedings or for the purposes of initiating or bringing to an end any such investigation or proceedings or facilitating a determination of whether it or they should be initiated or brought to an end.
- 5.3. Any confidential information received by the police from the FSA remains subject to the statutory restrictions on disclosure once in the hands of the police. Any further use or disclosure of confidential information must be made in accordance with the statutory restrictions and gateways.
- 5.4. Similarly, any information relating to the business or affairs of any person received by the FSA from the police for the purposes of, or in the discharge of, the functions of the FSA is confidential information. Consequently it can only be disclosed with the consent of the police and, if different, any person to whom the information relates; or in accordance with one of the statutory gateways.
- 5.5. In addition to the statutory obligations of confidentiality, both parties recognise that information disclosed to each other may sometimes be sensitive. In these circumstances it is best practice for a party who wishes to disclose such information onward to notify the other party that it wishes to do so before disclosing the information in order that the issues can be discussed further if necessary.

## **6. Provision of Information**

- 6.1. The FSA will provide sufficient information to enable the police to consider requests for assistance.
- 6.2. The FSA is responsible for the accuracy of the information supplied to the police and relied upon by the police.

## **7. The form of the request**

- 7.1. The request for assistance will be made by the FSA to the police in writing and signed by an FSA Investigator and the relevant person within the FSA Enforcement Division who has overall managerial responsibility for the conduct of the case.
- 7.2. The request form at Annex 1 may be used.
- 7.3. The request should include sufficient information to enable the police to identify and locate the suspect and/or the relevant premises to be entered.
- 7.4. A request for assistance by way of arrest should state:
  - (a) the basis on which the FSA asserts that there are reasonable grounds for suspecting that an arrestable offence (within the meaning of section 24(1) PACE) has been committed; and
  - (b) with regard to the individual named in the request, the reasonable grounds for suspecting him to be guilty of the offence.
- 7.5. A request for assistance by way of arrest should also provide sufficient information, regarding the factual background of the offence, to enable the police to exercise its judgement as to whether there are reasonable grounds for suspicion that an offence has been committed and that the individual is guilty of that offence, or to support an application to a Magistrates' Court for a warrant to arrest.
- 7.6. A request for assistance to execute a warrant should include a copy of the signed warrant and relevant background information.
- 7.7. The request for assistance should be transmitted to the officer in charge of the relevant police fraud squad or criminal investigation department.

## **8. Execution of the request**

- 8.1. The FSA and the police will consult as to the timing and resourcing of each request for assistance.
- 8.2. In cases of arrest, decisions relating to the detainee, including access, conditions, length of detention and compliance with the Codes of Practice under PACE are the responsibility of the police. The police are responsible for ensuring that a detainee's rights under PACE are observed and to ensure the detainee's physical and general wellbeing during detention.

- 8.3. Where the police are assisting the FSA with the execution of a warrant, and unless otherwise agreed with the FSA, it will be the responsibility of the police, in consultation with the FSA, to handle all matters relating to the conduct of the entry and search and seizure process, including in relation to the handling and removal of evidence.
- 8.4. However, overall responsibility for, and decisions relating to, the direction of the investigation of the offence will remain with the FSA.

## **9. Questioning of suspects**

- 9.1. When access to the detained suspect is permitted by the Custody Officer, FSA Investigators will conduct a tape recorded interview.
- 9.2. A representative of the police will be present during the interview to provide the technical assistance and guidance, in terms of compliance with the Codes of Practice under PACE, as is appropriate in the circumstances of each case.
- 9.3. The conduct of the tape recorded interview is governed by Codes C and E of PACE.
- 9.4. The mastercopy of the interview tape and any other exhibits will be retained by the FSA.

## **10. Charge**

- 10.1. The police will monitor, evaluate and determine whether the conditions for continued detention are met. The FSA may make representations to the Custody Officer that a suspect should be charged or may alternatively decide to lay an Information according to its internal processes and guidelines for the institution of criminal proceedings.

## **11. Bail**

- 11.1. The FSA will co-operate in providing information to assist the police to determine whether a suspect should be admitted to bail.
- 11.2. The police will decide whether a suspect should be admitted to police bail and the conditions, if any, which should be imposed.

## **12. Reimbursement of expenses**

- 12.1. The FSA will reimburse to the police reasonable incidental expenses incurred in connection with a request for assistance made by the FSA under the procedures laid down in this memorandum.

## **13. Point of liaison**

- 13.1. The FSA and police will each appoint a representative on a case by case basis to co-ordinate the procedures provided by this memorandum.

#### **14. Data Protection**

- 14.1. Data gathered and exchanged under the terms of this Memorandum of Understanding will be managed in compliance with the Data Protection Act 1998.

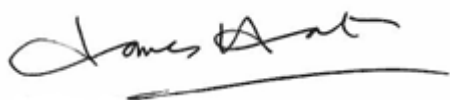
#### **15. Consultation**

- 15.1. The parties will keep the operation of this Memorandum of Understanding under review and will consult when necessary with a view to improving its operation and resolving any matters.

#### **16. Commencement**

- 16.1. This Memorandum of Understanding will take effect when both parties have signed it and will continue to have effect until terminated by either party giving 30 days advance written notice to the other party. It may be amended by agreement in writing.

Signatories to this agreement:



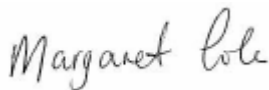
Dr. James Hart QPM  
**Commissioner of Police**  
**Chairman – ACPO Economic Crime Portfolio**



**For and on behalf of ACPO**

Date

*3rd August 2005*



Margaret Cole  
**Director of Enforcement**



**For and on behalf of the Financial Services Authority**

Date

*2 August 2005*



## ANNEX 1

### REQUEST FOR ASSISTANCE

<b>Name of subject of request<sup>1</sup></b>	
<b>Address of subject of request</b>	
<b>Contact details of subject of request<sup>2</sup></b>	
<b>Solicitor / Legal Advisor</b>	
<b>Contact details of Solicitor / Legal Advisor</b>	
<b>What offence is the FSA investigating?</b>	Is a copy of the statute attached? <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>What is the basis for suspecting that an offence has been committed?</b>  <b>Consider including:</b> <ul style="list-style-type: none"> <li>• <b>Background information</b></li> <li>• <b>Documentary evidence</b></li> <li>• <b>Witnesses</b></li> <li>• <b>Telephone records</b></li> <li>• <b>Expert evidence</b></li> </ul>	

<sup>1</sup> Individual to be questioned, or entity whose premises are to be searched.

<sup>2</sup> Consider including name and contact details for compliance officer, where applicable – e.g. where subject's offices are to be searched.

<b>Is the subject suspected of committing this offence?</b>	
<b>What is the basis for suspecting that the subject of this request has committed the offence above?</b>  <b>Consider including:</b> <ul style="list-style-type: none"> <li>• <b>An outline of the individuals involvement</b></li> <li>• <b>The subject's links with other suspects in the case</b></li> <li>• <b>Highlight the evidence which points towards the subject's guilt</b></li> </ul>	
<b>Why is a request for assistance being made?</b>	<input type="checkbox"/> The subject has refused to attend for interview under caution on a voluntary basis  <input type="checkbox"/> It is suspected that if the subject was aware of the investigation he would destroy evidence or dissipate assets which would otherwise be the subject of a confiscation or restraint order  <input type="checkbox"/> It is suspected that if the subject was aware of the investigation he would leave the jurisdiction  <input type="checkbox"/> In execution of a search warrant (please attach copy)  <input type="checkbox"/> For any other reason (please specify)
<b>Other relevant information</b>	

<b>Do you consider that any of the following apply?</b>	<input type="checkbox"/> There is no risk of the subject absconding from bail <input type="checkbox"/> The subject has no UK residential address <input type="checkbox"/> The subject has no known ties to the UK <input type="checkbox"/> It is likely that the subject will interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or another person <input type="checkbox"/> Any other factor which may be relevant to the grant of bail (please specify)
<b>Who is the point of contact for this request for assistance?</b>	Telephone
<b>Who are the investigators appointed by the FSA?</b>	<p style="text-align: center;">Is a copy of the Memorandum of Appointment of Investigators attached? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>

**Application made by**

.....

**FSA Investigator**

**Application approved by**

.....

**For and on behalf of the Financial Services Authority**

**Dated**