

# **Memorandum of Understanding between the Gambling Commission and the Financial Conduct Authority**

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## **Introduction**

1. This Memorandum of Understanding (MoU) establishes a framework for cooperation, coordination and information sharing between the Gambling Commission ("the Commission") and the Financial Conduct Authority ("the FCA"), collectively referred to as "the Parties" throughout this document.
2. It sets out broad principles for collaboration and the legal framework governing the sharing of relevant information and intelligence between the Parties. The shared aims of this MoU are to enable closer working between the Parties, including setting out a framework for the exchange of information and consultation, to assist them in discharging their regulatory functions.
3. This MoU is a statement of intent and does not give rise to legally binding obligations on the part of either the Commission or the FCA. The arrangements set out in this MoU are subject to what is permitted and required by law.
4. This MoU is not intended to:
  - a. restrict the exercise or discretion which the law requires or allows the Parties to exercise;
  - b. create any legitimate expectation on the part of any person that the Parties will do any act or will refrain from doing any act; or
  - c. prevent the Parties 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.
5. The Parties have determined that they do not exchange sufficient quantities of personal data to warrant entering into a separate data sharing agreement, but this will be kept under review.

## **The role and function of the Gambling Commission**

6. The Commission is an independent, non-departmental public body, sponsored by the Department for Digital, Culture, Media and Sport ("DCMS"). The Commission is responsible for advising local and central government on the issues relating to gambling.
7. Under the Gambling Act 2005 ("the GA 2005") the Commission regulates all gambling in Great Britain, apart from spread betting, in partnership

with local Licensing Authorities. It does so in the public interest and through its statutory licensing objectives to:

- prevent gambling from being a source of crime and disorder, being associated with crime and disorder or being used to support crime;
- ensure that gambling is conducted in a fair and open way;
- protect children and other vulnerable persons from being harmed or exploited by gambling.

8. In support of this, the key functions of the Commission are:

- to issue new operating licenses under the GA 2005 to organisations and individuals who are providing facilities for gambling, and personal licenses to certain categories of individuals working in the gambling industry;
- to publish licence conditions and codes of practice for the provision and management of gambling facilities;
- monitor compliance with the regulatory requirements of all licensees through its compliance work;
- investigate breaches of licence conditions and take regulatory action where appropriate;
- investigate and prosecute illegal gambling and other offences committed under the GA 2005;
- advise the Government on the incidence and nature of gambling and its impact;
- advise Licensing Authorities on how they exercise their functions under the GA 2005.

### **The role and function of the Financial Conduct Authority**

9. The FCA is responsible under the Financial Services and Markets Act 2000 for making and enforcing rules governing the conduct of firms authorised and regulated by the FCA, regulating standards of conduct in retail and wholesale markets and for supervising the trading infrastructures that support those markets.

10. The FCA is responsible for the prudential supervision of firms that are not regulated by the Prudential Regulation Authority (PRA) and is also responsible for the regulation of primary securities markets, including via monitoring market disclosures, reviewing and approving prospectuses and operating the UK listing regime.

11. The FCA has a single strategic objective: to ensure that the relevant markets (as defined in section 6 (1F) Financial Services Act 2012) function well. Three operational objectives support this strategic objective: securing an appropriate degree of protection for consumers (including wholesale consumers); protecting and enhancing the integrity of the financial system; and promoting effective competition in the interest of consumers in the markets for financial services.

12. The FCA does this via oversight and regulation of the UK financial markets which includes:

- authorisation of individuals who carry on regulated activities;
- a market-based approach to the supervision of firms in the financial services sector;
- investigation and enforcement activity against firms and individuals who are carrying out or purporting to carry out regulated activities and financial services (with or without authorisation);
- exercising powers under the Competition Act 1998; and
- bringing criminal prosecutions, including, in appropriate cases, of market abuse, financial crime and serious unauthorised business.

### **Information sharing and cooperation**

#### *Consultation on matters of mutual interest*

13. The Parties recognise that there are areas where their remits may overlap, or it may not be clear who is best placed to lead on an issue that arises. The Parties will therefore discuss such matters to ensure that, the appropriate regulator(s) can be identified.

14. To the extent permitted by law and having regard to their respective powers, expertise and resources, the Parties seek to ensure that:

- a. They notify each other of significant developments, including on matters of authorisation or licensing, where the other is likely to have an interest and to discuss, where appropriate, any steps they propose to take.
- b. There are designated points of contact through which issues may be quickly and efficiently raised and disseminated to the relevant areas at the other.
- c. Matters arising will be dealt with in as timely a manner as possible and in a way that allows for the proper exchange of views to take place.
- d. Where a decision is called for, they will endeavour to determine a mutually agreed position at working level in the first instance. If this is not possible, the named points of contact will escalate the issue to an Executive Director at the Commission or an Executive Director at the FCA to ensure that a decision is reached in a timely manner.

15. The Parties may refer a matter for action to the other if the other is considered to be more appropriate to deal with the matter. Where the recipient determines not to proceed, an explanation will be provided in writing.

16. Relevant staff at the Parties 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.

#### *Information sharing*

17. In addition to the above, the Parties will exchange information on relevant issues of interest to the extent permitted by law, and as relevant to the performance of their respective functions. This may include, but is not limited to:

- a. 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.
- b. information held by either regulator about fraud/criminal or any other activity that might cast doubt on the fitness and propriety of an FCA-authorized firm or an approved person.
- c. information or intelligence held 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)
- d. information or intelligence held by either regulator relating to a Commission-licensed operator's suitability to carry on the licensed activities and their compliance with conditions imposed on their operating licence.
- e. information or intelligence held by either regulator relating to the provision of unlicensed gambling facilities to customers in Great Britain.

18. The Parties may share information proactively or on request from each other in writing. Any request for information will include details of the information sought and why it will assist them to carry out their functions. Each may suggest a reasonable deadline for response, including an explanation of any urgency.

19. The Parties may consult and co-ordinate in respect of investigations, reviews, calls for evidence and recommendations directed towards both parties, where appropriate.

20. On general policy matters relating to areas of mutual interest, for example, financial promotions of contract for differences (CFDs) and other high risk retail derivatives, the Parties will consult each other at an early stage in relation to policy deliberations which may have a material effect on the other's objectives.

#### **Legal basis for sharing information**

##### *Information shared by the FCA with the Commission*

21. Subject to any disclosure restrictions applicable to the FCA, the FCA may disclose confidential information to the Commission to facilitate the carrying out of a public function of the FCA and is permitted by:

- a. Regulation 3(1)(a) of the Financial Services and Markets Act 2000 (Confidential Information) Regulations 2001 (SI 2001/2188) (the Disclosure Regulations), a gateway which permits disclosure of confidential information where it is made for the purposes of enabling or assisting the FCA to discharge any of its public functions;
- b. Regulation 12(1)(a) of the Disclosure Regulations, a gateway which permits disclosure of confidential information to the Commission where it is made for the purpose of enabling or assisting the Commission to discharge its functions as such;
- c. Regulation 12(1)(b) of the Disclosure Regulations, a gateway which permits disclosure of confidential information to the Commission in its capacity as a disciplinary proceedings authority for the purposes of any prescribed disciplinary proceedings which have been or may be initiated, or for the purpose of initiating or bringing to an end any such proceedings, or of facilitating a determination of whether they should be initiated or brought to an end.

22. Where the FCA discloses confidential information to the Commission, the Commission will continue to be bound by the statutory confidentiality regime in FSMA. Disclosure of information other than in accordance with FSMA may constitute a criminal offence.

#### *Information shared by the Commission with the FCA*

23. Section 30(1) of the GA 2005 states the Commission may provide information received by it in the exercise of its functions to any of the persons listed in Schedule 6 of the GA 2005:

- a. for use in the exercise of the person's or body's functions, or
- b. for the purpose of a function of the Commission.

24. Section 30(2) of the GA 2005 allows any of the persons or bodies listed in Part 1 or 2 of Schedule 6 to provide the Commission, for use in the exercise of its functions, information received by the person or body in the exercise of his or its functions.

25. The FCA is listed as a body under Part 2, Schedule 6 of the GA 2005.

#### **Purpose of information sharing**

26. The Parties may use information obtained under this MoU and which is not in the public domain for the purpose set out in any request for information or proactive disclosure. This includes for enforcement and supervisory purposes as applicable.

## **Confidentiality and Data Protection**

27. The parties will keep any non-public information received under this MoU, 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 Parties will use all reasonable endeavours to notify the other prior to complying or assert such appropriate legal exemptions or privileges as may be applicable.
28. The Parties 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).

## **Public communications**

29. Whenever possible the Parties will seek to coordinate and agree their respective approaches and statements in advance before making any public communications. In most cases, such coordination will be facilitated between mutually agreed points of contact (in conjunction with Press Offices) but may be escalated as appropriate.
30. Regarding investigations, the FCA will not normally make public the fact that it is or is not investigating a particular matter nor any of the findings or conclusions of an investigation except as permitted under FSMA.
31. In deciding whether to publish any information regarding its investigations, the Commission will act in accordance with Part 7 of its *Licensing, compliance and enforcement under the Gambling Act 2005: Policy statement*.
32. The FCA and the Commission will seek to cooperate closely before making public communications about any investigation where the other is providing assistance or might otherwise be involved or have an interest. This is necessary to ensure that such communications are as accurate and consistent as possible, whilst also recognising that it would generally be inappropriate for either the FCA or the Commission to comment on one another's investigations.

## **Publication schemes under the Freedom of Information Act 2000**

33. If either of the Parties receive a request for information under the Freedom of Information Act 2000 that involves disclosing information that has been provided by the other, it will notify the other, to allow it the opportunity to make representations on the potential impact of the disclosure.
34. The FCA's publication scheme can be found on its website ([www.fca.org.uk/freedom-information/fca-publication-scheme](http://www.fca.org.uk/freedom-information/fca-publication-scheme)).

35. The Commission's publication scheme can be found on its website (<https://www.gamblingcommission.gov.uk/about/Being-open-about-what-we-do/Publication-scheme/Publication-scheme.aspx>).

### **Duration and review of the MOU**

36. The named points of contact will meet quarterly to discuss any matters arising since the last meeting and to check if the discussion and resolution processes set out in this MOU are working effectively. Any outstanding issues should be resolved in line with the process above.

37. The Parties will monitor the operation of this MoU and will review it annually.

38. Any minor changes to this memorandum identified between reviews may be agreed in writing between the Parties.

39. Any issues arising in relation to this memorandum will be notified to the designated point of contact for each organisation.

40. The Parties will maintain an open dialogue with each other to ensure that the MoU remains effective and fit for purpose.

41. They will also seek to identify any difficulties in the working relationship, under this MoU and proactively seek to minimise the same.

### **Points of Contact**

42. The Commission may reach the FCA to deal with any issues via the dedicated mailbox [S&C-MP-HoDsOffice@fca.org.uk](mailto:S&C-MP-HoDsOffice@fca.org.uk) marked as FAO: Head of Department Markets Policy

43. The FCA may reach the Commission to deal with any issues by contacting [licensingqueries@gamblingcommission.gov.uk](mailto:licensingqueries@gamblingcommission.gov.uk)