

Memorandum of Understanding between the Scottish Charity Regulator and the Financial Conduct Authority

Purpose of the Memorandum of Understanding

The purpose of this memorandum of understanding is to set out the relevant powers and responsibilities of the Scottish Charity Regulator and the Financial Conduct Authority and the framework that the organisations have agreed for co-operation and collaboration.

OSCR
Scottish Charity Regulator



1. Purpose of Memorandum of Understanding

1.1 This Memorandum of Understanding (MOU) provides a framework for closer working between the Scottish Charity Regulator (OSCR) and the Financial Conduct Authority (FCA). OSCR and FCA are fully committed to the aims of this MOU which are to:

- promote a common understanding of the role and functions of each organisation and their regulatory responsibilities, working procedures, legal powers and constraints;
- promote co-operation between OSCR and FCA and their staff at an operational level;
- promote better regulation;
- facilitate effective and appropriate exchange of information with the objective of assisting each organisation to achieve its objectives; and
- ensure appropriate consultation on matters of mutual interest.

2. The role and function of OSCR

2.1 OSCR is established under the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act) and is the regulator of charities in Scotland. Section 1(5) of the 2005 Act sets out OSCR's general functions:

- to determine whether bodies are charities
- to keep a public register of charities
- to encourage, facilitate and monitor compliance by charities with the provisions of the 2005 Act
- to identify and investigate apparent misconduct in the administration of charities and to take remedial or protective action in relation to such misconduct
- to give information or advice, or to make proposals, to the Scottish Ministers on matters relating to OSCR's functions.

3. The role of function of the Financial Conduct Authority

3.1 The Financial Conduct Authority (FCA) is a non-government body which is responsible for regulating the conduct of financial services firms. 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 consumer in the market for financial services.

3.2 The FCA also has the functions of acting as registering authority for societies registered under the Co-operative and Community Benefit Societies Act 2014 (CCBS 2014), for societies registered under the Friendly Societies Act 1974 (FS Act 1974), and for societies registered and incorporated under the Friendly Societies Act 1992 (the FS Act 1992), some of which are charities. The FCA's statutory objectives are disengaged for the functions delivered under this legislation.

3.3 The Co-operative and Community Benefit Societies Act 2014 consolidated and replaced previous Industrial and Provident Societies legislation. The term of Industrial and Provident Society is no longer used with societies registering now either being a co-operative society or community benefit society (CBS) and those registered before 1 August 2014 now termed as a registered society (RS).

4. Mutual disclosure of information

4.1 The FCA is a 'relevant regulator' for the purposes of the 2005 Act, and as such Chapter 3 of the 2005 Act enables OSCR and the FCA to share information and work together where appropriate.

4.2 Furthermore section 24 of the 2005 Act permits OSCR to disclose information to any public body or office holder (in Scotland or any other part of the United Kingdom) for any purpose connected with OSCR's functions, or for the purpose of enabling or assisting the public body or office holder to exercise any functions.

4.3 The FCA's ability to disclose information can be subject to statutory restrictions (some of which are European law obligations). The co-operation arrangements outlined in this section do not affect or override those restrictions; therefore this MOU does not require the FCA to disclose information that is confidential for the purposes of its applicable statutory regime. Because the FCA's powers in relation to those societies which are charities are limited, and mostly do not come within the scope of the FCA's wider powers under the Financial Services and Markets Act 2000 (FSMA), OSCR and the FCA anticipate that the amount of information which may be shared will not be substantial.

4.5 Subject to the above, the FCA and OSCR expect to exchange information as appropriate in connection with the carrying out of their respective responsibilities (as set out above).

4.6 OSCR and FCA will ensure that any disclosure of information under the terms of this MOU is carried out in a manner that is efficient, proportionate and fully compliant with the 2005 Act and FSMA, CCBS 2014, the Friendly Societies Acts, Human Rights Act 1998, the Data Protection Act 1998, the Freedom of Information Act 2002 and the Freedom of Information (Scotland) Act 2002.

4.7 OSCR and the FCA will not disclose information received under the terms of this MOU to any other person or body without the consent of the disclosing

party. When disclosing information the provider will mark it with the appropriate government protective security classification.

5 Registered Social Landlords

- 5.1 A large number of registered societies/CBS are Registered Social Landlords (RSL's), and therefore are also registered and regulated by the Scottish Housing Regulator. OSCR has a MOU with the Scottish Housing Regulator and working arrangements in relation to RSL's which are charities are recorded in this document. This document is available on both the Scottish Housing Regulator and OSCR's Website.

6. Joint working responsibilities

- 6.1 It is important in ensuring the effective working of this agreement that both parties are clear on their responsibilities.
- 6.2 OSCR and FCA have agreed which areas are relevant for collaboration and cooperation for RS/CBS/FS which are **not** RSL's.
- 6.3 Annual Returns and Monitoring
 - 6.3.1 Excluding RSL's there are only a small number of charities remaining that are registered both by FCA and OSCR. These charities must comply with **both** OSCR and FCA reporting arrangements, including sending both a copy of their annual accounts.
- 6.4 Complaints
 - 6.4.1 All complaints received by OSCR will initially be referred to the appropriate RS/CBS/FS and its internal complaints procedure. If the complaint is of a very serious nature OSCR will investigate in line with its Inquiry Policy.
- 6.5 Application and review of charitable status
 - 6.5.1 The responsibility for application of charitable status by way of an entry on the OSCR's Register under section 4 of the 2005 Act rests directly with the organisation. To avoid any requirement to make rule changes after incorporation, it is advisable for new organisations wishing to be registered and incorporated as RS/CBS and as charities in Scotland to apply to OSCR for charitable status on the basis of draft documents before incorporation. If all is in order OSCR will issue an 'in-principle' approval on the basis of which the organisation can apply to FCA for incorporation and registration, following which OSCR will register them as a charity.
 - 6.5.2 It is possible for CBS that intend to pay interests on shares to apply for charitable status. Appendix A outlines the features that OSCR requires by the society's rules, this is also stated in FCA guidance.
 - 6.5.3 OSCR is under an obligation to review entries in the Register under section 3(6) of the 2005 Act as well as to remove from the Register a charity which no longer meets the charity test (Section 30). The review of a charitable

RS/CBS/FS against the charity test will be an exchange between OSCR and each individual charitable RS/CBS/FS.

6.6 Consents and notifications

- 6.6.1 The process of applying for consent will be an exchange between the individual RS/CBS/FS and OSCR. Under sections 11 and 16 of the 2005 Act charities are required to seek OSCR's prior consent to change their name or purposes, to amalgamate and to dissolve themselves. Where OSCR grants consent for such changes to an RS/CBS/FS, and the RS/CBS/FS is then notifying us under s17 that the change has taken place, we will require an undertaking that all requirements of registration with FCA have been met. It will be recognised that the requirements that determine whether consent can be granted by OSCR and FCA are different, and that each needs to make its decision based on its respective legal framework.

6.7 Conversion to a SCIO

- 6.7.1 The Scottish Charitable Incorporated Organisation (SCIO) is an incorporated legal form for registered Scottish charities, governed by the:

- Charities and Trustee Investment (Scotland) Act 2005
- The Scottish Charitable Incorporated Organisations Regulations 2011
- The Scottish Charitable Incorporated Organisations (Removal from the Register and Dissolution) Regulations 2011

- 6.7.2 Sections 56 to 58 of the 2005 Act make provision for a Scottish charity which is a registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014 to convert to a SCIO. When an application is made to OSCR for such conversion OSCR will consult with FCA before a decision is issued in line with the agreed operational process.

6.8 Removal of Charity from the Register

- 6.8.1 Should a charitable RS/CBS/FS be removed from the **OSCR** Register, as a result of either an enquiry or individual review of charitable status, OSCR will notify the FCA in writing.

7. Consultation

- 7.1 As registrars of charitable RS/CBS/FS, OSCR and FCA will work together to ensure that the relevant law is interpreted and applied in a way that achieves consistency of decision making and a seamless regime that promotes effective regulation without imposing an unnecessary burden on the charities.
- 7.2 In order to achieve this, representatives of OSCR and FCA will make contact as appropriate either by phone or email as appropriate; and where major issues arise, a formal meeting may be arranged.
- 7.3 In order to secure that matters are handled at the appropriate level, contact between OSCR and FCA should be established between designated

officeholders (See section 9). Where they consider it appropriate, designated points of contact may delegate ongoing liaison to members of their staff.

8. General

- 8.1 Whilst it is anticipated that the arrangements in this Memorandum should apply generally, it is recognised that some circumstances will require special handling. Nothing in this memorandum prevents the making of arrangements to meet specific exceptional needs.
- 8.2 Any disagreement arising from the interpretation of this Memorandum will be referred to the Head of Registration of OSCR and the Head of the Approved Persons, Passporting and Mutuels Department at the FCA, who will endeavour to resolve it within the spirit implicit in the cooperation arrangements. The Memorandum will be amended if necessary to reflect the agreed outcome of the referral.
- 8.3 This MOU came into effect on June 2016. The MOU will be reviewed
- In the event of any significant changes to legislative and regulatory framework of guidance for each organization
 - At the request of either organisation

9. Points of Contact

Area of Liaison	FCA	OSCR
Development of Strategic Policy and Legal Framework	Manager of Mutuels Team	Head of Engagement
Register; Responsibilities for joint working/information Provision in Support of Compliance with the Act	Manager of Mutuels Team	Head of Registration
Information Provision in Support of Compliance with the Act	Manager of Mutuels Team	Head of Enforcement



David Robb
Chief Executive, OSCR



Pat Knox
Head of the Approved Persons,
Passporting and Mutuels Department,
FCA

Appendix A

A power of a community benefit society to pay interest on shares is not incompatible with charitable status, provided that the following features are required by the society's rules:

1. The interest rate is set at a level which is not in itself a motivation to buy shares and which the charity trustees can justify as being in the interests of the charity by reference to available commercial rates for borrowing.
2. The cost is part of the society's revenue expenses and met before the surplus is determined.
3. The rates are declared in advance of the period for which they will become payable, just as for a bank or building society account, and never retrospectively.
4. There is a power to suspend interest payments in the interests of the society.
5. There is a power of the society to withhold repayment of the shares, either temporarily or indefinitely and to write the value down below the nominal £1.
6. The shareholding does not confer any rights to the underlying assets of the society.
7. In the event of a solvent dissolution, shareholders can not be paid more than the nominal value of their shares.

