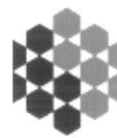


MEMORANDUM OF UNDERSTANDING
BETWEEN
THE FINANCIAL CONDUCT AUTHORITY
AND THE
DEPARTMENT OF ENTERPRISE, TRADE AND
INVESTMENT IN NORTHERN IRELAND

Financial Conduct Authority



Department of
**Enterprise, Trade
and Investment**
www.detini.gov.uk

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INTRODUCTION

This Memorandum of Understanding ('MoU') establishes a framework for co-operation between The Financial Conduct Authority ('FCA') and The Department of Enterprise, Trade and Investment in Northern Ireland ('DETI'). It sets out the role of each body and how they will work together where necessary as a continuing consequence of 'The Financial Services and Markets Act 2000 (Permissions, Transitional Provisions and Consequential Amendments) (Northern Ireland Credit Unions) Order 2011' ('the Consequential Order 2011'). This Order had transferred regulatory responsibility for Northern Irish credit unions ('NICUs') to the Financial Services Authority ('FSA') and by virtue of the Financial Services and Markets Act 2000 (Exemption) (Amendment No. 2) Order 2011 the date for the transfer of regulation was established as 31 March 2012.

An MoU has therefore been in place since 31 March 2012 between the FSA and DETI and this MOU supersedes that though necessarily covers much of the same ground. The need for this new MOU arises as a direct consequence of the reform of UK financial regulation with the Government creating two new focused financial regulators – the FCA and the Prudential Regulation Authority ('PRA') - to replace the FSA. The legislative framework that confirms this is set out in the Financial Services Act 2012. Both the FCA and the PRA will come into being on 1 April 2013 and the FSA will be dissolved on this date.

Within the Act the FCA has been given a single strategic objective to ensure that the markets for financial services function well. Three operational objectives support this: securing an appropriate degree of protection for consumers (including investors in financial instruments and wholesale consumers); protecting and enhancing the integrity of the UK financial system; and promoting effective competition in the interests of consumers in the markets for financial services.

DETI is a government department of the Northern Ireland Executive and exercises authority on behalf of the devolved Northern Ireland Assembly ('the Assembly'). DETI formulates and delivers economic development policy and has responsibility for ensuring a modern regulatory framework to support business and the social economy. DETI appoints the Registrar of Credit Unions to carry out the statutory functions assigned to the office under the Credit Unions (Northern Ireland) Order 1985 ('the 1985 Order').

This MoU aims therefore to support joint working arrangements between the FCA and DETI which satisfy the statutory responsibilities of each body in relation to NICUs as set out above and as further specified within this MoU. It builds on what was established in a 22 September 2011 pre-transfer co-operation agreement letter between the FSA and DETI and the initial MoU between the FSA and DETI. It also in

many respects sits alongside a separate and newly drawn-up MoU that supports joint working arrangements between the PRA and DETI.

Set out below therefore for the purposes of this MoU are the main categories for the working arrangements between the FCA and DETI.

Information Sharing

Further to Article 2A(4) and (5) of the 1985 Order it will become the duty of DETI to cooperate with the FCA and to share information with it as may reasonably be required for the performance of any of its functions.

Further to this, and as respectively the registrar and the financial conduct regulator of NICUs, DETI and the FCA will liaise and consult whenever necessary to ensure that both legislation and best practice are interpreted and applied in a coherent manner to achieve consistency of decision-making and so help to underpin an effective registration and regulation regime for NICUs.

In order to facilitate the effective and efficient flow of information and intelligence between DETI and the FCA, each organisation will designate one or more persons to act as the primary points of contact. The role of the designated persons will be to ensure that:

- Information is exchanged with the appropriate degree of speed and security;
- The flow of information is in accordance with the restrictions on information exchange;
- The information exchanged is not trivial and does not create an undue burden on either DETI or the FCA.

Where they consider it appropriate, designated points of contact may delegate ongoing liaison to colleagues, or to other appropriate members of their own organisation, and if such is done will advise the other organisation accordingly.

In addition to liaison between primary points of contact, meetings may be held between the FCA and DETI officials to discuss areas of mutual strategic interest, including regulatory and market developments. The outcomes of these meetings will be recorded and sent to appropriate people within each organisation and acted upon as appropriate.

If any specific joint projects are required (for example some urgent work in respect of an individual NICU) the FCA and DETI will agree as to the overall purpose and intention of the project at the outset, including agreeing key contacts, the regularity and recording of any meetings and the exchange of information.

The FCA will keep DETI fully informed of any matters it deems of material significance to DETI's continuing responsibilities as Registrar of NICUs. In addition, the FCA will provide such information as DETI may deem necessary to fulfil its obligations as Registrar of NICUs including its responsibilities under Article 81 of the 1985 Order to make a report to the Assembly, as well as its obligations to produce both standing and ad hoc written and oral reports to the Northern Ireland Assembly, its members and committees, and Northern Ireland Executive Ministers.

Similarly DETI will provide information deemed necessary by the FCA to fulfil its obligations to make reports to parliamentary committees etc. as may be required and will keep the FCA fully informed of any other matters it deems of material significance to its responsibilities as conduct regulator of NICUs.

DETI and the FCA will review as and when appropriate the processes in place to facilitate information and intelligence exchange.

Unless specified otherwise by DETI in relation to any particular matter, the FCA may consult with the PRA as it considers appropriate in respect of any matter it receives from DETI without seeking DETI's prior permission to do so. Any consultation between the FCA and the PRA would need to take into account the provisions generally of the MoU that comes into force as at 1 April 2013 between the PRA and the FCA and which is designed among other things, to underpin their inter-relationship and their respective regulatory roles.

Confidential Information

Confidential information received by the FCA is subject to statutory safeguards under FSMA. As an EEA competent authority, the FCA may be subject to restrictions regarding disclosure of certain confidential information.

Where the FCA or DETI shares information with the other party that is not yet publicly available, that information may not be disclosed to any other body without prior consent from the other party to this MoU, or until such time as it becomes publicly available.

The FCA will, as a notification obligation and as appropriate, and within a reasonable time of receipt, pass to DETI any indications or evidence of any breaches of law or misconduct committed by any persons associated with a NICU of which it becomes aware in its role as regulator whenever considered relevant to DETI's role as registrar. This includes breaches involving either criminal or non-criminal activity.

DETI will similarly quickly pass to the FCA information and intelligence where it concerns an allegation or evidence of fraud or other criminal activity by any firm whose financial conduct is supervised by the FCA. If relevant to the FCA's role as conduct regulator, DETI will also quickly pass to the FCA information and intelligence concerning any unauthorised firm of which it becomes aware.

Additionally, DETI will also quickly pass to the FCA any indications of malpractice and or professional misconduct committed by any FCA supervised firm or individual of which it becomes aware in the course of its role as registrar. The FCA will similarly pass to DETI any such indications if considered relevant to DETI's role as registrar.

DETI will follow any confidential information restrictions placed on it when handling FCA related material, and the FCA will do likewise when handling restricted material received from DETI.

Transfer of personal data

The FCA and DETI will abide at all times with the Data Protection Act 1998. Personal data held by either DETI or the FCA will be held only for as long as necessary and will be destroyed securely after its use. Neither the FCA nor DETI will further disclose, either publicly or privately, personal data received in this manner without the consent of the body from which it was received, unless the information is already public.

Requests and referrals

The FCA and DETI may request information from each other, or refer a matter for action, if the other body is considered more appropriate to deal with the matter having regard primarily to its responsibilities under the legislation. Any such request or referral shall include details of the information or action sought and the legal powers or legislative gateways considered to be available. It may suggest a reasonable deadline for response, including an explanation of any urgency. The recipient of the request or referral will respond within the deadline or, if unable to do so, will inform the other party as soon as reasonably possible indicating the date by which it expects to give a full response.

Requests and referrals can be made in writing, either electronically or by letter.

Websites

The FCA and DETI will keep under review the relevant parts of their own websites to ensure they are fit for purpose and will respectively do as follows:

- the FCA website will have a suitable link to the DETI website;
- DETI shall ensure its own website contains no regulatory content concerning NICUs so that between them the FCA and the PRA websites shall be the sole custodian and publisher of regulatory data (other than that DETI's own website may contain the information as set out within its annual reports to the Assembly required under section 81 of the 1985 Order);
- DETI shall continue to maintain that part of its existing website containing registration content in respect of NICUs until such time as it is no longer the registrar for NICUs;
- A new 'Application pack' to include both DETI registration guidance for prospective NICUs and PRA/FCA authorisation guidance, as well as the respective registration and authorisation forms for such, shall be made available on the DETI website;
- DETI will publish an FCA approved information/referral page concerning the regulation of the financial conduct of NICUs by the

FCA and will also provide a link on its website to the credit union part of the FCA website as well as a link to the FCA register;

- DETI will update its website so that it contains information about the statutory accounts that credit unions will need to submit to DETI and attach to the PRA annual regulatory return.

The FCA will publish on its register relevant details of all authorised NICUs.

Relationship Management

In high-level detail how the FCA regulates NICUs

The rules and guidance the FCA requires firms to follow is set out in the FCA Handbook, which is a collection of Sourcebooks. Credit unions are required to comply with a dedicated Sourcebook called the Credit Unions New Sourcebook (CREDS). NICUs are subject to CREDS, with some exclusions and transitional periods to reflect the costs of entering the FCA and PRA regimes and the fact that neither the Legislative Reform (Industrial and Provident Societies and Credit Unions) Order 2011 nor the Co-operative and Community Benefit Societies and Credit Unions Act 2010 will apply to NICUs.

In high level detail how DETI will continue to carry out its registration function for NICUs

DETI will continue to sponsor the office of Registrar of Credit Unions to carry out the registration functions prescribed in the 1985 Order and as amended by the Consequential Order 2011.

In relation to the respective roles of the two parties to this MoU in respect of an application to register a new NICU the following will apply:

- the application for registration should be submitted to DETI;
- where the PRA seeks advice from the FCA as to whether the FCA is content for the Part 4A permission to be granted, the FCA will advise the PRA accordingly and will do so in accordance with any timeframe established by the PRA;
- DETI will liaise with the PRA to ensure that, if the NICU is to be registered, the NICU receives its acknowledgment of registration on the same day as it receives its deposit-taking permission from the PRA.

Access to Supervisory and historic records

On receipt of a request from the FCA, DETI will provide a copy of any supervisory or other record held by it in respect of a NICU via an agreed secure transfer mechanism. This could include electronic files and/or paper documents held for each NICU which have not previously been supplied to the FCA as a result of the previous transfer agreement between DETI and the FSA.

Such access shall be granted in line with any request by the FCA, subject only to any technical limitations or data protection issues in providing such access, and if such is the case then the parties shall agree whether and how such access should be provided.

DETI will enable the FCA to request any other relevant historical records which may not have been provided under the prior transfer agreement with the FSA to enable it to carry out its regulatory functions more effectively. These records shall be sent to the FCA so far as reasonably possible within 2 business days of the request being received and where appropriate the FCA will return any such records to DETI as soon as they are no longer required. The FCA may make copies of such records and also may request copies of any such record rather than the original record itself. Any records sent to the FCA shall be sent securely, shall be maintained securely by the FCA, and if sent back to DETI, shall be returned in a secure manner.

Registration Events

Ministers have also decided to transfer the registration function (i.e. essentially all the other non-supervisory statutory functions assigned to DETI in respect of NICUs) from DETI but for the time being the registration function will remain with DETI. The Financial Services Act 2012 contains provision for the Treasury by order to amend the legislation providing for any function of the Register of Credit Unions for Northern Ireland to be transferred to the Financial Conduct Authority and/or the Prudential Regulation Authority.

Whenever DETI informs the PRA of registration events as required within its MoU with the PRA, or its decision to decline a registration application, or of changes to model rules, it shall copy the FCA point of contact into all such emails sent to the PRA so that the FCA is also aware of such matters simultaneously with the PRA being informed.

Article 8(1A) of the 1985 Order states that the rules of a credit union must not be inconsistent with FSMA or any rules made or any requirements imposed by or under that Act. In addition to their other statutory checks DETI as registrar will therefore also check this aspect prior to registration but if in doubt may reasonably ask the PRA or the FCA for its comments as to whether any particular rule or rules proposed by a NICU are inconsistent with FSMA (as amended) or any rules made or any requirements imposed by or under that Act.

Further to Articles 65(7) and 66(4) of the 1985 Order DETI will not register special resolutions in respect of either the amalgamation or the transfer of credit unions unless DETI has obtained confirmation from the PRA that the proposed amalgamation or transfer would not, in their own opinion, result in a contravention of FSMA, or of any requirement imposed by or under it. The FCA will assist the PRA to provide that opinion if requested to do so by the PRA.

Enquiries

In order to ensure effective working arrangements, DETI and the FCA will meet periodically, as agreed between them, in order to discuss any enquiries of mutual

interest. Where possible and in appropriate cases, DETI and the FCA will co-operate in the course of investigations with a view to avoiding duplication of enquiry work in order to better deliver their respective functions.

Meetings or conferences may be held where the proper sharing of intelligence and other evidential information could result in an agreed enquiry process. These processes may include each organisation enquiring separately, or in a co-operative manner where both agencies investigate at the same time.

If the FCA and DETI carry out simultaneous enquiries into a firm or person, DETI and the FCA will co-ordinate to ensure that any enforcement action is, where possible, consistent in both effect and the time at which it is taken

Miscellaneous

Policy and any fees matters

Where not already on the public record, the FCA will inform DETI within one calendar month prior to the changes taking effect, of any changes to the regulatory fees and levies to which NICUs may be subject in the course of the FCA discharging its responsibilities as the financial conduct Regulator of NICUs.

Further to the above DETI and the FCA will liaise and consult whenever necessary to ensure that any fees matters relating to NICUs are properly considered by all parties wherever relevant and/or appropriate.

DETI and the FCA will also liaise and consult whenever necessary to ensure that any policy matters relating to NICUs are properly considered by both parties where relevant and/or appropriate.

Handling of queries

In the event of the receipt of ad hoc queries received from:

- the general public;
- members of NICUs or NICUs themselves;
- professional or other government bodies;
- or any other parties

any such queries will be assessed by whoever receives them as to whether they would more appropriately be answered by the FCA, the PRA or by DETI or answered by more than one body. Both parties to this MoU will co-operate as necessary to assist with the efficient handing of all such queries to ensure that the enquirer receives a timely, substantive and appropriate response.

Queries can be received by phone, electronically or in writing. If considered appropriate to transfer the query to the other party, an appropriate method of transfer should under normal circumstances occur within 24 hours. The party initially receiving the query should send an acknowledgement advising to whom it has been transferred. The party then in receipt of the query should aim to respond within 10

working days to the enquirer, and, if appropriate, copy the other party in to the response sent.

Complaints

DETI will continue to adjudicate on any complaint cases between NICUs and their members concerning matters or issues arising prior to 31 March 2012 (the date when the FSA became responsible for the regulation of NICUs). Any such complaint cases that have arisen since 31 March 2012, or which have still to arise, are though for the Financial Ombudsman Service to adjudicate on, rather than for DETI to do so.

Freedom of Information and Data Protection Information Access requests

The FCA and DETI will seek to co-operate with each other when Freedom of Information requests or Data Protection Information Access requests are received by one of the parties that includes information received by, or which might affect the interests of, the other party to this MoU.

Such requests may be received electronically or in writing. If considered appropriate to transfer the query to the other party, an appropriate method of transfer should occur within 24 hours. The party initially receiving the request should send an acknowledgement advising to whom it has been transferred. The party then in receipt of the query should respond within the requisite timeframe to the person making the request and, as appropriate, copy the other party in to the response as sent.

GENERAL

Whilst it is anticipated that the arrangements in this MoU should apply generally, it is recognised that some circumstances will require special handling. Nothing in this MoU prevents the making of arrangements to meet specific exceptional needs.

If any unintended inconsistencies come to be found between the wording of this MOU and the legislation, then the legislative provisions will prevail. If there is any disagreement arising from the interpretation of this MoU it will be referred as appropriate to the Head of Department responsible for credit union supervision within the FCA and to the Head of Business Regulation Division within DETI, and each will endeavour to resolve it within the spirit implicit in these co-operation arrangements. In every circumstance the MoU will be amended as necessary to either remove the inconsistency or to reflect the agreed outcome of such a referral.

The FCA and DETI will keep the working of the MoU under review, update it as appropriate and as agreed, and carry out a formal review after the first six months of operation and then at yearly intervals. These reviews may, among other things, need to consider whether and when the MOU needs to be amended to reflect the impact of the unfolding regulatory reform programme and any continuing work being undertaken by the Treasury as to the implications of this programme for the Credit Unions Act 1979 and the 1985 Order.

In conclusion, both parties to this MoU agree to work collaboratively and co-operatively to assist each other to carry out their respective statutory duties and responsibilities. Not only will this allow each party to better carry out its own statutory functions but it will also aid generally and specifically the credit union sector in Northern Ireland and all those with any involvement or interaction with it.

Signed on behalf of the Financial Conduct Authority on 23/3/2013 by

Clive Adamson _____ (FCA Director responsible for financial conduct supervision of credit unions)

 (Signature)

Signed on behalf of the Department of Enterprise, Trade and Investment in Northern Ireland on 28/3/13 by Jackie Kerr (Head of Business Regulation Division at DETI)

 (Signature)

