

Memorandum of Understanding (MoU)

Parties between:

1. **THE FINANCIAL CONDUCT AUTHORITY** whose office is at 12 Endeavour Square, London, E20 1JN (“the FCA”)
2. **THE COMMISSION FOR EQUALITY AND HUMAN RIGHTS (known as the Equality and Human Rights Commission)** whose office is at Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JX (“the EHRC”).

Introduction and background

1. This Memorandum of Understanding (MoU) sets out the framework that supports the working arrangements between the Financial Conduct Authority (“FCA”) and the Commission for Equality and Human Rights (“EHRC”). The strategic partnership, as outlined in this MOU, aims to support the FCA and EHRC in effectively and transparently meeting their obligations under the Equality Act 2010, and will help to protect people in financial services markets. The FCA and the EHRC recognise that their roles are distinct, but work may cover common ground and address similar issues. This MoU reflects the current working relationship and promotes ongoing liaison and co-operation between both organisations.
2. The FCA is established under The Financial Services and Markets Act 2000 (FSMA) as the conduct and markets regulator in the financial services sector. It is also responsible for the prudential supervision of firms that are not authorised by the Prudential Regulation Authority (PRA). FSMA gives the FCA the power to make and enforce rules governing the conduct of regulated firms and market participants. It has a single strategic objective to ensure that relevant markets function well, and 3 operational objectives. These 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 consumers.
3. The EHRC is the regulator responsible for enforcing the Equality Act 2010. It safeguards and enforces the laws that protect people's rights to fairness, dignity and respect. It uses unique powers to challenge discrimination, promote equality of opportunity and protect human rights across Great Britain.
4. The Regulator’s Code 2014 provides that when the law allows, regulators should agree secure mechanisms to share information with each other about businesses and other bodies they regulate, to help target resources and activities and

minimise duplication. Relationships with other regulators is one of the strategic priorities of the EHRC and it seeks greater alignment with the FCA on areas of mutual interest. As set out in the FCA's Approach to Consumers document, the FCA cooperates with organisations, including regulators, to further its objectives; this includes working with them to support vulnerable and excluded customers where it does not have the powers to address problems alone.

Public Sector Equality Duty

5. Since 5 April 2011 the Equality Act 2010 has introduced a single general Public Sector Equality Duty (PSED) which applies to public authorities and others who may be exercising public functions. Under this duty public authorities are required to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not.
6. The FCA recognises that in the exercise of its public functions it must have due regard to the PSED, including where they relate to the firms and market participants that the FCA regulates. The FCA sets out how it discharges its PSED in its Annual Diversity Report. The FCA's role in promoting diversity and inclusion goes beyond compliance with the PSED, and links directly to its statutory objectives as conduct regulator.
7. Whilst the FCA does not have enforcement powers under the Equality Act 2010, which are the sole reserve of the EHRC, it is likely that a breach of the Equality Act will also be a breach of the FCA's rules including its Principles for Businesses (Principles). The FCA can and does act in appropriate cases where firms are breaching its rules. The FCA can and will use its expertise of financial services markets to assist the EHRC in its enforcement work through the areas of co-operation set out in this MoU, for example by advising on the financial services markets it regulates.

Scope and Status

8. This MoU is subject to the statutory responsibilities and functions, and other legal obligations, of the FCA and EHRC and is not enforceable in law. However, the FCA and the EHRC are committed to working in ways that are consistent with the principles of this MoU. The purpose of the MoU is a means to achieve mutual goals, and the two organisations enter into the MoU intending to honour it.

9. Nothing in this MoU is intended to, or shall be deemed to, establish any partnership or joint venture between the organisations, constitute either organisation as the agent of the other organisation, nor authorise either of the organisations to make or enter into any commitments for or on behalf of the other organisation.
10. In operating within the terms of this MoU, each organisation will continue to work within their respective operating procedures at all times.

Principles of co-operation

11. The FCA and the EHRC will consider where they can work together on a case by case basis informed by their biannual engagement meetings.
12. The FCA and the EHRC will work together following the principles set out below. In particular, all decisions about collaborative working between the FCA and the EHRC will be subject to the following general principles:
 - a) each Party will respect each other's independent status and will cooperate when necessary or appropriate;
 - b) the working relationship will be governed by the desirability to deliver, in the most effective way, their respective functions;
 - c) the Parties will work together in a way that aims to contribute to their respective functions;
 - d) the Parties will be open and transparent in their decisions about when and where it is considered appropriate for them to work collaboratively;

Areas of co-operation

13. Subject to mutual agreement and availability of resource in each organisation, such co-operation may be appropriate in some or all of, but not limited to, the following key areas where there is mutual interest:
 - a) Areas of mutual regulatory interest;
 - b) Sharing knowledge and expertise;
 - c) Co-operation on inquiries, research projects or diagnostic work;
 - d) Co-operation on stakeholder activities (potentially joint events);
 - e) Co-operation on advice, guidance and policy;

- f) Joint external communications (e.g joint government responses, statements or trade press articles);
- g) Cross referral of concerns;
- h) Signposting of complaints;
- i) Signposting of advice and guidance of each other's regulatory responsibility on each other's websites; and
- j) Commissioning of research and reviews of research.

Levels of co-operation

- 14. Twice yearly meetings at 6 month intervals will be scheduled between the respective leads of this MoU or their representatives. Prior to each meeting and in accordance with policies and guidance, the information to be shared will be exchanged for discussion at the meeting together with any significant issues of mutual interest relating to the Equality Act and the protection of people in financial services markets arising over the previous 6 months. They will keep under review whether biannual meetings are sufficient.
- 15. The working relationship between the FCA and EHRC will be characterised by the exchange of information and other types of contact, including formal and informal meetings at appropriate intervals at the appropriate level. The relevant officials at the FCA and the EHRC will keep this working relationship under review.

Complaints handling, advice and guidance procedures

- 16. There may be occasions when one organisation may identify information contained in complaints which may be of interest to the other organisation and may be suitable for sharing. Where such instances occur the appropriate route for sharing of information shall be as follows:
 - a) FCA – Contact: Consumer Strategy and Policy Department. If this relates to an identified potential breach of FCA rules or other compliance issues, it will be passed to the relevant teams in the FCA. Information will be shared with the EHRC in accordance with FCA information sharing policies and guidance.
 - b) EHRC – Contact: RIO Lead Principal Compliance Directorate or further advice and guidance can be found on [the Equality and Human Rights Commission website](#). If this relates to an identified potential breach of the Equality Act 2010 or Human Rights Act 1998 it will be passed to the EHRC legal request triage inbox. If it relates to a policy or

other compliance issue, it will be passed to the relevant teams. Information will be shared with the FCA in accordance with EHRC information sharing policies and guidance.

17. Each organisation may, on request, provide assistance to the other on matters within its remit, subject to the availability of resources and the absence of conflict with the functions and legal obligations and restrictions of the organisation requested to provide such assistance. Such assistance would not obviate the need for each organisation to seek its own legal opinion or give due regard to the Public Sector Equality Duty in its own policies and reports where necessary. The assistance provided by one organisation to another will not constitute legal advice.

Information sharing

18. The FCA and EHRC aim to co-operate by sharing information where it is judged to be helpful to one another in fulfilling their respective functions, including their respective statutory powers of investigation and enforcement, subject to any legal restrictions on disclosure of such information.
19. The FCA and EHRC will aim to provide timely and focussed exchange of relevant information that enables effective co-ordination and co-operation in the areas outlined in this MoU.
20. Sharing of information envisaged under any part of this MoU will be subject to any legal restrictions on disclosure, which for the FCA includes s348 FSMA and for the EHRC includes s6 Equality Act 2006 (Confidential Information).
21. In this MOU “**Data Protection Legislation**”, “**data subject(s)**”, “**personal data**”, “**process**”, “**processed**”, and “**processing**” shall have the meanings set out in and will be interpreted in accordance with the General Data Protection Regulation and the Data Protection Act 2018.
22. Both organisations recognise that processing of personal data (including sharing of personal data) must be carried out in accordance with the General Data Protection Regulation (GDPR), Data Protection Act 2018 (DPA) and The Human Rights Act 1998, and all relevant legislation relating to these matters and respective codes of Practice, frameworks or other policies relating to confidential personal information and information issues. Both organisations agree that the sharing of personal data will be considered on a case-by-case basis and carried out in a manner consistent with the Data Sharing Code of Practice published by the Information Commissioner’s Office (ICO).

23. Specifically, this includes that each organisation shall comply with its obligations to report a personal data breach to the ICO, and (where applicable) data subjects under Article 33 of the GDPR, and wherever reasonable and practicable shall inform the other organisation of any personal data breach relating to shared personal data under this MoU.
24. The organisations agree to provide reasonable assistance as is necessary to each other to facilitate the handling of any personal data breach in an expeditious and compliant manner.

Miscellaneous

Review of this MoU

25. The arrangements covered by this MoU are, wherever possible, set out in terms providing sufficient flexibility for the relationship between the FCA and the EHRC to develop in the light of experience. Alongside the MoU, they will develop a more detailed action plan (not for publication) on how they will work together. The FCA and EHRC will monitor the functioning and effectiveness of this MoU and action plan, and will review it one year after the date of signature. After this initial review, during their engagement further periodic reviews will be agreed by the organisations to evaluate their continuing fitness for purpose.
26. This MoU may only be varied by written agreement of both organisations.

Date of coming into force

27. This MoU shall commence on the date of signature by both organisations.
28. Either organisation may terminate this MoU by giving at least three months' notice in writing to the other organisation at any time.

Charges and Liabilities

29. Nothing in this MoU is intended to affect the parties' responsibilities to bear their own costs and expenses incurred in complying with their obligations under this MoU.
30. Nothing in this MoU is intended to alter the general position that both parties remain liable for any losses or liabilities incurred due to their own or their personnel's actions and neither party intends that the other party shall be liable for any loss it suffers as a result of this MoU.

Publication

31. The FCA and EHRC agree the other may publish this MoU on their respective websites.

Contacts

32. Both organisations have identified a contact point responsible for the management of this MoU (known as 'Relationship Leads'), which are set out below:

33. **FCA:** Consumer Strategy and Policy Department, Financial Conduct Authority, 12 Endeavour Square, London, E20 1JN

EHRC: RIO Lead Principal Compliance Directorate, Equality and Human Rights Commission, 3rd floor Arndale House, The Arndale Centre, Manchester M4 3AQ

Duly authorised on behalf of **THE COMMISSION FOR EQUALITY AND HUMAN RIGHTS**



SIGNED BY

NameAlastair Pringle

Position.....Executive Director, Scotland and Corporate Delivery

Date19 February 2021

Duly authorised on behalf of **THE FINANCIAL CONDUCT AUTHORITY**

SIGNED BY *Nisha Arora*

NameNisha Arora

Position.....Director, Consumer and Retail Policy

Date19 February 2021