



Memorandum of Understanding

In Respect of the Exchange of Information

between

Her Majesty's Revenue and Customs

and

Financial Conduct Authority

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1. Introduction

- 1.1. This Memorandum of Understanding (MoU) sets out the high level agreement between Her Majesty's Revenue and Customs (HMRC) and Financial Conduct Authority that governs the exchange of information needed to better deliver their respective businesses. This MoU describes the high level principles governing the exchange of information between the two organisations. It should be noted that 'exchange' covers all transfers of information between the two organisations, including where one organisation has direct access to information or systems in the other.
- 1.2. Information will only be exchanged where it is lawful to do so. The relevant legal bases are detailed within this agreement.
- 1.3. Although this MoU is not a contract nor legally binding, and does not in itself create lawful means for the exchange of information, it has an essential role in documenting the processes and procedures agreed between the organisations. The agreement should not be interpreted as removing or reducing existing legal obligations or responsibilities on each party, for example as data controllers under the Data Protection Act.
- 1.4. This MoU relates to the overall exchange of information between HMRC and FCA and does not replace or supersede those 'process level' MoUs that cover agreements relating to one or more specific information exchanges. The process level MoUs that underpin this MoU include, but may not be limited to, those listed at Annex 2.

2. Legal

- 2.1. Both organisations are legally obliged to handle personal information according to the requirements of the Data Protection Act 1998 and the Human Rights Act 1998.
- 2.2. HMRC has specific legislation within the Commissioners for Revenue and Customs Act 2005 (CRCA) which covers the confidentiality of information held by the department, when it is lawful to disclose that information and legal sanctions for wrongful disclosure. For HMRC, disclosure of information is precluded except in certain limited circumstances (broadly, for the purposes of its functions, where there is a legislative gateway or with customer consent (see also Annex 1)). Unlawful disclosure relating to an identifiable person constitutes a criminal offence. The criminal sanction for unlawful disclosure is detailed at section 19 of CRCA.
- 2.3. Section 348 Financial Services and Markets Act 2000 (FSMA) states that confidential information must not be disclosed by the FCA or persons obtaining the information from the FCA, without the consent of the person from whom the FCA received the information and, if different, the person to whom it relates. Section 348(2) FSMA provides the definition of 'confidential information'.

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- 2.4. Under Section 349 FSMA confidential information may be disclosed by the FCA where the disclosure is made for the purpose of carrying out a public function and it is permitted by Treasury regulations. The relevant regulations are the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001, SI 2001/2188 as amended ("the Disclosure Regulations").
 - 2.5. Any disclosure made by the FCA to HMRC will result in the same duty of confidentiality being attached to the information when held by HMRC as set out in FSMA and the Disclosure Regulations.
 - 2.6. Information can only be exchanged where there is a legal basis for this. Annex 1 lists the legal bases that permit the exchange of information between HMRC and FCA. Information that is not covered by any of the legal bases listed at Annex 1 should not be exchanged.
 - 2.7. The process level MoUs, listed at Annex 2, include details of the legal bases that make it lawful for the specified information to be disclosed and the restrictions on the use of that information (i.e. whether it can only be used for specific purposes, restrictions on onward disclosure, etc.).
 - 2.8. Data supplied by HMRC to FCA under s.350 FSMA may be disclosed by FCA in proceedings mentioned in section 350(4) (c) or (e) FSMA or with a view to their institution without consulting HMRC.
 - 2.9. FCA will not otherwise disclose data supplied by HMRC to any outside organisation unless permitted or required by law and will not make any such disclosure without prior approval by HMRC.
 - 2.10. HMRC will not disclose data supplied by FCA to any outside organisation unless permitted or required by law and will not make any such disclosure without prior approval by FCA.

3. Freedom Of Information

- 3.1. Both organisations are subject to the requirements of the Freedom of Information Act (FoIA) 2000 and shall assist and co-operate with each other to enable each organisation to comply with their information disclosure obligations.
- 3.2. In the event of one organisation receiving a FoIA request that involves disclosing information that has been provided by the other organisation, the organisation in question will notify the other to allow it the opportunity to make representations on the potential impact of disclosure.

4. Information Handling

- 4.1. As part of Her Majesty's Government, both HMRC and FCA must process personal data in compliance with the mandatory requirements currently set out in HM Government's [Security Policy Framework](#) when handling, transferring, storing, accessing or destroying information.

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- 4.2. Each organisation will expect the other to have taken every reasonable measure to comply with the above standards and will conduct a risk assessment of the exchange against these requirements.
- 4.3. Each regular data exchange will have a process level MoU covering that particular exchange (perhaps, grouped with other exchanges). These will provide specific information relating to that exchange, including:
- the purpose of the exchange;
 - legal basis;
 - procedures (including for FoI requests);
 - security arrangements, including how to handle any security incidents in the receiving organisation that involve information from the exporting organisation;
 - costs;
 - roles and responsibilities of the parties, in particular, who is the data controller and, where appropriate, who is the data processor, and responsibilities under the Data Protection Act; and
 - the protocol for resolving any disputes relating to the information sharing activity.

Where onward disclosure is allowed, the process level MoU must include details of how information will be handled after onward disclosure, including reporting arrangements for any security incidents that involve the exported information after onward disclosure.

- 4.4. The exporting organisation will ensure that data integrity meets their organisation's standards, unless more rigorous or higher standards are required and agreed as part of agreeing the relevant process level MoU.
- 4.5. HMRC and FCA must ensure effective measures are in place to manage potential or actual incidents as per Cabinet Office guidance and apply the appropriate baseline set of personnel, physical and information security controls that offer an appropriate level of protection against a typical threat profile as set out in [Government Security Classifications](#), issued by the Cabinet Office, and as a minimum the top level controls framework provided in the Annex – Security Controls Framework to the GSC
- 4.6. Without limiting the receiving organisation's legal obligations under Data Protection legislation or otherwise, the organisation in receipt of information will ensure that they:
- only use the information for purposes that are legal under the legal basis on which they received it;
 - even where not legally required to do so, will, as a courtesy, notify the other organisation if they are going to use the information for any purpose other than that for which they received it;

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- store data received securely and in accordance with the prevailing central government standards, for example, in secure premises and on secure IT systems;
 - notify the other organisation if they are planning to onwardly disclose the information to other parties that are not covered by the existing agreement(s) (without breaching any legal restrictions on onward disclosure);
 - ensure that only people who have a genuine business need to see that data will have access to it;
 - report any data losses, wrongful disclosures or breaches of security relating to information originating in the other organisation to the designated contacts immediately (within 24 hours of becoming aware). This includes both advising, and consulting with, the other organisation on the appropriate steps to take, e.g. notification of the Information Commissioner's Office or dissemination of any information to the data subjects;
 - only hold data while there is a business need to keep it and destroy it in line with Government guidelines (see also para. 4.1);
 - regularly review the assessment of risks to information and the effectiveness of measures taken to mitigate risks; and
 - provide assurance, as detailed in the assurance document between HMRC and FCA.

4.7. Each one-off ad hoc transfer of information will have a Data Usage Agreement. This will provide specific information relating to that transfer, including:

- the purpose of the transfer;
- legal basis;
- procedures (including for FoI requests);
- security arrangements, including how to handle any security incidents in the receiving organisation that involve information from the exporting organisation;
- any costs;
- roles and responsibilities of the parties, in particular, who is the data controller and, where appropriate, who is the data processor, and responsibilities under the Data Protection Act; and
- the protocol for resolving any disputes relating to the information transfer.

5. Monitoring and Review Arrangements

5.1. This agreement will be reviewed at least every three years. Any changes needed in the interim may be agreed in writing and appended to this document for inclusion at the following review.

5.2. Reviews outside of the schedule can be called by representatives of either organisation.

5.3. Annex 3 outlines the contacts for document control, the version history of this MoU and its review date.

6. Issues, Disputes and Resolution

6.1. Where a problem arises that cannot be resolved through the relevant process level contacts, it should be reported, in writing, to the designated contacts (listed in Annex 4). The contacts will endeavour to resolve the problem within 2 working days. Once the potential changes have been identified, a formal change notification should be sent to the 'Data Exchange Coordinator'.

6.2. Where it is not possible to resolve the issue within 2 working days or the issue is of such severity that customers may be negatively affected, the issue will be escalated to the senior management team for each partner. They will be notified with an explanation of why the dispute has not been resolved so that they can take appropriate action for resolution or plan contingency arrangements.

6.3. Where the 'business as usual' channels fail to reach agreement, the organisations will attempt to negotiate a settlement in the spirit of joint resolution within 20 working days of a formal notification being received.

6.4. Any issues regarding ongoing delivery aspects of the information supply, such as data integrity or quality, should be addressed through 'business as usual' channels as detailed in Annex 4.

6.5. External changes affecting the operational delivery responsibilities of the organisations will also necessitate the review and potential amendment of this agreement.

7. Costs

7.1 No charges will be made by either party in relation directly to this MoU. There may, however, be costs involved in specific information exchanges; these will be detailed in the respective process level MoU.

8. Signatures

SIGNED BY:

For, and on behalf of,
Her Majesty's Revenue and Customs

For, and on behalf of,
FCA

Mike Potter

Andrew Bailey

(HMRC -
Chief Digital and Information Officer)

(FCA)

Date _____

Date _____

9. Annex 1 – Legal Bases for the Sharing of Information

9.1. Data can be exchanged between Her Majesty’s Revenue and Customs and FCA using the following specific legislation, regulations, guidance and agreements or the N. Ireland equivalents:-

HMRC to FCA

Section 18 of the Commissioners for Revenue and Customs Act (CRCA) sets out the specific circumstances in which HMRC may disclose information.

These are:

- where HMRC has a statutory legal gateway permitting the disclosure of information to a third party;
- for the purposes of HMRC’s functions;
- where the person or organisation that the information relates to has given their consent¹;
- where disclosure is for the purposes of civil proceedings or criminal investigation or proceedings;
- where disclosure is made in pursuance of a court order binding on the Crown;
- where disclosure is to a body with the statutory power in CRCA to inspect HMRC; or
- where disclosure is made in specific circumstances that are defined as being in the ‘public interest’ as set out in CRCA.

The legal gateway(s) permitting disclosure of information from HMRC to FCA are:

Legal Gateway
Section 350 Financial Services and Markets Act 2000
Section 19, Anti-Terrorism, Crime and Security Act 2001
Regulation 49A, Money Laundering Regulations 2007
Section 241 and Schedule 15 Enterprise Act 2002
Schedule 7, Para. 28B Finance Act 1994

FCA to HMRC

Section 349 FSMA provides that confidential information may be disclosed by the FCA where the disclosure is made for the purpose of carrying out a public function and it is permitted by Treasury regulations

The legal gateway(s) permitting disclosure of information from the FCA to HMRC are:

¹ Consent needs to be fully informed and freely given (i.e. there must be a viable alternative). It is also permissive – HMRC is not obliged to disclose the data.

Legal Gateway
The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001
Regulation 119, Payment Services Regulations 2009

9.2. The legal bases listed in 9.1 above should not be used in isolation, but with regard to the following:-

- Data Protection Legislation, including the Data Protection Act 1998
- Human Rights Act 1998

9.3. And for fraud purposes:

- Police and Criminal Evidence Act 1984 together with its Codes of Practice (England and Wales only)
- Regulation of Investigatory Powers Act 2000
- Criminal Procedures Investigation Act 1996 together with its Code of Practice (England and Wales only)

10. **Annex 2 – ‘Process level’ MoUs covering specific information exchanges include but may not be limited to the following:**

MoU Name and Reference	Legal Basis	Contact
For the exchange of information and conducting of joint visits under the Money Laundering Regulations 2007 and Payment Services Regulations 2009 MOU-A-J-P0001	<ul style="list-style-type: none"> • Section 18(1) of the Commissioners for Revenue and Customs Act 2005 (CRCA); • Sections 348 and 349 FSMA (as applied with modifications by paragraph 5 of Schedule 5 to the PSR); • Regulation 49A Money Laundering Regulations 2007; • Regulation 119(2) Payment Services Regulations 2009; • Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001; • Section 19 Anti-Terrorism, Crime and Security Act 2001; 	Michael Buggy (FCA) Caroline d’Cruz (HMRC)
Information Exchange Between HM Revenue and Customs Risk and Intelligence Service Directorate Gateway Exchange Team & Financial Conduct Authority (Draft) MoU-UAJ-P0002	<ul style="list-style-type: none"> • Section 19 Anti-Terrorism, Crime and Security Act 2001 • Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 	Michael Buggy (FCA) Judith Hall (HMRC)

11. Annex 3 – Document Control

11.1. Document Control Personnel

Key personnel	Name	Organisation (Team)
Author	Mitch Riviere Michael Buggy	HMRC FCA
Approvers	Jackie Riley Greg Sachradja	Central Policy – Information Policy & Disclosure, HMRC Head of Department, Law, Policy and International, EMO, FCA
Review Control	Mitch Riviere Michael Buggy	HMRC FCA

11.2. Version History

Version	Date	Summary of changes	Changes marked
0.1	26.11.2012	Initial Draft	No
0.2	20.12.2012	Financial	No
1.0	22.03.2013	Final Version	No
2.0	8.06.2016	Updated	No
2.1	10.11.2016	Final updated version 2016	No

11.3. Review dates

Version	Publication date	Review date

12. Annex 4 - Contacts

12.1. HMRC – Business As Usual

Contact	E-mail	Responsibility
Dan Leonard, Cyber Security and Information Risks	Leonard, Dan (CSIR) dan.leonard@hmrc.gsi.gov.uk	Security Incidents
Central Policy Information Policy & Disclosure team Inbox	ccp, disclosure (RP CCP London) ccp.disclosure@hmrc.gsi.gov.uk	Legal issues
EDE team Inbox	Kershaw, John Data exchange Coordinator john.kershaw@hmrc.gsi.gov.uk	External Data Exchange Coordinator
FOI team Inbox	Request, FOI (CenPol Information Policy and Disclosure) foi.request@hmrc.gsi.gov.uk	Freedom of Information Requests
Central Customer & Strategy Directorate	Shingler, Colin (CentralC&S) colin.shingler@hmrc.gsi.gov.uk	Protocol for dealing with cross-departmental complaints

12.2. HMRC – Escalation

Contact	E-mail	Responsibility
Julian Thomas, Cyber Security and Information Risks	Thomas, Julian (CSIR) christopher.kelleher@hmrc.gsi.gov.uk	Security Incidents
Jackie Riley, Information Policy & disclosure, Central Policy	Riley, Jackie (CenPol Information Policy and Disclosure) jackie.riley@hmrc.gsi.gov.uk	Legal issues
Graham Neaves, Cyber Security and Information Risks	Neaves, Graham (CSIR) graham.neaves@hmrc.gsi.gov.uk	Data Exchange Champion
Henny Abuzaid, FOI	Abuzaid, Henny (CenPol Information Policy and Disclosure) henny.abuzaid@hmrc.gsi.gov.uk	Freedom of Information Requests
Colin Shingler, Central Customer & Strategy	Shingler, Colin (CentralC&S) colin.shingler@hmrc.gsi.gov.uk	Protocol for dealing with cross-departmental complaints

12.3. FCA – Business As Usual

Contact	E-mail	Responsibility
Michael Buggy	michael.buggy@fca.org.uk	All BAU issues

12.4. FCA – Escalation

Contact	E-mail	Responsibility
Peter Screech Deputy Departmental Security Officer	peter.screech@fca.org.uk	Security Incidents
Manager, Law & International, EMOD	kate.higginson@fca.org.uk	Legal issues
Phil Todd	philip.todd@fca.org.uk	Freedom of Information Requests

13. Glossary of Terms

Abbreviation	Description
CRCA	The Commissioners for Revenue and Customs Act
MoU	Memorandum of Understanding
FoIA	Freedom of Information Act
FoI	Freedom of Information
HMRC	Her Majesty's Revenue and Customs
PSB	Public Sector Body
SPF	Security Policy Framework

Definition	Interpretation
"Data Controller"	has the meaning set out in section 1 of the Data Protection Act 1998, i.e. 'a [natural or legal] person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed'.
"Data Processor"	has the meaning set out in section 1 of the Data Protection Act 1998, i.e. 'in relation to personal data, any [natural or legal] person who processes the data on behalf of the data controller'.
"Data Protection Legislation"	means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner
"FoIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation
"Law"	means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body
"Ad Hoc Transfer"	Is defined as being bulk data with a protective marking of restricted or above and the transfer is part of a pilot or project with a definitive end date.
"Regulatory Bodies"	means those government departments and regulatory statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence matters dealt with in this Agreement and "Regulatory Body" shall be construed accordingly
"Public sector body"	This will generally be another government department (OGD) but could be another public sector body (e.g. Local Authority). Information sharing with a private sector body with which HMRC has a commercial relationship needs to be covered by a commercial contract, not an MoU.