

MEMORANDUM OF UNDERSTANDING

BETWEEN

(1) THE FINANCIAL CONDUCT AUTHORITY (FCA);

(2) THE NATIONAL TRADING STANDARDS BOARD (NTSB);

(3) THE CONVENTION OF SCOTTISH LOCAL AUTHORITIES (COSLA);

**(4) THE DEPARTMENT OF ENTERPRISE, TRADE AND INVESTMENT
(DETI);**

**(5) THE ASSOCIATION OF CHIEF TRADING STANDARDS OFFICERS
(ACTSO); AND**

**(6) THE SOCIETY OF CHIEF OFFICERS OF TRADING STANDARDS IN
SCOTLAND (SCOTSS)**

1. Purpose and Scope

- 1.1. Prior to 1 April 2014, the Office of Fair Trading (OFT) was responsible for consumer credit regulation and licensing.
- 1.2. On 1 April 2014, the OFT's responsibility for consumer credit regulation moves to the FCA. Activities connected with consumer credit and consumer hire become regulated activities under the Financial Services and Markets Act 2000 (FSMA), along with the power to authorise, supervise and take enforcement action in relation to consumer credit activity.
- 1.3. Local authority trading standards services in England, Wales and Scotland and the DETI (together, Trading Standards Services (LATSS)) will continue to have powers to take enforcement action in respect of consumer credit, so liaison between the FCA and LATSS is important to the future effectiveness of the new consumer credit regulatory regime.
- 1.4. The NTSB, COSLA, DETI, ACTSO and SCOTSS (together, the Representative Bodies) are parties to this agreement on behalf of LATSS in Scotland, England and Wales, and Northern Ireland.
- 1.5. This Memorandum of Understanding (MOU) sets out the high-level framework the FCA, the Representative Bodies, and LATSS will use to co-operate and co-ordinate in carrying out their respective responsibilities in relation to consumer credit. It does not create any separate enforceable or legal rights.
- 1.6. The MOU aims to provide an outline of how the FCA, the Representative Bodies, and LATSS will co-operate to assist one another and prevent duplication of work, but it is not intended to set out in detail precisely what work will be taken forward by any particular party, as that level of prescription is unlikely to lead to effective regulation.

- 1.7. In areas where there is more obvious overlap, such as intelligence-sharing and investigating unauthorised businesses, more detailed operational protocols will be developed. Initially protocols will be created to cover working with the Trading Standards Illegal Money Lending Teams and the three National Intelligence Hubs, with other protocols being developed as and when required.

2. Roles and responsibilities of the FCA and the Representative Bodies

FCA

- 2.1. Broadly, under FSMA the FCA is responsible for
 - (1) Regulating standards of conduct in retail and wholesale markets;
 - (2) Supervising trading infrastructure that supports those markets;
 - (3) The prudential supervision of firms that are not PRA-regulated;
 - (4) The functions of the UK Listing Authority (UKLA).
- 2.2. It has 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 (include 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.

The Representative Bodies

- 2.3. LATSS in England, Wales and Scotland are funded by, and are accountable to, local authorities. They enforce a broad range of consumer related legislation, from weights and measures, food standards and product safety to counterfeit goods, cold callers and rogue traders, as well as enforcing consumer credit legislation.
- 2.4. The NTSB is formed from regional representatives of the Heads of Trading Standards Services in England and Wales and is tasked with providing the delivery mechanism and governance structure for regional and national consumer protection enforcement in England and Wales. The equivalent bodies for Scotland and Northern Ireland are the COSLA and the DETI. The DETI is a government department of the Northern Ireland Executive and exercises authority on behalf of the devolved Northern Ireland Assembly; it deals with enforcement of trading standards through this single body.
- 2.5. The NTSB and COSLA provide the funding for, and govern the Illegal Money Lending Teams (IMLT) and work closely with the ACTSO and SCOTSS, who represent trading standards chief officers in England and Wales, and Scotland.

3. Information sharing

General

- 3.1. The FCA, Representative Bodies and LATSS aim to co-operate by sharing information where appropriate and where legally permissible, and exchange of information will take place at many levels, subject to ensuring

that information exchanged is not trivial and does not create an undue burden.

- 3.2. Information or inquiries will generally be exchanged from the FCA to LATSS via a designated email contact at the LATSS office, and from LATSS to the FCA through either:
 - (1) ConsumerCreditSectorTeam@fca.org.uk; or
 - (2) FCID@fca.org.uk, if the matter relates to intelligence.
- 3.3. Information will be exchanged with the appropriate degree of speed and security. Where possible, information available to the FCA, Representative Bodies or LATSS that is relevant to the responsibilities of the others will be shared where requested, and parties will seek to process information requests within 10 working days, where possible. In addition, if the FCA, Representative Bodies or LATSS considers that information it has gathered would be of material interest to the others, it will proactively offer such information to the other without a request.
- 3.4. Where information is received from third parties, the ability to share such information with each other may in some instances be constrained by the terms of agreements with those third parties, or by other legal restrictions. However, the FCA, Representative Bodies and LATSS will seek to ensure that these instances are minimised, where possible.
- 3.5. Without prejudice to the obligations a party may have to use or disclose information in relation to enforcement proceedings or otherwise, each party will endeavour to consult the other, where practicable, before
 - (1) passing the information to a third party, unless the information was disclosed in the first place on the condition that it may not be disclosed to any other body without prior consent from the disclosing party; and
 - (2) using the information in the context of enforcement proceedings or other court case where it is likely to become publicly disclosed.
- 3.6. The FCA, Representative Bodies and LATSS will share information and intelligence where it concerns an allegation of evidence of fraud, money laundering 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, LATSS will also pass on to the FCA any information and intelligence concerning any unauthorised firm of which it becomes aware or where the behaviour of an authorised firm is such that questions about their fitness to trade in credit may be raised.

Confidential Information

- 3.7. Where possible, the FCA, Representative Bodies and LATSS will protect the confidentiality and sensitivity of all unpublished regulatory and other confidential information received from any of the others, and will ensure that any confidential information is only disclosed if there is an appropriate gateway permitting the disclosure of such information.

FCA's obligations

- 3.8. Section 348(1) of FSMA prevents the FCA from disclosing any confidential information it receives, except where the person from whom the information was received (and, if different, the person to whom the information relates) has consented to the disclosure, and in certain other limited circumstances.
- 3.9. In broad terms, confidential information is information that:
- (1) relates to the business or other affairs of any person and which was received by the FCA for the purposes of, or in the discharge of, its statutory functions; and
 - (2) which is either:
 - (a) not in the public domain; or
 - (b) is not in the form of a collection or summary so that it cannot be attributed to any particular firm or individual.
- 3.10. Section 349 of FSMA allows the making of regulations to permit the disclosure of confidential information in certain circumstances. The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (the "Gateway Regulations") sets out the circumstances in which disclosure may be made, but does not compel the FCA to do so.
- 3.11. The Gateway Regulations generally permit the disclosure of information under two main gateways:
- (1) where disclosure is made for the purposes of enabling or assisting the FCA to discharge any of its public functions (regulation 3(1)(a) the Gateway Regulations) i.e. its functions under FSMA and certain other legislation; and
 - (2) where the disclosure is made for the purposes of enabling or assisting LATSS and DETI to discharge its functions, in relation to information not subject to directive restrictions (regulation 12 of the Gateway Regulations).
- 3.12. Before disclosing any confidential information, the FCA must have regard to any relevant restrictions on disclosure including those set out in the Gateway Regulations. When the FCA passes on information to the LATSS, or to the Representative Bodies, they will be bound by the FSMA obligation on disclosing confidential information (section 348(1) FSMA).

LATSS obligations

- 3.13. LATSS powers in relation to disclosure of information are set out in a general framework in the Enterprise Act 2002 (EA 2002). Section 237 of the EA 2002 provides a general restriction on the disclosure of specified information (information "which comes to a public authority in connection with the exercise of any function it has under or by virtue of" certain legislative provisions, in relation to the affairs of an individual or any business of an undertaking) during the lifetime of the individual or during the existence of the undertaking, unless that disclosure is within one of the

permitted gateways, the information had previously been legitimately made public, or is with the consent of the individual or the undertaking.

- 3.14. The specified information includes information coming to a public authority in relation to its exercising any function under Part 8 of the EA 2002 (enforcement of certain consumer legislation) and the Consumer Credit Act 1974.
- 3.15. The gateways permit disclosure by the disclosing authority:
 - (1) to facilitate the exercise of its own functions under EA 2002 or any other enactment; and
 - (2) to another public authority or to any other person for the purpose of facilitating the exercise by that person of any function he has under an enactment specified in Schedule 15 of EA 2002, which include the Consumer Credit Act 1974 and the Financial Services and Markets Act 2000.

Where information disclosed is not made public, there are restrictions on further disclosure by the recipient.

4. Co-operation and Co-ordination

- 4.1. Co-operation and information sharing between the FCA and LATSS at an operational level will
 - (a) assist in the FCA's assessment of whether firms meet the threshold condition of suitability;
 - (b) help ensure that a consistent and co-ordinated approach is taken in relation to issues such as financial promotions and unfair terms in consumer contracts; and
 - (c) help identify potential poor conduct in relation to consumer credit that can be taken forward by the FCA's supervision work.
- 4.2. LATSS will endeavour to pass on to the FCA information about firms that held a consumer credit licence, where LATSS have concerns about those firms' conduct, and the FCA may seek information from the relevant LATSS about firms that have not previously been licenced under the consumer credit regime.
- 4.3. The FCA and LATSS will co-operate in areas where there is a joint interest, and where there are co-existing regulatory obligations. In relation to retailers and other non-financial businesses, the FCA will share non-financial concerns e.g. in relation to rogue traders, where FCA supervision work has identified such issues with LATSS, and LATSS will share credit-related concerns that come to their attention in their trading standards work.

The FCA and LATSS will co-operate in exploring ways, whether by the provision of information or training, to raise awareness of the new consumer credit regime and its requirements.

5. Enforcement

- 5.1. Where practicable, the FCA and LATSS will notify each other before starting a formal investigation or commencing civil or criminal proceedings in respect of which the other has an interest, and will seek to avoid taking regulatory actions that are incompatible or even in conflict. Where such an instance arises, it will be escalated through the management and governance structures of each organisation.
- 5.2. Representatives from the FCA and the Representative Bodies responsible for enforcement and legal intervention respectively will meet regularly to discuss potential and on-going enforcement action.

Criminal Investigations

- 5.3. Both the FCA and the LATSS have powers to investigate and prosecute criminal offences under the Consumer Credit Act and FSMA, and where appropriate, will seek to put in place more detailed operational arrangements through specific protocols, in order to assist in efficient investigation and enforcement and to manage the risk of duplication of effort.

Action under the EA 2002

- 5.4. Both the FCA and the LATSS have the power to take action under Part 8 of the EA 2002, which allows it to accept undertakings and seek civil enforcement orders to stop breaches of certain legislation where the breach harms the collective interests of consumers.
- 5.5. The legislation includes Consumer Credit Act 1974, Consumer Credit Directive, Unfair Commercial Practices Directive, Unfair Terms in Consumer Contracts Directive, and the Distance Marketing of Financial Services Directive. The lead enforcer under the EA 2002 will be the Competition and Markets Authority (CMA), and the FCA and LATSS will co-operate with each other and will notify the CMA if they intend to make such an application for an enforcement order as required by statute (no separate notification is needed under this MoU).

Unfair Contract Terms

- 5.6. Under the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs), both the FCA and the LATSS are qualifying bodies, and both the FCA and the LATSS have powers in relation to unfair contract terms under the UTCCRs for the purposes of considering a complaint, obtaining documents and information or applying for injunctive relief under the enforcement mechanism under Part 8 of the EA 2002 and/or the UTCCRs.
- 5.7. Under the Unfair Contract Terms Regulatory Guide (UNFCOG) contained in the FCA Handbook, the FCA will consider the fairness (within the meaning of the regulations) of financial services contracts for carrying on any regulated activity, including consumer credit. Where the firm concerned is not an authorised firm or appointed representative, the lead enforcer in considering enforcement action under the UTCCRs in respect of financial services contracts involving the carrying on of regulated activities is the CMA, and as required by statute, both the FCA and LATSS will notify the CMA of their intention to take any action under Part 8 EA 2002 and/or the UTCCRs. No separate notification is needed under this MoU.

Financial Promotions

- 5.8. The supervision of credit advertising becomes subject to the FSMA financial promotions regime. The Consumer Credit (Advertisements) Regulations 2004 and the Consumer Credit (Advertisements) Regulations 2010 are revoked by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013. Conduct relating to advertisements and other financial promotions through the FCA's Principles for Businesses and the Consumer Credit sourcebook (CONC) in the FCA's Handbook becomes the sole responsibility of the FCA.
- 5.9. The FCA will continue to liaise with the NTSB and COSLA in relation to any requirements for possible enforcement action that the Advertising Standard Authority (ASA) may refer in relation to advertisers who persist in breaching the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (the CAP Code), in order for them to consider action in relation to misleading, aggressive or otherwise unfair non-broadcast advertising within the scope of the Consumer Protection from Unfair Trading Regulations 2008 (CPRs), or misleading advertising that falls within the scope of the Business Protection from Unfair Trading Regulations 2008 (BPRs).

6. Review of Memorandum of Understanding

- 6.1. The FCA and the Representative Bodies will meet regularly to review the effectiveness and efficiency of the MoU. The FCA and the Representative Bodies will work together to raise awareness of this MoU and have agreed to its publication.