

Memorandum of Understanding between the Financial Conduct Authority (the FCA) and the scheme operator, the Financial Ombudsman Service (The Financial Ombudsman Service)

Introduction

1. This Memorandum of Understanding (MoU) provides a framework for and describes how the FCA and the Financial Ombudsman Service cooperate and consult with each other in the exercise of their roles and respective functions, as required by Schedule 17 paragraph 3A(2) of the Financial Services and Markets Act 2000 (FSMA).
2. A separate duty to co-operate between the Financial Ombudsman Service, FCA and FSCS exists under s.415C FSMA. This is implemented through the form of the Wider Implications Framework. The statement of policy explaining how the parties shall comply with the s.415C duty and the terms of reference of the Wider Implications Framework are published on the FCA's website¹.
3. Cooperation between the FCA and Financial Ombudsman Service benefits both users of financial services and claims management services as well as the financial services and claims management industries by contributing to the efficient functioning of the statutory systems for conduct regulation and dispute resolution.
4. This is particularly important in scenarios where decisions of the FCA or Financial Ombudsman Service may have significant impacts upon users of financial services and firms in the market. This includes decisions the FCA makes when contemplating or carrying out supervisory or regulatory action. It also includes decisions made by the Financial Ombudsman Service in its statutory role as the independent scheme operator of the ombudsman scheme, especially when it receives a significant number of cases concerning the same or similar issues or where the Financial Ombudsman Service's decisions may affect a significant proportion of firms in a sector of financial services. In these circumstances, the FCA and the Financial Ombudsman Service will cooperate to meet their respective statutory objectives.

¹ <https://www.fca.org.uk/about/wider-implications-framework>

5. This MoU also describes how the FCA and the Financial Ombudsman Service will share information between themselves.
6. The FCA and the Financial Ombudsman Service will monitor the operation of this MoU and the effectiveness of and efficiency of co-operation on an annual basis and amend this MoU from time to time as necessary.

Roles of the FCA and the Financial Ombudsman Service

7. Under FSMA:
8. The FCA operates as the financial conduct regulator. Its strategic objective is ensuring that the relevant markets function well.² Further to its strategic objective, the FCA has operational objectives which are:
 - (a) securing an appropriate degree of protection for consumers;
 - (b) protecting and enhancing the integrity of the UK financial system; and
 - (c) promoting effective competition in the interests of consumers in the market for regulated financial services.
9. In addition, since 2023, the FCA has a secondary objective of facilitating the international competitiveness of the UK economy and its growth in the medium to long term (subject to alignment with relevant international standards).
10. The FCA must also, so far as is compatible with acting in a way which advances its consumer protection or integrity objectives, discharge its general functions in a way which promotes effective competition in the interests of consumers. It is answerable, through the Treasury, to Parliament for the effective discharge of its functions.
11. The FCA discharges its objectives by setting standards that regulated firms must meet and by acting where such firms may be breaching those standards.
12. The FCA does not investigate individuals' complaints against the firms it regulates. This is the role of the Financial Ombudsman Service.

² Section 1B(2) of FSMA. For the purposes of FSMA, the relevant markets are defined (in section 1F) as the financial markets, the markets for regulated financial services and the market for services that are provided by persons other than authorised persons in carrying on regulated activities but are provided without contravening the general prohibition.

13. The Financial Ombudsman Service's main role, as the ombudsman scheme operator, is to operate a scheme to resolve disputes, independently and impartially, as an alternative to the civil courts. The scheme's statutory purpose is for certain disputes to be resolved quickly and with minimum formality by an independent person on the basis of what is fair and reasonable in all the circumstances. The scheme has two jurisdictions – the compulsory jurisdiction and the voluntary jurisdiction.
14. The Financial Ombudsman Service must determine disputes on the basis of what it believes to be fair and reasonable in all the circumstances of the case, taking into account certain matters including the relevant law and regulations, relevant regulator's rules, guidance and standards, relevant codes of practice and (where appropriate) what the Financial Ombudsman Service considers to have been good industry practice at the relevant time.

Statutory responsibilities of the FCA and the Financial Ombudsman Service

15. Under FSMA, the FCA is required to take such steps as are necessary to ensure that the ombudsman scheme operator – the Financial Ombudsman Service – is, at all times, capable of exercising its statutory functions. In particular, the FCA is responsible for:
 - a) appointing and removing the directors (including the chair) of the Financial Ombudsman Service (in the case of the chair, acting with the approval of Treasury);
 - b) ensuring that the directors' terms of appointment (and particularly those governing removal from office) secure their independence from the FCA in the operation of the scheme;
 - c) approving the annual budget of the Financial Ombudsman Service and any variations to it;
 - d) consenting to scheme rules for the compulsory jurisdiction;
 - e) approving voluntary jurisdiction rules and standard terms for the voluntary jurisdiction; and

- f) making rules for the compulsory jurisdiction on: complaint-handling by firms; specifying the activities covered and the complainants who are eligible; setting the time limits for referring complaints to the Financial Ombudsman Service, the money award limit; and the levies to cover the operation of the compulsory jurisdiction.
- 16. The Financial Ombudsman Service (with the consent/approval of the FCA) is responsible in particular for:
 - a) adopting a budget (which must indicate amounts of income arising/expected to arise and distribution of resources deployed) distinguishing between each of the scheme's two jurisdictions;
 - b) fixing standard terms and making rules for the voluntary jurisdiction on: complaint-handling by respondents, specifying the activities covered, specifying the complainants who are eligible, setting the time limits for referring complaints to the Financial Ombudsman Service, the limits on awards, and the levies to cover the establishment and operation of the voluntary jurisdiction;
- 17. making scheme rules for the compulsory jurisdiction; and
- 18. fixing standard terms and making rules in the voluntary jurisdiction on ombudsman procedures, awards of costs and interest and case fees.
- 19. The Financial Ombudsman Service is also responsible for:
 - a) operating the ombudsman scheme (which is known as the Financial Ombudsman Service);
 - b) appointing the ombudsmen (including the Chief Ombudsman) on terms consistent with their independence; and
 - c) making a yearly report to the FCA on the discharge of its functions and publishing that report.

Governance

20. Mindful of its obligation to take such steps as are necessary to ensure that the scheme operator, the Financial Ombudsman Service, is at all times, capable of exercising its statutory functions, the FCA will:
 - a) consider the appropriateness and suitability of the persons whom the FCA may consider for appointment as a director of the Financial Ombudsman Service (and, in the case of the appointment of the chair, seek the approval of HM Treasury);
 - b) review the reports submitted to it by the Financial Ombudsman Service on the discharge of its functions and review the report by the Chief Ombudsman on the discharge of his or her functions;
 - c) periodically review and consult with the Financial Ombudsman Service on the desirability (or not) of developing any rules having considered reports on the discharge of the Financial Ombudsman Service's or the Chief Ombudsman's functions;
 - d) review the annual accounts sent to it by the Financial Ombudsman Service and the report by the Comptroller and Auditor General;
 - e) consider and, where appropriate, approve, the annual budget proposed by the Financial Ombudsman Service in a timely manner; and
 - f) take any other steps that may be necessary to ensure that the Financial Ombudsman Service is, at all times, capable of exercising its statutory functions.
21. In appointing the directors of the Financial Ombudsman Service, the FCA will take into account the views of the chair of the Financial Ombudsman Service and the need to maintain an appropriate balance of knowledge, experience and diversity in the composition of the board.
22. The FCA and the Financial Ombudsman Service will cooperate in the smooth running, and periodic review, of the arrangements for:
 - a) the appointment of directors to the Financial Ombudsman Service;

- b) setting the Financial Ombudsman Service's budget and the associated levies and case fees;
- c) collection by the FCA, on behalf of the Financial Ombudsman Service, of the levy in relation to the compulsory jurisdiction; and
- d) consulting on and making rules affecting the Financial Ombudsman Service.

Cooperation

23. The FCA and the Financial Ombudsman Service agree that they will:

- a. seek to dispel confusions and misunderstandings about their different roles;
- b. seek to achieve a complementary and consistent approach, so far as that is consistent with their independent roles by consulting each other at an early stage (including on the interpretation of regulatory requirements where they are relevant to the resolution of disputes).;
- c. meet and communicate regularly – at appropriate levels of seniority – to discuss matters of mutual interest, such matters may include forward looking assessment of complaint volumes, trends emerging from recent closed complaints and emerging redress events and relevant matters relating to the FCA's supervision of regulated firms including work planned or being undertaken by the FCA which may impact on the volume or nature of complaints which the Financial Ombudsman Service receives;
- d. share (for comment) at an early stage, draft documents (such as consultation papers and briefings) that affect the other's functions, including any relevant briefings or public statements (including either parties' Consultation Papers, Financial Ombudsman Service approach frameworks and Guidance or Policy Statements issued by the FCA) and seek to co-badge these where appropriate for clarity; and
- e. work together in accordance with the s.415C FSMA duty to co-operate. The Financial Ombudsman Service and FCA are subject to this duty. The terms of compliance with the duty are set out in the "Terms of Reference for the Wider Implications Framework (incorporating the statutory statement of policy of the cooperation duty under section 415C)" which is published on the FCA's website.

24. The Financial Ombudsman Service will review issues arising from its casework and will discuss these with the FCA where patterns or themes give rise to potential broader market impacts, noting the FCA's wider statutory objectives.
25. The FCA and the Financial Ombudsman Service agree to cooperate for the purposes set out in paragraph 23 through a number of fora, including but not limited to:
 - a. ongoing engagement across issues that may arise, at both director and working level, for example, through regular collaboration at sectoral level;
 - b. regular bilateral discussions as necessary;
 - c. membership of the Wider Implications Framework; and
 - d. attendance at the FCA Oversight Committee.

Information sharing

26. The Financial Ombudsman Service must disclose information to the FCA where it considers it has information which, in its opinion, would or might be of assistance to the FCA in advancing one or more of its operational objectives (including the secondary competitiveness and growth objective) or the FCA's access to cash obligations. The FCA will have regard to this information in giving effect to its operational objectives and the FCA's access to cash obligations.
27. Subject to any restrictions on disclosure of information (confidential or otherwise) at law:
28. The Financial Ombudsman Service may disclose information to the FCA for the purpose of enabling or assisting the Financial Ombudsman Service to discharge its own functions and for the purpose of enabling or assisting the FCA to discharge any of its public functions.
29. The FCA may disclose information to the Financial Ombudsman Service for the purpose of enabling or assisting the FCA to discharge any of its public functions or enabling or assisting the Financial Ombudsman Service to discharge its functions. The FCA may also disclose information to the Chief Ombudsman and any other member of the panel of ombudsmen for the purpose of enabling or assisting such persons to carry out their functions.

30. Subject to any restrictions on disclosure of information (confidential or otherwise) at law, the FCA and the Financial Ombudsman Service will seek to adhere to the following procedures when sharing information between the two entities:
- a) The Financial Ombudsman Service will give the FCA the information the FCA reasonably requires to enable it to discharge its statutory obligations with regard to the scheme.
 - b) Routinely, the Financial Ombudsman Service will give the FCA regular information about the number and types of complaints handled.
 - c) If concerns arise, the Financial Ombudsman Service will give the FCA information about: serious shortcomings in a firm's complaint-handling; concerns about the fitness and propriety of a firm or approved person; or other issues that may require action by the FCA in accordance with its statutory objectives.
 - d) If the FCA requests it for actual or contemplated regulatory action, the Financial Ombudsman Service may give the FCA (for the specific firm concerned) information that is relevant to the discharge of the FCA's statutory functions.
 - e) The FCA will give the Financial Ombudsman Service information about: proposed changes to rules or guidance on complaints-handling; and, when it is relevant to the Financial Ombudsman Service's functions, actual and contemplated regulatory action.
 - f) Where either the FCA or the Financial Ombudsman Service seek to share information which may be legally privileged, the relevant organisation will adhere to any protocols that may have been agreed for the exchange of such information.