

Memorandum of Understanding
between
the Insurance Fraud Bureau
and
the Financial Conduct Authority

10 April 2019

Contents

RECITALS	3
OPERATIVE PART	4
Interpretation	4
Purpose and Principles	4
Legal Status and Effect	6
Provision of Unsolicited Information	6
Confidentiality Restrictions	6
Details of the Information to be Exchanged	7
Requests for Assistance	8
Procedure for Requests	8
Assessing Requests	9
Contact Points	9
Consultation	9
Commencement	10

Memorandum of Understanding ("MoU")

Between

Insurance Fraud Bureau ("IFB") and Financial Conduct Authority ("FCA")

Recitals

A. The IFB is a not-for-profit company established to lead the insurance industry's collective fight against insurance fraud. It acts as a central hub for sharing insurance fraud data and intelligence, using their position at the heart of the industry and access to data to detect and disrupt organised fraud networks. It uses a wide range of data and intelligence to achieve two primary objectives: 1) to help insurers identify fraud and avoid the financial consequences; and 2) to support police, regulators and other law enforcement agencies in finding fraudsters and bringing them to justice. It also tries to raise public awareness of insurance fraud scams.

B. The FCA is responsible for ensuring that relevant markets function well. In doing so, it aims to advance the protection of consumers, the integrity of the UK financial system and promote effective competition. It is responsible for the conduct regulation of all financial services firms in the UK. As of 1 April 2019, the FCA is the regulator of claims management companies established or serving customers in England, Wales and Scotland. The six sectors of claims management activities regulated by the FCA are personal injury, financial services and products, housing disrepair, specified benefits, criminal injuries, and employment. The FCA's regulation of conduct includes acting to prevent market abuse and ensuring that financial firms treat customers fairly. The FCA is also responsible for the microprudential regulation of those financial services firms not supervised by the Prudential Regulation Authority ("PRA"), which include claims management companies.

C. The IFB and the FCA wish to enter into this MoU to provide a formal basis for co-operation in relation to claims management activities, including for the exchange of information and investigative assistance. The IFB and the FCA believe such co-operation will enable them more effectively to perform their respective functions in relation to claims management activities.

Operative Part

Interpretation

1. In this MoU, unless the context requires otherwise:

"administering" an applicable law, regulation or requirement includes enforcing the same;

"applicable laws, regulations and requirements" means any law, regulation or requirement applicable in the United Kingdom, and where the context permits includes:

- (a) relevant European legislation that has not yet been transposed into the United Kingdom domestic law;
- (b) any law, regulation or requirement applicable in the United Kingdom; and
- (c) any rule, direction, requirement, guidance or policy made or given by or to be taken into account by a Party;

"FCA" means the Financial Conduct Authority;

"FCA Rules" means the rules set out in the FCA's Handbook

"FGCA" means the Financial Guidance and Claims Act 2018

"FSMA" means the Financial Services and Markets Act 2000

"Gateway Regulations" means The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001

"IFB" means the Insurance Fraud Bureau

"Party" means the IFB or the FCA (together, the Parties);

"person" means a natural person, legal entity, partnership or unincorporated association.

Purpose and Principles

2. The purpose of this MoU is to establish a formal basis for co-operation, including the areas of exchanging information, communications, and investigative assistance.
3. Such exchange of information and investigative assistance may take place for, but is not limited to, the following purposes:

From the IFB to the FCA in support of the FCA's role as established by the FGCA and supporting legislation. In particular but not limited:

- (a) to assess the suitability of persons to provide regulated claims management activities;
- (b) to enable alleged breaches of the Compensation Act 2006, FSMA, FGCA and supplementary legislation, breaches of the FCA Rules, or other failures, to

be properly investigated and decided upon, and the risk to the public to be assessed;

- (c) to enable the proper processing of claims or applications for redress or compensation of any description;
- (d) for the purposes of regulatory, disciplinary or other legal proceedings, whether in public or not, provided that the recipient is reasonably considered able to take regulatory or other proper action upon the information; and
- (e) for the purposes of further lawful disclosure of the information to persons under investigation, witnesses, legal advisers, other regulators, professional bodies, prosecuting bodies, and law enforcement agencies including the police.

From the FCA to the IFB in support of the FCA's public functions but not limited:

- (f) to help insurers identify fraud and avoid the financial consequences; and
- (g) to support police, regulators and other law enforcement agencies in finding fraudsters and bringing them to justice

4. There is evidence and intelligence to indicate that there might be wide-scale fraud involving motor insurance accident claims and persons performing the role of claims management services. This includes evidence of staged, induced and invented accidents, false injury claims, and the involvement of accident management companies, repair companies, car hire companies, vehicle recovery and salvage companies. There are also reports of insurance intermediaries selling fraudulent policies, which are subsequently invalid, as well as firms impersonating authorised firms in order to sell insurance products fraudulently. Finally, there are reports of conduct and fraud issues involving persons both working in unauthorised and authorised business, as well as reports of alleged malpractice by some medical practitioners and solicitors. Such activities will only be covered by this MoU to the extent that they are relevant to the FCA's regulatory functions, or the FCA considers that sharing information in respect of the above will further one of its operational objectives, as follows:

- (a) to secure an appropriate degree of protection for consumers;
- (b) to protect and enhance the integrity of the UK financial system; and
- (c) to promote effective competition in the interests of consumers.

5. The IFB's function of sharing insurance fraud data and intelligence to detect and disrupt organised fraud networks, might assist in the reduction of collisions resulting in persons being killed or seriously injured. It should also:

- (a) aid the enforcement of road traffic legislation enacted to protect the public;
- (b) increase public confidence and satisfaction in the insurance industry;
- (c) prevent and reduce crime and disorder;
- (d) increase safety and security; and
- (e) disrupt criminal networks.

6. This MoU does not modify or supersede any laws or regulatory requirements in force in, or applying to the United Kingdom. This MoU sets forth a statement of intent and accordingly does not create any enforceable rights. This MoU does not affect any arrangements under other MoUs.
7. The Parties acknowledge that they may only provide information under this MoU if permitted or not prevented under applicable laws, regulations and requirements.

Legal Status and Effect

8. Nothing in this MoU shall, or is intended to:
 - a) create any legal or procedural right or obligation which is enforceable by either of the Parties against the other; or
 - b) create any legal or procedural right or obligation which is enforceable by any third party against either of the Parties, or against any other third party; or
 - c) prevent either of the Parties from complying with any law which applies to them; or
 - d) fetter or restrict in any way whatsoever the exercise of any discretion which the law requires or allows the Parties to exercise; or
 - e) create any legitimate expectation on the part of any person that either of the Parties to this MoU will do any act (either at all, or in any particular way, or at any particular time), or will refrain from doing any act.

Nevertheless, the Parties are genuinely committed to pursuing the aims and purposes of this MoU in good faith, and intend to act in accordance with its terms on a voluntary basis.

Provision of Unsolicited Information

9. The Parties may provide information, or arrange for information to be provided, on a voluntary basis even though no request has been made.

Confidentiality Restrictions

10. Section 348(1) of FSMA prevents the FCA from disclosing any confidential information it receives except in certain circumstances. Confidential information is defined in section 348(2) of FSMA. Where the information has lawfully been made available to the public or is in the form of a collection of data or a summary so that it cannot be attributed to a particular firm or individual, that information is not confidential information (see section 348(4) of FSMA).
11. The restriction on the disclosure of confidential information under section 348 FSMA does not apply where the person from whom the information was received (and, if different, the person to whom the information relates) has consented to the disclosure of the material.
12. Section 349 of FSMA allows HM Treasury to make regulations to permit the disclosure of confidential information in certain circumstances. The Gateway Regulations set out the circumstances in which disclosure may be made. The Gateway Regulations are permissive, enabling the FCA to disclose information in certain circumstances, but do not compel the FCA to do so.

13. The Gateway Regulations generally permit the disclosure of confidential information to the IFB (in relation to current or former authorised persons) where the disclosure of confidential information is made for the purposes of enabling or assisting the FCA to discharge any of its public functions (see regulation 3(1)(a) of the Gateway Regulations), i.e. its functions under FSMA and certain other legislation.
14. Any disclosure of confidential information received by the FCA to the IFB for the purposes of the FCA's functions remains subject to section 348 of FSMA and the Gateway Regulations.
15. When the FCA discloses confidential information to the IFB, the IFB will be bound by the statutory confidentiality regime in FSMA.
16. The IFB receives confidential information from its members, and will only share it in accordance with their contractual obligations and the General Data Protection Regulation (including as saved with the European Union (Withdrawal) Act 2018, the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 and any subsequent analogous legislation) and the Data Protection Act 2018, along with any relevant codes or certifications.
17. Under section 68 of the Serious Crimes Act 2007, a public authority may, for the purposes of preventing fraud or a particular kind of fraud, disclose information as a member of a specified anti-fraud organisation or otherwise in accordance with any arrangements made by such an organisation.
18. A Party that receives non-public information under this MoU will only disclose that information in accordance with disclosure permitted under its applicable laws, regulations and requirements. The recipient Party will endeavour to consult with the other Party if it proposes to pass on information to another person. The recipient Party will endeavour to comply with any restrictions on the use of information that are imposed when the information is provided. In the absence of any such restrictions, the recipient Party may assume that there are no such restrictions (other than any restrictions that apply as a matter of law).
19. If there is a legally enforceable demand for information supplied under this MoU, the Party receiving the demand will notify the Party that supplied the information of the demand, unless this is not practicable for reasons of urgency. The Party receiving the demand will use all reasonable legal means to resist such a demand, including asserting such appropriate legal exemptions or privileges with respect to that information as may be available.

Details of the Information to be Exchanged

20. Subject to the confidentiality restrictions set out in paragraphs 10 to 19 above, the FCA may disclose to the IFB information obtained in the course of its supervisory or investigative work involving claims management companies, if the FCA considers that such information may be relevant to the IFB.
21. Where the FCA requires information relating to persons providing claims management services, it will request such from the IFB. Specifically, the IFB and the FCA will exchange information in a format agreed between the parties, where lawful, concerning, but not limited to, individuals, vehicles, premises and companies. IFB information may include names, addresses, photos, conviction history of offenders and any current relevant intelligence. The IFB will supply such data from existing intelligence and information systems.

22. It is expected that information shared will be not rated above the FCA's "Restricted" classification; should it become necessary to pass information of a higher security classification, the request will be looked at on an individual basis, and dealt with in the way that the relevant Party deems most appropriate.

Requests for Assistance

23. If a request for assistance is made, each Party will use reasonable efforts to provide assistance to the other, subject to paragraphs 10 to 19 above. Assistance may include for example:
- (a) providing information in the possession of the requested Party;
 - (b) confirming or verifying information provided to it for that purpose by the requesting Party;
 - (c) exchanging information, collaborating on communications or discussing issues of mutual interest;
 - (d) obtaining specified information and documents from persons;
 - (e) conducting inspections or examinations of financial services providers, claims management companies, and/or the firms mentioned in paragraph 4 above, as applicable, or arranging for the same; and
 - (f) permitting the representatives of the requesting Party to participate in the conduct of enquiries made by or on behalf of the requested Party pursuant to paragraphs (d) - (e) above.
 - (g) providing all relevant information in possession of the requested Party relating to any breach or potential breach of data protection laws and regulations that may impact the other party without undue delay.

Procedure for Requests

24. Requests for the provision of information or other assistance will be made in writing, or made orally and, unless otherwise agreed, confirmed in writing in a format agreed between the parties within ten business days. To facilitate assistance, the requesting Party should specify in any written request:
- (a) the information or other assistance requested (Identity of persons, specific questions to be asked etc.);
 - (b) if information is provided by the requesting Party for confirmation or verification, the information and the kind of confirmation or verification sought;
 - (c) the purpose for which the information or other assistance is sought;
 - (d) if the request for assistance is for the purpose of actual or possible enforcement investigation or action (including (i) for the purposes of any criminal investigation whatever which is being or may be carried out, whether in the United Kingdom or elsewhere; (ii) for the purposes of any criminal proceedings whatever which have been or may be initiated, whether in the United Kingdom or elsewhere; or (iii) for the purpose of initiating or bringing to an end any such investigation or proceedings, or of facilitating a

determination of whether it or they should be initiated or brought to an end);
and

(e) any other matters specified by the requesting Party and by the applicable laws, regulations and requirements in relation to the requesting Party.

25. Where such information is to be provided in writing, the information should be appropriately marked using the relevant classification markings, and transmission should be via encrypted email service or password protected document.

Assessing Requests

26. Each request for assistance will be assessed on a case-by-case basis by the requested Party to determine whether assistance can be provided under the terms of this MoU. In any case where the request cannot be fulfilled in part or whole, the requested Party will consider whether there may be other assistance which can be given by itself or by any other authority.

27. In deciding whether and to what extent to fulfil a request, the requested Party may take into account:

(a) whether the request conforms with this MoU;

(b) whether the provision of assistance would be unreasonably burdensome to the performance of the requested Party's functions;

(c) whether it would be otherwise contrary to the public interest or the essential national interest of the requested Party's jurisdiction to give the assistance sought;

(d) any other matters specified by the laws, regulations and requirements of the requested Party's jurisdiction (in particular those relating to confidentiality and professional secrecy, data protection and privacy, and procedural fairness); and

(e) whether complying with the request may otherwise be prejudicial to the performance by the requested Party of its functions.

28. The Parties recognise that assistance may be denied in whole or in part for any of the reasons mentioned in paragraph 27 in the discretion of the requested Party.

Contact Points

29. The Parties will provide a list of contact points to which information or requests for information or assistance under this MoU should be directed.

30. Those individuals will maintain an open dialogue between each other in order to ensure that the MoU remains effective and fit for purpose. They will also seek to identify any difficulties in the working relationship, and proactively seek to minimise the same.

Consultation

31. The Parties will review the operation of this MoU every three years, and will consult with each other when necessary with a view to improving its operation, and resolving any matters.

32. Any minor changes to this MoU identified between reviews may be agreed in writing between the parties.
33. Where the specific conduct set out in the request for assistance may constitute a breach of a law, regulation or requirement, the relevant Parties will consult to determine the most appropriate means for each Party to provide assistance.

Commencement

34. This MoU will take effect when both Parties have signed it and will continue to have effect until terminated by either Party giving 30 days advance written notice to the other Party. It may be amended by agreement in writing.

Executed by the Parties:

For the IFB



Stephen Dalton

Head of Intelligence, IFB

For the FCA



Philip Salter

Director of Retail Lending, Supervision

Date: 10 April 2019

Date: 10 April 2019