

## **Memorandum of Understanding between the Office of the Scottish Charity Regulator and the Financial Conduct Authority**

### **Purpose of the Memorandum of Understanding**

The purpose of this memorandum of understanding is to set out the relevant powers and responsibilities of the Office of the Scottish Charity Regulator, under the Charities and Trustee Investment (Scotland) Act 2005, and the Financial Conduct Authority (FCA) under the Industrial and Provident Societies Act 1965 and the Friendly Societies Act 1974.



\*2013-03-26-0003\*

## **1. Context**

- 1.1 Under section 1 of the Charities and Trustee Investment (Scotland) Act 2005 ("the Act") the Office of the Scottish Charity Regulator ("OSCR") is responsible for the operation of an effective regulatory framework including the granting of charitable status, maintenance of a public register of charities, the investigation of apparent misconduct and facilitation and monitoring of compliance with the Act.
- 1.2 The Financial Conduct Authority ("FCA") is a non-government body which is responsible for regulating the conduct of financial services firms.
- 1.3 The FCA also has the function of acting as registering authority for societies registered under the Industrial and Provident Societies Act 1965 ("IPS") and for societies registered under the Friendly Societies Act 1974 ("FS"), some of which are charities.
- 1.4 This Memorandum of Understanding ("MOU") aims to support joint working arrangements between OSCR and the FCA which satisfy the statutory responsibilities of each body.

## **2. Objectives of the Memorandum**

- 2.1 The primary objectives of the Memorandum are to:

- Ensure that OSCR and FCA can fulfil their statutory duties in the most effective way possible;
- Minimise the burden of regulation for charitable IPS/FS in Scotland; and
- Set out the circumstances in which OSCR and FCA will share information and collaborate where a common approach is required.

## **3. Registered Social Landlords**

- 3.1 A large number of IPS are Registered Social Landlords (RSL's), and therefore are also registered and regulated by the Scottish Housing Regulator. OSCR has a MOU with the Scottish Housing Regulator and working arrangements in relation to RSL's are recorded in this document. This document is available on both the Scottish Housing Regulator and OSCR's Websites.

## **4. Annual Returns and Monitoring**

- 4.1 Excluding RSL's there are only a small number of charities remaining that are registered both by FCA and OSCR. These charities must comply with **both** OSCR and FCA reporting arrangements, including sending both a copy of their annual accounts.

## 5. Joint working

- 5.1 OSCR and FCA have agreed as shown below which areas are relevant for collaboration and cooperation for IPS/FS which are not RSLs.
- 5.2 The FCA is a 'relevant regulator' for the purposes of the Act, and as such Chapter 3 of the Act enables OSCR and the FCA to share information and work together where appropriate.

Because the FCA's powers in relation to those IPS/FS which are charities are limited, and mostly do not come within the scope of the FCA's wider powers under the Financial Services Act 2012, OSCR and the FCA anticipate that the amount of information which may be shared will not be substantial.

- 5.3 **Complaints** – All complaints received by OSCR will initially be referred to the appropriate IPS/FS and its internal complaints procedure. OSCR will investigate if the complaint is of a very serious nature and under its remit.

## 6. Information provision in support of compliance with the Act

- 6.1 To minimise the regulatory burden, OSCR and FCA have agreed the following matters for cooperation for IPS/FS which are not RSL's.
  - 6.1.1 **Charitable Status Application** – The responsibility for application of charitable status by way of an entry on the Register under section 4 of the Act rests directly with an individual IPS/FS and the application must be signed, approved appropriately and sent directly to OSCR.
  - 6.1.2 **Review of Charitable Status** – OSCR is under an obligation to review entries in the Register under section 3(6) of the Act as well as to remove from the Register a charity which no longer meets the charity test (Section 30). The review of a charitable IPS/FS against the charity test will be an exchange between OSCR and each individual charitable IPS/FS.
  - 6.1.3 **Removal of Charity from Register** – Should a charity be removed from the OSCR Register, as a result of either an enquiry or rolling review, OSCR will notify the FCA in writing.
  - 6.1.4 **Notifications** – IPS/FS retain individual responsibility for notifications required under section 17 of the Act. Contact should directly be made to OSCR.
  - 6.1.5 **Consents** – The process of applying for consent will be an exchange between the individual IPS/FS and OSCR. For all section 16 consents that require both the consent of OSCR and FCA, OSCR will grant consent first with conditions attached that any relevant registration requirements of the IPS or the FS are met. It will be recognised that the requirements that determine whether consent can be granted by OSCR and FCA are different, and that each needs to make its decision based on its respective legal framework.
  - 6.1.6 **Name Change** – In the event of a proposal to change a charity's name, the IPS/FS should contact OSCR first for consent, then seek FCA approval in

accordance with the Industrial and Provident Societies or the Friendly Societies Acts. Again, each will make its decision based on its respective legal framework.

## 7. Consultation

- 7.1 As registrars of charitable IPS/FS, OSCR and FCA will work together to ensure that the relevant law is interpreted and applied in a way that achieves consistency of decision making and a seamless regime that promotes effective regulation without imposing an unnecessary burden on them.
- 7.2 In order to achieve this, representatives of OSCR and FCA will keep in regular contact either by phone or email, where major issues arise a formal meeting may be arranged.
- 7.3 In order to secure that matters are handled at the appropriate level, contact between OSCR and FCA should be established between designated points of contact (See Appendix). Where they consider it appropriate, ongoing liaison may be delegated to members of their staff.
- 7.4 **Communications** – OSCR and the FCA will collaborate on external communications or handling external media interest where there is a matter of mutual interest
- 7.5 To ensure the sector is aware of the development of MOUs copies will be made available on each organisation's website.

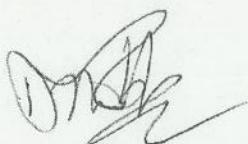
## 8. General

- 8.1 Whilst it is anticipated that the arrangements in this Memorandum should apply generally, it is recognised that some circumstances will require special handling. Nothing in this memorandum prevents the making of arrangements to meet specific exceptional needs.
- 8.2 Any disagreement arising from the interpretation of this Memorandum will be referred to the Chief Executive of OSCR and the Head of the Approved Persons, Passporting and Mutuals Department at the FCA, who will endeavour to resolve it within the spirit implicit in the cooperation arrangements. The Memorandum will be amended if necessary to reflect the agreed outcome of the referral.
- 8.3 OSCR and FCA will keep the working of the Memorandum under review, update it as required, and carry out a formal review every three years.

**Points of Contact**

<b>Area of Liaison</b>	<b>FCA</b>	<b>OSCR</b>
Development of Strategic Policy and Legal Framework	Technical Specialist with policy responsibility for Industrial & Provident Societies	Chief Executive
Register; Responsibilities for joint working/information Provision in Support of Compliance with the Act	Manager of Mutuals Team	Head of Registration
Information Provision in Support of Compliance with the Act	Manager of Mutuals Team	Head of Enforcement

Signed by:



David Robb  
Chief Executive (OSCR)



Victoria Raffe  
Director (FCA)

Agreed May 2006

Reviewed December 2008

Amended to reflect Financial Service Authority change of form to the Financial Conduct Authority April 2013

